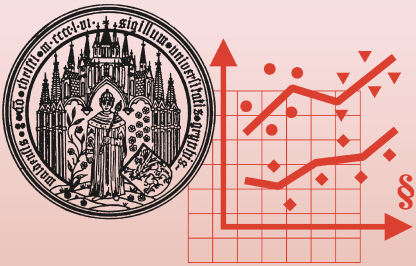
Schriften zum Strafvollzug,
Jugendstrafrecht und zur
Kriminologie

Herausgegeben von Prof. Dr. Frieder Dünkel
Lehrstuhl für Kriminologie an der
Ernst-Moritz-Arndt-Universität Greifswald

Band 36/4



Frieder Dünkel, Joanna Grzywa,
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in collaboration with
Andrea Gensing, Michele Burman
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Juvenile Justice Systems in Europe

Current Situation and Reform Developments

Vol. 4
2nd revised edition

Forum Verlag Godesberg

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The project was funded by the European Commission, Justice and Home Affairs (JLS/2006/AGIS/168) and the Ministry of Education, Science and Culture of the Federal State of Mecklenburg-Vorpommern with the support of:
Ernst-Moritz-Arndt-University of Greifswald (Germany),
Fundación Diagrama, Murcia (Spain), and
Don Calabria Institute, Verona (Italy)

2nd revised edition

MG 2011
Forum Verlag Godesberg

Bibliographische Information der Deutschen Nationalbibliothek

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über http://dnb.d-nb.de abrufbar.

Mönchengladbach 2011, 2. überarbeitete Auflage (Erstauflage 2010)
DTP-Satz, Layout, Tabellen: Kornelia Hohn
Institutslogo: Bernd Geng, M.A., Lehrstuhl für Kriminologie
Gesamtherstellung: Books on Demand GmbH, Norderstedt
Printed in Germany

ISBN 978-3-936999-96-9 (Gesamtwerk, Band 36/1 bis 36/4)
ISSN 0949-8354

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1. Introduction

Generally speaking, the common idea of juvenile justice[1] in Europe is that minors or juveniles should be dealt with differently than adults. According to criminological research results worldwide, juvenile delinquency and crime are episodic and regularly disappear in early adulthood.[2] Consequently – and in line with Art. 40 (4) of the United Nations' Convention on the Rights of the Child (CRC) and many subsequent international instruments – European countries have introduced special regulations for juvenile offenders which provide educational measures and sanctions instead of imprisonment as responses to youth criminality. The intention is to avoid compromising the developmental

1 In this article, the term "juvenile justice" is used in a broad sense and is defined, according to the *Council of Europe's* Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, as "the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support." More definitions can be found for example in the articles of *Doak* 2009, p. 19, footnote 2: "all legal provisions and practices (including social and other measures) relevant for treating children in conflict with the law", or *Junger-Tas* 2006, p. 506.

2 See for example *Junger-Tas et al.* 2009; *Baier et al.* 2009; *Dünkel/Gebauer/Geng* 2008, p. 47; *Bundesministerium des Innern/Bundesministerium der Justiz* 2006; *Spieß* 2008; *Thornberry et al.* 2004; *Laub/Sampson* 2003.

process of young persons in the transitional stage from youthfulness to adulthood. This development and the many international recommendations and conventions in the field of juvenile justice can be seen as the major achievement in modern juvenile criminal policy worldwide.

The following article presents results from the present AGIS-project, focussing on the scope and main characteristics of juvenile justice systems in Europe. It aims to describe similarities and differences between the numerous European approaches to dealing with the criminal or "deviant" behaviour of juveniles. The article starts with a brief overview of the historical development of juvenile justice in Europe (see *Section 2* below). This is followed by a presentation of different juvenile justice typologies (see *Section 3* below), so that we can determine and define a common terminology, which will simplify discussion on different aspects of juvenile justice. *Section 4* deals with the different codifications and special jurisdictions of juvenile justice (the latter are described in more detail by *Gensing* in this volume). *Section 5* is dedicated to the forms of behaviour for which juveniles may be sanctioned under juvenile justice or welfare laws. Not only criminal but also other forms of "deviant" or "anti-social" behaviour can result in the issuance of juvenile justice measures. *Section 6* deals with the most relevant issue when talking about the scope of juvenile justice. The number of young persons dragged into the juvenile justice system depends first and foremost on the minimum ages of criminal responsibility which vary considerably across Europe. The aim of this article is to present the differences and the particularities in countries that have relatively high or low ages of criminal responsibility. Furthermore, there are many variations with respect to age thresholds in the European juvenile justice systems. Those and other particularities, like for instance *doli incapax*, shall also be described. A special issue of concern will be discussed in *Section 7* – the transfer of juveniles to adult courts. Such transfers, or the application of adult criminal law in cases of severe offending, are not in line with the original ideas of juvenile justice that rely on special age limits. The last section (see *Section 8* below) is dedicated to the question whether or not it is even possible to determine which juvenile justice system in Europe is "the best".

2. Historical development of juvenile justice systems in Europe

Historically, the evolution of special juvenile justice systems in practice is often associated with one of the first known juvenile courts, which was established in Chicago in 1899 as a consequence of a movement towards improved care for

children.[3] Furthermore, the international "*Zeitgeist*" at that time favoured welfare over punishment for the prevention of criminality (*Fritsch* 1999, p. 42).

It should not come as too much of a surprise that the idea of special juvenile justice systems is relatively new (compared to the long history of penal systems as such), also keeping in mind the historical development of the status of "youth": Until the 19th century, juveniles were regarded as "little adults", in terms of both their legal and their social status.[4] Consequently, they were prosecuted according to the regulations of the general (adult) penal and procedural law, but their sentences were mitigated. Simultaneous to the onward process of industrialisation in western societies and as a result of social and cultural changes, during this time fields of research were established that focussed on "youth", especially with regard to the fact that the behaviour of juveniles particularly in big cities was seen as a social problem (see *Fend* 2003, p. 33; *Platt* 2009; *Cipriani* 2009, p. 4 ff.).

Europe soon followed the American idea of developing special juvenile justice systems: specific jurisdictions (courts) and/or separate juvenile criminal laws were established for example in the *Netherlands* (1905), the *United Kingdom* (1908),[5] *Ireland* and *Germany* (1908),[6] *Portugal* (1911), *Belgium*, *France* and *Hungary* (1912), *Austria* (1919), *Czechoslovakia* (1931), *Italy* (1934) and *Switzerland* (1942).[7]

The new laws all followed an idealized "non-punitive" approach with "treatment" rather than "punishment" or "formal justice", and emphasized "the best interest of the child" to be the aim of every action. The judge was to assume an educational role and paternalistic and protectionist policies were pursued.

In the following decades, the direction in which this approach developed in almost all European countries showed significant divergence (either in the laws

3 *Junger-Tas* 2006, p. 507; *Jensen* 2006, p. 84. *Hazel* 2008, p. 24 refers to the first separate court for juveniles in *Western Australia* in 1895 or *Illinois* in 1898. *Platt* 2009 refers to the first juvenile court established in *Colorado* in 1899.

4 For example *Fritsch* 1999 p. 117; see also *Fend* 2003 for more references, and *Walgrave/Mehlbye* 1998. *Thane* 2009 describes the longer history of "childhood" starting in the thirteenth century. *Hendrick* 2009 describes the historical development of constructions of childhood in Britain.

5 *May* 2009 presents an overview about the historical development in *England*.

6 In Germany in 1908 in some cities such as Berlin, Frankfurt or Cologne special juvenile courts were established, whereas specific juvenile justice legislation followed only after the First World War in 1922 (Juvenile Welfare Act) and 1923 (Juvenile Justice Act), see in more detail *Fritsch* 1999, p. 58 ff.

7 Different *Swiss* Cantons had specific juvenile procedural laws before 1942.

or in the sanctioning practice).[8] In this context, the introduction of judicial rights as well as the principle of proportionality in sentencing (this principle is emphasised in *Austria* especially by the Juvenile Law Reform of 1975 and generally in the *Scandinavian* countries) played a special role.[9] The focus shifted towards the aim of responding to the deeds of the offender rather than the needs (*Hazel* 2008, p. 24).

The underlying idea of these reforms was not to punish the juvenile offenders more severely, but (beginning in the 1950s) to "save the children from their saviours" (*Hartjen* 2008, p. 91). It had been discovered that the well-intended approach to "educate" children sometimes resulted in harsher and more invasive reactions than a sanction provided under adult criminal law (which has to be proportional to the guilt of the offender) would have entailed in a comparable case. Furthermore, diversion and restorative justice were seen as appropriate reactions to juvenile crime and hence were introduced in many juvenile justice systems (see *Dünkel/Pruin/Grzywa* in this volume).

Italy introduced restorative justice elements and community sanctions in 1988. *Ireland* determined minimum and maximum terms for the deprivation of liberty of juveniles in 1941 and 1957, and introduced restorative justice elements and diversion in 2001. *Spain* introduced a lot of procedural safeguards and changed the approach to juvenile delinquency in 1995 and 2000. *Portugal*, since 2001, formally distinguishes between situations involving minors who commit criminal offences (educational intervention) and minors in danger (protective intervention). *Romania* introduced legal guarantees according to the CRC and other international instruments, and since 2006 provides for mediation as a special element of youth justice. The juvenile justice system in *Serbia* has provided procedural rights and alternative sanctioning measures since 2005. *Germany* widely extended diversion and elements of restorative justice through the law reform of 1990 and retained the minimum interventionist approach through difficult times after the German reunification with increasing crime rates particularly in the East German Federal States (see *Dünkel* in this volume).

Recently, in some countries we can observe tendencies towards a tightening of the laws or the sentencing practice for juvenile offenders based on the argument that the rates of youth criminality had risen dramatically.[10] So, for example, apart from the often mentioned intensifications in *England/Wales*, in 2000 *Spain* introduced a special sentencing system for very serious offences, particularly for terrorist acts, which lacks any educational purpose.[11]

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8 *Junger-Tas/Dünkel* 2009; *Muncie* 2001; *Junger-Tas* 2006, p. 511 ff.; *Bala et al.* 2002, p. 266.

9 *Cavadino/Dignan* 2006; *Hazel* 2008, p. 6; *Muncie/Goldson* 2006, p. 197 ff.

10 See in more detail: *Muncie/Goldson* 2006 and *Dünkel et al.* in this volume.

11 See for an historical overview *Junger-Tas* 2006 and *Muncie* 2008.

According to the national reports in this volume, rates of youth criminality may have risen in official statistics, but this rise has to be put into perspective by consulting other indicators for youth criminality like self-report surveys[12] etc., which do not correspond to the statistical rise for registered crime rates in some countries (see for example the reports on *Germany* and *Sweden*).[13] It should be emphasized that the assimilation of adult penal law with regards to an emphasis on purposes like the protection of society had not been intended at all by the original critics to the welfare system. Those stipulated the introduction of procedural safeguards and the principle of proportionality for juvenile offenders and intended "to achieve a fairer and more just sentencing policy" (*Junger-Tas* 2006, p. 509), not an approximation to the adult sentencing practice. However, in some countries reform developments resulting from this criticism led to more severe juvenile sentencing and a loss of some special achievements that had been made previously. Examples are developments in *England/Wales* and in other countries which follow the (from a pedagogical point of view incomeprehensible) "zero tolerance" approach of "getting tough" on juveniles (see *Section 4* below).

Countries which were under communist or socialistic regimes after World War II are often underrepresented in international comparisons. Sometimes it seems as if the development of juvenile justice in these countries started no earlier than after the fall of the Soviet system.[14] However, the truth is that juvenile justice developed rather simultaneously in *Eastern* and in *Western Europe*: The Russian Penal Code of 1903 included special regulations (for example about the criminal liability) and sanctions (for instance a special warning by the judge, see *Pergataia* 2001, p. 8) for juvenile offenders, which can for example be compared to regulations in the draft for a German Penal Code in 1909 (*Fritsch* 1999, p. 79). Furthermore, in *Russia* like in other European countries the question of how to deal with juvenile offenders was discussed at international conferences (i. e. 1890 in St. Petersburg, see *Fritsch* 1999). In 1918 a decree about "commissions for minors" replaced the traditional criminal procedure for juvenile offenders through a more informal procedure (*Pergataia* 2001, p. 13). These commissions were not only responsible for the treatment of young offenders but also for juveniles who exhibited anti-social

12 *Junger-Tas et al.* 2009; *Baier et al.* 2009; *Dünkel/Gebauer/Geng* 2008, p. 47.

13 See *Dünkel* and *Haverkamp* in this volume.

14 This may be due to the fact that, unfortunately, there is (so far) not much English literature available about the juvenile justice systems in the countries which belonged to or were influenced by the Soviet system.

behaviour, and followed a purely welfarist approach which was retained over the years.[15]

Many countries that were later influenced by the Soviet system (or belonged to the Republic of Yugoslavia) had introduced special regulations for juvenile offenders previously, which were in line with the development in the rest of Europe.

In *Hungary*, the first amendment to the Hungarian Criminal Code (Csemegi-Code) of 1878 introduced welfare-oriented elements and foresaw that young delinquents aged 12 to under 18 years could only be sentenced if their intellectual and moral maturity could be proven (see *Váradi-Csema* in this volume). *Croatia* introduced a Decree of the Vice–Roy of *Croatia*, *Slavonia* and *Dalmatia* in 1918 on "punishment and protection of youth" (see *Bojanić* in this volume). In *Poland*, a legislative commission was set up in 1919 to prepare drafts of both the criminal and civil law. With the international support from French, Austrian and Swiss scientists, the draft of the Act on Juvenile Courts was prepared by the legislative commission in 1921. This draft contained justice and welfare elements for the treatment of young offenders. Although this draft was never enacted, most of its provisions were included in the 1928 Code of Criminal Procedure as well as in the Criminal Code of 1932, and since 1928 the juvenile court was competent to deal with young offenders (see *Stańdo-Kawecka* in this volume). In 1931 the *Czech Republic* and *Slovakia* (as *Czechoslovakia*) adopted a law on juvenile justice and established specialised juvenile courts. This law was deleted without replacement in 1950, two years after the communist seizure of power. In *Slovenia* – part of the Austro–Hungarian Monarchy at the time – the former Austrian Ministry of Justice decided in 1908 that all cases of juvenile delinquency should be dealt with by a specialized judge at a general court. Consequently the first juvenile judge commenced work in Ljubljana in 1909 (see *Filipčič* in this volume).

Influenced by the Soviet system, most countries shared the communist ideology, which was oriented towards the welfare approach in combination with a strong emphasis on institutional control of delinquent behaviour (see *Kanev et al.* and *Shchedrin* in this volume).

Poland introduced major reforms including procedural safeguards etc. as early as in 1982. In most other countries affected by communist or socialistic ideas one can observe major developments of independent juvenile justice systems and the introduction of the principles of the Council of Europe and the United Nations after the fall of the Soviet system. In *Croatia,* for example, there was a far reaching reform in 1998 which introduced inter alia special councils and judges which decide about juvenile offenders in the courts. In *Kosovo* a new

15 Like other juvenile legislation of that time following the welfare ideal, the *Russian* system did not provide procedural rights for juveniles who were sent to the juvenile commissions.

law and youth courts were introduced in 2006. In the same year, *Serbia* set up new regulations which introduced special youth judges as well. Major reforms took place in *Slovenia* (already in 1995), *Slovakia*, *Romania* and *Russia*. In the *Czech Republic*, juvenile courts were established after a major law reform in 2003 (see *Válková* 2006; *Válková/Hulmáková* in this volume). However, for example, in the Baltic States there are still no independent youth courts at present. In *Russia*, first juvenile courts have been established in *Rostov/Don* and a few other cities, and such a project has also been established in *Romania* in *Brasov*.[16] However, often the required infrastructure for the specialisation of youth judges in dealing with juveniles in an educative manner is widely lacking (see *Dünkel* 2008).

To sum up, one can conclude that almost all countries followed a welfare approach to responding to juvenile offending at the beginning of the last century. During the hundred years that followed, most countries have shifted to a more justice oriented approach (although not all countries have introduced special youth courts).[17] This may be partly due to the international instruments on juvenile justice that provide for the introduction of procedural safeguards that could be difficult to integrate into a purely welfare approach. Nowadays, the welfare approach is most strongly represented in *Belgium* and *Poland*. However, all countries covered by our study (still) emphasize that, according to the international instruments, the "best interest of the child" is the guideline for any public action in cases of juvenile offenders, and in many countries the justice and the welfare system are strongly connected in searching for the best reaction to juvenile criminal behaviour.

3. "Classical" typologies of European juvenile justice systems

As a result of the manifold developments described above we can hardly find a pure welfare or justice approach in one country. Systems that combine welfare as well as justice elements and that have introduced even more and different approaches to responding to young offenders are more common. Some authors have analyzed the juvenile justice systems and developed special "models" into which the single countries could be classified. For this classification, the scientists generally observe both the legal situation and the sentencing practice in the country.[18]

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16 See *Păroşanu* in this volume, for a summary *Dünkel* 2008, p. 104 and *Dünkel/Pruin* 2009a, p. 122.

17 See below (*Section 4*) and *Gensing* in this volume for more details.

18 *Muncie* 2001, p. 30 emphasizes the danger of mistaking "governmental rhetoric for what actually happens on the ground."

Winterdyk[19] defined six juvenile justice models worldwide. Besides the classical "welfare" and "justice" model he defined a "participatory", a "modified justice", a "crime control" and a "corporatist" model.

In the *welfare model*, the state aims to help the juvenile offender and to rehabilitate him or her with educational measures and interventions. In general, not only delinquent behaviour is sanctioned, but also other forms of deviant behaviour. Indeterminate sanctions are often possible. According to this definition, we could classify *Belgium*, *Bulgaria* (with respect to the referrals to juvenile commissions) or *Poland* as countries that follow a welfare approach.[20] But also the *Scandinavian* countries are strongly related to the welfare approach (see below).

The *justice model* aims at avoiding the imposition of longer interventions "in the best interest of the child". Therefore, procedural rights and safeguards are emphasized, sanctions are of a determinate and proportional nature, and lawyers play a dominant role. *Italy* or the *Scandinavian* countries could be seen as good examples for this category.[21]

The *participatory model* is characterized by informality and minimum intervention, with educators and community agencies playing a key role. In the literature *Japan* is defined as a good representative for this approach.[22] *Scotland* (where the main decision-making process happens outside the court within the Children's Hearings System) could be seen as a good example as well.

Examples for the *modified justice model* can be found in *Canada* or the *Netherlands*, where responsibility and the protection of society reflect a legalistic approach and mitigated accountability and special needs of young offenders reflect welfare elements.[23] According to this definition, the *German* approach could be categorized as a modified justice model.

The "*crime control*" model is defined by the "emphasis on criminal prosecution and constitutes the most punitive approach, very similar to the adult criminal

19 *Winterdyk* 1997 and 2002; *Hartjen* 2008, p. 86 ff.

20 See *Dünkel/Pruin/Grzywa* in this volume. *Muncie* 2008, p. 117 also names *France*, so do *Cavadino/Dignan* 2006, p. 203 and *Hartjen* 2008, p. 86, who both additionally refer to *Germany* as a good example for the welfare model.

21 For more examples see *Hartjen* 2008, p. 88. For *Muncie* 2008 (p. 117), *Germany* is a good example for the justice model. In *Sweden*, many "sanctions" (in a wider sense) are delivered by the welfare agencies (after the judge of the criminal court has transferred the case to them). Due to this practice the *Swedish* or *Finnish* approaches could also be classified as welfare models.

22 *Winterdyk* 2002; *Hartjen* 2008, p. 88; *Muncie* 2008, p. 117.

23 *Winterdyk* 2002; *Hartjen* 2008, p. 88; *Muncie* 2008, p. 117.

system" (*Hartjen* 2008). Apart from the *USA*, *Hungary* is categorized as a country following this model.[24]

The *corporatist model* is most clearly defined by the interagency approach. Juvenile justice specialists decide. *England/Wales* seem to be a good example for this approach, because Youth Offending Teams, consisting of social workers, probation officers, police officers and education officers, work together to find and deliver more focused and effective responses to juvenile delinquency.[25]

Cavadino and *Dignan* defined, in addition to the justice and welfare models, a "*minimum intervention model*", a "*restorative justice model*" and a "*neo-correctionalist model*" which can all be found within Europe (*Cavadino*/*Dignan* 2006; see also *Dünkel* 2008).

According to *Cavadino/Dignan*, in countries that follow the minimum intervention model, the state aims to avoid negative stigmatisation by promoting diversion and similar forms of avoiding formal punishments and procedures. This follows the philosophy that in many cases intensive state intervention is counterproductive for offender rehabilitation. Therefore, much emphasis is placed especially on extra-judicial reactions. *Canada* and *Scotland* (*Cavadino*/*Dignan* 2006, p. 206) seem to integrate many elements of the minimum intervention model, but many other countries focus on diversion as well (e. g. *Austria* or *Germany*, see *Dünkel/Pruin/Grzywa* in this volume).

Restorative justice models particularly prioritize extra-judicial conflict resolution. The offender is to be reintegrated by measures that involve the victim, the offender and the wider society. Mediation, family group conferences and other approaches which strengthen the bonds to members of the local community are of particular importance in countries that follow this approach. *Cavadino* and *Dignan* refer to the juvenile justice system in *New Zealand* for explaining the restorative justice model (*Cavadino*/*Dignan* 2006, p. 208 ff.).

The final model described by *Cavadino* and *Dignan* is the so-called "*neo-correctionalist model*", with the underlying ideology of "law and order". Young offenders are to be made and held responsible for their behaviour. This "responsibilisation*"* is not limited to the offenders themselves, but also extends to their parents, who can in some cases also be subjected to interventions and measures (so-called parenting orders in *England/Wales*). Furthermore, behaviour that could develop into criminal behaviour can be sanctioned (with so-called Anti-Social Behaviour Orders, ASBOs). "Zero tolerance" is a frequently used slogan. This approach sometimes seems to be associated with the justice model, because both the neo-correctionalist and the justice approach aim to approximate adult and juvenile criminal law to a certain degree. However, the difference

24 *Winterdyk* 2002; *Hartjen* 2008, p. 88.

25 See *Winterdyk* 2002; *Hartjen* 2008, p. 88; *Muncie* 2008, p. 117.

between the justice and neo-correctionalist approaches is, that – although both systems place more emphasis on the offence – crime policy strategies which follow the neo-correctionalist model emphasise punitive aims and place the protection of society above the best interest of the child (which results in a more frequent use of deprivation of liberty),[26] whereas the introduction of justice model elements as such is related to introducing due process rights and preserve the emphasis on educational interventions at the same time (i. e. *Germany* or *Sweden,* see in this sense: *Junger-Tas* 2006, p. 528).

Even with so many options, a clear categorization of the countries still remains difficult. This is due to the fact that many countries work with more than one "track" to deal with juvenile offenders. So, for example, *Sweden* originally follows a justice approach, if we look at the fact that criminal courts are competent for sanctioning juvenile offenders. Where an offender is referred to the Social Services, we can find "welfare" or "participatory" elements as well (see above). The situation in *Italy* is comparable in this regard. In *Austria* (as in many other countries following a justice approach), educational measures play an important role in the sanctioning practice (and the court has to involve youth welfare agencies), and in *Switzerland* (which is generally to be defined as a justice-model system as well) the new Juvenile Justice Law provides protective (or in other words educational) measures which are imposed regardless of an offender's guilt and can be indeterminate in duration.

In *Bulgaria*, which can be defined as including many elements of the welfare model, custodial sanctions have to be confirmed by a criminal court judge (since 2004),[27] which can be seen as being indicative of procedural safeguards and thus of elements of a justice-approach. In *France*, defined above as a country integrating many welfare-elements as well, the law reform of 2007 enabled the courts to abstain from mitigating sentences for recidivist juvenile offenders (this had been obligatory before the reform, except in extraordinary cases).

These examples demonstrate that it is impossible to cope with the complexity of the single systems if one tries to classify a country as belonging to a particular model of juvenile justice (in this sense: *Muncie* 2008, p. 117). This is furthermore not what those scholars and researchers who established these categories and different juvenile justice models had intended. Rather, their intention was to explore summative models of youth justice which shall "help to understand patterns in the proliferation of policies and procedures" (*Cavadino*/*Dignan* 2006, p. 199 ff.; *Hazel* 2008, p. 23) and ease the international debates about recent developments in the field of juvenile justice, but it is not assumed

26 See *Dünkel/Pruin/Grzywa* in this volume for the sanctioning practice in the countries that follow the "neo-correctionalist" approach.

27 *Germany* is categorized into three different models by three different authors, see *above*.

that "any one country will match either type exactly and display at any one time all of the characteristics identified with either model" (*Hazel* 2008, p. 23).[28]

Accordingly, the following sections of this article do not aim to "classify" the single countries, but rather to analyse special areas of juvenile justice in order to generate a comprehensive overview of the differences and similarities in certain issues of European juvenile justice.

4. Different types of codifications and decision-making authorities

The systems in Europe vary considerably in where and how the respective regulations are codified and who is responsible for making decisions on the issuance of (educational) measures or sanctions for juvenile offenders.

Table 1 reveals the different approaches to the codification of laws for juvenile offenders. Many countries provide specific penal or criminal procedural laws[29] (e. g. *Austria*, *Belgium*, *Croatia*, *Cyprus*, *Czech Republic*, *England/Wales*, *France*, *Germany*, *Ireland*, *Italy*, *Kosovo*, *Portugal*, *Scotland*, *Serbia*, *Spain* or *Switzerland*).[30] Specific juvenile criminal laws often coincide with specialised authorities who are competent to decide in cases of juvenile offenders. In many European countries (*Austria*, *Bulgaria*, *Croatia*, *Cyprus*, *Czech Republic*, *England/Wales*, *France*, *Germany*, *Greece*, *Hungary*, *Italy*, *Ireland*, *Kosovo*, *Netherlands*, *Serbia*, *Slovenia*, *Spain*, *Switzerland* and *Turkey*) there are special criminal youth courts and/or judges who decide in cases of juvenile offending. The youth courts differ considerably from the adult criminal courts, and the judges are – more or less – specialised (see in more detail *Gensing* in this volume). In *Poland*, it is the family court which is responsible for juvenile offenders as well as for juveniles in need of care. Similarly, courts with double responsibilities can be found in *Portugal* and *Belgium* as well.

Other countries do not have specific criminal law books for juveniles but special regulations within their criminal justice acts. Mostly these regulations are assorted into special sections (e. g. *Lithuania*, the *Netherlands*, *Northern Ireland*, *Romania* and *Russia*). In these countries, in general adult courts are

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28 In this sense *Hartjen* 2008, p. 97. An example for how to work with the typologies of *Cavadino/Dignan* 2006 can be found in the last chapter of this volume (by *Dünkel et al.*).

29 Respectively specific *Acts* in the countries belonging to the *United Kingdom*.

30 This approach best meets the international requirements for "laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law" (*Committee on the Rights of the Child* 2007, No. 90). Sometimes these specific regulations include both juvenile and young adult offenders, see *Dünkel/Pruin* in this volume.

competent to decide about juvenile offenders (e. g. *Denmark*,[31] *Estonia*, *Finland*, *Latvia*, *Romania, Russia*, *Slovakia*, *Sweden and Ukraine*).

Some countries provide special laws for juvenile offenders which deal only with special aspects of juvenile justice. For example, in *Estonia* the Juvenile Sanctions Act provides an alternative system of sanctions for minors (through the Juvenile Commissions, see below) whilst all other provisions concerning criminal proceedings against juveniles are fully embodied in the Code of Criminal Procedure that applies to both juvenile and adult offenders (see *Ginter/Sootak* in this volume).

Belgium and *Poland* are the only countries that regulate the treatment of offenders and juveniles exhibiting "problematic behaviour" (see below for further definitions) in the same (civil) law.[32] Whereas the *Belgian* federal law[33] concentrates on procedural aspects for juveniles that come into contact with the justice system (i. e. legal procedures, the instauration of a single seated juvenile judge and legal guarantees), in *Poland* the sentencing system is in major parts the same for these two groups of "delinquent" juveniles as well. Provisions on juveniles with problematic behaviour are included in the Juvenile Act, and both groups are dealt with by the family court. However, the procedure in cases possibly resulting in deprivation of liberty in a youth prison-like institiution is based on criminal procedure law regulations (with all common procedural guarantees), the procedure in other cases follows a civil law approach.

The observation that most countries have established special systems for juvenile offenders and separate them from juveniles who are "in social danger", or who are showing "problematic behaviour", supports the impression that pure welfare systems have been widely repressed – at least from a formal point of view, because almost all countries base their systems of juvenile law on forms of behaviour that are defined by criminal law.

This development is probably due to international requirements: According to Art. 40 CRC the states shall "seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law".

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31 From 1 January 2010 all city courts have to assign at least one "juvenile-judge", see http://www.fm.dk/Nyheder/Pressemeddelelser/2009/11/~/media/Files/Nyheder/Pressemeddelelser/2009/11/Finanslov%20med%20vaekst%20og%20velfaerd/aftaletekst_FL10.ashx.

32 In *Portugal* there was a major shift from a "protectional approach" to an "educational approach" in 1999. Since the introduction of Law No. 166/ 99 (Lei Tutelar Educativa – LTE: Educational Guardianship Law), which entered into force in January 2001, the law distinguishes between juvenile offenders (educative intervention) and minors in danger (protective intervention).

33 *Belgium* has three youth welfare laws, one for each community (Flemish, French and German), see *Christiaens et al.* in this volume.

Meeting these requirements in one system that integrates both parts is likely to be difficult. However, *Belgium* and *Poland* can be seen as countries that have successfully preserved the welfare approach.

As regards the "law in practice", there are many countries that transfer the main responsibility for juvenile offenders to the welfare system. In *Bulgaria*, *Estonia*, *Latvia*, *Lithuania*, *Russia* and the *Ukraine* juvenile offenders can be transferred to Juvenile Commissions that are then competent to decide which sanction or measure to apply.[34] In *Sweden* the case can be referred to the Social Services, and in *Scotland* most cases are referred to the Children's Hearings System. All of these approaches can be defined as special forms of diversion. In many other countries, diversion is accompanied by a huge influence of the welfare authorities (see *Dünkel/Pruin/Grzywa* in this volume).

Furthermore some countries have introduced special (civil) regulations for juveniles showing deviant ("anti-social") behaviour that is outside the threshold of criminal offending (e. g. in the *UK*, see *Section 5* below). Some *Eastern European* countries have established special welfare laws that allow the state to intervene where juveniles exhibit deviant behaviour.

Table 1: Codification of laws concerning juvenile offenders in Europe

Country	Main regulations for juvenile offenders to be found within			Specific civil laws which include both juvenile offenders and juveniles in "danger" or showing "anti-social behaviour"
	specific juvenile criminal law(s)	youth welfare law(s)	general (adult) criminal law(s)	
Austria	X			
Belgium		X[a]		X (on the level of the Federal States)
Bulgaria			X	X (*Combating Minors' and Adolescents' Anti-Social Behaviour Act*)
Croatia	X			

34 The role and practice of juvenile commissions is reluctantly criticised by scholars and Human Rights organisations, see *Kanev et al.* and *Sakalauskas* in this volume). The *Bulgarian Helsinki Committee* brought a case before the *European Court of Human Rights in Strasbourg* on behalf of five girls detained by a juvenile commission in a school for delinquent children (*V.T. and Others v. Bulgaria,* appl. 51776/08), in the hope that the Court would express itself on all the problems of the system.

Country	Main regulations for juvenile offenders to be found within			Specific civil laws which include both juvenile offenders and juveniles in "danger" or showing "anti-social behaviour"
	specific juvenile criminal law(s)	youth welfare law(s)	general (adult) criminal law(s)	
Cyprus	X			
Czech Republic	X			
Denmark			X	**X** (*Juvenile obligation, when indicated combined with electronic monitoring, for children of at least 12 years of age*)
England/ Wales	X			X (*Anti-Social Behaviour Act*)
Estonia			X	X (*Juvenile Sanctions Act*)
Finland			X	
France	X			
Germany	X			
Greece			X	
Hungary			X	
Ireland	X			X (*Anti-Social Behaviour Act*)
Italy	X			
Kosovo	X			
Latvia			X	X (*Law on the Application of Compulsory Corrective Measures to Children*)
Lithuania			X	X (*Law on special protecttion for children*)
Netherlands			X	
Northern Ireland			X	X (*Anti-Social Behaviour Act*)
Poland		X		
Portugal	X			

Country	Main regulations for juvenile offenders to be found within			Specific civil laws which include both juvenile offenders and juveniles in "danger" or showing "anti-social behaviour"
	specific juvenile criminal law(s)	youth welfare law(s)	general (adult) criminal law(s)	
Romania			X	X (*Law on the protection and promotion of the rights of the child*)
Russia			X	X
Scotland	X			X (*Anti-Social Behaviour Act*)
Serbia	X			
Slovakia			X	
Slovenia			X	
Spain	X			
Sweden			X	
Switzerland	X			
Turkey		X	X	
Ukraine			X	X (*Act on public authorities for childcare issues and special institutions for children*)[b]

Note: a Three youth welfare laws (one for each community).
b This law contains basic principles for public authorities. There are specific regulations for each institution for childcare, e. g. Act on the Special Criminal Police for Children, or the Act on Social Services for Children in Criminal Proceedings.

5. Different forms of behaviour

One central point for the differentiation between the systems concerns the different forms of behaviour that can open the (trap) door to the juvenile justice system.

Criminal behaviour

In most countries, the specific juvenile justice laws and jurisdictions result in a system that cannot intervene until a juvenile has violated the rules of the criminal law or similar statutes (*Austria*, *Croatia*, *Cyprus*, *Czech Republic*,

Denmark (until 2009),[35] *England/Wales*, *Finland*, *Germany*, *Greece*, *Hungary*, *Ireland*, *Kosovo*, *Lithuania*, *Romania*, *the Netherlands*, *Northern Ireland*, *Portugal*[36], *Scotland*, *Slovenia*, *Spain, Sweden* or *Switzerland*). Other forms of "problematic" behaviour which could endanger the juvenile and which could be connected to (future) offending in the young person's further development are not "punished" within the juvenile justice system,[37] but dealt with by welfare legislation. The latter is responsible whenever a child is "in danger" or "in need of care", and sometimes welfare agencies (or the family courts) are competent to apply compulsory measures.

Usually juvenile justice authorities in these systems cannot start their work before the age of criminal responsibility has been reached. Exceptions – however – can be seen in the *Czech Republic* or in *Greece*, where the system also encompasses children who have breached a criminal code rule before having reached the age of criminal responsibility, however, by only providing for educational measures (see *Section 6* below in more detail).

Status offences

In some countries the (criminal youth) courts furthermore have the authority to deal with "offences" that can only be committed by juveniles. In such cases, the prosecuted behaviour would not have been punishable had it been committed by an adult (so called "status offences").[38] Typical status offences are truancy or running away from home as well as actions such as using vulgar language, spitting and drinking (see *van Bueren* 1995, p. 197). In Europe, the juvenile justice systems of *Bulgaria*, *England/Wales*, *Estonia*, *Finland*, *Poland* and *Scotland* know status offences, the most common being the criminalisation of the purchase and consumption of alcohol. In *Lithuania*, a special welfare law provides the possibility to place juveniles in an educational institution for truancy.

The aim of status offences is to keep juveniles off behaviour which endangers their well-being and which could possibly lead them into crime (*Hartjen* 2008, p.

35 There is no special juvenile justice system in *Denmark* or *Sweden*.

36 Since the introduction of the Educational Guardianship Law No. 166/99 (in force since January 2001).

37 Exceptions concerning the indirect "punishment" of "anti-social behaviour" are described further below.

38 See *Goldson* 2008 and *van Bueren* 1995, p. 197 for a definition of status offences. See also Beijing Rule 3.1. The concept of status offences can be understood as the opposite to legal decriminalization which is foreseen for non-serious misdemeanours in some countries (e. g. immunity of 14 and 15 year-old offenders in case of a moderate and non-serious misdemeanour in *Austria*, see *Section 6.3* below and *Dünkel/Pruin/Grzywa* in this volume for more examples).

15). Nr. 56 of the United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines") gives a clear statement on the "criminalisation" of primarily non-criminal behaviour: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if" committed by a young person. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") deal with status offences in Rule 3.1: "The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult." *Van Bueren* interpretes this as a specific "green light" for the continued criminalisation of status offences (see *van Bueren* 1995, p. 198). Rule 3.1 could likewise be understood to mean that the UN intended to assure procedural rights for juveniles who are (against all recommendations) prosecuted for status offences, with the consequence that the prosecution of status offences would not be an unlegislated field at all. However, this was not the intention of the UN Beijing Rules. The aim was (as is the case in the recent European Rules for Juvenile Offenders Subject to Sanctions or Measures, ERJOSSM, of 2008) to protect delinquents sentenced for so-called status offences or according to anti-social behaviour laws and placed in the same instititutions or settings as juvenile criminal offenders (see No. 22 ERJOSSM) by the standards of the Rules.

It is argued that status offences allow the courts to intervene in problematic situations between parents and their children, and that such interventions are therefore important in order to "support" the parents. This is not very convincing keeping in mind that preventive and family support measures from specific welfare laws could assume this role. Therefore penal intervention is not the only – and not the appropriate – way to deal with such problems (*van Bueren* 1995, p. 197). There is furthermore empirical evidence that such a paternalistic approach can have discriminatory effects within some groups,[39] which should likewise be seen as an important argument against the criminalization of status offences.

Anti-social behaviour

In some countries, the door to the juvenile justice system is not only open if the juvenile breaks rules of the criminal law (or commits specific status offences), but also if the juvenile shows "anti-social behaviour".

In *Poland*, for example, the notion of "demoralization" is used in the Juvenile Act of 1982. Truancy, alcohol and drug abuse, prostitution, and other behaviour violating social norms are considered to be signs of "demoralization". Displaying signs of demoralization is the basis for instituting proceedings under

39 *Van Bueren* 1995, p. 197 with further references.

the Juvenile Act. All educational and medical measures may be applied both to juveniles who have committed "punishable acts" whilst between 13 and 16 years of age, and to juveniles aged younger than 18 who show serious problem behaviour (signs of "demoralization").[40] The equal treatment of the two groups of juveniles can be seen as typical for a straight welfare approach which understands youth criminality as a special expression or form of problem behaviour and consequently offers education and protection for both groups of juveniles. Such a pure implementation of a welfare approach can be found only in *Poland*, but overall the differences to other "welfare" systems are rather small:

In *Bulgaria* it is not the court that is competent for responding to anti-social behaviour of juveniles, but a Juvenile Commission. Anti-social behaviour is an act that is "socially dangerous and illegal or contradicts morals and good manners". According to this definition, criminal behaviour is just seen as one form of anti-social behaviour.[41] Additionally, in *Bulgaria* a particularity with regards to "petty hooliganism" can be found. Whereas the Bulgarian Criminal Code contains a criminal offence of "hooliganism", which is subject to harsh punishment, juveniles aged between 16 and 18 can additionally be held responsible for "petty hooliganism", which is regulated in the Decree for Combating Petty Hooliganism (DCPH).[42] The "decree defines petty hooliganism as behaviour – such as cursing, obloquy or other abusive language used in a public place – that demonstrates disrespect to citizens, public authorities and the public in general, or fighting, squabbling or other similar activities that violate public order" (see *Kanev et al*. in this volume). Insofar the definition is similar to the definition of demoralisation in *Poland* or anti-social behaviour in other countries. Petty hooliganism in *Bulgaria* is considered an "administrative offence". It can be responded to with deprivation of liberty or a fine, and the case can be – and in practice often is – referred to the local commissions.

In *Estonia*, *Latvia*, *Lithuania* and *Russia*, compulsory educational measures (including custodial options) can be applied to children and juveniles under the age of 18 – and even under the age of criminal responsibility – where the young person has behaved anti-socially (*Pergataia* 2001, p. 218). Since two law reforms in 2009 and 2010 the same applies for *Denmark*. The laws which allow for these kinds of interventions are special welfare (civil) laws (see *Table 1*).

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40 If it comes to institutional care for juveniles, since 2004 offenders and juveniles exhibitting problematic behaviour must be placed in different institutions, a reform which was grounded on the aim to adhere to international standards.

41 Since 2004 only the court can decide in case of deprivation of liberty against juveniles who have behaved anti-socially. Before, the commission had been able to place juveniles in closed institutions.

42 Decree for Combating Petty Hooliganism from 31 December 1963 (last amendment: 30 November 2004), see *Kanev et al*. in this volume.

The difference between the prosecution of criminal behaviour (or status offences) and the criminalisation of anti-social behaviour is that the latter is defined quite vaguely. After all, the decision about whether behaviour is defined as "anti-social" is up to the judge who is granted a lot of discretional power. What is questionable in this regard is the fact that it can be difficult for juveniles to know or foresee whether or not what they are doing is in fact anti-social.

This is also true for another development: real extensions of public control which can additionally lead to (criminal) sanctions like deprivation of liberty are "Anti-Social Behaviour Orders" (ASBOs). ASBOs are civil orders but are often defined as quasi-criminal interventions. In *England/Wales*, since 1999 they may be imposed on anyone over the age of ten who has acted in an anti-social manner, which is defined as "behaviour that caused or was *likely to cause* harassment, alarm or distress to one or more persons not of the same household". Failing to comply with an ASBO (*breach*) is a criminal offence and can consequently result in a custodial sanction, even for "offenders" who are too young for the imposition of a "regular" custodial sanction (see *Dignan* in this volume). In *England/Wales*, ASBOs are used most frequently in relation to children and young people, although they should – according to the Home Office – only be used in exceptional circumstances (*Kofmann* 2006; *Kofmann/ Dingwall* 2007; *Cavadino* 2007, p. 328).

In *Scotland*, ASBOs can be issued since 2004. In *Ireland* the police are (since 2006) responsible for issuing warnings to children from 12 to 17 years of age who behave in an anti-social manner. The warning shall be followed by a meeting between the police and the child and his/her parents to discuss the behaviour if the police are convinced that the problem behaviour will recur. The meeting shall end with a "good behaviour contract" that covers a period of at least six months. The child can furthermore be admitted to the Garda Diversion Programme or be sent to the Children Court for a behaviour order. *Walsh* describes the close association between the civil order and the criminal process as "obvious".[43] Behaviour orders are similar to the sanctions imposed by the court in cases of criminal behaviour. Additionally, a failure to comply with the order constitutes a criminal offence.

ASBOs have roused numerous concerns (see for example *Dignan* in this volume and *Cavadino* 2007). They are primarily linked to the lack of any true definition of what constitutes "anti-social behaviour", so that the definition is open to a wide degree of discretion and interpretation. This criticism applies to all countries which provide the possibility to apply (educational) measures against juveniles who exhibit "anti-social" behaviour. Furthermore, the critics observe that since ASBOs are technically "civil" measures they are subject to the less demanding civil standard of proof, compared to the criminal law standards, and this even though ASBOs can result in deprivation of liberty (up to

43 See *Walsh* in this volume, or *Yates* 2009, p. 172 with further references; *Kofmann* 2006.

five years in *England/Wales* for adults and up to 24 months of detention for juveniles).

Furthermore, the adult Magistrates' Courts are competent to decide about ASBOs, regardless of the age of the offender. One of the consequences is that young "offenders" who receive ASBOs are often "named and shamed" by the media because no reporting restrictions are in place as would be the case for juvenile justice proceedings. This practice is often followed by high degrees of stigmatisation for the juveniles and can result in their self-identification as criminals.

The most serious concern is that under the influence of ASBOs many young people are being dragged into the criminal justice system (and into the custodial system) for behaviour that would in the past have been dealt with informally.[44] Furthermore, providing measures or interventions that are similar or identical to criminal sanctions, that can be applied to juveniles who have not reached the age of criminal responsibility is incidentally a lowering of that age threshold, often via the "back-door" of civil law.

Those who support ASBOs claim that they help to reach problematic juveniles and to influence them at an early stage. It is, however, not evident why ASBOs, which are aimed at protecting society, should have any educational effect. There is no empirical data that corroborates this belief, bearing in mind that the orders merely contain prohibitions rather than obligations that require the juvenile to "actively improve". Furthermore, again, reaching and influencing juveniles can best be achieved with the help of the (already existing) welfare law which provides measures that are primarily voluntary and which require the juvenile's and his/her family's cooperation. There is empirical evidence for an unequal application of ASBOs: Apparently juveniles from disadvantaged backgrounds are overrepresented among those receiving ASBOs. Insofar they suffer additional stigmatisation and are ultimately held responsible for the structural disadvantages from which they are suffering (*Burney* 2009, p. 91 ff.). As a consequence to this criticism the new government in England and Wales has expressed its will to minimize the use of ASBOs against juveniles.[45]

Need of care

Especially in countries pursuing a strong welfare approach the door to the juvenile justice system is opened if the juvenile shows behaviour that is indicative of a "need of care". As youth criminality is seen as an expression of social problems, juveniles are not punished, but "treated" or "educated". This approach is especially emphasized in *Belgium*. In countries which are more

44 See *Dignan* and *Walsh* in this volume; *Burney* 2009 with further references.

45 This new orientation is based on a report of an expert commission, see http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/ and *Independent Commission on Youth Crime and Antisocial Behaviour* 2010

oriented towards a justice approach, it is the welfare system that intervenes if a juvenile is "in need of care". Mostly in these cases all measures are applied on a voluntary basis and coercive measures are extreme exceptions. In *Scotland*, the Children's Hearings System is completely within the civil jurisdiction and deals with both offenders and those in need of care (*Hazel* 2008, p. 39).

In *Sweden* frequent transfers to the Social Services follow the same approach of seeing juvenile delinquency as a special expression of a "need of care". In *France* the track for juvenile justice is opened if a juvenile commits a crime or if he/she is in danger, in terms of health, security or morality, or if the conditions of his/her education are seriously compromised (see *Castaignède*/*Pignoux* in this volume).

It is obvious that these approaches are totally different from ASBOs which follow a clear punitive approach. But are there really major differences to countries that open their juvenile justice system to anti-social behaviour (like *Poland*), or is it just the language that labels the same behaviour in some countries as "anti-social" and as an expression of the "need of care" in other countries? This question merits further discussion. One difference is that the labeling of behaviour as "anti-social" carries a certain degree of stigmatisation. If someone is "anti-social" it includes that he or she is deemed "not good" for society and consequently society has to be protected from her or him. On the other hand, someone who is in need of care is someone who needs help and should therefore not be excluded from society, but society should open its arms and help. Probably these differences are just marginal, because systems that work with "anti-social" behaviour aim to help the juveniles as well (e. g. in *Bulgaria* or *Poland*), but the terminology could be an indicator for at least slightly different philosophies.

"Misbehaviour" of parents

The remainder of this section is dedicated to recent developments in some European countries that provide for parental "misbehaviour" or "poor parenting" to be sanctionable under certain conditions.

Belgium foresees the possibility of so-called "parental training" (referred to as "*parental stage*" by *Christiaens et al*. in this volume) in the new juvenile justice legislature. This new measure can be imposed on parents who "clearly show a lack of interest" for the delinquent behaviour of their offspring. This training lasts for 30 hours and in general includes individual as well as group counselling. Parents who refuse to follow these parenting classes can be punished with a fine or imprisonment (for a maximum of seven days).

In *Bulgaria*, the JDA also provides possibilities to sanction the parents or guardians of children who behave anti-socially "for not taking proper care of them". The local commissions can issue a warning, an obligation to attend

lectures and consultations on educational matters, or a fine ranging between 50 and 1,000 BGN (25-500 €, see *Kanev et al.* in this volume).

In *Denmark* parental liability in 2009/2010 was intensified by introducing the possibility to withdraw social welfare-benefits for three months if the parents do not comply with the obligation to survey their children properly.

England/Wales, apart from "parental bind-overs", have provided for "parenting orders" since 1998 which require parents to attend counselling or guidance sessions (for up to three months), and require parents or guardians to exercise a measure of control over their child (for example by ensuring that they attend school, or avoid certain people or places) for a period of up to twelve months (see *Dignan* in this volume and *Arthur* 2009). The order itself does not count as a criminal conviction. Failure to comply with the order, however, does constitute a criminal offence that is punishable with a fine of up to £ 1,000 (see *Dignan* in this volume). *Ireland* and *Scotland* introduced similar parenting orders in 2004 resp. 2001 (see *Walsh* and *Burman et al.* in this volume; *Arthur* 2009, p. 72).

France witnessed an intensification of parental liability in 2002, which implies that child-benefits can be slashed should the child be accommodated in a secured institution. Furthermore, parents can be issued a fine should they fail to appear before the youth court despite the court summons (*Hazel* 2008, p. 39; *Kasten* 2003, p. 387). In *Greece*, a court may place the young person who offends under the supervision of the parents with an explicit sanction for the parents if they fail to deter their child from further offending (*Hazel* 2008, p. 39 ff).

The influence of the family and especially the parents on juveniles and their (delinquent) behaviour is indisputable (for example *Lösel/Bliesener* 2003 or *Lösel et al.* 2007, p. 358). However, the question whether such parent(ing) orders as described above are an appropriate method for influencing the situation of delinquent juveniles is open to discussion. There are studies that show some general positive effects of parental training programmes (*Lösel et al.* 2007; *Scott et al.* 2006), but the majority of the parents attended these programmes voluntarily. The question is whether parents will change their educational approach under public coercion. According to *Arthur*, "evidence indicates that using compulsion and the threat of fines and imprisonment is not an effective way to change the behaviour of parents and their children" (see *Arthur* 2009, p. 77 with further references). This suggests that one should leave parenting training in the hands of the welfare system by offering voluntary training for parents with children showing "problematic" behaviour, like the *Swedish* "Community Parent Education Programme" for parents of pre-school children, or the preventive programmes for parents with "children at risk" in *England/ Wales*.[46] Furthermore, one should direct attention to the fact that

46 *Hazel* 2008, p. 39. In favour of this opinion: *Arthur* 2009, p. 83.

parents who "fail" are often under social and financial pressure in the form of debts, substance-abuse, family conflicts and/or unemployment. So it seems much more logical to support parents in their search for solutions rather than to additionally punish and stigmatize them (see *Junger-Tas/Dünkel* 2009, p. 226).

6. Age groups in European juvenile justice systems

According to the national reports in this volume, all countries have set – in line with Art. 40 (3)a of the Convention on the Rights of the Child (CRC)[47] and Basic Principle No. 4 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures of 2008 – a minimum age for criminal responsibility "determined by law", below which no child or juvenile can be subject to criminal sanctions in the form of punishment (see *Table 1* in the final chapter of *Dünkel et al.* in this volume).[48]

The age limits vary considerably across Europe (see *Giostra/Patané* 2007 with more references). Furthermore we can observe different age thresholds for different areas of juvenile justice.[49] The following section shall present similarities and differences in these age related legal provisions that govern criminal responsibility in European juvenile justice systems.

6.1 Low minimum age and particularities

In *Scotland*, the age of criminal responsibility was 8 until 2010. However, one has to put this extremely low minimum age of criminal responsibility into perspective. In practice, juvenile offenders from 8 up to the age of 15 were regularly[50] transferred to the Children's Hearings system, which follows a welfare approach and decides according to the needs of the offender. Nevertheless, as a reaction to the critics from the UN Committee on the Rights

47 "*States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law*".

48 For an analysis of the maximum age for the application of juvenile justice, see *Dünkel/Pruin* in this volume.

49 See *Table 1* in the chapter of *Dünkel et al.* at the end of this volume. The age ranges for the placement in youth prisons or similar forms of deprivation of liberty will be explained further in the chapter by *Dünkel/Stańdo-Kawecka* in this volume. The chapter by *Dünkel/Pruin* in this volume mainly covers the fourth column about the age of "full criminal responsibility".

50 Exceptions are made for the most severe offences; see *Burman et al.* in this volume.

of the Child the age of criminal prosecution was raised to 12 in the year 2010.[51] From the age of 16 onwards juveniles can be referred to the Procurator Fiscal for formal prosecution. Furthermore, juveniles can be sent to youth offender institutions at the age of 16 or older, whereas under the age of 16, in extreme cases the most invasive measure available is closed residential care (see *Burman et al.* in this volume and *Smith* 2000).

In *England/Wales*, *Northern Ireland* and *Switzerland* the age of criminal responsibility is 10, followed by *Ireland*, the *Netherlands*, *Turkey* and recently *Scotland* (12 years of age, see above) and then *France* (13 years of age).

In general, countries with a relatively low age of criminal responsibility provide different age thresholds for the imposition of custodial measures, so that the comparatively low ages of criminal responsibility have to be relativized in this respect. For example, detention in a young offender institution in *England/Wales* is only applicable from the age of 15 upwards. Juveniles aged between 12 and 14 can only be taken into custody (in different "secure training" institutions) in case of "persistent" offending (which is not defined further by the law, see *Dignan* in this volume). However, ("persistent") offenders as young as ten years of age may be sentenced to a form of custody called "long term detention", if they have committed serious offences specified in the law.[52]

The situation in *Northern Ireland* is comparable. Here, the "juvenile justice centre order" as a special custodial sanction for the younger age group can be imposed on juveniles aged 10 to 17. Detention in the young offender's centre, which is provided for 17 to 21-year-olds, is more comparable with the juvenile prisons in other countries (e. g. *Germany*). The maximum term is four years. In *Ireland* criminal responsibility generally starts at 12 (since 2001, when it was raised from 7). There is the possibility to reduce the age of criminal responsibility to 10 years for murder, manslaughter, rape and aggravated sexual assault. A Community Service Order can, as in *Northern Ireland*, not be imposed until the offender has reached the age of 16.

In the three countries described above, we can talk about a "real" low age of criminal responsibility that allows for serious punishments also for the youngest age group. On the other hand, the low age of criminal responsibility in *Switzerland* is not regularly connected with serious or punitive sentencing: Since 2007, the minimum age of criminal responsibility has been set at 10 (before it was 7), but there are more age-thresholds in the law. For example, fines and imprisonment cannot be imposed on juvenile offenders aged below 15. Literally,

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51 Art. 52 Criminal Justice and Licensing (Scotland) Act 2010, http://www.legislation.gov.uk/asp/2010/13/part/3?view=plain. The age of referring to the Children's Hearing system is still 8.

52 Since 2004, "children at risk" can be monitored from the age of eight onwards, see *Hazel* 2008, p. 32. Moreover, since 1998 child offenders under the age of criminal responsibility can be transferred to Youth Offending Teams for further measures.

only in exceptional cases coercive sanctions or measures (apart from educational or therapeutic measures) can be imposed on juveniles under 15. For deprivation of liberty of 4 years or more to be imposable, the offender must be aged 16 or older (and he or she must have committed very serious offences, see *Hebeisen* in this volume and *Hebeisen* 2007). In *France*, the age of criminal responsibility is higher (13 years), but apart from this the situation is very similar to *Switzerland*: State interventions as a response to delinquent behaviour are limited to educational measures (from the welfare law) for the 10 to 12 years age group. Juvenile criminal law can only be applied to young offenders from the age of 13 onwards, which means that, apart from educational measures, they can be sentenced to (regularly) mitigated punishments. *Greece* is comparable to these countries as well: If a child between 8 and 15 years of age commits an offence, the judge can apply educational or therapeutic measures. So the age of 8 is the limit from which on the state can respond to delinquent behaviour, but criminal liability as mentioned in Art. 40 (3) a CRC starts at the age of 15.

In the *Netherlands* there are more age thresholds to be observed as well. Youth detention can only be imposed for a period of up to one year if the age of 12 has already been reached. For 16 and 17-year-olds youth detention can be imposed for up to two years. On the other hand, the Dutch "STOP"-projects allow the police to issue measures (reprimands and summary fines) to children under the age of criminal responsibility (*Weijers/Grisso* 2009, p. 55; *van Kalmthout/Bahtiyar* in this volume and *Pruin* 2010). In *Turkey*, in general, educational measures are applied up to the age of 15. If juveniles below that age are deemed criminally liable, the prison sentence is half the amount the general criminal law prescribes. The prison sentence is limited to 7 years, but compared to other countries this is still a particularly punitive reaction to juvenile offending.

6.2 High minimum age and particularities

Belgium, *Lithuania*, *Poland*, *Portugal*, *Russia* and the *Ukraine* provide a comparatively high minimum age for the criminal responsibility of juveniles.

The *Belgian* age-limit of 18 is the highest in Europe, and reflects the consistency in the application of the welfare approach. In *Belgium*, juvenile or child offending is viewed as an expression of problematic social situations that indicate the juvenile's need for state care, protection or education (see in more detail *Cipriani* 2009, p. 4 ff.). Consequently, criminal responsibility cannot start until the state accepts that a person is fully aware of his responsibility for his own actions, and that its possibilities for influencing the development of the offender through education have been exhausted. In *Belgium* this is the case with the age of civil majority of 18. Again, this high age has to be put into perspective: apart from the possibility to transfer 16 and 17-year-olds to the adult court (see *Section 7* below), there are many possibilities to apply coercive

measures to juvenile offenders under the age of 18. In practice, child offenders under the age of 12 (or 10) will not receive coercive educational sanctions, because they are viewed as lacking the ability to discern between right and wrong (see *Put* 2007, p. 6).

In *Poland*, as an example for another country representing the welfare approach, as a rule the lowest age of criminal responsibility is 17 years at the time of the offence. Criminal sanctions (including imprisonment) can only be imposed on juveniles aged 15 and 16 in very exceptional cases. They may exceptionally be declared criminally responsible if they have committed one of the most serious crimes enumerated in the law and "the circumstances of the offence and the offender, the level of his/her maturity as well as the ineffectiveness of educational or corrective measures justify directing the case to an adult criminal court" (see *Stańdo-Kawecka* in this volume).[53] However, the juvenile (welfare) law provides the possibility to impose educational, therapeutic measures or correctional measures for a juvenile who committed a "punishable act" prohibited by law as an offence or finance offence while being at least 13 years of age.

The situation in *Portugal* is similar. A juvenile under the age of 16 is not criminally responsible, but the Educational Guardianship Law provides (coercive) educational measures for juvenile offenders from the age of 12 onwards, which are, in fact, comparable to juvenile (criminal) educational sanctions in other countries. However, imprisonment is not possible for offences committed before the age of 16 has been reached.

Lithuania, *Russia* and the *Ukraine* share particularities which originate from the Soviet system: The Criminal Code for the *Russian Soviet Federative Socialist Republic* of 1960 set the age of criminal responsibility at 16 but, for specific crimes listed in the Code, the age was 14.

In *Lithuania* criminal responsibility starts with the age of 16. § 13 Penal Code provides for the application of sanctions and measures to juveniles from the age of 14 onwards in case of certain crimes. In practice, this leads to an application of (juvenile) criminal law to the majority of juvenile offenders under the age of 16. The reason is that most offences that are typical for juveniles like robbery, burglary and theft are contained in the catalogue of § 13 so that insofar the application of juvenile criminal law on under 16-year-olds can be described as the rule rather than the exception (*Sakalauskas* in this volume). By comparison, for offences like battery or public nuisance the offender cannot be prosecuted before his or her sixteenth birthday. The "Law on special protection for children" alters the age of criminal liability further. Educational measures, including closed educational care, can be imposed on children under the age of

53 Another possibility to impose penalties is given if the juvenile has reached 18 years of age at the time of the family court decision and correctional measures are found to be inappropriate.

14 should they exhibit "deviant" behaviour. The legal situation in *Russia* and the *Ukraine* is exactly the same with respect to the main points.

6.3 Minimum age of 14 or 15 and particularities

In the majority of the European countries criminal responsibility starts at 14 (*Austria*, *Bulgaria*, *Croatia*, *Cyprus*, *Denmark*,[54] *Estonia*, *Germany*, *Hungary*, *Italy*, *Kosovo*, *Latvia*, *Romania*, *Serbia*, *Slovakia*, *Slovenia* and *Spain*) or 15 years of age (*Czech Republic*, *Finland*, *Greece*, *Iceland*, *Norway* and *Sweden*).

In *Austria*, there are some particularities concerning age limits. First, the existence of a certain form of immunity should be mentioned. 14 and 15 year-old offenders can be released from criminal liability in cases of moderate and non-serious misdemeanours if there are no convincing reasons urging the court to enforce juvenile penal law (§ 4 (2) 3 Austrian Juvenile Justice Act, see also *Dünkel/Pruin/Grzywa* in this volume). The age is furthermore relevant with respect to the imposition of sentences: Life or 10-20 year sentences are replaced by 1-15 years if the juvenile committed the offence when he or she was 16 or older, and 1-10 years if the offence was committed before the age of 16.

Other countries differentiate age groups under and above 16 as well: In *Bulgaria*, the maximum sentence for juvenile offenders under the age of 16 is 10 years, and 12 years of imprisonment for those over 16. Probation can only be imposed on juveniles aged 16 and above. In *Spain*, younger juveniles can receive measures that last up to 5 years. For older juveniles they can not exceed 8 years in severe cases.

The juvenile criminal laws of *Croatia*, *Kosovo*, *Serbia* and *Slovenia* divide juveniles into younger juveniles (14 to under 16-year-olds) and older juveniles (16 to under 18-year-olds). Juvenile imprisonment (and fines in *Slovenia*) can only be imposed on older juveniles, whereas educational sanctions are provided for both age groups.

Like in *Lithuania*, *Russia* and the *Ukraine*, juveniles under the age of criminal responsibility can receive educational measures (including closed educational care) in *Estonia* and *Latvia* in case of criminal behaviour under the age of 14 (or anti-social behaviour under the age of 18, see *Section 5* above). This again can be seen as a dilution of the minimum age of criminal responsibility and is comparable to the provisions in the *Czech Republic* and in *Slovakia*. In these countries, the criminal law provides compulsory welfare measures for children under the age of 15 (*Czech Republic*) or 14 (*Slovakia*) in case of criminal behaviour.[55]

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54 According to a recent law reform the age was lowered from 15 to 14 in January 2010.

55 As described *above*, the *Netherlands* refer to children under the age of criminal responsibility who commit an offence as well. The law provides the diversionary

6.4 Raising the minimum age of criminal responsibility through *doli incapax*

Many countries in fact increase the minimum age of criminal responsibility through the introduction of special regulations which imply "conditional criminal responsibility" (*Weijers/Grisso* 2009, p. 49). According to these regulations, juveniles can only be sanctioned for their criminal offence if they are able to understand and to fully realise that the action was wrong.

The idea of "doli incapax" stems from Roman Law. Where offences were committed by *"impuberes"* between their 7th and 14th birthday, it had to be differentiated whether or not they were able to understand their wrongdoing (see *Dräger* 2003, p. 3; *Weijers/Grisso* 2009 p. 47). The presumption of innocence of children could be rebutted if their capacity to understand and to act accordingly was proven. This concept was later implemented in the *French* "Code Napoléon" of 1810, which influenced the legislation in *Germany* and other Continental European laws (e. g. *Italy*).

Many countries have introduced (or retained) regulations like *doli incapax* within their criminal laws, but the regulations vary both in terms of the age-groups that are covered, and according to the way they have been developed.

Germany provides a presumption of innocence for juvenile offenders between 14 and 17 years of age in the JJA (§ 3). This regulation has been in place since 1851 and was copied from the *French* law which contained the principle of "*discernement*" in the Penal Code since the beginning of the nineteenth century (see above and *Fritsch* 1999, p. 78; *Weijers/Grisso* 2009, p. 48). Before a juvenile can be sanctioned, the court has to prove that the child at the time of the offence was able to see that her or his action was seriously wrong, and that she or he was able to act accordingly. Similarly, in *Bulgaria* juveniles aged between 14 and 17 can only be sanctioned if they understand the nature and the meaning of the concrete criminal act they have perpetrated. *Estonia* introduced a similar regulation in 2002, and the *Czech Republic* did so in 2003 (for juveniles between 15 and 17, see *Válková/Hulmáková* in this volume and *Válková* 2006). *Romania* provides a comparable regulation for 14 and 15-year-olds, *Turkey* for juveniles aged between 12 and 15. In 2002, *France* introduced special regulations for the criminal responsibility of juvenile offenders: only juveniles "*capables de discernement*" are responsible for offences in regard to criminal law (Article 122-8 frCP). In *Slovakia*, this kind of conditional responsibility is only provided for 14-year-olds (§ 95 slCP).

"STOP"-programme for these children. The difference to the countries described above is that participation in the STOP-programme is voluntary. The above mentioned countries are more comparable to *France, Greece* and *Switzerland*, where the judge can impose educational measures at a younger age than the age of criminal responsibility in case of criminal behaviour.

Juveniles from the age of 15 onwards are criminally responsible without any consideration of their actual state of maturity. In *Switzerland*, criminal responsibility with respect to "discernment" defined as a "maturity of responsibility" must be proven in case the court wants to impose sanctions, but not if only educational measures are to be applied (*Hebeisen* 2007, p. 135).

England/Wales abolished a similar regulation (which had existed since the 14th century, see *Walsh* 1998) in the year 1998 through the *Crime and Disorder Act*. Before, it had been presumed that children aged 10 to 13 years did not necessarily know the difference between right and wrong and, therefore, had been incapable of committing a crime because they lacked the necessary criminal intent. The government undervalued the presumption of doli incapax as archaic, illogical and even unfair, and the abolition of the doctrine has been heavily criticised by scholars and scientists (see *Walsh* 1998 with further references). *Cyprus* abolished doli incapax in 2006.

In *Austria*, the burden of proof is inverted compared to the countries described above. Not the ability to decide between "right and wrong" has to be proven. Instead, a so-called delay in maturity can be evidenced for 14 and 15-year-olds by an "unusual level of developmental retardation". In this case, the law provides a particular ground for immunity (§ 4 (2) 1 Austrian Juvenile Justice Act, JGG, see *Bruckmüller et al.* in this volume).

The situation is comparable in *Ireland* for children under 14 years of age. Where such a child is charged with a criminal offence, the court may dismiss the case due to the child's age and level of maturity if it determines that it did not have a full understanding of what was involved in the commission of the offence (see *Walsh* in this volume). The *Russian* example demonstrates that this alternative is not confined to *Western European* countries: If in *Russia* a juvenile offender "as a consequence of psychological immaturity, not caused by mental illness, at the time of committing the socially dangerous act could not fully recognize the facts and social danger of his actions (or lack of actions) or control them, he is not to be held criminally responsible" (Part 3, article 20 PC, see *Shchedrin* in this volume).

Hungary does not provide comparable regulations. In *Greece*, the legislator intentionally resigned the condition of discernment. Instead, the judge is responsible to decide in each individual case whether a sanction is necessary or whether educational measures are deemed sufficient to prevent the juvenile from reoffending.

Unfortunately we have only little information on the frequency with which cases are dismissed based on the principle of discernment. *German* experiences give cause for serious concern if the regulation is of practical relevance at all, because the judges routinely approve discernment without involving psychological or psychiatric experts. Furthermore, psychological/forensic experts (when asked) deny the existence of discernment only in extraordinary cases. So the "law in practice" should be investigated further, most notably with respect to the

international instruments like Rec (2003) 20 which states that "culpability should better reflect the age and maturity of the offender, and be more in step with the offender's stage of development, with criminal measures being progressively applied as individual responsibility increases" (Rule No. 9).

7. Limiting the scope of juvenile justice through transfers of juveniles to the adult court or the application of adult criminal law to juveniles in severe cases

In some countries, juvenile offenders under the age of 18 are always (e. g. *Cyprus* from the age of 16 onwards) or in the majority of cases (e. g. *Scotland* or *Portugal* from the age of 16 onwards) dealt with in the adult criminal justice system.

Beyond that, in some countries juvenile offenders can be transferred from the youth court to the adult court or the law provides the application of adult criminal law for certain offences (waiver or transfer laws).[56] This is in fact a limitation of the scope of juvenile justice (*Hazel* 2008, p. 35) and a lowering of the minimum age for the application of adult criminal law.

Some countries provide the application of adult criminal law in case of serious offences, for example in *Belgium* for rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide by juveniles aged 16 or older. Since a law reform in 2006, before which juveniles had been tried by adult courts, Extended Juvenile Courts have been made competent in this respect.[57] In the *Netherlands*, the juvenile court remains competent as well, but the general criminal law can be applied to 16 and 17 year-old juveniles. In 1995 the requirements were relaxed. The seriousness of the criminal offence, the personality of the young offender, or the circumstances under which the offence is committed can lead to the application of adult criminal law. The law provides the judge with a great deal of discretionary power. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law. In *England/Wales*, juveniles are transferred to the adult criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adult offenders carry a maximum term of imprisonment of 14 years). The Crown Court has to consider slightly different regulations for the protection of juveniles in this case. The number of juvenile offenders who are sent to the Crown Court

56 For an overview, see *Stump* 2003; *Bishop* 2009; *Weijers et al.* 2009; *Beaulieu* 1994, p. 329 ff.; *Goldson/Muncie* 2006a, p. 91 ff.; *Keiser* 2008.

57 See *Christiaens et al.* in this volume and *Put* 2007. Besides this possibility for "waivers", traffic offences are always judged by (adult) police courts, see *Christiaens et al.* in this volume.

has fluctuated over the last 25 years, yet without any indication of a clear cut trend in either direction.

Other countries provide transfer possibilities as well, but only for extraordinary offences which are generally not committed by juveniles:

In *Germany*, juveniles can only be tried by an adult court in very exceptional cases (Higher Regional Court, *Oberlandesgericht*) if they have committed very serious crimes (terrorist acts) which endanger the democratic state or the peace of nations. Another possibility to try juveniles before adult courts is if they have committed a serious offence in complicity with adult offenders aged over 21 (this possibility also exists in other countries like *Cyprus*, *England/Wales* and *Poland*). In both cases, the court has to observe many procedural regulations from the Juvenile Justice Act (see § 104 of the German JJA) and still has to apply juvenile criminal law.

In *Serbia* or in *Northern Ireland*, transfers are limited to juveniles who have been charged with homicide or who are co-accused with adult offenders. In the latter case, there is an interesting alternative as well: the juvenile has to be referred back to the youth court for sentencing following a finding of guilt (see *O'Mahony* in this volume). In *Ireland*, in exceptional cases like treason or crimes against the peace of nations, but also for murder or manslaughter, juveniles are tried by the Central Criminal Court before a judge and jury. Additionally, the juvenile can exercise his or her right to be tried before a judge and jury (see *Walsh* in this volume).

In *France*, by contrast, not special serious offences but rather misdemeanours are brought before an adult court: since 1945 in cases of misdemeanours (*contraventions des quatre premières classes*) juvenile offenders are judged by the Police Court which can issue reprimands or fines. Since 2002, the competences of the Police Court have been conferred on a specific "proximity judge", who is not a lawyer and not specialised in juvenile matters, but has the competence to "punish" juveniles to a certain degree (see *Castaignède/Pignoux* in this volume).[58]

In *Scotland* there are no waivers or transfer laws as such, but one thing is worth mentioning in this context: In most severe cases the juvenile offender will not be transferred to the Children's Hearings System. Systematically, this is not a transfer to the adult criminal court, because the criminal court originally holds the competence for all cases, even if in practice the vast majority is transferred to the Children's Hearings System. But still, *Scotland* shares the idea that in very serious cases the offenders should not be dealt with in the juvenile criminal system but in the adult criminal system.

Other countries which do not have a specialised juvenile jurisdiction like the *Scandinavian* countries do thus (naturally) not provide transfer laws. It should

58 In this context we should remember that ASBOs are usually issued by an adult court as well, see *Section 5* above.

be emphasized though that, in general in the *Scandinavian* countries, the same regulations apply in cases of "aggravated" as well as "normal" offences.

The application of adult law to juveniles[59] through waivers or transfer laws can be defined as a systematic fissure. Whereas normally the application of (juvenile) law depends on the *age* of the offender, transfer laws or waivers rely on the *type* or *seriousness* of the committed offence. The justification for a special treatment of juvenile offenders (as an inherent principle of juvenile justice legislation) is challenged through such regulations (see *Keiser* 2008, p. 38). The original idea is to react differently to offences which are committed up to a certain age, based on their level on maturity or on their ability of discernment (see above). Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility shall signify – independent from the type of offence – from which age on a young person is deemed "mature enough" to receive (adult) criminal punishments. However, on the other hand the introduction of "transfer laws" in a sense makes exactly those offenders fully responsible who in fact often lack the (social) maturity to abstain from crime or to differentiate right from wrong (would they commit very serious crimes otherwise?). Furthermore it is quite confusing to imagine that the same juvenile would be seen as not fully matured in case of a "normal" offence, but fully criminal responsible in case of a serious offence.[60] A systematic approach would treat the offences equally.

States with transfer laws or waivers often argue that these laws are justified by the (hoped-for) deterrent effect of more severe sanctions on juvenile offenders.[61] It is additionally stated that waivers are needed as a "safety valve" (see *Weijers et al.* 2009) for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases.[62] However, so far criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.[63]

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59 See *Stump* 2003 with further references.

60 See *Weijers/Grisso* 2009, p. 67: "An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits."

61 In *Belgium*, the possibility of waivers is officially based on the high age of criminal responsibility (18 years) which should be compensated, see *Christiaens et al*. in this volume. In *Germany* the same arguments are used to fight for the application of adult criminal law to young adults (18-20 years of age), see *Dünkel/Pruin* in this volume.

62 These arguments do ultimately show fear of and intolerance towards the juveniles' misconduct, see *Hartjen* 2008, p. 9.

63 *Bishop* 2009 p. 97 ff. (with further references) and *Redding* 2008. *Bishop* 2009 particularly emphasizes that the negative effects of transfer laws are found among those

The second argument misses the point as well: Does adult criminal law provide adequate or suitable options for reacting to severe criminality? How do we measure effectiveness? If we look at recidivism rates, then in particular long prison sentences – as the "typical" reaction from the adult criminal law to serious offending – receive bad marks with regard to their "effectiveness" in preventing further crimes.[64]

In terms of practice, the *Netherlands* have reduced the number of transfers to the adult court considerably: Whereas in 1995 16% of all cases were dealt with by the adult criminal court, it was only 1.2 % in 2004 (*Weijers et al*. 2009, p. 110). In *Belgium* the use of transfers is very limited as well: transfer decisions amount to 3% of all judgments (*Weijers et al*. 2009, p. 118 with references to regional differences). In *Ireland*, adult criminal courts are competent in less than 5% of all cases against juveniles. In *Poland*, from 1999-2004 the number of cases transferred to public prosecutors swung between 242 and 309, which is 0.2-0.3% of all cases dealt with in explanatory proceedings (see *Staňdo-Kawecka* in this volume).

Even if waivers and transfer laws are of little significance in the practice in most countries, they are nonetheless flaws in the system that ultimately undermine the special regulations for juvenile offenders.[65] Therefore the *UN Committee on the Rights of the Child* recommends abolishing all provisions which allow offenders under the age of 18 to be treated as adults, in order to achieve a non-discriminatory full implementation of the special rules of juvenile justice to all juveniles under the age of 18.[66]

8. Conclusions: Which system is the "best"?

The European countries follow more or less different approaches for the treatment of juvenile offenders. The starting point of juvenile justice was the idea that juvenile offenders – compared to adults – need different responses and specific educational sanctions. In both East and West, special juvenile justice

who receive community sanctions as well. Consequently her results can not only be reduced to distortional effects (p. 97).

64 *Killias/Villettaz* 2007, p. 213 with further references. Research results furthermore show that a lenient, minimum-interventionist juvenile justice system does not produce more juvenile offenders than an active and punitive one, see *Smith* 2005, p. 192 ff. with further references.

65 See *Keiser* 2008, p. 38. The *European Court for Human Rights* has not seen a violation of the *European Convention of Human Rights* so far, but the vote (on the occasion of the case concerning the ten year-old murderers of James Bulger) was discussed quite controversially, see ECHR, *V. v. The United Kingdom* 24888/94, p. 101.

66 *Committee on the Rights of the Child* 2007, No. 34, 36, 37 and 38; *Doek* 2009 p. 23 with further references.

systems have been established. In some countries, adult criminal courts are competent to decide about young offenders, but the criminal (procedural) laws introduced special procedures, sanctions and mitigations when dealing with and sentencing juvenile and young adult offenders. Juvenile justice had initially been based on the welfare ideal, with justice elements, such as procedural safeguards and other due-process principles, being integrated as time progressed. Nowadays, we can additionally recognize restorative justice and minimum intervention strategies, as well as neo-liberal tendencies. The gravity of impact of these different approaches varies from country to country.

The main focus of the systems can be found in the forms of behaviour that it is designed to encompass: whereas in many countries we find a specific system for criminal behaviour, in other countries juvenile offenders and juveniles in need of care are treated (almost) identically. There are furthermore countries that define special status offences, which can only be committed by juveniles, or which "penalize" anti-social behaviour.

The greatest differences can be found if we turn to the different age groups within the juvenile justice systems: while in some countries criminal responsibility starts very early, in other countries the minimum age is much higher. Further analysis demonstrates that the issue of age groups in juvenile justice is very complex: In some countries a low age of criminal responsibility is relativised through much higher age thresholds for severe punishments. Many systems provide the doctrine of *doli incapax* or comparable regulations which in fact raise the age of criminal responsibility. On the other hand, there are countries that allow for the application of adult criminal law in cases of severe offences (or, in case there is a juvenile justice jurisdiction, for the competence of an adult criminal court to sentence juvenile offenders).

Some questions remain: Can we rank the different systems by defining which system is better than another? Can we say which theoretical approach should be followed or which kind of behaviour should be covered by the juvenile justice system – and are we able to define the "best age thresholds"? Not surprisingly, the honest answer to these questions is predominantly negative.

Indicators for "good" or "bad" systems are not the (theoretical) approaches of welfare, justice, minimum intervention or restorative justice as such. Rather, it is more important to investigate if – and to what extent – the systems respect the above-mentioned international standards and guidelines. In order to estimate this correctly, further analysis of both the legal approaches and the sentencing practices are necessary.

For example, with respect to the practice we could doubt that *Bulgaria*, as a welfare-oriented country, has introduced enough due process guarantees or – with respect to the high numbers of juveniles in closed welfare institutions – observes the principle of minimum intervention and of deprivation of liberty as a measure of "last resort" (see *Kanev et al.* in this volume). Yet this does not imply that the welfare approach as such is unwelcome, because *Belgium* for

example has (recently) demonstrated ways of introducing due process guarantees into a welfare system, and the *Scottish* (welfare) Hearings System generally involves no coercive or repressive measures.

On the other hand we have *England/Wales* as a justice-model country, where imprisonment or deprivation of liberty – against all international guidelines – is not used as a last resort, and the application of the principle of minimum intervention can be questioned (see, for example, *Hammarberg* 2008, p. 195). *Germany*, in turn, seems to regard these principles quite well, and it likewise represents[67] a justice model.

The *Scandinavian* countries are examples for systems which do not have specific juvenile justice jurisdictions at all, but can still be seen as role models for minimum intervention and procedural guarantees in Europe. However, in *Scandinavia* it has been criticised that due process guarantees do not apply to juveniles who are transferred to the welfare authorities. In consequence the *Swedish* legislator recently improved judicial control for measures imposed by the welfare authorities (see *Haverkamp* and *Dünkel et al.* in this volume).

We could assume that the international instruments appreciate the justice-model, if we have a look at provisions for the strict separation of juvenile offenders on the one hand and juveniles in need of care on the other. However, the juvenile justice systems in *Poland* and *Belgium* demonstrate that international human rights standards can be introduced into welfare systems as well, and especially the recommendations of the Council of Europe accept the mix of different approaches in Europe (i. e. Rec (2003) 20, see *Dünkel et al.* at the end of this volume). On the other hand, it is evident that predominantly punitive elements ("neo-liberal" approaches) are not welcome in juvenile justice systems which rely on human rights. Transfer laws can therefore be described as alien to a "good" juvenile justice system. Anti-social behaviour orders that are based on "responsibilisation" and which ultimately penalize non-criminal behaviour (with the aim of protecting the society) are not in line with the claim for a rational and moderate handling of "problematic" juveniles. In fact, they widen the net of public control and redound to a wrong picture of the "dangerous youth". Rather, offers and procedures from welfare law that are based primarily on their voluntariness and the willingness of parents and their children to cooperate, should be the right choice for juveniles who are exhibiting "problematic" behaviour. This is true with respect to parenting orders and similar developments as well.[68]

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67 See references above under *Section 3*.

68 Welfare law and not penal law is likewise the right address for juveniles who "commit" status offences.

Age limits have been discussed and modified consistently in the historical development of juvenile justice systems.[69] *Ireland*, for example, raised the age of criminal responsibility from 7 to 12 in 2001 and lowered the age in 2006 to 10 for certain offences. *Spain* raised the minimum age of criminal responsibility from 12 to 14 years but is currently discussing a lowering of the age to 12 again. The *Czech Republic* decided to lower the age limit from 15 to 14, which was immediately revoked, so that the age of criminal responsibility remains at 15 today.[70] In consideration of these discussions we should remember that, in most countries, the age limits for juvenile offenders date further back than the specific juvenile justice systems as such.[71] To discuss the best minimum age of criminal responsibility, we should allow ourselves the question why in general we need special age limits for the minimum age of criminal responsibility.

Everybody will agree to the conclusion that toddlers shall not be prosecuted for theft if they take away toys from their playmates. Research results confirm that discernment and reasoning powers develop gradually.[72] Criminal responsibility should not start until a juvenile is able to understand her or his wrongdoing. One way could be to make the judge competent to decide in each single case whether the young offender is criminally responsible or not. This would confer a large degree of discretional power to the judge, and it is questionable whether or not a judge would be able to diagnose something which is considered by specialists as being highly complicated within the time frame that court proceedings provide. A minimum age promotes legal certainty and equal treatment and prevents time-consuming and invasive expert's opinions on legal concepts of discernment. This is the reason why 40 (3)a CRC specifies that every country should establish a certain minimum age of criminal responsibility.

What is the correct age? Concerning cognitive abilities we can state that juveniles do not have the same capacities as adults and should therefore not be held criminally responsible in the same way (*Weijers/Grisso* 2009, p. 63). However, no research results allow us to confirm an absolute age from which on every juvenile has the competences to decide rationally about offending. Obviously, when a person can be presumed criminally liable depends on each individual's development.[73] These results have been confirmed through recent

69 See *Fritsch* 1999.

70 See *Válková/Hulmáková* and *Dünkel et al.* in this volume for an overview about reforms in the last 30 years.

71 See for example *Fritsch* 1999 and *Dräger* 1992 for an overview of the regulations within Roman Law.

72 See *Weijers/Grisso* 2009 p. 60 ff. with further references.

73 See *Hartjen* 2008. Discernment in this sense can under certain circumstances be denied for adult offenders, because they would likewise not commit any crime if they were socially and mentally mature to a great extent.

neuroscientific studies which indicate that the brain matures continuously over the life course (see *Weijers/Grisso* 2009, p. 64 with further references).

We therefore have to conclude that it is not possible to establish fixed age categories for the field of criminal responsibility based on the current state of research. We do only have vague results: younger juveniles (in the early teens) will not be able to fully understand the wrongdoing of their acts (*Weijers/Grisso* 2009, p. 63 with further references). The concrete establishment of minimum and maximum age limits is consequently rather a political decision than a response to scientific findings. This decision that is made by society depends on cultural and legal developments, and it therefore differs (and is revised) in certain eras and places.[74] In *Germany*, for example, the age of 14 was – in the year 1923 – considered to be a suitable minimum age of criminal responsibility because juveniles left school aged 14 and their religious confirmation took place the same year.[75] One underlying idea was that juveniles who were still in school definitely should not be sent to prisons (*Dräger* 1992, p. 22). This argumenttation would lead to much higher minimum ages of criminal responsibility in most European countries, due to the prolongation of school education etc. over the last 50 years (see *Dünkel/Pruin* in this volume).[76]

The international instruments consequently do not determine special age limits in the area of juvenile justice. Art. 40 (3)a CRC stresses that the State Parties shall establish "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law" (see in this context: *Doek* 2009, p. 23). According to Beijing Rule No. 4, the age should not be too low and has to consider the development of the personal "emotional, mental and intellectual maturity", because then the concept of responsibility would become meaningless (see *van Bueren* 2006). Similarly the European Rules for Juvenile Offenders Subject to Sanctions and Measures (Rec (2008) 11) of 2008 stipulate that the age of criminal responsibility shall not be too low (see Basic Principle No. 4). The commentary makes the following clarification: "Although it might be difficult to find a general European consensus, such minimum age should not be too low and should be related to the age at which juveniles assume civil

74 In *Germany*, for example, civil majority starts at age 18, young persons are integrated into the juvenile justice system until the age of 21, they are allowed to drive vehicles or to vote from the age of 16 onwards and can choose their religion from the age of 14 onwards etc. *Cipriani* defines childhood as "a concept that bundles together ideas and expectations about young people and their roles in societies," see *Cipriani* 2009, p. 2 with reference to *Goldson* 1997.

75 See *Fritsch* 1999, p. 103 with further references and *Dräger* 1992, p. 227.

76 Such a postulation seems not very popular with respect to the latest discussion of lowering the minimum age of criminal responsibility in some countries. The age limits of 7 and 14 in Roman Law supposedly depended on the utilisation of the "holy number" 7, see *Dräger* 1992, p. 5.

responsibilities in other spheres such as marriage, end of compulsory schooling and employment. The majority of countries have fixed the minimum age between 14 and 15 years and this standard should be followed in Europe."[77]

The UN Committee on the Rights of the Child (2007) expressed that, in its view, a minimum age of criminal responsibility below the age of 12 years is not internationally acceptable.[78] Consequently, it recommended that the United Kingdom of Great Britain and Northern Ireland should raise the minimum age of criminal responsibility.[79] On the other hand the *Committee* refrained from establishing a fixed minimum age limit. This decision may be due to a "reluctance to impose on the religious or cultural traditions that may have influenced the setting of the age" (*van Bueren* 2006, p. 27). This is especially understandable from a world-wide perspective, but it still remains questionable whether one could reach an agreement on age-groups on a European level.

