

*Liudmyla Dubchak* ■

The development of criminal law and criminal executive policy in Ukraine (during the period of independence) concerning juveniles who have committed a prohibited act

Rozwój prawa karnego i polityki wykonywania kar w Ukrainie (w okresie niepodległości) w odniesieniu do nieletnich, którzy popełnili czyn zabroniony

Abstract: In every society, resocialising juveniles who have committed a prohibited act and fully reintegrating them back into society remains a pressing issue to resolve. Societies devise various unique approaches to address these challenges. Ukraine has established its own distinct model encompassing prevention, deterrence, punishment and resocialisation, specifically tailored for juveniles.

The article examines the principles of criminal liability for juvenile offenders in Ukraine, detailing the system of criminal penalties and social rehabilitation measures applied to them. It delves into the evolution of punitive policies for juveniles in Ukraine since gaining independence, highlighting the conditions of their detention in Ukrainian penal institutions and how they differ from those for adult convicts. Additionally, it discusses the institutional development of penitentiaries in Ukraine.

The focus was placed on the factors shaping the development of criminal and criminal executive policies in independent Ukraine, notably the shift in the state's trajectory towards democratic and civilised principles, adherence to the rule of law and Ukraine's integration into European frameworks. The article scrutinises changes to the legal framework regulating the sentencing of juveniles for criminal offences, and changes in the conditions under which juveniles serve their sentences. It highlights the gradual transformation of the approach to juvenile criminal punishment, underscored by an increasing recognition of the need for novel methods of resocialising juveniles in order to facilitate their reintegration into a healthy social environment.

Dr Liudmyla Dubchak, Ukraine; research fellow at the Center for Criminological Analysis at the University of Warsaw, Poland, lyudmyla.dubchak@yahoo.com, ORCID: 0000-0001-7585-405X

The article also examines the fluctuating trends in juvenile crime rates. Since the 2000s, there has been a significant decrease in the number of juveniles sentenced to imprisonment due to positive developments within the state, the humanization of criminal law, and the broader implementation of alternative forms of punishment for juvenile offenders. The introduction of probation in Ukraine has also played a positive role.

Keywords: criminal offense, juvenile crime, guilt, juvenile delinquency, juvenile criminal punishment, educational colony

Abstrakt: W każdym społeczeństwie resocjalizacja młodych osób, które dopuściły się czynu zabronionego, pozostaje ważnym problemem do rozwiązania. Ukraina ma własny model profilaktyki, przeciwdziałania przestępczości, karania i resocjalizacji, w tym nieletnich sprawców przestępstw.

W artykule dokonano analizy zasad odpowiedzialności karnej nieletnich sprawców przestępstw w Ukrainie, opisano system kar kryminalnych i środków resocjalizacyjnych stosowanych wobec takich osób. Opisane zostały zmiany w polityce karnej Ukrainy wobec nieletnich sprawców – od odzyskania niepodległości do dzisiaj. Koncepcja karania nieletnich sprawców stopniowo zmieniała się, obrano nowy kierunek traktowania ich, co miało związek z rosnącą świadomością konieczności stosowania nowych metod oddziaływania resocjalizacyjnego na nieletnich w celu zapewnienia im powrotu do pełnowartościowego, zdrowego życia. W artykule zwrócono także uwagę na warunki izolacji nieletnich w zakładach karnych Ukrainy i ich odmienność od warunków, w jakich przebywają osoby dorosłe. Artykuł analizuje również dynamikę zmian liczby przestępstw popełnianych wśród nieletnich.

Słowa kluczowe: przestępstwo, przestępczość nieletnich, вина, czyny zabronione popełniane przez nieletnich, karanie nieletnich, kolonia wychowawcza

Introduction

Addressing the challenges of social resocialisation and potential punishment for juveniles who have committed prohibited acts remains pertinent in contemporary society. This prompts the question of whether society should opt for punitive measures or adopt alternative responses towards young individuals who have made mistakes in their lives.

Engaging in prohibited activities and displaying negative behaviour is a societal phenomenon among juveniles. Across societies, including Ukraine, there are ample instances of juveniles committing punishable offences, including general crimes. However, over the past two decades, there has been a notable trend of declining numbers of criminal offences and crimes being committed by juveniles in Ukraine. Since 2000, their frequency has decreased nearly tenfold. However, the prevalence of prohibited acts remains significant in society. For instance, in 2020 local general courts heard 3,420 criminal proceedings involving juveniles; in 2021, this figure decreased to 2,997. Out of these cases 3,094 were concluded (3,006 in 2021), resulting in sentences being handed down to 1,846 juveniles in 2020 and to 1,742 in 2021. Consequently, 2,048 juveniles were sentenced in Ukraine in 2020, compared to 1,695 in 2021.

It is worth noting that Ukraine's state resocialisation policy towards juveniles during peacetime independence has undergone significant changes, emphasising the humanisation of criminal and criminal executive law. This shift has been influenced by the advancement of democratic values within the state.

Ukraine's punitive and resocialisation policy concerning juveniles who have committed criminal offences has increasingly prioritised the fundamental principles of the rule of law. A crucial aspect of this policy has been the incorporation of the UN Convention on the Rights of the Child, dated 20 November 1989 (Konventsiiia 1989), and the Final Recommendations of the Committee on the Rights of the Child. These efforts are aimed at aligning the primary objectives of the state's youth policy.

At that time, significant changes occurred in the organisation of the criminal justice system for incarcerated juveniles. There was a notable shift towards prioritising the provision of adequate conditions for housing juvenile offenders in closed facilities, as well as their education and academic achievements, fostering socially beneficial skills, addressing moral and spiritual needs and promoting their overall health.

However, in comparison with other countries, Ukraine maintains its unique approach to juveniles who have committed prohibited acts. This divergence is particularly evident when compared to countries like Poland. In Ukraine, the determination of how to treat a juvenile who has committed a prohibited act falls within the realm of criminal law. Additionally, there is no single legal document in Ukraine that comprehensively regulates the treatment of juveniles who have committed offences, whether they are misdemeanors or crimes.

The primary normative legal documents in Ukraine governing the treatment of juveniles who have committed offences include:

- Law of Ukraine “On bodies and services for children and special institutions for children” (dated 24 January 1995) (1995. No. 20/95-BP);
- Criminal Code of Ukraine (Chapter XV: Peculiarities of criminal responsibility and punishment of juveniles) (adopted on 5 April 2001, entered into force on 1 September 2001) (2001. No. 2341-III), which replaced the Criminal Code of the Ukrainian SSR, which was adopted in 1960 (1960. No. 2001-05);
- Criminal Executive Code of Ukraine (Chapter 21: Peculiarities of serving a sentence in the form of deprivation of liberty by convicted women and juveniles) (dated 11 July 2003, entered into force on 1 January 2004) (2003. No. 1129-IV), which replaced the Correctional Labour Code of Ukraine, adopted in 1970 (1970. No. 3325-07);
- Criminal Procedure Code of Ukraine (Chapter 38: Criminal proceedings against juveniles) (from 13 April 2012, entered into force on 20 November 2012) (2012. No. 4651-VI), which replaced the Criminal Procedure Code of Ukraine adopted in 1960 (1960. No. 1001-05);
- Law of Ukraine “On Probation” (Article 12: Peculiarities of probation for juveniles) dated 5 February 2015 (2015. No. 160-VIII).

This raises the question of how to treat prohibited acts of juveniles. Is it possible to define them as crimes and to give this concept the same characteristics as illegal acts committed by adults?

1. Definition and classification of criminal offences in the criminal legislation of Ukraine, and the criminal responsibility of juveniles for such offences

The Criminal Code of Ukraine delineates the notion of a crime as a category within criminal offences. As per Article 11(1) of the Criminal Code of Ukraine, a criminal offence is “a socially perilous criminal act (action or inaction) perpetrated by the perpetrator of the offence” (2001. No. 2341-III). In accordance with Article 12(1), criminal offences are classified into two categories: criminal misdemeanors and crimes (2001. No. 2341-III). Criminal liability is established for criminal offences under the criminal legislation of Ukraine. A criminal misdemeanor, a category of criminal offences defined in the Criminal Code (Article 12(2)), constitutes a less socially perilous act (or inaction), for which criminal liability entails fines or other penalties not involving deprivation of liberty (2001. No. 2341-III). Conversely, a crime, as outlined in the Criminal Code of Ukraine, represents a more socially perilous act.

Crimes, as stipulated in Article 12(3), are categorised into minor, serious and especially serious crimes, each of which entails a corresponding measure of punishment as determined by the Criminal Code of Ukraine. According to its Article 12:

- a minor crime is defined as “an action (or inaction) for which the primary penalty is a fine amounting to no more than ten thousand tax-free minimum incomes of citizens or imprisonment for a duration of no more than five years”;
- a serious crime is characterised as “an act (or inaction) for which the primary penalty is a fine not exceeding twenty-five thousand tax-free minimum incomes of citizens or imprisonment for a duration of no more than ten years”;
- an especially serious crime is defined as “an action (or inaction) for which the primary penalty is a fine exceeding twenty-five thousand tax-free minimum incomes of citizens, deprivation of liberty for a duration exceeding ten years or life imprisonment” (2001. No. 2341-III).

