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"HEAR ME OUT!" - JUVENILE JUSTICE, PEACE and THE CHILD'S RIGHT TO BE HEARD IN ROMANIA AND NORWAY

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Master's Thesis in Peace and Conflict Transformation – June 2020

To my son, Mihai, for making me believe in a better world

ACKNOWLEDGEMENTS

I like to think of my thesis as the result of multiple forces of the universe: an idea, inspiration, hard work and the support of a lot of people. I am grateful to my supervisor, Jemima Garcia-Godos, who constantly encouraged me and gently, but firmly, always nudged me in the right direction. My husband, Vidar, who is the main reason why I embarked on this Arctic adventure, has been, such as in life, an unexhausted source of inspiration and unconditional support for this research. My son, Mihai, has been my greatest motivation to stay curious and better myself. My parents have been incessantly inquisitive about my progress and would not let me slack. Thank you all!

I am indebted to the CPS staff for making this entire experience possible. To my colleagues, thank you for your contagious creative energy and enthusiasm. You left me with memories which will always put a smile on my face… May the pursuit of peace bring all of you a lot of joy and fulfilment!

ABSTRACT

"If you want peace, work for justice." – Pope Paul VI

This paper explores how the children's right to be heard is implemented in the criminal proceedings in Romania and Norway. The judicial practices in the two countries are analysed in relation to four elements identified in the literature as relevant to the child's right to be heard- space, voice, audience and influence. The two juvenile justice systems are then compared to each other, as well as to international best practices, with the final aim of identifying small-scale measures worth disseminating in Romania and Norway to strengthen the effectiveness of child's right to be heard. The paper argues that a more effective implementation of the children's right to be heard strengthen all the array of the children's rights, makes the juvenile justice system more child-friendly and facilitates the transition from conflict and punitive justice towards positive peace.

Keywords: right of the child to be heard, juvenile justice, children's rights, child-friendly justice

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CHAPTER 1: INTRODUCTION

How do Romania and Norway protect their youth found in the extreme situation of undergoing a criminal trial? How much weight is placed on the views of the child in each legal system and how effectively is his right to be heard exercised in criminal proceedings? Is there any way the two countries can render the child's voice more meaningful? The research for this master thesis starts by exploring the legal provisions and practice of juvenile justice proceedings in Romania and Norway, drawing a critical comparison between the two. Further on, by projecting each of the legal systems against the background of best international practices in this area, the thesis identifies ways to render the Romanian and Norwegian practices more child-friendly. This introductory chapter provides an overview of my motivation for this research, its purpose, the research questions, the approach chosen for the thesis and a brief outline of its structure.

1.1. Background and motivation for the research

I regard caring for children as the most valuable investment in our future as humans and I have had a long-standing interest in the issue of children's protection. A fairly recent course of events stirred my curiosity even more: In short, in November 2015, Norway's Barnevernet (Child Welfare Service) in Naustdal took custody of all five children of a mixed Romanian-Norwegian family who resided there, on the grounds of improper nature and quality of parental care. This triggered a wave of protests among the Romanian community in Norway and also back in Romania. Protesters carried placards displaying slogans such as "Children belong to the family" or "Barnevernet = childhood killer". Romanian people disapproved vehemently of the "brutal measure" of removing the children from the family and insisted there was nothing wrong with the parental care, even if it might at times involve some form of reprimand: it is better for children to grow up in the midst of the family (NRK, 2020). Norwegian people on the other hand put a lot of trust in the institution of Barnevernet and were supportive of the measure. This made me wonder about how children are treated in Norway and Romania. How are they disciplined? Are they been punished? How are they protected? How important is their opinion? I am part of a mixed Romanian-Norwegian family which includes several lawyers and a child's psychologist. The incident created a heated debate and it was interesting to hear

different opinions, informed by different experiences and perspectives. Recent developments fuelled up the debate even further: in a few cases brought before the European Court of Human Rights in Strasbourg, such as the case *Strand Lobben and others versus Norway*, the activity of Barnevernet in Norway was criticized, and the court determined that their actions constituted a violation of human rights (European Court of Human Rights, 2019).

Undoubtedly, this cemented my determination to explore how the two countries treat their most precious legacy, their children. In this exploration, I opted to shift my focus from the social services sphere to criminal law and from the idea of "punishment" in the family to the "official punishment", to the justice in a court of law, or the so-called retributive justice or juvenile justice. I am educated as a jurist and I have professional experience in criminal law, so I felt more confident and well-equipped to explore the already familiar legal landscape. I decided I wanted to investigate how children-offenders are protected in criminal proceedings in Romania and Norway and more specifically how much weight their opinions carry.

At first glance, I could perceive both commonalities and diverging features between the two judicial systems and these spurred my intellectual curiosity even more. Both Romania and Norway ratified the United Nations Convention on the Rights of the Child (hereinafter CRC) (United Nations Treaty Collection, 2020). Formally, both countries put the best interest of the child first in their legal proceedings (Langford, Skivenes, Søvig & Kirkebø, 2019: 18-19). Norway is regarded as one of the countries which has a considerable preoccupation in upholding the rights of the children. Due to its top position on global children's indexes, the international broadcast company CNN declared in 2017 that Norway is the "best" country in the world in which to be a child (Langford et al., 2019: 6). Quite significantly, Norway has been the very first country in the world to appoint an ombudsman for children. Set up in 1981, the Barneombudet in Norway has already a longstanding activity in support of children's rights (Langford et al., 2019: 22-23). Romania is a country with a younger democracy and still developing its system of legal guarantees in support of children. In the last two decades, the process was closely linked to the accession to the European Union. There is still no institution of ombudsman for children in Romania, even if the possibility is contemplated, but not without controversies since there are voices which contest its efficiency (Rodi, 2017). I wanted to know more. My connection to both countries represented both an incentive and an advantage for me to materialize my idea. I was also inspired by the timing of the research which seemed symbolic to me, since recently, on 20 November 2019, the CRC celebrated its 30th anniversary (United Nations Human Rights Office of the High Commissioner, 2020). Lastly, I was also enticed by

the unique chance provided by the interdisciplinary approach encouraged within the "Peace studies" programme. Previously, my legal profession required me to confine myself to a strict legal approach when I performed work related research. Through this research, I could finally set free my intellectual curiosity, go beyond the criminal justice traditional concept, and explore the interconnectivity between crime, justice and peace as well as between law and social studies.

1.2. Relevance to peace studies. Juvenile justice and peace

Thirty-seven percent of the world's population is younger than 18 years old (Shamrova & Lampe, 2020: 1). Not only that youth are a significant percentage of the population, but they represent the future: they are the future work force, the future decision-makers and the ones inhabiting and shaping our future society. At the same time, children are vulnerable and their capacity to discern good from bad is not yet fully formed. Sometimes, they make bad choices to the extent that they commit criminal offences. Whilst they need to be held responsible for any such antisocial conduct, it is equally important that this process is child-friendly and is tailored to the particularities entailed by their young age.

Criminal proceedings may be daunting for any individual, even more so for children. Their conduct is regulated by strict rules, they are unfolding before figures of authority and they may result in serious consequences, such as restricting someone's liberty. Once someone is suspected of having committed a criminal offense, an investigation ensues which may result in initiating criminal proceedings against the offender. These proceedings are conducted in a court of law and they have as a final outcome a determination on the guilt of the offender. In case he is found guilty, he may be convicted to various measures, ranging from judicial reprimand to deprivation of liberty. We need to make sure that the process is not unnecessarily hurtful and that the facts of the case are correctly established. In case the offender is found guilty, the measure applied by the court must be adequate to the gravity of the offense and the personal characteristics of the offender, so he is not labelled as criminal for his whole life and he is able to reintegrate in society. Trial proceedings may ultimately have an impact on whether child-offenders become re-offenders, or they turn into responsible, law-abiding adults. Fair criminal proceedings are decisive for restoring the mutual trust between these children and society and therefore, to creating a more peaceful world. The trial proceedings are fair when they are

conducted with full respect for the human rights standards (Goss, 1982). The right to be heard is essential for establishing the truth in a case and pondering the right sanction. When it comes to children, they are exposed to particular vulnerability due to not being given a voice in matters affecting them and are often oppressed by the decisions made by the adults (Shamrova & Lampe, 2020: 1). Authors such as Jonathan Herring point out towards similar dysfunctionalities affecting the child's right to be heard in court: judges seem to place great weight on children's views only when they match with the judges' own opinions (Aoife, 2018: 280-349). Treating children in court in a manner adequate to their age and hearing their voice, thwarts the reoccurrence of the antisocial behaviour and contributes to the reintegration of the offender in society. If it is not addressed in an adequate and sensitive manner, a mere childhood mistake can turn into a life of crime. We, as society, cannot afford to lose future honourable citizens to crime. Therefore, the juvenile justice, in its traditional form represented by a trial in a court of law, has not only a punitive function, but encourages the respect for the social norms and consolidate peace. Johan Galtung, one of the main founders of peace and conflict studies, postulated that peace entails not only the absence of violence, but also respect for human rights, legitimacy and justice (1969: 167-186). The importance of children's rights, including their right to be heard enjoys a wide global recognition: it is telling that the UN Convention for the Rights of the Child – which pinpoints this research - is the most widely and fastest ratified human rights treaty in the history of the United Nations (Yapi International, 2020).

1.3. Children in criminal proceedings: a socio-legal approach

Juvenile offenders have been a special focus of research in the field of criminology and sociology. Most studies compared juveniles who were processed by juvenile courts with the general population or to groups of nondelinquents, from the perspectives of their family background, physiological and social environment, trying to identify patterns which would constitute risks of committing criminal offenses (Heilbrun, Goldstein & Redding, 2005; Goodman & Scott, 2012; Hoffmann & Dufur, 2018; Karacsony, 2014; Miller, 2014; Copeciuc, 2018). The information generated has been utilized in the design of several programs aimed at preventing or reducing juvenile delinquency (Nelson, 2016; Sanders, 1981; Caspi, Lahey & Moffit, 2003; Ramsay & Morrison, 2010; Decker & Marteache, 2017). The impact of the punishment on the juvenile offenders and on their reintegration in society have also received

significant attention from scholars (Cusmir, 2013; Rowland, 2009; Braithwaite, 1989; Zamosteanu, 2013). Extensive research revolves around identifying ways of preventing juvenile delinquency or forms of supervision, education, treatment and support which are most likely to prevent the child-offenders from committing further crimes, to most fully rehabilitate and re-integrate them, ensuring their maximum development (Teneane, 2015; Kury, Redo & Shea, 2016). The right to be heard and the principle of the best interest of the child have been widely explored, but mostly in relation to the field of family law, such as custody and social care cases (Langford et al., 2019).

Many authors as well as practitioners support the idea to stop criminalizing children completely, promoting forms of diversion and restorative justice instead. "It is not child-friendly to make children criminals", claims, for instance, Peter Newell (2010: 137). Criminalizing children is damaging not only to the overall development of many children, but of human societies too. It encourages a spiral downwards by children into further offending and violence, often extending into adulthood. Conversely, there are voices in support of augmenting the criminal liability of children offenders. An authoritative 2013 United Nations report refers to the present time as a period "when public opinion expresses concern at the perceived threat posed to society by juvenile delinquency, and States around the world contemplate reductions in the minimum age of criminal responsibility and longer sentences of imprisonment" (United Nations Office of the SRSG, 2013: 39).

However, the focus of this research is not on proposals of changes in legislation or penal policies, but rather on critically assessing the current state of affairs in juvenile criminal justice system. The research also proposes small-scale changes at the level of individual courts with potential to improve practice. Even if in both Norway and Romania we can talk about an increasing trend to recourse to mediation, still, the most serious of the criminal offenses committed by children need to be processed in a court of law. This research is confined to trial proceedings in criminal cases. It does not intend to explore issues related to restorative justice or mediation, the investigation stage of criminal offenses, execution of the sentences or reoffending and reintegration. I research the child's right to be heard in criminal proceedings. By exploring how the courts ensure the effective exercise of the children's right to be heard in criminal proceedings, I aim to investigate the capacities of the courts to be "child-friendly", to be focused on the rights and needs of the child and to act according to his best interest. For this purpose, I use a socio-legal conceptual framework of peace and juvenile justice by building up on both criminal justice and peace studies. Often academic studies are preoccupied to go in-

depth into their specific research area. For instance, peace studies largely concern themselves with extreme situations such as large-scale conflicts or with peacekeeping and peace-building mechanisms. Criminal justice studies focus on justice system processes, analysis of law or jurisprudence. The topic of the present research situates itself at the crossroad between criminal justice and peace studies and examines the conduct of the criminal trials from a fresh social sciences perspective. This social-legal research stems not only from analysis of law, doctrine and jurisprudence, but also builds up on data obtained from qualitative interviews, as it is further explained in the methodology chapter. In addition, the present research employs a comparative outlook between Romania and Norway, as well as between each of the two and the best international practices, which consolidates the originality of the approach. At the outset, the thesis lays out the two system of legal rules, Norwegian and Romanian, pointing out aspects such as the legal procedure, participants in the trial, the legal standing of the children, specialized institutions involved in the process, if any, as well as practical aspects of relevance. The concrete methodological steps undertook to achieve this are further on elaborated in the methodology chapter.

1.4. Problem statement and research questions

To sum up, this research focuses on the legal framework and practical aspects of the processes of children's participation and their right to be heard in criminal trials and draws a comparative review between the Romanian and Norwegian systems. It does this by analysing the legal provisions in force, as well as by examining their practical implementation. The main content of this research is legal. In addition, the legal proceedings and safeguards will be framed from the perspective of the "peace theory" developed by Johan Galtung. As elaborated in the "Conceptual Framework" chapter, Galtung regarded peace as entailing not only the absence of violence, but also respect for human rights, legitimacy and justice. These are the pillars which define the "positive peace", the most sustainable form of peace (Galtung, 1969: 167-186). My premise is that the participation of the child and his right to be heard in more child-friendly criminal proceedings can contribute to the development and consolidation of positive peace. From this perspective, the aim of this thesis is to explore how "child-friendly" the two judicial systems in Norway and Romania are and to identify any possible best practices which could

improve the practical conduct of the criminal proceedings and elevate them towards higher standards.

Research questions:

The research focuses on children within the age-slot of 16-18 years old. The rationale for this is that, as further elaborated in Chapter 4, children between 16-18 years old may be considered criminally liable under similar legal conditions in both Romania and Norway. This places them in a similar context which provides a common ground for the analysis. This research investigates the following questions:

1. What are the particularities of the conduct of criminal proceedings in cases with defendants aged between 16-18 in Romania when it comes to their right to be heard?
2. What are the particularities of the conduct of criminal proceedings in cases with defendants aged between 16-18 in Norway when it comes to their right to be heard?
3. What are the similarities and differences between the two legal systems?
4. Are there any best practices or strategies worth disseminating in order to make the two systems more "child-friendly" when it comes to the exercise of the child's right to be heard?

Starting from these questions and by using an inductive approach, the answers are generated based on a research material consisting of documents and semi-structured interviews. The documents establish the legal framework of the domain of inquiry, while the interviews are used in a complementary way to provide a richer image of how the legal provisions are implemented in practice.

The following definitions are instrumental for this research:

- "Criminal trial/criminal proceedings": proceedings in court following the prosecution of a person charged with the commission of a criminal offense, conducted to establish his criminal liability
- "Child": any person below the age of eighteen years, according to Article 1 of the CRC; the terms "child", "young adult" and "juvenile" are used interchangeably throughout the text.
- "Children in conflict with the law": all children who are suspects/accused persons in criminal proceedings; the term child offender is used with a similar meaning

- "Juvenile justice": the set of standards that recognize the child's human right to a fair trial and special status requiring child-specific treatment, according to Article 40 CRC
- "Child-friendly justice": "justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity" (Council of Europe, 2010).

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In the following chapters, the thesis presents the conceptual (Chapter 2) and methodological framework of the research (Chapter 3) and further on delves into investigating and answering the research questions (Chapters 4 and 5). The study demonstrates that even if Romania and Norway uphold children's rights, still, both countries can improve the practical implementation of the child's right to be heard in their criminal proceedings: even small changes can have significant effects in rendering the juvenile systems more child friendly.