The previous comparison of age thresholds in European juvenile justice systems demonstrates, though, that a harmonization of age groups could lead to a loss of important particularities. A consistent welfare approach for example needs a minimum age of criminal responsibility of 18 (as it is practiced in *Belgium*). Furthermore, up to a certain degree we can already observe a harmonisation in age groups: In most countries with a low minimum age of criminal responsibility there are special (and higher) age groups for deprivation of liberty (see, for example *Switzerland*), and countries with a high age of criminal responsibility mostly allow for the application of educational measures at a much younger age. The European Court of Human Rights refrained – due to the different meaning of age limits – from stipulating a unified minimum age of criminal responsibility.[80]

In most European countries juveniles are criminally responsible from the age of 14 onwards (see *Weijers/Grisso* 2009, p. 49, *Junger-Tas/Dünkel* 2009, p. 220).[81] In Europe, particularly the countries of *Great Britain* set comparatively low minimum ages of criminal responsibility. In many countries the political discussion about age limits is misused to simulate "drastic steps" against youth crime. With respect to the international research in this field, the very notion that lowering the age of criminal liability could serve as a deterrent is not

77 See *Council of Europe* 2009, p. 36.

78 See *Committee on the Rights of the Child* 2007, No. 32, and *Doek* 2009.

79 *Committee on the Rights of the Child*, Concluding observations on the United Kingdom of Great Britain and Northern Ireland from 20 October 2008.

80 ECHR, *V v UK* (31 EHRR 121) para. 72. See *van Bueren* 2006, p. 27 and *van Bueren* 2007, p. 106. The issue of harmonising the minimum age of criminal responsibility is discussed in *Dünkel/Grzywa/Pruin/Šelih* at the end of this volume.

81 International comparisons show age ranges between 7 and 18, see *Bala et al.* 2002, p. 261 and *Cipriani* 2009.

understandable. Rather, (harsher) sanctioning of very young juveniles is more likely to promote reoffending than to quell it, especially if compared to recidivism rates after community measures.[82] Another question is whether early intervenetion in cases of young persons under the age of criminal responsibility who exhibit numerous risk factors is a reasonable approach. There is evidence that such early prevention can be effective, particularly with problematic and disadvantaged families.[83] However, such preventive solutions are not the subject of criminal law but rather of welfare or family laws.

To sum up, apart from some specific questionable developments, the diversity and the creativity of European juvenile justice systems as such is not worrisome. The countries have found individual ways to consider their social and cultural peculiarities, which could hardly be considered within one unified law for Europe. Common principles should be – and are in most countries – to refrain from punitiveness in juvenile justice and to preserve seeing juveniles as a special group, to accept that they make mistakes in the course of their "normal" development and to do everything to integrate them into society (also in case of the most serious crimes) either by educational welfare or justice measures. As long as we can reach a consensus on that, the question of "best legislation" with regards to the determination of the age of criminal responsibility is not paramount. Consequently, the "best" juvenile justice system is the one that (by legislation as well as in practice) best respects international human rights standards and recommendations for dealing with juvenile offenders.

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82 For example *Killias/Villettaz* 2007, p. 213 with further references.

83 See *Farrington/Welsh* 2007; *Krüger* 2010.

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Young adult offenders in the criminal justice systems of European countries

Frieder Dünkel, Ineke Pruin

1. Introduction

Apart from the general questions on the age groups relevant for juvenile justice, (see *Pruin* in this volume) the present chapter is dedicated to the age group of young adults, regularly defined as offenders aged between 18 and 21 (see No. 21.2 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures, ERJOSSM). In all countries of our study, young adults over 18 are fully responsible with respect to civil law, but remain similar to "youths" in terms of their psychological development as well as many other aspects. All over Europe, we can observe that a prolongation of the transitional phase from youthfulness to adulthood has gradually taken place. The reasons for this are manifold. One particular cause is the high rate of unemployment among young people, which is a pan-European problem. Another reason can be found in the requirement of more and better job qualifications, resulting in longer periods of training and hindering youths in achieving early financial autonomy. Therefore, many European countries have introduced specific regulations for this age group that we want to analyse further in this report.

This article aims to provide some background in the discussion why young adults are more comparable to juveniles than to adults. Furthermore, the article will present different approaches, particularities and similarities in the treatment of young adult offenders in Europe. In our opinion, the question of dealing with young adult offenders is one of the most important areas of juvenile justice reform in Europe as it influences the scope of separate juvenile justice systems considerably (as recommended by all international instruments, for example the so-called Beijing-Rules of 1985).

2. Young adults and international human rights instruments on juvenile justice

"The United Nations Standard Minimum Rules for the Administration of Juvenile Justice" of 1985 (the so-called Beijing Rules) stipulate in Rule 3.3 that "efforts shall also be made to extend the principles embodied in the Rules to young adult offenders."

On 24 September 2003, the Committee of Ministers of the Council of Europe passed Recommendation (2003) 20 on "New ways of dealing with juvenile delinquency and the role of juvenile justice". Rule 11 of this Recommendation reads as follows:

"*Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.*"

In September 2004 the International Association of Penal Law (AIDP) held its World Congress in Beijing, China. The final Resolution of the 17th International Congress of Penal Law emphasizes "*that the state of adolescence can be prolonged into young adulthood (25 years) and that, as a consequence, legislation needs to be adapted for young adults in a similar way as it is done for minors.*" The age of criminal majority should be set at 18 years, the minimum age not lower than 14 years (see No. 2 of the Resolution). Under No. 6., the Resolution states: "*Concerning crimes committed by persons over 18 years of age, the applicability of the special provisions for minors may be extended up to the age of 25.*"

On 5 November 2008, the Committee of Ministers of the Council of Europe passed Recommendation (2008) 11 on the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM). As a part of the basic principles, Rule 17 states that "young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly". The commentary to this rule states that "*it is an evidence-based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation*".

What does it mean when international instruments like the Council of Europe's Recommendation on new ways of dealing with juvenile delinquency propose to treat young adults in the same way as juveniles?

Such recommendations, unless they are formally incorporated into national law, are only so-called soft law and not binding for national legislators. However, the German Constitutional Court delivered an important decision in

May 2006, emphasizing the persuasive force of such recommendations: "*It could be an indication that insufficient attention has been paid to the constitutional requirements of taking into account current knowledge and giving appropriate weight to the interests of the inmates, if the requirements of international law or of international standards with human rights implications, such as the guidelines or recommendations adopted by the organs of the United Nations or the Council of Europe are not taken into account or if the legislation falls below these requirements.*" (BVerfG Neue Juristische Wochenschrift 2006, 2093 ff.; a similar statement can be found in a decision of the Swiss Supreme Court, *Bundesgericht*, from 1992, cited by the German BVerfG).

The present chapter will describe the background of these recommendations. The German legislation and practice contain probably the most far-reaching extension of the scope of juvenile justice to encompass young adults in Europe. The comparative overview will also demonstrate that more and more countries are developing regulations in the same direction and that most countries provide for some special treatment of young adults in the criminal justice system.

3. Reasons for special legislation for young adults in the juvenile justice system

It is one of the major achievements of modern juvenile criminal policy worldwide that minors or juveniles should be dealt with differently from adults. This has been recognized by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the so-called Beijing Rules of 1985) as well as by Council of Europe recommendations such as those on 'Social Reactions to Juvenile Delinquency' of 1987 (Rec [1987] 20) or the recommendation on "New ways of dealing with juvenile delinquency …" of 2003 mentioned above.

The empirical criminological base of this worldwide standard is the evidence that juvenile delinquency is regularly of a petty nature and often disappears as young people grow into adulthood. The episodic nature of most juvenile offending justifies a more tolerant approach, and rather, to wait until the ubiquitous problems of integration into adult society have disappeared by themselves. In addition, the state welfare authorities should provide appropriate support.

The principal reason for a separate juvenile justice system is the idea that educational measures are more appropriate than traditional punishment, because young persons are in a stage of continuous personal development where educational efforts are deemed to be a promising strategy.

Therefore, in all European countries juvenile legislation provides for special educational measures and sanctions in order not to compromise the developmental process of young persons in the transitional stage from youth to

adulthood. This also applies for the *Scandinavian* countries, even though they do not have a separate juvenile justice system.

A further argument for a separate juvenile justice system is based on the idea of *doli incapax* (i. e. diminished criminal capacity). The continental European doctrine (based on early 19th century *French* law) differentiates two elements of criminal responsibility: first the juvenile or child must be able to recognize the difference between right and wrong, and secondly, to have the ability to act according to this insight. Juvenile systems that emphasize the second of these elements of "responsibilization" will generally establish a higher minimum age for criminal responsibility, as in *Germany* with 14 year-olds or in *Scandinavia* with 15 year-olds. Children below this age can be made "responsible" under civil law or juvenile welfare law. This opens the door for restorative justice and reparation measures within an educational approach.

4. Justifications for dealing with young adults under juvenile law: Results from interdisciplinary research

Given this background, what were the reasons for the Council of Europe to make the 2003 proposal to integrate young adults into the juvenile justice system?

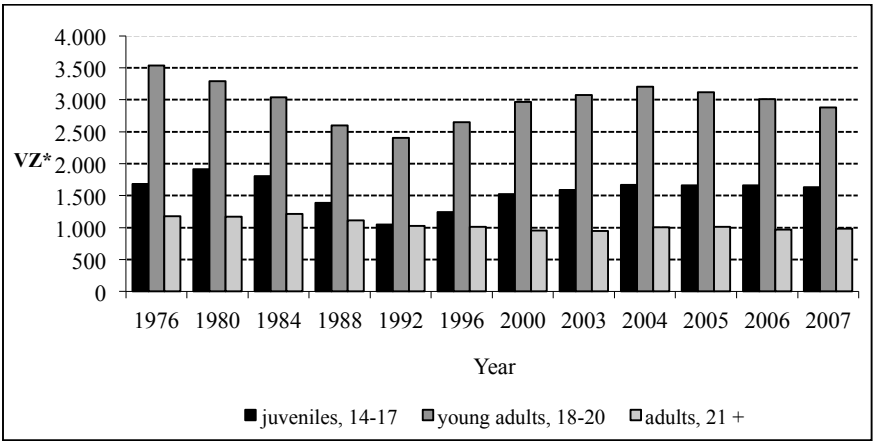
No. 11 of the Recommendation (2003) 20 and No. 17 of the ERJOSSM refer to the "extended transition to adulthood". This statement is based on criminological, psychological and sociological knowledge, which demonstrates changes in the living contexts of young adult persons over the last 50 years. We want now to highlight some aspects of these new insights with respect to some German data.

4.1 Criminological aspects: the age-crime-curve and research on developmental aspects of criminal careers

Germany is an appropriate case study for young adults as the legal framework of German juvenile law allows the statistical differentiation of this age group. The police statistics as well as the so-called *Strafverfolgungsstatistik* (statistics on court decisions),[1] deliver separate data for 18 to 21 year-old young adults.

1 The German sentencing statistics (*Strafverfolgungsstatistik*) comprise all defendants and convicts, whose criminal proceedings have been completed by a conviction, after either an oral hearing or a written summary decision (*Strafbefehl*), or when the proceedings have been discontinued by the court.

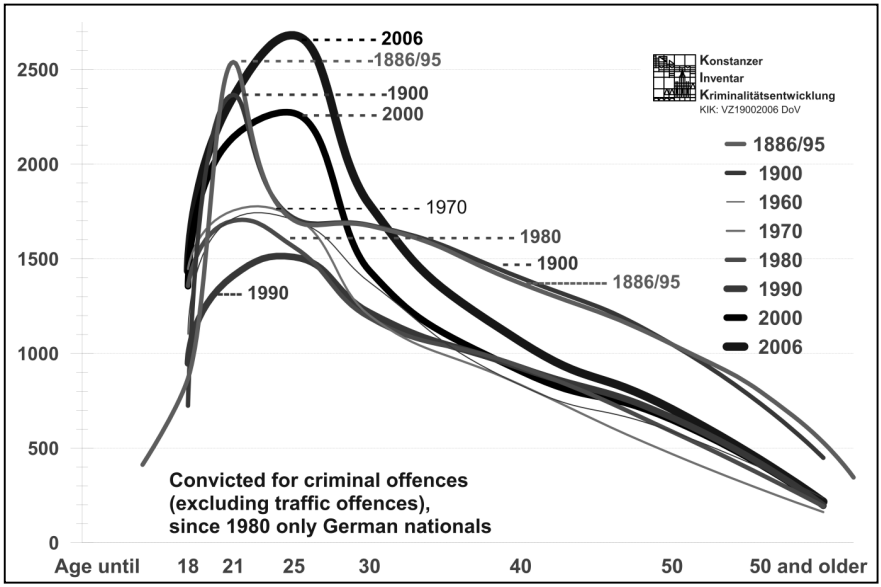
Figure 1: Convicted juveniles and young adults in West-Germany 1976-2007



* VZ: Convicted persons per 100,000 of the age group
Source: Statistisches Bundesamt (Ed.), Strafverfolgungsstatistik 1976-2007, own calculations.

Figure 1 displays conviction rates per 100,000 of the age group. The data show that during the last decades, young adults have always had the highest risk of conviction compared to juveniles and adults of over 21. If we then look more closely at conviction rates, the well-known phenomenon of age and crime distribution gives evidence that crime decreases after a peak at the age of 21-25 years: the so-called 'age-crime-curve'.

Figure 2: Conviction rates according to age groups, Germany 1886-2006 (per 100,000 of the age group)



Source: *Spieß* 2008, p. 10.

German statistics further show an interesting result concerning changes since 1900. We have examined conviction statistics since the end of the 19th century. The peak of prevalence rates has altered: the peak was between 18 and 21 in 1886/95, a pattern maintained even in 1970 and 1980, but since the 1990s it has increased to 25. (The other phenomenon of a sharp increase in the overall prevalence rates between 1990 and 2006 is of less interest in the context of this article). In other words, the general shape of the age-crime-curve has not changed since the beginning of the last century, but the peak (indicating the episodic nature of juvenile crime) has moved to the right, i. e. to the age group between 21 and 25 (*Spieß* 2008, p. 10).

The differences between males and females also reveal that the peak for female offenders is earlier than the one for male suspects or convicts (*Heinz* 2003, p 62; *Spieß* 2008, p. 15 and *Pruin* 2007, p. 115 ff.). However, the sharp decrease of the police registered prevalence rates as well as of conviction rates continues for both genders until the age of 30. The age crime curve is an indicator for the episodic (temporary) nature of "normal" juvenile crime (*Heinz* 2003, p. 74; *Bundesministerium des Inneren/Bundesministerium der Justiz* 2006, p. 354 ff.) and it can be seen as a universal phenomenon in all countries

(*Cavadino/Dignan* 2002, p. 285; *Junger-Tas et al.* 2009; *Stevens* 2009). However, there is a small group of so-called persistent offenders who continue with criminal activities for longer periods. In most cases, even this group discontinues offending in later periods of their lives (*Sampson/Laub* 1993, p. 35 f.; 2009).

Over time, the structure of juvenile delinquency has not changed very much in general, although registered violent crime and drug offences have increased in many countries during the last 20 years. This increase is partly due to the increased rate of reporting cases of violence to the police. Furthermore, it has to be emphasized that the increase of the registered (violent) crimes and of self-reported delinquency during the early 1990s has already levelled off, and one can observe a decline since the early 2000s in many European countries. This has also been the case in Eastern Europe, which has experienced specific problems after the social changes at the end of the 1980s.[2]

Juveniles and young adults still predominantly commit less serious crimes. Self-report and other studies demonstrate that in the transition from juvenile to adult criminality many persistent offenders discontinue, which is another indicator for the episodic nature of juvenile and young adult crime.[3]

In the light of the criminological literature, we can say that the phenomenon of the ubiquitous and episodic nature of juvenile delinquency today (which has been the reason for creating a special juvenile justice system) is also valid for young adults.

4.2 Psychological and sociological considerations

Changes in the living contexts of young adults have also been shown by psychological and sociological research studies.

In the field of psychology, it is assumed that the "transition" from childhood to adulthood proceeds by developing an independent identity. Since the middle of the 20th century, research in developmental psychology has increasingly focused on sociologically-orientated theories of adolescence. These highlight the influence that environmental factors have on a person's development as well as the special individuality of stages of development through changing living contexts, specific requirements/demands, increased access to information, and individually-varying life experiences (*Fend* 2003; *Oerter/Montada* 2008).

German sociological research shows, however, that this very social environment has changed considerably in the last 50 years. These developments occurred particularly in those fields of life that are deemed most significant for a

2 See *Estrada* 2001; *Kivivuori* 2007; *van Dijk/Manchin/van Kesteren* 2007; *Steketee/Moll/Kapardis et al.* 2008; *Junger-Tas/Dünkel* 2009, p. 215 ff.; *Stevens* 2009.

3 See *Heinz* 2003, p. 36 f.; *Stelly/Thomas* 2001; *Farrington/Coid/West* 2009.

person's integration into adult society and for the development of one's own, independent identity (*Hurrelmann* 2007). For instance, the point in time at which juveniles and young adults enter adult life, and are at least financially in a position to establish their own identity, has been considerably postponed. In the 1950s, more than 70% of German juveniles finished school at the age of 14 and 15 in order to enter the labour market immediately. Nowadays, German sociologists assume that the age at which a job will provide longer-term financial independence has increased to 25 (*Hurrelmann* 2007, p. 39).

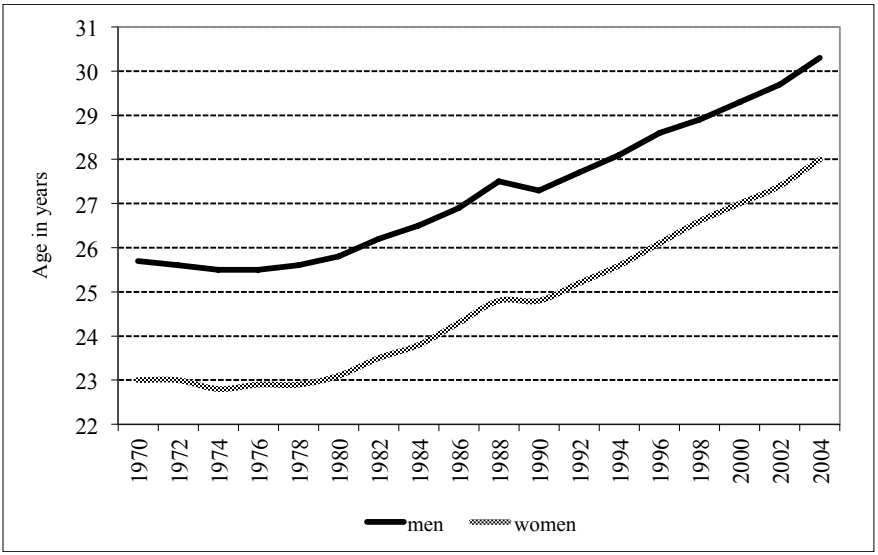
On the one hand, this development can be accounted for by changes in the employment market in the last 50 years. Employers have been requiring increasing levels of qualifications from their employees. Vocational training and academic degrees are gaining increasing importance, and regular school education has also been prolonged: pupils at high schools generally graduate at the age of 19. On the other hand, structures of basic school as well as vocational education could possibly have been deliberately elongated since the mid 1970s, in order to prevent the labour market becoming even further overburdened. This has in part been attributed to the pan-European problem of youth unemployment (*Hurrelmann* 2007, p 22; *Wahler* 2000, p. 183 ff.).

Furthermore, developments in economy, intensification of competition and industrial restructuring have led to the demand for increased labour market flexibility and to a reduction of social protection within the labour laws (*Golsch* 2008). This especially affects young people who are in the specific phase of transition between leaving school and entering the labour market ("school-to-work-transition", see *Kurz et. al*. 2008). In many European countries a substantial increase in temporary or fixed-term jobs can be observed (*Bukodi et al*. 2008; *Kurz et al.* 2008) as well as significant increases in the search period for the first job.[4] Labour market entrants aged 16-29 are affected the most by the increase in employment insecurity (*Golsch* 2008; *Blossfeld et al.* 2005). Especially in Eastern European countries, processes for entering the labour market became turbulent after the regime changes (*Kurz et al.* 2008). Youth unemployment is a European-wide phenomenon (*Golsch* 2008: Figure 2.1 for 10 European countries). To sum up, we can observe from these developments that young adults increasingly encounter a long period of financial insecurity and a huge degree of dependence, both of which complicate the development of an independent personality and life structure which is the most important "developmental task" in the phase of young adulthood.

4 See, for example, *Buchholz/Kurz* 2008. *Kurz et al.* (2008, p. 341) conclude from their analysis of 10 European countries that the entry into the labour market – at least for school leavers with general education, formal vocational training and/or university education – is easier in countries "where education is relatively standardized and stratified and/or where vocational education has a clear, occupation-specific character."

Detachment from one's family of origin is regarded as a further important aspect for the development of an individual identity. According to traditional sociological perspectives, this detachment occurs in the founding of one's own, new family, and/or through the establishment of stable bonds to a partner. According to European analyses, considerable changes have also occurred in this context (see *Figures 3* and *4*).

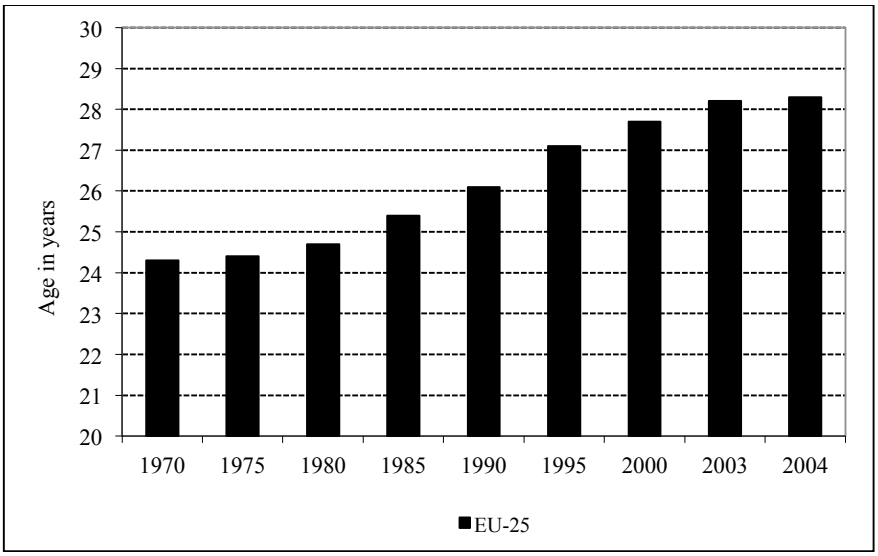
Figure 3: Mean age of marriage in Europe[5], years 1970-2004



Source: Office for Official Publications of the European Communities 2006.

5 The analysis includes data from *Austria*, *Belgium*, the *Czech Republic*, *Cyprus*, *Denmark*, *England/Wales*, *Estonia*, *Finland*, *Germany*, *Greece*, *Spain*, *France*, *Hungary*, *Ireland*, *Italy*, *Latvia*, *Lithuania*, *Luxembourg*, *Malta*, *Netherlands*, *Poland*, *Portugal*, *Slovenia*, *Slovakia* and *Sweden*.

Figure 4: Mean age of mothers in years at the time of birth of their first child in Europe[6], 1970-2004



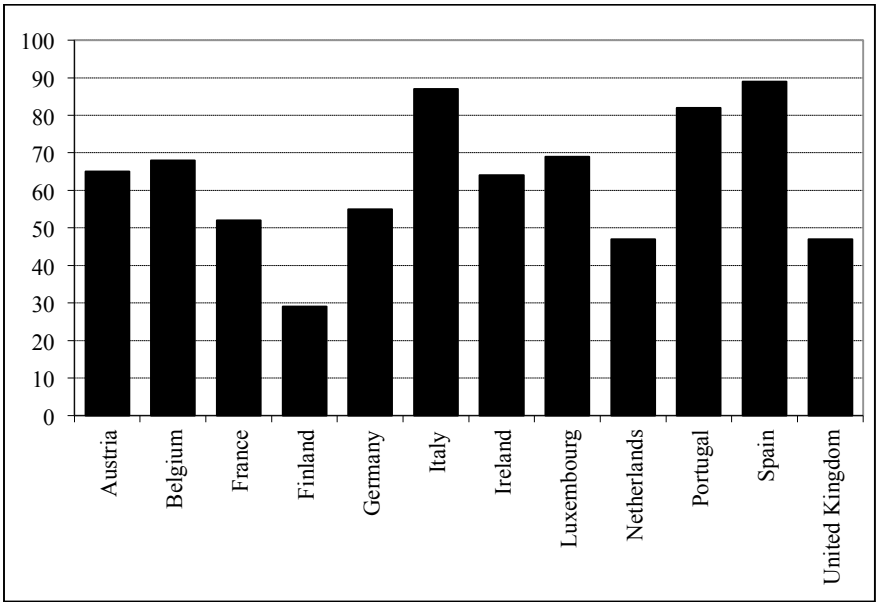
Source: Office for Official Publications of the European Communities 2006

As can be seen from *Figures 3* and *4*, the average age of mothers at the time of birth of their first child as well as the average age at which people marry have increased considerably. Moreover, individual life concepts have witnessed such a degree of change in the last 50 years that sociologists point to a change away from the traditional structure and life course towards a "pluralisation of life concepts" (*Brüderl* 2004, "patchwork families" etc.), in which individual views and decisions can be, and are, acted out.

Another indicator of a more prolonged process of transition to adulthood can be seen by looking at the proportion of young adults still living with their parents. A comparative statistic developed by the *European Commission* shows that throughout Europe, with the exception of *Finland*, about 50% of 20 to 24 year-old young adults (up to almost 90% in *Italy* and *Spain*) still live with their parents (see *Figure 5*). Out of those who have left their parental home in the *UK*, about 20% got married and another 20% found a stable job.

6 The analysis includes data from the same countries mentioned above.

Figure 5: European comparison of young adults (aged 20-24) living with their parents



Source: European Commission: Youth in the European Union, 1997.

Therefore, we can conclude from the findings of sociological research that, as regards the establishment of an individual personal identity, meaningful and significant roles are now being assumed at comparatively later points in time in the life course. Furthermore, their sequence has also changed. In the past, it could be seen as being normal for certain events in the life course to occur in a particular order (school graduation, first sexual experiences, moving out from the parents home several years after the completion of vocational training, soon followed by the establishment of one's own family, etc.). Nowadays, however, such a "universal" succession of events in the life course can no longer be assumed. The relatively short "status passage of adolescence" that had been associated with a relatively low degree of autonomy, and which is viewed as a phase of introduction into and preparation for adult life, has been broadened. In addition, a fundamental social tendency towards individualisation has apparently reduced the degree of structure and standardization in this phase of life (*Grunert/Krüger* 2000; *Deutsche Shell* 2002, p. 33 ff.).

5. Implications of the findings for modern criminal policy

The results and findings presented here briefly disclose what the Council of Europe aimed to convey with its phrase about the "*extended transition to adulthood"*. Nowadays, insecurities regarding the future, as well as dependencies that prevent the establishment of an individual personal identity endure over a long biographical period, and do not end once majority has been attained. What had previously been "normal" in childhood and adolescence now applies to young adulthood as well. The mean age at which episodic criminal behaviour discontinues has also shifted upwards. The arguments and reasons for the special treatment of minors in criminal law therefore also apply to young adults. Moreover, there are assumed correlations between these results. For example, the relevance of a certain degree of stability in the spheres of employment and personal relationships for desistance from criminal behaviour is particularly emphasized in *Sampson* and *Laub*'s developmental theory of crime (*Laub/Sampson* 2003; *Sampson/Laub* 1993; 2009).

What are the consequences of these developments for modern criminal policy? It can be concluded that for young adults (as for juveniles) tentative or cautious penal interventions with flexible, supportive and rehabilitative provisions are more advisable than predominantly repressive measures with their known disintegrative effects (*Pruin* 2007, p. 153 ff.). Such an integrative approach will better promote the development of an individual personal identity as well as the attainment of a certain degree of stability, which will result in the desistance from episodic criminal behaviour that is typical of young people.

This is why the Council of Europe has called for the incorporation of young adults into juvenile criminal law, because it is precisely in the sphere of youth justice that many such interventions are already provided in many European countries today. The adult criminal justice systems, by contrast, normally provide for more repressive and less reintegrative responses to criminal behaviour.

6. Young adult offenders in European juvenile justice systems

In contrast to the age of majority in civil law, there are no uniform age categories in criminal law in Europe (see *Pruin* in this volume; *Doob/Tonry* 2004; *Cipriani* 2009). However, young adults are seen almost everywhere as a special age group, who are treated differently from older adults either within the general criminal law or within the juvenile law (see *Dünkel* 1993; 2002; *Pruin* 2007). Regulations in the juvenile law also often provide for the application of specific educational sanctions for young adults, and regulations within the

criminal law for adults frequently provide for a mitigation of the normal sentences for young adults.

One can differentiate three models for young adults:

1. Countries with special regulations within the (juvenile) law which make the educational, procedural or correctional measures applicable also for young adults;
2. Countries with special regulations in the general criminal law that mitigate the sentences imposed on young adults;
3. Countries with very few to no special rules for young adults.

The criminal law of most European countries provides for special arrangements for dealing with young adults either in criminal or in juvenile law. Many countries, including *Belgium*, *Croatia*, *Denmark*, *France*, *Germany*, *Greece, Italy* or the *Ukraine*, provide the possibility of prolonging juvenile measures or sanctions, the enforcement of which has started before the offender's 18th birthday, to a higher age. What is more interesting – especially with respect to the international recommendations – is how countries deal with young adults who have committed an offence after their 18th birthday. The provisions for this age category vary greatly. In many European countries (see *Table 1*), there are special measures that can be imposed on young adults that are not applicable to adult offenders.[7] These measures place a particular emphasis on re-socialization and are normally part of the sanctioning catalogue of the juvenile laws. However, whereas the imposition of these special sanctions is obligatory for juveniles, their application for young adult offenders is optional in most cases.

The 2003 Recommendation of the Council of Europe goes beyond such measures. Instead the Council demands that the member countries should consider the possibility of sentencing young adults under provisions that normally apply to juveniles. This would require a certain number of applicable measures, and it is here that the systems in Europe differ greatly. According to the law, *Croatia*, the *Czech Republic*,[8] *Germany*, *Lithuania*, the *Netherlands*,

7 Until recently, *Spain* belonged to these nations. The juvenile law reform of 2000 had also provided the application of juvenile educational measures to 18-21 year-old young adults. However, the enactment of Article 1 (2) and (4) of the Law 8/2000 had been postponed to 2007, and in December 2006, an amendment to the Juvenile Law abolished this rule. Nevertheless, Art. 69 of the general criminal law (Codigo Penal) still provides the possibility of such a rule: see in detail *de la Cuesta/Blanco* 2006, p. 7.

8 Educational measures in the past could only be imposed in combination with a suspended sentence. Since 1 January 2010, they may be used in combination with any other sanction for adult offenders.

Portugal, *Slovenia*, *Switzerland*[9] and *Russia* allow the application of numerous educational measures stemming from juvenile criminal law. On the other hand, the number of such special sanctions is very limited in *England/Wales*,[10] *Finland*, *France*, *Ireland, Northern Ireland* and *Sweden*.

Normally, the law at least prescribes that issues of imprisonment are to be administered in a particularly educational manner for this age category, or that imprisonment has to be served in youth prisons until a certain age (even – under special conditions – up to 27 in *Austria*).[11] In *England/Wales*, *Ireland, Northern Ireland* and *Scotland* young adults are normally sent to special institutions for young (adult) offenders.[12] In 2002, the *Netherlands* created a separate regime for young adults in the prison system, which aims at offering extra protection and perspectives for young adult detainees between the ages of 18 and 24. *Switzerland* has specific institutions for young adult offenders which particularly emphasize schooling and vocational training in order to promote societal reintegration. However, the *Swiss* regulation for 18-25 year-old young adult offenders is part of the general Criminal Law for adults, not part of the juvenile justice legislation. *Turkey* likewise provides for special (closed and open) institutions for young adults.

It has to be mentioned that the existence of such legal provisions gives no indication of their actual application in practice. Currently, there are few comparative data available on the actual practice of applying educational measures of juvenile law to young adults. As we have seen, in *Germany*, such practice is the rule (at least in the vast majority of the Federal States, see *Dünkel* in this volume and *Dünkel* 2003; 2006; *Eisenberg* 2009, notes 4 ff. to § 105). By contrast in the *Netherlands* (see in detail *Pruin* 2007), *Lithuania*, *Slovenia* and *Russia* the courts seem to be much more reluctant to use the juvenile law for

9 If a further offence was committed after the 18th birthday, but criminal proceedings had been instituted beforehand.

10 The sanction of adjudicating an offender to a day training centre ("attendance centre order") is the only special juvenile sanction in *England/Wales* that still also applies to young adults.

11 See *Dünkel/Stańdo-Kawecka* in this volume. The provisions in *England/Wales* or *Ireland*, where young adult offenders shall be sent to a Young Offenders Institution resp. St Patrick´s Institution, could be interpreted as a possibility to apply specific juvenile sanctions to young adults, or just as regulations that concern the execution of a prison sentence.

12 17 to 21 year-old offenders in *England/Wales* may be sentenced to a Young Offenders Institution (YOI). In *Ireland* young male offenders between 17 and 21 years of age can be sent to detention in St. Patrick's Institution. In *Scotland*, there are five Young Offender Institutions for young people aged between 16 and 21 years. Similarly in *Northern Ireland* 17 to 21 year-old young adults are usually sentenced to the Young Offenders Centre, see the reports by *Dignan*, *Walsh*, *Burman et al*. and by *O'Mahony* in this volume.

young adults. The reasons for such restricted application can be manifold. For example, *Lithuania* and *Russia* report that the judges refer to the absence of clear legal criteria[13] for the application of juvenile law. The reluctance in *Slovenia* to apply juvenile law to young adults could stem from the fact that this age group is not dealt with by juvenile courts. Instead, young adults are adjudicated on by judges for adult offenders who are not specialised, and who are therefore often insecure about the forms and procedures of educational measures used for juveniles. By contrast, in *Germany* the specialised juvenile judge or court is always competent for sentencing young adult offenders. This can clearly be seen as advantageous for the application of juvenile law to young adults, because the juvenile judge is familiar with the kind of juvenile measures and sanctions. Juvenile judges tend to apply the sanctions system with which they are familiar; also, due to their specialisation in educational and developmental issues, they can better judge the appropriateness of educational measures in each individual case. Therefore, the decision of the *German* legislator in 1953 to extend the competence of juvenile courts to young adults was the basis for a successful implementation of the rules to young adults.

Another reason for a reluctant application of juvenile law might be that, in some countries (in contrast to Germany), flexible responses to criminal behaviour can be found within the adult criminal law, with a wide range of community sanctions. Consequently, in such countries (for example, the *Netherlands*, see below) applying juvenile law to young adults is not necessarily advantageous or more appropriate, compared for instance to *Germany* where the adult criminal law is very limited with respect to sentencing flexibility or the range of community sanctions.

Furthermore, it is interesting to look at the difference between the law in the books and the law in practice: For example, in *Greece,* there is legally no possibility to apply juvenile law to young adults. However, according to the Greek report (see *Pitsela* in this volume) the judges nevertheless sometimes issue juvenile measures in young adult cases.

Other unintended effects have been reported from *Germany*. There, only the general criminal procedure provides a summary procedure for imposing fines on traffic offenders (without an oral hearing). The juvenile prosecutors, particularly in some Federal States, therefore tend to apply the general criminal law in cases of traffic offences that are usually sanctioned with fines (see *Dünkel* in this volume). Another apparent anomaly is that in *Germany*, more than 90% of the most serious crimes (such as murder, robbery, rape etc.) are sentenced according to juvenile law, thus avoiding increased minimum and maximum sentences of the general criminal law which would not be proportional for young adults. This

13 *Lithuanian* law provides for the application of juvenile sanctions if the young adult according to his "social maturity" is closer to a juvenile than to an adult over 21, and that these juvenile sanctions are better for achieving the aims of criminal justice.

practice is contrary to the widespread practice found in other countries whereby perpetrators of the most serious crimes are transferred to adult courts (so-called waiver-decisions, for example in the *USA*, see *Stump* 2003; *Bishop* 2009; *Weijers/ Nuytiens/Christiaens* 2009).

If one interprets the *Council of Europe*'s 2003 recommendation as requiring the development and establishment of a flexible range of alternative and educational sanctions for young adult offenders, an effective implementation of this demand must not necessarily be measured by the number of available juvenile justice measures. For instance, the sanctioning systems of *Sweden* and the *Netherlands* show that flexible responses to criminal behaviour can also exist within adult criminal law; these countries have a comparatively high degree of flexibility in the applicability of "rehabilitative" sanctions and measures. Nevertheless, in most European countries it is the juvenile justice system that provides such educational/rehabilitative sanctions or measures (*Pruin* 2007, p. 231 ff.).

As a rule, also, we can conclude that, in most European countries, the provisions of the respective juvenile justice systems are more appropriate and suitable for dealing with young adults who are still "developing". Furthermore, there is an important difference as to whether young adults are sentenced by criminal judges who are responsible for adult offenders, or by judges who are experienced in the fields of youth and youth crime, and who thus have – in comparison – more insight into the interests and needs of the age group in question.

A number of other countries, including *Croatia*, *Germany*, *Kosovo*, *Lithuania*, the *Netherlands*, *Slovenia* and *Switzerland* have introduced the optional possibility of applying special measures from juvenile criminal law to young adults, depending on the existence of specific preconditions. For instance, there is often the requirement for a predictive assessment of the effectiveness of the applicable sanctions in order to determine whether adult or juvenile criminal law is to be applied. In *Germany*, special criteria with regard to the psychosocial development have to be considered. This provision is currently under discussion because these criteria are not very clear and are therefore likely to induce an unequal application of juvenile law on young adult offenders across the Federal States of *Germany* (see the report by *Dünkel* in this volume and *Pruin* 2007).

In other countries, the judges may have difficulties in deciding whether the criteria have been met in a single case, because they are often formulated vaguely and/or the court needs background information about the psychosocial development of the young adult offender (see *Shchedrin* on *Russia* in this volume). Such information is typically provided by social inquiry reports drafted by the welfare services; sometimes even psychological or psychiatric experts are needed. If these services are not approached, or have difficulties in interpreting the vague regulations, it may influence the judge's reluctance to use juvenile measures (see *Sakalauskas* in this volume on *Lithuania*).

In *Austria*, *Croatia*, *Cyprus*, the *Czech Republic*, *Denmark*, *Finland*, *France*, *Germany*, *Greece*, *Hungary*, *Italy*, *Poland*, *Portugal*, *Romania*, *Slovakia*, *Sweden* and *Switzerland* instead of or alongside the special measures described above, the are also provisions for mitigating the sentences that young adult offenders receive. While this mitigation is mandatory in *Austria*, the *Czech Republic* and *Slovakia*, it is optional in the other countries mentioned above. The legal wording regarding this issue is very particular in the *Czech Republic*. Instead of defining fixed legal age limits and categories, the law provides for the possibility of mitigating sentences for persons who are of an age that is "close to adolescence". There are also reports that the age of an offender is taken into consideration when sentencing in countries such as *Ireland* and *England and Wales*, despite the absence of explicit respective legal provisions. In *Hungary*, the Supreme Court has issued sentencing guidelines, which state that being between 18 and 21 years of age (thus close to the age of a juvenile) at the time the offence was committed is an important mitigating factor.

In *Serbia, Slovenia* and other states of the former Yugoslavia, the applicability of special regulations is in accordance with the age of the offender at the time of the proceedings, and not the person's age at the time of the offence. This approach bears the risk that delays in the proceedings are ultimately at the expense of the young adult.

In contrast, the *Swiss* amendment to the Juvenile Law from 2007 entails an interesting approach. Where criminal proceedings are instituted against a juvenile and further crimes committed after the age of 18 are detected, formally, the procedural provisions of the Juvenile Law still apply for all offences, and the youth court can choose between measures from the juvenile or adult criminal law.[14]

In some countries, resorting to the special provisions of juvenile criminal law is, in practice, ruled out in cases of especially serious criminal offences. On the other hand, the *German* law and jurisdiction explicitly opens the provisions of juvenile criminal law to all types of offenders and offences (see above).

Particularly with regard to the current European juvenile criminal law reforms in *Austria*, the *Czech Republic*, *Kosovo*, *Lithuania*, *Serbia* and *Slovenia* one can speak of a European trend towards broadening the possibilities for incorporating young adults into the special provisions for juveniles. This trend has apparently established itself predominantly in the Eastern European countries that were (and sometimes still are) in a phase of transformation, away from "Soviet" traditions towards the modern Continental European model of juvenile justice.

There have been reports from *Austria,* the *Czech Republic*, *Hungary,* the *Netherlands* and *Spain* that their draft laws had in fact contained aspects that

14 This concerns only educational measures; criminal sanctions have to be applied according to the adult criminal law.

called for a wider incorporation of young adults into juvenile procedures, but that these were later amended by Parliament. Therefore, one may conclude that the experts who are regularly responsible for drafting laws in their respective countries are convinced of the necessity to integrate young adults in the juvenile justice system, but that this notion could not (yet?) achieve acceptance from politicians in the legislatures. It will be interesting to see how other current reform proposals, for example in *Hungary* (see *Csuri* 2008; *Váradi-Csema* in this volume), further develop in the future.

In conclusion, the different models of dealing with young adult offenders in Europe can be summarised in the following *Table 1*.

Table 1: Young adults in European (juvenile) criminal law

Country	Special rules for young adults providing the application of specific (juvenile law) sanctions	Special rules for young adults concerning mitigating sentences	Age range for youth detention/custody or similar forms of deprivation of liberty
Austria	X	X	14-27
Belgium	(X)[a]	-	Only welfare institutions
Bulgaria	-	-	14-21
Croatia	X	X	14-21
Cyprus	-	X	14-21
Czech Republic	X[b]	X	15-19[c]
Denmark	X[d]	X	15-23
England/Wales	X[e]	-	10/15-21[f]
Estonia	-	-	14-21
Finland	X[g]	X	15-21
France	(X)[h]	X	13-18 + 6 m./23
Germany	X	X	14-24
Greece	(-)[i]	X	13-21/25
Hungary	-	X	14-24
Ireland	X[j]	-	10/12/16-18/21
Italy	X	X	14-21
Kosovo	X	-	14/16-23

Country	Special rules for young adults providing the application of specific (juvenile law) sanctions	Special rules for young adults concerning mitigating sentences	Age range for youth detention/custody or similar forms of deprivation of liberty
Latvia	-	-	14-21
Lithuania	X	-	14-21
Montenegro	X	-	14/16-23
Netherlands	X	-	12-21
Northern Ireland	X[k]	-	10-16/17-21
Poland	-	X	13-18/15-21
Portugal	X	X	12/16-21
Romania	-	X[l]	14-21
Russia	X	-	14-21
Scotland	X[m]		16-21
Serbia	X	-	14/16-23
Slovakia	-	X	14-18
Slovenia	X	-	14-23
Spain	-	-	14-21
Sweden	X[n]	X	15-21
Switzerland	(X)[o]	X[p]	10/15-22
Turkey	-	-	12-18/21[q]
Ukraine	-	-	14-22

Note: a) If the offence was committed before the 18th birthday, juvenile welfare measures can be prolonged until the 23rd birthday.
b) Application of educational measures and mitigation of sentences if the young adult is of an age “close to a juvenile”. According to the jurisprudence this is the case until the age of 21 has been reached.
c) Obligatory: until the age of 19 in youth prison.
d) No special juvenile law. Special regulations with respect to early release can be applied to young adults. Furthermore, young adults can be placed in alternative institutions, see Corrections Act, sect. 78 (formerly Criminal Code, sect. 49, subsection 2).
e) Detention in a Young Offenders Institution instead of imprisonment, attendance centre order can be applied.
f) The English Young Offenders Institutions (YOIs) are differentiated to institutions holding 15 to17-year-olds, 18 to 21-year-olds and institutions holding

both age groups. Exceptionally, 10 to 12-year-old persistent offenders and 12 to 14-year-olds can be sent to secure training facilities.
g) No special juvenile law. The application of suspended sentences (conditional imprisonment) is extended and combined with supervision. Young adult offenders under the age of 21 can be released on parole earlier (after one third or half of the sentence) than adults over 21.
h) The educational measure of judicial protection (*protection judiciaire*) can be prolonged beyond the age of 18.
i) If the offence was committed before the 18th birthday, educational or therapeutic measures can be prolonged until the 21st birthday. Furthermore, according to the *Greek* report (see *Pitsela* in this volume), in practice the judges apply in some cases educational measures on offenders who were 18 or older at the time of the offence.
j) A young male offender between 17 and 21 years can be sentenced to detention in St. Patrick's Institution.
k) Young offenders (17-21) are usually sentenced to the young offenders centre.
l) The law does not define the age as a mitigating factor, but in practice the judges impose less harsh sentences on young adults.
m) Juveniles and young adults between 16 and 21 years of age can be sentenced to detention in a Young Offenders Institution.
n) No special juvenile law but special procedures and measures such as the transfer to the Social Services. The imposition of custodial sanctions is particularly restricted (see *Dünkel/Stańdo-Kawecka* in this volume).
o) Special educational measures can be applied if a further offence was committed after the 18th birthday but criminal proceedings had been instituted before.
p) The general Criminal Law (Art. 61 Swiss PC) provides for special institutions for 18 to 25-year-old offenders.
q) Special open and closed institutions for young adults.

In total, 20 out of 35 countries (57%) provide for either the application of educational measures of juvenile law, or special rules concerning specific sanctions for young adults in the general penal law. Furthermore, 17 out of 35 countries (49%) have special rules in the adult criminal law concerning the mitigation of penalties for young adults. 9 out of 35 countries (26%) provide the mitigation of sanctions according to the general criminal law *and* the application of sanctions of the juvenile law. It is therefore most exceptional that special rules for young adult offenders are not provided at all, i. e. neither in the juvenile law nor in the general criminal law. As far as we are aware there are only eight such countries: *Belgium*, *Bulgaria*, *Estonia*, *England and Wales*, *Latvia*, *Spain*, *Turkey* and the *Ukraine.*[15]

15 However, even these countries provide that young adults are accommodated in juvenile prisons or special institutions or units for young adults (separated from adults aged over 21).

7. Conclusion and future prospects

To summarise, recent scientific findings regarding the living situation of young people are supportive of maintaining and/or establishing flexible possibilities for sanctioning young adult offenders. This is in line with the requirements of the recommendations of the Council of Europe. The review of the 35 legal systems gathered in the present paper shows that the idea is already widely shared across Europe. However, even if the implementation is not always satisfying, there is in fact a clear trend towards an expansion and broadening of the scope of juvenile justice towards the inclusion of young adults. According to current criminological, psychological and sociological evidence, the most appropriate way of dealing with young adult offenders would be to incorporate them fully into juvenile justice.

There are good reasons to follow the European approach of giving special concern to the age group of young adults (see the Council of Europe Recommendation [2003] 20, Rule 11 and [2008] 11, Rule 17). And there are good reasons as well to generally treat young adults as juveniles.

In order to prevent the possibility that young adults will become "lost in transition" (*Barrow Cadbury Commission* 2005) some countries should change their legislation, in particular *Bulgaria*, *England and Wales*, *Estonia*, *Latvia*, *Spain* and *Turkey*. Many should also adapt their practice so that young adult offenders more frequently receive alternative and rehabilitative sanctions. One appropriate approach could be to fully integrate young adults into the juvenile justice system (where available) and to ensure that specialised judges and prosecutors deal with this age group, which shares many similarities with juveniles.

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Jurisdiction and characteristics of juvenile criminal procedure in Europe

Andrea Gensing

1. Introduction

The previous chapter by *Ineke Pruin* covered the systems of juvenile justice in Europe. Her article has already revealed the special importance of two particular issues that have shaped – and which continue to shape – the development, choice and form of the juvenile justice system in each respective country. The first of these issues is criminal responsibility, more precisely the regulations on the age of criminal responsibility, capacity and criminal liability. The inclusion (or exclusion) of young adults into the scope of these provisions is also significant in this regard (see *Dünkel/Pruin* in this volume). The second issue concerns the balance that has been struck between education and punishment, which not only has a decisive impact on the choice of system, but also especially influences the legal provisions that guide criminal procedure, measures and sanctions.

Even though there are differences between the systems and ages of criminal responsibility across Europe, it is still apparent that all European states provide special legal regulations for juveniles. These peculiarities compared to adult law are not limited to interventions and sentencing powers, but also always include special provisions regarding the criminal procedure. This even applies to those countries that have no separate juvenile criminal codes. The legislative provisions that govern these procedural peculiarities are based on the underlying principles of juvenile justice philosophy. The leading principle in all countries is special prevention, in the sense of reintegrating the juvenile into society and preventing re-offending. In this regard the principle of education and the child's welfare and best interests are of predominant importance. Furthermore, other

basic concepts have a decisive impact, such as for instance the principle of subsidiarity, minimum intervention, restorative justice and accountability, all of which were elaborated in the previous chapter of this volume. Accordingly, the special procedural provisions all serve to protect juvenile offenders who are exposed to criminal procedures. Overall, it should be noted that all countries aim to have a special-preventive or educational influence on juvenile offenders, albeit via different means and approaches.

Generally speaking, seven particular issues should be highlighted here which form the basis of juvenile justice from the procedural perspective, and which distinguish juvenile justice from adult criminal justice.[1]

The first substantial characteristic is the establishment of youth courts or special youth panels, and the resulting accentuation of the principle of specialisation (see *Section 2* below). On the one hand, this covers the appointment and responsibilities of juvenile judges. However, interest is also directed towards the parties to the pre-trial proceedings, especially the police, the public prosecutor or investigating judges in terms of their duties as well as the degree to which they are (or should be) specialized. In this context the participation of defence counsels is increasingly important (see also *Section 5* below).

Moreover, two further parties to the proceedings have a special role to play. First, the juvenile's parents or legal guardians should be involved, not least due to the fact that juveniles are minors and thus underlie the responsibility of their parents (see *Section 3* below).

The second party to receive more detailed attention is a form of youth court service, social welfare service or a similar body whose role is to bring a deeper social dimension into the proceedings (see *Section 4* below). The scope of responsibility of these services covers the investigation of the personal and social circumstances of the juvenile, but can also encompass the enforcement of imposed educational or community measures as well as keeping contact to juveniles deprived of their liberty and providing aftercare support.

A fourth feature is the question of mandatory legal defence, which is often further-reaching than is the case for accused adults (see *Section 5* below).

Furthermore, the protection of the juvenile and his/her privacy needs to be addressed (see *Section 6* below). This is often expressed through entirely non-public procedures, provisions that make it easier for the publicity of a procedure to be constricted and special rules for how/whether offences are registered in criminal records.

A further integral aspect of juvenile justice that has gained increased recognition especially over the last 10 to 20 years is the involvement of the victim or injured party in the procedure (see *Section 7* below). Although this

1 At this point it has to be mentioned that the chapter by *Dünkel*/*Dorenburg*/*Grzywa* in this volume addresses pre-trial detention and other kinds of preliminary compulsory measures in detail. Therefore this subject is excluded from the present chapter.

concerns the adult criminal procedure as well, there are more (sometimes far-reaching) restrictions regarding the exercise of rights of the injured party in victim-offender mediation and special reparative and restorative efforts by the offender to alleviate the caused damages increasingly (and more than in adult criminal procedures) play an important role (see also *Doak*/*O'Mahony* in this volume).

Finally, alternatives to formal proceedings have to be mentioned at this point (see *Section 8* below). On the one hand, these cover the possibilities for dismissing and thus diverting cases and/or for referrals to welfare authorities. On the other hand some countries like *Scotland*, *Northern Ireland*, *Ireland* and *Belgium* attract attention with their special procedural schemes such as the Scottish Children's Hearings System or the youth or family conferences that have been developed in the other countries mentioned above.

The following chapter focuses on whether or not (and if so how) European countries provide for or implement these integral characteristics of juvenile criminal procedure.[2]

2. Youth courts and the principle of specialisation

The demand for specialisation or rather the establishment of specialised public authorities and courts becomes apparent in international standard minimum rules and recommendations.[3]

Art. 40 (3) of the Convention of the Rights of the Child advises the member states to make an effort to establish procedures, official bodies or authorities and institutions that are appropriate for children. They should be responsible for all persons under 18 years of age who are suspected, accused or convicted of a violation of criminal law. Moreover paragraph 1 of Art. 40 CRC in particular stipulates that the whole proceeding should be conducted in a notably protective manner. Indeed this is "only" encouraged, but the intended overall course is clear.

Beijing-Rule No. 22 explicitly refers to youth courts. According to Rule 22.1 vocational training, practical training courses, advanced training courses and other appropriate instructional methods should be provided for juvenile judges, prosecutors etc. Doing so enables all persons or parties who are involved with juvenile delinquents to acquire the necessary expertise and to keep this knowledge up-to-date. In addition, the composition of juvenile justice and youth court staff should make allowance for the existing differences between the individual juveniles, which implies the need for women and minorities to be

2 The information used and provided here was primarily derived from the national reports that are compiled in this volume. Country names in *italic* refer to these chapters.

3 See for the European Recommendations and International Minimum Standards www.coe.int or www.un.org and *Höynck/Neubacher/Schüler-Springorum* 2001.

involved. Riyadh-Guideline No. 58 requires that all active staff of the youth courts and juvenile justice system receive vocational training so that they are able to meet the needs of young people.

The demand for youth courts in Recommendation No. R (87) 20 on social reactions to juvenile delinquency is rather restrained. No. 5 of this Recommendation notes that transfers of minors to adult criminal courts should be avoided as far as youth courts are existent. Nevertheless, according to No. 9 it should at least be considered that all parties of the proceedings have special vocational training in the field of juvenile justice and juvenile delinquency.

Furthermore, Recommendation Rec (2003) 20 concerning "New ways of dealing with juvenile delinquency and the role of juvenile justice" already covered this topic in the headline. "Juvenile justice system is defined as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal professions, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support".[4] The implementation of the reaction to youth crime should be carried out according to No. 21 of this Recommendation through the local bodies, which are among the basic public authorities, volunteers and the private sector. They should offer vocational training and advanced training courses as well.

Finally, Recommendation Rec (2008) 11 on the "European Rules for Juvenile Offenders Subject to Sanctions or Measures" requires the provision of specialised and moreover sufficient staff in Rules No. 18 and 19.

2.1 Jurisdiction: Youth courts or adult criminal courts

As already becomes apparent from *Table 1* below, youth courts, special youth panels or specially appointed youth judges are most commonly provided for in the Central, Western and Southern European countries. These include *Austria*, *Bulgaria*, *Croatia*, *Cyprus*, *Czech Republic*, *England/Wales*, *France*, *Germany*, *Greece*, *Hungary*, *Ireland, Italy*, *Kosovo*, *Netherlands*, *Serbia*, *Slovenia*, *Spain*, *Switzerland* and *Turkey*.

Regarding *England/Wales* and *Ireland* it is worth pointing out that youth courts do exist, but the judges or rather magistrates regularly do not have to be specialised. So, in these cases it is more a concern of allocation of duties within the courts. Moreover, in *England/Wales* the Crown Court – an adult criminal court with jury involvement – is responsible for serious offences. The same applies in *Ireland* where the most serious cases are heard before a judge and jury in an adult court (the Circuit Court and the Central Criminal Court).

4 See Recommendation Rec (2003) 20 of the Committee of Ministers to Member States.

The establishment of youth court panels particularly in *Slovenia* (1995), *Croatia* (1998), *Hungary* (2003), the *Czech Republic* (2003/04), *Kosovo* (2004), *Serbia* (2006) and *Bulgaria* (2006) is a relatively new phenomenon in many countries. In some respects this also the case in *Turkey* (1979/2005).[5] Their introduction over the last ten to fifteen years has to be viewed in the context of the overall reforms and societal developments in these countries. It becomes clear that the regulations of the continental countries as well as the European recommendations and international standard minimum rules were pivotal points of reference. Regarding *Bulgaria* it has to be mentioned that speaking of juvenile courts is somehow doubtful. The only difference to adult criminal courts lies in the requirement of involving specialised lay judges with an interest in educational issues. The professional judges themselves need not be specialised.

In *Switzerland* the procedure for juvenile delinquents has been regulated at the Federal level since the passing of the Federal Code of Criminal Procedure on 1 January 2011. Previously, criminal procedure for juveniles had been regulated at the cantonal level. Therefore, different models could be found in the different Cantons. Generally speaking (and simplifying slightly), the French-speaking Cantons tended to apply the so-called "youth court model" which is characterized by the comprehensive responsibility of one youth judge, who is competent from the initial investigation to the execution of measures. In the German speaking Cantons a modified youth court model prevailed, in which the competent authority (*Jugendanwalt*) is responsible for the investigation and execution but not for all judicial judgements (solely for those cases, however accounting for about 98% of the proceedings, that do not involve sentences to the protective placement measure or to imprisonment for longer than three months). The Federal Code of 2011 prefers the latter model.

Even though we speak of youth courts, not one country in Europe actually disposes of an entirely independent special court authority. Rather, they are special panels or panels with a special composition that are to be provided for within the allocation of duties of the ordinary jurisdiction. This particular competence often "only" exists in the local and regional courts, and ceases at the appellate court level. The former Yugoslavian countries are exceptions to this rule, where special provisions have also been established at the higher and highest courts. The so-called *Jugendgerichtshof* in Vienna[6] – a separate court including all parties to the procedure under one roof and which was closed in 2003 – is worth to mention in this regard. At present in *Austria* there are

5 In 1979 a special law called "the Law on the Establishment of the Children's Courts and Related Procedural Rules" was enacted in *Turkey*. This law encompassed only children of 0-11 and young juveniles of 11-15. Older juveniles of 15-18 were tried in adult courts. The present Child Protection Law dates from 2005. It has extended the youth court jurisdiction to juveniles up to the age of 18.

6 See also *Bruckmüller* in *Junger-Tas/Decker* 2006, p. 264; *Jesionek* 2007, p. 120.

concrete considerations for re-establishing this comprehensive youth court due to the advantages that such a unified approach is perceived to entail.

Belgium, *Poland* and *Portugal* are among those countries whose special courts feature significant differences to the aforementioned countries. In accordance with its overall welfare oriented approach, *Belgium*'s youth courts are responsible both for delinquent as well as non-delinquent but otherwise conspicuous behaviour of minors under 18 years of age. The *Polish* approach is similar, with family courts being generally responsible for juveniles under 17 years of age. The proceeding of the family court is in accordance with the underlying behaviour of the minor. Where a minor has committed a minor offence or shows signs of so-called "demoralization", the regulations of the Civil Code are relevant. Cases of more severe offending, however, are responded to with the provisions of the Code of Criminal Procedure with modifications provided for by the 1982 Juvenile Act. *Portugal* disposes of both family and youth courts for juveniles aged younger than 16, but the Portuguese draw a clear line between delinquency and otherwise "conspicuous" behaviour.[7]

At this point *Northern Ireland* and *Scotland* need to be mentioned. Since 1968/1971 Scotland has applied the so called "Children's Hearings System" – a system of round-table welfare tribunals – to children under 16. Recently this system has been supplemented by special youth courts for young offenders aged 16 and 17. In 2002, *Northern Ireland* introduced a system of "Restorative Youth Conferencing" which – contrary to the Scottish approach and as its name suggests – places central emphasis on the involvement of victims. *Northern Ireland* also disposes of a system of youth courts that are involved when a conference is not possible or is unsuccessful. Conferences are prioritized over formal court procedures.

Thus, in general the characteristics of the youth courts or juvenile jurisdiction respectively are the specialisation of judges or rather a corresponding requirement, often far reaching competences of the youth judges as well as the involvement of particular appropriate and competent youth lay judges. These issues are discussed in more detail in the following sections.

In *Denmark*, *Finland* and *Sweden* adult courts are responsible. This is especially attributable to the fact that, in the Scandinavian countries, the approach to dealing with juveniles below 15 years of age is entirely welfare-oriented (14 years in *Denmark* since 2010). Persons under that age never come into contact with the court system. At the same time, general criminal law applies to juveniles aged 15 and over, which annuls any need for special youth courts. However, certain special regulations are provided for, especially regarding diversion, the involvement of welfare authorities in cases of under-18-year-olds, and in terms of sanctions and sentencing. Overall, the Nordic

7 Regarding the Portuguese system see also *Rodrigues* in *Albrecht/Kilching* 2002.

approach to the issues of youth jurisdiction and the specialisation of justice authorities is indeed a special case in Europe.[8]

Furthermore, what is noticeable is a predominant approach in the Central and Eastern European countries of having only general criminal courts, as can be seen in *Estonia*, *Latvia*, *Lithuania*, *Romania, Russia, Slovakia* and *Ukraine*. This does not, however, mean that no special procedural provisions for juveniles are in place in these countries. The period of political transition and change in the 1990s prioritized the drafting and enactment of general legislation that is in accordance with the rule of law. Consequently, the issues of a special youth jurisdiction and even juvenile justice in general received little attention. This state of affairs has been alleviated in recent years, with considerable attention now being directed at the need for specialized authorities – especially youth judges – in these countries. The issue of youth courts and juvenile justice has gained importance in recent years. Reform demands relate to the specialisation of judges and parties to the proceedings. The developments in these countries resembles that in the states mentioned earlier that have recently implemented youth courts or youth panels. So we can be full of expectation and curiosity in this respect. At any rate, the need for reform is recognized, as is the need for adhering to the European recommendations and international standard minimum rules.

First practical implementations can already be observed. The Law on Judicial Organization in *Romania* provides that within all courts, special panels or sections dealing with minors and family cases are to be established. The first youth and family court was implemented in 2004 in the city of Brasov. In the meantime many courts have established special panels or sections with competence in minor and family matters. The remaining courts shall establish the panels/sections in the near future.

In *Rostov*/Don, *Krasnoyarsk* and a few other cities in *Russia*, youth courts currently have been established. A recent *Slovakian* reform commission suggested the establishment of youth courts. In *Lithuania*, at least in the urban centres, specialized police officers and public prosecutors have been introduced. The *Ukrainian* law provides for the appointment of specialised judges, a provision that has yet to be implemented in practice. In addition, the establishment of youth courts is also a current issue of debate, with some pilot projects having been set up in some regions of the country.

Even though in many European countries adult criminal courts are still responsible for juvenile offenders, one has to keep in mind that nearly all of them provide at least some form of special procedural provisions, most notably in terms of the imposition of special (educational) sanctions and measures, as shall become clear in the following sections.

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8 See also *Haverkamp* 2007, p. 167 ff.; *Haverkamp* in *Albrecht/Kilching* 2002, p. 337 ff.; *Lappi-Seppälä* in *Muncie/Goldson* 2006, p. 177 ff.; *Jepsen* in *Jensen/Jepsen* 2006, p. 213 ff.

Table 1: Jurisdiction

Youth courts or youth judges or other peculiarities	Adult criminal courts
Austria (youth courts)	Denmark
Belgium (but also family conferences)	Finland
Bulgaria (different panels, but just special lay judges)	Sweden
Croatia (special panels)	Estonia (but youth committees relevant)
Cyprus	Latvia
Czech Republic (special panels)	Lithuania (but first specialisations)
England/Wales (but magistrates are not specialised)	Romania (special panels dealing with family and youth cases)
France (youth courts)	Russia (some projects with youth courts in Rostov, Krasnoyarsk etc.)
Germany (youth courts)	Slovakia (but: reform efforts underway)
Greece (youth courts)	Ukraine
Hungary (youth judges and panels)	
Ireland (Children's Court, but judges not specialised)	
Italy (youth courts)	
Kosovo (youth courts)	
Netherlands (youth courts)	
Northern Ireland (youth courts, but youth conferences have priority)	
Poland (family courts)	
Portugal (family and youth courts)	
Scotland (Children's Hearing is central; now also youth courts for 16 and 17 year olds)	
Serbia (youth judges and panels)	
Slovenia (youth judges and panels)	
Spain (youth courts)	
Switzerland (two different youth court models)	
Turkey (juvenile courts)	

2.2 Specialisation of judges

The specialisation of professional judges is naturally only a relevant issue for those countries that provide youth courts or youth judges in the first place. As already noted above, legislation in *Bulgaria*, *England/Wales* and *Ireland* states no requirement for specialized judges (it should be added here that the Magistrate's Courts in *England/Wales* do not employ professional jurists. Instead, the court is composed of three magistrates or "lay judges"). *Cyprus* has youth courts, but no clear calls for specialisation have been voiced.

The provisions in the remaining countries stated in *Table 1* above need to be viewed merely as "should-provisions" i. e. provisions whose implementation is not binding. Therefore, not only the legal provisions are relevant, but rather the degree to which they have been put into practice. Certainly, some catching-up needs to be done in this regard. In any case, any specialisation of judges or other authorities or parties to the proceedings is directly connected with the desire or need to protect the minors who come into contact with the (juvenile) criminal justice system. For this reason all involved parties should aim to obtain additional knowledge in the fields of education, psychology and other related sciences. At the same time, this also has to be respected and kept in mind by the persons responsible for staffing. Without knowledge of sentencing options, current research results on the effectiveness of sanctions and measures, and insight into the backgrounds of juvenile crime in general, providing individualized, special preventive responses to juvenile offending seems barely conceivable.

The situation in *Serbia* is a remarkable example, because there the reforms of 2006 made the requirement of specialisation mandatory, leaving no leeway. The Serbian Ministry of Justice has already organised and implemented basic and advanced training courses for judges, prosecutors, police officers etc. The same is true for *Portugal* where the appointment as juvenile judge or prosecutor since 2009 depends from the participation at special training courses within the education at the National School for Magistrates. In contrast, the situation in *Germany* is rather inhomogeneous. There are indeed a number of judges who have been functioning as youth judges for quite some time, and who can thus be deemed "specialised". However, it is often the case that the court organisation provides for judges to be rotated around the different fields of activity, with little to no attention being directed toward their degree of specialisation or suitability. Plans are, however, underway for the establishment of a "youth academy" that shall provide advanced and further training for youth judges, youth prosecutors and other relevant professions.[9] The main problem will be to establish a mandatory duty for juvenile judges and prosecutors to participate at such further training.

9 See for more details regarding „Netzwerk Jugendakademie" for ex. *Sonnen* 2009, p. 9 f.

Turkey demands that youth judges be highly specialised. The Children Protection Act of 2005 established youth courts. The policy was that the youth courts would be built by appointing judges who already have experience in juvenile cases.

In *France* special training for first-instance youth judges has already been provided at the national magistrate's school (*Ecole Nationale de la Magistrature*) for some time. In addition, interdisciplinary advanced training courses for youth judges are offered in Vaucresson in the *centre de recherches*.[10]

The situation is a little different in *Greece*. Youth judges there should indeed have special expert knowledge while being able to speak at least one foreign language (as an indicator for having expert knowledge). However, youth judges in *Greece* are appointed for two or at absolute most for four years. Such a short period in office appears to be in opposition to a real specialisation.

On the other hand in *Sweden* the provision that judges should be specialised was abolished in 2001.

In summary, one can assert that nearly all countries – at least those that provide for youth courts or panels – require the involved judges to have a certain degree of specialisation. The main obstacles that currently exist are on the one hand a lack of binding guidelines and legal provisions that govern the selection of youth judges, while the availability of appropriate advanced training as well as attendance levels at these courses are lacking on the other. In most cases it is in fact "learning by doing". There is definitely a recognizable will to prepare appropriate and interdisciplinary advanced training courses. However, especially the Eastern European countries are still facing infrastructural problems in this regard, so that further developments of the youth courts there shall still take quite some time. In any case, the youth judge and youth prosecutor professions do not appear to be particularly attractive ones, maybe due to lacking opportunities for professional advancement.

2.3 Competences, especially including the pre-trial proceeding

Another issue of significance lies in the further competences and responsibilities that are vested with youth judges. So for example in *Germany* or, as mentioned before, in *Switzerland* the youth judge is also responsible for the enforcement of sentences. In *Germany* and *Kosovo* the youth judge can or should even potentially assume custodial tasks, which, however, are rarely practised. In nearly all countries covered in this project, where an adult offender is charged, the site of the crime determines which court – from a geographical perspective – is competent.

10 See also *Maguer/Müller* in *Albrecht/Kilching* 2002, p. 159; *Nothafft* in *Dünkel/van Kalmthout/Schüler-Springorum* 1997, p. 138 f.

For juveniles, the emphasis is shifted away from the offence and instead the competent court is determined by the youngster's place of residence, which aims at achieving a certain degree of educational proximity.

The judge in *Cyprus*, for example, has a more interventionist role, contrary to the usual accusatorial criminal procedure.

What is quite remarkable is that in Europe, juvenile judges are often required to perform tasks and duties that are normally functions of investigating judges, the most prominent examples being the issuance of preliminary measures or interventions that are related to a person's basic rights. However, in this context the main question is how the responsibilities in the preliminary proceeding are shared and as the case may be existing peculiarities are considered in the juvenile justice procedure.

In Europe, the responsibility for conducting the preliminary proceedings and for making indictment decisions predominantly lies in the hands of the public prosecution service of a country. Regularly the prosecution service is assisted by the police during the investigation, and this allocation of competencies and responsibilities exists both in juvenile and adult criminal proceedings. Public prosecution services that assume such central investigative roles can be found in *Austria*, *Bulgaria*, the *Czech Republic*, *Estonia*, *Germany*, *Hungary*, *Italy*, *Kosovo*, *Latvia*, *Lithuania*, the *Netherlands*, *Portugal*, *Romania*, *Russia*, *Slovakia*, *Spain*, *Turkey* and *Ukraine*, so in nearly all countries that pursue a justice oriented approach. However, it has to be emphasised that in practice it is not the public prosecutor, but the police who take most of the responsibility for conducting preliminary investigations.

The approach adopted in *Italy* (and in *Hungary* in more severe cases) is quite unique in that indictment is followed by a relatively extensive "preliminary hearing" that is conducted by a youth judge together with two lay-judges. Here, too, the prosecution service is responsible for conducting the actual investigation; however, the youth judge has to accurately check the case in this preliminary hearing.

The prosecution service as a public authority is a relatively new innovation in countries with an Anglo-American legal tradition. The Crown Prosecution Service in *England/Wales*, for example, was introduced in the mid 1980s. Initially, the investigation lies solely in the hands of the police force. A case is only referred to the prosecution service where the police find it necessary to bring a charge against a suspect, or where they are not authorized to divert a case on their own. *Northern Ireland* introduced its Crown Prosecution Service as late as 2005, but there, too, it is the police who are primarily responsible for the investigation.

A similar allocation of responsibilities also exists in *Ireland*, where the police – *Garda Síochana* – assume the task of conducting the investigation, but the Prosecution Service alone makes indictment decisions. In *Cyprus*, too, it is the police who are responsible for the investigation, probably because of the

country's historical association with Great Britain. According to law the Attorney General's Office is in charge of the proceeding, but in practice their involvement regularly only occurs in cases of severe offending. Hence in these countries the prosecution service is not assigned such a considerable role of leadership. The prosecutor is responsible for indictment, but the police force has possibilities for diverting or closing cases before the prosecution service is even involved. Therefore, the police in Anglo-American countries have more competences than their counterparts in other states, who are merely "investigation officers" of the public prosecution service.

Scotland is an interesting case insofar that criminal prosecution is the task of the so-called "Lord Advocate", while the police carry out the investigation. Should they not be able to close the case themselves, the police then either refer it to the so called "reporter" or send it to the procurator fiscal (prosecutor), who can transfer the case to the reporter as well or just bring a charge against the suspected person. The reporter is responsible for the preparation and enforcement of Children's Hearings which play the decisive role in *Scotland*'s approach to responding to juvenile delinquency.

Even in *Belgium*'s youth protection or welfare oriented system, it is regularly the prosecution service which, in cooperation with the police, is responsible for the investigation. However, this competence can be transferred to the youth judge in exceptional severe cases, whose functions then cover more than "only" ordering preliminary measures. So the youth judge can exceptionally also be the investigating judge simultaneously.

In *Bulgaria* the investigation can be conducted either by the police or by special "justice investigators". A similar approach is followed in *Russia*, where investigative responsibility can also be vested with representatives of other specific authorities, like for instance the security service or drugs/narcotics agencies. In the *Ukraine* the police are referred to as the "*criminal militia*". This serves as a good example for how in some *Eastern European* countries, a certain degree of closeness to the military remains at least in terms of the chosen nomenclature. In *Turkey* the police are responsible in urban areas, while in rural areas it is the gendarmerie.

The approach that is applied in *Denmark* for instance is rather different. The police authorities are responsible for the preliminary proceedings. However, this responsibility is divided among different officers within the police force, who in turn have different vocational training backgrounds. While the investigation is conducted by "regular" police officers like in most countries as well, indictment decisions are made by special police officers who have a juridical background, i. e. they have been educated and trained at a faculty of law. Therefore, two different kinds of police officers act, albeit while answering to the same director. Responsibility for indictment is only transferred to the prosecution service in exceptional, severe cases.

As already mentioned above in the context of youth courts, *Switzerland*'s system constitutes a rather noteworthy approach. In many cantons, the youth judges are responsible for the entire procedure, including the preliminary proceedings. However, some cantons have established separate youth prosecutors, whose roles and competences in turn differ from Canton to Canton. Some youth prosecutors conduct the investigation and are responsible for arraigning suspects. In other Cantons, the youth prosecutor's functions are limited to investigatory issues, while bringing charges lies in the hands of the youth judge. The youth prosecutor's involvement in the latter issue is limited to filing an application for a suspect to be arraigned. At this point it is not possible to clarify precisely which Cantons apply which regulations concretely.

Within Europe, some countries still incorporate investigating judges into the preliminary stage, where his/her role lies in conducting the investigation and subsequently forwarding its outcome to the prosecution service, which then decides whether or not to bring formal charges. This model of an investigating judge is used in these countries in the adult criminal procedure as well, and has been maintained since the historical beginnings. Other countries also had an investigating judge prior to the 20th century, which related to the inquisitorial model. However, the main points of criticism and discussion relating to this model regularly lay in the fact that one single judge was responsible for both the investigation and for the final verdict, allegedly leaving much room for prejudice, bias and lacking independence. For many countries, the transformation of the procedure to the accusatorial model was the reason for entrusting the investtigation to the prosecution service, an authority that is independent from the judiciary.

Some countries still have investigating judges. However, in adult criminal law they are only responsible for investigations in the preliminary proceedings. These countries are *Croatia*, *France*, *Greece*, *Serbia* and *Slovenia*.

One distinct feature of the *French* procedure is that the investigation in cases of misdemeanours (*délits*) or so-called 5th category contraventions (*contraventions de 5e classe*) is regularly conducted by the judge who will later be responsible for the main trial. In these cases, therefore, the youth judge also functions as the investigating judge. This does not apply where a *crime* has allegedly been committed, in which case the ordinary investigating judge is competent for the investigation. The *French* system also provides for a further special judge, whose scope of activity is limited to decisions on whether or not pre-trial detention should be ordered in cases of juveniles aged 13 and above (*juge des libertés et de la detention*). This approach is sensible insofar that, where the youth judge is responsible for both the investigation and the main trial, an independent and unbiased judge is involved in the case. One downside to this is, however, that these special judges for pre-trail detention regularly lack any form of specialisation in juvenile matters.

In *Croatia*, *Serbia* and *Slovenia*, the prosecution service bases its decision whether or not to instigate investigatory proceedings on a so-called "pre-preliminary proceeding". The investigatory proceedings are then conducted by the youth judge as an investigating judge, who subsequently forwards his/her conclusions to the prosecution service. The latter then decides whether or not to bring formal charges. What is particularly relevant here is that the judge who conducts these preliminary investigations also presides over the main trial. By contrast, in its 2004 reform law, *Kosovo* dispensed with the competency of such an investigating judge, and instead transferred responsibility for the entire preliminary proceeding to the prosecution service. However, this is not completely without checks and balances, as the prosecution is obliged to inform the youth judge whenever preliminary proceedings are instituted.

The identity of the juvenile investigating judge and the later judge on the trial stage is often advocated by the necessary close relationship to the juvenile and his/her social environment, which seems to be favourable for an appropriate sentencing. However, it is just the case *Bouamar vs. Belgium* where the European Court on Human Rights outlawed such practice (see *Christiaens*/*Dumortier*/*Nuytiens* in this volume).

In contrast, in 1995 the Netherlands established that judges who are involved in the preliminary proceedings – even though their role in the *Netherlands* is limited to ordering preliminary measures – shall not be involved in the subsequent main trial of a case.

In accordance with its overall welfare-oriented approach, *Poland* assigns the task of leading the investigation (the so-called "clarification procedure") to the family judge, who is later also competent for conducting the main trial. As already stated above in the context of youth jurisdiction, in *Poland* legal provisions of civil or criminal procedure with modifications provided for by the Juvenile Act can be applied. This naturally also concerns the procedural methods that are applied in the clarification procedure. The police may act in this procedure only on an order of the family judge and the prosecution service can only exceptionally be competent for the investigation – in cases of severe offending by 15 or 16-year-olds, in which cases the criminal court is exceptionally responsible.

Aside from the countries that provide very special procedures and competences, we can note in summary that in the majority of cases, responsibility for the preliminary proceedings is vested with the prosecution service which is supported by the police in its investigative efforts. Only very few countries in Europe still have investigating judges.

According to *Dünkel*, the development in juvenile procedure towards more closely resembling the role allocation of adult criminal procedure is a positive one that is in accordance with the relevant United Nations Standard Minimum

Rules, insofar as it is accompanied by a consolidation of constitutional procedural rights and guarantees.[11]

Aside from responsibilities and competencies, a further core point of interest is the question of opportunities to use diversionary procedures, or more precisely, who is authorized to dismiss or close proceedings. The goal of diversion clearly lies in the avoidance of stigmatizing and/or detrimental procedures (see *Dünkel/Pruin/Grzywa* in this volume). Diversion plays a formidable role in all countries, a role that has been continuously gaining prominence in the last decades, and which is endorsed by all relevant European and international recommendations, basic principles and conventions. Possibilities for diverting cases exist in particular during the preliminary proceedings (diversion away from court), but can also play a role during the main trial (diversion from punishment or prison). Normally, the decision whether or not to divert a case can already be made by the public prosecutor, but in any case also by the youth judge after the indictment. In *Cyprus*, *England/Wales*, *Ireland*, the *Netherlands*, *Northern Ireland* and in *Scotland* the police have diversionary powers as well. In the *Ukraine*, the criminal militia are also authorized to dismiss or close a case, albeit only with the prior consent of the public prosecutor.

The only countries in this project in which the prosecution service does not have the authority to close or dismiss a case are *Italy*, *Lithuania* and *Poland*. In *Italy*, this power is vested in the judge(s) who conduct the so-called preliminary hearing. Regards to Italy, the obligation to prosecute is even a constitutional principle (see art. 112 of the Italian Constitution with reference to the principle of equality of citizens – art. 3) The Italian Prosecutor is therefore without discretionary power to withhold prosecution. Only the judge for the preliminary investigation or the court bench for preliminary hearing may close or dismiss a case.

However, even though certain diversionary possibilities are provided for at this stage, a criminal procedure is essentially not really prevented. The effect is not the same as in countries where the public prosecutor suspends the prelimnary proceeding, or where a judge decides whether or not to initiate further proceedings based on the documentation and files at hand. In *Turkey*, the public prosecutor can order the postponement or total suspension of proceedings as long as this is approved by the youth judge. In *Poland*, only the family judge is eligible for suspending a case because he/she alone is responsible for conducting the proceedings. Further, more elaborate information is provided in the chapter by *Dünkel/Pruin/Grzywa* in this volume. A short summary has been compiled in *Table 2* below.

11 See *Dünkel* 2004, p. 20 f.

Table 2: Competences

Country	Competences in pre-trial proceedings	Diversion (the whole proceeding) by:		
		Police	Prose-cutor	Judge
Austria	Youth Prosecutor, Police	-	+	+
Belgium	Prosecutor, Police; possibly Youth Judge	-	+	+
Bulgaria	(Youth) Prosecutor, (Youth) Police or Investigation Service	-	+	+
Croatia	Youth Prosecutor, (Youth) Police; Youth Judge as Investigating Judge	-	+	+
Cyprus	Attorney General's Office, Police	+	+	+
Czech Republic	(Youth) Prosecutor, (Youth) Police	-	+	+
Denmark	Police: Investigation Officers and Police Officers who are trained in law and are responsible for indictment	(+) (with prose-cutor)	+	+
England/ Wales	Police, Crown Prosecution Service	+	+	+
Estonia	(Youth) Prosecutor, Police	-	+	-
Finland	(Youth) Police (similar to Denmark)	-	+	+
France	Youth Prosecutor, Police; Investigating Judge: either Youth Judge or the general Investigating Judge	-	+	+
Germany	Youth Prosecutor, (Youth) Police	-	+	+
Greece	Youth Prosecutor, (Youth) Police; Investigating Judge	-	+	+/-
Hungary	Youth Prosecutor, Police	-	+	+
Ireland	Garda Síochana – juvenile liaison officer, Prosecutor	+	+	+

Country	Competences in pre-trial proceedings	Diversion (the whole proceeding) by:		
		Police	Prose-cutor	Judge
Italy	Youth Prosecutor, (Youth) Police	-	-	+
Kosovo	Youth Prosecutor, Police	-	+	+
Latvia	(Youth) Prosecutor, (Youth) Police	-	+	+
Lithuania	(Youth) Prosecutor, (Youth) Police	-	-	+
Netherlands	Prosecutor, (Youth) Police	+	+	+
Northern Ireland	Youth Police, Prosecutor	+	+	+
Poland	Family Judge	-	-	+
Portugal	Youth Prosecutor, (Youth) Police	-	+	+
Romania	(Youth) Prosecutor, Police	-	+	+
Russia	(Youth) Prosecutor, Police or particular Investigation Officers	-	+	+
Scotland	"Lord Advocate", Police, Prosecutor; Reporter	+	+	-
Serbia	Youth Prosecutor, (Youth) Police; Youth Judge as Investigating Judge	-	+	+
Slovakia	(Youth) Prosecutor, (Youth) Police	-	+	+
Slovenia	Youth Prosecutor, (Youth) Police; Youth Judge as Investigating Judge	-	+	+
Spain	Youth Prosecutor, (Youth) Police	-	+	+
Sweden	Youth Prosecutor, Police	-	+	-
Switzerland	Often Youth Judge or modified Youth Judge (*Jugendanwalt*), only in a few cantons Youth Prosecutor	-	+	+
Turkey	Youth Prosecutor, Youth Police or Gendarmerie	-	+/-	+
Ukraine	Prosecutor, Criminal Militia for minors	+/-	+	+

2.4 Specialisation of prosecutors and police officers

In principle, the way in which preliminary proceedings involving juvenile suspects are conducted – especially in terms of competences and responsibilities – greatly resembles the general adult criminal procedure. Accordingly, one frequently recurring similarity is the role of the prosecution service as a "gatekeeper to the preliminary proceedings", or as the competent authority for indictment decisions. In nearly all countries the actual practical investigative activities are performed by the police.

One major difference to adult criminal procedure, however, is the principle of specialisation, which is intended to also apply to those persons who are involved in or party to the preliminary proceedings. European and international recommendations, basic principles and standard minimum rules – Art. 40 (1), (3) CRC, Beijing-Rule No. 22.1, Riyadh-Guideline No. 58, No. 9 of the Recommendation Nr. R 87 (20) and Recommendation Rec (2003) 20 No. 21 – demand that all persons who are involved at any stage of the juvenile criminal procedure be specialized, and this includes public prosecutors and police officers. Moreover, Beijing-Rule No. 12.1 states that "police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose."

As is already indicated in *Table 2*, the problem of properly implementing the aim of specialisation of persons who are party to the preliminary proceedings becomes clear. Predominantly, such specialisation is envisaged not only for the competent courts and judges but also for youth prosecutors and police officers. The investigating judges in those countries in which they exist are also youth judges.

Again, in this context as well, the provisions that govern the specialisation of youth justice staff are not legally binding, i. e. such specialisation should occur, without there being an actual legal obligation. In *Table 2* above, where the term "youth" is in brackets, it is implied that in that country respective demands have been voiced or are already provided in theory. However, there is a clear trend in larger cities and urban centres, especially more recently in the Eastern European countries, of establishing special branches or initiatives for specialisation. In any case, here the same question applies as regarding youth judges: namely to what extent theory and practice are in concordance with each other, and to which degree the (infra-)structural requirements for implementing these provisions are available.

No form of specialisation is requested in *Denmark*. Yet those persons who are involved in cases of 15 to 18-year-old suspects shall nonetheless observe the

respective legal particularities for this age group.[12] Up until their abrogation in the wake of the political turn-around of 1989, *Romania* was endued with specialised youth prosecutors. In the meantime, though, efforts to introduce further training and skill enhancement courses for public prosecutors and police officers have re-emerged there.

In *Kosovo* specialized youth prosecutors as well as juvenile courts recently have been established. *Ukraine* does not provide juvenile prosecutors, which is however not entirely surprising as there are no youth courts there either. On the other hand, the criminal militia personnel who are involved in the investigation of juvenile cases are in fact specialised in issues relating to children and juveniles.

Speaking more generally, one can conclude that the countries of Europe are endeavouring to put the principle of specialisation into practice. What counts most is that, even where full implementation thereof is not yet possible, or where respective further training is not yet available, those persons who are actively involved in juvenile criminal proceedings in many cases are aware of the important role that they play in responding to juvenile offending.

