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ChildONEurope Series 6

Complementarities and synergies between juvenile justice and social services sector

The proceedings of the ChildONEurope Seminar on Juvenile Justice

(Florence, Istituto degli Innocenti, 19 April 2012)

ChildONEurope Series 6

Complementarities and synergies between **juvenile justice** and **social services** sector

The proceedings of the ChildONEurope Seminar on Juvenile Justice

(Florence, Istituto degli Innocenti,
19 April 2012)

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Complementarities and synergies between juvenile justice and social services sector

The proceedings of the ChildONEurope Seminar on Juvenile Justice

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Introduction

This publication contains the collection of papers related to the European Seminar on 'Complementarities and synergies between juvenile justice and social services sector' of the European Network of National Observatories on Childhood (ChildONEurope) held in Florence, Istituto degli Innocenti, on 19 April 2012. Throughout a decision of the ChildONEurope Assembly of 24th of February 2012 the ChildONEurope Secretariat convened an European seminar to the issues pertaining to the synergic collaboration between the juvenile justice and the social services dedicated to children ended in conflict with the law. Its main aim was to stimulate a wide-ranging discussion on the different criticalities and implications of juvenile justice more sensitive to the child needs and rights.

The timing of this Seminar was particularly appropriate. The so called 'third period' of the history of juvenile justice law, which may be said to date back to the end of the 20th century, is the one characterised by the transformation of institutions (1960-1990) and the drafting of major international documents (Beijing, Riyad and Havana). This period is very rich, it is marked, in turn, by the emphasis on the model of protection, its critical analysis, a tendency towards moving away from the judiciary and having recourse to extra-judiciary solutions. Whereas, some scholars define the period starting from the 1990 onwards as the 'implementation period' of these international standards. But several questions on criticalities remain no answered. Therefore, the implementation cannot be so smoothly operated simply on the basis of their formulation in the international standards. Several are the issues at stake, but one is obtaining and increasing attention: how include and enhance the social services action in the child best interest.

Today's research shows that juvenile justice requires a specific, supple and flexible law that can call upon a range of responses based on aid and education. The development of probation and parole also can be estimated as success in some national experiences. The recidivism and revocation rates have decreased through the use of more constructive and rehabilitative community sanctions. The prevailing new trend on the international scene is to search for alternatives to deprivation of liberty. Focusing on the reality coming from the European experiences, mainly referring to the context of the European Union, the Seminar represents an attempt to place children at the centre of the debate, focussing attention on the main problems facing the implementation of a juvenile justice national frameworks in line with the International standards and on the role that social services should play in order to reach the final aim of setting up a restorative and reintegrative juvenile justice system.

The plenary debate started with the contribution of Renate Winter, Justice Appeals Chamber of the Special Court for Sierra Leone (SCSL) who provided a critical overview over the fulfilment of children's right in the juvenile justice framework and the crucial role of social services for child care and reintegration. The European dimension of the debate was introduce throughout two contributions. The first, was an analysis of the European Union Agenda of action on the EU Strategy and aimed at verifying the possible synergies of work with the social services in this specific context. It was provided by Margaret Tuite, EU Commission-Coordinator for the Rights of the Child DG Justice, Fundamental rights and rights of the child. The second contribution, based on the presentation of the Council of Europe Guidelines on child friendly justice and on social services friendly to children and families, was carried out by Gioia Scappucci, Council of Europe, Children's Rights Division. The plenary section was concluded with the contribution of Cédric Foussard, Director of the International Juvenile Justice Observatory who delivered a critical introduction of the national dimension though the presentation of a comparative European analysis of national experiences on practices of reintegration.

The proceedings reproduced in this publication include as well the outcomes of the three working groups minded to further develop the discussion of three specific issues, namely: (1) the promotion of

alternative to detention in Europe; (2) the participation of social services in the youth court and their potential for the prevention of re-offending; (3) unaccompanied migrant children in conflict with the law. Each one of the working group was opened with the introductive speech of experts coming from academia and international civil society. The expert involved in the working groups' discussion were: Frieder Dünkel, University of Greifswald, Germany, with the coordination of Isabella Mastropasqua, Director of the Study, Research and International Activities Bureau, European Study Center of Nisida, Italy, Stephanie Rap, Researcher, Utrecht University, Netherlands, with the coordination of Benoît Parmentier, Director, Birth and Childhood's Office (ONE), Brussels, Belgium, and Damien Nantes, Director of the Association Hors la Rue, France, with the coordination of Marie-Paule Martin Blachais, Chairperson ChildONEurope Assembly.

Part 1
The international debate trends on juvenile justice and social services

The fulfilment of children's rights in the juvenile justice framework: the role of social services

Renate Winter

Articles 27 and 40 of the Convention of the Rights of the Child, Comment nr. 10 of the Committee on the Rights of the Child and the European Guidelines for a Child friendly Justice deal with the most important issues for juvenile justice: the duty of Member States to use diversion and alternative measures to the maximum possible extent, and furthermore to assist the child throughout all stages of criminal as well as civil procedures.

Neither a juvenile judge nor a family judge can provide this assistance alone. A judge can issue orders, but cannot execute those orders. For the execution of orders, decisions or judgements he/she needs the assistance of social services, be it by psychologists, psychiatrists, mediators, social workers or probation officers, all of them working within the justice system.

Even if the work of the assisting personnel might differ in matters of penal, civil and administrative justice, the difference of having or not having somebody available to immediately, swiftly and efficiently take over the protection of a child at risk or in conflict with the law, is of paramount importance for the judiciary. Furthermore, a judge, knowing that his/her order cannot be executed due to the lack of a supervisory body would not issue such order, even if it would be in the best interest of the child. He/she would have to choose not so favourable measures for the child in cases where supervision by social services is unavailable.

Juvenile justice deals with children in conflict with the law, no matter if they are below or above the age of criminal responsibility. In each case a decision on the child that is in the best interest of the child, has to be made. Juvenile justice also deals with children in contact with the law, such as child victims and child witnesses. In such cases a system of assistance for the child, subjectively through a person of trust, objectively through available protection mechanisms, has to be established. To be able to do so, social services must be in place. Sometimes just one person helping the child to get through a difficult time will suffice; sometimes a whole network of services is necessary, as for instance in cases, where trafficked and severely traumatised children have to give evidence in court.

Let us now have a look at penal matters.

To be able to decide in the best interest of the child, a judge or prosecutor needs first of all to know about the circumstances of the child. He/she needs a thorough report on the child, about the family/school/work environment, problems encountered, contacts with police, contacts with courts, behavioural problems, psychological problems, friends etc. Only then appropriate decisions can be made on the need for pre-trial detention, diversion, bail, indictment, in cases when a child is above the age of criminal responsibility. According to Article 12 of the CRC, a child shall be heard in matters pertaining to him/her if ever possible, even if the assistance of an interpreter, a psychologist or of other assisting persons is necessary. A report on the child has not only to be as complete as possible, it has to be delivered as quickly as possible, especially in cases where a decision has to be made on the use of pre-trial detention so as to keep children out of jail if possible or at detained in jail for the shortest possible period of time. Such a report is made by a social worker with special training on court procedures and on dealing with children. If for instance the crime committed encourages the prosecutor/judge to opt for pre-trial detention, the report can influence this decision. If it confirms the possibility for bail or the possibility of returning the child to a well-functioning family for supervision, the prosecutor/judge would certainly avoid depriving the child of his/her liberty, as deprivation of liberty is a measure of last resort, and to use a measure of last resort would not be necessary in this case.

If the judge/prosecutor is inclined to divert the child from the justice system and to use diversionary measures such as victim-offender mediation or community service, several conditions might be imposed. Once again it would be up to the social worker to submit as complete a report as possible on

the child to enable the judiciary to reach an appropriate decision for the child in question. In case mediation is envisaged, a mediator (mostly a specially trained social worker or a specially trained psychologist) has to deal with both parties of the mediation - the victim (and his/her family) as well as the offender (and his/her family). The mediator is required to report back to the requesting judicial authority if mediation seems to be feasible and again at a later stage, if the mediation has been successfully finalized. If this is the case, the prosecutor/judge can close the case. If community service is taken into consideration, it is again the social worker who has to report to the prosecutor/judge about the situation and the circumstances of the child, if the child is willing and able to undertake community work duties, on what kind of duties would be best suited to the child (and the victim), on the availability of such community duties, and if the family is in agreement with the child undertaking such work. If the prosecutor/judge has decided which kind of work/duty would have the most beneficial impact on the child and be in the interest of the community, the social worker has to accompany the child to the workplace and deal with the employer, in order to ensure that the child is doing the work properly and that the employer is not misusing the child. After finalisation of the job, the social worker has once again to report back to the judiciary in order for the case to be closed if the job has been done correctly or, if not, to open a case at court.

If case diversion is not possible but alternatives can be used instead of punishment, a social worker is again required to first of all report to the judge on the child and his/her situation, to see which alternatives are available in a given situation and to propose to the judge which of them would be in the best interest of the child giving reasons for the recommendations. The judge will then invite the social worker and the child and his/her family/caregiver, to discuss the matter and make a decision. The order given will spell out the conditions necessary for a successful execution of the order and it is once again the social worker who will accompany the child and his/her family and report back to the judge.

If none of the above has worked or if no alternatives are possible and a case comes to trial, the social worker who has made the initial report has to be invited to trial in order to be questioned about possible changes in the circumstances of the child, to give the latest information on the child, for instance if the child has found gainful employment, or a place at a school, or is undergoing therapy. Furthermore, the social worker has to give information on the child's development since the time of the committal of the offence and to submit to the judge recommendations on appropriate, individually tailored possibilities for using non-custodial measures. In many countries, for instance as in Austria, a trial without submission of a report and without interrogation of the social worker would be voided. This shows the importance of the role of the social services in the juvenile justice system, as it is stipulated that a judge cannot find an adequate decision in the best interest of the child without information delivered by competent and trained social workers.

In cases where non-custodial measures are ordered by the judge, the nomination of a social worker or probation officer by the social services, depending on the system in place, will be requested by the judge. The duty of this social worker is to assist the child, and often also his/her family, to fulfil the order to avoid custodial measures and to report back to the judge at the end of the measure. If the fulfilment of the order is not possible for a reason over which the child has no influence, a report has to be submitted in order to enable the judge to change the order. In cases where the child is unwilling to fulfil the order of the judge the social worker has to report on that as well, as the judge might be inclined to summon the child and his/her family to give him/her another chance before revoking the order and using custodial measures.

If probation or a sentence with probation time is pronounced, a probation officer (a social worker specially trained to work in this field) is nominated in most of the cases. It is clear that child in difficult situations, where assistance was not given and where the environment was part of the problem and is certainly not part of the solution, somebody is needed to guide the child through the probation period to prevent him/her becoming recidivist. It goes without saying that returning a child, without assistance, to a very problematic environment means that this child will most likely become recidivist! The probation officer has to periodically report to the judge about the progress of the child or the difficulties encountered by him/her.

In cases where a judge has to deprive a child of his/her liberty, this does not mean that this child will not receive assistance during the period in a closed institution, nor that assistance will not be possible (indeed it is more than necessary) after his/her release.

Services should be provided in closed institutions, especially when a child has acute problems such as aggressiveness, drug addiction, grave behavioural problems, learning deficits, lack of vocational training, etc. A closed institution, appropriate for children, has to provide professional assistance to be given by a wide range of social services, according to the needs of the child in question. The most important duty of social services, however, is preparing the child for "the life after" - the life as a law-abiding citizen without the danger of recidivism. This preparation should start as soon as possible, but in any case after one third of the imprisonment time, in order to make the child ready for the "life outside" if parole is granted. In most of the Member States of the CRC, parole is granted to a child after having served half to a third of the sentence and thus preparation for release has to start as soon as possible. In Austria, where good services are available, probation officers say that preparation for release has to start on the day the child enters the closed institution! This means that the probation officer (parole is usually granted with a probation period) has to investigate whether the family/community accept the return of the child, if the child has work/a school place, if the child has a place to live, and if the child has the financial means to bridge the time between release and receipt of income. Furthermore the probation officer will be present when the child is liberated to assist him/her during the first days of liberty and to assist the child during the whole probation period, in the hope of being able to write a positive final report.

In cases where a child that has committed an offense is below the age of criminal responsibility, the juvenile judge has nevertheless to find a solution for this child to prevent this child from becoming a fully-fledged offender when reaching the age of criminal responsibility. He/she will call upon social services to provide assistance through supervision, treatment, counselling, vocational training, assistance at school, or whatever is necessary to get the child safely through the critical situation in which this child is involved.

Another group of children that are in dire need of assistance and who are often forgotten are the victims and witnesses of crime. Children can be direct victims of crimes, but they can also be indirect victims by having been exposed to experiences or sights that are detrimental to their mental health. A child that has been attacked by his/her father for instance will generally have great difficulties in overcoming or dealing with this act and will not only need the assistance of general social services (specialized youth protection services) but also of psychologists or even psychiatrists in grave cases. The same child, as a witness at court will have even more problems, as family members might try to influence the child, others might try to threaten the child into silence or to give evidence the family wants the judge to be told. In such cases a person of trust is dearly needed, and that person should accompany the child through the whole procedure. If there is no friend, no family member to do the job or if it is too dangerous for them to assist the child, a social worker will be designated by the court to guide the child through the ordeal ahead. Such a person would be even more necessary in cases of trafficking, where a trafficked and thus severely traumatised child has to face the trafficker in court, and very often has to face examination by lawyers who will try to discredit the child's ability to tell the truth. There is need again for strong assistance to be extended to the child to prevent re-victimisation as much as possible. A lawyer, paid by the state, can do the legal protection but the individual psychological protection can only be delivered by a social worker/psychologist.

Another issue is re-compensation in cases where an offender has been found guilty. Who will see to it that the child gets treatment if necessary (and necessary it is in most of the cases)? Who will activate the network of available assistance to the child (protection after trial, monitoring the time of release of the offender, getting legal assistance for having re-compensation really done, finding a place to live if necessary, etc.)? These are duties of social workers acting as persons of trust. It takes a long time for wounds to heal, and justice is quick to close a case. Social services cannot or should not close the case of a child victim/witness before redress has been achieved.

Let's now turn to civil matters, as child friendly justice doesn't stop at criminal matters.

Whenever a child is in contact with the law, social services are requested in order to guarantee their protection. Let's take as an example a divorce procedure: father and mother attack each other, they fight heavily over custody rights, visitation rights, financial agreements and the child is asked by both

of them to be his/her witness. Sometimes the parties accuse each other of criminal behaviour such as sexual harassment, incest, violence etc. Once again, both parents want the child to testify on their behalf. There is no need to explain what such a situation means for a child and there is no need either to explain that the family judge will seek to secure the protection of the child by the youth protection services, and, if necessary, to temporarily place the child with a guest family. It is also needless to say that a report by a social worker would be required to reach such a conclusion.

A similar situation arises in cases of adoption where a child has to be heard, in cases where a placement outside the family is needed, be it in an institution, be it with a foster family. Without the assistance and a report on the situation of the child and recommendations on where to place the child, a family judge would be unable to make decisions that would be for the child's best interest.

If a child has been abducted by a parent or a repatriation procedure has to be undertaken in administrative matters, once again the services of social workers are necessary and important. In abduction cases, social services of both countries involved have to submit reports on the child and the parent in question. In repatriation cases, especially if the child has been trafficked with the consent of the family and a decision has to be made where to send the child, the judge has to know about the situation of the original family and the possible threats by the traffickers to the family, before he/she can issue an order.

The list, where social services are needed in child protection cases is a long one, longer even than the one for penal matters. One cannot say that the one or the other is more important. Both are equally necessary to grant the basic rights and the necessary security to a child in contact with the law and legal institutions.

