



Reform Forum Note

INTERNATIONAL STANDARDS OF JUVENILE JUSTICE: ITS CREATION AND IMPACT ON UKRAINIAN LEGISLATION


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Submitted on 10 Sept 2021 / Revised 05 Oct 2021 / Revised 05 Nov 2021 / Approved 14 Jan 2022

Published: 01 Feb 2022

Summary: 1. Introduction. – 2. The First Working Group Discussions on Juvenile Justice. – 3. Dividing the Article into Two Sections: Treatment in Penal Matters and Torture/Capital Punishment. – 4. Conclusions.

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Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that his opinion and views expressed in this article are free of any impact of any organizations.

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Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that her opinion and views expressed in this article are free of any impact of any organizations.

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Managing Editor – Dr. Serhii Kravtsov. English editing – Dr. Sarah White.

How to cite: A Omarova, S Vlasenko 'International Standards of Juvenile Justice: Its Creation and Impact on Ukrainian Legislation' 2022 1(13) Access to Justice in Eastern Europe 116-126. DOI: <https://doi.org/10.33327/AJEE-18-5.1-n000100>

Published: 01 Feb 2022 (<https://doi.org/10.33327/AJEE-18-5.1-n000101>)

ABSTRACT

Background: *The rights of the child have always been a focus of international organisations, including the United Nations. This is evidenced by the fact that in 1979 the UN Commission on Human Rights established a Working Group to draft a convention on the rights of the child, which from 1979 to 1989 worked on establishing a universal treaty for children around the world. Among other articles, members of the Working Group developed provisions on juvenile justice. The result of this hard work was that international standards of juvenile justice were established in Arts. 37 and 40 of the UN Convention on the Rights of the Child.*

Methods: *The historical and legal methods were the main methods of the research, which allowed us to make a comparison of the draft texts of Arts. 37 and 40. This comparison gave us an opportunity to trace the development of thoughts of states parties about the treatment of children in penal matters and punishments for committed crimes. The paper begins by considering the draft texts of Art. 20 (which would become Arts. 37 and 40) of the Convention that were proposed for discussion. We reveal the main discussions and contradictions of the members of the Working Group. The next part describes the reason for dividing the initial article about juvenile justice into two separate parts. The final important comments and suggestions of state parties are also highlighted.*

Results and Conclusions: *The process of adopting these articles was long and difficult, as it turned out that developing universal proposals with which all member states would agree was a complex task. Nowadays, Ukraine is trying to reform its legislation, particularly in the sphere of juvenile justice. That is why some useful recommendations for Ukrainian legislation are proposed in the concluding remarks.*

Keywords: *the UN Convention on the Rights of the Child, juvenile justice, the treatment in penal matters, rights of the minors, juvenile delinquency*

1 INTRODUCTION

In a democratic state, children's rights and, most importantly, their observance, has always been a focus of attention. In view of this, no one has ever doubted the need for their legislative consolidation. Certainly, the problem of guaranteeing them becomes especially acute when it comes to children who are in conflict with the law. Taking all of this into account, the decision to develop a regulatory framework for juvenile justice was made at the international level. Due to this, international standards of the protection of children's rights in the field of juvenile justice were developed.

Even though Ukraine postures itself as a social, legal, and democratic state, some provisions on the legal regulation of children need to be improved. Therefore, studying international standards for the protection of children's rights in the field of juvenile justice will be useful.

First of all, it should be noted that today, the main international legal document that enshrines the rights of the child and effective mechanisms for their implementation is the UN Convention on the Rights of the Child (hereinafter – the Convention).

This UN's act contains articles on juvenile justice, namely Arts. 37 and 40. Having familiarised ourselves with the content of the above-mentioned norms of the Convention, we can say that in order to comply with these norms, the participating states are required to take concrete action.³ Given the importance and conceptuality of the document under consideration, it is

3 Henrietta JAN Mensa-Bonsu, 'Ghana' in SH Decker, N Marteache (eds), *International Handbook of Juvenile Justice* (Springer 2017) 3.

quite logical that the national legislation of the state parties to the Convention, including in the field of juvenile justice, should be based on its provisions.

