

# **RESULTS REPORTS OF THE STUDY OF NEEDS ASSESSMENT**

**ENGLISH AND PARTNER'S LANGUAGES VERSIONS**

**CHILD-FRIENDLY JT**

**The right of minors to information, translation and  
interpretation in criminal proceedings: development  
of child-friendly tools**

**JUST-AG-2016-06-760674**



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# **RESULTS REPORT OF THE STUDY OF NEEDS ASSESSMENT**

**SPANISH AND ENGLISH  
FUNDACIÓN DIAGRAMA INTERVENCIÓN  
PSICOSOCIAL (SPAIN)**

**Child-Friendly JT**

*The right of minors to information, translation and interpretation in criminal proceedings:  
Development of child-friendly tools  
JUST-AG-2016-06*

# **EVALUACIÓN DE NECESIDADES DE LOS/AS MENORES EN CONFLICTO CON LA LEY EN ESPAÑA: INFORME SOBRE EL DERECHO DE LOS/AS MENORES A INFORMACIÓN, TRADUCCIÓN E INTERPRETACIÓN EN LOS PROCEDIMIENTOS JUDICIALES**

## **1. INTRODUCCIÓN**

En España el Sistema de Justicia Juvenil está regulado por la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores (LORPM) y su Reglamento aprobado por Real Decreto 1774/2004, de 30 de julio (RLORPM). Tanto en la LORPM como en el RLORM, así como en la Ley de Enjuiciamiento Criminal (LECrím), se establecen los derechos de los/as menores cuando son detenidos/as o internados/as en España.

Concretamente, en cuanto al derecho a la información, tanto la LORPM como el RLORPM, son claros al afirmar que las autoridades y funcionarios/as que intervienen en la detención, deben informar a la persona menor, en un lenguaje claro y comprensible y de forma inmediata, sobre los hechos que se le imputan, las razones de su detención y los derechos que le asisten, que son, además de los que contempla la LORPM (art. 17.1 LORPM y art. 3 RLORPM), los recogidos en el art. 520 de la LECrím.

En la LECrím, el art. 520.2 destinado al tratamiento de las personas detenidas y presas, enfatiza de nuevo que todos/as los/as detenidos/as serán informados/as de los hechos que se les atribuyen y las razones motivadoras de su privación de libertad, así como de los derechos que les asisten. Pero incluye, como apunte distinto a la LORPM, que deberá hacerse por escrito, en un lenguaje sencillo y accesible y en una lengua que comprendan. Recientemente se ha introducido un nuevo artículo, el art. 520.2 *bis* LECrím, para matizar que debe entenderse por "lenguaje claro y accesible": "*aquel que se adapte a la edad de la persona detenida, su grado de madurez, su discapacidad y cualquier otra circunstancia personal de la que pueda derivar una limitación de la capacidad para entender el alcance de la información que se le facilita*".

Asimismo, los derechos que asisten a las personas menores detenidas en España, son los siguientes (art. 520.2 LECrím):



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- Derecho a guardar silencio no declarando si no quiere, a no contestar alguna o algunas de las preguntas que le formulen, o a manifestar que sólo declarará ante el juez.
- Derecho a no declarar contra sí mismo/a y a no confesarse culpable.
- Derecho a designar abogado/a.
- Derecho a acceder a los elementos de las actuaciones que sean esenciales para impugnar la legalidad de la detención o privación de libertad.
- Derecho a que se ponga en conocimiento del/la familiar o persona que desee, sin demora injustificada, su privación de libertad y el lugar de custodia en que se halle en cada momento. Las personas extranjeras tendrán derecho a que las circunstancias anteriores se comuniquen a la oficina consular de su país.
- Derecho a comunicarse telefónicamente, sin demora injustificada, con una tercera persona de su elección. Esta comunicación se celebrará en presencia de un/a funcionario/a de policía o, en su caso, del/la funcionario/a que designen el/la juez o el/la fiscal.
- Derecho a ser visitado/a por las autoridades consulares de su país, a comunicarse y a mantener correspondencia con ellas.
- Derecho a ser asistido/a gratuitamente por un/a intérprete, cuando se trate de extranjero/a que no comprenda o no hable el castellano o la lengua oficial de la actuación de que se trate, o de personas sordas o con discapacidad auditiva, así como de otras personas con dificultades del lenguaje.
- Derecho a ser reconocido/a por el/la médico forense o su sustituto/a legal y, en su defecto, por el/la de la institución en que se encuentre, o por cualquier otro/a dependiente del Estado o de otras Administraciones Públicas.
- Derecho a solicitar asistencia jurídica gratuita, procedimiento para hacerlo y condiciones para obtenerla.

Además, la legislación española contempla otros derechos respecto a la información facilitada a las personas detenidas:

- Se tiene que informar a la persona detenida sobre el plazo máximo de duración de la detención y el procedimiento que puede seguir para impugnar la legalidad de la detención (art. 520.2 párrafo 2º LECrim).
- En lo que respecta a las personas extranjeras, cuando no se disponga de una declaración de derechos en una lengua que la persona detenida entienda, se buscará un/a intérprete para informarle de sus derechos. Y posteriormente, sin que se retrase indebidamente, se le entregará una declaración escrita de los

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derechos que le asisten en la lengua que comprenda (art. 520.2 párrafo 3º LECrim).

- Además, el/la detenido/a podrá conservar una declaración escrita de los derechos durante todo el tiempo de la detención (art. 520.2 párrafo 4º LECrim).

Ese mismo derecho a la información, incluye también la posibilidad de instar un procedimiento de *habeas corpus* si el/la menor o cualquiera de la personas que prevé la legislación, consideran que la persona menor ha sido privada ilegalmente de libertad.

Asimismo, los/as menores que se encuentran cumpliendo una medida cautelar de internamiento en centro, también tienen derecho a la información. Concretamente, tienen derecho a recibir información personal y actualizada de los siguientes aspectos (art. 56.2 LORPM):

- de su situación personal,
- de su situación judicial,
- de las normas de funcionamiento interno del centro,
- y de los procedimientos concretos para hacer efectivos tales derechos, en especial para formular peticiones, quejas o recursos.

Además el art. 36.2 del RLORPM establece que las personas menores, en el momento de su ingreso en un centro, tienen derecho a recibir información por escrito de:

- sus derechos y obligaciones,
- el régimen de internamiento en el que se encuentran,
- las cuestiones de organización general,
- las normas de funcionamiento del centro,
- las normas disciplinarias,
- y lo medios para formular peticiones, quejas o recursos.

Así pues, con la creación del presente informe, se pretenden detectar las dificultades que muestran los/as jóvenes españoles/as para reconocer los derechos que les asisten y comprender información relevante sobre los procedimientos judiciales.

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## 2. METODOLOGÍA

Con el propósito de analizar el conocimiento de los/as menores sobre sus derechos e información relevante en los procedimientos judiciales, se ha empleado una metodología de investigación mixta. Por un lado, se ha obtenido información cuantitativa a través de un cuestionario administrado a menores en conflicto con la ley, y por otro lado, se han organizado dos grupos de discusión para obtener mayor información sobre este asunto. Así pues, cada uno de los puntos que a continuación se muestran, serán divididos en dos apartados: Grupo de cuestionarios y grupo de discusión.

### 2.1. Participantes

#### ➤ Grupo de cuestionarios:

Los/as participantes de este grupo son 52 menores, 27 de los cuales están cumpliendo una medida de internamiento en un centro educativo de Murcia gestionado por Fundación Diagrama, y 25 se encuentran cumpliendo una medida en medio abierto con la entidad CEFIS en Murcia y Cartagena. El rango de edad de estos/as menores oscila entre los 15 y los 20 años ( $X=17.4$ ). El sexo es mayoritariamente masculino, resultando una proporción de 47 chicos (90.4%) con una media de 17.4 años de edad, frente a 5 chicas (9.6%) con una media de 17.6 años.

En relación al tipo de medidas que están cumpliendo los/as menores de este grupo, el 52% de ellos/as lo está haciendo en internamiento, con una media de 266.7 días de duración, estando el 21% en internamiento cautelar, el 21% en régimen cerrado, el 5% en régimen terapéutico, el 48% en régimen semiabierto y el 5% en régimen abierto.

El 48% restante está cumpliendo una medida en medio abierto, con una media de 222 días de duración, teniendo el 92% de ellos una medida de libertad vigilada y el 8% restante, tareas socioeducativas.

#### ➤ Grupo de discusión:

Los/as participantes de este grupo son 16 menores, 10 de los cuales están cumpliendo una medida de internamiento en un centro educativo de Murcia gestionado por Fundación Diagrama, y 6 se encuentran cumpliendo una medida en medio abierto con la entidad CEFIS en Murcia y Cartagena. El sexo de estos/as menores es 100%



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masculino, oscilando el rango de edad entre los 15 y los 19 años ( $X=17.4$ ). La nacionalidad mayoritaria de los/as menores es española (87.5% frente a 12.5%).

En relación al tipo de medidas que están cumpliendo los/as menores de este grupo, el 62.5% de ellos/as lo está haciendo en internamiento, con una media de 16.3 meses de duración. Mientras que el 37.5% restante, se encuentra cumpliendo una medida de libertad vigilada, con una media de 8.6 meses de duración.

En cuanto al tipo de delito, la mayoría de los/as menores ha cometido un delito de hurto (50%), seguidos/as de aquellos/as que han cometido un delito por conducir sin licencia (18.75%), un quebrantamiento de condena (12.5%), un delito de violencia intrafamiliar (12.5%) y un robo con violencia (6.25%). Respecto a los antecedentes delictivos de los/as menores que conforman la muestra, el 75% de ellos/as ha cometido algún delito previo, respecto al 25% restante que no lo ha hecho.

## 2.2. Instrumentos

### ➤ Grupo de cuestionarios:

El instrumento empleado en este grupo, fue un cuestionario anónimo creado por todo el Consorcio que forma parte del proyecto, que recoge 43 preguntas de verdadero/falso sobre distintas situaciones por las que puede pasar un/a menor una vez que se le acusa de un delito (por ejemplo: *"un/a menor tiene derecho a que le expliquen de qué se le acusa"*), así como la edad, el sexo, la medida educativa en ejecución y la duración de dicha medida. El propósito de este cuestionario, es valorar los conocimientos que tienen los/as menores acerca de sus derechos e información relevante de los procedimientos judiciales.

Este instrumento fue elaborado en inglés en su versión inicial, y posteriormente fue traducido, por cada uno de los países participantes, en sus respectivos idiomas: croata, búlgaro, griego, italiano y español.

### ➤ Grupo de discusión:

El instrumento utilizado en este grupo, fue el modelo de las 6 fases para la creación y desarrollo de los grupos de discusión, creado por Stewart, Shamdasani y Rook (2007). Dichos autores, determinaron que en primer lugar debe establecerse el objetivo de la

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creación del grupo; posteriormente definir las características de los/as participantes; a continuación, designar a un/a moderador/a que guiará el curso del grupo, así como un/a observador/a que anotará todo lo tratado en la sesión en una plantilla previamente creada; posteriormente se especificará un guion de conducción del grupo y finalmente se analizarán los datos obtenidos. El propósito del uso de este modelo, consiste en analizar los conocimientos de las fases del procedimiento judicial que los/as menores sujetos/as a medidas judiciales de internamiento poseen, y en base a éstos, identificar carencias y/o necesidades.

Este instrumento fue elaborado en inglés en su versión inicial, y posteriormente fue traducido, por cada uno de los países participantes, en sus respectivos idiomas: croata, búlgaro, griego, italiano y español.

### 2.3. Procedimiento

Previamente a la intervención con ambos grupos, todos los países participantes debían llevar a cabo 3 reuniones con diferentes entidades de la Administración Pública, para solicitarles las autorizaciones pertinentes, así como colaboración en el desarrollo del estudio. En el caso de España, las reuniones fueron con: la Consejería de Familia e Igualdad de Oportunidades de la Comunidad Autónoma de la Región de Murcia, el Juzgado de Menores de Murcia y la Fiscalía del Juzgado de Menores de Murcia.

La selección de los/as participantes fue llevada a cabo por la Dirección de cada uno de los centros, atendiendo a los/as menores que prestaron su consentimiento para participar en el estudio.

#### ➤ Grupo de cuestionarios:

El cuestionario empleado con este grupo, fue administrado por dos técnicos de Fundación Diagrama encargados/as de la ejecución del presente proyecto, que se desplazaron a ambos centros en dos días diferentes. Dentro de los centros, se dividía a los/as menores en dos grupos (de alrededor de 13 personas) y cada técnico supervisaba a cada uno de ellos. En total se hicieron 4 grupos, formando un total de 52 sujetos.

Antes de iniciar el cuestionario, cada técnico explicaba a su grupo el propósito de la administración del mismo, las instrucciones para su correcta cumplimentación, así como su carácter confidencial y anónimo.

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Durante la cumplimentación del cuestionario, cada técnico supervisaba el adecuado funcionamiento de su grupo, cuya duración máxima oscilaba alrededor de los 20 minutos.

➤ Grupo de discusión:

El modelo empleado con este grupo, fue ejecutado por dos técnicos de Fundación Diagrama encargados/as de la ejecución del presente proyecto, que se desplazaron a ambos centros en dos días diferentes. En cada centro, se eligió un grupo de 10 menores con los/as que se llevaba a cabo dicha metodología de trabajo. Uno/a de los/as técnicos actuaba como mediador/a dirigiendo el grupo con preguntas y el/la otro/a técnico actuaba como observador/a apuntando la información tratada durante el desarrollo del grupo.

Antes de iniciar el grupo, el/la técnico-mediador/a explicaba al grupo el propósito del grupo de discusión, las instrucciones para su correcto desarrollo, así como el consentimiento para la grabación de voz y su carácter confidencial y anónimo. Cada grupo de discusión tuvo una duración de alrededor de 1.30h.

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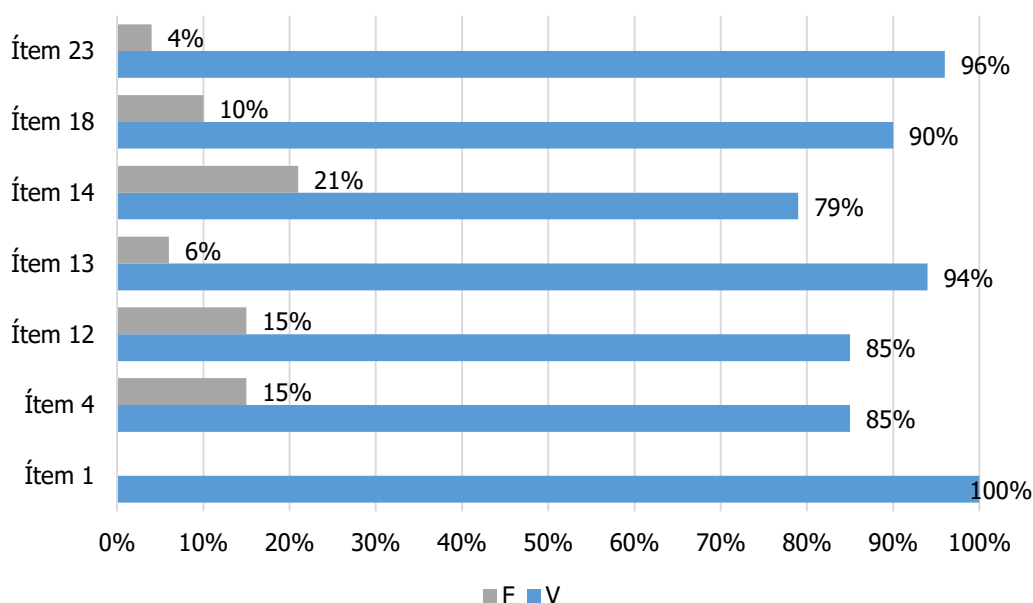
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### 3. RESULTADOS

#### 3.1. Detención

##### 3.1.1. Derecho de los/as menores a información

➤ Grupo de cuestionarios:



**Ítem 1.** Un/a menor tiene derecho a que le expliquen de qué se le acusa.

**Ítem 4.** Un/a menor tiene derecho a permanecer en silencio.

**Ítem 12.** Un/a menor tiene derecho a ver la información de su expediente judicial.

**Ítem 13.** El/la abogado/a de un/a menor tiene derecho a ver la información de su expediente judicial.

**Ítem 14.** Un/a menor tiene derecho a quejarse si no le permitieran ver la información de su expediente judicial.

**Ítem 18.** Un/a menor detenido/a tiene derecho a recibir una declaración escrita de sus derechos.

**Ítem 23.** Un/a menor tiene derecho a que un/a médico lo/a vea.

➤ Grupo de discusión:

**Derecho de los/as menores a saber de qué se los/as acusa:** en el primer grupo (internamiento), los/as menores aseguraron que la policía les informa de todo una vez en comisaría. En cambio, en el segundo grupo (medio abierto), la sensación general fue que cuando se produce la detención, la policía no les informa.

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**Derecho de los/as menores a acceder a su expediente judicial:** en el primer grupo (internamiento), los/as menores sabían que tienen derecho a acceder a su expediente, aunque señalaron que la policía no siempre se lo facilita. Además, apuntaron que el/la abogado/a también puede solicitarlo y que en este caso es mucho más efectivo (*"El abogado es el primero que lo tiene. Después te lo da a ti"*). Mientras que en el segundo grupo (medio abierto), los/as menores manifestaron que no tienen este derecho, que a ellos/as directamente no les van a conceder el acceso al expediente, sino que tiene que ser a través de su abogado/a (*"¡No!"*-varios a la vez-; *"No. Tu abogado sí"*; *"Se lo puedes pedir, pero no te lo van a dar"*).

**Derecho de los/as menores a tener una declaración de derechos:** en el primer grupo (internamiento), los/as menores comentaron que una vez en comisaría, la policía les lee sus derechos (*"Tienes derecho a permanecer en silencio, tienes derecho a un abogado, a una llamada..."*; *"Pero eso el 50% de los policías. Algunos ni te dicen nada"*), pero que en ningún momento les dan una declaración de derechos por escrito (*"Yo la he visto en papel, siempre se ponen a leerla de un papel"*; *"A David le dicen: tienes derecho a esto, esto y esto"*). Además, los/as menores apuntaron que entienden correctamente cuando se los leen. Mientras que en el segundo grupo (medio abierto), no entendían correctamente el concepto de declaración de derechos.

**Derecho de los/as menores a permanecer en silencio:** en el primer grupo (internamiento), los/as menores aseguraron que cuando les leían sus derechos en comisaría, les comentaban su derecho a permanecer en silencio (*"Tienes derecho a permanecer en silencio, tienes derecho a un abogado, a una llamada..."*), y parecía que entienden que "permanecer en silencio" significa no declarar. Lo mismo sucede en el segundo grupo (medio abierto), ya que los/as jóvenes entendían perfectamente que permanecer en silencio implica que *"tienes derecho a no declarar"*; *"cuando te preguntan puedes estar callado y no contestarles"*.

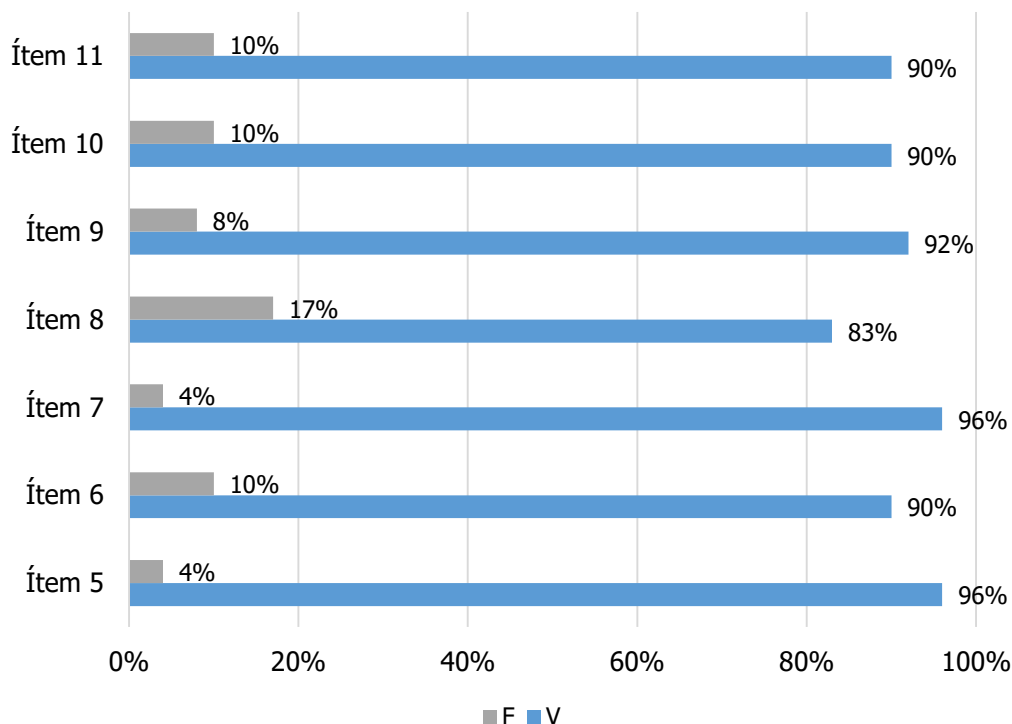
**Derecho de los/as menores a asistencia médica:** en el primer grupo (internamiento), los/as menores comentaron que si necesitan asistencia médica de algún tipo, se la van a dar (*"Lo tienen que curar los policías y todo"*; *"Lo tienen que llevar al médico"*; *"Lo llevan para allá [para el hospital] y luego lo traen otra vez al calabozo"*). Algo similar comentaron en el segundo grupo (medio abierto), ya que conocían su derecho a asistencia médica en caso de necesitarla.

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### 3.1.2. Derecho de los/as menores a interpretación y traducción

#### ➤ Grupo de cuestionarios:



**Ítem 5.** Un/a menor tiene derecho a un/a intérprete si no entiende el idioma.

**Ítem 6.** Un/a menor extranjero/a tiene derecho a recibir asistencia adecuada (traducción/interpretación) cuando quiera hablar con su abogado/a.

**Ítem 7.** Un/a menor que no pueda oír o ver tiene derecho a comunicarse con su abogado/a en una lengua que comprenda.

**Ítem 8.** Un/a menor extranjero/a tiene derecho a quejarse cuando no comprenda lo que le han dicho.

**Ítem 9.** Un/a menor que no pueda oír o ver tiene derecho a quejarse cuando no comprenda lo que le han dicho.

**Ítem 10.** Un/a menor extranjero/a tiene derecho a recibir información importante por escrito y en una lengua que comprenda (por ejemplo: la sentencia).

**Ítem 11.** Un/a menor que no puede oír o ver tiene derecho a recibir la información importante (por ejemplo: la sentencia) por escrito (por ejemplo: en Braille) y en una lengua que comprenda (por ejemplo: lengua de signos).

#### ➤ Grupo de discusión:

**Derecho de los/as menores a traducción e interpretación:** en el primer grupo (internamiento), los/as menores señalaron que la policía tendría que asegurarse de que la persona entiende lo que se le dice y que deberían exigir un traductor/intérprete en los casos que lo requieran (*"Tiene derecho a que otra persona lo asista que hable en... [una lengua], que él pueda entenderlo"; "Ellos [la policía] tendrán que recurrir a una persona [traductor/intérprete, se entiende] que pueda ir en ese momento para que se los lea [para que le lea sus derechos a David]"; "Tiene que ser así, pero así no es"*). Lo mismo

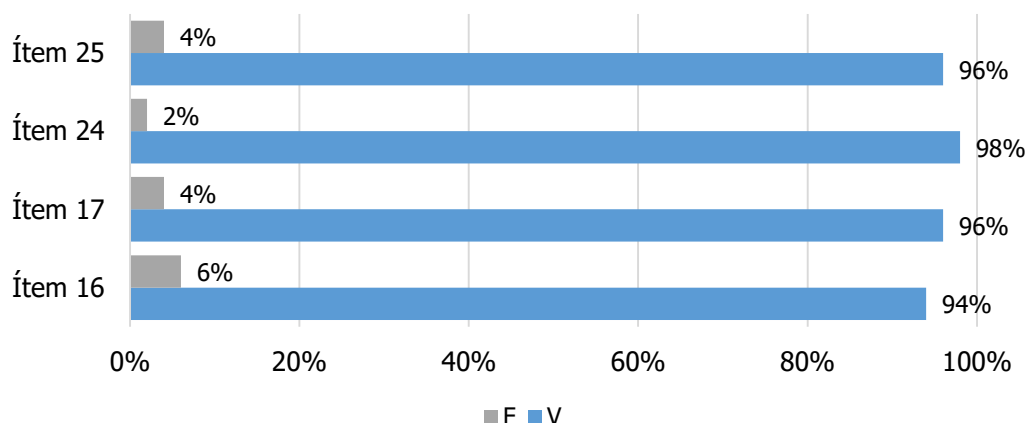
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sucede si el/la menor no pudiera oír o ver (*"Tienen que encontrar a uno que lo pueda entender. A uno que hable lenguaje de signos para que lo entienda."* *"Con signos o como sea se los tienen que leer [sus derechos]. No puede no saber lo que están haciendo"*). Lo mismo sucedió en el segundo grupo (medio abierto), ya que los/as menores comentaron que en cualquiera de los casos, todos/as los/as menores detenidos/as tienen derecho a un/a intérprete/traductor que pudiera hacerle entender lo que se le está diciendo (a la pregunta sobre qué hacer si David no entiende por uno u otro motivo, responden: *"Pues un intérprete"*; *"Pues alguien que entienda su lengua... de signos"*).

### 3.1.3. Derecho de los/as menores a un/a abogado/a

#### ➤ Grupo de cuestionarios:



**Ítem 16.** Un/a menor tiene derecho a hablar con su abogado/a antes del interrogatorio policial.

**Ítem 17.** Un/a menor tiene derecho a mantener en secreto lo que ha hablado con su abogado/a.

**Ítem 24.** Un/a menor tiene derecho a ser asistido/a-defendido/a por un/a abogado/a.

**Ítem 25.** Un/a menor tiene derecho a ser defendido/a por un/a abogado/a de manera gratuita.

#### ➤ Grupo de discusión:

**Derecho a un/a abogado/a:** en el primer grupo (internamiento), los/as menores apuntaron que tienen derecho a un/a abogado/a, ya sea de oficio o privado/a (*"Es obligatorio que tengas un abogado"*; *"Si no puedes pagar un abogado, llaman a uno de oficio y ya está"*). Algunos apuntaron a que el de oficio no lo hace tan bien (*"No te va a defender como el de paga"*), pero otros señalaron que no es así (*"Según el abogado. Hay abogados de oficio que defienden bien"*). Lo mismo sucede con el segundo grupo (medio abierto), ya que los/as menores tenían claro que tienen derecho a un/a abogado/a, tanto de oficio como privado/a, y señalaron que lo pueden solicitar ellos/as mismos/as o la policía.



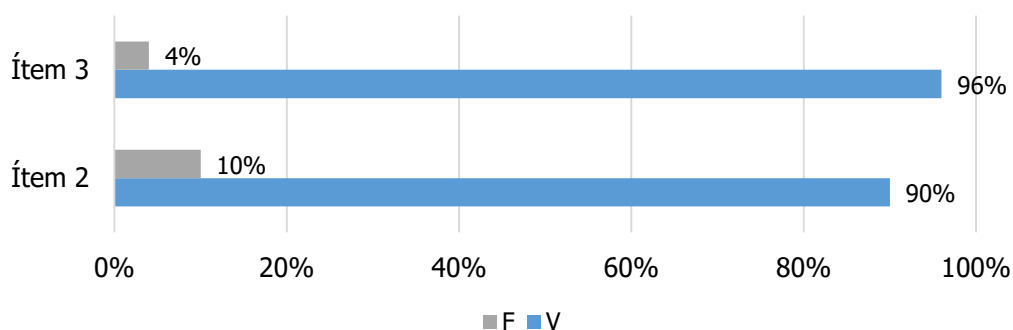
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**Derecho de los/as menores a privacidad con su abogado/a:** en el primer grupo (internamiento), los/as menores señalaron que sí tienen este derecho. Lo mismo sucede con el segundo grupo (medio abierto), ya que los/as menores apuntaron que todo lo que hablan con su abogado/a, es estrictamente confidencial (*"Es confidencial. Sólo lo sabe el abogado, lo que tú le digas"*).

#### 3.1.4. Derecho de los/as menores a informar a los/as tutores legales

➤ Grupo de cuestionarios:



**Ítem 2.** Un/a menor tiene derecho a llamar a una persona de confianza.

**Ítem 3.** Un/a menor tiene derecho a informar a sus padres de que está detenido/a.

➤ Grupo de discusión:

**Derecho de los titulares de la patria potestad a estar informados:** en el primer grupo (internamiento), los/as menores comentaron que es imprescindible que la policía informe a los/as progenitores/as una vez en comisaría y antes de declarar (*"Llaman a tus padres antes de declarar"*; *"Les dicen que vayan al cuartel, que está su hijo detenido"*; *"Cuando estás dentro del cuartel llaman delante de ti a tus padres y les dicen que su hijo está aquí por esta causa"*). Lo mismo sucede con el segundo grupo (medio abierto), ya que los/as menores sabían que tienen derecho a que sus tutores/as legales conozcan su situación, y esto se hace a través de una llamada en comisaría por su parte o por la policía.

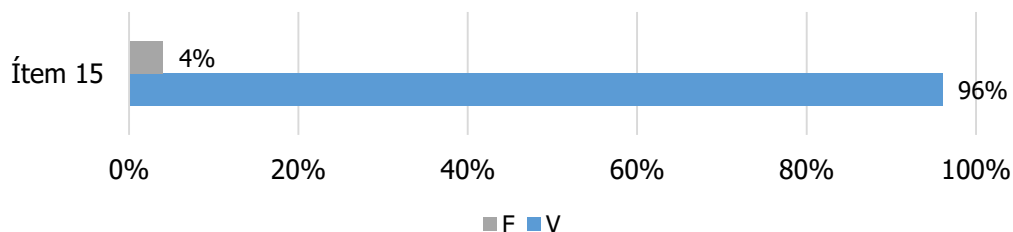


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### 3.1.5. Derecho de los/as menores a estar acompañados/as

➤ Grupo de cuestionarios:



**Ítem 15.** Un/a menor tiene derecho a que su abogado/a esté presente durante el interrogatorio policial.

➤ Grupo de discusión:

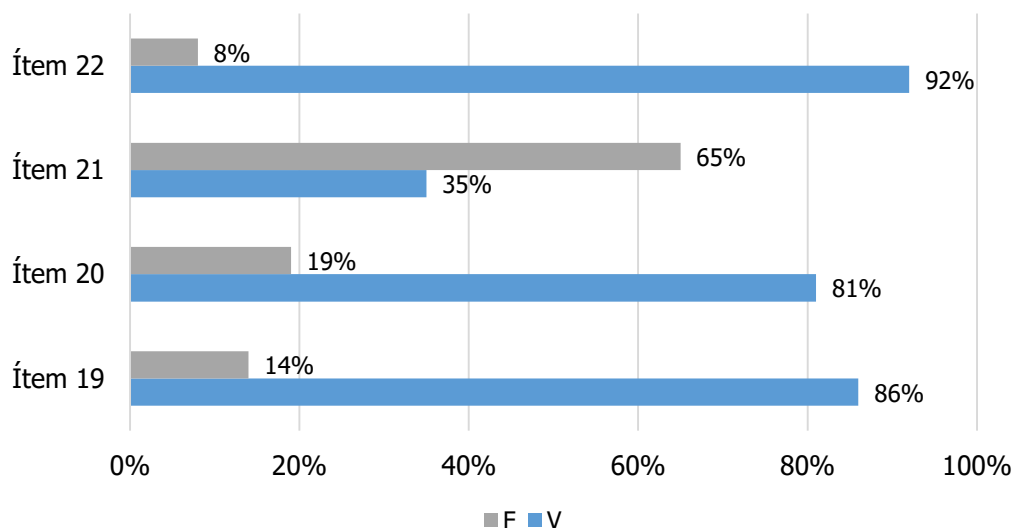
**Derecho de los/as menores a declarar en presencia de su abogado/a y los titulares de la patria potestad:** en el primer grupo (internamiento), los/as menores sabían que tenían derecho a que su abogado/a estuviera presente (*"Tiene que estar el abogado. Pero también tienes derecho a no declarar y a declarar en fiscalía después"*), pero por lo que respecta a los/as progenitores/as, no lo tenían tan claro. En el caso del segundo grupo (medio abierto), los/as menores indicaron que es obligatorio que el/la abogado/a esté presente durante la declaración (si no estuviera presente *"no puedes declarar"*; *"puedes negarte"*. *"Hasta que no llegue el abogado, nada"*), y señalaron que los/as progenitores/as también pueden acompañar.

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### 3.1.6. Conocimiento de otros temas importantes

#### ➤ Grupo de cuestionarios:



**Ítem 19.** Un/a menor detenido/a tiene derecho a estar separado/a de los adultos detenidos/as.

**Ítem 20.** Un/a menor no puede estar detenido/a más de 48 horas.

**Ítem 21.** El interrogatorio policial puede ser grabado en vídeo.

**Ítem 22.** Un/a menor tiene derecho a que no se publiquen grabaciones en vídeo sobre él/ella.

#### ➤ Grupo de discusión:

**Derecho de los/as menores privados de libertad a estar separados/as de los adultos en su misma situación, durante la detención:** en el primer grupo (internamiento), los/as jóvenes apuntaron que las personas menores de edad no pueden mezclarse con mayores de edad, pero que esto no siempre se cumple (*"Por ley tú no puedes estar con mayores de edad", Si tienes suerte te meten a otro [calabozo] separado, si no..."*). Además, a la pregunta de por qué hay que separar a menores de edad de mayores de edad responden: *"Porque puede ser más vulnerable un crío más pequeño que uno más grande"*. Lo mismo sucede en el segundo grupo (medio abierto), todos/as saben que no se puede mezclar en el mismo calabozo a mayores y menores de edad, otra cosa es que se cumpla efectivamente (*"Poder puedes, pero se supone que si eres menor tienes que estar separado de los grandes"; "Hay varios calabozos, no hay uno sólo. Están separados. Si puedes, solo. Si no, pues no. Todos mezclados"*).

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#### Derecho de los/as menores a no permanecer detenidos/as más de 48 horas:

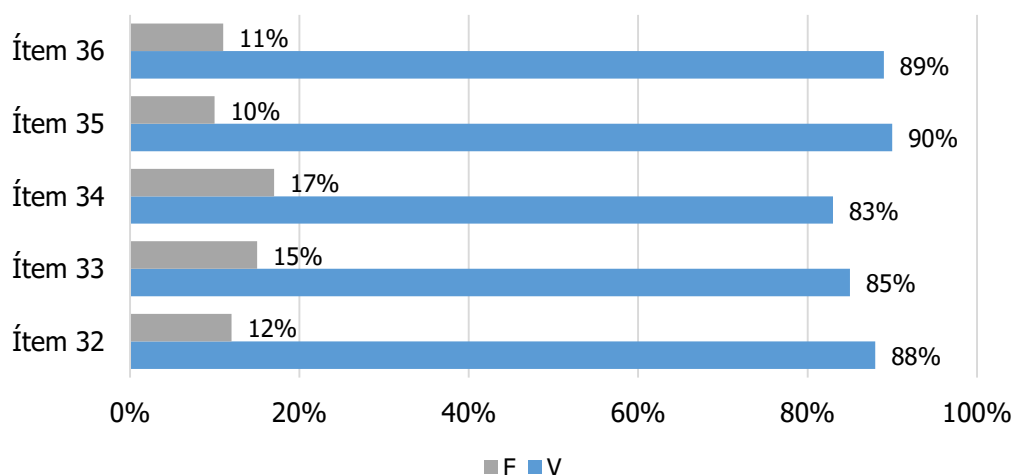
en el primer grupo (internamiento), los/as menores sabían que son 48 horas el máximo de detención, pero cuando la detención se efectúa un viernes comentaban lo siguiente: "A lo mejor te quedas todo el fin de semana". Mientras que en el segundo grupo (medio abierto), dudaban sobre el máximo de horas que se puede estar detenido/a (entre 24 y 48 horas). En cualquier caso, parece extendida la opinión de que no se respeta este máximo y que si, por ejemplo, la detención se produce un viernes, pasarán todo el fin de semana detenidos/as.

**Derecho a utilizar medios audiovisuales:** en el primer grupo (internamiento), los/as menores aseguraron que no pueden ser grabados/as por ser menores ("No tienen derecho [a grabarte]"; "A los menores no, pero a los mayores sí"). Lo mismo sucede en el segundo grupo (medio abierto), ya que todos/as están de acuerdo en que en ningún caso se les puede grabar. ("Si me graban, lo denuncio. Así de fácil").

## 3.2. Enjuiciamiento

### 3.2.1. Derecho de los/as menores a información

#### ➤ Grupo de cuestionarios:



**Ítem 32.** Un/a menor tiene derecho a revisar su sentencia.

**Ítem 33.** Un/a menor tiene derecho a un juicio a puerta cerrada (sin público).

**Ítem 34.** Un/a menor tiene derecho a quejarse y a pedir que se le indemnice cuando no se hubieran respetado sus derechos.

**Ítem 35.** Un/a menor tiene derecho a que no se hable de su vida privada.

**Ítem 36.** Un/a menor tiene derecho a que los medios de comunicación (por ejemplo: televisión, periódicos, etc.) no hablen de su vida privada.

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➤ Grupo de discusión:

**Derecho de los/as menores a recurrir la sentencia:** en el primer grupo (internamiento), los/as menores no tenían muy claro que se pueda hacer algo una vez dictada la sentencia, lo veían como algo definitivo y que no puedes hacer nada. Lo mismo sucedía en el segundo grupo (medio abierto), ya que la opinión general es que contra la sentencia no se puede hacer nada aunque no estés de acuerdo.

**Derecho de los/as menores a un juicio a puerta cerrada:** en el primer grupo (internamiento), los/as menores no tenían claro si se tiene derecho a un juicio a puerta cerrada o no, pero sí parecían saber que puede haber público, además de las personas que intervienen durante el juicio (fiscal, abogado/a, Equipo Técnico, etc.) (*"Se puede meter gente de la calle [en el juicio]"; "-Tú puedes estar solo en tu juicio, sin nadie. – Yo creo que no. –Yo creo que sí. Sólo con el juez y con todos esos [fiscal, abogados, psicólogos, familia...], pero con la gente no"*). Algo similar ocurrió en el segundo grupo (medio abierto), ya que los/as menores apuntaban lo siguiente "Yo creo que no"; "Si lo pides [que no haya público] te van a decir: a ti qué más te da que haya gente"; "No puedes hacer nada. Tiene que haber testigos y de todo. Tiene que haber gente". No obstante, uno de los jóvenes señala: "Si no quieres [que haya público], pues los tendrán que echar".

**Derecho de los/as menores a recurrir si se hubieran vulnerado sus derechos:** en el primer grupo (internamiento), comentaron que "Decirlo lo puedes decir. Otra cosa es que te hagan caso". Mientras que en el segundo grupo (medio abierto) no lo tenían claro.

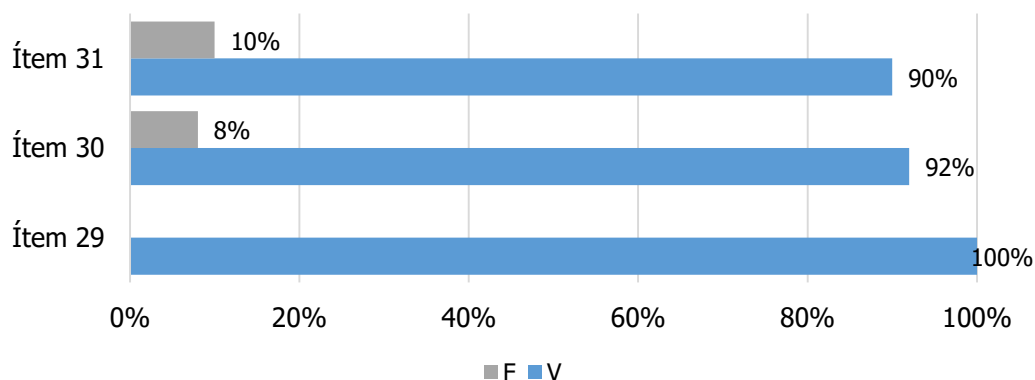
**Derecho de los/as menores a la vida privada:** en el primer grupo (internamiento), los/as menores aseguraron que los medios de comunicación no pueden publicar información sin su consentimiento. Mientras que en el segundo grupo (medio abierto), los/as jóvenes comentaron que tienen derecho a la intimidad y que no debería publicarse nada sin su consentimiento, sin embargo, esto no siempre es así (*"Yo creo que sin su consentimiento no deberían ni grabar ni publicar nada"* "Pues yo estuve publicado, salí en la tele y todo... A mí no me pidieron permiso ninguno" "Puedes denunciar, pero ¿qué van a hacer...?").

