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Juvenile Offenders in Slovene Criminal Law

ABSTRACT: *This contribution provides a brief overview of the Slovene juvenile justice system and its status as of September 2024. I begin by introducing the relevant substantive and procedural provisions. This de lege lata introduction is key to understanding the second part of this contribution, which focuses on three topical issues. First, criminological perspectives are explained by introducing relevant statistical data that evidence issues, such as: (a) a sharp increase in (perceived?) juvenile criminality in year 2023, (b) a high percentage of repeat juvenile offenders (recidivism rate), and (c) a disproportionately high number of male, Roma, and Muslim offenders. Second, the struggle for a dedicated juvenile justice legislation and the recent push for a firmer juvenile justice approach are explained. Finally, the latest findings of the Slovene Human Rights Ombudsman are presented.*

KEYWORDS: *Child offenders, Slovenia, educational measures, recidivism, Roma, juvenile prison, juvenile justice*

1.

Educational Measures and Sanctions for Juvenile Offenders

Slovenia does not have a comprehensive legislation covering juvenile sanctioning or procedure. Instead, sanctions and educational measures for juvenile offenders are detailed in the old Criminal Code (KZ-94)¹ from 1994 and were deliberately excluded from the new Criminal Code-1 (KZ-1)² from 2008.

Under Slovene criminal law, juvenile offenders are sanctioned to ensure their rehabilitation, and provide education, re-education, and proper development through

1 Kazenski zakonik (KZ), Uradni list RS, št. 95/04 – uradno prečiščeno besedilo in 55/08 – KZ-1).

2 Kazenski zakonik (KZ-1), Uradni list RS, št. 50/12 – uradno prečiščeno besedilo, 54/15, 6/16 – popr., 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP in 16/23.

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protection and assistance, supervision, professional training, and the development of a sense of personal responsibility.

While addressing children and juvenile offenders, the possible sanctions to be imposed on the offender vary depending on his age. For children – offenders not yet 14 years of age – the criminal substantive legislation is not applicable (Art. 71 KZ-94) and they cannot be tried in criminal law courts (Art. 452 of the Criminal Procedure Act - ZKP³). In such cases, the child or underage offender involved in committing a criminal offence is handled through social welfare services.

The second group are younger juveniles – offenders who were 14 years of age at the time of committing the offence but not yet 16 years of age. For this group of juvenile offenders, only educational measures may be imposed.

In some cases, only a reprimand may be issued, comprising a warning that the court may impose a more severe criminal sanction if the individual commits a new crime (Art. 76 KZ-94).

Instructions and prohibitions – The court can choose between 11 options (Art. 77 KZ-94), including involuntary humanitarian work, involvement in a social training programme, regular school attendance, prohibition from driving a motor vehicle, and similar other prohibitions. Instructions such as involuntary humanitarian work are temporally limited (e.g. 60 hours over a three-month period for settlement with the injured party by the juvenile perpetrator) and must be arranged in manner that the minor's schooling or employment is not hampered.

Supervision by a social welfare centre may be imposed to have a lasting influence on the juvenile offender's education and proper development (Art. 78 KZ-94). This supervision may not be less than 1 year or longer than 3 years.

If the juvenile offender needs to be removed from his environment and placed under the constant supervision of professional educators to achieve (re)education goals, he may be committed to an educational institution (Art. 79 KZ-94). Again, this educational measure is subject to temporal limits – a minimum of 6 months and a maximum of 3 years.

The most disruptive educational measure that may be used as a last resort is transferal to a re-education institution for a minimum of 1 year and not longer than 3 years (Art. 80 KZ-94). There is only one such re-education institution in Slovenia – the Re-education home Radeče. It has a capacity for 47 juveniles, with 13 offenders being held there as of the end of 2022.⁴

The final educational measure is the committal to an institution for physically or mentally handicapped youth – a so called “training institute” (Art. 80 KZ-94). The

3 Zakon o kazenskem postopku (ZKP), Uradni list RS, št. 176/21 – uradno prečiščeno besedilo, 96/22 – odl. US, 2/23 – odl. US, 89/23 – odl. US, 53/24, 93/25 – ZNUZJV in 10/26 – ZKOM.

4 Uprava Republike Slovenije za izvrševanje kazenskih sankcij, 2023, p. 15.

offender remains in a training facility for as long as necessary for his or her training, treatment, or care, but not for more than 3 years. Currently, there are five institutions in Slovenia that undertake such training programmes: CUDV⁵ Dolfke Boštjančič Draga and CUDV Matevža Langusa Radovljica in the Western Slovenia cohesion region and CUDV Črna na Koroškem, CUDV Dobrna and CUDV dr. Marijana Borštnarja Dornava in the Eastern Slovenia cohesion region. As of August of 2024, available capacity for whole-day care was 1 person in Western Slovenia and 11 in Eastern Slovenia.⁶

The third group of offenders are older juveniles – offenders who had attained 16 years of age at the time of committing the offence but were not yet 18 years of age. For this group of offenders, criminal law punishment type of sanctions may be imposed if the education measures are not adequate. Thus, as a rule, educational measures should be imposed, and a punishment may be imposed only in exceptional cases.

A financial penalty may be imposed for punishable offences involving imprisonment up to 5 years or a fine (Art. 88 KZ-94). However, this is possible only if the juvenile offender can pay for himself, as per his income. If the financial penalty is paid by his parents or other relatives, the sanction would miss its educational purpose and effectively punish the perpetrator's parents. In cases where a fine cannot be enforced, the court imposes one of the educational measures.

If the offence committed by the juvenile offender is punishable by imprisonment of 5 years or more, he may be sent to a juvenile prison (Art. 89 KZ-94). The imprisonment may last from 6 months up to 5 years (up to 10 years in exceptional circumstances, where a sanction of 30 years of imprisonment may be imposed for regular offenders). There is only one juvenile prison in Slovenia – the Celje Juvenile and Adult Prison.⁷ As of the end of 2022, only 1 offender was held in the juvenile prison.⁸ Besides the financial penalty and juvenile prison, ancillary sanctions may also be imposed, including a prohibition of operation a motorised vehicle illegally (Art. 39 KZ-94).