According to Godfrey O. Odongo, there are six indications in the Convention that new standards of juvenile justice have been introduced, namely:

- a) founding separate institutions, laws and procedures valid for children accused or suspected of committing crimes;
- b) establishing the minimum age of criminal responsibility;
- c) adherence to the principle of using detention as a last resort and for the shortest period of time;
- d) the desirability of diversion as a binding obligation on states parties;
- e) the degree to which juvenile justice takes into account the procedural guarantees of the Convention and relevant international instruments, such as the UN Beijing Rules on the Administration of Juvenile Justice;
- f) limiting the use of specific court verdict and the necessity to provide for alternative types of punishment at the stage of sentencing.⁴

Yet, in practice, it turned out that establishing these features is not so easy. Thus, Arts. 37 and 40 of the Convention in its current version were discussed and passed by the Working Group in 1986 as a single article – Art. 20 (this is a discussion of the so-called Polish draft of this provision, which will be discussed later). It should be noted that at first reading, the article mentioned was Art. 19. Subsequently, the Working Group decided to divide Art. 19 into two – Art. 19 and 19-bis, which later became Arts. 37 and 40, respectively.⁵

However, nowadays, there are unfortunately no comprehensive historical or legal studies of the process of developing international standards of juvenile justice. This type of research requires the usage of the historical and legal method, about which was written earlier.⁶

2 THE FIRST WORKING GROUP DISCUSSIONS ON JUVENILE JUSTICE

An article on the rights of a child accused or found guilty of violating criminal law was first proposed to the Working Group by a Canadian representative in 1985.⁷

In addition to the above, there were two other proposals regarding the content of this article submitted by the Ad Hoc Group of Informal NGOs and Poland in 1986. During their debate, the representatives of the USA, Austria, and the Netherlands advanced an opinion that the text proposed by Canada could be used as a springboard for discussion. It is noteworthy that the member of the delegation of the USSR stressed that all proposed draft texts (the Polish and Canadian) could be taken as a basic text while waiting for the revised text of the Canadian version, as the Canadian observer said in her introductory statement that to continue the debate an updated version of the article would be presented to the group shortly. The proposal of the representatives from Canada was considered by the Working Group at its session in 1986. It is advisable to dwell on what the Canadian delegation suggested. The study of the content of the proposed edition allows us to state that the main concepts for the

4 Godfrey O Odongo, 'Kenya' in SH Decker, N Marteache (eds), *International Handbook of Juvenile Justice* (Springer 2017) 31.

5 Legislative history of the Convention on the Rights of the Child. Volume II (OHCHR, The Office of the United Nations High Commissioner for Human Rights, Save the Children Sweden, 2007), 739.

6 D Shygal, A Omarova 'Evaluation of the Results of the Historical and Legal Comparison of the Juvenile Justice of Ukraine and Poland in the 1920s' 2021 2(10) *Access to Justice in Eastern Europe* 67–85.

7 Report of the working group on a draft convention the rights of the child E/CN.4/1985/64 <<https://undocs.org/E/CN.4/1985/64>> accessed 11 November 2021.

representatives of this country remain respect for human (in this case, the child's) dignity and the value of the individual. This is confirmed by the provisions of the article that all states parties of the Convention 'recognize the right of children accused or found guilty of violating criminal law to be treated in a manner consistent with the development of their dignity and worth' (para. 1). It should be noted that it is significant for us that, despite the child's violation of the law, i.e., the commitment of punishable acts, the Canadians believe that states should primarily seek their rehabilitation, correction, return to society as full members. As proof, we cite the provision of subpara. (c) of the article under consideration, which states that the main goal of the state should be the correction and social rehabilitation of children 'found guilty of violating criminal law'.