CHAPTER 2: CONCEPTUAL FRAMEWORK

This chapter presents the conceptual framework developed in order to explore how the child's right to be heard in criminal proceedings is implemented in the courts of law of Romania and Norway. The framework has been developed based on the literature review and refined after collecting and processing the data and in order to extract the conclusions of the research, through a qualitative approach driven primarily by deductive reasoning. The concepts introduced herein constitute the lenses used by the researcher to assess the data and translate them into meaningful findings. The main elements of this framework are punitive justice with focus on juvenile justice, human rights and positive peace as per the typology created by Johan Galtung (1969). The considerations on punitive justice briefly touch upon the dimensions of "conflict", regarding it as the cause which generates the state intervention by the way of instituting criminal proceedings. The journey from conflict and punitive justice towards peace is accomplished with the help of the human rights safeguards for fair-trial, with a focus on children's rights and child-friendly justice. The structural elements of this conceptual framework are thus: juvenile justice, children's rights and positive peace, the latter positioning this thesis on the territory of peace studies.

2.1. Punitive Justice and Juvenile Justice

Conflicts are a normal occurrence in a society, and they emerge on a regular basis. The term "conflict" refers to the widest set of circumstances, such as interests, values, beliefs, in which conflict parties perceive that they have mutually incompatible goals (Ramsbotham,Woodhouse & Miall, 2011: 9, 10,11). Johan Galtung proposes a model in which conflict is viewed as a triangle, in which the concepts of "contradiction", "attitude" and "behaviour" are its vertices. These coordinates are constantly changing and influencing one another and turn the conflict into a dynamic process (Galtung, 1996: 70 – 75). If the conflicts are not properly managed, they may become polarized and may lead to violent conflict. Conversely, emergent conflicts can be managed in a peaceful manner. Peaceful change entails the resolution of social problems, normally by institutionalized procedures. Rules contribute to avoiding conflict or, when the conflict arises, they avoid polarizing it and instead they channel it towards peaceful

change (Miall, 2007: 10-13). When a person commits a criminal offense, he comes into conflict not only with the victim, but also with the society as a whole. This elicits what Aristotle, the Greek philosopher, called "criminal violence", which consists of impetuous and arbitrary acts, characterized as crimes, which come into contradiction with the law of the state (Bishop & Phillips, 2006: 379). In order to break down the circle of violence, restore the social order and avoid the relapse into even more violence, the conflict needs to be addressed in a fair and effective manner, according to transparent rules and by impartial fora: justice must be done.

The term "justice" is overarching and depending on its focus, may reveal itself under different forms. Robert Schreiter distinguishes several types of justice, such as punitive justice for the oppressor, restorative justice for the victim, and distributive and structural justice as features of social justice (Schreiter, 2005: 108-109). The present research revolves around punitive justice. This type of justice focuses on the individual responsibility of the offender and is grounded on the idea of punishing a wrongdoing. The idea of the punitive justice is central to the criminal trial proceedings. When a criminal offense is committed, the calls to punish the offender are amongst the first to be heard. Victims and their families are keen to see that wrongdoers do not get away and that injustice does not go unpunished. Impunity - the failure to punish perpetrators of crimes - would lead to anarchy. In both Norway and Romania, the criminal responsibility of an offender is established in a court of law, within legal proceedings generically known as "criminal trial". The main purpose of a trial is to establish the facts of the case and ascertain the applicable law. Ultimately, the court decides on the guilt of the offender and in case he is found guilty, it applies a punishment. The punishment however should not be solely focused on retribution, but also on rehabilitation. Keith E. Yandell underlined the fact that retribution and rehabilitation cannot be seen as separate, grounding this conclusion on three arguments: First, punishment as retribution demands that only a guilty person can be punished. Hence, punishing the offender acknowledges his responsibility for the wrongdoing and in this way, grants him the dignified status of a fully moral agent. Secondly, the punishment of the offender must be proportionate to the crime (Yandell, 1998: 41). The punishment should not be arbitrary, otherwise it would turn into a form of "legal" revenge which perpetuates a circle of violence (Smith, 2011: 2-3). Tailoring the punishment according to the gravity of the offense and the personal traits of the offender contributes greatly to his rehabilitation. Lastly, the whole process of holding the offender liable for his crime should be directed to the final aim of accomplishing justice. "The desire for justice is not identical to desire for revenge" (Yandell, 1998: 42). The desire for justice is the engine behind the process of punitive justice.

Achieving justice requires that the particular circumstances of each case are correctly established, within an efficient and fair trial, and human rights provide the right tools for that. When it comes to children, their criminal liability is established according to a set of rules designated as "juvenile justice". As established in the "Introduction" chapter, we use the term "juvenile justice" as referring to the set of standards that recognize the child's human right to a fair trial and special status requiring child-specific treatment, in accordance with Article 40 CRC.

2.2. Fair Trial Rights

The actual practice of exercising the human rights stems from philosophical and religious roots and, following a long evolution, resulted in consolidating the prerequisites necessary to the crystallization of their legal bases (Nastase, 1992: 18). The contemporary human rights regime is grounded on numerous prominent international legal instruments. On 10 December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, document which, even if not legally binding agreement, overtime it acquired a high moral, political and legal significance (Pavel, 2012: 502-518). The concept of human rights refers to rights and freedoms grounded on international law and customs and which are intrinsically connected to the human being's individuality. It is of their essence that human rights are deemed to be universal and unalienable: absolutely everyone is entitled to human rights and fundamental freedoms (Smith, 2013: 1-29).

Within the category of human rights, fair trial rights are a specific set of rights whose aim is to ensure the proper administration of justice and they are codified in several international declarations and conventions. Despite alterations in phrasing or placement of the various fair trial rights, the various international conventions define the right to a fair trial in broadly the same terms.

The Universal Declaration of Human Rights explicitly proclaimed various rights associated with a fair trial, such as presumption of innocence until the accused is proven guilty. Article 10 contains the key-provision that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him" (United Nations, 1948). The International Covenant on Civil and Political Rights further elaborated on these rights. Article 14 provides

that an accused person is entitled to: (a) information on the nature and cause of the charge against them; (b) adequate time and facilities for the preparation of their defence; (c) trial without undue delay; (d) a competent defence; (e) examination and cross-examination of witnesses; and (f) not to incriminate her-or himself (United Nations, 1966). The European Convention of Human Rights in Article 6 provides elaborates on the right to a fair trial, which encompasses the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defense, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter) (Council of Europe, 1950). The right to be heard is an essential fair trial right.

2.3. Children's Rights: The right to be heard and child-friendly justice

The set of fair trial rights stipulated in the above-mentioned conventions are universally applicable, all human beings, without distinction, should enjoy them. That means that children are entitled to all the fair trial guarantees and rights which apply to adults. Additionally, there are certain conventions concerning exclusively the status of children, stressing in this way the importance of their legal protection. The underlying assumption is that children and young people are indeed bearers of rights and that they should be legally allowed to actually make use of them whenever necessary. The performance and behaviour of youths as defendants may be affected by their psychosocial immaturity in ways that extend beyond the elements of understanding and reasoning (Grisso, Steinberg, Woolard, Cauffman, Scott, Graham, Lexcen, Repucci, Schwartz, 2003: 357). It is essential that the justice system is adapted to children and young people in those cases when they break the rules, cause problems or find themselves in problematic situations (Vandekerckhove & O'Brien, 2013: 528). Acknowledging the children's developmental particularities, international conventions underlined that that the right of their child to be heard should be exercised under certain conditions.

The children's right to be heard is provided by Article 12 of the United Nations Convention on the Rights of the Child (CRC) under the broader principle of effective participation. The right of the child to express his views, and for those views to be taken into consideration, is one of the cornerstones of children's law (Fenton-Glynn, 2014: 135-163), and is incumbent on CRC

signatory states to guarantee the effective application of this right. Not only that the right of the child to be heard is a fundamental right in itself, but it has also an impact in the interpretation and implementation of all the other children's rights giving it a pervasive effect on the Convention as a whole (Sutherland, 2014: 152-172). The European Convention on the Exercise of Children's Rights in its Article 3 outlines certain conditions in which the children's right to be heard is materialized, for instance when children receive all relevant information, or when they are consulted and allowed to express their views (Council of Europe, 1996).

Despite the fact that this set of children's rights is guaranteed by these conventions, their implementation leaves quite a lot to be desired and children and young people have regularly experienced situations where their rights have not been adequately protected, as illustrated by the case law of European Court of Human Rights (Vandekerckhove & O'Brien, 2013: 524). This deficiency was sought to be addressed by the adoption of several guidelines.

A set of important guidelines with special regard to minor offenders were adopted in 1985 by the United Nations: the UN Standard Minimum Rules on the Administration of Juvenile Justice, widely known as the Beijing Rules. The Beijing Rules can be regarded as a framework and model for national juvenile justice systems (Van Bueren, 1992: 381-399) and they contain important safeguards such as "the promotion of the well-being of the juvenile" or the right of the child to remain silent or to confront and cross-examine witnesses. The best interest of the child is considered an important objective of a fair juvenile justice procedure. In 2010, The Council of Europe adopted Guidelines on Child Friendly Justice to further consolidate the agenda of a justice which is friendly towards children. They do not introduce new binding norms in addition to those stipulated by CRC. Instead, the aim of the guidelines is, as the Preamble recalls "the identification of practical remedies to existing shortcomings in law and in practice", so that we meet "the need to guarantee the effective implementation of existing binding norms concerning children's rights" (Council of Europe, 2010). The guidelines offer practical advice on how to ensure that the child is respected and engaged with during the judicial proceedings. It is required that children should be treated with respect for their age, their special needs, their maturity and level of understanding and the cases involving children should be adjudicated in non-intimidating and child-sensitive setting. The guidelines reiterate the importance of upholding the children's and young people's right to participate and be heard in judicial proceedings, underlining that their participation must be "meaningful". "Due weight" has to be afforded to the child's opinion, taking into account factors such as age, maturity and communication skills. The guidelines define the term "child-friendly justice" as

a type of justice which sees that all children's rights are implemented at the highest possible level, considering the child's level of maturity and understanding and the circumstances of the case (Council of Europe, 2010).

2.4. From Violence to Peace, via Juvenile Justice:

"Peace and justice are two sides of the same coin." – Dwight D. Eisenhower

The term "peace" is herein utilized in the framework proposed by Johan Galtung and is defined in relation to the lack of violence. Galtung started his analysis of "peace" by differentiated among different forms of violence: direct, cultural and structural. Direct violence poses a threat to life or diminishes one's capacity to meet basic human needs. Structural violence implies social injustice and it manifests by actions hindering certain groups from equal access to opportunities, goods, and services and preventing the fulfilment of their basic human needs. Cultural violence refers to the existence social norms that make direct and structural violence seem normal or acceptable. Direct violence manifests itself in a more overt way, by visible actions such as causing physical/ psychological harm. Structural violence is less obvious to detect, it entails a latent form of violence present in social structures and is expressed by harmful attitudes and assumptions, such as social injustices or discrimination. Cultural violence operates on a similar latent level as structural violence and is even more conspicuous: it consists of social norms or cultural artifacts such as religion or art which justify direct and structural violence and make it seem acceptable. The categories of violence may be shifting and the latent violence consisting of prejudices and harmful attitudes which ground structural and cultural violence, may reach a critical point and that can then burst into overt direct violence (Galtung, 1996: 200).

Given the above classification of violence and if peace is regarded as an absence of violence, then, correlatively, Galtung distinguished between a positive and a negative form of peace. The negative peace consists of the cessation of direct violence, whereas positive peace goes beyond that and entails surmounting the structural and cultural violence as well (Galtung, 1969:167-191). Positive peace includes the key ideas of legitimacy, justice and human rights and it expands to different levels such as economic, political or personal relations (Ramsbotham et

al., 2011: 11). Positive peace is an aspiration and has not been achieved by any society to date. Romania has been under a lengthy autocratic regime until 1989 and in 2007 it joined the European Union, having been considered that it has, amongst other conditions of membership, "stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" (European Union, 2016). Its democracy is still considered fragile, with significant levels of corruption riddling the political landscape and official institutions and a high level of public distrust in the state structures (Democracy International, 2017). Norway has a long tradition of respect for human rights, civil liberties and high regard for the quality of life. "The promotion of human rights and democratic principles is at the heart of Norwegian foreign policy" - it is stated on the front page of the official website of the Ministry of Foreign Affairs (2013) and this position is reflected in the country internal affairs policies as well. Norway - qualified by some broadcasting companies such as NBC (2017) or Daily Scandinavian (2018), as the "world's best democracy" - makes sustained efforts to incorporate in its legislation gender equality, equal opportunity and anti-discrimination laws. Both Romania and Norway are democratic, peaceful states characterized by the absence of conflict and which enjoy the "liberal peace" as portrayed by the democratic peace theory which posits that democracies are hesitant to engage in armed conflict with other identified democracies (Spiro, 1994). However, neither of the two countries have achieved the level of positive peace characterized by the complete absence of structural and cultural violence. As Galtung affirms, even in liberal democracies – no matter how well-developed - there are forms of latent violence which continue to permeate the institutional structures, such as classism, sexism, nationalism, racism and other forms of social inequity (Galtung, 2007: 2009). Positive peace remains an aspiration.

Even if idealistic, Galtung's idea of positive peace is worth pursuing. A society characterized by forms of positive peace benefits from systems and institutions which are able to effectively manage conflict and to avoid its polarization. In a society characterized by higher levels of positive peace, conflict is handled in such a way that all parties "win" in the outcome because they consider peace to be the ultimate goal. Positive peace entails consolidating social structures and institutions by equipping them with the capacity to generate a sustainable peace. Positive peace cannot be regarded as a stagnant status quo, but rather as an incessant process, whose consolidation requires the constant engagement of all levels of the society, from grass-roots level to state institutions (Galtung, 1996).

Moving on into the landscape of the courtroom and the judicial system, peace – under its different forms - can be pursued here as well. Negative peace is achieved by the cessation of the criminal acts by bringing the offender to trial. Positive peace is consolidated by ensuring that the trial proceedings are conducted in a fair, transparent manner and with full respect for human rights standards, contributing to a better reintegration in society of the offender (cessation of structural violence). Additionally, safeguarding the procedural rights and freedoms during the criminal trial contribute to eliminate forms of prejudice and bias which might be stigmatizing for the offender (cessation of cultural violence). In this way, the criminal justice process with its human rights safeguards are mechanisms of curtailing not only crime, but also harmful ideas and behaviour embedded in the social structure as violence-perpetuating mechanisms, and by this they tackle not only direct violence, but also structural and cultural violence as well.

The particularity of juvenile justice is that it concerns young people and their "developing capacities" (Lansdown, 2005), therefore their rights are held in particular regard. In the CRC, the juvenile justice rights are situated within the wider, generic category of "welfare" rights (Scraton & Haydon, 2002: 311-328; Smith, 2010: 3-17), they sit within the broader provisions of the convention itself (Goldson & Muncie 2006: 217). This demonstrates the crucial connection between the specific safeguards which apply to those who are processed within the criminal justice proceedings and the generic entitlements which every child enjoys. Undergoing a criminal trial should not negatively impact on the universal rights of the youth such as, for instance, the right to decent education, or the right to protection from bullying and from being marginalised. Accomplishing criminal justice cannot lead to "justify oppressive practices – or even to tacitly accept them – simply on the grounds that young people have forfeited their rights by involving themselves in criminal offences". Criminal justice cannot be achieved in the detriment of social justice and the two forms of justice are reliant on each other (Smith, 2011: 199). Therefore, accomplishing juvenile justice consolidates forms of positive peace. The right to be heard is one of the tools through which juvenile justice aims to achieve positive peace. This stance is emphasized by the United Nations Committee on the Rights of the Child in 2006 when it stated that "recognizing the right of the child to express views and to participate in various activities, according to her/his evolving capacities, is beneficial for the child, for the family, for the community, the school, the State, for democracy. This implies, on the long term, changes in political, social, institutional and cultural structures" (United Nations

Committee on the Rights of the Child, 2006:2). This demonstrates the significance of the right to be heard and more generally, of the juvenile justice in contributing to positive peace.

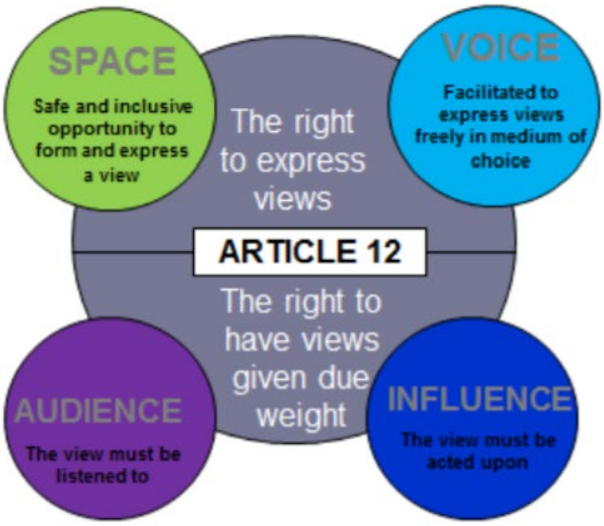
The operative legal provision utilized as a starting point for the purpose of this research is Article 12 CRC. Romania and Norway are both signatory states of the convention, therefore they are bound by this provision. In addition, both countries have their own national laws, such as the Constitution, criminal and criminal procedure laws which further expand on fair-trial rights. The practical way of implementing the child's right to be heard in each of the two countries is examined against the backdrop of the incident international and national provisions, as presented above.