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#### 3.2.2. Derecho de los/as menores a estar acompañados/as

##### ➤ Grupo de cuestionarios:



**Ítem 29.** Un/a menor tiene derecho a que sus padres estén presentes durante el juicio.

**Ítem 30.** Un/a menor tiene derecho a esperar a su abogado/a en el juicio.

**Ítem 31.** Un/a menor tiene derecho a que su abogado/a esté presente durante las ruedas de reconocimiento.

##### ➤ Grupo de discusión:

#### Derecho de los/as menores a estar acompañados/as de los titulares de la patria potestad y su abogado/a:

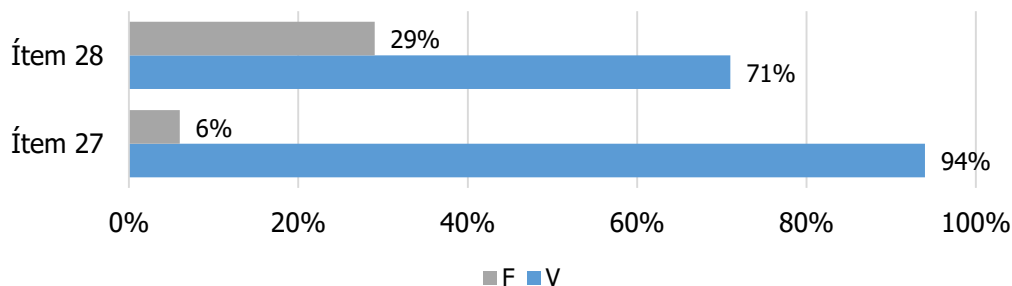
en el primer grupo (internamiento), los/as menores apuntaron que el/la abogado/a tiene que estar presente e intervenir siempre en el juicio. Sobre si el juicio se celebra aunque el/la abogado/a no aparezca, señalaron que *"no, se cancela"*. Los/as menores decían que antes de entrar a juicio el/la abogado/a te informa (*"te preparan. Va el abogado y te dice: te piden esto, esto y esto. Confórmate. O: No te conformes."*) *"Antes de entrar a juicio, hay una sala pequeña y ahí el abogado te dice por qué te van a celebrar el juicio, lo que te van a decir, lo que te van a echar y todo eso"*). En relación a los padres/madres, indicaron que *"pueden estar ahí contigo en el juicio"*, pero no está claro si pueden intervenir o no y si el juez les puede hacer preguntas. Además, comentaron lo siguiente: *"[en la sala de vistas] estarán los fiscales, los jueces, los abogados, los padres..."*, *"los trabajadores sociales, la Comunidad Autónoma también está"*. *"El abogado, la Comunidad Autónoma... Todos los que están ahí pueden hablar"*. Lo mismo sucede en el segundo grupo (medio abierto), ya que la opinión general fue que la presencia del/la abogado/a no es únicamente un derecho, sino que es obligatoria (*"Si [tu abogado] no aparece no se hace el juicio"*) *"[el juicio] No se celebra a no ser que haya otro abogado por ahí"*), así como la asistencia de los/as tutores/as legales (*"Si no están los padres tiene que estar un tutor o algo de eso"*). Además, comentaron que antes de la vista, la persona menor habla con su abogado/a.

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#### 3.2.3. Derecho de los/as menores a estar presentes y participar

##### ➤ Grupo de cuestionarios:



**Ítem 27.** Un/a menor tiene derecho a estar presente y a participar en su propio juicio, a ser oído/a y a dar su opinión.

**Ítem 28.** Un/a menor que no hubiera asistido a su propio juicio, tiene derecho a otro juicio.

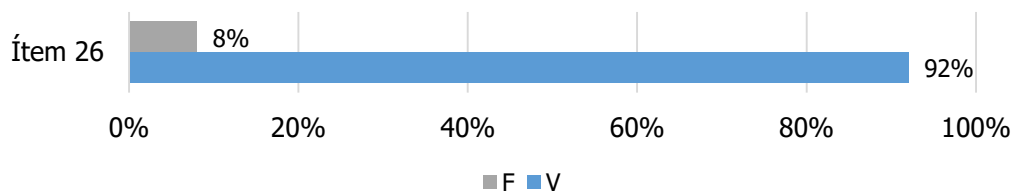
##### ➤ Grupo de discusión:

#### Derecho de los/as menores a estar presentes y participar en su propio juicio:

en el primer grupo (internamiento), apuntaron en general que la persona menor siempre debe estar presente: "Te buscan"; "Una vez lo dejan pasar, otra también, pero ya a la tercera te buscan". Además, comentaron que al/la menor se le permite intervenir: "hasta que él [juez] no te lo diga, no"; "[El juez] te dice: ¿tienes alguna sugerencia que decirme?, ¿algo que quieras añadir?". Lo mismo sucede en el segundo grupo (medio abierto), ya que saben que pueden intervenir, pero únicamente cuando el/la juez/a se lo permita o cuando les pregunte ("No. Cuando el juez le pregunte"; "No tienes la palabra hasta que te la dé el juez"; "Yo hablaba cuando veía que [...] me había hecho alguna pregunta o algo").

#### 3.2.4. Derecho de los/as menores a una evaluación individual

##### ➤ Grupo de cuestionarios:



**Ítem 26.** Un/a menor tiene derecho a una evaluación individual antes del juicio.

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### ➤ Grupo de discusión:

**Derecho de los/as menores a una evaluación individual:** en el primer grupo (internamiento), los/as menores señalaron que el equipo técnico te evalúa, pero no siempre (*"Normalmente hablas con el equipo técnico, con el psicólogo"; "Sí, el equipo técnico [te evalúa]. Algunas veces, la mayoría no"*). Además, comentaron que durante la evaluación hacen preguntas como las siguientes: *"Qué te ha pasado, si estás bien, cómo estás"; "Te preguntan de todo"; "Qué haces con tu vida. Si fumas, bebes... "*, siendo el objetivo final: *"Para saber cómo estás tú"; "Eso forma parte de la declaración [sic: instrucción]"*. Lo mismo sucede en el segundo grupo (medio abierto), ya que todos/as comentaron que el equipo técnico adscrito al Juzgado les hace una evaluación individual (*"Hablas con tres o cuatro en un momento"; "Te preguntan si estás estudiando, si no estás haciendo nada..."*). Pero dudaron del momento en que se produce la evaluación (*"Eso es antes del juicio. Después del fiscal, ¿no?"*; *"Cuando hablas con el fiscal"; "Eso es cuando declaras, mucho antes del juicio"*). Señalaron además que el equipo técnico también habla con sus tutores/as legales.

## 3.3. Cumplimiento de la medida

### 3.3.1. Derecho de los/as menores a información

**Derecho de los/as menores a recibir información escrita sobre sus derechos y obligaciones y sobre el reglamento de régimen interno del centro de internamiento:** en el primer grupo (internamiento), la percepción general es que los/as participantes mostraron un amplio conocimiento del funcionamiento del centro/reglamento. Estos/as apuntaron que al llegar al centro *"le dan una hoja con todo lo que tiene que hacer. Cómo funciona"; "te dan un documento donde te dice toda la normativa del centro. El primer día"*. En el segundo grupo (medio abierto), los/as menores señalan que al empezar a cumplir la medida, les informan sobre el funcionamiento del mismo.

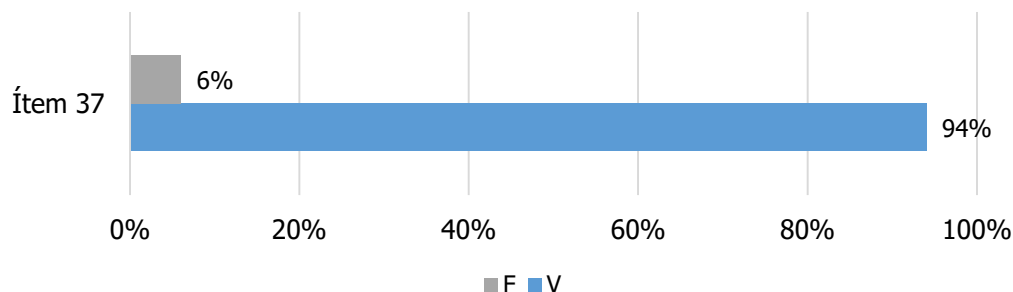


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#### 3.3.2. Derecho de los/as menores a comunicación familiar

➤ Grupo de cuestionarios:



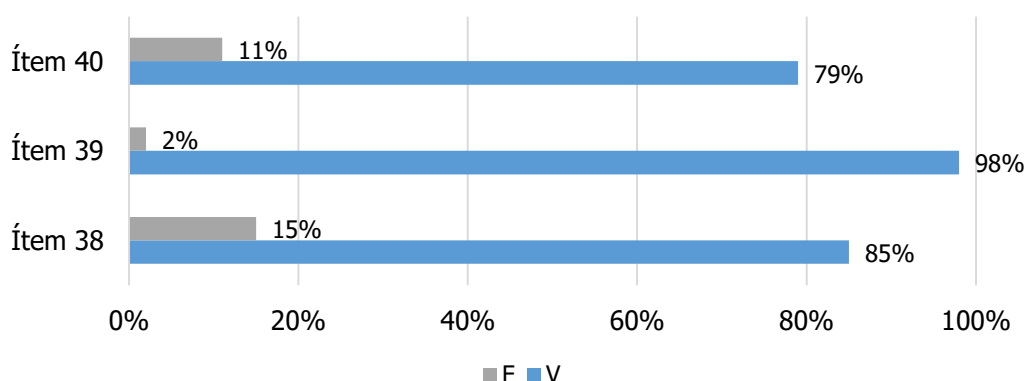
**Ítem 37.** Un/a menor que está en un centro de internamiento tiene derecho a ver a su familia.

➤ Grupo de discusión:

**Derecho de los/as menores a comunicarse con su familia:** en el primer grupo (internamiento), todos/as los/as menores conocían su derecho a comunicarse con su familia. En cuanto a la forma de comunicación y a la frecuencia, comentaron: "*Tienes visitas. Tienes que pedir hora. Una cita*"; "*Dos [visitas] a la semana*"; "*En persona o por teléfono*". Algo similar ocurre en el segundo grupo (medio abierto), ya que todos/as parecían saber que tienen derecho a comunicarse con su familia: "*Por teléfono. Puedes llamar [a tu familia]. En tus tiempos libres*".

#### 3.3.3. Derecho del/la menor a recibir asistencia médica

➤ Grupo de cuestionarios:



**Ítem 38.** El/la abogado/a del/la menor que está en un centro de internamiento tiene derecho a pedir que un/a médico lo/a vea.

**Ítem 39.** Un/a menor que está en un centro de internamiento tiene derecho a que un/a médico lo vea.

**Ítem 40.** Los padres de un/a menor que está en un centro de internamiento tienen derecho a pedir que un/a médico lo/a vea.



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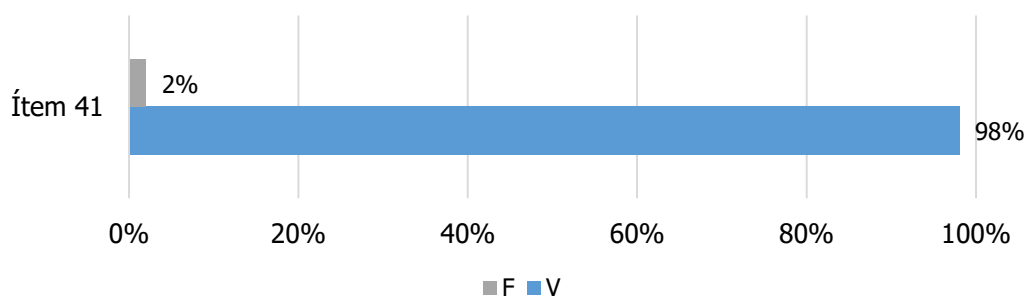
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➤ Grupo de discusión:

**Derecho de los/as menores a asistencia médica:** en el primer grupo (internamiento), todos/as los/as menores señalaron que tenían derecho a recibir asistencia médica. Apuntaron a que el médico es el que se desplaza al centro: *"Tienes que hacer una petición"; "Te dan un papel en el que tú dices tus síntomas y ya cuando el médico pase por aquí te ve"*. Lo mismo sucede en el segundo grupo (medio abierto): *"[en el centro] hay médico, viene..."; "Si estás saliendo de permisos y todo eso, tienes la posibilidad de que te lleve tu madre [al médico]. Si no, viene la policía y te lleva"*.

### 3.3.4. Derecho de los/as menores a educación y formación

➤ Grupo de cuestionarios:



**Ítem 41.** Un/a menor que está en un centro de internamiento tiene derecho a recibir educación y formación.

➤ Grupo de discusión:

**Derecho de los/as menores a educación:** en el primer grupo (internamiento), los/as menores indicaron que todos/as tienen no sólo el derecho, sino también la obligación de estudiar, sea secundaria o FP. Comentaron que en el propio centro se ofrece la ESO, pero también programas de FP, y que los que están en régimen abierto o semiabierto pueden salir a estudiar fuera del centro, a recursos normalizados (*"Aquí menores y mayores tienen obligación de estudiar. Todos"; "Hay FP. Aquí cuatro de nosotros estamos en FP"; "Si estás en semiabierto o abierto puedes salir [a estudiar]"*). Lo mismo sucede en el segundo grupo (medio abierto), ya que los/as menores comentaron que *"es obligatorio. Tienes que hacer escuela sí o sí"*. Además, dentro del centro ofrecen FP y talleres y si estás en régimen abierto o semiabierto puedes salir a estudiar fuera

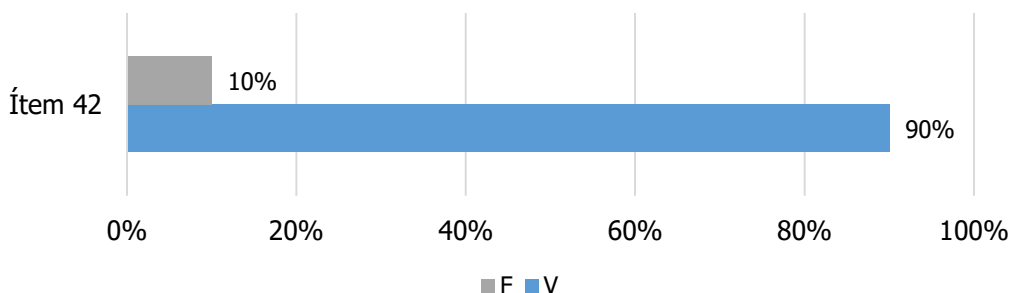
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(*'[Puedes] estudiar. Una FP de albañilería o algo. Y si estás saliendo de permisos y todo eso, pues tienes la posibilidad de salir a estudiar a la calle'*).

#### 3.3.5. Derecho de los/as menores a libertad religiosa

➤ Grupo de cuestionarios:



**Ítem 42.** Un/a menor que está en un centro de internamiento tiene derecho a practicar su religión y sus creencias.

➤ Grupo de discusión:

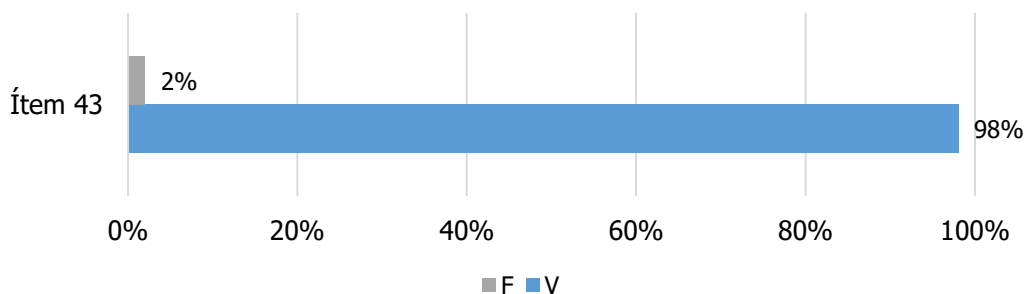
**Derecho de los/as menores a libertad religiosa:** en el primer grupo (internamiento), hubo unanimidad tanto entorno a la obligación de respeto de sus creencias, como entorno al respecto efectivo de las mismas por parte del centro, tengas el credo que tengas. Señalan que les dan facilidades para ello (*"Viene un cura cada X tiempo"; "[Tienes derecho] a que respeten todo lo que crees. Deben"; "Sí [tienes derecho a hacer el ramadán]. Hace poco lo hemos hecho"; "Sí [te ponen facilidades]. Hay que respetar las creencias de cada uno"*). Algo similar sucede en el segundo grupo (medio abierto), ya que los/as menores comentaron que conocen ese derecho y que el centro facilita la práctica religiosa: *"[Al centro] va un cura de vez en cuando y todo eso. [...] Y si eres marroquí o lo que sea haces el ramadán. Como por la noche hay gente, por la noche comen y todo eso. Ellos pueden rezar con sus mantas y cosas de esas"*.

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#### 3.3.6. Derecho de los/as menores a acceder a programas para su reinserción social

➤ Grupo de cuestionarios:



**Ítem 43.** Un/a menor que está en un centro de internamiento tiene derecho a participar en talleres que ayuden a su reinserción social.

➤ Grupo de discusión:

**Derecho de los/as menores a acceder a programas para su reinserción social:** en el primer grupo (internamiento), los/as menores apuntaron que "*hacemos también talleres de drogas*"; "[talleres] *de sexualidad, de todo*" y que hacían salidas que les permitían mantener el contacto con la comunidad. Lo mismo sucedía en el segundo grupo (medio abierto), ya que los/as menores indicaron que hacen talleres, que pueden hacer deporte, actividades lúdicas, etc.: "*Hay talleres todos los días, todas las tardes. Hasta los fines de semana*".

#### 3.3.7. Derecho de los/as menores a una evaluación individual

**Derecho de los/as menores a una evaluación individual:** en el primer grupo (internamiento), no se hace mención de la evaluación individual al llegar al centro. Sólo se habla de cuando te reciben y te informan de tus derechos/deberes y del funcionamiento del centro. En cambio, en el segundo grupo (medio abierto), no tenían muy claro que se produjera, ya que a la pregunta sobre si alguien te evalúa al entrar al centro, responden: "*Hay psicólogos y cosas de esas*".

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#### 3.3.8. Preguntas cualitativas

*¿Qué derechos crees que son los más importantes? Escribe los números y explica por qué.*

En el primer grupo (internamiento), la respuesta que más se repite tiene que ver con el ítem 37 (Un/a menor que está en un centro de internamiento tiene derecho a ver a su familia), con afirmaciones como las siguientes: *"Ver a mi familia"; "El contacto familiar afecta mucho a la medida del menor"; "Avisar a la familia y poder verlos"; "Porque es importante estar siempre en contacto con la familia"; "Porque hay que ver a la familia"; "Porque así te apoyan y dan fuerzas para seguir hacia adelante"; "Porque la familia es el principal apoyo".*

En cambio, en el segundo grupo (medio abierto), las respuesta más repetidas están relacionadas con los ítems relativos a la asistencia letrada: 13 (El/la abogado/a de un/a menor tiene derecho a ver la información de su expediente judicial); 15 (Un/a menor tiene derecho a que su abogado/a esté presente durante el interrogatorio policial); 25 (Un/a menor tiene derecho a ser defendido/a por un abogado/a de manera gratuita); y 30 (Un/a menor tiene derecho a esperar a su abogado/a en el juicio), con afirmaciones como las siguientes: *"Pues porque tiene que estar presente y para decirme lo que me dicen del juicio"; "Porque el abogado te puede guiar"; "Porque el abogado es muy importante"; "Porque el menor tiene derecho a esperar a un abogado porque le ayudará mejor"; "Derecho a ser defendido por un abogado".*

*¿Qué derechos crees que no se han respetado en tu caso? Escribe los números y explica por qué.*

En el primer grupo (internamiento), la respuesta más repetida es que se han respetado todos sus derechos durante todo el proceso judicial: *"Se han respetado todos"; "Estoy conforme"; "En mi caso se han respetado todos los derechos".*

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## 4. CONCLUSIONES

### ➤ Grupo de cuestionarios:

Como resultado más importante dentro de este grupo, destacar aquel obtenido en el ítem 21, en el que se observa mayor proporción de respuestas inadecuadas, frente a adecuadas:

- Ítem 21. El interrogatorio policial puede ser grabado en vídeo (35% verdadero, frente a un 65% falso).

A parte, también destacarían los resultados hallados en los ítems 14, 20 y 28, ya que a pesar de haberse respondido adecuadamente, las diferencias entre la respuesta adecuada e inadecuada, no son muy elevadas:

- Ítem 28. Un/a menor que no hubiera asistido a su propio juicio, tiene derecho a otro juicio (71% verdadero, frente a un 29% falso).
- Ítem 14. Un/a menor tiene derecho a quejarse si no le permitieran ver la información de su expediente judicial (79% verdadero, frente a un 21% falso).
- Ítem 20. Un/a menor no puede estar detenido/a más de 48 horas (81% verdadero, frente a un 19% falso).

Finalmente, mencionar algunos ítems contestados adecuadamente, pero que a pesar de resultar evidentes a priori, el porcentaje de respuestas inadecuadas resulta llamativo:

- Ítem 8. Un/a menor extranjero/a tiene derecho a quejarse cuando no comprenda lo que le han dicho (83% verdadero, frente a un 17% falso).
- Ítem 34. Un/a menor tiene derecho a quejarse y a pedir que se le indemnice cuando no se hubieran respetado sus derechos (83% verdadero, frente a un 17% falso).

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➤ Grupo de discusión:

Destacar como resultados coincidentes entre ambos grupos de discusión, el hecho de que manifiesten que no se puedan utilizar medios audiovisuales por parte de la policía, durante el interrogatorio policial; niegan su derecho a recurrir su sentencia; así como su derecho a un juicio a puerta cerrada; y a una evaluación individual al empezar a cumplir su medida.

En el grupo 2 (medio abierto) además, niegan que se les informe de aquello que se les acusa; niegan su derecho a acceder a su expediente judicial; no saben exactamente qué es una declaración de derechos; niegan que tengan derecho a recurrir si piensan que han vulnerado sus derechos.

Atendiendo a todos los resultados mostrados, tanto en el grupo de cuestionarios como en el grupo de discusión, se observa un mayor desconocimiento entre los/as menores participantes de aquellos derechos presentes durante la **fase de detención**, aunque también se aprecian dificultades en aquellos derechos establecidos durante la **fase de enjuiciamiento**.

Todos estos resultados revelan las dificultades que los/as menores atraviesan en el momento de comprender sus derechos y deberes legales, causado por el uso de un lenguaje excesivamente complicado y específico relacionado con el sistema de justicia juvenil. De modo que a través de la adaptación de dicha información a un lenguaje adecuado a la edad y desarrollo evolutivo de los/as menores, se ayudará a que puedan identificar sus derechos y comprendan la información relevante sobre los procedimientos judiciales, estando así más informados/as y ganando mayor seguridad y confianza en ellos/as mismos/as y el sistema de justicia.

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# **ASSESSMENT OF NEEDS OF CHILDREN IN CONFLICT WITH THE LAW IN SPAIN: REPORT ON THE RIGHT OF CHILDREN TO INFORMATION, TRANSLATION AND INTERPRETATION IN CRIMINAL PROCEEDINGS**

## **1. INTRODUCTION**

The Juvenile Justice System in Spain is regulated by the Organic Act 5/2000 of 12 January, regulating the criminal responsibility of minors –known in Spanish as LORPM- and its Development Regulation approved by Royal Decree 1774/2004 of 30 July - RLORPM-. Likewise, the LORPM, the RLORPM, as well as the Criminal Procedure Act - LECrim- set out the rights of children under arrest or detention in Spain.

In regard to the right to information specifically, the LORPM and the RLORPM are clear when stating that public authorities and officials involved in police arrest must inform the child, immediately and in a plain language, about the facts he/she is accused of, the reasons of his/her arrest and the rights he/she has, as set by Article 17.1 of the LORPM, Article 3 of the RLORPM and Article 520 of the LECrim.

Again, Article 520.2 of the LECrim -regulating the treatment of people under arrest or imprisonment- remarks that detainees must be informed of the offence he/she is charged with, the reasons motivating his/her deprivation of liberty, as well as the rights he/she has during all these proceedings. But in contrast to what stated by the LORPM, it is specified that this information must be provided in writing and in a plain and accessible language that detainees could understand. A new article has been recently added to the LECrim -Art. 520.2 *bis*-, in order to qualify the meaning of “plain and accessible language”, which must be understood as a language tailored to the detainee’s age, state of maturity, disability or any other personal circumstance which may limit the capacity of understanding the scope of the information provided.

Furthermore, the rights of arrested children in Spain, as recognised by Article 520.2 LECrim, are as follows:



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- Right to remain silent, not to testify, not to answer some or any of the questions posed to him/her and to express that he/she is intended to testify before a judge only.
- Right not to testify against him/herself or to confess guilt.
- Right to be assisted by a lawyer of his/her choice.
- Right to access the key information and documents involved in the proceedings in order to challenge the legality of the arrest/deprivation of liberty.
- Right that a relative or acquaintance is informed, without undue delay, of his/her deprivation of liberty and current place of detention. Foreigners have the right that this information is provided to the consular authorities of his/her country.
- Right to communicate by phone and without undue delay with a third person of his/her choice. This communication must be held in the presence of a police officer or official appointed by the Judge or the Prosecutor.
- Right to be visited by, to communicate and correspond with the consular authorities of his/her country.
- Right to be assisted freely by an interpreter if the detainee is a foreigner who does not understand or speak the language of the proceedings, is deaf, has a hearing impairment or any other difficulty in communicating.
- Right to be examined by a forensic doctor or a legal substitute and, in their absence, by a doctor from the establishment where he/she is arrested or by any other doctor from the Public Health System.
- Right to legal aid in accordance with the legal procedures and requirements.

There are some additional rights regarding the information provided to people under arrest set out by the Spanish Law:

- The detainee must be informed about the maximum duration of the arrest and the procedure which may be pursued in order to challenge the legality thereof - Art. 520.2, paragraph 2 LECrim-.
- Regarding foreigners, if there is no letter of rights available in a language that the arrested person can understand, an interpreter must be appointed in order to inform the detainee about his/her rights. Subsequently and without undue delay, a written letter of rights shall be provided to him/her in the language that he/she understands -Art. 520.2 paragraph 3 LECrim-.
- The detainee may keep the written letter of rights during the entire duration of the arrest -Art. 520.2 paragraph 4 LECrim-.

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The right to information also entitles to trigger the *habeas corpus* procedure, in the case that the child or any other person determined by the law consider that he/she is unlawfully deprived of his/her liberty.

In the same way, the children who are serving a provisional measure in a detention centre have the right to information as well. Specifically, they have the right to be provided with updated information about the following issues -Art. 56.2 LORPM-:

- their personal situation,
- their judicial situation,
- the internal rules of the centre,
- and the specific procedures for giving effect to those rights, especially for making requests, complaints or appeals.

Moreover, Article 36.2 of the RLORPM stipulates that children, when entering the detention centre, have the right to receive in writing information about:

- their rights and duties,
- the detention regime they are serving,
- general organisation matters,
- the internal rules of the centre,
- the disciplinary rules,
- and means for making requests, complaints or appeals.

Thus, the present report is intended to detect the difficulties faced by Spanish youngsters to identify the rights they have during criminal proceedings and understand relevant information concerning it.

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## 2. METHODOLOGY

With the aim of analysing children's knowledge about their rights and other relevant information concerning criminal proceedings, it has been applied a research methodology with a mixed approach. On the one hand, quantitative information has been collected through questionnaires delivered to children in conflict with the law and, on the other hand, two focus group have been held in order to obtain further information about the issue. Thus, each topic addressed below shall be divided in two sections: Questionnaires group and Focus group.

### 2.1. Participants

#### ➤ Questionnaires group:

The participants in this group were 52 children, among whom 27 were serving a measure in a detention centre in the city of Murcia managed by *Fundación Diagrama* and 25 were serving a non-custodial measure managed by the organisation *CEFIS* in Murcia and Cartagena. The participants' age ranges between 15 and 20 years ( $X=17.4$ ). The gender is mostly male, with a proportion of 47 boys (90.4%) and an average age of 17.4 years and 5 girls (9.6%) with an average age of 17.6 years.

Regarding the type of measures that children are serving, 52% of them were in a detention centre, with an average serving period of 266.7 days. Among them, 21% in provisional detention, 21% in a close regime, 5% in therapeutic regime, 48% in a semi-open regime and 5% in an open regime.

The remaining 48% are serving a non-custodial measure, with an average duration of 222 days, 92% are on probation and the remaining 8% are within socioeducational programs.

#### ➤ Focus group:

The participants in this group were 16 children, 10 were serving a measure in a detention centre in Murcia managed by *Fundación Diagrama* and 6 were serving a non-custodial measure administered by *CEFIS* in Murcia and Cartagena. The children's gender is 100% male, the age ranges between 15 and 19 years ( $X=17.4$ ). Among them, the predominant nationality is the Spanish one (87.5% and 12.5% foreigners).

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Regarding the type of measures the children are serving, 62.5% are in a detention centre, with an average stay of 16.3 months. While the remaining 37.5% are on probation, with an average duration of 8.6 months.

Regarding the type of offence, the majority of children committed a theft (50%), followed by those convicted for driving without a licence (18.75%), breaking their sentences (12.5%), domestic violence (12.5%) and robbery with violence (6.25%). In respect of the criminal record of the children forming the sample, 75% had committed previous offences, in contrast to the remaining 25%, who had not.

## 2.2. Instruments

### ➤ Questionnaires group:

The instrument used with this group was an anonymous questionnaire developed by the whole consortium participating in the project, consisting of 43 true/false questions about different situations which a child may go through when accused of committing a crime (for example, *"a child has the right to be given an explanation about what he/she is being accused of"*) and some other questions about his/her age, gender, the judicial measure he/she is serving and its duration. The aim of this questionnaire is to assess the children's knowledge about their rights and other relevant information concerning criminal proceedings.

The original version of the questionnaire was drafted in English and then translated for each one of the partner States into its respective language: Croatian, Bulgarian, Greek, Italian and Spanish.

### ➤ Focus group:

The instrument applied to this group was the 7 steps model developed by Stewart, Shamdasani y Rook (2007) for the creation and conduct of focus groups. The authors determined that set the aim of creating the group; then specifying the participants features; the appointing a facilitator who shall manage the group and an observer who shall take notes about the topics covered during the focus group filling a template previously created, defining a guide for managing the group and finally analysis of the collected data. The purpose of applying this model was to be able to analyse the knowledge about the stages of the criminal proceedings that the children who are serving

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a judicial measure of detention have and, based on this, identify potential deficiencies and needs.

The original version of the instruments and documents used in this activity were drafted in English and then translated for each one of the partner States into its respective language: Croatian, Bulgarian, Greek, Italian and Spanish.

### 2.3. Procedure

Before the intervention with both groups each partner State was bound to hold 3 meetings with different bodies of the Public Administration in order to obtain their engagement in the development of the research and the necessary permissions. With regard to Spain, meetings were held with the Department of Family and Equal Opportunities of the Autonomous Community of the Region of Murcia, the Juvenile Court of Murcia and the Juvenile Prosecution Service of Murcia.

The participants' selection was made by the centres' management, taking into account the availability of their consent for participating in the research.

#### ➤ Questionnaires group:

The questionnaire posed to this group was administered by two technicians from *Fundación Diagrama* in charge of the execution of this project, who went to both centres in two different days. In the centres the children were divided in two groups (with around 13 participants each) and each group was monitored by one technician. Thus, 4 groups were formed, consisting of 52 individuals in total.

Before starting with the questionnaire, each technician explained the aim of answering the questionnaire, the instructions for doing so correctly and its confidential and anonymous character.

During the filling of the questionnaire, each technician supervised the proper function of his/her group, whose maximum duration was around 20 minutes each.

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➤ Focus group:

The model applied to this group was carried out by two technicians from *Fundación Diagrama* in charge of the execution of the present project, who went to both centres in two different days. A group of 10 children was selected in each centre with whom use the research methodology. One technician acted as a facilitator, conducting the focus group by posing questions and the other one as an observer, taking notes of all the topics covered during the debate.

Before the start of the activity, the facilitator presented the aim of the focus group, the instructions for its proper development and requested the consent for the voice recording, specifying its confidential and anonymous character. Each focus group had a duration of around 1:30h.

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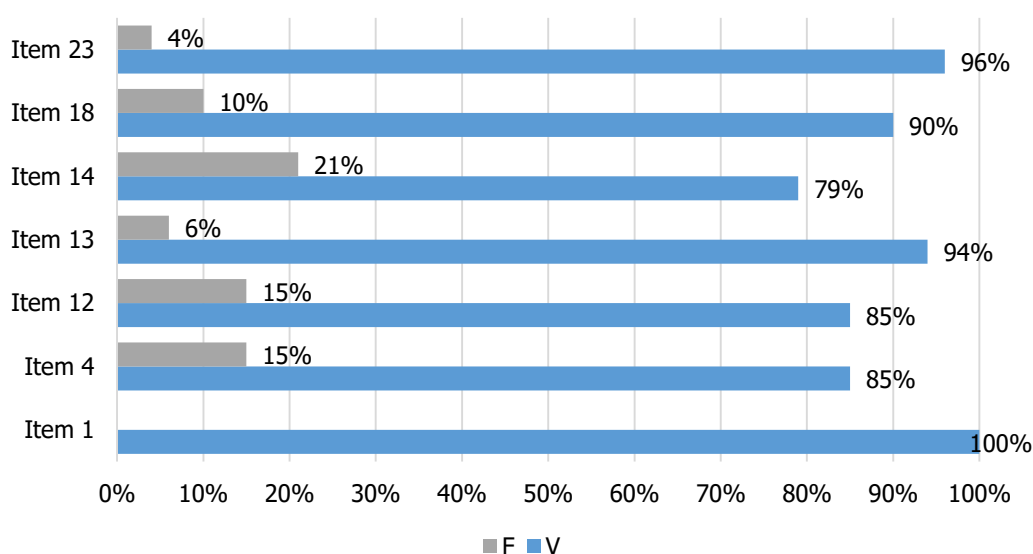
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### 3. RESULTS

#### 3.1. Police arrest

##### 3.1.1. Children's right to information

###### ➤ Questionnaires group:



**Item 1.** A child has the right to be given an explanation about what he/she is being accused of.

**Item 4.** A child has the right to remain silent.

**Item 12.** A child has the right to see the information about his/her judicial record.

**Item 13.** A child's lawyer has the right to see the information of the child's judicial record.

**Item 14.** A child has the right to make a complaint if he/she is not allowed to have a look into his/her judicial record.

**Item 18.** A child under arrest has the right to be given a written letter of his/her rights.

**Item 23.** A child has the right to be seen by a doctor.

###### ➤ Focus group:

**Right of children to know what they are being accused of:** in the first group (detention) the children claimed that the police inform them about all the issues once in the police station. By contrast, in the second group (non-custodial measures) the general perception is that the police do not inform them at all when the arrest takes place.



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**Right of children to have access to their judicial file:** in the first group (detention) the children knew that they have a right to access to their judicial file, but they claimed that the police do not necessarily facilitate the access. In addition, they noted that the lawyer is entitled to request that access and in that case the petition is far more effective (*"The lawyer is the first person to get it. Then he/she gives it to you"*). While in the second group (non-custodial measures) the children expressed that they do not have such right and they are not allowed to access their judicial file, but through their lawyer (*"No!"-several children at once-; "You don't, but your lawyer does"; "You can ask for it, but they won't give it to you"*).

**Right of children to have a letter of rights:** in the first group (detention), the children said that once at the police station, the officers inform them about their rights (*"You have the right to remain silent, you have the right to a lawyer, to a call..."*; *"That, however, 50% of the police officers. Some of them don't say a thing"*), but they are not given a letter of rights in writing at any time (*"I have seen it in writing. They always read it on a sheet"*; *"David is told: you have the right to this, to this, and to this"*). In addition, the children noted that they understand properly what they are told. While the second group (non-custodial measures) did not understand properly the very concept of letter of rights.

**Right of children to remain silent:** in the first group (detention), the children claimed that, when informed of their rights at the police station, they were told about a right to remain silent (*"You have the right to remain silent, you have the right to a lawyer, to a call..."*) and, apparently, they understood that "to remain silent" means not to testify. And the same with the second group (non-custodial measures), since the participants understood perfectly that to remain silent implies that *"you have the right not to testify"*, *"when they asked you a question you can be quiet and not answer"*.

**Right of children to medical care:** in the first group (detention), the children remark that if they need any kind of medical assistance, they shall receive it (*"He has to be treated by the police themselves"*; *"They have to take him to the doctor"*; *"They take him to the hospital and then they bring him back to his cell"*). Likewise, in the second group (non-custodial measures) the children did know about their right to medical care when needed.

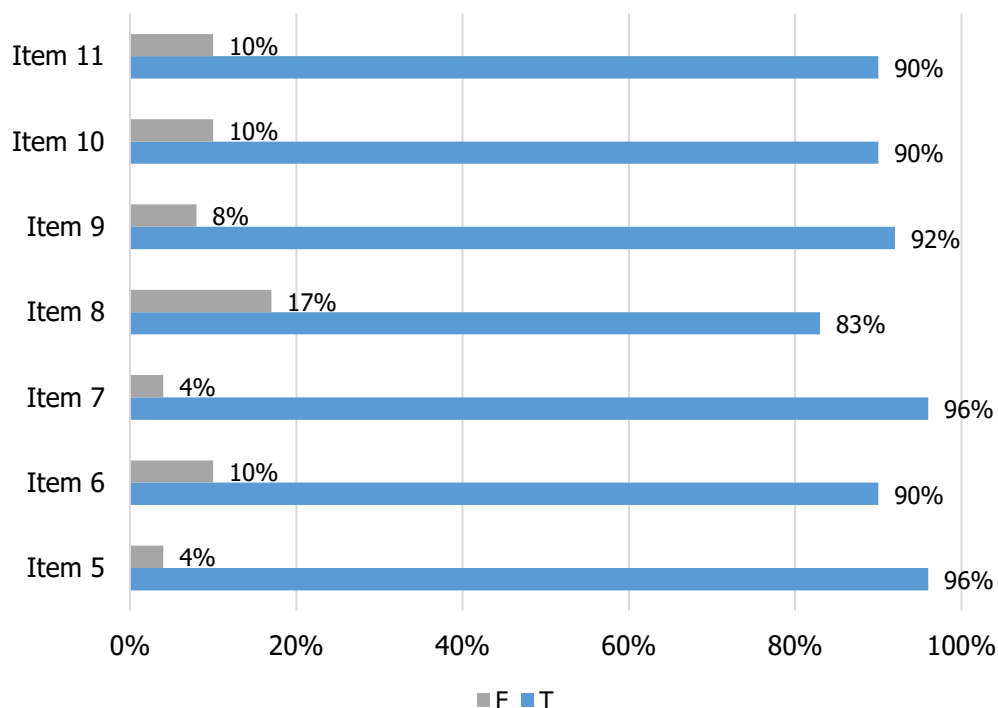


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### 3.1.2. Children's right to translation and interpretation

#### ➤ Questionnaires group:



**Item 5.** A child has the right to an interpreter if he/she does not understand the language.

**Item 6.** A foreign child has the right to appropriate assistance (translation/interpretation) if he/she wants to speak to his/her lawyer.

**Item 7.** A child who cannot hear or see has the right to be communicated to by his/her lawyer in a way that he/she understands.

**Item 8.** A foreign child has the right to make a complaint if he/she has not understood what he/she has been told.

**Item 9.** A child who cannot hear or see has the right to make a complaint if he/she has not understood what he/she has been told.

**Item 10.** A foreign child has the right to be given the important information in writing and in a language that he/she understands (for example: the final judgment).

**Item 11.** A child who cannot hear or see has the right to be given the important information in writing (in Braille for example) and in a language that he/she understands (for example: the final judgment).

#### ➤ Focus group:

**Right of children to translation and interpretation:** in the first group (detention), the children noted that the police should make sure that the person under arrest understands what he/she is being told and should request the presence of a translator/interpreter when required (*"He has the right to be assisted by a person who speaks... [a language] that he could understand"*; *"They [the police] will have to resort to a person [translator/interpreter] who could go immediately to inform him [about his rights]"*; *"It must be that way, but it isn't"*). And the same should be done if the child could not hear or see (*"They have to find someone who could understand him. Someone who speaks sign language and could understand him"* *"In sign language or whatever,*

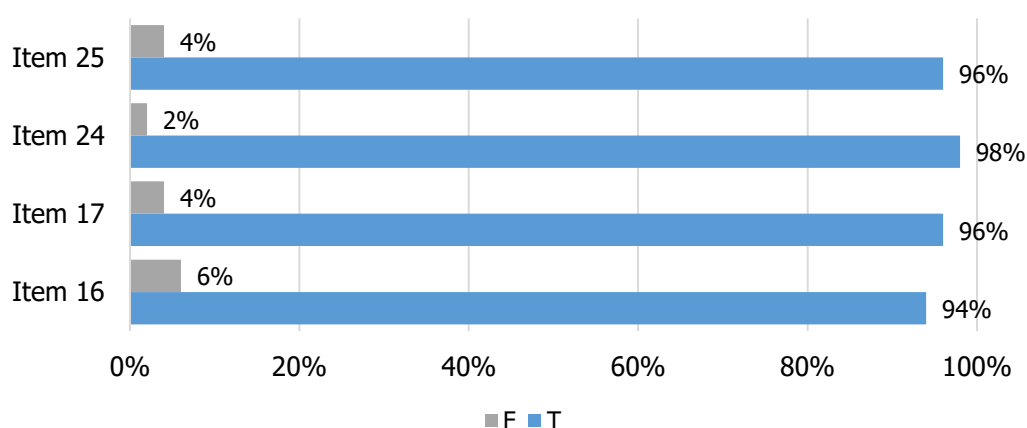
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*they have to inform him [about his rights]. He has to know what they are doing with him*). Similarly, in the second group (non-custodial measures) it was stated that children always have the right to be assisted by a translator/interpreter who could make them understand what they are being told (regarding the question about what must be done if David does not understand, the participants answered: "An interpreter", "Someone who understands his language... sign language").

### 3.1.3. Children's right to a lawyer

#### ➤ Questionnaires group:



**Item 16.** A child has the right to speak with a lawyer before being questioned by the police.

**Item 17.** A child has the right not to tell anyone what he/she has talked about with the lawyer.

**Item 24.** A child has the right to be assisted/defended by a lawyer.

**Item 25.** A child has the right to be defended by a lawyer for free.

#### ➤ Focus group:

**Right to a lawyer:** in the first group (detention), children noted that they have the right to be assisted by a lawyer, either public or private (*"It is mandatory to have a lawyer"; "If you can't afford a lawyer, they will appoint a public defender"*). Some of them said that public defenders do not do as well as private ones (*"He/she won't defend you as private defenders do"*), but other thought differently (*"It depends on the lawyer. There are public defenders who do it well"*). And the same regarding the second group (non-custodial measures), whose members were sure that children have the right to a lawyer, public or not, and noted that his/her assistance may be requested by the children themselves or the police.