According to the Criminal Code of Ukraine, criminal liability may be incurred for any criminal offence, including those committed by juveniles. In Ukraine, juveniles can be held criminally liable. In accordance with Article 3(12) of the Criminal Procedure Code of Ukraine, a juvenile is defined as “a minor, as well as a child between the ages of fourteen and eighteen” (as per Article 3(11), “a minor is a child below the age of fourteen”) (2012. No. 4651-VI).

According to Article 22(1) of the Criminal Code, juveniles – specifically individuals who have reached the age of 16 (or in certain cases, 14) prior to committing a criminal offence – are liable for criminal responsibility (2001. No. 2341-III). According to Article 22(2) of the Criminal Code of Ukraine, criminal liability can be incurred between the ages of 14 and 16 for committing a range of serious crimes. These include premeditated murder (Articles 115–117), an assault on the life of a state or public figure, law enforcement officer, member of a public formation for the protection of public order and the state border, military serviceman, judge, people's assessor or juror in connection with the administration of justice, barrister or representative of a person in connection with providing legal aid or representative of a foreign state (Articles 112, 348, 379, 400 and 443), intentional grievous bodily harm (Article 121 and para. 3 of Articles 345, 346, 350, 377 and 398), cruelty to animals (Article 299), intentional bodily harm of moderate severity (Article 122, para. 2 of Articles 345, 346, 350, 377 and 398), sabotage (Article 113), banditry (Article 257), terrorist act (Article 258), hostage-taking (Articles 147 and 349), rape (Article 152), sexual violence (Article 153), theft (Article 185, para. 1 of Articles 262 and 308), robbery (Articles 186, 262 and 308), brigandage (Article 187, para. 3 of Articles 262 and 308), extortion (Articles 189, 262 and 308), intentional destruction or damage to property (para. 2 of Articles 194, 347, 352 and 378 and paras 2–3 of Article 399), damage to roads and vehicles (Article 277), hijacking or seizing railway rolling stock, air, sea or river vessel (Article 278), illegal possession of a vehicle (paras 2–3 of Article 289) and hooliganism (Article 296) (2001. No. 2341-III).

Considering the definitions of criminal offences, crimes and criminal liability as outlined in the Criminal Code of Ukraine, the Ukrainian legislature does not differentiate their characteristics concerning juveniles, except for those related to age. Criminal liability can be imposed on both adults and juveniles over the age of 16, and for certain serious crimes, from the age of 14. For juveniles, criminal liability assumes somewhat less severe forms, as stipulated in the corresponding Chapter XV of the General Part of the Criminal Code of Ukraine.

2. Changes to the system of penalties for criminal offences committed by juveniles since Ukrainian independence

Since gaining independence in peacetime, Ukraine's modern state resocialisation policy regarding juveniles has made significant strides towards implementing the core principles outlined in various international documents. Notably, these include the Geneva Declaration of the Rights of the Child, adopted by the General Assembly of the League of Nations in 1924 (Geneva Declaration 1924), the Convention on the Protection of Human Rights and Fundamental Freedoms (1950),

the Minimum Standard Rules of the United Nations for the Administration of Juvenile Justice (Minimalni standartni 1985), the Convention on the Rights of the Child (approved by the United Nations on 20 November 1989, ratified by the Parliament of Ukraine on 27 February 1991 [No. 789XI] and entered into force in Ukraine on 27 September 1991 (Konventsiiia 1989)) and the Rules of the United Nations for the Protection of Juveniles Deprived of Their Liberty (adopted on 14 December 1990 within the framework of the eighth UN Congress (Rezoliutsiia 45/113 1990)).

The implementation of the core principles outlined in international documents commenced alongside changes in Ukraine's overall state policy and was closely linked with amendments to legislation governing the treatment of juveniles who have committed a prohibited act, i.e. a criminal offence. Starting from the 1990s, and particularly following Ukraine's independence, as the country defined its national development trajectory based on democratic values and the rule of law, reforms in criminal justice and enforcement concerning juvenile offenders gained momentum.

The initial wave of changes in the juvenile punishment system commenced with the adoption of Resolution No. 88 by the Cabinet of Ministers of the Ukrainian SSR on 11 July 1991 (Postanova 88/1991). This document outlined the direction of reforms in Ukraine's criminal executive system, laying out crucial steps for implementing the state's criminal executive policy and focussing on humanising punishment for juveniles. It specifically addressed the conditions of juvenile convict punishment, emphasising a shift towards social reorientation in executing punishments. The document stressed adherence to international human rights norms, principles of legality, humanism, democracy and justice, as well as the differentiation and individualisation of educational interventions for convicts.

The foundation of the reform outlined in this Resolution stemmed from the Declaration on the State Sovereignty of Ukraine (Deklaratsiia 1990) and the adoption of the UN Minimum Standard Rules for the Treatment of Prisoners in 1955 (Minimalni standartni 1955). Subsequent steps for reforming the penal system for juvenile convicts were then determined.

Initially, the objective was to enable convicted juveniles to serve their sentences within their local communities. As outlined in Article 2 of the Resolution: "To ensure that sentences are primarily served in the areas where individuals reside, the establishment of interregional facilities for housing convicted juveniles and women is to be organised, including the provision of pre-trial detention facilities for these specified groups" (Postanova 88/1991).

Secondly, the objective was to amend the Criminal and Criminal Executive Codes to regulate legal norms concerning the separate detention of juvenile and adults convicts in order to minimise the negative influence of the latter. According to Article 6 of the Resolution, "Specifics of Adult Detention", it was directed to:

undertake efforts to reduce the number of convicts in educational and labour colonies. To facilitate the restriction of social interactions of adolescents, juvenile colonies were to be established in most regions of the republic. Additionally, for the utmost

protection of juvenile convicts from the adverse influence of adult offenders, the establishment of special pretrial detention centres within the educational and labour colonies in regional centres of the republic was mandated. (Postanova 88/1991)

The resolution called for the creation of a distinct type of penal institution for juveniles. Initially, specialised educational and labour centres were to be established, with separate departments designated for housing different categories of juvenile convicts. This arrangement was intended to tailor and individualise the management and conditions for individuals serving sentences, considering factors such as their prior criminal history (including the nature and severity of their offences) and their progress in rehabilitation.

Thus, the Resolution emphasised the need for:

a phased transition of educational and labour colonies into specialised educational and labour centres, alongside the provision for the operation of centres accommodating individuals who had previously served prison sentences and convicts under semi-free regime conditions, with the purpose of preparing them for eventual release. (Postanova 88/1991)

Thirdly, the objective was to establish a unified regime for penal institutions housing juveniles and to allow convicted juveniles who have reached the age of majority to be released from correctional labour colonies. Additionally, measures aimed at reducing the social isolation of incarcerated teenagers and enhancing public involvement in the educational process were to be implemented.

Fourthly, there was a proposal to introduce a novel form of criminal punishment: the restriction of liberty. As outlined in Article 7 of the Decree, it was not to involve incarceration and was intended to replace existing forms of punishment such as imprisonment in settlement colonies, conditional imprisonment with mandatory work participation and conditional release from incarceration with mandatory work involvement. This penalty could be imposed on a juvenile provided that they were physically capable and had no prior convictions (Postanova 88/1991).

All the objectives outlined in the Resolution were to be carried out by developing regulations governing an educational and labour institution, an educational and labour centre for juveniles who have committed crimes, a colony, a prison and a pretrial detention centre. These regulations were specifically mentioned in the Resolution (Postanova 88/1991).

The subsequent significant strides in reforms within the criminal justice and correctional systems for juveniles took place in 1994, when the Cabinet of Ministers of Ukraine approved the “Programe for Aligning Detention Conditions of Prisoners, Pretrial Detainees, and Medical and Labour Rehabilitation Centres with International Standards” (Postanova Kabinetu Ministriv Ukrainy No. 31/1994). The Programe underscored the importance of establishing conditions conducive to facilitating effective educational intervention and resocialisation for juveniles in prisons. Although the term “resocialisation” was not explicitly used in the document, there was a clear emphasis on creating conditions for educational

intervention with teenagers. Such intervention entailed arranging supervised physical education and sport within educational and labour colonies, as well as concerts and performances, and assigning representatives from physical education organisations to engage with them (Ministry of Youth and Sports, Ministry of Culture, Ministry of Internal Affairs, local state administrations) (Postanova Kabinetu Ministriv Ukrainy No. 31/1994).

Furthermore, reforms in the juvenile punishment system were implemented following the adoption of the Law of Ukraine “On Amendments and Additions to Legislative Acts of Ukraine on the Regulation of Certain Issues Related to the Conditions of Serving Sentences by Convicts” on 27 July 1994 (1994. No. 137/94-BP). This law amended the Correctional Labour Code of Ukraine (1970. No. 3325-07), particularly the provisions governing the conditions in which juveniles serve sentences and delineating the rights of juveniles. These changes are outlined below.