Additionally, the aspects relevant for the child's right to be heard are structured using the model developed by Lundy, also known as the "Voice" model (Lundy, 2007). This model provides a way of conceptualising Article 12 of the CRC and intends to raise the awareness of the decision makers on four factors relevant for the successful implementation of the provision:

(a) Space: Children must be given the opportunity to express a view
(b) Voice: Children must be facilitated to express their views
(c) Audience: The view must be listened to.
(d) Influence: The view must be acted upon, as appropriate.

Each of these factors is of fundamental importance for how effective children can achieve their right to be heard. The four factors are discussed in detail in chapters 4 and 5 and they represent the structure which underpins the research and overall analysis. The four factors do not stand alone, but they are interrelated, they influence each other and sometimes, there is a significant degree of overlap between, for instance between: (a) space and voice, and (b) audience and influence. Their dynamic is graphically illustrated by Lundy in the following diagram (Figure 1) (Welty & Lundy, 2013: 2).

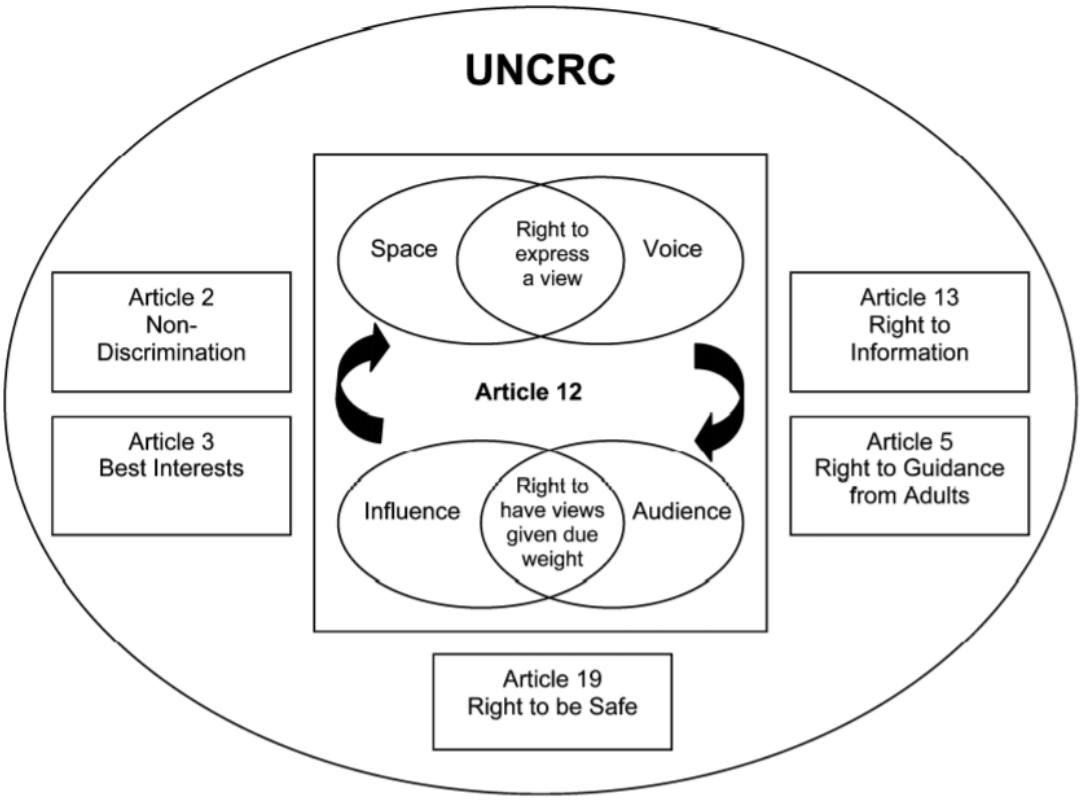
Figure 1: Lundy's "Voice" model (Source: Welty & Lundy, 2013: 2)



The 'Voice' model includes four factors allowing the involvement of children in decision making, and their relationship with Article 12.

Moreover, the right to be heard is essential for all the other children's rights. Laura Lundy illustrates this interdependence in a tell-tale figure (Figure 2), which points out to certain cross-cutting issues of the rights provided by the CRC and intends to emphasize that Article 12 can only be understood fully when it is considered in the light of other relevant CRC provisions, in particular: Article 2 (non-discrimination); Article 3 (best interests); Article 5 (right to guidance); Article 13 (right to seek, receive and impart information); and Article 19 (protection from abuse) (Lundy, 2007).

Figure 2: The "Voice" model in relation to relevant CRC provisions (Source: Lundy, 2007: 932)



Therefore, promoting ways to consolidate the right to be heard – by improving the four elements of Space, Voice, Audience and Influence - contributes to safeguarding all the other children's rights guaranteed by the CRC, as well as the overall juvenile justice system and ultimately build forms of positive peace.

Summing up, the conceptual framework described above proposes a way of managing conflicts with the law by channelling these towards peaceful change, through the mechanisms of juvenile justice and fair trial rights. Even extreme antisocial acts such as criminal offenses, if addressed by justice mechanisms which are fair and abide by human rights standards, may be managed constructively and diverted from conflict towards peaceful change and forms of positive peace. The next chapter will present the methodology embedded in the conceptual framework which is employed by this research in the endeavour of answering the research questions.

CHAPTER 3. METHODOLOGY

This thesis is concerned with how the youngsters who commit criminal offenses are treated in the courts of law of Norway and Romania. This chapter elaborates on the methodological approach utilized for the research. Firstly, I present the ontological and epistemological assumptions in which my methodology is embedded. In section 3.2, I discuss the choice of tools for my data collection: document analysis and interviews. In section 3.3, I explain how I analyse the collected data, and in sections 3.4 and 3.5, I elaborate on the limitations of my thesis and the implications of my own position, as well as on ways of overcoming them. Finally, in section 3.6, I offer a synthesis of my approach throughout the thesis and outline the analysis chapters that follow.

3.1 Ontological and epistemological position

The ontological and epistemological assumptions define the framework that underlie the research and underpin the coordinates in which I apply the methodology for collecting the data (Hennink, Hutter & Bailey, 2011: 10-25).

Ontology refers to what the researcher thinks reality looks like and how he views the world (Hennink et al., 2011: 11) or to "reflect on the nature of the phenomena, or entities or social reality" (Mason, 2002: 14). This research takes as a starting point a set of determined laws and regulations, but it goes further into collecting observations and reflections about how these fixed rules work in practice. The ontological position of undertaking this analysis is pragmatism, which is grounded in the assumption that the true nature of reality is secondary in relevance to the more pressing concern of what actually works in practice (Tashakkori & Teddlie, 2003). Giving equal recognition to both the natural world and the constructed world of culture, language and subjective thought, pragmatism views truth and knowledge as constructed and ever-changing and through research, we can only aspire to a "provisional truth", derived from real experience and aimed at solving real problems (Johnson & Onwuegbuzie, 2004). In the case of this research, the rules which regulate the right to be heard of the juvenile offenders are examined alongside with the practical aspects of their

implementation, with the final aim of identifying solution for a justice system which is more child-friendly.

Epistemology explores issues such as "what the relationship is between the inquirer and the known" (Denzin & Lincoln, 2008: 33-34) and "what may represent knowledge or evidence of the social reality that is investigated" (Mason, 2002:16). The epistemological approach of this research is interpretivist. The interpretive approach acknowledges subjectivity and the fact that the study participants offer their subjective perceptions of the social world. Since all human beings are inherently subjective, so is the researcher. The interpretive approach acknowledges that the process of producing data is influenced by the researcher's background, position or emotions.

This chapter also addresses the issue of reflexivity, which makes more explicit the influence of researcher and of the informants on the research process. The research combines the etic and the emic perspectives. While it endeavours to understand the juvenile justice using the researcher's frame of reference consisting of the laws (etic perspective), it aims to understand the experiences of the informants "from their own perspectives, in their own context" and to describe them "using their own words and concepts" (emic perspective) (Hennink et al., 2011: 17-19). This way, this study goes beyond the concept of mere "understanding" and aims to achieve what Max Weber called "verstehen" - interpretive understanding of social action in order to arrive at a causal explanation of its course and effects (Bryman, 2012: 29-32).

3.2 Research Design and Data collection

The research design has an exploratory character. Rather than generating a defined hypothesis regarding the characteristics of the criminal proceedings with minors and testing it against the collected data (a deductive approach), this research uses an inductive approach: it collects empirical data generated by the research questions and uses those data to extract its findings.

Methodology refers to how we gain knowledge about the world (Denzin & Lincoln, 2008: 31). My chosen methodology is qualitative and consists mainly of analysis of legal texts, supplemented by in-depth interviews with relevant informants. These shape this research as a socio-legal study, which capitalizes on the contribution that social sciences bring to the law, legal practice and government administration (Sommerlad, 2013: 108-109; Sommers, 1998).

The part of legal analysis of the thesis is grounded in the analysis of laws, bylaws, jurisprudence and doctrine relevant to my research. In addition, through the interviews, I was able to obtain "deep" or "rich" forms of data which a qualitative research may supply. The qualitative approaches to research try to explore and capture an interpretation of the events which is deeper and more subjective, rather than searching objective truths that can be generalized, as is the case of quantitative studies (Bryman, 2016: 380-382; Gray, 2009: 202-203). Capitalizing on these traits of the qualitative method, the strict legal texts were enriched by and contrasted with the subjective understandings and interpretations assigned by my informants to concepts such as children's rights and child-friendly justice, gaining a deeper understanding of the social reality in which these concepts are situated. All my informants are legal officials with key positions in the process of adjudicating cases with children.

3.3. Documents as means of data collection

The adjudication of the cases in both Norway and Romania are governed mainly by codified written laws, which may be classified in substantial rules and procedural rules (Law Teacher, 2018). The criminal responsibility of a defendant, the rights and obligations of the parties, the procedural guarantees and safeguards they enjoy and, overall, the entire conduct of proceedings in a criminal court are strictly regulated by law. Therefore, the legal provisions are highly relevant for my research. I rely on the traditional legal methodology to establish the legislative framework applicable in Romania and Norway to young offenders in courts. I will analyse the laws, bylaws, jurisprudence and doctrine relevant to my research. These documents identify circumstances which trigger the youth's criminal liability and the key features and variations in the legal and institutional context of Norway and Romania which impact on their standing and treatment as defendants in criminal proceedings. The documents provide an overview of statutory measures pertinent to the children's rights and of the key safeguards designed to ensure a fair and effective trial.

The primary legal documents used as material for analysis are the sources of law as stipulated by each of the two national legislations which are relevant for the research topic, mainly the Constitutions, Criminal and Criminal Procedure Codes. In addition, there are certain international conventions which are also relevant and some of them are commonly applicable

to both Norway and Romania, most important of which is the United Nations Convention on the Rights of the Child.

The main national formal sources of Romanian law are: Constitution and constitutional laws, organic laws and ordinary laws, simple ordinances and emergency ordinances adopted by the Government, administrative acts of a normative nature. In addition to the national sources, the international treaties to which Romania is a party are also applicable, as well as the general principles of law. The jurisprudence and legal doctrine represent secondary sources of law and are relevant to interpret the legal provisions (Popa, 2008: 164-166).

According to traditional Norwegian legal doctrine the main sources of Norwegian law are the formal laws (including the written Constitution, secondary laws and international treaties incorporated in Norwegian law), preparatory works, jurisprudence, administrative decisions, custom, legal doctrine and policy considerations (Boe, 2010: 154). Some scholars distinguish between primary and secondary sources of law (Skoghøy, 2010: 36-46).

The specific relevant legal provisions will be listed in detail in the analysis chapter. In order to enhance the understanding of the topic of analysis, the thesis also makes use of secondary sources such as reports and statistics from various institutions or NGOs. This sets up the framework which allows to further analyse how the overall legislation of each country really works in practice.

3.4. Interviews as means of data collection

I complement the data extracted from the legal documents with the data resulted from interviewing eight participants in the legal proceedings, such as lawyers, judges, prosecutors or social services staff. According to the review provided by the Norwegian Centre for Research Data (NSD), the project did not require registration.

Let's try to imagine making a movie: we have the script, describing the main events and lines of every actor. However, not everything can be captured in the script. It is of tremendous importance how the actors perform, their know-how, their skills and the entire set of behaviours they employ on the set. In criminal trials, we can think of the laws as of a script and of the practical conduct of the proceedings as of the enacting of the script. We need to grasp both in order to have the entire picture.

Several authors acknowledge the relevance of observing how law is applied. Roscoe Pound talks about how law in action often diverge from the law in books (2002: 136). Reza Banakar also discusses the so-called "gap" problem and reassessed the significance of studying the discrepancy between the law as a body of rules with a degree of autonomy and the law as an institutionalized form of practice (2019).

In this research, the interviews provide input about how the relevant laws are implemented in practice and, in general, on any other aspect which can impact on the trial proceedings with minors. For example, do the judges who deal with such cases undergo specific trainings? Are there any particular aspects, either positive or negative, when a minor is heard? The interviewees were invited to present their views about their own role and the role of the other participants in the process, as well as any other aspect they deem relevant, including recommendations of legislative reform or best judicial practices.

Semi-structured interviews

I have chosen to conduct semi-structured interviews since they presented several advantages: I could maintain an overall structure by pointing the informants to address the same general themes, formulated in a similar wording. At the same time, the flexible format of the interview not only allowed, but encouraged the interviewees to "ramble" and bring forth what they see as relevant and important to these general themes. It also allowed me to follow up the answers of the informants with additional spontaneous questions. This facilitated shifting the emphasis of the conversation and the pursue of fruitful avenues of inquiry and generated genuine insightful views of their perceptions. I sought to capture how the interviewees frame and understand issues and patterns relevant to my research (Bryman, 2016: 470-479).

The semi-structured interviews provide a significant degree of flexibility for both me as a researcher and for my informants. I avoided following a strict interview guide. Rather I formulated a general set of topics that I wanted covered. My questions were presented in a clear, however not very narrow manner and I offered the respondents considerable leeway in answering (Bryman, 2016: 473-479). My interview guide aligned itself to the structure described by Charmaz (2002) and contained initial opening questions (such as those related to the professional background and experience of the interviewee), intermediate questions (such

as their involvement in the criminal trial with minors) and ending questions ("can you recount an example of best practices of how to handle the deposing of the minors?"). The opening questions served not only as "ice-breakers", but also helped establish the professional background and expertise of each subject and by this contributed to contextualizing their answers (Bryman, 2016: 473).

Sampling and fieldwork

The fieldwork and data collection for this thesis were conducted in the period from July to December 2019.

The categories of officials involved in the adjudication of criminal cases concerning minors are the judge, the prosecutor, the lawyer and the social services representative. This holds for both Norway and Romania, even if their involvement or roles in the trial proceedings may vary. For both of my target countries, I interviewed one of each category of officials, in total a number of eight informants. The sampling of my informants is done purposefully, since their professional experience can contribute to a larger extent to the in-depth understanding of the topic of the research. This resonates with the purpose of the qualitative research, namely "to gain a detailed understanding of a social phenomenon, to identify socially constructed meanings of the phenomenon and the context in which the phenomenon occurs" (Hennink et al., 2011: 84). By selecting my informants in this manner, I endeavoured to capture the same experience - the criminal trial - from the different perspectives of each professional category involved, in order to cross-check information and to form a more complete perception of the whole adjudication process. Their professional standing supplied me with first-hand information regarding the conduct of criminal trials with minors. All my informants have positions of authority, each of them has more than 15 years working experience in the field of the research and some of them are the managers of their respective departments. This speaks in favour of their trustworthiness and credibility, criteria underlined by the authors Lincoln and Guba as contributing to the internal validity of the research (Hennink et al., 2011: 49). I do not specify their exact position in order to protect their anonymity.