2.5 Lay judges

In most European countries laypersons are involved in juvenile criminal procedures. Regularly, though, this practice merely mirrors the composition of general adult criminal courts in a country, and thus should not be seen as a special legal provision for juvenile offenders. Rather, the involvement of lay judges predominantly occurs in more severe cases for which the competence of a judge sitting alone is no longer sufficient.

The only countries not to envisage the composition of the court to include laypersons – neither in adult nor in juvenile criminal cases – are *Greece*, *Romania, Turkey* and the *Ukraine*. In addition, the youth court in *Cyprus* consists only of a single judge.

There are two ways in which laypersons can be involved in criminal justice procedures, as a lay judge/lay assessor, or as a juror. The majority of laypersons in Europe are active as lay judges/lay assessors. It is regular and common European practice for a professional judge to be accompanied by two or three lay judges. Especially serious cases can be tried by jury in *Denmark*, *England/ Wales*, *France*, *Ireland*, the *Netherlands*, *Russia* and *Scotland*.

Another commonality between lay judges and jurors is that their participation in juvenile criminal proceedings is regularly limited to the main trial. Lay judges/lay assessors decide on both the issues of guilt and sentencing,

12 In *Sweden* it is slightly similar. Even if there are no youth courts in *Sweden* but there exists a kind of youth prosecutor in the Public Prosecution Service. So some prosecutors are responsible all or part for juvenile offenders.

on an equal footing with the professional judge. In jury courts, however, the question of guilt is decided by the jury, while sentencing the offender lies only in the hands of the judge. The only exceptions to this general point of involvement are *Hungary* and *Italy*, where laypersons (in *Italy* called "honorary judges") already play a role in the so-called "preliminary hearings" that are held between the preliminary proceedings and the main trial. Their participation at this point is probably due to the fact that the preliminary hearing is the most important stage of the proceedings, at which decisions need to be made that concern the further course of an entire case.

The main difference to general penal jurisdiction predominantly lies in the number of lay judges who are involved, but more importantly also in the fact that they should be selected from the ranks of teachers or educators, i. e. that they should be persons with certain knowledge and experience in dealing with juveniles and their upbringing. Incorporating laypersons with a background in the education and upbringing of young people contributes to providing a criminal procedure that is aligned to the particularities of youth. This approach is followed in *Austria*, *Bulgaria*, *Croatia*, *France*, *Germany*, *Italy*, *Kosovo*, *Northern Ireland, Poland*, *Portugal, Serbia*, *Slovenia* and *Switzerland*. In *Bulgaria*, where specialised professional judges are not involved, the participating lay judges should be educators or teachers who have children of their own (albeit without any mention of the latter in the law).

Accordingly, this requirement does not exist in those countries in which only general criminal courts are competent. Again, *England/Wales* is worthy of mention in this context, where the Magistrate's Court is always only composed of three lay judges of whom no form of specialisation is required.

In some countries, a layperson's history of experience with educational and juvenile issues is not the only point of interest. Rather, some jurisdictions require that both genders be represented among the involved lay judges. This approach is meant to let the court better resemble the "normal" family structure, while at the same time minimizing room for bias and providing equal opportunities (see *Austria*, *Croatia*, *Germany*, *Italy*, *Kosovo* and *Serbia*).

2.6 Further aspects

Austria (since 2001), *Croatia* and *Germany* are the only countries in Europe to try cases of young adult offenders in youth courts. Similar provisions that were introduced in *Spain* in 2000 were swiftly abrogated again in 2006. Although the vast majority of countries represented in this volume do not allow for young adults to be dealt with in the youth court system under juvenile procedural law, the majority of them do in fact provide at least some special provisions for this age group, for example mitigations, or the applicability of juvenile justice sanctions or measures to young adults (see *Dünkel/Pruin* in this volume). One frequently recurring provision concerns the enforcement of sentences in cases of

persons who were juveniles at the time of the offence, but who are young adults at the time the sentence is enforced i. e. who become young adults while serving their sentence.

In the majority of countries, cases in which a juvenile offends in complicity with an adult, and in which the exceptional combination of both procedures is deemed necessary, are tried before adult criminal courts. This also applies in Poland for example, where it is usually the family courts that are competent for dealing with juvenile offenders. *Germany* and *Ireland* are the only countries in which such cases are principally tried before the youth court.

A topic that is highly significant in the context of juvenile justice and youth court jurisdiction is the possibility in some countries – for instance *Belgium*, *Poland*, and in exceptional cases *Northern Ireland* – to transfer juvenile cases to adult criminal courts. The *Dutch* approach of enabling the youth court to apply adult criminal law in certain cases is also relevant in this regard. In *Ireland* cases that belong before an adult court can be tried in the children's court, and subsequently referred back to the adult court for sentencing (for more details on the transfer provisions in European jurisdictions, see *Pruin* in this volume).

Bulgaria and *Estonia* are two positive examples of transfer policies that go in the opposite direction. There, referrals away from the penal courts to local youth commissions or boards are prioritized, an approach that shall be highlighted more closely in the course of this report. Current developments are oriented towards an expansion of such preventive possibilities. However, less efforts are invested in the further development of the formal youth court jurisdiction.

In principle, the juvenile's age at the time of offending is decisive in all countries, notwithstanding that in some countries (for example *Croatia*, *Ireland*, *Kosovo*, *Latvia* and *Serbia*) the offender's age at the time of the proceedings determines whether the general penal provisions are to be applied, especially in regard to sentencing and applicable sanctions. This latter regulation was abolished in *Romania* with the reforms of 2006. In *Kosovo* and *Serbia*, persons who have turned 21 cannot be tried for offences that they committed when they were 14 or 15 years old.

3. Involvement of the legal guardian or legal representative

A further particularity of juvenile criminal procedure is the involvement of legal guardians and legal representatives. On the one hand, these participatory rights as well as other procedural rights serve to protect and support the interests of the juvenile. On the other hand, their right to participate in the proceedings already arises from their parental and educational duties to raise and care for their child. Consequently, the involvement of parents and/or legal guardians in the procedure usually ceases once the juvenile has turned 18 years of age, even if this occurs after proceedings have been initiated, i. e. mid-procedure. Apart from providing their children with support, the parents also play a significant role in

the gathering of information on the juvenile's personality and background, because they are likely to know their offspring better than anyone else in this regard.

Accordingly, Art. 5 CRC calls for the rights of parents or other persons, who are legally responsible for a young person to be respected. Art. 40 (2) b) iii) CRC demands that a parent or legal guardian be present during the procedure, especially at the main trial or when the verdict is spoken, unless this is not in the best interest of the child. Rule 7.1 of the Beijing Rules specifies the juvenile's right to having a parent or legal guardian present at all stages of the proceedings. Furthermore, Beijing-Rule No. 10.1 requires that the juvenile's parents or legal guardian be immediately notified of his/her apprehension. Beijing-Rule No. 15.2 entitles the parents to participate in the proceedings, and states that they may be required by the competent authority to attend them in the interest of the juvenile. Their participation may, however, also be denied if this is deemed necessary for meeting the interest of the child. Riyadh-Guidelines No. 11-19 acknowledge the important role of the family, and that its rights and functions are to be regarded. The parents' or legal guardian's right to be present throughout the entire procedure, including police questionings, and their entitlement to be informed without undue delay are emphasized in No. 8 of Recommendation Nr. R (87) 20, an instrument that serves to strengthen the legal position of juveniles. Furthermore, No. 10 of Recommendation Rec (2003) 20 states that parents or legal guardians should attend court proceedings unless it is considered counter-productive and, where possible, be offered help, support and guidance. Rec (2003) 20 goes further than the other relevant international recommendations and guidelines by stating that parents should be encouraged to become aware of and accept their responsibilities in relation to juvenile and child offending. Also, parents should be required to attend counselling or parent training courses where appropriate. Finally, No. 14 of Recommendation Rec (2008) 11 demands that due account be taken of the rights and responsibilities of parents and legal guardians throughout the entire procedure.

As can be taken from the national reports in this volume, it appears that the involvement of parents or legal guardians has a role to play in each country. Generally, they are to be informed of any preliminary proceedings or investigations that are initiated, or more importantly of the apprehension or arrest of their child. Another recurring theme within European juvenile justice appears to be that parents/legal guardians are granted the opportunity to actively participate in any hearings in which their children are involved. Thus, in nearly all countries, except where they are accused of complicity, the parents of young offenders are already involved very early on. One prominent exception in this regard is *Bulgaria*, where the parents are informed only towards the end of the preliminary proceedings, at a time where charges will have already been filed, or the decision on whether or how to proceed further has essentially already been made. However, in *Bulgaria* both the parents and the juvenile are entitled to

access the records, a privilege that is only rarely granted to parents and suspected juveniles in Europe. The *Polish* approach to involving young offenders' parents in the proceedings is also uncommon in Europe. During the investigatory proceeding, which are conducted by a family judge, the parents are required to be present at any questionings or hearings by the police, which is however rather the exception than the norm. Also, in order for the police to be competent for questioning a juvenile suspect, the matter at hand has to concern the commission of criminal offences (and not "merely" signs of demoralisation). Moreover, the parents can attend the proceedings as well as appoint for their child the legal defence counsel.

In *Austria* and *Germany*, among other countries, a juvenile suspect can even insist that his/her parents or legal defence counsel be present, although in practice the police do not always inform juveniles about these rights.

More extensive parental participation is desired in *Belgium*, especially in the context of family group conferences. On the other hand, in *Belgium* the parents of young offenders can receive a caution or warning, or be required to undergo counselling or parenting training courses. A similar state of affairs can be observed in *Ireland* and *Northern Ireland*. There, the parents are obliged to attend police questionings if these were preceded by a formal arrest. Furthermore, their presence is required where warnings are issued against their children, and even more so at youth conferences. The *Scottish* Children's Hearings System also envisages the participation of parents or guardians. Thus, youth conferences or similar hearings require parents to actively participate and – like their children – to assume responsibility for the behaviour their children have exhibited.

In *Russia*, parents are accorded the right to access the records of the case, along with other extensive participatory rights. At the same time, they can also be obliged to pay fines or to ensure that their child does so. Along with *Bulgaria* and *Russia*, the right to access records is also provided in *Hungary*.

Parents who are present at the questioning in *Croatia* and *Slovenia* are entitled to make constructive proposals and suggestions, and to ask their own questions. Parental cooperation is also an element of the *Serbian* diversion procedure. In *Slovakia*, any agreements on guilt or punishment require the respective parent's or guardian's approval.

In *Switzerland*, the parents are to be heard during the preliminary proceeding, while in *Portugal*, for example, the imposition of preliminary measures or the dismissal of a case requires a prior hearing of the parents. The Portuguese authorities specially emphasise the involvement of parents on each stage of juvenile prosecution, court trial and even during the execution of sanctions. *Polish* legislation states that either the parents or a lawyer should be present when a juvenile is questioned by the police. Parental attendance is also requested in *Cyprus*, however, one should bear in mind that the Cypriot juvenile justice system only caters for juveniles aged between 14 and 16.

England/Wales on the other hand recommend that parents attend the trial. However, this is not imperative. At the same time, courts can impose so-called parenting orders, or bind the parents of young offenders over. In *Romania*, participatory rights and attendance obligations only apply in cases of juveniles aged under 16.

In *Italy* the presence of parents is expected and requested by Art. 7 of the Juvenile Criminal Procedure Law (DPR No. 448/88). The notification to the parents is mandatory. In this way, parents (or guardian persons) are called up to their responsibilities in relation to the minor defendant. An active presence is requested during all the stages of the trial.

In summary, in some countries the combination of rights to information and participation in the preliminary proceedings can in fact result in their attendance becoming compulsory. In *Belgium* and *France* (since 2002), parents who fail to attend can receive an administrative fine. In *Ireland*, in cases of parental non-attendance, the proceedings can either be continued regardless, or they can be adjourned and a warrant of arrest is issued. In *Ukraine*, the parents are obliged to attend the proceedings and are to be involved whenever a juvenile under the age of 16 is questioned. In the remaining European countries parental attendance and participation are merely a right, and not a duty or an obligation.

Further entitlements and rights include the right to appoint an attorney (as is the case for instance in *Germany*), the right to have the last word at the trial, and the right to file legal remedies. Generally, these rights also apply to the suspected juvenile as well, and are thus extended to cover the parents, too. Some countries also provide rights or entitlements to ask questions.

Another noteworthy issue that can be observed in several European countries is the possibility of placing a juvenile under the supervision of his/her parents as an alternative to pre-trial detention or other forms of preliminary placements.

As an overall observation, in all countries the involvement of parents/legal guardians is intended to be in the interest of protecting the juvenile suspect. Additionally, many countries have extended the scope of procedural rights and safeguards so that they also apply to the juvenile's parents, and not just to the young offender. Parents are obliged to attend at least the main hearing in *Belgium*, *France* and *Ireland* and are required to assume a more active participatory role in the framework of youth conferences or hearings especially in *Belgium*, *Ireland*, *Northern Ireland* and *Scotland*. Thus, basically all countries are more or less in concordance with European and international guidelines in this regard, the only minor exceptions being *Bulgaria* and *Romania*, for reasons already stated above.

Legislation in *Belgium* and *England/Wales* provides the possibility for parents of juvenile offenders to be punished in certain circumstances, and a certain degree of parental "responsibilisation" can also be observed in *France* and *Russia*. This can be seen as being at least partially in line with the new approach of Recommendation Rec. (2003) 20.

4. Involvement of social welfare institutions

One commonality among all European countries, at least from a legal-theoretical perspective, is the great degree of attention that is accorded to the offender's personality, personal development and social environment in criminal proceedings and in determining the most appropriate sanction. Most commonly it is the (juvenile) judge who is responsible for gathering and factoring this information into the decision-making process. However, the public prosecutor or another authority competent for conducting the preliminary proceedings should at least consider these data in their decisions, especially when the issue of suspending or closing proceedings is at hand.

Obtaining information on the juvenile's living and social circumstances is demanded in Art. 3 (1) CRC, Beijing-Rules No. 1.6 and 16.1, to a certain extent in No. 9 of Recommendation Nr. R (87) 20 and in Recommendation Rec (2003) 20. Incidentally this demand is also represented in the call for the juvenile's welfare to be observed, a request that cannot be met satisfactorily without having prior knowledge of these factors.

In most countries, the involvement of welfare agencies or persons with knowledge and experience in social work, education science or psychology is mostly provided as early as at the stage of the preliminary investigational proceedings.

Regularly, these authorities or persons have the task of providing young offenders with support (also during trial) as well as drafting reports on the offender's personality, family/social background and evaluations on the adequacy or necessity of certain sanctions in each individual case. In general, they are also responsible for the implementation of certain interventions and measures and the aftercare support to promote social integration.

A large number of European countries involve youth welfare organisations or youth court services or the probation service. Which persons or agencies become active in which country can be taken from *Table 3*. Despite differences in nomenclature, the tasks and functions with which the respective bodies are endowed are nonetheless very similar.

One factor that is worth to be stressed is the organisational affiliation of the respective welfare agency of a country. In *Belgium*, *Greece*, *Hungary*, *Ireland*, *Northern Ireland*, *Portugal* and *Switzerland* the youth court services are within the Ministry of Justice and are under the supervision of the juvenile judge. The *French* "*services éducatifs auprés du tribunal*" on the other hand are affiliated with the youth protection agency, but their members of staff are officially employed by the Ministry of Justice.

In *Italy*, already in social services dealing with juvenile offenders were transferred to the local authorities (municipalities) as is the case in *Germany* and many other countries.

The *Greek* approach is particularly interesting in that the youth court service representative has the right to refuse to give evidence, which is beneficial for gaining the juvenile's trust. To what extent this right is or can be exercised is, however, questionable.

In contrast, in the other countries the welfare agency or probation service belong to the youth welfare services, or in a further dimension to the Ministry of Social Affairs, an organisational approach that helps to exemplify the interconnectedness of criminal law and youth welfare law. In *Serbia* and *Slovenia*, the youth judge can exceptionally devolve the task of gathering background information on the juvenile's social and personal circumstances to one of the court's resident social workers.

In *Turkey*, compiling such information is normally the task of specialist social workers who are attached to the courts. The scope of action of the Social Services and Child Protection Institution are children in "need of protection", i. e. minors who are alleged to have committed a crime.[13]

Turning the attention to the situation in *Kosovo*, one firstly needs to keep in mind that a probation service was introduced only a few years ago. Its functions most prominently cover the provision of support in issues of probation in cases in which prison sentences are imposed. This in connection with the general novelty of such a service in *Kosovo* helps to explain the small number of probation officers with special training in juvenile-related matters. Rather, the current state of affairs has probation workers "learning by doing". In certain circumstances the so-called Guardianship Authority is drawn into the proceedings, an agency that is comparable to social services at the local (municipality) level in other countries.

In *Poland*, the Family Diagnostic-Consultative Centre is involved, however, mostly only where more profound diagnoses are required. For the rest, the family judge is responsible for gathering all relevant information, but can request support from the police and the probation service.

In this context, mention needs to be made of different strategies within Europe that apply a multi-agency approach, for example the Youth Offending Teams in *England/Wales*.[14] In *Bulgaria, Estonia* and *Northern Ireland*, the involvement of welfare agencies is coordinated differently, because many cases are settled by the juvenile committee or a special coordinator at the youth conference. These teams or committees are composed of representatives from various different agencies, authorities and services, and always include at least one social worker or social pedagogue.

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13 Children who are accused of committing a crime are never called with terms used for adult criminals. They are called "children dragged into crime" and are considered as children in need of protection, see *Sokullu-Akinci* in this volume.

14 See also *Bottoms/Dignan* in *Tonry/Doob* 2004, p. 77 f.

Just *Latvia*, *Lithuania* and *Russia* only prescribe the involvement of a pedagogue or a psychologist. However, these persons are also able to remark on the accuracy and integrity of the investigation report. Also, in the *Ukraine* it is considered necessary for a pedagogue to be present where a juvenile under the age of 16 is questioned. The task of determining the suspect's personal situation and circumstances can also be delegated to the criminal militia or the so-called Agency for Matters Involving Minors. What needs to be borne in mind at this point is that, in the *Ukraine* a first draft law has been drawn up that aims to establish a probation service, whose functions and tasks would also include the collation of personal background information in cases of juvenile offenders.

One highly interesting legal provision can be found in the *Romanian* legislation. Failing to comply with certain special regulations, for example if the probation service's investigation report on the personal circumstances of the suspect is missing, can result in the entire procedure being voided. This is at least the picture that is painted in theory – whether or not this regulation is abided by in practice is not known.

One noticeable element in European juvenile justice that can be observed in most countries is that more and more persons are becoming involved from the beginning to the end of juvenile (criminal) procedures. As already stated above in connection with *English* Youth Offending Teams, this is often referred to as a multi-agency-approach, an approach that is most prominently postulated and backed by Recommendation Rec (2003) 20 of the Council of Europe, as well as by No. 15 (and therefore a "Basic Principle") of Recommendation Rec (2008) 11. The pivotal element of such an approach is effective and good communication/ collaboration between the various involved agencies and bodies, which is essentially the key for being able to meet the needs and support the welfare of the juvenile.

Table 3: Involvement of welfare agencies

Country	**Competent agency involved**
Austria	Youth Court Service
Belgium	Social Service of the Youth Court
Bulgaria	No special authority or delegate; but attendance of educators/pedagogue at questioning; note: juvenile delinquency committee
Croatia	Centre of Social Care
Cyprus	Social Welfare Service
Czech Republic	Youth Welfare Service

Country	Competent agency involved
Denmark	Child Welfare Service
England/Wales	Youth Offending Teams
Estonia	No special authority or delegate; note: Juvenile Committee
Finland	Probation Service; but cooperation of the Police etc. with welfare authority as well
France	Youth Court Service (*services éducatifs auprés du tribunal*)
Germany	Youth Court Service
Greece	Youth Court Service
Hungary	Probation Service
Ireland	Probation Service
Italy	Social Service (in connection with Youth Court)
Kosovo	Probation Service
Latvia	No special authority or delegate; but attendance of a teacher or psychologist at questioning
Lithuania	No special authority or delegate; but attendance of a delegate of the Children's Rights Protection Agency or psychologist at questioning
Netherlands	Child Care and Protection Board
Northern Ireland	Department for Social Service
Poland	Family Diagnostic-Consultative Centre and Probation Service
Portugal	Social Service of the Ministry of Justice
Romania	Probation Service
Russia	No special authority or delegate; but attendance of a pedagogue or psychologist at questioning; obligatory for minors below 16 years of age
Scotland	Local criminal justice social workers
Serbia	Guardianship Authority
Slovakia	Youth Welfare Service
Slovenia	Social Welfare Agencies (called Centres for Social Work)
Spain	so called Social or rather Technical Team

Country	Competent agency involved
Sweden	Local Welfare Authorities
Switzerland	Social Service of the Youth Court
Turkey	Social workers of the Youth Court; Social Services and Child Protection Institution
Ukraine	No special authority or delegate; but attendance of a pedagogue at questioning of a minor aged under 16 years; possible involvement of a delegate of the criminal militia for minors or of the Agency for Matters Involving Minors as well

5. Mandatory defence counsel

The right to consult an attorney is elementary to any legal proceedings. Due to the consequences that criminal proceedings can have, appointing a defence attorney becomes all the more relevant. Accordingly, the consultation of a criminal defence lawyer is possible in all countries, without exception. The crucial question is if and under what circumstances an assigned defence counsel is to be provided. Particularly if the juvenile is not confessing the crime the appointment of a defence counsel should be mandatory.

This right has only been introduced relatively recently in some countries – for instance in *Turkey* in 1992,[15] in *Belgium* in 1994 and *Portugal* in 2001 – which can be linked to the overall juvenile justice approach that is followed there. Welfare-oriented systems respond to juvenile offending in an educational rather than a criminal justice framework, so that there has been very little demand for legal defence.

One question of particular significance concerns the requirements for mandatory defence. Another question is if mandatory court-appointed defence is provided to a greater extent than for adults. There are significant differences between the countries in Europe in terms of when legal defence becomes mandatory. Legal defence is especially important in cases of juvenile offenders due to their need of protection and in that an attorney can assist a juvenile in preserving or even identifying the rights to which he/she is in fact entitled. Having said that, legal counsel is unlikely to be considered necessary for every single minor case. Also, it needs to be kept in mind that the protection and support of juvenile suspects are already addressed by the involvement of parents

15 In 1992 exclusionary rules and right to a defence counsel were introduced into the *Turkish* Criminal Procedure system. For minors the defence counsel became obligatory.

and the youth court (welfare) services. Appointing a defence counsel becomes imperative where a juvenile is facing or already serving pre-trial detention.

Mandatory legal defence for the full duration of youth justice proceedings is a popular approach especially in Eastern European countries, for instance *Bulgaria*, *Estonia*, *Latvia*, *Lithuania* and *Ukraine*. *Russia* is an exception in the sense that the appointed person does not have to be a lawyer. A close relative could also be approved. In *Poland*, there are two different procedures, and mandatory representation is only necessary in "correctional proceedings". The *Romanian* regulations are particularly questionable and conspicuous. On the one hand, legal defence is court-appointed if the minor or his parents have not chosen a legal defence counsel on their own. However, in each step of the procedure the appointment of a different defence counsel is possible because of the internal organisation of the Bar; so it can occur that the juvenile is confronted and has to collaborate with numerous lawyers. It seems that in these countries which have no independent youth courts or youth judges (see *Table 1* above), the regulations for a mandatory legal defence counsel aim to provide the juveniles with appropriate protection. The *Czech Republic*, *Finland*, *France, Hungary*, *Kosovo*, *Serbia*, *Slovakia*, *Spain* and *Sweden* also require the participation of a defence attorney – who is court-appointed where necessary – from the beginning of the procedure.

In *Croatia*, *Ireland, Portugal* and *Slovenia* a defence counsel can be applied for if the juvenile or his/her parents cannot afford the costs of a privately appointed legal representative. However, in *Ireland* such an application is only approved if a case in fact goes to court, while in *Croatia* and *Slovenia* the offence in question has to be punishable with more than three years of imprisonment, or the judge has to consider court-appointed defence as being necessary.

A prominent feature in *Northern Ireland* is the fact that the young person can be accompanied by a defence counsel in the youth conference. However, the role of this legal representation is merely limited to guidance, advice and consultation. For instance, the lawyer cannot speak for the juvenile, which can be attributed to the concept of conferencing itself. Should the parents of a juvenile who is referred to court be unable to afford a self-appointed attorney, the court shall (like in *Ireland* as well) appoint a defence counsel instead.

The situation in *Greece* is quite interesting. Regulations on mandatory representation are practically irrelevant because legal defence is only mandatory when a juvenile is charged with a felony offence. However, the law regularly only views offences by young people as misdemeanours.

Some countries in Europe only consider the appointment of legal defence to be necessary for cases that go to trial, i. e. legal defence is not considered to be necessarily required during the preliminary proceeding. Examples besides *Ireland*, as mentioned above, include *Belgium*, *Scotland* and – only in cases of prosecutions before a court of lay assessors or a jury court – *Denmark*.

In *Austria* and *Germany*, defence counsels are appointed by the courts in certain specific cases or when it is deemed necessary based on the individual case at hand. There, like in most other countries as well, the legal regulations are further-reaching than those provided in adult criminal law.

The situation in *Cyprus* is rather unclear. In *Turkey* legal defence can be appointed without a juvenile suspect having to file a respective request. However, further concrete regulations within the Child Protection Law are still lacking, and all available indications stem from the general Code of Criminal Procedure.

Swiss regulations on the consultation of a defence attorney list numerous cases in which an appointment is mandatory: cases of severe offending; when both the juvenile and his/her legal representatives are clearly incapable of defending themselves or their child; when a juvenile suspect has been in custody for more than 24 hours; when preliminary placement measures are being considered (similar regulations exist in *Germany*). The latter case can be viewed as being rather questionable, especially when all involved parties, including the juvenile and his/her legal representatives, agree with such a preliminary measure, which in *Switzerland* is in fact not entirely rare. If an attorney is nonetheless appointed in such cases, the parents can be obliged to contribute to the subsequently arising expenses, even though they were not in need of such support. Indeed, the federal legislator intended the sharing of these costs to be facultative and dependent on the family's income. However, implementation at the cantonal level envisages these provisions as obligatory.

How the issue of costs is resolved in the other countries cannot be precisely clarified at this point. Frequently, juvenile offenders are not required to cover procedural expenses, which in turn include any costs that arise from court-appointed legal counsel. As has already been indicated, courts often only appoint defence attorneys when the suspect or his/her family have insufficient means to consult them themselves.

The situation and qualifications of the legal defence counsels themselves are rather difficult to assess, with only few national reports making any reference to this issue. In those countries that did provide such information, *Serbia* and *Italy* for example, in part special knowledge and experience in working with young people is a requirement. There, the defence counsel is more than just the counterpart to the public prosecutor.

In part, such requirements are deliberately abstained from. Where special knowledge is requested, it is mostly in the context of "should"-provisions, rather than binding regulations. In *Northern Ireland*, for example, the so-called solicitors are normally specialised in criminal and juvenile justice law, even though this is not an explicit requirement. Specialised attorneys can also be found in *Portugal*.

Contrary to this, many countries justify the dispensability of professional specialisation with the functions and tasks to which defence attorneys attend.

Still, having knowledge of the principles of juvenile criminal procedure is unlikely to be viewed as superfluous in these countries. Otherwise, it would be challenging to provide juvenile clients with effectively designed and proper legal defence.

Lately two perspectives have emerged: the first is in favour of mandatory defence, or rather of extending its scope of application, due to the inexperience of juveniles, irrespective of whether or not the defence attorney is specialised. The second perspective is opposed to this idea, or rather is in favour of restricting mandatory defence to only those cases in which it is considered very necessary. What seems to be important in any case is that the concerned juvenile is informed in detail and comprehensively about his/her right to legal defence immediately at the beginning of the procedure.

The right to legal aid and the possibility of consulting self-appointed defence counsels are fundamental elements of fair proceedings that are in accordance with the rule of law. It is therefore not surprising that European and international recommendations and standard minimum rules accentuate this right, for instance Art. 37 d) CRC concerning deprivation of liberty, Art. 40 (2) b) ii) and iii) CRC from a more general perspective, Beijing-Rules No. 7 and 15.1, which also highlight the allocation of free legal aid where there is provision for such aid in the respective country, and No. 8 of Recommendation No. R (87) 20 on social reactions to juvenile delinquency.

6. Protection of the juvenile and his/her privacy; prevention of stigmatisation

The protection of juveniles and particularly of their privacy is a further fundamental principle of juvenile criminal procedure. Many countries put the juvenile's right to the protection of his/her privacy into effect by closing the proceedings to the general public, a strategy that is closely associated with the notion of social reintegration and the prevention of unnecessary stigmatization. The theoretical footing of this approach is labelling theory, according to which inessential embarrassments and humiliations in (formal) procedures are to be abstained from. This can be achieved by reducing the number of people who are entitled to attend the main hearing or trial to a minimum.

Due to its enormous significance, the protection of a juvenile's privacy is explicitly addressed and emphasized in European and international recommend-dations and standard minimum rules. Reference can be made, for instance, to Art. 16 and 40 (2) b) vii) CRC, Beijing-Rules No. 8.1 and 8.2, which also clearly state the prohibition of publishing information that may lead to the identification of a juvenile offender, No. 8 of Recommendation No. R (87) 20 and No. 16 of Recommendation Rec (2008) 11.

If we turn our attention to the question of which countries exclude the general public from juvenile (criminal) proceedings (see *Table 4* below), and which do not, it is noticeable that just over half hold juvenile proceedings in camera, while adult proceedings in the same country are open to the public. Public access is granted to adult criminal procedures in all countries that are covered in this volume. What needs to be borne in mind is that the notion of public hearings itself is a crucial element of the rule-of-law principle that is seated in Art. 6 ECHR. However, due to the widespread perception that young offenders need to be accorded a special degree of protection, it has become accepted practice to exclude the general public and the media from cases involving juvenile suspects.

Focussing on those countries that exclude the public from juvenile (criminal) proceedings, certain differences can be observed. On the one hand, the exclusion of the public frequently also covers the rendition of judgement in a case. In *Bulgaria*, the *Czech Republic*, the *Netherlands* and *Romania* the final judgement (sentence) is always to be pronounced publicly. This divergence from the more common approach of entirely non-public proceedings is based on Art. 6 (2) al. 2 ECHR which stipulates that renditions of judgement be open to the public. *Greece* is an exception in this regard – whether or not the general public is granted access to the pronouncement of judgement is a facultative decision.

On the other hand, differences exist in terms of whether juvenile proceedings can be made open to public access under certain circumstances, as is the case in *Germany* if an offence has been committed in complicity with an adult or young adult offender.

The remaining countries (see *Table 4* again) all abide by the principle of public hearings in juvenile cases. What becomes apparent here though is that, aside from general grounds for excluding the public, being of juvenile age or the juvenile's interests that are particularly in need of protection, special grounds are often considered upon which to base the non-publicity of a case, so that consequently the proceedings can in fact be held in camera. However, in *Austria* and *Portugal*, even where such exceptional grounds exist, the rendition of judgement shall always be open to the public. In *Italy* and the *Ukraine*, the public is always to be excluded in cases of defendants aged under 16 years.

Accordingly, all countries provide for certain special arrangements. The main difference lies in whether or not juvenile proceedings are public or non-public from the onset.

The protection of young defendants' privacy plays a considerable role in *Turkey*. One question in this regard is, however, whether this only implies obscuring the juvenile's identity, or whether the principle of non-public proceedings is also covered.

The existence of juvenile courts in a country is no clear guarantee for the non-publicity of proceedings. For instance, proceedings before the youth courts in *Austria, Belgium*, *Portugal* and *Spain* are generally open to the public. By

contrast, with the exception of the single youth court in *Brasov*, juveniles in *Romania* are tried before ordinary criminal courts, however without public access being granted except for the rendition of judgement. In the *Romanian* system, the non-publicity of hearings provides the juvenile with a certain degree of protection and in a sense serves to compensate the application of many of the general criminal procedure regulations (nevertheless, at least some special regulations for juveniles exist within the Criminal Procedure Act, see Art. 480-493).

At the same time, the principle of providing protection and preventing stigmatisation also has an effect on the publication of information and data in the media. Media coverage of juvenile proceedings is widely restricted in Europe, most prominently in that the juvenile's privacy is to be protected by prohibiting the publication of names or other information that could be used to identify a defendant. This latter approach to avoiding unnecessary humiliation, identification and exposure is common to all countries covered in the present study.[16]

Table 4: Principle of non-publicity of juvenile trials

Principle of non-publicity (but possibility of public access in particular cases)	**Principle of publicity** (but possibility of exclusion due to the offender's age or educational reasons)
Bulgaria (judgement public)	Austria (since 2001 no exclusion possible for judgement)
Croatia	Belgium
Cyprus	Denmark
Czech Republic (judgement public)	Estonia
England/Wales	Finland
France	Hungary
Germany	Latvia
Greece (non-publicity of judgement is optional)	Lithuania
Ireland	Portugal (judgement always public)
Italy	Russia
Kosovo	Slovakia
Netherlands (judgement public)	Spain
Northern Ireland	Sweden

16 It should be mentioned that especially in England/Wales since some years there are, however, discussions in this respect. The idea of "naming and shaming" is not unpopular at all, see *Graham/Moore* in *Junger-Tas/Decker* 2006, p. 71; *Herz* in *Albrecht/Kilching* 2002, p. 100 ff.

Principle of non-publicity (but possibility of public access in particular cases)	**Principle of publicity** (but possibility of exclusion due to the offender's age or educational reasons)
Poland Romania (judgement public) Scotland (in any case the Hearing) Serbia Slovenia Switzerland Turkey	Ukraine (but exclusion in principle for minors under 16 years of age)

The protection of privacy is addressed not only by restrictions of public access to proceedings, but also by special legislative provisions on the registration of offences. In *Austria*, *Belgium*, *Denmark*, *Finland*, *France*, *Germany*, *Greece*, *Ireland*, *Italy*, *Latvia*, *Portugal*, *Spain* and *Switzerland* limitations are in place that curb obligations to disclose past convictions, the accessibility of criminal records for future reference in later proceedings, that entail more lenient periods of limitation and which draw the requirements for an offence to be registered more narrowly. The exact form of such provisions varies significantly from country to country. However, the overall approach is clear. Contrary to these protective regulations, there is the not entirely unproblematic requirement in *England/Wales* for notifiable offences to be registered with a fingerprint, and for all other offences to be registered with the offender's signature.[17]

Going beyond the above mentioned European and international standards for the protection of privacy, Beijing-Rule No. 21 and No. 10 of the Recommendation R (87) 20 provide guidance and direction on the formal registration of criminal offences. No. 12 of Recommendation Rec (2003) 20 recommends that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, unless where the nature of the employment requires this information to be known.

7. Role of the injured party

Another important aspect is the involvement of the victim. The victim is firstly involved in the proceeding by hearing of witnesses and by granting several individual rights of information.

Interestingly, it is often in fact the juvenile offender who is considered to be in need of protection from too much influence being exerted on the proceedings

17 See *Herz* in *Albrecht/Kilching* 2002, p. 93, Fn. 78.

by the victim. In *Italy* and *Germany*, for instance, civil actions and private suits are inadmissible, and only recently in *Germany* joint plaintiffs have been possible in very particular cases. Overall, however, the victim continuously has received more and more attention in juvenile (criminal) proceedings. This refers not only to the many different manifestations of (victim-offender) mediation that have begun to emerge all over Europe, but also includes their involvement in conferences as is the case in *Belgium, Ireland* and *Northern Ireland*. In this respect, the current trend to an increased attention to restorative juvenile justice elements is more than apparent. This course goes hand in hand with the principle of emphasising the importance of assuming responsibility for one's own actions. So in a sense, juveniles are considered to be less in need of protection after all, or rather, the forms of protection and means by which these are to be achieved are in continuous development.

In any case, caution is advised when defendant's rights are constrained on educational grounds, because witnessing that rights are both accorded and respected is an important learning factor for young offenders that should not be underestimated.

One observation that can be made is that in all countries in Europe, forms of compensation, reparation or (victim-offender) mediation play a considerable or at least increasingly important role, regardless of whether they are implemented in the context of suspending or dismissing formal proceedings (diversion) or as forms of obligations or requirements. This especially applies to juvenile offenders. In a sense, juvenile justice can be regarded as a forerunner that leads the way in criminal justice reform. However, implementing such initiatives has turned out to be rather problematic especially in the Eastern European countries. The greatest impediments lay in the current lack of appropriate mediators as well as in the need to generate a broader understanding for the availability and utility of such possibilities among practitioners, judges and legislators. For instance, in the *Ukraine* there is still a lack of detailed respective legal provisions, and mediation is still in its beginnings in *Kosovo* as well. *Cyprus* has yet to introduce mediation-initiatives; however a corresponding draft is currently being debated in Parliament.

Information on the admissibility of private suits, joint plaintiffs and civil actions could only be drawn from a very slight few national reports. In general, however, countries in which these possibilities are available in adult criminal proceedings tend to make them inadmissible or restrict their applicability in juvenile cases. This applies in particular to the first two models.

In contrast, there are some countries, for instance *Estonia*, *Greece*, *Hungary* and *Kosovo* that allow civil claims to be asserted in a criminal procedure. Countries that exclude such civil actions justify this with the argument that a victim will normally not be interested in the educational issues but will be focussed solely on enforcing the monetary claim instead.

The involvement of the victim is naturally at its most intensive in the context of family group or youth conferences.

The role of the victim is currently a highly topical issue all across Europe, both in juvenile justice and in adult criminal law. This high degree of significance is clearly voiced for instance in No. II 1. iii) of Recommendation Rec (2003) 20. Additionally, Basic Principle No. 12 of Recommendation Rec (2008) 11 states, that mediation or other restorative measures should be encouraged at all stages of dealing with juveniles. In a lot of countries corresponding reform considerations are currently being expressed, movements that are based on the notion of restorative justice that is more extensively covered in the chapter by *Pruin* on juvenile justice systems in this volume.

8. Alternative proceedings

Alternatives to formal proceedings also include the possibilities that are available for diverting cases and thus closing procedures in an informal manner, even where such means of diversion involve the imposition of further directives and conditions. First insights into the means of diversion in Europe have already been touched upon earlier in this volume (see the chapter of *Dünkel/Pruin/Grzywa* in this volume).

As already stated earlier, so-called youth commissions or committees play a significant role particularly in *Bulgaria* and *Estonia* in combating juvenile delinquency. It has to be considered that these efforts labeled as "preventive measures" have similar functions to diversion and other alternatives to formal proceedings. Generally, the public prosecutor who is responsible for conducting the preliminary proceedings refers eligible cases to such a committee when he/she considers indictment or punishment to be unnecessary. These committees consist of practitioners who are trained and experienced in the fields of pedagogy, psychology and social work. Their tasks lie in the issuance and enforcement of appropriate non-penal measures (i. e. interventions that are in the remit of criminal law).

The so called Youth Offender Panel in *England/Wales* functions in a similar way. In cases of first-time young offenders who admit their guilt, the judge is obliged to make a referral to this panel, upon which a form of group conference is held that is very much restorative in nature. The responsible authority is the Youth Offending Team.

Furthermore, a kind of juvenile committee exists in *Cyprus*. However, rather than requiring a referral from the court or the prosecutor, this body is involved automatically in certain specified cases and decides itself on whether or not a case should be suspended, albeit with the requirement of the Attorney General's approval. The committee is composed of police officers and representatives of the Social Welfare Services.

Since 2004 and 2007 respectively, judges in *Ireland* have been able to refer cases to a family group conference or "into the care and supervision jurisdiction of the health boards". Furthermore restorative justice initiatives play a decisive role in *Belgium*. Among other things it is the family group conference as well which has become more and more attractive.

Youth conferencing has been in place in *Northern Ireland* since 2002. As a basic principle, all cases are to be referred to such conferences, either by the public prosecutor or by the judge. Thus, the conferencing approach appears to be coming more and more into the foreground.

Youth or family group conferences are characterised in particular by their focus on discussing the exhibited criminal behaviour, on the consequences of the offence and on determining an appropriate response in a relatively informal atmosphere, in which all parties to the conference participate. The substantial preparatory work that such conferences entail is the responsibility of the conference supervisor, who, however, assumes a more passive role during the conference itself. The juvenile, his/her family, the victim as well as other persons who can be supportive of the offender or the victim are entitled to attend and participate in such conferences. The juvenile is expected to assume responsibility, to develop empathy for the victim and to get aware of its suffering. The victim is granted an opportunity to state his/her views and to reflect on the offence, and the closer social environment of both victim and offender are involved as well.

The *Scottish* Children's Hearings System is similar, which is however part of the welfare system and is conducted by three laypersons. Frequently the victim does not participate in these hearings, not least due to the fact that such hearings focus more on clarifying the case at hand and determining an appropriate response to the exhibited behaviour. While the juvenile taking responsibility is also a factor, it is not as strongly emphasized as is the case in conferencing systems. Rather, the best interest of the juvenile is paramount, and is not curtailed by a greater focus on the victim.[18]

Alongside these special procedural models and competences, attention should also be drawn towards the notion of acceleration and the procedural particularities that result from it. The principle of acceleration plays a more central role in juvenile justice procedures than in adult criminal justice. A certain degree of immediacy is necessary so that any responses to offending are associated with the committed act and are perceived and internalized as such. At the same time, speeding up procedures should not be permuted at any cost. Rather, it has to be borne in mind that the appraisal of the offender's personality

18 See for more detailed information on youth conferences in *Northern Ireland* and the Children's Hearings System in *Scotland* the respective national reports of *O'Mahony* and *Burman et al*. in this volume. See also *O'Mahony/Campell* in *Junger-Tas/Decker* 2006, p. 93 ff.; *Burman et al.* in *Junger-Tas/Decker* 2006, p. 439 ff.

and regard for his/her personal development are of fundamental significance, especially regarding appropriate responses to juvenile offending. Extensive investigations of the juvenile's personal and social circumstances should only be left out in cases involving very petty offences.

In all other cases the social and personal circumstances have to be evaluated by social inquiry reports which have to be discussed in the oral hearing. The result of this approach is that summary (written) proceedings or plea guilty proceedings often are excluded in juvenile criminal procedures. Nevertheless, summary proceedings are provided in *Denmark*, *Finland*, *Sweden* and some cantons in *Switzerland*. Fast track plea guilty procedures are possible in *England/ Wales* and since 2007 also in *France*. They have to be differentiated from consensual decision making in conferences or hearings and also from the so-called youth contract in *Denmark* (which is a special form of diversion).

In addition, *Belgium*, *Bulgaria*, *France* (for example *jugement à délai rapproché*), *Germany* (*formloses jugendrichterliches Verfahren* according to § 45 (3) JGG and *vereinfachtes Jugendstrafverfahren* according to §§ 76-78 JGG) and *Italy* (*Guidizio abbreviato*) provide the possibility for accelerated proceedings. The speediness of these procedures is achieved in particular by certain deadlines or by deviating from formal requirements. So for example within the abbreviated court hearing ("*vereinfachtes Jugendstrafverfahren*") it is possible that the hearing will be held in the judge's chamber without robes being worn and without the public prosecutor being present. *England/Wales* and *Scotland* introduced so-called Fast-Track-Hearings in 2002 which are geared especially towards more effectively intervening in cases of persistent young offenders. Whether or not they are in fact effective in preventing reoffending is yet to be empirically substantiated.

9. Summary and final comments

In summary, it should be emphasised that in all European countries court proceedings and procedures in cases of juvenile offenders differ from the general criminal procedure for adults. The degree to which procedures deviate from each other is marginal in some countries and vast in others. They all provide for special procedural rules and regulations – albeit to greatly varying degrees – that accord consideration to the peculiarities and particularities of the phase of youth, and which are based on the general notion of special prevention. Therefore, we can indeed speak of some form of fundamental consensus. International conventions and minimum standards are influential and provide an important framework for the protection of children and juveniles.

In any case, given the differentness of juvenile offending and the necessity of offender-based juvenile justice, the establishment of special youth courts or benches is both essential and sensible. Also, the generation of a juvenile jurisdiction always goes hand in hand with the advancement of constitutional

procedural guarantees and safeguards. As in many countries a large, often the majority of cases is dealt not by court trials but by diversionary procedures (which are more and more extended and appreciated in many respects, see *Dünkel/Pruin/Grzywa* in this volume) the question of specialization must not be limited to the parties of such court trials but also to those involved in the preliminary proceedings.

In principle, it can be said that countries with established youth courts or other special authorities come close to satisfying the European and international guidelines and human rights standards. But what has also become clear is that creating a legislative framework for youth courts is not enough on its own. It is at least equally as important to provide and implement further training and skill enhancement in practice for all parties to the proceedings, including the actors of the preliminary procedure. With regard to the Central and Eastern-European countries there is a clear trend towards specialisation, with first youth court pilot projects having been established in *Romania* and *Russia*. When observing the situation in *Scandinavia*, it needs to be borne in mind that minors under the age of 15 fall solely within the scope of a purely welfare-oriented system. This also affects juveniles aged under 18 – even though they are generally subjects of regular penal courts – as is exemplified in particular by the strong involvement of the welfare authorities and the special sanctions available to the courts.

Therefore, despite the clear and present differences between the different legal systems in Europe, an overall tendency towards specialisation remains plainly visible. Even though the ways in which this tendency is exactly implemented in the practice of each respective country may differ, the basic orientation and fundamental policies indeed show many similarities. The most problematic issue currently appears to lie in the practical implementation of these policies – not only regarding staff-specialisation itself, but also in terms of providing juveniles with special protective rights. The *Baltic States*, *Russia*, *Romania* and the *Ukraine* are also burdened in part by shortcomings in the necessary infrastructural requirements, for instance in the field of socio-pedagogical concepts and services.

The involvement of parents, defence counsels and welfare agencies – all means for providing the juvenile with support – stands in close connection with the principle of specialisation. In addition to such supportive provisions, providing means to protect the juvenile's privacy is equally essential.

The role of the victim is currently a prevailing and ongoing issue. It is in fact already difficult to picture juvenile justice without the instruments of mediation and reparation coming to mind. The conference-systems, which usually involve the victim in some way or another, should be seen as a stimulating orientation for future reform. One positive aspect of conferencing approaches is that they prompt young offenders to reflect on the nature, effects and consequences of their behaviour – especially for the victim – and to take responsibility for their actions. This in turn is beneficial for the social reintegration of both the offender

and the victim. Expressing his/her needs and fears could assist the victim in coming to terms with the offence and leaving the experience behind. Overall, no difficulties were reported to have arisen from differences in the needs of the offender and the victim. Therefore, the involvement of both sets of parents appears to be a significant factor. One downside of the conferencing approach is that the resulting punishments and interventions can lack proportionality and equality when different cases are compared with each other. However, this is nothing special of the conferencing system, but a problem of formal court proceedings, too, as can be shown by the regional and local disparities in sentencing in most countries. Each case is negotiated separately and individually, but this in turn results in different outcomes. Another problem that goes beyond the actual sanction itself is – given the informality of the procedure and the decision-making process within the conference – the issue of each offender receiving a "fair trial". Defence counsels are often not included or intended to attend. Going further still, the initiation of a conference and the subsequent avoidance of formal criminal proceedings require the juvenile's consent, a confession or even a guilty plea. The question that arises from this is what follows if the conference is unsuccessful or if the offender fails to fulfil the requirements of the sanction resulting from a conference? After all, in some countries such breaches result in the young offender being brought before a criminal court bearing a signed confession in hand. In the end, fears of a net-widening or up-tariffing effect have in fact been voiced. However, we should wait for in-depth evaluations of such conferencing schemes before jumping to any conclusions. In any case, transferring elements of restorative justice that "work" in one system into another country is not always a straightforward endeavour.

Intensifications of juvenile justice, or bringing juvenile justice too closely in line with adult law – for example the possibility to transfer juveniles to adult courts and the introduction of fast-track-procedures – should be disapproved as inappropriate. Rather, the practical implementation of the existing legal provisions should be reappraised and improved, both from a procedural perspective and with regards to executing sanctions or measures and the persons and institutions involved in it.

In any case, and more generally speaking, any juvenile (criminal) procedure, especially the main trial or other respective forms of negotiation, has to be comprehensible and understandable. The only way a juvenile can or will learn from the event is if he/she feels to have been treated fairly and understands what is happening, and why. Although the trial and the way of dealing with juveniles during the proceedings will probably have only a limited impact compared to the sanctions imposed and the reactions of the social environment and community, it can be of major importance if it contributes to the acceptance of the trial as being fair and just. Therefore, if a formal criminal procedure is inevitable, every

participating party at the proceedings should do its best to use it as an educational effort and to improve the juvenile's chance for successful social reintegration.

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Sanctions systems and trends in the development of sentencing practices

Frieder Dünkel, Ineke Pruin, Joanna Grzywa

1. Introduction

According to the international standards of the United Nations (for example the so-called Beijing-Rules of 1985)[1] and the Council of Europe (for instance the Recommendation (2003) 20 on "New ways of dealing with juvenile delinquency and the role of juvenile justice") juvenile justice systems typically provide a variety of community sanctions that are less infringing on juveniles' rights, while at the same time being more of an educational and rehabilitative nature than traditional sanctions of the general criminal law. Juvenile criminal sanctions systems are based on the principles of social (re-)integration and the aim of avoiding the deprivation of juveniles' liberty as much as possible (deprivation of liberty as a last resort, *ultima ratio*).[2] Additionally, diverting young offenders from juvenile courts and from possible stigmatisation or other negative effects of more serious justice interventions through the extensive use of informal sanctions is seen (according to the international standards, see for example Rule No. 7 of Rec (2003) 20) as an appropriate way of dealing with less serious crime (see *Dünkel* 2009).

The following chapter focuses both on informal ways of dealing with juvenile offenders at a pre-court (or court) stage (i. e. diversion, informal sanctions after diversionary procedures including restorative conflict resolution,

1 If the offence was committed before the 18th birthday, juvenile welfare measures can be prolonged until the 23rd birthday.

2 For the historical development, see *Jensen*/*Jepsen* 2006, p. 452, see also *Dünkel*/*Pruin* 2009, p. 113 ff. with further references.

mediation etc.) and on sanctions and measures for juvenile offenders which can be applied by a court after a court-proceeding (formal sanctions).

We want to analyse if the sanctioning systems significantly differ in the laws as much as it is to be estimated in the light of the different approaches to responding to juvenile offending[3] (see *Section 2*). Furthermore, the chapter will try – despite of all the difficulties of a comparative study in this field – to identify trends in the sanctioning practices according to the analysis of the 34 national reports (see *Section 3*). Finally this chapter will discuss the question whether or not sentencing of juveniles has become harsher.

2. Sanctions systems in European juvenile laws

The analysis of the country reports shows a large variety of responses to juvenile offenders in each of the European juvenile justice jurisdictions (see *Table 1*). The aim of this plurality is to enable the judge to find a tailored response to each individual case and to give him some flexibility and alternatives to detention. Within the outline for the national reports the participants of our AGIS-project were asked to categorize the different strategies and measures as either "informal" or "formal" sanctions. All sanctions or measures that are imposed by the juvenile prosecutor or by the juvenile judge either at a pre-court level or otherwise without a verdict or a regular proceeding (typically diversionary procedures) are defined as "informal sanctions" (see *Section 2.1* below). "Formal sanctions or measures" are defined as being imposed by a juvenile judge or court during or after a formal proceeding (regularly with an oral hearing). These court dispositions are described under *Section 2.2* below.

2.1 Informal sanctions – diversion with and without interventions

2.1.1 Meaning and definition of diversion

All European countries (in our study) know the possibility of diverting young offenders from trial (see *Table 1*). However, in the course of the present project we have experienced that the term 'diversion' is understood differently from country to country, so first and foremost it should be more closely defined.

Literally, diversion means "the act of turning aside from any course, occupation, or object."[4] In the context of criminal justice, diversion is seen as a headword

3 See *Pruin* in this volume; for a comparison of *Austria*, *Germany*, *Switzerland* and the *USA* see *Ries* 2005.

4 See "Accurate and Reliable Dictionary", http://ardictionary.com/Diversion/7849.

for "decisions, measures and strategies"[5] which aim to avoid formal penal prosecution, trial and sentences.[6] A more concrete definition of diversion can be as follows: Diversion is the dismissal of the case when the offence is of minor gravity and if formal proceedings do not seem to be appropriate. Diversion follows the procedural principle of "expediency" (in contrast to a strict principle of "legality" which obligatorily requires formal proceedings and court decisions in any case) and its main aim is to avoid stigmatization through formal court proceedings.[7] In the European juvenile justice systems different forms of diversion are to be found: Diversion can be unconditional or conditional; it furthermore often means the referral of juvenile offenders to health or social services or to mediation schemes instead of judging them in criminal court proceedings (see in more detail *below*).

Diversion is regularly a decision of the prosecutor at a pre-court level. In many countries diversion can also be adjudicated by the judge, if after an accusation the case seems to be appropriate for a dismissal (e. g. because of reparation efforts by the offender that have been performed in the meantime). In some countries even the police are competent to divert juvenile offenders and therefore to avoid criminal proceedings more or less completely (see in more detail below).

2.1.2. International instruments and theoretical background

Particularly in the field of juvenile justice, since the mid 1980s many international recommendations have emphasised that diversion should be given priority as an appropriate and effective strategy of juvenile crime policy. It has repeatedly been covered in international human rights instruments such as

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (so-called Beijing Rules, see Rules No. 11.1-11.4).

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5 *Koffmann/Dingwall* 2007.

6 For more definitions see *Koffmann/Dingwall* 2007; *Goldson* 2008, p. 147 (Diversion). A wider definition of "diversion" (including alternative/community sanctions and prison avoidance as such) is presented by *Hazel* 2008, p. 48.

7 The second report of the US Advisory Commission on Criminal Justice Standards and Goals in 1973 had defined the term "diversion" as follows: "… the term 'diversion' refers to formally acknowledged and organized efforts to utilize alternatives to initial or continued processing into the justice system. To qualify as diversion, such efforts must be undertaken prior to adjudication and after a legally prescribed action has occurred. In terms of process, diversion implies halting or suspending formal criminal or juvenile justice proceedings against a person who has violated a statute, in favour of processing through noncriminal disposition or means" (*Advisory Commission on Criminal Justice Standards and Goals* 1973, p. 73).

- The Council of Europe's Recommendation on Social Reactions to Juvenile Delinquency of 1987, Rec. (87) 20 (see Rules No. 2 and 3).
- The Convention on the Rights of the Child of 1989, see Article 40 (3) b), and the General Comments of the Committee of the Rights of the Child, in particular the Comment No. 10 on Children's Rights in Juvenile Justice from 25 April 2007.8
- The United Nations Guidelines for the Prevention of Juvenile Delinquency of 1990 (so-called Riyadh-Guidelines, see Rules No. 5 and 6).
- The United Nations Standard Minimum Rules for Non-custodial Measures (so-called Tokyo-Rules, see Rule No. 5).
- The Council of Europe's Recommendation on "New ways of dealing with juvenile delinquency and the role of juvenile justice" of 2003, see Rec 2003 (20), see Rules 7, 8 and 10.
- The European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM), Rec (2008) 11, see Rules 5, 10 and 12 (with regards to principles of minimum intervention and proportionality).[9]

The concept of non-intervention (or better avoiding formal prosecution) was developed in combination with decriminalization (particularly of so-called status offences) and deinstitutionalization (from youth custody and residential homes). Since the 1960s particularly in North-America[10] and across Europe, tendencies

8 CRC/C/GC/10, 25 April 2007; a documentation of the General Comments of the Committee of the Rights of the Child can be found in the Sourcebook on International Children's Rights, see *Belser/Hanson/Hirt* 2009. Comment No. 10, Rule 24 explicitly states: "Given the fact that the majority of child offenders" (i. e. offenders below the age of 18) "commit only minor offences, a range of measures involving removal from criminal/juvenile justice proceedings and referral to alternative (social) services (i. e. diversion) should be a well-established practice that can and should be used in most cases." The Committee further emphasises that diversion should not be limited to minor offences, but has been proven to be a successful and cost-effective way of dealing with most kinds of offences committed by children, see *Belser/Hanson/Hirt* 2009, p. 192.

9 See *Dünkel/Grzywa/Pruin/Šelih* in the final chapter of this volume and *Section 2.2.2* below.

10 In 1967 the US President's Commission on Law Enforcement and Administration of Justice in its final report stated: "The formal sanctioning system and pronouncement of delinquency should be used only as a last resort. In place of the formal system, disposetional alternatives to adjudication must be developed for dealing with juveniles, including agencies to provide and coordinate services and procedures to achieve necessary control without unnecessary stigma. Alternatives already available, such as those related to court intake, should be more fully exploited. The range of conduct for which court intervention is authorized should be narrowed, with greater emphasis upon consensual and informal means of meeting the problems of difficult children", see President's Commission on Law Enforcement and Administration of Justice 1967, p. 2; see also *Heinz* 2005, p. 168.

in juvenile criminal policy have emerged that are based on the notions of the principles of "subsidiarity" and "proportionality" of state interventions against juvenile offenders.[11] More specifically, these developments also involve the expansion of procedural safeguards on the one hand, and the limitation or reduction of the intensity of interventions in the field of sentencing on the other. One major element of this philosophy was the idea of diversion, i. e. to avoid possibly stigmatising state interventions in favour of a more lenient and – with regard to future social integration – more appropriate approach.

In spite of heavy criticism in the early 1980s, blaming "net-widening" effects and informal social control that would even surpass formal social control of the youth courts,[12] diversion has continued its "triumphant" expansion due to national and international developments in juvenile crime policy in the 1980s.

There are six theoretical assumptions that can be seen as the basis for diversion:

1. Avoiding (unnecessary) stigmatisation. This aspect is related to the so-called labelling approach. The concept of diversion thus reflects the views of labelling theory which stresses the possible negative effects of stigmatisation by formal sanctions of the youth court. Judicial interventions often impede rather than encourage the social integration of young offenders. The empirical evidence or at least plausibility of possible negative consequences of state interventions has promoted the recognition of the principle of subsidiarity and of the last resort of imprisonment since the beginning of the 1960s.
2. The principle of giving priority to education instead of punishment ("educative diversion").
3. The principle of proportionality as a limitation of state intervention (minimum intervention model). This aspect is related to a "constitutional" or "human rights approach" that wants to avoid disproportionate sentencing. This approach sets clear limits to "excessive" educational efforts based only on an assessment of educational needs which are not justified by the seriousness of the committed offence.
4. The "economic" base of diversion is related to the pragmatic consideration of reducing or limiting the courts' case load (see in general *Jehle/Wade* 2006; *Wade et al.* 2008). It can be shown that an increase of cases in the criminal justice system needs to be compensated by diversionary or other bureaucratic strategies that make the "input" manageable.
5. The criminological base of diversion is the evidence of the episodic and petty nature of most juvenile crimes. Criminological research has demonstrated quite well that juvenile delinquency is a ubiquitous and

11 See *Dünkel* 2009; for the history of diversion in England see *Goldson* 2008, p. 147.

12 See for example *Austin/Krisberg* 1981; 1982; *Kerner* 1983.

passing phenomenon linked closely to age. Even so-called (repeat) career offenders regularly abandon their criminal lifestyle as they reach the age of adulthood at around 20 to 25 years.[13] The episodic and petty nature of most juvenile crimes supports the concept of diversion, i. e. the avoidance or reduction of state intervention. This strategy is accompanied by strengthening the educational interventions in the family and/or the social peer group etc.

6. The perspective of sociology of law: The advantage of non-intervention or less severe punishment (e. g. probation instead of imprisonment) lies in the increased expectations of future norm conformity, which are expressed by the competent punishing authority to the offenders in question. The violator of the norm is under the pressure of a special (informal) obligation as he has been given "social credit" which contributes to better compliance with the norm (see *Raiser* 2007, p. 235 f.; *Spittler* 1970, p. 106 ff.).

2.1.3. Varieties of diversion in the European juvenile justice systems

The concept of diversion shows some variations within the European juvenile justice systems. Diversion can be completely non-interventional, conditional (the dismissal of the case is provisional until certain conditions are fulfilled like victim-offender-mediation, the reparation of the damage, community service; for examples see below) or can be combined with special educational diversionary measures (like supervision orders, or special obligations/directives concerning daily life) or with a referral to the Social Services in general. The following sections describe different approaches to diversion that can be observed in the respective laws. Many countries provide for more than one of the described types of diversion.

Non-interventional diversion and legal decriminalisation of offences with minor guilt

According to *Table 1*, diversion as non-intervention is not provided in all European countries.

Austria is a good example for different forms of diversion without any interventions: The prosecutor and the judge can inter alia unconditionally dismiss a juvenile's case if the offence is punishable by a fine or not more than five years of imprisonment, if measures of interventionist diversion do not

13 See in detail *Boers* 2009; *Farrington/Coid/West* 2009; *Sampson/Laub* 2009 with further references.

appear necessary to prevent the juvenile from re-offending.[14] Furthermore, there is another interesting form of non-intervention in *Austria*: The immunity for 14 and 15 year-old offenders in cases of moderate and non-serious misdemeanours if there are no convincing reasons urging the court to enforce juvenile penal law to prevent the offender from committing further acts (see § 4 (2) 3 Austrian Juvenile Justice Act, JGG). This form of sparing special groups of juvenile offenders the experience of a formal criminal trial[15] is equivalent to forms of procedural diversion in other countries. The pettiness of the offence and "minor guilt" result in the decision that the facts do not qualify as an offence.[16] This is comparable to the situation in *Russia*, where the definition of crime entails that an offender has to commit "a socially dangerous act".[17] Consequently offences without danger for society are not criminalized and prosecuted.[18] The situation in the *Czech Republic* was similar until the recent reform law of 2009 which abolished the concept of decriminalising minor violations of the criminal law by denying the character of a criminal offence and not only by withdrawing possible charges because of the principle of expediency ("procedural decriminalisation"). This was an obvious consequence of the introduction of diversion (with and without interventions) in 2004. Here, unconditional diversion follows the principle of expediency, meaning that a case can be dismissed where it seems to be appropriate due to the (petty) nature of the crime. This is a common strategy for non-interventional diversion and can be found for example in *Slovakia* (for misdemeanours), *Finland*, *France, Kosovo, Slovenia, Spain* or *Sweden* (if the offender has admitted to the offence).

In the *Netherlands* the use in practice of non-intervention without any sanction has decreased in favour of interventive diversion (minor obligations like community service etc.), but remains possible nonetheless (see *van Kalmthout/Bahtiyar* in this volume).

At least theoretically, in *England/Wales* the police have two possibilities to divert cases informally and without any interventions. They can decide to take

14 See *Bruckmüller/Pilgram/Stummvoll* in this volume. In Germany, §§ 45 (1) and 45 (2) JJA are comparable.

15 In *Austria* it is defined as "*Strafausschließungsgrund*" (exemption from punishment).

16 See *Jesionek* 2007, p. 121. About the relation between this form of decriminalization and status offences or the "criminalization" of anti-social behaviour see *Pruin* in this volume.

17 This principle is generally valid, for all age groups of offenders, see the report about *Russia* by *Shchedrin* in this volume. The idea to consider the "social danger of the act" derives from the Soviet system, see *Pergataia* 2001, p. 85, and therefore was widespread in the former Socialist countries. More and more countries are abolishing this concept in favour of procedural discretion given to the prosecutor whether or not to initiate proceedings (principle of expediency).

18 See for further details *Pruin* in this volume.

no further action or issue an informal warning, which means that no formal record is made and the incident cannot be mentioned in any future criminal proceedings. The Home Office has discouraged this practice since 1998 in favour of formal warnings to ensure that offenders are held accountable for any wrongdoing. Consequently, non-interventional forms of diversion seem to be limited to very trivial cases (see *Dignan* in this volume).

It should be stressed that the main principles of diversion (see above) are pre-eminently met through diversionary decisions that are not followed by any intervention. A dismissal of a case which is followed by coercive (albeit well-intentioned) measures always bears the danger of net-widening, and has to consider the proportionality of the measure to the offender's level of guilt and the seriousness of the offence. In addition, in many of these cases informal reactions and/or educational steps by parents or schools will have been taken which make further (formal) justice system interventions dispensable. Insofar informal social control by the wider society is sufficient for providing for the social integration of juvenile offenders.

Diversion in combination with a referral to the Social Services or special administrative authorities/bodies

In many European countries diversion can be combined with referring the juvenile to the Social Services or to special bodies.

In *Bulgaria*, for example, the prosecutor can decide not to initiate or to discontinue preliminary proceedings in cases where an adolescent commits a crime that poses no serious threat to the public. The prosecutor can not indicate educational measures by her/himself, but she/he can refer the case to a "local commission", an administrative body that is primarily competent for investigating anti-social behaviour and which can impose some correctional measures on juveniles (see *Pruin* in this volume). This approach stems from the Soviet system, where the great majority of cases involving insignificant offences by juveniles were to be brought before a government-social organ – the commission for juvenile affairs, operating under the local government – which adopted educational measures both for young children and for juveniles (see *Shchedrin* in this volume). Still in *Russia* there is – at least legally[19] – the possibility (after the release from criminal liability) to refer juveniles to a Juvenile Commission that can then consider further interventions.[20]

In *Estonia* we find a similar approach of "institutionalized" diversion: Minors against whom criminal prosecution is deemed unnecessary can be referred to

19 According to *Shchedrin* in this volume, this possibility plays no major role in practice.

20 *Pergataia* 2001, p. 195. In the *Ukraine*, juvenile commissions were abolished in the 1990s.

Juvenile Committees which in turn can apply several sanctions or measures.[21] In *Romania*, the prosecutor can decide not to proceed with criminal prosecution, which can theoretically result in a reprimand or a small fine (Art. 91 Criminal Code), but to refer the case to the Child Protection Directorate.

However, not only Eastern European countries know the possibility of diverting juveniles from the criminal justice system in combination with a referral to the welfare system:

In *Sweden,* juveniles can be referred to the Social Services for the issuance of treatment measures. Many measures need the consent of the juvenile, but compulsory measures can also be applied to juvenile offenders. Prior to the reforms of 1999 and 2007 the courts generally had no control over what the Social Services did once a young person had been referred to them. Now, the Social Services have to present a concrete treatment plan to the court if they want to apply compulsory measures.

In *Scotland*, children up to 16 years of age who have offended are referred to the Children's Hearing System (regionally-based welfare tribunals composed of lay volunteers and a professional Children's Reporter with a legal background) and decision-making falls to the three lay members. The child, his/her parent/carers and a social worker are usually present, while others such as teachers, family representatives and safeguarders attend less frequently. Where a case is legally complex or deprivation of the child's liberty (e. g. residence in foster care or residential accommodation, attendance at school or a programme designed to address offending behaviour) is being considered the Hearing will appoint a legal representative to represent the child's views. The overall task of the Hearing is to decide whether or not to order compulsory measures of supervision and, if so, whether any conditions should be attached (e. g. residence in foster care or residential accommodation, attendance at school or a programme designed to address offending behaviour). Decisions are made in the "best interests" of the child. In practice, the majority of Hearings result in a supervision requirement, although Hearings can also be discharged with the consequence that no further action is taken (see *Burman et al.* in this volume).

The different approaches have in common that diversion implies the transmittal of the decision-making authority to another body that is formally located outside the justice system. These bodies have the possibility to dismiss the case, but they can usually also provide for coercive measures, partly with far-reaching consequences for the young offender (i. e. deprivation of liberty).

The differences between East and West are, at least legally, not very extreme. In *Sweden*, the criminal court has to decide if it comes to coercive measures. Furthermore, since 1999, the Social Services have been obliged to

21 In contrast to *Russia*, the law in *Estonia* determines a special procedure for the Juvenile Committee and special rights of the juveniles within this procedure, see *Pergataia* 2001, p. 225.

ensure that the reactions are proportional to the seriousness of the offence (*Hazel* 2008, p. 57). *Scotland* emphasizes that a Hearing always follows the principle of minimum intervention (see *Smith* 2000 with further references). This may create the impression that the approaches in Western Europe lead to decisions that are more cautious and in accordance with the international guidelines compared to the Eastern European approaches that have a more paternalistic background, and which often provide wider possibilities for imposing coercive measures. But in the end we have to observe the practice of the commissions and bodies. It should be of particular interest in this regard how often coercive measures are applied, and for how many juveniles the referral to the Social Services results in deprivation of liberty. Unfortunately, often there are no or only very limited data available in this regard.

Diverting juveniles away from the criminal process to the welfare system shifts the focus to children's needs and away from their criminal behaviour. The concentration on the "needs" of the offender which is emphasized by all five different approaches entails (as always) the danger that intended "help" results in net-widening or disproportional restrictions – especially if it comes to coercive, involuntary interventions. Therefore the principle of proportionality should also be observed if the case is dealt with outside of the justice system. In *Scotland*, there are no punitive sanctions even available in cases of failure to comply with the concrete orders of supervision (see *Smith* 2000). Refraining from penalizing breaches is important for avoiding "sentencing spirals" and for ensuring that the principles of diversion are not undermined. On the other hand one could question what consequences would result should the minor fail to co-operate at all.

Conditional suspension of prosecution (in combination with educational measures)

Most countries provide diversion in combination with educational measures, which are often very similar to community sanctions that can be imposed by the courts.[22] In *Austria*, diversion can be combined with minor fines and particularly victim-offender mediation, community service or a probationary term (if necessary, in combination with directives or supervision by the Probation Service).[23] Prosecution is suspended until the obligations have been fulfilled. The situation in *Germany* is similar, where we find (beside non-interventional diversion) the possibility of diversion with intervention. In these cases the juvenile prosecutor proposes that the juvenile court judge impose a minor sanction, such as a

22 *Table 1* shows which educational measures can be combined with diversion in the specific countries. *Section 2.2.2* below gives more information about the character and the content of the different educational measures.

23 See *Bruckmüller/Pilgram/Stummvoll* in this volume and *Jesionek* 2007.

warning, community service (usually between ten and forty hours), mediation (*Täter-Opfer-Ausgleich*), participation in a training course for traffic offenders (*Verkehrsunterricht*) or certain obligations such as reparation/restitution, an apology to the victim, community service or a fine (§ 45 (3) JJA). Once the young offender has fulfilled these obligations, the prosecutor will dismiss the case in co-operation with the judge.

In *Italy* a conditional suspension of the procedure is provided by Art. 28 of the Criminal Procedure Act (D.P.R no. 448/88). Use of this regulation has continuously increased since its introduction (however still on a small scale of slightly over 10%). It enables the prosecutor to forward a case to a mediation scheme or to provide the assistance and supervision of the Probation Service.

Greece, a country where prosecution had previously been guided by the principle of legality, introduced a new rule in the Criminal Procedure Act (Article 45A) in 2003 which provides for diversion if the prosecutor estimates that a court hearing is not necessary because of the petty nature of the crime and/or the personality of the juvenile (under 18, see *Spinellis/Tsitsoura* 2006). Prosecution is conditionally suspended and the minor can be obliged to fulfil certain educational measures (with special emphasis on reparation and compensation). After the fulfilment of these obligations the prosecutor definitely discharges the case. Similar regulations and provisions exist in *Croatia* (Art. 64 § 2 JCA), *Hungary, Kosovo* and *Serbia*.

Usually, the juveniles fulfil their obligations in cooperation with and under the supervision of the Social Services. In contrast to the approaches presented above, in these cases of conditional suspension of prosecution, it is the prosecutor or the judge who normally decides what measure is to be applied. The judge or prosecutor is also competent to decide finally – after the fulfilment of the obligations – that criminal proceedings against a juvenile not be initiated or continued.[24]

A special case of conditional suspension of prosecution can be found in *Turkey*. The public prosecutor can postpone the prosecution of juveniles in special cases (first-time offenders and where the damages have been repaired in full) for three years.[25] If the juvenile does not commit a crime within this period, the case will be dismissed.

The situation in the *Czech Republic* and in *Latvia* is slightly different. In the *Czech Republic* prosecution can be conditionally suspended for a period between 6

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24 In recent years, we find the tendency that, according to the international standards, sanctions or measures followed by deprivation of liberty have to be decided or at least approved by the courts, see for example *Haverkamp* or *Stańdo-Kawecka* in this volume. In *Bulgaria*, since recently the judge has been competent in all cases of deprivation of liberty. Therefore, if the local commissions order custodial measures, their decision has to be approved by the judge.

25 Since 12 December 2006, before it had been 5 years, see *Sokullu-Acinci* in this volume.

months and 2 years. In *Latvia*, since 2002 a person who has committed a criminal violation or a less serious crime may be conditionally released from criminal liability by the prosecutor. The period of probation is set at between 3 and 18 months – at most half the duration of the *Turkish* approach. Additionally, the prosecutor can impose special obligations if the suspect so consents. If a person who has been conditionally released from criminal liability re-offends during the period of probation or fails to perform the imposed duties, his/her criminal prosecution shall be continued.

In *Slovakia*, prosecution can be conditionally suspended in misdemeanour cases punishable with sentences of up to 5 years (§§ 216 f. Slovakian Criminal Procedure Act). Whereas this form of diversion has become widely accepted, the same does not apply for diversion by referral to a mediation scheme (§ 220 CPA). In 2005 a new form of diversion was introduced: a kind of guilty plea called a "contract of guilt" which (with the consent of the accused) can contain minor sanctions, particularly the compensation of the victim. However, in these cases a formal court decision is not avoided.

So-called "release from criminal liability" in combination with coercive educational sanctions is quite common in the Eastern European countries. In *Lithuania*, a juvenile can be released from criminal liability in combination with many (compulsory) educational measures. What is peculiar here is that this form of diversion can entail being confined to institutional care in exceptional cases (the same is possible in *Russia,* the *Ukraine* and *Bulgaria*). In *Lithuania* there is no special "juvenile commission" like in other Eastern European countries. The judge himself imposes the educational sanction in this case.[26]

In *Russia* a young offender can – aside from the case being transferred to the Juvenile Commission (see above) – also be released from criminal liability in combination with compulsory educational measures. One presumption for this form of diversion is the "certainty" that the educational measures will "better" the juvenile offender (*Pergataia* 2001, p. 173). In contrast to the referral described above, the court itself chooses the compulsory educational measure in this case.

Providing discretion for dismissing the case even after a juvenile has fulfilled the required obligations could be questionable. From the viewpoint of the juvenile, continuing prosecution despite having fully complied could seem very unfair. In *Belgium*, for example, the public prosecutor can dismiss a case after a mediation procedure has taken place between victim and offender. He/she also has the power to continue prosecution of the young offender, even where

26 So we can state that *Latvia* and *Lithuania* have developed the Russian approach further, because they resign additional bodies like juvenile commissions and integrate the idea of releasing the juvenile from criminal liability. This must imply that for the decision of release from criminal liability and the imposed sanctions, all procedural rights of the offender should be valid.

mediation has been successful. Similar regulations of discretion exist in *Germany* and other countries, but the practice in most cases is that successful mediation (in the view of the prosecutor and/or judge) will result in a dismissal of further proceedings. However, at least in *Belgium*, empirical evidence apparently shows that "victim-offender mediation is used in addition to other measures in order to broaden social control" (*van Dijk/Christiaens/Dumortier* 2006, p. 187 f.). The concern relates to the premises of diversionary philosophy of "giving back the conflict" to the citizens involved in the case (see *Christie* 1977). Moreover the General Comment No. 10 on children's rights in juvenile justice of the UN Committee for the Rights of the Child (2007) postulates that "the completion of the diversion by the child should result in a definite and final closure of the case" (see *Christiaens et al.* in this volume and *Commissioner for Human Rights* 2009, p. 8).

On the other hand, the option of only a conditional discharge may encourage the juvenile justice authorities to use such diversionary procedures also in more serious cases, because within the probationary period it is always possible to continue prosecution if the offender does not comply with the conditions or obligations imposed. In these cases, however, it is important that the final court sentence after non-compliance is not disproportionate to the original offence.

An example of such "probationary" diversion with a possible discharge also in more serious cases is *Italy*, where "pre-trial probation" is used for all types of offences[27] and where compliance with a court-approved programme results in a "judicial pardon" by the court.[28]

Victim-offender mediation plays a particular role as a condition for the suspension of prosecution or of a diversionary measure, for example in *Belgium*, the *Czech Republic*, *Germany*, *Hungary* or *Slovenia*.[29] Two specific difficulties could arise from making the dismissal of a case dependent on "successful" victim-offender mediation:

Firstly, a mediation-procedure is always based on the voluntariness of both parties to talk and to negotiate. Can we really call participation voluntary if failing to do so results in prosecution or maybe even incarceration? In this respect *Austrian* law provides a reasonable solution: rather than making explicit

27 Which is in line with the international postulations, see *Commissioner for Human Rights* 2009, p. 18.

28 Introduced through Article 28 D.P.R no. 448/88 (*Sospensione del processo e messa alla prova)*. If the offender fulfils the conditions and obligations for the probation period, the case will be dismissed. This alternative is used quite often, see below *Section 3.2.1*.

29 In *Lithuania*, the case can be dismissed after the offender has reconciled with the victim. This is no victim-offender mediation in its more widely acknowledged sense, because there no "mediator" is involved and no special procedure is foreseen, see *Sakalauskas* in this volume. Nevertheless, in terms of the general idea, the situation is comparable to the other countries mentioned above.

mention of voluntariness, the law states that participation should not be enforced, but should reflect the readiness of the offender to assume responsibility and to make reparation. Furthermore, the agreement of the victim is not necessary (see § 7 (4) Austrian Juvenile Justice Act).

The second question is even more precarious and relevant for practice: When is mediation successful? Shall the victim have the right to decide upon further prosecution by turning down reparation efforts or claiming for more compensation? The *German* solution in this respect is probably a reasonable one: According to the law it is sufficient that the offender has sincerely tried to resolve the conflict, to repair damages etc. Also, in *Germany*, *Austria*, *Denmark* and *Slovenia* the prosecutor is obliged to consider a restorative justice intervention before sending a case to court.

2.1.4 Competent authorities

From the information given above it is obvious that different authorities may be competent to decide on the dismissal of the case (diversion). Apart from the special role of the Social Services or special bodies (see above), diversion can be initiated by the police, the prosecutor or the judge.

A young offender's first point of contact with the justice system is frequently the police. While in some countries informal actions of the police with regards to juvenile offenders must be described as "unofficial and extralegal"[30], some countries have even institutionalized the possibility of "police diversion".

In these countries, the police, to whose attention an offence committed by juveniles has come, can simply take no further action because the behaviour in question is viewed as being very minor, petty and unimportant (e. g. *Cyprus*). In *England/Wales* the law provides for non-intervention by diversion on a pre-court level by the police. The police can issue an informal warning, a reprimand or a final warning (the latter regularly entailing an intervention by the Youth Offending Team). The Crime and Public Disorder Act of 1998 restricted police diversion insofar as after a first formal caution only one further caution is possible (final warning); after that a formal court hearing is obligatory except for very strict exceptions (see *Dignan* in this volume and *Hine* 2007).

In *Ireland,* the police diversion programme (organized under the police forces of the so-called *Garda Siochana*) is always combined with a (informal or formal) caution. If a formal caution is imposed, supervision (up to 12 months) is obligatory (referral to a juvenile liaison officer). There is also the possibility for a restorative caution at this level: the caution can be combined with a family

30 *Hartjen* 2008, p. 110. In *Germany*, for example, the police – bearing in mind *Germany's* terrible history with excessive abuses of police power by the Nazi-regime – are not allowed to dismiss the case or to take no further action if an offence comes to their attention.

conference and an action plan for the child which may include: making an apology and reparation to the victim, attendance at school or a training programme, participation in sports or recreational activities, being at home at certain times and staying away from certain places (see *Walsh* in this volume).

In the *Netherlands* the law (Article 77e PC) states that the police, with the permission of the public prosecutor, can suggest that a young suspect participate in a special project, which can consist of a range of different requirements, for instance repairing the caused damage, attending special courses, or performing community service (so-called HALT-disposals). Participation in this programme is voluntary.[31]

In *Northern Ireland* the police play an important role as well: Since 2003 as part of a "Youth Diversion Scheme" specialist police officers make proposals as to how juveniles should be dealt with, and the prosecutors usually base their decisions on that recommendation (see *O'Mahony* in this volume).

Police diversion is generally recommended by the international instruments (see for example No. 11.2 of the Beijing-Rules or No. 5.1 of the Tokyo-Rules). The advantage of diversion at this early stage of the procedure is that the police can react promptly, so that there is immediacy between committing the offence and the justice system's response. On the one hand a swift reaction is seen positively from a pedagogic point of view (if the police act cautiously and with respect). On the other hand, the amount of time during which the offender could be stigmatized is reduced. The police have a lot of discretional power in such a system. The resulting dangers could be prevented through the condition that the police have to undergo specific training on contact with young offenders.

The countries following the procedural principle of "legality*"* have difficulties to provide for police diversion. They traditionally did not provide for diversion in their general criminal procedure law at all. Examples were *Austria*, *Germany*, *Greece*, *Italy*, *Portugal*, German speaking *Swiss cantons* and most Eastern European countries. Most of these countries have now relaxed the legality principle particularly in the field of juvenile law, and now provide wide exceptions to the principle by making extensive use of informal procedures. In a European comparison most countries foresee diversion on a pre-court level by the prosecutor (in parts in addition to police diversion), see for example *Austria*, *Belgium*, *Bulgaria*, *Czech Republic*, *England/Wales*, *Germany, Greece, the Netherlands* and *Spain*.

Family group conferences in *Northern Ireland* can be based at the court level, but their primary field of application is the pre-court level (see *O'Mahony/ Campbell* 2006 and *O'Mahony* in this volume). They are an example for the most recent reform developments in some European countries towards a wider introduction of restorative elements. Family group conferencing and other forms

31 As with victim-offender mediation, it is questionable whether the term "voluntariness" is justified if the alternative is formal prosecution (see *above*).

of restorative justice have also been introduced in *Belgium* (see *Christiaens et al.* in this volume). To avoid net-widening effects, these diversionary conferences should be limited to cases in which a young person would otherwise go to court (see *Hazel* 2008, p. 51).

In some countries, diversionary decisions can also be made by a judge at the court level, for example in *Bulgaria*, the *Czech Republic*, *Germany*, *England/Wales*[32] or *Kosovo*. Such court diversion makes sense particularly in cases when the juvenile has paid reparation or has otherwise resolved the conflict with the victim after the prosecutor has submitted the indictment to the court, which gives the judge the impression that further prosecution would not be appropriate or necessary. Especially the countries following the traditional welfare model have facilitated diversionary strategies on a court level because of the wide discretionary power of the juvenile judge. Examples are *Belgium* and *Poland*.[33]

2.1.5 What works with diversion? Recidivism after non-intervention or after punishment

There is empirical evidence that diversion "works". The recidivism rates are lower, or at least not higher, than after formal court procedures and convictions. The following *German* experiences are impressive in this regard.

The strategy of expanding informal sanctions has proved to be an effective means, not only to limit the juvenile court's workload, but also with respect to special prevention. The reconviction rates of those first-time offenders who were "diverted" instead of being formally sanctioned were significantly lower. In *Germany* the re-offending rates after a risk period of three years were 27% vs. 36% (see *Dünkel* in this volume). Even for repeat offenders the re-offending rates after informal sanctions were not higher than after formal sanctions (see *Storz* 1994, p. 197 ff.; *Heinz* 2005, p. 306). The overall recidivism rates in states like Hamburg, with a diversion rate of more than 80% or 90%, were about the same (between 28% and 36%) as in states such as Baden-Württemberg, Rhineland-Palatinate or Lower Saxony where the proportion of diversion at that time accounted for only about 43-46% and the recidivism rate was 31-32% (see *Figure 1*). Thus, the extended diversionary practice has had at least no negative consequences concerning the crime rate and general or special prevention (see *Heinz* 2005; 2006). It also reflects the episodic and petty nature of juvenile delinquency.

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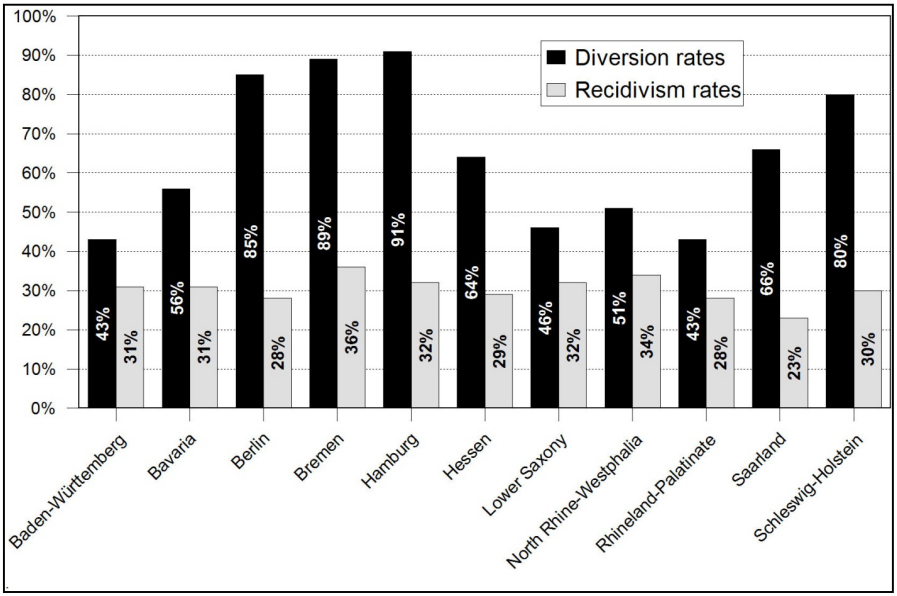
32 About the development of diversion and the tightening of the regulations see *Koffman/Dingwall* 2007.

33 For a summary on critiques to the concept of diversion in general see *Hazel* 2008 p. 52.

Figure 1: Diversion rates and recidivism in comparison of the Federal States in West-Germany (simple theft, first time offenders, birth cohort 1961)



Source: *Storz* 1994, p. 153 ff.; *Heinz* 2006, p. 184 ff.