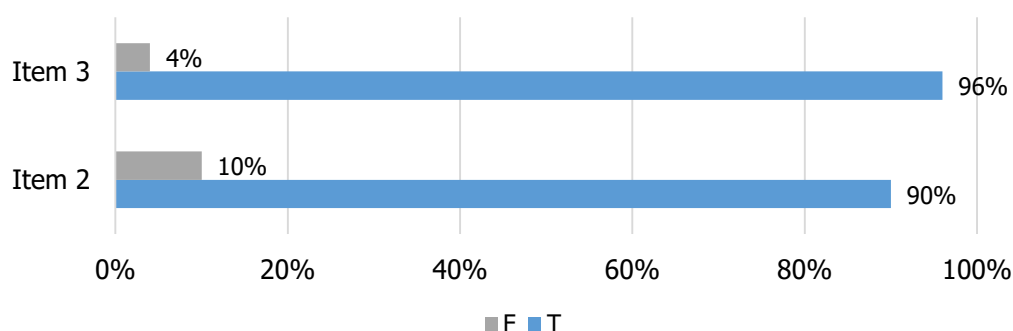
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**Right of children to privacy with their lawyer:** in the first group (detention), the children noted that they do have this right. And the same in the second group (non-custodial measures), since the children remarked that everything they talk about with their lawyer remains strictly confidential (*"It's confidential. What you say to your lawyer is only known by him/her"*).

#### 3.1.4. Children's right to inform the holders of their parental responsibility

##### ➤ Questionnaires group:



**Item 2.** A child has the right to call a closely related person.

**Item 3.** A child has the right to inform his/her parents that he/she is under arrest.

##### ➤ Focus group:

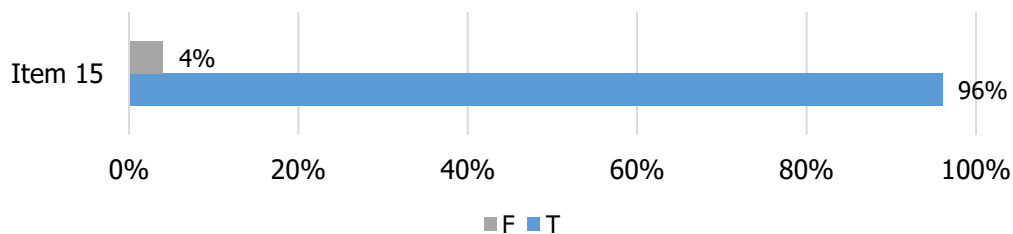
**Right of the holders of the parental responsibility to be informed:** in the first group (detention), the children remarked that it is essential that the police inform their parents once in the police station and before the questioning takes place (*"They call your parents before testifying"; "They say to them to go since their child is under arrest"; "When you are at the police station, they call to your parents to say that their child is here for some reason"*). The same in the second group (non-custodial measures), since the children knew they have the right that the holders of their parental responsibility know their situation and this is achieved through a call from the police or the children themselves.

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### 3.1.5. Children's right to be accompanied

#### ➤ Questionnaires group:



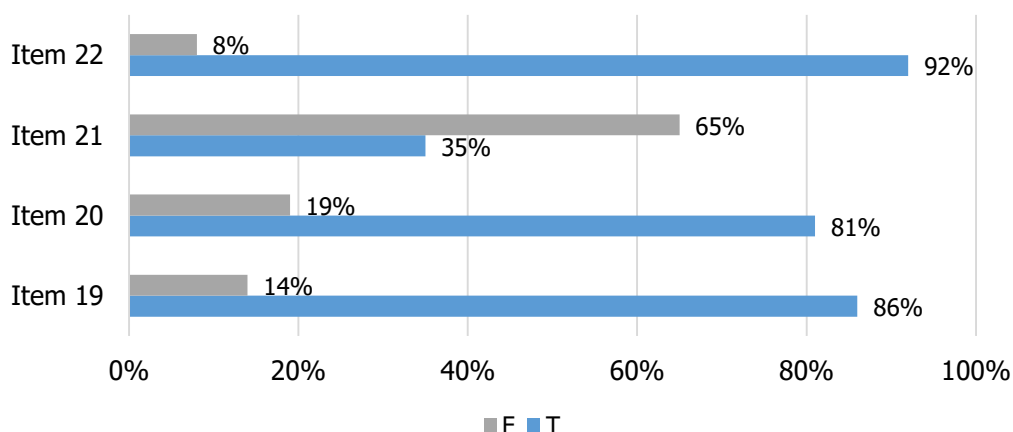
**Item 15.** A child has the right to a lawyer's presence during the police questioning.

#### ➤ Focus group:

**Right of children to testify in the presence of their lawyer and holders of parental responsibility:** in the first group (detention), the children knew that they have the right to the presence of their lawyer ("*Your lawyer has to be there. But you also have the right not to testify and then to testify before the prosecutor*") but with regard to their parents' they were not sure. In the case of the second group (non-custodial measures) the children remarked that it is mandatory that their lawyer is present while they are testifying (if he/she were not "*you can't testify*"; "*you can refuse to do so*") and noted that their parents may accompany them as well.

### 3.1.6. Knowledge of other relevant issues

#### ➤ Questionnaires group:



**Item 19.** A child under arrest must be separated from adults under arrest.

**Item 20.** A child can be under arrest for no longer than 48 hours.

**Item 21.** The police questioning can be video-recorded.

**Item 22.** A child has the right to the non-publication of video-recordings of him/her.

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### ➤ Focus group:

**Right of children deprived of liberty to be kept separate from detained adults during their arrest:** in the first group (detention), the youngsters remarked that children must not be put together with adults, but this is not always complied with (*"By law, you can't be along with adults"; "If you are lucky they'll put you in another cell, but if you are not..."*). Moreover, having asked about the reasons for separating children from adults, these were the answers: *"Because a child is more vulnerable than an older person"*. Likewise, in the second group (non-custodial measures) everybody know that adults and children must not be put together in the same cell, but the effective compliance with this is a different story (*"You could [be along with an adult], but if you are a minor you are supposed to be separated from the adults"; "There are several cells, not only one. And they are separated. If it's possible, you'll be alone, but if it's not, you'll not"*).

**Right of children to be put under arrest for no longer than 48 hours:** in the first group (detention), the youngsters knew that 48 hours is the maximum time that they can be under arrest, but when the arrest is performed on Friday, these were the answers: *"If it is Friday, you will remain there the whole weekend"*. In the case of the second group (non-custodial measures), the children doubted about which is the maximum time that they can be under arrest (between 24 and 48 hours). In any case, the opinion that this maximum is not respected seems widely accepted and, for example, if the arrest is being performed on Friday, the child will spend the whole weekend under arrest.

**Right to use audio-visual means:** in the first group (detention), the youngsters assure that they cannot being recorded as they are under-aged (*"They do not have right [to record you]"; "Under-aged don't, but adults do"*). The same happens in the second group (non-custodial measures), as all of them agreed that in any case they can be recorded (*"If they record me, I will report them. As easy as that"*).

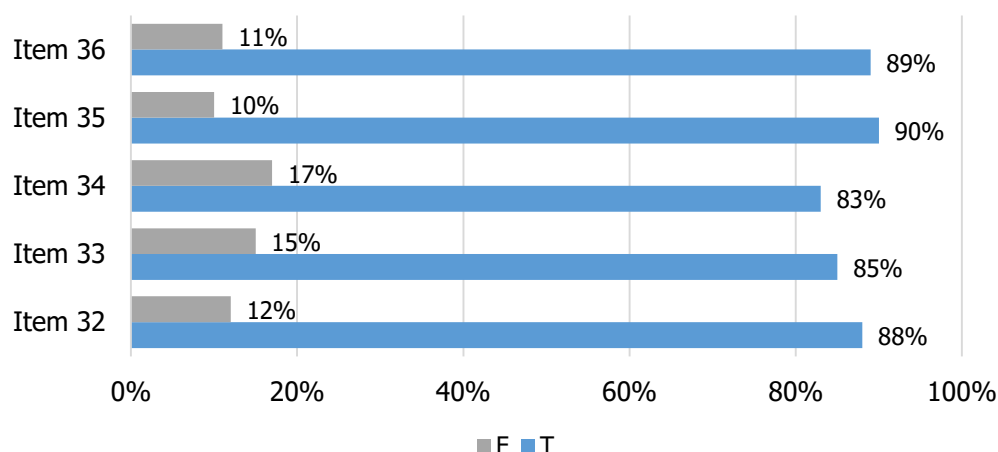
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### 3.2. Trial

#### 3.2.1. Right of children to information

➤ Questionnaires group:



**Item 32.** A child has the right to the review of his/her sentence.

**Item 33.** A child has the right to a non-public/closed trial.

**Item 34.** A child has the right to make a complaint and ask for reparation if his/her rights are not respected.

**Item 35.** A child has the right that people do not speak about his/her private life.

**Item 36.** A child has the right to have his privacy protected from the Medias (for example: television, newspapers, etc.).

➤ Focus group:

**Right of children to appeal the sentence:** in the first group (detention), the children did not have very clear that something could be done after the sentence is approved. They saw it as something definitive. The same happened in the second group (non-custodial measures), as the general opinion was that you cannot complain when the sentence is approved.

**Right of children to a non-public trial:** in the first group (detention), the youngsters did not have really clear if they had right to a non-public trial or not, but they seemed to know that there can be public, apart from the people who intervene during the trial (prosecutor, lawyer, Technical Team, etc.) ("*Regular people can assist to the trial*"; "*You can be alone in the trial, without anyone. – I don't think so. – I think so. You can be with the lawyer and with the others [prosecutor, psychologists, family, etc.], but not with other people*"). Something similar happened in the second group (non-custodial measures), as the children pointed out the following statements: "*I don't think so*"; "*If*

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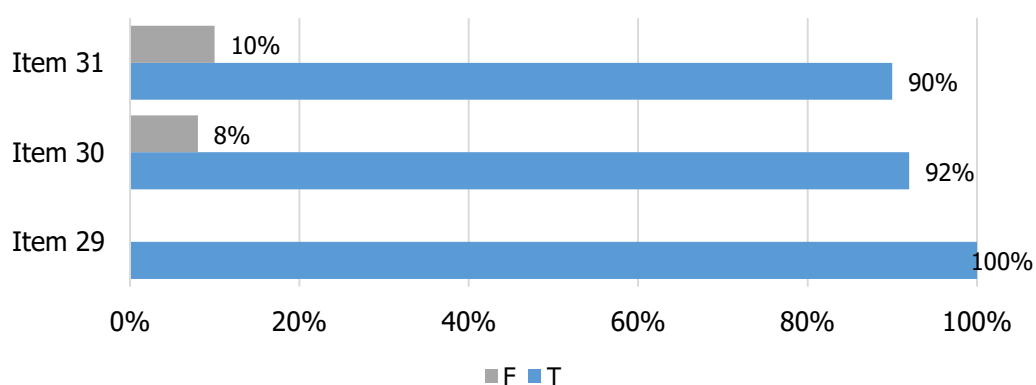
*you ask for it, they will answer you: what do you care if there is people or not"; "You cannot do anything".*

**Right of children to appeal if their rights have not been respected:** in the first group (detention), children commented that *"You can say that, but it's difficult that they accept it"*. While in the second group (non-custodial measures) they do not have that clear.

**Right of children to privacy:** in the first group (detention), the youngsters assured that the Media cannot publish information without their consent. While in the second group (non-custodial measures), children commented that they have right to privacy and they thought that nothing can be published without their consent. Nevertheless, this is not always like that (*"I think that without our consent they could not record or publish anything"; "I get on TV and anyone ask me for permission"; "You can denounce them, but what will they do?"*).

### 3.2.2. Right of children to be accompanied

#### ➤ Questionnaires group:



**Item 29.** A child has the right to have his/her parents present during his/her trial.

**Item 30.** A child has the right to wait for his/her lawyer at the trial.

**Item 31.** A child has the right to his/her lawyer's presence during identity parades.



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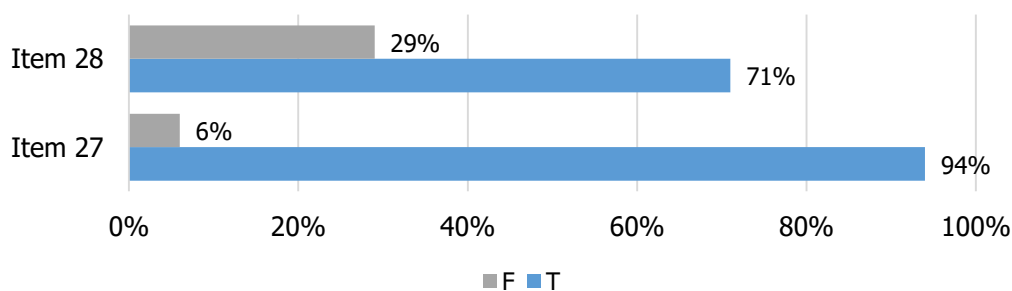
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#### ➤ Focus group:

**Right of children to be accompanied by their holders of parental responsibility and their lawyers:** in the first group (detention), the youngsters pointed out that the lawyer has to be present and always intervene in the trial. Moreover, they said that if the lawyer is not present when the trial takes place *"the trial is cancelled"*. Children said that before get into the trial, the lawyer informs you about it (*"He/She prepares you and say you: they will demand you that. Conform you or not"*; *"Before getting into the trial, there is a small room and the lawyer tells you there why the trial is going to be held, what they are going to say to you and what measure are they going to impose to you"*). Regarding parents, children said that *"they can be in the trial with you"*, but it is not clear if they can intervene or not and if the lawyer can formulate them questions or not. Moreover, they commented the following: *"In the courtroom will be the prosecutor, the lawyers, the parents..."*; *"The social workers and the Autonomous Community will be there too"*; *"Everyone there can talk"*. The same happened with the second group (non-custodial measures), as the general opinion was that the presence of the lawyer is not only a right, but it is compulsory (*"If the lawyer don't appear in court, the trial is not going to be held"*; *"The trial is not going to be held if there isn't another lawyer around"*), as well as the assistance of the holders of parental responsibility (*"If the parents are not present, the holders of parental responsibility must be there"*). Moreover, they said that before the trial, the child talks with his/her lawyer.

### 3.2.3. Right of children to be present and participate

#### ➤ Questionnaires group:



**Item 27.** A child has the right to be present and to participate at his/her trial, to be heard and to give his/her opinion.

**Item 28.** A child who was not present at his/her own trial has the right to another trial.



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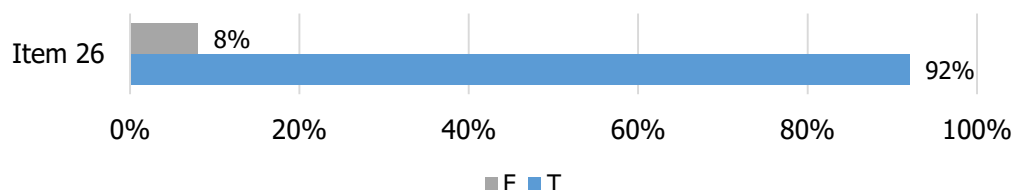
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#### ➤ Focus group:

**Right of children to be present and to participate during the trial:** in the first group (detention), children pointed out that they must be always present: *"They look for you"; "Once they let that pass, other too, but for the third time they look for you"*. Moreover, they commented that the child is allowed to intervene *"when the judge tells him/her"; "The judge tells you: do you have any suggestion to tell me? Something you want to add?"* The same happened in the second group (non-custodial measures), as they knew they can intervene, but only when a judge allows them or when they are asked (*"No. When the judge ask you"; "You don't have the word until the judge give it to you"; "I spoke when I see that he/she is asking me a question"*).

#### 3.2.4. Right of children to individual evaluation

#### ➤ Questionnaires group:



**Item 26.** A child has the right to an individual assessment before his/her trial.

#### ➤ Focus group:

**Right of children to individual evaluation:** in the first group (detention) the children pointed out that the technical team evaluates you, but not always (*"Usually you talk with the technical team, with the psychologist"; "Yes, the technical team [evaluates you] sometimes, but the majority not"*). Moreover, they said that during the evaluation they ask you questions as the following ones: *"What happened to you, if you are ok, how are you"; "They ask you about everything"; "What do you do with your life. If you smoke or drink",* their final objective is: *"To know how you are"; "That is part of the statement"*. The same happened in the second group (non-custodial measures), as all of them commented that the technical team of the Court evaluates you individually (*"You talk with three or four people"; "They ask you if you are studying or not"*). But they doubted in the moment in which the evaluation takes place (*"This is before de trial. After the prosecutor, isn't it?"; "When you talk with the prosecutor"; "This happens when you make the statement"*). Moreover, they pointed out that the technical team talks with their parents too.

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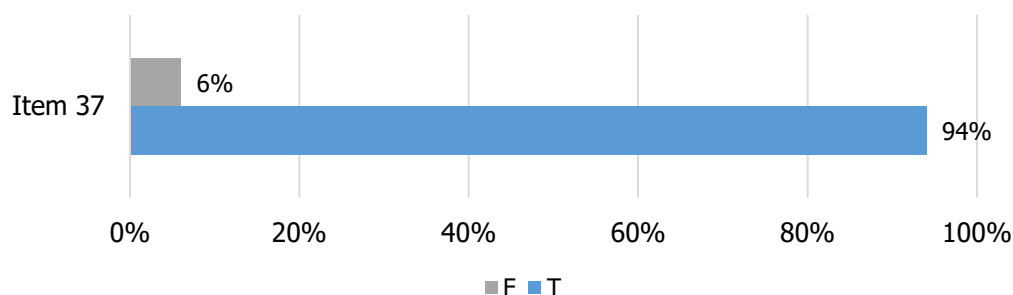
### 3.3. Sentence execution

#### 3.3.1. Right of children to information

**Right of children to receive written information about their rights and obligations about their rights and obligations and about the detention centre's internal regime Regulations:** in the first group (detention), the general perception is that the participants showed a wide knowledge about the functioning of the centre/Regulations. These children pointed out that when they arrive to the centre *"They give you a sheet with all your tasks and how the centre functions"*; *"They give you a document in which all the Regulations of the centre are explained. The first day"*. In the second group (non-custodial measures), the children commented that at the beginning of the measure, they are informed about the centres Regulations.

#### 3.3.2. Right of children to family communication

##### ➤ Questionnaires group:



**Item 37.** A child who is in a detention center has the right to see his/her family.

##### ➤ Focus group:

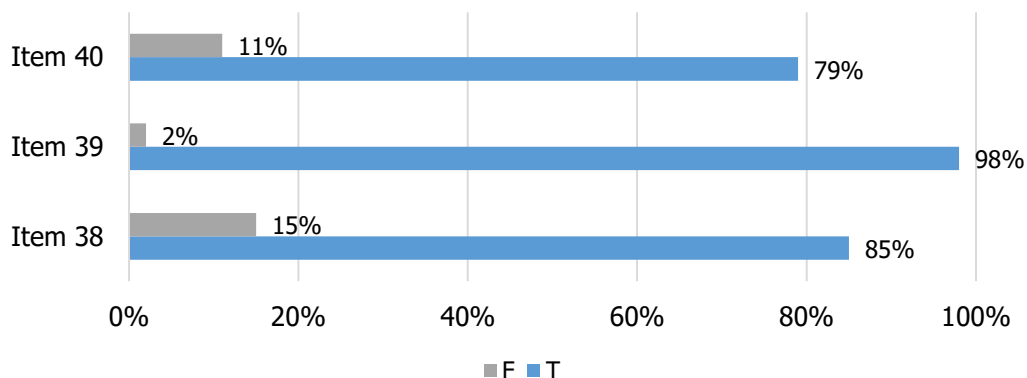
**Right of children to family communication:** in the first group (detention), all of the children knew their right to have family communication. Regarding the way to communicate and the frequency, they pointed out: *"You have visits. You have to ask for a specific day"*; *"Two [visits] per week"*; *"In person or by telephone"*. Something similar happened with the second group (non-custodial measures), as all of them seemed to know that they had the right to communicate with their families: *"By phone. You can call [your family] during your spare time"*.

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#### 3.3.3. Right of children to receive medical care

##### ➤ Questionnaires group:



**Item 38.** The lawyer of a child who is in a detention center has the right to ask for a doctor to see the child.

**Item 39.** A child who is in a detention center has the right to be seen by a doctor.

**Item 40.** The parents of a child who is in a detention center have the right to ask for a doctor to see their child.

##### ➤ Focus group:

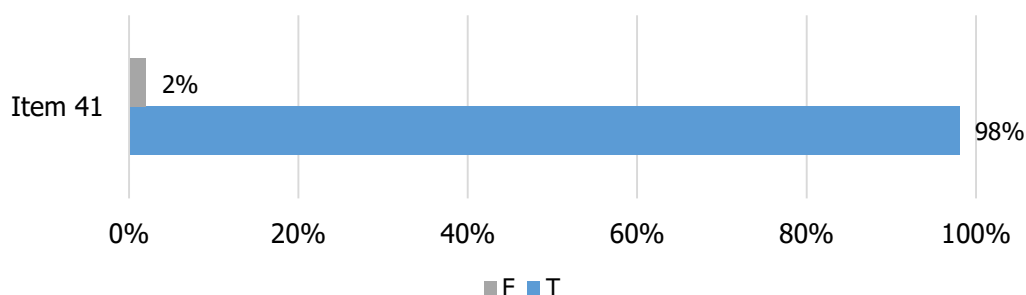
**Right of children to medical care:** in the first group (detention), all children pointed out that they have the right to receive medical care. They commented that the doctor is the one who goes to the center: *"You have to make a request"; "They give you a sheet in which you specify your symptoms and the next time the doctor goes to the center, he/she sees you"*. The same happened in the second group (non-custodial measures): *"[in the center] there is a doctor, he/she came..."; "If you go out during a permission, you have the chance that your mother takes you to the doctor. If not, the police takes you there"*.

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### 3.3.4. Right of minors to education and training

➤ Questionnaires group:



**Item 41.** A child who is in a detention center has the right to be given education and training.

➤ Focus group:

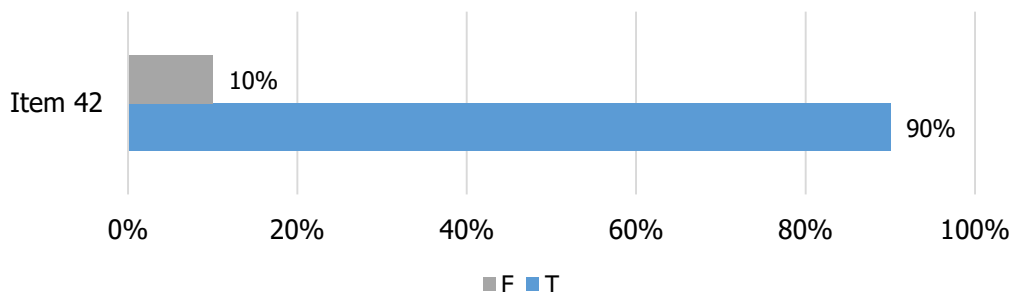
**Right of children to education:** in the first group (detention), children pointed out that every one of them have that right, but also the obligation to study. They commented that the center offers them the Compulsory Secondary Education, but also Training Cycles for Professional Training. They also said that the ones who have open regime and semi open regime they can go out to study in High Schools (*"Children here have the obligation to study. Every one of them"; "Four of us are studying a Training Cycle for Professional Training"; "If you are in an open or semi open regime, you can go out [to study]"*). The same happened with the second group (non-custodial measures), as children said that *"it is compulsory. You have to go to school"*. Moreover, in the center offers you Training Cycles for Professional Training and if you are with an open or semi open regime you can go out to study (*"[You can] study. A Training Cycle for Professional Training of masonry or something. And if you are going out with permissions, you have the chance to go out and study in a High School"*).

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#### 3.3.5. Right of children to religious freedom

##### ➤ Questionnaires group:



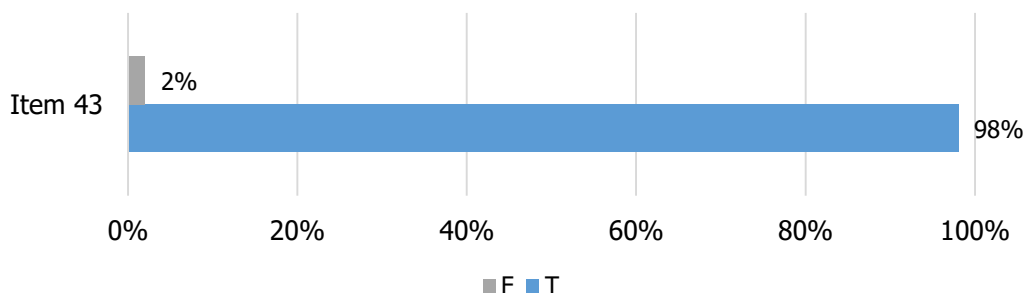
**Item 42.** A child who is in a detention center has the right to practice his/her own religion and believes.

##### ➤ Focus group:

**Right of children to religious freedom:** in the first group (detention), there was unanimity with the obligation to respect anyone's beliefs, as well as with their execution on the center. They pointed out that they are given allowances from the center to develop them (*"A priest comes to the center once in a while"*; *"[You have right] to be respected for your beliefs"*; *"Yes [you have right to do the Ramadan]. We've done it recently"*; *"Yes [they give you allowances]. You have to respect anyone's beliefs"*). Something similar happened with the second group (non-custodial measures), as youths said that they know that right and from the center you have the opportunity to do it: *"The priest goes to the center once in a while. If you are Moroccan you have the right to do the Ramadan"*.

#### 3.3.6. Right of children to have access to programs that foster their development and their reintegration into society

##### ➤ Questionnaires group:



**Item 43.** A child who is in a detention center has the right to attend workshops which help him/her reintegrate into society.

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➤ Focus group:

#### **Right of children to have access to programs related to social reintegration:**

in the first group (detention), youngsters pointed out that *"we also assist to workshops related with drugs, sexuality and everything"* and they said that they visit some places that allow them to have contact with community. The same happened in the second group (non-custodial measures), as children pointed out that they assist to workshops related with sport, leisure activities, etc.: *"There are workshops every day, every afternoon. Even at weekends"*.

#### **3.3.7. Right of children to individual evaluation**

**Right of children to individual evaluation:** children in the first group (detention) did not say anything about an individual evaluation when they arrive to the center. They only talked about the moment they receive you in the center and they are informed about their rights and the center's functioning. However, in the second group (non-custodial measures), children did not have clear if this action is developed, as when they were asked, they answered: *"There are psychologists"*.

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#### 3.3.8. Qualitative questions

*Which rights do you think are the most important? Write down the numbers and say why.*

In the first group (detention), the most repeated answer has to do with the item 37 (A child who is in a detention center has the right to see his/her family), with answers like the following ones: *"To see my family"; "The contact with the family affects a lot with the measure of the minor"; "To advise the family and can see them"; "Because it's important to be always in contact with your family"; "Because you have to see your family"; "Because they support you and they give you strength to keep going"; "Because family is the main support".*

However, in the second group (non-custodial measures), the most repeated answers are the ones related to items about legal aid: 13 (A child's lawyer has the right to see the information of the child's judicial record); 15 (A child has the right to a lawyer's presence during the police questioning); 25 (A child has the right to be defended by a lawyer for free); and 30 (A child has the right to wait for his/her lawyer at the trial), with statements like the following ones: *"Because he/she has to be present to tell me what the judge tell me during the trial"; "Because the lawyer guides you"; "Because the lawyer is really important"; "Because the child has the right to wait for a lawyer in order to be helped"; "Right to be defended by a lawyer".*

*Which rights do you believe have not been respected in your case? Write down the numbers and say why.*

In the first group (detention), the most repeated answer is that their rights have been respected during all the judicial proceeding: *"All rights have been respected"; "I'm agree"; "In my case, all rights have been respected".*



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## 4. CONCLUSIONS

### ➤ Questionnaires group:

As a most important result in this group has to be highlighted the one obtained in the item 21, in which a major proportion of inadequate answers is observed, in front of the adequate ones:

- Item 21. The police questioning can be video-recorded. (35% true, in front of 65% false).

A part, the results obtained in items 14, 20 and 28 are important too, as despite they had been answered properly, the differences between the adequate answer and the inadequate are not so high:

- Item 28. A child who was not present at his/her own trial has the right to another trial (71% true, in front of a 29% false).
- Item 14. A child has the right to make a complaint if he/she is not allowed to have a look into his/her judicial record (79% true, in front of a 21% false).
- Item 20. A child can be under arrest for no longer than 48 hours (81% true, in front of a 19% false).

Finally, it has to be mentioned some items correctly answered but despite they are evident a priori, the percentage of inadequate answers is remarkable:

- Item 8. A foreign child has the right to make a complaint if he/she has not understood what he/she has been told (83% true, in front of a 17% false).
- Item 34. A child has the right to make a complaint and ask for reparation if his/her rights are not respected (83% true, in front of a 17% false).



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➤ Focus group:

As a coincident results on both discussion groups has to be highlighted the fact that they manifested that police questioning cannot be video-recorded; they denied their right to appeal the sentence; as well as their right to a non-public trial; and an individual evaluation at the beginning of the execution of their measures.

In group 2 (non-custodial measures) they also denied the fact that they are informed about what they are accused of; denied their right to access to their criminal record; they did not know exactly what a declaration of rights is; they denied to have right to appeal if they think that their rights have not being respected.

Regarding all the showed results, in the questionnaires group as well as in the focus group is observed a lack of knowledge among youngsters on those rights of the **detention phase**. Moreover, children showed also difficulties on those rights stablished on the **trial phase**.

All that results reveal the difficulties that children go throw to understand their rights and legal duties, caused by the use of a complicated and specific language related to the juvenile justice system. In this way, through the adaptation of that information into an adequate language adapted to the age and evolutionary development of children will help to identify their rights and understand the relevant information about judicial proceedings. Therefore they will be better informed and they will gain more security and confidence on themselves and on the justice system.

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# **RESULTS REPORT OF THE STUDY OF NEEDS ASSESSMENT**

**GREEK AND ENGLISH  
HOPE FOR CHILDREN (CYPRUS)**

## **ΑΞΙΟΛΟΓΗΣΗ ΑΝΑΓΚΩΝ ΤΩΝ ΠΑΙΔΙΩΝ ΠΟΥ ΕΡΧΟΝΤΑΙ ΣΕ ΣΥΓΚΡΟΥΣΗ ΜΕ ΤΟ ΝΟΜΟ ΣΤΗΝ ΚΥΠΡΟ: ΕΚΘΕΣΗ ΣΧΕΤΙΚΑ ΜΕ ΤΟ ΔΙΚΑΙΩΜΑ ΤΩΝ ΠΑΙΔΙΩΝ ΣΤΗΝ ΠΛΗΡΟΦΟΡΗΣΗ, ΤΗ ΜΕΤΑΦΡΑΣΗ ΚΑΙ ΤΗ ΔΙΕΡΜΗΝΕΙΑ ΣΕ ΠΟΙΝΙΚΕΣ ΔΙΑΔΙΚΑΣΙΕΣ**

### **1. ΕΙΣΑΓΩΓΗ**

Λόγω του ότι η ψυχική κατάσταση των παιδιών είναι ιδιαίτερα εύθραυστη και ο χαρακτήρας τους επηρεάζεται σημαντικά από διάφορους παράγοντες και στοιχεία που βρίσκονται στο στενό και ευρύτερο περιβάλλον τους (οικογένεια, σχολείο, κοινωνία κ.λπ.) . το κρίσιμο στάδιο της συναισθηματικής και ψυχολογικής τους κατάστασης, τα παιδιά θεωρούνται ευαίσθητα. Ως αποτέλεσμα αυτών, οι ανήλικοι αντιμετωπίζουν σημαντικά προβλήματα και δυσκολίες κατά τη διεκπεραίωση της ποινικής διαδικασίας σε σύγκριση με τους υπόπτους ή τους κατηγορούμενους ενηλίκους. Αυτοί είναι οι κύριοι λόγοι για τους οποίους είναι επιτακτικό να υπάρχουν συγκεκριμένα μέτρα προστασίας και νομοθεσία για τη ρύθμιση της ποινικής διαδικασίας καθώς και οι ποινικές κυρώσεις των ανηλίκων και των νέων.

Είναι κοινώς αποδεκτό ότι οι ανήλικοι χρειάζονται ειδική προστασία σε ποινικές διαδικασίες προκειμένου να κατανοήσουν τι γίνεται ενώπιον τους (π.χ. δικαστικές διαδικασίες) και να διασφαλίσουν τον σεβασμό και την άσκηση των δικαιωμάτων τους. Διαφορετικά, δηλαδή εάν το άτομο δεν κατανοεί τη διαδικασία ή τις συνέπειες των πράξεων του (π.χ. εισδοχή ή μη εξομοίωση), το δικαίωμα σε δίκαιη δίκη είναι πολύ περιορισμένο, θέτοντας έτσι σε κίνδυνο την ακεραιότητα της δικαστικής διαδικασίας.

Παρόλο που ο αριθμός των νεαρών παραβατών που έχουν διαπράξει σοβαρά ποινικά αδικήματα (π.χ. ληστεία) καθώς και ελαφρά αδικήματα (π.χ. κακόβουλη υλική ζημιά) έχει μειωθεί σημαντικά στην Κύπρο, δεν θα πρέπει να αποτελεί παράγοντα ανακούφισης<sup>1</sup>. Ως εκ τούτου, στο πλαίσιο του έργου JT Friendly Child Friendly, επιδιώξαμε να συμβάλουμε στην ορθή εφαρμογή των οδηγιών 2012/13 / ΕΕ σχετικά με το δικαίωμα ενημέρωσης σε ποινικές διαδικασίες, 2010/64/ΕΕ σχετικά με το δικαίωμα διερμηνείας και μετάφρασης σε ποινικές και 2016/800 όσον αφορά τις δικονομικές εγγυήσεις για παιδιά που είναι υπόπτων ή κατηγορούνται σε ποινικές διαδικασίες. Ως εκ τούτου, οι κύριοι στόχοι του προγράμματος σχετίζονται με την προώθηση της

<sup>1</sup>[http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/\\$file/CRIMINAL\\_STATISTICS-2015-EL-170817.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/$file/CRIMINAL_STATISTICS-2015-EL-170817.pdf?OpenElement) τελευταία πρόσβαση στις 3/9/2018.

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δικαιοσύνης φιλικής προς τα παιδιά, διευκολύνοντας την κατανόηση των πληροφοριών που παρέχονται στους ανήλικους που έρχονται σε σύγκρουση με το νόμο, καθώς και τους γονείς τους και/ή τους γονείς τους, μιας γλώσσας προσαρμοσμένης στο στάδιο της ανάπτυξής τους. Λόγω αυτών των παραγόντων, η ανάγκη ειδικής προστασίας των ανηλικών παραβατών είναι πολύ σημαντική και θα μπορούσε να βρεθεί σε διεθνές επίπεδο, τόσο στο ευρωπαϊκό όσο και στο κυπριακό νομικό πλαίσιο.

## 2. ΜΕΘΟΔΟΛΟΓΙΑ

Δεδομένου ότι η Κύπρος δεν κατόρθωσε να υλοποιήσει τις δραστηριότητες (ερωτηματολόγιο και ομάδα εστίασης), οι νομικοί μας εκμεταλλεύτηκαν την ευκαιρία να εξετάσουν το νόμο στα βιβλία του νόμου εν ενεργεία. Η έκθεση εκπονήθηκε βάση της έρευνας που έγινε, η οποία περιελάμβανε την ανάλυση του υφιστάμενου κυπριακού νομικού πλαισίου όσον αφορά τους ανήλικους παραβάτες, έχοντας υπόψη τις ευρωπαϊκές οδηγίες καθώς και τις διεθνείς συμβάσεις και τη σχετική νομολογία. Στο πλαίσιο της έκθεσης εντοπίζονται οι δυσκολίες εφαρμογής που αντιμετωπίζει η Κύπρος όσον αφορά το νομοθετικό πλαίσιο των ανηλικών παραβατών. Οι ερευνητές μας έχουν δοκιμάσει αρκετές φορές για να πάρουν την άδεια πρόσβασης στη φυλακή προκειμένου να διανείμουν το ερωτηματολόγιο σε ανήλικους και νέους παραβάτες, ωστόσο το Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης καθώς και το Τμήμα Φυλακών αρνήθηκαν λόγω της υπάρχουσας νομοθεσίας. Ως εκ τούτου, είχαμε συμφωνήσει με το αρμόδιο υπουργείο να στείλουμε το ερωτηματολόγιο ώστε να το διανείμει στους ανηλικούς και τους νεαρούς παραβάτες στη φυλακή, ωστόσο δεν λάβαμε ποτέ τα αποτελέσματα των ερωτηματολογίων.

### 2.1. Συμμετέχοντες

Ο στόχος του έργου ήταν να γίνει μια ομάδα εστίασης με τους ανήλικους παραβάτες και να τους διανεμηθεί ένα ερωτηματολόγιο για τα δικαιώματά τους. Δεδομένου ότι μια τέτοια άδεια δεν εγκρίθηκε από το Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης, οι ερευνητές μας ήρθαν σε επαφή με τη Διεύθυνση των Κεντρικών Φυλακών, ωστόσο η ανεπίσημη απάντηση ήταν ότι οι ανήλικοι δεν ενδιαφέρονται για μια τέτοια δραστηριότητα. Ως εκ τούτου, οι ερευνητές μας αξιοποίησαν την ευκαιρία να αναλύσουν το υπάρχον κυπριακό νομικό πλαίσιο όσον αφορά τα δικαιώματα των ανηλικών παραβατών και να αξιολογήσουν την εφαρμογή της νομοθεσίας.

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### 2.2. Εργαλεία

Τα εργαλεία που θα χρησιμοποιούσαν οι ερευνητές μας, μεταφράστηκαν στα ελληνικά. Η αγγλική έκδοση μας στάλθηκε από τους συντονιστές του έργου και μετά από διαβούλευση με τις δημόσιες αρχές, την μεταφράσαμε στα ελληνικά. Και οι δύο εκδοχές του ερωτηματολογίου απεστάλησαν με τηλεομοιότυπο (FAX) στο Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης προκειμένου να διανεμηθούν στους ανηλικούς παραβάτες. Δυστυχώς, δεν λάβαμε ποτέ τα ολοκληρωμένα ερωτηματολόγια.

### 2.3. Διαδικασία

Η διαδικασία αξιολόγησης και ανάλυσης των αναγκών ανηλικών που έρχονται σε σύγκρουση με το νόμο ξεκίνησε το 2017. Είχαμε τέσσερις συναντήσεις με τις δημόσιες αρχές προκειμένου να λάβουμε τα σχόλιά τους για το ερωτηματολόγιο και να καταλάβουμε πώς λειτουργεί η διαδικασία στην Κύπρο. Από τον Οκτώβριο του 2017 προσπαθούμε μέσω επιστολών και τηλεφωνικών κλήσεων για να λάβουμε την άδεια πρόσβασης στη φυλακή. Δυστυχώς, μας απαγορεύθηκε η πρόσβαση, συνεπώς οι ερευνητές μας διενήργησαν έρευνα προκειμένου να εντοπίσουν τα κενά του νομοθετικού πλαισίου και να συμβάλουν σε ένα ευρωπαϊκό σύστημα δικαιοσύνης για τα παιδιά που είναι φιλικό για τα παιδιά, καθώς και να βελτιώσουν τη γνώση των επαγγελματιών που ασχολούνται με τη δικαιοσύνη ανηλικών.

## 3. ΑΠΟΤΕΛΕΣΜΑΤΑ

Όταν κάποιος ερευνά το θέμα των ποινικών διαδικασιών ανηλικών και νέων, μπορεί να βρει την Ευρωπαϊκή Σύμβαση για τα Ανθρώπινα Δικαιώματα καθώς και το Γενικό Σχόλιο (Σχόλιο #10) των Στοιχειωδών κανόνων των Ηνωμένων Εθνών για την απονομή δικαιοσύνης σε ανηλικούς καθώς και τους Κανόνες για την προστασία των ανθρωπίνων δικαιωμάτων και των θεμελιωδών ελευθεριών των Ηνωμένων Εθνών και τη Σύμβαση για τα δικαιώματα του παιδιού. Σύμφωνα με αυτές τις κατευθυντήριες γραμμές, μπορεί κανείς να βρει την προσπάθεια βελτίωσης του νόμου των κρατών όσον αφορά αυτό το θέμα και να προωθήσει έναν εναλλακτικό και πιο σύγχρονο τρόπο αντιμετώπισης του ζητήματος<sup>2</sup>. Ο κοινός παράγοντας σε όλο αυτό το κείμενο είναι ότι υπάρχει ένα κοινό έδαφος, το οποίο είναι το καλύτερο συμφέρον του παιδιού.

<sup>2</sup> General Comment No. 10, of the International Convention on the Rights of the Child.

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Σε κάθε περίπτωση, όταν ένας ανήλικος καταδικάζεται σε φυλάκιση ή κρατείται, ισχύουν ειδικά δικαιώματα. Για παράδειγμα, το γεγονός ότι η φυλακή πρέπει να είναι διαφορετική από εκείνη των ενηλίκων<sup>3</sup>, να βελτιώνει συνεχώς το επίπεδο εκπαίδευσής τους, ακόμη και στην περιοχή της φυλακής να τους παρέχετε πρόσβαση σε ψυχαγωγικές και αθλητικές δραστηριότητες<sup>4</sup> και να τους δίνει την ευκαιρία να δραστηριοποιούνται σε κάτι δικής τους επιλογής προκειμένου να αποκτήσουν επαγγελματικές δεξιότητες<sup>5</sup> για να επιβιώσουν με αξιοπρέπεια μετά την απελευθέρωσή τους. Εκτός αυτού, θα πρέπει να έχουν πρόσβαση σε ιατρική και ψυχική υποστήριξη<sup>6</sup>, καθημερινές επισκέψεις γονέων και φίλους, καθώς και άδεια να φύγουν για λίγο από τη φυλακή για να επιτύχουν σταθερή επανένταξη στην κοινωνία<sup>7</sup>.