As per this law, juveniles were granted the option to acquire food and essential items through cash-free transactions using funds earned whilst incarcerated or received through transfers (1994. No. 137/94-BP). Furthermore, according to Article 57, the provision of food, clothing, footwear, undergarments and utility services to convicted juveniles was to be supplied at no cost (1994. No. 137/94-BP). Article 81, “Application of Security Measures to Persons Deprived of Liberty”, prohibited special measures against juveniles, except in instances where they engage in a group attack endangering the lives or well-being of the correctional labour institution staff or others, or in cases of armed resistance (1994. No. 137/94-BP).

Another significant milestone in the reform of the juvenile punishment system, aimed at fulfilling the objectives outlined in Resolution No. 88 of the Cabinet of Ministers of the Ukrainian SSR “On the main directions of reforming the criminal executive system in the Ukrainian SSR” dated 11 July 1991 (Postanova 88/1991), and in accordance with the principles of the Convention on the Rights of the Child (adopted by the UN on 20 November 1989, entered into force on 2 September 1990, ratified by the Parliament of Ukraine on 27 February 1991 [No. 789XI] and entered into force on 27 September 1991 (Konventsiiia 1989)), was the enactment in 1995 of the Law of Ukraine “On bodies and services in the affairs of juveniles and special institutions for juveniles” (1995. No. 20/95-BP). The law delineated the types of entities and services catering for juveniles, as well as special institutions for juveniles, specifying their objectives, fundamental principles and operational framework (1995. No. 20/95-BP).

According to the Law, the entities and services for juveniles, along with the designated special institutions for juveniles, are mandated to provide social protection and undertake measures for the prevention of delinquency among this demographic. The Law further stipulates that the special state institutions responsible for juvenile social protection and crime prevention encompass those tasked with executing punitive measures for criminal acts and facilitating the correction and rehabilitation of offenders. These specialised institutions are referred to as penitentiaries. The establishment and operations of specialised educational

institutions are governed by criminal executive legislation. Consequently, this law delineated specific provisions for the treatment of juveniles, even within the context of serving a sentence.

Substantial changes in the treatment of juveniles within special penitentiaries began to materialise during the 2000s, spurred by several influencing factors. Ukraine's accession to the Council of Europe played a pivotal role in driving further reforms within the country's criminal justice and correctional systems. Ukraine officially joined the Council of Europe on 9 November 1995, following the adoption of a corresponding resolution by the Parliamentary Assembly of the Council of Europe which endorsed Ukraine's admission (26 September 1995) (Vysnovok No. 190 1995). This event catalysed a heightened commitment from Ukrainian authorities to implement reforms across various aspects of society, with a particular focus on the execution of criminal penalties.

Ukraine's membership in the Council of Europe entailed specific obligations for the state to align various sectors of legislation with European standards, including criminal justice and the correctional system. Significant emphasis was placed on harmonising criminal legislation with international norms. A crucial requirement was to adhere to key European legal instruments ratified by the Parliament of Ukraine, notably the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. These documents hold direct legal force and necessitated compliance.

The subsequent phase of changes in Ukraine's criminal and correctional policies commenced in the early 2000s, coinciding with the country's official declaration of a foreign policy trajectory aimed at European integration and the ultimate goal of potentially acceding to the European Union.

On 14 September 2000, the President of Ukraine issued a decree endorsing the "Programe of Ukraine's Integration into the European Union" (Prohrama intehtatsii Ukrainy 2000). These measures outlined Ukraine's ensuing obligations to align newly enacted legislative measures with European legal norms and to introduce legal frameworks akin to those observed in Western European countries.

Responding to the demands of the era, on 5 April 2001, the Parliament of Ukraine passed a new Criminal Code (2001. No. 2341-III), superseding the previous Criminal Code enacted in 1960 during the Soviet era (1960. No. 2001-05). The new Criminal Code of Ukraine brought about significant changes to the framework governing the criminal punishment of juveniles, offering a fresh interpretation of juvenile criminal responsibility and the corresponding penalties.

A significant innovation introduced by the new Criminal Code of Ukraine (2001. No. 2341-III) was the inclusion of a separate chapter (Chapter XV) within the General Part dedicated to regulating the criminal responsibility and punishment of juveniles. This chapter outlined a special approach to juvenile criminal responsibility that considers factors such as age, socio-psychological characteristics, psychophysical development and other pertinent features of juvenile offenders.

One notable addition to the 2001 Criminal Code was community service as a form of punishment available to juveniles. Another noteworthy innovation was the increased emphasis on fostering a more open environment for external communication within institutions that administer punishments for juveniles.

Since the early 2000s, considerable attention has been directed towards fostering collaboration between educational colonies and various state institutions and the public. Specifically, on 24 January 2001, the President of Ukraine issued a decree titled “On additional measures to ensure the implementation of the National Programme ‘Children of Ukraine’ for the period until 2005” (Ukaz 42/2001). Item 96 of this decree outlined the need to establish youth counseling centres within correctional and labour colonies to provide social services for juveniles. These innovations were reflected in the newly enacted Criminal Executive Code of 11 July 2003 (effective from 1 January 2004) (2003. No. 1129-IV).

The adoption of the new Criminal Executive Code marked the establishment of a distinct legal framework for Ukraine’s criminal executive system, significantly differing from its predecessor. For the first time in the history of legislation governing the execution of punishments, the principles of criminal and executive legislation were codified within the Criminal and Executive Code (Szkuta 2018: 232). Prior to the enactment of the Criminal and Executive Code, educational and labour colonies were governed by the Correctional and Labour Code of Ukraine, which was originally enacted in 1970 (with subsequent amendments), but ceased to be valid as of 1 January 2004 (1970. No. 3325-07). According to the 1969 Correctional Labour Code, juvenile penal institutions were referred to as educational and labour colonies, underscoring the emphasis on labour education in the execution of punishments. The approaches and methodologies employed in working with juveniles mirrored those used with adults. The Code established the squad system for organising the daily life of juveniles. The legal standing of convicts, primary methods of correction and re-education, educational strategies, internal procedures, daily schedules and systems of incentives and penalties were aligned with those used for adults.

With the enactment of the Criminal Executive Code in 2003, there was a shift in the approach to organising the system for punishing and correcting juveniles. It introduced a dedicated Chapter 21, titled “Special Provisions for Serving a Sentence in the Form of Deprivation of Liberty for Convicted Women and Juveniles” (2003. No. 1129-IV), which addressed issues related to the execution of punishments for juveniles.

As per the Criminal Executive Code enacted in 2003, the public – comprising representatives of state authorities, local self-government bodies, public organisations and parents – was mandated to play a significant role in establishing conditions conducive to the successful resocialisation of juveniles who had run afoul of the law, achieved through their re-education and integration into community life. Thus, the Code (Article 149) emphasised the need to establish institutions within educational colonies to aid the colony administration in various matters:

organising the educational curriculum and enhancing the colony's material and technical resources, addressing social protection concerns for convicts, managing employment and living arrangements for released individuals and appointing boards of trustees comprising representatives from state authorities, local self-government bodies and public organisations. The formation and operation of these guardianship councils are outlined in a regulation endorsed by the Cabinet of Ministers of Ukraine (2003. No. 1129-IV).

To adequately regulate the legal aspects of other institutions collaborating with juveniles in educational colonies, the Cabinet of Ministers of Ukraine passed Resolution No. 429 on 1 April 2004, titled "On the Approval of Regulations on Supervisory Commissions and Boards of Trustees at Special Educational Institutions" (Postanova 429/2004). This resolution delineated the functions, responsibilities and authority of supervisory boards, specifying their role in overseeing and supporting special educational institutions.

In 2013, the Ministry of Justice of Ukraine approved the Typical Regulations on Parent Committees at Educational Colonies through Order No. 65/5/2013 dated 9 January 2013 (Typove polozhennia 65/5/2013). This measure aimed to enhance the effectiveness of educational efforts on convicts and to provide support to the administration of educational colonies. It permitted the establishment of parent committees within the departments of social and psychological services, subject to approval by the head of the educational colony.

As per the Ministry of Justice's directive, the parent committee serves as an advisory body established in accordance with Article 149 of the Criminal Executive Code. Its purpose is to enhance the effectiveness of educational efforts on convicts and aid the administration of the educational colony in engaging with convicts' families to reinforce their rehabilitation outcomes. Additionally, it provides assistance to orphans, individuals lacking parental care and convicts who have lost social ties in broader society.

The Ukrainian Parliament took a significant stride towards aligning the country's justice system with international norms and implementing a modern system of criminal justice measures with the passage of the Law of Ukraine "On Probation" (2015. No. 160-VIII) on 5 February 2015. This law came into effect on 27 February 2015 and was implemented on 1 September 2015 (2015. No. 160-VIII).

In Ukraine, probation was established as a new system encompassing supervisory and social/educational measures for convicts, applied by court decision and in accordance with the law. These measures include executing certain types of criminal punishments which do not involve the deprivation of liberty and providing the court with information about the accused (Article 2(6) of the Law of Ukraine "On Probation") (2015. No. 160-VIII).