It is also worth noting subpara. (a) of para. 2: 'No child shall be arbitrarily detained or imprisoned'. Moreover, a child who has committed a criminal offence has the same rights as any other person, namely the right to: humane treatment, respect for his/her dignity, immediate notification of charges against him/her in a language he/she understands, consideration cases in accordance with the law within the framework of a fair judicial proceeding within a rational time by an independent and impartial court, legal aid for defence. In addition, the child is presumed innocent until proven guilty. In our opinion, the last paragraph of the article testifies to the desire to consolidate the humane treatment of the child: 'No child can be sentenced to death. No child shall be subjected to cruel, inhuman or degrading treatment or punishment, or to any act which is disproportionate to the circumstances of both the offender and the crime'.

Examining the texts of the proposed provisions, during the next consideration, the representative from Iraq noted that he preferred the draft text proposed by Canada in the original version, which, in his opinion, should be merged with the one proposed by Poland. It is worth pointing out that the representative from Austria expressed the view that, when examining the content of the article under examining by the Working Group, care should be taken not to duplicate the statutory provisions of other existing international human rights documents applicable to children. Of no less interest is the statement made by the representative from the United Kingdom that a strict ban on the separation of children from adults may not always be of benefit to the child, and he noted that the Working Group should focus on what is in the best interest of children. It should be added that some scholars have also noted that when studying the participation of minors in criminal proceedings, it is important (and better) to have respect to the child's opinion and interests, which can be achieved by minimising the negative consequences that may affect the child's emotional intelligence, his/her social activity, comprehensive healthy development, and upbringing.⁸

Based on this, the Chairman of the Working Group, after some debate, established an informal working group consisting of delegations from Austria, Canada, Poland, and concerned NGOs to consult and formulate an article consolidating the views of many delegations. Incidentally, the Chairman, like the above-mentioned representative from Iraq, believed that para. 1 of the revised text proposed by Canada could be the springboard for discussion of the para. 1 of the article, which would be adopted by the Working Group, while the compromise text prepared by an informal group could be the basis for para. 2.

In the context of the above, it is appropriate to analyse the text proposed by the informal working group. First of all, almost at the beginning of the article, the members of the group (as well as the delegation from Canada) recognised the main goal of the state correction and social rehabilitation of children found guilty of violating criminal law, which could be achieved by behaving in a manner appropriate to develop their sense of dignity and value

8 OV Kaplina, OP Kuchynska, OM Krukevych, 'Interrogation of minor and juvenile witnesses in criminal proceedings: Current state and prospects for improvement' (2021) 28(3) *Journal of the National Academy of Legal Sciences of Ukraine* 270.

and the strengthening of their respect for the rights and fundamental freedoms of others (para. 1).

Equally important is the assertion that children have the same legal rights as adults. The provisions of subparas. (b) and (d) deserve special attention. The first enshrined the need to use detention in custody unless it was absolutely necessary and for as short a period of time as possible. The other prohibits arbitrary detention, imprisonment, torture, or cruel, inhuman, or degrading treatment or punishment. It should be added that according to the group's proposals, criminal law and the penitentiary system should not be used instead of procedures and means of child protection. However, it is our opinion that the innovation and progress that could have been made during the discussion was the prohibition of capital punishment and life sentence as a penalty for persons under the age of 18.

During the discussion, it was suggested that some additions and changes should be made to the text of para. 1. For example, the representative from the USA noted that her delegation understood that this article covered criminal proceedings against both adults and juveniles, namely, cases when a child has committed an act that would be considered a criminal offence if it was committed by an adult. In this regard, the delegation from Japan expressed uncertainty about the appropriateness of enshrining in the text of the article the provision 'subject to juvenile justice proceedings', as in his country, it includes family court proceedings, and that is why he reserved the right to express some reservations about the content of para. 2 until its final composition. An observer from the Netherlands argued against the above formulation and proposed to supersede it by stating: 'children who are accused of or recognized as having infringed the penal law'. This proposition of the Netherlands was supported by the representative from the USA.