There is a saying that seems very appropriate to me: a juvenile judge without a social worker is like a fish without water. The same holds for a family judge or somebody deciding in administrative matters. Without the assistance of social services, there is no way to act in the best interests of a child.

The EU Agenda for the rights of the child: the possible synergies of work with social services

Margaret Tuite

EU objective on the rights of the child

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty on European Union (notably Article 3(3) puts further emphasis. The rights of the child are also enshrined in the Charter of Fundamental Rights of the European Union, where Article 24 of the Charter recognises that children are independent and autonomous holders of rights. Article 24 of the Charter also makes the child's best interests a primary consideration for public authorities and private institutions.

In that context, the European Commission adopted an EU Agenda for the rights of the child in February 2011, reaffirming the strong commitment of all EU institutions and of all EU Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies. The EU Agenda recalls that the standards and principles of the United Nations Convention on the rights of the child must continue to guide EU policies and actions that have an impact on the rights of the child. The EU Agenda focuses on a number of concrete actions in areas where the EU can bring real added value such as **child-friendly justice and the protection of children in vulnerable situations** that are of relevance to this conference discussion**.**

It is worth bearing in mind that it is estimated that within the EU 0.2% of the total child population is in formal contact with the police (about one million children per annum). Based on UNODC and Eurostat figures and other studies, efforts have been made to estimate the vulnerability or vulnerabilities of persons in conflict with the law (e.g. approximately 69% of persons in conflict with the law suffer from drug addiction, 22% from alcohol addiction, 10% from mental illness and 9% from learning disabilities or difficulties, 19% are foreigners). Persons in conflict with the law may suffer from more than one vulnerability. These figures are only estimates (and include extrapolations for those Member States for which data is not available), and I give them to provide a <u>very rough indication</u> of the likely scale of numbers involved.

EU Commission activities in the area of child-friendly justice

In the EU Agenda, the Commission undertook to promote the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice and to take them into account in future legal instruments in the fields of civil and criminal justice.

Data collection on children's involvement in justice

The EU will launch a major **data collection study** that should begin in the third quarter of 2012 to collect data on children's involvement in administrative, civil and criminal judicial proceedings in all EU Member States. The study results are expected to serve to develop and implement evidence-based policies.

The **geographical scope** for all parts of the study is all EU Member States. We will collect data on children's involvement in justice meaning **administrative, civil and criminal justice** and covering all potential roles that a child may have in relation to judicial proceedings: offenders/perpetrators/accused (juvenile justice), victim (civil claimant, civil party, private prosecutor), witness and/or parties to criminal justice proceedings; party, witness, claimant, plaintiff in administrative or civil proceedings).

The first objective of the study is to provide a **narrative overview of the situation** - as at 1 June 2012 - in all EU Member States using the Council of Europe Guidelines on child-friendly justice as a template. The narrative overview will record and map legislation, policy and measures in place in

Member States. A second objective, after analysis of international and national indicators already available, to draw up a master list of indicators that reflect obligations to respect, protect and fulfil children's rights in the area of justice. The **third overarching objective** is to collect statistics on children's involvement in administrative, civil and criminal judicial proceedings for the years 2008-2010 (and 2011 if available). Beyond the scope of the Guidelines on child-friendly justice, the narrative overview will also include elements related to age limits (upper age limits for juvenile justice, description of what happens after the age of 18 is reached when a child is already in the system (e.g. transfer to adult systems), a detailed description of diversion measures to include the conditions under which they apply and the impact if any on criminal records. Support mechanisms and measures for **child victims and witnesses** will also be described, as well as advice and support regarding access to complaint, legal appeal and judicial review mechanisms. In terms of this conference topic, there are clear linkages with social services throughout.

In terms of **timing**, we would expect to have the results of the study for **criminal justice** by the end of June 2013, with the results for civil and administrative justice due about a year later. We know that data on juvenile justice is more readily available than other data, and it is likely that very little data is gathered on child witnesses. We expect considerable data gaps, but the study will provide an EU-wide overview of children's involvement in justice for the first time and we hope that the data collection work will provide a sound basis on which to improve data collection in the future.

The study results are intended to be **user-friendly and multi-functional** and will be designed in such a way as to make it possible for users (results will be publicly available) to filter results according to their needs (for example by Member State/by area of justice/by age/by indicator (structural/process/outcome), by year, etc.

Stakeholders for data collection

Given the broad scope and relative complexity of this study, in order to succeed it is essential for the Commission to work with all stakeholders. As well as the mandatory bilateral consultations of each Member State, some key stakeholder involvement mechanisms have been incorporated in the terms of reference for the study. The Commission will be assisted by **a steering group** comprising experts from international and other organisations as well as some Member States (e.g. Fundamental Rights Agency of the European Union, Council of Europe, UNICEF (TransMONEE), UNODC, academic experts on rights of the child, NGO representatives and Member State representatives). The steering group mandate is to ensure that relevant knowledge and expertise within the remit of the steering group is made available and to advise the Commission in taking informed key decisions in the execution of this study.

Member State involvement is obviously critical to the success of this study and round table discussions with Member State (Ministry of Justice and National Statistics Offices) representatives are planned at appropriate milestones, for each of the three areas of justice.

In parallel to this secondary data collection study and complementary to it, the **Fundamental Rights Agency of the European Union** will gather **primary data** and assess **the actual experience on the ground** in a specific area focusing on qualitative aspects, through field research (interviews and focus groups with legal and social professionals) to identify what is or is not implemented and how, and to assess impact, good practices, difficulties and gaps, to include different perspectives, to assess usage of guidelines and child-friendly procedures, etc.

Future instrument on vulnerable suspects

The **future (end 2013/early 2014) legislative instrument on vulnerable suspects** is likely to have a strong child focus. Children may suffer from multiple vulnerabilities, for example if they suffer from mental illness or are part of the migrant population or if they suffer from an addiction. In the work now underway to prepare that legislation, complementarity and synergies with social services are integral to many aspects of the proposal, such as

- assessment of vulnerability
- the right to information and the right to be heard
- notification of custody

- the right to assistance including medical care and psychological support
- pre-trial detention measures
- interview phases
- hearings
- measures to be taken in cross-border cases.

The consideration of **training** of legal and other professionals and police officers with regard to interactions with child suspects or accused is also very important. Key issues to be considered are likely to include: identification/definition of vulnerable suspects/accused, safeguards granted to vulnerable suspects to guarantee their effective participation in criminal proceedings, definition of children and measures in place when children are interviewed by the police (e.g. presence of parent/guardian or lawyer), questions around legal representation for children, etc.

The vulnerability of child suspects/accused on grounds **other than age** is not systematically identified in all Member States and data is lacking within the EU on this topic. Children may not fully understand their rights/charges especially when information is not adapted to their needs; children can waive their right to legal assistance without realising the consequences and, furthermore, a child's welfare may not be sufficiently protected if appropriate adults are not informed on how to assist them when notified of the child's custody.

Victims' rights

Child suspects or accused may also have been or be **victims**, and it is important to look at measures for child victims when discussing juvenile justice, **including the recent Commission proposal on the rights of victims of crime**[1]. A coordinated approach involving the police, education, social services, etc. and combining services in a one-stop-shop or the successful "children houses" that have been implemented in some Member States and Croatia may be considered appropriate and this could also be the case for **vulnerable suspects or accused**.

Training on child-friendly justice

Training in child-friendly justice is important. Training is not only about legal aspects but should include elements of child psychology and communication (see Guidelines on child-friendly justice.)

The child's right to be heard (UNCRC Article 12) is a red thread throughout juvenile justice from investigation of a crime through to how matters are explained once a judicial decision is taken, appeal and complaint mechanisms available, etc. In this respect, the Commission will launch a study in November 2012 to map EU-wide legislation, policy and practice on child participation (the child's right to be heard) in a wide variety of settings including the justice setting.

In 2013, under the Fundamental Rights and Citizenship Programme, the EU intends to make funding available for the provision of training on child-friendly justice to a range of professionals (including judicial and legal practitioners, social workers, etc.).

At EU level the combination of **specific legislative measures, the data collection work - both secondary by the Commission and primary by FRA - as well as efforts to promote child-friendly justice and exchange best practice in collaboration with international partners such as the Council of Europe** can serve to help ensure that children's interactions with the justice system are not unnecessarily unpleasant or distressing.

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[1] Adopted as Directive 2012/29/EU of 25.10.2012 OJ L315/57. **[***Post-conference note***]**

The Council of Europe Guidelines on child friendly justice and on social services friendly to children and families*

Gioia Scappucci

In November 2010, the **Council of Europe** adopted **Guidelines on child-friendly justice**. These apply to everyone under 18 years when they come into contact with the justice system, such as when they break the law, their parents get divorced or when someone who hurt them is being punished.

The Guidelines say that:

- Decisions should be made about children in a way that respects their rights. The child's age and needs must always be taken into account, and his/her privacy respected.
- Children should know about their rights and who can help them.
- Children have the right to be heard in decisions that affect them, and adults must take children's views seriously.
- Children's rights should be respected and they must be treated equally.
- Children and their parents should be given information about the child's right to be treated fairly and properly. This should be explained in a way everyone under 18 years can understand.
- Everyone working with children should receive training on children's rights, how to talk to children and on the needs of children.
- Special rules should apply when children break the law. They must be respected by the police.
- Children who understand their rights should be able to go to court to have those rights protected. They should have their own lawyer and they should have a say in cases that affect them. Decisions should be taken as quickly as possible and should be explained to children in a way they understand. Before they go to court, children should know what it will be like. Special rules should apply to those who have been hurt.

A year later, in November 2011, the Council of Europe also adopted **Guidelines on social services friendly to children and families**. These encourage states to adapt their social service systems for children and families to the specific rights, interests and needs of children.

The key strategies in child-friendly social service delivery include:

- Transparent dissemination in a child-friendly language of information on the availability of social services;
- Equal access to social services for all children;
- Availability of social services for children and families at different stages and situations of their lives;
- Suitability of services based on planning and matching services with individual needs, including an assessment of outcomes for the child;
- A common assessment framework and interagency protocols for different professions and agencies working with or for children, especially children at risk;
- Training, supervision and accountability for all members of staff working with and for children;
- Primary consideration for the safety of the child in all social service delivery;
- Protection of confidentiality of personal data of children who are or have been recipients of social services;
- Mechanisms for re-examination of the outcome of decisions or requests when they are challenged by the child or her/his parents;
- An efficient monitoring and evaluation system of all social service providers for children and families.

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* For further information, please refer to the full text of the Council of Europe Guidelines available at: http://www.coe.int/t/dg3/children/keyLegalTexts/CM_Guidelines_en.asp

A comparative European analysis of national experiences on practices of reintegration

Cédric Foussard[*]

The IJJO[1] and its EU branch, the EJJO[2]

Children and young people all over the world are in need of protection and special care when they come into conflict with the law. This is the original inspiration for the International Juvenile Justice Observatory.

The IJJO has set up its European Branch the European Juvenile Justice Observatory (EJJO), as a positive element in the process of combining strategies and good practices in Europe. The objective of the EJJO aims to create the European Council for Juvenile Justice as the European think-tank on Juvenile Justice is composed of European Experts in the field, who works for the development of initiatives and standards of good practices for the education and the inclusion of young Europeans in conflict with the law[3] and develop the corresponding strategies and recommendations as this Green Paper pretends.

The International standards and the European standards working in favour of the social reinstatement of the young people in conflict with the law

Over the last twenty-five years, international juvenile justice standards have been developed by the United Nations at international level and the Council of Europe at regional level. In addition, a range of non-binding declarations and recommendations have produced specific codes concerning the rights of young offenders and other specific areas of juvenile justice.

At the international level:

- The Convention on the Rights of the Child (1989), Article 40[4]
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)[5]
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)[6]

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[*] Both Cédric Foussard's presentation of the ChildONEurope Seminar of 19th April 2012 on Juvenile justice and social services sector and this summary take back the principal points of the IJJO Green Paper written by Ms. Severine Jacomy-Vité on *The social reintegration of young offenders as a key factor to prevent recidivism*. This paper has been done in collaboration with the European Council for Juvenile Justice. It is aimed at examining the orientations and scopes of young offender's reintegration efforts across Europe so as to highlight perceived challenges and positive practices to be taken into account in further policy and programme developments. (See also the Green Paper developed by the Public Administration Section *The Evaluation of the Implementation of International Standards in European Juvenile Justice Systems* and the Academic Section *Measures of Deprivation of Liberty for young offenders: how to enrich International Standards in Juvenile Justice and promote alternatives to detention in Europe?*).

[1] http://www.ijjo.org

[2] http://www.ejjo.org/

[3] Throughout the paper, different terms are used to refer to this group, or to parts of it: children, adolescents, minors, juveniles or youths in conflict with the law, young offenders below or above the minimum age of criminal responsibility, etc. All these terms have different ideological, legalistic and practical implications or connotations. They are used indiscriminately but selectively at different points to reflect various aspects, references and contexts of the discussion.

[4] http://www2.ohchr.org/english/law/crc.htm

[5] http://www2.ohchr.org/english/law/pdf/beijingrules.pdf

[6] http://www2.ohchr.org/english/law/tokyorules.htm

- The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)[7]
- United Nations General Assembly Resolution on Human rights in the Administration of Justice (Nov 2010) A/C.3/65/L.35/Rev.1[8]
- General Comment number 10 (2007) of the Committee on the Rights of the Child on Children's rights in juvenile justice[9]
- General Comment number 13 (2011) of the Committee on the Right of the Child to freedom from all forms of violence[10].

At the European level:
- Guidelines of the Committee of the Ministers of the Council of Europe on Child-Friendly Justice - CJ SCH (2010) 1211
- Recommendation CM/Rec (2008)11of the Committee of the Ministers to member states on the European Rules for Juvenile offenders subject to sanctions or measures12
- Recommendation Rec(2006)2 of the Committee of the Ministers to member states on the European Prison Rules[13]
- Recommendation No. R (89) 12 of the Committee of the Ministers to member states on Education in Prison[14].

Key elements of successful social reintegration: postulate and examples of best practice

Detention as a measure of last resort for children in conflict with the law: This principle is a quasi-universal norm of international law[15]. Indeed, the use of custodial measures has been documented to be highly damaging for children and adolescents. Hence, this principle must be respected by all means through an array of prevention, diversion and alternative measures. In addition, this may allow improving remaining custodial options, not only in terms of conditions but also in terms of approaches. It is time for a new way of thinking and acting: in juvenile custodial institutions, a pedagogical approach that focuses on "treatment" instead of on "control" is needed.

Child-Friendly Justice: The reintegration of young offenders, notably further to a detention period, can only be complete if it is grounded in a positive "sense" of justice, nurtured by their understanding of justice and by their experience of justice. Hence, child-friendly justice can be considered as another prerequisite to the successful reintegration of young offenders, although it is only just emerging as a concept and as a part of the broader notion of justice for children.

Reintegration as a continuous and long-term objective: Reintegration is not just about aftercare. Actually necessary assistance must be provided to juveniles, "at all stages of the proceedings"[16]. The founding principle is that reintegration is a process, rather than the end result or the limited mandate of one or two professionals in isolation. That is why it requires consistency, continuity and long-lasting commitment.

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[7] http://www.un.org/documents/ga/res/45/a45r112.htm
[8] http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N10/609/51/PDF/N1060951.pdf?OpenElement
[9] http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf
[10] http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf
[11] http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf
[12] https://wcd.coe.int/ViewDoc.jsp?id=1367113&Site=CM
[13] https://wcd.coe.int/ViewDoc.jsp?id=955747
[14] http://www.exocop.eu/sixcms/media.php/13/CoE_1989_Education_In_Prison.pdf
[15] Cf. Article 13 of the Beijing Rules and Article 37 of the CRC.
[16] Cf. Article 24.1 of the Beijing Rules.

