



## **CHILD-FRIENDLY JUSTICE IN UKRAINE: FROM A CONCEPT TO A WORKING MODEL (The state policy in the juvenile justice realm)**

### **Abstract**

This document is designed to support steps to create a basis for the formation of a domestic model of juvenile justice in Ukraine based on international children's rights standards in this area, in particular the concept of a child-friendly justice.

The purpose of the analysis is to assist the representatives of authorized governmental bodies and institutions in obtaining an overall assessment of the status of the juvenile justice system functioning, focusing their attention on the key problems in this area, and forming the basis for directing the state's actions to create an effective model of the child-friendly justice in Ukraine.

The recommendations given emphasize the importance of adopting a basic law on the juvenile justice. It is stated that the government policy in this sphere should be recognized as a separate area of activity of its bodies in the field of human rights, and its implementation should be based on the principle of "ensuring the best interests of the child". Attention is drawn to the need for greater inclusion, to the content of the national statutory instruments in this area, of the provisions of international instruments on the rights of the child, including the ones related to the juvenile justice.

This document has been prepared under the Matra 2017-2020 program of the Government of the Netherlands and supported by the Netherlands Section of the Defence for Children International organization (DCI-ECPAT NL). The document has been developed to support the implementation of the National Social Program "National Action Plan for the Implementation of the UN Convention on the Rights of the Child" until 2021 and the National Strategy for the reform of the juvenile justice system until 2023, as well as in the context of provisions of the Council of Europe Strategy for the rights of the child (2016-2021).

This generalization is intended for representatives of state agencies, services, and institutions, involved in the formation and practical implementation of the state policy in the field of juvenile justice (parliamentarians, heads and experts of central government bodies and local self-government bodies, judges, prosecutors, investigators, staff of the probation authorities, social services, special agencies and institutions for children, etc.) that have the ability to direct the vector of the state action towards the development of the child-friendly justice.

This document will also be useful for representatives of civil society, who today make a significant contribution to this process, and most importantly, have the desire to influence the public policy-making in this area.

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## Introduction

Protection of the rights of the child is an integral part of the Ukraine's human rights policy, affecting more than 7.6<sup>1</sup> million children – and these are the citizens of Ukraine only. Every year many children come into contact with the law and the justice system in this or that status: suspects / accused persons, persons who have committed an administrative offense, victims, and witnesses.

Ensuring that all children have access to justice is one of the prerequisites for existence of the rule-of-law state. International standards stipulate that every child should be guaranteed the right to a fair trial and respect for other rights and freedoms, and, taking into consideration the special status of the child, each child should also be provided with special care and assistance, giving priority to the best interests of the child.

That is why in many countries, including Ukraine, measures are being put in place to establish such child protection systems, including the ones related to children in contact with the law, which would be appropriate and adapted to their age, maturity, and development. For example, in recent years Ukraine has ratified a number of international conventions concerning the rights of the child, and a series of measures are being taken to strengthen the protection of children in terms of their right to proper support and care. In addition, a range of program documents are being implemented in the field of the rights of the child (the National Action Plan for the Implementation of the UN Convention on the Rights of the Child) and juvenile justice (the National Strategy for the reform of the juvenile justice system until 2023). Some time ago the national probation service was established and the foundations for specialization of investigators, prosecutors, and judges in criminal cases against minors were laid. With the support of international partners at the level of cities and regions of Ukraine, a series of pilot projects are being implemented to improve the protection of children in conflict / contact with the law.

However, despite the numerous state measures in the area of the rights of the child, both child protection and juvenile justice issues have not yet been properly addressed, in particular through the launch of functioning of a juvenile justice system. They have also not been resolved in accordance with the existing international standards in this field, although this approach at the state level is recognized as the central area of focus for development of the national legislation and the practice of its application in the field of human rights, which is also part of the Association Agreement between Ukraine and the European Union.

Not only the resolutions of the parliamentary hearings held in 2004, 2005, 2007, 2011, 2014, 2016, and 2017 are indicative of the deficiencies of the state policy in the field of the rights of the child. Alternative reports on the implementation of the provisions of the UN Convention on the Rights of the Child in Ukraine for 2002–2008, 2012–2016, and 2011–2018, and the Concluding Observations of the UN Committee on

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<sup>1</sup> Excluding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol.

the Rights of the Child on Ukraine submitted by it in 2002, 2007, and 2011, also highlight the existing systemic pain points.

The state of provision of children's rights in Ukraine was particularly affected by the aggravation of the socio-economic situation in the country due to the Russian aggression in 2014–2015, which forced the legislator, aiming to prevent a financial catastrophe and to create preconditions for an economic growth in Ukraine, even to cut down some social support programs for children.

That is why the shortcomings that exist in this area do not allow characterizing the attitude of the state and its bodies and agencies towards the child in conflict / contact with the law as the one aimed at giving top priority to the best possible ensuring of the child's interests and protecting his or her rights, including through the reintegration of the child instead of punishment and isolation. Moreover, such measures are not only quite cost-intensive for the budget, but also ineffective for crime prevention.

And the proper development of our country as a democratic and a rule-of-law state depends, of course, on the due resolution, based on the fairness and humanism, of the issue of protection of children's rights and arrangement of a juvenile justice in Ukraine, which would meet the international standards in this field. The prospects for the country's membership in the European Union also depend on this. Thus, at the level of the Concept of the National Social Program "National Action Plan for the Implementation of the UN Convention on the Rights of the Child" until 2021, it is determined that the process of Ukraine's accession into the European Union provides for the implementation of European standards and approaches to the enforcement of the rights of the child.

That is why this document should help representatives of the state, involved in the formulation and implementation of the state policy on the juvenile justice, to develop a vision of optimal ways for Ukraine to implement its own model of juvenile justice, based on the generally recognized international standards of children's rights in this field – in particular, the concept of the child-friendly justice.