The fourth group includes young adults – offenders who committed criminal offences as adults but have not yet attained 21 years of age during the trial (Art. 94 KZ-94). For such an offender, an educational measure may also be imposed if appropriate. However, it may last no longer than until the offender reaches the age of 23. There are additional provisions on sanctioning an adult for offences committed as a minor. For example, a person over the age of 21 cannot be tried for an offence committed as a younger juvenile (Art. 92 KZ-94).

5 CUDV – »Center za usposabljanje, delo in varstvo« (Centre for Training, Work and Care).

6 Uprava Republike Slovenije za izvrševanje kazenskih sankcij, Izvajanje dnevnega varstva oz. programa vzgoje in izobraževanja (VIZ) ter celodnevne varstva za otroke, mladostnike in odrasle do 26. leta (ki so vključeni v VIZ) na dan 31. 8. 2024. [Online]. Available at: <https://www.gov.si teme/centri-za-usposabljanje-delo-in-varstvo/> (Accessed: 28 September 2024).

7 Zavod za prestajanje mladostniškega zapora Celje.

8 Uprava Republike Slovenije za izvrševanje kazenskih sankcij, 2023, p. 29.

2. Criminal Proceedings Against Juvenile Offenders

Similar to sanctions and educational measures, the procedural legislation against juvenile offenders is also not regulated as a separate legal act. Instead, it can be found in the XXVII. chapter of the Criminal Procedure Act (ZKP).⁹ The proceedings may be divided into five stages: (a) the pre-criminal police investigation and initiation of the procedure, (b) preliminary (pre-trial) stage, (c) indictment stage, (d) trial stage before the juvenile panel, and (e) appeal stage (legal remedies).

Once the relevant evidence is gathered, criminal proceedings may be initiated only upon a formal request from the state prosecutor (Art. 465 ZKP). However, if the prosecutor refuses to initiate the proceedings, the victim may, instead, request the juvenile panel to initiate the proceedings. It should be noted that the state prosecutor has immense room for discretion – a deviation from the principle of legality, which is the main principle of Slovene criminal proceedings.¹⁰ In case of offences punishable by imprisonment for up to 3 years or a fine, the public prosecutor has the discretionary authority to waive the initiation of criminal proceedings where this is not prudent.¹¹ He may further decide not to initiate proceedings in cases where the execution of a sentence or an educational measure for another offence committed is already in progress (Art. 466 ZKP).

The *dominus litis* of the preliminary investigative proceedings is the juvenile judge. He is tasked with collecting additional evidence (if needed) and producing an individual appraisal of the juvenile. The production of an individual appraisal is a novelty in Slovene criminal law against juvenile offenders and was introduced in 2019 with the amendment ZKP-N.¹²

In 2024, the Ministry of Justice adopted the Guidelines for production and updating of the individual appraisal of the juvenile.¹³ These guidelines were drafted by members of the judiciary (Higher Court in Ljubljana and District Court in Celje), state prosecution (District State Prosecutor's Office in Ljubljana and District State Prosecutor's Office in Celje), social welfare centres (from Ljubljana and Maribor), the

9 Zakon o kazenskem postopku (ZKP), Uradni list RS, št. 176/21 – uradno prečiščeno besedilo, 96/22 – odl. US, 2/23 – odl. US, 89/23 – odl. US in 53/24.

10 Šepec, 2023, pp. 230–233.

11 The state prosecutor may also use the standard instruments of opportunity, which are referred to as the settlement procedure (161.a ZKP) or postponement of prosecution (162 ZKP). However, these are also limited to offences punishable by imprisonment for up to 3 years. Hence, the incentive for the prosecution to reach these instruments is rather unlikely.

12 Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku – ZKP-N (Uradni list RS, št. 22/19 z dne 5. 4. 2019).

13 Smernice za izdelavo in posodabljanje individualne ocene mladoletnika v kazenskem postopku. [Online]. Available at: <https://www.gov.si/assets/ministrstva/MP/Slike-novic/2024/Smernice-za-izdelavo-IOM-julij-2024.pdf> (Accessed: 28 September 2024).

Association of centres for social work, Ministry of Justice, Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the Social Affairs Inspection Service.

The guidelines are a comprehensive account of the content of individual appraisal (including formal data, family history, content data on the juvenile, appraisal of risks, pre-existing treatment of the juvenile by social welfare centres, other welfare measures provided to the juvenile or his family, opinion, and proposal) and the drafting and updating procedure.

At this stage of the proceedings, various provisional measures may be imposed, including committal to a transient home, diagnostic centre, or placed under the supervision of a social welfare agency, or sent to a foster home (Art. 471 ZKP). A remand in custody is also possible during preliminary investigative proceedings, but it cannot exceed 1 month. However, in extraordinary cases, the juvenile panel may extend it for an additional 2 months.

The juvenile judge collects suitable evidence, issues his individual appraisal, and sends the documents to state prosecutors, who review them and decide to either produce a motion for punishment or educational measure; alternatively, they can propose to the juvenile judge to discontinue the proceedings (Art. 475 ZKP). If the juvenile judge disagrees with the motion of the public prosecutor, the matter is decided by the superior court's juvenile panel.

During the trial stage, the case is heard by the juvenile panel (and not the juvenile judge). The trial is not public – when a minor is tried, the public is always excluded. However, persons involved in the juvenile's upbringing and supervision as well as scholars are allowed to be present at the trial (Art. 480 ZKP). Where appropriate, the court may remove the minor during the examination of certain evidence or statements.