Support to reintegration as an outcome-oriented process: The reintegration is as one ultimate ("*desirable*") goal of juvenile justice[17] but it is not specified means to reach this goal. Comparing cost projections of systems with and without solid reintegration services have in some cases enabled to speed up policy change and make long-term savings. Moreover, the "social profit" would be even higher.

Restorative justice as a broader paradigm conducive of reintegration: Restorative justice is only gradually being introduced in juvenile justice across Europe and more as a complementary approach than as an entire system while it has a lot to offer in terms of defining relevant objectives and criteria of reintegration. Indeed, by closely involving the community, restorative justice also enables a stronger and more positive monitoring of recidivism.

Scope of the reintegration agenda

Focus on reintegration from custody: Reintegration is a particularly acute concern for those who have been detained or placed in a custodial setting, as a result of their offending behaviour. Certainly these youngsters combine the double challenge of overcoming the impact of institutional care and the stigma and consequences of their offence and offending behaviour.

Reintegration from non-penal custody: Child offenders under the minimum age of criminal responsibility, underage minors "with deviant behaviour" (e.g. Bulgaria[18]), unaccompanied, separated or asylum seekers minors and child victims of trafficking are all prone to some form of custody from which reintegration may also be necessary. The recommendations made in the present paper should therefore be considered for application to these groups too.

Reintegration from pre-trial detention: Police custody and pre-trial detention: happen when the child or adolescent is most vulnerable and receptive to any external information but also to risks, aggression, threats, etc.; has been experienced by many of those found later on in the system; by definition also includes children and youths who are innocent, who will be released upon judgment and/or who will be given non-custodial sentences. It is why it is essential that they start being considered as part of the juvenile justice process and its reintegration aim.

Reintegration of young adults: A clear case has been made in International and European standards, as well as in recent research in favour of making young adults up to the age of 21, 23 or even 25, benefit from juvenile justice approaches and services[19]. Therefore, it is highly recommended that all European countries adopt a blanket approach to young adults in terms of enabling them to benefit from the same level of support to reintegration as minors.

Overview of policies and programmes in favour of young offender's reintegration in Europe

Legislative framework: Statutory obligations in terms of reintegration objectives and means for prisons and residential institutions hosting young offenders in Europe generally put the emphasis on education and training, but are far less detailed in terms of other factors of rehabilitation and reintegration. Therefore consideration could be given to encouraging reforms among EU members on

[17] Cf. Article 40 of the UN CRC.

[18] In Bulgaria, the minimal age of criminal responsibility is 14 years. Yet, a system outside of criminal justice treats so-called counter-societal behaviour below that age. As a result, Bulgaria institutionalizes children considered "deviant" as young as 8 years.

[19] Cf. Article 3.3 of Beijing Rules.

the basis of most developed existing domestic legislations and regulations[20]. Yet, beyond legislative reform, implementation should be prioritized. Moreover the EU may need to become more directly involved in sanctioning or supporting countries in situation of non-compliance with established international and European standards, or for that matter with their own domestic legislation.

Coordination, capacity, and after care services: Reintegration is a common responsibility of institutions and society: for successful reintegration, institutions need chain partners in society. Re-offending is for a non-negligible amount the result of bad transition management from custody to society. That is why a coordinated approach between all social partners is an important prerequisite.

Programmes and measures: In most if not all countries in Europe, schooling and vocational training are the primary concerns and regulated components of reintegration strategies of custodial institutions for young offenders. In addition to basic academic knowledge and technical skills, education and training programmes may include cultural activities, computer skills and vocational counseling.

Indeed, the focus should always be on self-management, autonomy and self-responsibility of the youngster. To this end, there is a growing trend towards delaying and externalizing training scheme during and after the detention period evaluated due to the fact that contact with the outside world is very important.

While welcoming the emphasis given to education and training as well as the growing provision of treatment programmes in juvenile detention and correctional institutions in Europe, it is high time that these programmes be upgraded to fit the interests, abilities and employment prospects of the concerned youth, that the offer of variety of quality psychosocial and behavioural treatments be an obligation of such institutions and that contacts with family members and/or important others be fully and systematically supported and facilitated, not only through visits, but also through direct involvement in treatments, gradual release and aftercare.

Preparatory and temporary release: Some positive practices of gradual or temporary release exist in Europe, but that they serve the purpose of "deserving" juveniles rather than being a right attached to a structured and systematic rehabilitation policy.

Short custodial sentences appear to have become an obstacle to meaningful and gradual rehabilitation and reintegration purposes. While detention must be "used only as a measure of last resort and for the shortest appropriate period of time", a well-planned stay in a system of gradual custody, involving the full respect of children's rights, the promotion of their personality and dignity, and the provision of a comprehensive set of measures and programmes, is clearly more beneficial in most cases than short sentences in a non-rehabilitative, or eve destructive, setting.

Monitoring, evaluation and research: In Europe, there appears to be lack of meta-analyses, notably because cross country comparative analysis is impossible in the absence of common standards and data. This is sometimes even true at country level (e.g. Belgium). A growing number of countries are producing recidivism data on a national scale, which are used in evaluation and monitoring of rehabilitation factors and measures. However, and beyond methodological concerns[21], the use of such data should be carefully weighed and put in perspective.

Key components of successful reintegration approaches

This part of the paper intends to point out emerging approaches that are reported to be especially valuable by civil society organizations active in the rehabilitation of young offenders. More than

[20] See, for instance, Ireland Children's Act vs. the Greek Correctional Code.

[21] See for instance, C. Friendship, A.R. Beech and K.D. Browne, *Reconviction as an outcome measure in research. A methodological note*, "British journal of criminology", Vol. 42/2, 2002, pp. 442-444.

specific projects or measures, the focus is on approaches, programme components or factors of rehabilitation that should be further promoted and developed.

One summary of the key characteristics of such programmes could be that they should be holistic, dynamic and participatory.

The following key objectives or principles appear to guide most promising programmes:

- **Guaranteeing integrated and interdisciplinary work:** The principle of having a central referent able to convene (and inform) the different professions and partners in the reintegration process of the young offender needs to be established or restored in many countries. The key is that a shift - or at least a better linkage and increased focus - may need to be made from a case-management of the judicial decision-making and implementation process, to a case-management of the reintegration process.

Indeed, the continuous exchange of ideas based on dialogue and communication between stakeholders is fundamental. In this context, in Europe, NGOs have an increasingly important role, being able to operate with a degree of flexibility which allows them to facilitate and manage contacts across the territory in a dynamic way.

- **Preventing institutional dependency and ensuring continuity of care:** The more institutional dependency will be avoided, the more continuity care can be a light, natural and successful process. One the one hand, key elements of custody must be carefully weighed and planned so as not to nurture inmate's dependency. One the other hand, continuity of care includes essential elements which should prevent change from custody to after-custody from being too radical and lead to social problems and, potentially, recidivism. One basic element should be the provision of facilities and material support for youngsters to be able to mix rapidly with the local community without being necessarily identified as former offenders and not to be pushed to commit offences for mere material reasons.

- **Addressing the youth's offending behaviour and promoting factors of resilience:** To preserve or restore their sense of dignity and identity, it is key that youngsters are not simply trained or cognitively "re-programmed" to behave lawfully, but heard and accompanied to understand themselves and find meaning both in their past and their future life.

Youth led projects and networks of former young offenders acting as agents of their own and their peer's reintegration are developing. Such projects are transforming a negative experience (offending) into a new identity and role (support to others), beyond mere recovery or social reintegration into the previous environment.

- **Opening up realistic and fair socio-professional perspectives:** The particular situation of young offenders could be better researched, with less focus on re-offending rates and more focus on other aspects of social and personal integration. In that respect, civil society service providers have noted that clearing the administrative situation of the youth is of utmost importance although it is often neglected, as well as anticipating future housing, means of transports, as well as leisure and hobbies development.

Conclusion

Evaluated practice from a number of countries and field experience from civil society players have allowed to determine a number of elements and approaches which appear to contribute to higher levels of reintegration and, ultimately, non-recidivism than punitive custodial options lacking individual support and aftercare.

Therefore, European societies need to continue strategically investing in the social integration of all vulnerable groups at macro level, so that juvenile justice systems are not left in isolation to address root causes of offending such as dire socio-economic situations, cultural and educational gaps, psychosocial and mental health issues that are beyond its realms.

Finally, a rights-based approach to children and adolescents would ensure that young offenders are entitled to an array of benefits and services that favours their reintegration, rather than being gradually excluded from these as their judicial status negatively evolves.

In conclusion, **we must ensure that all children and adolescents remain considered first and foremost as subjects of rights and agents of their own lives.**

Recommendations

At European level:

- Bring youth criminality on the EU agenda as a phenomenon to be addressed positively through EU programmes and funding accessible to NGOs
- Establish a European platform on the social reintegration of young offenders
- Develop European directives on the individualization of education and employment options and outcomes for young offenders during and after custody
- Support national strategies and projects which nurture integrated approaches and positive social networks of young offenders in custody
- Define modalities for young offenders to fully participate by having their view taken into account at all stages of the judicial procedure and of the implementation of the penal sanction
- Encourage domestic legislative and policy changes to guarantee sustainable living options for young offenders coming out of custody
- Establish a mechanism for exchange of good practices and the development of common and results-oriented indicators
- Monitoring the existence and quality of national policies and practices on the reintegration of young offenders
- Foster cooperation between European institutions such as DG Justice, DG Employment, EACEA, DG Home Affairs, and stakeholders from civil society associations and other bodies.

At national and local level:

- Develop child-friendly justice
- Maintain children deprived of liberty close to their place of residence
- Individualize activities and programs
- Involve different stakeholders, juvenile offenders, their families and the victim in the planning, develop and implementation of tailored approaches
- Promote educational and training paths to enhance minor's skills and competences for a full social and working reintegration
- Support specialized employability schemes
- Determine the appropriateness and modalities of disclosure of criminal records to employers
- Introduce and/or enforce the obligation to provide post-sentence assistance
- Ensure that a coordinated aftercare system through
- Monitor and test the objectives, effectiveness and educational value of reintegration projects on an on-going basis
- Develop overarching national strategies for young people who are no longer in education, employment or training
- Integrate substance abuse prevention programmes in late elementary school (age 0-11) and early secondary school curriculum.

Part 2

Outcomes of the Working groups

Working group 1
Juvenile justice and child protection systems in Europe
Promoting community sanctions and developing "good practices" in an 'era of penal excess'

Frieder Dünkel, Ineke Pruin

Introduction

In the last 20 years, youth justice systems in Europe have undergone considerable changes, particularly in the former socialist countries of Central and Eastern Europe. However, differing and sometimes contradictory youth justice policies have also emerged in Western Europe. So-called neo-liberal tendencies can be seen particularly in *England and Wales*, and also in *France* and *the Netherlands* (Cavadino and Dignan, 2006: 215 ff; 2007: 284 ff; Goldson, 2002: 392 ff; Tonry, 2004; Muncie and Goldson, 2006; Bailleau and Cartuyvels, 2007; Muncie, 2008; Cimamonti, di Marino and Zappalà, 2010). In other countries, such as *Germany* and *Switzerland*, a moderate system of minimum intervention with priority given to diversion and of educational measures has been retained (Dünkel *et al.*, 2011). In many countries, elements of restorative justice have been implemented.

This chapter evaluates youth justice policies and practice in Europe from a comparative perspective. The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts. Attention is also paid to the traditional 'welfare' and 'justice' models of youth justice and how they have become intertwined in modern European practice. The claim that a 'new punitiveness' is the prevailing strategy is questioned and attention is drawn to the practice of many youth justice systems, which seem to be fairly resistant to neo-liberal policies. Sonja Snacken (2012: 247 ff) has recently sought to explain why continental European countries in general have succeeded in resisting 'penal populism'. In the conclusion this reasoning is applied to youth justice systems in particular.

Contemporary trends in youth justice policy

Across Europe, policies based on the notions of the subsidiarity and proportionality of state interventions against youth offenders are remaining in force or emerging afresh in most, if not all, countries. Recently however, in several European countries, we have also witnessed developments that adopt a contrary approach. These developments intensify youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation. The youth 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 and Wales* in 1994 and 1998 (Kilchling, 2002; Cavadino and Dignan, 2007: 284 ff.; 2006: 215 ff.; Junger-Tas and Decker, 2006; Bailleau and Cartuyvels, 2007; Junger-Tas and Dünkel, 2009). The causes of the more repressive or 'neo-liberal' approach in some countries are manifold. It is likely that the new punitive trend in the USA, with its emphasis on retribution and deterrence, was not without considerable impact in some European countries, particularly in *England and Wales*.

These developments at the national level, which is the primary focus of this chapter, have to be understood against the background of international and regional instruments that set standards for youth justice. Most important in this regard is the 1989 UN Convention on the Rights of the Child, a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the 'best interests of the child' - 'child' defined for the purpose of this Convention as a person under the age of 18 years - and to provide education, support

and integration into society for such children. These ideas are developed further in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and at the European level in the recommendations of the Council of Europe, in particular the 2003 Recommendation regarding new ways of dealing with juvenile offending (Rec [2003]20) and the 2008 Rules for juvenile offenders subject to sanctions or measures (Rec [2008]11; Dünkel, 2009; Dünkel *et al.*, 2011: 1861 ff).

Responsibilisation and neo-liberalism

In *England and Wales*, and to some extent elsewhere, the concept of responsibilisation has become a pivotal category of youth justice. Responsiblisation is not limited to young offenders but increasingly parents are held criminally responsible for the conduct of their children. Making parents more responsible may have a positive impact. There is empirical evidence that parental training, combined with child support at an early stage, has positive preventive effects (Lösel *et al.*, 2007). However, it is not necessary to criminalise parents. Ideally, parental training should be offered by welfare agencies (as is the case in *Germany* and the Scandinavian countries) and not be enforced by penal sanctions (Junger-Tas and Dünkel, 2009: 225 f).

A positive aspect of making young offenders take responsibility for their actions is that it has contributed to the expansion of victim-offender-reconciliation (*Täter-Opfer-Ausgleich*), mediation and reparation. In the English context, however, it is more problematic as it has been accompanied by the abolition of the previously rebuttable presumption that 10- to 14- year olds may lack criminal capacity. Although in practice the presumption had been relatively easily to rebut, its formal abolition in 1998 was an indication of determination to hold even very young offenders responsible for their actions. The tendencies in English youth justice may be regarded as symptomatic of a neo-liberal orientation, which can be characterised by the key terms of responsibility, restitution (reparation), restorative justice and (occasionally openly publicised) retribution. These so-called '4 Rs' have replaced the '4 Ds' (diversion, decriminalization, deinstitutionalization and due process) that shaped the debates of the 1960s and 1970s (Dünkel, 2008). The retributive character of the new discourse is exemplified by the requirement that community interventions should 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 attribute these changes to the so-called 'neo-correctionalist model' that has come to dominate official English penology (Cavadino and Dignan, 2006: 210 ff; Bailleau and Cartuyvels, 2007; Muncie, 2008).

There are many reasons for the increase in neo-liberal tendencies, as defined by Garland and other authors (Garland, 2001; 2001a; Roberts and Hough, 2002; Tonry, 2004; Pratt *et al.*, 2005; Muncie, 2008). Some are to be found in the renewed emphasis on penal philosophies such as retribution and incapacitation, and in related sentencing policies that demonise youth violence, often by means of indeterminate sentences. There are also underlying socio-economic reasons. More repressive policies have gained importance in countries that face particular problems with young migrants or members of ethnic minorities and that have problems integrating young persons into the labour market, particularly where a growing number of them live in segregated and declining city areas. They often have no real possibility of escaping life as members of the 'underclass', a phenomenon that undermines 'society's stability and social cohesion and create mechanisms of social exclusion' (Junger-Tas, 2006: 522 ff, 524). They are at risk of being marginalised and eventually criminalized. In this context recidivist offending is of major concern. Therefore many of the more punitive changes to the law are restricted to recidivist offenders in *England and Wales*, *France*, and *Slovakia* for example.