According to the study made, exactly the concept of the child-friendly justice is one of the up-to-date and most humane among the juvenile justice models. This concept is recognized as one of the most effective at the level of international bodies and many countries, including the countries of the European Union. Because of its adaptation to the needs of children in accordance with their age, maturity, and development, the child-friendly justice is able to ensure the effective protection of the rights of the child in conflict / contact with the law, to contribute to the resolution of a range of legal and social problems of such a child, and, which is equally important, to protect the interests of the community and society.

According to the deep-rooted conviction of national and international experts who participated in the preparation, review, and elaboration of this document, the implementation in Ukraine of the concept of the child-friendly justice will result in the creation of a valid and efficient model of the juvenile justice, which would be truly child-friendly. Its implementation will undoubtedly help raise the protection of the rights of the child in conflict / contact with the law to a qualitatively new level and further promote and uphold the enforcement of human rights and freedoms in Ukraine.

Upbringing of children depends entirely on the attitude of the adults, not the attitude of the adults towards the problems of upbringing.

*Gilbert Chesterton*

## **1. National model of juvenile justice: current situation and problems of functioning.**

### **1.1. Origins of the formation of the state policy on the juvenile justice in Ukraine.**

The juvenile justice issue is not something essentially new to the law and legal practice of Ukraine. Attempts to resolve these issues were initiated more than one hundred years ago. The Statute of Criminal Proceedings of 1864 provided for the existence of special rules and procedures for dealing with minors in the proceedings. Starting from the beginning of the 20<sup>th</sup> century, special juvenile courts were established in Kharkiv, Kyiv, Odessa, Katerynoslav, and Mykolaiv. During the Soviet period, there were special commissions on juvenile delinquency. In 1971, the Criminal Procedure Code of Ukraine of 1960 was supplemented with a separate section "Proceedings in juvenile delinquency cases". With the advent of independence in 1991, Ukraine ratified the UN Convention on the Rights of the Child, and the Concept of the Judicial and Legal Reform in Ukraine in 1992 provided for the establishment of courts for consideration of family law cases and cases on minors.

Finally, the Criminal Procedure Code of 2012 introduced the specialization of investigators, as well as courts on the consideration of criminal proceedings concerning minors, while in 2017 the National Strategy for the reform of the juvenile justice system until 2023 was approved.

Therefore, paying special attention to the rights of children in the sphere of justice administration is a tendency inherent in the process of development of both the state and the law in Ukraine. It should also be considered as a reflection of the formation of our state as a European-type country, which is set up based on the principles of humanity and justice, as well as on the priorities of the universally recognized human values.

### **1.2. Juvenile justice: the issue of structure.**

When it comes to the juvenile justice, it should not be linked with a court and its activities only. In the broad sense, which is supported by a number of major international instruments in this sphere, the juvenile justice should cover the issues of both organization of the judiciary (the central body of this system) and the functioning of related institutions (advocacy, prosecutor's office, bodies of the pre-trial investigation, probation agencies, social services, and special institutions for children). That is why, in the process of formulation of the state policy in this field, it is expedient to consider the juvenile justice as a system designed to guarantee every child the right to a fair trial and respect for his or her other rights and freedoms. And this system should be operated on the rule-of-law principles in accordance with the European standards.

As for the content, such concepts as "the juvenile justice" or "the system of justice for children" are also used as a synonym for the "system of justice for minors" word combination, in particular in the legislation. At present, interpretation of the juvenile justice in Ukraine is mainly associated only with institution of criminal proceedings against a minor. However, taking into account the approaches of the European Court of Human Rights (*Engel v. The Netherlands*), certain safeguards specific to criminal charges within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms may apply during the consideration of a specific category cases involving administrative offenses. At that, the provision of such safeguards to minors is quite relevant, as administrative offenses are quite widespread among them<sup>2</sup>, which would be aligned with guarantees of the rights of the child in the event of criminal charges (Articles 37, 40 of the Convention on the Rights of the Child).

Such an approach requires a broader understanding of the content of the juvenile justice concept, which goes beyond the borders of criminal justice and criminal punishment only. In addition, when considering criminal cases, the court does not always pay attention to the issues of civil and family rights of the child involved in the legal proceedings.

### **1.3. State policy on the juvenile justice: the issue of content.**

The state policy in the field of juvenile justice, which is a reflection of the fulfillment of Ukraine's obligations under the ratification of the UN Convention on the Rights of the Child and a number of other international treaties in this sphere, has its own specificity and peculiarities.

Thus, it is simultaneously linked to both the state policy on the rights of the child and the state policy in the sphere of justice in general. And such a linkage of the juvenile justice with other equally important and topical issues in the sphere of human rights does not contribute to the vision of it as an independent area of activity of the Ukrainian authorities. There is certain dissipation of efforts and resources that should have been persistently focused on improving the juvenile justice realm.

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<sup>2</sup> According to the State Statistics data, these offenses were committed: in 2016 – with respect to 13,878 minors; in 2017 – with respect to 12,661 minors; in 2018 – with respect to 10,477 minors.

In particular, this can be confirmed by the provisions of six general and special concepts and programs in the sphere of human rights and justice administration, not implemented or only partially implemented in Ukraine over the last almost twenty-seven years, which included issues related to the juvenile justice. At some point, the concern about such a slow pace of reforms in the juvenile justice system in Ukraine was also expressed by the UN Committee on the Rights of the Child.

The plan of implementation of the National Social Program “National Action Plan for the Implementation of the United Nations Convention on the Rights of the Child” for the period until 2021 foresees the development of a system of justice for children through working out a corresponding draft law in 2019. However, taking into account the fact that 2019 is a year of the intensive political activity in Ukraine, the implementation of this idea may again be postponed for an indefinite period.