The probation body, in collaboration with the central executive body responsible for shaping state social policy, is tasked with implementing probation programmes for juveniles upon their release from serving a probationary sentence. Probation for juveniles is conducted by the probation authority in collaboration

with agencies and services for children, as well as specialised institutions and establishments responsible for their social protection and crime prevention. This close cooperation allows for the implementation of individualised approaches to each juvenile, the utilisation of diverse tools for a positive educational influence through probation programmes and the facilitation of constructive engagement with teenagers.

The most recent significant legislative initiative aimed at reforming criminal justice and the criminal executive system concerning juveniles who have committed offences was the drafting of the “Child-Friendly Justice” law by the Cabinet of Ministers of Ukraine. This draft law was presented to the Parliament of Ukraine on 4 June 2021 (Proekt Zakonu 5617/2021).

However, this draft law has not yet been adopted, partly due to the onset of the second phase of Russian aggression and the war in Ukraine. The adoption of the “Law on Child-Friendly Justice” is expected to enhance the effectiveness of child-friendly justice. The main focus of the proposed legislation is to align Ukrainian law with the requirements of the Convention on the Rights of the Child and other international standards pertaining to children’s rights. The aim is to establish conditions that ensure the legality, fairness and effectiveness of every decision concerning a child in conflict with the law. Additionally, the proposed law aims to create a legislative framework for addressing issues related to the prevention of juvenile delinquency, providing suitable conditions for handling juveniles who have committed offences and facilitating effective educational interventions to facilitate their resocialisation.

The adoption of the aforementioned law was intended to enhance the positive aspects of the current system of bodies and services for children whilst reforming its ineffective or deficient components. As part of this effort, the proposal included the closure of secondary schools and vocational schools for social rehabilitation, replacing them with specialised centres for the social and psychological rehabilitation of children.

3. Exemption from liability through the use of coercive educational measures and educational measures for juveniles who have committed a prohibited act

In Ukraine, juveniles who engage in criminal behaviour (a crime or offence) may be held criminally responsible for it. Conversely, if innocence is proven, the court may opt to completely absolve the juvenile of responsibility (acquittal). However, according to the Criminal Code of Ukraine, apart from the court’s decisions to either fully absolve or hold a juvenile criminally liable, there exists the option of exempting them from liability through the use of coercive educational measures (2001. No. 2341-III). Exemption from responsibility through coercive educational

measures is different to acquittal. The legislature specifies that a juvenile offender may either be exempted from punishment or relieved of criminal liability altogether. This raises the question of what exemption from responsibility using coercive educational measures entails. Currently, compulsory educational measures serve as alternatives to criminal penalties for juveniles, offering opportunities for societal improvement without resorting to isolation or more severe punitive measures. Coercive educational measures are penal law measures that courts apply to juveniles when exempting them from criminal liability or when implementing specific administrative measures.

In Ukraine, such measures include restrictions on the perpetrator's freedom. This may involve sending the juvenile to a special care and education facility for children and adolescents until they show improvement, for a maximum period of three years. Release from responsibility using coercive educational measures serves as a form of social rehabilitation for juveniles who have committed prohibited acts, such as criminal offences or unintentional crimes.

These measures, also known as proceedings for juveniles who have committed prohibited acts, may be applied in the situations specified in Article 97 of the Criminal Executive Code. For instance, a juvenile who has committed a criminal offence for the first time or an unintentional offence that is not a serious crime may be exempt from criminal liability if correction is feasible without penalty. In such instances, the court can apply coercive educational measures to the juvenile, as provided in Article 105(2) of the Code. It's worth noting that if a juvenile who has committed a criminal offence avoids the application of coercive educational measures against them, these measures are waived and the juvenile becomes subject to criminal liability (2003. No. 1129-IV).

According to Article 105 of the Criminal Executive Code, the court has the authority to impose the following coercive educational measures on a juvenile:

- warnings;
- restriction of free time and imposition of specific behavioural requirements;
- placement under the care of parents or guardians, or under the supervision of a pedagogical or administrative team, or with individual citizens upon their request and with the juvenile's consent;
- imposition of the obligation to compensate for any property damage – for juveniles who are over 15 years old and possess property, financial resources or earnings;
- placement in a special educational and upbringing facility for children and youths until they are rehabilitated, but no longer than 3 years, the terms of residency in these facilities and the process of departure being established by law (2003. No. 1129-IV).

The Code distinguishes between the concepts of “application of coercive educational measures” and “use of educational measures.” These concepts are distinct and should not be conflated. In the latter case, this type of procedure applies to individuals who are over 11 years old but have not yet reached the age of criminal

responsibility (14 years) and have committed a socially dangerous act outlined in a specific section of the Criminal Code of Ukraine.

Until a juvenile reaches the age of criminal responsibility and commits a prohibited act, the perpetrator cannot be held criminally liable because there is no subject of criminal liability, and the individual has not yet reached the age at which they can be held criminally responsible. Therefore, a special type of educational measure may be applied to such an individual as a behavioural measure. In accordance with Article 105 of the Criminal Executive Code, one of the educational measures (coercive upbringing measures) applicable to a juvenile who has committed a prohibited act from the age of 11 is to place them in a special educational and upbringing facility for children and adolescents (2003. No. 1129-IV).

In Ukraine, such institutions, as outlined in Article 8 of the Law of Ukraine “On bodies and services for children and special institutions for children”, enacted in 1995, are schools and vocational schools of social rehabilitation within educational units (1995. No. 20/95-BP). These facilities fall under the category of entities and services for children, providing social protection and preventing crime among them. According to Article 8 of this law, general education schools and vocational schools for social rehabilitation are specialised educational institutions for children who require special educational conditions. These institutions are under the jurisdiction of the central executive authority responsible for the development of state policy in the field of education and science, namely the Ministry of Education and Science of Ukraine (1995. No. 20/95-BP).

The Law specifies the age at which a juvenile may be sent, by court decision, to special educational facilities for children and adolescents: from 11 to 14 years of age (in exceptional cases before the age of 15), juveniles are typically sent to general social rehabilitation schools; from 14 to 18 years of age, juveniles are typically sent to vocational schools of social rehabilitation. In exceptional cases, this may extend to age 19 if it is necessary to complete an academic year or professional internship (1995. No. 20/95-BP). Therefore, the maximum age limit for youths to remain in special educational facilities for children and adolescents is 19 years, particularly if there is a need to complete the academic year or vocational training. Since 2010, there has been a notable decline in the number of these facilities in Ukraine.

One reason for the decrease in the number of children placed in special educational institutions in Ukraine for committing prohibited acts is the humanisation of criminal responsibility. This entails restricting the use of educational coercive measures against offenders, such as placement in secondary schools and social rehabilitation schools.

An important advancement in enhancing legal regulations within the realm of child-friendly justice was the establishment of the Interministerial Coordinating Council on Justice Administration, which in 2021 spearheaded efforts to draft the “Child-Friendly Justice” law. The draft law proposed to completely eliminate schools and vocational rehabilitation centres. Instead, their role in facilitating the social rehabilitation of children involved in legal infractions would be assumed by children’s social and psychological resocialisation centres.

Table 1. Number of general educational schools and vocational schools for social rehabilitation

	General schools of social rehabilitation	Vocational school of resocialisation	Number of pupils	Intended for (people)
2006/2007	11	3	-	-
5 September 2010	11 299 pupils	3 117 pupils	416	-
2013	6	3	309	1,500
2017	1 Komyszuwacha School of Social Rehabilitation, 6 pupils	1 A.S. Makarenko Vocational School of Social Rehabilitation 15 pupils	21	160 + 180
2018	1 Komyszuwacha School of Social Rehabilitation, 9 pupils	1 A.S. Makarenko Vocational School of Social Rehabilitation 9 pupils	18	160 + 180
2019	1 Komyszuwacha School of Social Rehabilitation, 5 pupils	1 A.S. Makarenko Vocational School of Social Rehabilitation 10 pupils	15	160 + 180
2022	1 Komyszuwacha School of Social Rehabilitation, 3 pupils	1 A.S. Makarenko Vocational School of Social Rehabilitation 6 pupils	9	160 + 180

Source: Own elaboration.

The reasons for the closure of special educational institutions for children and youths are outlined below.

1. The gradual humanisation of the criminal process for children has rendered the financing of institutions accommodating juveniles unviable for the state. For instance, the Komyshevacha School of Social Rehabilitation (the only active school in Ukraine) and the A.S. Makarenko Makiyivsky School of Social Rehabilitation currently accommodate 10 children for periods ranging from 1 to 3 years, employing a significant staff of up to 60 individuals. The annual financial expenditure for maintaining these schools and ensuring the basic needs of the juvenile offenders amounts to 5–6 million UAH. In 2019, the Ministry of Education and Science opted

to integrate girls and boys in social schools. Subsequently, as part of an effort to streamline the system, the decision was taken to close down eight resocialisation schools (Lytvyniuk 2021).