Another important result concerning the "effectiveness" of diversion has been obtained from the German Freiburg birth cohort study. The study covered more than 25,000 juveniles from the birth cohorts 1970, 1973, 1975, 1978 and 1985. The proportion of diversion instead of formal punishment for the age groups of 14 and 15 year-old juveniles increased from 58% to 82%. Recidivism after two years (according to official crime records) was 25% for the diversion group and 37% for the juveniles formally sanctioned by the youth court (see *Bareinske* 2004, p. 188; *Heinz* 2006, p. 186). The difference of 12% in favour of diversion corresponds to the above mentioned studies. The Freiburg birth cohort study demonstrates that the increase in the use of diversion in *Germany* during the 1980s and 1990s (see *Dünkel* in this volume) does not correspond to an increase of juvenile delinquency rates. On the contrary, the recidivism rates of comparable delinquents (for different typical juvenile delinquent acts) were significantly lower when diverted as compared to those formally sanctioned by the youth court (see *Bareinske* 2004, p. 136 f.).

Similar results have been obtained with regards to self-reported delinquency of juveniles diverted from the juvenile justice system as compared to those

formally sanctioned. The "diversion group" reported fewer offences in the three years after being sentenced than the control group of formally sanctioned juveniles (see *Crasmöller* 1996). On this basis *Crasmöller* (1996, p. 124 f., 132) therefore states that more repressive reactions contribute to an increase in further delinquency.

The most comprehensive and in-depth study is the Bremen longitudinal study on juvenile delinquency and integration into the labour market by *Schumann* and his collaborators in *Germany* (see *Schumann* 2003a). 424 juveniles were contacted five times over a period of 11 years. The results revealed that the development of delinquent careers depended primarily on gender, attachment to delinquent peers and the kind of sanctioning by the juvenile justice system. Court sanctions had negative effects also with regards to labour market integration (stable employment, see *Prein/Schumann* 2003, p. 200 ff.; *Schumann* 2003b, p. 213). On the other hand, it seems that the juvenile justice system itself has less impact (no matter what sentencing decision is made) compared to positive or negative developments in the life course such as successful school or work integration, good relations to pro-social friends etc., or negative experiences of exclusion in social life, attachment to delinquent peers etc. Nevertheless, the Bremen longitudinal study also demonstrates that (prosecutorial) diversion instead of (court) punishment is an appropriate means to reduce juvenile and young adult delinquent behaviour (see *Prein/Schumann* 2003, p. 208).

The *German* results are confirmed by British empirical research demonstrating that conditionally discharged offenders had lower reconviction rates (39%) than those sentenced to fines (43%), probation (55%) or community service (48%, see *Moxon* 1998, p. 91). The evident methodological problems of comparing different sanctions (concerning the seriousness of different crimes, previous convictions etc.) were addressed by strictly controlling the different "sanction groups" for key variables such as age, sex and previous criminal history.

Looking at the costs and the impact of different sentences and interventions it is evident that informal warnings and cautions are the least expensive measures. They are classified by *Moxon* (1998, p. 97) by "low re-offending for first offenders". "Caution plus" is a combination with restorative justice schemes. Pure restorative justice is more expensive but "promising in terms of re-offending". There has to be, however, some caution in interpreting the comparison of different sanctions and interventions, since selection bias has to be seriously controlled for, and unfortunately this is not always the case. In general we may conclude that the theoretical assumptions of diversion as an effective strategy can be confirmed by some empirical evidence, although further research on "what works, with whom under which circumstances" continues to be needed in this context.

2.2 Formal sanctions

Sanctions and measures for juvenile offenders that can be applied by a court after a court-proceeding (formal sanctions, see above) are likewise an interesting field for comparison. This is especially so in the context of juvenile justice systems, because many countries provide wide alternatives to traditional forms of "punishment" like fines and imprisonment. According to *Table 1*, there are nonetheless differences between the different juvenile justice systems in Europe in this regard.

2.2.1 Historical development and international instruments

Historically, the European juvenile justice systems have tended to expand the variety of "alternative" court dispositions in order to reduce the use of different forms of deprivation of liberty. The idea of "deinstitutionalisation" started with regards to closed welfare institutions in the *USA* and Europe in the late 1960s. The experiment in Massachusetts in the early 1970s triggered abolitionist discussions concerning youth imprisonment in Europe (see for example *Schumann/Voss/Papendorf* 1986). Actually, in *California* (for budgetary reasons) there has been a surprising revival of the idea of closing down youth prisons.[34] The introduction of educational sanctions involving restitution, social training or educational courses, community service orders and other so-called intermediate sanctions is indicative of a strong movement for more constructive and educational responses to juvenile delinquency. Whether alternative sanctions can contribute to an at least "reductionist" approach concerning the use of custodial sanctions is an open and frequently discussed question, because creating more "alternatives" can also contribute to "net-widening" without any reduction in the application of liberty depriving sanctions.[35] No country has managed to totally avoid depriving juvenile offenders of their liberty, but major differences can still be observed (see *Section 3* below).[36]

Especially the 1970s and 1980s were the era of developing new community sanctions. The starting point was the introduction of community service orders

34 See *The Record* from April 25, 2007; in July 2008 the State watchdog commission recommended that California phase out its antiquated juvenile prisons (run by the Department of Corrections) by 2011, replacing them by regional county lockups, see http://thinkoutsidethecage2.blogspot.com/2008/07/closing-juvenile-prisons-in-california.html.

35 See *Gibbons/Blake* 1976; *Nejelski* 1976; *Austin/Krisberg* 1981; 1982.

36 About the different forms of youth imprisonment and other forms of deprivation of liberty see *Dünkel/Stańdo-Kawecka* in this volume.

in 1972 in *England/Wales* which nowadays are amongst the most widespread community sanctions, not only in the juvenile justice system.

In *Germany* a real "grass roots movement" of so-called new community sanctions emerged, bringing with it four new measures that aimed to replace short-term detention: mediation, social training courses, community service and a special probationary directive (implying intensive care through the juvenile welfare services, see in detail *Dünkel* 2006 and in this volume).

In the last 15 years the idea of education has taken on a more repressive connotation in some countries, the most prominent example being the British Labour policy calling for "tougher" and "credible" court sanctioning. The tendency towards more repressive sanctions, especially community sanctions, can be demonstrated by the new language that is now used compared to the 1960s and 1970s. The term "community treatment" was replaced by "community punishment" or "punishment in the community" in the 1980s and 1990s, as can be taken from the rhetoric of neo-liberal or "neo-correctionalist" (*Cavadino/ Dignan* 2006) Labour policies in *England/Wales*.

However, in Continental European countries such as *Austria*, *Germany* or *Switzerland* (and many Eastern-European countries following their example) the classic ideal of education being support for the further development of a young person's personality and as enhancing pro-social orientation and social competences still clearly dominates (see *Dünkel/Pruin* 2009). This philosophy is reflected within the systems of formal sanctions.

The international instruments which entail recommendations for the use of formal sanctions in juvenile justice systems are the same as described above (see *Section 2.1.2*). Additionally the following instruments have to be observed:

- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly in the Resolution 45/113 of 14 December 1990.[37]
- European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM, Rec [2008] 11), adopted by the Committee of Ministers of the Council of Europe on 5 November 2008.[38]

37 The United Nations define "deprivation of liberty" as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority" (Art. 11).

38 See in detail *Dünkel* 2008; *Dünkel/Baechtold/van Zyl Smit* 2009 and *Dünkel/Grzywa/ Pruin/Šelih* in this volume (with regards to the Basic Principles of the ERJOSSM).

2.2.2 The European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM): Principles for the imposition and implementation of community sanctions

Some of the specific rules of the ERJOSSM concerning the imposition, implementation and execution of community sanctions and measures should be specially mentioned here (although they also apply to diversionary measures, see *2.1.2* above).

The recommendations concerning community sanctions or measures start with the following two rules:

- A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process (Rule 23.1).
- Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles (Rule 23.2; see also No. 2.3 of the so-called Tokyo-Rules of the United Nations from 1990).

The following rules emphasise the need for clear statutory regulations on the definition and mode of application of community sanctions, on the obligation of any competent authority to explain the content and the aims of the legal provisions governing community sanctions or measures (Rule 25a). The decision to impose or revoke a community sanction or measure shall be made by a judicial authority or, if it is made by an administrative authority authorised to do so by law, it shall be subject to judicial review (Rule 26). Further it is emphasized that "depending on the progress made by the juvenile, the competent authorities shall, when provided for by national law, be entitled to reduce the duration of any sanction or measure, relax any condition or obligation laid down in such a sanction or measure or terminate it" (Rule 27).

Further regulations deal with failures of compliance by the juvenile. Similar to the European Rules on Community Sanctions or Measures (ERCSM) of the Council of Europe from 1992, two further rules are as follows:

- If juveniles do not comply with the conditions and obligations of the community sanctions or measures imposed on them, this shall not lead automatically to deprivation of liberty. Where possible, modified or new community sanctions or measures shall replace the previous ones (Rule No. 30.1).
- Failure to comply shall not automatically constitute an offence (Rule No. 30.2).

With regards to the implementation of community sanctions Rule 31.1 is as follows: "Community sanctions and measures shall be implemented in a way that makes them as meaningful as possible to juveniles and that contributes to their educational development and the enhancement of their social skills."

Further rules deal with the rights to be informed and to complain against the conditions of implementation. "Juveniles shall have the right to make oral or written representations prior to any formal decision concerning the implementation of the community sanctions or measures, as well as the right to apply to alter the conditions of implementation" (Rule 33.2).

Particularly with regards to the implementation of community service orders it is important to remember Basic Principle No. 7 which states that sanctions or measures shall not humiliate or degrade the juveniles subject to them (see *Dünkel/Grzywa/Pruin/Šelih* in this volume). Therefore hard labour or conditions that make juveniles identifiable as offenders ("chain gangs", special clothing etc.) are not allowed. "The conditions under which juveniles carry out community work or comparable duties shall meet the standards set by general national health and safety legislation" (Rule 36.1). Rule 36.2 states that "juveniles shall be insured or indemnified against the consequences of accident, injury and public liability arising as a result of implementation of community sanctions or measures." Although community work shall also be organised by private enterprises it is important to note that it "shall not be undertaken for the sole purpose of making a profit". In this context a general rule placed in the chapter on staff is important: Even where other (for example private) organisations or individuals are involved in the process of implementation, whether they are paid for their services or not, the authority responsible for implementing sanctions or measures remains accountable for ensuring that the requirements of the present rules are met (Rule 131.3).

One important issue is that in some countries offenders are charged for the equipment necessary for the implementation of community sanctions, for example electronic monitoring equipment. Rule 37 aims to exclude such practices by stating that the "costs of implementation shall in principle not be borne by the juveniles or their families."

In the chapter on "conditions of implementation" some rules emphasise the necessity of quality management and professionality based on empirical evidence and continuous evaluation research.

A total of 10 rules (Rules 46-48.5) regulate the procedure and consequences of "non-compliance". Due process rules can also be observed here (rules of evidence, hearings, rights to complaint, to defence etc). Rule 48.4 states that, where "the revocation or modification of a community sanction or measure is being considered, due account shall be taken of the extent to which the juvenile has already fulfilled the requirements of the initial sanction or measure in order to ensure that a new or modified sanction or measure is still proportionate to the offence." This rule challenges the widespread practice of fully revoking suspended sentences (in case of further crimes etc.) even if the offender has complied with the conditions for the major part of the probation period (e. g. in *Germany* and other Continental European countries). Therefore national

legislation should provide the possibility of a partial revocation of suspended sentences.

2.2.3 Types of formal sanctions

All European countries provide for a wide variety of sanctions and measures which can be applied to juvenile offenders (see *Table 1*). This is in line with the European Rules and recommendations mentioned above, which claim for a wide range of sanctions and measures as well as alternatives to imprisonment (see also *Muncie* 2001).

As a general rule the applicable sanctions and measures follow a certain hierarchy that is based on the order in which priority shall be given to the most educational, most appropriate sanction. This regularly opens up the possibility to combine several educational measures or sanctions with each other. A second general principle that is stressed particularly in the Council of Europe's Rec (2003) 20 is the principle of proportionality that also has to be adhered to when only educational or diversionary measures are applied (see Rule 7 cited above). We would propose the following levels of sanctioning, ordered from the least to the most intrusive:

1. Warnings, reprimands, conviction without sentence, educational "directives";
2. Fines, community service, reparation orders, mediation;
3. Social training courses and other more intensive educational sanctions;
4. Mixed sentences, combination orders (which can be characterised as a more "repressive" way of dealing with juvenile offenders);
5. Suspended sentences without supervision by the Probation Service;
6. Probation;
7. Suspended sentences with supervision by the Probation Service, electronic monitoring;
8. Educational residential care, youth imprisonment and similar forms of deprivation of liberty.

The least invasive sanctions are warnings or reprimands (verbal sanctions),[39] followed by a wide range of alternative sanctions that exert more or less influence on the life of the offender. Many sanctions systems provide educational measures (such as educational "directives" in *Austria* and *Germany*)[40] either as independent sanctions or as complementary elements of other sanctions like for instance probation or suspended prison sentences (e. g. *Denmark* or *Kosovo*). The aim of such educational directives is always to improve the educational impact on the

39 Some countries do not provide for warnings/reprimands as a court decision, but still reprimands can be issued if the court or the public prosecutor decides to divert the case, see for example *England/Wales*, *Germany* or *Lithuania*, *Table 1*.

40 See *Bruckmüller/Pilgram/Stummvoll* and *Dünkel* in this volume; see also *Dünkel* 2006.

one hand and to reduce the impact of risk factors in the juvenile's daily life on the other. The laws should confer a certain degree of discretionary power on the judge to enable him or her to find the most appropriate directive. In *France*, since 2002 the juvenile can be ordered not to visit certain places or meet certain persons. Furthermore, the civic training course (stage de formation civique) was introduced, the goal of which is to "remind the juvenile of his legal obligations". In *Slovenia*, the law provides, inter alia, for an order to visit school regularly or to take up a form of vocational education or employment suitable to the offender's knowledge, skills and inclinations. In *Lithuania* the court can apply certain directives and prohibitions like the prohibition of changing the permanent address, the prohibition of going to certain places, or forms of curfew.

In between we find the possibility to impose a fine on juvenile offenders which is theoretically possible in many, albeit not all European countries.[41] For example *Belgium*, *Bulgaria*, *Croatia*, *Italy*, *Poland*, *Scotland*, *Serbia* and *Spain* do not refer to fines for juveniles in their reports. Indeed one may question if fines could be seen as educational sanctions, facing the fact that juveniles will often be unable to pay for fines with their own money.[42] On the other hand the *Finnish* report emphasises that fines for juveniles will be low and just touch on the pocket money a juvenile disposes of. In the *Czech Republic* it is possible to suspend a fine. This alternative has been abolished in *Lithuania*.

Most European countries offer victim-offender mediation for juveniles as a court disposition.[43] Yet, in some countries mediation is never or only seldom practiced due to a lack of organisational infrastructure at the local level, as reported by the *Czech Republic*, *Kosovo, Poland* and *Romania*.[44]

In some countries the personal participation of the victim in a reconciliation procedure (like in victim-offender mediation) is not essential. *England/Wales* know special "reparation orders" that aim at compensating the victim. There is an interesting sanction in *Belgium* called "written project proposed by the youngster". The aim of this project can focus on restoring the damage caused by

41 Another question is whether the possibility to fine juveniles is used within the country. Most countries rarely or almost never use this sanction for juvenile offenders. One exception is *Finland*, see below.

42 Most juveniles in Europe finish school late and therefore dispose of their own money relatively late in their life course, see *Dünkel/Pruin* in this volume.

43 As already mentioned above, most countries provide such forms of mediation as a diversionary measure (see also *Doak/O'Mahony* in this volume).

44 Mentioned for example by the reports of *Válková/Hulmáková*, *Stańdo-Kawecka*, *Păroşanu* and *Helmken* in this volume. If victim-offender mediation is "ordered" by a court, the above discussed question of the voluntariness on behalf of the offender is even more concerning than in cases of diversion.

the offence, apologising, participating in mediation, following intermediate treatment for a maximum of 45 hours, etc.[45]

In many countries, community service can not only be combined with diversion but also be imposed at the court level. Community service combines slight "punishment" with reparative and rehabilitative elements. The offender shall offer "a 'payback' to the community via unpaid work".[46] Community service can be seen as a more disciplinary sanction without intensive educational contents, even though from an idealistic point of view the unpaid work could "provide for the offender to learn new skills" (*Goldson* 2008, p. 78). This is supposedly an explanation for special age limits for the imposition of community service. For example in *England/Wales*, *Ireland* and *Northern Ireland* community service can only be imposed on juveniles aged 16 or older. Huge differences can be observed with respect to the maximum number of hours: Whereas the limit in *Belgium* is 30 hours and the *Austrian* maximum is 60 hours, a juvenile offender can receive up to 120 hours in *France* or 200 hours in the *Netherlands*. Quite unfortunately, no statutory limits are provided in *Germany*. However, in practice the large majority of community service orders do not exceed 50 hours. In exceptional cases where disproportionate numbers of working hours are imposed, an appeal would be possible with the argument of a violation of the constitutional principle of proportionality.

The differences in legislation are partly due to different approaches and settings for community service orders: For example, in *Finland* a high number of hours (regularly only for young adults aged 18-20) will replace a sentence of up to 8 months of unconditional imprisonment.[47]

Stemming from the Soviet system *Russia*[48] distinguishes two different forms of "work orders": (compulsory) "community work" and "corrective work". Corrective work can be imposed for between two months and one year, for offenders who are currently employed. 2-5% of the juvenile's earnings are withheld. The *Ukraine* provides for both sanctions as well. The term "work" in

45 *Christiaens/Dumortier/Nuytiens* in this volume stress that this innovation "is surrounded more by questions than by answers".

46 *Goldson* 2008. p. 78 (Community Punishment Order).

47 In *Finland* prison sentences of up to 8 months may be commuted to community service (from 20 to 200 hours). In order to ensure that community service will really replace an unconditional prison sentence the judge in a first step has to impose the prison sentence, which then in a second step can be commuted to community service. As prison sentences for juveniles are only very rarely used, community service also does not play an important role: In 2005 only 14 community sentences were imposed on 15 to 17 year-old juveniles (0.3% of all 4,252 court disposals, see *Lappi-Seppälä* in this volume).

48 *Bulgaria* makes this distinction as well but corrective work seems to be inapplicable to juveniles/adolescents, see *Kanev et al.* in this volume.

comparison to "service" expresses the more punitive character of this sanction.[49] *Latvia* does not make legal provisions for corrective work in this sense, but emphasizes the punitive element of "unpaid work" which involves a person's compulsory participation in an indispensable public service as a form of punishment.

Lithuania, like many other Eastern European countries, abolished the sanction of corrective work with the law reforms of 1992 and 1995, because the necessary requirements can not be met in the free market economy: Most enterprises have been passed into private hands which are usually not open to receive offenders. The former "corrective work" sanction consisted of placement at a certain workplace (typically in a state-run enterprise) and the deduction of 10-20% of the salary. This form of imposing duties is not compatible with the free market economy. Additionally, a workplace cannot be guaranteed any more, and such a guarantee was a precondition for the execution of corrective work in the Soviet system. As a consequence, the new Penal Code of *Lithuania* abolished the sanction of corrective work and established community service instead (although in former times corrective work had accounted for approximately 25% of all imposed sanctions, see *Sakalauskas* in this volume).

Many countries have successfully implemented creative and constructive measures such as, for instance, social training courses (*Germany*) or so-called labour and learning sanctions or projects (the *Netherlands*), where the juveniles can learn to deal with their aggressive potential or where they can be trained according to their personal skills.

In some countries there are special "centres" to which juvenile offenders can be sent for a few hours a day. In *England/Wales*, the attendance centre order requires a young person to be present at a (usually) police-run institution on Saturday afternoons, where juveniles engage in physical education and other activities designed to inculcate a sense of discipline or social skills, for sessions up to a maximum of 36 hours.[50] In *Kosovo*, the court can commit a minor to a disciplinary centre for a maximum of one month (for up to four hours per day) or for a maximum of four days of a school or public holiday (for up to eight hours per day).[51] In *France*, the law of 5 March 2007 created a new educational measure, activities during the day (*mesure d'activités de jour*), in which the juvenile is involved in vocational or school insertion activities at a public or

49 The meaning of corrective work is insofar similar to the character of the "Community Punishment Order" in *England/Wales* which replaced the "Community Service Order" in 2000, see *Goldson* 2008, p. 78 (with regards to Community Punishment Orders).

50 See *Dignan* in this volume. This sanction is comparable to the German "weekend arrest", see *Dünkel* in this volume.

51 Up to now, disciplinary centres in *Kosovo* do not exist in practice.

qualified private institution or agency. In *Italy*, the magistrate can order the minor to carry out study or work activities in special working groups.

Some European countries (*Estonia*, *Germany*, *Lithuania*, *Russia*, *Spain* and the *Ukraine*) provide for the possibility of short-time detention in special disciplinary centres. The educational effect of detaining young people in a closed institution for a short period of time can be deemed questionable (see below).

Germany introduced short-term detention in a special detention centre (up to four weeks of detention as a short sharp shock) into the juvenile justice system by an amendment to the Juvenile Justice Act in 1943. This "demonstration of the repressive *Zeitgeist* of the Nazi era" (see *Dünkel* in this volume) is currently still in force, as attempts have been made to adjust it to the educational ideal by transforming it into a kind of stationary social training course. The reality still looks questionable and therefore academic scholars almost unanimously call for the abolition of short-term detention (see *Dünkel* in this volume), whereas practitioners emphasise the usefulness of such detention as a stationary social training course in order to prevent (longer) sentences of juvenile imprisonment and for those juveniles who fail to comply with community sanctions.

Lithuania provides for a sanction called "arrest" in special "arrest-houses" for a period between 5 and 45 days. The law foresees the possibility this for sanction to be suspended. The situation is similar in *Estonia* (up to 30 days), and in *Russia* arrest in special arrest houses can be applied for 1 to 4 months. In practice this sanction is not used because there are no arrest-houses in the country (see *Shchedrin* in this volume). There are in fact legal proposals that aim at this sanction being abolished entirely.

Ukraine foresees short-term detention for a period of between 15 and 45 days. The offender must have reached the age of 16 before the court can apply this sanction. However, nothing is known about its practicability.

In *Spain* the juvenile can be ordered to spend weekends in an open centre or at home, with attendance at a centre during the day being considered more lenient ("attending a day institution"). This measure, which is a combined measure, was already included in the law of 1992 under the title "brief detention period of one to three weekends".

In *England/Wales* the idea of "shock incarceration" in detention centres was abolished in favour of the "detention and training order" with a maximum period of twenty four months (of which are only 12 spent in detention). In 1995 the *Netherlands* likewise abandoned the sanction of short-term detention for up to 14 days. Looking at these countries and the rare or non-existent use of similar measures in practice in several Central and Eastern European countries (see e. g. *Russia*) we can observe an increasing tendency against the use of short-time detention sanctions in Europe (see *Bochmann* 2008, p. 179).

This is not surprising if we look at the criticism that such sanctions have received: *German* research results have shown extremely high recidivism rates among persons who experience short-term detention (70% within four years of

sentence, compared to less than 40% for educational community sanctions).[52] Although the research is not based on a comparison of real control groups, it is evident that juveniles who take part in community sanctions today (such as social training courses or community service orders) are rather comparable to those who had been sentenced to short-term detention before the 1990s. The *German* sentencing practice can therefore be seen as a "natural experiment" in which short-term detention is replaced with (more educational) community sanctions. The recidivism rates for short term detention were always the highest, whereas recidivism after community sanctions remained low in spite of more medium or higher risk offenders having been involved. Therefore, recently (2009) renewed demands from the conservative parties for a new form of arrest (short-term detention in combination with a probation period from a suspended prison sentence) will hopefully remain unsuccessful.

Christiaens/Dumortier/Nuytiens (in this volume) give the example that sometimes in practice there are similar "sanctions" that can not be found in the law: In *Belgium* measures of "provisional placement" in the pre-trial phase are misused as "short sharp shock" interventions for juveniles.

In *Austria*, *Denmark*, *Estonia*, *Finland*, *Germany*, *Sweden* and *Switzerland* an offender can be convicted without receiving a concrete sentence. In *Germany* it is a special alternative to youth imprisonment and combined with a period of supervision by the Probation Service.[53] In *Sweden*, the conditional sentence (*villkorlig dom*) brings with it a two year period of unsupervised probation and shall regularly be supplemented with a fine or with community service (for 18 to 20-year-olds).

Supervision or surveillance orders can likewise be found in most European countries. In most countries, the Social Service or the Probation Service is responsible for the execution of this measure. In *Kosovo* the juvenile offender is usually supervised by the legal representative, normally the parents. In *Italy* likewise the offender can be "placed" at home: During such "house arrest" the minor usually stays at home under the supervision of his/her parents or another caregiver. The aim is to avoid isolating the minor from his/her familiar and social surroundings in order to prevent disturbances to his/her personal development.

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52 The recidivism rate of about 70% is also higher than for those sentenced to conditional juvenile imprisonment (probation) and about the same as for unconditional juvenile imprisonment (see *Jehle/Heinz/Sutterer* 2003). The concern is that short-term detention is provided for the lower-risk offenders and therefore the high recidivism rates indicate a failure of such short-term detention; the results insofar are in line with the meta-analyses showing no effect sizes for shock-incarceration and similar scare straight programmes, see e. g. *MacKenzie* 2006; 2006a; *Dowden/Andrews* 2000 with further references.

53 See § 27 German JJA and *Dünkel* in this volume.

In *Finland* the Juvenile Punishment Order consists of work programmes, supervision and activity programmes that aim to promote social adjustment, the person's sense of responsibility and his/her social relations. There is a strict requirement that this sentence only be issued in high-risk cases. This requirement may prevent net-widening effects as the Juvenile Punishment Order is definitively only applied in cases of repeat offenders who have already been sentenced to conditional imprisonment.

Contrarily, in *England/Wales* the introduction of the so-called referral order could well be having a net-widening effect,[54] since it is more invasive and rigorous than the conditional discharge that it has essentially replaced in practice (see *Dignan* in this volume). "Action plans" or "referral orders" in contrast to the *Finnish* "Juvenile Punishment Order" follow a more punitive approach.

In *Estonia*, *Hungary*, the *Netherlands*, *Poland*, *Portugal*, *Slovenia, Spain* and *Sweden* it is possible to confiscate a person's driver's license or to issue a prohibition from driving a vehicle as an independent sanction or measure. In these cases the courts have to consider a certain susceptibility to unequal treatment, because there are special groups of juveniles or young adults who are more dependent on driving a car than others (due to work obligations, poor local infrastructure etc.). We have serious reservations against the temporary withdrawal of a driver's licence as a standalone sanction, especially if it is used for other than only traffic related offences. The future integration of juveniles is often more difficult when their mobility is hampered. Therefore, educational efforts should be made to allow juveniles to participate in traffic in a responsible manner. Social traffic training courses seem to be the appropriate answer, rather than excluding juveniles from mobility – particularly when they live in rural areas.

Many (but not all) European countries provide suspended juvenile prison sentences that frequently go hand in hand with supervision by the Probation Service or a similar service with a social work approach. In *Germany* and *Estonia* for example, such supervision is obligatory. The "Continental European Model" of suspended sentences implies the imposition of a youth prison sentence, the execution of which is not immediate. Should an offender fail to meet the conditions of probation, suspension is revoked and the juvenile serves the term of imprisonment set at the first trial (for example in *Austria*, *Bulgaria, Germany* or *Spain*).

Especially the states of the United Kingdom (*England/Wales*, *Northern Ireland* and *Scotland*) as well as *Ireland*, *Cyprus* and *Kosovo* provide for probation as a special sanction. This sanction is – as its name indicates – always connected with support from and control by the Probation Service. Contrary to the "Continental European Model", in these countries no term of detention is fixed. Therefore, where an offender fails to comply with his or her probationary

54 See *Dignan* in this volume and *Dünkel/Pruin* 2009, p. 195.

requirements, the term of imprisonment is determined in a second sentencing trial. Here one finds another explicit example for how the same terms can mean different things in a European "exchange": Many countries use the term "probation" to describe the "Continental European" approach of "suspended sentences with supervision". In *Table 1* we have tried to classify the sanctions according to their meanings rather than the names they have been given.[55]

No European country has managed to totally avoid imprisonment or detention for juveniles. Many different forms of deprivation of liberty with corresponding institutions can be found in Europe, like youth prisons, detention centres, closed educational care or schools "for juveniles with special needs".

Considerable differences can be found between the systems in this respect.[56] In some countries, open or closed welfare institutions do not play an important role with respect to deprivation of liberty for juveniles. There are no or few institutions, and the larger share of juvenile offenders is detained in specialised juvenile prisons or in (departments of) adult prisons. Examples are *Germany*, *Greece*, the *Netherlands* or *Turkey*. In other countries specialised juvenile prisons are not of major importance and most juveniles are placed in open or closed welfare institutions, for example in *Belgium*, *Denmark*, *Finland*, *France*, *Italy*, *Slovakia*, *Switzerland* and *Sweden*.

Some examples show that the name is not a decisive factor in this regard: In *Bulgaria* alongside different forms of educational (reformatory) schools, there are so-called "correctional homes" where juveniles serve their sentences under the criminal procedure. *Walsh* (in this volume) claims that imprisonment for juveniles does not exist in *Ireland*. Since March 2007, in *Ireland* a "child offender" (under 18 years of age) cannot be formally sentenced to imprisonment. There is, however, an option for detention in a children's detention school (formerly reformatory schools) or St. Patrick's Institution which is likely to be comparable to youth imprisonment in other countries. The situation in *Belgium* is similar: According to *Christiaens/Dumortier/Nuytiens* (in this volume) the juvenile can be placed in an open or closed community institution, which – as a tribute to the consistent welfare approach – is not seen as a youth prison, but which is nonetheless similar in terms of the consequences for the juvenile. The

55 The *Swedish* doctrine explicitly expresses that supervision has to be viewed as a comparatively severe punishment, while conditional sentences are less severe interventions. At the same time, both are deemed more severe than fines, while being less intrusive than deprivation of liberty.

56 All following information is taken from the country reports or the responses of the Summary Analysis of the national replies to a questionnaire related to the treatment of juvenile offenders, that was sent to the member states of the Council of Europe on 1 October 2006 in order to gather information on the actual legal situation and statistical data on juveniles subject to non-custodial and custodial sanctions or measures, see *Dünkel/Pruin* 2009a and *Dünkel/Stańdo-Kawecka* in this volume.

situation in *Estonia* is comparable insofar as juveniles can be placed in a closed youth home or special school which is not labelled as a youth prison, but which may well be similar in practice (see *Ginter/Sootak* in this volume).

The prevailing type of institution with regards to deprivation of liberty of juveniles is explained by the respective overall approach to juvenile justice (welfare or justice oriented, see *Pruin* and *Dünkel/Stańdo-Kawecka* in this volume). In countries following a welfare approach, welfare institutions are the first choice. A strict welfare system would not allow juveniles to be accommodated in (adult or juvenile) prisons, because in such systems juveniles can not receive criminal sanctions, but are only treated with welfare measures. *Bulgaria* is an example for such welfare oriented policy that claims the absence of any youth prison.[57] *France* has 22 closed welfare institutions (CEF and CER, see *Dünkel/Pruin* 2009a) and has just recently planned and established seven juvenile prisons (*établissements pénitentiaires pour mineurs*). However, until recently a lot of juveniles were being placed in adult prisons. In *Belgium*, a new Act has introduced a diversification of the possibilities to residentially place a minor. Besides the old possibilities to place a youngster (1) with a "competent private person" (foster family), (2) in a private institution or (3) in an "open" or "closed" community institution, the new Act of 2006 has created the additional possibilities of (4) placing a minor with a "(legal) corporate body" in order to fulfil a "positive achievement" or (5) placing the minor in a hospital, in a service that organises withdrawal courses (alcohol, drugs) or in an open or closed juvenile psychiatric institution.[58] *Belgium* has seven closed welfare institutions and only one juvenile prison. In *Italy* most juveniles are placed in open welfare institutions, while relatively few end up in juvenile prisons. *Swiss* juvenile justice authorities apparently rely even more on welfare institutions. Most of them are open facilities, and juveniles in separate prison units are the very exception (see *Hebeisen* in this volume). We can see in these countries that the welfare approach is not the only principle in the respective juvenile justice system, but it does appear to play an important or even dominating role.

Countries that more closely follow a justice approach treat juveniles primarily as offenders and place great emphasis on due process guarantees. Consequently, welfare institutions are only an offer to the juveniles that can be taken up voluntarily (for example to avoid custody in youth prisons or pre-trial detention). Thus, closed welfare institutions do not play as important a role as juvenile prisons do. Accordingly, in *Germany* there were about 250 places in

57 Although the so called correctional homes are comparable to youth prisons in other countries (see above). It remains unclear whether and how many juveniles are imprisoned in prisons for adults in *Bulgaria*.

58 More information about the different types of deprivation of liberty can be found in the chapter of *Dünkel/Stańdo-Kawecka* in this volume and *Dünkel/Pruin* 2009a.

closed welfare institutions in 2006 (which are partly used to avoid pre-trial detention) and 5,844 places in juvenile prisons.

The *Scandinavian* countries can hardly be placed in this category, because they do not have special juvenile justice systems or specialised youth prisons. Young offenders are placed in adult prisons or – as in *Denmark* – in prisons for young adults. But the intention to avoid imprisonment for juveniles is taken very seriously in *Scandinavia*, as can be taken from the very small numbers of juveniles in prison there (see *Dünkel/Stańdo-Kawecka* in this volume). On the other hand, more juveniles are placed in open and – less often – in closed welfare institutions (see *Haverkamp* in this volume). This shows that the connection between the justice and the welfare system is very strong.

In any case, one should not forget that any form of deprivation of liberty is an intensive intervention into the rights of juveniles and should therefore always be observed carefully and be seen as a sanction/measure of last resort.[59]

Some countries have introduced electronic monitoring for adults and for juveniles (for example in *England/Wales*, *France*, the *Netherlands*, *Scotland* or *Sweden*) as a means of reducing the number of persons sent to prison. We have serious doubts whether or not such practice always serves as an appropriate and proportionate alternative to custody. These reservations are based on the fact that such measures are often oriented towards increased control more than anything else. Wherever it is used for juveniles it should only be admitted as an additional control element for primarily educational sanctions and should never be used as an independent or standalone intervention. Furthermore, it must be strictly limited to cases where a custodial sanction would otherwise be inevitable (in order to prevent net-widening). It seems that electronic monitoring in the field of juvenile justice can not be a useful strategy except in very exceptional cases. There are good reasons to rely more on dynamic factors in personal relationships to educational personnel than on technical devices. If electronic monitoring is applied, it must be assured that it is only used as an alternative to the execution of a prison sentence. To avoid net-widening it should be postulated that, like in *Sweden*, electronic monitoring can only be applied in cases where a prison sentence has already been imposed, which can then be replaced.[60]

59 According to all international recommendations mentioned above.

60 Unfortunately, there are no data available on how many times electronic monitoring has in fact been applied regarding young offenders.

Table 1: Diversionary and court dispositions in European juvenile justice systems

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Russia	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine
Informal sanctions																																		
Non interventional diversion (i. e. absolute discharge/ withdrawal)	X		X		X	X	X	X	X	X	X	X	X				X	X	X		X	X	X	X		X		X	X	X	X	X		
(Conditional) Diversion with intervention	X	X	X[1]	X	X[1]	X	X[2]	X	X[1]	X	X	X	X	X	X[17]	X	X	X	X	X	X	X	X	X[1]	X[(1)]	X	X	X	X	X	X	X	X[18]	X[1]
Diversionary measures																																		
Reprimand/caution		X[12]	X					X	X		X	X				X			X		X				X								X
Suspending prosecution for probation period	X							X						X														X			X		
Out of court settlement (i.e. victim-offender mediation, reparation)		X	X	X		X	X		X	X	X	X	X	X	X	X	X		X	X	X[3]	X		X	X[3]		X		X	X	X		X
Community service/work	X		X	X					X			X	X				X		X	X						X	X		X	X				
Fines (or comparable)	X											X	X																					

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Russia	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine
Special obligations/ orders concerning the everyday life, training courses/ programmes	X		X	X					X		X	X	X	X		X	X	X	X	X			X		X		X						X
Institutional educational measures (or similar)			X																X															
Formal sanctions																																		
Reprimand/warning	X	X	X	X		X			X		X	X	X	X		X	X	X				X	X	X	X	X				X	X	X	X	X
Fines	X				X	X	X	X	X	X	X	X	X^{21}	X		X	X	X	X	X	X		X	X	X							X	X	X	X
Victim-offender mediation, reparation order (or comparable sanction/measure)		X^{13}			X			X^{4}	X		X	X	X		X	X	X^{5}	X			X		X		X						X^{15}		X		X
Community service/ work		X					X^{6}	X^{7}	X	X	X	X	X	X	X	X	X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X
Special obligations/ orders concerning the everyday life, training courses (or comparable sanction/ measure)				X			X^{6}	X^{8}	X	X^{9}	X	X	X		X^{16}	X	X^{5}		X			X	X	X	X	X			X	X	X	X	X	X	X
Referral to an attendance centre (or comparable)				X				X	X		X				X	X	X				X		X										X	

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Russia	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine
Short time detention									X			X							X							X					X^{11}				X
Supervision/-surveillance		X		X	X			X	X	X^{9}		X	X				X	X		X		X	X	X	X	X	X	X		X	X		
Confiscation/disqualification from driving a vehicle									X					X			X	X		X		X	X							X	X			
Conviction without sentence	X						X		X	X		X																			X	X		
Institutional educational measures (or similar)		X		X	X	X	X		X		X		X		X^{10}	X	X	X		X		X	X	X	X	X	X	X		X	X	X	X
Suspended/conditional imprisonment	X^{19}		X^{19}	X^{19}	X	X^{19}	X		X^{19}	X^{19}	X^{19}	X^{19}	X^{21}	X^{19}	X^{19}		X^{20}	X^{19}	X^{19}	X^{19}	X		X	X^{19}	X			X^{19}			X^{19}	X	X^{19}	X^{19}
Probation					X			X								X	X				X					X								
Imprisonment/detention	X	X^{14}	$X^{(14)}$	X	X	X	X	X^{14}	X^{14}	X	X	X	X	X	X	X^{14}	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Note: 1) Referral to social service, juvenile commissions or a similar body, 2) Youth contract, 3) Youth/family conference, 4) Reparation order, 5) On the basis of supervision, 6) In case of suspended sanction, 7) Reparation order and community service order (offenders aged 16-17), 8) Referral order, community service order, curfew order, 9) Juvenile punishment order, 10) Probation order coupled with an obligation to reside in a certified hostel residence, 11) One to three weekends, 12) Parents can also be cautioned, 13) and group conference, 14) Placement in educational institutions like youth homes etc. which are – especially seen by a welfare approach – no youth prisons, but can be defined as comparable with regards to the consequences for the juveniles, 15) Reparation order: in combination with referral to the Social Services, VOM: just voluntarily, 16) House arrest 17) "Pre-trial-probation" as a special form 18) Postponement, 19) With supervision, 20) Combined with community service, 21) If the young offender is sentenced after his/her 18th birthday.

3. Sentencing practices

3.1 Methodological Problems

Before presenting some results about the sentencing practice, we have to prepend some comments that limit the informative value of our data:

In our AGIS-project we asked the reporters to describe informal ways of dealing with juvenile delinquency and by this wanted to know how often the possibility of diversion or other alternatives to prosecution for juvenile offenders are used in each country. In another separate chapter we then asked for data about juvenile court dispositions and their application.

As can be seen from these questions we refrained from regulating how the reporters should present their data. For example, we did not ask for an imprisonment rate for young people per 100,000 of the relevant age group, for two reasons: First of all we are aware of the fact that – apart from the general problems that arise when working with statistical data about crime and reactions to crime in a large number of countries[61] – the collection of data about criminal behaviour and its sanctioning by juvenile justice and (more difficultly) welfare authorities varies a lot in Europe. Sometimes an absence of reliable statistical records can be observed (see *Muncie/Goldson* 2006, p. 2), and even where statistical records do exist, practice of how crimes (and clear-ups) are recorded varies greatly (see *Cavadino/Dignan* 2006, p. 4). Thus, comparability can only be achieved through lots of interpretation.[62] This makes an international comparison of statistical data difficult enough. To complicate matters further, the different juvenile justice systems provide for a wide variety of possibilities for dealing with juvenile offenders. So for example the imprisonment rates for juvenile offenders in one country could be extremely low whereas simultaneously the rates of juveniles in closed residential facilities of the welfare system could

61 For example, some countries register offences related to the offence, others related to the offender. In the course of proceedings the year can turn so the outcomes of a case that began in one year could be registered in another year, some statistics only refer to the most serious offence, some statistics only refer to reported cases, others to proceedings (with possibly many offences and even several accused persons etc.; for the general problems see for example *Cavadino/Dignan* 2006 p. 4; *Muncie/Goldson* 2006, p. 2 or *Muncie* 2001, and for the methods of comparative research *Barberet* 2009).

62 The difficulties are shown by the fact that the European Sourcebook of Crime and Criminal Justice Statistics does not contain juvenile justice material (see *Killias et al.* 2003; *Aebi et al.* 2006) and even the SPACE project of the Council of Europe does not contain information about the sentencing practice in juvenile justice, see http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Prisons_and_alternatives/Statistics_SPACE_II/; also *Jehle/Lewis/Sobota* (2008, p. 237 ff.) do not give concrete comparative figures on diversionary practices and the way of dealing with offenders in the juvenile justice system.

be quite high. Concentrating on statistical data about imprisonment would ignore the great amount of alternatives to custodial sanctions in the juvenile justice systems. This is why imprisonment rates in the field of juvenile justice have to be interpreted with extreme care. Even if we try to compare other categories of interventions, the meaning of "educational measures" for example is not consistent between the countries whatsoever. Some countries use the term "educational measures" to distinguish between custodial and other (= educational) measures. In some countries "educational measures" can also include closed residential care.

The different age groups that are covered by the different juvenile justice systems all over Europe[63] additionally hinder comparability. While statistics in *England/Wales* deal with 10 to 17 year-old juveniles, the German juvenile justice sentencing data cover 14 to 20 year-old juveniles and young adults.

Our conclusion was to give the reporters in the AGIS-project a rather wide scope of discretion in describing their national sentencing practice instead of strictly requiring them to adhere to a pre-determined form and structure of data-presentation that many would have been unable to follow. Therefore, the result is not surprising: it is almost impossible to compare the national data in one table for all European countries. However, we can present some structural elements and tendencies within the specific countries.

3.2 Sentencing "strategies" in individual countries and comparative aspects

3.2.1 The application of informal and formal sanctions in individual countries

Austria

The law reform of 1988 emphasized diversion and restorative justice (mediation), and practice has indeed changed in this direction. The total number of convictions already decreased in the "model phase" of alternative projects from 7,809 cases in 1984 to 2,808 in 1989.[64] Complete and comprehensive statistical data on diversion are not available. Estimation can be obtained by comparing the numbers of suspected and convicted juveniles during one year. With regards to these figures, in 2004 almost 90% of cases ended at the pre-court level, not all, however, because of diversionary discharges. A more realistic

63 See *Junger-Tas/Dünkel* 2009, p. 221 f.; *Pruin* and the table in the concluding chapter (*Dünkel/Grzywa/Pruin/Šelih*) of this volume.

64 The later increase of convicted juveniles in the 1990s is due to increased crime problems which have, however, levelled off in the course of the 2000s.

diversion rate could be about 50%.[65] The main diversionary interventions in practice are dismissals according to the drug law, and victim-offender mediation, whereas court intervention remains a last resort (2004: 9% of all court dispositions were juvenile imprisonment; another 12% were partly-suspended sentences). The sentencing practice has changed insofar as minor court sanctions (admonition etc.) have apparently been replaced by diversionary reactions, whereas unconditional imprisonment remains unchanged at about 1% of all suspects.

Belgium

After the 2006 reforms the *Belgian* system still remains strongly imbued with welfare elements but has been increasingly oriented towards restorative justice. There are almost no statistical data available, but individual research reveals a diversion rate of approximately 70%. Further research on court dispositions found that about 50% entailed placement in a welfare institution, half of them in closed institutions, whereas other sanctions were community measures including probation. No longitudinal data are available and therefore nothing can be said about changes in sentencing practices. There is the impression that not much might have changed as the strong welfare orientation has been retained.

Bulgaria

In *Bulgaria* the so-called local commissions and the courts deal with so-called anti-social behaviour (mostly status-offences such as truancy, running away from home etc.) as well as with criminal offences. The sanctioning practice for anti-social behaviour and for crimes with regards to correctional measures looks very similar. In 2005, 39% of the correctional measures imposed were warnings, another 16% were placements under the supervision of the parents and 19% were placements under the supervision of a public educator. Placements in a correctional boarding school (a form of residential home) as the most intrusive measure are the exception and used as a last resort (2% of all measures). In 2005 about 9,000 juveniles received correctional measures, and another 3,300 (2005: 3,273) were sentenced following a formal criminal procedure. Traditionally almost all of these juvenile offenders received a custodial sanction (80-90%), but since 1998 an amazing reduction in the proportion of custodial sanctions can be observed: in 2005 only 1,545 (47%) received a sanction of deprivation of liberty. Since 1998 some of those who previously would have been sent to prison departments have instead received the correctional measure of being placed in a boarding school. However, it nevertheless appears that, in total,

65 *Jesionek* 2007, p. 122 reports a diversion rate of about 50% according to § 6 Austrian Juvenile Justice Act.

alternative sanctions or measures are being used more and more and that the imposition of custodial sanctions is in decline. In 2005 the most important community sanction was the victim-offender agreement (41%).

Croatia

In *Croatia* the Juvenile Justice Act of 1998 extended the possibilities of diversionary reactions and of (court based) educational sanctions. In 2005, 50% of juvenile cases were diverted by the prosecutor. Of those convicted by the juvenile court, on average (in the period 1998-2005) only 1% was sent to juvenile prisons, another 7-8% were placed in open educational institutions and 4% were sent to closed correctional institutions (i. e. different forms of residential homes). In the 1980s the proportion of juveniles sentenced to imprisonment was about three times higher (16-22%). As in other countries deprivation of liberty in a closed setting has therefore become the absolute exception, and accounts for only about 2-3% of all informal and formal sanctions imposed on juveniles.

Cyprus

In *Cyprus* in 2002 the Attorney General introduced a new policy that considerably suppressed the possibilities for diversion. In the 1980s and 1990s up to 90% of juveniles were not prosecuted because the principle of expediency dominated the sentencing practice. Since 2002 almost no cases are diverted anymore. However, statistics are not reliable and quite a number of cases are probably being diverted directly the police. Of those sentenced by the courts, since 2002 annually only 1 to 6 juveniles (i. e. between 1% and 5%) were sentenced to unconditional imprisonment. The change in prosecutorial attitudes has apparently not resulted in the issuance of harsher punishments by the courts.

Czech Republic

In the *Czech Republic* the reform law of 2003 (enforced on 1 January 2004) introduced diversion and a variety of educational sanctions, including mediation. Diversion is not frequently applied in practice; the rate of prosecutorial diversion has only slightly increased from about 10% in 2000 to 18% in 2006. The main sanctions of the Juvenile Court are the so-called conditional sentence (probation with and without supervision by the Probation Service) and community service orders, although diversion (by the prosecutor or judge) and other educational and "protective" court ordered measures should have priority. In 2006, 43% of the sanctions ordered by the juvenile courts were conditional prison sentences without supervision, and a further 7% were supervised conditional sentences. Community service orders accounted for 21%. Court based diversion

was issued in 20% of the cases either in the form of a conditional (12%) or an absolute discharge (8%). The new forms of supervision by the Probation Service and social workers from other organizations have gained importance, although the deficits of staffing and of regulations for the implementation of community sanctions are still evident. Nevertheless, the use of juvenile imprisonment as well as of pre-trial detention has decreased considerably. In 1995, 86% of court sanctions were community sanctions and 14% were sentences to youth imprisonment. 11 years later, the figures had shifted to 93% and only 7% respectively. Deprivation of liberty has really become a measure of last resort. This was partially supported by further reforms of criminal procedure laws (e. g. in 2002 and 2004 restricting pre-trial detention). The daily prison population of sentenced juveniles has dropped from more than 300 in the 1980s to about 100 in 2006. The reduction of the juvenile population in pre-trial detention has been even more impressive: after a sharp increase since 1989 to more than 600 in 1994 it decreased to slightly over 200 at the end of 1999 and no more than 59 in 2006.

Denmark

In *Denmark* the general criminal law with some few amendments is also applied to juveniles. Therefore fines, suspended sentences and unconditional sentences are the dispositions available. However, in 2002 a special sanction (the youth sanction) was introduced, which includes mandatory deprivation of liberty in two types of juvenile institutions (high and low security) for up to 18 months, followed by a period of aftercare/supervision. The sanction has a fixed total duration of two years, including the aftercare/supervision stage at the end. It is rarely imposed (about 100 cases per year), maybe because there is the impression that it is a more serious sentence than the prison sentences (1-12 months) that had been used before the youth sanction was introduced. Diversion is not as widespread as in other western countries, with only 20% of cases being diverted. On the other hand, sending juveniles to prison is the absolute exception in *Denmark*, and almost all juveniles who receive prison sentences are transferred to so-called pensions (residential homes) or to the Welfare Authorities which accommodate them in institutions. The number of juveniles in the prison system is regularly under 10. Danish sentencing of juvenile offenders seems to be rather stable.

England/Wales

The development of the sanctioning practice in *England/Wales* is of major concern insofar as – certainly in part related to ongoing law reforms and "getting tough" policies – the number of juveniles deprived of their liberty has considerably increased. The cautioning rates decreased in the 1990s and stabilised in the 2000s (2005: about half of the 14 to 16 year-olds were cautioned). The proportion

of 15 to 17 year-olds sentenced to custody with 14% in 2004 was much higher than in most Western European countries on the continent. Another element of the "getting-tough" philosophy was the introduction of the so-called referral order (resulting in various, often combined educational or residential measures), which was used in 26% of the cases in 2004, whereas the proportion of discharges decreased from 29% 1992 to 11% in 2004).

More recently, there has been an observable desire for a turnaround in the use of custody in England and Wales. Almost paradoxically, the Government coalition of Conservatives and Liberal Democrats elected in 2010 has voiced an interest in reducing the use of imprisonment (not least due to economic reasons).[66] From 1999 to 2009, the number of 10 to 17 year-olds sentenced to immediate custody already decreased from 7,653 to 4,940 (a reduction in absolute figures of 35%). The share of juveniles sentenced to immediate custody among all sentenced juveniles decreased from 8.5% to 6.1%. Up until 2002, juveniles were more at risk of being sentenced to immediate custody than adults aged 18 and above. Since then the opposite has been the case. The average period of detention ordered against juveniles in all courts has – in part due to the introduction of the Detention and Training Order in the year 2000 and the implications of that sanction – increased from 8.8 to 11.1 months.[67] However, from the viewpoint of the share of custodial sentences among all sentences issued against juveniles, overall the neo-liberal trend has significantly lost momentum since the end of the 1990s, which indeed justifies the claim that a turnaround has occurred in terms of penal practice. Nonetheless, the proportion of juveniles sentenced to immediate custody remains noticeably higher than in other European countries, and in need of further attention.

Estonia

According to the statistics, the law reform of 2002 seems to have had a considerable impact on the sanctioning practice in *Estonia*, even though the statistical data for the first two years are seen as not being fully reliable. The prosecutor can dismiss a case due to minor guilt and refer it to the so-called Juvenile Committees, or bring a charge before the court. Far more cases are diverted to the Juvenile Committees (2004: 5,094 measures imposed) than are

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66 A recalibration in policy and practice has been in demand in the academic sphere for some time, and has recently been highlighted by the 2010 Policy Paper of the Police Foundation ("Time for a fresh start", see *Independent Commission on Youth Crime and Antisocial Behaviour* 2010). The title of the volume edited by *Smith* in 2010 ("A New Response to Youth Crime") also stands for such a rethinking of criminal and penal policy (albeit for the time being only in academia).

67 See *Ministry of Justice*, ed., Sentencing Statistics 2009 (incl. Supplementary Tables, Table 2e), own calculations.

sentenced by the courts (1,004). The number of measures imposed by the Committees has almost tripled since 1999 (1,847), whereas the number of court cases resulting in a conviction decreased from about 1,600 to about 1,000. If taking into account the number of measures of the Juvenile Committees against convictions by the courts, the diversion rate would have increased from 55.2% to 83.5% within the 5 years from 1999 to 2004. However, this is not the whole truth, as the number of juveniles registered at the prosecutorial level was 1,415 in 2004, so that in addition the court diversion rate ("exemption of punishment")[68] must be considered, which would be 29% (411 not convicted by the court out of 1,415 prosecuted juveniles). Before the law reform (until 2002) the courts had imposed unconditional prison sentences in about 20% of all cases, whereas the proportion in 2004 was 71%. This change is probably just the result of increases in the numbers of referrals to the Juvenile Committees and not due to intensified or harsher sentencing. Court punishments are limited to unconditional and conditional prison sentences and fines (which are rarely appropriate for juveniles). *Ginter*/*Sootak* (in this volume) report that in 2005 the sanctioning practice changed again with conditional imprisonment being the most frequently used form of punishment (65% of all convictions). Unconditional imprisonment accounted for 19% of all juvenile cases, and 18% were relieved from criminal punishment and referred to a Juvenile Committee. These figures are difficult to understand and certainly problems of adequate registration and counting may have a role to play as well. It is not very reliable that from one year to another the proportion of unconditional prison sentences drops from 71% to only 19%. In any case, it becomes evident that the number of custodial sentences related to the total of referrals to the Juvenile Committees and the community sanctions imposed by the court is low and probably comparable to other countries which rely on the principle of using deprivation of liberty as a last resort.

Finland

The situation in *Finland* is rather different. Regarding informal sentencing, it is remarkable that diversion does not play an important role. For 15 to 17 year-old juvenile offenders, non-prosecution occurs only in 5-6% of all cases dealt with by the prosecutor in that age group. While non-prosecution is therefore used in a fairly restrictive manner (as compared to many other jurisdictions), mediation (as a form of diversion, not as a formal sanction) has played a substantial role in the Finnish juvenile justice system since 1995. Since only some of the mediation cases are included in the statistics about withdrawals of cases, the diversion rate (withdrawals) is underestimated.

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68 In these cases the court may, however, impose some educational measures, from a simple admonition to a supervision order up to the placement in different residential homes.

Regarding the Finnish court dispositions for juveniles, the low imprisonment rates are most remarkable. The imposition of prison sentences has declined over the years. While in 1980 3.5% of all cases dealt with by the courts resulted in imprisonment, it was only 0.8% in the year 2006. This implies that *Finland* is taking the postulation to apply imprisonment as a last resort very seriously and is not influenced by any harshening tendencies. As a reason *Lappi-Sepällä* sees reforms that he signifies as "humane neo-classicism" (see *Lappi-Sepällä* in this volume). Law reforms in *Finland* stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing, the principles of proportionality and predictability have become the central values. The population seems to agree with these objectives and has not voiced any demands for harsher punishments, not even in cases of serious offending.

The most frequently used sanction in *Finland* is the fine, which is quite exceptional compared to practice in other European countries.[69] Fines account for 74% of court sentences issued against 15 to 17 year-old juveniles. The second most relevant sanction in *Finland* is conditional imprisonment, accounting for over 17% of all interventions in 2005. Overall, one can conclude that *Finland* follows a strategy of minimum intervention, and that there have been no indications that practice has become or is becoming harsher or more severe.

France

The French criminal prosecution system is traditionally based on the principle of expediency. The prosecutor has the discretion whether or not to prosecute. In 2006, 41% of all prosecutable cases were in fact prosecuted further.[70] 50% of the juveniles convicted by juvenile courts received educational measures, mostly reprimands and/or transfers of juveniles to the supervision of their parents (surveillance by parents or legal guardians). Only about 10% of all convictions in 2006 were unconditional prison sentences (most of them for very short periods). The proportion of unconditional prison sentences among all sentences increased from 8% in 1980 to almost 14% in 2003, but subsequently dropped again to 10% in 2006, which is close to the figures of the early 1980s. It has to be considered as well that the social control within the area of community sanctions has been increased by enforced forms of supervision (*protection judiciaire*), which includes electronic monitoring in some cases.

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69 Fines cannot be issued against juveniles in *Belgium, Bulgaria*, *Croatia*, *Italy*, *Poland*, *Scotland, Serbia* and *Spain*, see *Table 1*.

70 See also *Höft* 2003, p. 174; *Hartjen* 2008, p. 90.

Germany

In *Germany* in the 1980s a major movement towards diversion and new educational alternative sanctions occurred. Diversion rates increased considerably from slightly more than 40% in the early 1980s to about 70% in 2006. Although a considerable number of violent and more serious offenders entered the juvenile justice system in the beginning of the 1990s an amazing stability of the sanctioning practice remains characteristic. Unconditional juvenile imprisonment accounts for only 2-3% of all informally (prosecutors and youth courts) or formally (youth courts after a trial) sanctioned juveniles and young adults aged 14-20. However, another 6% of the juveniles and young adults experience the disciplinary measure of short term detention of up to 4 weeks (*Jugendarrest*). The sentencing practice in the Eastern Federal States 20 years after the reunification has adjusted to the "Western" style. Altogether the sentencing practice is oriented to the minimum intervention model (including some restorative elements, mediation and community service orders).

Greece

In some aspects *Greek* sentencing practice is different from the countries that we have dealt with so far. Informal (diversionary) sanctions like the absolute discharge, which has only been available since 2003, are only rarely applied.
With regard to formal sentencing, educational measures play a pivotal role, with approximately 75% of all cases resulting in the imposition of an educational measure. More specifically, the most common of these measures is the reprimand, accounting for more than 50% of all court dispositions. It is remarkable that imprisonment is the second most commonly ordered sentence in *Greece*. More than 20% of all dispositions are sentences to imprisonment. Around 70% of prison sentences are less than one month and 90% are less than 6 months in duration. This means that short prison sentences are clearly predominant. What is more, they are executed only very rarely because they are often suspended (similar to probation). Fines are almost never issued against juveniles in *Greece*.

The sentencing data make no indication of an intensification or toughening-up of Greek practice. *Greece*, on the other hand, does not seem to follow any strategies of non-intervention. Obviously the Greek system emphasises warning offenders through formal proceedings and sanctions that are in fact not very invasive on second glance. It will be interesting to see whether this practice has changed under the new law of 2003, which opened the floor for diversionary measures and the discharge of cases to a large extent.

Hungary

Hungarian sentencing practice has experienced major changes since 1980. The proportion of diversion in the sense of an unconditional discharge (mostly combined with a reprimand) has increased from 16% in 1980 to 34% in 2007. Other forms of diversion are the postponement of an indictment and the referral to mediation schemes. These alternatives to bringing the charge to court increased from 0.2% in 1980 to 8% in 2007. The result of this orientation to informal reactions is that the proportion of indictments decreased from almost 84% to 58%. The court sentencing practice, too, shows a clear tendency towards less severe punishments. The proportion of (suspended and unconditional) juvenile prison sentences dropped from 34% in 1980 to 27% in 2007. At the same time the proportion of suspended sentences increased from 47% to 74%. In other words only 6.3% of all convicted juveniles received an unconditional prison sentence in 2007 (the corresponding figure for 1980 was 18%).[71]

Altogether *Hungary* has made great progress towards meeting the international standards that emphasise minimum intervention and community sanctions and measures.

Ireland

Since 1963 *Ireland* has disposed of a comprehensive police diversion scheme (Garda Siochana), and since 2004 family group conferencing has been in place as a specific alternative to formal court proceedings. There are, however, no statistical data available yet. The proportion of police diversion is not clear from the statistical data provided by the respective ministries (see the report by *Walsh* in this volume), but it is probably larger than the number of cases dealt with by the youth courts. 40% of the cases dealt with by the court in 2005-2007 ended without formal sanctions, mostly because of dismissals or withdrawals. 18% of the juveniles were sent to detention, and another 12-13% received probation.

Despite poor statistical evidence it becomes clear that, with the reform of the Children Act of 2001 (although major parts of the Act were not put into effect immediately), the use of custodial sentences should have diminished and the scope of restorative and other educational measures has been broadened. In conformity with this policy, the numbers of juveniles detained in reformatory and industrial schools on 30 June of each year show an overall downward trend from 159 in 1978 to 41 in 2005.

71 Own calculations from *Table 3* of the report of *Váradi-Csema* in this volume.

Italy

The *Italian* law reform of 1988 introduced diversionary measures and broadened the scope of alternative sanctions for juvenile offenders as well as for adults. *Italy* has traditionally been a country with strong ties to the principle of legality, and therefore the prosecutor had been denied any discretionary power for discharging or dismissing cases. This has been changed considerably and recently also victim-offender mediation has become an issue for limiting the power of the court. One of the possibilities to divert a case is "pre-trial probation" (*sospensione del processo e messa alla prova*). In this case, the law provides for supervision by the Probation Service at a very early stage in order to prevent further prosecution if the alleged offender complies with the requirements of probation. Another possibility for dismissal is provided in cases where an offence is not deemed serious enough. The proportion of preliminary probation has steadily increased. In 1992, in 2.9% of the preliminary hearings such a probationary measure was issued, whereas the proportion in 2005 was already 11.1%. At the court level *Italy* (under the leading principle of legality) has developed a special form of exemption from punishment: the judicial pardon (*perdono guidiziale*), which is restricted to first time offenders. The judge also disposes of the other diversionary measures relating to the petty nature of the offence, to efforts in mediation etc. Unfortunately no statistical information about the judicial practice is available from the national report in this volume. From earlier publications it becomes evident that diversion and the judicial pardon are widely used. *Picotti/Merzagora* (1997, p. 218 ff.) report that at the beginning of the 1990s only about 40% of registered young offenders were brought to court by the prosecution. In only 16% of these cases a formal trial was held, about 30% were dismissed by the judge because of the pettiness of the offence or guilt, and 23% received a judicial pardon.[72] The rest was dismissed for other reasons, and about 25% were dealt with by an abbreviated procedure (possibly in connection with a minor sanction). Apparently the Italian criminal justice system can still be characterized by its specific leniency and moderate sentencing practice which results in amazingly low incarceration rates particularly for juvenile offenders (see in general *Nelken* 2009).

Kosovo

Comprehensive data on the sentencing practice in *Kosovo* are not yet available. The report by *Helmken* (in this volume) indicates that in the early times of the UN mandate and shortly after the introduction of the Juvenile Justice Code in 2004, prosecutors hardly ever applied diversion measures. Statistical data on the

72 *Hazel* 2008, p. 22 reports that about 80% of juvenile court decisions are judicial pardons.

court practice of the year 2006 show a similar picture as in many other countries: 73% of the sanctions were educational measures (predominantly supervision by the parents) and 15% were punishments (community service, suspended sentences and unconditional imprisonment). Juvenile imprisonment as a last resort accounted for 4% of all sentences. In addition, placements in an educational correctional institution were issued in 2% of all cases resulting in a sanction.

Latvia

There are few special sanctions for juvenile offenders in *Latvia*. In principle the same sanctions like for instance fines, community service, suspended and unconditional imprisonment are provided. In 1999, however, the exemption from criminal liability was introduced as a form of diversion, and victim-offender mediation gained importance in this context. The prosecutor has wide powers of discretion and is also allowed to impose sanctions such as fines or community service orders, which are limited to half of the maximum provided by law (to be imposed in a court trial). No statistical information on the practice of diversion is given by the national report on Latvia in this volume. The court practice during the period from 2002 to 2006 shows no changes in the rate of unconditional prison sentences (26%), but an increase of community service orders from 6% to 14% and a decrease of suspended sentences from 67% to 59% is observable. Fines account for less than 1% over the entire period. It is impossible to judge whether or not the share of juvenile imprisonment is high since we have no clear picture of the diversion practice. Problems for a wider application of educational and restorative measures apparently arise from a lack of personnel and other resources.

Lithuania

Lithuania provides special educational sanctions for juveniles in a separate chapter of the Penal Code. Apart from the generally applicable criminal punishments (fines, community service, restriction of liberty, suspended and unconditional imprisonment) that are mitigated in cases of juveniles, according to Art. 82 PC the court can also impose the following educational measures: a warning, community service or reparation orders and directives/obligations, which are related to the offender's conduct, whereabouts etc. and placement in a special reformative facility as a last resort. Prior to the reforms of 2003, the sentencing of minors very much resembled adult sentencing patterns. Between 20% and almost 50% received an unconditional prison sentence. This has not changed very much after 2003: in 2008, 31% of all sanctions issued against minors were prison sentences. Another 6% received short-term sentences ("arrest" for up to 45 days). The proportion of suspended sentences decreased from 40% in 2004 to

26% in 2008, and the use of fines and community service orders is decreasing as well. Restrictions of liberty increased from 23% to 31%. Diversionary sanctions are apparently of very little importance. Despite the serious registration and counting problems that are indicated in the national report by *Sakalauskas* (in this volume) one may conclude that the sentencing practice in *Lithuania* remains rather harsh and that alternative educational measures do not yet play the role that they could be playing. In 2008 only 476 juveniles received educational measures whereas 1,263 were punished with a criminal sanction.

Netherlands

Dutch sentencing practice is characterized by the traditionally strong orientation to diversion projects such as HALT or STOP, which were developed in the 1970s and 1980s. Referrals to these projects are made primarily by the police, but also by public prosecutors. Far more than half of all juvenile cases are diverted and about 40% are dealt with via these schemes. The measures provided can consist of repairing the caused damage, following special courses, community service etc. Many cities have started special local offices for organizing and coordinating the so-called HALT disposal, which is an out-of-court settlement offered by the Public Prosecution Service to juvenile offenders involving community service or educational tasks. Participation in such a project means that no official report will be sent to the public prosecutor. Of those (possibly more serious) cases that did reach the prosecutorial stage in 2006, 65% were dismissed,[73] often in combination with conditions and obligations such as community service orders. Since the mid 1980s, dismissals without any intervention have been increasingly pushed aside by diversion linked to some form of intervention, according to the official policy of the General Prosecutor.
The few cases remaining for formal court proceedings are mainly sanctioned with community service orders (2005: 46%). Youth detention (juvenile prison sentences of up to one year for 12 to 15 year-olds and up to two years for 16 and 17 year-olds) is ordered in 31% (1997: 32%) of all cases formally sanctioned in court, while fines play a much smaller role (4%). Imprisonment can be imposed on 16 and 17 year-old offenders who are transferred to adult courts because of the seriousness of their offending. The proportion of such prison sentences decreased from 3% in 1997 to 1% in 2005. The proportion of custodial sanctions that appears very high at first glance (about one third of the court disposals) has to be relativised by the large amount of diversionary measures which do not reach the court level. Taking all HALT and similar disposals and the prosecutorial diversion measures into account, the proportion of custodial sanctions is about 10% of all informal and formal sanctions.

73 Own calculations from *Table 3* of the national report by *van Kalmthout/Bahtiyar* in this volume. The ratio is very stable: in 1995 66% of juveniles were diverted.

Northern Ireland

In *Northern Ireland* much emphasis is given to the police diversion schemes that are successful "in managing to keep the number of young people prosecuted through the courts to a minimum" (*O'Mahony* in this volume). The numbers of juveniles sentenced by the courts decreased from 1,254 in 1987 to 722 in 2004 (in 2005 the number of 1,455 includes 17 year-olds who had formerly been excluded by law). Juveniles dealt with via police diversion schemes are referred to prosecution in only 5-10% of cases, another 10-15% receive restorative cautions and 75-80% are dealt with informally (reprimands).

Of the cases that did reach the courts in 2005, 21% received conditional discharges, 24% were fined and 13% were sentenced to probation/supervision. 10% were sent to immediate custody, 9% were referred to an attendance centre and 5% were sentenced to perform community service. All other educational measures made up roughly 5% of the total. Since 1987, the share of juveniles being sent to immediate custody by the courts has decreased from 21% to 10% in 2005. Referrals to so-called youth conferences (introduced in 2004) already reached a considerable 55% in their second year of implementation. Altogether, practice in Northern Ireland appears to be rather moderate and oriented to the educational and restorative philosophies of juvenile justice.

Poland

The situation in *Poland* is complicated insofar as the juvenile justice system deals with offenders as well as with juveniles in need of care (juveniles showing signs of "demoralisation"). Nevertheless, some statistical data are available on juvenile offenders sentenced by the family courts. There is no police or prosecutorial diversion, but the family judge can dismiss a case on grounds of expediency, an option that is used in only about 10% of the cases. Since 2000 the judge can refer the juvenile to mediation, however in practice this possibility has been used only very reluctantly. The predominant sanctions imposed by the court on juvenile offenders (having committed a punishable act) are reprimands (32.8% of all educational or correctional measures in 2004), supervision by a probation officer (30.6%) and ordered parental supervision (16.0%). The principal measure of deprivation of liberty is placement in a correctional house (in some aspects similar to youth prisons in other countries, see *Stańdo-Kawecka* in this volume). It is used only rarely and accounts for only 1.8% of all sanctions ordered by the family court.[74] The share of this sanction has been on the decrease since 1990, which indicates that the sentencing practice is coming to more and more resemble the international recommendations. However, one must consider that (probably few) juveniles of at least 15 years of age who have

74 Own calculations from Figure 8 of the report of *Stańdo-Kawecka* in this volume.

committed very serious crimes can be sentenced by adult courts, and are not included in the family court statistics.

Portugal

There are no data available on the practice of diversion in *Portugal*. Concerning the court dispositions, one tendency is remarkable: Since the introduction of the new juvenile justice laws,[75] admonitions (as the least invasive formal sanctions) have come to be imposed less frequently. Whereas in 2001 62% of all educational measures imposed by the youth court were admonitions, the percentage had dropped to 23% by 2005. At the same time, educational supervision has seen increased application in practice, with shares increasing from 22% in 2001 to 29% in 2005. More dramatic statistical increases can be observed for the community service order (*realização de prestações económicas ou de tarefas a favor da comunidade*), going up from 1% in 2001 to 14% in 2005. Therefore, there is a visible tendency towards replacing less invasive measures with more invasive educational and community based measures. No clear-cut trends can be observed for (educational) internment measures. While there had been a steady decrease in the absolute numbers of the measure of internment under the old laws, since 2001 the numbers have gone up and down (2001: 5%; 2003: 15%; 2005: 9%). However, it should be noted that only a very small number of minors are interned in a closed regime.

Romania

In *Romania*, diversion (i. e. an order of no further criminal prosecution by the prosecutor generally combined with a referral to the Child Protection Directorate) is used extensively. Whereas in 1995 only 28% of the cases involving minors were diverted, the percentage rose to 53% by 1999 and reached 81% in 2007. Concerning the court dispositions, prison sentences are applied relatively often. In the year 1996, of 10,377 convicted minors 4,667 (almost half) were given prison sentences. In the following years the number of minors sentenced to prison dropped and accounted for roughly one quarter of all sentences in 2006. After the establishment of the Probation Service in 2002 an increased number of prison sentences were conditionally suspended. In 1993, conditional suspensions made up 3.8% of all ordered sanctions, rising to 18.4% in 1996 and to 22.7% in 2002. Other forms of community sanctions are applied more seldom, but the numbers have been increasing in recent years.

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75 Law no. 166/99 of 14 September: *Lei Tutelar Educativa* – Educational Guardianship Law, entered into force in January 2001 and Law no. 147/99 of 1 September*: Lei das Crianças e Jovens em Perigo* – Law on the Protection of Children and Young People in Danger.

Russia

In *Russia*, over the past eight years considered in our study diversion (i. e. the exemption from criminal liability) was used in approximately one quarter of all cases involving juveniles each year. If convicted by the court, the vast majority of juvenile offenders receive a criminal sanction. Between 1998 and 2005, approximately 24% of all juvenile offenders who were sentenced by the courts were deprived of their liberty. The imposition of conditional sentences has steadily decreased from 74% in 1998 to 58% in 2005, but remains the most frequently applied alternative sanction. The use of fines has increased significantly in recent years (from 1% of all court dispositions in 1998 up to 9% in 2005). Other community sanctions are rarely used. "Compulsory educational sanctions" (like placing minors under the supervision of parents or a children's department, restricting leisure activities by the courts etc.) are only seldom applied, partly due to a lack of a developed respective infrastructure.

Scotland

In *Scotland*, juvenile offenders under the age of 16 are generally brought into the Children's Hearing System. Even if they are (in case of very serious offences) sentenced by the criminal court, they are only very exceptionally sentenced to custodial sanctions.

Cases of 16 and 17 year-old offenders can be remitted by the courts to the Children's Hearing System for advice and/or disposal, but the overwhelming majority of offenders from this age group are dealt with in the criminal courts.

For those between 16 and under 21 years of age sentenced by the criminal courts, the use of custody slightly decreased between 1990 and 2006. For the most part (and except for the most serious crimes) custodial sentences are relatively short. The absolute numbers of community sanctions for offenders under the age of 16 have increased from year to year (from 1,358 in 2000/01 to 1,732 in 2004/05).

Serbia

The new Law on Juvenile Perpetrators of Criminal Offences and Criminal-Justice Protection of Underage Persons in *Serbia* (in force since 1 January 2006) introduced provisions for the extensive application of diversion orders by the public prosecutor or the judge. Diversion orders (i. e. the dismissal of the case combined with community measures) are applicable for all offences punishable with a fine or with imprisonment of up to 5 years. Furthermore, the public prosecutor can decide to dismiss the case on the principle of expediency due to a lack of relevance for the public (with no further action following). Data on the practice of diversion are not available for the time following the introduction of

the new law. Concerning the legal situation before the reform, in 2002, 13% of all cases were dismissed through the public prosecutors or the judges, thereof 5% on the principle of expediency. It is to be assumed that the rates for diversion have risen since 2005 due to the new legislation.

Concerning court dispositions, data are available for the period between 1983 and 2002. Under the old juvenile justice legislation, educational measures accounted for more than 95% of all court responses to juvenile offending. Juvenile prison sentences played only a marginal role (0.5% to 1.7% of all court dispositions). However, it remains to be seen how the sanctioning practice has developed since 2006.

Slovakia

In *Slovakia*, diversionary practice remains rather limited: in 2004-2006, 10-20% of cases were (conditionally) discharged, and only 0.1-2% were discharged following mediation. Another 8% were dismissed with a "contract of guilt", which is a relatively new form of diversion (in force since 2006) and which is expected to see more extensive use in future.

The courts' sentencing practice favours suspended prison sentences in about 70% of juvenile cases (figures are presented only for the period from 2000-2006). Another 7-12% of the cases are discharged (diversion by the court) and only 9-13% are unconditional prison sentences. Fines and other sanctions – with less than 1% – do not play an important role. Between 2000 and 2006 the sanctioning practice of the courts did not change significantly.

Slovenia

In *Slovenia*, diversion plays a remarkable and predominant role in the juvenile justice system. In 2002 for example, the state prosecutor dismissed almost two thirds of all cases.

With regard to formal sanctions by the juvenile court, imprisonment is very rarely imposed (in approximately 1% of all cases). However, commitment to a juvenile institution as another form of deprivation of liberty is applied more often. One can see though that over the last 25 years the number of juveniles sent to an educational institution has decreased considerably (in 1980, almost 14% of sentenced juveniles were sent to an educational institution, in 2002 it was only 4%, and in 2006 the proportion was at around 7%).

Community sanctions have become more and more important in Slovenian court sentencing practice: the use of "instructions and prohibitions" increased very quickly after their introduction in 1995. Supervision plays the most important role in Slovenian sentencing, accounting for more than 50% of all cases. After the adoption of the new Criminal Code in 1995 a steady decrease in the number of reprimands could be observed which, according to judges, were

imposed as an emergency exit due to the lack of other adequate educational measures. Fines play only a marginal role in the Slovenian sentencing practice.

Spain

In *Spain*, approximately 40% of cases involving juvenile offenders are diverted by the public prosecutor. Diversion is possible if the crimes committed are minor offences or petty crimes not involving violence or intimidation, and if there is no evidence of the defendant having re-offended.

Concerning the application of court dispositions, most data are presented for the autonomous region of *Catalonia* for the years between 2001 and 2005. In 2005, in 45% of all cases the court or public prosecutor decided for acquittals, warnings or stay of proceedings. In 41% of all cases community sanctions were applied. Within this category, the suspension of the sentence in combination with supervision played the most important role (approximately half of all community sanctions). Furthermore, the imposition of community service is of particular interest: In 2005 community service was ordered in 12% of all court dispositions in *Catalonia*.

In the year 2005, the courts in *Catalonia* opted for custodial sanctions in 14% of all cases. The numbers have in fact increased considerably from 7% in 2001. In the rest of *Spain*, the proportion of custodial sanctions is much higher (27% in 2006 for the whole of *Spain* with many differences between the Autonomous Regions). More than half of the young prisoners are placed in an open regime.

Sweden

In *Sweden*, different forms of diversion play an important role for juvenile offenders aged 15 to 17 years. The Public Prosecution Service can issue a waiver of prosecution and combine it with a referral to the Social Services for further measures or interventions. In the 1980s this alternative was used in the majority of all cases against juveniles aged 15 to 17 (1980: 51% of all suspects, 1985: 56 %). In particular between 1990 and 2005 there was a considerable decline in the use of waivers: In 2005 a waiver of prosecution was only issued for 18% of all suspects (for young adults the percentages declined from 17% in 1980 to 10% in 2005). Supposedly this sharp decline was inter alia influenced by reforms in the year 1995 that eliminated the possibility of a waiver in cases of recidivism. In recent years, waivers of prosecution have seen increased use in practice, accounting for more than 30% of all juvenile cases in 2007 and 2008.

Furthermore, the public prosecutor can issue a summary sanction order (e. g. resulting in a fine). In practice this is an important measure for the prosecutor to deal with youth crime, though its impact has substantially declined in all age groups since 1985. Nevertheless, in 2008 23% of all cases against 15 to 17 year-

old offenders resulted in the imposition of a fine by the prosecutor. Also, summary sanctions by the prosecutor require the guilt of the offender. If there are doubts, the case goes to court or the case is dropped depending of the state of evidence.

All in all the public prosecutor plays a prominent role in cases of youth criminality: In the year 2008, the Public Prosecution Service made the final decision in 61 percent of cases involving 15 to 17 year-olds, and in 48 percent of cases involving persons aged 18 to 20.

Concerning the court dispositions, the special youth sanctions "youth service" and "youth care" (both combined, again, with a referral to the Social Services) have an enormous impact on the sentencing of 15 to 17 year-olds. Statistics show a steady increase in the number of court ordered referrals to the Social Services for special youth care. Since 1990 the number has more than tripled, which is probably due in part to the fact that the possibilities for the public prosecutor to dismiss the proceeding were limited in 1995 (see above). In 2008, 67% of all court-sentenced juveniles (aged 15 to 17) were referred to the Social Services for special youth care. For 18 to 20 year-old offenders the most frequently imposed sanction is the fine. Deprivation of liberty is explicitly restricted by law, and is only very rarely applied in practice for young offenders below the age of 18, and comparatively seldom for offenders aged between 18 and 20 years (n = 800 in 2008).

Switzerland

The new *Swiss* law, which has been in force since 2007, continues the strong orientation towards the use of educational measures and restricted use of criminal punishment (such as using prison sentences as a very last resort). In the last 20 years, between 10% and 6% of all juvenile cases had been settled by forms of diversion which are called "postponement of the decision" (*Aufschub des Entscheides*) or "non-imposition of penalties or measures" (*Absehen von Strafen oder Maßnahmen*). The numbers and shares had been declining in the last 10 years. The new Juvenile Justice Act of 2007 abolished these diversionary measures, extending instead a catalogue of grounds for desisting from punishment, the consideration of which became mandatory under the new legislation. The decision is made by the juvenile judge, i. e. there is no diversion at the pre-trial stage. The statistical effects that this change will have are difficult to estimate. At the same time mediation procedures were introduced. There are no statistical data available on these new diversionary measures.

The juvenile sanctions system provides two kinds of sanctions – protective measures and penalties – both of which are of an educational nature. 10 to 15-year-olds can only be sanctioned with educational measures, admonitions or community service for up to 10 days, while juvenile imprisonment sentences or fines are inapplicable. The sanctioning practice for 15 to 17-year-olds is characterised by court based penalties, whereas the protective measures

"educational supervision", "placement in a foster family" or "placement in a residential home" are applied exceptionally (2004: 471 cases against 6,642 penalties). The share of protective placements in residential homes among all protective measures imposed has decreased from 39% to 27%. The most important penalty is community service, with figures almost doubling between 1984 (19%) and 2004 (36%). The share of fines was 27% in 2004, decreasing noticeably since 1984 (42%). Another rather lenient disposal is the reprimand which has had stable shares ranging between 19% and 22%. The most severe punishment is imprisonment (for a maximum of one year at that time).[76] Unconditional imprisonment amounted to less than 5% of the offenders sentenced to penalties. Conditional imprisonment was issued in about 15% of the cases. Interestingly the length of 85% of the suspended and about 78% of the unconditional prison sentences was between a few days and one month only. These figures demonstrate that deprivation of liberty is the absolute exception in the *Swiss* sentencing practice, and where they are imposed, the duration for which they are (or can be) ordered is not very punitive at all.

Turkey

There are almost no statistical data available that give information about the decisions of the Public Prosecution Service or the application of sentences or educational measures by the juvenile courts in *Turkey*. Looking at the numbers of juveniles who are registered by the police for an offence in comparison to the total numbers of convicted juveniles, it is quite evident that informal ways of dealing with juvenile delinquency and alternatives to custodial sanctions play an important role. To elaborate on the sanctioning practice further, more research and statistical recording is needed.

Ukraine

The *Ukrainian* sanctions system very much resembles that of *Russia*. There are two types of sanctions/interventions: compulsory educational measures (also in cases of an exemption from criminal liability) and punitive measures (penalties). The scope for the application of alternative sanctions (e. g. community service orders) was extended considerably by the 2008 reform of the criminal law. Some restorative justice elements have been included in the juvenile justice system in the *Ukraine*, but their practical application e. g. of mediation is almost impossible because of a lack of infrastructure (theoretically).

Statistical data on the sanctioning practice are hard to find. According to the *Ukrainian* Parliament, in the year 2006, 2,700 juveniles were exempted from

76 Since November 2007 imprisonment can be imposed for a maximum of 4 years for offenders aged 16 or older for certain severe offences.

criminal proceedings and compulsory education was imposed on them. This figure represents a sharp decline when compared to 2004 (4,600). In the same year (2006) 7,591 juveniles were punished by means of alternative sanctions, with 99% receiving a suspended (conditional) prison sentence with supervision. In the following year (2007) the relation remained unchanged (4.972 out of 4.985), although the absolute numbers of alternative sanctions decreased. The absolute numbers of juveniles in so-called colonies (prisons) remained rather stable from 1991 to 2000 (between around 3,300 and 3,900), but has since then dropped considerably to only 1,902 in the year 2007. It is not clear whether these developments are a result of declining crime rates or of a step away from imposing custodial sanctions.

3.2.2 Comparative aspects

Orientation towards diversion

Diversion has experienced a triumphant expansion in many countries such as *Austria*, *Germany*, *Ireland*, the *Netherlands*, *Northern Ireland*, *Romania*, *Slovenia*, *Spain* and *Sweden*, where more than 50% and up to about 80% (*Northern Ireland*) of cases involving juvenile offenders are diverted.

In *Bulgaria* the transfer of about 50% of the caseload to local commissions and the use of prosecutorial diversion of a similar magnitude in *Croatia, France* and *Hungary* can be seen as a strong orientation towards diversionary reactions. The cautioning rates in *England/Wales* (although on the decline) are similar, which demonstrates the difficulty of classifying a country under a single juvenile justice philosophy or orientation.

An extreme case in the other direction is *Cyprus*, where diversion has been nearly abolished, however, without resorting to more serious forms of punishment on the court level. In *Denmark* and the *Czech Republic* diversion is not widely applied (with diversion rates of less than 20%), but court ordered sanctions only very rarely imply that the juvenile be deprived of his/her liberty.

In *Serbia* the new laws have extended the possibilities for diverting cases punishable with a fine or with imprisonment of up to 5 years. There are no data available yet on how these legal provisions are used in practice.

In *Scotland* the general competence of the Children's Hearing system for offenders under the age of 16 represents the prevailing diversionary strategy for responding to juvenile delinquency.

The situation is comparable in *Sweden*, were almost two thirds of the cases involving juvenile offenders are diverted by the Public Prosecution Service, many of them due to the pettiness of the offence and therefore without any intervention. Another frequently used form of diversion is referring juveniles to the Social Services in cases where an educational or other intervention appears necessary.

Countries with no or very few diversion outlets at the prosecutorial level are the *Czech Republic*, *Finland*, *Kosovo*, *Lithuania*, *Poland*, *Russia* and *Switzerland*. This does not necessarily imply that these countries exhibit more punitive sentencing practices, but rather a shift of the discretionary powers for exempting from punishment, to the juvenile or family (*Poland*) court.

Orientation towards restorative justice

The most extensive and far-reaching efforts towards implementing restorative justice elements have been made in *Belgium* and *Northern Ireland*, but many countries have begun making improvements by introducing forms of victim-offender mediation (*Austria*, *Czech Republic*, *Germany*, *Greece*, *Slovenia* and *Spain*), although the absolute figures remain modest.