In Romania, I focused on the activity of two courts - the Court in Targoviste and the Court for Family and Minors in Brasov. The Targoviste Court is a regular court for adults and the cases

with juveniles are assigned for adjudication to certain specialized panels. This is in fact the jurisdiction model which is common for the entire country. Exceptionally, the Brasov Court is the only court in the country specialized to adjudicate cases involving children (suspected) offenders, which means that all the judges are dealing exclusively with cases with minors. Due to its specialization, I initially intended to select all my interviewees from this court. However, this could not be achieved during the summer period, when I collected my data. Due to the judicial recess, most of the court officials were on leave and I could only identify one informant available. This made me re-orient myself and identify the rest of my interviewees from the Targoviste court. In the end, this proved beneficial for my research. By interviewing professionals involved in both types of courts, I gained insight in the activity of both specialized and non-specialized minors' courts and I identified diverging patterns in their activity. When it comes to Norway, there are no courts specialized for cases with children. These proceedings are handled by all regular courts. Here I focused on the activity of the Court in Tromsø, where I now live. City of Tromsø is of comparable size with each of the Romanian cities of Targoviste and Brasov.

All eight interviews were conducted face-to-face and they were not mediated by any translation or interpretation. In Romania, I conducted the interviews in Romanian, my native language, whereas in Norway the interviews were conducted in English since all subjects had very good command of it. All the respondents as well as I were legal professionals, we were all familiar with the legal jargon and this facilitated a clear communication (Bryman, 2016: 494). Additionally, having worked for more than ten years in international peace-keeping missions, I am familiar with English legal terminology and this offered me the tools of accurately capturing the meaning of the interviews into the final English paper.

I had established contact with the informants approximately one month prior to the interviews when I offered them a general outline of my area of interest. With some of the informants I was previously acquainted from different professional or personal walks of life. At their suggestion, the interviews took place in the quiet confines of their offices, which allowed for privacy and for an uninterrupted flow of the discussion. There was one specific case when one of the informants shared an office with a co-worker who was away for most of the time but stepped in during the final moments of the interview and even engaged in the discussion. This did not prove to be hindering the interviewing process, but on the contrary, it stimulated a lively exchange of opinions. All interviews were "conversational" in nature and the respondents were communicative and seemed comfortable to engage in the discussion (Bryman, 2016: 471).

Depending on the richness of the information provided by the informants, a single session lasted between 20 minutes and two hours. In three cases (two in Romania and one in Norway), I interviewed the respondents on three different occasions, so that they could clarify and expand on aspects which revealed themselves during the analysis of their precedent interviews. By doing so, I endeavoured to produce what Geertz calls "thick description" that is, rich accounts of the details of a researched area (1973).

Some of the later interviews took place in informal settings suggested by informants, in places which were similarly private. The settings of the interviews were calm and quiet, and we had sufficient time for the discussion. This allowed me to take note not only of the substantial content of the response itself, but also of the informants' process of formulating the answer and the manner of responding, such as longer moments of reflection, gestures or hesitations. All these become valuable prompts for me to formulate probing, interpreting or structuring questions and could also in themselves provide relevant data for analysis (Bryman, 2016: 478). I could also observe certain initial hesitations or emotional reactions. As Julia Brannen notes, "respondents' accounts of sensitive topics are frequently full of ambiguities and contradictions and are shrouded in emotionality" (Lee, 1993: 104).

I recorded the interviews manually, by taking detailed hand-written notes. In the end of the interview, I reviewed the notes by reading them back to the respondent. This gave me the chance to double-check their answers and confirm their exact meaning, increasing the credibility and trustworthiness of the research (Bryman, 2016: 49). In my initial notes I often used abbreviations so I could keep up with the respondents' pace of answering without interrupting them. Therefore, in order to be able to decipher them later, I transcribed them once more right after the interview. This gave me the opportunity to proceed to a preliminary analysis of the data immediately after each interview and not wait until after the whole data was collected, following the approach recommended by Lofland and Lofland (2006), since this "allows the researcher to be more aware of emerging themes that he or she may want to ask about in a more direct way in later interviews". Re-writing the interviews at that point also allowed me to identify additional questions relevant for the research and not yet touched upon. Since at that time I was still in the field, I could contact again some of the respondents and organize additional interview sessions with them.

3.5. Reflections about the use of interviews

There are certain limitations to interviews that can potentially have a negative impact on the validity of research. They might concern either the respondents or the researcher. This section identifies and discusses these limitations and presents the ways of mitigating them.

Respondents:

Some authors point out that interviews do not always produce reliable, objective knowledge, since there is a risk that "subjects present themselves differently to different interviewers, and also change their opinions during the interchange" (Lee, 1993: 105). This places doubt on whether the results of a study are repeatable, thus calling into question reliability and validity as two of the most prominent criteria for the evaluation of social research (Bryman, 2016: 46).

There are several reasons why a respondent might alter his opinion, even in the course of the same interview, one of the main being self-censorship and transference.

Self-censorship, as Charles Briggs points out, makes the "respondents often shape their responses in keeping with the imaginings of future texts and audiences" and this tendency becomes even more prevalent when it comes to debating sensitive topics such as criminal justice or juvenile delinquency (2003: 498). In my particular research, people might be concerned that by expressing a blunt view they might damage the imagine of their own institution or they might disturb some other participant in the criminal proceedings hindering by this their future professional cooperation.

To counter this risk, I put in place several precautionary measures. From the very beginning, I made it very clear to the informants that the interviews were done under the condition of complete anonymity. I was explicit to the fact that I am interested in their views as individuals and not as representatives of their respective institutions. The discussions took place in quiet and private places, under no time pressure and even when we met in the respondents' offices, we did so upon their own suggestion. All of them seemed at ease during the interviews, they were all forthcoming with the information and even volunteered to be contacted again if necessary. In fact, on three occasions I took advantage of their offer. The fact that I was

acquainted with some of them, either professionally or personally, contributed to an atmosphere of mutual trust and respect and facilitated open and honest replies.

In case of transference, the informants may alter their answers because they "develop an identification with the interviewer" and thus "may produce what it is assumed the interviewer wants to hear" (Lee, 1993: 105). My research had an explanatory character, I did not have a defined hypothesis as a starting point. To my informants, I introduced the topic of my research by painting it in big strokes. I invited their views by asking very open questions and avoided leading them in anyway. I welcomed both positive and negative input. Therefore, there was no reason why my informants would have perceived that I had an invested interest in the results of my research and be tempted to tailor their answers accordingly. Furthermore, an answer which would not reflect their conviction would become evident by moments of hesitation or clumsiness in phrasing or simply by not fitting in with the rest of the statements. The moderate pace of the interviews and the in-depth level of discussion would have allowed me to identify potential slips or contradictions and clarify them.

Reflections on my own positionality

Critics of the qualitative methods often allude to the researcher's unsystematic views about what is significant and important. The researcher frequently develops close personal relationships with the people studied, aspects which shed even more doubt on the qualitative findings (Bryman, 2016: 405). Other authors are sceptical of the fact that the interpretation of data is equally subjective and therefore at risk to be distorted and tailored to fit the researcher's convictions or preconceptions. For instance, for various reasons "interviewers may accord particular features of the respondent's experience undue prominence" (Lee, 1993: 105).

To address these critiques, I will present a few reflections on my background and positionality as a researcher. My educational background is legal. I have myself been a judge for 20 years and I have experience in adjudicating cases with minors. One cannot discount the fact that since I was a judge, I could be inclined to approve of the legal work done in courts and that this could be detrimental to an objective analysis of the potential negative effects on minors. However, judges are by default required to be objective and are trained to know how to distance themselves from a subjective stance since they act as referees during trial proceedings. I am accustomed to critically assess a legal system. Along my career I have been involved in drafting

proposals of legislative reform and in other different initiatives of improvement of the legal system. I have always endeavoured to make the legal system better by means of critical assessment. In addition, I am now out of the judicial system. I have no invested interest in the results of the research. I am making this study in my exclusive capacity of master student and this positions me in a more objective corner. The fact that I am part of a mixed Romanian - Norwegian family is a further guarantee that prevents me from taking sides.

I could see some advantages to my previous professional experience: at the time I collected the data, I was already familiar with the court setting and proceedings, even if only from a judge's perspective. My research opened new perspectives towards exploring the viewpoints of the other participants at trial as well. We could easier find common ground and I believe that my legal mind and familiarity with legal language and legal approach in general, represented tools that facilitated an easier interaction with the interviewees. Along my career, I have been worked in different countries – Romania, Iraq or Kosovo. Having worked in different legal systems makes me receptive at critically assess them and facilitates the comparative technique employed by this research.

As a trial judge, I have also accumulated experience in conducting interviews with parties and witnesses. The interviews for the current research were undoubtedly more open, unstructured and less pointed than the legal interviews, yet my ability to prompt the conversation in the direction of interest and to be an active listener proved particularly useful to shape-up the discussions. I was also aware of the importance of avoiding leading questions and had the practical exercise of doing so. I believe I managed to tick some criteria pointed out by Kvale (1996) for a quality interviewer: the use of a terminology familiar to the interviewees, to be a good listener and avoid leading questions (Bryman, 2016: 473). Lastly, my former profession also got me easier access to the subjects of my interviews, who, as legal professionals regarded me as a peer and were forthcoming in offering their insight.

Triangulation

As an extra safety net to overcome the limitations of the interviews, I combined them with the analysis of legal documents. I could take advantage of the technique of triangulation, which refers to combining different methods, different sources of data, different theories or different

researchers. In this research, I did not use the "across method" triangulation, which combines data collection techniques and approaches from both qualitative and quantitative methodologies. Instead, I used "within method" triangulation, using different data collection methods from the qualitative methodology. The method of triangulation was appraised by Denzel and Webb for its potential to cross-check or complement information and increase the validity of findings (Bryman, 2016: 392). I found this beneficial when exploring the practical implication of abstract concepts such as procedural rights. The laws list a set of abstract rights and obligations. The interviews brought to the fore how these rights and obligations are applied in practice. The phenomena being researched – children's treatment in court - involves subjective understandings that are difficult to extract solely from rigid legal provisions.

Ethical considerations

I chose not to interview children or observe any of the trials since these would have required elaborated consent requirements. All the subjects of my interviews were either state officials or private lawyers. In accordance with the Norwegian Centre for Research Data (NSD) requirements, all interviews are anonymous (Norsk senter for forskningsdata AS, 2020). To safeguard confidentiality, the informants have been assigned indicatives (a letter plus a digit), as follows: judges - the letter "J" (J1 for Romania and J2 for Norway), prosecutors – the letter "P" (P1 for Romania and P2 for Norway), the lawyers – the letter A (A1 for Romania and A2 for Norway) and the social workers – the letter S (S1 for Romania and S2 for Norway).

All the initial hand-taken notes on the interviews have been destroyed after the end of the research project, in accordance with NSD regulations.

I made sure that all informants gave me their informed consent to be interviewed. I endeavoured to offered them clear and detailed information about how their data would be used, their rights, and their opportunity to, at any time, withdraw from the project altogether. During the whole research I kept in mind the great importance of transparency in the process (Bradon, 2006: 26-32). In two of the instances, after declaring the interviews concluded, the respondents volunteered additional opinions which were relevant as data. I have ascertained that they consent that these last post-interview remarks may too be used for the purpose of the research and are not meant as "off the record". In one case, one of my respondent's work-colleague

stepped in towards the end of the interview, overheard the discussion and offered her opinion. In this instance, I introduced myself to her and presented the scope and terms of my research and she agreed that her answers could be included in the data. This way, I ensured that the all the respondents gave their valid consent for the entire content of their statements. Lack of informed consent is identified by Diener and Crandall (1978) as a serious transgression of ethical principles and needs to be avoided (Bryman, 2016: 135).

3.6. Analysing the data

The legal documents are analysed mainly by utilizing the logical method, a method of interpretation which is predominant in legal sciences and is largely based on deductive techniques (Popa, 2008: 15-16). If you have to take a legal decision, these are the steps to follow: You identify the set of rules, you then establish the concrete facts of the case and you determine whether the rules are applicable to these facts, and in which manner. By using logic inferences, on the basis of laws, evidence and reasoning, you arrive to a final determination of the case, which in a criminal case is mainly related to the question of whether someone is guilty or not of committing a criminal offense.

When it comes to the interviews, I will analyse the data by grouping their content around certain predominant themes. I relied on the recommendations by Ryan and Bernard (2003) when identifying the themes: by exploring how interviewees might discuss a topic in different or in similar ways, by identifying recurring topics, by spotting linguistic connectors (examining the use of words like “because” or “since” which point to causal connections in the minds of participants), or by using theory-related material (in my case, the relevant legal provisions) as a springboard for themes (Bryman, 2016: 580). I categorized my informants’ articulations into broad themes that emerged during our discussions: the role of each participant in the proceedings, publicity of trial, specialization of panel, procedural rights, shortfalls of proceeding, training of the judicial personnel or best judicial practices.

In addition, as detailed in the chapter “Conceptual Framework”, the aspects relevant for this research are structured using the model developed by Lundy, also known as the “Voice” model (Lundy, 2007). The analysis and findings of the research will be grouped around four factors relevant for the right of the child to be heard: Space, Voice, Audience and Influence.

The analytical discussion in the thesis is divided into two parts, one regarding Romania and the other Norway (in this order, based on the alphabetical order). I will use a comparative technique to draw a parallel between the two systems and critically assess their similarities and distinguishing features. I conclude by outlining any potential loopholes in the legislation as well as issues in need of improvement and by identifying best practices worth promoting.

Finally, for reasons of language conciseness, the pronoun "he" will be used generically throughout the text instead of "he/she". Only when it comes to specific persons, such as the informants, the pronouns used are accorded to their real gender.

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Having established the methodological framework of this research project, as well as its scope and limitations, the thesis proceeds in the coming chapters to answering the research questions.

CHAPTER 4: RIGHT TO BE HEARD IN ROMANIA AND NORWAY. COUNTRY-SPECIFIC AND COMPARATIVE OUTLOOK

This chapter starts by introducing the specific legal framework applicable in the juvenile criminal proceedings in Romania and Norway. This framework groups together both international and national provisions. The international provisions relevant for this research are common and are presented jointly for both countries. Separate sections will then outline briefly the specific national laws of each Romania and Norway. The analysis of the concrete implementation of the right of the child to be heard in criminal proceedings, based on the applicable laws as well as the input from the interviews, will be also divided in two parts, one for each country. Each part will be structured around the four aspects developed in Lundy's model, as presented in the "Conceptual Framework" chapter, namely: Space, Voice, Audience, Influence. The chapter ends by outlining a comparison between the way of achieving the right to be heard in the juvenile justice systems in Romania and Norway.

4. 1. International provisions commonly applicable

The relevant provision for this research is Article 12 of the United Nations Convention on the Rights of the Child (CRC), which enshrines the right of the child for effective participation in matters of his concern and in the second paragraph specifically refers to the child's right to be heard (United Nations Human Rights Office of the High Commissioner, 1989):

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Stepping onto the specific terrain of the juvenile justice, a set of relevant guidelines is represented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, largely known as "The Beijing Rules", adopted on 29 November. The rules are not compulsory in nature, but both Romania and Norway, as UN members, are committed to following their recommendations on how to achieve a better administration of juvenile justice. Rule number 5 indicates two main objectives of juvenile justice: Firstly, the criminal justice should be centred on the promotion of the well-being of the juvenile, which implies the avoidance of merely punitive sanctions. Secondly, the sanction should be established given due consideration to the "principle of proportionality". The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should have an impact on the influence the proportionality of the sanctions. Rule number 7 underlines the right of the child to participate in the proceedings, Rule number 8 mentions the child's right to privacy aimed "to avoid harm being caused to her or him by undue publicity or by the process of labelling". Rule number 22 emphasises the need for professionalism and training of juvenile justice personnel 1985 (United Nations, 1985).

Another set of rules relevant for the field of juvenile justice and for the right of the child to be heard are provided in the "Guidelines on child friendly justice" adopted by the Council of Europe on 17 November 2010 (Council of Europe, 2010). These guidelines have been adopted to make sure that justice proceedings are being adapted to cater for the needs of children and young people by taking into consideration their level of understanding, their personal characteristics and vulnerabilities, their position and their best interest (Vandekerckhove & O'Brien, 2013). The guidelines introduce a comprehensive set of standards aimed at improving the juvenile justice system and tailoring it according to the specific needs of children. They identify the features of child-friendly justice: accessible; age appropriate; speedy; diligent; adapted to and focused on the needs of the child; respecting the right to due process; respecting the right to participate in and to understand the proceedings; respecting the right to private and family life; respecting the right to integrity and dignity. Even if they are non-compulsory in nature, the countries which are members of Council of Europe, such as Romania and Norway, have taken upon themselves to observe their recommended actions, with the aim of creating a justice system which guarantees respect for and the effective implementation of all children's rights (Council of Europe, 2020).