2. The second reason for the closure of these facilities stemmed from their failure to comply with international standards regarding the protection of children's rights and the principle of upholding the best interests of the child. These educational institutions are "closed" facilities by nature, which do not fully align with the operational model of similar institutions in Europe and the standards applicable in the fields of rehabilitation and social and psychological assistance for children and adolescents who have committed offences and crimes. Additionally, General Comment No. 24 (CRC/C/GC/24) from the UN Committee on the Rights of the Child, titled "Rights of Children in Juvenile Justice", issued in 2019 and replacing General Comment No. 10 (2007), underscores that restricting or depriving contact with family for any purpose should be prohibited (Lytvyniuk 2021).

Since 2019, the government has prioritised the closure of schools and resocialisation institutions. To address this, a working group was formed, comprising representatives from various government agencies such as the National Police, Parliamentary Ombudsman, Ministry of Social Policy, Ministry of Internal Affairs and others. Their task was to explore alternative methods of intervention for juveniles in conflict with the law. Additionally, the development of these draft laws is outlined in Item 67 of the Action Plan for implementing the National Strategy in the Field of Human Rights for 2021–2023. By the end of June 2021, the Ministry of Justice of Ukraine had formulated and presented the draft Law of Ukraine "On Child-Friendly Justice" (Lytvyniuk 2021).

However, in addition to the ongoing second phase of the Russian–Ukrainian war, reform implementation has been halted since 24 February 2022 due to Russian aggression in Ukraine. Martial law was declared in Ukraine in accordance with the Law of Ukraine "On the Legal Regime of Martial Law" (2015. No. 389-VIII). As a result, the application of coercive educational measures to juveniles who have not reached the age of criminal responsibility continues to proceed as usual during martial law.

Because special educational institutions for children and adolescents were located in areas directly affected by the Russian aggression in Ukraine, specifically in the Zaporizhzhya region, Ukrainian authorities decided to evacuate students from the Komyshevsky School of Social Rehabilitation to the A.S. Makarenko Vocational School of Social Rehabilitation in the Kirovohrad region.

4. Punishing juveniles for criminal offences

According to the 2001 Criminal Code of Ukraine, a juvenile who commits a criminal offence may either face criminal responsibility or be exempted from it. The court decides the punishment based on the type of offence (crime or misdemeanor) and its severity (2001. No. 2341-III). Article 98 of the Criminal Code states that courts may impose five types of punishments on juveniles convicted of a criminal offence: (1) a fine, (2) public works, (3) corrective works, (4) detention or (5) deprivation of liberty for a specific period. Additionally, juveniles may face additional penalties such as fines and deprivation of the right to hold specific positions or engage in certain activities (2001. No. 2341-III).

The first three types of punishment for criminal offences do not involve imprisonment in isolated conditions. Detention and deprivation of liberty for a specific period do involve confinement in isolation and can be imposed on juveniles. These forms of punishment for juveniles are served in special correctional institutions: the former is served in detention centres, whilst the latter is served in specialised educational institutions.

In addition to the aforementioned primary forms of punishment for juveniles, fines and deprivation of the right to hold specific positions or engage in certain activities may also be imposed.

According to Articles 57 and 60 of the Criminal Code, corrective works and detention, respectively, may be imposed as punishment on juveniles who have reached the age of 16 for committing a criminal offence (2001. No. 2341-III).

According to Article 99(1) of the Criminal Code, a fine as punishment for a criminal offence can be imposed on a juvenile if they have independent income, personal funds or property that can be subject to enforcement. A juvenile who lacks such income, funds or property, for whom a fine is the primary punishment, may instead be penalised with public works or corrective work, as stipulated in Article 99(3) of the Criminal Code of Ukraine (2001. No. 2341-III).

Another form of punishment for a juvenile who has committed a criminal offence, as outlined in Article 100 of the Criminal Code of Ukraine, is public works. These works can be assigned for a period ranging from 30 to 120 hours and involve the offender carrying out tasks during their free time from studies or primary employment. The duration of this type of punishment cannot exceed two hours per day (2001. No. 2341-III).

Unlike public works, corrective works as a form of punishment for a juvenile are carried out at the place of their employment for a period ranging from two months to one year. "A deduction is made from the earnings of a juvenile sentenced to corrective works to the state income, in an amount determined by the court verdict, ranging from five to ten percent", as specified in Article 100(3) (2001. No. 2341-III).

According to Article 101, detention entails confining a juvenile in isolation within specially designated facilities for a duration ranging from 15 to 45 days (2001. No. 2341-III).

The most severe form of punishment for a juvenile is deprivation of liberty. This punishment may be imposed on a juvenile for a duration of six months to ten years, except in cases of particularly serious crimes committed by a juvenile, involving intentional homicide, for which a punishment of up to 15 years may be imposed on the juvenile (Article 102) (2001. No. 2341-III).

Considering the classification of crimes by severity, a juvenile may receive a sentence of imprisonment for a specified period:

- for a minor crime, up to four years;
- for a serious crime, up to seven years;
- for a particularly serious crime, up to ten years (Article 102) (2001. No. 2341-III).

Juvenile imprisonment for a specified period takes place in specialised educational institutions.

5. Specialised institutions for juvenile offenders serving criminal sentences

As indicated in section 2, special educational colonies are categorised as special institutions responsible for providing social protection and preventing offences; they are set out in Article 1 of the Law of Ukraine titled “On Bodies and Services in Juvenile Affairs and Special Institutions for Juveniles” of 1995 (1995. No. 20/95-BP). According to Article 10 of this law, the special educational institutions of the State Criminal Executive Service of Ukraine are facilities where juveniles aged 14 and older who are sentenced to imprisonment serve their sentences. Their organisation and operations are governed by criminal executive legislation (1995. No. 20/95-BP).

According to Article 11(2) of the Criminal Executive Code, special educational institutions (educational colonies) are categorised as institutions for the execution of punishment (2003. No. 1129-IV). According to the Code, institutions for the execution of punishment encompass detention centres, penal institutions and special educational institutions established and dissolved by the central executive body responsible for implementing state policy in the field of executing criminal punishments and probation (Article 11(7) of the Criminal Executive Code) (2003. No. 1129-IV).

According to Article 19 of the Criminal Executive Code of Ukraine, special educational institutions (educational colonies) “implement punishment in the form of imprisonment for a specified period for convicted juveniles” (2003. No. 1129-IV). In other words, adolescents found guilty of breaking the law are placed in special educational institutions (educational colonies) as facilities for carrying out sentences.

Juvenile offenders aged 16 to 18, as well as those convicted of particularly serious crimes from the age of 14, serve their sentences in educational colonies. Additionally, the upper age limit for convicts serving their sentence in an educational colony

can be extended to 22 years. This extension is permitted if it is deemed necessary to “consolidate the results of correction and graduation after reaching adulthood” (Article 148(1) of the Criminal Executive Code of Ukraine) (2003. No. 1129-IV).

According to Article 93 of the Criminal Executive Code, a juvenile sentenced to imprisonment serves the entire term of their sentence in a single educational colony, typically within the administrative territorial unit corresponding to their place of residence before conviction or the permanent residence of their relations. Transfer to another educational colony is permitted only in exceptional circumstances that prevent continued stay in the current facility (2003. No. 1129-IV).

Educational colonies, as special institutions for juvenile convicts, have a unique organisational structure tailored to their dual function of punishment and resocialisation. The structure of educational colonies comprises three distinct activities, as outlined in Article 94: quarantine, diagnosis and distribution; resocialisation; and social adaptation. These activities are kept separate from each other.

Upon arrival at an educational colony, all newly arrived convicts, including juveniles, are placed in the quarantine, diagnosis and distribution section, as specified in Article 94. There, they undergo a 14-day period during which a comprehensive medical examination is conducted to identify any infectious, somatic or mental illnesses. Additionally, primary psychological, pedagogical and other assessments of the convicts are carried out, as outlined in Article 95. During their stay in this section, convicts are not permitted regular visits, except for those aimed at obtaining legal assistance, as stated in Article 95(3) (2003. No. 1129-IV).

As per Article 95(2) of the Criminal Executive Code, following the medical examination, primary psychodiagnostics, psychological/pedagogical assessment and consideration of criminological and criminal/legal characteristics, an individualised programme of social and educational interventions is formulated for each convict. This programme is endorsed by the colony’s director (2003. No. 1129-IV).

Convicts transferred from the quarantine, diagnosis and distribution section according to the procedure outlined in the Criminal Executive Code (Article 94(3)) are housed in the resocialisation section of educational colonies. In accordance with Article 96, convicts are assigned to departments within the social and psychological service and housed in residential quarters where department members reside locally (2003. No. 1129-IV). Convicts who demonstrate lawful behaviour and diligence in their studies and work, and have less than six months remaining before their release, are housed in the social adaptation centre (Article 94, Section 5) (2003. No. 1129-IV).

According to Article 98 of the Criminal Executive Code, a tailored programme for reintegration is devised for every inmate serving a prison sentence and for juvenile convicts housed in educational colonies. Inmates residing in these centres may be employed in designated production facilities within the colony or at external sites, provided security measures are met and continuous supervision is ensured. These inmates reside in specially designated accommodation within the colony, separate from other inmates.

In addition to special educational institutions, detention centres are also classified as facilities for carrying out sentences as outlined in the Criminal Executive

Code, where juveniles may be placed. However, in the Law of Ukraine “On Bodies and Services for Juveniles”, detention centres are not listed among the bodies and services designated for juveniles, nor are they considered special institutions for juveniles.