Orientation towards community court dispositions

Countries that primarily apply court-based community sanctions are the *Czech Republic*, *Romania*, *Scotland* (for young offenders aged 16-21), *Slovenia*, *Spain* (Catalonia) and *Switzerland*. Due to a relatively high diversion rate few cases in the *Netherlands* reach the juvenile courts. The principal court disposal is, however, community service. *Slovenia* is an extreme case as in 98% of court decisions educational measures are applied. The same is true for *Serbia* (95%). In many Central and Eastern European countries the suspended prison sentence is still the predominant community sanction, often because of a lack of infrastructure for other more educational alternatives (e. g. in the *Czech Republic*, *Hungary*, *Latvia*, *Russia* and *Slovakia*).

Orientation towards custodial dispositions

There are few countries where one can observe that custodial sanctions are of considerable importance. *Bulgaria*, *Lithuania*, *Romania*, *Russia* and *Spain* (particularly Catalonia) could be classified as belonging to this group. In *Bulgaria* traditionally 80-90% of court disposals had been sentences to imprisonment, but after the law reform of 1999 the proportion of prison sentences for juvenile offenders dropped to "only" 47% (2005). In *Romania* and *Russia*, however, compared to the Soviet time decreasing proportions of custodial sanctions are evident. In *Spain* increasing numbers of custodial sanctions have been imposed only recently.

3.3 Changes in dealing with juvenile offenders: "neo-liberal" getting tough strategies, stability and/or relying more on diversion and alternative sanctions?

It is difficult to develop a systematic comparative approach when looking at the different juvenile justice systems and the respective practices of applying the informal and formal sanctions that they provide. The following sections are an attempt to "cluster" the developments that can be observed in the individual countries (see Section 3.2 above) with regards to the question whether or not sentencing practices have become more severe under the claimed policy of "getting tough" which has been described as the "neo-liberal" model (see Pruin in this volume). However, we have to admit that such "clustering" must be very tentative as in many jurisdictions one cannot always state clear tendencies. We are sadly also unable to realise a more in-depth picture of developments in sentencing, for example by looking at the length of juvenile prison sentences as an indicator for punitiveness.[77] Quite often one finds a mixed picture of getting tough policies for serious or violent (juvenile) offending on the one hand and a more tolerant or lenient approach to property offences that to a large extent represent more general "episodic" offending. Such developments have been characterised as "bifurcation" in the general developments of criminal justice systems,[78] explaining the increasing prison population rates and the change of inmate structures (more violent, sexual, drug offenders and foreigners/members of ethnic minorities, less property offenders in prisons). To a certain degree this concept may be verified in juvenile justice systems as well. Diversion and community sanctions are being applied more and more in cases of non-violent (property) offenders, whereas more serious offenders are the candidates for closed residential care or youth imprisonment. Nevertheless we will try to focus the main orientation of different practices in different European jurisdictions when allocating the counties to the following "clusters".

3.3.1 The "neo-liberal" cluster

Although elements of "neo-liberal" juvenile justice policy can be seen in many countries, it is difficult to decide that a country really can or should be characterized as being oriented to more serious punishment and custodial sanctions. Even *England/Wales* as the outstanding example in the analysis of *Cavadino/Dignan*

77 Most country reports did not deal with this question in detail. The *German* figures demonstrate that there has been no increase of the length of juvenile imprisonment if the offenders are matched according to the different crimes.

78 See *van Zyl Smit/Snacken* 2009, p. 57 with reference to *Bottoms* 1977; see also *Dünkel/Snacken* 2000; 2005.

(2006) has developed restorative justice and minimum intervention strategies at least for larger parts of the offending population. However, the number of issued conditional discharges has declined rapidly since the introduction of the more intrusive referral order, and cautioning rates have been on the decrease since the mid 1990s. The proportion of juvenile prison sentences increased from 11% in 1992 to 17% in 1997 (leveled off to 14% in 2004). Altogether it can be said that since the early 1990s *England/Wales* have moved towards more severe punishment, not only in rhetoric but also in reality. Prior to the reforms of the 1990s *England/Wales* had followed a minimum intervention approach, which would have had them in the third cluster (see *Section 3.3.3* below).

There are a few other countries with rather tough sentencing practices such as *Lithuania, Romania* or *Spain*. But again it has to be stressed that the changes have only gone in a more punitive direction in *Spain*, whereas the Central and Eastern countries have moved on from a bad past to a lacking present in this regard.

3.3.2 The "stability" cluster

The *Scandinavian* countries and *Switzerland* could be judged as countries with a moderate educational or welfare oriented approach that is characterized by a strong degree of stability, although in *Denmark*, for example, the introduction of the so-called youth sanction as well as the lowering of the age of criminal responsibility can be perceived as a shift towards harsher, more intrusive penal policy (see *Storgaard* and *Pruin* in this volume). Stable and moderate sentencing practice can also be observed in *Cyprus*. *Germany* has also retained its moderate approach, even in times with many problems of violent offending after the 1990s.

3.3.3 The "lenient" cluster: extending diversion, educational and restorative measures and reducing custodial sanctions

Countries that have changed their sanctioning and sentencing policies in a more lenient direction, particularly by extending diversion and reducing the use of custodial sanctions in general, are the Central and Eastern European countries coming from the Soviet tradition of harsh and severe punishment. In this context one should mention the countries of the former Yugoslavia, which were not under the influence of Soviet law, but have nevertheless adjusted to diversion and minimum intervention philosophies (*Croatia*, *Serbia*, *Slovenia*). *Slovenia* recently (2009) experienced a general law reform that extended maximum penalties in general criminal law, but the juvenile justice system remained unchanged.

Many Continental European countries such as *Austria* or *Germany* would also fit into this cluster, at least in the 1980s, when diversion and restorative measures were extended. *Belgium* and *Finland*, too, have extended mediation

and restorative measures. *Finland* succeeded in reducing the annual number of prison sentences for 15 to 17 year-olds from 400-500 in the 1980s to 60-70 in the 2000s.

One of the most exciting examples of a system expanding educational and restorative elements is *Northern Ireland*, where the use of custodial sanctions has been reduced to a minimum. In addition, the new approach of conferencing has brought a shift towards restorative justice. The same is true for *Ireland*, where diversion has been implemented for a large part of offenders.

The *Czech Republic* also shows sincere efforts to reduce custodial sanctions. The reform law of 2003 contributed to a larger application of alternative sanctions such as suspended sentences and community service. The proportion of prison sentences had already dropped to about 7% by 2003, having resided between 16-22% in the 1980s.

Slovenia, too, succeeded in reducing juvenile imprisonment from a share of 14% in 1980 to 4% in 2002.

4. Summary and conclusion

The present overview on the development of community sanctions in Europe reveals different strategies for dealing with juvenile offenders. Some countries prefer non-intervention (diversion, see also *Dünkel* 2009), some prefer court based community sanctions, but all take the international standard – often explicitly incorporated into national legislation – seriously that deprivation of liberty must remain a reaction of last resort. Nevertheless the practice varies considerably also in this regard. Juvenile imprisonment or custody in Germany, Finland, *Serbia* or *Sweden* accounts for less than 2% of all imposed sanctions. In *England/ Wales* the figure lies at about 15% and in some Eastern European countries like *Lithuania* more than 30% of sentences against juvenile offenders are custodial. Therefore, extending the scope of community sanctions must be an issue for future sentencing policy reforms particularly in the latter mentioned countries.

Informal ways of dealing with juvenile offenders, i. e. avoiding formal court hearings and possible stigmatization have become a priority in many European countries. In some countries more than 60% of juvenile cases are diverted (e. g. in *Germany*, *Ireland*, the *Netherlands*, *Northern Ireland* or *Slovenia*), many of them without educational interventions (non-intervention), but often also combined with certain minor educational measures (diversion with intervention) or after informal means of conflict resolution like mediation and forms of restorative justice.

The main empirically ("evidence") based results and perspectives of diversion may be summarised by the following four theses:

1. Diversion is a meaningful and effective response (particularly) to juvenile first and second time episodic offenders.

2. Diversion by "non-intervention" should be given priority in most of these cases.
3. Diversion combined with restorative or educational measures is sufficient in many of the more serious cases.
4. Juvenile court dispositions should be preserved for persistent and/or more serious offenders.

These considerations are supported by international standard minimum rules and recommendations as can be shown by the Council of Europe's Recommendation 2003 (20) on "New ways of dealing with juvenile delinquency and the role of juvenile justice." Rule 7 of this recommendation states: "Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, be applied only in cases where responsibility is freely accepted." Rule 8 proposes that in order "to address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim." So in summary there is no reason to give up a moderate and reasonable juvenile justice system which is based on the idea of education and more tolerance than is practiced towards adult offenders.

The priority given to community sanctions sometimes creates problems in practice when budgetary restrictions limit the scope for more educational rather than repressive measures. The "triumphant" expansion of community service orders (which sometimes can be seen as a more retributive than educational measure) is also due to limited or even reduced application of measures such as social training courses or other, more "constructive" or rehabilitative measures in some countries.

Looking at the various sanctioning practices of the 34 countries gathered in this study, it becomes clear that countries with less extensive or almost non-existent diversionary practice can also successfully avoid the imposition of custodial sanctions. *Italy* is a good example for this. Due to the principle of obligatory prosecution (the principle of "legality") the prosecutors regularly have to bring cases to court, but the *Italian* system provides the juvenile court with the possibility of ordering a "judicial pardon". This results in the same low rates of formal sentences, particularly juvenile imprisonment, as can be found in other countries that emphasise informal ways of dealing with minor offences by discharging cases via the prosecutor.

The *Finnish* preference for fines seems to be a model that should be investigated further. Another observation is that there are groups of countries

that share a common strategy, like for example *Germany* and *Slovenia* with respect to the diversion practice.

Other particular interesting "clusters" can be seen in the strong orientation to suspended sentences (or forms of probation) in the Central and Eastern European countries. This is partly due to the traditional sanctions systems that strongly relied on prison sentences, and the main alternative was to suspend them on probation (without providing a Probation Service comparable to Western standards, see in summary *van Kalmthout/Durnescu* 2008). New, more constructive or educational sanctions are being introduced only quite slowly, and where they are successful they widen the spectrum of community sanctions (e. g. in the *Czech Republic* or *Lithuania*). It is still too early to tell to what extent these new community sanctions will prove to be real alternatives to custody, but the results in most countries are at least encouraging. And we have to notice that some of the countries of the former "East-block" such as *Poland* and the states of the former Yugoslavia have developed a variety of educational sanctions remarkably quickly (see the reports on *Croatia*, *Slovenia*, *Serbia* in this volume).

If we want to evaluate the different forms of community sanctions we have to clarify the criteria for qualifying one measure as better than another. The question is: should we only think in terms of recidivism rates and less invasive measures, or should we also be considering the rights of the victim to receive reparation (through reparation orders or victim offender mediation which also enables the victim to play an active role in the "penal" process) or the possibilities to influence the life of the young offender (through supervision or special training courses)? In the end, determining which community sanction is "the best" depends on each single case. In this respect it has to be emphasized again that the "right" community sanction cannot just be based on the "needs" of the offender. The justice system's response also has to be proportional to the offender's degree of guilt. Additionally, it should be mentioned that the persons who execute community sanctions on the ground, like probation officers, mediators or trainers (in social training courses), play a decisive role in respect to the success of the measure. So they should receive the best available training.

The analysis of the sanctioning practice in the 34 countries gathered in this volume gives reason to question whether sentencing is "becoming harsher and harsher" (*Cavadino/Dignan* 2006, p. 340) or if the "main trend in juvenile justice in a number of countries has been more repressive" (*Junger-Tas* 2006, p. 505). One can observe that most Eastern European countries are not following this trend. Instead, it can be taken from the respective national reports that they have begun to move away from their previously repressive systems. Our conclusion is that we cannot verify the trend towards harsher ("neo-liberal") juvenile justice policy in all of Europe. Even if, in some countries, politicians call for intensifications of the juvenile laws (for example in *England/Wales*, *France*, the *Netherlands*, *Spain* or even to some extent in *Germany*) – and even

if the laws are intensified, in most countries the juvenile judges seem to be holding tight to their cautious way of dealing with juvenile offenders in practice. However, there is no doubt that practice has become harsher in some countries, particularly in *England/Wales*. Ironically it is precisely this country that has provided the most sophisticated evaluation research demonstrating that community sanctions are more promising than custodial sanctions in terms of re-offending rates as well as under general cost-benefit-considerations (see for example *Goldblatt/Lewis* 1998). Recently, research on restorative justice showed altogether positive effects concerning victim and offender satisfaction and reductions in recidivism (see *Sherman/Strang* 2007; *Shapland et al.* 2008; *O'Mahony/Doak* 2009). And there is no doubt that restoration can work as an alternative also in generally more punitive systems (see *Cavadino/Dignan* 2006, p. 210).

The criticism that community sanctions not necessarily contribute to a reduction of custodial sanctions but instead to widening and intensifying the net of social control has to be taken seriously, but in Europe – with a few exceptions – there is no empirical evidence that such net-widening effects have taken place.
In any case, there is no choice in the matter, and the search for constructive and effective community sanctions, also for recidivist and violent offenders (as proposed by the Council of Europe's Rec (2003) 20 on "New ways of dealing with juvenile delinquency …"), remains a contemporary task for rational juvenile policy.

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Developing mediation and restorative justice for young offenders across Europe

Jonathan Doak, David O'Mahony

1. Introduction

In recent years there has been a dramatic growth in alternative responses to criminal offending. In particular, the use of mediation and restorative approaches have emerged as important innovations and have come to exert an increasingly strong influence in criminal justice systems across Europe. The growing influence of mediation and restorative justice has developed as policymakers have become more concerned about the capacity of traditional criminal systems to deliver participatory processes and fair outcomes that are capable of benefiting victims, offenders and society at large. This concern has been caused in part by the structure and process inherent to the orthodox criminal justice system, whereby crime has essentially been conceptualised as the violation of the state's law by an individual. As such, most western criminal justice systems, particularly during the trial phase, tend to be bipartisan in nature, and largely reflect the normative duality of the contest between the state and the offender (*Zehr* 1990; *Fattah* 2004; *Doak* 2008). By contrast, mediation and restorative justice does not view crime through such a narrow lens, but seeks to resolve conflicts by addressing the wider needs of victims, offenders and even the broader community.

The growth of mediation and restorative justice has also been spurred on at European and international levels by the development of initiatives grounded in restorative principles. International instruments have increasingly viewed restorative- and mediation-based interventions as a legitimate, if not superior, means of delivering justice. In placing a strong emphasis upon participation and reparation, international trends have exerted a downward pressure upon national

governments to develop policies based on mediation and restorative justice principles. At European level, for instance, the EU Framework Decision calls on Member States to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure. Article 10(2) calls on Member States to ensure that "any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account". The Council of Europe has also recognised the growing tendency for states to integrate mediation and restorative measures within their criminal justice systems, and issued a detailed set of principles in support of this trend in its in Recommendation (99) 19 "Concerning Mediation in Penal Matters". The Recommendation, which consists of 34 articles, recognises that there is a need for both victims and offenders to be actively involved in resolving cases themselves with the assistance of an impartial third party. These provisions reflect internationally recognised principles of best practice, including the importance of specific training for mediators, the principle of voluntariness for participants, the need for judicial supervision, and the need to ensure that procedural human rights guarantees are safeguarded. In addition, Member States are encouraged to promote research and evaluation of mediation processes.

The Council of Europe's Recommendation was also adopted as the basis for part of the United Nations Vienna Declaration on Crime and Justice,[1] which committed the Member States "to introduce, where appropriate, national, regional and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice". It committed States to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider the establishment of funds for victims, in addition to developing and implementing witness protection policies (at para 27).

However, the rapid growth of mediation and restorative justice initiatives at an international level has led to a raft of divergent practices and a lack of consensus on how they should be implemented. As a result mediation and restorative justice programmes worldwide vary considerably in terms of what they do and how they seek to achieve their outcomes. Very often the practical operation of schemes differs according to the situation and the manner in which individual programmes have evolved. As such, there is no single "prototype" format for practices that adopt the "mediation" or "restorative" labels. In relation to criminal justice, restorative and mediation programmes differ, not least in relation to their degree of formality and legality. Some schemes are based in statute and require that offenders are dealt with through rigid frameworks. In such instances, considerable resources are often invested across a range of statutory agencies, and widespread training and a change in working culture of the police and prosecutor is required. By contrast, other schemes are "voluntary"

1 Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century (UN Doc A/CONF.187/4).

or practice-led, and thus may be much more informal. Typically, such schemes lie on the fringes of the criminal justice system and as a result, frequently experience problems with resources and logistics. Even where schemes do become part of a formal criminal justice system, the conditions for referring an offender vary considerably, with some programmes taking referrals as diversionary interventions, or as a form of police caution, while others may be referred by the prosecutor or by the courts as an official form of disposal.

Programmes also differ according to the level of victim involvement, with some using face-to-face meetings, or indirect mediation, while others rarely involve victims at all. Even the very nature of the offence and type of offender that can be referred differ. Some schemes only take first time offenders who have committed relative minor offences, while others consider a whole range of offences and individuals who have offended in the past.

These divergences in practice, law and theory present considerable challenges in trying to make sense of both restorative justice and mediation in relation to criminal justice. This chapter, therefore, attempts to untangle some of the complexities and differences in practice that exist and it explores examples of mediation and restorative practice across a number of jurisdictions, particularly across Europe. It also considers the potential to further develop mediation and restorative justice, and underlines the ability of such schemes to deliver considerable advantages in the delivery of criminal justice to victims, offenders and broader society.

The chapter presents an overview and examples of four of the more common forms of mediation and restorative justice that operate in European youth justice systems. These are victim-offender mediation; community-based panels or reparation boards; police-led restorative practices and "cautioning", and family group conferencing models. Each of these schemes of practice is considered in turn, focusing on practical issues of how they operate and research evidence concerning their impact.

2. Victim/Offender Mediation (VOM)

Victim/Offender mediation is currently the most popular form of restorative practice in continental Europe. Many of these schemes have their roots in programmes that were developed in North America in the mid-1970s, but found favour among European policymakers during the 1980s, as a broader debate emerged on how victims and offenders might be given a better opportunity to participate in criminal justice (*Pelikan*/*Trenczek* 2006). The aim of mediation is to give victims and offenders a safe environment in which they are able to discuss the crime, its impact and the harm it may have caused, and to allow an opportunity to put right the harm caused. Some forms of VOM limit the role of the offender and victim by using "shuttle" type interactions or "go-betweens", thereby limiting the victim's and offender's contact with each other. More

commonly however, the mediation takes place on a face-to face basis between the victim and offender, with the mediator acting as a neutral facilitator.

The majority of the mediation projects available are used as forms of diversion away from criminal sanctioning and are usually restricted to minor juvenile or adult offenders (*Miers*/*Willemsens* 2004). The decision on whether to use mediation is often made by the prosecutor, before cases make it to court. Most mediation programmes available are not explicitly restorative and only recently has there been an emphasis on providing programmes that have a strong restorative focus. There is considerable variation in the types of programmes and some are based on an extension of welfare legislation, rather than being used as a punishment, or sanction of the court (*Pelikan*/*Trenczek* 2006). But, as *Miers*/*Willemsens* (2004) note, most schemes are characterised by being diversionary, including less serious offences against property and the person.

Although many descriptive accounts of various European restorative programmes exist, the considerable variation in what they do and how they operate makes direct comparisons difficult. This is compounded by a general lack of research evaluating such schemes. In their review of different restorative programmes across Europe, *Miers/Willemsens* (2004) note, that the paucity of evaluative data makes comparisons problematic. While the authors find the results of emerging research as generally positive, they caution against other than the most parsimonious of interpretations of these data. Bearing this caveat in mind, it is worthwhile highlighting recent developments in six jurisdictions where mediation projects are among the most developed: *Austria*; *Finland*; *France*; *Germany*; *Norway*; and *Spain* (Catalonia). At the end of the section, a brief overview is also given of the *Dutch* Halt scheme, which is based on a variation of the VOM model.

Austria

In *Austria*, mediation is a relatively common means of diversion for both juvenile and adult offenders, with around 10,000 cases being adjudicated in this manner every year (*Hofinger et al*, 2002). Although Austria has a reputation as a conservative society with a punitive orientation in criminal justice, victim/ offender mediation or *Außergerichtlicher Tatausgleich* (ATA) has a long tradition in the country (*Pelikan* 2000). While literally translated as "out-of-court offence compensation", the concept implies much more than a victim and offender simply negotiating a financial settlement. Instead, the process is designed to ensure that a much more comprehensive form of restitution is delivered which is "socially constructive and more directly related to the victim: its goal – as an additional instrument of the penal system – is restoration of public peace after an offence" (*Löschnig-Gspandl*/*Kilchling* 1997, p. 59). Mediation will thus generally comprise three distinct components: compensation for any personal injury, loss or damage caused, whether directly or indirectly, by an offence; reconciliation talks,

apologies, help for the victim etc. and, in exceptional cases; and community service or payments to public welfare institutions (so-called "symbolic restitution" (*Löschnig-Gspandl*/*Kilchling* 1997, p. 59).

Mediation was placed on a statutory footing for young people through the Juvenile Justice Act 1988. Following the success of pilots, the scheme was gradually extended to adult offenders through a series of further pilots in the early 1990s and amendments were subsequently made to the Criminal Procedure Act (CCP, *StPO*) in 1999 to accommodate the new arrangements (see further *Pelikan* 2000). The decision to refer an offender to mediation is entirely discretionary and usually rests with public prosecutor on receiving the file, although the court may also make such an order at a later point in the criminal process. Article 90 CCP stipulates that diversion may be ordered in one of four circumstances: a) where the facts do not show "severe guilt"; b) where there has been no loss of life; c) where the offence is punishable by under 5 years in prison; or d) where no punishment is considered necessary to prevent the alleged offender or others from committing further crimes.

The legislation then proceeds to provide for a range of diversionary measures. There are no concrete rules as to how certain types of offences should be disposed of; so the magistrate has considerable leeway in determining whether or not a case is suitable for referral. Mediation, however, is only possible where the offender has agreed to accept responsibility for the offence; agreed to make some effort to try to repair the damage; and to reflect on the reasons that led to the offence. The victim's consent is also necessary in cases involving adult offenders, unless this consent is withheld for reasons that are not relevant to the criminal proceedings (*Hofinger et al.* 2002). In addition, mediation is not regarded as appropriate for petty misdemeanours, or for juveniles needing a probation officer/assistant because of their psychological and social problems (*Hofinger et al.* 2002).

One notable feature of the *Austrian* scheme is that the legislation draws little distinction between juveniles (aged 14-18) and adult offenders (*Bruckmüller et al*. in this volume). Where juveniles are concerned, Article 90 of the Criminal Procedure Act continues to apply, but must be read in conjunction with the provisions of the Juvenile Justice Act 1988. Section 5 of the Act stipulates that the upper limits of fines and custodies for young offenders are half of that for adults (no minimum sentences are prescribed). In practice, this allows for a wide range of offences to be diverted (*Hofinger et al.* 2002). In addition, where the victim fails to consent to participate in mediation, the offence may still be diverted providing the offender expresses a willingness to offer some form of compensation.

As regards the practical operation of mediation, it is organised and conducted by ATA units, which are part of a semi-autonomous Probation Service. The units tend to operate autonomously until the mediation is complete and a final report has been submitted to the public prosecutor or judge. Mediation usually takes place directly: with the victim, offender and mediator in

the same room. Unlike conferencing, supporters and representatives of the wider community are not generally permitted in the room, unless juveniles are involved. Occasionally indirect or "shuttle mediation" is arranged where the parties are reluctant to meet in person. It should be stressed that the mediation is not intended to rehabilitate the offender per se. Instead, it is geared to "work towards a situational change and a change of interactional conditions" (*Hofinger et al.* 2002). Clear criteria for imposing sanctions are fixed in advance and the offender's due process rights must be safeguarded at all times. In relation to young offenders, imprisonment is to be regarded as the last resort and there are a variety of non-custodial measures which ought to assume priority (*Hofinger et al.* 2002).

Successful operation of the programme is heavily dependent upon close co-operation between the ATA units and more established voluntary formal criminal justice agencies. Mediators meet regularly with members of the judiciary and representatives of the public prosecutor's office meet to share experiences and discuss on difficult cases. In addition, if the public prosecutor is unsure about the kind of diversionary measure that would be best suited to a particular case, he/she can theoretically refer it to a so-called "clearing house", whereby the Probation Service will offer assistance in tailoring the best solution (*Hofinger et al.* 2002).

Evaluations of the *Austrian* system of victim-offender mediation have been broadly positive. (*Hofinger et al.* 2002) summarise a range of studies which report a high degree of willingness among both victims and offenders to take part in VOM. Moreover, around 75% of all cases referred resulted in a successful outcome. Qualitative analysis of the data also indicated a shift in officials' (judges, prosecutors) perception of crime and punishment towards the value of non-court oriented disposals, but the extent and durability of this shift remains a matter of conjecture.

Finland

Victim-offender mediation has been practised in *Finland* since 1983. The practice expanded rapidly during the 1980s and 1990s, as policymakers sought new ways to deal with social problems facing children and young people (*Eskelinen*/*Iivari* 2005). Mediation services are now available throughout the country, and are financed and managed by municipal authorities.[2] In 2006, the *Finnish* Parliament passed the Law on Mediation (1015/2005). The purpose of the legislation, which covers both civil and criminal cases, was to extend VOM throughout the entire country, so that every citizen would have access to mediation services on demand. Whilst the new legislation did not radically alter the practices which had been developing throughout the country over the

2 Not all municipal authorities provide mediation services. Using data obtained in 2001, *Eskelinen/Iivari* 2006 estimate that just over half municipal authorities are equipped to deliver services.

previous 20 years, it did amend the Criminal Code to provide that an agreement or settlement between the offender and the victim which is now a possible ground for mitigation in sentencing, and could result in the waiver of any further penal sanction altogether (*Lappi-Seppälä* in this volume).

While there are no recent figures as to the number of referrals to mediation, studies conducted in the 1990s suggested an average of 3,000 cases per annum (*Miers et al.* 2001; *Pelikan*/*Trenczek* 2006). Prior to the passage of the new legislation, practices tended to vary from one municipal district to another, with little uniformity in terms of the types of cases handled. In most municipalities, the focus is on young offenders, although in some areas adult offenders may also be eligible for mediation (*Eskelinen*/*Iivari* 2005). However, the new legislation should ensure a more uniform approach to practice.

Referrals are generally made as a diversionary measure by the police (who refer around 80% of all cases), though prosecutors and judges may also make referrals (*Pelikan*/*Trenczek* 2006). It is also possible for a party (or the parents of a young offender) to contact mediation officials directly or inform the police of their willingness to mediate. Thus the process is not tied to any one particular agency of the criminal justice system, and may commence as a diversionary measure, before or during the criminal investigation or trial, or after sentencing – depending on where the referral has come from. Likewise, cases involving domestic violence are afforded a high priority in some areas, while authorities elsewhere may refuse to take on such cases at all (*Iivari* 2000).

VOM will now be organised and financed by the Ministry of Social Affairs and Health, through five provincial offices. Services are co-ordinated by local government, with some municipal authorities opting to participate in a shared service or buy in services from elsewhere (*Miers et al.* 2001). *Iivari* (2000) reports, however, that many offices are understaffed and under-resourced, which in turn affects the quality and development of mediation activities.

In terms of how mediation operates in practice, sessions are conducted according to a series of protocols and memoranda drawn up by working groups on developing mediation, appointed by the Ministry of Social Affairs and Health. The mediation sessions themselves are co-ordinated by volunteers. There are currently around 900 voluntary mediators in Finland, who are trained using materials produced by the *Finnish* Mediation Association. The course provides the participants with basic information about theories behind mediation in the criminal justice system, including functions of the main criminal justice agencies, rules on co-operation, negotiation skills and the relevant legislation. *Elonheimo* (2003) suggests that the standard 30 hours of training (plus six hours of practical mediation) is insufficient to hone the skills required by mediators to encourage parties to engage in meaningful dialogue. In his view, training tends to be "parsimonious and particularistic". *Iivari* (2000) also notes that the standard of training is variable across different localities, and that opportunities for further training and development tend to be relatively under-developed at present.

The process itself is entirely consensual for both the victim and offender, with each case usually being overseen by two mediators. The following account is offered by *Iivari* (2000): "The mediation process starts with preliminary contacts. The mediation office or one of its mediators contacts both parties separately, asking whether they are willing to take the matter into mediation. If all parties are agreed, the first mediation session will be held. For the majority of the cases this will suffice, but if needed, more sessions are arranged. During these sessions the mediator's principal role is to mediate; he/she does not try to lead the parties into one direction or another, but tries to mediate between them so that they both, understanding one another's viewpoint, can come to an agreement. If mediation is successful, a written contract is prepared. The contract includes the item (offence type), the content of the settlement (how the offender has consented to repair the damage), place and date of restitution as well as the consequences of a breach of contract."

Where the contract is breached, mediators may attempt to negotiate a new payment schedule. If this fails, the contract is deemed to be terminated and the parties are notified that they may deal with their case through the official court process. However, even where parties honour their commitments under the agreement, this does not necessarily herald the end of the penal process. If the offence is relatively minor in nature (known in *Finnish* law as a "complainant offence"), the agreement will usually bring the matter to a close and the prosecutor will generally drop the charges (*Iivari* 2000). If the offence is more serious in nature, it is treated as a "non complainant offence", and the fact that the parties have been involved in a successful mediation will not necessarily bring the matter to a close. The principle of legality dictates that the case will still usually be heard by a court. Depending on the gravity of the offence and a range of other factors, the prosecutor may then use his or her discretion to drop the case; this is likely to follow if subsequent prosecution would seem "either unreasonable or pointless" due to a reconciliation, and if non-prosecution would not violate "an important public or private interest" (*Lappi-Seppälä* in this volume). However, even where the case does proceed to court, the judge may opt to mitigate sentence or even refrain from imposing a sentence altogether (*Iivari* 2000).

Although some research was conducted into the operation of the schemes in the latter half of the 1990s, recent empirical studies have been thin on the ground. *Iivari* (2000) reports a major study carried out by *Mielityinen*. He observed that almost half (44%) of the cases were so-called complainant crimes (i. e. minor offences, vandalism, disturbances of domestic peace etc.), and 54% of cases were non-complainant offences (i. e. assault and battery including family violence, robbery, fraud and property crimes). The remaining 2% of the cases involved disputes and quarrels. It was also notable that mediation schemes were not only targeted to conflicts between private individuals: in almost half of the cases, there was a corporate victim (e. g. shopkeepers or municipalities). In 1997, 70% of all the cases referred for mediation resulted in mediation being

started. Of all the mediation negotiations commenced, 60% ended in an agreement. Of all the contracts, some 68 % were fulfilled.

More recent commentary on the *Finnish* schemes tends to be of an anecdotal nature. *Iivari* (2000) holds a generally positive view of the *Finnish* scheme. Despite being located outside the formal criminal justice system, he believes that there is widespread support and co-operation on the part of the police, prosecutors and courts, who have developed a "very positive attitude to mediation". He also asserts that the public are largely supportive of the concept. A slightly less optimistic picture is presented by *Elonheimo* (2003), who co-ordinated a small-scale evaluation of 16 mediation sessions by law students in the city of *Turku*. He reports a number of advantages of mediation over conventional criminal practices including the ability of the parties to tell their stories in their own words; the promotion of the victim's reparatory interests; motivating offenders to provide compensation; and relatively high levels of satisfaction amongst all parties. However, not all aspects of practice were found to be operating satisfactorily. Issues giving rise to concerns included a reluctance among juvenile offenders to participate in the process; insufficient emphasis placed on the value of pre-mediation meetings; the tendency of the parents of juveniles to dominate the discussion; the lack of creativity in formulating reparation agreements; and the fact that referrals were relatively few in number and tended to concern very petty offences.

France

Victim-Offender mediation (*médiation pénale*) for adults has been developing in *France* since the early 1980s. As far as juveniles are concerned, prosecutors or judges have been empowered to issue reparation orders in cases involving offenders under the age of 18 since the end of the Second World War, pursuant to Ordinance of 2 February 1945, that either The *reparation pénale* is intended to devise a form of action plan that is characterised by strong educational and rehabilitative elements. These will be overseen by education officers or social workers, who are employed or certified by the national agency for "judicial protection of youth" (*Protection Judiciaire de la Jeunesse* or *PJJ*). *Milburn* (2002a, p. 8 f.) offers the following description of how the scheme operates in practice:

"Three steps can be identified in the process. The first one consists of an assessment of the juvenile: his personal situation and the nature of the offence. Parents are generally invited to participate. The education agent may thus assess the capacity of the young person to participate in a reparation process and, if not, see if there are specific causes for his misbehaviour… During this first interview, the young person and his parents are told the general principles of the measure and asked if they agree with them.

If so, then a second set of interviews starts with the young person to prepare him for the reparation activity. The purpose, during this phase, is for the juvenile to understand the negative value of his misdemeanour and to work out a positive outcome by choosing a relevant activity, which is likely to restore his own self-esteem and his relationship with the local community.

The third sequence – the activity itself – is not meant to be a work performance but a valuable achievement acknowledged as such by the beneficiary. The latter may be the victim him/herself – whether a private citizen or a public or private organisation – or another organisation which takes on the supervision of such an activity. They may be public services, charity organisations or community services."

Since the 1993 reforms, juveniles may also be referred for victim-offender mediation (*médiation pénale*) by the prosecutor, the juvenile court, or the children's judge. If requested by the prosecutor, indictment is avoided if the subsequent mediation procedure is successful (*Milburn* 2005). While the format of the mediation will be largely similar to that which is used for adult offenders, specific alterations will often be made to accommodate the particular needs of juveniles. In particular, the offenders' parents will need to give their consent and agree to be present at all the mediation sessions. The court is charged with the responsibility of ensuring any negotiated settlement is proportionate and has elements of rehabilitation.

The operation of both the reparatory and mediation schemes for juveniles was evaluated by *Milburn* (2002). He reported a high level of dependency among mediators upon the prosecutor's office which forwards the cases to the penal mediation agency. Moreover, many prosecutors seemed keen to want to keep a close eye on the mediators' actions and exercise a degree of control over their actions. There was also a lack of consensus at national level as to what mediation for young offenders should involve. As mediation for the under 18-years-olds is not explicitly considered by the law, there has been no official monitoring of its practices.

Germany

As in many other European jurisdictions, VOM (*Täter-Opfer-Ausgleich*) was first piloted in a number of cities across the Federal Republic of *Germany* in the mid-1980s. These expanded rapidly, and today there are approximately 400 schemes in operation, dealing with an annual caseload of around 20,000 cases. Approximately 13,000 of these involve juveniles (*Kilchling* 2005). Unlike certain other jurisdictions, there is no single organisation charged with delivering VOM. Instead, mediation is delivered by many different public agencies and voluntary organisations. In the case of juveniles, most schemes fall within the remit of the juvenile court office, though some are also run by social services or operate entirely independently (*Dünkel* 1996; *Bannenberg* 2000).

Financing therefore varies both in source (and in amount): the local social service or juvenile court budgets, or in the case of the independent providers, a mix of public and private funds (*Miers et al.* 2001).

About two thirds of the programmes deal solely with juveniles and one third also work with adults (*Pelikan*/*Trenczek* 2006). Referrals to mediation can be made at any stage of the penal procedure; however, in practice, most cases are assigned by prosecutors and only a few by judges during the trial (*Kerner*/*Hartmann* 2005 cited by *Tränkle* 2007). A few programmes also accept self-referrals by victims or offenders (*Trenczek* 2001). A broad range of cases are referred, including assaults, thefts and robbery and criminal damage (*Dünkel* 1996; *Kerner*/*Hartmann* 2005). The manner in which mediation is conducted varies amongst the schemes, and may involve both direct and so-called "shuttle"-mediation (*Kilchling* 2005). There is generally only one mediator in charge of conducting an individual mediation procedure. One distinct feature of *German* practice is that, unlike most other VOM schemes in Europe and North America, the offender is always approached first. This practice was developed in order to protect the victim from emotions at a stage in the process when it is still unclear whether the offender is willing to participate or not (*Kilchling* 2005).

During the 1990s, formal legal provision VOM was gradually integrated into the *German* Criminal Procedure Act (*StPO*) and in the Juvenile Justice Act (*JGG*). As far as the latter is concerned, judges are empowered to refer any case to VOM (§ 10 (1) No. 7 JGG), and the public prosecutor can also opt to halt procedure if the juvenile seriously engages in a reconciliation process (§ 45 (2) 2 JGG).

Despite the rapid expansion of VOM (VOM schemes are available in almost 100% of all juvenile court districts, see *Dünkel/Geng/Kirstein* 1998, p. 167 ff.), and the fact that it has been placed on a well-developed legislative footing, there seems to be resistance on the part of both the police and the legal profession to make widespread use of mediation with only 5-8% of criminal cases being dealt with by mediation, in spite of the fact that over 25% of all charges are eligible (*Pelikan*/*Trenczek* 2006; *Dünkel* 1996; *Dünkel/Geng/Kirstein* 1998). Similarly, *Miers et al.* (2001) cite research published in 1997 which showed that of 450 judges and 667 public prosecutors throughout *Germany*, only 3% and 11% per cent respectively had made any mediation referrals in the previous year. *Trenczek* (2002) states that many lawyers see mediation as a burdensome and time-consuming process, whilst *Bannenberg* (2000) suggests, that resistance is primarily attributable to the fact that most public prosecutors and judges are unfamiliar with the procedure. In the view of *Kury*/*Kaiser* (1991, p. 5), most judges and prosecutors in *Germany* in the past regarded the victim predominantly in his or her role as a witness to criminal proceedings, which are essentially structured around the conception of crime as an offence against the state.

Thus, as in many other European jurisdictions, the ultimate success of mediation is inevitably hindered by the reluctance of lawyers and judges to acknowledge the potential of the procedure. In particular, official communication

in terms of formal co-operation between mediators, prosecutors and the court seems to be rather poor, with virtually no discussion of which cases might be suitable for referral (*Kilchling* 2005). The manner in which the process of mediation itself is conducted is subject to very little regulation, thus standards and styles will vary considerably (*Pelikan*/*Trenczek* 2006). Some federal states publish their own guidance and training standards, but these are by no means uniform throughout the country. Increasingly, however, there would seem to be a move towards finding consensus on issues of good practice. In 2002, the National Mediation Association (*Bundesverband Mediation*) published a handbook of some 1,500 pages, and most schemes now conduct their work according to these standards (*Kilchling* 2005). However, it is perhaps unsurprising that *Tränkle* (2007) found a number of problems in the *German* mediation sessions she observed. Although her research was focused on schemes involving adults, her findings are also likely to bear an influence on the operation of juvenile mediation schemes. *Tränkle* reported that there was a lack of understanding among the participants of the purpose and value of mediation; a predominance of bureaucratic and legalistic styles; uncertainty among participants as to the appropriate role of the mediator; and sometimes a failure of mediators to provide victims and offenders with adequate information in advance of mediation.

Norway

Discussions of alternative penal approaches in *Norway* were triggered in the late 1970s following the publication of *Nils Christie's* seminal article, "Conflicts as Property" (1977, see Chapter 1). A report to Parliament focusing on criminal policy in general, and juvenile offenders in particular, prompted the Government to establish a project entitled Alternatives to Prison for Juveniles in 1978, which sought to test a range of new ways of dealing with young offenders (*Kemény* 2005). It should be noted, however, that *Norway* lacks any distinct juvenile justice system; the age of criminal responsibility is 15 years and young people below this age will be dealt with under the social welfare system. For those over the age of 15, the Municipal Mediation Service Act 1991 placed mediation on a statutory footing and specific powers to make referrals to mediation and to discontinue proceedings are provided to prosecutors by ss. 71a and 72 Criminal Procedure Act 1998. Further legislation was passed in 2004, with responsibility for organising mediation passing from municipal authorities to 22 public mediation services run directly by the central Ministry of Justice.

Today *Norway* has the highest number of mediation cases in Europe. Currently the caseload consists of about 5,000 to 6,000 individuals referred to mediation each year, of which about 3,000 are criminal cases, mostly consisting of less serious property and minor personal offences (*Miers*/*Willemsens* 2004). For the most part, mediation referrals are made by the police or prosecutor,

although it can also be ordered by courts as part of a community sentence or as a condition of a suspended sentence.

Once the question of guilt has been resolved, the prosecutor must make a determination whether the case is suitable for referral to mediation. The prosecutor's discretion is not entirely unfettered; he or she must consider that the case is "suitable". Typical cases described in the circular letter include theft, vandalism, joyriding and violence (minor assaults) arising out of a preceding conflict. Providing the parties agree on the facts of the case and consent to the process, mediation will be offered as an alternative to formal penal sanctions. The prosecutor should also take into account the need for an offence to have involved a personal victim, as well as considerations relating to individual deterrence. Thus, despite mediation being fairly well spread throughout the country, it is still generally confined to less serious offences and retains its diversionary character (*Kemény* 2005).

In terms of how mediation works in practice, the legislation provides for direct face-to-face meetings between victims and offenders. Either party may bring along a supporter, but legal representation is not permitted. The mediation event may be brief, as is typically the case with offences against property, or prolonged, as is the case with neighbour disputes or violence (*Miers et al*, 2001). Services are usually provided by trained volunteers, who receive a nominal fee as well as having any related costs reimbursed. Volunteers are trained through a national accreditation programme, and are accountable to a co-ordinator based within the Ministry of Justice. In addition, the Ministry of Justice arranges annual conferences and publishes a regular journal for mediators which are intended to inform and to generate and exchange good practice (*Miers et al.* 2001).

Research indicates that the vast majority of mediated cases (91%) reach an agreement, and 95% of these agreements are fulfilled. The major forms of disposals include compensation (41%), work (21%), reconciliation (21%), compensation and work (7%) (*Kemény* 2005). In addition, evaluations conducted in the mid 1990s showed that a very high proportion of victims and offenders expressed satisfaction and said they would be prepared to recommend it to others (*Paus* 2000; *Kemény* 2005). Little research has been done in terms of measuring recidivism, but *Kemény* (2005) notes that indications to date are that incidences of recidivism is slightly lower with VOM than with traditional penal responses.

Spain (Catalonia)

VOM has undergone considerable expansion across *Spain* in recent years, but this is particularly true in the autonomous regions including the Basque country, Castille la Mancha and the Balearic Islands. However, by far the most significant developments have occurred in Catalonia, where, since the early 1990s, mediation has been regarded as a primary response to juvenile offending. Approximately 3,000 young offenders are brought before the juvenile courts

each year, and around half of these are dealt with through the Catalonian Department of Justice's mediation programme (*Miers et al.* 2001).

The current legal framework is contained within Law OL 5/2000, which provides that VOM with juveniles (aged 14-18) may be used in two different ways. First, it may be used as a diversionary device by the public prosecutor. Referral is intended to be discretionary, with the prosecutor being able to refer an offence to mediation providing the offender repairs the harm caused to the victim or expresses a willingness to do so (*de la Camara* 2002). In these circumstances, no further action will be taken by the prosecutor providing the offender carries out his obligations under the agreement. Under Article 19(2), any decision to discontinue to action is provisional and will depend upon the juvenile's compliance to the VOM agreement. In cases involving serious felonies, the action may not be abandoned until the mediation process and any reparation are completed. Secondly, the court may postpone sentencing pending mediation following a request by prosecutor or by any of the parties. In these circumstances, the judge will request an initial report from the mediator confirming that the case is suitable for mediation. Once the mediation has taken place and the agreement is completed, a report is issued to the judge, who must assess the legality of the agreement and whether the law demands the imposition of any further penalty. A useful overview of the actual mediation process is offered by *Vall Ruis* (2002):

"In the first meeting the mediator explains to the offender the characteristics and requirements of VOM. If the offender indicates a willingness to enter the programme, if his/her lawyer agrees, and if the mediator deems mediation an appropriate approach for a specific case, the process can be started. The next important step involves contacting the victim and explaining the aim and the characteristics of the mediation process. The victim is offered the possibility to take part in the programme. If the victim chooses not to participate, the process has to be terminated; otherwise it moves forward until an agreement is reached or until it becomes clear that an agreement is not feasible. In any of these cases the mediator informs the judge of the mediation result."

A number of evaluative studies have been undertaken to date. Their findings have been largely very positive. *Barberán* (2005) reports that the scheme allows for a "win-win" situation: justice is perceived as closer to the parties involved and its social image is improved. In this sense, it is an effective means to encourage young people to take responsibility for their actions. The common experience among offenders and victims is that the judiciary has reacted fairly to the offence and it offers both of them an opportunity to participate in formulating a solution. The specific nature of particular offences is better understood, as are the characteristics of the conflict that brought it about. As a result, victims do not feel as victimised, offenders feel more responsible, and both experience values useful to themselves and the community. However, a

more concerning findings was that the programmes had resulted in some degree of net-widening (drawing in some petty offences).

In terms of how the system might be improved, *Vall Rius* (2002) proposes that prosecutors and mediators should work more closely together to develop common goals and common understandings of VOM. A formal protocol of collaboration should be put in place and more specific criteria should be developed for making referrals. In addition, the "circle of dialogue" should be extended; schemes should work harder to include other actors within the criminal justice system such as juvenile judges, probation officers, victim support assistants, and lawyers. This would facilitate a deeper and more consistent change of attitudes, and would help stakeholders to address longer term conceptual in addition to ongoing organisational issues.

Netherlands

A slightly different form of restorative intervention is adopted by the police in the *Netherlands*. There, the police can refer a first or second time juvenile offender (under the age of 16) to the HALT scheme. Established in the early 1980s (and now placed on a statutory footing), the scheme was one of the earliest crime prevention measures to be established in Europe with a clear restorative component. The programme is primarily offender-orientated; although victims are occasionally invited to participate in mediation, reparation is normally directed towards the wider community (*Blad* 2006). The scheme is primarily targeted at juveniles found to have been involved in vandalism and retail theft, though other forms of petty crime are also covered (*Kruissink* 1991).

HALT is a resource-intensive scheme, dealing with around 17,000 cases each year, and is staffed entirely by professionals (*Blad* 2006). The professional dealing with a particular case will try to negotiate an appropriate agreement with the offender, his/her parents, and the victim. The agreement will usually entail the young person agreeing to some form of community service or participating in some other worthwhile task. Providing the young person completes the programme as agreed, he or she will not be prosecuted. If, however, the young person declines the offer, or fails to complete the programme satisfactorily, the case will usually be referred to the public prosecutor (*Zandbergen* 1996).

3. Community-based panels and reparation boards

Community-based panels or "reparation boards" are restorative based practices which are widespread in the United States. While the boards are primarily used for adult offenders convicted of non-violent offences, more recent initiatives have been focused on juvenile offenders. The boards are usually made up of a small number of community representatives, who meet the offender and talk through the reasons for the offending behaviour and how to rectify the harm that

has been caused. The board then decides the sanction that should be imposed for the offence, monitor compliance and will then report back to the court on its completion. The main goal of the boards is to empower communities and to promote offender responsibility and victim reparation (*Bazemore/Umbreit* 2004).

A similar panel scheme currently operates in *England* and *Wales* for young offenders who have been prosecuted for the first time through the courts. Under the Youth Justice and Criminal Evidence Act 1999, referral orders to young offender panels are made available to the youth courts as a primary court disposal method for first-time offenders between the ages of 10-17 years. The main aim of the panels is to provide first-time offenders with "opportunities to make restoration to the victim, take responsibility for the consequences of their offending and achieve reintegration into the law-abiding community" (*Home Office* 2002).

Following referral by a court, the panel decides how the offending should be dealt with and what form of action is necessary. If the victim wishes, they may attend the panel meeting and describe how the offence affected them. Parents are required to attend the panel meeting (if the young person is under the age of 16) and meetings are usually held in community venues. Government guidelines state that young people should not have legal representation at panel meetings, as this may hinder their full involvement in the process, but if a solicitor is to attend they may do so as a "supporter" (*Home Office* 2002).

The panel has to decide on an agreed plan which can provide reparation to the victim or community and include interventions to address the young person's offending. This can include victim awareness, counselling, drug and alcohol interventions and forms of victim reparation. The length of the order should be based on the seriousness of the offence, but panels are free to determine the nature of intervention necessary to prevent further offending by the young person (*Home Office* 2002). The young person must agree to the plan. However, if they refuse they will be referred back to the court for sentencing. Once a plan is agreed it is monitored by the Youth Offending Team and if the young person fails to comply with its terms they may be referred back to court for sentencing.

Referral orders were piloted in 11 areas across *England* and *Wales* between March 2000 and August 2001. Research concluded that, in the main: "within a relatively short time youth offender panels have established themselves as constructive, deliberative and participatory forums in which to address young people's offending behaviour" (*Newburn et al.* 2002). The orders were rolled out across the rest of *England* and *Wales* in April 2002, and in 2003/04 there were over 27,000 referral orders made, constituting 25 per cent of all court disposals (*Youth Justice Board* 2004).

Newburn et al. (2002) concluded from their research that the new orders were working well and many young people played an active role in their panel meetings. They found that 84 per cent of the young people felt they were treated with respect and 86 per cent said they were treated fairly. The research found that

75 per cent of the young people agreed that their plan or contract was "useful" and 78 per cent agreed that it should help them stay out of trouble (*Newburn et al.* 2002). Parents also appeared to be positive about the orders, and compared with the experience of the youth court, parents appeared to understand the referral order process better and felt it easier to participate (*Newburn et al.* 2002).

Despite the rather positive evaluation findings, a number of concerns have been raised concerning referral orders (*Goldson* 2000; *Haines*/*O'Mahony* 2006). It has been argued that such orders raise questions about informed consent as some young people and parents may feel forced into agreeing plans. Children as young as 10 years, without legal representation, may be drawn into signing into contracts affecting their liberty (*Cullen* 2004). Another concern is that the discretion of magistrates is curtailed in the legislation whereby minor first-time offenders must be referred to panels (*Ball et al.* 2001), effectively making them a mandatory sentence.

The research by *Newburn et al.* (2002) confirms this, as 45 per cent of the magistrates interviewed felt that the lack of discretion in the legislation undermined their authority. Crawford and *Newburn* (2003) also found that some panels had difficulty devising suitable plans because of a lack of local resources and that panel members believed that adequate local facilities and resources were crucial to the success of panels.

More fundamental problems with the referral order centre around the low levels of victim involvement in the process. In their research, *Newburn et al.* (2002), note that victims attended in only 13 per cent of cases where at least an initial panel meeting was held. Such low levels of victim participation obviously greatly limit any chance of "encounter, reparation, reintegration and participation" (*van Ness/Strong* 1997), supposedly essential for the restorative process. Furthermore, research has yet to establish whether such orders are having any net-widening effects and if they unnecessarily draw minor offenders further into the criminal justice system. Questions remain as to the extent to which such orders are truly proportionate to the offence committed and their longer-term impact on recidivism, especially by comparison to other disposals (*Mullan/O'Mahony* 2002). For these reasons, the extent to which referral orders encapsulate the core features of restorative justice remains questionable. However, unlike most restorative based programmes available in *England* and *Wales*, the referral order has been incorporated quite well into the courts and criminal justice process as a key response to youth offenders who plead guilty the first time they are prosecuted through the courts.

4. Police-led restorative cautioning

Police-led conferencing was first developed in Wagga Wagga, New South Wales and involved the adaptation of the New Zealand model of family group conferencing for the purposes of community-orientated policing (*Moore*/-

McDonald 1995). In the first instance, offenders were brought together with their family and friends to decide how to respond to the offence, as in the New Zealand model, but the scheme was then extended to include victims and their supporters. The approach is based around *Braithwaite*'s concept of "reintegrative shaming" (*Braithwaite* 1989). Thus these schemes seek to deal with crime and its aftermath by attempting to make offenders ashamed of their behaviour, but in such a way that encourages them to reflect on the consequences of the crime and to find ways of reintegrating them within the community.

The restorative caution attempts to reintegrate the young person, after they have admitted what they did was wrong, by focusing on how they can put the incident behind them, for example by repairing the harm through such things as reparation and apology (*O'Mahony/Doak* 2004). It thereby allows the young person to move forward and reintegrate back into their community and family. The whole process is usually facilitated by a trained police officer and often involves the use of a script or agenda that is followed in the conferencing process. The victim is encouraged to play a part in the process, particularly to reinforce upon the young person the impact of the offence on them, but as *Dignan* (2005) notes, restorative cautioning schemes have (at least initially) placed a greater emphasis on the offender and issues of crime control, than on their ability to meet the needs of victims.

During the 1990s, police-led restorative cautioning schemes expanded considerably in both North America and the *United Kingdom*. In the latter jurisdiction, two such schemes have been the subject of intensive evaluations: the programme run by the Thames Valley Police, and the scheme developed in *Northern Ireland* by the Police Service of Northern Ireland. Research by *Hoyle/ Young* (2003) evaluated the Thames Valley scheme from 1998-2001. The evaluation was somewhat mixed. On the positive side, the researchers reported that offenders, victims and their supporters were generally satisfied and felt they had been treated fairly; both victims and offenders believed that the encounter helped offenders to understand the effects of the offence and induced a sense of shame in them; over half of the participants gained a sense of closure and felt better because of the restorative session, and four-fifths saw holding the meeting as a good idea. Less encouraging findings included the fact that a significant minority of victims and offenders felt they had not been adequately prepared for the process, or felt they had been pressured into it; facilitators occasionally seemed poorly prepared, and sometimes asked illegitimate questions (e. g. relating to prior offending or attempts to gather criminal intelligence); and some officers appeared to press offenders to apologise or make reparation. However, at the end of the research period the researchers noted that practice had improved considerably towards the end of the research period. Overall, their impression was that restorative cautioning represented a significant improvement over traditional cautioning, and it also appeared to be more effective in terms of reducing recidivism (*Hoyle/Young* 2003).

The Thames Valley model has now been integrated to different degrees by police forces across the *United Kingdom*, and was subject to further evaluation following the implementation of a similar model for juvenile offenders in *Northern Ireland* from March 2003. The Police Service of Northern Ireland police instigated two pilot schemes: one based in Ballymena, County Antrim and the other in Mountpottinger, Belfast. Both schemes adopted a restorative approach for juveniles under 17 years of age. All the young people had admitted involvement in the offence, but were diverted away from prosecution by way of a formal caution, delivered using a restorative framework.

These schemes were subject to an evaluation (*O'Mahony et al.* 2002), which examined a total of 1,861 juvenile liaison referrals made between May 1999 and September 2000, including 969 cases from Mountpottinger and 892 from Ballymena. The team also collected more detailed information about the backgrounds of individuals and any previous contacts they had with the police from a random sample of 265 case files, including all cases dealt with by way of restorative caution or conference.

On examination of cases that were dealt with using a restorative model, it was found that there were clear differences in practice between the two pilot areas. In Mountpottinger where the restorative scheme evolved from traditional cautioning practice, the sessions appeared to be used as an alternative to the traditional caution. Here, 39 of the 42 restorative cases were dealt with by way of a restorative caution without the presence of the victim, and only three were dealt with by a restorative conference including a victim. In Ballymena, however, the scheme had been developed from a local "retail theft initiative", and generally only dealt with shoplifting cases. Here, 25 of the 28 cases resulted in a restorative conference, though these mostly used a surrogate victim who was drawn from a volunteer panel of local retailers and only three cases were dealt with by way of a restorative caution.

The restorative sessions were usually facilitated by a trained police officer. While the majority of the restorative cautions took place in a police station, most of the conferences (primarily in Ballymena) took place elsewhere. Levels of victim participation were found to be low, with the actual victim attending only 20% of the conferences and in the Ballymena area (where most conferences took place), a surrogate victim was invariably used. The young person and their parent(s) usually attended, and occasionally a social worker or a teacher was also in attendance. The majority (over 90%) of the restorative sessions resulted in a written or verbal apology to the victim and in only 8% of the cases did the young person refuse to apologise. Few of the sessions resulted in any compensation or reparation, though the majority of cases in both locations involved retail theft, where goods were normally recovered immediately.

While the overall evaluation found the police were strongly committed to restorative ideals and had applied a considerable effort in attempting to make the new scheme a success, a number of pertinent concerns were identified by the

researchers including a lack of meaningful involvement of the victim; the fact that some venues (i. e. police stations) could not be considered a "neutral" location; the use of an extremely resource-intensive process to deal with relatively low-level offending.

Of greater concern was the fact that the researchers found evidence of net-widening; first time or petty offenders were sometimes drawn into the criminal justice system. Restorative cautions were most commonly used for less serious cases involving young juveniles (12 to 14 years) that previously would not have resulted in formal action. For instance, over 90% of the restorative conference cases were for minor thefts and 80% of these involved goods with values under 18 €. Indeed, in over half the cases, goods were worth less than 6 €. It was not uncommon to come across cases where a considerable amount of police time had been invested in arranging a full conference for the theft of a chocolate bar or a can of soft drink. Indeed, the profile of those given restorative cautions and conferences was more similar to those given "advice and warning" under the pre-existing regime than those cautioned previously and was not at all similar to those referred for prosecution. Some of the people dealt with under the scheme were very young, had no previous police contact or had only committed very trivial offences.

These findings highlight the danger that when informal alternatives are introduced into the criminal justice system they may serve to supplement rather than supplant existing procedures (*O'Mahony/Deazle* 2000). The question is thus raised as to whether it is appropriate to use restorative conferences, which are obviously costly and time-consuming, for mainly first-time offenders involved in petty offences. It could be argued that a better course of action might be to deal with such cases by way of "advice and warning", particularly where the value of goods is relatively low and to reserve the restorative cautions for more serious offences. Having said that, the researchers concluded that the restorative framework used in delivering the police caution was a considerable improvement on previous practice and was well received by the vast majority of participants.

5. Family Group Conferencing

Family Group Conferencing (FGC) was first developed in New Zealand in the late 1980s as part of a more general initiative which sought to address difficulties in the way young people – particularly those from Maori backgrounds – perceived the criminal justice system (*Maxwell/Morris* 1993). The model sought to develop a more culturally sensitive approach to offending, through placing particular emphasis upon the desirability of including victims, offenders and communities in rectifying harm caused by criminal behaviour. Typically, a youth conference involves a meeting in which a young person is provided with the opportunity to reflect upon their actions, and offer some form of reparation to the victim. The victim, who is given the choice whether or not to attend, can explain to the offender how the offence has affected him or her as an individual.

Following group dialogue on the harm caused by the young person's actions, a "conference plan" is devised.

During the latter half of the 1990s, the New Zealand model was exported to many other criminal justice systems in North America and Australia. However, so far it has penetrated Europe to a lesser extent. The *Netherlands* is one of the few jurisdictions of continental Europe to have adopted a form of conferencing as a means of diversion. A number of different schemes are in operation, with most being administered by the police, HALT centres, or the prosecutor. Two specific forms of conferencing are used: "family group decision-making" and "youth justice conferencing", though neither has a legislative basis. The former tends to be used to resolve disputes arising within a family circle, and thus lies outside the criminal justice system. Occasionally, however, cases of domestic violence are referred to this process. The latter model, Youth Justice Conferencing, is often used in cases involving broader disputes.

The conference largely follows the traditional family-based New Zealand model, with victims and offenders bringing along their respective families and friends to discuss an ongoing dispute and agree solutions. Conferences are coordinated by a neutral facilitator, with each participant being given an opportunity to speak and ask questions, as well as contribute to the action plan. Although evaluative evidence is somewhat sketchy, initial research suggests that it has been relatively successful with the majority of participants reporting satisfaction with the process (*Miers/Willemsens* 2004). Despite the positive results, the overall number of cases referred for such programmes remains relatively small and in that sense restorative practices remain marginal to the *Dutch* criminal justice system (*Pelikan/Trenczek* 2006).

By contrast, in *Northern Ireland* conferencing is used as the primary response to youth offending. Here, the system has statutory footing in Part Four of the Justice (Northern Ireland) Act 2002. Additionally, The Youth Conference Rules (Northern Ireland) 2003 establish the procedures to be followed when convening and facilitating a conference. For the most part, the scheme follows the New Zealand process, described above. However, one key difference is the fact that in the Northern Ireland scheme, the plan is usually devised and negotiated with all of the parties present, including the victim. This plan takes the form of a negotiated "contract", with implications if the young person does not follow through what is required of him or her. Agreement is a key factor in devising the "contract", and the young person must consent to its terms. Ideally, the "contract" will ultimately have some form of restorative outcome, addressing the needs of the victim, the offender and wider community.

The Youth Conference Service was introduced in December 2003 in the form of a pilot scheme and initially was available for all 10-16 year olds living in the Greater Belfast area. In mid-2004, the scheme was expanded to cover young people living in more rural areas, including the Fermanagh and Tyrone regions. Section 63 of the Justice (Northern Ireland) Act 2002 provides for the

extension of the youth justice system to cover 17 year olds in the jurisdiction of the youth courts, which took effect from August 2005.

There are two distinctive types of conference available under the legislation: diversionary conferences and court-ordered conferences. In either case, the conference co-ordinator is responsible for submitting a plan to the prosecutor or court on how the young person should be dealt with for their offence. A decision to hold a diversionary conference is taken by the Public Prosecution Service. Unlike many restorative schemes elsewhere, diversionary conferences are not intended for minor first time offenders (they will normally be dealt with by the police by way of a warning or caution). Instead, the programme is aimed at young offenders who would normally be considered for prosecution in the courts. Providing a conference plan is agreed and successfully completed, the young person will avoid a court appearance and a subsequent criminal conviction. It is important to underline that two preconditions must be in place before a diversionary conference can proceed. First, the young person must admit to the offence; and secondly, he or she must consent to the process. If both these conditions are not in place, the offence will be disposed of in the normal way through prosecution in the Youth Court.

Court ordered youth conferences provided for in the legislation take place with a view to a youth conference co-ordinator providing a recommendation to the court on how the young person should be dealt with for their offence. The young person may be referred to a youth conference by a court, known as a court-ordered youth conference. The admission or establishment of guilt and consent of the young person are again prerequisites for a court-ordered conference to take place. A distinctive feature of the *Northern Ireland* system is that a court *must* refer a young person to a youth conference. This is subject to certain restrictions: when a magistrate refers a case they must take into account the type of offence committed. Only offences with a penalty of life imprisonment, offences which are triable, in the case of an adult, on indictment only and scheduled offences which fall under the Terrorism Act (2000) are not automatically eligible for youth conferencing. In effect, the vast majority of young offenders have to be referred for the youth conferencing process. The mandatory nature of court-ordered referrals highlights the intended centrality of youth conferencing to the youth justice system. In jurisdictions where referrals are discretionary, the uptake has often been low which has led to the marginalisation of restorative schemes to the periphery of the justice system (*Shapland et al.* 2004; *Miers et al.* 2001; *Crawford*/*Newburn* 2003).

Restorative youth conferencing has changed the face of the youth justice system in Northern Ireland and although it has only been in operation for a few years, early indications appear to be positive. The youth conferencing scheme has been subject to a major evaluation in which the proceedings of 185 conferences were observed and personal interviews were completed with 171 young people and 125 victims who participated in conferences (*Campbell et al.*

2006). This research allows us to reflect on the extent to which the scheme has been successful in achieving its aims and the extent to which it renders the justice system more accountable and responsive to the community as a whole.

The research findings were generally very positive concerning the impact of the scheme on victims and offenders, and found it to operate with relative success. Importantly, the research showed that youth conferencing considerably increased levels of participation for both offenders and victims in the process of seeking a just response to offending. The scheme engaged a high proportion of victims in the process: over two-thirds of conferences (69%) had a victim of some sort in attendance, which is high compared with other restorative based programmes (see *Maxwell/Morris* 2002; *Newburn et al.* 2003; *O'Mahony*/*Doak* 2004). Of these 40% were personal victims and 60% were victim representatives (such as in cases where there was damage to public property or there was no directly identifiable victim). Indeed, nearly half of personal victims attended as a result of assault, whilst the majority (69%) of victim representatives attended for thefts (typically shoplifting) or criminal damage.

The research demonstrated that victims were willing to participate in youth conferencing and 79% said they were actually "keen" to participate. Most (91%) said the decision to take part was their own and not a result of pressure to attend. Interestingly, over three quarters (79%) of victims said they attended "to help the young person" and many victims said they wanted to hear what the young person had to say and their side of the story: "I wanted to help the young person get straightened out". Only 55% of victims said they attended the conference to hear the offender apologise. Therefore, while it was clear that many victims (86%) wanted the offender to know how the crime affected them, what victims wanted from the process did not appear to be driven by motivations of retribution, or a desire to seek vengeance. Rather it was apparent that their reasons for participating were based around seeking an understanding of why the offence had happened; they wanted to hear and understand the offender and to explain the impact of the offence to the offender.

Victims appeared to react well to the conference process and were able to engage with the process and discussions. It was obvious that their ability to participate in the process was strongly related to the intensive preparation they had been given prior to the conference. Nearly all victims (91%) received at least an apology and 85% said they were happy with the apology. On the whole they appeared to be satisfied that the young person was genuine and were happy that they got the opportunity to meet them and understand more about the young person and why they had been victimised. On the whole, it was apparent, for the victims interviewed, that they had not come to the conference to vent anger on the offender. Rather, many victims were more interested in "moving on" or putting the incident behind them and "seeing something positive come out of it".

For offenders, it was evident that the conferencing process held them to account for their actions, for example, by having them explaining to the

conference group and victim why they offended. The majority wanted to attend and they gave reasons such as, wanting to "make good" for what they had done, or wanting to apologise to the victim. The most common reasons for offenders attending were to make up for what they had done, to seek the victim's forgiveness, and to have other people hear their side of the story. Only 28% of offenders said they were initially "not keen" to attend. Indeed many appreciated the opportunity to interact with the victim and wanted to "restore" or repair the harm they had caused. Though many offenders who participated in conferences said they did so to avoid going through court, most felt it provided them with the opportunity to take responsibility for their actions, seek forgiveness and put the offence behind them.

Youth conferencing was by no means the easy option and most offenders found it very challenging. Generally offenders found the prospect of coming face to face with their victim difficult. For instance, 71% of offenders displayed nervousness at the beginning of the conference and only 28% appeared to be "not at all" nervous. Despite their nervousness, observations of the conferences revealed that offenders were usually able to engage well in the conferencing process, with nearly all (98%) being able to talk about the offence and the overwhelming majority (97%) accepting responsibility for what they had done.

The direct involvement of offenders in conferencing and their ability to engage in dialogue contrasts with the conventional court process, where offenders are normally afforded a passive role - generally they do not speak other than to confirm their name, plea and understanding of the charges - and are normally represented and spoken for by legal counsel throughout their proceedings. Similarly, victims were able to actively participate in the conferencing process and many found the experience valuable in terms of understanding why the offence had been committed and in gaining some sort of apology and/or restitution. This, too, contrasts with the typical experience of victims in the conventional court process, where they often find themselves excluded and alienated, or simply used as witnesses for evidential purposes, if the case is contested (*Doak* 2008).

Nearly all of the plans (91%) following conferences were agreed by participants and importantly, victims were on the whole happy with the content of the plans. Interestingly, most of the plans centred on elements that were designed to help the young person and victim, such as reparation to the victim, or attendance at programmes to help the young person. Few plans (27%) had elements that were primarily punitive, such as restrictions on their whereabouts, and in many respects the outcomes were largely restorative in nature rather than punitive. The fact that 73% of conference plans had no specific punishment element was a clear manifestation of their restorative nature. But more significantly, this was also indicative of what victims sought to achieve through the process. It was clear from the research that notions of punishment and

retribution were not high on the agenda for most victims when it came to devising how the offence and offender should be dealt with through the conference plan.

Overall indications of the relative success of the process were evident from general questions asked of both victims and offenders. When participants were asked what they felt were the best and worst aspects of their experience a number of common themes emerged. For victims, the best features appeared to be related to three issues: helping the offender in some way; helping prevent the offender from committing an offence again; and holding them to account for their actions. Positive aspects of the conferencing were clearly non-punitive in nature for victims: most seemed to appreciate that the conferences represented a means of moving forward for both parties, rather than gaining any sense of satisfaction that the offender would have to endure some form of harsh punishment in direct retribution for the original offence. Victims and offenders expressed a strong preference for the conference process as opposed to going to court and only 11% of victims said they would have preferred if the case had been dealt with by a court. On the whole victims considered that the conference offered a more meaningful environment for them. While a small number of victims would have preferred court, identifying conferencing as "an easy option", this view was not held by the offenders. The offenders identified the most meaningful aspect of the conference as the opportunity to apologise to the victim, a feature virtually absent from the traditional court process. Yet, they also identified the apology as one of the most difficult parts of the process.

Very recent research findings have assessed the impact of the scheme on recidivism rates (*Lyness* 2008). These encouraging findings, which compare reconviction rates for young offenders given differing disposals, including custodial and community orders, show those given restorative conferences had a one year reconviction rate of 38% compared with a custodial rate of 73% and an overall community disposal rate of 47%.

6. Conclusions

Despite the issuing of the Council of Europe recommendations encouraging the application of restorative justice at all stages of the criminal justice process,[3] restorative practices and mediation still largely remain on the periphery of many European criminal justice systems. Moreover, they are often confined to less serious offences (*Pelikan/Trenczek* 2008). There has been a reluctance to embrace such practices in some jurisdictions, even though research evaluations have been generally positive. Agreements reached in mediation, especially for direct mediation, appear to be high and are usually fulfilled, with completion rates of between 60% to 100% being reported in the research (*Kerner/Hartmann* 2005).

3 Recommendation (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters.

Furthermore, general satisfaction levels of participants and the willingness of individuals to participate in such schemes has been found to be high and victims, who participate, are usually significantly more satisfied than those who participated in the traditional criminal justice procedure (*Aertsen et al.* 2004).

Similarly, research on restorative justice has generally been positive. Restorative programmes often allow young persons, their families, and victims to play a role in guiding how the young person should be dealt with by the courts. They place specific emphasis on devolving decision making, or at least the power to make recommendations as to how youth offenders should be dealt, back to those most directly impacted by the offence – the victim, offender and his or her family. Research has also found that young offenders usually felt they had a better understanding of the consequences of what they had done following the conference, felt involved in the decision making process and were satisfied with the outcome. Similarly, victims generally expressed high levels of satisfaction with the process and outcome. The experience of mainstreamed restorative conferencing has been overwhelming positive and research has consistently illustrated that such conferences can more fully involve victims than conventional criminal justice.

The research evidence considering the impact of mediation and restorative justice on re-offending has also been positive. The weight of recidivism-based evidence demonstrates that such interventions usually have a modest, but statistically significant impact on reducing recidivism. Research evidence suggests that interventions that involve direct contact between the offender and victim are generally more successful than those that have indirect or no victim involvement. Specifically, it has been found that restorative interventions are better able to reduce reoffending if core elements of the restorative process are achieved, in particular, if they are inclusive, fair and forgiving and when offenders are remorseful and conference agreements are consensual.

However, it is important not to oversell the power of mediation and restorative justice simply in terms of their ability to reduce recidivism, or to just frame them as crime prevention measures. After all, it is unrealistic to think that a single mediation or restorative (or other) intervention is going to lead to radical changes in offending. Furthermore, mediation and restorative measures are not an option in cases where the defendant pleads innocent, or refuses to engage in such a process – however they can be used effectively for many of offenders and offences.

There is obviously considerable potential to expand mediation and restorative measures further into criminal justice systems across Europe. Such measures offer considerable advantages, as noted above, in terms of delivering a better form of justice to those individuals most directly affected by crime. Thus mediation and restorative interventions need to be seen as a way that can improve on traditional justice systems in terms of holding offenders to account and encouraging them to accept responsibility for their actions; giving victims and offenders a fairer and more satisfying experience of justice, and producing outcomes that are more likely to result in recompense, forgiveness and reconciliation.

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Juvenile offenders in preliminary or pre-trial detention[1]

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1. Introduction

In January 2006 the Committee of Ministers of the Council of Europe adopted the new version of the European Prison Rules (EPR, Recommendation (2006) 2). At the same time, an expert group was set up which was to advise the Committee on Crime Problems (CDPC) in order to draft a further Recommendation for juvenile offenders subject to community sanctions or to any form of deprivation of liberty. The terms of reference were explicitly related sanctions concerning deprivation of liberty and community sanctions, and insofar already went beyond the EPR. On 5 November 2008 the European Rules for Juvenile Offenders Subject to Sanctions or Measures were adopted as Recommendation (2008) 11 (ERJOSSM). The ERJOSSM clarify that any form of preliminary or pre-trial detention shall be a measure of last resort. Basic principle No. 10 stipulates that "deprivation of liberty of a juvenile shall be a measure of last resort and imposed

1 The chapter at hand is mainly based on the national reports compiled in the three volumes of this publication. The country reports are referred to by the country names in italics. Further information was gathered by a questionnaire which was sent out by the Council of Europe to its Member States in 2006 when the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) were prepared by a group of experts; see the final report of *Dünkel/Pruin* 2009; see for the ERJOSSM *Council of Europe* 2009; *Dünkel/Baechtold/van Zyl Smit* 2009; *Dünkel* 2008; 2009. The references in italics also refer to the countries of the Member States to the Council of Europe that responded to the questionnaire. Further information could finally be gathered from the comprehensive study of *van Kalmthout/Knapen/Morgenstern* 2009, which, however, mainly covers the problems of adult offenders.

and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention." This Basic Principle corresponds to other international human rights standards such as, for example, Rules No. 15 and 16 of the Recommendation (2003) 20 of the Council of Europe concerning "new ways of dealing with juvenile delinquency and the role of juvenile justice" of 2003.[2] Most standards for pre-trial detention in the ERJOSSM are the same as for any other form of detention and are therefore dealt with by the general part of the Rules. However, some specific rules are provided in No. 108-113. They underline that the regime and the treatment in any form of preliminary detention, and especially in police or pre-trial detention, must take into account the principle of presumed innocence. One consequence is that juveniles cannot be compelled to work (No. 112). Two principles that also apply to juveniles in other forms of deprivation of liberty are particularly important for pre-trial detention: Rule 109 stresses the responsibility of state authorities to preserve the dignity and personal integrity of juveniles during their detention and requires special care to be taken during the initial period of detention, which is a phase of high vulnerability. Rule 110 emphasises the principle of "through-care", which is of particular importance because pre-trial detainees experience for the first time the helplessness and the shock of incarceration, an experience which should be addressed by the agencies responsible for the juveniles after their release or while they are subject to custodial or non-custodial sanctions or measures in the future. Such through-care may be organised by the juvenile welfare authorities or probation services in strict co-operation with the social services within the institution. The principle of through-care is already mentioned in Basic Principle No. 15 and in Rule 51, but re-emphasised for pre-trial detention in Rule 110.

The Special Part concerning rules for pre-trial detention furthermore stresses the necessity to make available a "range of interventions and activities" which are not compulsory, but which, rather, should be available should a juvenile request it (No. 113.1). Therefore, it may be recommendable to accommodate juveniles in pre-trial detention close to facilities for sentenced offenders which

2 Rule No. 15 concerns police custody: "Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor. They should not be detained in police custody for longer than forty-eight hours in total and for younger offenders every effort should be made to reduce this time further. The detention of juveniles in police custody should be supervised by the competent authorities." Rule 16 deals with pre-trial detention: "When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.

would facilitate their participation in school or vocational programmes offered in the latter. Apparently this notion may help to explain the lack of independent pre-trial detention institutions.

Nevertheless, pre-trial detention and its execution can still be characterised as the "poor cousin" (or "unloved child") of criminal justice. Indeed, the legal prerequisites for imposing and enforcing preliminary detention are often not regulated satisfactorily. In practice, in most European countries, young offenders in pre-trial detention are exposed to worse conditions of detention than their sentenced counterparts in juvenile prisons or similar institutions. Bearing the presumption of innocence in mind, this is a totally unacceptable state of affairs.

2. Legal framework for preliminary residential care and pre-trial detention

In general, the legislation governing pre-trial detention – also for juvenile offenders – is based in the codes of criminal procedure (abbreviated in the following sections as CCP). Typically, the legal grounds for pre-trial detention are laid down in the CCP, but special restrictions and extended alternative measures for juveniles or special younger age groups are contained in the juvenile laws (juvenile justice acts, juvenile welfare laws etc.; see for example, *Austria, Bulgaria,* the *Czech Republic, Germany* or *Northern Ireland*). The legislation of juvenile welfare or justice regularly also provides for specific alternatives to preliminary or pre-trial detention, such as preliminary residential care in homes etc. (see among others *Bulgaria,* the *Czech Republic, Germany, Greece* or *Portugal*). In *Finland, Latvia* and the *Ukraine*, pre-trial detention is regulated in a special respective law. Even in welfare-oriented systems such as the Polish or Scottish legislation, some basic legal provisions of the CCP apply to juveniles in that they can exceptionally be sent to pre-trial detention. So, for example, in *Scotland* the CCP contains rules that specify the rule of last resort of pre-trial detention for juvenile (and young adult) offenders.

The first phase of investigation is usually initiated by the police or the prosecutor. Arresting a juvenile offender for 24, 48 or 72 hours in police detention is possible by order of the investigating authorities. Regarding Article 5 (2) of the European Convention on Human Rights, the question of pre-trial detention has to be decided by a judge within the shortest possible time (or as it is written in many national laws: "without undue delay").

The competent authorities who impose pre-trial detention in all European countries are judges,[3] sometimes special investigating judges, but usually judges

3 Only in *Armenia* "the investigator and prosecutor" seem to have a right to impose pre-trial detention, but this may be a misunderstanding, with the answer possibly referring to police detention instead, which in all countries is possible within the first 24, 48 or 72 hours.

of the penal court. In several countries it is the juvenile judge who is competent (*Belgium*, *Czech Republic*, *Germany*, *Italy*, *Switzerland*). This is a recommendable way of organising the prosecution of juvenile offenders, for, where the juvenile law provides specific (more restrictive) regulations, it is the juvenile judge who will be familiar with these rules and who will be in a position to apply them more appropriately.

While the imposition of pre-trial detention is always a judicial decision, in some countries release from such detention can also be ordered by the prosecutor (e. g. in *Denmark*, the *Czech Republic*,[4] *Georgia*, *Norway*, *Russia*, *Sweden* and the *Ukraine*).

Pre-trial detention of juveniles is treated even more as a very last resort (*ultima ratio*) than in criminal procedural legislation for adults. Juvenile laws therefore provide for various alternatives to preliminary or pre-trial detention,[5] either by placing juveniles in open, but sometimes more controlled settings, including supervision by the family, home confinement and other alternatives, or by sending them to a welfare institution. Usually, these are open facilities, but – as can be seen by the emerging discussion on closed welfare homes (see for example *England, France* and *Germany*) – as a last resort several countries also provide places in closed welfare institutions. Preliminary residential care in an educational institution is explicitly given priority in *Germany* (§ 71 JJA) and *Portugal* (Art. 57 JA).

The legal grounds for imposing pre-trial detention are mostly incorporated in the national codes of criminal procedure (see *2.1* below). Additional special rules for juveniles are often provided by the juvenile welfare or justice laws, for example by establishing further restrictions that apply to the younger age groups that are covered by the juvenile justice system. (see *2.2* below).

2.1 Legal grounds and principles for imposing pre-trial detention

2.1.1 Aims of pre-trial detention

The aim of any form of preliminary detention is to ensure that the trial can take place or that the final sentence can be enforced. Often the prevention of further delinquency is also cited as one of the aims of pre-trial detention, and therefore

4 Only during the investigative proceedings, whereas during the court trial proceedings the decision has to be made by the judge.

5 We use the term "preliminary detention" for juvenile offenders that are placed in welfare institutions under normally less restrictive and more educationally oriented conditions, run by the Ministries of Education, Social Affairs or the like, and the term "pre-trial detention" for juvenile offenders in more or less custodial institutions, typically run by the Ministries of Justice.

the terminology used can be "preventive detention" (see, for example *Bulgaria* or the *Ukraine*). The legal prerequisites for imposing pre-trial detention are a concrete suspicion that the person in question committed the offence, and a reason for imposing detention such as the concrete fear of escape, danger of collusion etc. (see *Table 1*). They are similar in all European countries (see *van Kalmthout/Knapen/Morgenstern* 2009, p. 62 ff.). On the other hand, an extended legal ground that appears repeatedly in the legislation of European countries as a reason to impose pre-trial detention is the "exceptional trouble a crime has caused with regard to the public order", which is the case in *Bulgaria, France, Italy* and the *Netherlands*. However, in practice these cases will be those that – in other jurisdictions – in which pre-trial detention would be justified because of the gravity of the offence (see below).

Regarding grounds for pre-trial detention, in principle the same preconditions are relevant for juveniles as for adults, but sometimes further restrictions apply for the former (see *2.2* below).

2.1.2 Suspicion

When speaking of suspicion, often a stronger degree thereof, like an "exigent suspicion", is required (*Austria* and *Germany*: *dringender Tatverdacht*; similarly, for example, in *France*, *Italy* or *Switzerland*; in *Greece*: "serious indications of the defendant's guilt"), which basically implies a high probability of a subsequent conviction for the alleged offence. The terminology may differ from country to country, but in most cases the principle is that pre-trial detention should only be used exceptionally and as a last resort,. In *Poland* for juvenile offenders of at least 15 years of age a "high probability" that the juvenile suspect actually committed the offence is requested,[6] whereas in *Sweden* a "probable cause" (German: *hinreichender Tatverdacht*) is sufficient. Other countries such as *Bulgaria, Latvia* or *Slovenia* require a "reasonable assumption" or a well-grounded suspicion. Despite differences in terminology and nomenclature, there seems to be a consensus insofar that in all countries, more than a simple degree of suspicion is necessary if a juvenile is to be remanded in secure custody. Some countries further differentiate according to the seriousness of the offence and require a lower degree of suspicion if the offender is alleged to have committed a very serious crime such as homicide or robbery (see, e. g. the jurisprudence of

6 In *Poland* juveniles from 13-17 are under the jurisdiction of the family court. Full criminal responsibility is provided at the age of 17, exceptionally (for very serious crimes) at 15. Therefore pre-trail detention in the strict sense is restricted to young persons of at least 17 or 15 years of age. However, the family court may impose preliminary detention in the detention centre for juveniles, a special institution similar to a welfare institution. The reasons for such preliminary detention are also educational ones or the state of so-called demoralisation; see *Stańdo-Kawecka* in this volume.

the Constitutional Court in *Germany* with regards to the legal ground of the severity of the offence, see *van Kalmthout/Knapen/Morgenstern* 2009, p. 73 f. and *Dünkel* in this volume).

2.1.3 Legal grounds

The "classic" legal grounds for imposing pre-trial detention in all countries are escape or the concrete *risk of escape*, *the danger of interference with evidence or influencing witnesses danger of collusion* and *the danger of an immediate relapse into further (serious) crime*, *risk of reoffending*. Regarding the latter, there is a need for differentiation. In *Germany*, this ground for detention is only accepted in cases of certain specified more serious offences (for example, robbery, serious bodily injury etc., see § 112a CCP). In a few countries the seriousness of the offence alone can justify pre-trial detention (for example *Croatia*, *Latvia*, *Lithuania*, *Romania* and to a certain extent *Germany*, see above). In *Bulgaria*, on the other hand, the conditions are rather marginal, with the law only requiring that a crime has (probably) been committed for which the law provides a prison sentence, under the condition of a risk of escape and/or of reoffending. This is all the more, as a risk of reoffending is presupposed for recidivist offenders or in cases where a sentence of 10 years or more is provided by law.

In a few countries, other grounds are enumerated in the law, like the "interest of the public" or the "risk of posing a serious threat to public order" (*France,* the *Netherlands, Scotland*).[7] These countries, on the other hand, have not incorporated the ground of the "gravity (seriousness) of the offence" into their laws. It is probable that in judicial practice, a "risk for public order" is the functional equivalent to the "seriousness of the offence" in other countries. In *Romania* and some other of the former socialist countries the concept is in between these two notions. Pre-trial detention may be justified because of the "degree of the social danger of the offence", which possibly is similar to the term "gravity of the offence", but also reflects the perception of the crime by the public.

In more welfare-oriented systems, educational needs can also be of significance, particularly when the judge or welfare authorities have to decide on preliminary detention in a welfare institution. The need for immediate care, or any "irregular" situation which endangers the well-being of the juvenile, will then be the guiding principles for this decision.

2.1.4 Principle of proportionality

In many countries, the principle of proportionality must be attributed particular attention and consideration. So, for example in *Austria* and *Germany*, pre-trial

7 The wording in *Italy* is similar ("serious risk to society"), but it is not clear if this means the same legal concept, see also *Table 1*.

detention can only be imposed if it is proportional to the importance of the case and the final sentence that is expected to follow. In other countries the principle of proportionality is stressed by restricting pre-trial detention to cases where a prison sentence may be imposed (*Bulgaria, Italy,* the *Netherlands* and *Romania*). According to *Greek* law, pre-trial detention of juveniles is only allowed if the crime is punishable with a minimum prison sentence of at least 10 years (the same applies to 14-16 year old juveniles in *Romania*). In *Portugal* pre-trial detention ("pre-trial internment order") is restricted to cases where an internment in an educational centre may be imposed.

In *Finland*, whether a convicted person remains detained depends from the length of the sentence. All offenders sentenced to imprisonment of at least two years will be detained without any discretion. Offenders with sentences between one and two years shall remain in detention if it is probable that he/she will abscond or otherwise avoid the enforcement of the sentence. For shorter sentences (less than one year) the offender may be detained if he/she has no permanent place of residence in the country.

In the *Czech Republic*, for pre-trial detention to be justified in cases of intentional offences, the crime regularly must be punishable with more than two years of imprisonment. For negligent offences, the minimum prison sentence must be more than three years. In *Latvia*, imposing pre-trial detention is excluded for negligent or minor offences (misdemeanours).

In the *Netherlands*, too, there is a restriction that is connected to the gravity of the offence: pre-trial detention is only permitted for crimes punishable with more than six years of imprisonment.[8] Some countries aim to restrict pre-trial detention by emphasising such abstract criteria, while others have regard to the concrete punishment expected in the given case.

