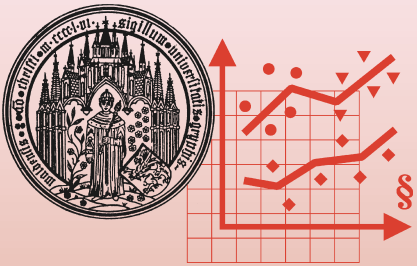
Schriften zum Strafvollzug,
Jugendstrafrecht und zur
Kriminologie

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

Band 36/1



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

Current Situation and Reform Developments

Vol. 1
2nd revised edition

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Volume 1

Preface to the second edition

The first edition of the book edited in spring 2010 was a great success. Therefore we decided to edit a second revised edition which in general contains only linguistic improvements. With the exception of *Latvia* we avoided a general update of statistical data as this would have meant major editorial work. However, we considered a few new developments such as the *Scottish* law reform of 2010 raising of the age of criminal prosecution from 8 to 12 and the reform in *Greece* in the same year raising the age of criminal responsibility from 13 to 15 and improving some procedural safeguards concerning judicial appeals and the representation by defence counsel. We also thought that new discussions in *England* and *Wales* about "a fresh start" (see *D. Smith,* 2010, ed., A New Response to Youth Crime, Cullompton: Willan Publishing) in order to overcome the "neo-correctionalist" approach as defined and criticized by *Dignan* and *Cavadino* (2006) are at least worth mentioning. Therefore we added an editorial note to *James Dignan*'s chapter on *England* and *Wales* and also included some new statistical data in the summarizing chapters in volume 4. The data for *England* and *Wales* demonstrate a considerable decrease of juveniles sentenced to custodial sanctions, which is in line with international standards such as the Council of Europe's Recommendations (2003)20 and (2008)11 which call for using deprivation of liberty only as a last resort (see chapter 45 in volume 4 of this book).

Further country reports with minor amendments are *Austria*, *Bulgaria*, *Cyprus*, the *Czech Republic*, *Denmark*, *Estonia*, *Germany*, *Greece*, *Hungary*, *Portugal*, *Romania*, *Turkey* and *Ukraine*.

The influence of international human rights standards such as the United Nations' Convention on the Rights of the Child, the Council of Europe's Recommendations mentioned above and the decisions of the European Court of Human Rights are clearly visible in recent jurisprudence and reform laws in *Germany* and *Greece*. The recent developments in many European countries support the general conclusions of the comparative research results gathered in the 4 present volumes. They indicate the emergence of a common European philosophy of juvenile justice based on human rights and efforts to effectively reintegrate young offenders.

We greatly thank the authors for revising their chapters with regards to linguistic errors and new legislation.

We hope that the second edition will be appreciated by our readers in the same way as the first edition.

Greifswald, August 2011

Frieder Dünkel, *Joanna Grzywa*, *Philip Horsfield* and *Ineke Pruin*

Introductory chapters

Introduction

Frieder Dünkel, Joanna Grzywa,

Philip Horsfield, Ineke Pruin

In the last 15 years, youth justice systems in Europe have experienced considerable changes, particularly in the former socialist countries of transition. However, differing and sometimes contradictory youth justice policies have also emerged in Western Europe, for example in the form neo-liberal tendencies particularly in England and Wales, and also in the Netherlands (see *Cavadino*/*Dignan* 2002: 284 ff.; 2006: 215 ff.). In other countries – such as Germany for example – a moderate system of "minimum intervention" (priority of diversion and of educational measures) has been retained (see *Dünkel* 2006). In many countries, elements of restorative justice have been implemented (mediation, family group conferencing, see e. g. Belgium).

The central questions for the future development of youth justice systems both in Eastern and Western Europe will be: where do we go from here? Will there be chances for a harmonisation of European youth justice policy towards a "European juvenile justice system"? And if yes, will it be geared more to neo-liberal or to traditional educational, minimum intervention and/or restorative justice ideas?