According to Article 15(1) of the Criminal Executive Code, detention centres administer punishment in the form of detention. They are authorised to detain juveniles who were at least 16 years old at the time of sentencing and who have been convicted of criminal misdemeanors (2003. No. 1129-IV). Juvenile convicts serving sentences in detention centres are isolated from other categories of convicts and kept separately, in accordance with Article 51 of the Criminal Executive Code. The procedure and conditions for juveniles’ sentence in detention centres, as outlined in Article 51(12), are generally similar to those for adult convicts, with a few exceptions. However, juveniles sentenced to detention have certain privileges compared to adults. For instance, they have the right to short-term visits of unlimited frequency (whilst adults are limited to once a month), and they are entitled to a two-hour walk (whereas adults are only allowed a one-hour walk) (2003. No. 1129-IV).

6. Conditions and procedures for juveniles serving punishments in educational colonies

As stipulated in Article 102(1) of the Criminal Executive Code of Ukraine, a specific regimen is implemented in educational colonies. A similar regimen is also enforced for adult convicts in correctional colonies (2003. No. 1129-IV). The regime, as defined in the Criminal Executive Code, encompasses

the procedures governing the execution and serving of punishment, which ensure the isolation of convicts; continuous supervision over them; fulfillment of their assigned duties; protection of their rights and legitimate interests; safety of convicts and staff; separate detention of various categories of convicts; diverse conditions of detention depending on the type of facility; and adjustments to the conditions of detention as necessary. (2003. No. 1129-IV)

The regime requirements for different types of colonies, including educational colonies for juvenile convicts and correctional colonies for adult convicts, are virtually identical, as defined by Article 102 of the Criminal Executive Code of Ukraine (2003. No. 1129-IV). Whilst all special penitentiaries operate in conditions of isolation, the Criminal Executive Code of Ukraine mandates that the colony regime “should minimise the disparity between the conditions of life in the colony and in freedom, aiming to enhance convicts’ responsibility for their behaviour and awareness of human dignity” (Article 102(2)). Additionally, it establishes “conditions for socially useful work of convicts, secondary education

and vocational training, social and educational programmes and public influence” (Article 102(3)) (2003. No. 1129-IV).

The regime in all types of colonies includes the following provisions:

1. Convicts are required to wear uniform clothing.
2. Convicts, their belongings and clothing and the premises and grounds of the colonies are subject to search and inspection; personal searches are conducted by individuals of the same sex as the convicts.
3. The colony administration has the authority to inspect, on reasonable grounds, citizens and their belongings and vehicles on the colony’s premises, as well as to confiscate documents, items, products and substances whose possession and use are prohibited for convicts.
4. The regulations of the Ministry of Justice of Ukraine specify the permissible items and their quantities that convicts are allowed to possess, whilst prohibited items are confiscated.
5. Additionally, the colony administration is responsible for safeguarding the money and securities of convicts (Article 102) (2003. No. 1129-IV).

The distinction in the regime of an educational colony for juveniles compared to other types of colonies lies in the prohibition of employing physical force, special equipment and weapons on convicted juveniles, except in situations where they engage in a group or armed assault endangering the lives and well-being of colony staff or others, or when they offer armed resistance (Article 106(3)). Furthermore, even in such extreme scenarios, the use of straitjackets on convicted juveniles is not permitted (2003. No. 1129-IV).

Regarding the execution of the punishment of juveniles in the form of deprivation of liberty in an educational colony, there are also similarities with adult convicts regarding the procedures and conditions of serving the punishment (Chapter 15 of the Criminal Executive Code). This is outlined in the “General provisions for the execution of punishment in the form of deprivation of liberty” of the Criminal Executive Code of Ukraine.

The special conditions for organising the execution of sentences for juvenile convicts require moving them separately from adults (Article 88(2)) and ensuring separate detention of juveniles and adults (Article 92(1)). Moreover, unlike adults, juvenile convicts serving their sentences in correctional facilities must adhere to the following rules (Chapter 16 of the Criminal Executive Code of Ukraine):

1. Smoking is prohibited (Article 107(4)).
2. Short-term trips outside the colony within the territory of Ukraine are permitted for a duration of no more than seven days, excluding travel time to and from the destination (which should not exceed three days), under the following exceptional personal circumstances: death or severe illness of a close relative posing a threat to their life; a natural disaster causing substantial material damage to the convict or their family; and receiving medical treatment if it cannot be administered at the penal institution, if a doctor’s opinion from the institution is obtained.

3. Food, clothing, footwear, bedding and communal services are provided at no cost (2003. No. 1129-IV).

According to Article 125 of the Criminal Executive Code, it is mandatory to establish secondary comprehensive schools with three levels of education in educational colonies. Convicts studying in these schools are provided with textbooks, notebooks and writing materials free of charge. The specifics of serving sentences for juvenile convicts in educational colonies are outlined in Article 143 of the Criminal Executive Code.

Juvenile convicts in correctional colonies have certain rights. They have the right to spend money earned in the correctional colony, as well as funds received through transfers, pensions and other income, on food, clothing, shoes, underwear and basic necessities, without any limitation on the amount. They also have the right to receive unlimited short-term visits and one long-term visit every month. Additionally, they are entitled to free secondary education. They can meet with the individuals specified in the first paragraph of Article 8(2) of the Criminal Executive Code without any limitation on time or number, on working days, weekends, holidays and non-working days, between 8.00 a.m. and 8.00 p.m. Furthermore, they have the right to receive legal assistance and confidential legal consultations, which are quickly organised by the administration of the penal institution upon the initiative of the convicts, their relatives and/or individuals specified in this article.

With conscientious behaviour and a positive attitude towards work and education, after serving at least one fourth of their sentence, convicts have the right to improve their detention conditions. They may be allowed, by the decision of the head of the colony, to receive a short-term visit outside the educational colony once every three months (2003. No. 1129-IV). For demonstrating conscientious behaviour and a positive attitude towards work and study, as well as actively participating in the activities of amateur organisations and educational programmes within the educational colony, incentive measures can be applied, as outlined in Article 144 of the Criminal Executive Code. These measures include granting the right to attend cultural, entertainment and sports events outside the educational colony, accompanied by the colony's staff, or allowing convicts to leave the educational colony accompanied by parents or other family members. The duration of these outings is determined by the head of the colony but cannot exceed eight hours. However, it is prohibited to attend cultural, entertainment and sports events outside the colony that take place after 8.00 p.m. (2003. No. 1129-IV).

Juveniles convicted in educational colonies who violate the established rules and conditions of serving their sentence may face various punishments. These can include warnings, reprimands or severe reprimands. Additionally, their improved detention conditions, as outlined in Article 143 of the Code, may be revoked. In more severe cases, they may be placed in disciplinary isolation for a period of up to five days, either with or without the possibility of studying or working (2003. No. 1129-IV).

If convicts have reached the age of 18, they are transferred, as per Article 147 of the Criminal Executive Code, from an educational colony to a minimum-security correctional colony with general detention conditions. The decision regarding the transfer of a convict who has reached 18 from an educational colony to a correctional colony is made by the central executive authority responsible for implementing state policy on the execution of criminal punishments. This decision is based on recommendations from the pedagogical council and a submission from the head of the educational colony, which must be approved by the children's affairs service (2003. No. 1129-IV).

However, convicts who have reached the age of 18 may, for the purpose of consolidating the results of correction or completing secondary education or vocational training, be allowed to remain in an educational colony until the completion of their sentence, but not beyond the age of 22, as stated in Article 148 of the Criminal Executive Code (2003. No. 1129-IV). Such a decision can be taken by the pedagogical council through a resolution from the head of the colony, which must be approved by the children's affairs service.

Convicts who have reached the age of 18 and are permitted to remain in an educational colony are subject to the conditions of serving their sentence and the norms of food and material support established for juvenile convicts. The working conditions for individuals who have reached the age of 18 are determined in accordance with labour legislation.

7. Probation for juveniles in Ukraine

With the enactment of the Law of Ukraine "On Probation", a new approach to implementing criminal justice policy emerged that emphasises creating optimal conditions for executing criminal sentences without resorting to incarceration. The primary objective of the probation service is to enhance the security of society by supervising offenders, preventing recidivism and helping courts determine the level of responsibility of the accused.

The Law of Ukraine "On Probation" delineates the particulars of probation for juveniles, highlighting the significance of their age and psychological attributes. Juvenile probation, as outlined in Article 12, involves collaboration between the probation authority, child welfare agencies and specialised institutions and organisations dedicated to social welfare and crime prevention. Additionally, parents or legal guardians are engaged in social and educational interventions with the convicts. Helping convicted juveniles engage in education and attain a comprehensive secondary education are crucial objectives of the probation authority (2015. No. 160-VIII).

The Law “On Probation” underscores the collaborative implementation of suitable probation programmes by the probation authority and the central executive body responsible for shaping state policy on social issues concerning juveniles released from serving a sentence with probation. These probation programmes are designated by court order for individuals released from serving a probationary sentence.