In addition, since the juvenile justice concerns a special category of persons – children, it should have certain meaningful specificity – particularly in relation to the purposes of the child’s treatment, as well as the content of the practices and procedures for such treatment, which is a requirement of the international standards – in particular, the UN Convention on the Rights of the Child.

The existing problems in the formation and implementation of the state policy on the juvenile justice mainly concern the insufficient reflection of this specificity in its content, directions, and measures for its implementation.

This results in a situation where the state policy in this sphere is insufficiently effective, while the domestic legislation on the juvenile justice does not fully comply with the requirements of international instruments in this field.

Therefore, the lack of deliberate, consistent, and systemic involvement, at the state level, of the legislative, executive, and law enforcement agencies in implementing new and improving existing practices and procedures, aimed at the best possible protection of the interests of the child, does not lead to the proper protection of the rights of children in contact with the law.

In addition, the economic factor of preventing juvenile delinquency and the financial effectiveness of certain measures of influence (especially detention in prisons and juvenile correctional facilities) are not always taken into consideration when developing programs, decisions, and regulatory changes. Interests of the community and society in terms of security and social peace are also not always taken into account. Consideration of these aspects, on the one hand, can save funds from the local and state budgets, and on the other hand, can become an effective factor in expanding forms and mechanisms of re-socialization of children in conflict with the law.

And although the Ukrainian Government notes that the state has achieved significant results in ensuring children's rights, however, these measures are not enough, as evidenced in particular by the study of the Alternative Reports on the Implementation by Ukraine of the provisions of the UN Convention on the Rights of the Child for 2002-2008, 2012-2016, and 2011-2018 (draft), "Analysis of the National Legislative Framework of Ukraine on the current system of protection of children in conflict with the law" (Defence for Children International (DCI-ECPAT NL) – the All-Ukrainian Foundation for Children's Rights), as

well as the Concluding Observations of the UN Committee on the Rights of the Child concerning Ukraine, which were provided by the Committee in 2002, 2007, and 2011 following the submission of periodic reports by our country.

As a result, we can see a situation where the administration of the state policy in this area, while formally ensuring the implementation of international standards for the protection of the rights of the child, still has not led to the creation of an effective mechanism for their protection in Ukraine, including through the formation of a system of justice for children, based on to the best international standards and practices.

#### **1.4. Legal framework for the juvenile justice in Ukraine: compliance with international standards.**

The peculiarity of the legal framework for the juvenile justice in Ukraine is the fact that children's rights and their guarantees, establishment of procedures for dealing with a child during the criminal proceedings, and grounds for application of coercive measures and legal liability must be determined solely by the laws of Ukraine (Article 92 of the Constitution of Ukraine). And although international legal treaties are also a part of the national legislation in this sphere, but only those ratified by the Verkhovna Rada of Ukraine (Article 19 of the Law of Ukraine "On International Treaties of Ukraine").

This circumstance in a certain sense decelerates the update of the legal framework for the juvenile justice in Ukraine and the process of bringing it in line with those international standards (the UN and Council of Europe guiding principles, the UN Standard Minimum Rules, etc.), which do not have the status of the ones ratified by the Verkhovna Rada of Ukraine. Their provisions are not included in the provisions of the national legislation. Only recently there appear official documents of the Government, where these statutory instruments get the status of standards in the juvenile justice sphere. However, they still do not have the status of a source of law, which deprives them of any regulatory influence on the relationship in this area and actions of the authorized persons.

Taking into account the above-mentioned peculiarities of the legal framework for the juvenile justice in Ukraine, references to international standards, which do not have the status of the ones ratified by the Verkhovna Rada of Ukraine, in the subordinate statutory acts (as a rule, these are a resolution or an order of the Cabinet of Ministers of Ukraine and letters of the highest judicial authorities) do not ensure the bringing of the national legislation in this sphere in line with the relevant international standards. Although at the official level, the Government has declared the position that regulations and provisions of international documents of a universal and regional nature should become a legal platform for standards in the juvenile justice sphere.

The Government notes that a number of statutory instruments have been adopted in recent years (the new Criminal Procedure Code, the Law of Ukraine "On Probation", etc.), aimed at improving the legislation on the protection of the rights of children, including minors, who are in conflict with the law. However, along with this, the Government acknowledges that there is still a range of problems that need to be resolved by Ukraine's implementation of the country's international obligations, in particular those that are conditioned by the ratification of the UN Convention on the Rights of the Child.



The position of the public (Alternative Reports on the Implementation by Ukraine of the provisions of the UN Convention on the Rights of the Child for 2002-2008, 2012-2016, and 2011-2018) and international institutions (Concluding Observations of the UN Committee on the Rights of the Child concerning Ukraine) regarding these deficiencies is more negative. In particular, the Alternative Report on Ukraine's observance of the provisions of the UN Convention on the Rights of the Child for the period from 2011 to 2018 indicates that both national legislation and practice do not contribute to the implementation of the ratified international treaties.

In addition, despite the upgrade, the current Ukrainian legislation does not contain definitions of, and does not define the content of, such categories as "juvenile justice", "child-friendly justice", "justice on minors", "juvenile judiciary", "children in conflict with the law", "children in contact with the law", etc. This does not allow to fully develop the approaches to solving problems related to the implementation and protection of the rights of these categories of persons, which fact does not contribute to the protection of the rights of the child in Ukraine.

This is the evidence to the fact that the legal and regulatory aspects of the state policy on the juvenile justice ensures the consolidation of the existing standards and peculiarities of the justice with respect to children in the national statutory instruments on a nominal basis only. Such a situation does not contribute to the formation of an effective mechanism for the protection of the rights of the child in Ukraine and the implementation of international (including the European ones) standards, practices, and approaches to ensuring the rights of the child in the practical activities of the authorized state bodies.