Discretion of the court in its decision making is expanded when compared with regular criminal proceedings. Even in cases where it is found that the juvenile is responsible for committing a crime, the court may terminate the proceedings if it deems it “insensible” to impose either a sentence or an educational measure on a minor (Art. 483 ZKP).

A thorough analysis of the protection of the juvenile's rights would exceed the scope of this contribution.¹⁴ Nonetheless, two important provisions of the Slovene proceedings are mentioned. In the context of dealing with juvenile migrant offenders, the “in dubio pro youth” principle is important. If the juvenile's age cannot be ascertained, it is presumed that he or she has not yet reached the age of doubt (Art. 452.a ZKP).

Regarding obligatory formal defence, it should be noted that the engagement of a defence counsel is not provided by the state in all cases of juvenile criminal

14 For a Slovene perspective, see Filipčič and Mihelj Plesničar, 2017; for a discussion on the EU legal framework see Radić, 2020; De Vocht et al., 2014.

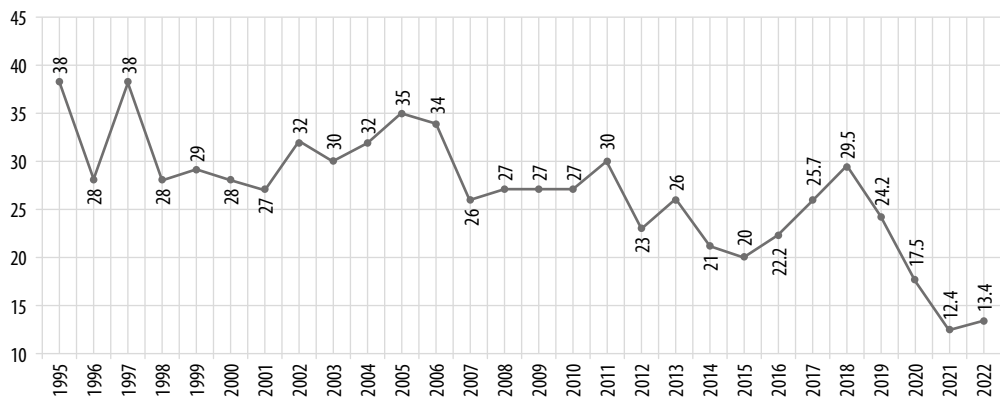
proceedings. This is mandatory: (a) only if the proceedings are pending against the offender for an offence punishable by imprisonment for more than 3 years – from the commencement of the preparatory proceedings; (b) from the time of deprivation of liberty; and (c) if the juvenile judge finds it necessary (at the discretion of the court) (compare Arts. 452.d and 454).

3.

Statistics in Juvenile Offenders in Slovenia

The following chapter presents the relevant criminological data on criminal law sanctioning and imposing of educational measures in Slovenia. Figure 1 represents the average number of juvenile offenders in the juvenile prison in Celje and the re-education institution in Radeče combined. The steady trend of decline observed was exacerbated by the COVID-19 pandemic in 2020 and 2021. Recent data available for free capacities in the re-education institution Radeče (September 2024) do not show any drastic changes in the metric, as it currently houses 12 juveniles, the same number as in 2022.¹⁵

Figure 1: Average number of juveniles in prisons and juvenile detention centres. Source: gov.si¹⁶

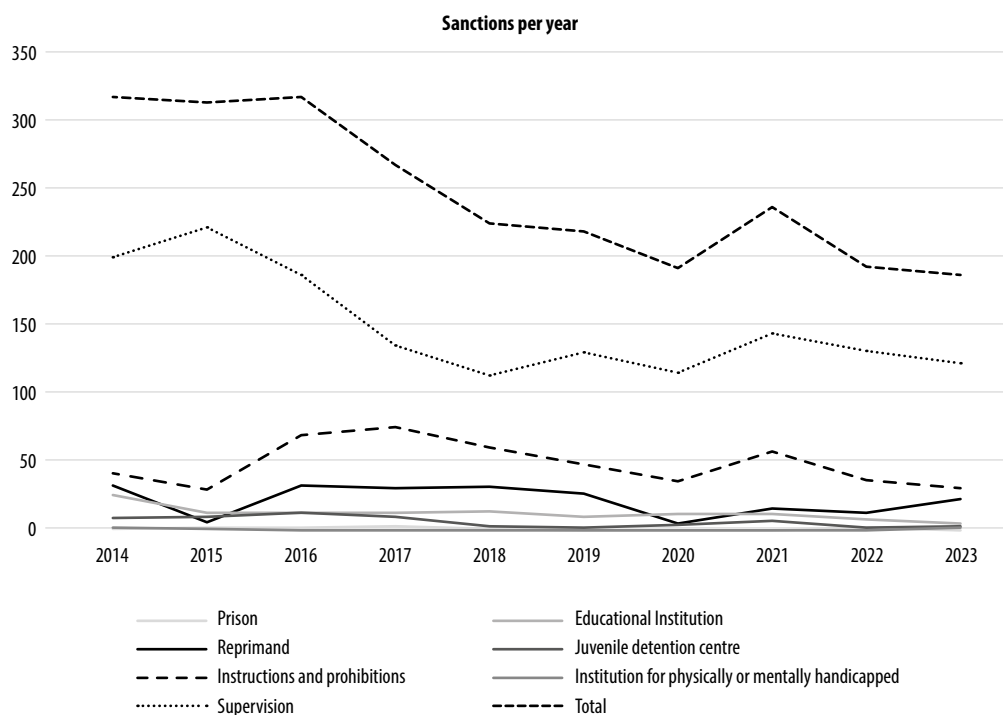


15 Uprava a izvrševanje kazenskih sankcij, Zasedenost zavodov za prestajanje kazni zapor in prevzgojnega doma – 23. 9. 2024 ob 00:00. [Online]. Available at: <https://www.gov.si/assets/organi-v-sestavi/URSIKS/Dokumenti/Zaporska-statistika/2024/Stevilo-zaprtyh-oseb-in-zasedenost-zavodov-dne-23.-9.-2024.pdf> (Accessed: 28 September 2024).