In order to fulfil the objectives outlined in the Law of Ukraine “On Probation”, the state Probation Centre was established within the Ministry of Justice system. As of 1 January 2021, the Probation Centre operates alongside the 24 branches and 576 subdivisions of the probation service (including 14 sectors dedicated to juvenile probation) across Ukraine. These entities are staffed by 3,402 employees, including lawyers, social workers and psychologists (Probatsiia n.d.).

In 2017, Ukraine established 12 juvenile probation centres. As of 1 October 2022, the number of operational juvenile probation centres has increased to 14.

According to Article 76(2) of the Criminal Code of Ukraine, a person released from serving a probationary sentence may be mandated by the court to fulfil the measures outlined in the probation programme (2001. No. 2341-III). The probation programme is a structured series of sessions conducted according to a predetermined schedule. Its objective is to address behaviours that deviate from societal norms and to foster positive changes in individuals’ personalities that align with social norms (Probatsiini prohramy 2021).

In 2018, the Ministry of Justice of Ukraine approved the following documents through orders: “List of measures for the implementation of probation programmes” (Nakaz 926/5/2018), “Probation programmes for juvenile subjects of probation”, “Prevention of the use of psychoactive substances”, “Overcoming aggressive behaviour” and “Change in pro-criminal thinking” (Nakaz 1797/5/2018). Subsequently, the Ministry of Justice of Ukraine issued Order No. 3235/5 on 23 October 2019, approving the probation programme titled “Formation of life skills” (Nakaz 3235/5/2019).

When implementing probation programmes for juveniles, the probation authority may engage social service providers as defined by the Laws of Ukraine “On Social Services” and “On Social Work with Families, Children and Youths” (Probatsiini prohramy 2021). Meanwhile, a distinct probation tool has been devised for juveniles: the assessment of the risk of recidivism by individuals aged 14–18 who have committed or been accused of committing criminal offences. To facilitate the execution of probation programmes for working with juvenile offenders, juvenile probation sectors have been established in the administrative territorial units of Ukraine. These sectors are tasked with implementing state policies related to certain forms of punishment not involving imprisonment and probation for juveniles.

Table 2. Statistics on juvenile probation

	As of 1 November 2015	2016	As of 1 July 2017	2018	As of 1 March 2019	As of 1 July 2020	As of 1 July 2021	As of 1 October 2022
The Criminal Executive Inspectorate	1,998	-	-	-	-	-	-	-
Juvenile Probation Centres (created in 2017)	-	-	12	13	13	14	14	14
Persons registered with authorised bodies on probation matters	-	4,304	1,239 (82 of whom are girls)	988	1,002	755	721	556
Of those persons who are clients of juvenile sectors				149	166	142	127	
Persons released from serving a probationary sentence				958	970	726	678	533
Persons sentenced to public works				30	32	19	33	
Persons sentenced with a fine						10	9	
Persons whose exemption from serving a probationary sentence was cancelled				11	1			
Persons convicted for evading punishment				3				
Convicted persons who committed repeated crimes after becoming familiar with the order and conditions of serving the sentence		110		64	6		18	

Source: 2015 – Informatsiia Derzhavnoi (2015); 2016–2017 – Yak poviazani pidlitkova (2017); 2018 – Ministerstvo yustytzii Ukrainy (n.d.); 2019 – Hrytsenko (2019); 2020 – Kidina (2021: 171); 2021 – Tsentri Probatsii (2021); 2022 – Probatsiia v Ukraini (2022).

8. Changes in the population of juveniles sentenced to a period of imprisonment

Over the past two decades, there has been a notable drop in the number of criminal offences committed by juveniles in Ukraine. This decline has in turn impacted the following aspects:

- verdicts (rulings) that became legally binding during the period;
- convictions in Ukraine;
- individuals sentenced to imprisonment in Ukraine.

According to the table, from 2005 to 2021, the number of crimes in Ukraine committed by or involving juveniles decreased from 26,470 to approximately 3,600, a 7-fold decrease. Additionally, upon analyzing other data presented in Table 1, we observe the following:

1. The number of juveniles whose sentences (rulings) became effective during the reporting period, when comparing 2005 to 2021, decreased 8-fold (from 20,917 to 2,639 individuals).
2. The number of juveniles convicted in Ukraine decreased 10-fold when comparing 2005 to 2021 (from 17,556 to 1,695 individuals).
3. The number of juveniles sentenced to imprisonment in Ukraine decreased 16-fold between 2005 and 2021 (from 3,626 to 221 individuals).

It is necessary to separately discuss the reasons that have contributed to the decrease in the number of crimes among juveniles in Ukraine, particularly those sentenced to imprisonment. Regarding the reduction in the number of crimes, attention must be paid to the demographic factor. Starting from the late 1980s, there was a substantial decline in the birth rate in Ukraine, which persisted until the early 2000s. Consequently, in the 2000s individuals born in the 1980s entered adolescence.

According to statistical data in Ukraine, 742,500 children were born in 1980. In 1985, 762,800 children were born. In 1990, 657,200 children were born. In 1995, 492,900 children were born. In 2001, 376,500 children were born (Istorychna demohrafiia 2023).

Thus, from 1980 to 2001, the birth rate in Ukraine decreased almost twofold, which also led to a decrease in the number of juveniles in the country since 1995, and consequently, the crime rate among them. It is also important to consider other demographic data, such as the number of children residing in Ukraine during this period.

From 2005 to 2022, the population of children and adolescents aged 10 to 19 in Ukraine decreased 1.6-fold, dropping from 6,410,382 to 4,034,432. These data also suggest that the demographic crisis in Ukraine has partially contributed to the decrease in the number of crimes committed by juveniles in the country.

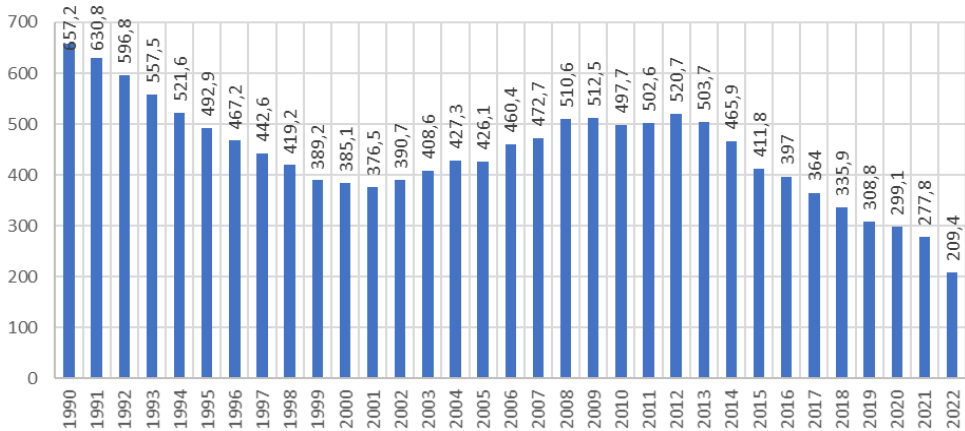
The demographic decline, along with the persisting crime rate in Ukraine, has been influenced by the war initiated by Russian aggressors in 2014. This conflict led to the annexation of the Crimean Peninsula and the occupation of parts of the Donetsk and Luhansk regions. However, we believe that broader trends in social, economic and political development, coupled with improvements in citizens' living standards, have significantly contributed to the reduction in crime across the country.

Table 3. Statistics of juvenile delinquency and court sentences for criminal offences

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Number of crimes committed by or with the participation of juveniles (3)	26,470	19,888	18,963	15,846	3,514	17,342	17,846	14,238	8,781	7,467	7,171	5,230	5,608	4,750	4,088	Approx. 3,70 (4)	More than 3,500 (5)
Number of juveniles whose verdicts (rulings) entered into force in the reporting period (6)	20,917	15,937	13,989	11,725	10,830	12,391	11,066	10,545	7,225	5,815	5,394	4,083	3,636	3,350	2,960	2,639	
Number of juveniles convicted in Ukraine (7)	17,556	13,939	11,170	10,078	8,555	10,883	8,686	9,010	5,911	4,875	4,589	3,474	3,088	2,798	2,406	2,048	1,695
Number of juveniles sentenced to imprisonment in Ukraine	3,626	2,697	2,387	1,977	1,886	2,030	1,915	1,496	1,153	725	585	495	416	257	283	259	221
Percentage of juveniles sentenced to imprisonment in Ukraine in relation to the total number of minors sentenced in Ukraine	20.65	19.35	21.37	19.61	22.05	18.65	22.05	16.60	19.51	14.87	12.75	14.25	13.47	9.19	11.77	12.65	13.04

Source: Lubenets, Naumova (2021: 11); State administration of justice (n.d.: 34); Statistics (n.d.); Zvit pro rezultaty monitorynhu (2021); Roshchyna (2022); Statystyka (n.d.).

Figure 1. Birth rate in Ukraine, 1991–2022



Note: The table displays data that since 2014 exclude the temporarily occupied territory of the Autonomous Republic of Crimea and Sevastopol, as well as the temporarily occupied territory in the Donetsk and Luhansk regions (Skilky ditei 2023).