It should be emphasised, however, that, in the case of most continental European countries, there is no evidence of a regression to the classical penal objectives and perceptions of the 18th and 19th centuries. Overall, there is continued adherence to the prior principle of education or special prevention, even though 'justice' elements have also been reinforced. The tension between education and punishment remains evident. The reform laws that were adopted 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 2001, the *Czech Republic* in 2003 or in *Serbia* in 2006 are examples of this dual approach. The reforms in *Northern Ireland* and in *Belgium* in 2007 are of particular interest, as they strengthened restorative elements in youth justice, including so-called family conferencing, and

thus arguably contribute to responsiblisation in this way without necessarily being 'neo-liberal' in fundamental orientation (Christiaens, Dumortier and Nuytiens in Dünkel *et al.*, 2011; O'Mahony and Campbell, 2006; Doak and O'Mahony, 2011).

It must be recognized, however, that, even in countries with a moderate and stable youth justice practice, the rhetoric in political debates is sometimes dominated by penal populism with distinctly neo-liberal undertones. Nevertheless, this does not necessarily result in a change, as can be demonstrated by a German example. At the end of 2007 several violent crimes in subways (which were filmed by automatic cameras) led to a heated public debate about the necessity to increase the sanctions provided by the Juvenile Justice Act. The leader of the Christian Democratic Party (CDU) of the federal state of Hesse, Roland Koch, made this a core element of his electoral campaign by proposing the use of boot camps and other more severe punishments for juvenile violent offenders. He also used the fact that the offenders had immigrant backgrounds for xenophobic statements. Within a few days almost 1000 criminal justice practitioners and academics signed a resolution against such penal populism and in January 2008 the CDU lost the elections. Since then penal populism has not been made a major issue in electoral campaigns again. The CDU had gone too far. Muncie (2008: 109) refers to this debate in Germany and interprets it as an indicator for increased punitiveness. Yet, youth justice practice in *Germany* has remained stable and sentencing levels relatively moderate (Heinz, 2009; 2010).

Diversion, minimum intervention and community sanctions

If one regards the developments in the disposals that are applicable to young offenders, there has been a clear expansion of the available means of diversion. However, these are often linked to educational measures or merely function to validate norms by means of a warning (Dünkel, Pruin and Grzywa, 2011). Sometimes, however, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

Everywhere it is proclaimed that deprivation of liberty should be a measure of last resort. In practice the level of what is meant by 'last resort' varies across time and in cross-national comparison. *England* and *Wales*, for example, experienced sharp increases of the juvenile prison population in the 1990s, but the reduction of immediate custody by 35 per cent from 1999 to 2009 contradicts the assumption that the adoption of a more punitive rhetoric necessarily leads to a continued growth in these numbers. *Spain* and a few other countries have also shown increases in the use of youth custody in recent years, but in general recent developments go in the other direction. This is particularly true for Central and Eastern European countries. In some of these countries, such as *Croatia*, the *Czech Republic*, *Hungary*, *Latvia*, *Romania* and *Slovenia*, the high level of diversion and community sanctions and the low level of custodial sanctions characteristic of continental Western European and Scandinavian countries have been achieved, whereas others, such as *Lithuania*, *Russia* and *Slovakia*, still use deprivation of liberty more often, albeit not as frequently as in Soviet times.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in *Belgium* about 80%, *Germany* about 70% (Dünkel, Pruin and Grzywa, 2011: 1684 ff). In some countries, such as *Croatia*, *France*, *the Netherlands*, *Serbia* and *Slovenia,* this is a direct consequence of the long recognised principle of allowing the prosecution and even the police a wide degree of discretion - the so-called expediency principle. Exceptions, where such discretion is not allowed, can be found in some Central and Eastern European countries, but in these cases one should note that, for example, property offences that cause only minor damage are not always treated as statutory criminal offences. *Italy*, to take a further example, provides for a judicial pardon which is similar to diversionary exemptions from punishment, but awarded by the youth court judge. So, there is a large variety of forms of non-intervention or of imposing only minor (informal or formal) sanctions.

Constructive measures, such as social training courses (*Germany*) and so-called labour and learning sanctions or projects (*the Netherlands*), have also been successfully implemented as part of a strategy of diversion. Many countries explicitly follow the ideal of education (*Portugal*), while at the same time emphasising prevention of re-offending, that is, special prevention (as is done by the Council of

Europe's 2003 Recommendation on new ways of dealing with juvenile delinquency and the role of juvenile justice).

Restorative justice

One development that appears to be common to Central, Eastern and Western European countries is the application of elements of restorative justice policies to young offenders. 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. Pilot mediation projects were established in the 1990s in Central and Eastern European countries such as *Slovenia* (since 1997) and the *Czech Republic*. They are predominantly linked to informal disposals (diversion).

In some countries, legislation provides for elements of restorative justice to be used as independent sanctions by youth courts. In *England* and *Wales,* for example, this is done by means of reparation or restitution orders, and in *Germany* by means of so-called *Wiedergutmachungsauflage*, that is victim-offender-reconciliation as an educational directive (see §§ 10 and 15 of the Juvenile Justice Act). Family group conferences - originally introduced and applied in New Zealand - form part of the law reform of 2007 in *Belgium*. These conferences are forms of mediation that take into account and seek to activate the social family networks of both the offender and the victim. Even before the Belgian reform project, the youth justice reform in *Northern Ireland* had introduced youth conferences, which have been running as pilot projects since 2003. In addition the Northern Irish reform, made provision for reparation orders: an idea that had been introduced in *England* and *Wales* in 1998 (O'Mahony and Campbell, 2006; Doak and O'Mahony, 2011).

Whether these restorative elements actually influence sentencing practice or are merely a 'fig-leaf' seeking to disguise a more repressive youth justice system can only be determined by taking into account the different backgrounds and traditions in each country. Victim-offender-reconciliation has attained great quantitative significance in the sanctioning practices of both the *Austrian* and the *German* youth courts. If one also takes community service into account as a restorative sanction in the broader sense, 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 (Heinz, 2012).

In *Italy* the procedural rules for youth justice introduced in 1988 have led to a move away from a purely rehabilitative and punitive perspective to a new conception of 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 combined with the suspension of the procedure with supervision by the probation service (*Sospensione del processo e messa alla prova*).

Youth justice models

If one compares youth justice systems from a perspective of classifying them according to typologies, the 'classical' orientations of both the justice and the welfare models can still be differentiated (Doob and Tonry, 2004: 1 ff; Pruin, 2011). However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems, for instance within *German* and other continental European youth justice legislation.

There is a clear tendency in youth justice policy in recent decades to strengthen the justice model by establishing or extending procedural safeguards, also to what may be regarded as welfare measures. This tendency includes a stricter emphasis on the principle of proportionality in the sense of avoiding both sentences and educational measures that are disproportionately harsh.

Other orientations that are not necessarily based squarely on 'justice' or 'welfare' are significant too. Restorative justice has already been mentioned. Minimum intervention, too, plays a part but so also do the 'neo-liberal' tendencies towards harsher sentences and 'getting tough' on youth crime (Albrecht and Kilchling, 2002; Tonry and Doob, 2004; Jensen and Jepsen, 2006; Junger-Tas and Decker, 2006; Bailleau and Cartuyvels, 2007; Ciappi, 2007; Patané, 2007; Cimamonti, Di Marino and Zappalà, 2010; Pruin, 2011). Tendencies towards minimum intervention, that is the prioritization of informal procedures (diversion), including offender-victim-reconciliation and other reparative strategies, can

also be viewed as independent models of youth justice: a 'minimum intervention model' (Cavadino and Dignan, 2006: 199 ff, 205 ff). Cavadino and Dignan (2006: 210 ff) identify not only a 'minimum intervention model' (priority of diversion and community sanctions) and a 'restorative justice model' (priority of restorative/reparative reactions), but also a 'neo-correctionalist model', which, as mentioned previously, is particularly characteristic of contemporary trends and developments in *England* and *Wales*.

Here, too, there are no clear boundaries, for the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies**,** but also minimum intervention (as is especially the case in *Germany*, see Dünkel, 2006; 2011)**,** restorative justice and elements of neo-correctionalism (for example, increased 'responsibilisation' of the offenders and their parents, tougher penalties for recidivists and secure accommodation for children). Rather, differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European juvenile justice is moving towards mixed systems that combine welfare and justice elements, which are further shaped by the trends mentioned above.

Reform strategies

Against this background of a range of old and newly prominent ideas combined with somewhat fractured models, one can identify a number of reform strategies.

In many Western European countries such strategies seem to have been relatively well-planned. 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 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 guarantee in times of social change, as has been the case in Central and Eastern Europe. Yet, reform of youth justice through practice (as developed in *Germany* in the 1980s) appears preferable to a reform 'from above', which often fails to provide the appropriate infrastructure.

As a result of major political changes at the end of the 1980s, more drastic reform was required in the countries of Central and Eastern Europe. The situation as it existed at the time was not uniform across the region but differed amongst groups of countries. One group was comprised of the Soviet republics, *Bulgaria*, *Romania* and to some degree the *German Democratic Republic* (East Germany) and *Czechoslovakia*. These countries had developed a more punitively oriented youth justice policy and practice. On the other hand, there were *Hungary*, *Poland* and *Yugoslavia*, which had rather moderate youth justice policies with many educational elements.

Across Central and Eastern Europe developments since the early 1990s have been characterised by a clear increase in the levels of officially recorded youth crime. The need for youth justice reform, a widely accepted notion in all of these countries, stemmed from the need to replace old (often Soviet or Soviet-influenced) law with (Western) European standards as contained in the principles of the Council of Europe and the United Nations. This process has, however, produced somewhat different trends in criminal policy.

Since the early 1990s, there has been a dynamic reform movement both in law and in practice. It is exemplified not only in numerous projects but also in the appointment of law reform commissions for and, in many cases, in the adoption of reform legislation in, for example, *Estonia*, *Lithuania*, *Serbia*, *Slovenia* and the *Czech Republic*.

On the one hand, the development of an independent youth justice system is a prominent feature of these reforms: see, for example, developments in the *Baltic States, Croatia*, the *Czech Republic*, *Romania, Russia, Serbia* and *Slovakia,* as well as in *Turkey*. In this connection the importance of procedural safeguards and entitlements that also take the special educational needs of young offenders into account has been recognised. However, in the *Baltic States* there are as yet no independent youth courts. In *Russia* the first model youth courts are up and running in Rostow on the Don and in a few other cities (Shchedrin in Dünkel *et al.*, 2011). Such a project has also been established in *Romania* in

Brasov (Păroşanu in Dünkel *et al*., 2011). However, in general, the required infrastructure for the introduction of modern, social-pedagogical approaches to youth justice and welfare is widely lacking.

In order to deter recidivists and violent young offenders in particular, some of this new legislation not only involves new community sanctions and possibilities of diversion, but also retains tough custodial sentences. The absence of appropriate infrastructure and of widespread acceptance of community sanctions still results in frequent prison sentences. However, developments in *Russia*, for example, show that a return to past sanctioning patterns, where roughly 50% of all young offenders were sentenced to imprisonment has not occurred. Instead, forms of probation are now quantitatively more common, and more frequently used than sentences of imprisonment.

What is becoming clear in all Central and Eastern European countries is that the principle of imprisonment as a last resort (*ultima ratio*) is being taken more seriously and the number of custodial sanctions reduced. However, it has to be noted that youth imprisonment or similar sanctions in the ex-Yugoslavian republics and to a lesser extent also in *Hungary* and *Poland* had 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 necessary infrastructure are clear. Initially, the greatest problem in this respect was the lack of qualified social workers and teachers. This has remained a problem, as to a great extent the appropriate training courses have not yet been fully introduced and developed (Dünkel, Pruin and Grzywa, 2011). Again one has to differentiate as there are exceptions: *Poland* has a long tradition in social work. Also in the former *Yugoslavia* social workers were trained, following the introduction of 'strict supervision' as a special sanction in 1960.

The concept of 'conditional' criminal responsibility (related to the ability of discernment) as long expressed in *German* and *Italian* law - has recently been adopted in *Estonia* (2002), the *Czech Republic* (2003) or *Slovakia* (for 14 year olds, see Pruin, 2011: 1566 ff). This is another interesting development, for it reflects a tendency for reforms in the countries of Central and Eastern Europe to have been influenced by Austrian and German youth justice law as well as by international standards. Despite obvious and undeniable national particularities, there is a recognisable degree of convergence among the systems in Western, Central and Eastern Europe.

Unresolved issues

Although on the basis of comparative research one may speak, albeit cautiously, of an emerging European philosophy of juvenile justice, which includes elements of education and rehabilitation (apparent in, for example, the recommendations of the Council of Europe), the consideration of victims through mediation and restoration, and the observance of legal procedural safeguards, there are some issues on which such a development is not as clear. In this regard we consider the age of criminal responsibility and its corollary, the age at which offenders cease to be regarded as juveniles and are treated as adults. The latter issue also raises the question of whether there should be some mechanism for the converse, namely, allowing juveniles to be tried in adult courts.

Age of criminal responsibility

There is no indication of a harmonisation of the age of criminal responsibility in Europe. Indeed, the 2008 European rules for juvenile offenders subject to sanctions or measures recommend no particular age, specifying only that some age should be specified by law and that it 'shall not be too low'(Rule 4).

The minimum age of criminal responsibility in Europe varies between 10 (*England and Wales, Northern Ireland*, and *Switzer land*), 12 (*the Netherlands, Scotland*, and *Turkey*), 13 (*France*), 14 (*Austria, Germany*, *Italy*, *Spain* and numerous Central and Eastern European countries), 15 (*Greece* and the *Scandinavian* countries) and even 16 (for specific offences in *Russia* and other Eastern European countries) or 18 (*Belgium*). After the recent reforms in Central and Eastern Europe, the most common age of criminal responsibility is 14 (see Table 1).

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 + (mitigated sentences)	15-19
Denmark[d]		15	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
the Netherlands		12	16/18/21	12-21
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 responsibility resulting in juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice).

[b] Only for traffic offences and exceptionally for very serious offences.

[c] Only for serious offences.

[d] Only mitigation of sentencing without separate youth 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] Article 61 of the Swiss Criminal Code for adults provides for 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, where they can stay there until they reach the age of 30.

[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 really low age of criminal responsibility, for example in *England* and *Wales*, in many countries only educational sanctions imposed by the family and youth courts are applicable at an earlier age (for example, *France* and *Greece*). Also in *Switzerland* the youth court 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* and *Slovenia* for 14 and 15 year old offenders. Further still, some countries, such as *Lithuania* and *Russia,* 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 minimum age of criminal responsibility lies at 16 (for a summary, see also Pruin, 2011). Such a graduation of the age of criminal responsibility must be criticized as it is contrary to the basic philosophy of juvenile justice that sanctions rather should refer to the individual development of maturity or other personality concepts than to the seriousness of the offence (see also the criticism under 4.3).

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 as a last resort in a home or in residential care (particularly in the form of closed or secure centres as in *England and Wales* and *France*) can be just as intensive and of an equal or even longer duration than a sentence of juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs considerably from the language used in the reform debates (Doob and Tonry, 2004: 16 ff). Legal changes that formally make the regime more intensive are sometimes the result of changes in practice, and sometimes they contribute to changes in practice. The effect of these changes varies too. Despite the dramatization of events by the mass media that sometimes lead to changes in the law, there is often, in *Germany* for instance, a remarkable continuity and a degree of stability in youth justice practice (Dünkel, 2006; 2011).