Αυτά τα κείμενα προστατεύουν τα δικαιώματα των παιδικών παραβατών και έχουν μια προσέγγιση με το παιδί στο κέντρο, με στόχο τη μεταρρύθμιση του ανήλικου καθώς και τη διασφάλιση της κοινωνικής ένταξής του. Αυτά τα κείμενα είναι κατευθυντήριες γραμμές και αρχές που τα κράτη δεν μπορούν να παραβιάζουν. Κάθε κράτος που υιοθετεί και εναρμονίζει την εθνική νομοθεσία με τη διεθνή και την ευρωπαϊκή, παρέχει εκσυγχρονισμό των διατάξεων ώστε να προσαρμοστεί στις νέες συνθήκες και στάσεις που επικρατούν (κοινωνική επανένταξη, προστασία, αποφυγή στιγματισμού του παιδιού).

Επιπλέον, όταν κάποιος αναφέρεται στη νομολογία, μπορεί να διαπιστώσει ότι οι ανήλικοι που έρχονται σε σύγκρουση με το νόμο, πρέπει να έχουν ειδικές διαδικασίες που πρέπει να ακολουθήσουν στο δικαστήριο και πρέπει να ληφθούν ειδικά μέτρα. Το σκεπτικό είναι ότι το παιδί δεν μπορεί να αντιληφθεί τη διαδικασία. Στην υπόθεση *S.C. κατά Ηνωμένου Βασιλείου (2004)*<sup>8</sup>, το Ευρωπαϊκό Δικαστήριο Ανθρωπίνων Δικαιωμάτων αποφάνθηκε ότι το δικαίωμα σε δίκαιη δίκη<sup>9</sup> του ανήλικου παραβιάστηκε διότι το εθνικό δικαστήριο δεν έλαβε ειδικά μέτρα για να πληροφορήσει τον ανήλικο για το τι γίνεται.

<sup>3</sup> Article 13 (4) of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>4</sup> Article 32 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>5</sup> Article 38 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>6</sup> Article 49 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>7</sup> Article 59 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>8</sup> *S.C. v the United Kingdom (2004) 17 BHRC 607*

<sup>9</sup> Article 6 (1) of the European Convention of Human Rights



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### Υφιστάμενο νομικό πλαίσιο

Σημαντική θεωρείται ο προσδιορισμός των εννοιών «ποινικό δίκαιο» και «ανήλικος» προτού αναφερθούμε στην ισχύουσα νομοθεσία για τους ανηλικούς παραβάτες στην Κύπρο, προκειμένου να αποσαφηνιστεί το περιεχόμενο.

Ο όρος «ποινικό δίκαιο» σημαίνει όλες οι διατάξεις που ορίζουν και καθορίζουν κατά τρόπο που επιβάλλουν συγκεκριμένα μέτρα (ποινές) κατά ορισμένων παράνομων πράξεων για την αποκατάσταση της κοινωνικής και έννομης τάξης. Επιπλέον, ο όρος «ανήλικος» στην κυπριακή νομοθεσία γενικά θεωρείται ως κάθε άτομο που δεν έχει φθάσει στην ηλικία των 18 ετών. Ωστόσο, εκτός από αυτόν τον γενικό κανόνα, στα πλαίσια της ποινική δικαιοσύνης, η παραβατικότητα των ανηλικών εξετάζεται όταν ένας ανήλικος θεωρείται να είναι ποινικά υπεύθυνος για παράνομη πράξη ή παράλειψη. Σύμφωνα με το άρθρο 14 του Ποινικού Κώδικα (Κεφάλαιο 154) της Κυπριακής Δημοκρατίας, η ποινική ευθύνη για παράνομη πράξη ή παράλειψη αποδίδεται σε οποιοδήποτε πρόσωπο ηλικίας 14 ετών και άνω. Επομένως, αυτό σημαίνει ότι κάθε άτομο που δεν έχει συμπληρώσει την ηλικία των 14 ετών δεν φέρει καμία ποινική ευθύνη για οποιαδήποτε παράνομη πράξη ή παράλειψη. Πριν από την τροποποίηση του Νόμου 18(I)/2006, το ηλικιακό όριο ποινικής ευθύνης ήταν τα 12 έτη. Έτσι, το ηλικιακό όριο διαφέρει από κράτος σε κράτος.

Στο κυπριακό νομικό σύστημα, παρόλο που υπάρχουν διατάξεις που εγγυώνται δικαιώματα, δεν υπάρχει ειδικό νομικό πλαίσιο για τους ανηλικούς όπως σε άλλα ευρωπαϊκά κράτη μέλη. Αντί αυτού, υπάρχουν ορισμένες διάχυτες νομοθετικές διατάξεις μεταξύ των νομοθεσιών που ισχύουν μόνο για τους ανηλικούς παραβάτες με ποινές. Σε πολλές περιπτώσεις, οι διατάξεις αυτές είναι παρόμοιες ή / και ίδιες με αυτές των ενηλίκων με παραλλαγές που πληρούν τις απαιτήσεις κάθε ξεχωριστής περίπτωσης.

### Ο περί Αδικοπραγούντων Ανηλικών Νόμος, Κεφάλαιο 157

Στην Κύπρο, η μόνη νομοθεσία που αφορά τους ανηλικούς παραβάτες είναι ο περί Αδικοπραγούντων Ανηλικών Νόμος, Κεφάλαιο 157, που εισήχθη το 1946 και η τελευταία τροποποίηση έγινε το 1972. Η νομοθεσία αποτελείται από 25 άρθρα και θεωρείται ότι ρυθμίζει τις διαδικασίες που ακολουθούνται κατά την ποινική διαδικασία των ανηλικών και τις ποινές που θα μπορούσαν να τους επιβληθούν. Από την τελευταία τροποποίησή της το 1972, η νομοθεσία δεν μπορεί σήμερα να εξυπηρετήσει τις ανάγκες όσον αφορά τη νεανική παραβατικότητα. Επομένως, δεδομένου ότι πρόκειται για μια «παλιά» νομοθεσία, είναι σημαντικό να αναλυθούν ορισμένες από τις βασικές της διατάξεις.



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Το Κεφάλαιο 157 ασχολείται με τους ανήλικους παραβάτες λαμβάνοντας υπόψη την ηλικία τους και την προώθηση των συμφερόντων τους. Συγκεκριμένα, το άρθρο 5 του Κεφαλαίου 157 ασχολείται αρχικά με διαδικαστικά ζητήματα, για παράδειγμα, οι περιπτώσεις ανηλικών αντιμετωπίζονται από δικαστήριο ανηλικών σε διαφορετικό κτίριο ή χώρο από το Επαρχιακό Δικαστήριο. Επιπλέον, οι υποθέσεις πρέπει να διεξάγονται σε διαφορετικές ημέρες και ώρες από τις ακροάσεις των ενηλίκων.

Ωστόσο, στην Κύπρο οι ακροάσεις των περιπτώσεων ανηλικών γίνονται στο Επαρχιακό Δικαστήριο ή στο Κακουργιοδικείο, ανάλογα με την περίπτωση, δεδομένου ότι δεν έχουν συσταθεί εξειδικευμένα δικαστήρια ανηλικών. Χαρακτηριστικό παράδειγμα είναι η περίπτωση της Κυπριακής Δημοκρατίας κατά του Αλέξη Αναστασίου<sup>10</sup>, στην οποία ο κατηγορούμενος ήταν ηλικίας 17 ετών, υπόθεση η οποία διεξήχθη στο Ανώτατο Δικαστήριο της Λάρνακας για το ποινικό αδίκημα της ανθρωποκτονίας. Επιπλέον, το ίδιο άρθρο επισημαίνει ότι τα προσωπικά δεδομένα προστατεύονται, δεδομένου ότι το Άρθρο ορίζει ότι μόνο μέλη και δικαστικοί υπάλληλοι, δικηγόροι και μέλη άμεσα ή έμμεσα εμπλεκόμενα στην υπόθεση μπορούν να είναι παρόντες στην αίθουσα του δικαστηρίου (γονείς ή κηδεμόνες μπορούν να είναι παρόντες εάν θεωρηθεί αναγκαίο από το δικαστήριο), απαγορεύοντας συγχρόνως τη δημοσίευση των στοιχείων του ανηλικού χωρίς την άδεια του δικαστηρίου.

Σύμφωνα με το Κεφάλαιο 157, καθήκον του δικαστηρίου ανηλικών είναι, μεταξύ άλλων, η άμεση εξήγηση στον ανήλικο όσον αφορά για το τι κατηγορείται, σε απλή και κατανοητή γλώσσα, όπως αναφέρεται στο άρθρο 10(I). Αυτό οφείλεται στο γεγονός ότι ένας ανήλικος δεν μπορεί να καταλάβει ούτε να συνειδητοποιήσει το λεξιλόγιο και τους νομικούς όρους που χρησιμοποιούνται για τη διεξαγωγή της υπόθεσης. Ενδεικτικά, στην υπόθεση R εναντίον Δικαστηρίου Ανηλικών του West London<sup>11</sup>, όπου ο κατηγορούμενος ήταν 15 ετών, ενώ σύμφωνα με τα πορίσματα οι ικανότητές του ήταν ίδιες με ένα 8χρονο παιδί, το δικαστήριο έλαβε ειδικά μέτρα ώστε ο κατηγορούμενος ανήλικος να μπορούσε να συμμετάσχει στη διαδικασία και να μην παραβιάζεται το δικαίωμά του σε δίκαιη δίκη, συμπεριλαμβανομένης της χρήσης απλής και κατανοητής γλώσσας («συνοπτική και απλή γλώσσα»). Είναι σημαντικό να σημειωθεί εδώ ότι το δικαστήριο ανηλικών μπορεί να αντλήσει πληροφορίες για τον ανήλικο (π.χ. ακαδημαϊκή επίδοση, γενική συμπεριφορά, ιατρικό ιστορικό κ.λπ.), εάν το Δικαστήριο κρίνει ότι οι πληροφορίες είναι έγκυρες για την ακρόαση της υπόθεσης και κατόπιν απόφασης. Αυτό το είδος πληροφοριών περιλαμβάνονται συνήθως στις εκθέσεις των Υπηρεσιών Κοινωνικής Ευημερίας που δημιουργούνται για περιπτώσεις νεαρών

<sup>10</sup> *Republic of Cyprus v. Alexis Anastasiou 15064/14, 6722/14, 11808/14*

<sup>11</sup> *R (TP) v West London Youth Court [2005] EWHC 2583*

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παραβατών. Έτσι, η σημαντικότερη πτυχή αυτού του άρθρου της νομοθεσίας είναι ότι δηλώνει τις ποινές ή / και τις κυρώσεις που επιβάλλονται στον νεαρό παραβάτη.

Συνεχίζοντας, το Άρθρο 7 του Κεφαλαίου 157 υπογραμμίζει ότι εάν ένας νεαρός κρατείται ή παραπέμπεται στο δικαστήριο, η προφυλάκιση πρέπει να γίνεται σε αστυνομικό τμήμα αντί στις φυλακές. Σημειώνεται ότι η αστυνομία είναι υποχρεωμένη να διασφαλίσει ότι ο ανήλικος δεν θα έλθει σε επαφή με έναν ενήλικα κατάδικο.

Η ποινική μεταχείριση των ανηλίκων εποπτεύεται από το Άρθρο 12 του Κεφαλαίου 157. Όσον αφορά το άρθρο αυτό, εάν το Δικαστήριο ανηλίκων είναι ευχαριστημένο με το αποτέλεσμα των εξετάσεων, μπορεί να ενεργήσει με έναν από τους ακόλουθους τρόπους: α) να απορρίψει την κατηγορία, β) να θέσει το ανήλικο υπό την εποπτεία του «Κηδεμονευτικού Λειτουργού» (το καθήκον αυτό έχει ανατεθεί στις Υπηρεσίες Κοινωνικής Ευημερίας του Υπουργείου Εργασίας, Πρόνοιας και Κοινωνικών Ασφαλίσεων<sup>12</sup>), γ) να τοποθετήσει τον ανήλικο σε αναμορφωτικό σχολείο - αυτού του είδους σχολεία δεν έχουν ακόμη δημιουργηθεί στην Κυπριακή Δημοκρατία, δ) να διατάξει την καταβολή χρηματικών προστίμων ή τα έξοδα αποζημίωσης που προέκυψαν από την πράξη του δράστη (συνήθως η πληρωμή γίνεται από γονείς ή κηδεμόνες αφού ο ανήλικος δεν κατέχει περιουσία), και ε) να επιβάλλει ποινή φυλάκισης, η οποία επισημαίνεται ότι είναι μια πολύ σημαντική πτυχή<sup>13</sup> δεδομένου ότι δεν έχουμε κέντρο κράτησης ανηλίκων παραβατών. Επιπλέον, όταν κάποιος διερευνήσει το αναφερόμενο άρθρο, θα διαπιστώσει ότι η φυλάκιση διατάσσεται μόνο αν και όταν ο ανήλικος δεν μπορεί να αντιμετωπιστεί με τους προαναφερθέντες τρόπους. Η ποινή φυλάκισης θεωρείται το ακραίο μέτρο<sup>14</sup>.

### **Ο περί Κηδεμονίας και Άλλων Τρόπων Μεταχείρισης Αδικοπραγούντων Νόμος (46(I)/1996)**

Μια άλλη νομοθεσία στο κυπριακό νομικό σύστημα σχετικά με τους ανηλικούς είναι ο νόμος Κηδεμονίας και Άλλων Τρόπων Μεταχείρισης Αδικοπραγούντων (46 (I) / 1996). Η θέσπιση αυτής της νομοθεσίας καθιερώνει μια σημαντική εξέλιξη για την αντιμετώπιση των ανηλίκων παραβατών, καθώς παρέχει εναλλακτικούς τρόπους αντιμετώπισης του ανηλίκου. Σύμφωνα με το άρθρο 5 του προαναφερθέντος νόμου, ο παραβάτης μπορεί να τεθεί υπό την εποπτεία του «Κηδεμονευτικού Λειτουργού» (η

<sup>12</sup>Law Office of the Republic of Cyprus, Criminal Law, <http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument> accessed on the 3<sup>rd</sup> of September, 2018

<sup>13</sup> Law Office of the Republic of Cyprus, Criminal Law, <http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument> accessed on the 3<sup>rd</sup> of September, 2018 (Mitletton)

<sup>14</sup> Juvenile Offenders Law, Article 12 (2)

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περίοδος εποπτείας δεν μπορεί να είναι μικρότερη του ενός έτους και όχι μεγαλύτερη των τριών ετών). Το Διάταγμα Κηδεμονίας<sup>15</sup> μπορεί να περιλαμβάνει όρους κοινοτικής εργασίας, με τους οποίους ο δράστης εργάζεται χωρίς μισθό υπό ορισμένες προϋποθέσεις, όπως η συγκατάθεση του ανήλικου (άρθρο 6). Επιπλέον, μερικές άλλες μορφές θα μπορούσαν να είναι η παρακολούθηση μαθημάτων από τον ανήλικο, να παρευρίσκεται με τον «Κηδεμονευτικό Λειτουργό» σε καθορισμένες ημέρες και ώρες. Αυτά τα μέτρα ισχύουν μόνο αν ο ανήλικος αποδέχεται τους όρους. Εάν υπάρχει αποδοχή, θα πρέπει να υπάρξουν κατάλληλες ρυθμίσεις με τις αρμόδιες αρχές, τα υπουργεία κ.λπ. (άρθρο 7).

Είναι σημαντικό να σημειωθεί ότι η παραβίαση των όρων του Διατάγματος Κηδεμονίας συνεπάγεται ορισμένες κυρώσεις όπως προβλέπει το Άρθρο 8 του νόμου 46 (I) / 1996. Κατά τη διερεύνηση αυτής της υπόθεσης, διαπιστώνεται η περίπτωση του Προϊσταμένου της Αστυνομίας Λεμεσού κατά Κωνσταντίνου Γεωργίου<sup>16</sup>, όπου το δικαστήριο, αφού έλαβε υπόψη τα γεγονότα (οικογενειακή κατάσταση, έκθεση της Υπηρεσίας Κοινωνικής Πρόνοιας κ.λπ.), επέβαλε ποινή φυλάκιση στον κατηγορούμενο. Ο δράστης ήταν 17,5 χρονών, ο οποίος επανειλημμένα παραβίαζε τους όρους του Διατάγματος Κηδεμονίας που του είχε επιβληθεί. Παραβίασε επίσης τους όρους της κοινοτικής εργασίας, ως εκ τούτου, το τελευταίο μέτρο που λήφθηκε ήταν η φυλάκιση του.

### **Ο περί Αποκατάστασως Καταδικασθέντων Νόμος του 1981 (Ν. 70/1981)**

Διατάξεις σχετικά με τους ανήλικους περιλαμβάνονται επίσης στο νόμο του 1981 περί Αποκατάστασως Καταδικασθέντων (Ν. 70/1981), του οποίου η τελευταία τροποποίηση έγινε το 2004 (τροποποίηση 228(I)/2004). Ειδικότερα, με την τροποποίηση αυτή, οι όροι απόρριψης προηγούμενων ποινών (Άρθρο 5 του 70/1981) σχετικά με τους νέους έως 21 ετών, δεν είναι τόσο αυστηροί<sup>17</sup>. Με αυτόν τον τρόπο, παρέχεται στον δράστη η δυνατότητα να συμπεριληφθεί στην κοινωνία παρά το αδίκημα που διέπραξε.

### **Ο περί Παιδίων Νόμος, Κεφάλαιο 352**

Η ειδική προστασία και φροντίδα που χρειάζεται ένας νεαρός ως αναπτυσσόμενο πρόσωπο μπορεί να βρεθεί στο πλαίσιο του Νόμου για τα Παιδιά, Κεφάλαιο 352. Αν το Δικαστήριο ανήλικων αποφασίσει ότι ο ανήλικος χρειάζεται φροντίδα και προστασία

<sup>15</sup> Law Office of the Republic of Cyprus, Criminal Law, <http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument> accessed on the 3<sup>rd</sup> of September, 2018.

<sup>16</sup> *Head of Police Force of Limassol v. Konstantinou Georgiou 34504/10*

<sup>17</sup> Rehabilitation of Convicted Persons Law of 1981, Article 12 (2) – Chapter 157

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προς όφελός του, το Άρθρο 64 του Κεφαλαίου 352 προβλέπει ότι ο ανήλικος μπορεί να τοποθετηθεί σε αναμορφωτήριο ή να βρεθεί υπό τη φροντίδα ενός αρμόδιου προσώπου, είτε είναι συγγενής είτε όχι.

**Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005 (Ν. 163(I)/2005)**

Μια πολύ σημαντική μεταρρύθμιση του νόμου στον τομέα αυτό είναι η εισαγωγή του Νόμου Περί Δικαιωμάτων Προσώπων που Συλλαμβάνονται και Τελούν υπό Κράτηση του 2005 (Ν. 163 (I)/2005). Αυτή η νομοθεσία ορίζει κανόνες στους οποίους υπάρχουν συνθήκες που ρυθμίζουν την κράτηση, την εξευτελιστική μεταχείριση και τα δικαιώματα των φυλακισμένων και των κρατουμένων. Το Άρθρο 6 της προαναφερθείσας νομοθεσίας κατοχυρώνει το δικαίωμα ενημέρωσης των γονέων και κηδεμόνων σχετικά με τη σύλληψη των παραβατών κάτω των 18 ετών. Σύμφωνα με το νόμο, οι αστυνομικοί υποχρεούνται να ενημερώνουν αμέσως τους γονείς ή τους κηδεμόνες των ανηλικών για τους λόγους της σύλληψης ή / και της κράτησής τους. Εάν κρίνεται απαραίτητο, ενημερώνονται επίσης και οι Υπηρεσίες Κοινωνικής Ευημερίας.

Σύμφωνα με το Άρθρο 10 του προαναφερθέντος νόμου, αναφέρεται ρητά ότι εάν ένα πρόσωπο ηλικίας κάτω των 18 ετών ή άτομο με πνευματική ανεπάρκεια ανακρίνεται, ο δικηγόρος του πρέπει να είναι παρών ανά πάσα στιγμή, καθ' όλη τη διάρκεια της ανάκρισης. Επιπλέον, το Άρθρο 12, παράγραφος 2, κατοχυρώνει το δικαίωμα των γονέων ή κηδεμόνων του ανηλικού να παρίστανται σε όλες τις συνεδριάσεις ή / και να επικοινωνούν με τον δικηγόρο του, καθώς και να παρίστανται σε κάθε ιατρική εξέταση (Άρθρο 27, παράγραφος 2) που μπορεί να διεξαχθεί στον ανήλικο για τους σκοπούς της υπόθεσης. Εξετάζοντας αυτή τη νομοθεσία, διαπιστώνεται ότι σκοπός αυτών των δύο άρθρων είναι η προστασία του ανηλικού όσον αφορά τις παραβιάσεις των δικαιωμάτων του κατά τη διάρκεια της διαδικασίας. Δεδομένου ότι οι ανήλικοι είναι μια ευαίσθητη ομάδα ανθρώπων, η νομοθεσία (σύμφωνα με το Άρθρο 16 (1)) προβλέπει ότι οι συγγενείς τους, οι γονείς ή οι κηδεμόνες τους μπορούν να τους επισκέπτονται καθημερινά (ένα δικαίωμα που δεν εξασφαλίζεται για ενήλικους παραβάτες) σε καθορισμένο χώρο υπό την παρουσία ενός μέλους της αστυνομικής δύναμης ή ενός λειτουργού των φυλακών.

Σύμφωνα με τη νομοθεσία, ο φυλακισμένος ή ο κατηγορούμενος πρέπει να ενημερωθούν όσο το δυνατόν συντομότερα όσον αφορά τα δικαιώματά τους. Εάν είναι ανήλικοι, πρέπει να ενημερώνονται μαζί με τους γονείς τους και / ή τους κηδεμόνες τους, όπως διαπιστώνεται στο Άρθρο 17, παράγραφος 2. Μία από τις σημαντικότερες

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διατάξεις της νομοθεσίας είναι ότι ο νεαρός κρατούμενος κρατείται σε τόπο διαφορετικό από αυτόν των ενηλίκων, όπως προβλέπεται στο Άρθρο 20, παράγραφος 2. Η ίδια διάταξη ισχύει πριν από την ακρόαση της υπόθεσης, ενώ ο ανήλικος μπορεί να είναι υπό κράτηση. Ο λόγος για τον οποίο αυτό είναι τόσο σημαντικό για τους ανήλικους παραβάτες είναι επειδή θεωρούνται ευάλωτοι λόγω της ηλικίας τους και επειδή πρέπει να προστατεύονται σε μεγάλο βαθμό από τους ενήλικες παραβάτες που μπορεί να βλάψουν ή / και να εκμεταλλευτούν το ανήλικο.

### Δυσκολίες υλοποίησης

Λαμβάνοντας υπόψη το Κεφάλαιο 157 καθώς και τις άλλες νομοθετικές διατάξεις που αναφέρθηκαν παραπάνω, αντιλαμβάνεται κανείς ότι αυτό δεν σημαίνει ότι η Κύπρος έχει ειδικό σύστημα κανόνων που ισχύει για ανήλικους. Για παράδειγμα, η νομοθεσία προβλέπει ότι πρέπει να υπάρχουν ειδικά δικαστήρια για τους ανήλικους παραβάτες, αναμορφωτήρια και ειδικά κέντρα κράτησης ανηλίκων, στην πραγματικότητα όμως δεν υπάρχουν. Ως εκ τούτου, οι υποθέσεις ανηλικών παραβατών διεξάγονται στα Επαρχιακά Δικαστήρια ή στα Κακουργιοδικεία (όπου διεξάγονται και υποθέσεις ενηλίκων). Η φυλάκιση τους γίνεται στην κεντρική φυλακή της Λευκωσίας, σε κοινό κτίριο με τους ενήλικες, αλλά κρατούνται σε ξεχωριστή πτέρυγα, η οποία δεν χωρίζεται ανάλογα με το φύλο των κρατουμένων (οι ανήλικοι στις κεντρικές φυλακές Λευκωσίας, αγόρια και κορίτσια βρίσκονται στην ίδια πτέρυγα της φυλακής). Επομένως, από αυτό το γεγονός προκύπτει ένα ζήτημα, το κατά πόσο υπάρχει εκμετάλλευση ή βία εντός του χώρου της φυλακής κατά των ανηλίκων. Η νομοθεσία προβλέπει την ύπαρξη ειδικής σχολής μεταρρύθμισης (αναμορφωτήριο), στην οποία τοποθετούνται οι ανήλικοι, ωστόσο στην πράξη δεν υπάρχει τέτοια διάταξη.

Επιπλέον, η ίδια η νομοθεσία παρεκκλίνει από τις αντίστοιχες ευρωπαϊκές και διεθνείς, καθώς οι τροποποιήσεις και η παλαιά νομοθεσία δεν εξυπηρετούν τις σύγχρονες ανάγκες στον τομέα της ποινικής δικαιοσύνης των ανηλίκων. Καταβλήθηκαν κάποιες προσπάθειες όσον αφορά τον εκσυγχρονισμό της υφιστάμενης νομοθεσίας με την υποβολή ενός νέου σχεδίου νόμου<sup>18</sup> το οποίο προέβλεπε εναλλακτικές κυρώσεις και διαδικασίες, αλλά χωρίς καμία πρόοδο. Παρατηρήθηκε ότι, σε ορισμένες περιπτώσεις, οι ποινές που επιβάλλονται στους ανήλικους παραβάτες είναι ίδιες με εκείνες που επιβάλλονται στους ενήλικες, με κάποια αλλαγή λόγω του ότι το δικαστήριο αναγνωρίζει τη νεαρή ηλικία του παραβάτη. Ωστόσο, τα δικαιώματα των νεαρών παραβατών, αν και υπάρχουν πολλές ελλείψεις, προστατεύονται σε κάποιο βαθμό.

<sup>18</sup> Commissioner for Children's Rights,  
<http://www.childcom.org.cy/ccr/ccr.nsf/All/BC60D95921CCF715C2257D930037B5F9?OpenDocument>  
accessed on the 4<sup>th</sup> of September 2018



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Φαίνεται ότι η αποτελεσματικότητα αυτών των μέτρων είναι ανεπαρκής καθώς η Κυπριακή Δημοκρατία παρουσιάζει σημαντικά κενά όσον αφορά την αντιμετώπιση ανήλικων παραβατών (π.χ. απουσία ειδικού κέντρου κράτησης, ειδικών δικαστηρίων, ειδικής και επαρκούς νομοθεσίας σε σχέση με ανήλικους κλπ.), τα οποία πρέπει να καλυφθούν αμέσως. Επιπλέον, στη σύγχρονη εποχή της τεχνολογίας και της πληροφόρησης, η δυνατότητα αντίληψης και το αίσθημα ευθύνης των ανήλικων είναι πολύ πιο ανεπτυγμένες σε σχέση με τα προηγούμενα χρόνια.

Πριν γίνει παραβίαση του νόμου, θα πρέπει να δοθεί έμφαση στην πρόληψη και όχι στην καταπίεση που θα μπορούσε να επιτευχθεί με συγκεκριμένα μέτρα, όπως η ατομική αξιολόγηση των συνθηκών διαβίωσης, το οικογενειακό υπόβαθρο κλπ., το οποίο θα μπορούσε να είναι καθοριστικός παράγοντας που οδηγεί τον ανήλικα στην παραβίαση της νομοθεσίας. Πράγματι, είναι ένα από τα πιο ευαίσθητα καθήκοντα, να ασχοληθούμε με ανήλικους και νεαρούς παραβάτες, γι' αυτό πρέπει να αναμορφώσουμε την υφιστάμενη νομοθεσία ώστε οι ανήλικοι να απολαμβάνουν τα δικαιώματά τους<sup>19</sup>.

Όσον αφορά τη σύλληψη ή τη φυλάκιση ανήλικου, οι αρμόδιες αρχές πρέπει να εφαρμόζουν όλα τα εγγυημένα δικαιώματα του παιδιού, όπως απαιτείται από το νόμο και από το αίσθημα της δικαιοσύνης. Πρέπει να υπάρχουν διαφορετικοί χώροι για τους συλληφθέντες ανήλικους ή / και παραβάτες και η Κυπριακή Δημοκρατία πρέπει να επιλύσει το θέμα αυτό το συντομότερο δυνατό.

#### **4. ΕΠΙΛΟΓΟΣ**

Εν κατακλείδι, μετά την ανάλυση και παραπομπές της σχετικής νομοθεσίας που ρυθμίζει τον τρόπο με τον οποίο πρέπει να γίνονται οι ποινικές διαδικασίες σε σχέση με τους ανήλικους παραβάτες, είναι σαφές ότι η Κύπρος δεν έχει ειδική, αποτελεσματική και συγκεντρωμένη νομοθεσία. Η νομοθεσία που ασχολείται με τους ανήλικους παραβάτες είναι διάσπαρτη σε διάφορα μέρη της νομοθεσίας. Ειδικά όταν έχουμε κατά νου τον νόμο για τους ανήλικους παραβάτες που χρονολογείται από τον προηγούμενο αιώνα, μπορεί κανείς να είναι σίγουρος ότι η Κύπρος πρέπει να αντιμετωπίσει επειγόντως το ζήτημα αυτό. Επιπλέον, η πλήρης απουσία εγκαταστάσεων (δικαστήρια και φυλακές ανήλικων κ.λπ.), καθώς και καμία ειδική νομοθεσία από την Κύπρο, φαίνεται ότι υπάρχει κενό όταν συγκρίνονται οι ευρωπαϊκές οδηγίες με το κυπριακό νομικό πλαίσιο. Υπάρχει ανάγκη σύγχρονων ποινικών διαδικασιών και διατάξεων σχετικά με ανήλικους παραβάτες. Η Κυπριακή Δημοκρατία πρέπει να προβεί σε σειρά ενεργειών όπως η

<sup>19</sup> Pikis, *Sentencing in Cyprus* (2007, 2<sup>nd</sup> edition, Nicosia) 88-90

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θέσπιση ειδικής νομοθεσίας, η σύσταση ειδικών κέντρων για την κράτηση ανήλικων παραβατών, την πρόσληψη ειδικών ως προσωπικού σε θέματα διαχείρισης ανήλικων παραβατών, την κατάρτιση του υπάρχοντος προσωπικού με εγχειρίδια και με την προσέγγιση που θα πρέπει να έχουν όταν έρχονται σε επαφή με ανήλικους παραβάτες, με τη βοήθεια διαφόρων ενδιαφερομένων μερών (δικηγόροι, αστυνομικοί, δικαστές κλπ.).



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LAW IN CYPRUS:  
REPORT ON THE RIGHT OF CHILDREN TO INFORMATION,  
TRANSLATION AND INTERPRETATION IN CRIMINAL  
PROCEEDINGS**

**1. INTRODUCTION**

Due to the fact that the mental state of children is particularly fragile and their character is significantly influenced by a variety of factors and elements found in their narrow and wider environment (family, school, society, etc.) as well as their young their age; the critical stage of their emotional and psychological condition, children are considered to be sensitive. As a result of these, minors face significant problems and difficulties in handling the criminal proceedings when compared to adult suspects or defendants. These are the prime reasons why it is imperative that there are specific protection measures and legislation to regulate the criminal procedure as well as the criminal sanctions of minors and young people.

It is commonly accepted that minors need special protection in criminal proceedings to be able to understand what is being done before them (e.g. judicial proceedings) and to ensure respect for and exercise of their rights. Otherwise, that is to say, if the person does not understand the procedure or the consequences of his or her actions (e.g. admission or non-confession), the right to a fair trial is greatly restricted, thus jeopardizing the integrity of the judicial process.

Even though the number of juvenile offenders who have committed serious criminal offenses (e.g. robbery) as well as minor offenses (e.g. malicious damage to property) has decreased considerably in Cyprus, should not be a comforting factor<sup>1</sup>. Therefore, within the purposes of the project Child Friendly JT, we aimed to contribute to the correct implementation of Directives 2012/13/EU on the right of information in criminal proceedings, 2010/64/EU on the right to interpretation and translation in criminal proceedings and 2016/800 in regards of the procedural safeguards for children who are suspects or accused in criminal proceedings. Therefore, the main objectives of the project are related to the promotion of child friendly justice by facilitating the comprehension of the information provided to the minors in conflict with the law, as

<sup>1</sup>[http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/\\$file/CRIMINAL\\_STATISTICS-2015-EL-170817.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/$file/CRIMINAL_STATISTICS-2015-EL-170817.pdf?OpenElement) accessed on the 3<sup>rd</sup> of September, 2018.



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well as their parents and/or holders of parental responsibility, through the use of a language adapted to their stage of development. Due to these factors, the need of special protection of juvenile offenders is very important and could be found at an international level, European as well as the Cypriot legal context.

## 2. METHODOLOGY

Since Cyprus did not manage to implement the stated activities (questioner and focus group), therefore, our legal experts took the opportunity to examine the law in books v. the law in action. The report was written upon the desk research which involved the analysis of the existing Cypriot legal framework in regards of juvenile offenders, having in mind the European Directives as well as International Conventions and relevant case law. In the context of the report one can find the implementation difficulties Cyprus is facing in regards of the legislative framework of juvenile offenders. Our researches have tried various times to get the permission to access the prison in order to distribute the questioner to minor and young offenders, however, the Ministry of Justice and Public Order as well as the Department of Prison refused on the ground of the existing legislation. Therefore, we had agreed with the relevant Ministry to send the questioner so that they distribute it to the minors and young offenders in prison, however, we never received the completed questioners.

### 2.1. Participants

The aim of the project was to do a focus group with juvenile offenders and to provide them with a questioner in order to analyse their capacity in regards of their rights. Since such a permission was not approved by the Ministry of Justice and Public Order, our researchers contacted the Director of the Central Prison, however, the unofficial response was that the minors are not interested in such an activity. Therefore, our researchers took the opportunity to analyse the existing Cypriot legal framework in regards of the rights of juvenile offenders and assess the implementation of the legislation.

### 2.2. Instruments

The instruments our researchers were going to use, were translated into Greek. The English version was sent to us by the coordinators of the project and after consultation with Public Authorities, we have translated it into Greek. Both versions of the

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questioner were sent by FAX to the Ministry of Justice and Public Order in order to be distributed to the juvenile offenders. Unfortunately, we never received the completed questioners.

### 2.3. Procedure

The procedure of assessing and analysing of the needs of minors in conflict with the law, started in 2017. We have had four meetings with public authorities in order to get their feedback for the questioner and understand how the procedure works in Cyprus. Since October 2017 we have been trying through letters and phone calls to get the permission to access the prison. Unfortunately, we were denied access, therefore, our researchers did a desk review in order to find the gaps of the legislative framework and contribute to a more child-friendly European Juvenile Justice System as well as to improve the knowledge of professionals working in juvenile justice system.

## 3. RESULTS

When someone explores the issue of criminal proceedings of minors and young people, they can find the European Convention on Human Rights as well as the General Comment (Comment #10) of the Minimum Rules for the Administration of Juvenile Justice as well as the United Nations Rules for the Protection of Human Rights and Fundamental Freedoms as well as the Convention of the Rights of the Child. Under these guidelines, one can find the attempt to improve the law of states in this issue and to promote an alternative and a more modern way of dealing with it<sup>2</sup>. The common factor in all these text, is that there is a common ground, which is the child's best interest.

In any case, when a minor is sentenced to imprisonment or detained, special rights apply. For example, the fact that the prison area must be different from that of the adults<sup>3</sup>, to improve their level of education continuously, even at the area of the prison, grant them access to recreational and sport activities<sup>4</sup> and to empower them to carry out work of their own choice in order to acquire occupational skills<sup>5</sup> to survive

<sup>2</sup> General Comment No. 10, of the International Convention on the Rights of the Child.

<sup>3</sup> Article 13 (4) of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>4</sup> Article 32 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>5</sup> Article 38 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

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with dignity after their release. In addition to this, they should have access to medical and mental support<sup>6</sup>, day-to-day parental visits and friends, as well as authorisation to go out of prison for a while to achieve steady reintegration into society<sup>7</sup>.

These texts protect the rights of child offenders and have a child-centred approach, aiming reforming the minor as well as to ensure the minors' social integration. These texts, are guidelines and principles that States cannot violate. Each state which adopts and harmonises with International as well as European legislation, provides modernise provisions in order to adapt to the new conditions and attitudes that prevails (social reintegration, protection, avoid stigmatization of the child).

Additionally, when one refers to case law, they can find that juveniles in conflict with the law, need to have special procedures to follow in court and special measures should be taken. The rationale is that the child can not perceive the procedure. In the case of *S.C. v UK (2004)*<sup>8</sup> the European Court of Human Rights ruled that the right to a fair trial<sup>9</sup> of the minor was violated because the national court failed to take special measures to make the minor aware of what is being done before him.

### Existing legal framework

It is important to define the concepts of "criminal law" and "minor" before citing the applicable legislation for juvenile offenders in Cyprus, in order to clarify the content.

The term 'criminal law' means all provisions which define and prescribe in a manner which imposes specific measures (sentences) against certain unlawful acts in order to restore social and legal order. Furthermore, the term "minor" in the Cypriot legislation is generally perceived as any person who has not reached the age of 18. However, in addition to this general rule, in the framework of criminal justice, juvenile delinquency is examined when a minor is considered to be criminally liable for an illegal act or omission. Pursuant to Art. 14 of the Criminal Code (Chapter 154) of the Republic of Cyprus, criminal liability for an unlawful act or omission is attributable to any person aged 14 or over. Therefore, this means that any person who has not reached the age of 14 does not bear any criminal liability for any illegal act or omission. Prior to the

<sup>6</sup> Article 49 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>7</sup> Article 59 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>8</sup> *S.C. v the United Kingdom (2004) 17 BHRC 607*

<sup>9</sup> Article 6 (1) of the European Convention of Human Rights

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amendment of the Law 18(I)/2006, the age of criminal liability was 12. Thus, the age limit varies from State to State.

In the Cypriot legal system, although there are provisions guaranteeing rights, there is no specific statutory legal framework for minors, like in other European Member States. Instead, there are some legislative provisions dispersed across legislations which apply only to juvenile offenders, with sentences. In many instances, these provisions are similar and/or identical to those of the adults, with variations that meet the requirements of each case separately.

### Juvenile Offenders Law, Chapter 157

In Cyprus, the only legislation which refers to juvenile offenders is the Juvenile Offenders, Chapter 157, which was introduced in 1946 and the last amendment was made in 1972. The legislation consists of 25 Articles and is supposed to regulate the procedures followed in criminal proceedings of minors and the sentences which could be imposed upon them. Since it was last amended in 1972, it cannot serve the needs of juvenile delinquency today. Thus, since it is an 'old' legislation, it is important to analyse some of its basic provisions.

Chapter 157 deals with juvenile offenders, taking into account both their age and the promotion of their interests. In particular, Article 5 of Chapter 157 deals initially with the issues concerning the court, for example that juvenile cases are dealt with by a Juveniles Court in a different building or area than the District Court. In addition, the cases should be held on different days and hours of the hearings of adults.

However, in Cyprus the cases of minors are heard in the District Court or the Assize Court, depending on the case, since no specialised Juvenile Courts have been established. A typical example is the case of Republic of Cyprus v Alexis Anastasiou<sup>10</sup>, in which the accused, aged 17, in which, the case was held in the Larnaca's Assize Court for the criminal offense of homicide. In addition, the same article observes that personal data are protected, since the Article determines that only members and court officials, lawyers and members directly or indirectly involved in the case (parents or guardians may be present in the courtroom if it is considered to be necessary by the court), prohibiting at the same time the publication of details of the minor without the permission of the court.

<sup>10</sup> Republic of Cyprus v. Alexis Anastasiou 15064/14, 6722/14, 11808/14

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According to Chapter 157, the duty of the Juvenile Court is, among other things, is to directly explain to the minor the accusation he/she is accused of, in a simple and comprehensible language, as stated in Article 10 (I). This is due to the fact that a minor cannot understand nor realises the vocabulary and legal terms used to hold the case. Indicatively, in the case *R v. West London Youth Court*<sup>11</sup> where the accused was 15 years old, while according to the findings, his capacity was for as one of an 8-year-old child, the court had taken special measures so that the accused minor could participate in the process and in order for his right to fair trial not to be encroach, including the use of simple and comprehensive language ('concise and simple language'). It is important to state here, that the Juvenile Offenders Court may draw information for the minor (e.g. academic performance, general behaviour, medical history, etc.) if the Court considers the information to be valid for the hearing of the case and upon decision of the case. This kind of information is usually included in the reports of the Social Welfare Services to set up for cases of juvenile delinquents. Thus, the most important aspects of this article of the legislation, is that it states the sentences and/or penalties imposed upon the juvenile offender.

Moving on, Article 7 of Chapter 157 underlines that if a juvenile is detained or referred to the court, the custody should take place at a police station instead of the prisons. It is noted that the police are obliged to ensure that the minor will not come into contact with an adult convict.

The criminal handling of minors is overseen by Article 12 of Chapter 157. When in regards of this Article, if the Juveniles' Offenders Court is satisfied with the outcome of the examinations, it can act upon one of the following ways: a) reject the category, b) put the minor under the supervision of the 'Guardian Officer' (this task has been delegated to the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance<sup>12</sup>), c) place the minor in a reformatory school which is not yet established in the Republic of Cyprus, d) order the payment of fined or costs for damages which occurred by the act of the offender (usually, the payment is made by parents or guardians since the minor does not own his/her own property) and e) impose a sentence on imprisonment, which is pointed out to be a very important aspect<sup>13</sup> since we do not have a detention centre for juvenile offenders. Furthermore, when one explored the stated Article, they will find that imprisonment is ordered only if and when

<sup>11</sup> *R (TP) v West London Youth Court [2005] EWHC 2583*

<sup>12</sup> Law Office of the Republic of Cyprus, Criminal Law,  
<http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument>  
accessed on the 3<sup>rd</sup> of September, 2018

<sup>13</sup> Law Office of the Republic of Cyprus, Criminal Law,  
<http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument>  
accessed on the 3<sup>rd</sup> of September, 2018 (Mitleton)

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the minor cannot be treated under the above mentioned ways. The sentence of imprisonment is perceived to be the extreme measure<sup>14</sup>.