4. 2. Romania. National provisions

Romania ratified the CRC in 1990. This came soon after the overthrow of President Ceausescu's longstanding dictatorial regime in December 1989 and at a time when Romania was in the midst of worldwide concerns about the disturbing conditions in its residential childcare institutions. The ratification of CRC demonstrated Romania's commitment to reintegrate into the world community and to achieve reform of its childcare system in line with international principles (Dickens, 1999: 139-150).

The Romanian Constitution adopted in the year 1991, amended and completed, regulates in Chapter II the rights and fundamental liberties of the citizen, thus correlating them with the dispositions of international treaties from this domain. Article 1 paragraph 3 entitled "General Principles" proclaims expressis verbis the following supreme values: human dignity, rights and freedoms of the citizens, free development of human personality, justice and political pluralism (Constitutia Romaniei, 2003).

Shifting the focus towards juvenile justice, the conduct of criminal cases is regulated by the Criminal Code (Codul Penal, 2009), which consists of substantial rules and by the Criminal Procedural Code (Codul de Procedura Penala, 2010), which contains procedural rules. Article 113 Criminal Code provides that a minor who has not yet turned 14 years of age does not have criminal liability and if he is between 14 and 16 years of age, he only has criminal liability if proven he committed the act with competence. The minor who has reached the age of 16 years old is fully criminally liable. A large proportion of cases concerning minor defendants are diverted from the justice system and are therefore settled outside criminal proceedings. For the rest, the criminal liability of the minor is determined by instituting criminal proceedings against him, consisting of an initial investigation (pre-trial) stage, followed by filing an indictment and conducting a trial. If the trial concludes that the minor is guilty of the commission of the criminal offense he is charged with, he might be sentenced to one of the custodial or non-custodial educational measures provided by Article 115 Criminal Code. Non-custodial educational measures are the following: civic education training; supervision; weekend commitment; daily assistance. Custodial educational measures are the following: institutionalization in an educational centre or institutionalization in a detention centre. The catalogue of measures applied to juveniles differs from the punitive system provided for adults. The array of measures applicable to youth are of educational, medical, and correctional nature

and their main focus is not so much to punish, but to support, educate, and reintegrate the minors into society (Banciu, 2011: 18-30). Article 133 Criminal Code specifies that the measures applied by the judicial decision are not called “punishment”, they do not represent a “conviction” in the meaning of the criminal law and do not constitute criminal record. Article 74 Criminal Code elaborates on how to customize the educative measure applicable to the minor according to the particularities of each case, namely by taking into account the seriousness of the offense and the threat posed by the defendant. The following criteria are considered relevant: the circumstances and manner of commission of the offense, the threat to the protected social value, the nature and seriousness of the outcome produced by the offense, the reason for committing the offense, the intended goal and certain personal circumstances of the offender, such as his conduct after committing the offense and during the trial or his level of education, age, health, family and social situation (Codul Penal, 2009).

The jurisdiction over the criminal cases with juveniles is regulated by special provisions: According to Article 507 Criminal Procedure Code, the cases with juveniles are conducted by judges specially appointed, according to the law. The Criminal Procedure Code, in Articles 504-520 institutes a special procedure to be followed in cases involving defendants under the age of 18 years old. Article 509 stipulates that cases with juvenile defendants are tried on an emergency and primarily basis. According to Article 508, the following participants shall be summoned for the hearing date: the probation service, the parents of the juvenile or, as the case may be, the tutor, the guardian or the person in whose care or supervision the juvenile is temporarily placed under. Article 509 (2) stipulates that the court hearing is non-public. Other individuals apart from the persons referred to in article 508 may assist at the hearing only with the explicit consent of the Court. The child suspect has the right to be heard by the judge only on one occasion, a limitation which does not exist in the case of adults. Article 509 (9) provides that the juvenile's hearing will take place once, and re-hearing will be admitted by the judge only in duly justified cases.

4. 3. Romania. Implementation of the child's right to be heard: Space, Voice, Audience, Influence

(a) Space

In order to engage with the authorities in a meaningful way, the children must be given an appropriate space to express their views and these views must be proactively sought. They need to perceive the space as a safe space, where they can express their opinion honesty and without fear of repercussions. This goes hand in hand with the protection provided by Article 19 of the CRC, which gives children the right to be protected from abuse. Laura Lundy, the creator of the "Voice" model, includes under the element of "Space" the fact that the child's views must be elicited in a meaningful and non-threatening way, which could be achieved through the support of a mentor or trusted person. In the case of a criminal trial, this role could be played by the child's lawyer. Lastly, the children should have the possibility to choose whether they want to express their views and on which aspects (Lundy, 2007).

In Romania, as a rule, the criminal trials take place in the courtroom and they are public. Article 352 Criminal Procedure Code proclaims that the trial is public, the principle of publicity being one of the pillars of the criminal justice system (Codul de Procedura Penala, 2010). Exceptionally, given due regard to their young age which requires special protection, Article 509 (2) Criminal Procedure Code provides that the criminal cases involving juveniles are tried behind closed doors, in hearings which are non-public. There are only a few persons summoned at the hearing and they are strictly identified by the law: the parents or legal representatives of the child and the officials involved in the administration of justice: judge, clerk, prosecutor and social services representative. Even if Article 509 (2) Criminal Procedure Code further allows for the possibility that other persons can be granted access into the courtroom, this rarely happens in practice. In her career of over 20 years as a judge, the informant J1 was only required to grant public access to a juvenile case once. The case concerned very serious counts of murder and serious bodily harm and it was the press who requested access. Their presence in the courtroom was granted, but they were not allowed to record or report from inside the courtroom. They were required that they maintain their presence as discrete and unobtrusive as possible and that all the subsequent reporting will adhere to the confidentiality limitations imposed by the court, such as protecting the identity of the parties. The statements of

informants A1 and P1 provided a similar account: In the cases with juveniles in which they participated as a lawyer or prosecutor respectively, the only individuals present in the courtroom were those directly concerned – parents or officials. J1 and A1 further revealed an interesting aspect: actually, the cases with minor offenders are not formally started by the judge declaring the session non-public and by ascertaining this aspect through checking the attendance in the courtroom. Rather, the matter of "non-publicity" of juvenile cases is handled in a more "roundabout" way: these cases are left towards the end of the public session (in Romania, a public session lists around 20-30 cases in the same day), when most of the public has left the courtroom. It usually happened naturally and without the court policing the measure, that in juvenile cases, the only persons who remained in the room were the participants who were legally allowed. It can be concluded that, in practice, even if not so strictly policed, the rule of non-public session in case of juvenile cases is adhered to. The session therefore takes place in a setting which is rather private, with an average of ten persons in the attendance, consisting of the judge, prosecutor, clerk, lawyers(s), social services representative and/or parent(s)/ legal representative(s) of the juvenile. The number can drop even lower, as the parents/legal representative and the social service worker may or may not present themselves to the hearing. As long as they are legally summoned, their absence does not preclude the continuation of proceedings, as per Article 508 Criminal Procedure Code. (Codul de Procedura Penala, 2010).

By the time he steps into the courtroom, besides his parent(s)/ legal representative(s), the juvenile is already acquainted with some of these participants: his lawyer – who, presumingly, has already been in contact with the juvenile in order to prepare his defence and the prosecutor, who conducted the investigation of the criminal offense prior to bringing the case to court. However, the fact that the minor is acquainted with one role or another does not automatically mean that they know that very person, since an institution can be represented by different individuals at different times throughout the criminal proceedings. According to J1 and P1, if a decade ago the prosecutors' assignment to the cases used to be divided according to the specific stage of the proceedings (with some of the prosecutors in charge of the investigation and others representing the case before the court), nowadays prosecutors usually follow through with the case since its inception to its conclusion. This "unwritten rule" is even more sought to be adhered to in the cases with juveniles, since they deem desirable that the child is not confused by interacting with too many different faces. When it comes to the lawyer, the situation differs substantially depending on weather he is hired by the minor/ his family or he

is an ex-officio lawyer, meaning appointed by the state. If the lawyer is hired, he usually remains the same throughout all stages of the proceedings and therefore he becomes more familiar with the juvenile. Conversely, if the lawyer is appointed ex-officio, he usually changes over the course of the criminal proceedings, so that different lawyers come to represent the minor at different times. This means that when the trial proceedings commence before the court the relationship between lawyer and his juvenile client might be more crystallized, or on the contrary, barely in its inception stage. More about the role of lawyer will be presented within the section (b) Voice.

The role of the social services worker is very limited in the trial stage, S1 explains. The presence of the social services is not required in court and their role is limited to submitting an evaluation report of the minor which is required by Article 506 CPC and usually contributes to assessing the educative measure to be applied in the end by the court if they find the defendant guilty. The social worker interacts with the minor outside the courtroom, usually in the timeframe prior to the beginning of the trial stage, in order to collect his input and draw up the evaluation report. Their discussion is rather conversational in nature and usually takes place in an environment which is less formal than the courtroom, without rigid procedures, aiming at putting the child at ease and facilitate a fruitful interaction. The social worker might turn into a "friendly face" who can encourage the child to talk more openly and honestly. However, the role of the social worker does not extend into the courtroom. As S1 puts it, even if social workers are allowed to participate in the court proceedings, they are not obliged by law, therefore in practice they do not make use of this possibility.

One of the main actors who is usually not yet known to the child prior to the trial session is the judge. According to J1, who has an experience of over 20 years as juvenile judge, she takes some time at the beginning of the session to engage in a more informal conversation with the juvenile, explaining to him the main moments of the trial, the roles and the basic rules to be followed in court. More on this aspect is presented under the section "Audience". The judge is seated at a bench which is situated in a higher position than the rest of the seats in the room and is dressed in the official robe. According to the account of J1, A1 and P1, the environment in the courtroom looks official – with the national symbols on display above the judges' bench - and very sombre, the rooms have white painted walls and are equipped with plain looking furniture. The rooms do not have much natural light or proper ventilation. The juvenile cases are usually called out at the end of the daily list of cases, after hours of uninterrupted session, when the air could feel sticky. J1 tells how, in an attempt to brighten up the atmosphere, they

brought in some plants in the courtroom. Overall, all informants assess the general court environment as "official and intimidating" for any people who do not regularly go to court and even more so for children.

(b) Voice

This element suggests that notwithstanding their age, children can provide insightful views if they are stimulated to engage through the use of appropriate communication skills. Recalling that the current research concerns youth between 16-18 and, this specific point examines how the officials involved in the administration of justice can engage more fully with the child-defendants in order to elicit from them meaningful accounts. Sometimes, children need professional guidance in order to express, or even to form a view. Article 5 of the CRC gives children the right to receive guidance and direction from adults in the exercise of their CRC rights, including Article 12 - the right to be heard. Amongst the prerequisites for endowing the child with a meaningful and effective voice, we can include: granting him sufficient time to understand the issues relevant for the trial; access to child-friendly documentation; information or training for adults to overcome their resistance to children's involvement (Lundy, 2007).

The conduct of court proceedings is regulated by law and has a strict, rigid structure. According to Article 376 CPC, the defendant gives statements at the beginning of the trial. This could suggest that the child's account comes at a moment when he is not yet very familiar with the judge or the dynamic in the courtroom. J1 explains how, in an attempt to mitigate this, she dedicates time throughout the trial to explain to the child what is happening in court at different times. Often, this is achieved though the juvenile's lawyer: the judge grants short recesses during the trial sessions and directs the lawyer to explain to the child "in his own language" the significance of different procedural acts. The efficiency of these briefings – as both J1 and A1 point out, is highly reliant on how meaningful the rapport between the lawyer and the child is. Such rapport is difficult to be built exclusively during the trial, where the atmosphere is formal and the whole process follows a strict procedure and dynamic. The proceedings are dominated by legal languages consist of "rituals" which are unfamiliar to the child. The court does not have available any child-friendly material to help the child make better sense of what is going on. A1 reflects on how sometimes the atmosphere in court can be overwhelming even

for adults, let alone children. This negative impact can be mitigated by a skilful lawyer, J1 and A1 opine. A meaningful lawyer-client rapport is better grounded on their pre-trial interaction.

Given its relevance, the role of the lawyer in eliciting a meaningful "voice" from the child is examined in more detail in the following. According to Article 90 Criminal Procedure Code, it is mandatory that the juvenile defendant is assisted by a lawyer. If his family doesn't hire one themselves, the court will appoint an ex-officio lawyer to represent the minor throughout the proceedings. According to Article 91 CPC, the ex-officio lawyer has the obligation to present himself and provide representation on every occasion he is summoned and to ensure an effective and efficient defense (Codul de Procedura Penala, 2010). J1 and A1 explain how the appointment of ex-officio lawyers works in practice: when the court acknowledges that the minor has not hired a lawyer of his own choice, the judge puts forward an official request to the Bar Association to appoint an ex-officio lawyer to the case. Following the court notification, the Bar Association appoints a lawyer to represent the minor from a roaster of ex-officio lawyers. The appointment of the ex-officio lawyer is valid until the conclusion of the case, but it ceases at any given moment during the trial if the minor gets himself a hired lawyer (Codul de Procedura Penala, 2010). J1 and A1 identified several aspects who have proved problematic in their professional experience:

The procedure of appointing the ex-officio lawyer is accomplished separately, in two different steps: one time for the investigation stage and another time for the trial stage. Therefore, the Bar Association appoints different ex-officio lawyers for these two different stages, an aspect which, as the informants assess, impacts negatively on the efficient preparation of defence and also on building the rapport between the lawyer and the minor. A1 related how she experienced being appointed ex-officio lawyer in a case in the trial stage and she realized that the previous ex-officio lawyer, who had been appointed in the investigation stage, followed a risky defence strategy. Therefore, A1 decided to shift strategies and pursue an entirely different line of defence in the trial stage. In A1's opinion, whereas at times it might be useful to explore more than one legal avenue, usually, such a change in the legal strategy has a negative impact on the credibility of the defense.

Article 91 CPC requires that, in case the ex-officio lawyer cannot be present for a hearing session, he has the obligation to provide a substitute lawyer for that hearing. In principle, the case has to carry on and is not postponed unless it is impossible to ensure a substitute, which is rarely the case in practice. It is up to the ex-officio lawyer himself to find a substitute lawyer.

Sometimes, it happens that in the same day a lawyer may have to make representations before several different courts, prosecution offices or other judicial authorities, located at considerable distances from each other. In such cases, the lawyers can agree with their colleagues to step in for each other in different cases so they can concentrate their daily caseload before fewer judicial authorities. Usually, the lawyers plan around the cases where they are hired, and not around those where they are appointed ex-officio. The practice of substituting lawyers leads to a discontinuation of the legal representation of the minor in the case. For some ex-officio lawyers – J1 and P1 opine - practical considerations of time, case preference, physical distance or financial gratification may prevail over the endeavour to provide the minor with a constant presence throughout the entire the case. The informants conclude that this practice is detrimental for an efficient defence, as well as for the rapport between the lawyer and the child. On a similar vein, in the case *Rupa versus Romania*, the ECtHR remarked the fact that the defendant's ex-officio lawyers were different for each session, they have not properly discussed the defense with the client and their role came down to their mere physical presence, and concluded that this represents a violation of the right to a fair trial (European Court of Human Rights, 2008).