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 central issue in this regard is the extension of the applicability of juvenile criminal law - or at least of its specifically educational measures - to 18 to 20 year old young adults, as occurred in *Germany* as early as in 1953 (see also the recent reforms in *Austria, Croatia, Lithuania* and *the Netherlands*; Pruin, 2007; Dünkel and Pruin, 2011; 2012).

This tendency is rooted in a criminological understanding of the transitional phases of personal and social development from adolescence to adulthood and a recognition that such transitions are taking longer. Over the last 50 years, the phases of education and of integration into working- and family life (the establishment of one's 'own family') have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties (Pruin, 2007; Dünkel and Pruin, 2011; 2012). Furthermore, new neuro-scientific evidence indicates that maturity and psycho-social abilities are fully developed only in the third decade of life (Weijers and Grisso, 2009: 63 ff; Bonnie, Chemers, and Schuck, 2012 (chapters 4 and 5); Loeber *et al.*, 2012: 336 ff), which would justify a juvenile justice system up to the age of 21 or even 24. The Dutch government recently is working on a proposal to extend the scope of juvenile justice in this way (see Loeber *et al.*, 2012: 368 ff, 394 ff.)

An increasing number of states have statutory provisions for imposing educational and other sanctions of the youth justice law on young adults. Historically however, such laws have not always had the same impact in practice. While in *Germany* the laws applicable to juveniles are applied in more than 90% of the cases concerning young adults who commit serious crimes (overall average: more than 60%; see Dünkel in Dünkel *et al.*, 2011), in most other countries this has remained the exception. One reason is that in *Germany* the jurisdiction of the juvenile court has been extended to young adults, whereas in other countries the criminal court for adults is responsible for this age group but can impose

some of the measures otherwise reserved for juveniles (for example, in the former *Yugoslavia*, which introduced this possibility in 1960: Gensing, 2011). The Yugoslavian experience is a good example of how substantive and procedural laws have to be harmonized in order to prevent counterproductive effects of such provisions. There was therefore good reason in 1998 for *Croatia*, a former Yugoslavian state, to transfer the jurisdiction on young adults to the juvenile courts. *Austria* took the same step in 2001.

In other instances keeping young adults fully in the adult framework does not mean that they cannot be treated very much like juveniles in practice. In *the Netherlands*, for example, the general criminal law provides for a plethora of alternative sanctions, which can be seen as educational or rehabilitative (for example, community service) and which are not provided in German criminal law for adults.

Transfer to adult criminal courts or jurisdiction (waiver procedures)

While raising the upper limit of the definition of juvenile may be seen as a way of imposing more appropriate sentences on immature young adults and extending the scope of youth justice, there is also an opposite trend, most prominent in the USA (Stump, 2003; Bishop, 2009) but also found in many European countries (Pruin, 2011), of referring children for trial in adult courts. Such referrals have a distinctively punitive purpose.

In some European countries, such as *Scotland* and *Portugal*, juvenile offenders from the age of 16 onwards can be dealt with in the adult criminal justice system. Beyond that, in other countries, juvenile offenders can be transferred from the youth court to the adult court, where so-called waiver or transfer laws provide for the application of adult criminal law to certain offences (Stump, 2003; Bishop, 2009; Weijers *et al.*, 2009; Beaulieu, 1994: 329 ff; Goldson and Muncie, 2006a: 91 ff; Keiser, 2008). This is in fact a qualified limitation of the scope of juvenile justice (Hazel, 2008: 35) and a lowering of the minimum age for the full application of adult criminal law.

Some countries provide for the application of adult criminal law for 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 the law reform of 2006, before which juveniles had been tried by adult courts, so-called Extended Juvenile Courts have had the competence to conduct such trials. In *the Netherlands*, the youth 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 discretion. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law. In *England* and *Wales*, juveniles, even at the age of 10, can be 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 more than 14 years). The Crown Court has to apply slightly different rules for the protection of juveniles in this case. The number of juvenile offenders who are sent to the Crown Court has fluctuated over the last 25 years without any indication of a clear cut trend in either direction.

In *Serbia* and 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 (O'Mahony, 2011). 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.

In *France*, in contrast, less serious offences, rather classed as 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 neither a lawyer nor a youth justice specialist, but has the competence to 'punish' juveniles up to a certain level (Castaignède and Pignoux in Dünkel *et al.*, 2011).

In *Scotland* there are no waivers or transfer laws, but the same effect can be achieved in another way. In most severe cases the juvenile offender will not be transferred to the children's hearings system. Formally, this is not a transfer to the adult criminal court, because the criminal court has original competence to try all cases, even if in practice the vast majority is transferred to the children's hearings system. However, *Scotland* shares the idea that in very serious cases the offenders should not be dealt by the juvenile criminal system but in the adult criminal system.

Countries, like those in *Scandinavia* that do not have specialised juvenile jurisdictions, thus (naturally) do not have provision for transfers either. It should 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 through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it (Stump, 2003). 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 special treatment of juvenile offenders (as an inherent principle of youth justice) is challenged by such provisions (Keiser, 2008: 38). The fundamental idea is to react differently to offences that are committed by offenders up to a certain age, based on their level on maturity or on their ability of discernment. Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility should signify - independently from the type of offence - from which age on a young person is deemed 'mature enough' to receive (adult) criminal punishment. On the other hand, however, the introduction of 'transfer laws' makes exactly those offenders fully responsible who often lack the (social) maturity to abstain from crime or even fully to differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be regarded as not fully mature when charged with a 'normal' offence, but fully criminal responsible for a serious offence. As Weijers and Grisso (2009: 67) have put it: 'An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits.' A systematic approach would treat all offences equally.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juvenile offenders. Additionally, they claim that waivers are needed as a 'safety valve' (Weijers *et al*., 2009) for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases. 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.

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 long prison sentences - the typical reaction by adult criminal law to serious offending - are relatively ineffective in preventing further crimes (Killias and Villettaz, 2007: 213). Research results furthermore show that a lenient, minimum-interventionist juvenile justice system does not produce more juvenile offenders than an active and punitive one (Smith, 2005: 192 ff).

In practice, transfers may be of declining significance in Europe. In *the Netherlands* the number of transfers to the adult court has been reduced 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: 110). In *Belgium* the use of transfers is very limited as well: transfer decisions amount to 3% of all judgments (Weijers *et al*., 2009: 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 to 2004 the number of cases transferred to public prosecutors swung between 242 and 309, which is 0.2-0.3% of all cases tried by the courts (Stańdo-Kawecka in Dünkel *et al*., 2011).

Even if waivers and transfer laws are of little significance in practice in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juvenile offenders. Additional safeguards in adult courts are unable to compensate for them (Keiser, 2008: 38). Therefore the UN Committee on the Rights of the Child recommends abolishing all provisions that allow offenders under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years (Committee on the Rights of the Child, 2007: paras. 34, 36, 37 and 38; Doak, 2009: 23).

Reform trends in juvenile justice in individual countries

The following survey on national reform trends follows the theoretical distinction between reforms focussing on the four major sometimes contradictory orientations such as:

- Procedural reform issues, particularly strengthening legal safeguards, principles of due process and sentencing reforms (e. g. introducing new - not necessary more intrusive - community sanctions),
- Reforms oriented towards the principle of minimum intervention, particularly expanding diversion strategies,
- Reforms oriented towards implementing restorative justice elements such as mediation or family group conferencing, and finally
- Reforms oriented towards 'neo-liberal" strategies of more severe punishment, intensifying social control, also by civil measures (ASBO's, parenting orders etc.) (see Dünkel, Grzywa, Pruin and Šelih in Dünkel *et al.*, 2011: 1851 ff).

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 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 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 neo-liberal 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 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. Later reforms in 2002 and 2006 brought a tougher sentencing approach, but only for young adults (18 to 20 years of age).

In *Cyprus* in 1996 the scope of educational sanctions was expanded, in 2006 the age of criminal responsibility was raised from 10 to 14.

In 2003 comprehensive juvenile justice legislation was passed in the *Czech Republic* 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.

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* 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 community 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 reoffending'. Also the emphasis given to reparation orders or to mediation may not necessarily be seen as 'neo-liberal'. 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 David 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). 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 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 - 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 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 involuntary 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.

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, 2007 and 2008 kept the general educational approach of the Ordinance of 1945 and also improved the system of supervision in the community (*protection judiciaire*). Since 2002 educational (welfare) measures can also be imposed on 10- to under 12-years-old offenders. 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 passed a major juvenile law reform in 1990. The possibilities of diversion were expanded, new 'alternatives', which had been developed by the practice in the nineteen eighties, 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.

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, 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 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 again 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.

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.

The last major reform in *Italy* 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.

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.

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.

The reform of 1995 in *the Netherlands* 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.

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 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 prosecuted 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.

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 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.

In 1992 a reform of the Criminal Code in *Romania* 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 (which came to effect in 2011).

The general reform of the Penal Code in *Russia* 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 major issue of juvenile law reform.

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 prosecution was raised from 8 to 12, the competence of the Children's Hearing System remained unchanged.

Serbia in 2006 established 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.

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 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 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 traditionally relies on a welfare orientation by transferring juvenile offenders (aged 15 to 17) regularly to 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 and Stańdo-Kawecka, 2011). 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.

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 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).

In the *Ukraine* the reform of the general Penal Code in 2001 established 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 Central 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.

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. Reforms aiming more severe sentencing of young offenders regularly are restricted to certain recidivist or violent offenders (e.g. England and Wales, France, the Netherlands, Romania or Slovakia).

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 and Pruin, 2009 and Dünkel, Pruin and Grzywa, 2011).

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 disproportional interventions.

Developments of sentencing young offenders

Even if reform developments in juvenile justice legislation do not confirm a 'punitive turn' it would be possible that sentencing practices in some or many countries follow the 'getting tough'-approach in order to fulfil public demands on reacting towards juvenile delinquency by more severe sanctioning. In order to evaluate this hypothesis we can observe a general lack of reliable comparative and longitudinal data. In many countries data on sentencing practices are not complete, comparable or even accessible, in particular to informal reactions (diversion etc.). If data on diversion are not clear, sentencing statistics of the courts are hardly interpretable. Therefore we had to abstain from a comprehensive cross-national comparison between the 34 countries involved in the study. To evaluate the hypothesis of an increasing 'punitiveness' it may be sufficient to evaluate national data in a longitudinal perspective in order to examine the changes in time. Reliable and interpretable data must

consider the delinquency structure and qualitative changes in juvenile crime. Often such data were not presented in the national reports in the present study. The decrease of youth imprisonment may be related to diminished youth violence and not necessarily to a milder sentencing practice. The following presentation therefore may only give some indication in favour or disfavour to the hypothesis of a 'new punitiveness' (see in more detail Dünkel, Pruin and Grzywa, 2011: 1684 ff).

In *Bulgaria* since the reform laws of 1996 and 2004 less custodial sanctions are imposed, whereas victim-offender-agreements increased considerably (more than 40% of all court dispositions). About one fourth of juvenile delinquents are formally sentenced, almost half of them to deprivation of liberty (before the law reforms almost 90% of court dispositions were custodial sanctions).

In *Croatia* in the 1980s the proportion of juveniles sentenced to imprisonment was about three times higher (16-22 per cent) than today. As in other countries deprivation of liberty in a closed setting has therefore become the absolute exception, and accounts for only about 2-3 per cent of all informal and formal sanctions imposed on juveniles.

In *Denmark* the sentencing practice has not changed significantly after the introduction of the so-called youth sentence in 2002. Still less than 10 juveniles are in prison departments on a given day.

In the *Czech Republic* the proportion of custodial sentences decreased from 14 per cent in 1995 to 7 per cent in 2006. The number of youth prisoners correspondingly decreased from 300 to 100.

England and *Wales* showed a strongly increasing rate of the juvenile prison population during the 1990s. The more punitive sentencing practice included also the imposition of longer sentences and a decline of diversion rates. However, the situation has changed considerably: 1999-2009 detention in a young offender institution declined by 35 per cent. It is paradoxically under the new conservative government that a shift from 'neo-liberal' sentencing is discussed and that the government wants to restrict immediate custody (mainly because of budgetary restrictions).

In *Estonia* since the reform of 2002 the proportion of diversionary measures (transfer to so-called youth committees) has tripled and is now more than 80%. Although statistical data are not always clear, the number of custodial sanctions has considerably declined.

In *Finland* 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. As a reason Lappi-Sepällä sees reforms that he signifies as 'humane neo-classicism" (see Lappi-Sepällä in Dünkel *et al.*, 2011). 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 the legal situation and practice in other European countries. Fines account for 74 per cent 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 per cent 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.

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, almost 60 per cent of cases were dismissed. 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. However, these changes quantitatively are difficult to measure.

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 70% in 2008. 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 5 per cent of the juveniles and young adults experience the disciplinary measure of short term detention of up to four 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).

In some aspects *Greek* sentencing practice is different from the countries that have been 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.

Despite poor statistical evidence it becomes clear that, with the reform of the Children Act of 2001 in *Ireland*, the use of custodial sentences has 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.

In *Hungary* 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. 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%). Altogether Hungary has made great progress towards meeting the international standards that emphasise minimum intervention and community sanctions and measures.

Although statistical data are rarely available and not always validated it seems to be evident that 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). Populist rhetoric which from time to time emerges in the political debates (Berlusconi and others) doesn't change this picture. The reform law of 1988 has led to an expansion of judicial diversionary measures (*perdono giudiziale*).

Latvia had a rather stable sentencing practice in the 1990s, but with the introduction of community service in 1999 and further community sanctions such as mediation in 2005 the youth prison population has been reduced from 438 in 2000 to 149 on 1st January 2010 (-66%).

In *Lithuania* the law reform of 2003 has not yet had too much impact. Still about 30 per cent of sentenced juveniles receive custodial sanctions. However, this proportion is much lower than in soviet times.

In *the Netherlands* since the mid-1980s a getting tough approach has emerged insofar that diversion without any intervention has been reduced. The law reform of 1995 has introduced longer custodial sanctions (up to one or two years instead of up to 6 months), which had some impact on the sentencing practice. The proportion of dismissals or of diversionary transfers to projects is somehow unclear. Therefore the relatively large proportion of about 30 per cent custodial sanctions on the court level is difficult to interpret.

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 Dünkel *et al.*, 2011: 971). The numbers of juveniles sentenced by the courts decreased from 1,254 in 1987 to 722 in 2004, the proportion of custodial sanctions decreased from 21 to 10 per cent of all court dispositions. The major law reform of 2001 has had further impact on sentencing. Youth conferencing (introduced 2004) became the major alternative sanction, which further reduced custody.

In *Poland* as well since 1990 the proportion of custodial sanctions has been reduced to a very low level of about 2 per cent of all measures issued by the family court.

In *Romania*, diversion is used extensively. Whereas in 1995 only 28 per cent of the cases involving minors were diverted, the percentage rose to 53 per cent by 1999 and reached 81 per cent in 2007. Concerning the court dispositions, prison sentences are applied relatively often. 1996 almost half convicted minors 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. 2002 a probation service was created, which contributed to an increase of probation sentences.

A trend to use alternative sanctions is visible in *Russia*, too. In soviet times 30-50% of convictions comprised custodial sanctions. Until 2005 the proportion decreased to 'only' 24 per cent, which still reflects a rather severe punishment practice (all the more that diversion with about 25 per cent still plays a marginal role).

The development in *Scotland* can be seen in contrast to England and Wales. Custodial sanctions for 16- to 21-years-old offenders decreased between 1990 and 2006, and also the younger age group below 16 profited from alternative sanctions.

Serbia has extended diversion by the reform of 2005, however, exact statistical data are lacking. Nevertheless a reduction of custodial sentences was observable already before the law reform.