16 Uprava a izvrševanje kazenskih sankcij, Povprečno število mladoletnikov (mladoletniški zapor in prevzgojni dom). [Online]. Available at: <https://www.gov.si/assets/organi-v-sestavi/URSIKS/Dokumenti/Zaporska-statistika/2023/Letni-trendi/Povprecno-stevilo-mladoletnikov.pdf> (Accessed: 28 September 2024).

Figure 2 represents the number of sanctions and educational measures imposed on juvenile offenders. A consistent decline can be observed in the imposed sanctions and educational measures. Overall, supervision of the social welfare centre is by far the most common educational measure, with instructions and prohibitions declining and the reprimand rate improving in 2022 and 2023. The number of cases where juvenile prison or committal to a juvenile detention centre (re-education institution) is imposed is negligible, explaining the low numbers of juveniles in these institutions, as observed in Table 1. Long-term trends (not directly visible from Table 2, but noticeable from older reports and contributions¹⁷) include the decline in imposed reprimands (from 60% in the early 90s to about 5% in 2023); a rise and decline in the educational measure of instructions (from 2% in the early 90s to 20% in 2000s and about 5% in 2023); and a steady rise in the education measure of supervision (from 30% in the early 90s to about 60% in 2023).

Figure 2: Statistics on sanctions and educational measures per year. Source: SiStat



¹⁷ Compare data with Filipčič, 2015, p. 17.

Figure 3 shows the charges brought to prosecution versus the number of cases dropped. It is useful to observe the overall juvenile criminality and the extent to which various mechanisms of opportunity are used in practice. The percentage of dropped cases is consistent with independent studies, which report a declining rate of approximately 48.5%.¹⁸ However, the sharp increase in juvenile criminality in 2023 is conspicuous. Crimes that increased notably in 2023 include threats, violent conduct (violence not reaching the threshold covered by offences against life and limb), minor bodily injuries, and economic or white-collar crimes. The general police report of 2023 notes that in 2019, the police processed 39 threats and 83 minor bodily injury offences, while in 2023 they processed 116 threats and 112 minor bodily injuries.¹⁹

Figure 3: Charges brought and dropped. Source: SiStat

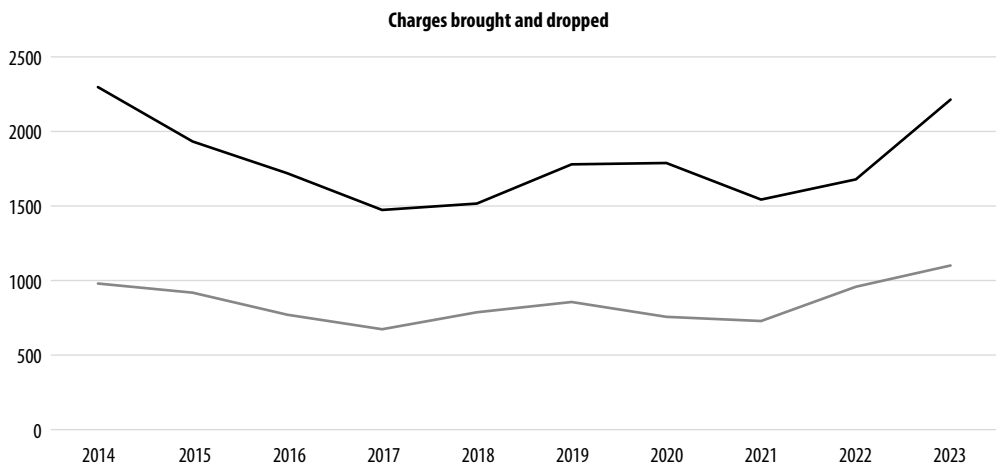


Figure 4 addresses the specific type of criminal offences committed by juvenile offenders for which they were convicted. Consistent with the police report data, crimes against life and limb, violent conduct, and threats jointly accounted for 42.25% of the total convictions.

18 Arnež and Mihelj Plesničar, 2024, p. 65.

19 Ministrstvo za notranje zadeve Republike Slovenije, 2023, p. 30.

Figure 4: Types of crimes committed by juvenile offenders in 2023. Source: SiStat.

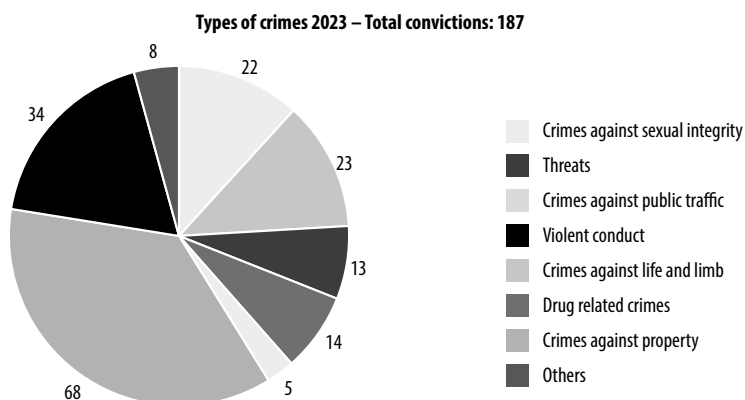


Figure 5 focuses on recidivism of juvenile offenders. The authors of this study reviewed 170 judgements issued by four district courts between 2015 and 2019.²⁰ The number of repeat juvenile offenders is strikingly high (40%), indicating that further studies are inevitable and must be performed and solutions implemented in this regard.