Another deficiency is that the preparation of ex-officio defense is sometimes insufficient. According to A1, some ex-officio lawyers do not make efforts to get in contact with the defendant prior to the trial session, they just introduce themselves on the spot, right before the session starts. This doesn't allow them time for a more ample conversation about the defense strategy. The communication is rather brief, and it is usually carried out between the lawyer and the defendant's parents, and not between the lawyer and the minor and this is detrimental to building a rapport between the latter two. The amount of money paid for the ex-officio representation is not as high as the legal fee for a hired lawyer and this has a negative impact on his motivation to spend time and effort preparing the defense. Even more so in the cases with minors, since until recently the tariff awarded for those cases used to be half of the tariff in a case concerning adults. However, as A1 specifies, this aspect has improved since February 2019, when the lawyers' ex-officio tariffs were increased by 140% and a uniform tariff was introduced for minors and adults (MonitorulCJ, 2019). The pay for ex-officio representation in the trial stage is now 868 RON, which is the equivalent of around 175 Euro (Protocol, 2019). Even if it is not a particularly large amount of money, A1 thinks that it still represents enough of a financial incentive, especially since most ex-officio lawyers are at the beginning of their careers and they do not have many clients to attend to. Getting to this aspect, A1 points out

another implication: the ex-officio lawyers are usually less senior and less experienced, and this also may reflect onto the effective preparation of defense. J1 offers her perspective, from a judge's point of view, on the same topic of inadequate defense. She reminisced about a period about a decade ago, when the usual practice of ex-officio lawyers was to submit to the court very brief and non-conclusive representations. A1 offers as an example the moment of presenting the concluding remarks to the court. Instead of using this last opportunity to address the court and bring forward the most convincing arguments for the defense, some ex-officio lawyers simply uttered the standard phrase "We leave the determination of the case to the appreciation of the Court". This practice became extensively used and was detrimental to the quality of the defense. In the same period, the jurisprudence of the ECtHR took a turn towards emphasizing the importance of an effective defense. In the case *Czekalla versus Portugal*, the Court underlined that "assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused". The legal assistance provided by the lawyer need to be effective and stay true to the fact that the ECHR "is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective" (European Court of Human Rights, 2003). Ineffective defense constitutes a violation of the right to a fair trial, as guaranteed by Article 6 paragraph 3 ECHR. In the light of these developments in the ECtHR case law, a lot of decisions of the Romanian first instance courts were reversed by the tribunals or courts of appeal, due to deficiencies in the legal service provided by certain ex-officio lawyers. It was concluded that based on the final remarks they submitted before the Romanian courts and the overall defense provided in the case, the lawyers demonstrated they have not studied or properly prepared the case and therefore they could not provide an effective defense. The higher courts considered this violation as being similar to a lack of defense and remanded the case for a new trial, instructing the first instance courts to take adequate measures to remedy the deficiency in the quality of the defense (LegeAZ, 2010). J1 recalls that such measures taken by the Romanian courts could consist of warning the defense lawyer, removing him from the case and replacing him, or eliminating him altogether the list of the Bar Association's ex-officio lawyers. Given these, the quality of ex-officio defense improved substantially, but the critical aspects underlined above still have a practical impact and leave place for improvement.

Being inquired about any specific training for lawyers when it comes to interacting with juveniles, J1 and A1 answered negatively. While J1 did not see an obvious disadvantage to this, A1 explained things from the perspective of her dual qualification: a child-psychologist with years of experience as a social worker and now a lawyer: in her opinion, it is important to

know how to “speak to the children in their own language” in order to truly capture their point of view. Sometimes, when they prepare the defense, lawyers deal with the parents rather than with the child, inadvertently by-passing the child’s perspective on the events at trial and missing what the child’s “best-interest” might be. The child’s real voice is at risk of being silenced. In order to elicit a more meaningful account from the child, the support from a mentor, such as his lawyer, is essential. Even more so since the child has only one opportunity to present his view to the court. Article 509 (9) provides that in principle the juvenile's hearing will take place once (Codul de Procedura Penala, 2010).

(c) Audience

This aspect, according to Lundy’s model, refers to how involved are the decision makers - in this specific research, the judge - in the process of active listening to the voice of the children. The effective exercise of children’s right to be heard should ensure that their opinions are not only “heard”, but “listened to” so that they can be awarded “due weight”, as required by Article 12 CRC. Similar to the previous point (b) Voice, this point concerns itself with the rapport between the child and the judge. While (b) focuses on how this rapport impacts the child’s statement or attitude, point (c) it focusses on the effect of the interaction between child and judge upon the judge. For example, if the rapport judge-child is perceived as intimidating, the child might suddenly trail off and only offer monosyllabic answers. This voice is silenced. This is an aspect which pertains to point (b) Voice. On the other hand, if during the interrogation the judge suddenly changes his line of questioning following up on the child’s account of events, this aspect suggests that the child’s perspective got across to the judge and thus pertains to point (c) Audience. In practice, the two elements are interconnected, and both rely on the skills of the judge to interact with the child. As J1 declares, the judge usually first encounters the minor during the first day of trial. His role is important, he is the one who starts the interrogation of the child, followed by prosecutor and lawyer. Usually, most of the relevant aspects are been examined by the judge and the rest of the participants are left with little inquiries. The time span between the first appearance and sentencing varies, depending on the complexity of the case.

A criminal trial takes on average several days of session from beginning until conclusion and, since the sessions are scheduled at around three weeks intervals, the trial spreads over a few

months' interval. Despite these variations, the majority of cases before the first instance court tend to be concluded within six to eight months from the first court appearance. This means that on average, the judge interacts with the child once every three weeks over a period of several months. Each of their encounter lasts no more than a couple of hours, since every time that the court is on session, there are around 20 cases listed. At other courts, as A1 and P1 relate, due to the backlog of cases, there are even more lawsuits listed in one session. The cases with minors are usually called in the end of the session when everybody is already tired and eager to go home. All these circumstances do not allow for an extensive interaction between the court and the child and the conversation needs to be strictly targeted to the aspects relevant to the trial. However, J1, P1 and A1 feel that a skilful judge could use this limited time to get through to the minor and facilitate an efficient communication.

The juvenile judges do not undergo specific juvenile trainings. All judges, in general, have the obligation of continual self-improvement and undertake a certain number of professional trainings per year. The professional institution in charge of the training of judges is the National Institute of Magistrates and they offer a large array of training programmes, some of which being on juvenile justice. J1 has attended two such trainings over the past three years. They were exclusively legal in nature, specifically focussed on the latest changes in legislation and on how to apply the new law to juvenile cases. The juvenile justice trainings are optional, not mandatory. In any case, they do not contain psychological or sociological teaching modules. The judges' skills in interacting with minors derive mostly from their experience, more precisely the number of juvenile cases they have handled. In Brasov, the juvenile court is specialized in cases with minors, therefore all the judges deal exclusively with such cases, which consolidates their specific experience. For the rest of the courts, Article 507 Criminal Procedure Code requires that the juvenile cases shall be adjudicated by judges specially appointed for this purpose (Codul de Procedura Penala, 2010). In Targoviste and other jurisdictions in the same district, the management of the court should assign two or three judges to handle such cases. However, A1 relates that in fact all the judges in Targoviste Court deal with juvenile cases. She believes that, for reasons of practicality, all judges of the court received a formal appointment as juvenile judges and in fact the requirement of specialization is by-passed.

(d) Influence

This element is interconnected with the previous one - (c) Audience - and seeks to ensure that children's views are given due weight in accordance with their age and capacity. A greater influence of the minor's account on the decision is reliant on a meaningful interaction between the minor and the court during the trial and is reflected in the result of the decision-making process, which is ulterior to the trial proceedings.

According to Article 103 Criminal Procedure Code, "in making a decision the existence of an offense and on a defendant's guilt, the court decides, on a justified basis, based on of all the assessed pieces of evidence". Article 97 Criminal Procedure Code enumerates the means in which evidence is obtained in criminal proceedings through the following: a) statements by suspects or defendants; b) statements by victims; c) statements by civil parties or of parties with civil liability; d) statements by witnesses (Codul de Procedura Penala, 2010). The minor 's best opportunity to make his voice heard is by giving his statement. He also has the right to pose questions to the witnesses and injured parties or to address the court. J1 and A1 point out that this possibility is rarely used, since it is usually the lawyer who takes charge of these. In case the minor is found guilty, Article 74 Criminal Code paragraph (1) provides that amongst the criteria for evaluating the applicable educative measure is the defendant's conduct after committing the offense and during the trial as well as his level of education, age, health, family and social situation (Codul Penal, 2009). Again, the minor's voice becomes very relevant. Giving due weight to the child's voice and reflecting it into the final decision is premised on an active listening to his account. The considerations put forward under point (c) Audience are equally relevant for this point as well.

4. 4. Norway. National provisions

On 26 January 1990 Norway was one of the first countries to sign the CRC and ratified it one year later, on 8 January 1991. The Norwegian legal system is based on a dualistic approach, which means that international law – including human rights instruments – are not as such an automatic source of domestic law, but they need to be incorporated into the national legislation by various legal techniques. The CRC was implemented in the Norwegian legal system by so-called "passive transformation". More specifically, the parliament determined that the

legislation in force at the time in Norway – namely the Human Rights Act (Menneskerettsloven, 1999) - was in conformity with the obligations following from the CRC and therefore gave its prior consent to incorporate them into domestic legal without additional legislative requirements (Langford et al., 2019: 269-299).

During the 1990s there was a growing global interest towards the status of human rights, which was partly due to the increased influence of the European Convention on Human Rights (ECHR) and the developing jurisprudence of the European Courts of Human Rights (ECtHR). This led to the inclusion of a new provision in the Constitution of Norway (Section 92, former Section 110c) requiring that the State shall "respect and ensure human rights" as they are expressed in the Constitution and in the treaties concerning human rights that are binding for Norway. The position of children's rights was consolidated in the Constitution by a major revision in 2014. According to Section 104, first paragraph, children have the right to respect for their "human dignity" and the "right to be heard in questions that concern them". The provision that "due weight shall be attached to their views in accordance with their age and development" mirrors the same principle enshrined in Article 12 CRC. Similarly, Section 104, second paragraph reiterates the provision of Article 3 CRC, by stating that the "best interests of the child" shall be a fundamental consideration for actions and decisions that affect children. (Langford et al., 2019: 269-299).

Zooming into the specific landscape of the criminal trial, the additional relevant provisions are the Penal Code (Straffeloven, 2005), Criminal Procedure Act (Straffeprosessloven, 1981) and the Act relating to the Court of Justice (Domstolloven, 1915). These laws establish the concrete context in which the right to be heard becomes manifest in criminal proceedings with juveniles. The point of departure when solving a legal matter will normally be the wording of the statutory provisions, where their preparatory works often will play a particularly important role in the interpretation. Rulings of the Supreme Court carry significant weight as they provide strong guidance to subsequent similar cases (Langford et al., 2019: 269-299).

In Norway, in accordance with the Section 20 of the Penal Code of 2005, the minimum age of criminal capacity is 15 years (Straffeloven, 2005). Therefore, only children between 15 and 18 years can be subjected to criminal proceedings, and be detained, if they commit crimes. Thus, the children between 16- 18 years old, who are the target group of this research, are criminally liable.

Given the wide and diverse professional experience of J2 - who over a period of around 30 years worked in turns as a lawyer, state prosecutor and he is now a judge - his account is heavily relied on to establish an overall picture of the juvenile system in Norway. According to him, (as well as P2 and S2), most of the criminal offenses committed by juveniles are settled though the mechanism of mediation established in Norway by the Mediation Service Act (Konfliktrådsloven, 2014). This entails that once the Prosecution Office establishes the criminal liability of the juvenile defendant, they send the case to the Council for Mediation (Konfliktråd). This signifies that the case is basically taken out of the criminal justice system and will be settled through a mediation process between the defendant and the victim. For example, in case of a theft, the perpetrator meets the victim and they agree on ways to make good for the damages. The mediation services are outside the Correctional System and their activity is governed by the Mediation Service Act. The measures established following the mediation are the result of the agreement of the parties and may be diverse, ranging from compensation for the damage, the commitment that the defendant would deliver certain works for the victim, certain forms of community service, etc. No punishment, in the meaning of criminal law, is applied. If the case is settled before the Council for Mediation, then it stays outside the criminal system and the sanction is not part of the defendant's criminal record. The possibility for mediation is open to any defendant, but it is mostly common for underage defendants. In case no agreement is reached, the Prosecution may decide to resume the indictment and send the case to Court for a trial or to apply a measure themselves. In principle, as J2 explains, the same substantial and procedural rules are applicable to any defendant, notwithstanding his age, therefore not differentiating between children and adults. The main notable exceptions provided by the Penal Code refer to punishments, who are more lenient for juveniles. According to Chapter 7 Section 40, preventive detention may not be imposed against minors "unless altogether extraordinary circumstances apply". As J2 explains, the measure of "preventive detention" is a form of sentence of imprisonment which can be periodically examined and renewed and it is applied in extremely serious cases, such as the one concerning the terrorist Anders Behring Breivik. When it comes to sentencing, there are certain "youth sentences" (ungdomsstraff), which are exclusively available to the juvenile offenders, according to Chapter 8 a Section 52 a (Straffeloven, 2005). These provisions allow the court, instead of imposing a sentence of imprisonment, to order "victim-offender meetings" and to impose an youth action plan pursuant to Chapter IV of the National Mediation Service Act, which may include measures such as non-economic compensation, community service tasks or certain prohibitions such as not to use alcohol or avoid contact with certain persons

(Konfliktrådsloven, 2014). These measures have entered into force recently, on 1 July 2014, and their main purpose is to identify ways to "bring this kid on a better track", as J2 explains. In practice, these measures have been rarely applied by the Court of Appeal in Tromsø. In addition to these youth sentences, the minors can receive the same type of sentences as adult offenders, including imprisonment. The array of punishments provided by the criminal law are imprisonment, suspended sentence, fine, a combination of the above and/or community service. When it comes to imprisonment, a limitation is introduced in Chapter 6 Section 33, which provides a maximum of 15 years imprisonment for minors, while for adults it can reach 30 years. According to Chapter 14 Section 78, the underage of the defendant represents a mitigating factor to be given particular consideration when applying the sentence. Chapter 6 Sections 33 and 34 provide that in case a punishment with imprisonment is applied against the minor, the rule should be to suspend its execution. The "immediate" execution of the imprisonment, which, as J2 clarifies, means an unconditional prison sentence – is only used as a last resort (Straffeloven, 2005). J2 points out that the sanctions applied by the court are listed, at least for a certain period, in the defendant's criminal record. Some convictions are never erased, and some jobs may never be accessible to the defendant. Norway has a general court system, with three instances with the Supreme Court as the superior body, deciding both civil and criminal cases, including cases with juveniles. (Langford et al., 2019: 269-299). There are no special courts or trial panels with special jurisdiction for juvenile cases.

4. 5. Norway. Implementation of the child's right to be heard: Space, Voice, Audience, Influence

(a) Space

As presented in the considerations above, the criminal cases involving juvenile which are settled before the courts are the most serious crimes such as murder or serious sexual offenses. In these instances, the cases are examined in the courtroom. J2 and A2 opine that the courthouse in Tromsø is very functional and even welcoming. Built recently, in 2003, the building distinguishes itself through the modern look and artsy architecture which places it amongst the most remarkable court houses in Norway. The building lays on three stories accessible from a large hallway, tastefully decorated with paintings and sculptures. This hallway also serves as

an entry way for the public and leads to the courtrooms which are located on this first level. The space open to the public is evocative of a museum. Both the façade of the waiting area and the courtrooms have large glass walls, offering lots of natural lighting and a pleasant view of the surroundings (ArkitekturGuide, 2004). Once in the courtroom, all the cases are public. The principle of publicity prevails in the criminal trials in Norway. According to the Act relating to the Court of Justice, the main trial proceedings are public notwithstanding the age of the defendant. Article 125 of the same Act, derogations are possible in case the defendant is under 18 years old, if the Court so decides, based on reasons of privacy (Domstolloven, 1915). J2 explains how this occurs mostly in civil cases concerning family issues, such as child custody. Such restrictions of public access are decided ex-officio by the Court or upon the request of the interested party. Minority of the defendant is not in itself a ground for holding a trial in camera, but it may constitute a reason to influence the Court decision to close the session to the public. J2 further details that in criminal cases, it happens very seldom that the court decides to close the sessions to the public and, in Tromsø, the few such instances concerned sexual abuse charges, when it was considered that the allegations could attract public condemnation. In the majority of the juvenile cases, the public access is allowed in the courtroom. However, in practice, there are no other persons present in the courtroom apart from the participants involved in a certain case. At the entrance of each courtroom there is a screen which during the conduct of proceedings displays "session in progress" and members of the public are mindful not to come in. A2 thinks that this is connected to a "general common sense and respect for privacy" of the Norwegian society. This self-restraint is also valid for the media: usually, they do not take part in the criminal proceedings. On the other hand, they may be granted access even in the cases closed to the general public, under the condition of protecting parties' anonymity. However, in cases which they consider of public interest, the journalists usually make use other means available to collect the relevant information: either from a court website set up for this purpose or they can contact the judge who is in charge of the "Press and Public Information" department and request information from them.