The proportionality between the seriousness of the offence and the application of pre-trial detention does not appear to be specifically assured in all jurisdictions, although the principle of proportionality in general is inherent to regulations that set limiting time periods. So in the *Netherlands* a judge has to end the enforcement of pre-trial detention if the expected sentence is shorter than the period of pre-trial detention that has been served up to that moment.

In *France*, Article 144-1 of the CCP states: "Pre-trial detention cannot exceed a reasonable period as compared to the gravity of the acts alleged to have been committed by the person under investigation and the complexity of the investigation needed to establish the truth". Pre-trial detention in France "therefore has to be applied in an appropriate manner (the principle of proportionality) and only for the period when it is strictly necessary."

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8 The *Ukrainian* law is less restrictive in that respect: defendants of crimes punishable with more than three years of imprisonment can be taken into custody, exceptionally even suspects of less severe crimes, see Art. 155 CCP.

The *German* CCP and particularly the Juvenile Justice Act explicitly emphasize the principle of proportionality: "Pre-trial detention must be proportionate to the gravity and seriousness of the criminal offence and to the anticipated sanction" (see § 112 (1) sentence 2 CCP, *StPO*). So, for example, it is widely recognised in the German jurisprudence that imposing pre-trial detention in a case, where no unconditional prison sentence is to be expected, would be a violation of the principle of proportionality (which is not only a principle of the CCP, see § 112, but also of the *German* Constitution, *Rechtsstaatsprinzip*, Art. 20 (3) of the Basic Law, *Grundgesetz, GG*). The practice, however, is not always in line with these legal and constitutional requirements. In addition, further restrictions can be found in the German Juvenile Justice Act, JGG: "The special stresses and strains to which particularly juveniles are exposed when they are sent to pre-trial detention must be considered" by the judge, see § 72 (2) 2 JJA (*JGG*, see also *2.2* below).

In *Norway*, section 170a CCP applies to all coercive measures and forbids a measure to be applied when it would be a disproportionate intervention in view of the nature of the case at hand and other circumstances. In effect, this rule limits the possible time period for which a juvenile can be kept in pre-trial detention.

The *Anglo-Saxon* systems particularly rely on the system of bail as an alternative to pre-trial detention. In *England/Wales* as well as in *Scotland*, the priority of bail is legally provided, which is in contrast to practice regarding adult suspects. So, in *Scotland* all offences can be considered for bail. At first appearance of a person taken into custody, whether on complaint or on petition, the court is automatically obliged to consider the admission to bail. Each case is judged on its own merit and entirely at the discretion of the judiciary.

2.1.5 Age limits for imposing pre-trial detention in relation to the general age limits of criminal responsibility

The age limits concerning the minimum age for pre-trial detention are regularly the same as for criminal responsibility (see *Pruin* in this volume). However, there are important restrictions in some countries. So, for example, criminal responsibility in *Austria* is restricted for 14 and 15 year old juveniles, and those committing minor offences are not criminally liable and thus not subject to pre-trial detention.[9]

9 According to Section 4 Para 2 of the Austrian Juvenile Justice Act, *JGG*, the juvenile offender cannot be sentenced in the following cases, where 1.) he is not able to understand the unjustness of his behaviour or to act according to this understanding, or 2.) he is under the age of 16, the guilt is not grave and the application of the Juvenile Justice Act is not necessary to prevent the juvenile from committing further crimes. In practice there might be cases where a juvenile is sent to pre-trial detention and in the course of the preliminary proceedings he is to be released as he is not found criminally responsible according to the above mentioned rules.

In *Germany* there is not a comparable restriction of criminal responsibility, but there is the aforementioned restriction with regards to pre-trial detention for the same age group. In *France*, pre-trial detention is excluded for under 16 year-old offenders if they are being prosecuted for a misdemeanour (*délit* in contrast to the more serious *crimes*). Under 16 year-old juvenile offenders can also be sent to pre-trial detention if they fail to comply with the judicial supervision order (called *contrôle judiciaire*).

The *Ukraine* and other countries of the former Eastern Europe differentiate the ages of 14 and 16 with regards to criminal responsibility (see *Pruin* and *Dünkel et al.* in this volume). The same applies for pre-trial detention, which for juveniles under 16 is therefore regularly restricted to serious and violent offenders.

Belgium does not recognize any criminal responsibility before the age of 18 has been reached (the age of 16 in special serious cases), an approach that clearly represents the classic welfare model. Therefore, pre-trial detention is not allowed for juveniles who are not criminally responsible. Nevertheless, there is the possibility for preliminary detention of persons aged at least 12 years in open or closed facilities of the welfare system (*protection de la jeunesse*). There is another closed welfare institution at the federal level (*de Grubbe*), to which juveniles can be sent at the age of at least 14 years.

Similarly *Scotland*, with its welfare oriented system, allows forms of preliminary detention for 8 to 16 year old juveniles. Also, different forms or preliminary detention are provided for juveniles aged 16 and 17 who are regularly not dealt with by the Children's Hearings System, but rather by criminal courts. They can therefore (exceptionally) be subject to pre-trial detention orders.[10] Children below the age of 14 can only be placed in local (open) welfare institutions. Those between 14 and 16 can exceptionally be committed to a remand centre if they are certified by the court to be "unruly or depraved" (Sect. 51 (1)b CCP Scotland).

Switzerland is an interesting case. As already mentioned in the chapter by *Pruin* in this volume, criminal responsibility in principle begins with the age of 10, but youth prison sentences are excluded for those under the age of 15. The same in practice applies to pre-trial detention. However, in extreme and exceptional cases pre-trail detention may be imposed also on juveniles under the age of 15. But regularly welfare institutions are used for preliminary detention and these institutions are almost exclusively open facilities.

10 For the very restrictive practice, see *Burman et al.* in this volume.

Table 1: Grounds for imposing pre-trial detention

Country	Age of criminal responsibility/Age range for pre-trial detention	Reasons for imposing pre-trial detention				
		Risk of absconding	Danger of collusion	Risk of reoffending	Gravity of the offence	Risk of posing a serious threat to public order
A	14/14	X	X	X	X	---
B	16[c]/14 (welfare institutions)	X	X	X	---	---
BG	14/14	X	X	X	X	X
CH	10/10/15	X	X	X	---	---
CY	14/14	X	X	X	---	---
CZ	15/15	X	X	X	---	---
D	14/14	X	X	X (with certain criminal acts, § 112a StPO)	X (with certain criminal acts, § 112 (3) StPO)	---
DK[a]	15/15	X	X	X	X	---
E	14/14	X	X	X	---	---
EST	14/14	X		X	---	---
E/W	10/10	X	X	X	---	---
F	13/13	X	X	X	---	X
FIN[a]	15/15	X	X	X	---	---
GR	15/15	X		X	---	---
HR	14/14	X	X	X	X (with certain criminal acts)	---
I	14/14	X	X	X	---	X (serious risk to society)
IRE	10/12/10/12	X	X	---	---	---

Country	Age of criminal responsibility/Age range for pre-trial detention	Reasons for imposing pre-trial detention				
		Risk of absconding	Danger of collusion	Risk of reoffending	Gravity of the offence	Risk of posing a serious threat to public order
KO	14/14	X	X	X	X	---
LT	14/14	X	X	X	X	---
LV	14/14	X	X	X	X	---
NI	10/10	X	X	---	---	---
NL	12/12	X	X	X	---	X
P	12[e]/12/14[g]	X	X	X	X	---
PL	13[e]/15/13/15	X	X	X	X	---
RO	14[b]/14	X	X	X	X	X
RUS	14[d]/14[d]	X	X	X	X	---
SCO	8/16	X	X	X	---	X
SK	14/14	X	X	X	---	---
SLO	14[f]/14[d]	X	X	X	---	---
SRB	14/14	X	X	X	X	---
SWE[a]	15/15	X	X	X	X	---
TR	12/12[d]/15	n. a.	n. a.	n. a.	n. a.	n. a.
UA	14[d]/14[d]	n. a	n. a.	n. a.	n. a.	n. a.

Note: A = Austria; B = Belgium; BG = Bulgaria; CH = Switzerland; CY = Cyprus; CZ = Czech Republic; D = Germany; DK = Denmark; EST = Estonia; E = Spain; FIN = Finland; F = France; GR= Greece; HR = Croatia; IRE = Ireland; I = Italy; KO = Kosovo; LT = Lithuania; LV = Latvia; NI= Northern Ireland; NL = Netherlands; PL= Poland; P = Portugal; RO = Romania; RUS = Russia; SCO = Sotland; SK = Slovakia; SLO = Slovenia; SRB = Serbia; SWE = Sweden; TR = Turkey; UA = Ukraine; UK = United Kingdom (England/Wales).

a Only mitigation of a sentence, no separate juvenile justice system.

b 14 to <16: only if proven that the minor committed the offence with discernment.

c Only for traffic and very serious offences

d Only for serious offences

e Application of educational measures of the family/youth court (juvenile welfare law)

f Only educational or therapeutic measures

g Juveniles under the age of 14 are sent to semi-open educational centres, juveniles of 14 and over are placed in secure facilities.

2.2 Special regulations for juveniles (and young adults) – Further restrictions for imposing pre-trial detention

The juvenile justice or welfare laws of most countries (or their Codes of Criminal Procedure) provide further restrictions for imposing pre-trial detention or preliminary detention when an offence has been committed by a juvenile (see *Table 3*). In *Germany*, the First Amendment Law of the Juvenile Justice Act from 1990 restricted the imposition of pre-trial detention in addition to the general principles of last resort and of proportionality. As mentioned above, § 72 (1) Juvenile Justice Act (JGG) stipulates that, in considering the principle of proportionality, the judge "must take into account the particular burden that the execution of pre-trial detention will cause on a juvenile". If pre-trial detention is ordered, the judge has to give arguments that other, less intrusive measures would not have been sufficient and that the warrant reflects the principle of proportionality. In *Germany* and in *Switzerland*, this legal approach is also defined as the principle of subsidiarity, which means that any non-custodial measure as an alternative to pre-trial detention is to be given priority. Orders to pre-trial detention for 14 and 15-year old offenders that are grounded on a fear of the suspect escaping are further limited to juveniles who have already escaped in the past or who have no place of residence in Germany (§ 72 (2) JJA).

Similarly, in *Georgia* the age and personal characteristics of the juvenile and his family situation have to be taken into account.

In *Finland* and *Romania* the possible negative consequences of detention have to be taken into account particularly. In practice, this restriction is apparently rather of importance with regards to the length of pre-trial detention than to the overall decision on whether or not to impose detention at all.

Some countries restrict pre-trial detention to cases where the offender is suspected of having committed a certain specifically serious crime. In *Italy*, for example, the crime must be punishable with at least five years of imprisonment.

In *France*, pre-trial detention is excluded in principle for minor offences ("*délits*"), but recently some exceptions have been countenanced – for instance if the juvenile fails to comply with supervision measures. In *France,* it is in particular the length of pre-trial detention that is limited by the seriousness of the alleged offence (see *2.4* below). In *Greece*, pre-trial detention is restricted to felony offences, punishable with a minimum sentence of at least 10 years.

The above mentioned principle of subsidiarity that prioritizes alternative measures over pre-trial detention also applies in other countries. In *Austria*, *Bulgaria*, *Croatia* and *Greece* pre-trial detention is only to be imposed if its aim cannot be achieved by alternative measures. In the *Czech Republic* and the *Netherlands*, this principle applies in general, i. e. also in the criminal procedure for adults. *Austrian* and *Portuguese* law (Art. 57 JA like the German §§ 71, 72 JJA) restrict pre-trial detention for juveniles to cases where no educational

preliminary measure is available. In all of these countries, pre-trial detention in accordance with international rules is a measure of last resort. Other countries such as, for example, *Russia*, only require "that alternative measures should be seriously considered" (see Art. 108, Art. 423 Russian CCP).

In *Estonia* and *Lithuania*, no special rules exist for a further restriction of pre-trial detention, which is due to the fact that these countries do not provide a specialised juvenile criminal procedure at all.

2.3 Special legal regulations for the execution of pre-trial detention for juveniles

The responsible authority for the execution of pre-trial detention is usually the Ministry of Justice, which also runs the pre-trial detention facilities.[11] It is a well-established international standard to require the separation of sentenced from remand prisoners (see *van Kalmthout/Knapen/Morgenstern* 2009, p. 96 ff. with further references).. This is also the case in the field of juvenile justice. In addition a separation of juvenile and adult pre-trial detainees is required (see No. 59.1 ERJOSSM).

Even when considering the general competence of the Ministries of Justice to run pre-trial detention facilities, it has to be emphasised that many decisions concerning the execution of pre-trial detention are in the competence of the investigating judge or another judge. For example, visits, censorship of letters and other questions concerning contacts with the outside world are the responsibility of the judge. It is a difficult interplay of judicial and prison administrative power that governs issues of execution of pre-trial detention (see e. g. *Austria*, *Germany*).

If the juvenile offender is transferred to a welfare institution, it is the responsibility of the Ministry of Education or Social Affairs which runs or (in case of private non-profit organizations) supervises these institutions.

"Pre-trial detention institutions" for juvenile offenders are rarely self-contained independent institutions. In Europe, as a rule pre-trial detention is apparently carried out in already existing institutions ("welfare institutions" or "youth prisons"). Juveniles are only rarely accommodated in pre-trial detention institutions for adults (*Turkey*, but in separate units). In the *Czech Republic*, juvenile pre-trial and sentenced detainees – due to their small number – are accommodated in separate cells or departments of two adult prisons. Exceptions from separate accommodation from adults are provided in exceptional cases if it is preferable for the juvenile.

The majority of institutions for pre-trial detainees are publicly/state run. Non-profit organizations are only involved in *Italy* and the *Netherlands* (see

11 *Ukrainian* legislation has created a special State Department for the Execution of Sentences, which is not under the Ministry of Justice, but closely related to it. The Head is nominated by the President of the Republic, not the Minister of Justice.

below).[12] In *France* and *Switzerland* "parts of the educational programmes" are or can be transferred to private institutions. In *Ireland* pre-trial detention can be imposed on juveniles at the age of 12, in exceptional cases of very serious crimes at the age of ten. Pre-trial detention for juveniles under 18 can be executed in detention schools which may also be privately owned and run, but subject to state supervision. Altogether one can state that services concerning the execution of pre-trial detention for juveniles in Europe are only transferred to private entities in exceptional cases. However, an exception from this rule is *Italy* where, according to the questionnaire of the Council of Europe (see *Dünkel/Pruin* 2009, p. 158), the implementation of pre-trial detention lies in the hands of private agencies, which, however, are supervised by the Department of Juvenile Justice. The *Netherlands* reported that 6 state-run and 8 non-profit private institutions were responsible for juveniles in pre-trial detention.

2.3.1 Accommodation and conditions of life in pre-trial detention

Rule No. 59.1 of the ERJOSSM stipulates that juveniles shall be accommodated in separate institutions.[13] This is the case in almost all countries (see *2.3* above). Furthermore, it is required that a separation is at least guaranteed if they are accommodated in the same institution (separate units or wings within the prison complex). This again is also the rule in practice (see *Table 2*). In some countries, however, the authorities are allowed to deviate from this rule under certain circumstances (*Croatia, Serbia, Slovenia* and *Ukraine*). In these countries the judge can order joint accommodation with adults insofar as negative influences can be excluded or even positive influences are expected. This is, for example, the case in the *Ukraine*, if the adult is detained in pre-trial detention for less serious crimes. In *Estonia*, the separated accommodation of juveniles and adults is not required by law. In *Portugal*, where such a separation is legally required, it is rarely realised in the practice concerning juveniles over 16 years of age, whereas those under 16 are strictly separated from adults, because they are placed in educational centres.

A remarkable detail is that, in most countries, single accommodation during the nights is not legally provided. Single accommodation for juveniles in pre-trial detention and thus the right to privacy is only legally guaranteed in

12 The *Italian* authorities reporting to the Council of Europe's questionnaire mentioned non-profit private institutions on the community level which are responsible for the execution of pre-trial detention of juvenile offenders, see *Dünkel/Pruin* 2009, p. 158.

13 No. 59.1 ERJOSSM reads as follows: "Juveniles shall not be held in institutions for adults, but in institutions specially designed for them. If juveniles are nevertheless exceptionally held in an institution for adults, they shall be accommodated separately unless in individual cases where it is in their best interest not to do so. In all cases, these rules shall apply to them."

Denmark, *Finland*, *Germany*, *Sweden* and *Switzerland*. However, report from *Finland* demonstrates that this right is not always realised (sometimes for practical reasons of overcrowding or a lack of single cells). This is also true for juvenile prisons in *Austria* though in principle prisoners of all ages should be accommodated in single cells during night time.

In other countries such as *Latvia* (6 persons in one cell), *Russia* (four to 6 persons) and *Turkey* (up to three persons) accommodation in communal cells or rooms is the rule. However, the number of detainees per room is lower compared to adults.

There is only little uniformity concerning the principles of allocation for juvenile pre-trial detainees. Some countries (*Austria*, *Denmark*, *Georgia*, *Latvia*, and *Slovakia*) emphasize that the juveniles should be detained close to their homes. Others (*Finland*, *Sweden*) describe the proximity to the court or to the place of the crime (*Russia*) as the most important issue. In other countries, the specialisation of a department (*Estonia*) or the availability of places (*Italy*) governs allocation decisions.

One matter of concern is that, in some countries, legal minimum standards for the accommodation and the minimum space per detainee appear to be entirely non-existent. This is in violation of No. 63.1 of the ERJOSSM as well as of No. 16.3 of the EPR 2006, which require that national law shall prescribe the minimum standards of accommodation, space etc.

In those European countries that do in fact provide standards, the prescribed minimum space varies considerably. *Estonia* and *Georgia* state a minimum space of 2.5 sqm, while in Russia 3.5 sqm are required by law. By comparison, in some *Western European* countries the standard is much higher. In *Italy*, 9 sqm, in the *Netherlands* and *Norway* 10 sqm, in *France* 10.5 sqm and in *Switzerland* 12 sqm (10 sqm for the sleeping room plus two sqm for the sanitary room) are required per person (see *Table 2*). Minimum standards in that respect have been more frequently established for regular youth imprisonment/custody (see *Dünkel/ Stańdo-Kawecka* in this volume). In *Germany*, the minimum space is not laid down in the law, but the German Constitutional Court ruled that the accommodation of two prisoners in a cell of about 8 sqm (without separate sanitary facility) constitutes a violation of the Basic Right of protection of human dignity (Art. 1 of the German Constitution, *GG*).[14] Most *Middle* and *Eastern European* countries that have fixed legal minimums of space provide between four and five square meters per person (see *Table 3*).

14 See *Bundesverfassungsgericht* Europäische Grundrechtszeitschrift 2002, p. 196, and 2002, p. 198.

2.3.2 Regime activities: Educational measures, therapy, school teaching, vocational training, work

Living conditions in pre-trial detention are traditionally often characterised as being poorer and less based around meaningful activities, treatment or schooling and other rehabilitative programmes than the regimes in youth prisons or particularly in youth welfare institutions.[15] Nevertheless, from the legal point of view, it is pretended that pre-trial detention considers educational and rehabilitative needs much more than is the case in detention centres for adults. However, the practice is disappointing insofar as rather often it becomes clear that there is no strong difference in daily practice and life.

The respective law regulations stipulate more or less the emphasis on educational offers and, in case of compulsory school age, of schooling. Presumably, the law in the books will differ from the law in practice, particularly in the field of pre-trial detention, but at least some aspects of daily life appear to be more favorable in juvenile pre-trial detention.

No. 113.1 of the ERJOSSM prescribes that "a range of interventions and activities shall be available to detained juveniles whose guilt has not been determined." Therefore, in many countries, possibilities to participate in school education or other further educational programmes have been introduced. In their legislation, some countries explicitly emphasize the educational approach of the execution of pre-trial detention (for example *Austria, Belgium, Germany, Ireland, Portugal, Slovenia, Spain, Slovakia* and *Switzerland*).

Contrary to pre-trial detention for adults, in some countries juveniles are obliged to participate in educational or school training programmes (for example in the *Czech Republic, Denmark* and *Russia*). In *Denmark*, the institutions shall "as soon as possible seek to prepare, based on the young person's motivation and overall qualifications, a special treatment programme" (see *Dünkel/Pruin* 2009, p. 170). As far as can be seen, as a rule, drug, alcohol or other (for example psychological or psychotherapeutic) treatment is not compulsory in pre-trial detention. With regards to the principle of presumption of innocence, a duty to work is outlawed by Rule No. 112 of the ERJOSSM. Nevertheless, such a duty exists in *Italy*.

In *Germany*, where legislation for the execution of deprivation of liberty is at the level of the Federal States (and not governed by Federal Law) the Prison Law of Lower Saxony (*NJVollzG*) provides that juveniles may be obliged to participate in further educational measures, work and work therapy if this seems to be educationally favourable (§ 161 *NJVollzG*). Until the end of 2009, the other Federal States in Germany only disposed of administrative rules (*Untersuchungshaftvollzugsordnung*, *UVollzO*), which (contrary to the legal situation for adult detainees) also allowed coercive participation in work activities (see No.

15 See *Dünkel/Vagg* 1994; *van Zyl Smit/Dünkel* 2001.

80 (2) *UVollzO*). This was a clear violation of the above mentioned international standards[16] and therefore also a violation of the German Constitution. These administrative rules have been abolished by the laws of the different Federal States coming into force in January 2010. The new laws on the execution of pre-trial detention unanimously have abolished coerced participation in work.

In *Greece*, schooling and vocational training programmes are offered in juvenile prisons. Juvenile pre-trial detainees can profit from them when they are accommodated in the same institution. Therefore – not only in *Greece* – the prison authorities deviate from the general principle of separate accommodation of sentenced and unsentenced juvenile offenders if this – on the request of pre-trial detainees – may alleviate the participation at educational programmes (see e. g. *Germany*).

In the *Ukraine*, one cannot really speak of "educational" opportunities for juvenile pre-trial detainees, but at least more extended sports activities can be observed. Juveniles are also granted more relaxations of the prison regime.

Georgian legislation obliges the state to ensure that the juveniles do not suffer the negative effects of deprivation of liberty. Therefore, juveniles shall be placed in better conditions than adults. The difference between the conditions of juvenile and adult detainees in pre-trial detention institutions generally reflects the special needs and characteristics of vulnerable detainees such as minors. In contrast with the adult detainees, minors are entitled to spend more time outside the building. They may walk or exercise in the yard of the penitentiary institution two hours daily. "The state is obliged to provide minors with secondary education even during pre-trial detention" (see Art. 136 of the *Georgian* CCP).

In *Slovakia* better accommodation conditions seem to apply and the regime is "mitigated", including the "possibility of education" (see *Dünkel/Pruin* 2009, p. 173). Furthermore, the specifics of treatment, the larger nutrition rations, more visits and the limitations of disciplinary sanctions are among the differences to adult pre-trial detention.

In *Sweden*, where the general conditions are more favourable than in most other countries, there are no real differences "other than that there is an individual treatment of every person, and young age is of course an important factor concerning the individual treatment". In answering the questionnaire of the Council of Europe, Swedish authorities stressed that, due to the special situation, all activities of the inmates must be voluntarily. Nevertheless, the assumption could be confirmed that the living conditions in pre-trial detention in general are problematic, as meaningful activities and educational programmes are the exception and therefore sometimes much time is lost which could have been better used for rehabilitative activities. However, this is in part due to the legal

16 This, however, is a violation of the Basic Principle of Rule 13 of the ERJOSSM, which stipulates that juveniles shall not have fewer rights than adults (even should it be based on educational grounds).

situation and the consequences of the principle of presumed innocence, which hampers the integration of pre-trial detainees in educational or treatment programmes (see *Dünkel/Pruin* 2009, p. 170).

In *Turkey* the general standards notably differ from countries like *Sweden*. The situation for juveniles does not show "important differences" compared to adults, except for more qualified staff, and that there are no external armed police forces (guards outside the perimeter of the institution) as is apparently the case in adult prisons. Turkish authorities state that "all staff recruited in juvenile prisons is trained for dealing with juveniles. There are more communal facilities, teachers, and psychologist in juveniles' prisons than in adult ones" (see *Dünkel/ Pruin* 2009, p. 173). Again, official rhetoric and reality might differ.

2.3.3 Involvement/participation of social services, e. g. probation service

In *Germany*, the social service attached to the juvenile prosecutor and judge (juvenile court's aid, *Jugendgerichtshilfe*, JGH) is immediately responsible and involved when a juvenile is taken into pre-trial detention (§ 72a Juvenile Justice Act, *JGG*). The social workers have a right to uncontrolled contact with the inmates (in the same way as defence counsels, see § 93 (3) JGG). They have to report immediately to the Juvenile Court in order to find alternatives to custodial remands (see § 38 *JGG*).

In *Bulgaria,* the *Czech Republic, France, Italy, Slovakia* and *Switzerland* the authorities for family and educational affairs are to be contacted and involved. In *Romania* (as in many other countries) it is the probation service which is involved. The legislation of nearly all countries provides that the parents or legal guardians be informed and involved in decision-making and in the search for educational solutions for their children (see for example *Belgium, Bulgaria, Poland* and *Romania*). In practice, however, the involvement of the parents in the execution of pre-trial detention or the preparation for release seems to be the exception (see *Dünkel/Pruin* 2009, p. 171).

2.3.4 Visits and contacts with the outside world

Contacts to the outside world during pre-trial detention are of major importance for alleviating the difficult situation of losing ones liberty and the experience of isolation in detention. Therefore, Rule No. 83 of the ERJOSSM stipulates that "juveniles shall be allowed to communicate through letters, without restriction as to their number and as often as possible by telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive regular visits from these persons."

Rule 84 requires that "arrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration." Rule No. 85.1 adds that

"institutional authorities shall assist juveniles in maintaining adequate contact with the outside world and provide them with the appropriate means to do so." It is remarkable that the ERJOSSM – even for pre-trial detainees – provide that, as part of the normal regime, "juveniles shall be allowed regular periods of leave, either escorted or alone" (Rule 86.1). "If regular periods of leave are not practicable, provision shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile" (Rule 86.2).

The reality in most countries is far from being in accordance with these far-reaching recommendations. The legal provisions and practice show considerable differences: In *Austria*, *Denmark* and *Finland*, pre-trial detainees can be visited as many times as the detainee demands as long as the required custody can be guaranteed. In *England*/*Wales*, theoretically and sometimes practically, the detainee can receive daily visits. In the *Czech Republic*, *Estonia*, *Latvia*, the *Netherlands* and *Slovakia* there can be up to one visit per week, in *Germany* and *Russia* visits are allowed every two weeks. Other countries do not indicate the frequency to which visits are allowed. It should be emphasized in this context that – regarding the special situation of pre-trial detainees – every effort should be made to protect their contacts to the outside world (see the international standards mentioned above). Visits of family members and friends (apart from visits of the defence counsel or the social workers of the probation services) are often the only way that personal contacts with the outside world can be maintained. They can also serve preventive functions if one considers the issues of suicide and self-harm in detention.

2.3.5 Wearing own clothes

In almost all countries, juvenile pre-trial detainees have the right to wear their own clothes.[17] Juveniles only wear uniform clothes of the institution in *Slovakia* and *Sweden*.

2.3.6 Preparation for release and modes of release

Preparation for release causes special problems, as the time of release is not foreseeable and is often decided from one day to the next. In general, subsequent prison sentences will be executed and therefore the issue of release preparations in pre-trial detention institutions is not relevant. Nevertheless, as exemplified by the German sentencing practice, the problem is quantitatively not deniable when considering that half of pre-trial detainees are directly released from pre-trial

17 In case juveniles do not dispose of sufficient clothing of their own, the institution will supply them with uniform clothes. In some countries, wearing own clothes is allowed under the condition that the detainee assumes the responsibility for cleaning them.

detention to serve, for example, a probation term in the community. Therefore, it is important that the probation and aftercare services are also made responsible for taking care of pre-trial detainees. However, only a few countries provide special legal regulations for that purpose and provide continuous care for juveniles in remand custody (see, for example, *Germany* and *Sweden* and *2.3.3* above).

2.3.7 Good order

All countries provide legal regulations for the maintaining of good order. Security or disciplinary measures are used almost everywhere, but also in this field, the principle of last resort is of special importance. Compared with the measures to maintain good order in prisons for sentenced juveniles and particularly for adult offenders, the periods for confinements seem to be shorter for juvenile pre-trial-detainees (*Denmark* and *Norway*: two weeks; *Georgia*: 20 days for juveniles aged over 16; *Ukraine*: five days; *Germany*: two weeks instead of four weeks for adult prisoners).

The competent authority is not always the prison director, but may be the same court or judge which was responsible for imposing the remand order (see, for example *Germany*). The same is true for measures restricting contacts with the outside world (visit controls, censorship of mail etc.).

2.3.8 Daily costs of pre-trial detention, staff equipment

The daily costs of holding persons in pre-trial detention can be seen as an indicator of the quality of institutional treatment and care. The variation of the daily net costs per juvenile (as revealed by the questionnaire of the Council of Europe for 2006, see *Dünkel/Pruin* 2009, p. 160 f.) seems to be extreme even if one considers the different levels of income and general costs of living. In *Armenia* (1.7 €) or the *Ukraine* (0.9 €), the standard of living for juvenile offenders and the staff–prisoner ratio are apparently very low (similar in *Estonia*, *Georgia* and *Turkey*, where it is between 16 and 22 €), whereas *Austria*, *Germany* and *Italy* represent the middle level with about 80-90 €. The *Scandinavian* countries, *Switzerland* (133-400 €, depending on the kind of institution) and the *Netherlands* (300 €) spend much more money for the accommodation, regime activities and personnel in pre-trial detention facilities for juvenile offenders, and reach a level which is even twice to three times the figures of the aforementioned continental European countries (see *Table 2* and *Dünkel/ Pruin* 2009, p. 160 f.).

Regarding the management, training and selection of staff in pre-trial detention institutions, only a few countries presented trainings which are tailored to working with juveniles (see *Dünkel/Pruin* 2009, p. 171). Nevertheless, it is obvious that staff equipment in juvenile pre-trial detention institutions or units is

often better than in pre-trial detention for adults. However, this does not mean much, as the situation seems to be unsatisfactory in most countries.

2.4 Legal regulations concerning the maximum length of pre – trial detention, review of detention orders etc.

The legal situation concerning the maximum duration of pre-trial detention for juveniles and other forms of limiting or shortening the time spent in pre-trial detention (regular reviews etc.) varies considerably (see *Table 3*).

In *Finland*, there is no absolute maximum period provided by law, but the court must fix a maximum in each individual case. In its decision, the court must give arguments by considering the possible negative effects of detention (see also *2.2* above in this respect). After the period fixed by the court has expired, the juvenile must be released unless the prosecutor delivers other means of evidence or legal grounds for imposing pre-trial detention.

In all other countries except *Ireland*, a fixed maximum period is provided by law. However, there are regularly possibilities for prolonging the period of stay in remand custody. The legal maximum terms for pre-trial detention vary considerably. The maximum term in *Slovakia* is four years. In *Belgium*, on the other hand, it is only two months. In *Switzerland* too, pre-trial detention in principle should not last longer than four weeks, although a fixed maximum has not been established. A prolongation is possible only for another month (but may be repeated) and with special regard to the principle of proportionality. In *Austria*, the maximum length of pre-trial detention is three months. A prolongation to six months and very exceptionally to one year is possible under specific circumstances which are ruled by the jurisprudence. In *Estonia*, *Germany*, *Latvia, Scotland* and *Spain,* the maximum term in principle is six months, but under certain conditions ("important reasons" according to § 121 German CCP) a further prolongation may be applicable. In cases where there is a "risk of reoffending", a maximum period of one year must not be exceeded (*Germany*). Furthermore, in *Germany* the principle of a particularly speedy trial applies in juvenile cases (see § 72 (5) *JGG*).

In *Greece*, there is an absolute maximum period for all pre-trial detainees provided by the Constitution (art. 6.4) and the CCP (art. 287). The maximum length of pre-trial detention depends on the character of crime in question. According to the Constitution, the maximum terms are one year for felonies and six months for misdemeanours. These terms can be extended in exceptional circumstances for further six and three months, respectively. The imposition of pre-trial detention on minors is limited to juveniles who have reached the age of 15. The maximum duration may not exceed 6 months or exceptionally 9 months.

The infringement of orders and instructions imposed on a juvenile does not entail the imposition of pre-trial detention.

In *France*, the maximum length of pre-trial detention depends on the age of the suspected offender and on the length of the expected sentence. Therefore, the absolute maximum term is one year for juveniles aged between 13 and 16. Juveniles aged at least 16 years may be detained for a maximum of two years (see also *Table 3*). In the *Netherlands* the maximum length is independent from the group of offender and the kind of crime in question. In any case it may not last longer than 104 days. In *Kosovo* the maximum length is one month, which can be prolonged only for two more months by a chamber decision of the court.

Sometimes there are different review procedures, even in the same jurisdiction. Juveniles may have a complaints procedure reviewing the original detention order, or during the execution of pre-trial detention have a general review of custody/detention. For example, in *France* and *Germany* a review of the further justification of pre-trial detention can be applied for at any time. In *Germany*, if at least three months of the period of pre-trial detention have passed (without an application for review being filed the juvenile) there will be a review "ex officio" by the court. This, however, does not apply if the juvenile is represented by a defence counsel (see § 117 *German* CCP).

In *Greece*, the suspected detainee may apply for detention to be suspended at any time (except suspects of drug offences: only after two months). In *Austria*, an *ex officio* judicial review is provided after 14 days, and every four weeks after then. The shortening of the review periods by the law reform of 1997 considerably contributed to the reduction in the numbers of pre-trial detainees.

In *Slovenia*, a judicial review of pre-trial detention is possible every two months once the proceedings have commenced. In *Turkey*, a review is provided once every month.

In general it can be said that in many cases, the legal provisions that limit the period of pre-trial detention do not seem to cause much pressure for more speedy trials for juvenile cases. This applies even more where the regulations that govern the prolongation of pre-trial detention are vague. Having exceptionally two or even more years as fixed maximum periods of pre-trial detention can hardly be seen as being in accordance with the Council of Europe's efforts to further avoid this preliminary measure from being used (see Rule 10 of the ERJOSSM and also Rule 16 of the Recommendation on "New ways of dealing with juvenile delinquency and the role of juvenile justice" from 2003 [Rec(2003) 20], which stipulates that remand in custody shall not be longer than six months until the commencement of the trial. Also, Rule 15 of the same Recommendation (2003) that police custody should not be longer than 48 hours is not always met by national legislation (see e. g. *Georgia*)).

Even if one takes into consideration that trials in cases of very serious crimes may require more time, a maximum of 36 or even 48 months as is the case in *Slovakia* is totally unacceptable. In contrast, the regulations in *Belgium* (maximum of two months and five days), *Cyprus* (maximum three months) or the *Netherlands* (maximum of 104 days) indicate what could be judged as "good

practice" in the European context. On the other hand, some countries provide short time limits for (regular) judicial reviews (e. g. *Austria*, *Denmark*, *Italy*, *Sweden* or *Turkey*) which may also be effective ways of shortening pre-trial detention periods.

2.5 Specific alternatives to pre-trial detention for juveniles

Pre-trial detention in juvenile criminal proceedings should be avoided even more than in cases of adults. International human rights instruments stress the particular vulnerability of juveniles and the possible specific negative effects of detention. No. 10 of the ERJOSSM of 2008 stipulates: "Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention."

In almost all countries, therefore, specific measures or additional restrictions are provided by law in order to avoid pre-trial detention. Such measures can be placements in an institution for residential care (homes), supervision by trustworthy persons or the probation service, or bail.

Table 2: Legal provisions and daily costs concerning the execution of pre-trial detention for juveniles

Country	Legal Provisions						
	Separation of juveniles and adults	Single cell acco-mmodation	Minimum cell size per prisoner	Educational approach	Special provisions regarding legal guardians	Judicial review of custody/detention	Costs per detainee per day (2006)
A	X	X (in principle)	7.5 sqm	X	X	X (first review after no more than 14 days; thereafter every 4 weeks)	80 €
B	X	n. a.	50 places in special institutions	X	X	n. a.	n. a.
BG	X	X/-	n. a.	n. a.	X	n. a.	n. a.
CH	X	X	10 sqm per prisoner, min. 2 sqm for sanitary installations	X	n. a.		133-400 €
CY	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.
CZ	X	n. a.	4 sqm per juvenile. A single room must have at least 6 sqm	No	n. a.	X (special provisions for juveniles since 2004)	n. a.
D	X	X	Not regulated in law; Federal Con-stitutional Court deems less than about 7 sqm as a violation of human dignity	X (§ 93 II JGG)	X	X (review can be requested at any time; no later than after 3 months by law; possibility to file complaint against detention)	86.64 €
DK	No	X	n. a.	No	n. a.	X	n. a.

Country	Legal Provisions						
	Separation of juveniles and adults	Single cell accommodation	Minimum cell size per prisoner	Educational approach	Special provisions regarding legal guardians	Judicial review of custody/detention	Costs per detainee per day (2006)
E	X	n. a.	n. a.	X (theoretically)	X	n. a.	n. a.
EST	n. a.	n. a.	Min. 2.5 sqm	n. a.	n. a.	n. a.	16 €
EW	X	n. a.	n. a.	n. a.	X	n. a.	n. a.
F	X	X (so far as is feasible)	Single cells to have at least 10.5 sqm	X	X	X	n. a.
FIN	X	n. a.	5.5 sqm	n. a.	X	X (after 2 weeks)	n. a,
GR	X	X (but in practice regularly communal cells)	6 sqm per prisoner in communal cells; 35 cubic meters in single cells *	n. a.	n. a.	X (Review can be requested at any time; possibility to file complaint against detention)	n. a.
HR	X (not mandatory)	n. a.	n. a.	n. a.	X	X	n. a.
I	Placement in IPM (Penitentiary Institution for Juveniles)	n. a.	9 sqm	n. a.	X	n. a.	90 €
IRE	X	n. a.	n. a.	X	n. a.	n. a.	n. a.
KO	X	No	Not specified by law	X	No	X	n. a.

Country	Legal Provisions						
	Separation of juveniles and adults	Single cell acco-mmodation	Minimum cell size per prisoner	Educational approach	Special provisions regarding legal guardians	Judicial review of custody/detention	Costs per detainee per day (2006)
LT	X	n. a.	5 sqm	n. a.	n. a.	n. a.	44 € (2008)
LV	X	n. a.	3 sqm	n. a.	X	n. a.	21.63 € (2005)
NI	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.
NL	X	n. a.	10 sqm	n. a.	X	X	300 €
P	X (juveniles under 16 in educational centres); in practice not for juveniles over 16 (in pre-trial detention)	X	n. a.	X	X	X	n. a.
PL	X	n. a.	n. a.	n. a.	X	n. a.	n. a.
RO	X	n. a.	n. a.	n. a.	X	X	n. a.
RUS	X	n. a.	4 sqm	n. a.	n. a.	n. a.	n. a.
SCO	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.	n. a.
SK	n. a.	n. a.	4 sqm	n. a.	X	X	n. a.

Country	Legal Provisions						
	Separation of juveniles and adults	Single cell acco-mmodation	Minimum cell size per prisoner	Educational approach	Special provisions regarding legal guardians	Judicial review of custody/detention	Costs per detainee per day (2006)
SLO	X	n. a.	n. a.	X	n. a.	X (after commencement of proceedings, every 2 months)	n. a.
SRB	X (can be disregarded under certain circumstances)	n. a.	n. a.	n. a.	X	n. a.	n. a.
SWE	X	X				X	n. a.
TR	X	n. a.	The size of the rooms is compatible with the European Prison Rules and United Nations legislation	n. a.	n. a.	X (every month)	16 €
UA	X	n. a.	Minimum 2.5 sqm	X (predominantly sporting activities)	X	n. a.	0,90 €

Note: A = Austria; B = Belgium; BG = Bulgaria; CH = Switzerland; CY = Cyprus; CZ = Czech Republic; EST = Estonia; E = Spain; D = Germany; DK = Denmark; FIN = Finland; F = France; GR = Greece; HR = Croatia; IRL = Ireland; I = Italy; KO = Kosovo; LT = Lithuania; LV = Latvia; NI = Northern Ireland; NL = Netherlands; PL = Poland; P = Portugal; RO = Romania; RUS = Russia; SCO = Scotland; SK = Slovakia; SLO = Slovenia; SRB = Serbia; SWE = Sweden, TR = Turkey; UA = Ukraine; EW = England/Wales; n. a. = not answer/data not available.

* According to art. 21 Greek Law for the Execution of Punishments. This rule applies only for prisons built after the enactment of this Law.

Table 3: Specific rules for pre-trial detention of juveniles, maximum length of pre-trial detention and alternatives to pre-trial detention

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
A	X	X	X	Max. length 3 months; in certain cases (jurisdiction) 6 months; in extraordinary cases 1 year	Preliminary residential care
B	n. a.	X	X	Max. length 2 months and 5 days (first judicial order: 5 days, after that prolongation to 1+1 months is possible). Preliminary protective measures must be as short as possible and used as a last resort	Community institutions (open or closed institutions) Federal Centre (closed institution)
BG	X (without court order)	X	n. a.	Two months, exceptionally one year, if the charge is for a severe crime and two years if the charge is for a crime that is punishable by imprisonment for fifteen years or more(see Art.152 para 2 CCP)	Preliminary residential care (organized by the youth welfare service)
CH	X	X	X	The length of pre-trial detention has to bet he minimum period possible (Art.6 para 1 JJA). First judicial order 4 weeks. Prolongation is possible (principle of proportionality)	Preliminary residential care (open and closed institutions)
CY	n. a.	n. a.	n. a.	Max. 3 months	n. a.
CZ	X	X	X	Max. 2 months; in serious cases 6 months (one prolongation in the preliminary proceeding and one during the trial is possible (max. 18 months)	Special institution of juvenile justice: preliminary residential care and placement with a „trustworthy person“ General institutions: supervision of the probation service, bail, „pledge“ of the defendant, guarantee of a trustworthy person or of an association of citizens

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
D	X	X	X	Max. 6 months; in certain cases the period can be prolonged by the higher court (OLG); with risk of reoffending max. length 1 year. Furthermore the principle of expediency of proceedings is to be considered (*Beschleunigungsgrundsatz*, § 72 V JGG)	Special institution of juvenile justice: Preliminary educational measures Preliminary residential care (§71 II JGG)
DK	n. a.	n. a.	n. a.	There is no total maximum period, but detention can at the most be ordered for four weeks at a time	n. a.
E	X	X	X	Max. 6 months; it can be renewed by further 3 months	n. a.
EST	n. a.	n. a.	n. a.	Max. 6 months	n. a.
F	X	n. a.	X	Art. 11 of the Ordinance of 2 February 1945 sets the age limits as follows: Pre-trial detention under the age of 13 is excluded. Juveniles between 13 and under 16 years of age can be remanded in two cases: If they are charged for a very serious offence ("*crime*"), the maximum length of pre-trial detention is 6 months, renewable by another 6 months (total maximum: one year). If they have agreed to the obligations of a supervision order ("*contrôle judiciaire*") with regards to the regulation of ch. III of Art. 10-2, i.e. the placement in a closed educational centre ("*centre éducatif fermé*") Juveniles aged 16 can be committed to pre-trial detention: - if they are charged for a very serious offence ("*crime*"), the maximum length of pre-trial detention is 6 months, renewable (total maximum: two years). - if they are to receive a prison sentence of 3 years or more with regard to prior convictions and the nature	Three educational measures: supervision (la liberté surveillée), probation, reparation

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
				of the crime (law of 9 September 2002). The length of pre-trial detention varies according to the expected sentence. - if it is 7 years or less, pre-trial detention cannot exceed one month, renewable once (total maximum: 2 months) - if it is more than 7 years, pre-trial detention cannot exceed 4 months, renewable twice (total maximum: one year	
FIN	n. a.	X	X	There is no upper time limit for pre-trial detention. However, the court must set a time limit for the prosecution. After that time limit the pre-trial detainee must be released, if the prosecutor has not brought charges against the person. If the suspect is under 18 years old the prosecutor must decide without delay if he/she will prosecute the person. If a suspect is arrested a court must make a decision on pre-trial detention no later than the 4th day after apprehension. After that the decision has to be reviewed by the court should pre-trial detainee request it, but not sooner than 2 weeks after an earlier proceeding	Directives such as travel ban
GR	X	X	n. a.	Max. 6 months; prolongation possible by a decision of the Judicial Council	Preliminary residential care (restrictive conditions)
HR	X	X	X	Max.1,5 months; it can be renewed by further 1+1 months (max. 3 months)	Supervision by the centre for social care Placement in a social care institution

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
I	X	X	X	6 months; Specific rules for reviewing the decision on pre-trial detention: It depends on the seriousness of the crime and the juveniles' behaviour or their specific needs	Directives and restrictions, home arrest, work directions, placement in a community for juveniles
IRE	X	n. a.	n. a.	n. a.	St. Patrick Institution (closed institution) for juveniles aged at least 16.
KO	-	-	n. a.	Max. 3 months	
LT	-	X	X	3 months; prolongation up to 12 months	No educational institutions, but successful pilot project with pre-trial supervision by the probation service.
LV	X	n. a.	X	An appeal can be made to a Regional Court. In accordance with Article 278 of the Criminal Actions Law for juveniles, maximum length of pre-trial detention could not be longer than half of the maximum period of pre-trial detention for adults. The maximum periods of pre-trial detention for juveniles are the following: 4,5 months when being charged for less serious crimes; 6 months when being charged for serious crimes; 12 months when being charged for very serious crimes	Supervision, educational institution
NI	X	n. a.	n. a.	n. a.	n. a.

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
NL	n. a.	n. a.	X	The maximum period is 104 days. First 4 days, then 10 days and then 30 days; twice renewable to a maximum of 90 days. On every occasion prolongation of pre-trial detention is decided by a judge. There is no differentiation by offender group. With regard to youth the judge is legally obliged to review pre-trial detention constantly. If possible, pre-trial detention is suspended either with or without conditions	Formerly: electronic house arrest Currently: night detention
P	X	X	X	For juveniles under 16 years of age: max. 6 months in especially complex cases For juveniles of at least 16 years: max. 18 months; in especially complex cases up to 3 years	Preliminary residential care Placement of the minor (with the parents, legal representatives or the de facto guardians or another competent person) with the imposition of obligations
PL	X	X	X	Max. length 2 years	Supervision by the probation service, supervision by a "trustworthy person", youth educational or socio-therapeutic centre
RO	X	X	X	Pre-trial detention for minors from 14-16 year olds shall not exceed 15 days. In exceptional cases, pre-trial detention may be prolonged but shall not exceed two months during preliminary proceedings. If a sentence of life imprisonment or a sentence to imprisonment of more than 20 years has to be imposed, as an exception a prolongation for up to 6 months is possible	Bail, judicial control

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
RO	X	X	X	The code of penal procedure stipulates that pre-trial detention for minors from 16 to 18 years shall not exceed 20 days, but in existence of legitimate reasons the period can be prolonged each time for another 20 days. Altogether, the period of pre-trial detention shall not exceed 90 days. Only in exceptional cases, if the sentence is to life imprisonment or to imprisonment for more than 10 years, pre-trial detention can be prolonged for 180 days maximum	n. a.
RUS	X	X	n. a.	If a person is under investigation he (she) may be a detainee for no longer than 2 months. Where the preliminary investigation takes longer, and if there are no arguments to change or to cancel a measure of restraint this term, can be extended to 6 months. A further prolongation, to 12 months, is possible for those accused of serious and very serious crimes and only in case of special complexity of a criminal case The custody term can be prolonged to 18 months if a person is accused of especially serious crimes upon the request filed by the investigator with the consent of the General Public Prosecutor of the Russian Federation or his deputy (Art.109 of the CCP of the Russian Federation)	Supervision
SCO	X	X	X	6 months	Bail and bail supervision by the probation service

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
SK	X	n. a.	n. a.	It depends on the gravity of the criminal offence: In pre-trial procedure: charge for minor offences: maximum 6 months, crimes: maximum 18 months, especially serious crimes: maximum 24 months. The whole maximum period of detention: minor offences: maximum 12 months; crimes: maximum 36 months; especially serious crimes: maximum 48 months	Preliminary residential care, supervision by the parents
SLO	n. a.	X	X	The maximum length depends on the status of the proceeding. Preliminary proceeding: first judicial order 1 month; prolongation by a higher court is possible (2 months) = max. 3 months. Main proceeding (after filing a charge): max. 2 years, and it must be determined every two months whether the reasons for the detention still exist	Home detention, prohibition order with respect to certain locations or individuals, requirements to regularly report to the police
SRB	X	X	X	In the preliminary proceeding: first judicial order 30 days, prolongation by further 30 days is possible Main proceeding (after filing a charge): as of submission of the proposal, detention can vary in duration, depending whether a younger or an older juvenile is concerned. In this respect the Law treats the two categories differently: detention of *older juveniles* may not exceed six months maximum, whereas the same measure may not exceed four months in cases of *younger juveniles*	Supervision by the parents, probation service, placement in foster families

Country	Specific rules for juveniles?			Maximum length of pre-trial detention	Alternatives to pre-trial detention
	Specific grounds	Enforcement	Period		
TR	X	X	n. a.	2 years (exceptionally 3 years)	Judicial control: is a new institution in the Turkish Criminal Procedure, accepted to eliminate the harmful effects of arrest (Art. 109 CPC). Judicial control means one or more obligations: not being allowed to leave the country, referring periodically to places specified by the judge, obeying the judge's orders and the orders of the authorities and offices the judge designates, following educational, vocational training, protective and control precautions, not to be allowed to drive vehicles, and the obligation to hand over a driving licence to the authorities, to accept receiving treatment for addiction to alcohol
UA	n. a.	X	n. a.	Up to 18 months depending on the gravity of the crime (Art. 156 of the CCP of Ukraine)	n. a.
UK	X	X	X	Max. 170 days. In summary proceedings max. 56 days. Proceedings at the „Crown Court" max. 112 days. After that time the detainee has the right to be released on bail	Bail (There is a general principle that defendants should be released on bail unless there are very strong reasons for refusing to do so, but the presumption is reversed in the case of defendants over the age of 17 who are charged with very serious offences), preliminary residential care, supervision by the administration

Note: A = Austria; B = Belgium; BG = Bulgaria; CH = Switzerland; CY = Cyprus; CZ = Czech Republic; EST = Estonia; E = Spain; D = Germany;DK = Denmark; FIN = Finland; F = France; GR= Greece; HR = Croatia; IRL = Ireland; I = Italy; KO = Kosovo; LT = Lithuania; LV = Latvia; NI= Northern Ireland; NL = Netherlands; PL= Poland; P = Portugal; RO = Romania; RUS = Russia; SCO = Scotland; SK = Slovakia; SLO = Slovenia; SRB = Serbia; TR = Turkey; UA = Ukraine; UK = United Kingdom (England/Wales); n. a. = not answer.

2.5.1 Bail, supervision, etc.

In *Scotland* pre-trial detention is ordered very rarely. This is a result of the common practice to primarily check the possibilities of using alternative measures, particularly bail. Pre-trial detention is only ordered (as a last resort) if bail cannot be justified under any circumstances. Therefore, strictly speaking, bail is not an alternative to pre-trial detention, but rather pre-trial detention is the alternative to the regularly used bail order. During the bail term the juvenile is under so-called bail-supervision.

Also in *England/Wales* the general principle applies that first the possibilities for a bail order are to be explored, and pre-trial detention is to be applied only as a last resort in very serious cases. Bail is also provided in many continental European countries (for example in the *Czech Republic* and *Germany*, § 116 (1) No. 4 of the German CCP), however in practice this alternative only finds exceptional use. In continental European countries, directives to regularly report to the police prevail instead.

A wide-spread alternative is judicial control with specific obligations such as to report regularly to the police, to avoid contact with specific persons, not to visit certain places etc. (see *Table 3*). Police and other supervision are used particularly in *Middle* and *Eastern* European countries (*Croatia, Latvia, Poland, Russia* and *Serbia*). Supervision can also be executed by a trustworthy person, organisation or a probation officer (see for example *Poland* and since 2002 the *Czech Republic*). In *Croatia* supervision is executed by the centre for social care. Often, supervision is also handed over to the responsibility of the parents or legal guardians, as long as it can be excluded that they could have a negative influence (*Serbia*).

In *France*, so-called supervised freedom (*liberté surveillée*) is an important alternative to remand custody. It is ordered and controlled by the investigating judge or juvenile judge.

In the *Netherlands*, house arrest was introduced recently as a pilot project. However, since 2003 the institute of "night detention" has been attributed greater attention. Night detention means that the juvenile follows his/her regular activities during the day (for example going to school or vocational training) and is only locked up during the night and at the week-ends. The main precondition for this alternative to be applicable is that the juvenile regularly attends school or has a vocational training place.

In contrast to the *Netherlands*, in *Slovenia* and *Italy* the institute of house arrest is more frequently used as an alternative to pre-trial detention. In *Italy*, the juvenile also has the possibility to live in a supervised living unit, an open institution, where regularly social workers supervise and assist the juveniles.

2.5.2 Preliminary educational measures

In some countries such as *Austria, Germany, Portugal* or *Switzerland* pre-trial detention may only be imposed if its aim cannot be achieved by educational alternatives (see *2.2* above). This corresponds to the principles of subsidiarity and proportionality as explained under *2.1.4* and *2.2.* Such measures are regularly community based. However, only such directives should be applied which are appropriate to further the education and personal development of the juvenile during the time until the final trial decision has been felled. Directives and obligations can be ordered with regards to school or vocational training, supervision by a social worker or another trustworthy person, avoiding certain places or contact with certain persons etc. Such educational community measures have to be considered in *Greece* and *Russia* before ordering pre-trial detention. According to the general procedural rules in *Greece*, specific restrictive obligations or educational measures (see Law No. 3860/2010) may be ordered (by the investigating judge with the consent of the prosecutor or by the judicial council) in cases of felonies or misdemeanours punishable with a minimum sentence of three months, and only when they are absolutely necessary to ensure that the defendant will be present during the pre-trial investigation or at trial und will submit him/herself to the execution of the court decision. Breach of such restrictive obligations or measures may result to pre-trial detention. With regards to juveniles there are no specific statutory regulations about such obligations, but – as they may result in pre-trial detention – some scholars want to limit them to very serious crimes (felony offences with at least 10 years of imprisonment) and only if a strict necessity for applying them in order to prevent the imposition of pre.-trial detention requires so.

The practice of applying such preliminary educational measures largely depends on the existence of a certain infrastructure and in particular on the availability of programmes in the community. Even in *Western European* countries there is often a lack of specific programmes. The probation services are overcharged with regular probation cases and are therefore not the driving force to extend such alternative measures. This is all the more deplorable as an early integration into constructive community measures at the preliminary stage of investigation could reduce not only the use of pre-trial detention, but also later convictions and sentences to unconditional prison terms.

2.5.3 Residential care (homes), closed residential facilities (secure units etc.)

In many countries, juvenile (welfare or justice) laws provide for a specific alternative by placing a juvenile in residential care, in most cases open homes with a purely educational approach. Preferably the consent of the juvenile and/or the parents is desired, but finally the family or juvenile court or judge can also order such a transfer against the juvenile's will (*Austria, Bulgaria, Croatia,*

Germany, Greece, Portugal, Slovakia and *Switzerland*). Sometimes closed institutions are also used if the fear of escape is grounded. In *Portugal* this preventive measure (*medida cautelar de guarda*) is executed in a closed or semi-closed institution. Residential care in closed institutions as well is a measure of last resort both in *Portugal* and in the other European countries.

3. Practice of pre-trial detention and alternatives to pre-trial detention

The Recommendation of the Council of Europe of 2006 (Rec (2006) 13/General Principle No. 3) emphasises that pre-trial detention can only be imposed in individual cases as a last resort where it is unavoidable for ensuring that the trial hearing can take place. Furthermore, pre-trial detention must never be (ab)used as a form of short term punishment.

As mentioned above (see *2.1*), pre-trial detention in almost all countries is only justified if it is proportional to the seriousness of the alleged offence. This regularly means that it is only acceptable if an unconditional prison sentence is to be expected. In some countries, therefore, pre-trial detention is excluded if only a fine or other community sanction is likely to be pronounced (see, for example *Bulgaria* or *Finland*). In *Germany*, pre-trial detention is only allowed "if it is proportional to the sentence to be expected." Many scholars interpreted this regulation in the sense that pre-trial detention is only justified in cases where an unconditional prison sentence is to be expected. However, the practice in many countries is different. Pre-trial detention in many countries is the harshest "reaction" to criminal offences, particularly because of the widespread practice to release persons directly from pre-trial detention into serving probation or another community sanction (see, for example, *Bulgaria, Finland, Germany* or *Romania*). An indicator for such practice is that, on a given day, more juveniles are detained in pre-trial detention than in youth prisons or similar institutions for sentenced offenders. In *Finland*, for example, in 2000, 57 15 to 17 years old juveniles were in pre-trial detention, whereas only 10 sentenced juveniles were incarcerated.[18] Similarly, in *Romania* pre-trial detention is imposed against 20% of all accused juveniles, while only 3% receive an unconditional prison sentence (see the study by *UNICEF* and the *Ministry of Justice of Romania* from 2003-2004, cited by *Păroşanu* in this volume). In *France*, on 1 January 2006, 65.4% of all incarcerated juveniles were in pre-trial detention.

Similar results can also be observed in *Germany*, where only every second juvenile or young adult taken into pre-trial detention will later be sentenced to an unconditional prison sentence (see *Heinz* 2008; *Dünkel* in this volume). In

18 However, one has to consider that in *Finland* as in other *Scandinavian* countries most juveniles deprived of their liberty are placed in (more or less open) welfare institutions, which partly explains the very small numbers of juveniles in prisons.

Bulgaria a disproportional number of juveniles are sent to pre-trial detention. In 2004, 16% of pre-trial detainees were under 18 years of age and 28% were aged between 18 and 25. Such data can be interpreted as an indicator that pre-trial detention is sometimes used as a short term prison sentence "through the back door".

Some countries such as the *Czech Republic* and *Germany* have recently reported significant reductions in the use of pre-trial detention. In the *Czech Republic*, on 31 December 1999, 227 juveniles were in pre-trial detention, compared to only 59 on 31 December 2006. There, pre-trial detention has more and more developed into a real last resort for juveniles who have committed very serious crimes or who have failed under other forms of sanctions or educational measures. The reasons for this positive development in the *Czech Republic* lay in the law reforms of 2002 and 2004 that (with some exemptions) abolished the issuance of pre-trial detention in cases of misdemeanours and other less serious crimes. Furthermore, alternative measures to pre-trial detention have been introduced by law, and the possibilities for a legal review of the detention order have been extended. Of major importance was also the shortening of the maximum length of pre-trial detention for juveniles in 2004.

Decreasing numbers of pre-trial detainees can also be observed in the *Ukraine*. On 1 January 2002, 2,105 juveniles were in pre-trial detention, a figure that had been almost halved by 1 January 2007 (n = 1,220). This enormous decline was also attributable to a legal reform in 2001 that placed greater emphasis on the application of alternative measures.

In *Greece*, the number of young pre-trial detainees has remained stable at a low level. The proportion of young persons in pre-trial detention compared to sentenced young persons in juvenile prisons is very low. However, this is to be explained by the increasing number of young persons sentenced to unconditional prison sentences. The number of young persons sentenced to a prison term in 2005 (n = 820) was almost six times higher than in 1990 (n = 167). The proportion of prison sentences increased from 52% to 76% in that period.

4. Conclusion

The question whether or not pre-trial detention can be imposed on young offenders primarily depends on the age of criminal responsibility (in this respect see *Pruin* and *Dünkel/Pruin* in this volume). In some countries, pre-trial detention cannot be imposed even if the juvenile in general is criminally responsible. So in *Switzerland*, for example, juveniles are criminally responsible from the age of 10, but youth imprisonment and pre-trial detention are only provided by law for juveniles aged at least 15. In *Ireland*, too, the age of criminal responsibility is 12, but pre-trial detention is restricted to those juveniles who have reached the age of 16. The minimum age for pre-trial detention varies considerably within the EU Member States, ranging from 10

years (*England/Wales*) to 16 years (*Ireland*). In most countries, pre-trial detention can be imposed on juveniles who have reached the age of 14. The conditions under which pre-trial detention is possible and the period for which it can be imposed can furthermore depend of the seriousness of the alleged offence. In some countries, juveniles under 16 years of age cannot be subject to pre-trial detention except for very serious crimes (felonies or similar offences).

In some countries, pre-trial detention is regulated by specific juvenile justice acts, while in others it is governed by the general codes of criminal procedure. The majority of countries provides for special regulations to shorten the period of preliminary detention for juveniles. Nevertheless, large variations can be observed when looking at the maximum periods of pre-trial detention for juveniles provided by law. They range from two months (*Belgium*) up to four years (*Slovakia*). With Recommendation (2003) 20 in mind, this state of affairs seems to be unsatisfactory. No. 16 of this Recommendation stipulates that pre-trial detention should under no circumstances last for longer than six months before the trial commences. This period can be prolonged if a judge, who is not involved in the inquiry, comes to the estimation that the delay of the criminal procedure can is justified by exceptional case circumstances.

It is to be welcomed that, in many countries, pre-trial detention really does appear to be a measure of last resort. In these countries, specific alternatives are provided in order to restrict its use. The European Rules for Juvenile Offenders Subject to Sanctions and Measures of 2008 (Rec [2008] 11) emphasize the principle of last resort (see No. 10).

The principle of subsidiarity is legally provided in many European jurisdictions. This principle implies that all community sanctions or measures that could be deemed appropriate in a given case are to be given priority over pre-trial detention. Such alternatives can be bail (see the Anglo-Saxon countries) or educational measures such as residential care (see, for example, *Austria, Germany, Switzerland*), special measures of supervision (for example, *France, Poland* or *Serbia*) or other measures such as, for example, so-called "night detention" in the *Netherlands.* This theoretical approach of last resort must, however, not deny the fact that in reality, pre-trial detention in many countries is rather common and the most infringing part of any deprivation of liberty.

In nearly all countries covered in this study, according to the law, juvenile pre-trial detainees must be accommodated separately from adults and sentenced prisoners. In practice, this principle cannot not always be realised satisfactorily, for example because of overcrowding, but sometimes also due to the small number of juvenile pre-trial detainees. So, for example, in the *Czech Republic* no separate pre-trial detention units for juveniles are provided, as the number of juveniles in pre-trial detention is too small and such units would rather result in a measure of isolation for the few persons being held in them. Nevertheless juveniles regularly are accommodated at least in separate cells from adults.

With regards to the possible psychological detriments (concerning the development of the juvenile's personality and the maintaining of family bonds) that pre-trial detention can effect, particularly when an unconditional prison sentence does not follow, and also with regards to the financial consequences for the State and the involved alleged offenders and their families, the question arises whether the strict application of and adherence to international human rights standards should be enforced by international and national control mechanisms (inspections and other forms of control). The ERJOSSM and Recommendation (2003) 20 should be seen as guidelines for such a human rights policy in the area of preliminary and pre-trial detention.

Summarizing the legal provisions of imposing and executing preliminary and pre-trial detention, the idea suggests that this area is comparatively underdeveloped, and that the concerns expressed by various Recommendations of the Council of Europe and also by the ERJOSSM appear to be justified. On the other hand, some findings are in fact indicative of "good practices" within Europe that are well in accordance with international standards. The sometimes reluctant and incomplete completion of the questionnaire of the Council of Europe (see *Dünkel/Pruin* 2009) – and with that the lack of information concerning this field – deserves further attention. The Council of Europe should encourage more in-depth research particularly in the field of pre-trial detention.

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Juvenile imprisonment and placement in institutions for deprivation of liberty – Comparative aspects

Frieder Dünkel, Barbara Stańdo-Kawecka

1. Introduction: Juvenile imprisonment as a measure of last resort and for the shortest possible term – international trends

Juvenile justice systems in Europe vary according to many aspects, including types of institutions in which juveniles may be deprived of their liberty, age limits, other legal preconditions and the duration of institutional placements.[1] In all countries, at least a special category of juveniles – in the meaning of minors who committed an offence while being under 18 years of age – may be convicted and sentenced to (youth) imprisonment, which they serve either in adult prisons or in separate juvenile prisons that are subject to the Prison Administration and that constitute a part of the country's prison system. In most countries, deprivation of liberty can also take place in welfare institutions under juvenile welfare law and administratively organised by Ministries of youth protection, family or social welfare.

1 This paper is based on the national reports of this volume as well as on a questionnaire which was sent out in 2006 by the Council of Europe to its Member States when the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) were prepared by a group of experts; see the final report in *Dünkel/Pruin* 2009. The references in *italics* refer to the countries covered in this volume as well as further Member States of the Council of Europe that responded to the Council's questionnaire, but which are not represented by national reports in this volume.

Correspondingly, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty of 1990 (the so-called Havana-Rules) state that depriving juveniles of their liberty goes far beyond placing them in prisons or youth prisons and shall be understood as any form of detention or imprisonment or placement of a person under the age of 18 in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or any other public authority. This definition indicates that the reason for the deprivation of liberty (being in need of protection and control, showing behaviour problems, committing an act forbidden by the criminal law) is irrelevant, and that the Rules apply not only to institutions for juvenile offenders but also to those housing juveniles in need of care, protection or supervision, whether public or private. The only juvenile facilities not covered by this definition are those which are completely open, which means that the child is free to come and go at will, enjoying approximately the same freedom as a child living with his or her family.

The 2008 European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) follow the same broad approach to the notion of "deprivation of liberty". They cover all juveniles who are deprived of liberty as a result of the alleged or actual commission of criminal offences, no matter where they are held – be it in penitentiary, welfare or mental health institutions. The ERJOSSM also widen the scope of their application to those age groups that are treated as juveniles, such as young adults, or that are accommodated together with juveniles in the same institution (for example juveniles in need of care in residential units of the welfare system, see Rules No. 17, 21.5 and 22 of the ERJOSSM).

Taking into account this broad meaning of deprivation of liberty, it should be noted that in different European countries juveniles may be placed in different types of institutions, run by the state, local governments or private agencies, subject to the Ministry of Justice or other ministries, on a basis of orders made by different authorities. Legal provisions determining grounds for sanctions and measures depriving juveniles of their liberty, the organizational structure of institutions designated for such juveniles and ways in which these institutions operate depend on many factors. Except for the general approach to juvenile delinquents oriented towards welfare, justice, restoration or "managerialism" and "neo-correctionalism", other important factors contributing to the shape of institutions in which juveniles are deprived of liberty seem to be the division of competencies between the State (federal authorities) and communities as well as the tradition of divisions of competencies between social services and justice agencies. In some countries (for example *Belgium, Ireland* or *Switzerland*), the political and social consensus reached after long-lasting work on the reform of the juvenile justice system also played a meaningful role in deciding on institutions in which juveniles can be deprived of their liberty.

In justice-oriented European countries, there is a distinction between the lower age of special diminished criminal responsibility of juveniles and the age of criminal majority. Juvenile delinquents who are over the age of the special

diminished criminal responsibility are subject to the juvenile criminal justice jurisdiction with the possibility of court-imposed sanctions that include the penalty of imprisonment or special youth imprisonment. At the same time, there is also a separate administrative or civil jurisdiction focused on children in need of care and protection as well as children in danger due to their problem behaviours. The proceedings under administrative or civil jurisdiction can also result in the imposition of a range of compulsory measures of protection, including a placement of a minor in secure accommodation. The primary consideration for applying compulsory measures of protection in such proceedings is the best interest of the child, and reasons for which he or she needs care or protection (lack of parental care, being a victim of abusive acts, or showing problem behaviours) have a significant meaning for the choice of the proper measure only if they indicate specific needs of the child concerned.

However, the differentiation between measures applied according to administrative or civil provisions and sanctions imposed under the juvenile criminal law has been weakened by the fact that many countries following the justice approach base their juvenile sanction systems on the principles of proportionality and subsidiarity (i. e. juvenile imprisonment as a last resort as claimed already by Rule No. 17c of the so-called Beijing-Rules of the UN from 1985 or Art. 37b of the Convention of the Rights of the Child of 1989). According to the latter, criminal sanctions, and first of all prison sentences, may be imposed on juveniles only if there is no other possibility to prevent re-offending and only for the shortest period possible. This idea has been re-emphasised by the ERJOSSM of 2008 in their Basic Principle No. 10.

As a result, a broad range of educational or correctional measures are also applied to juveniles, and some of them involve placing a juvenile in an institution that also offers secure accommodation and treatment for other categories of children – children in need of care and protection as well as children in danger of becoming delinquents. Additionally, under the justice approach, children who commit an offence while below the age of diminished criminal responsibility of juveniles, as well as those above this age who cannot be convicted for their acts (for example due to the lack of culpability), may be subject to interventions that are much the same as interventions provided for children who are thought to be in need of care and protection. Finally, in most justice-oriented countries there is a complex net of institutions in which perpetrators who commit an act forbidden by criminal law while aged under 18 may be deprived of their liberty.

As for countries with welfare-oriented juvenile justice systems, first of all it should be noted that currently their number in Europe is very limited. Reforms in the field of juvenile justice systems carried out in Europe during the last decades tended mainly towards justice, restorative or managerial approaches, with the latter being particularly visible in *England*/*Wales*. Among the main features of the welfare approach there is the lack of the concept of the diminished criminal responsibility of juveniles. Under this approach, juvenile offenders up to the age of crimi-

nal majority are, as a rule, perceived as persons not mature enough to be criminally liable. They are not punished for their behaviours, but subject to protective, educational or correctional measures, including those consisting of compulsory secure accommodation. To a large extent, the same measures may be applied to different categories of minors: children in need of care and protection, children showing problem behaviours (children in danger or pre-delinquent children) as well as those children who committed an act forbidden by the criminal law. The possibility to sentence juvenile offenders to prison terms, however, is not completely excluded even in the few European countries in which juvenile justice systems are still based primarily on the welfare model, such as *Belgium* and *Poland*[2] (*Section 3* below).

2. Age groups for juvenile imprisonment from a comparative perspective

As indicated above, and already by *Pruin* in this volume, juvenile justice and welfare systems vary according the relevant age groups that they encompass. This variation is even greater when considering the age range for youth or juvenile imprisonment or other forms of deprivation of liberty. This is clearly indicated in the last column of *Table 1*. There are two reasons why the age range differs from the age ranges for criminal responsibility: First, in some countries, particularly in *Germany*, young adults are generally treated as juveniles and therefore sentenced to a youth prison term, which is served in a juvenile prison. This strategy is encouraged by Rule No. 17 of the ERJOSSM. Second, all countries aim to prevent the transfer of juveniles into prisons for adults when they have reached the age of 18 or 21 (in the *Ukraine* since 2004 until 22).[3] Therefore, Rule No. 59.3 of the ERJOSSM states that "juveniles who reach the age of majority and young adults dealt with as if they were juveniles shall normally be held in institutions for juvenile offenders or in specialised institutions for young adults unless their social reintegration can be better effected in an institution for adults."

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2 In *Portugal*, from 12 until criminal majority (16) there is no possibility to sentence juvenile offenders to prisons terms. However, if a crime is committed they can be punished with educational measures, including those consisting of compulsory secure accommodation in centres of the Ministry of Justice (there is here deprivation of liberty, but only if the juvenile has reached the age of 14 in a closed centre). These institutions are not prisons and only for juvenile offenders (who have committed a crime). There are no children in need of care and protection as well as children in danger of becoming delinquents in these institutions.

3 The *Irish* legislation states expressly that when a child has been sentenced to detention in a detention school (having been convicted on indictment) and has not completed the sentence by the time he or she reaches 18 years of age, he or she shall be transferred to St. Patricks (which is the special institution for juvenile offenders aged at least 16, similar to a juvenile prison) or prison to complete the sentence.

Table 1: Comparison of the age of criminal responsibility and age ranges for youth imprisonment

Country	Minimum age for *educational* measures of the family/ youth court (juvenile welfare law)	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/ custody or similar forms of deprivation of liberty
Austria		14	18/21	14-27
Belgium		18	16[b]/18	Only welfare institutions
Belarus		14[c]/16	14/16	14-21
Bulgaria		14	18	14-21
Croatia		14/16[a]	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mit. sent.)	15-19
Denmark[d]		14	14/18/21	14-23
England/ Wales		10/12/15[a]	18	10/15-21
Estonia		14	18	14-21
Finland[d]		15	15/18	15-21
France	10	13	18	13-18 + 6 m./23
Germany		14	18/21	14-24
Greece	8	15	18/21	15-21/25
Hungary		14	18	14-24
Ireland		10/12/16[a]	18	10/12/16-18/21
Italy		14	18/21	14-21
Kosovo		14	18/21	16-23
Latvia		14	18	14-21
Lithuania		14[c]/16	18/21	14-21
Macedonia		14[c]/16	14/16	14-21
Moldova		14[c]/16	14/16	14-21
Montenegro		14/16[a]	18/21	16-23
Netherlands		12	16/18/21	12-21

Country	Minimum age for *educational* measures of the family/ youth court (juvenile welfare law)	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/ custody or similar forms of deprivation of liberty
Northern Ireland		10	17/18/21	10-16/17-21
Norway[d]		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12		16/21	12/16-21
Romania		14/16	18/(20)	14-21
Russia		14[c]/16	18/21	14-21
Scotland	8[e]	12[e]/16	16/21	16-21
Serbia		14/16[a]	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14/16[a]	18/21	14-23
Spain		14	18	14-21
Sweden[d]		15	15/18/21	15-21[g]
Switzerland		10/15[a]	18[f]	10/15-22
Turkey		12	15/18	12-18/21
Ukraine		14[c]/16	18	14-22

a Criminal majority concerning juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice).
b Only for road offences and exceptionally for very serious offences.
c Only for serious offences.
d Only mitigation of sentencing without separate juvenile justice legislation.
e The age of criminal prosecution is 12, but from 8 up to the age of 16 the Children's Hearings System applies thus preventing more formal criminal procedures.
f The Swiss Criminal Law for adults provides as a special form of detention a prison sentence for 18-25 years old young adult offenders who are placed in separate institutions for young adults; they can stay there until they reach the age of 30, see Art. 61 Swiss Criminal Code.
g Youth custody; there are also special departments for young offenders in the general prison system (for young adults until about 25 years of age).

The minimum age at which a young person can be imprisoned varies between 10 and 15 years and is strongly related to the age of criminal responsibility

described by *Pruin* in this volume. There are, however, important exceptions: In *Switzerland*, the age of criminal responsibility is 10, but youth imprisonment is possible only for juveniles aged 15. Similarly, in *England/ Wales*, detention in a young offenders institution is provided for 15 to 17 year old juveniles (and in separate units for 18 to 20 year old young adults), whereas 12 to 14 year old (recidivist) offenders can be placed in a secure training centre, and in exceptional serious cases 10 and 11 year old children can also be placed in secure children's homes. In *Belgium*, where a welfare law excludes criminal responsibility under the age of 18 (in serious cases 16) a minimum age is fixed nevertheless for the placement in a closed welfare facility (which corresponds more or less to reformatory schools or youth prisons in other countries): only juveniles older than 12 are accepted. In *Croatia*, *Montenegro*, *Serbia* and *Slovenia*, the age of criminal responsibility is 14, but youth imprisonment is restricted to juveniles aged 16 years or more.

The age range of young offenders kept in youth prisons, reformatory schools and other prison-like confinement, therefore, is sometimes quite broad (e. g 14 to 24 in *Germany*, 15-25 in *Greece* and 14 to 27 in *Austria*) if one considers that in many countries young adults can also be sentenced to youth imprisonment and may serve such a sentence up to the age of 21, 23 (*Denmark*),[4] 24 (*Germany*), or even 27 (*Austria*). Almost all countries keep juveniles who reach the age of majority while in detention in youth prisons if this enables the juvenile to finish school or vocational education or specific treatment in the young offender institution. A transfer to adult prisons is regularly only provided for those young adults who have reached the age of 21 (or in the *Ukraine*: 22). Few exceptions can be seen: In the *Czech Republic* at the age of 19 and in *France* six months after reaching the age of 18 a transfer is possible (see *Table 1* and *Pruin* in this volume).

3. Legal aspects and conditions of imposing juvenile imprisonment

The legislation for imposing youth imprisonment is generally based on the criminal codes (e. g. *Turkey*),[5] special juvenile justice acts (*Austria*, *Germany*,

4 In *Denmark* no special youth prisons exist. If a juvenile is sentenced to an unconditional prison sentence sect. 78 of the Corrections Act gives priority to the execution in an alternative institution (outside the prison system). Those juvenile and young adult offenders serving their sentence in prisons should be placed in the prison of *Ringe* which is mainly dedicated to young offenders until the age of 23, see also Storgaard in this volume.

5 See for *England/Wales*: Detention and Training Order: sections 100-107 of the Powers of the Criminal Courts (Sentencing) Act 2000; for very serious offences: sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

Switzerland), in criminal procedure legislation (*Italy*) and rarely in youth welfare laws (*Belgium*).

The usual reason for which juveniles are imprisoned is the perpetration of a criminal offence. Youth imprisonment is seen as a sanction of last resort everywhere in Europe and therefore the primary ground for imposing a youth prison sentence is the gravity of the offence.[6] In most countries, though, the young offender's need for educational treatment is to be considered as well. Moreover, there are a number of desired effects of imprisonment. In part, imprisonment is supposed to prevent the offender from committing further criminal offences, while for example in *Hungary* another effect is seen in the deterrence of other potential offenders. But in principle, general deterrence and retribution are not seen as a primary goal of juvenile justice and of sentences depriving juveniles of their liberty. The *German* juvenile law reform of 2008 explicitly outlawed deterrent goals and emphasised education and rehabilitation as the primary aims of juvenile justice.[7]

The application of the principle of proportionality with regards to the gravity of the offence is traditionally not a major issue of juvenile justice systems, which refer instead to educational needs when considering the length of juvenile imprisonment. Nevertheless, a clear tendency can be seen to limit juvenile imprisonment by the principle of proportionality as it is emphasised by Basic Principle No. 5 of the ERJOSSM of 2008. Therefore, it is no surprise that, for example, *Austria*, *Germany*, *Lithuania*, *Norway* and *Sweden* confirm this principle of proportionality in law.

The competent authorities for the imposition of youth imprisonment or equivalent forms of deprivation of liberty (e. g. in closed "correctional" institutions run by the Ministry of Justice such as in Portugal) are regularly juvenile judges or courts in a separate juvenile justice system (*Austria*, *Belgium*, the *Czech Republic*, *England/Wales*, *Germany*, *Greece*, *Malta*, *Slovenia*, *Spain*, *Switzerland* and *Turkey*), but it can also be a family court magistrate (see, e. g. *Poland*, *Portugal* "*Tribunais de Família e Menores"*) or a judge responsible for criminal matters in general as is the case in the *Scandinavian* countries. The *Scandinavian* countries do not provide a special juvenile court organisation, notwithstanding that judges base their judgements on the special rules regarding imprisonment of juveniles. The principle of prison sentences as a means of last resort is probably best developed in the *Scandinavian* countries which have almost no juveniles in prisons (see below). The same "reductionist" approach

6 See, e. g. *Belgium*, *Cyprus*, *England/Wales*, *Estonia*, *Finland*, *France*, *Georgia*, *Germany*, *Greece*, *Hungary*, *Italy*, *Lithuania*, *Norway*, *Portugal* (juveniles aged 16 or more), *Russia*, *Slovakia*, *Slovenia*, *Sweden*, *Turkey* and the *Ukraine*.

7 See § 2 Juvenile Justice Act (JGG) and the national report of *Dünkel* in this volume.

can be seen in *Austria*, *Germany*, *Greece*, *Slovenia* and *Switzerland*, where youth imprisonment has really become a "last resort" (*ultima ratio*).[8]

In many Eastern European countries the development of an independent juvenile justice system is a prominent feature (see for example the Baltic States, *Croatia*, the *Czech Republic*, *Romania, Russia, Serbia* and *Slovakia*). In the *Czech Republic* Juvenile Courts were established by the major law reform of 2003.[9] However, for example, in the Baltic States, up to now there are no independent Youth Courts. In *Russia* experimental models of a juvenile court have been introduced in *Rostov*, *Krasnoyarsk* and other cities, and such a project has also been established in *Romania* in *Brasov*.[10] But often the required infrastructure for specialized youth judges who are trained to deal with juveniles in an educative manner are widely lacking.

Sanctions like the placement in reformatory schools, youth prisons or custody or the special "youth confinement" sanction (*Denmark*) have to be clearly described in order to find similarities and differences.

Great differences can be observed regarding the duration of imprisonment. When stating the prescribed minimum term to which a young person can be imprisoned, in some countries it has to be considered that there exist special short term liberty-depriving sanctions (short-term detention, in *Germany*, *Estonia*, *Latvia*, *Russia* and the *Ukraine*), whereas the category of "youth imprisonment" covers sentences served in specialised prison-like institutions (youth prisons, reformatory schools etc.).

Such youth imprisonment sometimes has a raised minimum period (compared to the general criminal law for adults). This is the result of the inherent educational ideology which requires a certain minimum period to be served in order to improve the effectiveness of educational and treatment programmes.

An outstandingly high minimum penalty exists in *Slovakia*, i. e. 24 months, and also in the *Czech Republic* (12 months),[11] whereas *Germany*, *Greece,* and *Slovenia* provide a minimum of six months, *Italy*, *Latvia*, *Lithuania* and *Portugal* of three, *Russia* of two months. The other countries do not exclude short term imprisonment and provide imprisonment of less than two or three months, possibly only for a few days or weeks.

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8 See in summary some statistical data given by *Dünkel/Pruin* 2009, p. 136 ff., and below.

9 See *Válková* 2006; *Válková/Hulmáková* in this volume.

10 See *Păroşanu* in this volume; summarizing also *Dünkel* 2008, p. 104.

11 It has, however, to be considered that the *Czech* law allows for special mitigation if the penalty would be disproportionately severe for the juvenile and that the purpose of the penal measure can be achieved even with a shorter period of imprisonment (sect. 37 of the Act on Juvenile Justice, No. 218/2003 Coll.).

A few countries dispose of a special short-term sanction (detention centre), which can last from two, five or 15 days up to four weeks or 45 days (*Germany*, *Lithuania*, the *Ukraine*). *Latvia* has introduced such short-term detention for terms of between one and six months.

The maximum youth prison sentences or similar sanctions of deprivation of liberty vary between three years in *Portugal*, four years in *Switzerland*,[12] five years in the *Czech Republic*, 10 years in *Estonia, Germany*, *Latvia* and *Slovenia* and 20 years in *Greece* and *Romania* (in cases where life imprisonment is provided for adults)and even longer terms up to (theoretically) life imprisonment in *England/Wales*, the *Netherlands* or *Scotland* (in the latter cases restricted, however, to juveniles of at least 16 years of age). In general, the maximum is fixed at 10 years, sometimes allowing an increase of penalties of up to 15 years for very serious crimes. It is amazing, however, that countries such as *Portugal* or *Switzerland* do not allow for longer sentences than thee or four years even for very serious (murder) cases.

Table 2: Minimum and maximum length of youth imprisonment

Country	Youth detention/imprisonment	
	Minimum sentence	**Maximum sentence**
Armenia	3 m.	7 y. (under 16 years of age) 12 y. (≥ 16 years of age)
Austria	1 d.	Instead of life imprisonment or 10-20 y. 10 y. (under 16); 15 y. (≥ 16 years of age) All other cases: The maximum sentence is decreased by one half and no minimum term is fixed by law
Belgium		6 m. placement in an open institution; 6 m. in a closed institution
Bulgaria	n. s.	n. s.
Croatia	6 m.	5 y., for very serious felony offences: 10.y.
Cyprus	n. s.	n. s.
Czech Republic	1 y.	5 y., for very serious felony offences: 10 y.

12 The maximum of four years is provided only for at least 16 year-olds and very serious crimes; the regular maximum in *Switzerland* is only one year. The sentencing practice in *Switzerland* in serious cases is primarily based on educational or therapeutic measures which can be executed in residential facilities or homes. The time spent there is deducted from the prison sentence.

Country	Youth detention/imprisonment	
	Minimum sentence	**Maximum sentence**
Denmark	30 d.	8 y.
England/Wales	4 m. (detention in a young offender institution)	24 m. (detention in a young offender institution) Life sentence, when sentenced by the Crown Court
Estonia	1 d.	10 y.
Finland	14 d.	12 y.
France	2 m.	The maximum sentence is decreased by one half
Georgia	n. s.	10 y. (14 a. 15 year old juveniles) 15 y. (≥ 16 years of age)
Germany	2 d. (detention centre) 6 m. (youth imprisonment)	4 w. (detention centre) 5 y. (y. i. for 14-17 year old juveniles) 10 y. (y. i. for very serious felonies of 14-17 year old juveniles and in general for 18-20 years old young adults)
Greece	6 m.	15 y.
Hungary	1 y. (reformatory school) 1 m. (youth imprisonment)	3 y. (reformatory school) 15 y. (youth imprisonment)
Ireland	No minimum fixed (detention in a children's detention school)	No maximum fixed, but no longer than a prison sentence for an adult would have been.[13]
Italy	3 m.	18 y.
Kosovo	6 m.	5 y., for very serious felony offences: 10 y.
Latvia	1 m. (detention centre) 3 m. (youth imprisonment)	6 m. (detention centre) 2 or 5 y. (y. i.) 10 y. (y. i., very serious cases)
Lithuania	5 d. (detention centre) 3 m. (youth imprisonment)	45 d. (detention centre) 10 y. (youth imprisonment) The maximum sentence is decreased by one half

13 See *Walsh* in this volume. The detention order is served either in former reformatory schools or in St. Patrick's Institution.