Figure 5: Offenders by recidivism 2015–2019. Source: Arnež/Plesničar, RKK 75 (2024), 59–71

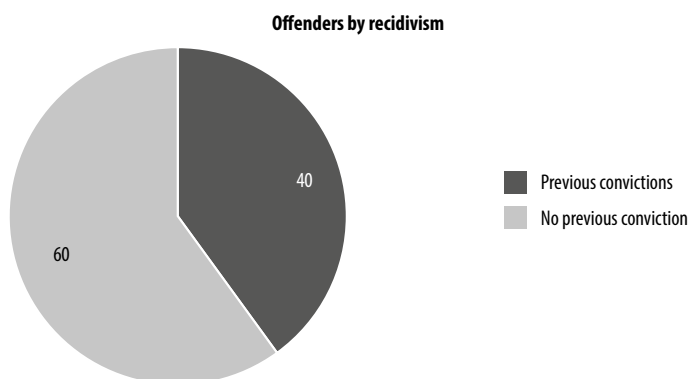


Figure 6 shows a typical state of juvenile offenders by gender. Male offenders represent 87% of juvenile convicts. The question of whether this problem stems from inherent psychological and developmental predispositions of the male gender or is compounded by inadequate societal structures and failed state policies in dealing

²⁰ Arnež and Mihelj Plesničar, 2024, p. 63.

with the juvenile male population is debatable. The dividing line also concerns the type of crime; for instance, female offenders are extraordinarily well represented in crimes against property, while male offenders commit crimes related to sexual integrity, drugs, and public traffic exclusively.²¹

Figure 6: Offenders by gender 2015–2019. Source: Arnež/Plesničar, RKK 75 (2024), 59–71

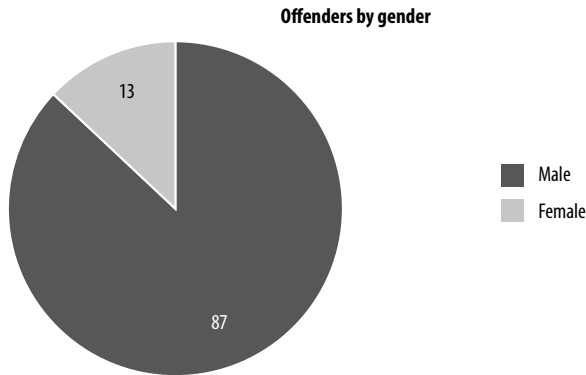
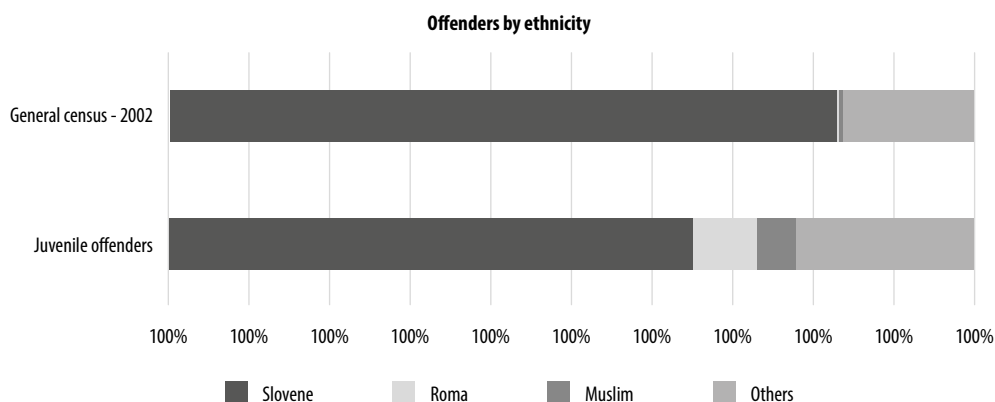


Figure 7 focuses on juvenile offenders by ethnicity and compares the results with the last Slovenian census (last held more than 20 years ago, in 2002). It indicates the disproportionately high percentage of Roma and Muslim juvenile convicts compared to the general population, indicating the ineffectiveness of state policies regarding the integration and de-marginalisation of these population segments. This issue escalated in the summer of 2024, with multiple stakeholders (unfortunately) linking the failed policy interventions for Roma juvenile offenders to implementing broader legislations designed to address juvenile crimes in general (see below).

21 Ibid., p. 64.

Figure 7: Offenders by ethnicity 2015–2019. Source: Arnež/Plesničar, RKK 75 (2024), 59–71



4.

The Dedicated Juvenile Criminal Legislation Saga 2008–2025 (and Beyond?)

As indicated above, Slovenia does not have a dedicated legislation covering substantive and procedural aspects of juvenile criminal law. Such a legislation was first promised in KZ-1 in 2008, which anticipates in Art. 5 that the criminal liability of minors must be determined through a special legislation. Until such a legislation is passed, educational measures, sanctions, and other questions related to criminal liability of minors are still regulated per the old criminal code of KZ from 1994.

An analysis and a first draft of the Act Addressing Juvenile Delinquents (ZOMP) was provided in 2010 – courtesy of the research done by the Institute of Criminology at the Faculty of Law in Ljubljana.²² However, this draft was never presented in parliament,²³ with the topic of juvenile offenders seemingly forgotten until 2019 and unveiled only with the proposal for an Act Addressing Juvenile Criminal Offenders

22 Zakon o obravnavanju mladoletnih prestopnikov – osnutek, EVA: 2011-2011-0052. [Online]. Available at: <https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=1693> (Accessed: 29 September 2024).

23 For a critical comment, see Fišer, 2017, pp. 15–16.

(ZOMSKD).²⁴ Unfortunately, this proposal was again deferred, that is, a comprehensive legislation covering the area of juvenile offenders did not come to pass until late 2024.

There are, however, positive developments. From 2021 until 2023, the Council of Europe and the European Union jointly funded a 24-month joint project to support Slovenia in its efforts to improve its justice system: 'Improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia.'²⁵ A comprehensive analysis was drafted by the researchers, including a National Research and Gap Analysis,²⁶ Case Law Analysis,²⁷ multiple Recommendations (contained within the said documents), and a Roadmap for Implementation.²⁸ These documents not only provide vivid insights into the strengths and shortcomings of the Slovene juvenile justice system but also make concrete suggestions for improving the existing proposal of the ZOMSKD. Moreover, the Roadmap for Implementation suggests that the ZOMSKD is to be adopted by the end of 2025 – a plan that seemed rather ambitious due to a new conflict disrupting the situation.