### **Law of Guardianship and Other Forms of Handling of Juvenile Offenders (46(I)/1996)**

Another legislation in the Cypriot legal system concerning juveniles is the Law of Guardianship and Other Forms of Handling of Juvenile Offenders (46(I)/1996). The establishment of this legislation establishes a significant development for dealing with juvenile offenders since it provides alternative ways while addressing the minor. Under Article 5 of the above mentioned law, the offender could be placed under the supervision of the "Guardian Officer" (the period of supervision may not be less than one year and not more than three years). The Custody Order<sup>15</sup> can include terms of community work, with whom the offender is doing work without a salary, under certain conditions, such as the consent of the minor in doing so (Article 6). Additionally, some other forms could be the attendance of the minor in classes, to be present at fixed days and hours to the "Guardian Officer". These measures are valid only if the minor accepts the terms. If there is acceptance, then there should be appropriate arrangements made with competent authorities, ministries etc. (Article 7).

It is important to note that the violation of the terms of the Custody Order entails some sanctions as provided by Article 8 of the Law 46(I)/1996. When exploring this under case law, one finds the case of *Head of Police Force of Limassol v. Konstantinou Georgiou*<sup>16</sup>, in which the court, after taking into account facts (marital status, report of the Social Welfare Office, etc.) imposed a sentence of imprisonment to the accused. The offender was 17.5 years old who repeatedly violated the terms of the Custody Order which was imposed on him. He also violated the community work terms, therefore, the last measure which was taken upon him was his imprisonment.

### **Rehabilitation of Convicted Persons Law of 1981 (70/1981)**

Provisions concerning minors can also be found in the Law of Rehabilitation of Convicted Persons Law of 1981 (70/1981) which was last amended in 2004 (amendment 228(I)/2004). In particular, with this amendment, the conditions of dismissal of previous sentences (Article 5 of 70/1981) regarding young people up to

<sup>14</sup> Juvenile Offenders Law, Article 12 (2)

<sup>15</sup> Law Office of the Republic of Cyprus, Criminal Law, <http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument> accessed on the 3<sup>rd</sup> of September, 2018.

<sup>16</sup> *Head of Police Force of Limassol v. Konstantinou Georgiou* 34504/10



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21, are not so strict<sup>17</sup>. In this way, the offender is given another chance to be included in society despite the offence he/she committed.

### Children's Law, Chapter 352

The special protection and care that a juvenile needs as a developing person, can be found under the Children's Law, Chapter 352. If the Juvenile Court decides that the minor needs care and protection for the benefit of the minor, Article 64 of Chapter 352, provides that the minor could be placed in a reformatory school or he/she will go under the care of a competent person, either he/she is a relative or not.

### Rights of Persons under Arrest and Detention Law

A very important law reform in this area is the introduction of the Law of the Rights of the People who are Taken in Detention of 2005 (N. 163 (I)/2005). This legislation sets rules from which there are conditions which regulate detention, degrading treatment and the rights of the arrestees and of prisoners. Article 6 of the above mentioned legislation, enshrines the right of information to parents and guardians, in relation to the arrest of offenders under the age of 18. Under the law, the police officers are obliged to immediately inform the parents or guardians of the minors regarding the reasons of the arrest and/or custody. If it is deemed to be necessary, the Social Welfare Services are informed as well.

Under Article 10 of the above mentioned law, it is explicitly stated that if a person under the age of 18 is being interviewed or a person with intellectual incompetence; his/her lawyer must be present at all times, throughout the investigation. Furthermore, Article 12 (2), enshrines the right of parents or guardians of the minor to attend all the meetings and/or communication with his/her lawyer as well as to be present at any medical examination (Article 27 (2)) the minor might undertake for the purposes of the case. When one explores this legislation, they can identify that the purpose of these two articles is the protection of the minor in regards of any violations of the minor's rights during the procedure. Since juveniles are a sensitive group of people, the legislation (under Article 16 (1)) provides that their relatives, parents or guardians, they can visit them on a daily basis (a right which is not guaranteed for adult offenders), in a designated area in the presence of a member of the police force or a prison staff.

<sup>17</sup> Rehabilitation of Convicted Persons Law of 1981, Article 12 (2) – Chapter 157



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According to the legislation, the prisoner or the arrestee must be informed in regards of their rights as soon as possible. If they are minors, they should be informed as well along with their parents and/or guardians, as found under Article 17 (2). One of the most important provisions of the legislation is that the juvenile prisoner is detained in a place other than that of the adults, as provided in Article 20 (2). The same provision applies prior to the hearing of the case, while the minor might be under arrest. The reason why this is so important for juvenile offenders is because they are considered to be vulnerable due to their age and because he/she should be protected at a large extend from adult offenders who might harm and/or exploit the minor etc.

### Implementation difficulties

When one takes into consideration Chapter 157 as well as the other legislative provisions mentioned above, one realises that it does not mean that Cyprus has a special system of rules which are applicable to minors. For example, the legislation provides that there should be special Juveniles Offenders Court(s), reformatory schools and special detention centres for minors, in reality, they do not exist. Therefore, minor offender cases are being held in the District or Assize Courts (at which adult cases are also being held). Their prison is the central prison of Nicosia, in a common building with adults sharing the same facilities as the adults, except, minors are being kept in a separate wing even though they do not separate them according to their sex (the minors in the central Prisons of Nicosia, males and females are in the same sector of the prison). Therefore, there is a question arising from this fact; of whether exploitation or violence within the area of the prison is happening, against minors. The legislation provides for the existence of a special reform school, to which the minor is placed, however, we do not have such a provision in practice.

Furthermore, the legislation itself derogates with the corresponding European and international, as the amendments as well as the legislation which is old, do not serve the modern needs in the area of the criminal justice treatment of minors. There were some efforts made in regards of the modernization of the existing legislation with the submission of a new draft of law<sup>18</sup>, which predicted alternative sanctions and procedures of minors, but, without any progress. It has been observed that, in some cases, the sentences imposed on juvenile offenders are common to the ones imposed on adults, with some commutation since the court recognises the minor's young age.

<sup>18</sup> Commissioner for Children's Rights,  
<http://www.childcom.org.cy/ccr/ccr.nsf/All/BC60D95921CCF715C2257D930037B5F9?OpenDocument>  
accessed on the 4<sup>th</sup> of September 2018

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However, the rights of juvenile offenders, though there are a lot of deficiencies, are being protected up to an extent.

It seems that the effectiveness of these measures is inadequate as the Republic of Cyprus presents significant gaps in addressing minor offenders (e.g. absence of special detention centre, special courts, specific and adequate legislation in regards of minors, etc.), which should be covered immediately. Furthermore, in the modern era, the era of technology and information, the possibility of perception and the sense of responsibility of minors are much more developed in relation to the earlier years.

Before one reaches to the point of violating the law, there should be emphasis drawn on prevention and not repression which could be achieved with specific measures such as individual assessment of living conditions, of family background etc. which could be a decisive factor which leads the minor to the violation of the legislation. Indeed, it is one of the most delicate tasks, to deal with minor and young offenders, however, that is why we need to reform the existing legislation in order for minors to enjoy their rights<sup>19</sup>.

For the arrest or the imprisoning of a minor, the competent authorities need to apply all the guaranteed rights of the child, as required by law and by the feeling of justice. There should be different designated areas for arrested minors and/or offenders and the Cyprus Republic needs to resolve this issue as soon as possible.

## 4. CONCLUSION

In conclusion, after the analysis and referrals of the relevant legislation which regulates the way the criminal proceedings should be done in relation to minor offenders, it is clear that Cyprus does not have any specific, efficient and compiled legislation. The legislation which deals with juvenile offenders is scattered in various pieces of the legislation. Especially when having in mind the Juvenile Offenders Law which dates back in the previous century, one can be sure that Cyprus needs to deal with this matter urgently. In addition, the complete absence of facilities (Juvenile Courts, Juvenile Prison etc.) along with no specific legislation from Cyprus, appears that there is gap when comparing the European Directives to the Cypriot legal framework. There is a need of modern criminal law procedures and provisions concerning juvenile offenders. The Republic of Cyprus must make a series of actions such as adopting a

<sup>19</sup> Pikis, *Sentencing in Cyprus* (2007, 2<sup>nd</sup> edition, Nicosia) 88-90

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specific legislation, set up special centres for the detention of juvenile offenders, recruitment of specialists as staff in management issues of juvenile offenders and in training the existing staff upon manuals and the approach they should have when they come into contact with juvenile offenders, with the assistance of various stakeholders (lawyers, police officers, judges etc.).



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# **RESULTS REPORT OF THE STUDY OF NEEDS ASSESSMENT**

**CROATIAN AND ENGLISH  
NGO MOST (CROATIA)**

**PROCJENA POTREBA MALOLJETNIKA U SUKOBU SA ZAKONOM U  
HRVATSKOJ:  
IZVJEŠĆE O PRAVIMA MALOLJETNIKA NA INFORMIRANJE,  
PREVOĐENJE I TUMAČENJE U KAZNENIM POSTUPCIMA**

## **1. UVOD**

Cilj provedene studije bio je ispitati stupanj znanja i percepciju mladih o postupcima u koje su bili uključeni, kako bi bolje razumjeli što im je bilo rečeno, što znaju o svojim pravima i o kaznenom postupku u koji su bili uključeni i njegovim posljedicama.

Izvješće sadrži metodologiju provedenog istraživanja koja uključuje opis sudionika, instrumenata korištenih u procjeni i proces provedbe istraživanja. Također, izvješće sadrži rezultate dobivene istraživanjem, kao i kratki zaključak.

## 2. METODOLOGIJA

### 2.1. Sudionici

Istraživanje je provedeno tijekom rujna i listopada 2018. godine u Centru za pružanje usluga u zajednici Split, Centru za socijalnu skrb Split i udruzi MoSt. Uzorak ispitanika koji su sudjelovali u istraživanju je bio prigodan.

Ukupno **14 sudionika** je ispunilo **Upitnik o pravima u kaznenim postupcima**. Pet sudionika su maloljetnici. Dobili smo usmeni pristanak roditelja za sudjelovanje maloljetnika u istraživanju.

**Svi sudionici su muškog spola.**

**Prosječna dob** ispitanika koji su ispunili Upitnik o pravima u kaznenim postupcima je **17.9** (17 godina, 10 mjeseci i 24 dana).

**Raspon dobi** ispitanika koji su sudjelovali u ispunjavanju upitnika kreće se od **16 do 19 godina**.

**Prosječno vrijeme od početka izvršavanja odgojne mjere** sudionika koji su ispunili Upitnik o pravima u kaznenim postupcima je **275.4 dana**.

Ukupno **6 sudionika** koji su ispunili Upitnik o pravima u kaznenim postupcima, izvršavaju odgojnu mjeru **pojačane brige i nadzora** (42.86%), **1 sudionik** izvršava odgojnu mjeru **pojačane brige i nadzora uz pridržaj maloljetničkog zatvora** (7.14%), **3 sudionika** izvršavaju odgojnu mjeru **upućivanja u odgojnu ustanovu** (21.43%), **3 sudionika** izvršavaju posebnu obvezu **uključivanja u rad humanitarnih organizacija** (21.43%), a **1 sudionik** izvršava posebnu obvezu **uključivanja u pojedinačni ili skupni psihosocijalni tretman u savjetovalištu za mlade** (7.14%).

Ukupno **6 sudionika** sudjelovalo je u **jednoj provedenoj fokus grupi**. Četiri sudionika su maloljetnici. Dobili smo usmeni pristanak roditelja za sudjelovanje maloljetnika u istraživanju.

**Svi sudionici su muškog spola.**

**Prosječna dob** sudionika koji su bili uključeni u fokus grupu je **17.5 godina**.



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**Raspon godina** ispitanika koji su sudjelovali u fokus grupi je od **17 do 19 godina**.

**Prosječno vrijeme od početka izvršavanja odgojne mjere** sudionika koji su ispunili Upitnik o pravima u kaznenim postupcima je **255.33 dana**.

**Četiri sudionika** koji su bili uključeni u fokus grupu izvršavaju odgojnu mjeru **upućivanja u odgojnu ustanovu** (66.66%), **1 sudionik** izvršava odgojnu mjeru **pojačane brige i nadzora uz pridržaj maloljetničkog zatvora** (16.67%), a **1 sudionik** izvršava posebnu obvezu **uključivanja u rad humanitarnih organizacija** (16.67%).

Svi ispitanici koji su sudjelovali u fokus grupi izjašnjavaju se kao **Hrvati**. **Pet sudionika** je odgojnu mjeru ili posebnu obvezu dobilo za **jedno kazneno djelo**, a **jedan za više kaznenih djela**.

**Tri ispitanika** koja su sudjelovala u fokus grupi počinila su kazneno djelo **pokušaja ubojstva** (50%), **1 ispitanik** kazneno djelo **silovanja** (16.67%), **1 ispitanik** kazneno djelo **neovlaštenog posjedovanja, proizvodnje i trgovanja drogama** (16.67%) i **1 ispitanik** kazneno djelo **tjelesne ozljede** (16.67%).

## 2.2. Instrumenti

**Upitnik o pravima u kaznenim postupcima** je preveden od strane voditeljice i istraživačice na projektu, kako bi se dobio što točniji prijevod.

Za potrebe prijevoda smo analizirali hrvatski zakonski okvir na engleskom i hrvatskom jeziku (Zakon o sudovima za mladež, Zakon o kaznenom postupku, Zakon o izvršavanju sankcija izrečenih maloljetnicima za kaznena djela i prekršaje, Direktive Europskog parlamenta i Vijeća 2012/13 / EU, 2016/800 , 2010/64 / EU), kako bi koristili stručnu terminologiju koja se upotrebljava u našem pravnom sustavu.

*Upitnik o pravima u kaznenim postupcima* sadrži 43 tvrdnje, te 2 pitanja esejskog tipa, kojima smo htjeli definirati razinu znanja i informiranosti sudionika o njihovim pravima, kada su bili uključeni u kaznene postupke. Sudionici su dali svoj odgovor na svaku od 43 tvrdnje označavanjem slova T ako su procijenili da je tvrdnja točna, ili slova N ako su procijenili da je tvrdnja netočna. Na posljednja dva pitanja esejskog tipa ispitanici su davali opisne odgovore, odnosno vlastito mišljenje i obrazloženje. Sudionicima je dana uputa o ispunjavanju upitnika o ispunjavanju upitnika:



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*"Provodimo projekt čiji je cilj otkriti u kojoj mjeri djeca koja izvršavaju odgojnu mjeru izrečenu od strane suda, znaju o pravima koja imaju tijekom svih faza svog sudskog postupka (uhićenje, suđenje i izvršavanje mjere). Kako bismo ostvarili ovaj cilj, potrebna nam je tvoja pomoć i sudjelovanje. Postaviti ćemo ti niz pitanja o različitim pravima djece tijekom različitih faza sudskog postupka (uhićenje, suđenje i izvršavanje mjere). Molimo te pažljivo pročitaj svaku tvrdnju i označi sa **T** (točno) ako misliš da je tvrdnja točna ili **N** (netočno) ako misliš da je tvrdnja netočna. Imaj na umu da ne postoje točni ili pogrešni odgovori, pa te stoga molimo da odgovaraš na pitanja u skladu sa svojim osobnim znanjem i iskustvom. Rezultati ovog istraživanja, kao ni tvoji odgovori, neće imati nikakav utjecaj na tvoju situaciju. Odgovori na ovaj upitnik su anonimni što znači da za prikupljanje podataka ne moramo znati tko je što odgovorio. Molimo te, nemoj upisivati svoje ime ili bilo koji drugi podatak koji može otkriti tvoj identitet".*

Nacrtr fokus grupe i popratni materijali su prevedeni od strane voditeljice i istraživačice na projektu, kako bi se dobio što točniji prijevod. Moderatorica i pomoćnica moderatorice (istraživačica i voditeljica projekta) su se prethodno pripremile za vođenje fokus grupe proučavanjem svih dodatnih materijala, kako bi predvidjele i kontrolirale nesistemske čimbenike koji bi mogli utjecati na pouzdanost procesa.

Sudionicima su dane upute o sudjelovanju u fokus grupi:

*"Predstaviti ćemo vam slučaj djeteta koje je počinilo kazneno djelo. Pročitati ću vam priču i postaviti ću vam neka pitanja vezana za prava koja ta osoba ima u ovoj fazi sudskog postupka. Vi ćete na ta pitanja odgovoriti i komentirati ih dajući svoje mišljenje. Imate li kakvih nejasnoća prije nego počnemo?"*

## **2.3. Postupak**

### **2.3.1. Primjena upitnika o pravima djece u kaznenim postupcima**

Kako bismo dobili odobrenje za provedbu istraživanja s djecom koja izvršavaju neku od odgojnih mjera izrečenu od strane suda, kontaktirali smo ravnatelja Centra za socijalnu skrb Split i ravnatelja Centra za pružanje usluga u zajednici Split. Ravnateljima je dana na uvid pismena suglasnost Ministarstva za demografiju, obitelj, mlade i socijalnu politiku za provedbu istraživanja. Nakon sastanka i obrazloženja ciljeva projekta dobili smo dozvolu za provedbu projekta.



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Socijalne pedagoginje Centra za socijalnu skrb su kontaktirale djecu koja izvršavaju odgojnu mjeru (pojačana briga i nadzor, uključivanje u rad humanitarnih organizacija, uključivanje u pojedinačni ili skupni psihosocijalni tretman u savjetovalištu za mlade, pojačana brige i nadzor uz pridržaj maloljetničkog zatvora), kao i njihove roditelje i dogovorile termin za individualnu primjenu upitnika. ukupno 11 ispitanika upućeno je od strane Centra za socijalnu skrb Split. Kod svake primjene upitnika djeci je detaljno objašnjena svrha istraživanja i uručen im je informativni letak sa svim potrebnim informacijama o sudjelovanju. Svi ispitanici su potpisali informativni letak i time pristali sudjelovati u istraživanju. Za djecu mlađu od 18 godina koja su sudjelovala u istraživanju smo dobili usmeni pristanak njihovih roditelja za sudjelovanje. Upitnici su primijenjeni u prostorijama Centra za socijalnu skrb i udruge MoSt.

Centar za pružanje usluga u zajednici uputio je 3 korisnika koji izvršavaju odgojnu mjeru upućivanja u odgojnu ustanovu na sudjelovanje u istraživanju popunjavanjem upitnika. Kod svake primjene upitnika djeci je detaljno objašnjena svrha istraživanja i uručen im je informativni letak sa svim potrebnim informacijama o sudjelovanju. Svi ispitanici su potpisali informativni letak i time pristali sudjelovati u istraživanju. Za djecu mlađu od 18 godina koja su sudjelovala u istraživanju odgajatelji ustanove su dobili usmeni pristanak njihovih roditelja za sudjelovanje. Upitnici su primijenjeni u prostorijama Centra za pružanje usluga u zajednici i udruge MoSt.

### 2.3.2. Provedba fokus grupe

U fokus grupi je sudjelovalo ukupno 6 ispitanika. Jedan ispitanik koji izvršava odgojnu mjeru pojačane brige i nadzora uz pridržaj maloljetničkog zatvora je upućen od strane Centra za socijalnu skrb Split, a 5 ispitanika koji izvršavaju odgojnu mjeru upućivanja u odgojnu ustanovu su upućeni od strane Centra za pružanje usluga u zajednici Split. Fokus grupa je provedena u udruzi MoSt. Ispitanici su prije početka fokus grupe pomoćnici moderatorice individualno dali sve potrebne podatke koji su se od njih tražili, kao što je dob, nacionalnost, vrsta kaznenog djela itd. Nakon toga je pomoćnica moderatorice uključila glasovni snimač i moderatorica je započela s provedbom fokus grupe. Pomoćnica moderatorice je bilježila sve odgovore prema nacrtu za fokus grupu. Fokus grupa trajala je 47 minuta a ispitanici su rado sudjelovali i odgovarali na postavljena pitanja. Sudjelovali su u raspravi i izmjenjivali mišljenja.



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**3. REZULTATI****3.1. Uhićenje****3.1.1. Pravo djece na informacije**

## Pravo djece da znaju za što ih se optužuje:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece da znaju za što ih se optužuje.
- Upitnik:
  - o Tvrdnja 1 (*Dijete ima pravo dobiti objašnjenje za što je optuženo*): 14 ispitanika označilo je T (točno).

## Pravo djece na uvid u svoj sudski spis:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na uvid u svoj sudski spis.
- Upitnik:
  - o Tvrdnja 12 (*Dijete ima pravo uvida u informacije iz svog sudskog spisa*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).
  - o Tvrdnja 13 (*Odvjetnik djeteta ima pravo uvida u informacije iz sudskog spisa djeteta*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).
  - o Tvrdnja 14 (*Dijete ima pravo na žalbu ako mu nije omogućeno da dobije uvid u svoj sudski spis*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

## Pravo djece da dobiju pisanu obavijest o svojim pravima:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece da dobiju pisanu obavijest o svojim pravima.
- Upitnik:
  - o Tvrdnja 18 (*Dijete koje je uhićeno ima pravo dobiti pisanu obavijest o svojim pravima*): 14 ispitanika označilo je T (točno).

## Pravo djece na šutnju:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na šutnju.
- Upitnik:
  - o Tvrdnja 4 (*Dijete ima pravo na šutnju*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

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**Pravo djece na zdravstvenu zaštitu:**

- **Fokus grupa:** Ispitanici su pokazali znanje o pravu djece na zdravstvenu zaštitu.
- **Upitnik:**
  - o Tvrdnja 23 (*Dijete ima pravo na liječnički pregled*): 14 ispitanika označilo je T (točno).

**3.1.2. Pravo djece na prevođenje i tumačenje****Pravo djece na prevođenje i tumačenje:**

- **Fokus grupa:** Ispitanici su pokazali znanje o pravu djece na prevođenje i tumačenje.
- **Upitnik:**
  - o Tvrdnja 5 (*Dijete ima pravo na prevoditelja ako ne razumije jezik*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).
  - o Tvrdnja 6 (*Dijete iz inozemstva ima pravo na primjerenu pomoć (prevođenje/usmeno prevođenje) ako želi razgovarati sa svojim odvjetnikom*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).
  - o Tvrdnja 7 (*Dijete koje ne čuje ili ne vidi ima pravo razgovarati sa svojim odvjetnikom na način koji mu/joj je razumljiv*): 14 ispitanika označilo je T (točno).
  - o Tvrdnja 8 (*Dijete iz inozemstva ima pravo na žalbu ako nije razumjelo ono što mu/joj je bilo rečeno*): 11 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno), 1 ispitanik nije dao svoj odgovor na tvrdnju.
  - o Tvrdnja 9 (*Dijete koje ne čuje ili ne vidi ima pravo na žalbu ako nije razumjelo ono što mu/joj je bilo rečeno*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).
  - o Tvrdnja 10 (*Dijete iz inozemstva ima pravo dobiti važne informacije napismeno i na jeziku koje razumije (na primjer: konačnu presudu)*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).
  - o Tvrdnja 11 (*Dijete koje ne čuje ili ne vidi ima pravo dobiti važne informacije napismeno (na Brailleovom pismu na primjer) i na jeziku koje razumije (na primjer: konačnu presudu)*): 14 ispitanika označilo je T (točno).

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**3.1.3. Pravo djece na odvjetnika****Pravo na odvjetnika:**

- **Fokus grupa:** Svi ispitanici su pokazali znanje o pravu djece na odvjetnika, ali su dva ispitanika iskazala mišljenje da je David dužan i platiti tog odvjetnika.
- **Upitnik:**
  - o Tvrdnja 24 (*Dijete ima pravo da pomoć/zastupanje odvjetnika*): 14 ispitanika označilo je T (točno).
  - o Tvrdnja 25 (*Dijete ima pravo na besplatno zastupanje od strane odvjetnika*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

**Pravo djece na povjerljivost komunikacije s odvjetnicima:**

- **Fokus grupa:** Svi ispitanici su pokazali znanje o pravu djece na povjerljivost komunikacije s odvjetnicima, ali dva ispitanika su iskazala mišljenje da David nema pravo razgovarati sa svojim odvjetnikom prije policijskog ispitivanja, a jedan ispitanika je iskazao mišljenje da Davidov odvjetnik ne bi trebao reći Davidu što će se dogoditi tijekom policijskog ispitivanja.
- **Upitnik:**
  - o Tvrdnja 16 (*Dijete ima pravo razgovarati s odvjetnikom prije policijskog ispitivanja*): 11 ispitanika označilo je T (točno), 3 ispitanika označila su N (netočno).
  - o Tvrdnja 17 (*Dijete ima pravo zadržati za sebe o čemu je razgovarao/la s odvjetnikom*): 14 ispitanika označilo je T (točno).

**3.1.4. Pravo djece da njihovi nositelji roditeljske odgovornosti budu informirani****Pravo djece da njihovi nositelji roditeljske odgovornosti budu informirani:**

- **Fokus grupa:** Ispitanici su pokazali znanje o pravu djece da njihovi nositelji roditeljske odgovornosti budu informirani, ali jedan ispitanik je iskazao mišljenje da David ne bi trebao biti informiran da ima pravo na telefonski poziv roditeljima da im kaže što se dogodilo.
- **Upitnik:**
  - o Tvrdnja 2 (*Dijete ima pravo nazvati blisku osobu*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).
  - o Tvrdnja 3 (*Dijete ima pravo obavijestiti svoje roditelje da je uhićeno*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

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**3.1.5. Pravo djece da daju izjavu u prisutnosti svog odvjetnika i nositelja roditeljske odgovornosti**

Pravo djece da daju izjavu u prisutnosti svog odvjetnika i nositelja roditeljske odgovornosti:

- Fokus grupa: Jedan ispitanik je pokazao znanje o pravu djece da daju izjavu u prisutnosti svog odvjetnika i nositelja roditeljske odgovornosti, a dva ispitanika su iskazala mišljenje da Davidovi roditelji ne bi trebali biti prisutni tijekom policijskog ispitivanja.
- Upitnik:
  - o Tvrdnja 15 (*Dijete ima pravo na prisutnost odvjetnika tijekom policijskog ispitivanja*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

**3.1.6. Ostala važna pitanja**

Pravo djece lišene slobode da budu odvojena od odraslih osoba u pritvoru:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece lišene slobode da budu odvojena od odraslih osoba u pritvoru.
- Upitnik:
  - o Tvrdnja 19 (*Dijete koje je uhićeno mora biti odvojeno od odraslih osoba koje su također uhićene*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).

Pravo djece da ih se u pritvoru ne drži više od 48 sati:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece da ih se u pritvoru ne drži više od 48 sati.
- Upitnik:
  - o Tvrdnja 20 (*Dijete ne smije biti u pritvoru dulje od 48 sati*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).

Pravo na korištenje audiovizualnih sredstava:

- Fokus grupa: Dva ispitanika su pokazala znanje o pravu na korištenje audiovizualnih sredstava, a tri ispitanika su iskazala mišljenje da Davidovo ispitivanje ne bi trebalo biti snimano.
- Upitnik:
  - o Tvrdnja 21 (*Policijsko ispitivanje može biti snimano video uređajem*): 14 ispitanika označilo je T (točno).

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- Tvrdnja 22 (*Dijete ima pravo da se njegove/njene video snimke ne objavljuju*): 13 ispitanika označilo je T (tačno), 1 ispitanik označio je N (netočno).

### 3.2. Suđenje

#### 3.2.1. Pravo djece na informacije

##### Pravo djece na žalbu na presudu:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na žalbu na presudu.
- Upitnik:
  - Tvrdnja 32 (*Dijete ima pravo žalbe na izrečenu odgojnu mjeru*): 14 ispitanika označilo je T (tačno).

##### Pravo djece na suđenje koje je zatvoreno za javnost:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na suđenje koje je zatvoreno za javnost.
- Upitnik:
  - Tvrdnja 33 (*Dijete ima pravo na suđenje koje je zatvoreno za javnost*): 14 ispitanika označilo je T (tačno).

##### Pravo djece na žalbu u slučaju nepoštivanja njihovih prava:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na žalbu u slučaju nepoštivanja njihovih prava.
- Upitnik:
  - Tvrdnja 34 (*Dijete ima pravo na žalbu i naknadu štete ako njegova/njena prava nisu poštivana*): 14 ispitanika označilo je T (tačno).

##### Pravo djece na privatnost:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na privatnost.
- Upitnik:
  - Tvrdnja 35 (*Dijete ima pravo da se ne govori o njegovom/njenom privatnom životu*): 13 ispitanika označilo je T (tačno), 1 ispitanik označio je N (netočno).
  - Tvrdnja 36 (*Dijete ima pravo na zaštitu vlastite privatnosti od medija (na primjer: televizije, novina, itd.)*): 14 ispitanika označilo je T (tačno).



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### 3.2.2. Pravo djece da budu u pratnji svojih nositelja roditeljske odgovornosti i odvjetnika

Pravo djece da budu u pratnji svojih nositelja roditeljske odgovornosti i odvjetnika:

- Fokus grupa: Jedan ispitanik je pokazao znanje o pravu djece da budu u pratnji svojih nositelja roditeljske odgovornosti i odvjetnika, a dva ispitanika su iskazala mišljenje da Davidovi roditelji ne bi trebali biti prisutni tijekom suđenja.
- Upitnik:
  - o Tvrdnja 29 (*Dijete ima pravo na prisutnost svojih roditelja tijekom suđenja*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).
  - o Tvrdnja 30 (*Dijete ima pravo čekati odvjetnika na svom suđenju*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).
  - o Tvrdnja 31 (*Dijete ima pravo na prisutnost odvjetnika tijekom postupka utvrđivanja identiteta*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

### 3.2.3. Pravo djece da budu osobno nazočna na svom suđenju i da sudjeluju u njemu

Pravo djece da budu osobno nazočna na svom suđenju i da sudjeluju u njemu:

- Fokus grupa: Četiri ispitanika su pokazala znanje o pravu djece da budu osobno nazočna na svom suđenju i da sudjeluju u njemu, a dva ispitanika su iskazala mišljenje da govornici na suđenju ne trebaju upotrebljavati jezik prilagođen djeci.
- Upitnik:
  - o Tvrdnja 27 (*Dijete ima pravo biti prisutno i sudjelovati u svom suđenju, biti saslušano i dati svoje mišljenje*): 14 ispitanika označilo je T (točno).
  - o Tvrdnja 28 (*Dijete koje nije bilo prisutno na svom suđenju ima pravo na drugo suđenje*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).

### 3.2.4. Pravo djece na pojedinačnu ocjenu

Pravo djece na pojedinačnu ocjenu:

- Fokus grupa: Četiri ispitanika su pokazala znanje da djeca imaju pravo na pojedinačnu ocjenu, a jedan ispitanik je iskazao mišljenje da prije suđenja nitko ne bi trebao procijeniti ni Davida ni njegove roditelje.
- Upitnik:
  - o Tvrdnja 26 (*Dijete ima pravo na individualnu procjenu prije početka suđenja*): 12 ispitanika označilo je T (točno), 2 ispitanika označila su N (netočno).

### 3.3. Izvršavanje odgojne mjere

#### 3.3.1. Pravo djece da dobiju pisanu obavijest o svojim pravima i obavezama te pravilnik odgojne ustanove

Pravo djece da dobiju pisanu obavijest o svojim pravima i obavezama te pravilnik odgojne ustanove:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece da dobiju pisanu obavijest o svojim pravima i obavezama te pravilnik odgojne ustanove.

#### 3.3.2. Pravo djece na komunikaciju s članovima obitelji

Pravo djece na komunikaciju s članovima obitelji:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na komunikaciju s članovima obitelji.
- Upitnik:
  - o Tvrdnja 37 (*Dijete koje se nalazi u odgojnoj ustanovi ima pravo vidati svoju obitelj*): 14 ispitanika označilo je T (točno).

#### 3.3.3. Pravo djece na zdravstvenu zaštitu

Pravo djece na zdravstvenu zaštitu:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na zdravstvenu zaštitu.
- Upitnik:
  - o Tvrdnja 38 (*Odvjetnik djeteta koje se nalazi u odgojnoj ustanovi ima pravo tražiti da liječnik pregleda dijete*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).
  - o Tvrdnja 39 (*Dijete koje se nalazi u odgojnoj ustanovi ima pravo na liječnički pregled*): 14 ispitanika označilo je T (točno).
  - o Tvrdnja 40 (*Roditelji djeteta koje se nalazi u odgojnoj ustanovi imaju pravo tražiti da liječnik pregleda dijete*): 13 ispitanika označilo je T (točno), 1 ispitanik označio je N (netočno).

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### 3.3.4. Pravo djece na obrazovanje

#### Pravo djece na obrazovanje:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na obrazovanje.
- Upitnik:
  - o Tvrdnja 41 (*Dijete koje se nalazi u odgojnoj ustanovi ima pravo na obrazovanje i osposobljavanje*): 13 ispitanika označilo je T (točno), 1 ispitanik nije dao svoj odgovor na tvrdnju.

### 3.3.5. Pravo djece na slobodu izbora u vezi vjerske (ne)pripadnosti

#### Pravo djece na slobodu izbora u vezi vjerske (ne)pripadnosti:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece na slobodu izbora u vezi vjerske (ne)pripadnosti.
- Upitnik:
  - o Tvrdnja 42 (*Dijete koje se nalazi u odgojnoj ustanovi ima pravo prakticirati svoju vjeroispovijest i vjerovanja*): 13 ispitanika označilo je T (točno), 1 ispitanik nije dao svoj odgovor na tvrdnju.

### 3.3.6. Pravo djece da imaju pristup programima socijalne reintegracije

#### Pravo djece da imaju pristup programima socijalne reintegracije:

- Fokus grupa: Ispitanici su pokazali znanje o pravu djece da imaju pristup programima socijalne reintegracije.
- Upitnik:
  - o Tvrdnja 43 (*Dijete koje se nalazi u odgojnoj ustanovi ima pravo pohađati radionice koje će mu pomoći da se reintegrira u društvo*): 13 ispitanika označilo je T (točno), 1 ispitanik nije dao svoj odgovor na tvrdnju.

### 3.3.7. Pravo djece na pojedinačnu ocjenu

#### Pravo djece na pojedinačnu ocjenu:

- Fokus grupa: Četiri ispitanika su pokazala znanje o pravu djece na pojedinačnu ocjenu, a jedan ispitanik je iskazao mišljenje da Davida nitko ne bi trebao procijeniti na početku izvršavanja odgojne mjere.

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**4. ZAKLJUČAK**

U zaključku su navedeni rezultati primjene upitnika i fokus grupe koji upućuju na iznimno visok stupanj znanja ispitanika na pojedinim tvrdnjama.

Rezultati primjene upitnika i provedbe fokus grupe ukazuju na maksimalnu razinu informiranosti ispitanika o pravu djece da znaju za što su optužena u fazi uhićenja, pravu djece koja su uhićena da dobiju pisanu obavijest o svojim pravima, pravu djece na zdravstvenu zaštitu u fazi uhićenja, pravu djece na žalbu na izrečenu presudu, pravu djece na suđenje koje je zatvoreno za javnost, pravu djece na žalbu i naknadu štete ako njihova prava nisu poštivana u fazi suđenja, pravu djece na komunikaciju s članovima obitelji u fazi izvršavanja odgojne mjere, pravu djece na obrazovanje u fazi izvršavanja odgojne mjere, pravu djece na slobodu izbora u vezi vjerske (ne)pripadnosti u fazi izvršavanja odgojne mjere i pravu djece na pristup programima socijalne reintegracije u fazi izvršavanja odgojne mjere.



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# **NEEDS ASSESSMENT OF CHILDREN IN CONFLICT WITH THE LAW IN CROATIA: REPORT ON THE RIGHT OF CHILDREN TO INFORMATION, TRANSLATION AND INTERPRETATION IN CRIMINAL PROCEEDINGS**

## **1. INTRODUCTION**

The purpose of the conducted study was to examine the degree of knowledge and perception that children and young people have of the proceeding in which they have been involved, to better understand what they have been told, what they know about their rights, and what they know about the proceeding in which they are involved and its consequences.

The report contains the methodology of the conducted research which involves the participants, the instruments used in the assessment and the research implementation process. Also, the report contains the results obtained by the research as well as the brief conclusion.



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## 2. METHODOLOGY

### 2.1. Participants

The research was conducted during September and October 2018 in Residential Home for Children and Youth in Split, Centre for Social Welfare in Split and NGO MoSt in Split. The sample of subjects that participated in the research was convenient.

**14 participants** overall were included in filling out the **Rights in Judicial Proceedings Questionnaire**.

5 of them were minors. We got the verbal consent from parents for participation for 5 minors included.

**All participants were boys.**

**The age range** of participants who completed the Questionnaire is **from 16 to 19 years**.

**Average age** of the participants who completed the Rights in Judicial Proceedings Questionnaire was **17.9 years** (17 years, 10 months and 24 days).

**Average duration of the disciplinary measure** of the participants who completed the Rights in Judicial Proceedings Questionnaire was **275.4 days**.

**6 participants** that completed the Questionnaire serve measure of **increased care and supervision** (42.86%), **1 participant** serves measure of **increased care and supervision and suspension of juvenile imprisonment** (7.14%), **3 participants** serve measure of **commitment to a centre for a disciplinary development** (21.43%), **3 participants** serve measure of special obligation **to engage in the work of the humanitarian organization** (21.43%) and **1 participant** serves measure of special obligation **to include in individual or collective psychosocial treatment at the youth counselling centre** (7.14%).

6 overall subjects were included in one Focus group that was conducted.



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4 of them were minors. We got the verbal consent from parents for participation for 4 minors included.

**Focus group participants were boys.**

**Average age** of the participants who were included in the Focus group was **17.5 years**.

**The age range** of participants which were included in Focus groups is from **17 to 19 years**.

**Average duration of the disciplinary measure** from the participants which were included in the Focus group was **255.33 days**.

**4 participants** included in Focus group serve measure of **commitment to a centre for a disciplinary development** (66.66%), **1 participant** serves measure of **increased care and supervision and suspension of juvenile imprisonment** (16.67%) and **1 participant** serves measure of special obligation **to engage in the work of the humanitarian organization** (16.67%).

All of the respondents which were included in the Focus group stated themselves as **Croats**.

**5** of them have committed crime for the **first time**, **one** of them is **recidivist**.

Respondents who participated in the Focus group specified a criminal offense for which they received a particular measure: **3 participants** committed a crime of **attempted murder** (50%), **1 participant** committed a **crime of rape** (16.67%), **1 participant** committed a crime of **unauthorized possession, production and trafficking of drugs** (16.67%) and **1 participant** committed a crime of **bodily injury** (16.67%).

## 2.2. Instruments

***Rights in Judicial Proceedings Questionnaire*** was translated both by Project manager and Researcher to get more accurate translation.

We have analyzed Croatian legislation in English and Croatian language (Law on Juvenile Courts, Criminal Procedure Act, Law on Execution of Sanctions for Minors for Criminal





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Offenses and Offenses, European Parliament and Council Directives 2012/13 / EU, 2016/800 ; 2010/64/ EU), to incorporate the expert terminology used in our legal system. *Rights in Judicial Proceedings Questionnaire* contains 43 claims and two essay type questions with aim to define the level of participant`s information and knowledge about their rights when they were involved in criminal proceedings. Participants gave their answers for each of 43 claims by marking **T** if they have estimated the claim is true or **F** if they have estimated the claim is false. In the last two essay type questions, respondents gave descriptive answers, i.e. their own opinion and explanation. The participants were instructed how to fill out the Questionnaire with a brief instruction:

*„We are currently carrying out a project, which aim is to discover how much children serving a sentence imposed by a criminal court know about the rights they have during all steps of their judicial proceeding (arrest, trial and sentence execution). To achieve this aim, we have to rely on your help and participation“.*

*"Below, we are going to ask you some questions regarding the different rights entitled to a child during the different phases of a judicial proceeding (arrest, trial and sentence execution). Please, read each statement carefully and say whether you think it is true (T) or false (F). Remember that there are no good or bad answers, so, please, answer the questions according to your own personal knowledge and experience. The results of this research won't have any impact on your situation, as well as the specific way in which you answer. The answers to this questionnaire are anonymous which means that when we collect your answers, we won't need to know whose are whose. Please do not write down your name or any other data which may reveal your identity".*

The script for Focus group and supporting material were translated both by Project manager and Researcher to get more accurate translation and all the necessary information. To conduct the Focus group, both moderator and assistant moderator (researcher and project manager) were previously prepared by reading all the additional materials to foresee and control non-systemic factors that could affect dependability of the procedure.

The participants were instructed how to participate and contribute with a brief instruction:

*"We will present the case of a child who committed a criminal offense. I'll read the story and ask you questions about the rights that this person has at this stage of the court process“.*



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*"You will answer these questions and comment on them by giving your opinion. Do you have any ambiguity before we begin?"*

### 2.3. Procedure

#### 2.3.1. Implementation of the Rights in Judicial Proceedings Questionnaire in criminal proceedings

In order to get the permission to conduct the research with children who execute some of the remedies provided by the court, we contacted the Director of the Centre for Social Welfare and the Director of the Residential Home for Children and Youth in Split. The directors received a written consent from the Ministry for Demography, Family, Youth and Social Policy for the implementation of the research. After the meeting and explanation of the project objectives, we were granted a project implementation license.

The social pedagogues from the Center for Social Welfare have contacted the children who are serving their educational measure (measure of increased care and supervision, special obligation to engage in the work of humanitarian organizations, special obligation to include in individual or collective psychosocial treatment at the youth counseling center, increased concern and supervision with the suspension of a juvenile prison) as well as their parents, and agreed on the term for individual application of the Questionnaire. A total of 11 children were sent by the Center for Social Welfare Split. At each application of the Questionnaire the children are explained in detail the purpose of the research and an informative leaflet was presented to them with all the necessary information. All respondents signed an informative leaflet and agreed to participate in the research. For children under the age of 18 who participated in the research, we received the verbal consent of their parents to participate. Questionnaires were applied in the premises of the Center for Social Welfare and NGO MoSt.