We now turn to the persons present during the court proceedings: In general, with a few exceptional cases when the punishment provided for the offense at trial is under 1 year, the defendant needs to be present throughout the proceedings, so that a fair trial is ensured. According to Article 83-85 of the Criminal Procedure Act, when the case concerns a minor defendant, the parents/legal representative are summonsed to the proceedings. Additionally, the minor needs to be represented by a lawyer (Straffeprosessloven, 1981). According to A2,

the lawyer remains usually the same throughout the whole process, notwithstanding is he is hired or appointed by the state. Therefore, the minor is familiar with his lawyer from the pre-trial stage. The same usually applies for the prosecutor. P2 explains that even if the law does not require it, the practice in her office so far has been that the workload of cases is distributed amongst peers keeping in mind that only one prosecutor should handle the case from the inception till its conclusion. This is endeavoured with a view of capitalizing on the good rapport between the child and the prosecutor which is facilitated by a longer interaction and familiarity. Therefore, when he steps into the courtroom, the minor has at least two familiar faces amongst the official actors: his lawyer and the state prosecutor. The judge meets the minor for the first time in court. He is seated at a raised dock which confers him a dominant position over the courtroom and he is wearing the official robe. J2 and A2 admit that this might be intimidating for the minors, but they consider these aspects as inherent to the officiality of the criminal trial.

The trial usually spreads over a few days in a row (in general between one and four) until completion, without any interruption other than weekend days or other official holidays. As J2 explains, this is mainly due to the fact that in the Norwegian system there is no official record of the proceedings and by completing the trial in one go, the panel could have the whole body of evidence fresh in their mind when they reach a decision. Along his career, A2 has provided legal counsel for around 20 juvenile defendants, mostly as an ex-officio lawyer. From the perspective of his experience, he remarks that, by coming daily to court over such a short period of time, his clients grow more and more familiar each day with the participants, set into the pace of proceedings and therefore are more likely to find the overall trial atmosphere less intimidating and overwhelming. The defendant gives his statement at the beginning of the evidentiary stage of the trial, preceded only by the victim, if there is one. It is the judge who initiates the questioning of the defendant, followed by the prosecutor and lawyer.

(b) Voice

As detailed earlier above, this aspect examines how juveniles can be stimulated, through the use of appropriate communication skills as well as professional guidance, to provide a more meaningful account of their perspective on the events at trial. It was previously pointed out that the CRC confers the children the entitlement to receive guidance and direction from adults in the exercise of their right to be heard. The role of the defense lawyer is central. The cases

which may result in serious sanctions, which, according to J2 represent most of the cases which reach the trial stage, require legal representation, according to Article 89 Criminal Procedure Act (Straffeprosessloven, 1981). The court appoints an ex-officio lawyer, who is selected according to the indication of the defendant and this lawyer will provide legal assistance throughout the entire case, both in pre-trial and trial stage. According to both J2 and A2 the practice of maintaining the same lawyer is very beneficial to smoothen up the conduct of proceedings as well as to pave the wave for a more profound interaction between the lawyer and the child. As a rule, the lawyer is present during all procedural acts and remains the same throughout all stages of the trial. Therefore, there are good chances that a good rapport between the lawyer and his client is already established from the investigation stage. A2 recounts how in cases with juveniles, he spends more time face to face with the client than in the rest of the cases, where he focusses on research, documents analysis and drafting of briefing notes. This is not to say that he does not award sufficient attention to preparing the research in the juvenile cases. However, apart from researching, juvenile cases require him to invest more time in building up a dialogue with the child: to discuss the child's vision of the events, to explain to the child the legal steps and possible consequences. A2 endeavours to translate the "legal language" into "child language", so that the child has sufficient elements to understand the issues relevant for the trial. A2 has not undergone any specific training for communication with children. Instead, since he has always enjoyed working with children, he adopted the "learning by doing" approach and he came to realize that treating children with patience and consideration pays off. Over his career, all legal professionals he encountered proved to be equally preoccupied of how to best interact with children. According to A2, the state prosecutors, even if they are not trained for this, have remarkable skills to put children at ease and make them feel safe to voice their opinion. In his assessment, this approach is the only effective one to keep the communication channels open, otherwise the children are most likely to withdraw within themselves and clam up.

(c) Audience

As underlined above, the right to be heard does not only imply that the child should be given the opportunity to express his views. An effective exercise of the right to be heard entails empowering the child to offer a meaningful account and to take into consideration his opinions.

It has to be ensured that the officials involved in the adjudication of the case and primarily the judge, who ultimately has the decisional power, grant "due weight" to the child's views, as required by Article 12 CRC. This aspect complements point (b) Voice, which revolves around how officials create optimal conditions for the child to express a meaningful view. Point (c) Audience, examines the question: How can a participant in the criminal trial, and more specifically a judge, be receptive and extract as much meaningful content from the opinions that the child presents before the court?

The right of the juvenile to be heard becomes manifest in criminal proceedings mainly by the statement he gives before the court. Even if he has the right to question witnesses or injured parties or address any other comments or statements to the court as he considers necessary, A2 declares that this rarely happens in practice. In fact, in his professional experience of over 15 years, this occurred only once, in a case in which a minor who was tried for bodily harm charges against a colleague chose to personally address the injured party and inquire about the circumstances around a claim of provocation. In the vast majority of cases, the questions and submissions before the court are handled by the lawyer and the child's "voice" is usually confined to giving his statement at the beginning of the evidentiary stage of the trial. The central audience to whom the minor presents his account is the judge. In principle, in Norway, one can become a judge only after accumulating an average of ten years' experience in other legal functions, such as a lawyer or prosecutor. This, opines J2, represents an advantage since it confers the judge a better overview of the different roles of the different actors involved in the criminal proceedings, equips him with more insight and skills to handle the process and relate to any defendant, in general. Accumulating professional experience is the way for the judges to hone their skills of dealing with juveniles. There is no special training for judges dealing in particular with the specificities of juvenile cases, or at least not on a regular basis. In a fairly recent development, the newly appointed judges undergo an initial training which includes a module on juvenile justice. This is a one-off event and there are no other subsequent mandatory trainings on the topic. As a rule, in Norway there are no specialized courts or specialized panels for juveniles. The cases with juvenile defendants are assigned according to the general rules of case management, to all judges of the court. J2 reveals that certain courts around Norway put more accent on specialization and tend to assign the juvenile cases to judges who routinely deal with such cases, as long as this is without prejudice to the transparency of the cases assignment. This practice known as "light specialization" ("lett spesialisering") and is neither extensive, nor institutionalised. It is safe to conclude that in Norway there is no specialization for the

juvenile cases. This is not to say that the cases with juvenile defendants are not handled properly. J2, A2 and P2 appraised the manner of conducting the juvenile cases: they are handled in a "professional and age-sensitive manner", with "efforts to avoid intimidating factors", "making sure that the best interest of the child prevails" and the child's voice is not "repressed or withheld".

(d) Influence

The previous two sub-sections analysed how efficient did the minor manage to make his point across to the judge - (b) Voice and how much was his opinion understood - (c) Audience. Both of these influence element (d) Influence, by determining how much weight is placed on the child's account during the decision-making process. In accordance with Part III, in particular Article 305 of the Criminal Procedural Code, the statement of the juvenile is examined in conjunction with the rest of evidence, such as the statements of witnesses and injured parties as well as documents, recordings, expert statements and other material evidence (Codul de Procedura Penala, 2010). This constitutes the basis for the court to decide whether the defendant is guilty of committing the criminal offense. If this answer is positive, then the punishment is established taking into account the personal traits and behaviour of the juvenile, which might constitute an aggravating or mitigating circumstance, triggering an increase or decrease in the punishment, according to Articles 77 and 78 of the Penal Code (Codul Penal, 2009). These aspects are connected to how the child's voice resonated with the judge.

Judges are instructed in substantial and procedural law, they possess the theoretical knowledge to manage and oversee the administration of evidence and through their professional experience they finetune their ability to evaluate the evidentiary material in specific cases, including statements by the defendant - explains J2. In fact, J2 reflects, how you handle juvenile delinquency can make the difference between a life of crime and a smooth reintegration into society. This comes with great responsibility and they, judges, are doing their utmost to raise themselves to the task. The voice of the child needs to be "filtered" through the screen of his age and capacity and the "best interest" of the child needs to be evaluated based on the overall picture, which often is rather complex. Ultimately, the final decision needs to reflect the best interest of the child and all the judges act with this solemn commitment in mind.

4. 6. Comparative Outlook Romania – Norway

As outlined at the beginning of this chapter, both Romania and Norway are signatory parties to the CRC, the international convention relevant for this research. Therefore, the international provision which enshrines the right of the child to be heard, namely Article 12 CRC, is commonly applicable in both countries, together with the rest of the rights and safeguards provided by the Convention. Stemming from these international provisions, both countries have enacted their own national laws - starting with their Constitutions and branching out with criminal codes, procedural criminal codes and other relevant laws and bylaws – which trickle down into their respective national system and are instrumental for the effective implementation of the right to be heard. Both countries have taken appropriate measures to incorporate the dispositions of Article 12 CRC – the child's right to be heard – into their national legislative systems. In both systems, the child who is a defendant has guaranteed his right to be heard in criminal proceedings. Both judicial systems act towards the same purpose – to achieve the best interest of the child. After examining the two legal systems closely, I could identify both similarities and differentiations between the ways the juvenile criminal proceedings are conducted in the two countries. These are pointed out below, grouped around the same four Lundy's criteria previously utilized as framework for the analysis of each country's legal systems.

(a) Space

In both Romania and Norway, the law provides, as a matter of principle, that the criminal proceedings are public. The Romanian law provides an important derogation from the principle of publicity: the hearings in juvenile cases are closed to the public. In juvenile cases, public access may only be granted by the judges in exceptional situations, based on a case to case assessment, but this possibility is rarely used in practice. Conversely, in Norway the law does not provide for such derogation and the general principle of publicity of the court hearings is equally applicable to the cases with juvenile or adult defendants. However, as an exception, the law allows for the possibility of closing the hearing to the public, when the defendant is under 18 years old and the Court decides to order this measure based on reasons of privacy. Despite this differentiation in the legal regime, the reality of the courtroom looks rather similar

in the two countries: In Romania the law enshrines the rule of closing the juvenile cases to the public, but there is no strict policing of this measure and the privacy of the session is simply ensured by leaving the case towards the end of the daily trial schedule. In Norway the law declares the juveniles hearing as public in principle, but out of an innate sense of respect for privacy, members of the public tend not to participate in such trials. It can be concluded that in both countries, the environment of the trial is rather private and the sessions are held in the presence of only a few participants – the minor's parents and the officials involved in the case, some of whom are familiar to the child from the pre-trial stage.

When it comes to the physical setting of the trials, the courtrooms which were the object of the research in Romania – in Brasov and Targoviste – were not as modern and appealing as the one in Tromsø, Norway. By their lack of natural light and sombre layout, the courtrooms in Romania tend to induce a more oppressing feeling to the participants in court proceedings and provide a lesser degree of comfort than the court in Tromsø. However, it is hard to generalize this comparison at the country level, since, according to A1 and J2, the situation on the ground in both countries varies from a court to another. The court in Targoviste, for instance, was temporarily located in a crammed, two-floor building, since the original court building was under refurbishment. Therefore, the inference regarding the scarcity of space and lack of sufficient windows cannot be assessed as a long-term situation or generalized to other courts. Conversely, the court in Tromsø is particularly remarkable from an architectural point of view and distinguishes itself amongst the other court buildings. None of the courts in Romania or Norway has courtrooms which are particularly designed for children, neither do they have any informational material available.

(b) Voice

In both Romania and Norway, the officials involved in the administration of justice endeavour to be considerate of the juvenile's point of view and to stimulate his opinion. The role of the lawyer is crucial in both jurisdictions. In Romania, the law provides that it is mandatory for the juvenile defendant to be assisted by a lawyer throughout the entire proceedings. Very often, the lawyer is ex-officio, meaning appointed by the state and this raises some problematic issue concerning replacement of lawyers during proceedings, which proves to be detrimental for the effective preparation of defence or for building a meaningful a rapport between the lawyer and

the minor. In Norway, the participation of a lawyer is mandatory, such as in Romania, in the cases with juveniles involving serious charges, which account for the most of court cases. The child needs to be assisted by a lawyer, who in general remains the same throughout the duration of the proceedings, including the pre-trial stage. This contributes to consolidating the rapport between the lawyer-client and constitutes the premise for a better preparation of the case. Similar to Romania, most of the lawyers are appointed ex-officio. However, in Norway, the judge assigns the case to the lawyer who is favoured by the defendant, which is an additional element to ensure both the continuity and effectiveness of the defence. In both countries the minor presents his statement to the court at the beginning of the trial, therefore it may be important to prepare him before hand and to promote his understanding of the proceedings. Each of the official participants in the trial may play a role here, with the lawyer at the forefront. Neither in Romania nor in Norway, do the lawyers who participate in juvenile cases have any type of specialised juvenile training. There are no such regular or mandatory trainings for the prosecutors or judges either. This aspect is not sufficiently aligned with The Beijing Rules, which in Rule number 22.1, provide that *"Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases"* (United Nations, 1985).

(c) Audience and (d) Influence

Due to their interconnections, these two elements are hereby assessed together. Both elements are reliant on a meaningful interaction between the Court and the juvenile. A meaningful interaction implies to actively listen to the child's view, to capture its essence and to reflect it in the final decision. The skills of the judge play a primordial role, even more so since in both countries it is the judge who is the first to conduct the interrogation of the defendant and therefore sets the tone and the dynamics between the minor and the court. In both Romania and Norway, the skills of the judges are primarily built up on their professional experience rather than on specific juvenile training. In Romania, the few juvenile trainings for judges are not mandatory and they focus on legal issues, not on psychological or sociological aspects of the interaction with the juvenile. In Norway, the situation is similar: the training is limited to a module included in a one-off initial training for newly appointed judges. There is a main

differentiation between the two countries which may influence the experience acquired by the judges in the field of juvenile justice: the issue of specialization. The judges who work exclusively in juvenile cases gain more expertise in adjudicating such cases and are more likely to consolidate their skills of interacting with the children, capture and make effective use of their input. The Romanian law provides that the juvenile cases are handled by specialized judges, in accordance with special procedures. Moreover, in Brasov, there is an entire court specialized in cases with minors. Certain authors opine that the existent level of specialization does not suffice and believe that specialised juvenile tribunals are necessary in all countries, since they are critical in acting as the "first agents" to come to the support of the minors who otherwise are not able to overcome certain problems by themselves (Banciu, 2011). If in Romania we may speak about a certain degree of specialization, conversely, in Norway, the cases with juvenile defendants are in principle handled by regular panel of judges and no special provisions are applicable in juvenile cases. Authors such as Linda Gröning and Hilde Švrljuga Sætre acknowledged the absence of specialization with regard to youth criminal justice as a cross-cutting challenge within Norway. "Norway has no specific courts, or specialized judges. It has neither a specific criminal process for dealing with children", as it is desirable in light of CRC Art. 40. To a certain extent, the authors attribute this to the specific topography of Norway, with many small local communities separated by mountains, and to the specific Norwegian pragmatic legal culture that is not inclined towards specialisation. The authors advice that it is time that Norway invests in a higher level of specialization and education in the criminal justice system in order to meet the specific needs for the child. (Langford et al., 2019: 269-299). When it comes to assessing the potential of the child's voice to impact on the decision, both legal systems facilitate this by including the child's personal characteristics, views and behaviour as means of tailoring the sanction. The informants indicate that the reasoning put forward in the judgements reflects that judges observe this criterion of customizing the sentence. This resonated with "the principle of proportionality" enshrined in the Rule number 5 of The Beijing Rules, according to which the individual circumstances of the offender have an influence on the proportionality of the sanction (United Nations, 1985).

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This chapter provided an analysis of the legislative framework and court practices which determine and shape the implementation of the child's right to be heard in criminal trials. The analysis focused in turns onto the legal landscape in Romania and in Norway and concluded by outlining a comparison between the main features of the two systems. While both countries pledge to promote the best interest of the child in criminal proceedings and already provide the legal framework for the right of the juvenile defendant to be heard, there is still place for improvement when it comes to the concrete implementation of this right.

The following chapter concludes this analysis by putting forward a series of best practices and recommendations which, if implemented, can contribute to the improvement of the juvenile justice systems in both Romania and Norway.

CHAPTER 5: INTERNATIONAL BEST PRACTICES ON THE CHILD'S RIGHT TO BE HEARD

The previous chapter provided an in-depth analysis of how the child's right to be heard is implemented in Romania and Norway and concluded by outlining a comparison between the two systems. Even if both systems have good "legislative bones" to guarantee this right, there is still place for improvement when it comes to its practical implementation. This chapter contemplates best international practices which are being crystallized in this field and projects the actual status quo of Romania and Norway against the background of these best practices. This second-level comparison serves to identify a possible gap between the current state of affairs in the two countries and the international recommendations, with the ultimate aim of bridging this gap and rendering the two systems more child-friendly when it comes to the exercise of the child's right to be heard. The conclusions and the best practices identified herein are structured around the same four criteria by Lundy which underpinned the research.