There are separate concerns about the state of justice regarding the consideration of cases on administrative offences (proceedings on such cases are regulated by the Code of Ukraine on Administrative Offenses). As for this Code, it is acknowledged by the Government that the existing procedures for instituting administrative actions are, to a great extent, obsolete, and the rights of persons being brought to administrative liability (while the importance of these rights is noted in a number of international documents) are not provided for by this Code. This situation needs to be resolved in a proper way.

### **1.5. National practice of the juvenile justice and the role of international standards.**

A court is the central chain link of the juvenile justice system, which fact stipulates the attention of the judicial branch to the issues of peculiarities in consideration of cases concerning minors – and this situation is reflected in the relevant programs (for example, in 2012, the Supreme Court of Ukraine, with the support of Agriteam Canada, concluded an agreement on implementation of the project “Reform of the Criminal Justice System for Juveniles in Ukraine), judgments and letters of higher courts, which are widely used in practice. But in many cases these programs are already completed and the acts are outdated and do not sufficiently take into account current international standards.

For example, the relevant Resolution by the Plenum of the Supreme Court of Ukraine “On the Practice of application of the laws on juvenile crimes by the courts of Ukraine”
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was issued on April 16, 2004, even before the new CPC came into force in 2012. However, it does not take into account both the new peculiarities of pre-trial investigation and judicial consideration of criminal proceedings concerning minors in the present-day conditions and the international standards for dealing with this category of cases. In its turn, the letter of the Superior Specialized Court of Ukraine for civil and criminal cases “On the practice of administration by the courts of criminal proceedings involving minors”, dated January 16, 2017, contains a reference to the international standards in the field of the protection of children’s rights, but, as of today, it is quite difficult to determine the role of such document in the law enforcement practice. Moreover, it does not address a number of problematic issues related to the administration of criminal proceedings involving minors.

In the opinion of the Ministry of Justice of Ukraine, existing problems in the sphere of administration of the law are caused by the imperfection of the national legislation. In addition, these problems are a result of the lack of systemacity in the activities of bodies and agencies on minors and their interaction with each other. Such a situation does not contribute to the formation of common and, most importantly, well-grounded approaches regarding the work with juvenile offenders.

At the governmental level, the ineffective inter-sectoral coordination in the integrated resolution of problems, related to the enforcement of children's rights, retarding the modernization of the existing system, is recognized as a weakness in the system of measures aimed at preventing offenses among children.

In turn, although showing certain results, the activities of the Interagency Coordination Council on Juvenile Justice, which was established in 2017, are of advisory and non-regulatory nature.

It is recognized by both the Government and public organizations that the mechanism of interaction between executive authorities and non-governmental organizations, engaged in the protection of children's rights, is not sufficiently effective.

Thus, there is a systemic crisis in the management of the process of formation and especially of the implementation of the state policy on the juvenile justice. And this does not take into consideration a number of disadvantages, related to non-compliance with the requirements of the international standards on the staff training in this field, since these international standards greatly emphasize the need for special training of all officials involved in the administration of the juvenile justice (the "Beijing Rules").

#### **1.6. Role of the child in the juvenile justice system.**

There is another problem that can be diagnosed in the context of the state policy on the juvenile justice – this is the nature of the child's participation in the administration of justice. This is in particular the requirement of Article 40 of the Convention on the Rights of the Child.

For example, in the content of the regulations, rules, and procedures of the juvenile justice and actions of authorized persons of the state, there is still a reflection of the well-known Roman law doctrine of “*parens patriae*” (“parent of the nation in law”), where the

state is recognized as the main caretaker of children. The consequence of implementation of such doctrine in the public policy, law, and practice is, in particular, the inactive nature of the child's participation in the consideration of his or her case, as well as the failure to take the child's opinion into account when making a decision regarding this child.

The fact that the existing system of protection of the rights and interests of the child in Ukraine is based on the approach to the child as an object of influence, and the child is being considered as an object of protection, and not a legal actor, has been taken into consideration by both the Government and human rights organizations. This is directly reflected in the state policy, legislation, and practice of its implementation.

Such a situation does not correspond to the current concept of children's rights, where, among the categories of rights provided for in the Convention on the Rights of the Child, there is a category of participation that defines children as legal actors and not the objects of protection.

The attitude of children and youth towards public authorities as a whole is an example of projection of this problem. Children and young people show low levels of credence to these institutions, especially the police and courts. For instance, on a scale from one to five, where 1 is a complete distrust and 5 is an absolute trust, the indicators of credence of young people are as follows: the Verkhovna Rada (1.81), political parties (1.85), the Government (1.87), courts (1.98), the President (2), local authorities (2.37), civil society organizations (2.38), the police (2.43), the media (2.55), army (2.86), volunteer movements (2.98), and church (2.99). None of these institutes has surpassed the average mark of 3 at the national level<sup>3</sup>. In another study on a 5-point scale, the level of trust was as follows:

Towards courts: from 0 to 2 - 66.44% of minors interviewed, 3 – 17.42% of respondents, and 4 to 5 – 16.13% of respondents;

Towards the police: from 0 to 2 – 61.9% of the juvenile respondents, 3 – 21.94% of respondents, and 4 to 5 – 16.77% of respondents<sup>4</sup>.

It is entirely reasonable that such distrust is explained by the deficiencies in the functioning of the justice system, with children participating in it, and the system of dealing with minors in general, since both of these systems are not child friendly.

### **1.7. Implementation of the "ensuring the best interests of the child" principle.**

The UN Committee on the Rights of the Child attributes this principle to the list of the leading principles of the comprehensive policy on the administration of juvenile justice. The latest official acts of the Government also recognize ensuring the best interests of the child as a top-priority ground for the formation and implementation of the child-friendly justice.