Let us focus on the detention of juveniles, which was also the subject of discussion, the results of which were documented and taken into account when agreeing on the text of the norms under consideration. According to M. Taylor, placing juveniles in prisons increases the likelihood of them offending against criminal law in the future. At the same time, it should be remembered that detention is used unless it is absolutely necessary and only for ordinary offenders or persons who have committed serious crimes.⁹ A similar view is held by Bruckmüller, who believes that a juvenile can be detained only if the associated consequences for personal development or reintegration into society are not disproportionate to the crime. Therefore, the assessment of the interests of society and the child should be carried out with special care, but at the same time quickly. It should be taken into consideration that the younger the suspect is, the more reasons to refuse detention.¹⁰

It should be mentioned that the representatives of different states did not overlook the need for legal assistance. Everyone agreed that it was important and necessary. However, the delegation of the United Kingdom expressed concern about the inclusion of 'legal assistance' in para. 2 of this draft text. He explained his attitude by saying that, for example, legal qualifications were not required for social workers to participate in juvenile court proceedings.

So, as can we see, during the first reading, there were three draft texts of the article devoted to juvenile justice. The main discussions were about legal assistance for the children in conflict with law, taking into account an opinion of the child during criminal procedure and detention in custody. The debates in 1986 established the general provisions on juvenile justice. These provisions needed to be improved, which was done during the second reading.

9 M Taylor, 'USA' in SH Decker, N Marteache (eds), *International Handbook of Juvenile Justice* (Springer 2017) 31.

10 K Bruckmüller, 'Austria' in SH Decker, N Marteache (eds), *International Handbook of Juvenile Justice* (Springer 2017) 221.

3 DIVIDING OF THE ARTICLE INTO TWO SECTIONS: TREATMENT IN PENAL MATTERS AND TORTURE/CAPITAL PUNISHMENT

Continuing the consideration of the issue, it should be noted that in 1989, there were five versions of Art. 19 adopted in the first reading. The draft text includes amendments offered by the Crime, Prevention and Criminal Justice Branch and the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, and two texts proposed by Venezuela that were reflected in documents E/CN.4/1988/WG.1/WP.11 and E/CN.4/1988/WG.1/WP.49.¹¹

After a general discussion, during which it became clear that a consensus could not be reached, the Chairman proposed the formation of an open-ended drafting group, which would include representatives of states parties such as China, Canada, the USA, Argentina, Cuba, the USSR, Mexico, Portugal, and India. It was this group that had to agree on the draft text with Venezuela. Following the inaugural meeting of this drafting group, which was attended by a majority of the Working Group, Venezuela invited the delegation from Portugal to adjoin it in coordination and elected a group of friends of the coordinator, including Spain, Venezuela, Senegal, Canada, Portugal, NGOs, and other interested delegations that expressed a wish to participate. The group's coordinators set out their proposals in document E/CN.4/1989/WG.1/WP.67/Rev.1, which they submitted for consideration. Having studied the text, we note that it reflects the key provisions that every child has the right to a humanist attitude and respect for dignity. It is prohibited to impose on persons under the age of 18 such criminal punishments as the death penalty, life imprisonment and to torture children and behave in a manner that is cruel, inhuman, or degrading. Additionally, a child may not be imprisoned illegally or high-handedly. Moreover, imprisonment can only be used unless it is absolutely necessary and for as short a period of time as possible. Enshrined rights of the child deserve to be highlighted: maintaining contact with his/her family through correspondence and dating; immediate access to legal and other relevant redresses; the right to appeal the lawfulness of imprisonment in court (or another competent, independent, and impartial body) and a speedy decision on this kind of act.