(a) Space

Children should be provided with a safe environment to express their views. To begin with, children should be asked whether or not they wish to participate in the decisions affecting them. Article 12 CRC provides their possibility to express a view as a right, not a duty. There might be occasions when juveniles choose not to be involved and give a statement during the criminal proceedings (Lundy, 2007). This choice needs to be an informed choice, the children need to be clearly explained about the possibility of declaring or not declaring, as well as about the legal implications of each. The constant dialogue and information sharing with the child is essential in the light of his diminished neurological, emotional and psychosocial capacities as well as the complexity of legal proceedings. Explanation of various interlocutory orders or rulings reached throughout the trial, their consequences and implications on the proceedings can support the child to reach a level of understanding that would otherwise be impossible. This requires the augmentation of the communication techniques between the child and the justice professionals (Aldea, 2013).

The physical space where the juvenile gives statement is also vital (Welty & Lundy, 2013). The importance of holding the trial in a child-friendly environment should not be underestimated. The space should be as such that the child should feel safe and be stimulated to express his view. Often, meetings with children are held in offices that are intimidating, oppressive and threatening. The very physical space we arrange, the words we use, the way the furniture is organised and the customs we adhere to may inhibit parity and increase subordination. Courtrooms are the symbol of the state judicial authority and in general they have an official and strict layout, with the judges' desk dominating the room and often displaying official symbols. Coupled with the solemn trial procedures and the participants wearing official robes, the whole atmosphere can be overwhelming. A space which is set-up in a less formal manner could be less intimidating and more child-friendly. This could be achieved by creating courtrooms or courthouses especially destined to hold juvenile cases. An additional idea worth exploring is that even the child himself is consulted about his choice of venue (Lundy, 2007).

Another aspect to consider when it comes to the space of the trial is the publicity of the proceedings, namely if they are held in public or not. There are no common standards and different countries regulate this aspect in different ways, some more restrictive than others. The privacy of the child seems to be a common concern, even if different manners are pursued in the attempt of balancing it with the principle of open administration of justice. It is recommendable, however, that the juvenile cases are closed to the public, so that the child will find the overall environment of the court less intimidating. Given its relevance, this aspect has been brought up before the ECtHR. In the case *T. versus the United Kingdom*, the Court ruled that allowing public access in juvenile trial hearings may hinder the possibility of the defendant to effectively participate in the criminal proceedings conducted against him. Consequently, the Court concluded that holding public hearings in juvenile cases constitutes a violation of the right to a fair trial guaranteed by Article 6 of the ECHR. The Court grounded its finding on the following considerations: The juvenile's exposure to the scrutiny of the press and the general public had the effect of increasing his sense of discomfort during the trial. It is unlikely that the defendant could have feel "sufficiently uninhibited in the tense courtroom and under public scrutiny". Given these circumstances, the juvenile defendant was unable to follow the trial and to take decisions in his best interest. These, coupled with the immaturity and disturbed emotional state, are factors which hindered the defendant from participating effectively in the criminal proceedings conducted against him. This - concluded the Court - represents a violation

of the right to a fair trial hearing in breach of Article 6 § 1 of the ECHR. The Court recommends that it is necessary to conduct the hearing in "such as way as to reduce the feelings of intimidation and inhibition" of the defendant (European Court of Human Rights, 1999).

In both Romania and Norway, the setting of the juvenile cases is rather private. In Romania, the closed sessions are the rule, but this measure is not always strictly policed by the Court. In Norway, the juvenile hearings are in principle public, like all the other hearings, but the public rarely shows up in court. Ultimately, the law allows for the possibility of closing the hearing to the public. In both countries, the issue of privacy of sessions is more scrutinized in the cases involving juveniles comparing to adults' cases. However, it is preferable that the juvenile cases are held with as few participants as possible and the measure of closure of the sessions to the public is applied regularly and more carefully policed. Also, consulting the child about how he feels about the extent of public access could be beneficial. When it comes to the physical setting of the trials, the architecture of the courtrooms varies, but the sessions are conducted in a similarly solemn and official manner. In both Romania and Norway, the climate of the courts could be "brightened up", by bringing in more lighting, properly airing the rooms or by adding simple props, such as plants. For both countries, it is recommendable to provide the children with legal informational material suitable for their level of understanding, so that to ensure that they are able to express an informed point of view.

(b) Voice

In order to make sure that the child has a real opportunity to participate in decisions concerning him, it is essential to safeguard an effective use of his right to be heard. The exercise of the child's right to be heard should not be regarded only as a mere formality or a box to be ticked. The child needs to engage with adults in a meaningful way and express his honest opinion. The voice of the child is important in the outcome of the criminal proceedings conducted against him. Children's enjoyment of Article 12 CRC is dependent on the cooperation of adults, who may have different levels of commitment to the process. Children have the right to receive direction and guidance from adults in order to be able to shape their opinion and find ways to convey it according to their age and level of maturity. The adults have the positive obligation to stimulate the children to express their meaningful voice, rather than abandoning them to a lonely process or decision. The abilities of adults to support children are decisive on whether

and how effective children are involved. One of the ongoing obstacles to the successful implementation of Article 12 CRC is that there is a limited awareness of the provision itself (Lundy, 2007). Therefore, a good approach could be to implement trainings for juvenile professionals, to promote awareness and stimulate their informed understanding of Article 12, as well as to disseminate good practices of implementation of the right to be heard. In addition to raising their awareness on the legal aspects, all juvenile justice professionals should finetune their skills of interacting with children by getting trained in children's rights, autonomy and development, as well as child-friendly communication techniques. In view of this, the Committee on the Rights of the Child has recommended, in its General Comment number 5 (2003), paragraph 53 that initial and in-service training for teachers and other professionals working with children should be "systematic and ongoing" and should "increase knowledge and understanding of the Convention and encourage active respect for all its provisions" (UNICEF, 2003).

The practical implications of enabling the child's participation in decision-making need greater recognition: we need to fight against the tendency to "solve" the cases quickly -a routinized approach to casework and a lack of opportunity to undertake direct work with children (Dickens, 1999: 139-150). It is equally beneficial that the lawyers endeavour to maintain their constant presence throughout the whole criminal proceedings and dedicate sufficient time to interact with the child himself, not only with the parents, so as to consolidate their rapport and build strong communication bridges with the child. The importance of the "relationship of confidence between lawyer and client" has been also acknowledged by the ECtHR: in the case *Croissant versus Germany*, the Court states that "when appointing the defence counsel, the national courts must certainly have regard to the defendant's wishes".

The opinions of the child need to be informed, and if the lawyer has the appropriate skills, he is better equipped to approach the child in an age-appropriate way. Preparing the defense could entail information with heavy legal content which needs to be "translated" into messages that the child is able to decode. The lawyer can get creative and specialized trainings can provide him with useful set of skills, such as use of simple language or child-friendly information leaflets. Simple actions could go a long way: The lawyer may also promote the child's understanding of the procedure and alleviate the stress of the hearing by simply taking time to explain the trial procedure or take him to see the courtroom in advance – actions appraised as positive by the European Court of Human Rights (1999).

In both Romania and Norway, the role of the lawyer is central for an efficient interaction with the child-defendant and for eliciting a meaningful account from the child. In both countries, it is recommendable that lawyers, as well as the prosecutors, undergo trainings specialized on interacting with juveniles. In addition, in Romania, particular regard should be paid to ensure the continuity of the same lawyer throughout the case. The ex-officio lawyer appointed by the Court should, in so far as possible, follow the juvenile defendant's preference, such as it happens in Norway.

(c) Audience

There is a need to ensure that children have a "right of audience" – a guaranteed opportunity to communicate views to an identifiable individual or body with the responsibility to listen (Welty & Lundy, 2013) and who, in the case of criminal proceedings, is represented by the judge. Without a receptive listener, the discourse of the child, no matter how honest or articulated, will simply be equivalent with fulfilling a formality, without any practical benefit.

Judges have much discretion as to the manner of hearing children and involving them in the proceedings. Their capacity to be a good listener and to engage with the child is decisive for an effective impact of the child's view on the decision-making process. Judges have a wide range of possibilities to engage in a meaningful interaction with the child throughout the proceedings. Being a receptive audience also involves sensitivity to the child's needs when he attempts to present his account. For instance, Article 13 CRC stipulates that children should have the opportunity to express their view freely, in various formats such as, "orally, in writing or print, in the form of art, or through any other media of the child's choice" (United Nations Human Rights Office of the High Commissioner, 1989). Judges should be aware and encourage such possibilities. Another example of good practice suggested by ECtHR in the case *T. versus the United Kingdom,* could be that the hearing times are shortened so as not to tire the juvenile defendants excessively (European Court of Human Rights, 1999). The receptivity of the judges and the range of methods he employs in order to elicit and retain a meaningful account from the juvenile are reliant on his training and experience in working with children. The considerations put forward under point (b) Voice, regarding the necessity of initial, as well as continuous in-service mandatory training of juvenile justice professionals, are equally relevant for the current point as well. The existence of specialized juvenile judges can be an advantage,

as it contributes to finetuning their skills. This is an aspect which can be further improved in both Romania and Norway. With specialized juvenile panels and one specialized juvenile Court in Brasov, Romania is ahead of Norway when it comes to the specific juvenile expertise of the judges. This expertise stems from practical experience, as juvenile trainings are not mandatory. In additions, the voluntary juvenile trainings for judges which can be undertaken voluntarily are in principle focussed on the legal aspects of the proceedings with minors and do not contain psychological or sociological modules. Romania and Norway can benefit from juvenile trainings which are mandatory and include psychological or sociological teaching modules.

(d) Influence

After creating the optimal circumstances for the child to present a meaningful account to the court and ensuring that the judge is receptive to this account, the ultimate aim of the Article 12 CRC is that the view of the child is properly weighted against the overall evidence and reflected in the final decision. Children and young people should be told what decision was made and how their views were taken into account (Welty & Lundy, 2013). Article 12 (1) CRC provides that the views of the child should be given due weight in accordance with his age and maturity and Article 3 indicates the best interest of the child as the primary consideration in decisions concerning children. The best interest principle is a positive tool for focusing the attention of adults on the interests of children in the process of decision making. But what is that exactly? The concept of child's best interest is complex and is not defined by CRC. It may receive different interpretations in different societies or different historical periods, and it involves an inherent element of subjectivity (Freeman, 2007). A unified jurisprudence and a coherent application of the best interest principle, as well as granting due weight to the child's viewpoint are recommendable and can be better achieved through the training of the judges. This element, (d) Influence, is interrelated with the previous one, (c) Audience and can be improved by investing in the training of judicial personnel and the creation of specialized panels. International guidelines should firmly require that judges and prosecutors undertake specific training updates on a yearly basis as part of as specialised continuous professional development program. Specialised panels consisting of legal representatives with the adequate skills and qualifications are needed to provide effective representation to children (Aldea, 2013). However, the issue of specialization of courts is a matter of national policy, which require

substantial funding and legislative change. Positive results may be achieved also by smaller scale measures, such as promoting specialized training at the level of each court or each individual judge. As pointed out under (c) Audience, Romania and Norway can benefit from mandatory juvenile trainings for judges. By introducing this practice on a larger scale, both countries may achieve a "de facto" specialization of the juvenile panels, which would yield positive outcomes for the trial by stimulating a meaningful two-ways interaction between the child-defendant and the Courts.

By following these recommendations, both Romania and Norway would move forwards to improve the exercise of the child's right to be heard, elevate their current state of the juvenile justice and make it more child-friendly.

CHAPTER 6: CONCLUSION

This thesis sets out to explore the implementation of the child's right to be heard in the criminal proceedings in Romania and Norway and the potential of the two legal systems of rendering the exercise of this right more effective and child-friendly. This is achieved by assessing each of the two juvenile justice systems and by comparing them to each other and lastly, to the international best practices in the field. The ultimate aim of the thesis is to identify international practices or strategies worth disseminating in Romania and Norway in order to make the two systems more child-friendly and more aligned to international best practices when it comes to the exercise of the child's right to be heard. The research uses an inductive approach and draws its findings from a research material consisting of documents and semi-structured interviews, which are utilised in a complementary manner in order to establish the legal framework of the child's right to be heard, as well as its practical implementation in courts.

The conceptual framework followed in this research proposes a way of managing conflicts of the young offenders with the law by channelling them towards peaceful change, through the mechanisms of juvenile justice and fair trial rights. Promoting the child-friendly potential of the juvenile justice systems strengthen the capacities of the courts to promote the more encompassing goals of turning juvenile offenders into good citizens, discontinuing the cycles of violence and building more peaceful societies. The research focusses on the right of the child to be heard and so, the court proceedings are analysed from the perspective of the four factors which Laura Lundy considered relevant for the successful implementation of this right: Space, Voice, Audience and Influence. It is vital to understand how making the four factors more efficient can impact the overall effectiveness of the juvenile justice system. With a more informed understanding of the potential of the juvenile justice systems, funding can be allocated in an optimal way, and organizations and policies can be tailored to better meet the needs of young defendants, while also bolstering the capacities of the courts to promote the more encompassing goals of discontinuing the cycles of violence and building more peaceful societies. The conclusions and the good practices identified herein are structured around the same four criteria by Lundy which underpinned the research. Both Romania and Norway have in place the legislative structure to guarantee the right of the child to be heard. However, there is still place for improvement when it comes to its practical implementation. The research identifies small-scale changes for each of the Lundy's criteria of Space, Voice, Audience and

Influence, which, if implemented can enhance the exercise of the right of the child to be heard and consolidate a more child-friendly justice system in Romania and Norway.

The thesis focusses on small-scale improvements, which do not involve legislative change or formal adoption of measures of national policy. Even small-scale improvements can generate positive results and elevate the practical implementation of the child's right to be heard to the level of the best practices in the field. Such measures include: specialized training of the juvenile justice personnel, "warming-up" the space of the courtroom and making it more child-friendly, circulating child-friendly information materials or promoting the continuous presence of the same defense counsel throughout the proceedings. Little goes a long way and small steps can consolidate the effectiveness of the right of the child to be heard. The implications reach even farther if we consider that all the rights in the CRC are interdependent and interrelated. For example, the right to be heard is instrumental to the application of the "best interest of the child" principle (Aldea, 2013). The improvement of the four elements of Space, Voice, Audience and Influence not only consolidate the child's right to be heard, but further contribute to safeguarding all the other children's rights guaranteed by the CRC and, by this, pave the way to a juvenile justice system which is more child-friendly (Lundy, 2007).

The thesis focuses on best practices and recommendations which can be implemented within the current legislative landscapes of each Romania and Norway. However, the positive effect of the small-scale improvements identified by the research can be, of course, boosted by employing larger-scale and more formalized measures as well. Ideally, the good practices outlined above could ensure a greater outreach and effectiveness, if they are coupled with more comprehensive measures, such as legislative change, policy making and securing human and financial resources for a better involvement of the children in decisions concerning them.

- At legislative level: it should be considered to introduce child-expertise in legal drafting. Some possible legislative changes could aim to increase the level of specialization of the juvenile justice laws (for instance when it comes to sanctions or privacy of sessions), as well as by creating juvenile courts.
- At policy level: policies should be more routinely scrutinized for compliance with Article 12 CRC, monitoring mechanisms sewn in to ensure conformity and impact assessments carried out periodically (Aldea, 2013).

Such comprehensive measures are reliant on both political will as well as considerable planning and funding. Given their overreaching application, they may impact on other aspects of the justice system. For example, the creation of specialized juvenile courts, may raise stuffing implications and may affect the backlog of the rest of the cases. How feasible is to create panels of judges especially designated for juvenile cases and how does this situation reconcile with the principle of a random and transparent case allocation? The potential larger-scale measures which could strengthen the child's right to be heard represent a valuable path for future research. Also, the importance of the rest of the rest of the array of the children's rights, such as "best interest of the child" principle, on the reform of the juvenile justice system could also provide fertile ground for future studies.

Meanwhile, this thesis offers a more accessible formula: examples of best practices and recommendations which can be adopted by Romania and Norway at the smaller scale, at court level, in their journey to a more child-friendly juvenile justice system. The aim is a juvenile justice system which walks neither in front nor behind children, but which walks besides them, true to the motto by Albert Camus: *"Don't walk behind me; I may not lead. Don't walk in front of me; I may not follow. Just walk beside me and be my friend."*

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