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<sup>3</sup> Ukrainian "Generation Z": Attitudes and Values – the nationwide poll "Youth of Ukraine 2017". URL: [http://neweurope.org.ua/wp-content/uploads/2017/11/Ukr\\_Generation\\_ukr\\_inet-2.pdf](http://neweurope.org.ua/wp-content/uploads/2017/11/Ukr_Generation_ukr_inet-2.pdf).

<sup>4</sup> N.V. Ortynska. Legal status of a minor: theoretical and legal research: dissertation for Doctor of Juridical Science. Lviv, 2017. 524 p.

A peculiarity of this principle is also a fact that it must simultaneously be implemented both in the content of the state policy on juvenile justice, the provisions of legislative and by-law acts in this field, and in the content of practical activities of authorized entities dealing with children in conflict / contact with the law. This involves incorporating appropriate mechanisms (practices and procedures for the treatment of minors) into the statutory instruments and developing a system of criteria and algorithms for evaluating the interests of the child by authorized actors (such as judges, social workers, etc.).

And although this provision is mentioned, in particular, in the Law of Ukraine "On the Protection of Childhood", it is virtually non-existent in its further meaningful implementation in the statutory instruments, related to the juvenile justice, or is not included into the list of criteria for evaluation of the best interests of the child in these statutory instruments.

Therefore, it has not found its proper consolidation and implementation in the national legislation and the practice of its application.

The UN Committee on the Rights of the Child observes that the application of the principle of the best interests of the child should be based on the obligation to systematically consider, by each legislative, administrative, or judicial body or institution, how their decisions and actions affect or may affect rights and interests of children. The best interests of the child are a complex concept that covers the child's interests themselves and concerns the child in the context and connection with his or her family and the community. That is why the "safeguarding the best interests of the child" should be conducted on a multidisciplinary (comprehensive) and fast (within a reasonable time) basis and be as easy as possible for the child.

Unfortunately, the Government acknowledges the fact that, despite the existence of legislative provisions for taking the views of the child into account, there is no mechanism to ensure the best interests of the child in the process of the state policy planning. In addition, the problem of implementation of this principle is connected with the fact that drafts of statutory instruments are not reviewed for compliance with the principles of the Convention on the Rights of the Child.

The best way to make children good is to make them happy.  
*Oscar Wilde*

## **2. Options for addressing the problems**

Introduction of an effective model of the juvenile justice in Ukraine is associated with a number of problems that require taking various measures of legal, organizational, socio-economic, and ideological nature. But most of all, it concerns the need to change the approaches of the state and its legislative, judicial, and executive authorities to the formation and implementation of the policy in this field and changes in the national legislation, as well as to practical activities in the sphere of juvenile justice administration by the replacement of the existing practice with the child-friendly justice.

Each of these measures represents a separate element of activities in solving the current problems, but on the other hand, they must be introduced and implemented in an integrated manner, which contributes to the general goal of ensuring the best interests of the child. This is the goal, which, as the world practice proves, can most effectively be achieved within the framework of the functioning of a special system – a justice system for children, or a juvenile justice. And in this regard, the UN Committee on the Rights of the Child urged Ukraine to introduce a juvenile justice system back in 2011.

### **2.1. Changes in the state approaches to the development of the juvenile justice policy.**

While analyzing the procedural norms and views of the state on the formation of policies in this sphere, it can be noted that currently there is significant strengthening of the trend towards humanization of the process of dealing with minors in conflict with the law. However, the state still maintains the model of the juvenile justice, mostly based on the punitive approach. Although at the level of the Government it is admitted that introduction of an individual educational approach in contrast to the punitive approach is a truly promising trend in this field.

US researchers note that punitive policies are much more costly (such measures cost an average of \$241 per day (\$88,000 a year)) than alternatives aimed at the youth development, family support, and community integration (community programs for youth cost only \$11 per day). The latter also reduce the offence repetition rate by an average of 55%, compared to 22% in the former approach. The fiscal burden is supplemented with the additional costs that result from ineffective policies, including: higher costs of social support; higher recidivism rates, including costs for future victims of crimes; former prisoners face legal discrimination in employment and housing, etc.

A step in changing the approaches of the state to the formation and implementation of policies in the field of juvenile justice is the introduction of a mechanism for the withdrawal of a child in conflict with the law from the customary system of justice, alongside with the use of alternative measures (supervision or guardianship; provision of assistance with social adaptation; financial penalties, compensation and restitution; community service; participation in group psychotherapy and similar activities; mediation (restorative justice), etc.). All of these options should more effectively contribute to destigmatization of children, who have committed an offense. Moreover, these changes are fully in line with the requirements of international standards in the sphere of juvenile justice (in particular, the "Beijing Rules").

Starting from the beginning of 2019, the Prosecutor General's Office and the Ministry of Justice of Ukraine have been launching a pilot project, which provides for the possibility not to initiate criminal proceedings against children who have committed a minor crime. The program provides for the withdrawal of juvenile offenders from the criminal process by undergoing a reconciliation (mediation) procedure with the victim

and compulsory measures to re-socialize the minors. The program implementation period is 6 months. Later on it can be fixed at the legislative level.

Mediation (restorative justice) has a great potential in combination with other social support measures and the education of a minor in conflict with the law to reduce punitive influence on such a person and to protect the interests of both victims and the community. This approach makes it possible not to apply, against minors, any measures of a punitive nature that are not sufficiently effective and economically justifiable. It also helps to compensate the victim for the harm caused and to establish a mutual understanding between the victim and the offender. In addition, it takes into consideration the interests of the community (the minor remains in the community, can take part in the community service useful for the local residents, and the state funds are not spent on the minor's allowance).