Presenting the proposal set out in working document E/CN.4/1989/WG.1/WP.67/Rev.1, the representative from Portugal said that the drafting group had tried to draft a text consistent with the documents adopted in this area by the UN, dividing the various independent situations in need of protection into two articles. Thus, the new Art. 19 covered situations such as the prohibition of torture and other violent, inhuman, or degrading treatment or punishment, the capital punishment or life sentence. Additionally, it provided for such punishment as imprisonment. It should be noted that in considering this issue, the representatives sought to reflect the comments made by the Human Rights Committee, as the priority was to show respect for human dignity, recognition of children's needs, and concern for legal or other assistance. Recognising the initiatives of the UN in the field of juvenile justice, the drafting committee included some of its guidelines in Art. 19-bis, but using non-mandatory wording. It is worth noting that this step has been taken to allow states to strike a balance between the desirability and the appropriateness of providing for these measures in national legislation. It should be added that given the emphasis and focus on respect for human rights and the provision of legal safeguards, as well as for the child to grow up in an atmosphere of love and understanding, the decisions were sometimes less formal than those reflected in other documents and caused concern, which, incidentally, was reflected in the provisions on the appearance at the hearing of the parents or legal representatives of the child. The members of

11 Report of the working group on a draft convention the rights of the child E/CN.4/1989/48 <<https://undocs.org/E/CN.4/1989/48>> accessed 11 November 2021.

the open-ended drafting group requested the delegation from Canada to submit paragraphs of the article to the Working Group, taking into account this proposition.

Speaking of changes and additions to the original versions of the articles under consideration, it should be noted that the representatives from Venezuela, the Federal Republic of Germany, Austria, and Senegal proposed deleting the words 'without possibility of release' from para. 1. At the same time, representatives from the USSR, Norway, Japan, China, the USA, and India advocated their preservation. For example, the delegations from Norway and India stressed that they would not support the removal of these words, as such a step would lead to a significant change in the text adopted in the first reading and approved by their governments. As a way to reach a consensus, the representatives from the Federal Republic of Germany, China, Venezuela, and the Netherlands proposed deleting the reference to life sentence and release provisions from this section. However, the representative from Senegal considered it important to maintain these provisions, as if they were excluded from the text, judges would have the right to impose a life sentence as a replacement for the death penalty. Para. 1 of Art. 19 was agreed and accepted after all discussions. Although, by joining the consensus, the representative from the USA reserved the right of his country to make reservations to this article if the USA ever decided to ratify the Convention.

In presenting para. 2, the observer from Canada noted that it overlapped the provisions of the Beijing Rules and the International Covenant on Civil and Political Rights. The representatives of the UK and the Netherlands reserved the right of their countries to make reservations to this article if they ever decide to ratify the Convention. Representatives from Kuwait and the USSR expressed their concern over the content of the second sentence of this para of the article. In particular, they were concerned that the Working Group would decide on detailed measures to punish juveniles without the needed experience. The representative from the USSR wondered whether there was a consensus of experts on juvenile punishment, especially that imprisonment ought to be applied only 'for the shortest possible period of time'. The representative from the Federal Republic of Germany stressed that he would not support this proposal for a sentence, as the legislator from the Federal Republic of Germany did not support that imprisonment for minors ought to be only 'for the shortest possible period of time'. The same opinion about this wording was the representative from Italy. As a consensus, she proposed to delete the second sentence, leaving only the first, which had already been accepted and agreed upon, but without insisting on this proposal. The representative from Senegal noted that the sentence under consideration was significant with a view to stimulating judges to contemplate other educational or corrective measures than imprisonment and to guarantee that detention measures were used only in exceptional cases (i.e., in extreme cases). An alternative proposal for a compromise was made by the representative from Norway, who offered to remove the words 'and for the shortest possible period of time'. By the way, this proposition was supported by representatives from Mexico and the USSR. However, the latter suggested replacing the wide-ranging concept of 'deprivation of liberty' with more exact words 'imprisonment, arrest and detention' and stating in the text that these measures ought to be 'in conformity with the law'. The proposal of Norway with amendments of the representative from the USSR was supported by Libya.

However, this issue was not immediately agreed upon. Thus, C. Slobogin and M. Fondacaro noted that juveniles are less capable of mellow judgment, impulse control, and prescience than adults, and therefore, public intervention to change criminal behaviour can help reduce recidivism, i.e., be more effective than deprivation of liberty.¹² However, the role and functions of juvenile detention have been discussed in connection with the existence of a juvenile court, which has the power to take measures such as detention. Although, the court, when choosing detention, imposes varying degrees of restraint to prevent re-offending

¹² C Slobogin, M Fondacaro, 'Juvenile Justice: The Fourth Option' (2009) 11(8) Iowa Law Review 131.