Interestingly the sentencing practice in *Slovakia* has not changed very much, although the official crime policy emphasised more severe punishment of juvenile offenders.

Slovenia belongs to the countries with an absolute moderate sentencing practice. Since 1980 the proportion of custodial sentence further decreased.

Longitudinal data about *Spain* have not been available. However, there are indicators for a tougher sentencing practice in Catalonia with an increased proportion of custodial sentences in the 2000s.

In contrast *Sweden* has kept its policy to avoid imprisonment for 15-17-years-old juveniles and 18-20-years-old young adults and use it only as a very last resort. Law reforms led to a less extensive diversion practice. The result is not more severe punishment, but an increase of transfers to the Social Welfare Boards (2008: two thirds of all criminal cases).

In *Switzerland*, too, custodial sentences remain the absolute exception. Interestingly the few youth prison sentences - if ever applied - are very short (almost 80 per cent below one month). The figures demonstrate that the Swiss sentencing practice is not punitive at all.

Data on the sentencing practice in the *Ukraine* are not easily accessible and incomplete. An indicator for a change in the sentencing practice of courts may be seen in the reduction of inmates in so-called youth colonies (youth prisons) since 2000. During the 1990s the number was around 3,300-3,900 per day, until 2007 it declined to about 1,900.

Summary and conclusion

Juvenile justice systems in Europe have developed in various forms and with different orientations. Looking at sanctions and measures the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve the compliance with the norm violated by the juvenile offender (*Normverdeutlichung*). Mediation, victim-offender reconciliation or family group conferences are good examples of such diversionary strategies. On the other hand, from an international comparative perspective, systems based solely on child and youth welfare are on the retreat. This is not so evident in Europe where more or less 'pure' welfare orientated approaches exist only in *Belgium* and *Poland* than in, for instance, Latin American countries, which traditionally were oriented

to the classic welfare approach (Tiffer-Sotomayor, 2000; Tiffer-Sotomayor, Llobet Rodríguez and Dünkel, 2002; Gutbrodt, 2010).

Across Europe elements of restorative justice have been implemented, both in countries which to some extent adopt neo-liberal or neo-correctional approaches and in those with a relatively strong welfare orientation. In addition, educational and other measures, which try to improve the social competences of young offenders, such as social training courses and cognitive-behavioural training and therapy, have been developed more widely. These developments are in line with international juvenile justice standards. The 2003 recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasizes the development of new, more constructive community sanctions also for recidivist and other problematic offender groups. This maintains the traditional idea of juvenile justice as a purely, special 'educational' system of intervention designed to prevent the individual from re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been hailed as desirable across Europe, it cannot be denied that in some countries 'neo-liberal' orientations have influenced juvenile justice policy and, to a varying extent, also practice (see Muncie 2008 with further references). The widening of the scope for youth detention in England and Wales, France and the Netherlands may be interpreted as a 'punitive turn'. And indeed the youth prison population in these countries did increase considerably in the 1990s. Muncie (2008: 110) refers to public debates and statements of academics also in other (including Scandinavian) countries and comes to the conclusion that such commentaries clearly suggest that not only in the USA and England and Wales but throughout much of Western Europe, punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support.

This conclusion reflects only a facet of the full reality. A different reality emerges, however, when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare agencies and projects such as mediation schemes. These continue to operate in a reasonably moderate way and thus to resist penal populism. Deprivation of liberty remains the truly last resort in *Scandinavia* and indeed most other regions and countries (von Hofer, 2004; Storgaard, 2004; Haverkamp, 2007). This differentiated picture of a 'new complexity' (Habermas, 1985) is the main message of the research presented by the major comparative study on juvenile justice legislation and sentencing practice in Europe (Dünkel *et al.*, 2011) on which this chapter is largely based (see in detail Dünkel, Pruin and Grzywa, 2011; Dünkel, Grzywa, Pruin and Šelih, 2011).

Sonja Snacken has sought to explain why many European countries have resisted penal populism and punitiveness (Snacken, 2010; 2012; Snacken and Durmontiers, 2012). She has emphasized that European states are constitutional democracies strongly oriented towards the welfare state, democracy and human rights. These fundamental orientations, which can be found most clearly in many continental Western European states, and particularly in Scandinavian states (Lappi-Seppälä, 2007; 2010), serve as 'protective factors' against penal populism (see also Pratt, 2008; 2008a).

It is undoubtedly true that penal populism does not halt at the gates of youth justice (Pratt *et al.*, 2005; Ciappi, 2007; see also Garland, 2001; 2001a; Roberts and Hough, 2002; Tonry, 2004; Muncie, 2008). Generally speaking however, the same factors that have allowed such punitiveness to be resisted in many European countries apply even more strongly to youth justice. Moreover, juvenile offending is different from that of adults. Its episodic nature allows for more tolerance and moderate reactions.

The relative invulnerability of youth justice to punitive tendencies is reinforced by the strong framework of international and European human rights standards that apply to it, courtesy of the 1989 UN Convention on the Rights of the Child and the other instruments mentioned above. More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand.

Clearly more needs to be done and this chapter has highlighted three areas in which policies are still unresolved, also at the international and European level.

- One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15.

- A second step would be to build on the interesting initiatives to increase the maximum age at which young offenders can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and to divert them from a career of adult crime.
- Thirdly, the contrary tendency towards trying juveniles as adults should be resisted. It is not only doctrinally dubious, as explained above, but holds the risk of increasing directly the impact of the worst features of the adult criminal justice system on young offenders.

In sum, youth justice policy as reflected in legislation and practice in the majority of European countries has successfully resisted a punitive turn. While there is more work to be done in areas where policy is not yet clear, it is realistic to hope that neo-liberal approaches will be moderated, even in England and Wales, France or the Netherlands where they are rhetorically most prominent, and that the ideal of social inclusion and reintegration will be the Leitmotiv for juvenile justice reforms of the 21st century.

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Working group 2
The participation of social services in the youth court and their potential for the prevention of re-offending

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Introduction

The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Convention on the Rights of the Child (CRC) are starting points when looking at the rights of children who are involved in the juvenile justice system. The best interest of the child principle (Art. 3 CRC) applies to all children, including children who are suspected of having committed an offence. Article 40 (1) CRC states that the manner in which juvenile offenders are treated in the justice system should promote their sense of dignity and worth and reintegration into society. Once a juvenile has committed a first offence, it is in the best interest of the child to prevent further offending. Social services are in the capacity to make important contributions to the prevention of re-offending and the reintegration of juvenile offenders into the society.

It is a well-known fact that in every Western European country the emergence of a special juvenile justice system implied a role for social services in the juvenile justice process. In the Beijing Rules it is for example formulated that "*In all cases* [...] *the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority*" (rule 16.1). This rule requires that adequate social services should be available to deliver information (e.g. in the form of a social inquiry report) to the youth court. This implies that the court should be informed with regards to the most relevant facts about the juvenile, such as his personal and family background and education. Moreover, the well-being of the child should be the guiding factor in the course of adjudication and sentencing (rule 17 (1) (d), Beijing Rules). It can be argued that background information regarding the young person and his family is crucial when taking a decision that is in line with the best interest of the child.

What is much less well known today is how social workers actually function within the juvenile justice systems in different countries: What is their relation to the court and the decisions taken by authorities? When do social services start their involvement with juvenile defendants? And what exactly is their role in the juvenile justice system and more specifically the youth court?

In this paper I will present an overview of the role of social services in the juvenile justice system within Western Europe, with regards to their preventive and re-integrative activities. The findings presented in this article are part of a larger comparative research project on juvenile justice procedures in Western Europe. This study concerns 11 countries and encompasses literature research ('law in the books') as well as empirical research in the youth courts in these countries ('law in action'). The empirical part of this study is conducted by means of systematic observations of youth court hearings and interviews with judges, prosecutors, lawyers and social workers in all the countries involved, to be able to say something relevant about 'law in action'. The countries involved in this study are Belgium, England and Wales, France, Germany, Greece, Ireland, Italy, the Netherlands, Scotland, Spain and Switzerland.

Combining the findings of the research conducted in the 11 countries, a structured scheme of the involvement of social services will encompass aspects such as attachment of social services to the youth court or to the local community; the moment at which social services start their involvement with the juvenile defendant - pre- or post-trial; the purpose of the social enquiry report; and the presence of social services at the youth court hearing. In this article it will be shown that a distinction can be made between countries that have a strong, classical welfare orientation and countries that apply a clear justice model.

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The relation between social services and the youth court

This first finding that stands out from this study is the nature of the relation between social services and the youth court. It has become clear that there are characteristic differences at this point, which lead to the conclusion that in Western Europe two different models may be distinguished concerning the relation between social services and the youth court. Social services are either directly attached to the court, or they constitute a separate and independent organization.

Part of the court

In several countries, such as Belgium, France, Greece, Italy, Spain and Switzerland, social services constitute a part of the youth court and social workers act under the authority of the court. Typical for this model is that the offices of the social workers are in the court building and social workers work in close cooperation with youth court personnel, such as judges. In these countries social workers have daily contact with the judge about current cases.

For example, in France the SEAT (*Service Éducatif Auprès du Tribunal pour enfants*) is part of the court. The social workers from SEAT provide the judge before every hearing with information about the personal background of the young person. Moreover, they give the judge updates about the progression the young person is making with regards to a protective or educative measure that has been imposed. The French social worker is also in close contact with the prosecutor and the lawyer of the young person. Together they discuss the situation of the young person and interventions that would be in the best interest of the child. Besides providing information to the youth court judge and liaising with the prosecutor and lawyer, the social worker also provides the parents of juvenile defendants with information about the court procedures, before they have to appear in court (Wyvekens, 2006; Gazeau and Peyre, 1998).

A similar situation exists in Switzerland. In Switzerland the judge or the prosecutor[1] works in close cooperation with social workers, who are attached to the court or the prosecution service. The social workers have their office in or very close to the court or office of the prosecution service, as is the case in France. In France and Switzerland the social services that operate within the juvenile justice system, have a variety of responsibilities. Besides providing the judge/prosecutor with background information with regards to the young person, before the final disposition is rendered, social services also provide for the implementation of protective measures. Protective or educative measures can be imposed both pre- and post-trial, because in Switzerland and France measures can be imposed regardless of whether the juvenile is found guilty (Blatier, 1998; de Vries, 2009; Wyvekens, 2006; Gazeau and Peyre, 1998). In Switzerland it is even the case that measures are given precedence above sanctions. This means that in case a juvenile is found guilty the judge can cancel the execution of the sanction, when the young person completes the protective measure successfully (Weidkuhn, 2009; Aebersold, 2011).

A similar situation can be found when looking at the practices in Belgium, Italy, Greece and Spain[2]. Social workers are strictly attached to the youth court and receive orders from the youth court judge to investigate the background situation of juvenile defendants.

The practices in the juvenile justice systems in these countries can be argued to fall within the classical child protection or *welfare model*. In these countries social workers play an important role in juvenile justice matters. Among others, this has to do with the fact that protective measures can be imposed instead of (only) sanctions, which means that the measures are sought that match closely with the needs of the juvenile defendant.

[1] In the German speaking part of Switzerland the specialized youth prosecutor (*Jugendanwalt*) handles a large majority of cases, outside the court. In the French speaking part youth cases are handled in a specialized youth court, by a youth court judge.

[2] The only difference in Spain is that here it is not the judge but the public prosecutor who orders the social workers to start an investigation on the background of the young person. The *equipo técnico*, however, is attached to the youth court and functions in a similar fashion as in France and Switzerland (de la Cuesta *et al.*, 2010; Dames, 2008).

Independent organization

In other Western European countries the social service that advises the youth court about the social background of the juvenile defendant is not attached to the youth court, but constitutes an independent organization. This is the case in the Anglo-Saxon world, but also in Germany and the Netherlands.

In England and Wales, separate authorities handle child protection and juvenile justice cases since the adoption of the Children Act in 1989[3]. In the UK there has never been anything like the classical child protection model we find in the juvenile justice systems on the European continent. Since the year 2000, every local community in England and Wales has a *Youth Offending Team* (YOT) that operates completely independent from the youth court. Representatives from the probation service, social work, education, police and the health services all cooperate within the local youth offending teams. The YOT's are responsible for the organization and provision of the social enquiry reports to the courts (Kool, 2010). A similar situation exists in other parts of the UK. In Scotland the social enquiry reports for the court are prepared by the local social work departments (Rap, 2008). In Ireland the reports for the courts are mostly delivered by the probation service, but other organizations such as the health service and welfare organizations provide reports to the court as well (Carroll and Meehan, 2007; Walsh, 2010).

Until legislative changes that took place in 1995 in the Netherlands, the youth court judge managed all the youth court cases by himself, supported by the Dutch Child Care and Protection Board (*Raad voor de kinderbescherming*). Since 1995 the central and control function has been taken away from the judge and assigned to the Child Care and Protection Board, to guarantee an independent role of the judge. Typically, the Board now works in close cooperation with the public prosecution service and the police instead of the judge. The Child Care and Protection Board as well as the juvenile probation service[4] function completely independent from the youth court. The social enquiry reports are prepared by these organizations, but in practice there is no close contact between judges and social workers.

In Germany the social work service employs *Jugendgerichtshilfe*. The social worker provides the youth court judge with information and supports the young person during the trial. As is the case in the Netherlands, the social work department functions independently from the youth court (Kurtovic and Weijers, 2010; Dünkel, 2006).

The approach described above can be argued to form part of a *justice model*. Within this model a clear divide exists between youth justice and youth protection cases. Moreover, social workers function within an organization that is independent from the court and they do not have regular and close contact with the judge, regarding the current cases.

Active or passive role in the youth court

This difference between the two ways of organizing the social work services acquires additional significance when taking a closer look at the actual role of the social worker in these two models. It becomes clear that by and large the role of the social worker is marginal during the hearing in the youth court in England and Wales, Ireland and Scotland. In the Anglo-Saxon countries input from the social worker is limited to the sentencing hearings and providing the judge with verbal remarks on the report is far from standard, but depends heavily on the personal style of the youth court judge or magistrates. Social workers have to appear at the sentencing hearing, in case the judge has additional questions about the young person and the progress he is making when he is already on probation or supervision (Hokwerda, 2001; Bottoms and Dignan, 2004; Griffiths and Kandel, n.d.). However, social workers can only contribute marginally to the hearing and receive not much, if any, time to give their opinion with regards to the situation of the juvenile.

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[3] The different interventions that are imposed in child protection and in juvenile justice cases are executed by different authorities as well. The juvenile justice interventions are executed by the YOT's and the family law interventions are executed by the youth social services.

[4] This social work organization is not attached to the Child Care and Protection Board or the courts, but situated within the local welfare departments, together with the voluntary social services.

On the other hand, in Belgium, France, Italy and Switzerland, basically, social workers are always present at both the pre-trial hearings and trials to clarify the written report. And as a rule they have a very active role. They are enabled by the judge to take that role, by giving a detailed and elaborate analysis of the situation of the young person (De Kock, 2008; Wyvekens, 2006; Gazeau and Peyre, 1998; De Vries, 2009; Weidkuhn, 2010). The children's hearings system in Scotland, in which juvenile defendants up to 16 years of age are handled, should also be mentioned here. At a children's hearing a social worker is always present to inform the lay panel members about the personal circumstances of the child and his family. The social worker engages actively in the round table discussion at the hearing and expresses his views on the welfare of the child. In the report for the children's panel detailed recommendations are given on the measures that insure the best interest of the child (Rap and Weijers, 2009; Bottoms and Dignan, 2004; Griffiths and Kandel, n.d.).