In June 2019, the non-governmental organization called Institute of Peace and Understanding (IPU), together with the Criminal Cassation Court within the Supreme Court of Ukraine, held an organizational meeting of the Coordination Council within the framework of the project "Implementation of the Restorative Justice in Ukraine" with the financial support of the United Nations Democracy Fund (UNDEF).

The aforementioned examples of steps to be taken by the public authorities to expand the use of mediation (restorative justice), along with the implementation of other practices at the legislative level, will contribute to the saving of public resources and may be beneficial to society, since the minor is not excluded from the community but is included in its socio-economic life.

That is why the state should focus its activities on the implementation of one of the most important principles of the child-friendly justice – the principle of retrenchment of the criminal repression, which should expand the range of opportunities for the withdrawal of a child out of the criminal proceedings and criminal liability.

The implementation of such an approach is also a factor in saving the resources of the justice system, which is quite costly.

There is a need for policy changes and a legislative solution to the issue of application of coercive measures of an educational nature against persons under the age of criminal liability, since the procedure itself is reminiscent of bringing a person to criminal prosecution, which is not in line with the position of the UN Committee on the Rights of the Child on the juvenile justice cases.

It is also important to direct the vector of the state policy on the dissemination of additional guarantees for young adult malefactors (for example, the ones aged from 18 to 21 years). This will be consistent with paragraph 3.3. of the Beijing Rules, indicating that efforts should also be made to extend the application of the principles embodied in the Rules to young adult offenders.

This problem can be seen through the example of the Supreme Court's conclusion (Case No. 198/8/17, Proceedings No. 51-609 km 1) that the appellate court's application of coercive measures of an educational nature to the accused, who had reached the age of majority at the moment of consideration of the petition, is an unconditional ground for revocation of the judgment. This position is also enshrined in paragraph 1 of the Resolution by the Plenum of the Supreme Court of Ukraine No. 2 “On the Practice of courts’ consideration of cases on application of coercive measures of an educational nature”, dated May 15, 2006, according to which the law provides for the application of coercive measures of an educational nature exclusively to minors – that is the person must be a minor not only at the time of commitment of the crime, but also at the time of the case consideration by the court.

## **2.2. Improvement of legislation on the juvenile justice.**

An important element in introduction of an effective model of the child-friendly justice in Ukraine is the upgrade of the legislative framework, which would be capable of not only filling the existing gaps, but also of contributing to implementation of the international standards into the legal system of Ukraine and of becoming the legal basis for introduction of new approaches to protecting the rights of the child.

The upgrade of the legislative framework, in particular, in this area has been envisaged by such acts as the National Social Program “National Action Plan for the Implementation of the UN Convention on the Rights of the Child” until 2021, the National Strategy for the reform of the juvenile justice system until 2023. In particular, they set out the tasks to develop a child-friendly justice system and to introduce the juvenile justice in the country.

An integral part of the legislative update is the need to expand the list of measures of influence applicable to minors, which is currently limited, inefficient and does not meet the international standards in terms of availability of a wide range of means of influence (paragraph 18 of the Beijing Rules).

Proceedings in cases involving administrative offenses also deserve serious criticism and, at a minimum, require the implementation of the basic guarantees of individual rights in the field of legal proceedings.

The adoption of a special Law on Juvenile Justice as a comprehensive statutory instrument, which would consolidate a number of principles in the field of the protection of children’s rights and become the basis for the national model of the child-friendly justice, should be a fundamental step in addressing legislative gaps and improving the national legislation in this sphere.

## **2.3. Upgrade of the law enforcement practices in the juvenile justice.**

The UN Committee on the Rights of the Child notes that the predominantly punitive approach, which is implemented in practice, fails to comply with the juvenile justice guidelines, since social and educational interventions are much more in line with the

objectives of the Convention on the Rights of the Child and have proved to be more effective in practice, including the efficiency from an economic point of view.

One of the areas for the upgrade of the law enforcement practice as a child-friendly justice practice is the comprehensive focus of efforts to solve the existing problems of all state institutions, relevant to this field.

Part of this should be the implementation of the globally acknowledged multidisciplinary approach in analyzing the situation (case) of a child in conflict with the law, when relevant experts not only conduct the assessment of the needs and risks of the child, but also take into account his or her individualities and circumstances of the offense.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) draw attention of the states to the fact that there is a need to make efforts and create appropriate mechanisms to promote, on an interdisciplinary basis, the interaction and coordination of activities of economic, social, educational, and medical organizations and services, the justice system, youth and civic organizations, institutions, etc.

One of the important aspects of ensuring the observance of the rights of the child is the further improvement of the provision of legal assistance. In addition, an important guarantee consists in the creation of requirements on the availability of the appropriate experience and special training of persons providing legal assistance to minors, which will be in line with the recommendations of the UN Committee on the Rights of the Child and the requirements of the Committee of Ministers of the Council of Europe Guidelines on the child-friendly justice.

There is also a need to adapt the premises of the courts and the police for consideration of cases involving children. As of today, a number of facilities of these public authorities have no appropriate courtrooms or special rooms for interrogation of children who became victims or witnesses of crimes (the so-called "Green rooms"), which fact adversely affects the consideration of this category of cases.

The draft amendment to the State Building Regulations proposes to adapt the buildings and premises of the courts to the needs of visitors with young children. It is not just about arranging a playing area for children (a baby room) in the public space of the courts, but also designing a separate room – a "little witness" – for juvenile participants of legal proceedings who sometimes need to testify during a court hearing.

One of the conditions for introduction of the juvenile justice in Ukraine is the proper training of investigators, prosecutors, judges, and lawyers, including the training on their use of child-friendly practices in cases involving children in conflict with the law. In a certain way, the society itself, especially at the level of local communities, is not ready to perceive new approaches to dealing with of juvenile offenders.