Residential Home for Children and Youth in Split has sent 3 respondents who are serving educational measure of Commitment to a Center for Disciplinary Development to participate in the survey by completing the Questionnaire. Each Questionnaire application explains the purpose of the research in detail and is provided with an informative leaflet with all the necessary information on participation. All respondents signed an informative leaflet and agreed to participate in the research. For children under the age of 18 who participated in the research, the educators of the institution received



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the verbal consent from their parents to participate. Questionnaires were applied in the premises of the Residential Home for Children and Youth and NGO MoSt.

### 2.3.2. Implementation of the Focus group

A total of 6 respondents participated in the Focus group. One respondent who is serving the educational measure of increased care and supervision and suspension of juvenile imprisonment was sent by the Centre for Social Welfare Split, and 5 respondents who are serving educational measure of a commitment to a center for disciplinary development were sent by the Residential Home for Children and Youth. The Focus group was conducted at the NGO MoSt.

The participants gave all the necessary information the facilitator's assistant needed, such as years, nationality, type of crime etc. After that, the facilitator's assistant turned on a voice recorder and the facilitator started implementing the Focus group. The facilitator's assistant recorded all responses to the focus group draft. The focus group duration was 47 minutes and respondents were happy to participate and have answered the questions asked. They also participated in the debate and exchanged opinions.



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### 3. RESULTS

#### 3.1. Police arrest

##### 3.1.1. Right of children to information

Right of children to know what they are being accused of:

- Focus group: participants showed knowledge about children`s right to know what they are being accused of.
- Questionnaire:
  - o Statement 1 (*A child has the right to be given an explanation about what he/she is being accused of*): 14 participants marked T (true).

Right to have access to their judicial file:

- Focus group: Participants showed knowledge about children`s right to have access to their judicial file.
- Questionnaire:
  - o Statement 12 (*A child has the right to see the information about his/her judicial record*): 12 participants marked T (true), 2 participants marked F (false).
  - o Statement 13 (*A child`s lawyer has the right to see the information of the child`s judicial record*): 13 participants marked T (true), 1 participant marked F (false).
  - o Statement 14 (*A child has the right to make a complaint if he/she is not allowed to have a look into his/her judicial record*): 13 participants marked T (true), 1 participant marked F (false).

Right of children to have a letter of rights:

- Focus group: Participants showed knowledge about children`s right have a letter of rights.
- Questionnaire:
  - o Statement 18 (*A child under arrest has the right to be given a written letter of his/her rights*): 14 participants marked T (true).

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#### Right of children to remain silent:

- Focus group: Participants showed knowledge about children`s right to remain silent.
- Questionnaire:
  - o Statement 4 (*A child has the right to remain silent*): 13 participants marked T (true), 1 participant marked F (false).

#### Right of children to medical care:

- Focus group: Participants showed knowledge about children`s right to medical care.
- Questionnaire:
  - o Statement 23 (*A child has the right to be seen by a doctor*): 14 participants marked T (true).

### 3.1.2. Right of children to interpretation and translation

#### Right of children to translation and interpretation:

- Focus group: Participants showed knowledge about children`s right to interpretation and translation.
- Questionnaire:
  - o Statement 5 (*A child has the right to an interpreter if he/she does not understand the language*): 13 participants marked T (true), 1 participant marked F (false).
  - o Statement 6 (*A foreign child has the right to appropriate assistance (translation/interpretation) if he/she wants to speak to his/her lawyer*): 13 participants marked T (true), 1 participant marked F (false).
  - o Statement 7 (*A child who cannot hear or see has the right to be communicated to by his/her lawyer in a way that he/she understands*): 14 participants marked T (true).
  - o Statement 8 (*A foreign child has the right to make a complaint if he/she has not understood what he/she has been told*): 11 participants marked T (true), 2 participants marked F (false), 1 participant did not give his answer to the statement.
  - o Statement 9 (*A child who cannot hear or see has the right to make a complaint if he/she has not understood what he/she has been told*): 12 participants marked T (true), 2 participants marked F (false).

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- Statement 10 (*A foreign child has the right to be given the important information in writing and in a language that he/she understands (for example: the final judgment)*): 13 participants marked T (true), 1 participant marked F (false).
- Statement 11 (*A child who cannot hear or see has the right to be given the important information in writing (in Braille for example) and in a language that he/she understands (for example: the final judgment)*): 14 participants marked T (true).

### 3.1.3. Right of children to a lawyer

#### Right to a lawyer:

- Focus group: All participants showed knowledge about children`s right to a lawyer, but 2 participants expressed the opinion that David is obliged to pay that lawyer.
- Questionnaire:
  - Statement 24 (*A child has the right to be assisted/defended by a lawyer*): 14 participants marked T (true).
  - Statement 25 (*A child has the right to be defended by a lawyer for free*): 13 participants marked T (true), 1 participant marked F (false).

#### Right of children to privacy with their lawyers:

- Focus group: All participants showed knowledge about children`s right to privacy with their lawyers, but 2 participants expressed the opinion that David doesn`t have the right to speak to his lawyer before the police questioning, and 1 participant expressed the opinion that lawyer shouldn`t tell David what would happen during police investigations.
- Questionnaire:
  - Statement 16 (*A child has the right to speak with a lawyer before being questioned by the police*): 11 participants marked T (true), 3 participants marked F (false).
  - Statement 17 (*A child has the right not to tell anyone what he/she has talked about with the lawyer*): 14 participants marked T (true).

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### 3.1.4. Right of children to have the holders of parental responsibility informed

Right of the holders of parental responsibility to be informed:

- Focus group: Participants showed knowledge about children`s right to have the holders of parental responsibility informed, but 1 participant expressed the opinion that David shouldn`t be informed that he has the right to call his parents to tell them what has happened.
- Questionnaire:
  - o Statement 2 (*A child has the right to call a closely related person*): 12 participants marked T (true), 2 participants marked F (false).
  - o Statement 3 (*A child has the right to inform his/her parents that he/she is under arrest*): 13 participants marked T (true), 1 participant marked F (false).

### 3.1.5. Right of children to be accompanied

Right of children to make a statement in the presence of their lawyers and holders of parental responsibility:

- Focus group: One participant showed knowledge about children`s right to make a statement in the presence of their attorney and bearer of parental responsibility, and 2 participants expressed the opinion that David`s parents shouldn`t be present during their son`s police questioning.
- Questionnaire:
  - o Statement 15 (*A child has the right to a lawyer`s presence during the police questioning*): 13 participants marked T (true), 1 participant marked F (false).

### 3.1.6. Other important issues

Right of children deprived of liberty to be kept separate from detained adults after their arrest:

- Focus group: Participants showed knowledge about right of children deprived of liberty to be kept separate from detained adults after their arrest.
- Questionnaire:
  - o Statement 19 (*A child under arrest must be separated from adults under arrest*): 12 participants marked T (true), 2 participants marked F (false).



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### Right of children to be put under arrest for no longer than 48 hours:

- Focus group: Participants showed knowledge about children`s right to be put under arrest for no longer than 48 hours.
- Questionnaire:
  - o Statement 20 (*A child can be under arrest for no longer than 48 hours*): 12 participants marked T (true), 2 participants marked F (false).

### Right to use audio-visual means:

- Focus group: Two participants showed knowledge about right to use audio-visual means, and three participants expressed the opinion that David`s questioning shouldn`t be recorded.
- Questionnaire:
  - o Statement 21 (*The police questioning can be video-recorded*): 14 participants marked T (true).
  - o Statement 22 (*A child has the right to the non-publication of video-recordings of him/her*): 13 participants marked T (true), 1 participant marked F (false).

## 3.2. Trial

### 3.2.1. Right of children to information

#### Right of children to appeal the sentence:

- Focus group: Participants showed knowledge about children`s right to appeal the sentence.
- Questionnaire:
  - o Statement 32 (*A child has the right to the review of his/her sentence*): 14 participants marked T (true).

#### Right of children to a non-public trial:

- Focus group: Participants showed knowledge about children`s right to a non-public trial.
- Questionnaire:
  - o Statement 33 (*A child has the right to a non-public/closed trial*): 14 participants marked T (true).

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#### Right of children to appeal if their rights are not been respected:

- Focus group: Participants showed knowledge about children`s right to appeal if their rights have not been respected.
- Questionnaire:
  - o Statement 34 (*A child has the right to make a complaint and ask for reparation if his/her rights are not respected*): 14 participants marked T (true).

#### Right of children to privacy:

- Focus group: Participants showed knowledge about children`s right to privacy.
- Questionnaire:
  - o Statement 35 (*A child has the right that people do not speak about his/her private life*): 13 participants marked T (true), 1 participant marked F (false).
  - o Statement 36 (*A child has the right to have his privacy protected from the medias (for example: television, newspapers, etc.)*): 14 participants marked T (true).

### 3.2.2. Right of children to be accompanied

#### Right of children to be accompanied by their holders of parental responsibility and their lawyers:

- Focus group: One participant showed knowledge about children`s right to be accompanied by their holders of parental responsibility and their lawyers, and two participants expressed an opinion that David`s parents shouldn`t be present during the trial.
- Questionnaire:
  - o Statement 29 (*A child has the right to have his/her parents present during his/her trial*): 12 participants marked T (true), 2 participants marked F (false).
  - o Statement 30 (*A child has the right to wait for his/her lawyer at the trial*): 12 participants marked T (true), 2 participants marked F (false).
  - o Statement 31 (*A child has the right to his/her lawyer`s presence during identity parades*): 13 participants marked T (true), 1 participant marked F (false).

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### 3.2.3. Right of children to be present and participate

#### Right of children to be present and participate during the trial:

- Focus group: Four participants showed knowledge about children`s right to be present and participate and two participants expressed the opinion that speakers shouldn`t use a child-friendly language during the trial.
- Questionnaire:
  - o Statement 27 (*A child has the right to be present and to participate at his/her trial, to be heard and to give his/her opinion*): 14 participants marked T (true).
  - o Statement 28 (*A child who was not present at his/her own trial has the right to another trial*): 12 participants marked T (true), 2 participants marked F (false).

### 3.2.4. Right of children to individual evaluation

#### Right of children to individual evaluation:

- Focus group: Four participants showed knowledge about children`s right to individual evaluation and one participant expressed the opinion that no one should evaluate David or his parents before the trial.
- Questionnaire:
  - o Statement 26 (*A child has the right to an individual assessment before his/her trial*): 12 participants marked T (true), 2 participants marked F (false)

## 3.3. Sentence execution

### 3.3.1. Right of children to information

#### Right of children to receive written information about their rights and obligations and about the detention centre`s internal regime Regulations:

- Focus group: Participants showed knowledge about children`s right to receive written information about their rights and obligations and about the detention centre`s internal regime Regulations.

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### 3.3.2. Right of children to family communication

#### Right of children to family communication:

- Focus group: Participants showed knowledge about children`s right to family communication.
- Questionnaire:
  - o Statement 37 (*A child who is in a detention center has the right to see his/her family*): 14 participants marked T (true).

### 3.3.3. Right of children to receive medical care

#### Right of children to medical care:

- Focus group: Participants showed knowledge about children`s right to receive medical care.
- Questionnaire:
  - o Statement 38 (*The lawyer of a child who is in a detention center has the right to ask for a doctor to see the child*): 13 participants marked T (true), 1 participant marked F (false).
  - o Statement 39 (*A child who is in a detention center has the right to be seen by a doctor*): 14 participants marked T (true).
  - o Statement 40 (*The parents of a child who is in a detention center have the right to ask for a doctor to see their child*): 13 participants marked T (true), 1 participant marked F (false).

### 3.3.4. Right of children to education and training

#### Right of children to education:

- Focus group: Participants showed knowledge about children`s right to education and training.
- Questionnaire:
  - o Statement 41 (*A child who is in a detention center has the right to be given education and training*): 13 participants marked T (true), 1 participant did not give his answer to the statement.

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#### 3.3.5. Right of children to religious freedom

##### Right of children to religious freedom:

- Focus group: Participants showed knowledge about children`s right to religious freedom.
- Questionnaire:
  - o Statement 42 (*A child who is in a detention center has the right to practice his/her own religion and believes*): 13 participants marked T (true), 1 participant did not give his answer to the statement.

#### 3.3.6. Right of children to have access to programs that foster their development and their reintegration into society

##### Right of children to have access to programs related to social reintegration:

- Focus group: Participants showed knowledge about children`s right to programs that foster their development and their reintegration into society.
- Questionnaire:
  - o Statement 43 (*A child who is in a detention center has the right to attend workshops which help him/her reintegrate into society*): 13 participants marked T (true), 1 participant did not gave his answer to the statement.

#### 3.2.7. Right of children to individual evaluation

##### Right of children to individual evaluation:

- Focus group: Four participants showed knowledge about children`s right to individual evaluation and one participant expressed the opinion that no one should evaluate David when he begins to serve his sentence.



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**4. CONCLUSION**

In conclusion, the results of the application of the Questionnaire and the Focus group indicate the extremely high degree of knowledge of the respondents on certain statements.

The results of the Questionnaire and Focus group implementation indicate the extremely high degree of knowledge about the right of children to know what they are accused of at the arrest stage, the right children who are arrested to receive written notice of their rights, the right children to health care at the time of arrest, the right to a trial that is closed to the public, the right of children to appeal and compensation for damages if their rights are not respected at the trial stage, the right children to communicate with the members of the family while executing their measure, the right of children to education in the stage of the execution of the measure, the right of the children to a freedom of choice in relation to religious affiliation in the in the stage of the execution of the measure and the right of the children to access social reintegration programs at the stage of the execution of the measure.



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# **RESULTS REPORT OF THE STUDY OF NEEDS ASSESSMENT**

**BULGARIAN AND ENGLISH  
SOCIAL ACTIVITIES AND PRACTICES  
INSTITUTE (BULGARIA)**



## **ОЦЕНКА НА ПОТРЕБНОСТИТЕ НА ДЕЦА В КОНФЛИКТ СЪС ЗАКОНА В БЪЛГАРИЯ: ДОКЛАД ЗА ПРАВОТО НА ДЕЦАТА НА ИНФОРМИРАНЕ, УСТЕН И ПИСМЕН ПРЕВОД В ХОДА НА НАКАЗАТЕЛНОТО**

### **1. ВЪВЕДЕНИЕ**

Правото на децата в конфликт със закона да бъдат информирани, да познават и да реализират своите права, е сфера, в която все още стоят сериозни предизвикателства. Такъв е въпросът дали децата са информирани, но и въпросът как са информирани, така че в резултат те наистина да познават своите права като участници в правни процедури. Познаването на тези права е едно от условията за тяхното спазване, макар че не винаги е достатъчно. От друга страна е важно да се проучи дали децата имат разбирането за правата като гаранция за справедлив процес, а не като формални правила.

Децата са силно уязвима група доколкото са в положение на по-голяма зависимост от разследващите и право раздаващите структури, отколкото възрастните. Директива 2016/800 на Европейския парламент и на Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство, Директива 2012/13 на европейския парламент и на Съвета от 22 май 2012 година относно правото на информация в наказателното производство, Директива 2010/64 на европейския парламент и на съвета от 20 октомври 2010 година относно правото на устен и писмен превод в наказателното производство на ЕС, въвеждат изисквания към страните членки, спазването на които минава през различни по тип и обхват промени в различните страни, в зависимост от специфичната ситуация в тази област. Резултатът от настоящето изследване ще покаже до каква степен изискванията на Директивите ефективно се прилагат в наказателното производство на всяка от страните и какви интервенции са нужни, за да бъдат те прилагани.

Както е известно, детето е обект на специални права и закрила. За да се затвърди неговото правно положение, нормативната уредба прилага особени правила по отношение на децата в наказателното производство. Особените правила в НПК са разписани в глава тридесета, и обхващат предварителното производство, както и самото дело. Изпълнението на наказанията е регулирано в

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ЗИН. Глава 30А от НПК път обхваща особените правила, свързани с правота на превод на лицата, които не владеят български език.

Минималната възраст за наказателна отговорност е 14 г.(НК).Деца на възраст над 14 г. участват в наказателни производства, като се вземат предвид особените правила (НК, НПК, ЗИНЗС), касаещи непълнолетните, но без да съществува специална система за детско и младежко правосъдие. Също така, по отношение на деца над 8 г., включително до навършване на пълнолетие, действа системата за борба с противообществени прояви на непълнолетни и малолетни, като налага възпитателни мерки, включително и настаняване в СПИ. Правота на тези деца често са нарушавани, тъй като няма стриктни регулации по отношение на настаняването.

Извършителите на престъпления над 14 г. преминават през наказателно производство. Разследването се извършва от полицейски органи, които имат задължението да информират децата и техните родители относно правота им в предсъдебното производство. Съгласно ЗМВР непълнолетните могат да бъдат задържани от полиция до 24 часа. Мерките за неотклонение за непълнолетни според НК са:

- надзор на родителите или на попечителя;
- надзор на администрацията на възпитателното заведение, в което непълнолетният е настанен;
- надзор на инспектора при детска педагогическа стая или на член на местната комисия за борба с противообществените прояви на малолетните и непълнолетните;
- задържане под стража.

Задържането под стража се осъществява в изключителни случаи, непълнолетните се настаняват отделно от възрастните.

Изпълнението на наказанията се регулира също с особени правила, съгласно ЗИНЗС.

Обикновено първият разпит на детето, преди стартиране на официално разследване, се осъществява като разпит на свидетел. Трябва да се спомене също, че, всички деца, т.е. от 8 до 18 г., участващи в правните процедури, независимо от възрастта и качеството на участие са обект на т.н. полицейска проверка, при която няма ясен регламент за права на детето.

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Разпит на малолетен и непълнолетен свидетел се регламентира в НПК където е предвидено, че „малолетният свидетел се разпитва в присъствието на педагог или психолог, а когато е необходимо, и в присъствието на родителя или настойника., а за децата над 14 г. се казва, че непълнолетният свидетел се разпитва в присъствието на горепосочените лица, ако съответният орган намери това за необходимо.

Едва след като се предяви обвинение, се прилагат разпоредбите на НПК за разпит на обвиняем, които предвиждат детето да бъде информирано в какво престъпление е обвинено и въз основа на какви доказателства; а също и правото да дава или да откаже да дава обяснения по обвинението; да се запознава с делото; да представя доказателства; да участва в наказателното производство; да прави искания, бележки и възражения; да обжалва актовете, които накърняват неговите права, и да има защитник.

Специалните правила в Наказателно-процесуалния кодекс гарантират правото досъдебното производство да се провежда от разследващи органи със специално обучение, регламентират мерките за задържане, правото родители или попечители да присъстват на разглеждането на делото. При изпълнение на наказание лишаване от свобода са гарантирани следните права на малолетни и непълнолетни лица: специално обучение на специалистите, работещи с непълнолетни; правото на образование; контакт с външната среда, включително семейство, роднини и др .; посещение на събития извън центъра за задържане. Изпълнението на пробационните мерки се извършва и от служител със специално обучение. За всеки малолетен е съставена индивидуална програма заедно с непълнолетния, социален работник от Отдела за закрила на детето, педагогически съветник, член на местната комисия за борба с антисоциалното поведение.

Въпросът за реформа в сферата на правосъдието за деца се поставя повече от двадесет години. Изграждането на адекватна система за младежко правосъдие е припознато като ангажимент от държавата в редица документи: Концепция за държавна политика в областта на правосъдието за детето, Пътна карта за изпълнение на Концепцията за държавна политика в областта на правосъдието за детето , Актуализираната стратегия за продължаване на реформата в съдебната система. Има изработен проект за Закон за отклоняване и налагане на възпитателни мерки на деца над 14 г., който е подложен на широко обществено обсъждане, с активното съдействие на ангажирани по темата НПО, както и с взаимодействие на високо институционално ниво. Целта на законопроекта е да

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„изгради политика, която да предотвратява общественото и виктимогенното поведение на децата, като едновременно с това осигурява ефективна високо специализирана защита на техните права и законни интереси, включително хуманна и законосъобразна корекция на поведенческите им отклонения, индивидуално съобразена с най-добрия интерес на детето в условия на правна сигурност и стабилен правов ред.“ Въпреки това приемането на този закон все още не предстои в близкото бъдеще.

## 2. МЕТОДОЛОГИЯ

Изследването в България се проведе в периода септември – октомври 2018 г.

Проучването се основава на количествена информация, получена от въпросници, и на качествена информация от проведена фокус група.

Въпросниците се състоят от 43 затворени и 2 отворени въпроса.

Някои от участниците не разбираха част от поставените въпроси, частично и поради използвания език (терминология). В тези случаи се наложи допълнително разясняване на същността на въпроса.

Част от участниците в проучването бяха неграмотни, като разпознаваха някои/всички букви от азбуката, но не можеха да прочетат написана дума. В тези случаи са наложи помощ от страна на изследователя, като въпросите бяха прочитани на детето.

Някои участници забелязаха, че верните отговори на въпросите са „да“, което може в известна степен да е повлияло на техните отговори.

Отворените въпроси затрудниха повечето от децата. Някои предпочетоха да не дават отговор или се задоволиха с формални отговори, като отбелязаха: „всички права са важни“ или „нямат нарушени права“.

Подобно пренебрегване на отворените въпроси може да се свърже и с предварителната подготовка на непълнолетните за провеждане на проучването от страна на пробационните инспектори. В част от ОСИН инспекторите възприеха задачата „да осигурят присъствието“ на всички непълнолетни, като в предварителните разговори са задали задължителен характер на участието в проучването. По този начин някои от непълнолетните, въпреки допълнителните разяснение на изследователите за целта на проучването, го възприеха като част от задължителните мерки при изпълнение на присъдата.

В България, по данни на ГДИН, има само два града, в които броят на осъдените на пробация непълнолетни лица е достатъчен за формиране на фокус група – София и Плевен. При договаряне на посещението в ОСИН – София обаче не получихме навременна информация колко деца ще присъстват на срещата, за да бъде подготвено провеждането на фокус-група. Част от децата не дойдоха на

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тази среща и въпросниците бяха попълвани в последствие, при допълнителни срещи.

Фокус-групата се проведе в гр. Плевен.

**2.1. Участници**

За провеждане на изследването бяха посетени ОСИН в 6 областни града. Това са службите, в които има най-висок брой деца, изпълняващи присъда пробация. По данни на началниците на ОСИН, броят на непълнолетните, изтърпяващи присъда пробация, намалява значително през последните 5 години.

- ОСИН Плевен – 7 деца., 29.09.2018 Попълнен въпросник и фокус-група
- ОСИН София, 19.09.2018 г. 11 деца
- ОСИН Русе, 27.09.2018 г., 7 деца
- ОСИН Пловдив, 02.10.2018 г., 6 деца
- ОСИН Благоевград, 11.10.2018 г., 5 деца

**Въпросник, възраст на участниците**

възраст	15	16	17	18	19	20
Момчета брой	2	3	17	10	1	2
Момичета брой		1				

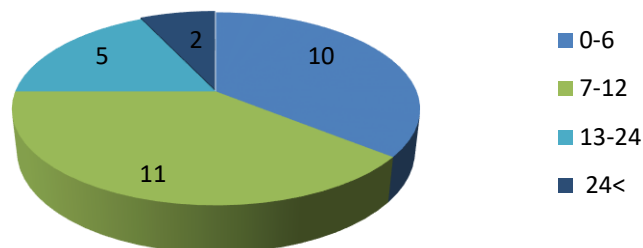
*Общо: 36 участника*

**Фокус група, възраст на участниците**

Възраст	15	16	17	18	19	
брой			<b>6</b>	1		

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**Продължителност на присъдата (месеци)**

Децата бяха с продължителност на присъдата от 6 месеца до 2 г. и 6 месеца. Максималният срок за присъда Пробация в България е три години.

Присъдата е по-голяма при непълнолетни с многократни провинения, предхождащи извършването на престъпление, както и при непълнолетни, при които има наложени присъди за повече от едно престъпление, които са кумулирани.

Всички деца изтърпяваха присъдата си от повече от 3 месеца, с изключение на 1 момче, което изтърпяваше присъда от по-малко от седмица и все още не беше провело първоначалните срещи с отговорния за него инспектор.

**2.2. Инструменти**

Използваните инструменти са въпросник и сюжет за провеждане на фокус група.

Инструментите бяха предоставени на английски език и преведени от експерти от екипа на ИСДП. При превода беше целено в максимална степен /доколкото е възможно това без изкривяване на първоначалния смисъл/ езикът да съответства на терминологията в България.

**2.3. Процедура**

Проучването се проведе със съдействието на ГДИН. С писмена молба до Главния директор на ГДИН беше поискано разрешение за достъп до непълнолетни, с присъда пробация, за целите на изследването. След получаване на разрешението



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бяха проведени две срещи с началник на сектор „Пробация“. ГДИН оказва съдействие, изразяващо се в определяне на службите с най-голям брой деца, и осигуряване на достъп до тях в определени дни от дирекцията дни. Пробационните инспектори, работещи с децата, бяха изискали от тях да присъстват в определите дни, като в повечето случаи това присъствие беше съчетани с полагането на подпис и/или други мерки, свързани с присъдата. По този начин децата/младите възрастни, не бяха принудени да посещават службата изрично за провеждане на изследването, което би било трудност, включително и финансова за тях. За съжаление, оказва се, че за няколко деца това означава да пропуснати учебни занимания. Смятаме, че някои от децата са били задължени да участват като те възприеха участието си като част от присъдата (Пловдив).

При провеждане на фокус групата присъстваха 7 деца, момчета.

Непълнолетните взеха активно участие при обсъждане на темите, свързани с първата и втората фаза на наказателното производство (така беше и при попълването на въпросниците), но по отношение на третата фаза – изтърпяване на наказанието, не проявиха интерес, тъй като наказанието, представено в сюжета на фокус групата, не беше релевантно за тях. Доколкото знанието им за правата им е придобито основно от личния опит, то и познанието им за положението на непълнолетен осъден в център за задържане беше предимно интуитивно.

Тъй като провеждането на фокус групата беше предхождано от попълване на въпросник, част от децата проявиха нетърпение с напредване на времето при провеждане на групата. Някои заявиха, че бързат, тъй като живеят извън населеното място и трябва да съобразят тръгването си с разписанието на обществения транспорт.

И на фокус-групата, и попълването на въпросниците, се осъществява в помещение на различните ОСИН- зала за групова работа/където имаше такива/, кабинет на инспектор, а в един от случаите – кабинет на началник ОСИН. Служителите направиха възможното, за да бъдат непълнолетните спокойни при провеждане на проучването, не присъстваха на провеждането му и потвърдиха анонимността на отговорите.

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**3. РЕЗУЛТАТИ****3.1. Полицейски арест****3.1.1. Право на детето на информация**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да знаят в какво са обвинени:</i> Фокус групата потвърди, че децата познават правото, също така знаят и кой трябва да ги информира.</p>	<p><i>Въпрос 1:</i> Да, всички отговори</p>
<p><i>Право на достъп до съдебното досие:</i> Не са сигурни от кого да искат разрешение, за да прегледат досието и на кого да се оплачат, ако им бъде отказано. Смятат, че това може да е родител/адвокат. Не знаят, че могат да подадат жалба.</p>	<p><i>Въпрос 12, 13 и 14:</i> 12 – 2 не 13 – 1 не 14 – 9 не</p>
<p><i>Право на декларация за правата им:</i> Запознати са категорично с правото, получавали са такава декларация. Не всички разбират за какво служи тази декларация, т.е. че информирането за правата е гаранция за справедлив процес.</p>	<p><i>Въпрос 18:</i> Въпрос 18 – 1не</p>
<p><i>Право да запазят мълчание:</i> Децата не са наясно какво означава „да запазиш мълчание“. И при въпросник, и при ФГ децата искаха обяснение на това право. Повечето „ДА“ отговори са получени от деца, които поискаха допълнителни разяснение какво представлява „запазването на мълчание“. Децатане разбират как могат да не говорят, след като са призовани в полицията. Във всички групи споделиха за нарушаване на правото–натиск, заплахи от страна на полицията. Във ФГ имаше изказано мнение, че детето мълчи, ако иска, докато дойде адвокатът му. Смятаме, че при изготвяне на брошурите трябва да се акцентира върху разясняване на същността на това право</p>	<p><i>Въпрос 4:</i> 4 – 11 не</p> <p>Групата от Русе – всички са писали ДА. Възможно е отговорите да са взаимно повлияни.</p>
<p><i>Право на медицинска грижа:</i> Във ФГ децата споделят, че имат право на медицинска грижа, като лекарят идва в килията, а при нужда болният отива в болницата</p>	<p><i>Въпрос 23:</i> 23 – 1 не</p>

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**3.1.2. Право на децата на писмен и устен превод**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на устен и писмен превод:</i> В разговора се изясни нагледно кое дете може да не разбира езика /използвахме разказ за дете с точно определена националност и език, за да се онагледни положението на детето, което не разбира български – дете от Турция, което говори само на турски/. Участниците във фокус групата потвърждават категорично за правото на превод. Смятат, че преводачът е отговорен за това детето да разбира какво му е казано. „единична реакция – Как дете, което не чува ще извърши престъпление, за какво му е?“</p>	<p><i>Въпрос 5, 6, 7, 8, 9, 10 и 11:</i> 5 – 2 не 6 – 0 не 7 – 1 не 8 – 7 не 9 – 5 не 10 – 2 не 11 – 4 не</p> <p>Нужда от обяснение / онагледяване на правото – кое дете ще се нуждае от превод, защо няма да разбира. 8 въпрос сочи сериозно непознаване на правото на жалбите, както е и при въпрос 14.</p>

**3.1.3. Право на адвокат**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на адвокат:</i> Запознати са с това право, включително правото на служебен адвокат. „ако искаш платен плащаш“.</p>	<p><i>Въпрос 24 и 25:</i> Няма НЕ</p>
<p><i>Право на уединение при среща с адвокат:</i> Повечето деца споделят, че не са говорили с адвокат преди разпита в полицията. След това са имали адвокат. Разбирането на децата е, че адвокатът обяснява случая и казва на детето дали да мълчи и какво да говори. Никои няма право да ни пита какво говорим с адвоката – това е общото мнение.</p>	<p><i>Въпрос 16 и 17:</i> 16 – 4 не 17 – 5 не</p>

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**3.1.4. Право на носителите на родителската отговорност**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на носителя на родителската отговорност да бъде информиран:</i></p> <p>Децата имат колебания относно това право /въпрос 3/, защото полицаите казват, че те ще се обадят на родителите, но не го правят веднага - родителите не са информирани веднага, а когато е време да си приберат децата, т.е. след разпита.</p> <p>ФГ – полицаят трябва да информира детето за това право и полицаят информира родителите за всичко.</p> <p>Всички казват, че родителите трябва да са информирани, но като че ли има неяснота как и кога става това.</p>	<p><i>Въпрос 2 и 3:</i></p> <p>2 – 0 не 3 – 3 не</p>

**3.1.5. Право на децата да бъдат придружавани**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да правят изявления в присъствието на техния адвокат и носител на родителска отговорност:</i></p> <p>Участниците знаят, че адвокатът трябва да присъства, както и че има право да говори – той трябва да ги защитава. Правото родителите да присъстват на разпита не се разяснява предварително, не всички родители са присъствали.</p> <p>Участниците казват, че разпитващият полицаи трябва да обясни правата на детето.</p>	<p><i>Въпрос 15:</i></p> <p>15 – 5 не</p> <p>Някои деца казват, че са били разпитвани без адвокат първи път и втори път – в присъствие на адвокат.</p>

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**3.1.6. Други важни теми/въпроси**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на задържаните деца да бъдат настанени отделно от възрастните след като са арестувани:</i> Участниците познават това право, не съобщават да е било нарушено.</p>	<p><i>Въпрос 19:</i> 19 – 5 не</p> <p>Възможно е да става въпрос за обръкване – въпросът продължава на следващата страница. Като цяло всички заявят, че са били отделно от възрастните.</p>
<p><i>Право на децата да не бъдат задържани за повече от 48 часа:</i> Знаят, че могат да бъдат задържани до 24 часа. Смятат, че ако е почивен ден, могат да ги оставят за по-дълго в ареста, защото няма кой да ги освободи.</p>	<p><i>Въпрос 20:</i> 20 – 12 не</p> <p>В България дете може да бъде задържано и за по-дълъг период с разпореждане на прокурор.</p>
<p><i>Право на аудио-визуални средства:</i> Знаят, че може да се записва разпитът, за да се използва в следващи фази. Обединяват се около мнението, че не може да се разгласява записът без Дейвид да даде съгласие.</p>	<p><i>Въпрос 21 и 22:</i> 21 – 17 не 22 – 15 не</p> <p>Много от децата не предполагат, че може да се записва разпитът.</p>

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**3.2. Дело****3.2.1. Право на децата на информиране**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да обжалват присъдата:</i> ФГ – ДА, познават тази възможност.</p>	<p><i>Въпрос 32:</i> 32 – 3 не</p>
<p><i>Право на децата на процес при закрити врата:</i> И ФГ и въпросникът потвърждават, че децата имат трудности при разбиране на термина - Закрити врата. Не познават това право, имат трудности при разбирана смисъла му.</p>	<p><i>Въпрос 33:</i> 33 – 5 не+ 1 не знам</p> <p>При изготвяне на брошурата това право да се онагледява, да се свърже с познати и близки неща. Да се обвърже с правото за запазване на достойнството. Не е разбираемо и понятно.</p>
<p><i>Право на децата да обжалват, ако правата им са били нарушени:</i> Предполагат, че имат право да подават жалба в такъв случай.</p>	<p><i>Въпрос 34:</i> 34 – 1 не</p> <p>Въпросът им е неясен. Въпросът се състои от две части, като първата част за тях е ясна и отговорът в повечето случаи е ясен – да. Считаме, че отговорът е отговор всъщност на първата част, не на втората. Смятаме, че повечето деца не са наясно с термина „обезщетение“, както и с възможността да искат такова.</p>
<p><i>Право на децата на личен живот:</i> Участниците смятат, че медиите имат право да говорят за детето. Според някои детето няма право да обжалва, според други има.</p>	<p><i>Въпрос 35 и 36:</i> 35 – 5 не 36 – 5 не</p> <p>Не разбират много добре смисъла и на двата въпроса, не разбират ситуация, в която правото на личен живот може да бъде нарушено в хода на процеса, не им е ясна връзката между процеса и</p>

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ФОКУС ГРУПА	ВЪПРОСНИК
	<p>личния живот. Смятаме, че тази тема е нужно да получи особено внимание при изготвяне на брошурата.</p>

**3.2.2. Право на детето да бъде придружено**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да бъдат придружавани от своя адвокат и носител на родителски права:</i> Във връзка с правота да бъдат придружени по време на идентификацията – въпрос 31 – някои заявяват, че не е присъствал адвокат. Може да се обобща, че познават тези права. Описват през личния опит, че родителите са в залата, адвокатът разяснява и на родителите какво се случва. По принцип той им е обяснил предварително какво предстои на делото.</p>	<p><i>Въпрос 29, 30 и 31:</i> 29 – 3 не 30 – 0 не 31 – 3 не</p>

**3.2.3. Право на децата да присъстват и да участват**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да присъстват и да участват на съдебното заседание:</i> Децата знаят, че имат право да присъстват и да дават мнението си. При всички тях това право е реализирано. Знаят, че имат право да обжалват присъдата си, ако е свързана с лишаване от свобода. В случаят с децата с присъда пробация, повечето е са сключили споразумение с прокурор - признали са вина и са се съгласили да им бъде наложено наказанието пробация, със съответните пробационни мерки.</p>	<p><i>Въпрос 27 и 28:</i> 27 – 2 не 28 – 10 не  Възможно е да не разбират точно смисъла на въпрос 28.</p>



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### 3.2.4. Право на децата на личностна характеристика

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на индивидуална оценка:</i> И при въпросника, и във фокус групата, участниците искаха разяснения. Децата разказват, че полицаят (инспектор детска педагогическа стая) и учителите дават оценка. ИДПС всъщност изготвя личностна характеристика, но тя не се изготвя от мултидисциплинарен екип. Социален работник от ОЗД изготвя социален доклад, който включва данни основно за икономическо ,семеино, здравно и образователно положение на детето. Детето обикновено не участва в изготвянето на тези документи и не е запознато с тях. Децата не разбират ролята на индивидуалната оценка, приемат я като задължение, а не право.</p>	<p><i>Въпрос 26:</i> 26 – 2 не</p> <p>Считаме, че има пълно неразбиране на въпросът. Смятаме, че е необходимо темата да се разгледа подробно при изготвяне на брошурите, като се акцентира върху нуждата и ползата от личностна характеристика.</p>

### 3.3. Изпълнение на присъдата

#### 3.3.1. Право на детето на информиране

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на писмена информация за своите права и задължения и за правилата за вътрешния ред в центъра за задържане:</i> Участниците познават това право.</p>	-----

#### 3.3.2. Право на децата да общуват със семейството си

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата да общуват със семейството:</i> Участниците са наясно с това право и не са се колебали. Изненадващо има 5 отрицателни отговора на съответния въпрос 37 във въпросника.</p>	<p><i>Въпрос 37:</i> 37 – 5 не</p>

#### 3.3.3. Право на децата на медицинска помощ

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на медицинска помощ:</i> Като цяло не проявиха интерес към дискутиране на въпросите, свързани с изтърпяване на присъда лишаване от свобода. Знаят, че имат право на лекарска помощ.</p>	<p><i>Въпрос 38, 39 и 40:</i> 38 – 0 не 39 – 0 не 40 – 3 не + 1 липса на отговор.</p>

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**3.3.4. Право на децата на образование и обучение**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на образование:</i> Участниците коментират, че детето в център за задържане има право да учи, да посещава програми. Не са наясно обаче, че вътре в затвора има училище – не си представят как става това обучение.</p>	<p><i>Въпрос 41:</i> 41 – 8 не</p>

**3.3.5. Право на децата на религиозна свобода**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на религиозна свобода:</i> Един от участниците заяви, че ако детето е католик може да се види със свещеник, но не и ако е мюсюлманин – не може да отбележи Рамадан. Не успяха да се фокусират върху тази тема. Като цяло не бяха заинтересувани от темата, свързана с религията.</p>	<p><i>Въпрос 42:</i> 42 – 5 не</p>

**3.3.6. Право на децата на достъп до програми, подкрепящи развитието и реинтеграцията им**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на достъп до програми за социална реинтеграция:</i> Участниците знаят, че имат това право. Знаят, че участието им в такива програми е задължително, тъй като програмите за обществено въздействие са една от пробационните мерки и могат да са част от присъдата.</p>	<p><i>Въпрос 43:</i> 43 – 2 не</p>

**3.2.7. Право на децата на индивидуална оценка**

ФОКУС ГРУПА	ВЪПРОСНИК
<p><i>Право на децата на индивидуална оценка:</i> Не разбират въпроса.</p>	<p>-----</p>

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**Отворени въпроси**

- 6 деца не са отговорили и на двата въпроса
- 1 не е отговорил на втория въпрос
- 1 не е отговорил на първия въпрос

**Въпрос 1: „Най-важни права“**

Присъстват 3 отговора, че „всички са най-важни“. Конкретните отговори могат да бъдат обобщени по теми, както следва:

**1. Право на адвокат:**

- Право на безплатна правна помощ
- Да се виждам насаме с адвокат
- Да мълча, докато дойде адвокат.
- Да имам адвокат преди и по време на разпит в полицията
- Адвокатът да иска мед. преглед, когато си в център за задържане

При децата адвокатът е фигурата на възрастния, който ги придружава, не само фигура на информиране и защита. Не делят изрично на „платен“ / „служебен“ защитник.

2. Право на информиране на лица, които не знаят езика и/или не виждат и не чуват: открито е като важно право по отношение на чужденец да получи превод. Също така е включено и правото на подходящ начин за информиране на дете, което не вижда и не чува.

3. Право на информиране на родител / близък, че детето е задържано: в един отговор изрично е описано, че целта детето има право да получи подкрепа от родителите си. Като важно право са включени и срещите със семейството в център за задържане.

4. Лекарски преглед в център за задържане.

5. Право на образователни програми: присъства с допълнителни пояснение - за да не правя повече престъпления.

6. Право на жалби и обезщетения.

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7. НЕ ЗНАМ: отговорите Не знам са основно от участници, които не бяха отговорили на въпроса и бяха изрично подканени да споделят своето мнение за най-важните права.

**Въпрос 2: „Кои права не са спазени“**

10 участника заявяват, че всички права са спазени / нямат нарушения. Това е изненадващо, предвид споделянето от почти всички участници в свободен разговор за нарушаване на правата им на етап Полицейско задържане – оказване на натиск, ненавременно информиране на родители, разпит без присъствие на адвокат и др.

Правата, които участниците определят като нарушени са по отношение на следното:

- Не е информиран за какво е задържан.
- Родителите не са информирани веднага.
- Не е присъствал адвокат на разпознаването.
- Разпит без адвокат при полицейски арест.
- Задържан повече от 48 часа.
- Обиск на жилището без заповед.
- Личен обиск без причина.
- Не е разяснена присъдата на ниво съд /не е разбрал какво следва за него.
- Не е получил писмена декларация за правата.

В някои случаи провеждането на проучването доведе децата до повдигане на въпроси, които са важни, но неизяснени за тях – напр. кумулиране на присъдата.

#### **4. ЗАКЛЮЧЕНИЕ**

Въпросникът и фокус групата имат основна роля да представят нивото на познаване на собствените права в наказателното производство и да подпомогнат създаването на брошури, посрещащи идентифицираните потребности на децата, техните родители/носителите на родителски права.

Може да се обобщи, че въпросникът дава ясни индикации за непознаване и неразбиране на някои от правата в хода на наказателното производство. Изводите са потвърдени от фокус-групата.

Идентифицирани са няколко теми, в разговор за които непълнолетните показват неразбиране, непознаване и дори незаинтересованост.

Но като че ли по-важната тема е не буквалното познаване на правата, а тяхното осмисляне от гледна точка на правото на всеки един на справедлив процес.