(protection of public safety), to prevent harm to both the juvenile and the society (protection of himself and others), and to ensure the presence of the juvenile in court (prevention of escape). It also confirms the fact of custody or guardianship for people of this age group. It should be noted that this is possible while the court decides and carries out post-disposition placement or provision of services.¹³ It is appropriate to add that paras. 3 and 4 of Art. 19 did not provoke special comments and did not require additional discussions. As a consequence, Art. 19 was adopted and became Art. 37 of the Convention.

The drafting group formed to prepare the text of Art. 19 also provided the text of Art. 19-bis. Innovations of this article (compared to the above-mentioned draft texts) can be considered that the child in each case has at least the following guarantees: to be presumed innocent until proven guilty according to law; to be immediately informed of the charges against him/her; to receive legal and other relevant assistance in preparing and presenting his/her defence; immediate trial in the presence of a legal adviser and his/her parents or legal guardians; not being forced to testify; reviewing a court decision by a higher authority; receiving free assistance from an interpreter when the child does not understand or does not speak the language used; observance of his/her confidentiality at all stages of the proceedings.

When introducing the proposed version of Art. 19-bis, the representative of Portugal pointed out that, given the reservations expressed by the members of the Working Group, particular norms had not been intentionally written as imperatives. She explained that this was done in order to give all members of the Working group the opportunity to approve or not support the measures proposed in them. Para. 1 and subparas. (a) and (b) were adopted without much discussion. Contradictions arose over several points of subpara. (b) of para. 2 of Art. 19-bis. For example, with regard to point (ii), the discussion revolved around two issues: the child would be directly informed of the charges against him/her and the type of legal aid that will be provided to him/her. The first question was asked by a representative from the USSR, who said that charges against the child could not be made through representatives because it would create severe challenges. The same consideration was expressed by the delegation from the German Democratic Republic. The delegations from Honduras, Italy, Venezuela, Senegal, and Mexico emphasised the need for parents and/or legal guardians to be informed of the charges against the child. With regard to legal aid, some members of Working Group, in particular, the Netherlands and the Federal Republic of Germany, noted that, given the specifics of their legal systems, the use of the wide-ranging concept of 'legal assistance' could be problematic, as in cases of minor violations of the law, child protection could be provided by non-lawyers. Japan also stated that the presence of legal counsel is not required under Japanese juvenile procedures. Finally, a compromise text was adopted and presented by the observer from Canada.

During the discussion on point (iii), several members of the Working Group elicited two issues, which were the use of the terms 'legal counsel' and 'judicial body'. Delegates from some countries of Western Europe agreed that, with regard to the specificities of their legal systems, the term 'judicial body' should be considered too broad in meaning, and therefore a more precise term was needed. The delegate from Japan stressed that not all hearings were open in his country – for example, in family courts, the use of the term 'fair hearing' creates certain problems when interpreted as a public trial. The representative from Japan stated that the principle of confidentiality set out in point (vii) was contradictory with the principle of a public trial. Finally, all the above-mentioned delegations stressed that they understood 'legal counsel' on a gross scale so that the term should also cover non-legal persons, as mentioned earlier. Only after all the proposals and amendments were taken into account point (iii) was adopted.

13 David W Rosh, 'Juvenile Detention. Issue For the 21st Century' in Albert R Roberts (ed), *Juvenile Justice Sourcebook: Past, Present, and Future* (Oxford University Press) 218.

In the light of the above-mentioned discussion, we want to highlight that Albert R. Roberts identifies three basic types of juvenile decisions: nominal, conditional, and custodial. Nominal decisions often apply to offenders who have committed a nonviolent crime for the first time and include reprimands or warnings that a juvenile will be imprisoned for a long time if he/she commits a new crime. Conditional decisions often require juvenile offenders to meet certain probationary conditions, such as participation in a two-month treatment for addictions, including six days a week of intensive group therapy, psychosocial assessment, individual clinical treatment twice a week, completion of professional assessment, and placement. The custodial decisions restrict the freedom of movement of minors by placing them in dangerous reception facilities, temporary community detention, safe detention, or secure detention, including home detention with electronic monitoring devices, group houses, forest camps, structured wildlife programs, schools, and juvenile security facilities.