#### **2.4. Approaches to choosing the best child-friendly justice model for Ukraine.**



The analysis of the experience in the juvenile justice in many countries proves that each of the states has been formed, to a certain extent, its own model of the juvenile justice. Each of them has its own peculiarities and has been chosen by the state concerned, taking into account its legal traditions and the content of its policies in the field of the protection of children's rights.

For Ukraine, it is important to choose such a model of the juvenile justice, which would take into consideration not only the real situation in the sphere of protection of children's rights in the country, but also legal traditions and domestic experience in this area. At the same time, the interests of territorial communities, society, and the state, which suffer from ineffective state policy in the field of juvenile justice and spend money for its realization, also cannot be ignored.

For example, the arrangement of separate courts for minors at the state level creates quite extensive opportunities for the protection of the rights of the child and represents a universal model. However, with the current political and socio-economic situation in Ukraine, creation of such a model is not promising enough.

As of today, Ukraine already has a model of specialized judges, but only in the field of criminal justice – although it is not sufficiently effective as well. Such ineffectiveness is, first of all, based on the fact that it fails to cover all aspects of the situation a minor has come to and does not comply with the criteria of the child-friendly justice.

That is why it would be expedient to give preference to such a model that would actually ensure the implementation, in the state policy, legislation, and the law enforcement practice, of the principle of the "best interests of the child" (which is conditioned by Ukraine's obligation to implement the UN Convention on the Rights of the Child) and would become the basis for the development of child-friendly justice, as well as a means of reintegrating a child in conflict with law into society.

That is why it is necessary to create a system that would, first of all, ensure the specialization of all actors the child comes in contact with in the system of justice (victims, witnesses, offenders in petty cases, etc.), and secondly, would promote the introduction of the multidisciplinary approach, when the best interests of the child are evaluated in a multidisciplinary manner by various specialists.

The introduction of a domestic model of juvenile justice in Ukraine requires ensuring the participation, in the process of pre-trial and court proceedings based on the child-friendly justice, of not only specialized investigators, prosecutors, and judges, but also attorneys, mediators, probation agencies, and psychologists. Such a model also requires the involvement of representatives of the local communities and the civil society organizations in the administration of justice, because they play an important role in protecting the rights of the child, but have no defined status and grounds to participate in this process.

A child needs your love most when he deserves it least.  
*Erma Louise Bombeck*

### **3. Conclusions and recommendations.**

At the beginning of the document, it was noted that each country created its own system of protection of the rights of the child, including children in contact with the law. But in most countries, including the states of the European Union, such systems are responsive to and adapted to the child's age, maturity, and development, as they are based on the concept of the child-friendly justice. This property integrates and characterizes the direction of development for the system of protection of the rights of the child and juvenile justice in democratic countries. Therefore, it is expedient for Ukraine, which is a democratic, social, and a rule-of-law state, also to take this approach in the field of juvenile justice.

The conducted research indicates that the state policy on the juvenile justice and the practice of its implementation are marked by serious shortcomings. For instance, the juvenile justice system does not sufficiently comply with the requirements of international standards on the rights of the child and justice for children; the procedures for dealing with children in contact with the law often do not meet the requirements of ensuring of the best interests of the child; and the forms and methods of consideration and resolution of cases involving minors very often are carried out similarly to the proceedings for adults. In such circumstances, the juvenile justice system has few grounds to achieve the goal of ensuring of the best interests of the child and to create conditions for re-socialization of children in conflict with the law, as well as to take into account the interests of the community and society in terms of maintenance of public security and social peace.

The implementation of the state policy on the juvenile justice should cover or take into consideration the following issues:

1. Adoption of a law on juvenile justice (on justice for children) is required in the near future. The results of the analysis of the national juvenile justice legislation and the practice of its implementation indicate that the adoption of such a law will ensure the coordination of the activities of the state bodies forming the justice system for children, will contribute to a more effective impact on the juvenile delinquency, and will create preconditions for further improvement of activities on the protection of children's rights in Ukraine.

2. It is important to provide the state policy on the juvenile justice with the status of a separate line of activity of its bodies, both at the national and local levels in the field of human rights, and to recognize it as an integral part of the activity for the protection of the rights of the child. This will ensure both purposeful activity of the state bodies in this field (central government authorities, court, public defenders' office, prosecutor's office, pre-trial investigation agencies, probation and social services, special institutions for children, etc.) and the systemic and comprehensive solution of those problems and challenges (legal, organizational, socio-economic, etc.) that are encountered on the road of implementation of the juvenile justice system in Ukraine.

The state policy on the juvenile justice in Ukraine should become a continuation of previous inventions in this area and gain its new development and contents in accordance with the European integration course of our country.

3. The national model of the juvenile justice in Ukraine should be based on international and European child-friendly justice standards. At the same time, it is important to take into account the existing standards of practices in dealing with children in contact with the law and the national legal traditions and practices. Such an approach will contribute to a more comprehensive protection of the rights and interests of children, the possibility of more effective re-socialization of the child in conflict with the law, and saving of public resources. It will also contribute to the protection of interests of the community and society in terms of maintenance of public security and social peace.

4. The basis for the formation of a model of juvenile justice in Ukraine should be created taking into consideration the following:

- When formulating and implementing the state policy: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and a number of other statutory instruments;

- When updating the national legislation: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, relevant recommendations of the Council of Europe to the member states on the justice and impact on the juvenile delinquency, and a number of other statutory instruments;

- When improving the law enforcement practice: General Comments of the UN Committee on the Rights of the Child, relevant recommendations of the Council of Europe to the member states on the justice and impact on the juvenile delinquency, and a number of other statutory instruments.