In mid-summer 2024, a group of (mostly juvenile) Roma offenders physically assaulted two police officers with their fists and clubs while the police officers were attempting to sanction two juvenile delinquents for driving an unregistered car. The incident was filmed and quickly became a media sensation.²⁹ Municipalities in southern Slovenia, with a sizeable Roma population (Kočevje, Ribnica, Novo mesto, and Črnomelj) joined the discussion, arguing that criminal groups within the Roma population were going "out of control" due to a lenient criminal law.³⁰ The government responded by creating a special Subdivision for improvement of safety in areas with Roma population³¹ and increased the presence of police in municipalities with Roma population.³²

During this time, the opposition is advocating stricter measures and a firmer approach toward juvenile offenders, including extension of juvenile prisons to younger juveniles (14–16 years age group) and for older juveniles (16–18 years age

24 Predlog Zakona o obravnavanju mladoletnih storilcev kaznivih dejanj, EVA: 2018-2030-0046. [Online]. Available at: <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=9999> (Accessed: 29 September 2024).

25 Project information and deliverables available at: <https://www.coe.int/en/web/cooperation-in-police-and-deprivation-of-liberty/improving-the-juvenile-justice-system-and-strengthening-the-education-and-training-of-penitentiary-staff-in-slovenia> (Accessed: 28 September 2024).

26 Mihelj Plesničar et al., 2023.

27 Arnež, 2023.

28 Urumova, 2023.

29 Gregorc, 2024.

30 See for example Fajfar, 2024; Božič, 2024.

31 STA, 2024.

32 G. K., 2024.

group) to criminal offences punishable by imprisonment of 1 year or more (instead of the existing period of 5 years or more).³³ While it is doubtful if these suggestions yielded any immediate results,³⁴ the new public perception that juvenile justice is linked to criminal groups within the Roma minority did not bode well for the ZOMSKD proposal, which (rightfully so) aimed to address some key issues in the Slovene juvenile justice system, as pointed out by the Slovene Human Rights Ombudsman.

5.

Findings of the Human Rights Ombudsman

I shall conclude this contribution by highlighting some key issues afflicting the Slovene criminal juvenile justice system. In his 2023 Yearly Report, the Slovene Human Rights Ombudsman laid bare two practical issues. First, there were complaints that juvenile judges do not regularly visit the juvenile detention centre in Radeče. However, the Ombudsman collected responses via the Supreme court and District courts in Maribor, Celje, and Ptuj, which revealed that juvenile judges conduct regular visits to juveniles housed within their jurisdictions. However, other courts, notably from Ljubljana, Kranj, and Koper, did not respond. This resulted in a recommendation for other District courts to conduct regular visits to juvenile offenders in Radeče.³⁵

The second issue is regarding the available institutional capacity for physically or mentally handicapped youth. A District court notified the Ombudsman in 2023 that it wanted to place a minor in a local institution. However, the capacities were full, which was not acceptable as the child had to be removed from his immediate environment to prevent harm to himself and others around him. Broadly, the Ombudsman also indicated the inadequate state of training programmes for physically or mentally handicapped juveniles. It is entirely unacceptable to place children in an environment with handicapped adults, without offering adequate training and educational programmes, and not providing experts or similar support.³⁶ The state of these programmes is so alarming that the Ombudsman reiterated that placing children in such environments is undesirable.

In the context of legislative issues, the Ombudsman restated its approval of the proposed ZOMSKD, attributable to the following legislative solutions: mandatory instead of discretionary monthly visits of juvenile judges to the juvenile prison and detention centre; obligatory formal defence, not merely for cases of deprivation of

33 M. Z., 2024.

34 M. Z. and G. K., 2024.

35 Varuh človekovih pravic Republike Slovenije, 2023, pp. 566–567.

36 Ibid., pp. 330–331.

liberty, consistent with ZKP but also for police detention; placing rigorous limitations on a remand in custody – not merely in the preliminary procedure but also at the trial stage; and reform of the provisions governing criminal punishment of juvenile offenders.³⁷

6.

Epilogue – the 2025 Proposal for an Act Addressing Juveniles Because of Criminal Offences

It is common that when a significant interval elapses between the speech given at an event and the subsequent preparation of a written contribution, that further important twists and turns give the author an opportunity to share in writing additional new insights. However, this shall also be the case, as this epilogue includes recent important events impacting the development of criminal law on juvenile offenders in Slovenia.

As stated above, the proposed ZOMSKD from 2019 was put on hold and rigorously re-examined from 2021 to 2023 in a project jointly funded by the Council of Europe and the European Union. At the time of the Annual Scientific Conference of the Central European Academy (ASCEA III) conference in Budapest, which took place in autumn 2024, the project did not result in an upgraded or even new proposed legislative effort.

However, in early 2025, the Slovene Ministry of Justice unveiled the new proposal for an Act Addressing Juveniles because of Criminal Offences (ZOMZKD).³⁸ The proposal is still in public discussion, enabling the public to express their opinions on the proposal. After this period is concluded and the proposal (possibly) revised by the Ministry of Justice, further changes may be introduced in the parliamentary procedure. However, there is good reason to believe that the new proposal on juvenile offenders will be passed in the following months. Hence, I shall in the remainder of this contribution introduce, albeit briefly, this new proposed legislation.

Similar to the previous two proposals for ZOMP (2010) and ZOMSKD (2019), the new proposal for ZOMZKD aims to create an overarching legal framework on juvenile offenders, covering substantive criminal law issues, procedural aspects, and enforcement of sanctions. Here, I shall reflect on some interesting changes to substantive criminal law provisions which are currently regulated in KZ and have been discussed above.