Points (iv), (v), (vi), (vii) of para. 2, as well as paras. 3 and 4 of Art. 19-bis were adopted without much debate. After changing the order of the articles, Art. 19-bis became Art. 40 of the Convention.

Thus, we can conclude that the second reading of the article devoted to juvenile justice was more complicated than the first reading. During the second reading, it was difficult to reach a consensus. There were five draft texts of the article, and the heated discussions led to dividing the article into two sections: the first enshrined the provisions on punishment and prohibition of torture and other violent treatment of the child, while the second enshrined guarantees of the child alleged as or accused of committing a crime and necessity of establishment of special laws, institutions, authorities, and procedures valid to children. Mainly all debates were about the rational duration of imprisonment of the child, punishments, and legal assistance. Sometimes the result of the discussion simply reserved the right to make reservations on the article.

4 CONCLUSIONS

The disputes over the content of certain articles of the Convention led to the adoption of Arts. 37 and 40. We also found that setting international standards for juvenile justice is a difficult and time-consuming process. Sometimes, it was necessary to appoint an open-ended drafting group to reach an agreement on contentious issues. The debate showed that the differences between the proposals made by different nations were ultimately resolved as follows: the use of non-imperative language to allow states to strike a balance between the desirability and expediency of introducing articles into their legal systems, agreeing with some proposals in a spirit of compromise and the most radical way – reserving the right of countries to enter reservations on these articles.

Although, despite all the differences of opinion, Arts. 37 and 40 were adopted, and after that, their provisions were implemented in national legislation, including the legislation of Ukraine. In examining the creation of Arts. 37 and 40 of the Convention, we came to the conclusion that nowadays, in Ukraine, there are several problems in the sphere of juvenile justice. The main problems are the following. The first problem is the absence of a comprehensive system of legislation on the protection of children's rights that could create a forceful state institute of juvenile justice. The second problem is the necessity of training social inspectors that could identify a problem in a family, solve it, and know the range of actions in different situations that are dangerous for the child. Also, obligatory special training for juvenile investigators, prosecutors, and judges should be provided. The third problem is the absence of mechanisms for the coordination and monitoring of the activities of state bodies, institutions, and non-governmental organisations that carry out measures

to prevent delinquency among children. One of the main principles of Arts. 37 and 40 is the principle of positive promotion, which offers an alternative to the standard strategies of the 'new youth justice'. The starting point is the placement of the child in the centre of the system through the mechanisms of influence on the development and provision of services. Participatory practices are promoted to increase the involvement of children in youth justice processes and activities.¹⁴ Ukrainian legislation still needs to be harmonised with the basic principle of the Convention and facilitate a real change in the status of the child from an object to a subject of juvenile justice.

The first step in this direction has already been taken. Currently, the draft law on child-friendly justice was submitted to the Verkhovna Rada of Ukraine on 4 July 2021.¹⁵ Unfortunately, it was not even in the first reading at the session of the Ukrainian parliament, and all the above-mentioned problems of the Ukrainian system of juvenile justice still exist. Therefore, we are convinced that this draft law must be discussed and adopted as soon as possible to strengthen the protection of the rights and resocialisation of juveniles who have committed criminal offences.

However, it is undeniable that the heated discussions in the Working Group in 1979-1989 made a significant contribution to international and national laws, changing the lives of millions of children, as all law enforcement agencies act from the viewpoint of legal language.

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14 St Case, S Creaney, J Deakin, K Haines, 'Youth Justice: Past, Present and Future, *British Journal of Community Justice*' (2015) 13(2) *British Journal of Community Justice* 105.

15 Draft law 'On child-friendly justice' <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72137> accessed 11 November 2021.

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