- The relevant guidance from the supreme judicial authorities regarding the practice of consideration and resolution of cases involving minors shall be subjected to update.

4. The state policy and the legislative resolution of the issue of forms for dealing with minors in conflict with the law and the system of measures of influence on such persons need to be changed. Priority should be given to the implementation of programs for the withdrawal of juvenile offenders from the criminal proceedings through the application of social rehabilitation measures and the education of minors in conflict with the law. In the short term, such steps will contribute to improvement of the efficiency and operability of the juvenile justice system. In the time following, they will further lay the groundwork for overall reformation of the system for prevention and counteracting offenses in the state and for strengthening the protection of victims and the interests of the community.

5. It is expedient to establish an executive body on the rights of the child under the Cabinet of Ministers of Ukraine. This body should get the functions of organizing the execution, by the Government, of the powers to ensure the rights of the child in Ukraine, including the ones related to the juvenile justice. It should also deal with coordination of the central government authorities in this field, monitoring of the Government's acts on observance of the state policy in the sphere of child rights, and interaction with civil

society. It would be also expedient to resolve the issue of liquidation of the Office of the Children's Right Commissioner for the President of Ukraine – with redistribution of part of the budget allocations and the staff of the Office of the Children's Right Commissioner for the President of Ukraine in favor of the Children's Right Commissioner for the Government.

6. The status of the state government authorities and local self-government bodies as the main actors for the fulfillment of Ukraine's obligations to implement the provisions of the UN Convention on the Rights of the Child and a number of other international treaties, ratified by the Verkhovna Rada of Ukraine, should be legally enshrined at both national and local levels. The list of conductors of the state policy on the juvenile justice in Ukraine, taking into consideration the requirements of Article 3 of the Ukrainian Constitution, shall include representatives of the legislature (as subjects of formulation of this policy), of the executive power and local self-government (as subjects of implementation and support), and of the judiciary and related institutions, including the civil society (as subjects of implementation of child-friendly programs and practices related to children in contact with the law).

7. It is important that the system of justice for children (a juvenile justice system) should be capable of providing every child with the right to a fair trial and respect for his or her other rights and freedoms. This should be ensured regardless of the status of the child in legal proceedings by giving a primary consideration to the best possible ensuring of the child's interests, taking into account his or her opinion and comprehensive assessment of his or her interests. This approach will contribute to enhancement of protection of the rights of the child in conflict with the law and further promote and uphold the respect for human rights and freedoms in Ukraine.

8. It is necessary to introduce procedures and practices for dealing with children that would be adapted to the characteristics of their age, maturity, and development, as well as to create for a child, being a party to the pre-trial or judicial proceedings in any status, the conditions for active participation in the proceedings as a legal actor and not as an object of protection. There is also a need to establish conditions (rules, procedures, and guarantees) for the expression and consideration of the child's opinion by the competent authorities.

9. In the process of formulation and implementation of the state policy in the field of the rights of the child, development of programs, decisions, strategies, and changes to the statutory instruments, including the ones related to the juvenile justice, it is important to take into consideration the "ensuring the best interests of the child" principle. This should be reflected in the provisions of both laws and by-laws, including by way of their review for compliance with the principles of the Convention on the Rights of the Child. This approach will help to focus attention specifically on securing the rights of the child and eliminating those negative factors that lead to their restriction or violation. The "interests of the child" as an evaluation notion shall be subject to assessment each time in respect of every minor in conflict with the law before any decision about the child is made by various experts – as a manifestation of the multidisciplinary approach.

10. In the process of formulation and implementation of the state policy in the field of the rights of the child, development of programs, decisions, strategies, and changes to the statutory instruments, including the ones related to the juvenile justice, it is important to calculate the economic feasibility and effectiveness of implementation of these or those measures and programs, as well as their ability to promote the protection of interests of the community and society in terms of maintenance of public security and social peace.

11. It is important to build the talent pool of the child protection system in Ukraine. That is why there is an urgent need for development and implementation of new training programs, courses, and workshops (and improvement of the existing ones) for the staff of the system of agencies, services, and special institutions for children, in particular:

- For representatives of all agencies, services, and special institutions – the training course on the rights of the child with issuance of a certificate as a condition for carrying out activities related to minors;

- Thematic training programs, courses, and workshops on the basic activities for protection of the rights of the child for the relevant agencies, services, and special institutions (prevention of offenses, prevention of domestic violence and bullying, peculiarities of interrogation and investigative activities with minors, etc.).

12. There is a need to provide the public with more information on the juvenile justice reforms. Therefore, in order to improve the public perception and support of the process of creating a system of justice for children in Ukraine, it would be expedient to carry out (at the national, regional, and local levels) thematic information and awareness-raising campaigns both about the goals of the reform and its benefits and positive consequences and about the protection of the rights of children in general in particular areas (bullying, drive against domestic violence, control of smoking and drug abuse, social support for children, juvenile justice, etc.).

13. It is advisable to introduce, at both the national and local levels, a system for monitoring the protection of children's rights in Ukraine, including the monitoring of the status of the juvenile justice system functioning and of the public opinion on their implementation. Such steps will enable more flexible adjustments and expeditious measures for implementation of the state policy on the rights of the child, including the ones related to the juvenile justice.

14. It is important to perceive the issue of protection of the rights of the child and the juvenile justice as part of the broader agenda of human rights and freedoms in Ukraine as a democratic, social, and a rule-of-law state, where the promotion and upholding of human rights and freedoms are its main responsibility. This emphasizes the fact that the resolution of problems in the field of the rights of the child should be carried out in the light of this constitutional provision, which is a reflection of the generally recognized international human rights standards in the modern world and a signpost on the way to realize our country's strategic course for getting a full membership of Ukraine in the European Union.

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