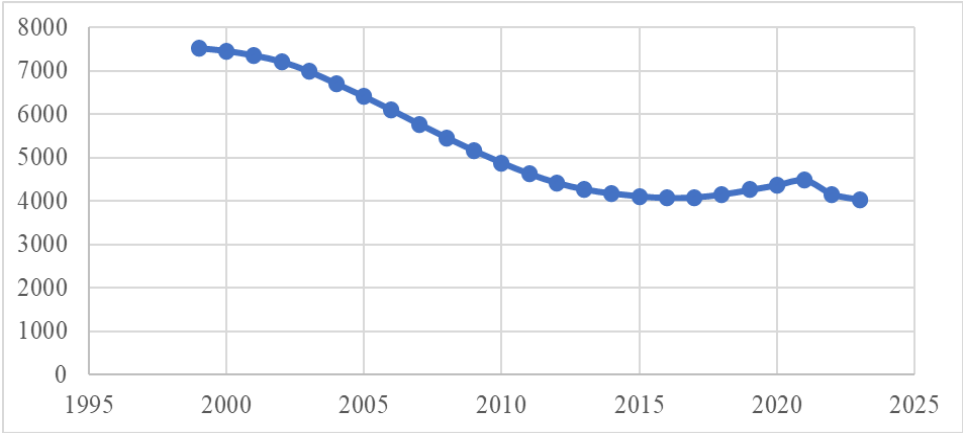
Source: Skilky ditei (2023).

On the other hand, significant attention should be drawn to the substantial drop (more than 10-fold) in the number of juveniles sentenced in Ukraine between 2005 and 2021, as well as in the number of juveniles sentenced to imprisonment in Ukraine (16-fold). Changes in Ukraine’s criminal policy, aimed at humanising criminal responsibility, have greatly impacted this notable decline in the aforementioned indicators.

An important factor contributing to this situation in Ukraine was the enactment of the Law of Ukraine “On Probation” on 5 February 2015, which came into effect on 27 August 2015 (2015. No. 160-VIII). This legislation likely played a significant role in the decrease in prison sentences served by juveniles. If we compare the decrease in sentences (decisions) entered into force between 2005 and 2020 (7.9-fold), with the reduction in the number of crimes committed by or involving juveniles (7.6-fold), we observe a similar ratio. However, the decline in the number of juveniles convicted between 2005 and 2021 was higher (10-fold). Furthermore, the decrease in juveniles sentenced to imprisonment during the same period was even higher (16-fold). This indicates a substantial decrease in the number of juveniles sentenced in Ukraine compared to 2005, with courts less frequently imposing on them sentences involving deprivation of liberty.

However, the changes over the years regarding the types of punishments imposed on juveniles who committed a criminal offence were not uniform. The reduction in the types of punishments applied to juveniles by court verdicts had the most significant impact on the number of sentences of deprivation of liberty. The number of convicted juveniles sentenced to imprisonment decreased significantly from 2005 to 2020, with a few exceptions. Increases were observed only in 2010

Figure 2. Adolescent population (aged 10–19) in Ukraine, 1999–2023



Source: UNICEF Data Warehouse.

(2,030 convicts; +7.6%) and 2019 (283 convicts; +10.1%). Comparing the figures from 2005, when 3,626 juveniles received sentences of deprivation of liberty, to those of 2020, when the number decreased to 259, a 14-fold decrease is observed in this indicator. Additionally, statistics from 2013 to 2020 show a 4.5-fold decrease in the number of juveniles sentenced to imprisonment (Lubenets, Naumova 2021: 11).

Table 4. Statistics of criminal punishments applied to juveniles by court verdicts

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Deprivation of liberty for a certain period	1,153	725	585	495	416	257	283	259	221
Detention	38	34	30	328	18	14	12	11	22
Corrective works	2	1	0	7	0	0	1	0	1
Public works	355	282	305	287	197	159	123	116	145
Penalty (fine)	468	365	387	316	351	334	402	347	133

Source: 2013–2020 – Kidina (2021); 2021 – State administration of justice (n.d.).

The fluctuations in the population of convicted juveniles sentenced to a term of imprisonment, as mentioned above, prompted the need for reforms within Ukraine’s penal system aimed at streamlining the operations of specialised correctional facilities. Consequently, there arose a demand for such institutions to be downsized. The overall tendency of diminishing numbers of juvenile offenders serving prison sentences in Ukraine’s specialised educational colonies led to the restructuring of the penal institution system, with a focus on downsizing through closures and liquidations.

Therefore, in comparison to the early 2000s, when Ukraine had 11 correctional colonies housing approximately 3,000 individuals serving sentences, by the end of 2021 only one correctional colony in Kremenchug city and one sector for convicted female juveniles remained operational in Ukraine, accommodating a total of 63 juveniles, including four girls.

Conclusions

Since gaining independence, Ukraine has made significant strides towards progressive, civilised and democratic societal development. Whilst to some extent the old model of handling juveniles who commit criminal acts, inherited from Soviet times, has been preserved, notable changes have occurred in criminal and criminal executive policies regarding the punishment and rehabilitation of juveniles. Firstly, there have been modifications in the types of criminal penalties applicable to juveniles. Secondly, there have been changes in the conditions under which juvenile sentences are served. And thirdly, there have been adjustments in the methods used for the resocialisation of juvenile offenders.

Institutional changes in the development of the juvenile penitentiary system have been influenced by two main factors: a significant decrease in juvenile crime rates, evident since the early 2000s, and a reduction in the number of court rulings regarding the criminal responsibility of juveniles, particularly those involving imprisonment.

Statistical data revealed a substantial decline in juvenile crime rates from 2005 to 2021. Specifically, the number of juvenile crimes decreased 7.5-fold, the number of juveniles whose verdicts became legally binding between 2005 and 2020 decreased approximately 8-fold and the number of juveniles convicted in Ukraine during the same period decreased 10.4-fold. Additionally, the number of juveniles sentenced to imprisonment decreased 16.4-fold within the same timeframe.

The decrease in juvenile crime rates can be attributed to various factors, including the demographic crisis in Ukraine, the territorial changes resulting from the annexation of the Crimean Peninsula and the occupation of parts of the Donetsk and Luhansk regions, as well as a notable improvement in the economic, political, cultural and social aspects of Ukraine.

In Ukraine, there has been a significant decrease in several key indicators between 2005 and 2021. Specifically, the number of juveniles convicted decreased by a factor of 10.36, and the number of juveniles sentenced to imprisonment decreased 16.4-fold. This notable decline can be attributed to changes in criminal law policy aimed at humanising criminal liability. Statistics indicate that the humanisation of criminal responsibility has had a positive impact on the reduction of crime in Ukraine. In other words, the implementation of more humane criminal liability measures did not result in an increase in crime within the state.

Table 5. Number of special educational institutions in Ukraine and of convicted juveniles serving prison sentences there

	Early 2000s (2004)	2008 (1)	2010 (2)	End of 2012	1 November 2015 (3)	2016 (as of 1 January 2017) (4)	1 July 2018	As of 1 January 2020 (5)	End of 2021 (6)
Number of educational colonies	11 10 for boys who committed a crime between the ages of 14 and 18 1 for girls	10 9 for boys who committed a crime between the ages of 14 and 18 1 for girls	10 9 for boys who committed a crime between the ages of 14 and 18 1 for girls	10 9 for boys who committed a crime between the ages of 14 and 18 1 for girls	6 5 for boys who committed a crime between the ages of 14 and 18 1 juvenile detention sector in a correctional colony for women	6 6	6 5 for boys who committed a crime between the ages of 14 and 18 1 juvenile detention sector in a correctional colony for women	1 2	1 educational colony in the city of Kremenchug 1 juvenile detention sector in a correctional colony for women
Number of juveniles serving sentences	Approx. 3,000	1,800	1,469	1,426	352	304	146, of whom 10 were girls	88	63, of whom 4 were girls

Source: (1) 2008 – Kovalenko, Lashchenko (2008); (2) 2010 – Stadnik (2017); (3) November 2015 – Informatsiia Derzhavnoi (2015); (4) 2016 – Stadnik (2017: 99); (5) January 2020 – The Rate of Imprisonment in the EU and Ukraine (2021); (6) 2021 – Puzyriov (2021).

The decline in the number of juveniles sentenced to imprisonment from 2005 to 2020 is linked to changes in penal policy and legal humanisation. During this period, greater emphasis was placed on utilising alternative methods to address juveniles who have committed unlawful acts. This shift was influenced by the establishment of probation in Ukraine in 2015. A key objective of this institution was to implement state probation programmes aimed at resocialising juveniles. Additionally, these programmes are intended to facilitate the engagement of convicted juveniles in educational endeavors and to enable them to complete secondary education.

Declaration of Conflict Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author conducted research as part of the framework programs for Ukrainian academic teachers funded by the Foundation for Poland. She conducted their research at the Faculty of Law in Warsaw, SWPS University of Humanities and Social Sciences, and served as an associate of the Center for Criminological Analysis at the University of Warsaw.

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