From this perspective, the latter countries - together with the children's hearings system in Scotland, which is the classical welfare exception within the Anglo-Saxon juvenile justice systems - have a social work tradition in the courtroom that is almost completely opposite to the tradition in the English, Irish and Scottish youth courts. At the same time, social workers in countries such as Germany, Greece and the Netherlands operate somewhere in the middle between these two extremes. Social workers in these countries are present in the youth court, but their role is not as profound and active as is the case in the countries that employ a clear welfare model with the juvenile justice system.

Early or late start of social service involvement

The second finding that stands out from this study concerns the moment at which the social service starts its involvement with the juvenile defendant. Again, a distinction can be made between two clearly different models in Western Europe. On the one hand, there are countries in which the social worker is in touch with the young person from the beginning of the juvenile justice procedure, shortly after he is arrested and charged. On the other hand, in some countries the social worker comes into play much later, that is, only after the formal trial and judgment.

Involvement pre-trial

In the Netherlands, when a minor is arrested and detained by the police, a social worker from the Child Care and Protection Board is notified immediately. The social worker conducts a first assessment of the wellbeing of the juvenile defendant in pre-trial detention and prepares a report for the judge, including an advice on releasing the young offender on supervision or to prolong the period on remand. When the young person is not taken into custody after his arrest, he will be invited to come to the office of the Board, where a standardized assessment is carried out by the social worker. In almost every juvenile justice case the Board prepares a report for the judge and gives advice on the best appropriate sanction.

This approach is far from typically Dutch. On the contrary, it can be found everywhere on the European continent. This approach typically consists of three aspects. First, the social worker visits the young person who is taken in pre-trial detention as soon as possible, which is in principle immediately after the police have arrested a minor. Second, the same social worker stays in touch with the young person throughout the course of the trial. In these countries we see that the judge is always in touch with a social worker from the moment that a young person is taken into pre-trial detention (Wyvekens, 2006; Gazeau and Peyre, 1998; de Vries and Weijers, 2010). Third, the social worker may start with early interventions, if necessary. In principle, there is quick action to start a kind of supervision when the social worker thinks this is necessary and in the best interest of the child. In for example Belgium, France and Switzerland the judge (or prosecutor in the case of Switzerland) can order preliminary protective measures. These measures can be ordered regardless of whether the juvenile is found guilty, and the measures can continue after the trial as well, in case the young person is still in need of supervision. This practice is typical for the *welfare model* in juvenile justice, where the needs instead of the deeds of the juvenile are central.

Involvement pre-sentencing

In the Anglo-Saxon countries, on the contrary, the start of social work involvement is at a later phase in the juvenile justice process. This has to do with the adversarial legal tradition, in which the justice system operates. In the adversarial tradition the debate between the prosecutor and the defence lawyer plays a key role during the hearing, while the judge takes a neutral stance. The trial does not take place on the basis of a dossier and in principle all the evidence is presented in court. The judge (or jury) does not have any prior knowledge of the case (Jörg, Field and Brants, 1995). The supposed neutrality of the judge implies in the dominant interpretation of the adversarial tradition that the judge may not be informed and advised about the personal situation of the defendant before or during the trial. This is completely opposite to the approach in the so-called inquisitorial tradition, where the dialogue between the judge and the (minor) defendant constitutes the heart of the hearing. Moreover, starting pre-trial investigations concerning the personal background of the young person is common practice in the inquisitorial tradition.

This implies that within an adversarial approach it is not possible for social workers to play a role in the pre-trial or trial phase. They only come into the picture when the guilt of the juvenile defendant has been established (either by plea or trial). Only in that case, the social worker is instructed to prepare a pre-sentence or social enquiry report and advise the judge on the personal circumstances of the young person. The judge asks the social worker to prepare a report before sentencing a young person and therefore the hearing must be postponed (Hokwerda, 2001). Interventions or supervision only commences after sentencing. The one possible intervention that can be installed is to order bail conditions, such as a curfew or staying away from specific area's or individuals, when releasing the juvenile defendant from pre-trial detention (Hehemann and Willemsen, 2010). However, in this phase of the process the judge has only knowledge concerning the offence and not concerning the personal circumstances of the young person.

Fair trial versus early intervention

The structural difference between early and late involvement of social work, though, cannot be interpreted as only a consequence of the inquisitorial versus the adversarial legal tradition. What is crucial here is the possibility of early intervention concerning the needs of the young person, which is far more common in countries that employ a welfare model. Intervening early in the criminal process can, however, challenge fair trial principles. Procedural safeguards for a fair trial demand that authorities exercise restraint with regards to intervening in the life of a defendant before the trial and final judgment have taken place. Early intervention and preventive activities have always been the classical arguments for the early involvement of social work in the welfare model in the juvenile justice system in continental Western Europe. In the justice model employed in the Anglo-Saxon world, though, this was never prioritised[5]. Implementing early interventions in the juvenile justice system can be interpreted as a structural difference between a welfare and a justice approach.

From a defendants' rights perspective, the early involvement of social services in criminal cases can be scrutinised. A basic fair trial requirement is the fact that a defendant is presumed to be innocent until proven guilty (see art. 6 ECHR; art. 40 (2) (b) (i) CRC). When implementing preliminary measures, it can be argued that this basic right is violated, because the guilt of the young person has yet to be proved in court.

With regards to early interventions, preliminary measures can be perceived to be less fair, because the final decision with regards to the guilt or innocence of the young person has not been reached yet. Therefore, the juvenile defendant can feel as though he is punished for an offence he is not convicted of. Moreover, the young person can also deny (parts of) the charge, in which case early interventions might be perceived as a sentence for something the young person has not done. Furthermore, it is

[5] With the exception of the establishment of the Scottish children's hearing system in the early 1960s which focuses exactly on the needs of the young person. In this system social workers investigate the social background situation of the young person before the children's hearing takes place, short after arrest, to provide recommendations to the panel members (Rap, 2008).

important to bear in mind that in order for interventions to be effective it is crucial that the decision (and the sentence attached to it) is reached in a fair manner[6].

In favour of the practices employed in the welfare model, it can be argued that early involvement of social services in the juvenile justice system is justified when the young person clearly suffers from problems; at home, at school and/or personally. When the offence is a sign that much more difficulties are present in the life of the young person, early interventions and supervision can be beneficial. The young person can be helped and supported much quicker in this case, instead of when he has to wait for a decision from a (youth court or family court) judge. The early social work involvement, employed in the welfare model, has the advantage for the judge that he can be provided with information with regards to how the young person is developing under the care that is already given to the young person. The judge can in this case decide to adapt the sentence to the individual development and progression of the young person.

Again, from a defendants' rights perspective this prevention practice can be condemned, because it is not in line with the equality of rights principle. Sentences should be of a similar length and similar nature in similar cases. However, when dealing with juveniles who are in need of care, individualized measures can be employed to meet the best interest of the child (Art. 3 CRC). The best interest principle prescribes that the young person should be provided with interventions that are in his best interest. From a welfare perspective, early interventions can be justified, because in the juvenile justice system is dealt with minors, who may suffer from problems underlying their offensive behaviour, and who are entitled to special protection from the state.

Three variations

Combining the findings as presented in this article results in three variations of social work participation in the juvenile justice system in Western Europe (see Table 1). On the one hand, some countries show a strong, classical welfare orientation. A close relation exists between social services and the youth court and these services are from an early moment in the juvenile justice process involved with the young person, implementing preventive measures. Moreover, social workers play an active role at the hearing and advise the judge on the best appropriate sanction or measure.

On the other hand, some countries employ a clear justice model. Social services function completely independent from the court, these services are only involved at the pre-sentencing phase, advising the judge on the background of the juvenile and interventions can only start after the judge has ordered the sentence.

Four Western-European countries appear to adopt a mixed model. In these countries an independent position of social services with respect to the youth court is combined with implementing early interventions soon after the arrest of the young person. Social workers come into play early in the juvenile justice procedure and they advise the judge on the most appropriate sanction or measure.

Table 1 - Variations of social work participation in the juvenile justice system in Western Europe

WELFARE MODEL	MIXED MODEL	JUSTICE MODEL
Belgium	Germany	England and Wales
France	Greece	Ireland
Italy	the Netherlands	Scotland - youth court
Scotland - children's hearings system	Spain	
Switzerland		

[6] This can also be underpinned by research conducted with regards to procedural justice. Studies show that, regardless of the outcome of the procedure, the decision is perceived as fair when one perceives the treatment as respectful (Tyler & Blader, 2003). Moreover, it is found that people who feel that they have been treated fairly are more inclined to accept the decision and to defer to it (Murphy & Tyler, 2008).

Conclusion

In this paper the participation of social services in the juvenile justice system in 11 Western European countries has been outlined. The participation of social services in the juvenile justice system is grounded in several children's rights conventions and standards. Moreover, social services play an important part in the manner in which juvenile defendants are handled in the juvenile justice system. An analysis has been given of the relation between social services and the youth court, the role of the social worker in the youth court and the moment at which social services start their involvement.

A clear distinction can be observed between countries in which a welfare model is employed in the juvenile justice system and countries in which a justice model is employed. In the welfare model social workers are involved with the young person from an early moment in the process, they maintain a close relationship with the judge, they play an active role during the hearing and they can implement pre-trial interventions. In the justice model, social services have a less prominent role in the juvenile justice process. Social workers are not in close contact with the judge, their involvement starts when there has to be decided about a sentence and early interventions are not employed.

From a defendants' rights perspective, however, some critical remarks can be made regarding the practices apparent in the welfare model. It can be argued that implementing early pre-trial interventions violates the presumption of innocence principle and the equality of rights principle. However, when following the best interest of the child principle as formulated in the CRC, the best interest of the child should always be the guiding principle when intervening in the life of a juvenile (art. 3 CRC). When a juvenile defendant is in need of care and/or protection early interventions are in his best interest, regardless of his guilt or innocence in the criminal case. Nonetheless, the procedures that lead to installing early interventions have to be fair, in order for the juvenile to understand the significance of the pre-trial intervention and believe in its effectiveness.

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Working group 3
Unaccompanied migrant children in conflict with the law

Damien Nantes

Presentation of HLR

Hors la rue (HLR) is a French NGO which works with unaccompanied foreign children or more generally minors in situations of danger.

HLR is doing street work in Paris and its suburbs trying to make contact with them during their activities in the street and visiting the non-formal houses in which they live. We also invite these children to come to our day center where we propose them French classes and various educational activities. The day center is one of the tools we use to build a relationship with these kids.

Unaccompanied migrants minors are usually not in conflict with the law

I was asked to speak about unaccompanied minors in conflict with the law. The first thing I would like to say is that these minors are rarely in conflict with the law. The majority of them left their country for economic reasons or to seek asylum in France. The migration journey is really hard and traumatic but the children have a strong will, they come with a dream (for themselves or their family) and usually they want to learn the language, they want to go to school, they want to work, etc. For all the social workers who are working with foreign unaccompanied minors it is almost an "easy work". Delinquency is a rare phenomenon among these children. Furthermore, we have to bear in mind that most of them are from an often privileged social background. It requires a capital, both economic and cultural, to try and achieve such a journey.

Actually the main issue that we face is the conflict between the law or the rights of the children and the public authorities attitude. Nowadays, many districts (*départements*) which are in France responsible for caring for or supporting endangered minors, are trying to find ways to limit their involvement. They explain that it is impossible for them to accompany these children for financial reasons and that the State should instead do it. So it becomes more and more difficult to obtain protection in France for them, which means that they have to live in the streets, bearing in mind what they have to face: racket, prostitution, violent situations, etc.

Although the French legal system compels public authorities to take care of minors in danger, they face many difficulties to access this protection and obtain sufficient help for health, education, etc. The main issue is to prove their age - i.e. their minority - which is often difficult as they do not have documents. The districts usually use a medical test to determine this age, but this test is well known for being inefficient: the French Academy of Medicine considers that the margin of error for this exam is 18 months.

Another important problem is the end of their protection when they come of age. Although the law provides for the possibility of extending the length of the institutional protection up to 21 years old, most of the districts want to stop it at 18. As a matter of fact many children go back to the street and to an illegal status on their 18th birthday.

If a large majority of the foreign unaccompanied minors are fortunately not in conflict with the law it doesn't mean that it never happens.

Specific case of victims of human trafficking

That being stated, we can speak about under-age offenders.

We have to deal with foreign minors offenders. For the past decade we have been dealing with such a situation in Paris. We have seen an important evolution. HLR was first created because of the

“appearance” in Paris in 2001-2002 of street kids from Romania who stole from parking meters. These kids were absolutely alone (not adults around), mainly males, they were often street children before their migration. The contact was tough with them but, when a trusting relationship had been established, the social work was not so difficult. With most of them we had very good results and they are now perfectly integrated into society.

But we are now dealing with a very different phenomenon. These minors are making small robberies in the streets, stealing wallets, cell phones or ATM, etc. They are usually from Eastern Europe (Romania, Bosnia, etc.) and part of them from the Roma community.

Those children are very young, and most of the kids we work with are 12, 13, 14 years old. There are more girls showing up (actually half of the children we are looking after are females) and it’s really difficult to find information about them: where do they live, are their families in France or not, where do they come from (which country, which part of the country), what’s their real name and of course: who are the adults they work for.

Because the main thing to say is that except for a few marginal cases, these minors are undertaking such activities for adults and they are victims of human trafficking or exploitation at the very least.

There are different groups and it is impossible, even dangerous to simplify. There are different contexts, the families are there or not, there are different means of pressure on these children, but in all cases they are not free to choose if they want to continue or not their activities.

Each day they have to bring money in if they do not want to face violence from the adults.

Sometimes the family is responsible for this exploitation but frequently, the children have to work for other adults to pay a debt of the family for example. We are even aware of a few cases when children have been bought or “stolen” from their parents.

It is very difficult to establish a contact with them and once it is eventually done, it is really hard to get any information and basically to help them.

Out of fear or because of a conflict of loyalty, they don’t want to leave the kids and the adults they live with. Classical means of protection are not efficient with those kids. Usually the answer is the placement of these children in institutional care without any previous social work. In those conditions the children escape and the main idea that it is impossible to work with them becomes a norm. Hence, institutions and social workers are giving up.

Even if we recognise the difficulties to work and find a solution for these kids, we are now afraid that the attempts to protect them were quite limited and that public authorities soon gave up to choose a punitive response. Therefore the situation of the kids is getting worse rather than improving.

Educational or punitive answer?

As the educational answer seems to be ineffective, public authorities adopt a punitive attitude.

These minors are obviously in conflict with the law. The frequency and the type of the offences committed in the streets make them very visible. It quickly became a public issue especially because their activities are taking place in the center of Paris, with many tourists, etc.

That is why law enforcement authorities had a strong reaction. The police made special groups with Romanian policemen to make investigations on this matter. And this work was made in collaboration with the prosecutors for minors of Paris. They especially work on the topic of identification of those kids. They try to establish a legal ID for them. Once it is done, each time the minor will get arrested, with the fingerprints, they will find his or her ID.

Each time they commit an offence and get caught they are identified and convicted. They are often sentenced in absentia. Hence, after a while, a child can have several convictions, which are added up. The result is that we have now part of these children who are sent to jail and for a longer period of time than the other minors. For robbery of mobiles some of these kids of 14 or 15 years old are sent to jail for several months (up to 9 months).

Although juvenile justice in France is supposed to be based on the fact that any child in conflict with the law should be considered before all as a child facing educational problems and needs, they are now solely considered as offenders. So without educational answer and facing political pressure the police and the justice system use repression.

The problem is that it is the unique answer. These minors need protection and nothing is really done to address that. There is no system of protection adapted to these children. Because of the pressure of the adults it is really difficult, almost impossible for these kids to stay in children's shelters if they do not feel secure. It takes time before they can trust other adults and just imagine that maybe something else is possible for living. Even when the judges for minors understand this situation, they feel that they do not have any educational answer to propose.