³⁷ Ibid., pp. 33, 321.

³⁸ Zakon o obravnavanju mladoletnikov zaradi kaznivih dejanj (ZOMZKD), EVA: 2025-2030-0001. [Online]. Available at: <https://e-uprava.gov.si/download/edemokracija/datotekaVsebina/714071> (Accessed: 10 March 2025).

First, the proposed changes to the educational measure of reprimand are staggering. The softest of educational measures may, according to the proposal, only be used if the juvenile offender *confesses* to the crime (“takes accountability for the criminal offence”). This additional condition aligns with the general move of Slovene criminal procedure towards *plea bargaining* and other instruments, which reward the defendant for his confession. However, introduction of such instruments into juvenile criminal law seems unfortunate for reasons which cannot be fully explored here.

Regarding the educational measure of instructions and prohibitions, the law now clearly states that if a settlement is imposed, the juvenile offender needs to cover the reparations from his own financial assets. This indicates that he does not meet the instructions provided by the court when his parents or another person compensate the victim. This change is welcomed as it aligns the educational measure with the existing regulation on financial penalty as a sanction for juvenile offenders.

There are three additional prohibitions that the court can impose upon a juvenile offender. First, a prohibition on approaching or communicating with either the victim or any other person may be imposed. Second, the court may forbid the juvenile offender to associate with certain persons. Lastly, the court may also prevent access to certain places or events. It should be noted that a ban on approaching or communicating with the victim may be imposed as a security measure.³⁹ This leaves room for speculation if the new prohibitional education measure ought to be seen as *lex specialis* to the already established security measure. The dilemma is not merely theoretical – education measures are limited to 1 year, while the security measure may continue for 3 years!

The temporal extent of the educational measure of supervision by a social welfare centre has been drastically reduced. The minimum duration was shortened to 6 months (from 1 year in KZ) and a maximum duration of 2 years (from 3 years in KZ). While the additional flexibility regarding imposition of a short supervision measure must be welcomed, the proposal does not explain the reason underlying the decision to shorten the maximum duration.

The set of circumstances where the maximum duration in a juvenile prison may be extended to 10 years has been extended. As a rule, the longest duration for which a juvenile offender may be sent to prison remains 5 years. However, now the court has the discretion to impose a prison sanction for up to 10 years in cases where the minimum incarceration sanction foreseen for the offence is 15 years (and not 30 years as is the case in the present legislation). This will allow the court to send the juvenile offender to prison for 10 years even for a “simple” murder and core international crimes (war crimes, crimes against humanity, genocide, etc.). For crimes

39 See Art. 71.a KZ-1 and Art. 33 of the proposed ZOMZKD.

such as premeditated killing of a human being or rape (including gruesome physical brutality towards the victim), the maximum prison sentence remains 5 years.

Additional novelties are regarding the question of security measures, which may be imposed on the juvenile offender. Under Art. 72, KZ already allows to impose security measures on older juveniles alongside an education measure, financial sanction, or juvenile prison, except the prohibition to practice a profession. However, there was no scope to impose a security measure as a stand-alone penalty in criminal proceedings. This is now supposed to change as Art. 34 ZOMZKD allows for imposing security measures such as compulsory psychiatric treatment, care in a health institution, and mandatory extra-institutional psychiatric treatment.

Additionally, Art. 35, now ZOMZKD, provides for additional, stricter conditions for imposing these security measures on juvenile offenders in comparison to when they are imposed on regular criminal offenders. Hence, compulsory psychiatric treatment and care in a health institution may only be imposed if the offence committed is punishable by imprisonment of 2 years or more. Additionally, regarding offences against property, it may be imposed only in cases which involve violence. The maximum duration of the security measure is 3 years (in comparison, the security measure may last up to 5 years for regular criminal offenders).⁴⁰ The proposal also stresses that the juvenile offender's treatment should be conducted in a forensic psychiatric department of the health institution, which must ensure multidisciplinary treatment of the minor and compliance with the special safety conditions established by the sectoral legislation (compare above with recommendations of the Slovene Ombudsman regarding mentally handicapped youth).

Surprisingly, there are no additional safeguards for mandatory extra-institutional psychiatric treatment in comparison to the security measure that targets regular criminal offenders. According to the proposal, the maximum duration of the extra-institutional treatment is limited to 3 years. In comparison, the security measure may last up to 2 years for regular criminal offenders.

This short overview shows that the proposed changes are not major reforms or revisions of the Slovene legislation on juvenile offenders, at least in the context of substantive criminal legislation. For example, the extension of juvenile prison to younger juveniles or older juveniles for less serious crimes is not anticipated in the proposal.⁴¹ The most problematic aspect of ZOMZKD may be identified in the proposed binding of the reprimand to a juvenile's confession.

Admittedly, this seems a rather mild complaint in comparison to the rather rigorous solution in the procedural part of the legislation, as Art. 51 stipulates that while children cannot be sanctioned for a criminal offence (or an educational measure

40 See Art. 70.a KZ-1.

41 However, this is still a topic for parliamentary discussion. See Robida, 2025, p. 20.

imposed), they shall be tried in criminal proceedings for unlawful acts involving elements of violence, punishable by imprisonment for 8 years or more. In such criminal (!) proceedings, a measure that protects the best interests of the children under the Family Code may instead be imposed.⁴² I hope that such doctrinal hiccups will be remedied in the parliamentary proceedings.