Правата, гарантирани от директиви Директива 2012/13/EU, Директива 2010/64/EU, Директива 2013/48/EU and Директива 2016/800 са важни в контекста на общата система от права, като в брошурите е важно да се представи именно структурата от основни права като основополагащи за всички останали.

Ценността и уникалността на всеки един човек, независимо от конкретната му житейска ситуация, е основата, върху която може да се поставят познанията и силата за отстояване на собствените права. Познанието и разбирането за правата не е интегрирано при много от децата. Правата им минават през възрастните и сякаш се възприемат като външни на случващото се.

В този смисъл ще е помагачо да се засили и усъвършенства практиката за информиране. Информирането съществува и сега, но то е в ръцете на възрастния и проучването ни налага изводът, че то не се случва по начин, съобразен с възможностите .

Не може да се каже, че имаше особено сериозни трудности в осмисляне на собственото положение и права на всеки един етап от наказателното производство.

Все пак се откриха някои важни пропуски в познанията. Тъй като има системност /показват се в повечето групи от различните градове/, те вероятно

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са свързани с недостатъци на системата за информиране на непълнолетните за техните права. Смятаме, че включването им в брошурите ще спомогне за избягване на тези недостатъци.

Като цяло проучването сочи, че децата са добре запознати с право на информиране. Те знаят, чие имат определени права, за които следва да получат информация. Неясен остава в много случаи въпросът кой може да даде допълнителни разяснения, когато се нуждаят от тях и как да ги поскат.

В общия случай адвокатът е този, който се възприема като подкрепяща фигура като източник на повече и надеждна информация, като разясняващ. Родителите не се открояват в разговорите ни като такъв тип фигура. Те по-скоро са оказващи подкрепа.

Може да посочим въпросите, които затрудниха или бяха неясни за участниците в проучването:

Трудност в осмислянето представлява правото „да запазят мълчание“. Възможно е трудността да има връзка с възрастта – свързват мълчанието с нещо недобро, както е в училище – когато мълчиш, значи не знаеш, лошо е. Също така не схващат условността на това право – запазваш мълчание, докато дойде адвокатът / родителите.

При всички групи имаше коментари за претърпяно нарушаване на правото, свързано с натиск от страна на полицията. В отворените въпроси от въпросника децата не го засягат, вероятно понеже се страхуват да го споделят или защото го смятат за нормално.

Въпросите, свързани с правото на жалба също посочиха, че децата не винаги знаят кога имат възможност да подават жалба.

Недостатъчно информация са получили децата и във връзка с информирането на родител, че са задържани в арест – те нямаха яснота в кога трябва да се случи това. Възможно е опитът на децата да е повлиял на отговорите им – родителите не са били информирани непосредствено след задържането на децата, а когато е трябвало да дойдат и да ги вземат от арест.

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Отново на етап полицейски арест фокус групата откри недостатъчно познаване на правото на „свидетелстват в присъствието на своите родители / адвокат“ – при първия разпит на децата не винаги е присъствал адвокат, както и родител.

По отношение на правото на устен и писмен превод, както и на осигуряване на възможност за информиране и комуникация на глухи / слепи деца, отговорите неизменно бяха потвърждаващи правото и нуждата от осигуряването им.

Това разбиране, че децата, не познаващи езика и/или използващи други канали на комуникация, имат нужда от допълнителна помощ в хода на производството, се повтори при въпросите за всеки един етап.

Правото на превод е отчетено като важно, въпреки, че не е част от личния опит на децата. Преживените трудности са довели до повишена чувствителност към трудностите на другия.

Във връзка с правата на по време на съдебното заседание, особено впечатление прави не просто непознаването на термина „при закрити врата“, а трудността да се разбере смисъла на това право.

Смятаме, че е нужно и допълнително информиране относно правото на личен живот, връзката с процеса - възможността това право да бъде нарушено, негативните последици за детето.

Изключително важен е въпросът за изготвянето на личностна характеристика, доколкото тя гарантира индивидуално отношение към всяко дете и съобразяване с конкретните специфики на личността и ситуацията му. Тук обаче срещнахме пълно неразбиране на въпроса.

За подобряване на положението без съмнение ще допринесе ако родителите и децата не просто са запознати с правата си, но и с техните взаимовръзки.

Същевременно е важно да се повиши разбирането у специалистите, работещи с децата, особено в досъдебното производство, че реализирането на правата е гарант за справедлив процес.



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**NEEDS ASSESSMENT OF CHILDREN IN CONFLICT WITH THE  
LAW IN BULGARIA:  
REPORT ON THE RIGHT OF CHILDREN TO INFORMATION,  
TRANSLATION AND INTERPRETATION IN CRIMINAL  
PROCEEDINGS**

**1. INTRODUCTION**

The right of children in conflict with the law to be informed and to know their rights is an area in which there are still serious challenges. This is the question of whether children are informed, but also of how they are informed, so that they could really enjoy their rights as participants in legal proceedings. Knowing the rights is one of the conditions for their enforcement, although it is not always enough. It is also important to examine whether children understand the rights as a guarantee of a fair trial and not as formal rules.

Children are a highly vulnerable group as they are more dependent on investigative and justice system and lawenforcement authorities than adults. Directive 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children suspected or accused in criminal proceedings, Directive 2012/13 of the European Parliament and of the Council of 22 May 2012 on the information in criminal proceedings, Directive 2010/64 of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings of the EU introduce requirements for Member States, introduces requirements for Member States the application of which is linked to different in type and scope changes in the countries depending on their specific situation. The assessment of the knowledge of their rights of children, who have already passed through the different phases of justice, will help to examine this particular situation. The result of the research could show to what extent the requirements of the Directives are effectively embodied in the criminal proceedings of each country and what interventions would be useful to support their implementation.

As it becomes clear, the child is subject to special protection and inviolability. In order to strengthen its legal position, the law provides for specific rules regarding the criminal process. The specific provisions of the Code of Criminal Procedure (CCP), Chapter thirty, cover "Special rules for dealing with juvenile delinquency cases", which relate to the pre-



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trial proceedings, the course of the case. The execution of the sentences is regulated in the Penalty Execution and Detention Act. Chapter 30a of the CCP covers the special rules related to ensuring the right of translation of non-Bulgarian speakers.

The minimum age for criminal liability is 14 years (Penal Code). Children aged over 14 are included in the criminal proceedings system which is not specialized Juvenile justice system, but contains special rules for children (Penal Code, Code of Criminal Procedure, and Law on enforcement of penalties). At the same time, there is a so-called "system for fight the anti-social behavior" that treats children over 8 years and imposes "educational measures", including placement in boarding school. The rights of these children are often violated, as placement has no clear regulations, etc.

Criminal offenders aged 14 years and over participate in the criminal proceedings. The investigation is carried out by the police authorities, who also have to inform the children and their parents about their rights during pre-trial proceedings. Detention by the police for children is 24 hours (Act of Ministry of Internal Affairs). The custodial measures under the Penal Code against minors are:

- surveillance of the parents or custodian;
- surveillance of the administration of the educational establishment where the child is placed;
- surveillance of the police inspector specialized for work with children/of a member of the local commission for combating juvenile antisocial behavior;
- detention in custody.

It is also defined that detention shall be taken in exceptional cases, and children should stay in special rooms apart from the adults.

The execution of the sentences imposed is also regulated by special rules for children in the Penalty Execution and Detention Act.

Usually, the first questioning of the child, before a formal investigation has started, takes place as a witness questioning. It should also be mentioned that all children, from 8 to 18 years old, involved in legal procedures, regardless of age and quality of participation, are subject to the so-called police check where is no clear regulation on the rights of the child.



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A questioning of a child and child witness is regulated by the Code of Criminal Procedure where it is stipulated that "the child witness is interrogated in the presence of a pedagogue or psychologist and, where necessary, in the presence of the parent or guardian". And for the children over 14 years it is said that "The child witness is interrogated in the presence of the abovementioned persons if the authority considers it necessary".

The provisions of the Code of Criminal Procedure for interrogation are applied after an indictment. At this point the child has the right to be informed of what crime is accused and on what evidence; as well as the right to remain silent; to see the information about his/her judicial record; to participate in criminal proceedings; to make requests, remarks and objections; appeal against acts that violate his or her rights, and have a lawyer.

The special rules in the Penal Procedure Code guarantee the right to pre-trial proceedings by investigating bodies with special training, regulate detention measures, the right parents or trustees to attend the hearing of the case. When executing a custodial sentence, the following rights of children are guaranteed: special training of the professionals working with children; the right of education; contact with the external environment, including family, relatives, etc; visiting events outside the detention center. The implementation of the probation measures is also carried out by an employee with special training. For each child, an individual program is drawn up together with him/her, a social worker from the Child Protection Department, a pedagogical counselor, a member of the Local commission for fight with the antisocial behavior.

The issue of reforming the justice system and setting out a Juvenile justice system is discussed for more than 20 years. The development of an adequate system of juvenile justice has been recognized as a commitment by the state: Concept of State Policy in the Field of Juvenile Justice, Roadmap for Implementing the Concept of State Policy in the Field of Juvenile Justice, Updated Strategy for Continuing the Reform in the judicial system. There is a draft law on the juvenile related criminal proceeding, which is subject to public discussion, with the active cooperation of NGOs engaged in the field. The aim is to "develop a policy that prevents the child's antisocial and victim-behavior, while at the same time providing effective and highly specialized protection of their rights and legitimate interests, including humane and lawful correction of their behavioral deviations, the best interests of the child in terms of legal certainty and stable legal order. "However, the adoption of this law is not yet forthcoming in the near future.



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**2. METHODOLOGY**

The research in Bulgaria took place between September and October 2018.

The research is based on quantitative information obtained from questionnaires and on qualitative information from a focus group.

The questionnaires consist of 43 closed and 2 open questions.

Some participants did not understand part of the questions posed, partly because of the language used (terminology). In these cases there was further clarification.

Some of the participants were illiterate, recognizing some/all letters of the alphabet, but could not read a written word. In these cases, they required help from the researchers, and the researchers were reading the questions to the participants.

Some participants noticed that the correct answers to the questions were "yes", which may have somewhat influenced their answers.

The open questions hampered most of the children. Some preferred not to respond or were satisfied with formal answers: "All rights are important" or "I have no rights violated".

It is possible that this neglect of open questions is the result of informing children about the conduct of the survey by probation inspectors. Some inspectors tried to "ensure the presence" of all children by saying the participation in the study is mandatory in preliminary talks. In this way, some of the children, despite the additional clarification of the researchers for the purpose of the research, considered it to be part of the mandatory measures in the execution of the sentence.

In Bulgaria, according to General Directorate for Sentence Execution (GDSE), there are only two cities where the number of children sentenced to probation is sufficient to form a focus group - Sofia and Pleven. However, when making arrangements for the visit in the regional office of the GDSE - Sofia, we did not receive timely information about the number of children to attend the meeting in order to prepare a focus group. Some of the children did not come to this meeting and the questionnaires were subsequently filled in for further meetings.



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### 2.1. Participants

According to GDSE, the number of underage prisoners has decreased significantly over the past 5 years.

District Offices of GDSE were visited in 6 cities to conduct the research. These are the departments where there is highest number of children sentenced to probation:

- District Office Pleven - 7 minors, September 29<sup>th</sup>, 2018. Completed questionnaire and focus group.
- District Office Sofia - 11 minors, September 19<sup>th</sup>, 2018.
- District Office Ruse – 7 minors, September 27<sup>th</sup>, 2018.
- District Office Plovdiv – 6 minors, 2, 2018.
- District Office Blagoevgrad – 5 minors October 11<sup>th</sup>, 2018.

#### Participants' age – Questionnaire

Age	15	16	17	18	19	20
Boys	2	3	17	10	1	2
Girls		1				

*Total: 36 participants*

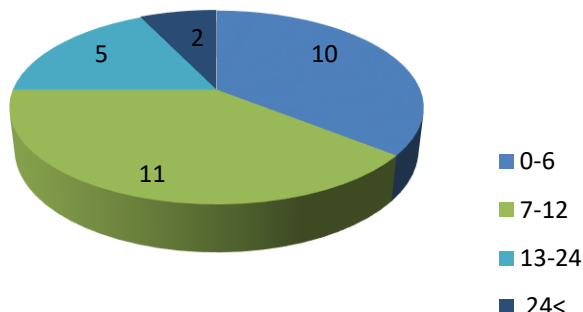
#### Participants' age – Focus Group

Age	15	16	17	18	19	
Number			6	1		

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### Duration of the sentence in months



The children were sentenced from 6 months to 2 years and 6 months. The maximum probation period in Bulgaria is three years.

The sentence is higher for children with repeated offenses preceding the commission of crime, as well as for juvenile offenders who have been convicted of more than one crime that they have accumulated.

All children have been serving their sentences for more than 3 months, except for one who had been serving a sentence less than a week and had not yet the initial meetings with the inspector responsible for him.

## 2.2. Instruments

The tools used are a questionnaire and an interview guide for focus groups.

The tools were provided in English and translated by experts from the SAPI team. In the translation, our aim was to match the language to the terminology in Bulgaria at the same time, we tried to stick as closely as possible to its original meaning.

## 2.3. Procedure

The study was conducted with the assistance of the GDSE. By written request to the GDSE Director General, permission to access children with probation sentence was requested for the purposes of the study. After the authorization, two meetings were held with the Head of Probation Sector. The GDSE has assisted in identifying the local offices

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with the highest number of children and providing access to them.

Probation officers working with the children had requested them to be present on the days, and in most cases this presence was combined with the execution of measures related to the sentence. In this way, children/young adults were not forced to attend the service simply because of the research, which would be difficult, including financial, for them.

Unfortunately, it turned out that for several children it means to miss schooling. We believe that some of the children were obliged to participate as they perceived their participation as part of the verdict (Plovdiv).

During the focus group there were 7 children, boys.

Children took an active part in discussing the issues related to the first and second phases of the criminal proceedings (as was the case with the completion of the questionnaires), but with regard to the third phase - serving the sentence, they were not interested, as the punishment represented in the focus group was not relevant to them. As far as their knowledge of their rights has been acquired mainly from personal experience, their knowledge of the situation of a juvenile convicted in a detention center was mostly intuitive.

As the focus group was preceded by a questionnaire, some of the children were eager to finish the group more quickly. Some have said they are in a hurry because they live outside the settlement and have to comply with the public transport schedule.

The focus group and the completion of the questionnaires were held in the premises of the local offices of the GDES - a group work room (where there was one), an inspector's office, and in one case a cabinet of the chief. Probation inspectors have helped for the children to be calm while conducting the research, they were not present in the rooms and confirmed the anonymity of the answers.



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### 3. RESULTS

#### 3.1. Police arrest

##### 3.1.1. Right of children to information

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to know what they are being accused of:</i></p> <p>The result of the focus group has confirmed the result of the questionnaire that children know that right, they also know who should inform them.</p>	<p><i>Question 1:</i></p> <p>All answers are YES</p>
<p><i>Right to have access to their judicial file:</i></p> <p>The participants are not sure whom should they ask for permission to review their file and whom to complain about if they are refused. They think this could be a parent/lawyer. They do not know what is the procedure to lay down a complaint.</p>	<p><i>Questions 12, 13 and 14:</i></p> <p>12 – 2 NO 13 – 1 NO 14 – 9 NO</p>
<p><i>Right of children to have a letter of rights:</i></p> <p>They are clearly aware of the right to have a letter of rights. Not everyone understands how this can benefit them, ie. informing about rights is a guarantee of a fair trial.</p>	<p><i>Question 18:</i></p> <p>18 – 1 NO</p>
<p><i>Right of children to remain silent:</i></p> <p>Children are not aware of what it means to "remain silent". In both the questionnaire and the focus group the participants needed an explanation of this right. Most "YES" responses were given by those children who asked for further clarification on what "to remain silence" means. Children do not understand how they can remain silent after being summoned by the police. In all groups, they shared information about violations of the right - pressure, threats from the police. There was a statement in the FG that the child was silent if he wanted until his lawyer came. We believe that the leaflets should focus on clarifying the essence of this right.</p>	<p><i>Question 4:</i></p> <p>4 – 11 NO</p> <p>In the group from Rousse all have written YES. It is possible that the responses are mutually influenced.</p>
<p><i>Right of children to medical care:</i></p> <p>In the focus group, participants say they are entitled to medical care. The doctor comes to the cell and, if necessary, the patient goes to the hospital</p>	<p><i>Question 23:</i></p> <p>23 – 1 NO</p>

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**3.1.2. Right of children to interpretation and translation**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to translation and interpretation:</i></p> <p>In the conversation we had to explain clearly which child may not understand the language. We used a narrative for a child of a specific nationality and language to illustrate the situation of the child who does not understand Bulgarian - a child from Turkey who speaks only Turkish. Participants in the focus group strongly confirm the right to translation. They think the interpreter is responsible for the child's understanding of what he is told.</p> <p>"Single Response - How could a child who does not hear commit a crime, what for?"</p>	<p><i>Questions 5, 6, 7, 8, 9, 10 and 11:</i></p> <p>5 – 2 NO 6 – 0 NO 7 – 1 NO 8 – 7 NO 9 – 5 NO 10 – 2 NO 11 – 4 NO</p> <p>The research identified a need the right to be explained/illustrated - which child may need translation and interpretation, what are the reasons not to understand the language.</p> <p>Question 8 indicates serious ignorance of the right to complaint, as in question 14.</p>

**3.1.3. Right of children to a lawyer**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right to a lawyer:</i></p> <p>They are aware of this right, including the right to free legal aid. Some of them have used one.</p>	<p><i>Questions 24 and 25:</i></p> <p>Only YES answers</p>
<p><i>Right of children to privacy with their lawyers:</i></p> <p>Most children say they have not spoken to a lawyer before being questioned by the police. Only after that they have a lawyer.</p> <p>The children's understanding is that the lawyer explains the case and tells the child whether to keep quiet and what to say. No one has the right to ask us what we are talking to with the lawyer - that is the general opinion.</p>	<p><i>Questions 16 and 17:</i></p> <p>16 – 4 NO 17 – 5 NO</p>

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**3.1.4. Right of children to have the holders of parental responsibility informed**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of the holders of parental responsibility to be informed:</i></p> <p>Children have hesitations about this right (question 3) because the police officers often say they will call their parents but do not do so right away. Parents are not immediately informed, but when it is time to take their children, after the interrogation.</p> <p>Focus group - the police officer must inform the child about this right and the police officer informs the parents about everything.</p> <p>Everybody says parents need to be informed, but it seems as though there is ambiguity about how and when it happens.</p>	<p><i>Questions 2 and 3:</i></p> <p>2 – 0 NO</p> <p>3 – 3 NO</p>

**3.1.5. Right of children to be accompanied**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to make a statement in the presence of their lawyers and holders of parental responsibility:</i></p> <p>Participants know that the attorney must be present, and that he has the right to speak - he must protect them. The right parents to attend the interrogation is not explained in advance, not all parents are present.</p> <p>Participants said that the person conducting the interrogation should explain the rights of the child.</p>	<p><i>Question 15:</i></p> <p>15 – 5 NO</p> <p>Some children said that they were interrogated without a lawyer the first time and a second time in the presence of a lawyer.</p>

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**3.1.6. Other important issues**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children deprived of liberty to be kept separate from detained adults after their arrest:</i></p> <p>The participants know they have the right to be kept separate from detained adults after their arrest, they do not report rights violations.</p>	<p><i>Question 19:</i> 19 – 5 NO</p> <p>There may be confusion - the text of the question begins on one page and ends the next. In general, all the participants said they were separated from adults.</p>
<p><i>Right of children to be put under arrest for no longer than 48 hours:</i></p> <p>They know they can be detained within 24 hours. Some participants commented that if the next day is a day off, they can be left longer in detention because there would be no one to release them.</p>	<p><i>Question 20:</i> 20 – 12 NO</p> <p>In Bulgaria, a child can be detained for a longer period with a prosecutor's order.</p>
<p><i>Right to use audio-visual means:</i></p> <p>They know that the interrogation can be recorded for the use in later phases. They unite around the notion that the record cannot be disclosed without David agreeing.</p>	<p><i>Question 21 and 22</i> 21 – 17 NO 22 – 15 NO</p> <p>Many of the children do not suggest that the interrogation can be recorded.</p>

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**3.2. Trial****3.2.1. Right of children to information**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to appeal the sentence:</i> The participants know that they can appeal.</p>	<p><i>Question 32:</i> 32 – 3 NO</p>
<p><i>Right of children to a non-public trial:</i> Both the focus group and the questionnaire show that children have difficulty understanding what it means " in camera/closed to the public". The participants are not aware that they have the right to a non-public trial, moreover, they have difficulties to understand what imposes these necessity.</p>	<p><i>Question 33:</i> 3 – 5 NO + 1 answer "I do not know"  When preparing the brochure, we should focus on this right, visualize it, to be placed in the context of known situations. To be bound by the right to preserve dignity. It is not understandable.</p>
<p><i>Right of children to appeal if their rights are not been respected:</i> They assume they have the right to file a complaint in that case. There was not a discussion.</p>	<p><i>Question 34:</i> 34 – 1 NO  The question was unclear to the participants. The question consists of two parts, the first part of which the answer is clear to almost all participants - yes. We believe that they have answered the first part, not the second part (ask for reparation if his/her rights are not respected). We believe that most children are not aware of the term "reparation", as well as the possibility to ask for it.</p>
<p><i>Right of children to privacy:</i> Participants believe that the media have the right to talk about the child. Some participants stated that the child has no right to complaint, others expressed the opposite opinion.</p>	<p><i>Questions 35 and 36:</i> 35 – 5 NO 36 – 5 NO</p>

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FOCUS GROUP	QUESTIONNAIRE
	<p>The participants needed further clarification on both questions. We think that they did not understand very well the meaning of the questions. They could not imagine how this right could be violated in the process. We believe that the link between the process and the private life is not clear to them.</p> <p>We propose this topic to be given special attention when preparing the brochure.</p>

**3.2.2. Right of children to be accompanied**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to be accompanied by their holders of parental responsibility and their lawyers:</i></p> <p>In connection with the right to his/her lawyer's presence during identity parades – some participants stated that this did not happen.</p> <p>It can be summed up that children know these rights. They describe through personal experience that parents are in the hall, the attorney explains to both children and parents what is happening. In principle, he/she explains in advance how the case will proceed.</p>	<p><i>Questions 29, 30 and 31:</i></p> <p>29 – 3 NO 30 – 0 NO 31 – 3 NO</p>

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**3.2.3. Right of children to be present and participate**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to be present and to participate during the trial:</i></p> <p>Children know that they have the right to be present and to participate during the trial and to give their opinion. All of them declared that this right have been implemented.</p> <p>They know they have the right to appeal if the sentence is "imprisonment".</p> <p>In this case, the children with probation sentence have concluded an agreement with the prosecutor - they have recognized guilty and have agreed to be penalized with probation, with appropriate probation measures.</p>	<p><i>Questions 27 and 28:</i></p> <p>27 – 2 NO</p> <p>28 – 10 NO</p> <p>They may not exactly understand the meaning of Question 28.</p>

**3.2.4. Right of children to individual evaluation**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to individual evaluation:</i></p> <p>When completing the questionnaires, and in the focus group, the participants wanted clarification.</p> <p>According to the participants' statements, it is the police officer (specialized to work with children, specialist in pedagogy) and teachers who make evaluation. In reality, the police officer prepares a so called <i>personal characteristic</i> of the child, but it is not a result of multidisciplinary study of the situation of the child. A social worker from the Child Protection Department prepares a social report, it includes data mainly about the financial situation, family status, education and health of the child.</p> <p>The child does not usually participate in the preparation of these documents and is not familiar with them.</p> <p>Thus, children do not understand the role of individual evaluation, they accept it as an obligation, and not as an implementation of a right.</p>	<p><i>Question 26:</i></p> <p>26 – 2 NO</p> <p>We believe there is a total misunderstanding of the issue.</p> <p>We believe that it is necessary to consider the subject in detail when preparing the brochures, focusing on the need and the utility of the individual evaluation</p>



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**3.3. Sentence execution****3.3.1. Right of children to information**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to receive written information about their rights and obligations and about the detention centre's internal regime Regulations:</i></p> <p>The participants are aware of that right.</p>	-----

**3.3.2. Right of children to family communication**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to family communication:</i></p> <p>The participants are aware of that right, they showed no hesitations. Surprisingly, there are 5 negative responses to the relevant question 37 in the questionnaire.</p>	<p><i>Question 37:</i></p> <p>37 – 5 NO</p>

**3.3.3. Right of children to receive medical care**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to medical care:</i></p> <p>Overall, the participants were not interested in discussing issues related to serving a custodial sentence.</p> <p>They know that they have the right to medical care.</p>	<p><i>Questions 38, 39 and 40:</i></p> <p>38 – 0 NO</p> <p>39 – 0 NO</p> <p>40 – 3 NO + one left without answer</p>

**3.3.4. Right of children to education and training**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to education:</i></p> <p>Participants commented that the child in a detention center is entitled to study, to visit programs. They are not aware, however, that there is a school inside the prison - they do not imagine how training and educating take place.</p>	<p><i>Question 41:</i></p> <p>41 – 8 NO</p>

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**3.3.5. Right of children to religious freedom**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to religious freedom:</i></p> <p>One participant reasoned that if a child is a Catholic, he/she can see a priest, but if he/she is a Muslim, he cannot celebrate Ramadan.</p> <p>The participants were unable to focus on this topic. They showed very little interest in the theme of religion as a whole.</p>	<p><i>Question 42:</i></p> <p>42 – 5 NO</p>

**3.3.6. Right of children to have access to programs that foster their development and their reintegration into society**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to have access to programs related to social reintegration:</i></p> <p>Participants know they have the right to access to such programs. They know their participation in it is compulsory, as the programs for social impacts are one possible probation measure and can be a part of the sentence.</p>	<p><i>Question 43:</i></p> <p>43 – 2 NO</p>

**3.2.7. Right of children to individual evaluation**

FOCUS GROUP	QUESTIONNAIRE
<p><i>Right of children to individual evaluation:</i></p> <p>Once again, regarding the individual evaluation, the participants did not understand the question.</p>	<p>-----</p>

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## Open questions

- 6 children did not answer both open questions.
- 1 did not answer the second question.
- 1 did not answer the first question.

### Question 1: "Which rights do you think are the most important? Write down the numbers and say why."

There are 3 responses that "all rights are the most important". Specific answers can be summarized on topics as follows:

#### 1. The right to have a lawyer:

- The right to free legal aid.
- To communicate alone with a lawyer.
- "Keep silent until a lawyer comes in."
- Have a lawyer before and during interrogation in the police.
- The lawyer to ask for medical care if the child in a detention center needs it.

For the participants, the lawyer is the figure of the adult person who accompanies them besides offering them information and protection. They do not explicitly divide the lawyers into categories according to whether they pay for the services or use free assistance.

2. The right of a foreign child or a child who cannot hear or see to be kept informed: it is highlighted as an important right a foreign person to receive translation. Also included is the right to an appropriate way to inform a child who does not see or hear.

3. The right to inform a parent / relative when the child is detained: one answer states that the child has the right to get support from his parents. Seeing his family while in detention center is also mentioned.

4. Medical examination when the child is in detention center.

5. Right to educational programs: there are annotations from some participants – they should visit programs in order not to do more crimes.

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6. Right to Complaints and reparation.

7. I do not know: the answers I do not know are mainly from participants who did not answer the question and were specifically asked to share their opinion.

**Question 2: "Which rights do you believe have not been respected in your case? Write down the numbers and say why."**

10 participants stated that all their rights were respected / not violated. This is surprising, given that almost all participants in a free conversation shared about some violation of their rights at the phase of police arrest – pressure during interrogation, parents were informed with a delay, interrogation without the presence of a lawyer, etc.

The rights that participants describe as violated are as follows:

- Not being informed about what he/she is being accused of and why he/she has been arrested.
- Parents are not immediately informed.
- There was no lawyer lawyer's presence during identity parades for recognition.
- Interrogation without a lawyer (the first interrogation in the police arrest).
- Being in detention for more than 48 hours.
- Housing search without a search order.
- Personal search for no reason.
- Did not get enough information after being sentenced about its execution/did not understand what follows about him/her.
- Has not received a written declaration of rights.

In some cases, conducting the study has led the children to raise questions that are important but unclear to them.



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**4. CONCLUSION**

The research results play a key role to demonstrate the level of knowledge of their own rights in criminal proceedings and in supporting the creation of brochures addressing the identified needs of children and their parents/holders of parental rights.

It can be summarized that the questionnaire gives clear indications of unawareness and misunderstanding of some of the rights in the course of criminal proceedings. The conclusions are confirmed by the focus group.

Several topics have been identified in a conversation where children show incomprehension, ignorance, and even lack of interest.

But the more important issue is not the literal knowledge of rights, but their understanding as a safeguard of a fair trial. The rights guaranteed by the directives Directive 2012/13/EU, Directive 2010/64/EU, Directive 2013/48/EU and Directive 2016/800 are important in the context of the general system of rights and it is important to present in the brochures also the structure of the fundamental rights.

The value and uniqueness of every person, regardless of his/her particular life situation, is the basis upon which the knowledge and the power to uphold his/her own rights can be put. But knowledge and understanding of the rights is not integrated in many children. Their rights pass through the adults and seem to be perceived as somehow external to what is happening to the child.

In this sense, it will be helpful to strengthen and improve the practice of informing in criminal proceedings. Minors do receive information, but the study forces us to conclude that this does not happen in a way that is consistent with children's abilities and understanding.

There were no particularly serious difficulties in rationalizing their own situation and rights at every stage of the criminal proceedings.

However, some important knowledge gaps have emerged. As they appear consistently (in groups of different cities), they are probably related to deficiencies in the system of informing children of their rights. We believe that focusing and clarifying these issues in the brochures will help improving the knowledge and enforcement of rights.



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Overall, the survey shows that children are well aware of the right to information. In many cases, uncertainties remain about who can provide further clarification when they need it and how to ask for it.

Overall, the survey shows that children are well aware of the right to information. They know they have certain rights for which they should get information. The children are also aware for most of the rights they are entitled during in criminal proceedings. In many cases, however, it is unclear for them who can give them more explanations when they need them and how could they demand it.

In general, a lawyer is the one who is perceived as a supportive figure and as a source of sufficient and reliable information. Parents did not stand out in our conversations as such type of figure. They are rather supporting.

We may point out the issues that were not clear to the survey participants:

There was difficulty in understanding about the right to "keep silent". Possibly the difficulty is age-related – the silence may be linked to something bad, as it is in school - when you are silent, you do not know. Difficult to understand may be the conditional nature of this right - keep silent until the lawyer/parents come.

In all groups, there were comments on the alleged violation of the law relating to pressure from the police. In open questions from the questionnaire, participants did not mention it, possibly because they are afraid to share it or because they do consider it as normal.

Issues related to the right of appeal also pointed out that children do not always know when they have the opportunity to file a complaint.

We also found omissions in the procedure of informing the child`s parents that he/she is under arrest. Minors did not know when and how exactly should this be done. Children's experience may have influenced their responses - parents were not informed immediately after the child was detained.

Regarding the police arrest phase, among the participants in the focus group we identified lack of knowledge of the right to "make a statement in the presence of their lawyers and holders of parental responsibility" - the first questioning of the children was

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not always attended by a lawyer and/or a parent.

Concerning the right to interpretation and translation, as well as the provision of the opportunity to inform and communicate to deaf/blind children, the answers have consistently confirmed the right.

The understanding that children who do not know the language or cannot see or hear, need additional help in the course of proceedings, was confirmed in all the answers regarding the issue.

The right to translation is also considered important, although it is not part of the children's personal experience. The difficulties they have experienced have led to increased sensitivity to the other's difficulties.

In connection with the rights at the hearing, it is particularly impressive that children do not know the term "non-public/closed trial" and how difficult it is for them to understand the meaning of this right. This is also a point that needs to be clarified in the brochure.

At the same time, it is important to raise awareness among practitioners working with children, especially in pre-trial proceedings, that the implementation of the rights is a safeguard for a fair trial.



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# **RESULTS REPORT OF THE STUDY OF NEEDS ASSESSMENT**

**ITALIAN AND ENGLISH  
ISTITUTO DON CALABRIA (ITALY)**

# **ANALISI DEI BISOGNI DEI MINORI IN CONFLITTO CON LA LEGGE IN ITALIA: RAPPORTO SUL DIRITTO DEL MINORE ALL'INFORMAZIONE, ALLA TRADUZIONE ED ALL'INTERPRETARIATO NEL PROCESSO PENALE**

## **1. INTRODUZIONE**

L'obiettivo principale della presente ricerca è promuovere una giustizia child-friendly e migliorare la comprensione delle informazioni rilevanti relative al processo penale sia da parte di minorenni e adolescenti in conflitto con la legge, attraverso l'uso di un linguaggio adatto alla loro fase di sviluppo, sia da parte dei loro genitori o esercenti la potestà genitoriale.

Il progetto promuove quindi la partecipazione dei minori e sostiene gli sforzi necessari per rendere loro chiari e comprensibili i propri diritti, oltre a favorire un approccio child-friendly. Nello specifico, è stata svolta un'indagine per valutare da un lato la conoscenza che i minori hanno dei loro diritti e dall'altro analizzare la corretta applicazione delle Direttive (2012/13/EU, 2010/64/EU, (EU) 2016/800).

In particolare, abbiamo voluto esaminare la comprensione e la percezione che i bambini e gli adolescenti in conflitto con la legge hanno dei procedimenti in cui sono coinvolti, per capire meglio cosa è stato loro detto, cosa fanno riguardo ai loro diritti, ai procedimenti di cui sono parte ed alle conseguenze che ne derivano.

In questo rapporto verranno illustrati i principali risultati ottenuti alla conclusione della prima fase del lavoro, che è consistita nella somministrazione di questionari e nella realizzazione di n.2 focus group, come previsto nella descrizione del progetto (vedi punti seguenti).

## **2. METODOLOGIA**

Come sopra evidenziato, è stato adottato un metodo di ricerca misto: quantitativo (questionari relativi all'analisi dei bisogni) e qualitativo (focus group sul tema). Il risultato di questa prima fase di lavoro è l'analisi comparata della valutazione dei bisogni dei minori in Europa.

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In particolare:

**a) Questionari:**

- n.36 questionari somministrati a n.36 adolescenti in conflitto con la legge collocati principalmente in comunità educativa (art. 22 D.P.R. 488/88 - vedi anche punto 2.1) I questionari sono stati somministrati in 8 diverse comunità private e certificate della regione Veneto gestite dal Don Calabria e non.

**b) Focus group:**

- **Focus Group n. 1**, tenutosi in data 6 Settembre 2018, presso la **comunità San Francesco** (Istituto Don Calabria) - Minerbe (Verona).
- **Focus Group n. 2**, tenutosi in data 13 Settembre 2018, presso: **comunità Girasole** (Associazione Iride) – Legnago (Verona).

E' da evidenziare che in entrambe le realtà era stato svolto in precedenza un percorso mirato alla legalità ed alla conoscenza del processo minorile rivolto ai minori ospitati nelle strutture contattate per lo sviluppo di questa prima fase della ricerca. Per questa ragione, abbiamo selezionato questi due gruppi di discussione, per dare continuità all'intervento ed allo stesso tempo per avere un feedback dai ragazzi sull'impatto che lo stesso aveva avuto.

In alcuni casi, i ragazzi intervistati (sia per i questionari che per i focus groups) non sono mai stati detenuti in un istituto penale minorile, pertanto, le informazioni raccolte riguardano informazioni indirette ricevute dai loro pari o da figure adulte di riferimento (educatore/assistente sociale).

Come indicato anche nelle conclusioni, i minori ai quali sono stati somministrati i questionari li hanno trovati abbastanza complessi e le domande erano decisamente troppe. E' stato difficile mantenere alta la loro attenzione e gli educatori hanno dovuto supportarli nelle risposte chiarendo alcuni termini e concetti.

I ragazzi coinvolti nei 2 focus group invece erano molto interessati a comprendere meglio cosa succedeva e cosa sarebbe potuto succedere loro dopo la conclusione del processo, cosicché il percorso ed i focus group sono stati anche un'opportunità per chiarire eventuali dubbi e/o approfondire determinati argomenti. Ciò che ne è emerso è stata una certa conoscenza della materia (il procedimento penale e correlati diritti dei minori) ma anche la necessità di approfondimento.

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I focus group hanno inoltre rappresentato un'opportunità per fare emergere i bisogni dei ragazzi ed eventuali mancanze che essi trovavano all'interno del sistema, in particolare riguardo agli argomenti affrontati dal progetto Child friendly JT, focalizzato sul diritto all'informazione, alla traduzione e all'interpretariato (Direttiva UE 2016/800).

Da ultimo, ma non meno importante, va segnalato come, dal punto di vista pedagogico, nonostante la necessità di ricordare ai ragazzi che oltre a specifici diritti essi hanno anche dei doveri, abbiamo potuto lavorare sul senso di responsabilità e sull'impatto che il reato commesso ha avuto, ha e avrà su di loro, sulla/e vittima/e sull'intera società.

### 2.1. Partecipanti

**Target:** minorenni e adolescenti di età compresa tra i 14 e i 25 anni<sup>11</sup> in fase di esecuzione penale collocati in istituto penale minorile e/o comunità. Dato il tipo di servizio che fornisce e le strutture di cui dispone l'Istituto Don Calabria (comunità residenziali), abbiamo incluso anche ragazzi collocati nelle nostre strutture (o in altre strutture private), tutte comunque certificate.

#### Questionari

- **Luogo:** i questionari sono stati somministrati in 8 diverse comunità private e certificate della regione Veneto gestite dal Don Calabria e non.
- **N. di partecipanti:** n.36
- **Sesso:** Tutti i soggetti coinvolti nel lavoro erano maschi, in quanto le strutture contattate per svolgere la ricerca ospitano solo maschi.
- **Età:** i ragazzi coinvolti avevano tra il 15 e i 18 anni. Età media: 16,4.
- **Tipo di misura:** Art.22 D.P.R. 448/88 collocamento in comunità e in alcuni casi art. 28 (messa alla prova).

Tutti i minorenni/adolescenti coinvolti erano maschi in quanto le strutture contattate per svolgere la ricerca ospitano solo maschi.

<sup>1</sup> Secondo la vigente legge italiana, I minorenni che commettono crimini durante la minore età possono stare nel sistema penale minorile sino ai 25 anni.

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**Grafico 1. Età**

<b>Ragazzi</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>
Età	15	17	16	16	16	17	17	16	15	16	16	17	17	16	17	16	17	16	16	17
<b>Ragazzi</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>	<b>35</b>	<b>36</b>				
Età	18	17	16	18	16	16	18	16	17	17	16	15	16	16	17	16				

**Focus group****Tavola 1 - Focus Group 1**

SESSO	ETÀ	NAZIONALITÀ	TIPO DI REATO	TIPO DI MISURA	DURATA DELLA DETENZIONE	PRECEDENTI PENALI
<b>P1</b>	M	17	Italia	Aggressione	Art. 22 DPR 448/88 collocamento in comunità	30 GG
<b>P2</b>	M	17	Italia	Furto	Art. 22 DPR 448/88 collocamento in comunità	30 GG
<b>P3</b>	M	17	Italia	Furto	Art. 22 DPR 448/88 collocamento in comunità	90 GG
<b>P4</b>	M	18	Albania	Spaccio	Art 28 DPR 448/88 messa alla prova	455 GG
<b>P5</b>	M	17	Marocco	Furto	Art. 22 DPR 448/88 collocamento in comunità	Apena arrivato
<b>P6</b>	M	18	Moldavia	Aggressione	Art 28 DPR 448/88 messa alla prova	730 GG

Dato non disponibile per la vigente legge sulla privacy

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- **Data:** 6 settembre 2018.
- **Luogo:** Comunità San Francesco (Istituto Don Calabria) - Minerbe (Verona).
- **N. di partecipanti:** 6.
- **Sesso:** Tutti i ragazzi coinvolti erano maschi in quanto le strutture contattate per svolgere la ricerca ospitano solo maschi.
- **Età:** i ragazzi coinvolti avevano tra il 17 e i 19 anni. L'età media era di 17,6.
- **Tipo di misura:** Art. 22 DPR 448/88, collocamento in comunità e Art. 28 DPR 448/88, messa alla prova.

**Tavola 2 - Focus Group 2**

	SESSO	ETÀ	NAZIONALITÀ	TIPO DI REATO	TIPO DI MISURA	DURATA DELLA DETENZIONE	PRECEDENTI PENALI
<b>P1</b>	M	17	Albania	Spaccio	Art. 22 DPR 448/88 collocamento in comunità	150 GG	Dato non disponibile per la vigente legge sulla privacy
<b>P2</b>	M	17	Italia	Danneggiamento		150 GG	
<b>P3</b>	M	17	Italia	Aggressione		60 GG	
<b>P4</b>	M	17	Marocco	Furto		90 GG	
<b>P5</b>	M	16	Italia	N/A		30 GG	
<b>P6</b>	M	17	Albania	Ricettazione		150 GG	

- **Data:** 13 settembre 2018.
- **Location:** Comunità il Girasole (Associazione Iride) – Legnago (Verona).
- **N. Di partecipanti:** 6.
- **Sesso:** Tutti i soggetti coinvolti erano maschi in quanto le strutture contattate per realizzare la ricerca ospitano solo maschi.

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- **Età:** I minorenni/adolescenti coinvolti avevano tra i 16 ed i 17 anni. L'età media era di 16,7.
- **Tipo di misura:** Art. 22 Decreto del Presidente della Repubblica 448/88 collocamento in comunità.

## 2.2. Instrumenti

### Strumenti utilizzati

Per la presentazione dei questionari e lo svolgimento dei due Focus Group, abbiamo utilizzato gli strumenti descritti di seguito. I questionari sono stati forniti dal capo-fila (Fundacion Diagrama) mentre lo staff di IDC si è occupato della traduzione in italiano.