The situation is a paradox because this issue of minors victims of human trafficking is well known. All of the actors, police, justice, etc. know that these children are victims. But in fact they are treated more harshly than "classic" offenders. And the convictions they face are even "heavier" than the ones for other minors for the same offences, as they are usually convicted in absentia, the families are not known, etc.

The main problem - and I will here make the same comment that was made this morning - is that there is no social work that is done with these kids. As an example, we are a small NGO with 7 social workers and we are almost the only NGO working with these children. Moreover, social workers of the local authorities do not know these children, they do not go to the places where they live.

It is a long and difficult work with these kids and nobody even starts to try and do something. The problem now is that the current answer of justice is inefficient and cruel. It is another violence for these children and definitely not a solution at all. After the jail, they just become tougher and harder. And while they are in jail, the adults are using other children.

Provide protection for these children is a more than difficult task but it is a legal obligation, a moral duty, and also the only solution that we have.

Programme of the seminar

PROGRAMME

Complementarities and synergies between juvenile justice and social services sector

Florence, ISTITUTO degli INNOCENTI • 19 April 2012

AGENDA

9.00	REGISTRATION
9.30	Welcome address ALESSANDRA MAGGI, Istituto degli Innocenti President JOSÉ LUIS CASTELLANOS DELGADO, Vice-chairperson ChildONEurope Assembly MARIA BURANI PROCACCINI, Scientific Coordinator of the Italian Childhood and Adolescence Documentation and Analysis Centre ROBERTA RUGGIERO, Coordinator ChildONEurope Secretariat
10.00	FIRST SESSION • Plenary Session Chairperson: ROBERTA RUGGIERO **The fulfilment of children's right in the juvenile justice framework: the role of social services**, RENATE WINTER, Justice Appeals Chamber of the Special Court for Sierra Leone (SCSL) **The EU Agenda of action on the EU Strategy: the possible synergies of work with the social services**, MARGARET TUITE, EU Commission-Coordinator for the Rights of the Child DG JUSTICE, Fundamental rights and rights of the child
11.00	COFFEE BREAK
11.30	SECOND SESSION • Plenary **The Council of Europe Guidelines on child friendly justice and on social services friendly to children and families**, GIOIA SCAPPUCCI, Council of Europe, Children's Rights Division **A comparative European analysis of national experiences on practices of reintegration**, CÉDRIC FOUSSARD, Director, International Juvenile Justice Observatory
12.30	Debate
13.00	THIRD SESSION • Introduction to Working Groups
13.15	LUNCH
14.30	THIRD SESSION • Working Groups 1. **Juvenile justice and child protection system: how to promote alternative to detention in Europe?** Expert: FREIDER DÜNKEL, University of Greisfwald, Germany Coordinator: ISABELLA MASTROPASQUA, Director of the Study, Research and International Activities Bureau, European Study Center of Nisida, Italy 2. **The participation of social services in the youth court and their potential for the prevention of re-offending** Expert: STEPHANIE RAP, Researcher, Utrecht University, Netherlands Coordinator: BENOÎT PARMENTIER, Director, Birth and Childhood's Office (ONE), Brussels, Belgium 3. **Unaccompanied migrant children in conflict with the law** Expert: DAMIEN NANTES, Director of the Association Hors la Rue, France Coordinator: MARIE-PAULE MARTIN BLANCHAIS, Chairperson ChildONEurope Assembly
16.30	THIRD SESSION • Panel discussion: results of working groups and debate Moderator: MARIE-PAULE MARTIN BLANCHAIS
17.00-17.30	Concluding remarks by the moderator

Bibliography

This bibliography is edited by the **Biblioteca Innocenti Library "Alfredo Carlo Moro"**, a special library on children's rights, established in 2001 as a cooperation effort between *Italian Government*, *Istituto degli Innocenti* and the *UNICEF Innocenti Research Centre*.

This bibliography reports a selection of international and Italian documents about juvenile justice: most of them are stored in the Biblioteca Innocenti Library (www.biblioteca.istitutodeglinnocenti.it); those which are not in the Library are signed by asterisk (*).

Documents are organized by date and by alphabetical order; links are given for those documents that are available on line.

The Library provides a reference service for the Italian National Childhood and Adolescence Documentation and Analysis Centre and for the Regional Childhood and Adolescence Documentation Centre of the Tuscany Region.

The collection of the Library consists of about 25.000 different documents in various languages and about 200 national and international journals.

The Italian collection collects materials specializing in psychology, pedagogy and social, juridical and statistical matters relating to childhood and adolescence in Italy; it includes some special collections belonged to Alfredo Carlo Moro, Angelo Saporiti, Valerio Ducci and a multimedia section.

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The Library specializes in the juridical (human rights, international agreements, juvenile justice) and economic (development economics, socioeconomic situation of countries in economic transition and conditions of children in the industrialized countries) areas.

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Filmography

Remand home, as other institutions traditionally in charge of protection, care and education of minors, benefits from a wide film iconography that span the history of cinema.

Such as the orphanages and other structures designed to protect and redeem, at least formally, children and adolescents in trouble, also penal institutions were created for meeting the social emergencies (for example to get young beggars or homeless off the streets) rather than for guiding young convicts in paths to recovery and social reintegration. This was told in two important movies of the post-war years *Shoe shine* and *Guaglio* where it can be felt the uncertainty of the borderline among abandon, social deviance and juvenile delinquency, a line which is even more blurred in the contemporary prison realities of the developing countries, as witnessed by movies like *Pixote, Salaam Bombay!*, *The wall*.

In this point of view the remand home is a place where, rather than developing the potentialities of the single in view of his rehabilitation, there is a tendency to uniform the subject to a socially acceptable and innocuous model. Two emblematic cases are either *Magdalene*, set in a convent-prison where until the Seventies were "redeemed" the young shameless Irish girls, or the British *The Loneliness of the Long Distance Runner*, where a young criminal of the working class becomes, despite himself, a model of social redemption. Whether for these two films of Anglo-Saxon area the social reinsertion of the subject can be only hypothesized with the provision that there is a moral redemption, in the US movies, the essential factor for integration is to share democratic rules through the renunciation to violence (this is the case of *Bad Boys* and *The United States of Leland* despite their differences) or to become a part of the active and productive fabric of the society, through the work (see in this connection the classic social Roosevelt-style melodrama, *Boys Town)*, thus through a more conscious comprehension of the functioning of the society and the development of the individual capacities.

On the same line is the French movie *The chorus*, that uses the metaphor of the choir to indicate the possibility of teaching young people to respect the neighbour and the team spirit (by the teaching of the choral singing), the last of a long list of movies where the protagonists are teachers and educators more than the boys. While in the already cited *Boys Town* and *Guaglio* the rescuers are priests (and coherently with their choices they see the rehabilitation of minors in trouble as a mission) in many other films the saviour is a layman, who plays the role of a solitary hero fought either by the institutions where he works or (at the beginning) by already disillusioned boys now totally submitted to criminality violent rules. *Forever Mary*'s Professor Terzi is a grave example of teacher-missionary, while Ciro, the protagonist of *Cinghiali of Portici,* a disenchanted and self-ironical rugby trainer, acting in a rehabilitation center for young at risk in the Naples hinterland, is a much more successful character .

On the contrary, Oliver, the protagonist of the anti-rhetorical movie *The son,* is an educator who seems to take on himself the problems of his pupils. The movie, with its essential style manages to subvert any cliché on the notion of guilt and forgiveness, responsibility and rehabilitation.

Beside the quick description given, some examples of individual autonomous redemption of ex-convict boys, out from adult and institutional dynamics, are significant, even though less numerous. Beyond the already cited *The Loneliness of the Long Distance Runner*, the character of Antoine of *The 400 Blows* who, after the escape from the reformatory, will find his redemption in the four following films dedicated to him by Truffaut; the sixteen years old Janine of *The little thief,* who will emancipate and mature through her pregnancy; the twelve years old Leonardo of *The end of the game,* who will decide to escape from the stereotype of the "pitiable case" imposed by a presumptuous journalist. Besides the events told through the cited movies it is interesting to remember, as a conclusion, the documentaries through which it has been possible to know the actions of the juvenile judges (*Juízo*, *The Judge, the minor and the system*) and the real condition of convict minors, the activities done by the associations inside the remand homes to support the young guests of the structures (*Perjury)* and finally the expectations, wishes, and fears of those who are serving their punishment (*Alone in four walls*, *Nisida. Growing Up In Prison*). The picture emerging from the documentaries, although merciless, sometimes contradicts what shown in the fiction movies, revealing a particular attention to a serious recovery path of the minors either by the operators working inside the prisons or by the civil society.

The rotten side of imprisonment

Films that do not hesitate to denounce the prevarications of the adults and the institutions towards imprisoned boys or girls, who in their turn, don't accept to integrate themselves into a corrupt and coercitive control system.

- *Shoeshine* (*Sciuscià*), Vittorio De Sica, Italy 1946*
- *Bad Boys*, Rick Rosenthal, USA 1983
- *Vito and the others* (*Vito e gli altri*), Antonio Capuano, Italy 1991
- *Magdalene*, Peter Mullan, Great Britain - Ireland 2002*
- *The United States of Leland*, Matthew Ryan Hoge, USA 2003*

Teachers behind the bars

Movies where rehabilitation is possible and it passes through the actions and the accounts of educators and teachers. An encounter and growth trough human contact and everyday work.

- *Boys Town*, Norman Taurog, USA 1938 *
- *Guaglio* (*Proibito rubare*), Luigi Comencini, Italy 1948*
- *Forever Mary (Mery per sempre)*, Marco Risi, Italy 1989*
- *The son* (*Le Fils*), Jean-Pierre e Luc Dardenne, Belgium - France 2002*
- *The chorus* (*Les Choristes*), Christophe Barratier, France 2004*
- *Cinghiali of Portici (I cinghiali di Portici)*, Diego Olivares, Italy 2006

Escape and emancipation

Escape as an hope of catharsis and release and as a discovery of a self-annihilation or blind alley in front of which it is necessary to stop.

- *The 400 Blows* (*Les Quatre cents coups*), François Truffaut, France 1959*
- *The Loneliness of the Long Distance Runner*, Tony Richardson, Great Britain 1962*
- *The end of the game* (*La fine del gioco*), Gianni Amelio, Italy 1970
- *The rebel - Enza's story* (*La ribelle - Storia di Enza*), Aurelio Grimaldi, Italy 1993
- *The little thief* (*La Petite voleuse*), Claude Miller, France 1988 *
- *Jimmy on the Hill* (*Jimmy della Collina*), Enrico Pau, Italy 2007*
- *Becoming Eduardo*, Rod McCall, USA 2008
- *Dark love* (*L'amore buio*), Antonio Capuano, Italy 2011*

Juvenile detention in the third world countries

Movies describing the condition of remand homes in developing countries

- *Pixote* (*Pixote, a Lei do Mais Fraco*), Hector Babenco, Brazil 1980*
- *The wall* (*Le Mur*), Yilmaz Guney, France 1983
- *Salaam Bombay!*, Mira Nair, India, France - Great Britain 1988*
- *Seventeen years* (*Diciassette anni*), Zhang Yuan, China - Italy 1999

The true face of detention

The following are documentaries, more or less recent, where the theme of juvenile detention is told without judgments or prejudices, magnetizing viewer's attention on the most unusual and contradictory aspects of the remand home, without concealing incoherencies and limits of the prison experience.

- *Juvenile Court*, Frederick Wiseman, USA 1973
- *Tattooed Tears*, Nick Broomfield - Joan Churchill, UK 1979
- *Tell Me Something About Yourself - René*, Helena Třeštíková, Czech Republic 1992
- *Tell Me Something About Yourself- Láďa*, Helena Třeštíková, Czech Republic 1994
- *Youth on hold (Une jeunesse en attente)*, Gilles Deroo - Patrice Deboosere, France 1997
- *Youth in prison (Jeunes en prison)*, Laurent Catherine, France 1998
- *Justice*, Olivier Ballande, France - Belgium 1998
- *Parent school - Zero tolerance (L'École des parents - Tolérance zero)*, Arnauld Miguet - Fabrice Gardel, France 1999
- *Perjury (Falsa testimonianza)*, Piergiorgio Gay, Italia 1999
- *To punish or repair (Punir ou Réparer)*, Joëlle Loncol, France 2001

- *The Judge, the minor and the system (Le Juge, le mineur et l'ordonnance)*, Jean-François Raynaud, France 2003
- *Arrêt sur délits*, Corinne Moutout, France 2003
- *Breaking the deadlock (Sortir de l'impasse)*, Benoît Sourty, France 2003
- *Love Letters from a Children's Prison*, David Kinsella, Russia 2004
- *Girl Trouble*, Lexi Leban -Lidia Szajko, USA 2004
- *Minor offences (Délits Mineurs)*, Rémi Lainé, France 2005
- *Out - reintegration paths* (*Dehors - Les Chemins de la reinsertion*), Mathilde Mignon, France 2005
- *Juvies*, Leslie Neale, USA 2006
- *The voice of blows (La Voix des coups)*, Olivier Lassu, France 2006
- *Alone in four walls* (*Allein in vier Wänden*), Alexandra Westmeier, Germany 2007
- *Behave (Juízo)*, Maria Augusta Ramos, Brazil 2007
- *Nisida. Growing Up In Prison* (*Nisida. Grandir en prison*), Lara Rastelli, France, Italy 2007
- *Bagatela*, Jorge Ramos Caballero, Colombia - Spain 2008
- *The Court of childhood* (*Au tribunal de l'enfance*), Adrien Rivollier, France 2008
- *Gangster Girls*, Tina Leisch, Austria 2009
- *In the chambers* (*Dans le cabinet du juge*), Adrien Rivollier, France 2009
- *The righteous path* (*La retta via*), Roberta Cortella, Marco Leopardi, Belgium - France - Spain 2009*
- *Detention center* (*Centre fermé*), Erik Silance, Belgium 2010
- *Me Facing Life: Cyntoia's Story*, Daniel H. Birman, USA 2011
- *Kids Behind Bars*, BBC production (documentary TV series), UK 2011
- *Babys Returns, Babys Escapes*, Adam Gebert, Czech Republic 2011
- *Desert Island*, Steve Thielemans, Belgium 2011

Inside and outside distress

Movies where juvenile detention is a part of a lager and widespread background of distress

- *Prison without bars* (*Prison sans barreaux*), Léonide Moguy, France 1938
- *The sinners* (*Au Royaume des cieux*), Julien Duvivier, France 1949
- *Mamma Roma*, Pier Paolo Pasolini, Italy 1962*
- *490+1=491*, Vilgot Sjoman, Sweden 1963
- *Boys on the outside* (*Ragazzi fuori*), Marco Risi, Italy 1989*
- *Street Kids* (*Scugnizzi*), Nanni Loy, Italy 1989
- *Holes*, Andrew Davis, USA 2003
- *The child* (*L'enfant*), Jean-Pierre e Luc Dardenne, Begium - France, 2004*

The movies marked by the asterisk are available for free rent and vision at the *Biblioteca Innocenti Library "Alfredo Carlo Moro"* of Florence, in the filmographic database of *the National Childhood and Adolescence Documentation and Analysis Centre* (where it can be also find cast and credits, a synopsis and a critical comment and there can be done other filmographic researches).

Authors

Frieder Dünkel, born 1950 in Karlsruhe/Germany, studied law at the universities of Heidelberg and Freiburg/Germany. His Ph.D. in 1979 dealt with an empirical research on the effectiveness of therapeutic treatment in prisons. From 1979 until 1992 he worked as a researcher at the Max-Plank-Institute of Foreign and International Penal Law, Criminological Unit, in Freiburg (with Prof. Günther Kaiser). The subject of his "Habilitation" in 1989 was "Juvenile imprisonment and other forms of deprivation of liberty in an international comparison".
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