42 Compare Fišer, 2025, p. 8, and Robida, 2025, p. 20.

Bibliography

- Arnež, J. (2023) *Analysis of the case law related to juvenile justice with a focus on young offenders (Output 2)* [Online]. Available at: <https://www.coe.int/en/web/children/-improving-the-juvenile-justice-system-in-slovenia> (Accessed: 29 September 2024).
- Arnež, J., Mihelj Plesničar, M. (2024) 'Razkorak med teorijo in prakso: Empirični vpogled v obravnavo mladoletnih storilcev kaznivih dejanj v Sloveniji', *RKK*, 7(1), pp. 59–71.
- Božič, A. (2024) *Ali Kočevje postaja slovenski Teksas?* [Online]. Available at: <https://www.24ur.com/novice/slovenija/ali-kocevje-postaja-slovenski-teksas.html> (Accessed: 29 September 2024).
- De Vocht, D., Panzavolta, M., Vanderhallen, M., Van Oosterhout, M. (2014) 'Procedural Safeguards for Juvenile Suspects in Interrogations: A Look at the Commission's Proposal in Light of an EU Comparative Study', *New Journal of European Criminal Law*, 5(4), pp. 480–506; <https://doi.org/10.1177/203228441400500405>.
- Fajfar, S. (2024) *Težave občin zaradi romske problematike je težko reševati iz Ljubljane* [Online]. Available at: <https://www.delo.si/novice/slovenija/tezave-obcin-zaradi-romske-problematike-je-tezko-resevati-iz-ljubljane> (Accessed: 29 September 2024).
- Filipčič, K. (2017) *National Report on Juvenile Criminal Law in Slovenia* [Online]. Available at: <https://childhub.org/en/child-protection-online-library/national-report-juvenile-criminal-law-slovenia> (Accessed: 29 September 2024); https://doi.org/10.1007/978-3-319-45090-2_19.
- Filipčič, K., Mihelj Plesničar, M. (2017) 'Slovenia', in Decker, S. H., Marteache, N. (eds.) *International Handbook of Juvenile Justice*. 2nd edn. Cham: Springer, pp. 395–419.
- Fišer, Z. (2017) 'Kam se je izgubilo slovensko mladoletniško kazensko pravo', *Pravna praksa*, 41–42, pp. 15–16.
- Fišer, Z. (2025) 'Dragi dojenčki, pozor', *Pravna praksa*, 5, p. 8.
- G. K. (2024) *V občini imamo ljudi, ki so bili že 17-krat ovadeni, pa so še kar na prostosti* [Online]. Available at: <https://www.rtv slo.si/slovenija/v-obcini-imamo-ljudi-ki-so-bili-ze-17-krat-ovadeni-pa-so-se-kar-na-prostosti/718728> (Accessed: 29 September 2024).
- Gregorc, M. (2024) *Posnetki nedeljskega incidenta razkrivajo brutalen napad na policiste*, [Online]. Available at: <https://www.24ur.com/novice/crna-kronika/posnetki-nedeljskega-incidenta-razkrivajo-brutalen-napad-na-policiste.html> (Accessed: 29 September 2024).
- Mihelj Plesničar, M., Balazic, M., Ramuš Cvetkovič, I., Skočir, M., Arnež, J., Filipčič, K. (2023) *National Research and Gap Analysis (Output 1)* [Online]. Available at:

- <https://www.coe.int/en/web/children/-improving-the-juvenile-justice-system-in-slovenia> (Accessed: 29 September 2024).
- Ministrstvo za notranje zadeve Republike Slovenije (2024) *Letno poročilo o delu Policije 2023* [Online]. Available at: <https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2023.pdf> (Accessed: 28 September 2024).
 - M. Z. (2024) *NSi predlaga zaostritev zakonodaje, po kateri bi bil zapor možen tudi za mlajše mladoletnike* [Online]. Available at: <https://www.rtv slo.si/slovenija/nsi-predlaga-zaostritev-zakonodaje-po-kateri-bi-bil-zapor-mozen-tudi-za-mlajse-mladoletnike/718507> (Accessed: 29 September 2024).
 - M. Z., G. K. (2024) *Andreja Katič: Vsa zakonodaja velja in mora veljati za vse enako, tudi kazenska zakonodaj* [Online]. Available at: <https://www.rtv slo.si/slovenija/andreja-katic-vsa-zakonodaja-velja-in-mora-veljati-za-vse-enako-tudi-kazenska-zakonodaja/719399> (Accessed: 29 September 2024).
 - Radić, I. (2020) 'Importance of the protection of privacy of juvenile suspects or accused persons in criminal proceedings in the context of the EU law', *ECLIC*, 4, pp. 576–597; <https://doi.org/10.25234/eclic/11917>.
 - Robida, S. (2025) 'Primerjalnopravni pogled na sankcioniranje mladoletnih storilcev kaznivih dejanj v izbranih evropskih državah', *Pravna praksa*, 6–7, pp. 20–21.
 - STA (2024) *Država ustanavlja posebno podskupino za izboljšanje varnosti na območjih z Romi* [Online]. Available at: <https://vecer.com/slovenija/foto-drzava-ustanavlja-posebno-podskupino-za-izboljsanje-varnosti-na-obmocjih-z-romi-10363863> (Accessed: 29 September 2024).
 - Šepec, M. (ed.) (2023) *Zakon o kazenskem postopku: s komentarjem: 1. knjiga (1. do 191. člen)*. Ljubljana: Lexpera, GV Založba.
 - Uprava Republike Slovenije za izvrševanje kazenskih sankcij (2023) *Letno poročilo 2022 Ljubljana: Uprava Republike Slovenije za izvrševanje kazenskih sankcij* [Online]. Available at: <https://www.gov.si/assets/organi-v-sestavi/URSIKS/Dokumenti/Letna-porocila-/Letno-porocilo-2022.pdf> (Accessed: 28 September 2024).
 - Urumova, I. (2023) *Roadmap for implementation of the recommendations (Output 4)* [Online]. Available at: <https://www.coe.int/en/web/children/-improving-the-juvenile-justice-system-in-slovenia> (Accessed: 29 September 2024).
 - Varuh človekovih pravic Republike Slovenije (2024) *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2023*. Ljubljana: Varuh človekovih pravic Republike Slovenije.