## A. QUESTIONARIO

### 1. Modulo (in italiano)

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**QUESTIONARIO DIRITTI MINORI IN CONFLITTO CON LA LEGGE NEI  
PROCEDIMENTI GIUDIZIARI**

Stiamo facendo una ricerca per capire quanto sono informati i minorenni sospettati o accusati di aver commesso un reato e sottoposti a procedimenti giudiziari. Ecco perché abbiamo bisogno del tuo aiuto e del tuo contributo.

Ti porremo una serie di domande inerenti diversi contesti o situazioni in cui si può trovare un minore sospettato o accusato di aver commesso un reato. Per favore leggi attentamente ogni frase e segna se secondo te è vera **(V)** o falsa **(F)**.

Il questionario è anonimo. Ciò significa che non è necessario sapere chi ha risposto alle domande, perciò, non mettere il tuo nome o qualsiasi altro dato che possa identificarti.

Avremmo tuttavia bisogno di sapere quanto segue:

**Età:** \_\_\_\_\_

**Sei una/un:**  ragazza  ragazzo

**Da quanto vivi nel centro/ipm/comunità** \_\_\_\_\_

**A che tipo di misura sei sottoposto/a?** \_\_\_\_\_

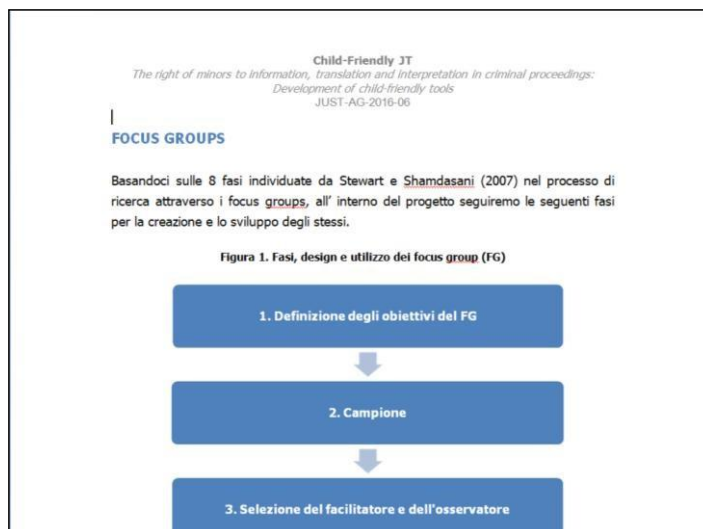


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### B. GRUPPI DI DISCUSSIONE

#### 2. Il metodo del Focus Group (tradotto in italiano)



#### 3. Progettazione e conduzione della interviste per il Focus Group e presentazione del metodo: un'introduzione al Focus Group

Questi strumenti sono stati il principale riferimento per i facilitatori e per gli osservatori, i documenti non sono stati tradotti in quanto lo staff di IDC ha organizzato un briefing con gli operatori delle strutture dove sono stati realizzati i focus group per illustrare loro l'iniziativa (obiettivi, attività e risultati attesi) e come doveva essere condotto il focus group (metodologia, strumenti, linee-guida sul FG).

### C. STRUMENTI COMUNI

#### 4. Foglio informativo per I partecipanti

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**FOGLIO INFORMATIVO PER I PARTECIPANTI**

Siamo lieti di invitarvi a partecipare a questo progetto di ricerca. Non siete obbligati, la partecipazione è su base volontaria. La scelta di non partecipare non avrà alcuna ripercussione sul vostro percorso. Prima di decidere se partecipare o meno, è importante che capiate perché stiamo facendo questa ricerca e in cosa consisterà la vostra partecipazione.

Se avete dubbi, qualcosa non è chiaro o desiderate ricevere maggiori informazioni chiedete pure a noi.

**Obiettivi della ricerca**

Obiettivo della ricerca è promuovere una giustizia child friendly/a misura di minore e migliorare la conoscenza e la comprensione di quelle che sono le informazioni basilari del procedimento penale minorile per i minorenni stessi e i loro genitori/detentori della patria potestà. Ciò verrà fatto utilizzando un linguaggio adeguato alla loro maturità e fase di sviluppo.

Siamo interessati a promuovere e a rendere possibile la partecipazione minorile e sostenere ogni sforzo per rendere chiari e comprensibili quelli che sono i loro diritti e rendere il procedimento penale minorile il più possibile child friendly/a misura di

## 5. Autorizzazione all'audio-registrazione

Si evidenzia che, sfortunatamente, a causa della delicata posizione in cui si trovano i ragazzi coinvolti e delle difficili relazioni con alcune delle loro famiglie (sia con gli stessi minori, sia con i servizi) non è stato possibile ottenere **l'autorizzazione alla registrazione delle sessioni**.

Egregio Sig./Sig.ra,

Con la presente chiediamo l'autorizzazione ad audio-registrare i minorenni partecipanti al focus group realizzato all'interno di una ricerca sul diritto all'informazione, alla traduzione ed all'interpretariato dei minorenni sospettati o accusati all'interno dei procedimenti penali. Tale ricerca viene svolta in collaborazione con altre organizzazioni europee provenienti da Spagna (capofila), Cipro, Bulgaria, Belgio e Croazia.

Le registrazioni rimarranno anonime e strettamente confidenziali e verranno utilizzate solo ai fini della ricerca. Tali registrazioni verranno pertanto distrutte e cancellate a chiusura del progetto.

Grazie per l'attenzione e la collaborazione a questa iniziativa.

Distinti saluti ,

Verona, 20 Settembre 2017.

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### 2.3. Procedura

Il sistema penale minorile italiano (ma possiamo dire il sistema italiano in generale) è caratterizzato da una forte burocrazia. Ciò rappresenta un grave limite per le nostre attività a causa del tempo necessario richiesto per ottenere i permessi dal Ministero della Giustizia, Dipartimento per la giustizia minorile e di comunità.

Il primo passaggio quindi è stato quello di chiedere formalmente l'autorizzazione via PEC ed attendere una loro risposta. Una volta ottenuto il permesso richiesto, il secondo passaggio è stato quello di contattare e reclutare i ragazzi.

Durante il processo di reclutamento, in particolare, sono stati tenuti in considerazione i seguenti criteri:

- Conoscenza e comprensione della lingua italiana;
- Tipo di misura (detenzione in istituto penale minorile o collocamento in comunità);
- Interesse a partecipare e motivazione.

Naturalmente, i responsabili della somministrazione dei questionari, i coordinatori e gli educatori delle strutture coinvolte nel progetto sono stati adeguatamente istruiti sulla procedura di reclutamento e selezione. Con gli stessi, inoltre, era stato svolto un lavoro preparatorio per informarli sull'iniziativa e definire insieme tempistiche, date degli eventi e condividere la metodologia.

Abbiamo quindi contattato i ragazzi, opportunamente supportati dal personale di struttura. In primo luogo, abbiamo spiegato loro gli scopi e gli obiettivi del progetto e che la partecipazione era libera e senza nessun impatto (positivo o negativo) sulla procedura penale in corso a loro carico.

Infine, abbiamo evidenziato che le risposte dei questionari erano anonime ed i dati raccolti sarebbero stati utilizzati unicamente ai fini della ricerca.

La medesima cosa è stata fatta riguardo ai focus group, infatti, abbiamo spiegato le regole del Focus Group ed evidenziato che le cose emerse nelle sessioni sarebbero state trattate con riservatezza e che i loro nomi non sarebbero comparsi nel rapporto di ricerca o in altri documenti correlati in cui venivano raccolti i risultati<sup>2</sup>.

<sup>2</sup> Il foglio informativo per i partecipanti è stato molto utile a questo scopo.

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### A) Questionari:

- **Luogo/Struttura:** questionari sono stati somministrati in 8 diverse comunità private e certificate della regione Veneto gestite dal Don Calabria e non.
- **Numero di questionari somministrati:** 36.
- **Criteri per la selezione:** vedi sopra.
- **Tempo necessario per la somministrazione dei questionari:** 1,5/2 h. (compreso il tempo per la spiegazione dell'attività e per la raccolta di feedback alla fine).
- **Coordinamento:** Alessandro Padovani (Direttore - Istituto Don Calabria), Alessandra Minesso (Project manager – Istituto Don Calabria).

### B) Focus groups:

- **Coordinamento:** Alessandro Padovani (Direttore - Istituto Don Calabria), Alessandra Minesso (Project manager – Istituto Don Calabria).

	FOCUS GROUP 1	FOCUS GROUP 2
<b>LUOGO/STRUTTURA</b>	Comunità San Francesco	Comunità il Girasole
<b>DATA</b>	6 settembre 2018	6 settembre 2018
<b>PARTICIPANTI</b>	6	6
<b>CRITERI DI SELEZIONE</b>	Vedi sopra	Vedi sopra
<b>DURATA</b>	2 ore	1,5 ore
<b>FACILITATORE</b>	Alessandra Minesso	Alessandra Minesso
<b>OSSERVATORE</b>	Alessandro Balbo	Riccardo Pavan

## 3. RISULTATI

### 3.1. Arresto

#### 3.1.1. Diritto all'informazione

**Questionario e focus group:** i minorenni/adolescenti coinvolti sembravano molto interessati a sapere cosa sarebbe accaduto durante il processo e quali sarebbero potute essere le conseguenze del reato commesso. Per quanto riguarda il diritto all'informazione durante la fase dell'arresto, dai questionari è emersa una discreta conoscenza dell'argomento e di questo specifico diritto. La stessa considerazione vale

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anche per il focus group, conoscono il diritto ma c'è bisogno di un approfondimento. Per quanto riguarda l'analisi dei bisogni dei ragazzi, è emerso chiaramente il bisogno di essere adeguatamente informati, così come è emerso che nonostante la normativa nazionale e internazionale garantiscano il diritto all'informazione, questo non è sempre o non è completamente garantito nella pratica.

### 3.1.2. Diritto alla traduzione e all'interpretariato

**Questionario e focus group:** riguardo al diritto all'interpretariato ed alla traduzione durante l'arresto, sia i questionari sia i focus group evidenziano una certa conoscenza da parte dei ragazzi dell'argomento, tuttavia emerge la necessità di informare meglio i ragazzi su questo diritto. Le risposte date indicano altresì che questo diritto nella pratica non è sempre attuato. Ciò è emerso chiaramente nei focus group, dove infatti i ragazzi hanno sottolineato come per loro, a volte, sia stato difficile capire cosa la polizia stesse spiegando. Tale considerazione deve essere fatta sia per i ragazzi stranieri che italiani, in entrambi i casi è accaduto di aver ricevuto poche informazioni in un linguaggio che non era per niente chiaro e comprensibile.

### 3.1.3. Diritto all'assistenza legale

**Questionario e focus group:** tutti i ragazzi intervistati sembravano essere ben informati su tali diritti, l'avvocato ha dimostrato di essere una delle figure di riferimento per i minori inseriti nel sistema penale minorile. Possiamo dire che, dopo la famiglia, l'avvocato è risultato essere una delle figure di riferimento più importanti nell'ambito del processo per la maggior parte dei minori coinvolti nella ricerca. In particolare, l'avvocato è un punto di riferimento all'interno del procedimento e spesso si instaura un rapporto professionale, naturalmente, basato sulla fiducia reciproca e la confidenzialità.

### 3.1.4. Diritto ad informare il detentore della patria potestà

**Questionario:** la maggior parte dei ragazzi coinvolti ha dimostrato una discreta conoscenza sul tema.

**Focus group:** in entrambi i casi i minori hanno dimostrato una buona conoscenza rispetto a questo diritto ed hanno raccontato la loro esperienza al moderatore dell'incontro. La legge in vigore italiana prevede che i genitori/detentori della patria potestà siano immediatamente informati.

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Concludendo, il fatto che in alcuni casi (la minoranza sia per i questionari che per i focus group) vi fosse una conoscenza parziale di tale diritto richiede una maggiore informazione e l'accertamento dell'effettiva applicazione dello stesso.

### 3.1.5. Diritto ad essere accompagnato

**Questionario e focus group:** discreta/buona conoscenza rispetto a questo diritto. I minori intervistati hanno dimostrato infatti di essere consapevoli di tale diritto, inoltre, nei focus group è emerso ancora una volta quanto sia importante per loro essere accompagnati e supportati in una fase così delicata.

### 3.1.6. Altri temi di rilievo

**Questionario e focus group:** Buona conoscenza della facoltà di utilizzare mezzi audiovisivi, della durata massima dell'arresto e del diritto ad essere separati dagli adulti. I ragazzi che hanno partecipato al focus group hanno dimostrato una certa conoscenza dell'argomento ed hanno colto l'occasione per raccontarci la loro esperienza personale. La maggior parte di loro aveva una visione chiara di questi diritti e hanno utilizzato le loro conoscenze in merito durante l'arresto. Alcune incertezze sono emerse invece dalle risposte dei questionari.

## 3.2. Processo

### 3.2.1. Diritto all'informazione

**Questionario e focus group:** discreta/buona conoscenza di questi diritti, da rilevare una certa differenza tra le risposte nei questionari e le discussioni nei focus group.

### 3.2.2. Diritto ad esser accompagnato

**Questionario:** discreta conoscenza di questo diritto.

**Focus group:** anche in questo caso, per entrambi i focus group realizzati, si evince una buona conoscenza della tematica.

Sia dai questionari che dai focus group emerge come il supporto della famiglia (in primis e del proprio avvocato risultino fondamentali).

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### 3.2.3. Diritto ad essere presente e a partecipare

**Questionario e focus group:** la maggior parte dei ragazzi ha dimostrato una discreta/buona conoscenza del diritto ad essere presenti all'udienza e di partecipare al processo. Anche in questo caso, è emerso il bisogno dell'utilizzo di un linguaggio chiaro e comprensibile, a fronte di una struttura standardizzata e formale dell'udienza penale e di un approccio formale da parte del giudice.

### 3.2.4. Diritto alla valutazione individuale

**Questionario e focus group:** discreta conoscenza di questo diritto, le esperienze ed i vissuti raccolti nei focus group rispetto ad esso sembrano essere positive.

## 3.3. Esecuzione della sentenza

### 3.3.1. Diritto all'informazione

**Focus group:** buona conoscenza di questo diritto durante la detenzione.

\*Questo diritto non viene sempre applicato, sono emerse delle differenze significative tra collocamento in comunità e la detenzione in istituto penale minorile.

### 3.3.2. Diritto a comunicare con la propria famiglia

**Questionario:** discreta/buona conoscenza sul tema, la maggior parte dei ragazzi coinvolti ha risposto correttamente. Il supporto della famiglia risulta ancora una volta fondamentale per questi giovani.

**Focus group:** buona conoscenza sul tema, anche in questo caso emerge l'importanza del ruolo della famiglia anche in se proveniente da un contesto disagiato.

### 3.3.3. Diritto all'assistenza sanitaria

**Questionario e focus group:** in entrambi i casi vi è una discreta conoscenza sul tema.



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### 3.3.4. Diritto all'istruzione e alla formazione

**Questionario:** i ragazzi intervistati erano discretamente informati.

**Focus group:** discreta conoscenza sul tema, è emersa una discussione molto interessante durante il secondo focus group, infatti, alcuni ragazzi hanno chiesto alcuni chiarimenti da cui è scaturita un dibattito tra tutti i partecipanti. E' stato un bel momento di peer education dove i ragazzi hanno condiviso esperienze, conoscenze, vissuti ed anche sentimenti e sensazioni.

### 3.3.5. Diritto alla libertà di culto

**Questionario:** discreta/buona conoscenza sul tema emersa dalle risposte.

**Focus groups:** discreta/buona conoscenza sul diritto alla libertà di culto durante la detenzione ma il tema non ha destato l'interesse dei ragazzi che hanno partecipato ai due focus group.

### 3.3.6. Diritto ad accedere a programmi che promuovono lo sviluppo e la reinclusione sociale

**Questionario e focus group:** discreta conoscenza del diritto ad accedere a programmi che promuovono la reinclusione sociale da parte dei giovani partecipanti. In alcuni casi, andrebbe approfondito il tema dei benefici che tali percorsi potrebbero avere nel loro progetto di vita in quanto a volte tale partecipazione viene percepita come qualcosa di obbligatorio e forzato e non come un'opportunità.

### 3.3.7. Diritto alla valutazione individuale

**Focus group:** discreta conoscenza di tale diritto nonostante vi sia la necessità di approfondire il concetto di valutazione personalizzata, non tutti i ragazzi infatti hanno compreso che non si tratta di uno strumento per controllarli e monitorare il loro comportamento o il loro agito, si tratta invece di individuare e definire il percorso/progetto più adatto per loro e con loro.

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**4. CONCLUSIONI**

Innanzitutto, va sottolineato come, per quanto concerne la somministrazione dei questionari, in alcuni casi i ragazzi abbiano trovato difficile la loro compilazione e abbiano dovuto chiedere supporto ai loro educatori. Un altro problema riscontrato è stata la lunghezza degli stessi, infatti questi ragazzi spesso faticano a rimanere concentrati a lungo perciò frasi troppo lunghe o troppe domande non sono funzionali per loro. Per quanto riguarda i focus group, invece, probabilmente è più facile per loro esprimersi verbalmente e amano sentirsi al centro dell'attenzione avendo l'opportunità di raccontarsi e raccontare la loro esperienza all'interno del sistema penale minorile, permane tuttavia il problema della scarsa capacità di concentrazione.

In generale, possiamo rilevare una discreta/buona conoscenza dei diritti di cui sono portatori e su cui abbiamo fondato la nostra ricerca. Maggiori lacune si sono riscontrate invece nei ragazzi a cui è stato somministrato il questionario (n. 36 questionari raccolti) rispetto a coloro che hanno partecipato ai 2 focus group (6+6 per un totale di 12).

Nello specifico, i ragazzi dei focus group sono parsi più consapevoli e informati sui loro diritti, forse perché, nonostante le domande chiuse e la struttura semplice del questionario, per loro è più facile esprimersi in piccoli gruppi, adeguatamente guidati dal facilitatore.

Per quanto riguarda il diritto principale, oggetto della Child Friendly JT, e cioè il diritto all'informazione, traduzione e interpretariato in tutte le fasi del procedimento penale, possiamo dire che è risultata una discreta/buona conoscenza dell'argomento sia da parte dei ragazzi che hanno risposto ai questionari, sia da parte di quelli che hanno partecipato al focus group.

Infine, ma non per questo meno importante, il risultato veramente interessante della ricerca riguarda la reale applicazione di questo diritto. Infatti, tra i minorenni/adolescenti coinvolti che hanno partecipato ai focus group è emerso il bisogno di ricevere informazione attraverso un linguaggio più chiaro e semplice.

Riguardo al diritto alla traduzione e all'interpretariato, inoltre, le esperienze personali dei ragazzi hanno dimostrato che mediatori e traduttori non sono sempre disponibili, nonostante la legge garantisca questo diritto ai ragazzi in conflitto con la legge in tutte le fasi del procedimento penale. Tale mancanza naturalmente influisce anche sul livello di capacità e possibilità di partecipazione dei ragazzi stessi.

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Sarà quindi necessario:

- definire approcci omogeni e interventi rivolti alla protezione dei minori che garantiscano la comprensione di tutte le fasi del procedimento;
- definire approcci che siano volti a regolare le relazioni e la cooperazione tra i vari servizi coinvolti (salute, istruzione, giustizia, pubblico /privato...) in una prospettiva multi-disciplinare;
- determinare approcci diretti a regolare le relazioni tra i servizi competenti e le istituzioni secondo un approccio olistico;
- informare adeguatamente il minore sui suoi diritti e doveri e garantire il diritto alla traduzione e all'interpretariato per i minori stranieri in conflitto con la legge;
- promuovere la partecipazione attiva e diretta del minore;
- garantire un ambiente adeguato e ascoltare il punto di vista del minore;
- sostenere e promuovere la partecipazione della famiglia, permettendo ai genitori di sostenere il loro figlio e ad assisterlo per tutto il procedimento.

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**NEEDS ASSESSMENT OF CHILDREN IN CONFLICT WITH THE  
LAW IN ITALY:  
REPORT ON THE RIGHT OF CHILDREN TO INFORMATION,  
TRANSLATION AND INTERPRETATION IN CRIMINAL  
PROCEEDINGS**

**1. INTRODUCTION**

The principal objective of this research is to promote child friendly justice and to improve the knowledge and understanding of relevant information in criminal proceedings for children/young people in contact with the law, as well as for their parents/holders of parental responsibility, through the use of a language adapted to their stage of development.

The project promotes hence children participation and sustain the efforts needed to make their rights clear and comprehensible, besides favouring a child-friendly approach.

An ad hoc study was carried out to assess the knowledge of minors about their rights, as well as to analyze the correct application of the Directives (2012/13/EU, 2010/64/EU, (EU) 2016/800). In specific, we wanted to collect the knowledge and perception that children and youths in conflict with the law have of the proceeding in which they have been involved, to better understand what they have been told, what they know about their rights and what they know about the proceeding in which they are involved and its consequences.

This report contains the key results obtained by the work done during this first phase through the submission of questionnaires and the development of n.2 Focus group as forecast by project description (see the following points).

**2. METHODOLOGY**

A mixed research methodology was adopted as highlighted: quantitative (questionnaires of needs assessment) and qualitative (focus groups). Result of this first phase is such European comparative analysis of needs assessment of minors.



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In specific:

### a) Questionnaires:

- N.36 questionnaires n.36 youths in conflict with the law with mainly with sentence of placement in community (art. 22 P.D. 448/88 – see also point 2.1). Questionnaires have been submitted in 8 different certified community in Veneto region managed by Istituto Don Calabria and not.

### b) Focus group:

- **Focus Group n. 1**, held in data 6<sup>th</sup> September 2018, location: **community San Francesco** (Istituto Don Calabria) - Minerbe (Verona, Italy).
- **Focus Group n. 2**, held in data 13<sup>th</sup> September 2018, location: **community il Girasole** (Associazione Iride) – Legnago (Verona, Italy).

To be stressed that among forecast activities, in both realities, a path targeted to hosted minors insisting on knowledge of penal procedure and legality was held so we included the 2 focus group within such path in order to give continuity to this action and have a feedback from youths about the impact of the same.

In some cases interviewed youths (both for questionnaires and focus groups) didn't experienced life in juvenile penal institution so the information collected comes from indirect ones received from peers or their educators/social workers.

As highlighted as well on conclusion, minors involved in questionnaires found them very difficult and the questions were definitely too much. It was very difficult for educators to maintain high the attention and they had to support them in answering clarifying some concepts and terms.

As for minors participating to the 2 focus group, indeed, were very interested in better understanding what's happening and what could happen to them after proceeding so the path and the focus groups have been as well an opportunity to clarify eventual doubts and/or deepen certain topic. What emerged is a certain awareness of the matter (penal procedures and related youths' rights) but as well the need to enhance knowledge on the same.

Focus groups represented furthermore the opportunity to make emerge youths' needs and eventual lacks that they found within the system in particular on the topic faced by

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Child friendly JT initiative i.e. right to information, translation and interpreting (Eu Directive 2016/800).

Last but not the least, from a pedagogical point of view despite the need to recall to youths they have specific rights but also duties, we could work on the sense of responsibility and on the impact that committed offence had, has and will have on themselves, on the victim/s and on the whole society.

### 2.1. Participants

**Target:** youths in execution of the sentence placed in community aged 14-25<sup>1</sup>. Given the type of service provided by Istituto Don Calabria (residential communities), we considered as well youths placed in our and other private but certified structures.

#### Questionnaires

- **Location:** Questionnaires have been submitted in 8 different certified community in Veneto region managed by Istituto Don Calabria and not.
- **N. of participants:** n.36.
- **Sex:** All involved youths were male as the structures contacted to implement research host only male.
- **Age:** involved youths were aged between 15 and 18 years. Average age 16,4.
- **Measure type:** Art.22 Presidential Decree 448/88 placement in community and in few cases Art. 28 probation.

All involved youths were male as the structures contacted to implement research hosts only male.

**Graph 1. Age**

Youth	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Age	15	17	16	16	16	17	17	16	15	16	16	17	17	16	17	16	17	16	16	17
Youth	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36				
Age	18	17	16	18	16	16	18	16	17	17	16	15	16	16	17	16				

<sup>1</sup> According to the Italian Law in force youths committing crime while underage can stay within the juvenile justice system till 25 years.

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**Focus group****Tavola 1 - Focus Group 1**

	SEX	AGE	NATIONALITY	CRIME TYPE	MEASURE TYPE	TIME INTERNMENT	CRIMINAL RECORDS
<b>P1</b>	M	17	Italy	Aggression	Art. 22 DPR 448/88 placement in community	30 days	Data not available due to privacy law in force
<b>P2</b>	M	17	Italy	Theft	Art. 22 DPR 448/88 placement in community	30 days	
<b>P3</b>	M	17	Italy	Theft	Art. 22 DPR 448/88 placement in community	90 days	
<b>P4</b>	M	18	Albania	Trafficking	Art 28 DPR 448/88 probation	455 days	
<b>P5</b>	M	17	Morocco	Theft	Art. 22 DPR 448/88 placement in community	Just entered	
<b>P6</b>	M	18	Moldova	Aggression	Art 28 DPR 448/88 probation	730 days	

- **Data:** 6<sup>th</sup> September 2018.
- **Location:** Community San Francesco (Istituto Don Calabria) - Minerbe (Verona, Italy).
- **N. of participants:** 6.
- **Sex:** All involved youths were male as the structures contacted to implement research host only male.
- **Age:** involved youths were aged between 17 and 19 years. Average age 17,6.



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- **Measure type:** Art. 22 Presidential Decree 448/88, placement in community and Art. 28 Presidential Decree 448/88 (Probation).

**Tavola 2 - Focus Group 2**

	SEX	AGE	NATIONALITY	CRIME TYPE	MEASURE TYPE	TIME INTERNMENT	CRIMINAL RECORDS
<b>P1</b>	M	17	Albania	Trafficking	Art. 22 DPR 448/88 placement in community	150 days	Data not available due to privacy law in force
<b>P2</b>	M	17	Italy	Damage		150 days	
<b>P3</b>	M	17	Italy	Aggression		60 days	
<b>P4</b>	M	17	Morocco	Theft		90 days	
<b>P5</b>	M	16	Italy	N/A		30 days	
<b>P6</b>	M	17	Albania	Fencing		150 days	

- **Data:** 13<sup>th</sup> September 2018.
- **Location:** Community il Girasole (Associazione Iride) – Legnago (Verona, Italy).
- **N. of participants:** 6.
- **Sex:** All involved youths were male as the structures contacted to implement research host only male.
- **Age:** involved youths were aged between 16 and 17 years. Average age 16,7.
- **Measure type:** Art. 22 Presidential Decree 448/88 placement in community.

**2.2. Instruments****Used tools**

To submit **questionnaires** and carry on the **n. 2 forecast focus groups**, we used the tools described here below. Kindly note that the forms have been provided by the



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coordinator (Fundacion Diagrama) while IDC staff carried on the translation of the same in Italian language.

### A. QUESTIONNAIRE

#### 1. Questionnaire form (in Italian language)

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**QUESTIONARIO DIRITTI MINORI IN CONFLITTO CON LA LEGGE NEI  
PROCEDIMENTI GIUDIZIARI**

Stiamo facendo una ricerca per capire quanto sono informati i minorenni **sospettati** o accusati di aver commesso un reato e sottoposti a procedimenti giudiziari. Ecco perché abbiamo bisogno del tuo aiuto e del tuo contributo.

Ti porremo una serie di domande inerenti diversi contesti o situazioni in cui si può trovare un minore sospettato o accusato di aver commesso un reato. Per favore leggi attentamente ogni frase e segna se secondo te è vera (**V**) o falsa (**F**).

Il questionario è anonimo. Ciò significa che non è necessario sapere chi ha risposto alle domande, perciò, non mettere il tuo nome o qualsiasi altro dato che possa identificarti.

Avremmo tuttavia bisogno di sapere quanto segue:

**Età:** \_\_\_\_\_

**Sei una/un:**  **ragazza**  **ragazzo**

**Da quanto vivi nel centro/ipm/comunità** \_\_\_\_\_

**A che tipo di misura sei sottoposto/a?** \_\_\_\_\_

### B. FOCUS GROUPS

#### 2. Focus group methodology (translated in Italian language)



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### 3. Designing and conducting Focus Group Interviews and Methodology brief: introduction to Focus Group

Such tools were the benchmark for conductors and observers, these documents haven't been translated as IDC staff organized a briefing with the staff of facilities where Focus Groups were implemented to explain them the initiatives (aims, activities and expected outcomes) and how the focus group had to be carried out (methodology, tools, FG guidelines...).

## C. COMMON TOOLS

### 4. Information sheet for participant

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**FOGLIO INFORMATIVO PER I PARTECIPANTI**

Siamo lieti di invitarvi a partecipare a questo progetto di ricerca. Non siete obbligati, la partecipazione è su base volontaria. La scelta di non partecipare non avrà alcuna ripercussione sul vostro percorso. Prima di decidere se partecipare o meno, è importante che capiate perché stiamo facendo questa ricerca e in cosa consisterà la vostra partecipazione.

Se avete dubbi, qualcosa non è chiaro o desiderate ricevere maggiori informazioni chiedete pure a noi.

**Obiettivi della ricerca**

Obiettivo della ricerca è promuovere una giustizia *child friendly*/a misura di minore e migliorare la conoscenza e la comprensione di quelle che sono le informazioni basilari del procedimento penale minorile per i minorenni stessi e i loro genitori/detentori della patria potestà. Ciò verrà fatto utilizzando un linguaggio adeguato alla loro maturità e fase di sviluppo.

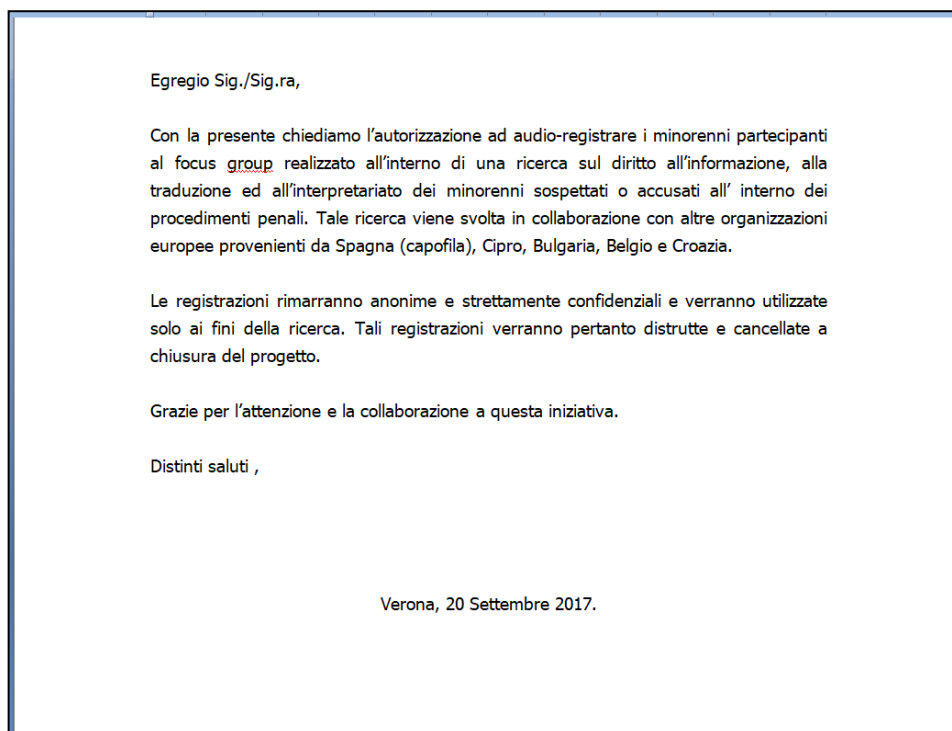
Siamo interessati a promuovere e a rendere possibile la partecipazione minorile e sostenere ogni sforzo per rendere chiari e comprensibili quelli che sono i loro diritti e rendere il procedimento penale minorile il più possibile *child friendly*/a misura di

### 5. Voice recording authorization

To be highlighted that, unfortunately, due to the delicate position of the youths and the difficult relation (in some cases) with the families (both with youths and with the services) **it wasn't possible to have the authorization to record the sessions.**

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### 2.3. Procedure

The Italian juvenile justice system (but let's say the Italian system in general) is characterized by strong bureaucracy. This represented a strong limit for our activities as we needed long times to have permissions and authorizations from our Ministry of Justice, Department for Juvenile Justice and community. The first step was hence to ask for formal authorizations and permission via certified e-mail and wait for their reply.

Once obtained the needed permission, the second step was to approach and recruit the minors, in specific, the following criteria have been considered during the recruiting process:

- Knowledge and understanding of Italian language;
- Type of measure (execution of the sentence detention in juvenile penal institution or placement in community);
- Interest in participating and motivation.

Of course referents for administering questionnaires, coordinators and educators of involved structures have been duly involved in the recruiting and selection process. Furthermore, some preparatory work was carried on with them in order to inform the same about the initiative and define timing/date and a common methodology.

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The third step was to approach youths, duly supported by facilities staff. The first thing was to explain those aims and objectives of the initiative and that participation was free and without any impact (positive or negative) on the penal procedure in charge. Last but not the least we highlighted that questionnaires answers were anonymous and results used only for research. The same happened for focus groups, indeed, we fixed the groups' rules and stressed that things emerged by the sessions were covered by privacy right and that their names wouldn't appear in the research report or other related documents collecting results<sup>2</sup>.

#### A) Questionnaires:

- **Location/Facilities:** questionnaires have been submitted in 8 different certified community in Veneto region managed by Istituto Don Calabria and not.
- **N. of administered questionnaires:** 36.
- **Selection criteria:** see above.
- **Time necessary to administer questionnaires:** indicatively 1,5/2 h. (including time to explain the activity and collect some feedback at conclusion).
- **Coordination:** Alessandro Padovani (Director - Istituto Don Calabria), Alessandra Minesso (Project manager – Istituto Don Calabria).

#### B) Focus groups:

- **Coordination:** Alessandro Padovani (Director - Istituto Don Calabria), Alessandra Minesso (Project manager – Istituto Don Calabria).

	FOCUS GROUP 1	FOCUS GROUP 2
<b>LOCATION/FACILITY</b>	Community San Francesco	Community il Girasole
<b>DATA</b>	6 <sup>th</sup> September 2018	6 <sup>th</sup> September 2018
<b>PARTICIPANTS</b>	6	6
<b>SELECTION CRITERIA</b>	See above	See above
<b>DURATION</b>	2 hours	1,5 hours
<b>FACILITATOR</b>	Alessandra Minesso	Alessandra Minesso
<b>OBSERVER</b>	Alessandro Balbo	Riccardo Pavan

<sup>2</sup> The information sheet for participants was very useful to this aim.

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### 3. RESULTS

#### 3.1. Police arrest

##### 3.1.1. Right of children to information

**Questionnaires and focus group:** Youths seems to be very interested in knowing what will happen during the process and which could be the consequences of committed offence. As for right to information during police arrest from questionnaires a discrete knowledge of the topic and of this right. The same could be highlighted for focus group, the right is known but there is the need to go deepen. As regards youths' needs, the need to be duly informed clearly emerged as well as the fact that despite the international and national law in force guarantees them such right the same is not always guaranteed or fully guaranteed in practice.

##### 3.1.2. Right of children to interpretation and translation

**Questionnaires and focus group:** as for right to interpretation and translation during police arrest even in this case both for questionnaires and focus group we can highlight a certain knowledge of the topic but there is the need inform better youths about such right. Replies given by youngsters tell us as well that such right is not always applied in practice, this clearly emerged from focus groups where minors stressed how sometimes they found difficult to understand what police was explaining them. This was valid for foreigners but also for Italians, indeed, it seems they received few information and certainly not in a clear and understandable language.

##### 3.1.3. Right of children to a lawyer

**Questionnaires and focus group:** all interviewed youths seemed to be well informed on this rights and the lawyer is a figure of reference for minors submitted to penal procedures. We can say that, after the family the lawyer is one of the figure of reference within the procedure for the major part of involved minors. In particular, the lawyer seems to be a referent figure within the procedure and this give origin to a professional and mutual trust relation based on confidentiality.

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### 3.1.4. Right of children to have the holders of parental responsibility informed

**Questionnaires:** the major part of involved youths seems to have a discrete knowledge of this right.

**Focus group:** in both cases minors demonstrated a good knowledge of this right and told to conductor their direct experience. Law in force prescribes that, after arrest, parents/holder of parental responsibility are immediately informed.

Concluding, the fact that in some cases (the minority both for questionnaire and focus groups) youths were partially aware about this, tell us that more information must be given and the application within daily practice of such right should be assessed.

### 3.1.5. Right of children to be accompanied

**Questionnaires and focus group:** discrete/good knowledge about such right. Interviewed youth demonstrated in fact to be aware about such right, furthermore from focus group it emerged once more how it is important for them to be accompanied and supported (from their family and from their lawyer) during such delicate phase.

### 3.1.6. Other important issues

**Questionnaires and focus group:** Good knowledge of right to be held separately from adults, to use audio visual means and to be put under arrest for no longer than 48 hours. Youths participating to focus groups demonstrated a certain knowledge of the topic and took the occasion to tell us their direct experience. The major part of them had a clear vision of these rights and made use of them during police arrest. Some uncertainties emerged indeed by questionnaires highlighting the need to go deepen.

## 3.2. Trial

### 3.2.1. Right of children to information

**Questionnaires and focus group:** discrete/good knowledge of these rights, a certain gap emerged also in this case between questionnaires replies and focus groups discussions.



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### 3.2.2. Right of children to be accompanied

**Questionnaires:** discrete knowledge of this right.

**Focus group:** it seems that, even in this case, for both groups, a good knowledge of the issue can be highlighted in both visited structures.

In both cases (questionnaires and focus groups) right to be accompanied by the family (first of all) and their lawyer seems to be a crucial issue.

### 3.2.3. Right of children to be present and participate

**Questionnaires and focus group:** Discrete/Good knowledge of the right to be present and participate in the court proceeding in the major part of youngsters participating to the 2 organized focus group and interviewed through questionnaires. Also in this case it emerged the need for a clear and understandable language (standardized and formal structure of the hearing and formal approach by the judge).

### 3.2.4. Right of children to individual evaluation

**Questionnaires and focus group:** discrete knowledge of the same, the direct experiences had in this field and collected during the organized focus groups seemed to be positive.

## 3.3. Sentence execution

### 3.3.1. Right of children to information

**Focus group:** good knowledge of the right to information during internment.

\* This right is not always applied, significant differences seemed to emerge among placement in community and detention in Juvenile penal Institute.

### 3.3.2. Right of children to family communication

**Questionnaires:** discrete/good knowledge of the topic, the major part of involved youths answered correctly. The support of the family seems to be crucial for these guys.

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**Focus group:** good knowledge of the topic, even in this case, such aspect seems to be crucial for youngsters participating to the 2 focus groups, family remains a referent point also in case of disadvantaged background.

### 3.3.3. Right of children to receive medical care

**Questionnaires and focus group:** in both cases the right seemed to be discretely known.

### 3.3.4. Right of children to education and training

**Questionnaires:** interviewed youths were discretely informed.

**Focus group:** discrete knowledge of the topic, an interesting discussion emerged during the second focus group in fact some of the youths asked for more information and an interesting debate/discussion among all involved minors started. It was hence an occasion for peer to peer education where youths shared their knowledge and experiences but also their feelings.

### 3.3.5. Right of children to religious freedom

**Questionnaires:** discrete/good knowledge on the topic emerged from given replies.

**Focus groups:** discrete/good knowledge on right to religious freedom during internment but the topic wasn't so interesting for the major part of minors participating to the 2 focus groups.

### 3.3.6. Right of children to have access to programs that foster their development and their reintegration into society

**Questionnaires and focus group:** Discrete knowledge of the right to access to programs fostering youths' social re-inclusion in the major part of involved youngsters. In some cases, a major awareness about benefits of such paths should be promoted as sometimes they perceive the participation to such programs as something mandatory and not as an opportunity.

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### 3.3.7. Right of children to individual evaluation

**Focus group:** discrete knowledge despite going deeper about the meaning of individual evaluation not all youths had clear it is not an interview to control them and how they are behaving or what they did but to understand and define the best educational project with them and for them.

## 4. CONCLUSION

As a premiss we have to stress that, as for questionnaire submission, in some cases, youths found questionnaire too difficult to fulfill and had to ask for support to their educator. Another issue is the length, in fact this youth have often difficulties in concentration so too long sentences or too many questions are not adequate for them. As regard focus group indeed, probably for these youths it's easier to express verbally and they loved to be the center of the attention and have the opportunity to tell their experience with the justice system even if the problem of concentration remained.

In general what emerged is a discrete/good knowledge of the rights on which we focused the research.

A certain gap emerged between youths participating to questionnaires (n.36) and those participating to the 2 focus groups (6 + 6 for a total of 12).

In particular youths participating to focus groups seemed to be more aware and informed about their rights maybe because despite close answers and the easy structure of questionnaires for them it's easier to talk and express themselves in small groups duly guided by the conductor.

As regards the core right, focus of Child friendly JT, i.e. right to information, translation and interpretation in all phases of criminal proceedings let's say that a discrete/good knowledge on the topic emerged both on youths fulfilling questionnaires and those participating to focus groups.

Last but not the least, what was really interesting was the application of this right, in fact, among youths participating to focus groups emerged the need to be informed in a clearer and plain language. As for the right to translation and interpretation indeed, direct experiences tell us that mediators or translator are not always available despite the law guarantees such right to minors in conflict with the law in all phases of the

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procedure. Such lack of course impact as well on the level of participation of the same youths.

It is hence necessary to:

- define homogeneous approaches and intervention addressed to youths' protection guaranteeing the comprehension of all phases of the procedure;
- define approaches aiming to regulate relations and cooperation among different involved services (health, education, justice, public/private..) according to a multi-disciplinary approach;
- define approaches aiming to regulate relations among competent services and institution according to an holistic approach;
- duly inform the minor about his rights and duties and guarantee translation and interpretation rights for foreign minors in conflict with the law;
- promote the active and direct participation of the minor;
- guarantee an adequate environment and listen to minors' point of view;
- support and promote family participation allowing to parents to support their child and accompany him/her during the whole procedure.