Country	Youth detention/imprisonment	
	Minimum sentence	**Maximum sentence**
Netherlands	1 d.	1 y. (y. i. for 12-15 year old juveniles) 2 y. (y. i. for 16 and 17 year old juveniles) Life imprisonment for 16 and 17 year old juveniles transferred to adult courts)
Northern Ireland	6 m.	2 y. (Juvenile Justice Centre for 10-16 year old juveniles) 4 y. (Detention in a Young Offenders Centre for 17-21 year old young adults)
Norway	14 d.	21 y.
Portugal	3 m.	3 y.
Romania	8 d.	5 y., in cases where life imprisonment is provided for adult offenders: 5-20 y.
Russia	1 m. (detention centre) 2 m.	6 m. (detention centre)[14] 6 y. (14 a. 15 year old juveniles) 10 y. (≥ 16 years of age)
Scotland	7 d. (≥ 16 years of age)	Life imprisonment (≥ 16 years of age)
Slovakia	2 y. 7 y. (very serious cases)	7 y. 15 y. (very serious cases)
Slovenia	6 m.	5 y. 10 y. (for very serious felonies)
Spain	1 d.	10 y.
Sweden	14 d.	4 y.
Switzerland	1 d.	4 y.
Turkey	1 d.	15 y. for 12-15; 24 y. for 15-18.
Ukraine	15 d. (detention centre) 6 m. (youth imprisonment)	45 d. (detention centre) 10 y. (youth imprisonment) 15 y. (y. i., very serious cases)

14 Detention centres for short-term detention have not been implemented in practice and the abolition of this sanction is being discussed, see *Shchedrin* in this volume.

4. International standards for the execution of juvenile imprisonment and similar sanctions

Until recently the United Nation's Rules for "Juveniles Deprived of Their Liberty" (the so-called Havana-Rules) of 1990 were the only international standards concerning the execution of custodial sanctions for juveniles (defined as "children" below the age of 18. The European Rules for Juvenile Offenders Subject to Sanctions or Measures of 2008 (Rec (2008) 11, the ERJOSSM) for the first time provide a European framework, which goes beyond the UN Rules insofar as the apply also for young adults and even those over the age of 21 if they are accommodated in the same institution as juveniles (as it is the rule in German juvenile prisons, see below). The ERJOSSM in their Basic Principles deal with a few aspects on the execution and regimes of custodial sanctions (see in detail *Dünkel/Grzywa/Pruin/Šelih* in this volume), for example that juveniles have to be "treated with respect for their human rights" (Rule N. 1), that the implementation of sanctions or measures shall not aggravate their afflictive character or pose an undue risk of physical or mental harm (Rule No. 8), or that institutions executing custodial sanctions shall dispose of sufficient resources and staffing in order to "ensure that interventions in the lives of juveniles are meaningful" (Rule No. 19).

The third part of the Recommendation (2008) 11 in detail deals with juveniles deprived of their liberty. A "general part" contains rules which are to be applied for all forms of deprivation of liberty, i. e. pre-trial and other forms of preliminary detention, the placement in psychiatric or welfare institutions as well as juvenile imprisonment or other forms of youth custody (regularly under the competence of ministries of justice). Aims and basic principles for deprivation of liberty are regulated in the following "overall approach":

"49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.

49.2. Deprivation of liberty of juveniles shall provide for the possibility of early release.[15]

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for

15 National legislation in Europe provides for different forms of early release, in some countries it is rather automatic (e. g. *England/Wales*, *Finland*), in other countries it is based on a risk assessment and a good prognosis (e. g. *Austria*, *Germany*). In many counties the possibilities for juvenile offenders are extended compared to adults. So in Finland and Germany juveniles can be released already after having served one third oft he sentence (compared to half or two thirds for adults), see in summary *Dünkel* 2010, § 57 notes 90 ff.; *Dünkel/van Zyl Smit/Padfield* 2010.

release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions.

50.3. Juveniles deprived of their liberty shall be encouraged to discuss matters relating to general conditions and regime activities in institutions and to communicate individually or, where applicable, collectively with authorities about these matters.

51. In order to guarantee the continuity of care, juveniles shall be assisted, from the beginning of and throughout any period of deprivation of liberty, by the agencies that may be responsible for them after release.

52.1. As juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well-being.

52.2. Particular care shall be taken of the needs of juveniles who have experienced physical, mental or sexual abuse."

Rule 49.1 wants to exclude the widespread practice that pre-trial detention is abused as a kind of short-sharp-shock sentence. The second part of the sentence solidifies the Basic Principle No. 8 and the corresponding Rule No. 102.2 of the EPR (for sentenced offenders) that "imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in" it.

Rule 49.2 stipulates provisions for an early release from any kind of deprivation of liberty. It has to be seen in relation to other rules which emphasize the principle of continuous care (Rules 15, 50.1 and 51) and an overall plan for the regime activities to be provided in the individual case. The probation and aftercare services shall be responsible already during the execution of the custodial part of a sentence as early as possible and in due time before a possible early release (see Rule 51). The individual planning of regime activities has to be oriented towards the time of the earliest possible release (see Rule 79.3). The commentary to Rule 49.2 cites empirical evidence that conditional release is a successful and promising strategy for reintegrating offenders compared to fully serving a sentence, particularly if the early relese is well prepared and combined with intensive care and supervision while being released.

Rule 50.1 enumerates the prevention of reoffending (rehabilitation) as the sole aim of custodial sanctions.[16] For this purpose a variety of rehabilitative measures and programmes shall be provided. This principle also applies to

16 Reference is made to Rule No. 12 of the UN-Rules for *Juveniles Deprived of their Liberty* of 1990, see *Höynck/Neubacher/Schüler-Springorum* 2001, p. 85.

juveniles in pre-trial detention and other custodial sanctions than juvenile imprisonment. The further paragraphs of Rule 50 deal with encouraging juveniles to participate. The participatory model will increase compliance and the success of rehabilitative efforts.

Juvenile prisons are often suffering from violent subcultures within the institution. Therefore with good reason Rules 52.1 and 52.2 challenge the responsible authorities to prevent aggressive act against the very vulnerable inmates, particularly the younger ones. Many juveniles in institutions have a history of domestic violence in their childhood and therefore special attention must be addressed to this phenomenon. The German Constitutional Court in his decision on juvenile imprisonment of 31 May 2006 emphasized the special vulnerability of young inmates and the duty of the state to protect them against victimization (see BVerfG NJW 2006, p. 2096; see also *Dünkel/van Zyl Smit* 2007).

Institutional structure and placement

The ERJOSSM emphasise the necessity of "a range of facilities to meet the individual needs of the juveniles held there and the specific purpose of their committal" (Rule 53.1). "Such institutions shall provide conditions with the least restrictive security and control arrangements necessary to protect juveniles from harming themselves, staff, others or the wider community" (Rule 53.2). The institutions shall have small living units (Rule 53.4) and be situated decentralized close to the future place of living of the juvenile in order to easy the contacts to his family and parents and to allow the participation at social, cultural and other activities in the community (Rule 53.5; see also Rule 55 concerning the placement of the juvenile).

Similar as No. 18.5 of the EPR Rule 63.2 states that "juveniles shall normally be accommodated during the night in individual bedrooms, except where it is preferable for them to share sleeping accommodation." In addition national law shall fix the minimum space for one inmate (see Rule 63.1). More concrete regulations were not possible as Estonian or Georgian law provides only 2.5, Russian law 3.5 sqm, whereas the "western" standard is 9-12 sqm (see *Dünkel/Pruin* 2009, p. 177 f.).

Regime activities

As to regime activities the following principles are of importance:

"76.1 All interventions shall be designed to promote the development of juveniles, who shall be actively encouraged to participate in them.

76.2. These interventions shall endeavour to meet the individual needs of juveniles in accordance with their age, gender, social and cultural background, stage of development and type of offence committed. They shall be consistent

with proven professional standards based on research findings and best practices in the field."

Rule 77 enumerates the various activities and programmes to be provided which also shall be part of the individual overall plan (see Rule 79.1).

"77. Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:

a. schooling,
b. vocational training,
c. work and occupational therapy,
d. citizenship training,
e. social skills and competence training,
f. aggression-management,
g. addiction therapy,
h. individual and group therapy,
i. physical education and sport,
j. tertiary or further education,
k. debt regulation,
l. programmes of restorative justice and making reparation for the offence,
m. creative leisure time activities and hobbies,
n. activities outside the institution in the community, day leave and other forms of leave and
o. preparation for release and aftercare.

78.1. Schooling and vocational training, and where appropriate treatment interventions, shall be given priority over work.

78.2. As far as possible arrangements shall be made for juveniles to attend local schools and training centres and other activities in the community."

An important rule concerning the daily life in institutions is No. 80 stipulating that "the regime shall allow all juveniles to spend as many hours a day outside their sleeping accommodation as are necessary for an adequate level of social interaction. Such a period shall be preferably at least eight hours a day." A challenge for the responsible authorities might be that "meaningful activities" shall also be provided on week-ends and holidays (i. e. days where subculture violence, but also suicide may happen more often than during the week).

Contacts with the outside world

The ERJOSSM specially emphasize as many contacts with the outside world as possible. Regular visits and a system of prison leaves shall maintain and develop

relationships with the family and other persons that are important for the future reintegration. They are an integral part of the preparation for release. If prison leaves are not possible – as is the case in pre-trial detention and sometimes for long-term prisoners – the institution shall provide additional long-term visits (see Rule 86.2). Such long-term visits are practised since long time in the middle and eastern European countries, whereas continental European countries focus to prison leaves instead. Both systems are needed in a modern approach of educational and rehabilitative institutions.

Good order

The chapter on good order also starts with some rules formulating the "General approach". These include the orientation at an educational system of maintaining good order including restorative measures (see also the general Rule 122.2 on conflict resolution). The system of "dynamic security … builds on positive relationships with juveniles in the institutions" (Rule 88.3; in the same direction see No. 51.2 EPR) and less on "static" architectural facilities like high walls and other arrangements against escape.

The system of disciplinary measures must be based on concrete definitions by law of what constitutes a disciplinary offence. The separation in a punishment cell is forbidden and any disciplinary segregation in the cell of the juvenile – according to a statement of the CPT referred to in the commentary – shall not last longer than three days (Rules 95.3 and 95.4). Isolation as a security measure (for inmates who attempt to commit suicide or to violate others) shall be restricted to a maximum of 24 hours (see Rule 91.4).

Another important issue is that „staff in institutions in which juveniles are deprived of their liberty shall not be allowed to carry or use weapons unless an operational emergency so requires" (Rule 92). In contrast to prisons for adults the use of fire arms to prevent escape in juvenile institutions and prisons is strictly forbidden.

Preparation for release

As mentioned above preparation for release is seen as a pillar stone of a successful reintegration into society. Therefore a detailed framework of regulations was established focussing on the principle of continuous care (see Basic Principle No. 15) and continued participation at educational and vocational programmes which the juvenile had started in the institution. The rules stipulate:

"100.1 All juveniles deprived of their liberty shall be assisted in making the transition to life in the community.

101.1 Steps shall be taken to ensure a gradual return of the juvenile to life in free society.

101.2 Such steps should include additional leave, and partial or conditional release combined with effective social support.

102.1 From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community, for example by:

a. assisting in returning to their family or finding a foster family and helping them develop other social relationships,
b. finding accommodation,
c. continuing their education and training,
d. finding employment,
e. referring them to appropriate social and health-care agencies and
f. providing monetary assistance.

102.2. Representatives of such services and agencies shall be given access to juveniles in institutions to assist them with preparation for release.

102.3. These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release."

Altogether it becomes clear that the ERJOSSM follow the tradition of a rehabilitative and educational regime in juvenile prisons and other institutions where juveniles are deprived of their liberty. The recommendation also furthers the rights of juveniles to complaint and of preserving legal safeguards against disproportional and infringing treatment. A differentiated system of rehabilitative activities preserving the balance with human rights of juvenile inmates is to be strongly appreciated. It takes into consideration the many dangers and possible violations of human rights of juveniles while being deprived of their liberty.

5. Legal aspects and conditions of the execution of juvenile imprisonment in national legislation

As to the legal base for the execution of youth prison sentences, one major result with respect to juvenile prisons is that only in a few cases special laws exist for the execution of sanctions of deprivation of liberty in reformatory schools or similar specialised institutions. They exist in *Hungary*, *Portugal*, *Scotland* and *Sweden*. In *Germany* the Federal Constitutional Court outlawed the then existing situation in 2006, when only a few legal provisions for youth prisoners were contained in the Juvenile Justice Act (JGG), and obliged the legislator to pass

primary legislation until the end of 2007.[17] Since 1 January 2008, all 16 German Federal States have disposed of detailed primary legislation. In most countries, special regulations for juvenile imprisonment are contained in chapters or sections of the general prison legislation.

The competent authority for the execution of youth imprisonment in general is the Ministry of Justice. However, some peculiarities could be observed. Thus, in *England/Wales*, the Youth Justice Board, a non-departmental public body sponsored by the Home Office, is responsible for organizing and supervising the detention in young offender institutions. In *Estonia* (as probably in some other countries, too) the Minister of Education and Research and the Minister of Social Affairs exercises supervision over the performance of duties in the areas of education, social welfare and health care in prisons. In *Germany* the responsibility for prison legislation was transferred from the national to the Federal States level. The Ministry of Justice of each state ("*Land*") remained the body which organizes and supervises the prison system.

In *Hungary* reformatory schools operate under the direct management and supervision of the Ministry of Social Affairs and Labour. As to youth imprisonment, the organization of penal institutions is headed and managed – by virtue of law – by the Minister of Justice and Law Enforcement who is responsible for the lawful operation of the organization of penal institutions.
In *Sweden* the National Board of Institutional Care is responsible for enforcing sanctions for juveniles sent to welfare institutions. The very few cases of prison sentences are under the competence of the Prison Service and Ministry of Justice.

So in general, the responsibility for the execution of youth imprisonment lies with the Ministry of Justice or the Ministry of Social Welfare or another ministry which is responsible for the organisation of youth prisons, reformatory schools etc. In some cases like *Austria*, the *Czech Republic* or *Germany* one has to differentiate between the juvenile judge, who is also responsible for the execution of youth prison sentences (*Vollstreckungsleiter*) and the Ministry of Justice which is responsible for the organisation of youth prisons. Some countries differentiate between (youth) prison sentences served in institutions or departments of the prison system, and reformatory schools which are run by the Ministry of Education and Research (*Estonia*) or the Ministry of Social Affairs (*Hungary*). In *Portugal*, the Institute for Social Rehabilitation (*Direcção-Geral de Reinserção Social*) – attached to the Ministry of Justice – is responsible.

In most countries (early) release is granted by a decision of a judge, either a special judge for the execution of penalties (*France*, *Italy*, *Spain, Sweden*) or a juvenile judge (e. g. *Austria*, *Belgium*, *Germany, Greece* and *Turkey*). Only in *Norway* and *Switzerland* the Correctional Services have the competence to

17 See *Bundesverfassungsgericht* (Federal Constitutional Court) Neue Juristische Wochenschrift 2006, 2093 ff.; for an analysis of this decision in the context of German constitutional law see *Dünkel/van Zyl Smit* 2007, p. 347 ff.

decide on parole/early release. In *Sweden* the Court decides also on the release from welfare institutions where most juveniles are placed. In *Slovenia* the body deciding on parole is a special Commission appointed by the Minster of Justice. It consists of three members of which one must be a Supreme Court judge, one a Supreme State Prosecutor and one a civil servant from the Ministry of Justice (from the Prison Administration Unit).

Youth prisons, reformatory schools and similar institutions are regularly organised by a public service (as is the case with pre-trial detention, see *Dünkel/Dorenburg/Grzywa* in this volume). Privately run institutions are only of considerable importance in *England/Wales* (7 out of 36 youth prisons) and the *Netherlands*. In *England*, there are profit organisations,[18] while in the *Netherlands* only non-profit organisations are involved. There are six state-run public and eight (non-profit) private institutions in the *Netherlands*. To a very minor extent, single private institutions also exist in *Scotland* (one institution out of 15) and in *Germany* (two small open facilities).[19] In individual cases in *Norway*[20] and *France*, the responsibility for certain aspects and fields of imprisonment can be transferred to private entities.

A matter of concern is that, in some countries, legal minimum standards for the accommodation and the minimum space per detainee appear to be entirely non-existent. This is a violation of No. 63.1 of the ERJOSSM as well as of No. 16.3 of the EPR 2006, which require that national law shall prescribe the minimum standards of accommodation, space etc.

In those European countries that do in fact provide standards, the prescribed minimum space varies considerably (see *Table 3* below). As has been pointed out already by *Dünkel/Dorenburg/Grzywa* in this volume, in comparison to pre-trial-detention, minimum standards regarding the size of cells etc. are more frequently in place concerning "regular imprisonment". In *Hungary* minimum standards are in place for imprisonment, yet not for pre-trial detention, as is also the case in *Cyprus*. *Estonia* provides more detailed and fixed rules. These minimum standards differ greatly between the individual countries. (*Denmark*: Juveniles are not to be allocated to cells together with persons above the age of 17, *Estonia*: precise regulations for the height and size of the cells). So in youth prisons and reformatory schools the minimum size per juvenile varies between 2.5 sqm in *Estonia*, 3 sqm in *Latvia*, 3.5 sqm in *Hungary* and *Russia*, 4 sqm in

18 According to the respondents to the questionnaire, there were two young offenders institutions run by private profit organisations in 2007 and all four secure training units were organized by the private profit oriented sector. The secure children's homes were all public institutions except for one, which was privately run for profit.

19 With 33 places out of about 7,000 places of the total youth prison system.

20 The very few cases of detained juveniles are dealt with by the public prison service; however, exceptionally the execution can take place in an institution partly managed by a private entity.

the *Czech Republic* and *Ukraine*, 5.5 sqm in *Finland*, 7 sqm in *Slovenia*, 9 sqm in *Italy* and 10.5 sqm in *France* (see *Table 3* below). The legal situation is quite unsatisfactory and needs improvement. In *Germany*, the standard is 10-12 sqm, although it is not prescribed by law. The German Federal Constitutional Court outlaws cells of less than 7 sqm as violating human dignity.

Table 3: Legal provisions for the minimum size of rooms (space per juvenile)

Austria	A decree of the Ministry of Justice specifies the minimum size of rooms and their capacity. The facilities depend on the concrete penitentiary.
Belgium	50 places, one room for one person, placing two people together is forbidden.
Bulgaria	n. a.
Croatia	n. a.
Cyprus	The size of the individual cells must be at least 7 sqm; a juvenile block of a closed prison is no larger than 18 cells.
Czech Republic	4 sqm per juvenile. A single room must have at least 6 sqm
Denmark	No, juveniles shall not share living quarters with inmates above the age of 17.
England/Wales	n. a.
Estonia	For reformatory schools: height of the studying rooms: at least 2.5 m, area for one person at least 1.7 sqm, area of the sleeping room for one person: 6 sqm; Juvenile prison: 2.5 sqm per person - same as for adults.
Finland	5.5 sqm per juvenile.
France	10.5 sqm per person; places per institution vary between 4 and 60. Most institutions have between 10 and 20 places.
Georgia	160 places in the only youth prison of Georgia, 3.5 sqm per juvenile.
Germany	The size and furnishing of rooms must be adequate, for the case law of the Federal Constitutional Court see also *Dünkel* in this volume (at least about 7 sqm).
Greece	6 sqm per prisoner must be provided in communal cells; 35 cubic meters in single cells. This rule applies only for prisons built after the enactment of this Law (see Law 2776/99, Correctional Code, Articles 21-22).

Hungary	Reformatory schools: 12 persons maximum in one group and one room (in special cases: 8 persons), 5 sqm of bedroom and study space per juvenile, at least 30 sqm of common living space per group. Youth prisons: at least six cubic meters of air space available per convict and in case of juveniles at least 3.5 sqm of moving space per person.
Ireland	Not prescribed by law.
Italy	9 sqm per person.
Kosovo	Not prescribed by law.
Latvia	3 sqm per person.
Lithuania	Rulebook of Correctional Institutions (approved by the written order of the Minister of Justice No. 461 dated 2 July 2003) provides for the maximum number of places in the institution. The written order of the Director General of the Prison Department in conformity with the sanitary norm HN 76: 1999 "Custodial and Pre-trial Detention Institutions: Equipment, Maintenance, Health Care" (approved by the written order of the Minister of Health Care No. 461 dated 22 October 1999) provides for the number of places in custodial and pre-trial detention institutions. According to the latter document, the minimum space per person in a cell of a remand prison is 5 sqm and 3 sqm in a correctional house.
Malta	36 places, every juvenile offender has his own cell which is constructed in line with the European Prison Rules, each cell has private sanitary facilities, as well as adequate lighting, windows allow natural light to enter and do not have prison bars.
Monaco	A youth prison does not exist.
Netherlands	10 sqm per room.
Northern Ireland	n. a.
Norway	Not prescribed by law.
Portugal	Maximum number of places in open institutions: 14; in semi-open institution: 12; in closed institution: 10.
Romania	n. a.
Russia	According to Article 99 of the Penal Code of the Russian Federation, the standard norm of living space per prisoner in juvenile colonies cannot be less than 3.5 sqm.

Scotland	Accommodation standards are the same as for adults, no specifics for prison design/cell size.
Slovakia	4 sqm per juvenile.
Slovenia	Accommodation standards are the same as for adults (at least 7 sqm; a single room must have at least 9 sqm)
Spain	General rule: individual cell for each offender; if there are no medical or security reasons: offenders can share rooms, if these have sufficient and adequate conditions to maintain intimacy and special place to keep belongings.
Sweden	Not prescribed by law.
Switzerland	12 sqm.
Turkey	Not prescribed by law.
Ukraine	Min. 4 sqm per juvenile. Number of places in educational colonies is not prescribed.

Note: n. a. = no answer/no data available.

The costs for a young prisoner per day vary extremely if one considers that in *Ukraine*, prison authorities had costs of about 1 €, in *Hungary* 6 €, *Estonia* 16 €, *Latvia* 22 € per day and young prisoner, whereas in *Germany*, the daily costs are around 87 €, 160-165 € in *Portugal* and *Norway* and almost 700 € or 900 € in *Sweden* or *Scotland* (see *Table 4* below). In *England/Wales*, the stay in a young offenders institution costs 206 € per day, 699 € in a secure training centre and even about 794 € in a secure children's home. In *Switzerland*, too, the costs vary according to the type of institution with daily costs ranging from about 133 to 400 €. Again it has to be noticed that these differences can be explained only to a smaller extent by differing income and living standards. Rather, to a larger extent they indicate the degree of importance that is attributed by prison and welfare policy to guarantee minimum standards for the care and treatment of juvenile prisoners.

Table 4: Daily net costs for juveniles held in youth prisons (2006/7)

Austria	About 120 € per day.
Belgium	n. a.
Bulgaria	n. a.
Croatia	n. a.
Cyprus	In 2005 £ 32.57 (Cyprus Pounds) = 56.86 €.

Czech Republic	n. a.
Denmark	n. a. (No separate calculations/statements are made on the expenditure for young offenders).
England/Wales	Young Offender Institutions: £138.36 per place and day = 206 €; Secure Children's Home: £ 533.70 per place and per day = 794 € Secure Training Centre: £ 469.86 per place and per day = 699 €.
Estonia	16 € (2005) Reformatory schools: 3 € per day. (2005)
Finland	125 € (2005) per juvenile.
France	n. a. (in Centres éducatifs fermés, closed welfare institutions with 10 places each, about 565 €)
Georgia	45 GEL (= 19 €)
Germany	86.64 € (average 2005).
Greece	n. a.
Hungary	Reformatory schools: n. a. Juvenile prisons: HUF 549,000/year = 2,237.47 € = 6.13 € per day
Ireland	250 € per day in St. Patricks and 740 € per day in a secure detention school
Italy	n. a.
Kosovo	n. a.
Latvia	In 2005 – 15.2 LVL (21.63 €) ("without investment money").
Lithuania	In 2008, the average daily net costs per juvenile were 153 LTL (= 44.30 €).
Malta	This data is not available but the average daily cost of an inmate at CCF is 25 LM = 58.37 €.
Monaco	n. a.
Netherlands	n. a.
Northern Ireland	n. a.
Norway	One place in a prison with a high security level is estimated to cost approximately 500,000 Norwegian kroner per year (= about 165 € per day).
Portugal	160.50 €

Russia	n. a.
Romania	n. a.
Scotland	Average £ 600 = 892 € per day for sentenced children.
Slovakia	1031 SKK per juvenile (= 30.62 €).
Slovenia	61 € per prisoner (2006) – no separate calculations are made on the expenditure for young offenders.
Spain	n. a.
Sweden	693.50 € (2005).
Switzerland	133-400 €.
Turkey	n. a.
Ukraine	205.8 UAH per month = 31 €. About 1 € per day.

Note: n. a. = no answer/no data available.

In general, guiding general principles of the regime are education and social rehabilitation. A wide range of principles are named by the *Cypriote* authorities: "Protecting the public, reintegration, retribution, restoration, education, normalization, preventing negative effects of deprivation of liberty, preserving basic human rights of the defendant." In most cases the priorities are not explicitly indicated, but it becomes clear that particularly the *Scandinavian* countries emphasize the principle of normalization besides the primary aims of education and re-integration/resocialization. Special educational efforts can be seen in *France*, where from 2007 onwards specific youth prisons (*Etablissements Pénitentiaires pour Mineurs*, EPM) have been established which are designed for a well-structured rehabilitative programme. The same can be said about the closed educational centres (*Centres educatifs fermés* (CEF) and *Centres Educatifs Renforcés*, CER), which dispose of an excellent staff-inmate ratio.

Germany has 28 youth prisons with about 7,000 places for 14-24 year old offenders (90% of them older than 18), which are designed according to the 16 laws of the Federal States to promote effective rehabilitation and to prevent recidivism.

In *Hungary* reformatory schools as well as youth prisons are to provide pedagogical guidance and to facilitate the re-integration of juveniles into society. There might not be big differences concerning the guiding principles, but the length of stay in reformatory schools is one to three years, in youth prisons or departments for juveniles it can be shorter or longer (see *Table 2* above), which influences the organizational structure.

Norway emphasises the aim of resocialization by providing as far as possible a gradual transition from imprisonment to complete freedom.

The *Spanish* and *French* authorities, besides the guiding principles named by most other respondents, emphasize the multi-disciplinary approach of educational interventions.

Ukraine refers to a complex system of educational measures which aims at: "1. Providing conditions of life of detained persons, consonant with human dignity and norms which are accepted in the society; 2. Support and development of a juvenile's self-esteem through minimization of the negative consequences of imprisonment and difference between life in prison and in liberty; 3. Support and strengthening of socially-useful connections with relatives and other positive relationships; 4. Providing improvement of educational level and receipt of professional skills, granting possibility to develop skills which will help them to successfully reintegrate into society after their discharge." It is remarkable in this context that *Ukrainian* authorities are aware of the negative effects of imprisonment under the conditions their prisons traditionally had to work.

The principle of allocation is, in most countries, placement as close as possible to home or to the place to which the juvenile will be released. In many countries, however, only a few institutions for juvenile offenders exist (in *Austria* only one) and therefore (particularly for girls)[21] this principle cannot always be followed. The new *French* EPM are located close to the most important industrial cities or agglomerated regions where the majority of the offenders will be residing.

One principle of allocation is to separate boys and girls. *Denmark* appears to be the only country in which this principle is not strictly followed. An interesting further aspect is the allocation of prisoners according to language in *Estonia*. Apparently, the Russian minority is not always placed in mixed units with the Estonian juveniles.

In *Norway* apart from the principle of allocating juveniles close to their homes, section 3 of the Execution of Sentences Act stipulates that particular importance shall be attached to a child's right of access to his or her parents during the execution of a sanction.

As to principles and minimum standards of accommodation (including legal minimum standards concerning the number of juveniles in one room), the different legal standards regarding the minimum space allocated to each prisoner has already been pointed out above (see *Table 3*). In addition, *Austrian* authorities reported that the only juvenile prison in *Gerasdorf* has 100 single rooms and 5 double rooms for juvenile inmates. In *Belgium* placing more than one juvenile in a room is forbidden. The only closed institution at *Grubbe* has 50 beds and each single room has between 12 and 15 sqm. In traditional *Eastern* European

21 In many countries, girls are accommodated together with adult female offenders (e. g. *Latvia*, *Lithuania*, see *Sakalauskas* 2006, p. 267 ff., 271), not always really separated from adults (see for an overview on women's imprisonment in Europe *Dünkel/ Kestermann/Zolondek* 2005; *Zolondek* 2007).

penitentiary institutions, juveniles are accommodated in larger dormitories with bunk beds. Sometimes about 20[22] or even more than 50 beds (e. g. *Russia*) are installed in these dormitories.[23] In contrast, in *Germany*, in all 16 new laws for the execution of youth prison sentences, single accommodation during the night is obligatory if the juvenile requires so. These strict regulations were promoted by the German Federal Constitutional Court[24] and supported in general after the murder of an inmate by three co-inmates in a youth prison at the end of 2006. The same practice also exists in *Denmark*, the *Netherlands*, *Norway*, *Portugal*, *Spain*, *Sweden* and *Switzerland*.

In *Hungary*, two to three juveniles are accommodated in one room of reformatory schools and apparently more in juvenile prisons, where 3.5 sqm have to be provided per inmate. In *Italy* 9 sqm is the norm (see *Table 3* above), usually in single or double accommodation.

Regulations or requirements to prevent overcrowding cannot be identified in all countries. *Austria* has no such regulations, the *German* laws for the execution of youth prison sentences strictly forbid overcrowding, but the prison administration within the limits of constitutional rights (with regard to the violation of human dignity)[25] can define the capacity of cells and thus deal with increased prisoners numbers. However, overcrowding is currently not a problem as the numbers of juvenile detainees are decreasing. *Denmark* has developed strategies to tackle the problem by emphasizing the "possibilities of early release under sect. 40a of the Danish Criminal Code. Juvenile offenders with sentences of three months imprisonment or less may apply for permission to serve the sentence under electronic surveillance. Every year an occupancy forecast is prepared – and in that light a capacity action plan." *Finland* (similarly *Denmark* at certain times) has created the possibility to delay the enforcement of prison sentences of up to 6 months for a period of maximum 8 months. *Greece* has introduced the most extensive legal regulations for "good-time" (i. e. the remission of sentences for working or schooling or vocational training) and thus early release of working prisoners that can contribute to solving the problem of overcrowding. But the general impression is that overcrowding in youth custody in most countries is not really an issue (with the exception of *England/Wales*).

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22 In *Ukraine* juvenile units dispose of dormitories of up to 20 beds.

23 Therefore, it may be seen as a progress that in *Latvia* the dormitories for male juveniles are restricted to a maximum of 10 beds, and that girls are accommodated in rooms with 2-3 beds. In *Lithuania*, in pre-trial detention the maximum number of juveniles in one room is four, sentenced prisoners are accommodated in larger dormitories.

24 See *Bundesverfassungsgericht* Neue Juristische Wochenschrift 2006, p. 2093 ff. and *Dünkel/van Zyl Smit* 2007.

25 The German Constitutional Court has outlawed accommodating two prisoners in an 8 sqm room without separate sanitary facilities; see Bundesverfassungsgericht Europäische Grundrechtszeitschrift 2002, p. 196 and 200.

As to prison clothing, three models exist: in some countries juveniles regularly wear prison clothes (*Estonia*, *Latvia* [boys], *Russia*, *Slovakia*, and *Ukraine*[26]), in other countries they usually or always wear their own clothes (*Austria*, *Belgium*, *Cyprus*, *Czech Republic*, *Georgia*, *Greece*, *Italy*, *Latvia* [girls], *Lithuania*, *Netherlands*, *Norway*, *Portugal*, *Slovenia*, *Spain*, *Sweden*, *Switzerland*, and *Turkey*) and thirdly it depends on the institution: In *Finland*, in open prisons juveniles always wear their own clothes, in closed prisons they *may* wear own clothes. In *Germany*, the respective laws give the prison governor the discretionary power to decide what would be appropriate in his institution. In *Hungarian* Reformatory Schools juveniles have the choice, whereas in juvenile prisons they wear uniforms. If the juvenile does not dispose of own clothes *Portugal* provides clothes of the institution that are as much as possible similar to the juveniles' own clothes.

In general, it can be summarized that in the large majority of countries, and in almost all Western European countries, juvenile detainees are allowed to wear their own clothes (sometimes with the condition that they clean their clothes themselves and keep them in good order).

Differentiation, classification and separation (boys and girls, specific offender and age groups) are important issues of prison organization. The criterion most often named is gender. Apart from *Denmark*,[27] *France* (EPM), the *Netherlands* (only in treatment centres) and *Norway* (some prisons, all half-way houses) all countries provide separate units for boys and girls. *England/ Wales* however does not separate according to sex in the secure children's homes for 12 to 14 year old juveniles.

The second criterion is age, as in some countries the very young age groups are separated from older ones (e. g. *Cyprus*, *Estonia*). In some *German* youth prisons a differentiation is made for prisoners with special treatment requirements (similarly in *Hungary* and *Sweden*) or long-term prisoners.

Only exceptionally is the seriousness of the offence or similar criteria (recidivists/first time offenders, violent/non-violent offenders) a reason for separated allocation (typically in Eastern European countries, for example the *Czech Republic*, *Georgia*, *Lithuania*, *Turkey* and the *Ukraine*).[28]

Youth prisons are organized around a variety of different educational and treatment programmes. Typically the participation in schooling and vocational

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26 However, in the *Ukraine* (according to art. 115 (6) Law on the Execution of Punishments) juvenile prisoners may be allowed to buy additional private clothes.

27 In *Denmark* this is the result of small numbers: in 2008 only 20 15-17 years old juveniles were detained, 7 sentenced and 13 in pre-trial detention. Females form a small minority of 5%. Any separate accommodation would result in isolation (and by that possibly inhuman treatment) of one or a few detainees.

28 In the *Ukraine* such differentiation is only theoretically provided. In practice the few juvenile inmates are all accommodated in one institution.

training is obligatory. The priority of schooling and vocational training over work – as recommended by Rule 78.1 of the ERJOSSM – is often laid down in statute (e. g. *Germany*). Based on an individual plan, juveniles generally have the right to education and rehabilitative programmes and meaningful leisure time activities as described by Rule 77 ff. of the ERJOSSM. To what extent these programmes are offered and effectively carried out, could not be answered by the questionnaire.

In all countries juvenile inmates are obliged to participate in schooling and vocational training, often also to work (e. g. *Austria*, *Denmark*, *Estonia*, *Georgia, Germany*, *Greece*, *Hungary*, *Lithuania*, the *Netherlands*, *Slovakia*, *Spain*, *Turkey* and the *Ukraine*). On the other hand, participation in further-going psychological or other treatment programmes is not obligatory (e. g. *Germany*, *Sweden*). However, in *Latvia* juveniles may have to undergo compulsory drug/alcohol addiction treatment. Also the *Czech* authorities emphasize mandatory individual treatment programmes.

An obligation to work is established in most countries, but not in *Belgium*, *Greece*, *Latvia*, *Slovenia*, *Sweden* and the *Ukraine*.

Usually there is no obligatory drug/alcohol or other treatment and most countries explicitly emphasize the voluntariness of participating in such programmes. Nevertheless, in the *Czech Republic*, *Latvia*, *Slovakia* and the *Ukraine* the authorities responded that there is also compulsory treatment for drug or alcohol addicts in juvenile prisons.

Contact of juveniles with the outside world (visits, family long-term visits, leaves, etc.) are of major importance (see Rules 83 ff. of the ERJOSSM). Therefore, all countries provide regular visits (to a larger extent than in prisons for adults), regular periods of leave, either escorted or alone, etc. Rule 86.1 of the ERJOSSM claims that this should be "part of the normal regime", and not a privilege for good behaviour. The responses to the questionnaire of the Council of Europe did not allow us to judge how far the Rules of the EJRJOSSM are applied effectively. It is, however, clear that most countries are sensitized and ready to extend their practice. (Unsupervised) long-term visits (allowed for juveniles who have no possibilities for prison leaves, see Rule 86.2 ERJOSSM) are mentioned only by *Estonia*, *Lithuania*, *Russia*, *Spain* and the *Ukraine*.

The involvement of parents in the execution of and preparation for release is not yet very well developed. The answer from *Denmark* probably represents the common state of affairs on this issue: "Parents are not involved in the enforcement of the sentence, but will be contacted in connection with leave and release on parole, if the juvenile delinquent is to live with his parents." So, in general, one can state that "there is no such obligation, but parents of young offenders are often somehow involved in the execution and preparation for release if they and the prisoner wish for it" (*Finland*). Any further involvement, also in specific activities during the enforcement of sentence in the institution, is apparently the exception.

The involvement of victims (mediation, reparation schemes, restorative elements) is not yet an important issue in European juvenile prison systems. Most countries gave a negative response to this question. However, in *Belgium* a recent directive emphasizes the idea of restorative justice also in prisons or juvenile institutions. In *Switzerland* too, some experiences of victim involvement exist, as does the idea of promoting offender apologies or even meetings between the victim and the offender if both agree and if this might be helpful in having the offender assume responsibility on the one hand, and to help the victim cope with the trauma of the experience on the other.

In *France* and *Germany*, mediation and reparation are attributed an important role in the system of disciplinary sanctions. Most *German* juvenile penitentiary laws of 2008 give priority to such informal conflict resolution.

Procedures for ending placements in juvenile prison regularly begin in the institution with an assessment and prognostic evaluation of the juvenile's progress. However, it is always a (juvenile or another) court that – with a few exceptions (see e. g. *Ireland*) – decides on release. As an exception, in *Denmark* the Directorate of the Prison and Probation Service, and in *Norway* the Correctional Services, make the decision upon recommendation of the prison.

As to the measures for preparation for release and the involvement of services outside (for example, probation service, private welfare agencies etc.), in *Denmark*, *England/Wales*, *Finland*, *France*, *Germany* (reinforced by the juvenile penitentiary laws of 2008), *Hungary*, *Italy* (with indicated problems in implementing the legal provisions for co-operation), *Latvia*, *Lithuania*, *Norway*, *Portugal*, *Scotland*, *Slovakia*, *Spain*, *Sweden*, *Switzerland* and the *Ukraine* the probation and aftercare services are systematically involved, sometimes by claiming for an involvement of aftercare services within a certain period (e. g. six months) before an (early) release. The co-operation is often laid down in the sentence plan of the institution which clarifies the responsibilities of the probation or aftercare service in each individual case. The great number of countries that confirmed the involvement of probation and aftercare services or the local social services makes clear that the importance of continuous care is understood and is being addressed. The ERJOSSM contain rules recommending measures to be taken in this respect (see Rules 15 and 51).

The majority of countries dispose of procedures for transferring juveniles to welfare or specific treatment institutions (drug treatment etc.), if e. g. the juvenile has serious drug or alcohol problems as is the case for example in *Finland*. Only *Latvia* and *Portugal* deny such a possibility.

Measures that are used to maintain good order (security measures, disciplinary measures, use of force etc.) are common everywhere. However, the systems vary considerably and in most countries, solitary confinement for

disciplinary or security reasons is possible for longer periods[29] than would be acceptable according to the ERJOSSM (see Rules 91.4 and 95.4 and the respective commentary). It is interesting to see that only few countries do not provide for any disciplinary solitary confinement (*Norway*, *Portugal* and *Sweden*). In *Sweden*, solitary confinement (so-called solitary care) for security reasons is widely banished. It will be continuously monitored and will always be reviewed, latest within seven days. A young person may also be kept separate from both inmates and staff (maximum 24 hours) if he/she behaves violently or is under the influence of intoxicants to the extent that he/she cannot be otherwise controlled.

Juveniles deprived of their liberty usually have access to legal aid. Visits of defence counsels are unsupervised. Nevertheless, problems are sometimes that the juveniles most often do not have the necessary financial means and free legal aid is not always available. The effectiveness of different national regulations cannot be judged by the often rather general answers to our questionnaire.

Complaints procedures (to the responsible head of the institution, and appeals to an independent court or body) are provided everywhere, but again their effectiveness and acceptance by the juveniles as well as by the institutions cannot be judged from the information given in the replies to the questionnaire of the Council of Europe. The same applies to the national reports of the present research project.

There are also regular inspections by the governments and independent bodies as required by Rules 20 and 125 ff. of the ERJOSSM. Some countries mentioned the European Committee for the Prevention of Torture (CPT), others referred to ombudsmen or special supervisory councils (e. g. the *Netherlands*, *Norway*, *Sweden*). Access to an ombudsman is provided in many countries such as in *Finland*, *Georgia*, *Greece*, *Hungary*, *Italy*, *Latvia*, *Lithuania*, the *Netherlands*, *Norway*, *Portugal* and *Sweden*.

The management, training and selection of staff is difficult to evaluate as most countries note that there are some methods of quality management in force, but the content and intensiveness of training programmes for staff were regularly not communicated. So in *Cyprus*, staff members receive one month of training, in *England/Wales* it is not much longer, whereas in *Germany* a two year intensive training period is provided.

The question on how the legal framework responds to certain categories of offenders was not answered by all countries. Only a few countries reported on specific offence related arrangements of youth imprisonment. Such specific treatment and sometimes separation concerned serious (recidivist) offenders (e. g. *Georgia*: to be separated from first-time offenders). Most countries

29 Punishment in a disciplinary cell: *Denmark*: maximum four weeks; *Estonia*: 45 days; *Germany* and *Finland*: two weeks; *Georgia*: up to six months for at least 16 year old juveniles; *Greece*, *Latvia* and *Lithuania*: up to 10 days.

emphasized that the category of offenders – apart from separating males and females, convicted and remand juveniles, and sometimes differentiating according to age groups as mentioned above – does not play an important role. The legal framework in nearly all countries stresses the importance of organising treatment and education with regard to the educational needs in every individual case (see e. g. *Hungary*, *Italy*, *Norway* or *Portugal*). This is the basis for sentencing plans as regularly provided in all countries, and required by Rules 79.1-4 of the ERJOSSM. In this context, the offence itself, or the way in which it is committed, may also be considered, e. g. as a member of a juvenile gang (*Spain*).

The final question in the Council of Europe's questionnaire to this chapter was: "Please describe what characteristics of juvenile prisons differ from prisons for adults (what are the peculiarities of juvenile compared to adult prisons, e. g. the stronger orientation towards education, vocational training, prison regimes etc.?). As expected, most countries answered similarly by emphasizing the more educational approach of youth prisons. The answer from the *Czech Republic* may be typical: "In contrast to adult prisons more efforts to prevent negative effects of imprisonment, more intensive individual treatment. Treatment focused on development of intellectual, emotional and social maturity. Intensive training of cognitive skills." *Denmark* noted that there are no juvenile prisons, but that the prison in *Ringe* is dedicated to young offenders aged 15 to 23. The same institution also provides a special unit for offenders in need of special social and educational care, usually those who are under 18 (only four places).

Whereas youth prisons or similar institutions regularly dispose of different and more extensive treatment and educational options compared to prisons for adults,[30] some also provide better living conditions and nutrition rations (e. g. *Georgia*, *Lithuania*) and less restrictive regimes[31] (particularly in *Eastern European* countries which still have different prison types, where prisoners are allocated depending on the type of crime committed and not their individual characteristics). Juvenile prisons usually do not have different levels of regime and where they do, they commonly do not have the most severe regime category (e. g. *Latvia*, *Lithuania*, *Russia*). This may mean that juvenile institutions also provide more minimum space per inmate (e. g. *Slovakia*, *Ukraine*) but also more visits and other contacts with the outside world (e. g. *Lithuania*, *Ukraine*). Particular emphasis is given to contacts with parents, which does not play a specific role in prisons for adults. Sometimes it was stated that in juvenile prisons, in contrast to adult prisons, no overcrowding would hamper the

30 In *Ireland* this is only the case for detention schools for up to 18 year old juveniles, whereas the conditions in St. Patricks for at least 16-year-olds are not much different from prisons for adults, see *Walsh* in this volume.

31 One particular issue in this context is that solitary confinement as a disciplinary measure is allowed only for shorter periods compared to prisons for adults, e. g. in *Germany* two weeks instead of four.

educational efforts (*Hungary*). The educational concepts often also include positive incentives that encourage juveniles to participate in schooling and vocational training and other activities which promote their re-integration (see e. g. *Germany*, *Greece*, *Lithuania* and *Portugal*).[32]

Considerable differences can also be seen with regard to staffing. In some juvenile institutions, such as in *Belgium* or *Portugal*, there are no traditional wardens. In the more prison-like settings (most other countries) there is a higher staff/inmates ratio in general, and a higher proportion of staff belonging to the educational and therapeutic professions (teachers, social workers, psychologists).[33]

5. Examples of welfare oriented systems

In *Poland* and *Portugal*, which follow the welfare approach, the age of criminal majority is less than 18 years of age. In *Poland* perpetrators who commit an offence while aged 17 are treated as fully criminally responsible under the adult criminal law, only with the possibility to mitigate the imposed penalty due to their age. Exceptionally, even 15 or 16 year old perpetrators of the most serious crimes may be dealt with by the criminal court and sentenced to penalties provided for adults, including the penalty of imprisonment. Life imprisonment is excluded for perpetrators under 18 years of age at the time of the offence, and the maximum prison term that 15 and 16 year old offenders can receive may not exceed 2/3 of the maximum penalty of imprisonment provided for adults. There are no special prisons for juvenile convicts, but those prisoners who are younger than 21 serve their sentences in a special prison for young adults. These may be separate penitentiary institutions or separate units within an institution in which different types of prisons are located.

In *Portugal* the age of criminal majority is even lower than in *Poland* and since 1911 it has been maintained at 16 years. As noted by *Rodrigues* and *Duarte-Fonseca* in their report on the juvenile justice system in *Portugal* in this volume, this is an aspect of the Portuguese system to which the Convention of the Rights of the Child has not yet been applied and which has caused much criticism particularly in the legal doctrine. What is most striking in *Portugal* is the fact, that there are no special provisions concerning penalties imposed on 16 and 17 year old offenders, although in relation to young people between 18 and 21 years it is possible – at least theoretically – to apply corrective measures as an alternative to a prison sentence. The lack of provisions enabling the application of alternatives to prison sentences for 16 and 17 year olds has been

32 For a comparison of *Greek* and *Dutch* institutions see *Pitsela/Sagel-Grande* 2004; The *Lithuanian* authorities noted: "More types of incentives are projected for good behaviour, diligent work and learning of juvenile inmates."

33 In *Turkey* a peculiarity of staffing is the absence of armed gendarmerie, which is typical for adult prisons.

perceived as a highly nonsensical trait of the Portuguese criminal justice system. Furthermore, for the past few years, offenders aged 16 and 17 have not been separated from adults in prisons. It should be noted, however, that 2007 amendments to the Criminal Code allow young people under the age of 21 who have been sentenced to prison terms not exceeding two years to serve their terms at their place of residence while being electronically monitored.

In *Belgium* the age of criminal majority has been 18 years since 1965. At the same time, *Belgium* has one of the highest age limits of *doli incapax* in Europe and the world. As a rule, perpetrators who commit offences while being under 18 years of age are not considered to be responsible for their acts; rather the offences they committed are considered to be symptoms of underlying problems which should be addressed by imposing measures of protection, education and surveillance. However, since 1965 the age of criminal responsibility has been flexible due to the possibility to transfer young offenders between the ages of 16 and 18 to adult criminal courts, where they can receive criminal penalties provided for adults, with the exception of life imprisonment. The maximum penalty for transferred juveniles is 30 years of imprisonment. Juveniles sentenced to imprisonment usually serve their terms in prisons for adults; however, separate federal youth prisons (federal detention centres) should be created in the future. The idea of separate federal youth prisons would allow juveniles to avoid the negative consequences and effects that staying in prisons for adults can have. On the other hand, there is a fear that opening special federal detention centres may alter the exceptional character of transfers in *Belgium*, by encouraging juvenile judges to make broader use of such a possibility.

In juvenile cases dealt with in *Belgium* by the juvenile judge, protective and educational measures shall be applied. Non-custodial measures are the first choice, and custodial orders – placing a juvenile in an open or closed community institution – are considered as a last resort. It should be noted that community institutions house not only juvenile delinquents placed in them on the basis of a sentence issued by the juvenile judge, but also juveniles who are detained during the pre-trial stage. Additionally, pursuant to Flemish legislation, minors who grow up in a "problematic educational situation" can also be placed in the same community institutions. As a result, the Flemish community institutions can have a mixed population of delinquent and non-delinquent minors. In practice this situation especially occurs in the community institution for girls. The minimum age for placing a juvenile delinquent in an open community institution is 12 years. Juveniles placed in closed institutions as a rule have to be 14 years old (exceptionally – 12 years) and other criteria concerning the seriousness of the committed offence or re-offending are also important. Closed community institutions provide a more structured daily regime with fewer possibilities to leave them, and are more focussed on the protection of the public than the open ones.

Juveniles are placed in community institutions for a period determined by the juvenile judge in the judgement. As a rule, all measures imposed by the juvenile judge end at the age of majority (18 years). At the implementation stage, however, the juvenile judge may revise the imposed measures and prolong them until the juvenile turns 20 if he/she requests this or in case of "continuously bad or dangerous behaviour". Under certain circumstances (for example very serious offences committed by children older than 12 years), the juvenile judge can even prolong the duration of stay in a community institution until the delinquent has turned 23. Although custodial measures should be based on the principle of subsidiarity, the number of juveniles placed in community institutions in *Belgium* is relatively high. Generally, the juvenile justice system there seems to be affected by an over-reliance on the educational potential of custodial institutions. The legal status of juveniles deprived of liberty in such institutions is unclear, because at the federal level there is no legislation concerning the legal position and basic rights of juveniles placed in them.

The juvenile justice system in *Portugal* has evolved during last years from a pure welfare (protective) approach towards a welfare approach marked by educational goals and the principle of "educational responsibility". The key objective of the 2001 reform was to distinguish between situations justifying educational intervention addressed to minors who have committed criminal offences, and situations requiring protective interventions against minors in danger, as well as to differentiate these two kinds of responses. As a result, juvenile offenders between 12 and 16 years are no longer seen solely as a product of negative circumstances that are beyond their control; on the contrary, they are seen as social actors who bear responsibility for their acts, although this responsibility is not equivalent to that of an adult. Juveniles aged between 12 and 16 years who have committed acts forbidden by the criminal law can only receive educational measures, provided that the offence committed expresses the existence of a need to correct the minor's personality.

Educational measures are applied for the period specified by the order and according to the principle of proportionality. Most educational measures are of non-residential character and the only custodial educational measure consists of placing a juvenile in an educational centre subordinated to the Ministry of Justice. Educational centres may be of an open, semi-open and closed nature. The latter regime is designed for older juveniles (at least 14 years old) who have committed serious offences. The maximum period for which a juvenile may be placed in an educational centre is two years or – exceptionally – three years in a closed centre. The actual length of stay in an educational centre can be modified (reduced or prolonged) through decisions made during the implementation stage. Also, the regime of implementation can be changed depending on the juvenile's educational progress. Educational centres are only intended to be used for juvenile offenders – other categories of minors cannot be placed in them. However, these centres cater not only for juveniles who are serving court ordered

educational measures, but also for young persons suspected of having committed an offence during the pre-trial stage. According to legal provisions, juveniles detained before the trial shall be accommodated separately from juveniles complying with the measure imposed by the court, however, this is not the case in practice.

As in other countries that follow the welfare approach, in *Poland* juveniles are deprived of their liberty primarily in institutions other than prisons. Among educational measures provided for both juveniles who committed an act forbidden by the criminal law while being under 17 years of age and pre-delinquent juveniles under 18 years of age (the latter juveniles according to the Polish Juvenile Act of 1982 are defined as persons displaying signs of "demoralisation") there are also measures of a residential character, such as the placement of a juvenile in a youth educational centre or socio-therapeutic centre. These centres can be public (run by the local government) or private (run by churches, charity associations or foundations) and they are subject to the Ministry of Education. What should be stressed is the fact that *Poland* is probably one of the last countries in Europe in which educational and correctional measures are imposed on juveniles for an indefinite period. As a rule, the stay of juveniles in such centres terminates on their 18th birthday unless the Family Court revokes the educational measure earlier. In some cases, however, it is possible for a juvenile to prolong his/her stay on a voluntary basis until the end of the school year.

Since 2004, juvenile offenders and juveniles displaying signs of "demoralization" cannot be placed – at least theoretically – in residential welfare institutions for children in need of care (children homes or family group-homes). In practice, however, it happens that, due to a lack of places in both youth socio-therapeutic centres and youth educational centres, family judges institute care proceedings instead, which still enables them to place a child with problem behaviour in a welfare institution. The other type of residential placement under the Juvenile Act (placement in a correctional house) is only possible in cases of juveniles who offend when aged between 13 and 17 years. Correctional houses are administered by the Ministry of Justice. However, they are neither subordinated to the Prison Administration nor constitute any part of the prison system. The stay of a juvenile in such a house terminates on his/her 21st birthday unless he/she is granted conditional release earlier. There are separate correctional houses for juveniles with mental disorders and personality disorders, for alcohol and drug addicted juveniles, and for those that are HIV-positive. Juveniles without such problems are directed to common houses of correction, which are divided into open, semi-open and closed establishments. Juveniles who had previously escaped from open or semi-open correctional houses should be placed in closed establishments. A further type of correctional house is designed for juveniles with a high degree of "demoralization" demanding restrictive educational supervision.

6. Examples of justice oriented systems

In comparison to *Belgium*, the jurisdiction of *England/Wales* belongs to those in Europe with the lowest age of criminal responsibility. Since the principle of *doli incapax* was abolished by the 1998 Crime and Disorder Act, the minimum age of criminal responsibility in *England/Wales* has been 10 years. Juvenile offenders between 10 and 18 are usually dealt with by Youth Courts. The custodial sanction that may be imposed on juvenile offenders between the ages of 12 and 18 is the "detention and training order" for a period of between four and twenty-four months. The first half of the detention and training order is served in closed custody, while the second half is served under supervision in the community. It should be added, however, that *England/Wales* have also introduced a quasi-criminal intervention known as the anti-social behaviour order, and that breaching the requirements connected with such an order constitutes a criminal offence that can result in a custodial sanction being imposed on children even though they are 10 or 11 years of age and are too young to qualify for a 'regular' custodial sanction. For those juvenile offenders who are, exceptionally, dealt with by the Crown Court, additional custodial options are also available. Juveniles convicted of murder are sentenced to a mandatory indeterminate sentence of long-term detention. For other serious offences the penalty of determinate detention may also be imposed on juveniles; the upper limit of the penalty is the same period of determinate custody as would apply in the case of an adult offender.

Juvenile offenders younger than 18 years of age who receive a detention and training order or who are sentenced to determinate or indeterminate detention may be housed in a variety of facilities that are known as the "Juvenile Secure Estate". There are three main types of juvenile secure facilities in *England/ Wales*: young offender institutions (YOIs), secure training centres (STCs) and secure children's homes (SCHs). Young offender institutions are owned and managed by the Prison Service. They house young offenders between the ages of 10 and 20 inclusive. They may be run as institutions separated from prisons or separate units located within prisons; the latter are designed mainly for girls. Generally, young offender institutions account for approximately 85 per cent of the places available within the Juvenile Secure Estate. The next type of institution is the secure training centre. These are operated by the private sector under contract from the Ministry of Justice. Currently, there are only four secure training centres, with each one accommodating around 60 juvenile offenders. Juvenile offenders are also deprived of their liberty in secure units of children's homes, which are owned and operated by local authority social service departments. The latter institutions house not only young offenders but also children in need of care and protection who require secure accommodation in their own best interests. Although there are 17 such establishments, they only provide around 6.5 per cent of the places available within the secure estate,

because they are relatively small (with an average of 14 beds each). In contrast to other institutions within the Juvenile Secure Estate, secure children's homes provide places for both boys and girls within the same unit.

It is the task of the Youth Justice Board to allocate individual young offenders to a particular institution as well as to commission and purchase places in the juvenile secure estate. The quality of residential care that is available in youth custodial facilities depends on many factors, such as the size of the facility, staffing levels, the overall level of investment, the turnover of staff and inmates and length of sentence to be served. The highest staffing levels (approaching one-to-one) are in secure children's homes that combine penal and therapeutic functions and which are designed for vulnerable young people as well as those with special needs. However, the small size of secure units makes it difficult to provide a full range of educational and training opportunities. Secure training centres are intended to provide juvenile offenders with education and rehabilitation in a secure environment and, because of their larger size, a broad range of services can be provided by them. From the point of view of both material conditions as well as education and training opportunities, the most problematic institutions are young offender institutions. They tend to be much larger, older and noisier, and many suffer from high levels of overcrowding. Furthermore, they are staffed by prison officers who often lack any specialist training, and thus tend to focus on control and security. The staffing level of around 1 : 10 is significantly lower than in other types of institutions within the Juvenile Secure Estate.

As a rule, the Youth Justice Board is only responsible for offenders under the age of 18 at the time of sentence. Such offenders, however, often remain within the Juvenile Secure Estate even after they have turned 18 when a move to an adult prison would negatively influence their rehabilitation. One of the most important problems connected with the Juvenile Secure Estate in *England/Wales* stems from the fact that there are too few specialist places available catering for the needs of the youngest and most vulnerable offenders. As a matter of fact, juvenile offenders are frequently assigned to whatever accommodation is available on the day and even the most vulnerable youngsters are often sent to the least suitable type of accommodation in young offender institutions.

In *Scandinavian* countries, there is no separate juvenile justice system in the sense of separate legislation on juvenile offenders, separate Juvenile Courts and a special catalogue of sanctions that can be imposed on juveniles. Children below the age of 15 who commit an act forbidden by the criminal law are not criminally responsible. Offences committed by children under 15 years of age at the time of the offence may result in the issuance of measures provided by the child welfare system, including involuntary institutional placement. Interventions applied by social services within the child welfare system are based on the principle of the best interest of the child. According to this principle, children who have committed an offence while aged under 15 are only placed in an

institution in order to meet their needs, and not to punish or condemn their behaviour. Perpetrators of offences committed when aged between 15 and 17 years are criminally responsible and subject to penalties foreseen by the Criminal Code. However, in each Scandinavian country there is a wide range of possibilities that enable such cases to be diverted from formal court proceedings, and particularly from unconditional prison sentences. As a result of these diversionary strategies, in practice the number of minors below the age of 18 in prisons is extremely low.

In *Denmark*, the maximum penalty provided for a juvenile who was below 18 years of age at the time of the offence is eight years of imprisonment. Unconditional prison sentences are only very exceptionally imposed on offenders younger than 18. Even being sentenced to unconditional imprisonment does not mean that the juvenile will serve the penalty in a prison. Under provisions of the Danish Code on the Execution of Penalties, a person sentenced to imprisonment may be placed in a hospital, in foster care, in a suitable home or a social institution for the whole period or part of the imposed penalty if there are special reasons for not placing him/her in a prison. These provisions are often used in cases of juveniles sentenced to imprisonment, who are instead placed in institutions run by social service authorities or in pensions. The latter institutions are administered by the prison authorities but operate much more like hostels than like prisons. They do not provide their residents with different meaningful activities, because residents attend schools or work outside the institution instead. The conditions for placing a person in an alternative institution, including pensions, include: the consent of the sentenced person (in cases of juveniles below 18 years of age – the consent of their parents) as well as the prediction that he/she will not commit further crimes and that the public's trust in justice will not suffer from it. Generally, as regards juveniles sentenced to unconditional imprisonment, the Danish prison administration has significant discretionary power to place them either in a prison, in one of the pensions, or to find another suitable institution in cooperation with the agencies of the child welfare system.

There are no youth prisons in *Denmark* in the sense of prisons used solely for juveniles under 18 years of age. In *Ringe* state prison designed for young men up to 23 years and for women of all ages there are, however, a few places for 15 to 17 year old prisoners. Juveniles who serve their penalties just in these places could be moved from the prison to a social institution and also back to the prison on the basis of administrative decisions. It should be noted, however, that unconditional imprisonment is not the only penalty in *Denmark* that results in a juvenile being deprived of his/her liberty. The so-called youth sanction was introduced in 2001 by an amendment to the Danish Criminal Code as an alternative penalty to a prison sentence of between one and 12 months (exceptionally up to 18 months). The youth sanction may be imposed for the period of two years and is structured into three phases. The first phase has to be executed in secure accommodation and is followed by a period in an open residential

institution. Both institutional phases, including the stay in secure accommodation, are implemented by social service authorities. The last phase of the youth sanction lasts at least six months, and consists of supervision in freedom. Additionally, juveniles may also be placed in institutions administered by social service authorities as a result of a conditional sentence with the condition to stay in such an institution or to obey decisions of the child welfare system agencies.

Due to very flexible provisions governing criminal sanctions and their implementation in juvenile cases in *Denmark*, non-delinquent children in need of care and protection can be accommodated in the same institutions administered by social service authorities as juvenile offenders sentenced to the youth sanction or unconditional or conditional imprisonment. Different categories of minors staying in the same institution may be subjected to different regimes, for example in terms of possibilities for spending time in company with others, receiving visitors, attending a school outside the institution and so on. Even in some pensions administered by the prison service, sentenced offenders may stay together with non-offenders (for example with students looking for cheap accommodation). What is worth emphasizing is the fact that, according to recent evaluations, the placement of offenders and non-offenders in the same pensions seems to contribute to reducing re-offending.

In *Sweden* the penalty of imprisonment may only be imposed on 15 to 17 year old perpetrators in very special and exceptional cases; life imprisonment is excluded for offenders aged between 15 and 21. In 1999, a new form of deprivation of liberty was introduced – the sentence to youth imprisonment (in other words: secure institutional treatment for young offenders). The new sanction means that young people aged 15 to 17 who have committed serious crimes can be sentenced – instead of prison – to placement in a special state home for young people for a period of between 14 days and four years. Juveniles sentenced to youth imprisonment stay in the same state youth homes as children in need of care and protection due to their own damaging behaviour (e. g. drugs) or damaging behaviour from the family against them. According to recent statistical data, in 2008 there were 31 state youth homes in *Sweden*. The average number of residents amounted to 620, of which 57 were juveniles serving the penalty of youth imprisonment, 535 were children in need of care and protection placed involuntarily, and 28 were there voluntarily. The initial phase of youth imprisonment is served in a special secure unit. After this phase, juveniles with shorter sentences who are not in need of special treatment may be placed in units which best suit their needs and which are as close as possible to their place of residence. Decisions concerning the choice of a particular youth home in which the sentence is to be served are determined in the development of an individualised treatment plan, which is drafted in collaboration with the local social services authorities who are legally responsible for the juvenile.

The introduction of youth imprisonment was based on the assumption that young offenders serving prison sentences have similar problems and treatment

needs to those young people placed in state youth homes under care orders. Additionally, the new penalty aimed at meeting the requirements and obligations stemming from international conventions according to which children (persons under the age of 18) are to be detained separately from adults. Since *Sweden* had abolished separate juvenile prisons in 1980, the few youngsters who were sentenced to prison terms were held in special units of prisons for adults. In practice, however, the introduction of youth imprisonment has contributed to an increase in the number of juveniles deprived of their liberty. Before the reforms of 1999, the average annual number of 15 to 17 year old prisoners had fluctuated between 4 and 11 persons, with an average duration of stay of about 5 ½ months. In 2008 the daily average number of young offenders serving (juvenile) prison sentences was 65, with an average sentence length of 8.5 months. As noted by *Haverkamp* (in this volume), the reforms of 1999 have apparently resulted in an intensification of sentencing practice.

In *Finland* all offenders under the age of 15 are also only dealt with by the child welfare authorities, while young offenders aged 15 to 17 are dealt with by both the child welfare system and the system of criminal justice. All interventions within the child welfare system, including interventions in the event of offences, are supportive and based on the fact that the child is endangering his or her future. Among those supportive measures there are also measures of a residential nature, which come into question for example when the community-based measures are insufficient and the minor seriously endangers his/her health or development, for instance by using intoxicants, by committing more than petty criminal acts or by other comparable behaviour. In most cases the placement of a child in an institution within the child-welfare system is voluntary. However, involuntary placement in closed-like institutions is also possible. Such institutions are usually small residential units with typically 10 to 20 places. In addition to the involuntary residential placement of children within the child welfare system, in *Finland* juvenile delinquents can also be deprived of their liberty as a result of measures taken by the health-care authorities, especially the use of psychiatric treatment. Children under 18 years of age can be ordered to undergo treatment against their will if they are deemed to be suffering from a severe mental disorder which, if untreated, would become considerably worse or seriously endanger their health or safety or the health or safety of others, provided that other mental health services are unavailable or inappropriate.

As for the criminal justice system, offenders aged 15 to 17 are subject to the Young Offenders Act, and in comparison with adult offenders they benefit from a mitigated scale of punishment. Young persons under the age of 18 cannot be sentenced to life imprisonment. Furthermore, an offender who was under 18 at the time of the offence cannot be sentenced to unconditional imprisonment unless there are weighty reasons for doing so. Other than in *Denmark* and *Sweden*, in *Finland* no special youth sanction that entails the deprivation of a person's liberty

is provided for juvenile offenders (the new juvenile penalty that has been applicable in the whole country since 2005, called juvenile punishment order, is a four to twelve month community sanction; thus, it is a non-custodial penalty). Despite of this, the number of prisoners under the age of 18 is extremely low and has recently varied around five to seven. At the same time, it is estimated that around 150 minors aged 15 to 17 are placed outside their home in child welfare institutions, partly due to their delinquent behaviour. Taking into account the small number of prisoners under the age of 18, it is not surprising that there are no separate juvenile prisons in *Finland*. However, the law requires that young offenders (up to 21 years of age) should be separated from adults, and that during the enforcement of the sentence special attention must be paid to their specific needs. In practice, young prisoners are placed in separate wards of prisons that offer programme-work suited to younger age groups.

7. Current developments in juvenile imprisonment practice: educational and treatment programmes and their outcomes

Throughout the world, the planning and organisation of youth custody facilities is developed according to the priorities of education, improvement, reintegration etc. (see *Section 4* above). On the basis of evidence based requirements, they attempt to apply the principle of increasing contact with the outside world as detainees approach the end of their sentences, and educational and vocational training is a priority in both Western and Eastern Europe, as indeed it is in Japan and North America. In countries such as the *Netherlands*, *Denmark*, *Norway* and *Sweden*, where prison sentences for juveniles tend to be relatively short, the provision of training for detainees has largely been taken out of the detention facilities, and instead local communities are more heavily involved in the task of reintegrating offenders. Since juvenile imprisonment also rarely lasts longer than two years in other *Western European* countries (see, for example, *Germany*), the continuous care and transfers to aftercare services – and in this context a multi-disciplinary approach – are becoming more and more important. This development is in line with the ERJOSSM, which explicitly calls for the possibility to continue training and treatment outside the institution after release (see Basic Principle No. 15 and Rules No. 78.5 and 100.1 ff.).

With regard to size and organisation, almost none of the countries considered have youth custody facilities with a capacity of more than 200 detainees. In the majority of nations, including not only the *Scandinavian* countries and the *Netherlands*, but also *England*, *France*, *Canada* and the *USA*, the average

capacity is less than 100-150 places.[34] International comparison reveals no facilities – except in *England/Wales* – comparable to the, albeit untypical, German detention centres with 500-700 places.[35] As a rule, facilities are sub-divided and the juveniles live together in residential units. In most *Eastern European* countries, however, there are no residential detention units of the kind found in *Western Europe*. Most young detainees in these countries are housed in larger, sometimes 30 or 40-bed dormitories. Prisons in *Russia* and various *Eastern European* countries still function according to categorisation of detainees, with a privilege-based system on the one hand and a disciplinarian system on the other. On the other hand, much progress has been made in some countries of the former eastern part of Europe (particularly when they only have small welfare oriented institutions).

Some juvenile prison facilities are organised like "prison schools" or educational centres (*Turkey)*, while others (certain camps in the *USA*, *Canada* and *Australia*, for example, as well as the former colonies in *Russia* and prison farms in *Greece*) serve specific labour or agricultural purposes (however, always integrating school and vocational training).

It would seem that youth custody facilities everywhere are better staffed than adult prisons, and that *Germany* and *Austria* along with the *Scandinavian* countries, *Switzerland* and the *Netherlands* score highest in this respect (see *Dünkel* 1990, p. 551).

It is almost impossible to quantitatively compare the numbers of juveniles deprived of their liberty. Statistics are often misleading and cover different age groups, mostly excluding juveniles in pure welfare institutions (even if they are accommodated in closed settings). None of the countries that responded to the questionnaire of the Council of Europe could provide statistical data on the number of juveniles held in psychiatric institutions. Almost no country reported reliable data on juvenile imprisonment rates (see *Dünkel/Pruin* 2009).

The data provided by King's College London (*Roy Walmsley*), in similarity to the SPACE data of the Council of Europe, refer to juveniles (under 18) in custodial settings of the prison system. However, juvenile imprisonment – as pointed out in *Table 1* – sometimes covers predominantly the age groups of young adults aged older than 18 years (in *Germany*: 90% of all juvenile prisoners). *Cavadino* and *Dignan* (2006, p. 301) tried to compute comparable juvenile prison population rates, but the results show that this is very difficult and not always complete.

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34 See already *Dünkel* 1990, p. 550 and the results from the Council of Europe's questionnaire presented under Section 4; see also *Dünkel/Pruin* 2009.

35 Institutions of this size are the exception in *Germany*, too, see *Dünkel/Geng* 2007, p. 144. Most detention facilities have up to 250 places, although 12 out of 28 juvenile prisons were of a larger scale, the biggest one in Hameln with about 660 places, the second biggest in Berlin with about 500 places.

The problems can be illustrated by the example of *Germany*. In 2005, about 700 juveniles under 18 were in juvenile prisons (counting for 23 per 100,000 of the age group). About the same number were detained in remand custody (not counted by *Cavadino/Dignan* 2006, p. 301). A further 300 juveniles were in psychiatric hospitals (estimated on the basis of admissions and average length of stay) and 250 were in closed welfare homes. Furthermore, one has to consider those juveniles in detention centres (*Jugendarrest*, i. e. short term detention at week-ends or for up to four weeks).[36] The total number of about 2,300 juveniles deprived of their liberty differs considerably from the number of sentenced offenders in juvenile prisons.

Similarly, up to 300 juveniles in closed residential care (30 units of up to 10 juveniles) have to be added to offenders accommodated in the *French* system of juvenile prisons (*Établissements pour Mineurs*) with a capacity of 420 places (see *Bornhöfer* 2010, p. 118 f.).

Therefore, we do not refer to juvenile prison populations in the present study as it would be highly misleading and incomplete. But certainly it will be one of the major tasks for the Council of Europe and others to try to deliver comparable statistical data in this area.

Although we have described certain significant common trends in the development and organisation of juvenile imprisonment (which are not necessarily paralleled in the area of adult prison provisions), it is important to bear in mind that the term education, in this field as elsewhere, is open to changing and varied interpretations. It is hardly meaningful, for example, to compare military-style training in a Japanese or Chinese prison (where the detainees have their heads shaved) with the concept of detainees participating responsibly in Western European-style residential detention units.

In the USA, on the other hand, the emerging trend is towards a rigorous form of "education" modelled on basic military service. This is the clear impression given, for example, by the so-called boot camps, in which young people spend three to six months undergoing tough educational and disciplinary programmes.[37] In some cases, young people have a strong preference for these military-style camps because the tough three-month training can substitute a custodial sentence of up to two years. The programmes in question are designed for young offenders (and first-time offenders often have preference) aged 16 to 25. They differ according to the relative priority that they attach to strict military order and hard work, on the one hand, and minimal efforts of rehabilitation on the other. Male detainees have their hair cut when they are placed in custody,

36 The average daily population of 14 to 21 year old offenders in juvenile detention centres was 655 in 2004. Of them, between 200 and 300 were probably under 18, see statistics of the Federal Ministry of Justice, Berlin, personal communication.

37 See *Morash/Rucker* 1990; *MacKenzie* 1990; *MacKenzie et al.* 1995; for a summary see *Gescher* 1998.

they wear a uniform and they are divided into military-type units. They are required to answer "Yes Sir" and "No Sir" to staff and may speak only when spoken to.

Numerous studies show that the initially reported success of these special preventive measures is not confirmed by critical analysis.[38] A comparative study in eight Federal States of rates of reoffending among boot camp "graduates" and "normal" ex-detainees yielded no significant differences.[39] Negative aspects of the boot camp treatment have also been documented. Various types of aggression by staff – including corporal punishment – have been recorded, along with a desensitising effect on detainees.[40] The dominant models of aggressive masculinity found in the boot camps are also, in many cases, a cause of delinquent behaviour. So in sum, there are null effect sizes with repressive forms like boot camps in the USA, and no reduced recidivism rates (see *Andrews/Bonta/Wormith* 2006).

In Europe, it is clear that this approach to juvenile imprisonment has not been seriously envisaged. Likewise, and rightly so, so-called "shock incarceration" strategies, using short custodial sentences under the toughest possible conditions for the specific purpose of deterrence, have been rejected in Europe.[41] This is also a consequence of the strict humanitarian approach as now manifested in the ERJOSSM. 'Scare straight' and similar programmes violate human dignity and would therefore be outlawed on constitutional grounds in countries such as *Germany*. This also includes programmes such as the so-called Glen Mills Schools which have not found acceptance in Europe because of their authoritarian approach to education.

Nonetheless, certain positive elements do stand out: a clearly structured timetable offering motivation and stimulus, for example, and straightforward definition of the rules and expectations of the custodial establishment, with consequences for their observance. It is also clear that more is needed than critical discussion of rules and standards and research on tolerance. As in other fields, it is not possible, because of the different cultural traditions involved, to lift US concepts "off the peg". They should at least be critically questioned.

Anti-aggression courses (see *Wolters* 1990), in which perpetrators of violence are confronted in a group context, are controversial on the grounds of their directive educational approach. *J. Walter* (1998, p. 231), for example, queries

38 See for a summary *Gescher* 1998, p. 179 ff., 207 ff., 266 ff.

39 See *MacKenzie et al.* 1995; for a summary see *Sherman et al.* 1998; *Lipton* 1998; *Gescher* 1998.

40 See *Morash*/*Rucker* 1990, p. 204 ff.

41 The prevalent view in English-language commentary on the subject is that this type of dissuasive special prevention is unlikely to succeed, see *Sherman et al.* 1998; *Lipton* 1998; *Goldblatt/Lewis* 1998; *Andrews/Bonta/Wormith* 2006.

whether it is possible to break down the well-recognized "spiral of violence" phenomenon via a treatment programme that is remarkable for the brutality and domineering tone of its language, while making such clear claims for itself as an anti-violence strategy. In terms of reducing rates of reoffending, it is not in any case evident that this type of treatment scores higher than traditional forms of therapy and support already used in youth custody (see *Ohlemacher et al.* 2001).

Cognitive behavioural programmes, such as "Reasoning and Rehabilitation" (see *Ross/Fabiano/Ewles* 1988), the so-called "Think first" (see *Ross/Fabiano* 1985) or "Enhanced Thinking Skills"-programmes (ETS) and other cognitive behavioural programmes, which were often developed in *North America* (particularly in *Canada*) seem to be more promising. There is also far-east meditation and martial arts like Budo, Karate-Do, Taekwondo, which are practised in some juvenile prisons and which can be seen as "promising" although a thorough evaluation is still lacking (see *Wolters* 1993; 1997). Other favourable programmes can be school education and vocational training if implemented in a "social therapeutic" setting (see *Germany*; *Dünkel/Drenkhahn* 2001; *Drenkhahn* 2007).[42] In *Germany*, another promising programme is the so-called "Just community"-programme in the juvenile prison of *Adelsheim*, a programme that enhances democratic and participatory rules of communication (see *Dünkel/ Walter* 2005).

8. Concluding remarks

International comparison of youth imprisonment provisions reveals a high level of diversity, which mainly reflects the differences in national penal systems for juveniles. In *Germany*, almost 90% of the population in youth custody are young adults aged between 18 and 25, whereas in other countries most young persons in institutions for young offenders deprived of their liberty are juveniles aged under 18. There are, however, a number of converging trends: it is, for example, generally accepted that juvenile imprisonment and other forms of deprivation of liberty should remain the exception or "last resort", and should be for as short as possible, as required by international standards such as the ERJOSSM of 2008. The use of "secure" homes, favoured particularly in *England* and more recently advocated again in *France* and *Germany*, needs to be challenged, however, on educational grounds, notwithstanding the fact the *French* experience demonstrates that purely educational settings can also be developed under such conditions. The best strategy has proved to be that of "more staff and fewer walls" – in other words, promoting intensive inter-personal relations as part of a comprehensive reintegration-oriented approach. Such an approach of dynamic

42 For a summary see the different meta-analyses of *Izzo/Ross* 1990; *Lipsey* 1992; *Andrews et al.* 1990; *Goldblatt* 1998; *Lipton* 1998; *Vennard/Hedderman* 1998; *Sherman et al*. 1998; 2006; *Andrews/Bonta /Wormith* 2006; *MacKenzie* 2006.

security is also emphasised by the European Prison Rules (see Rules 49 ff, 51, see also *Council of Europe* 2006, p. 72) and the ERJOSSM.[43] Developments in many countries have proved that there is scope for innovation in juvenile prison systems.

Overall, national and international experience offers plenty of pointers towards effective ways of organising juvenile imprisonment, but appropriate legislation and a guarantee of quality are prerequisites. At the same time, the question of respect for the human rights of juveniles in juvenile imprisonment and other forms of deprivation of liberty (including remand in custody or placement in psychiatric institutions) urgently needs to be addressed. Although the present national reports and the results from the questionnaire sent out by the Council of Europe presented in this paper have created an important improvement of attaining knowledge about legal provisions on juvenile imprisonment, we still lack information both about the application of these legal provisions and about the actual living conditions of young detainees.

To summarize the situation in juvenile prisons or similar institutions, one can clearly see the efforts made to diminish the negative effects of imprisonment and to promote a pro-social climate in order to re-integrate juvenile offenders into society (see for example *Allen* 2009). The need for continuous "through-care" is being recognized more and more, and several models of integrating the probation and aftercare services have been developed (e. g. *England/Wales*, *France*, *Germany*, *Scandinavian* countries). Also, the transfer to more open settings in the transitional part from closed institutions to release and aftercare is regularly promoted. Thus it becomes clear that the ERJOSSM express a European consensus on "good practices" which have been developed in many countries and institutions for juveniles deprived of their liberty.

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43 Rule No. 88.3 reads as follows: "Staff shall develop a dynamic approach to safety and security which builds on positive relationships with juvenile in the institutions."

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Juvenile justice in Europe – Legal aspects, policy trends and perspectives in the light of human rights standards

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1. Contemporary trends in juvenile criminal policy

All across Europe, juvenile criminal policies are emerging that are based on the notions of the subsidiarity and proportionality of state interventions against juvenile offenders. The common and principal aim of juvenile justice is to act in the best interests of the juvenile and to provide education, support and integration into society. These notions are articulated in the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 or in the UN Convention on the Rights of the Child of 1989 as well as on the European level in the Recommendations of the Council of Europe (2003) 20 and (2008) 11 (see below *Sections 4* and *5*). More specifically, these developments also involve the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of interventions in the field of sentencing, on the other hand.

However, recently we have also witnessed developments that adapt a contrary approach in several European countries. These developments imply an intensification of juvenile justice interventions by raising the maximum sentences for juvenile detention and by introducing other forms of secured accommodation. The juvenile justice reforms in the *Netherlands* in 1995 and in some respects in *France* in 1996, 2002 and 2007 should be mentioned in this

context, as should the reforms in *England* in 1994 and 1998.[1] In other countries such as Germany a juvenile crime policy oriented to welfare and a moderate justice approach is maintained. Priority is given to diversion and "education instead of punishment" (see *Dünkel* 2006). Many countries have implemented elements of restorative justice (reparation, mediation, family conferences, see in detail *Table 2* and below *3*).[2]

The causes for the observed more repressive or "neo-liberal" approach in some countries are manifold. It is likely that the new "punitive" trend with penal law approaches of retribution and deterrence coming from the USA was not without considerable impact in some European countries, particularly in *England/Wales*. The "new punitiveness"[3] does not halt before the doors of juvenile justice. However, juvenile justice is less vulnerable against neo-liberal tendencies, as the international human rights standards (see below *Sections 4* and *5*) prevent a total shift in juvenile justice policy. More repressive penal law orientations have gained importance in some countries that face particular problems with young migrants and/or members of ethnic minorities, and problems with integrating young persons into the labour market, particularly with the growing number young persons living in segregated and deteriorated city areas. They often have no real perspectives to escape "underclass" life, phenomena which "undermine society's stability and social cohesion and create mechanisms of social exclusion" (see *Junger-Tas* 2006, p. 522 ff., 524).

One recent issue within the debate on reforming the laws on juvenile welfare and justice is the notion of making the parents of young offenders criminally responsible.[4] This tendency is ambivalent. There is empirical evidence that parental training combined with child support at an early stage has positive preventive effects (*Lösel et al.* 2007). However such interventions should be an offer of the welfare agencies (as it is the case in Germany and the Scandinavian countries) and not be enforced by penal sanctions (*Junger-Tas/Dünkel* 2009, p. 225 f.).

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1 For a summary, see *Dünkel* 2003; *Kilchling* 2002; *Cavadino/Dignan* 2002: 284 ff.; 2006: 215 ff.; *Junger-Tas/Decker* 2006; *Bailleau/Cartuyvels* 2007; *Junger-Tas/Dünkel* 2009.

2 See for example *Belgium* and *Northern Ireland*; for a summary *Doak/O'Mahony* in this volume.

3 *Pratt et al.* 2005; *Ciappi* 2007; see also *Garland* 2001; 2001a; *Roberts/Hough* 2002; *Tonry* 2004.

4 See for example the so-called parenting order in *England* and *Wales* or similar measures in *Belgium*, *Bulgaria*, *France*, *Greece*, *Ireland* or *Scotland*, for a summary see *Pruin* in this volume.

1.1 Responsibilisation and mediation

In England, the concept of responsibilitisation has become a pivotal category of juvenile justice.[5] What is positive in this sense is that the promotion of responsibility is connected to the expansion of victim-offender-reconciliation (*Täter-Opfer-Ausgleich*), mediation and reparation. It is, however, more problematic in the light of the abolition of *doli incapax* for 10-14 year olds which poses a considerable reduction of the age of criminal responsibility. The tendencies in English juvenile justice can be deemed as being symptomatic for neo-liberal orientations under the key-terms responsibility*,* restitution *(*reparation*),* restorative justice as well as (occasionally openly publicised) retribution*.* The so-called "4 R's" have replaced the "4 D's" of the debates of the 1960s and 1970s (diversion, decriminalization, deinstitutionalization, due process, see *Dünkel* 2003). The retributive character can be exemplified by the requirement for the design of community interventions to be "tough" and "credible". For example, the "community treatment" of the 1960s was replaced by "community punishment" in the 1980s and 1990s. *Cavadino* and *Dignan* comprise these currents to the so-called "neo-correctionalist model".[6]

In the case of the continental European countries, there is nonetheless no evidence of a regression to the classical perceptions of the 18th and 19th century. There is an overall adherence to the prior principle of education or special prevention, even though justice elements have also been reinforced. Therefore, the area of conflict – if not paradox – between education and punishment remains evident. The reform laws that were passed in *Germany* in 1990, in the *Netherlands* in 1995, in *Spain* in 2000 and 2006, in *Portugal* in 2001, in *France* and *Northern Ireland* in 2002, as well as in *Lithuania* in 2000 (see *Dünkel/-Sakalauskas* 2001), the *Czech Republic* in 2003 (see *Válková* 2006) or in *Serbia* in 2006 (see *Škulić* in this volume) are suitable examples. The reforms in *Belgium* (2007) and *Northern Ireland* (2002) are of particular interest, which strengthened restorative elements in juvenile justice including so-called family conferencing.[7]

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5 See *Graham* 1998; critically: *Cavadino/Dignan* 2006, p. 68 ff. with regards to the "managerial" and the "getting tough"-approach; more in detail *Cavadino/Dignan* 2007.

6 See *Cavadino/Dignan* 2006, p. 210 ff.; see also *Bailleau/Cartuyvels* 2007 and *Section 2* below.

7 See *Christiaens/Dumortier/Nuytiens* in this volume; *O'Mahony/Campbell* 2006; *Doak/ O'Mahony* in this volume.

1.2 Reform strategies

With this background in mind, upon more specific observation one can identify certain successful reform strategies in a number of western European countries. In *Austria, Germany* and the *Netherlands,* the community sanctions and restorative justice elements that were introduced by the reforms in 1988, 1990 and 1995 respectively were systematically and extensively piloted. Nationwide implementation of the reform programmes was dependent on a prior empirical verification of the projects' practicability and acceptance. The process of testing and generating acceptance – especially among judges and the prosecution service – takes time. Continuous supplementary and further training is required, which is difficult to warrant in times of social change, as is the case in *Central* and *Eastern Europe*. Yet a "reform of juvenile justice through practice" (for *Germany* see *Bundesministerium der Justiz* 1989) appears preferable to a reform „from above", which often omits to provide the respective infrastructure.

1.3 Middle and Eastern Europe

The situation in the countries of Middle and Eastern Europe has differed before the major political changes at the end of the 1980s. One group were the Soviet republics, *Bulgaria*, *Romania* and to some degree the German Democratic Republic (East-Germany) and former Czecho-Slovakia. These countries had developed a more punitively oriented juvenile justice policy and practice. On the other hand there were *Hungary*, *Poland* and the former Yugoslavia with a rather moderate juvenile justice policy and many educational elements. The developments since the early 1990s are characterised by a clear increase in the levels of officially recorded juvenile crime since the late 1980s up to the early 1990s. The need for juvenile justice reform, a widely accepted notion in all of these countries, stems from the right to replace old (often Soviet or Soviet-influenced) law with (western) European standards as they are stipulated in the principles of the Council of Europe and the United Nations. This process has, however, in part produced different trends in criminal policy.

Since the early 1990s, there have been dynamic developments in the reform movement both in law and in practice, which is exemplified not only in numerous projects but also in the appointment of commissions for legal reform and in some cases the adoption of reform laws (see f. ex. *Estonia*, *Lithuania*, *Serbia*, *Slovenia* and the *Czech Republic*, see *Dünkel* 2003, p. 69 ff.).

One the one hand, the development of an independent juvenile justice system is a prominent feature (see for example the *Baltic States*, *Croatia*, the *Czech Republic*, *Romania, Russia, Serbia*, *Slovakia* and *Turkey*) and in connection with this the development of procedural safeguards and entitlements that also take the special educational needs of young offenders into account.

However, for example in the *Baltic States*, up to now there are no independent youth courts. In *Russia* a first model of a juvenile court is running in *Rostow*/Don and a few other cities (see *Shchedrin* in this volume), and such a project has also been established in *Romania* in *Brasov* (see *Păroşanu* in this volume). But in general, the required infrastructure for the introduction of modern, social-pedagogical concepts in the field of juvenile justice and welfare is widely lacking.

In order to deter recidivists and young violent offenders in particular, the expansion of sentences not only involves new community sanctions and possibilities of diversion, but also tough custodial sentences are propagated. Accordingly, the still largely nonexisting infrastructure and lacking acceptance of community sanctions still result in the frequent application of prison sentences. However, developments in *Russia*, for example, show that a return to past sanctioning patterns (with a prison-sentence proportion of roughly 50%) has not occurred, and that especially forms of probation are now quantitatively more common and frequent than sentences of imprisonment. What is becoming clear in all Central- and Eastern European countries is the fact that the principle of imprisonment as a last resort (*ultima ratio*) is being taken more seriously by reducing the application of custodial sanctions. However it has to be noticed that juvenile imprisonment or similar sanctions in the ex-Yugoslavian republics and to a lesser extent also in Hungary and Poland have already been the exception during the period before the political changes at the beginning of the 1990s.

Regarding community sanctions, the difficulties of establishing the respective necessary infrastructure are clear. Thus, initially the greatest problem in this respect was the lack of methodologically qualified social workers or social pedagogs, even more so since the respective training courses have – to the largest part – not yet been fully introduced and developed (see *Dünkel/Pruin/-Grzywa* in this volume). Again one has to differentiate as there are exceptions: *Poland* has a long tradition in social work and also in the former *Yugoslavia* since the introduction of "strict supervision" as a special sanction in 1960 social workers have been trained.

The adoption of the concept of conditional criminal responsibility – as expressed in *German* (§ 3 JGG) and *Italian* law and since recently in *Estonia* (2002), the *Czech Republic* (2003) or *Slovakia* (for 14 year-olds) – is another interesting development (see *Pruin* in this volume).

In general, reform tendencies in the countries of Central and Eastern Europe have been and are often influenced by Austrian and German juvenile law as well as by international minimum standards, recommendations and regulations.

1.4 Restorative justice

One development that appears to be common to Middle, Eastern and Western European countries is the emergence of elements of restorative justice. Victim-

offender-reconciliation, mediation, or sanctions that require reparation or apology to the victim have played a particular role in all legislative reforms of the last 15 years. Some pilot mediation projects have been established already in the 1990s in Middle and Eastern European countries such as *Slovenia* (since 1997) or the *Czech Republic*. These elements are predominantly linked to informal disposals (diversion). In some countries, for example in *England/Wales* (reparation, restitution order) or *Germany* (so-called *Wiedergutmachungsauflage*, Victim-Offender-Reconciliation as an educational directive, see §§ 10, 15 JGG) juvenile law provides them as independent sanctions of the youth court. The "family group conferences" – originally introduced and applied in New Zealand – are now being piloted and reflected by the law reform of 2007 in *Belgium* (see above). These conferences are a form of mediation which activate and take into account the social family networks of both the offender and the victim. Also recently, the juvenile justice reform in *Northern Ireland* (Juvenile Justice, Northern Ireland Act of 2002), too, has effected the introduction of youth conferences, which have been running in pilots since 2003. Additionally, the reparation order that was introduced in *England*/*Wales* in 1998 was incorporated into the act (see *O'Mahony/Campbell* 2006 and *Doak/O'Mahony* in this volume).

Whether these restorative elements are to be seen as either influental on sentencing practice or merely as the "fig-leaf" of a more repressive juvenile justice system can only be determined if one takes into account the different backgrounds and traditions in each country. Victim-offender-reconciliation has attained a formidable quantitative degree of significance in the sanctioning practices of both the *Austrian* and the *German* youth courts.[8] If one also takes community service into account as a – in the broader sense - restorative sanction, the proportion of all juvenile and young adult offenders who are dealt with by such – ideally educational – constructive alternatives increases to more than one third (see also *Heinz* 2008; *Dünkel* 2006).

In *Italy* the new juvenile penal trial moved from a pure rehabilitative and punitive perspective to a new conception of the penal procedure. Restorative justice measures have gained much more attention and victim-offender mediation can be applied at different stages of the procedure: during the preliminary investigations and the preliminary hearing when considering "the extinction of a sentence because of the irrelevance of the offence" or in combination with the suspension of the procedure with supervision of the probation service (*Sospensione del processo e messa alla prova*) (see Art. 27. 28 DPR N.448/88.).

8 Roughly 8% of all sanctions imposed on juveniles, see *Dünkel/Scheel/Schäpler* 2003 for the Federal State of Mecklenburg Western-Pomerania; for *Austria* see *Jesionek* 2001; *Bruckmüller* 2006.

2. Reform developments in relation to juvenile justice models

If one compares the juvenile justice systems from a perspective of classifying according to typologies, the "classical" orientations of both the justice and the welfare model can still be differentiated (see *Kaiser* 1985; *Dünkel* 1997; 2003; *Doob/Tonry* 2004, p. 1 ff.; see for a summary *Pruin* in this volume). However, one only rarely encounters these "ideal types" of welfare or justice models in their pure form. Rather, there are several examples for mixed systems, for instance within *German* and other continental European juvenile justice legislation.

There is a clear tendency in juvenile justice policy in the last decades to strengthening the justice model and establishing or extending procedural safeguards including a stricter awareness of the principle of proportionality (in the sense of avoiding disproportionate harsh sentencing or educational efforts) on the one hand, but also other orientations have been launched. The minimum intervention model, the implementation of restorative justice elements have to be mentioned, but also the above described "neo-liberal" tendencies of harshening sentences and "getting tough" on juvenile crime. The following *Section 3* and *Table 2* (at the end of the chapter) try to identify the main directions of reform in the individual countries and to assign them to the major orientations.

2.1 Minimum intervention

Tendencies towards minimum intervention i. e. the prioritization of informal procedures (diversion), including offender-victim-reconciliation, as well as reparative strategies can also be viewed as independent models of juvenile law ("minimum intervention model", "restorative justice model", see *Cavadino/-Dignan* 2006, p. 199 ff., 205 ff.). *Cavadino* and *Dignan* (2006, p. 210 ff.) identify not only the "minimum intervention model" (priority of diversion and community sanctions) and the "restorative justice model" (priority of restorative/reparative reactions), but also the previously stated "neo-correctionalist model"**,** which is particularly characteristic of contemporary trends and developments in *England/Wales* (see above).

Here, too, there are no clear boundaries, for the majority of continental European juvenile justice systems incorporate elements of both welfare and justice philosophies**,** minimum intervention (as is especially the case in *Germany*, see *Dünkel* 2006)**,** restorative justice as well as elements of "neo-correctionalism" (for example increased responsibilitisation of the offender and the parents, tougher penalties for re-offenders, secure accommodation of/for children). Rather, differences are more evident in the degree of orientation towards restorative or punitive elements.

In general one can conclude that the European juvenile justice converges to a mixed system that combines welfare and justice elements, which are more or less supplemented by the new trends mentioned above.[9]

2.2 Age of criminal responsibility

Despite obvious and undeniable national particularities, there is a recognizeable degree of convergence among the systems. From an international comparative perspective, systems based solely on child and youth welfare are on the retreat, especially since the United Nations' Convention on the Rights of the Child which was passed in 1989 (see *Höynck/Neubacher/Schüler-Springorum* 2001). This is not so evident in Europe where more or less "purely" welfare orientated approaches exist only in *Belgium* and *Poland*[10] than in, for instance, Latin American countries (which were traditionally oriented to the classic welfare approach, see *Tiffer-Sotomayor* 2000; *Tiffer Sotomayor/Llobet Rodríguez/Dünkel* 2002; *Gutbrodt* 2011).

On the one hand, one can speak of a European philosophy of juvenile justice that becomes apparent in the recommendations of the Council of Europe on education/rehabilitation, the consideration of victims through mediation and restoration, as well as the observance of legal procedural safeguards. However, there is no indication of a harmonisation of the age of criminal responsibility in Europe.

The minimum age of criminal responsibility in Europe varies between 10 (*England, Switzerland*), 12 (*Netherlands, Scotland, Turkey*), 13 (*France*), 14 (*Austria, Denmark*, *Germany*, *Italy*, *Spain* and numerous central and eastern European countries), 15 (*Greece*, the *Scandinavian* countries, except *Denmark*)[11] and even 16 (for specific offences in *Russia* and other Eastern European countries) or 18 (*Belgium*). After the contemporary reforms in Central and Eastern Europe, the most common age of criminal responsibility is 14 (see the following *Table 1*).

9 See *Dünkel/van Kalmthout/Schüler-Springorum* 1997; *Albrecht/Kilchling* 2002; *Tonry/Doob* 2004; *Jensen/Jepsen* 2006; *Junger-Tas/Decker* 2006; *Bailleau/Cartuyvels* 2007; *Ciappi* 2007; *Patané* 2007; *Pruin* in this volume).

10 The *Scottish* practice to send juvenile offenders up to the age of 16 to the Chidren's Hearings System could also be characterised as a welfare approach.

11 According to a recent law reform the age was lowered to 14 in *Denmark* by January 2010.

Table 1: Comparison of the age of criminal responsibility and age ranges for youth imprisonment

Country	Minimum age for *educational* measures of the family/ youth court (juvenile welfare law)	Age of criminal response-bility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/ custody or similar forms of deprivation of liberty
Austria		14	18/21	14-27
Belgium		18	16[b]/18	Only welfare institutions
Belarus		14[c]/16	14/16	14-21
Bulgaria		14	18	14-21
Croatia		14/16[a]	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mit. sent.)	15-19
Denmark[d]		14	14/18/21	14-23
England/ Wales		10/12/15[a]	18	10/15-21
Estonia		14	18	14-21
Finland[d]		15	15/18	15-21
France	10	13	18	13-18 + 6 m./23
Germany		14	18/21	14-24
Greece	8	15	18/21	15-21/25
Hungary		14	18	14-24
Ireland		10/12/16[a]	18	10/12/16-18/21
Italy		14	18/21	14-21
Kosovo		14	18/21	16-23
Latvia		14	18	14-21
Lithuania		14[c]/16	18/21	14-21
Macedonia		14[c]/16	14/16	14-21
Moldova		14[c]/16	14/16	14-21
Montenegro		14/16[a]	18/21	16-23
Netherlands		12	16/18/21	12-21

Country	Minimum age for *educational* measures of the family/ youth court (juvenile welfare law)	Age of criminal response-bility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/ custody or similar forms of deprivation of liberty
Northern Ireland		10	17/18/21	10-16/17-21
Norway[d]		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12		16/21	12/16-21
Romania		14/16	18/(20)	14-21
Russia		14[c]/16	18/21	14-21
Scotland	8[e]	12[e]/16	16/21	16-21
Serbia		14/16[a]	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14/16[a]	18/21	14-23
Spain		14	18	14-21
Sweden[d]		15	15/18/21	15-21[g]
Switzerland		10/15[a]	18[f]	10/15-22
Turkey		12	15/18	12-18/21
Ukraine		14[c]/16	18	14-22

a Criminal majority concerning juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice).
b Only for road offences and exceptionally for very serious offences.
c Only for serious offences.
d Only mitigation of sentencing without separate juvenile justice legislation.
e The age of criminal prosecution is 12, but for children from 8 up to the age of 16 the Children's Hearings System applies thus preventing more formal criminal procedures.
f The Swiss Criminal Law for adults provides as a special form of detention a prison sentence for 18-25 years old young adult offenders who are placed in separate institutions for young adults; they can stay there until they reach the age of 30, see Art. 61 Swiss Criminal Code.
g Youth custody; there are also special departments for young offenders in the general prison system (for young adults until about 25 years of age).

The ages of criminal responsibility have to be defined further: Whereas we can talk of a real low age of criminal responsibility for example in *England/ Wales*, in many countries only educational sanctions of the family and youth courts are applicable at an earlier age (e. g. *France*, *Greece*). Also in *Switzer-*

land the juvenile judge can only impose educational measures on 10 to 14-year-olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are restricted to those aged at least 15. The same is the case in the ex-Yugoslavian republics of *Croatia*, *Kosovo*, *Serbia* or *Slovenia* for 14 and 15 year-old offenders. Further still, some countries employ a graduated scale of criminal responsibility, according to which only more serious and grave offences can be prosecuted from the age of 14, while the general minimun age of criminal responsibility lies at 16 (e. g. *Lithuania*, *Russia*, for a summary see *Pruin* in this volume).

Whether these notable differences can in fact be correlated to variations in sentencing, is not entirely apparent. For within a system based solely on education, under certain circumstances the possibility of being accommodated in a home or in residential care (particularly in the form of closed or secure centres like in *England* or *France*) as a last-resort can be just as intensive and of an equal (or even longer) duration as a sentence to juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether the practice under juvenile justice or welfare is more or less punitive. Practice often differs considerably from the language used in the reform debates (see *Doob/Tonry* 2004, p. 16 ff.). Accordingly, legal intensefications are sometimes the *result* of changes in practice, and sometimes they contribute to changes in practice. Despite the dramatization of certain events by the mass media in some countries, there is for instance in *Germany* a remarkable degree of stability in juvenile justice practice (see *Dünkel* 2002; 2003b; 2006).

2.3 Young adults

There are also interesting developments in the upper age limits of criminal responsibility (the maximum age to which juvenile criminal law or juvenile sanctions can be applied). The most central issue in this regard is the extension of the applicability of juvenile criminal law – or at least of its specifically educational measures – to incorporate 18-20-year old young adults, as it occurred in *Germany* as early as in 1953 (see also the recent reforms in the *Austria, Croatia, Lithuania* and the *Netherlands* in summary *Dünkel* 2003, p. 82 ff.; 2003a; *Pruin* 2007; *Dünkel/Pruin* in this volume).

This tendency is well founded in juvenile criminology by reference to extended transitional phases of personal and social development from adolescence to adulthood. Over the last 50 years, the phases of education and of integration into working- and family life (the establishment of ones "own family") have experienced a prolongation well beyond the age of 20. Therefore, developmental-psychological crises and difficulties in the transition to adult life are characteristic for the group of young adults, yet can also occur up to the mid-thirties (see *Pruin* 2007 and *Dünkel/Pruin* in this volume).

The increasing number of states providing statutory law regulations for imposing educational and other sanctions of the juvenile law on young adults historically did not always have the same impact in practice. While in *Germany* in more than 90% of the cases concerning serious crimes juvenile law is applied (overall average: more than 60%; see *Dünkel* in this volume), in most other countries this remained the exception. One reason is that in *Germany* the jurisdiction of the juvenile court has been extended on young adults, whereas in other countries the criminal court for adults is responsible for this age group (e. g. in the ex-Yugoslavian republics which introduced such possibilities in 1960; see also *Gensing* in this volume). The Yugoslavian experience insofar is a good example of how substantive and procedural laws have to be harmonized in order to prevent counterproductive effects. Therefore with good reason *Croatia* (in 1998) and *Austria* (in 2001) transferred the jurisdiction on young adults to the juvenile courts. Another explanation is that in countries such as the *Netherlands* the general Criminal Law provides for a plethora of alternative (community) sanctions which can be seen as "educational" or rehabilitative (e. g. community service) and which are not provided in German Criminal Law for adults.

This development of extending the scope of juvenile justice towards young adults is in sharp contrast to the trends in the *USA*, where juveniles – sometimes children – who have committed serious offences are referred to adult courts in order to facilitate a harsher punishment than could be achieved before a juvenile court (see *Stump* 2003).[12]

2.4 Diversion and community sanctions

If one regards the developments in the disposals that are applicable for young offenders, there has been a clear expansion of the available means of diversion. However, these are often linked to educational measures or have the mere function of validating norms by a warning etc. (see *Dünkel/Pruin/Grzywa* in this volume).

Apart from some exeptions, we can presume that – regardless of whether the juvenile justice systems are more welfare or justice oriented – the vast majority of juvenile offending is dealt with out of court by means of informal diversionary measures (e. g. in *Belgium* about 80%, *Germany* about 70%). In some countries this is a direct consequence of the traditionally ruling principle of expediency such as in *Croatia*, *France*, the *Netherlands*, *Serbia* or *Slovenia*). The exceptions can be found in some Central and Eastern European countries, but in these cases it has to be considered that e. g. property offences with only minor damages are not always seen as a statutory criminal offence. *Italy* provides for a

12 An overview about the application of adult criminal law on juvenile offenders in Europe is given by *Pruin* in this volume.

judiciary pardon which is similar to diversionary exemptions from punishment, but awarded by the juvenile judge. So, there is a large variety of non-intervention or of imposing only minor (informal or formal) sanctions which can be attributed to the principle of minimum intervention (see above).

Constructive measures such as, for instance, social training courses (*Germany*) or so-called labour and learning sanctions or projects (*The Netherlands*) have also been successfully implemented. Many countries explicitely follow the ideal of education (*Portugal*), and incidentally emphasis is placed on preventing re-offending, i. e. special prevention (as is the case in the Council of Europe's Recommendation "New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice" of 2003, see *Section 3* below).

3. Reform trends in juvenile justice in individual countries

The following brief survey on national reform trends since the 1980s is taken from *Table 2* at the end of this chapter.

Austria

Austrian juvenile law experienced a major reform in 1988 by expanding the possibilities for diversion and restorative justice such as victim-offender-mediation and other constructive educational measures. Deprivation of liberty was becoming a measure of last resort. Since 2001 the application of juvenile procedural regulations was extended to young adults.

Belgium

Belgium held to its classical welfare approach and expanded the restorative justice approach by mediation and family group conferences. Strengthening the principle of proportionality and procedural safeguards were strengthened and detention in closed welfare institutions further limited. On the other hand, in serious cases the transfer of 16 and 17-year-olds to adult courts opens the pathway to the general justice system and possibly more repressive sanctions.

Bulgaria

Bulgaria passed a major law reform in 1996, which on the one hand emphasised due process guarantees and the principle of proportionality concerning placements in correctional institutions, on the other hand incorporated neoliberal tendencies towards crime control by anti-social behaviour orders. A second reform law of 2004 further strengthened procedural safeguards and placed decisions of deprivation of liberty in the hands of judges. New alternative sanctions such as probation were introduced. Prison sentences were mitigated

considerably, particularly for juveniles under the age of 16. At the same time anti-social behaviour orders were extended and parenting orders introduced.

Croatia

Croatia in 1998 implemented a comprehensive juvenile justice legislation emphasising due process standards on the one hand and diversion and educational measures including mediation on the other. The reform was influenced by the *Austrian* and *German* law reforms.

Cyprus

In *Cyprus* in 1996 the scope of educational sanctions was expanded, in 2006 the age of criminal responsibility was raised from 10 to 14.

Czech Republic

In 2003 comprehensive juvenile justice legislation was passed that enlarged the diversionary reactions and educational sanctions including mediation. 2009 the educational approach was kept, only one more repressive sanction (preventive detention) for very serious and dangerous offenders was introduced. Against strong political demands the age of criminal responsibility was not lowered to 14, but kept at 15.

Denmark

In *Denmark* no separate juvenile justice system exists and juveniles are sentenced by the general courts. Nevertheless special dispositions for juveniles exist and have been expanded by the reforms in 1998 and 2001. The so-called youth contract can be characterised as a form of conditional discharge, which tries to "responsibilise" young offenders. The so-called youth sanction with a custodial part and a part served in the community could be seen as a strengthening of sentencing as it might replace former shorter sentences. On the other hand it can be seen as a clearer structured and rehabilitation oriented sanction.

England and Wales

England/Wales are often characterised as the prototype of "neo-liberal" reforms by introducing stiffer sanctions and lowering the age of criminal responsibility from 14 to 10 by the reform laws of 1994 and 1998. Closed welfare and justice institutions were introduced also for 10 to 14-years-olds, anti-social behaviour orders widened the scope of juvenile social control, and the notion of commu-

nity sanctions changed towards the "getting tough"-approach ("credible" and tough alternatives). The sentencing practice more than in other countries relied on custodial sanctions. On the other hand, establishing the multi-agency-approach and the so-called Youth Offending Teams should not be seen primarily as "neo-liberal" or "repressive" way of dealing with young offenders. Much of it is in line with the classic idea of education or in modern words "preventing re-offending". A recalibration in policy and practice has been in demand in the academic sphere for some time, and has recently been highlighted by the 2010 Policy Paper of the Police Foundation ("Time for a fresh start"). The title of the volume edited by *Smith* in 2010 ("A New Response to Youth Crime") also stands for such a rethinking of criminal and penal policy (albeit for the time being only in academia).[13] But even the rather limited and tentatively evidence-based proposals up to now have not resulted in major legislative initiatives by the new government.

Estonia

Estonia in 2001 raised the age of criminal responsibility from 13 to 14. In 2002, major juvenile justice legislation followed, expanding diversion and community sanctions and including restorative justice elements (reparation, mediation). In the same year an amendment to the Code of Criminal Procedure determined that judges have to decide about the placement of a minor in a "school for students who need special treatment" due to behavioural problems. The juvenile committee has to provide a substantiated application in written form.

Finland

Finland – as the other Scandinavian countries – has no separate juvenile courts system. Nevertheless some peculiarities exist in the general framework of the Criminal Code. Already in 1989 the imposition of custodial sentences was further restricted to exceptional cases and in 1997 special emphasis was given to conditional sentences with supervision (the so-called juvenile punishment order). The general criminal policy in Finland has resulted to one of the lowest prison populations in the world (comparable to the other Scandinavian countries, see *Lappi-Seppälä* 2007). The general trends in juvenile crime policy are in the same line with the minimum intervention model. A particularity of the Finnish

13 See the Report of the *Independent Comission on Youth Crime and Antisocial Behaviour* 2010; *Smith* 2010. *Goldson* (2011, p. 3 ff.) criticized the Commission not going far enough, as it – for example – did not question the low age of criminal responsibility and in general the youth justice apparatus and concepts of responsibilisation. Furthermore, "the limited coverage of children's human rights within the Commission is noteworthy" (*Goldson* 2011, p. 23, footnote 8).

system is that the focus of social control concerning children (10-14) and juveniles (15-17) is on the child welfare system, which also deals with delinquents who in other countries are dealt with by the criminal justice system. Interestingly the welfare system has experienced similar liberal reforms as the justice system by reducing unvoluntary placements to closed welfare institutions considerably. The reform of the Child Welfare Act in 2006 strengthened the legal guarantees for those taken into public care, particularly in welfare institutions.

France

Some of the reform movements of the last years in *France* may be characterised by the "getting-tough-" or "neo-liberal"-approach. The possibility not to mitigate sentences for 16 and 17 years old recidivist offenders or the acceleration of criminal procedures under the declared aim to establish immediate punishments may be seen in this direction. However, the reforms of 2002, 2004 and 2007 kept the general educational approach of the Ordinance of 1945 and also improved the system of supervision in the community (*protection judiciaire*). As far as the new closed welfare institutions (since 2002) and the juvenile prisons (since 2007) are concerned, their strong rehabilitative approach has to be recognised. These institutions are of high quality and much better equipped than most of their counterparts in other countries.

Germany

Germany passed a major juvenile law reform in 1990. The possibilities of diversion were expanded, new "alternatives", which had been developed by the practice, were implemented into the law: mediation, social training courses, community service and special care and supervision by social workers. Alternatives to pre-trial detention were expanded, including legal representation for juveniles detained. A few reforms can be characterised as orientation to more intensive sentencing: 2006 the possibilities of a joint procedure by the victim was introduced in the JJA, but to a lesser extent than in the general criminal procedure against adults. In 2008 preventive detention after having served a juvenile prison sentence of at least 7 years was introduced, a more symbolic law reform as probably no cases will arise. In the same year the principle regulation of § 2 JJA clearly formulated the aim of juvenile justice by strictly prioritising the prevention of reoffending and the reintegration of juvenile and young adult offenders into society.

Greece

The *Greek* law reform of 2003 (similar to the *German* reform of 1990) clearly intended the introduction of diversion, mediation and other new community sanctions on the one hand and to expand due process rules and to further limit juvenile imprisonment as a measure of last resort. Indeterminate sanctions and measures were abolished. In 2010 the age of criminal responsibility was raised from 13 to 15.

Hungary

Hungary has special regulations for juveniles in the general Criminal Code. In 1995 a law reform emphasised the reintegration into society (special prevention) as aim of juvenile justice. Procedural safeguards were strengthened and juvenile imprisonment restricted as a measure of last resort. In 2000 the general Mediation Act emphasised restorative justice elements (mediation), which were expanded by the reform of the Criminal Procedure Act in 2007 (extended possibilities of diversion and mediation). In 2011 the scope for the use of mediation and restorative proceedings was expanded.

Since 2009 several reforms in general criminal law intensified the sentencing for adults. However, juveniles and young adults were exempted from these policy changes. On the other hand according to a law reform of 2010 certain administrative and minor offences can result in short-term detention of up to 90 days. This also applies to juveniles. The new conservative government is currently discussing a lowering of the age of criminal responsibility, but a decision has not yet been reached.

Ireland

After almost a hundred years since the introduction of the juvenile justice legislation *Ireland* introduced a major law reform in 2001 giving strong priority to restorative justice (mediation, family group conferences), diversion and community sanctions. Imprisonment for under 18 years old offenders was abolished. The age of criminal responsibility was raised from 7 to 12, but in 2006 lowered again to 10, but only for very serious cases such as murder. Anti-social behaviour orders were also introduced in 2006, but also wide discretion for diversion in this area.

Italy

The last major reform was the general amendment of the Criminal Procedure Act in 1988 (DPR No. 488/88, with some specific rules for the juvenile criminal procedure by another Legislative Decree (of 28 July 1989, No. 272), opening the

floor for diversion and alternative sanctions including mediation. The new juvenile and adult criminal procedure signified a shift from an inquisitorial to an accusatory model. In 1998, a general reform affected also juvenile offenders: a prognostic assessment in prisons or detention is not anymore necessary, i. e. prison sentences below three years may be suspended immediately.

Kosovo

Kosovo at the time of our research was under the administration of the United Nations. In 2004 a modern Juvenile Justice Code was passed that followed international standards for criminal procedure (due process safeguards) and introduced diversion and community based sanctions including mediation. The principles of proportionality and imprisonment as a last resort are emphasised.

Latvia

Latvia in 1998 passed the Law on the Protection of the Rights of the Child. The orientation on procedural safeguards and the primary aim of reintegration of juvenile offenders is well expressed by the title of the law. In 2002 two further reform laws strengthened the idea of diversion and of expanding the scope of community sanctions such as reparation and community service orders.

Lithuania

In *Lithuania* the major reform of the Criminal Code in 2003 included the expansion of educational measures and community sanctions for juvenile offenders. Diversion, mediation and community service became an issue of the reform movement, but emphasis was also given to procedural safeguards and to further restrictions for deprivation of liberty. Another reform law in 2007 emphasised educational measures for and supervision of young offenders.

Netherlands

The major reform of 1995 brought a mixture of extended alternative sanctions including diversionary measures on the one hand and of a more serious punishment for 16 and 17-year-olds in serious cases on the other by either being transferred to adult courts or sentenced for up to two years of juvenile imprisonment (before the maximum was 6 months). In 2001 alternatives to pre-trial detention were abolished and also the 2005 reform with stricter and tougher application of community sanctions can be characterized as a “neo-liberal” orientation.

Northern Ireland

The Children (Northern Ireland) Order of 1995 brought a separation of welfare and justice procedures and thus an orientation to the justice model by strengthening procedural safeguards and due process regulations for juvenile offenders. At the same time diversion and the range for community sanctions were expanded. A reform 1996 strengthened the ideas of educational measures for juveniles. In 2001 the statutory base for youth conferencing (family group conferencing) was created, thus shifting juvenile justice to the restorative justice model. 17 years old juveniles were included into the juvenile justice system.

Poland

Poland already in 1982 had its major law reform on juvenile justice. The emphasis was laid on a unique justice and welfare model concerning 13 to 17-year-olds. However, in cases of very serious crimes juveniles aged 15 and above may be sentenced according to the general criminal law. The juvenile law gives strict priority to educational measures and restricts deprivation of liberty. Due process regulations are of more importance in procedures concerning juvenile offenders (in contrast to juveniles procecuted for phenomena of "demoralisation"), particularly when detention in a correctional institution is to be considered. Mediation and victim-offender reconciliation is emphasised by the Mediation Act of 2000.

Portugal

In *Portugal*, major juvenile justice law reforms in the year 1999 aimed to extinguish the worst consequences of the pure welfare model which prevailed since 1925. The educative approach should be maintained, due process guarantees should be introduced, but not the penal consequences for a criminal offence. Accordingly, since 2001 *Portugal* follows an educational approach for juvenile offenders between 12 and 15 years of age. The juvenile is deemed responsible for his actions, but not in a penal way. The court may – after a procedure which follows similar rules than a criminal procedure for adults – apply compulsory educational measures, but no criminal sanctions. 16 to 21 years old offenders are fully criminally responsible, but special mitigating regulations and alternatives have been introduced, in 2007 house arrest (including electronic monitoring) was added as a special alternative for this age group.

Romania

In 1992 a reform of the Criminal Code introduced educational measures for juvenile offenders, but also provided for harsher punishment. The reform of

1996 was in line with the educational approach by expanding community sanctions. The Law on the Protection and the Promotion of the Rights of the Child from 2004 strengthened the procedural safeguards and the stronger justice orientation in line with international standards. Mediation became a major issue after the Law on Mediation of 2006 and a further law reform in 2009 (coming to effect in 2011).

Russia

The general reform of the Penal Code in 1996 brought special educational measures for juveniles, including diversionary and community based sanctions (e. g. community service). Procedural safeguards were strengthened by the Basic Principles for Juvenile Offenders passed in 1999, but also diversionary measures were expanded. In 2001 mediation and reparation became a majore issue of juvenile law reform.

Scotland

In 1995 in *Scotland* statutory regulations of the Children's Hearing System dealing with 8 to 15-year-olds were introduced. The focus is on restorative justice elements including mediation and reparation. In 2004 anti-social-behaviour and parenting orders were introduced, but the practice seems to be more reluctant than in *England* and *Wales*. In 2010 the age of criminal prosection was raised from 8 to 12, the competence of the Children's Hearing System remained unchanged.

Serbia

Serbia in 2006 established an independent and separate juvenile justice legislation. It is strongly oriented at international standards with regards to the principles of education, minimum intervention and of proportionality. Diversion and restorative justice elements are specially emphasised.

Slovakia

The *Slovakian* reform of 2005 on the one hand is in line with European justice and welfare orientation by expanding the range of community sanctions, on the other hand more repressive tendencies clearly can be identified. Sentences for recidivist and violent offenders were increased and the age of criminal responsibility was lowered from 15 to 14, however 14-year-olds are only responsible if they dispose of the discernment concerning the wrongdoing of their behaviour.

Slovenia

Slovenia got a major law reform in the context of amendments in the Penal Code in 1995. By that diversion was prioritised and mediation, reparation and community service were introduced. Also procedural safeguards have been strengthened. Interestingly the general law reforms in 1999, 2004 and 2008 which were increasing the penalties of the general Criminal Code for adults (*inter alia* "*three-strikes*"-legislation) left out the juveniles.

Spain

Spain created a justice oriented juvenile law for the age group from 12 to 15 years of age in 1992. In 1995 legislation was amended and the age group of 14 to 17-year-olds was subject of the Penal Code legislation. The focus was on diversion and restorative justice elements (mediation, reparation). The same orientation to modern juvenile justice principles is to be seen in the separate Juvenile Justice Act of 2000. In 2006, however, some tightening of the law can be identified, too. Young adults who should have been subject to educational measures were excluded again before the specific rule of 2000 came into force.

Sweden

Sweden traditionally relies on a welfare orientation by transferring juvenile offenders (aged 15 to 17) regularly the the welfare authorities. Punishments according to the general Criminal Code and particularly imprisonment have become an extrema ultima ratio for 15 to 17 years old juveniles (see also *Dünkel/Stańdo-Kawecka* in this volume). In 1999 the transfer to Social Welfare Authorities was expanded as a kind of diversion. Closed youth care institutions were established as an alternative to youth imprisonment. In practice this meant a net-widening as instead of the expected around 10 more than 100 juveniles were found in these institutions. With regards to the principle of proportionality and specific human rights standards (principle of certainty, i. e. determinacy of the sanction to be expected, and of proportionality) have been implemented by extending the court's control over the welfare services in 2007. The reform law of 2007 aimed at reducing fines for young offenders by introducing special juvenile sanctions, the so-called youth service and the youth care. Youth service contains unpaid work (20-150 hours) plus attendance in programme work or education. Youth care can mean different forms of treatment organised by the welfare authorities.

Switzerland

The *Swiss* reform of introducing a separate Juvenile Justice Act in 2007 is in line with the international standards of emphasising education, diversion and a variety of community sanctions including mediation and reparation. Procedural safeguards as well as the principles of minimum intervention and proportionality are emphasised. Youth imprisonment is the extrema ultima ratio; instead detention in mostly open welfare homes is prioritised. Although the maximum youth prison sentence has been increased to 4 years (for at least 16-year-olds) the *Swiss* juvenile justice system can be characterised as a moderate educational and justice approach.

Turkey

Turkey in 1992 passed a reform of the Criminal Procedure Act strengthening some procedural safeguards for juveniles (e. g. obligatory defence counsels). In 2003 the Children's Courts Act (1979) was amended and expanded the scope of juvenile justice from 12 to 15- to 12 to 18-year-old juvenile offenders. The Child Protection Law of 2005 expanded diversionary procedures (referrals to the welfare agencies) and the range of community sanctions (e. g. reparation, community service).

Ukraine

In the *Ukraine* the reform of the general Penal Code in 2001 etsablished special educational sanctions for 14 to 17 years old juvenile offenders, including diversion, reparation and community service orders. The reforms in the *Ukraine* – as in the other middle and eastern European countries – were inspired by the new membership in the Council of Europe and the ambition to meet the requirements of international juvenile justice standards such as the recommendations of the Council of Europe and the United Nations.

The general trend: Maintaining and/or expanding the educational (special preventive) approach and rejecting "neo-liberal" criminal policy tendencies.

Altogether the present international comparison shows that in the majority of countries there has in fact not been a reversal from the precept of education and the prevailing aim of preventing reoffending. Also countries which moved towards the "getting tough"-approach keep their general orientation of dealing with juveniles (and young adults) differently compared to adults.

It also can be deemed as internationally accepted that less intensive interventions, including diversion (if need be in connection with victim-offender-reconciliation, reparation and other socially constructive interventions), better

assist the integration of the "normal" juvenile delinquent (characterized by the episodic nature of his offending) than intensive (repressive) interventions, especially imprisonment (see *Dünkel/Pruin* 2009 and *Dünkel/Pruin/Grzywa* in this volume).

On the other hand education is not unlimited. Restrictions of educational criminal law through sentencing that is proportional to the offence are necessary, especially concerning custodial sentences. There is no justification to extend custodial sentences because of "educational needs" leading to unproportional interventions.

4. The Recommendation of the Council of Europe on "New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice"

The "new mix" of combining elements of different juvenile justice orientations mentioned above is expressed particularly well in the Recommendation of the Council of Europe on "New Ways of Dealing with Juvenile Offending and the Role of Juvenile Justice" (see Recommendation Rec [2003] 20). On the one hand, the Council stresses that the prioritization of diversion and minimum intervention has proved to be a successful strategy and therefore should be retained for "normal", episodic juvenile crime. It further states that it could be extended for recidivist or violent offenders. In this context, the Council sees the incorporation of restorative and reparative elements (for example victim-offender-reconciliation) as an especially positive development. Simultaneously, it is recommended that violent and persistent offenders as well as their parents should increasingly be made responsible. The Recommendation also contains elements which sometimes are mentioned in the context of the "neo-correctionalist approach", for example the emphasis on early intervention and prevention of juvenile delinquency on the one hand, and effective, scientifically founded sentencing based on "what works, with whom, under what circumstances" (see Recommendation Rec (2003) 20 and *Section 5* below). This orientation towards evidence based juvenile justice policy is not necessarily to be identified as "neo-liberal", because it is just the minimum intervention model and restorative justice that can be supported by empirical research (see *Dünkel/Pruin/Grzywa* in this volume). The new Recommendation also contains classical elements of the rule of law (due process), for example in its call for a limitation of the use of police custody and pre-trial detention. The ideal of education and rehabilitation is retained as the central principle, named in second place after prevention. This results in various different measures, for instance an orientation towards successful reintegration into society from the very first day of a prison sentence (see Nr. 19 of the Recommendation), a phased approach to reintegration should be adopted, using periods of leave, open institutions, early

release on licence and resettlement units (see Nr. 20). Not least, the third principle of the Recommendation – improved consideration of victims' interests and needs (see below) – mirrors the restorative and reparative approach in juvenile justice.

The Recommendation of the Council of Europe on "*New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice*"[14] of the year 2003 pursues the following paramount goals:

1. The prevention of offending and re-offending,
2. the rehabilitation and reintegration of offenders and
3. regard for the needs and interests of victims of crime.

The strategic approach incorporates the following perspectives:

The juvenile justice system has to be treated as a component of a wider community-based strategy for the prevention of juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs (No. 2 of the Recommendation). Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending where possible (No. 3). There is a need for the development of more suitable and effective measures of prevention and reintegration that are tailored to young migrants, groups of juveniles, young girls, and children and young people under the age of criminal responsibility (No. 4).

Sanctions should – as far as possible – be based on scientific results of what works, with whom and under which circumstances (No. 5).
The consequences for ethnic minorities require particular policy attention. Therefore, the persons in charge are to be obliged to compile so called impact statements (No. 6).

The Recommendation proposes the following "new responses":

The expansion of the range of suitable alternatives to formal prosecution should continue. The principle of proportionality is to be upheld, and the voluntariness of the offender must be regarded (No. 7). Regarding serious, violent and persistent juvenile crime, (proportional) community sanctions should be further developed (this can also imply the inclusion of the parents into the criminal responsibility of their children, so long as this is not counter-productive), especially such measures that incorporate elements of reparation and restoration to the victim (No. 8, 10).

The recommendation to expand community sanctions in cases of serious crime is remarkable in that emphasis is usually placed on the necessity of im-

14 See www.coe.int.

prisonment in this context. However, experiences with suspended sentences as well as with community education-/treatment programmes within the framework of the probation or youth welfare services have shown that positive results can be achieved with repeat and/or violent offenders or groups of offenders (see *Dünkel* 2003, p. 89 ff., 96 ff.). Insofar**,** juveniles who were viewed as the traditional clientele of the juvenile prison system 20 or 30 years ago can now be successfully supervised in the community.

With regard to the extended phases of (school and vocational) education and transition into adulthood, the sanctions of juvenile criminal law should be applicable to young adults according to their degree of maturity and development (No. 11). This matches the stated positive experiences that have been made in *Germany*, and mirrors contemporary legal reform in, for example, *Lithuania*, *Spain* and *Austria* (see above).

Incidentally**,** the recommendations repeatedly emphasise the need for risk assessment, evidence based interventions and empirical evaluation. Although aspects of "neo-correctionalist" thinking (for example regarding parental liability) can also be observed, the Recommendation Rec (2003) 20 remains adherent to the tradition of a moderate justice system that prioritizes education (key term: minimum intervention) and that emphasises community based interventions also in cases of more serious offending. This should serve as a mental note for counter-reforms in a more repressive direction.

The implementation of the 2003 Recommendation is to be executed in close collaboration with the local prevention and intervention agencies and should take quality standards into account. Continuous "monitoring" and the dissemination of good practices also belong to the recommended strategies.

It remains to be seen in how far the Recommendation shall influence the reforms in Europe, especially in the Middle and Eastern European countries. Unfortunately, one can assume that there shall be problems with the funding of scientific evaluations. The importance of evidence based criminal justice policy can, however, not be valued highly enough**.** Only by this means can we effecttively counter the populist trends in juvenile justice policy that are being publicised by *Silvio Berlusconi* in *Italy* and *Le Pen* in *France*.[15]

5. The "European Rules for Juvenile Offenders Subject to Sanctions or Measures" of 2008

In January 2006 the Committee of Ministers of the Council of Europe promulgated the new European Prison Rules (EPR, vgl. Council of Europe 2006). At the same time the Committee on Crime Problems (CDPC) set up a

15 One further could mention the right-wing populist Liberal Party in *Austria* which focuses on campaigns aginst (juvenile) foreigners, and the Conservative Party which tends to claim for tightening the Juvenile Justice Act.

further expert group which was to draft European Rules for juveniles under community sanctions and measures and deprived of their liberty. The terms of reference explicitly refered to community sanctions and sanctions with deprivation of liberty and thus went beyond the scope of the EPR. But also with regards to deprivation of liberty the new Rules are more comprehensive than the EPR as they cover all forms of deprivation of liberty such as pre-trial detention, detention in (closed) welfare institutions, youth imprisonment and psychiatric juvenile facilities.

The expert group consisted of *Andrea Baechtold*/Berne, *Frieder Dünkel*/Greifswald and *Dirk van Zyl Smit*/Nottingham. The Rules have been drafted until April 2008, the CDPC in its session from June 2008 has accepted them (with minor changes), and on 5th November 2008 the Committee of Ministers of the Council of Europe has passed them as Rec (2008) 11 ("European Rules for Juveniles Subject to Sanctions or Measures", ERJOSSM). The recommendation and the commentary to it can be approached on the webside of the Penological Council (PC-CP) of the Council of Europe under www.coe.int (see also *Council of Europe* 2009).

The following remarks can only give a short overview on the general outline, the so-called "Basic Principles".[16]

The Rules are structured in 8 Parts. In the same way as the EPR they start with "Basic Principles" (Rules No. 1-20) which concern the imposition and execution of community sanctions and all forms of deprivation of liberty. Rules on the scope of application and definitions (Rules No. 21-22) also belong to Part I. The most important issue in that respect is that the scope of application is extended to young adults of 18-21 years of age (as far as national law provides the application of juvenile law or sanctions or special rules for the execution of sanctions or measures for this age group, see Basic Priciple No. 17 below). The second Part deals with community sanctions and measures (Rules No. 23-48), while Part III covers issues regarding the deprivation of liberty (Rules No. 49-119). Part IV concerns "legal advice and assistance" (Rule No. 120), and Part V is dedicated to "complaints procedures, inspection and monitoring" (Rules No. 121-126). Questions related to staffing are dealt with in Part VI (Rules No. 127-134), those related to evaluation and research as well as to work with the media and the public are contained in Part VII (Rules No. 135-141). The closing Rule No. 142 (Part VIII) requires the Rules to be regularly updated.

The preamble formulates the following general directive: "The aim of the present Rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-

16 Some major aspects of the parts on the imposition and implementation of community sanctions or measures and the execution of custodial sanctions are described by *Dünkel/Pruin/Grzywa* and *Dünkel/Stańdo-Kawecka* in this volume; see also *Dünkel* 2008; *Dünkel/Baechtold/van Zyl Smit* 2009.

being when subjected to community sanctions and measures or any form of deprivation of liberty.

"Nothing in these Rules ought to be interpreted as precluding the application of other relevant international human rights instruments and standards that are more conducive to ensuring the rights, care and protection of juveniles. In particular, the provisions of Recommendation Rec(2006)2 on the European Prison Rules and of Recommendation R (92) 16 on the European Rules on Community Sanctions and Measures shall be applied to the benefit of juvenile offenders in as far as they are not in conflict with these Rules."

This statement makes it clear that the present Rules do not go beyond the guarantees formulated in earlier Recommendations and Rules concerning the human rigts of offenders. This must be interpreted as a formal prohibition of any discrimination or restriction of rights and legal guarantees for juveniles for example with regards to educational needs. Basic Principle No. 13 in the same way requires: "Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure."

The following remarks concentrate only on the so-called "Basic Principles" of the Rules, as they best symbolise the general European orientation and consensus of juvenile justice philosophy or policy.

Basic principles

The 20 "Basic Principles" are as follows:

1. Juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights.
2. The sanctions or measures that may be imposed on juveniles as well as the manner of their implementation shall be specified by law and based on the principles of social integration and education and on the prevention of re-offending.
3. Sanctions and measures shall be imposed by a court or, if imposed by another legally recognised authority, they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.
4. The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.
5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individual-

lisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

6. In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.
7. Sanctions or measures shall not humiliate or degrade the juveniles subject to them.
8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.
9. Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).
10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.
11. Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).
12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.
13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.
14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where it is appropriate to do so.
15. Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure an holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).

16. The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.
17. Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.
18. All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.
19. Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.
20. The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.

The following comments are largely based on the commentary to the Rules which have been drafted by the experts of the Council of Europe since 2007 (see *Council of Europe* 2009; *Dünkel* 2008; *Dünkel/Baechtold/van Zyl Smit* 2009).

Rule No. 1 corresponds to Rule No. 1 of the EPR. As stated in the Preamble the European Rules on Community Sanctions and Measures of 1992 are of particular relevance as well. Human rights issues arise not only when deprivation of liberty is used, but also when community sanctions and measures are applied. Both full-scale deprivation of liberty and lesser restrictions of liberty can be intrusive and may violate human rights if the principle of proportionality contained in Rule No. 5 is not applied. It is a basic standard of all international instruments that the human rights of juveniles have to be protected in the same way as it is the case for adults. The United Nations Convention on the Rights of the Child as well as the recommendations of the Council of Europe in the field of juvenile justice emphasise this issue. It should be noted that Rule No. 1 refers to protecting not only human dignity, but all human rights of juvenile offenders both deprived of their liberty or under community sanctions or measures. It should be clear that, in addition, other international instruments such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 14 December 1990 (the so-called Havana Rules) have also played an important part in the development of these Rules.

Rule No. 2 refers to the fact that all juvenile justice and welfare systems are based on the principles of social integration and education with regards to imposing and executing community sanctions or measures and sanctions of deprivation of liberty. This leaves much less space, and in some countries no

space at all, for the principle of general deterrence or other (more punitive) aims that are a feature of the criminal justice system for adults.

In the field of juvenile justice it is recognised that the personalities of juveniles are still developing and open to positive influences. Emphasis must be placed on the possibility of re-integrating young persons. This may be achieved in some cases only by intensive educational or therapeutic efforts. The rule on social integration would therefore not allow long-term security measures or life sentences that aim solely at protecting society from juvenile offenders and do not give them the prospect of release within a reasonable period.[17]

The emphasis that is placed on the major aim of education for the prevention of re-offending is important. In most international instruments education is not clearly defined. This is problematic as the term "education" may be misused as can be seen by repressive forms of authoritarian education, for example military style detention regimes that do not correspond to the European concept of human rights and dignity. On the one hand, the aim of preventing re-offending is modest, for it does not seek to achieve more than law-abiding integration into society. On the other hand, it is ambitious, for it is connected to the term social integration and therefore aims at promoting the juveniles' personal and wider social development, and their taking responsibility for their behaviour. Education therefore should be understood as including measures such as enhancing their communication skills or requiring them to make reparation, for instance writing appropriate letters of apology. Equally, society has to enable these changes to take place. It is important that the opportunities for learning and the interventions chosen to achieve these goals should be evidence-based (see also Rules No. 135-138 and the commentary on them below) and should contribute to the development and differentiation of the capacities of perception, interpretation, decision making and responsible action.

The restriction of the power to impose sanctions and measures to a court or to another legally recognised authority – as stipulated in Rule No. 3 – enshrines the principle of legality. Prompt judicial review where the imposition is decided by another authority is a further guarantee in this regard. Detention only for a legitimate purpose follows the requirements set by the European Court of Human Rights in its interpretation of Article 5 of the ECHR. It further relates to Rule No. 2 which emphasizes the primary goals of any sanction or measure imposed on juvenile offenders.

It is important that all sanctions and measures imposed on juveniles be of determinate duration because of the need for legal certainty and realistic prospects for reintegration into society. Where the sanctions or measures are open-ended this can be achieved by making them subject to regular review. The

17 See in this respect the case law of the European Court of Human Rights: *T. v. the United Kingdom* (GC), no. 24724/94, 16 December 1999; *V. v. the United Kingdom* (GC), no. 24888/94, ECHR 1999-IXT.

principle of proportionality applies both to the imposition and to the implementation of sanctions and measures. This principle should be applied at every stage of the procedure, so that juveniles are not subject to unnecessary restrictions.

The principle of minimum intervention in Rule No. 3 refers to the sentencing stage. Sanctions and measures should be imposed "*for the minimum necessary period"*. Rule No. 9 contains the same idea but for the level of the execution of sanctions and measures, and Rule No. 10 emphasises this idea with regards to deprivation of liberty (see also *Dünkel/Stańdo-Kawecka* in this volume).

Rule No. 4 stipulates that the law should set a minimum age for any type of intervention resulting from an offence. This includes the determination of the age of criminal responsibility as well as the age from which more punitive penal measures can be taken. It follows directly from the universally recognised principle of legality: the condition for any criminal liability is that the criminalized behaviour and the possible offender must be described by law. The principle of legality applies in the same way to other types of intervention.

The age of criminal responsibility has to correspond to "an internationally acceptable age" (see *United Nations, Committee of the Rights of the Child,* General Comment No. 10 (2007), para. 32 (CRC/C/GC/10, 25 April 2007). Although it might be difficult to find a general European consensus, such a minimum age should not be too low and should be related to the age at which juveniles assume civil responsibilities in other spheres such as marriage, end of compulsory schooling and employment. The majority of countries have fixed the minimum age between 14 and 15 years and this standard should be followed in Europe. Criminal responsibility for juveniles of less than 12 years exists only in a few countries such as England and Wales and Switzerland (see *Table 1* above).

In any case, very young offenders who are formally criminally liable should not be admitted to juvenile penitentiary institutions. In some countries the age for admission to such institutions is 15 (as in Switzerland) or 16, whereas the general age of criminal responsibility might be lower, usually between 12 and 14 years.

Rule No. 5 provides that all sanctions and measures must be subject to what is in the best interests of the juvenile, and this needs to be established in every individual case. This implies regular assessments by social workers, psychologists, psychiatrists or other professionals. On the other hand, the best interests of the juvenile should not be an excuse for excessive or disproportionate interventions. Measures that promote social integration are generally in the best interests of the juvenile.

This Rule contains two further interrelated principles. The principle of individualization is inherent in traditional juvenile justice. When a sanction or a measure is imposed, the age, physical and mental well-being, development, capacities and personal circumstances of the offender shall be taken into consideration. Information about these individual circumstances of the juvenile

will usually be obtained from psychological, psychiatric or social inquiry reports and therefore a multi-agency approach as indicated in Rule No. 15 is necessary. The principle of proportionality serves as a corrective to avoid extended educational sanctions or measures that cannot be justified in terms of the gravity of the offence. The principle of individualisation should, therefore *not* be used to justify interventions that are disproportionately severe with respect to the offence (in this respect see also Rules No. 8 und 13 of the Recommendation [2003] 20 mentioned above under *Section 3*).

Rule No. 6 stipulates that in the implementation of sanctions and measures a certain degree of discretion must be given to the implementing authorities in order to meet the individual circumstances of each case. This should, however, not lead to serious inequality of treatment. There should be careful documentation of the sentencing practice as well as of the implementation of sanctions and measures. In order to avoid discrimination (as referred to in Rule No. 11) particular attention must be paid to identifying local, cultural, ethnic and other differences and determining whether a different treatment would be justified in order to achieve the same results of social reintegration, education and prevention of re-offending.

Rule No. 7 prohibits any violation of human dignity. Overcrowding in institutions and harsh, military-type regimes, solitary confinement, depriving juveniles of social contacts are examples of what should be avoided. Equally, some forms of community work can also stigmatise juvenile offenders and would not be consistent with this rule (special uniforms which identify them as offenders, etc.).

Rule No. 8 corresponds to Rule No. 102.2 of the EPR. There should be no forms of implementation of sanctions or measures that aggravate their afflictive character, for example by hard and degrading work either in prisons or as a form of community service. Therefore, different regimes in juvenile penitentiary institutions which are (for punitive reasons) related to the gravity of the offence are not allowed. Overcrowding is one of the well-known circumstances that can endanger the well-being and physical or mental integrity of detained juveniles. An undue risk of physical or mental harm can be caused by exposing detained juveniles to other detainees who are dangerous or violent. Conditions of detention that are not sufficiently stimulating and social or sensory deprivation of any kind are prohibited by Rule No. 8. As far as community sanctions are concerned, special emphasis should be given to avoiding stigmatizing or humiliating conditions (see also Rule No. 7 above).

Rule No. 9 refers to the principle of the speedy implementation of sanctions and measures. Undue delay is undesirable also because it undermines the effecttiveness of the interventions. Rule No. 9 relates to Rule No. 5 and limits community sanctions or measures as well as deprivation of liberty to the minimum necessary. Therefore, review schemes must be provided by law that can shorten the execution of a sentence where continued enforcement does not

seem to be necessary for the social integration of the juvenile offender. All countries have introduced early release schemes concerning imprisonment. Community sanctions and measures can also be adjusted in order to lessen their negative impact, or their duration may be reduced. The principle of minimum intervention also better protects human rights and preserves social ties while not increasing the risks posed to society.

Rule No. 10 reflects No. 37 of the UN Convention on the Rights of the Child, Rule No. 17 of the Beijing Rules and the Council of Europe's Recommendation N° R (87) 20 concerning "Social Reactions to Juvenile Delinquency" as well as Recommendation Rec (2003) 20 on "New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice". It follows from Rule No. 9 on minimum intervention and emphasizes that deprivation of liberty should only be a measure of last resort: normally other, less intrusive sanctions should have been tried first. The Beijing Rules give examples of what is meant by the provision that deprivation of liberty shall be limited to "exceptional cases": Deprivation of liberty shall be restricted to older juveniles involved in violent or persistent serious offending. Many national legislations have responded to this idea by raising the age for being sentenced to youth custody or youth imprisonment to a minimum of 15 or 16 years, whereas the general age of criminal responsibility might be lower (see *Table 1* and for the commentary to Rule No. 4 above *Council of Europe* 2009, p. 36).

Furthermore, deprivation of liberty is also to be restricted to the minimum necessary period. This is important as it prevents detention from being unnecessarily prolonged, for instance in order to complete educational and treatment programmes or other forms of interventions. Instead, there should be provisions so that juvenile offenders who have been released early can complete such programmes outside of the institution. Even where the initial deprivation of liberty is also linked to other goals, for instance retribution, it must be clear that preparing the juvenile for re-integration into society becomes increasingly important as the implementation of the sanction progresses ("progressive principle"). The final decision remains with the judicial authority that has the legal power to order the deprivation of liberty.

The problem of pre-trial detention is already extensively addressed by Rules No. 16-18 of the Recommendation Rec (2003) 20. It reflects the empirical evidence that pre-trial detention is used extensively in many countries, for longer than justified and for purposes that are not provided by law; for example, as a form of crisis intervention or for reducing public concern. Therefore, Rule No. 16 of Rec (2003) 20 states: "When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial." In addition, Rule No. 17 of the above Recommendation clearly outlines that "where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand

should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures." The present Rules incorporate these restrictions on pre-trial detention by requiring that "special efforts must be undertaken to avoid pre-trial detention".

The principle of non-discrimination laid out in Rule No. 11 is a basic principle in all human rights instruments of the Council of Europe and the United Nations (see, for example, Art 14 of the ECHR and Rule No. 13 of the EPR). It does not mean that formal equality should be the ideal if it would result in substantive inequality. Protection of vulnerable groups is not discrimination, nor is treatment that is tailored to the special needs of individual juvenile offenders. Therefore, this principle is not infringed by special positive measures aimed at addressing juvenile offenders or groups of juvenile offenders with specific needs.

Rule No. 12 emphasises mediation and other restorative justice measures that have become important forms of intervention in juvenile welfare and justice systems. In many countries recent national legislation gives priority to mediation and restorative justice as methods of diversion from formal proceedings at various stages in the juvenile justice process. These strategies should be considered at all stages of dealing with juveniles and be given priority because of their special preventive advantages for the juvenile offenders as well as for the victims and the community (see for a summary *Doak/O'Mahony* in this volume).

Rule No. 13 includes the right to be informed, to have access to legal remedies, to legal assistance, complaints procedures and other procedural rights and safeguards (see also Rule No. 15, Recommendation Rec [2003] 20). The principle of effective participation in this case refers to the stage of imposition as well as of execution of sanctions and measures. Independently of which specific model of criminal investigation and procedure is followed, the juveniles and their parents or legal guardians must be informed about the offence or offences the juveniles are alleged to have committed and the evidence against them. The juveniles have the right to legal defence counsel also in purely welfare proceedings. In cases where deprivation of liberty is possible, a legal defence counsel must be allocated to the juveniles from the outset of the procedure. The Rule makes it clear that there is no justification for giving juveniles lesser rights than adults. Therefore regulations that restrict the right to appeal or complaints procedures with arguments of education cannot be justified. Other examples refer to issues of data protection: The more comprehensive social inquiry reports and case records within the juvenile justice and welfare system should not be transferred to criminal records that could possibly disadvantage juvenile offenders in their later adult life. Juvenile criminal records should include only serious sanctions and interventions in order to prevent stigmatisation as far as possible.

Rule No. 14 emphasizes the rights and responsibilities of parents and legal guardians to participate at all stages of investigations and proceedings. This is already inherent in the general principle of effective participation. However, it is important to stress the parents' or legal guardians' individual rights of participation. Nevertheless, these rights can be restricted if parents or guardians act against the best interests of the juvenile. The need for such restrictions should be assessed by psychologists or other professional staff of the juvenile welfare authorities and formally decided by the judicial authorities. While the participation of parents or legal guardians of juveniles is generally mandatory, this is not the case for young adults who have reached the age of civil majority. Nevertheless, their participation may still be desirable, especially if the young adults still live with them. Even if the juveniles' parents and guardians live abroad, attempts should be made to contact them. Where these parents and guardians cannot participate, their place should be taken where appropriate by an appointed representative. Restrictions may also be imposed where required by ongoing criminal investigations, but only for the period for which it is strictly necessary. Proceedings against juveniles and the execution of resulting sanctions and measures take place in a wider context in which family members and the wider community may have a role to play where this is applicable and can have a positive impact on the juvenile and society. One example of such community involvement is the execution of a community sanction or measure where the local community is by definition involved. Reintegration after deprivation of liberty also necessarily supposes acceptance by and interaction with the local community. This too is subject to the principle that such involvement must be in the best interests of the juvenile. The corollary of Rule No. 14 is that juveniles have a right to have contact with the members of their family.

The characteristics of juveniles require a specific multi-disciplinary and multi-agency approach. This is emphasised by Rule No. 15. The key disciplines to be included are psychology, social work and education. The multi-agency approach is a normal form of co-operation between youth welfare and justice agencies in many countries. Social workers, the police, school and vocational training authorities, prosecutors and juvenile judges as well as lay organisations of juvenile welfare should work closely together in order to act in the best interests of the juvenile. The multi-agency approach should involve as fully as possible agencies and organisations outside the justice system, for they may be socially and environmentally closer to the juvenile. In this context the principle of through care is of major importance. The principle of "end to end" offender management where a community based social worker or probation officer maintains contact with the offender throughout the sentence is of particular value in providing continuity of care. Discharge arrangements should be planned carefully so that continuity of care is ensured. Institutions for the deprivation of liberty must work closely together with aftercare services and other relevant

welfare agencies. However, data protection concerns must be borne in mind when cooperating in this way.

Rule No. 16 emphasises the rights to privacy and data protection. Juvenile offenders and their families have specific rights to privacy to protect them from negative stigmatisation. This recognises the need to help juveniles in their development to adulthood. Rule No. 16 places a duty on the state to provide the necessary protection for juvenile offenders and their families. In particular, the identity of juveniles and their families should not be communicated to anyone who is not legally authorised to be informed thereof.

Legal authorisation to receive information must be limited strictly to persons and institutions that require particular information related to a specific case. This should not lead to the public disclosure of entire lists of names of specific juvenile offenders. It follows too that only information that is necessary for this purpose should be collected in the first place.

Rule No. 17 deals with young adult offenders. Recommendation Rec (2003) 20 states in Rule No. 11 that "reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults." Similarly, Rule No. 3.3 of the Beijing Rules states: "Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders." Rule No. 17 continues in the same vein. Young adults in general are in a transitional stage of life, which can justify their being dealt with by the juvenile justice agencies and juvenile courts. Particularly in the past 15 years, many countries have taken into consideration this extended period of transition by either providing the possibility of applying educational measures to young adult offenders or at least by providing for special mitigation of their sentences (see for a summary *Pruin* 2007; *Dünkel/Pruin* in this volume and *Table 1* above). Applying sanctions or measures provided under the juvenile criminal law does not automatically mean that young adults will receive milder sanctions than adults over the age of 21; but where appropriate, they should benefit from the variety of educational sanctions and measures that are provided for juvenile offenders. It is an evidence based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into the social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation (see for example the special emphasis given to mediation, and family conferencing in many new juvenile justice laws).

Rule No. 18 corresponds to Rule No. 8 of the EPR and places the staff of juvenile welfare and justice agencies or institutions at the centre of caring for juvenile offenders as they need special and intensive assistance. Rule No. 18 is strongly related to Rule No. 15 emphasizing the co-operation of different

agencies involved (multi-agency approach). All staff in the field of juvenile welfare and justice must be suitable for working with juveniles and be specially trained or experienced in developmental and educational matters. Regular in-service training and supervision should be provided. Positive role models are particularly important, as in many instances staff have to play the role which is normally taken by members of the juvenile's family. The standards of care and accountability apply not only when staff are employed on a permanent basis but also when execution is delegated to, or commissioned from other agencies.

Rule No. 19 is related to Rule No. 18 and is designed to clarify that juvenile welfare and justice agencies must receive the necessary funding in order to achieve the required educational and social integration goals. The different agencies must be equipped in a way that enables them to provide the appropriate standard of care to meet the distinctive needs of juveniles. This can also mean that services are allocated according to different needs and risks posed by offenders. The rule corresponds to Rule No. 4 of the EPR. It conveys the message that lack of resources can never justify the infringement of human rights of juveniles. By imposing sanctions or measures on juvenile offenders the state intervenes at an age where normally the family is responsible for the juvenile's upbringing. If the state partially replaces the parents it must guarantee that its interventions are meaningful, positive and effective.

Rule No. 20 reflects the necessity of regular government inspection as well as of independent monitoring. This Rule corresponds to Rule No. 9 of the EPR. Independent monitoring by persons or institutions that are not controlled by state agencies is an essential and important element of democratic control as it may guarantee effective supervision of the general juvenile justice system that is independent from individual complaints procedures. The Rule envisages monitorring by recognised bodies such as boards of visitors or accredited NGOs, ombudsmen and other similar agencies. An effective individual complaints procedure available to juveniles concerning the imposition and execution of sanctions or measures complements the inspection and monitoring mechanisms.

The specific rules conserning community sanctions or measures (Part II of the ERJOSSM) have already been described in the chapter of *Dünkel/Pruin/Grzywa*, the rules concerning the execution of sanctions depriving juveniles of their liberty (Part III of the ERJOSSM) in the chapter of *Dünkel/Stańdo-Kawecka* in this volume.

There are, however, a few rules to be mentioned which may explain the major orientation the Council of Europe's juvenile justice policy. Part IV of the Rules deals with legal advice and assistance. Rules No. 120.1-3 guaranty (if necessary free) legal advice and assistance to the juveniles, parents and legal guardians. The justice orientation (preservation of the rule of law) is focussed by the Rules on complaints procedures, inspections and monitoring (Part V of the ERJOSSM). The Rules emphasise the "ample opportunity to make requests or complaints" to the implementing authorities (Rule No. 121). Procedures "shall

be simple and effective" and "decisions on requests or complaints shall be taken promptly" (Rule No. 122.1). Another important issue in this context is that the Rules prioratize mediation and restorative conflicz resolution "as means of resolving complaints or meeting requests" (Rule No. 122.2). In any case a further appeal to "an independent and impartial authority" must be guaranteed (Rule No. 122.3). The juvenile must get the possibility to be heard in person and to be entitled to receive legal advice (Rules No. 122.5 and 124).

Other forms of preserving guaranties of the rule of law are regular inspections and monitoring by governmental agencies and independent bodies as provided by Rules No. 125 and 126.1-4).

6. Summary and outlook

The development of juvenile delinquency in the 1990s has put juvenile justice under enormous pressure. A system of criminal justice geared towards special prevention and education is dragged into a conflict of justification and supportive argumentation in the light of violent, possibly xenophobic and right-wing offenders, especially under the conditions of a partly media-fuelled debate about the need for tougher punishments. But in general, the developments in juvenile crime in Europe are not grounds for a reversal in juvenile justice policy. Offending by young people in general remains episodic and petty in nature. On the other hand, it cannot be denied that a small number of no more than 5% of male juveniles of each birth cohort (especially those who come into contact with the police very early, and who are burdened by phenomena of disintegration) can slip into persistent criminal careers. However, a moderate juvenile justice system restricted by the rule of law (for instance the principle of proportionality) is sufficient also – and especially – for this group of offenders. Furthermore, such an approach can be deemed more efficient than a repressive concept that places emphasis on long prison sentences.

Abandoning the idea of education or – in less dramatic terms – special prevention as the Leitmotif of juvenile justice would result not only in an unjustifiable intensification of sentencing, but also threaten the autonomy of juvenile justice from adult criminal justice as a whole. However, we have to recognize that extending the scope of sanctions in the field of adult criminal law on the one hand and recognizing fundamental procedural safeguards and rights in the field of juvenile justice on the other has diminished the gap between juvenile and adult criminal law (see for instance the *Netherlands*). Juvenile justice policy should nevertheless be and remain more than merely a moderated form of adult criminal law. The Recommendation of the Council of Europe on "New Ways of Dealing with Juvenile Delinquency" from 2003 and the "European Rules for Juveniles Subject to Community Sanctions or Measures" from 2008 (ERJOSSM) are a helpful orientation for an independent juvenile justice system and are in line with a wide European consensus on the need for

retaining rational criminal and social policy for young people, even in difficult times. The goal must be the young offender's integration and not his (further) exclusion. Constructive measures like, for instance, mediation (victim-offender-reconciliation), educational support that aims to improve social skills, and an overall rational, moderate system of juvenile criminal law can be seen as in line with this goal.

The findings concerning the development of juvenile crime and the reform proposals to be made can be summarized as follows:

- Juvenile crime remains less concerning than as is suggested in parts of the media.
- Juvenile self-reported crime as well as victimisation studies reveal a stable or decreasing trend since the mid-1990ies, whereas police recorded data only recently are falling (see *Stevens* 2009; *van Dijk et al.* 2005; *Junger-Tas/Dünkel* 2009, p. 215 f.; *Estrada* 1999; 2001).
- Rises in the dark field of juvenile violence are by far less spectacular than those in the official statistics, which implies a change in reporting behaviour. This should be the case particularly in *Germany* and the *Scandinavian* coutries, while other studies are indicative of generally stable levels of reporting (see *Gabaglio et al.* 2005).
- Incidentally, children and young people deserve the public's attention, not only as perpetrators but rather as victims of violence.
- Juvenile crime remains episodic and petty in nature.
- Nonetheless, there is a need for norm validation through constructive**,** particularly supportive and promotional interventions for a distinct, yet small group of young offenders disadvantaged in multiple ways.
- Here, too, the traditional forms of juvenile welfare and community-based educational support – also for young violent offenders – regularly are both sufficient and successful.
- If the allocation to secured accommodation appears unavoidable, it should be performed in a therapeutic, educational surrounding (residential care or social-therapeutic juvenile detention, see *Dünkel/Stańdo-Kawecka* in this volume) and a period of after-care (6-12 months) should be compulsory.
- Contemporary trends in European juvenile justice policy are to be embraced insofar as they are geared towards an expansion of educational measures for offender-rehabilitation and an enhancement of "restorative justice" (see *Doak/O'Mahony* in this volume).
- Thus, the Council of Europe's Recommendation of 2003 and the European Rules for Juveniles Subject to Sanctions or Measures (ERJOSSM) from 2008 are in line with modern juvenile justice philosophy.

- Therefore full respect of young people's rights in juvenile justice according to the UN Convention of the Rights of the Child and the various Recommendations of the Council of Europe should be guaranteed.
- The age of criminal responsibility should be fixed at 14-15 and the age of criminal majority at 18-21 – in view of present knowledge on brain development –, including the option for young adults to be judged according to juvenile justice legislation.
- The transfer of juveniles under age 18 to adult courts, in view of the harmful effects of harsher sentences and particularly of prison should be abolished.
- Parents should not be punished for delinquent acts of their children. Instead, parent collaboration should be sought with all measures addressed to their children.
- Considerable investments should be made by authorities in prevention: evidence based programmes should be addressed to young children, schools, parents and communities.
- Young people require understanding, tolerance and open-mindedness from adults in order to tackle their problems of integration.
- A repressive juvenile justice approach would more likely be counter-productive in this context.
- Therefore, "neo-liberal" systems (see *Cavadino/Dignan* 2006) that are geared towards retribution and punishment and which lack empirically founded strategies of rational juvenile justice policy should be rejected.
- Neither the developments in crime nor the alleged inefficiency of conventional educational or special-preventive approaches are grounds for an intensification of juvenile criminal law.
- New forms of crime and special groups of offenders (for example violent or persistent offenders) do not require new and harsher sanctions as well.
- Forms of restorative justice are a positive means for re-enforcing responsibility and are conform to the traditional model of an educational juvenile justice system.
- Restorative justice in statute and integrated in the juvenile justice system offers an interesting perspective, on the condition that the victim is involved and the rights of the offender safeguarded (see also *Junger-Tas/Dünkel* 2009, p. 233).

The question whether further harmonization of Juvenile Justice in Europe is desirable cannot be answered by yes or no. It will be difficult, as the differences e. g. between the *Scottish* children's hearings system and the (in some aspects) more punitive *English* system are considerable. The same is true for the age

limits in comparison of countries like *Germany* (14-21) and *England/Wales* (10-18). But all of these systems have some important common elements: All reflect the view that juveniles should be dealt with differently from adults and that youthfulness mitigates the punishments that youths should receive and last but not least that youths should be kept separate from adult offenders (particularly when sent to detention in justice or welfare institutions).

European juvenile justice legislation would probably result in compromises which are not acceptable for many countries. The average age of criminal responsibility in Europe is 14. But why should *Norway* or *Sweden*[18] lower the age from 15 to 14? Why should *Belgium* and *Poland* give up their welfare approach with a criminal responsibility only exceptionally with 16 or 15, but regularly with 18? Would it be desirable to criminalize anti-social behaviour (as is the case in *Bulgaria*, *England* and *Scotland*) instead of restricting juvenile justice interventions to criminal offences defined by criminal codes? Should we bring into line the scope of custodial sentences for juveniles and what would be the result? Would a maximum of 4 years (as in *Switzerland*) be acceptable or 15 years as in some *Middle* and *Eastern European* countries or even life imprisonment?

We therefore disagree with scholars who promote a unified "European Juvenile Law" (see *Bochmann* 2009). Instead of forcing individual countries to change their system to a "medium level", a variety of solutions is desirable.

More important than unifying juvenile justice or welfare legislation would be to "make standards work" (see *Penal Reform International* 2001 with regards to prisons). In this context it could be debatable to create a European charter on juvenile justice which transfers the key issues of the Recommendations of 2003 and 2008 mentioned above to an international binding convention like the European Convention on Human Rights. However, this would mean a long process of possibly fruitless discussions resulting in rather low standards which could be agreed by everyone. It was difficult enough to pass the Recommendation of 2008 (see *Dünkel* 2008; *Dünkel/Baechtold/van Zyl Smit* 2009), but it would certainly be more difficult if not impossible to find an international agreement regarding the age of criminal responsibility, the question of how to deal with young adults, the sanctions systems, particularly the conditions of imposing and the length of custodial sentences.

Different cultural traditions and sentencing practices should be accepted as far as they are in line with human rights standards. Variations in juvenile justice and welfare are a precondition for a competition towards "best practice" models. We should therefore be very cautious with harmonization on both European Union and Council of Europe's level. Nevertheless an evaluation of the implementation of Recommendations should be envisaged and such monitoring (possibly blaming outsiders not following European Rules or Recommenda-

18 The recent reform in *Demark* (coming into force on 1st January 2010) should not be seen as an example to be followed.

tions) in practice could result in some form of harmonization without lowering the standards.

Important for evaluating how standards work will be to develop juvenile justice indicators and independent research on the working of the different justice and welfare systems, as well as of innovative programmes in order to go on improving the system. Therefore a net-work of juvenile justice researchers is needed, based in universities or other research institutes which guarantee high levels of research and make evidence based policy a realistic option.

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Table 2: Orientations of juvenile justice law reforms in Europe since 1980

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
Austria 1988	General reform; Aim: minimizing penal interventions	Expanding diversion	Victim-offender mediation	-	Juvenile Justice Act
2001					Lowering the age of full criminal responsibility (19-18), juv. justice applies also to 18 to 21-year-olds
Belgium 2006	Strengthening the principle of proportionality and of procedural safeguards (2006)	Limiting closed educational care (2006)	Mediation, family group conferences (2006)	Parenting orders; Transfer of 16 to 17-year-olds to adult courts (2006)	-
Bulgaria 1996	Due process guarantees for the placement in correctional institutions			Anti-social behaviour orders	Action plan 2003: extending prevention programmes
2004	Introduction of procedural safeguards; decisions of deprivation of liberty are transferred to judges	Implementing new alternative sanctions		Anti-social behaviour orders extended	
Croatia 1998	Due process guarantees; implementing standards of the CoE-Recommendations	Diversion and specific educational sanctions	Mediation, community work		Establishing a comprehensive juvenile justice legislation (Juvenile Courts Act), including rules for the execution of sentences
2002	Enhancing procedural safeguards				

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2006				Increasing prison sentences for young adults to max. 20 to 40 years	Criminal Code
Cyprus 1996		Expanding the scope of (educational) alternative sanctions (probation etc.)	Community work		Criminal Code
Czech Republic 2003	Establishing juvenile courts; Procedural safeguards	Diversion	Mediation, community work		Establishing a comprehensive juvenile justice legislation
2009				Preventive detention for juveniles (no further getting tough-policy)	
Denmark 1998	Youth contract: Increasing the commitment of juveniles and speed up the procedure in connection with the withdrawal of charges (kind of conditional discharge)	Youth contract, see column 2		Some elements of youth contracting	
2001	Youth sanction (combined custodial and community sanction; duration: 2 years, partly executed in closed conditions)			Youth sanction could be understood as "neo-liberal" as it replaces shorter prison sentences	
2010					Age of criminal responsibility lowered from 15 to 14.

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
England/ Wales 1991	Expanding community sanctions	Diversion	Mediation	Just deserts approach	Criminal Justice Act
1994				Stiffer penalties; secure training orders for 12 to14-year-olds; long-term detention possible for 10 to 13-year-olds.	Criminal Justice and Public Order Act
1998	Aim of juvenile justice: preventing offending and reoffending; introducing Youth Justice Boards and Youth Offending Teams (multi-agency approach)	Restricting diversion: See column 5	Restorative justice elements introduced	Abolishing *doli incapax* for 10 to 13-year-olds; Restricting diversion: final warnings for second time offenders; Responsibilisation of parents (parenting order); Anti-Social-Behaviour Orders (civil law; failure to comply may lead to criminal punishment)	Crime and Public Disorder Act
2003	Community sanctions enlarged				Criminal Justice Act
Estonia 2001					Penal Code: Raising the age of criminal responsibility from 13 to 14; CCP entails sanctions system for juveniles

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2002	Reform of the competences of the Juvenile Committees; expanding diversion and community sanctions		Introduction of restorative elements		Juvenile Sanctions Act
2002	Placement of a minor in a special "school for students" must be based on a court decision.				Code of Criminal Procedure
Finland 1989		Restricting prison sentences for juveniles and young adults to exceptional cases			Conditional Sentence Act
1997	Juvenile Punishment Order (comparable to a conditional sentence with supervision)				Criminal Code
2006	Strengthening the legal guarantees for children and juveniles taken into public care, particularly in welfare institutions.	Restricting institutional treatment to the minimum necessary; due process guarantees			Child Welfare Act
France 2002	Speedy court processing			Secure educational centres; For 16 to 18-years old recidivists: mitigation of sentences can be denied	Criminal Code; Educational measures from the age of 10 (no criminal responsibility)
2004				Longer registration of juvenile records	

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2007	Plea bargaining; establishing new separate juvenile prisons (more educationally and rehabilitation oriented).			Enhancing the regulations for 16 to 18-years old recidivists (no mitigation after second reoffending)	Code of Criminal Procedure; Criminal Code
Germany 1990	Due process regulations; alternatives to pre-trial detention	Expanding diversion; new community sanctions; expanding alternatives to pre-trial detention	Mediation		Juvenile Justice Act
2004				Preventive detention for young adults sentenced to at least 5 y. according to the general penal law	Juvenile Justice Act
2006				Joint procedure ("*Nebenklage*") by the victim of serious crimes	Juvenile Justice Act
2008	Aim of juvenile justice: strict priority to preventing reoffending and to reintegration into society (§ 2 JJA); Complaints procedures against measures while being imprisoned			Preventive detention for juveniles with youth prison sentences of at least 7 years (declared as being a violation of the Constitution by decision of the FCC from 4 May 2011)	Juvenile Justice Act

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2008				Preventive detention for juveniles	Juvenile Justice Act
Greece 2003	Procedural safeguards; Imprisonment as last resort; New community sanctions	Diversion; Abolishing indeterminate sanctions and measures	Mediation		Law on the Reform of Juvenile Penal Legislation and other Provisions.
2010	Specialisation of juvenile judges required by law. Extended possibilities for judicial review of all court sentences. Exclusion of speedy trial procedures.	Reducing the maximum penalty of deprivation of liberty from 20 to 10, exceptionally 15 years			Age of criminal responsibility raised from 13 to 15
Hungary 1995	Procedural safeguards; Imprisonment as last resort; Aim of juvenile justice: social reintegration				Criminal Code
2000			Mediation		Act on Mediation
2007		Diversion	Expanding mediation		Criminal Procedure Act
2010, 2011			Expanding mediation	Short-term detention for administrative and petty offences	Criminal Procedure Act Criminal Code; Law reforms intensifying and increasing penalties for adults, but not for juveniles
Ireland 2001	Expanding the range of non-custodial sanctions, prohibiting the use of imprisonment for children under the age of 18 years	Diversion	Restorative justice, mediation, family group conferences		Children's Act; Age of criminal responsibility raised from 7 to 12

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2006		Expanding diversion with regards to non-criminal (anti-social) behaviour		Lowering the age of criminal responsibility for murder, serious sexual crimes from 12 to 10; Anti-social behaviour orders from the age of 12 to 18	Criminal Justice Act; responsibility for children detention schools transferred from Education Ministry to Ministry of Justice
Italy 1988	Expanding alternative sanctions; orientation to minimum intervention	Diversion	Mediation		Criminal Procedure Act
1998	General reform on probation: immediate suspended sentences up to 3 years (prognostic assessment in prison is not necessary anymore)				Criminal Code
Kosovo 2004	Procedural safeguards; Aim: social reintegration Expanding the range of community sanctions; imprisonment as a last resort; Principle of proportionality	Diversion	Mediation		Juvenile Justice Code
Latvia 1998	Procedural safeguards; Aim: social reintegration Expanding the range of community sanctions				Law on the Protection of the Rights of the Child
2002		Expanding the range of community sanctions	Reparation, community service		Law on the Application of Compulsory Corrective Measures to Children

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2002		Diversion			Release from Criminal Liability Act
Lithuania 2003	Procedural safeguards; Aim: social reintegration Expanding the range of community sanctions	Diversion	Mediation, community service		Criminal Code
2007	Expanding educational sanctions and measures				Law on the Supervision of Children
Netherlands 1995	Expanding community sanctions	Diversion		Expanding the possibilities to sentence 16 and 17-years-olds according to adult criminal law; Increasing the length of juvenile imprisonment	Comprehensive juvenile justice reform; Possibility to apply juvenile justice sanctions on young adults
2001				Abolishing educational alternatives to pre-trial detention;	Criminal Procedure Act
2005				Stricter and more intensive application of community sanctions	Action Programme
Northern Ireland 1995	Procedural safeguards; Aim: social reintegration Expanding the range of community sanctions	Diversion			Children (Northern Ireland) Order; Separation of welfare and justice procedures

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
1996	See above				Criminal Justice Order and Criminal Justice Children Order
2002			Youth conferencing		Justice (Northern Ireland) Act; Extension of juvenile justice to 17-year-olds
Poland 1982	Procedural safeguards (offenders); Aim: social reintegration Expanding the range of community sanctions	Diversion			Juvenile Act (welfare approach)
1997				Competence of criminal court for adults for very serious crimes of at least 15 years-olds	Criminal Law
2000			Mediation		Juvenile Act
Portugal 1999 (in force since **2001**)	Procedural safeguards; Aim: social reintegration Expanding the range of community sanctions	Diversion; Educational sanction system	Reparation		Educational Guardianship Law (welfare approach for 12 to 15-year-olds); Separation of welfare and justice procedures
2007	House arrest and electronic monitoring as alternative sanction for under 21-year-olds				Penal Code
Romania 1992	Restoring the legal situation of 1969 (educational measures, but also intensified sentences)			See column 2	Penal Code
1996	Expanding the range of educational measures/ community sanctions				Penal Code

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
2004	Procedural safeguards; intensifying educational measures				Law on the Protection and the Promotion of the Rights of the Child
2006, 2009			Mediation		Laws on Mediation
Russia 1996	Aim of juvenile sanctions: social reintegration; Expanding the range of community sanctions	Diversion	Community service		Penal Code
1999	Procedural safeguards; Expanding the range of community sanctions	Diversion			Basic Principles for Juvenile Offenders
2001	Procedural safeguards	Diversion	Reparation, mediation		Code of Criminal Procedure
Scotland 1995	Statutory regulations of the Children's Hearing System	Diversion	Restorative justice elements		Children (Scotland) Act
2004	Restriction of Liberty Orders and Anti-Social-Behaviour-Orders (ASBOs)			Introduction of ASBOs and parenting orders; Youth courts, (exemption from Children's Hearings) for 16-17 years-olds, see column 2	Anti-Social-Behaviour Act
2010					Age of criminal responsibility raised from 8 to 12
Serbia 2005	Establishment of a separate juvenile justice system; procedural safeguards; expanding the range of community sanctions	Diversion	Reparation, mediation		Law on Juvenile Criminal Offenders

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
Slovakia 2005	Procedural safeguards; expanding the range of community sanctions	Diversion	Reparation, mediation, community service	Increasing penalties for recidivist and violent offenders	Penal Code; Lowering the age of criminal responsibility from 15 to 14, however, only conditional responsibility according to discernment
Slovenia 1995	Procedural safeguards; expanding the range of community sanctions	Diversion	Mediation, reparation, community service		Criminal Code
1999, 2004, 2008					Criminal Code; Law reforms intensifying and increasing penalties for adults, but not for juveniles
Spain 1992	Juvenile justice system for 12 to 15-years-olds; educational approach;				Juvenile Justice Act
1995	Juvenile justice for 14 to 17-year-olds; aim: reintegration; procedural safeguards; providing educational measures	Diversion	Mediation, reparation		Constitutional Law; Penal Code
2000	Separate juvenile justice legislation;	Diversion	Mediation, reparation		Law on Criminal Liability for Minors; educational measures also for young adults (not set into force)
2006					Juvenile justice legislation; Abolishing the rule for young adults

Country/year of reform	Law reform trends concerning:				
	Procedural reform issues/sentencing principles etc.	**Minimum intervention**	**Restorative justice**	**"Neo-liberal" orientations**	**Code/ Other issues**
Sweden 1999	Emphasis on interventions by the Social Services; introduction of closed Youth Care as a criminal sanction to avoid imprisonment	Kind of diversion			Penal Code
2007	Intensifying court control over the welfare intervention of the Social Services (principle of proportionality); prevention of recidivism	Reducing the use of fines and imprison-ment			Act on Special Provisions for the Care of Young People
Switzerland 2007	Procedural safeguards; expan-ding the range of community sanctions	Diversion	Mediation, reparation	Youth imprisonment with a maximum of one year for 14- and 15-year-olds, and of 4 years for 16- and 17-year-olds (formerly one year in general)	Juvenile Justice Act; Increasing the age of criminal responsibility from 7 to 10
Turkey 1992	Procedural safeguards; Obligatory defence counsels				Criminal Procedure Act
2003					Children's Courts Act; expanding the scope of juvenile justice to juveniles under 18
2005	Procedural safeguards; expan-ding the range of community sanctions	Diversion (referral to Social Services)	Reparation, community service		Child Protection Law
Ukraine 2001	Expanding the range of community sanctions	Diversion	Reparation, community service		Penal Code

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Reihenübersicht

Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie

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