The present study was initiated by an application to the AGIS-programme of the European Union in the year 2005. It was clear at that time that, although some comparative work in the field of juvenile justice had already been conducted (see *Albrecht*/*Kilchling,* 2002; *Cavadino*/*Dignan,* 2006), there was still a lack of in-depth comparative research that particularly includes the new EU Member States and candidates for accession. The earlier publications by *McCarney* (1996), *Shoemaker* (1996), *Dünkel*, *van Kalmthout* and *Schüler-Springorum* (1997) and also by *Dünkel*/*Drenkhahn* (2003) have covered some of these countries and/or aspects of comparative juvenile justice. The reports on national juvenile justice systems, however, needed to be updated and consoli-

dated. Some of the comparative research does not (or almost not) include middle and eastern European countries (see *Albrecht*/*Kilchling* 2002; *Winterdyk* 2002; *Tonry*/*Doob* 2004). Thus, a larger and more comprehensive effort of comparing juvenile justice systems was necessary. Such a comparative study would enable the European Union and other European subjects such as the Council of Europe to refer to the gathered material in order to further harmonize juvenile justice in Europe on the one hand, and to disseminate "good practices" in this field on the other.

In the meantime, further comparative literature has been published (see, for example, *Junger-Tas/Decker* 2006; *Muncie/Goldson* 2006; *Bailleau/Cartuyvels* 2007; *Patané* 2007; *Hartjen* 2008; *Junger-Tas/Dünkel* 2009). However, these publications are also limited both in the range of countries that they cover (particularly regarding Middle and Eastern Europe) and in the scope of the research. The main interest of *Bailleau* and *Cartuyvels* (2007) was to identify "neo-liberal" – or in the words of *Cavadino*/*Dignan* (2006): "neo-correctionalist" – tendencies in juvenile justice policy. *Muncie* and *Goldson* (2006) focus on Anglo-Saxon and Western European countries and identify convergences and diversities in international juvenile justice. Similarly, *Tonry* and *Doob* explored varieties of juvenile justice (see *Doob/Tonry* 2004) by presenting seven national reports of western countries and two subject chapters on public opinion as well as on restoration in youth justice (see the chapters of *J. Roberts* and *L. Walgrave*). *Junger-Tas* and *Decker* (2006) follow a comparative approach that is similar to the research at hand, but are mainly focused on Western Europe. The purely comparative approach of *Junger-Tas* and *Dünkel* (2009) focuses on current and possible future reforms of juvenile justice systems. The book constitutes in a way a second volume to *Junger-Tas* and *Decker* (2006) which contained a considerable number of national reports. The focus on international human rights standards and the conclusions are in line with the present study.

The research at hand is much wider in its scope. The national reports do not only include the development of juvenile delinquency and the formal and informal reactions to it. Rather, they also focus on the execution of sanctions in the community and particularly in residential care units and juvenile prisons, and highlight current trends in national juvenile justice policy reform (see the outline of the required national reports below). It is based on the cooperation of an international network which was first established by the Department of Criminology at Greifswald.[1] The aim of the research at hand was to gather and compile

1 The network of juvenile justice experts is based on a long-lasting co-operation of the Department of Criminology at Greifswald University. In 1995 we organised a first international conference of juvenile justice experts resulting in a reader, edited by *Dünkel*, *van Kalmthout* and *Schüler-Springorum* (1997; "Reform tendencies and reform strategies in the juvenile justice system in a European comparison"). Many of the national reporters of that book are involved in the current research as well. Furthermore, we succeeded to involve other, particular Eastern European researchers, who have been

knowledge about the current legal situation and reforms or reform proposals, and the practice of the juvenile justice agencies and the courts (sentencing practice, development of treatment and educational facilities etc.). It also covers the legal situation and practice in residential care institutions and/or youth prisons, a subject that is not comprehensively covered in any of the above mentioned comparative studies. Focus is also placed on gathering examples of "good practice" in the field of juvenile justice and juvenile institutions.

The application to the AGIS-scheme of the European Union was made possible only as a result of the strong commitment, strategic partnership, and – in addition to the University of Greifswald – financial support of two non-profit organizations who can be seen as specialists in the field of young offenders and promoting children's rights: the Diagrama Foundation ("*Fundación Diagrama Intervención Psicosocial*", Murcia/Spain) and the *Don Calabria* Institute (Verona/Italy). Diagrama Foundation was represented by its president *Francisco Legaz* and its legal advisor *Ignacio Mayoral*, and the *Don Calabria* Institute was represented by its director *Alessandro Padovani* and the project manager *Sabrina Brutto* as well as *Silvio Ciappi* as advisor of the Institute. It is also important to underline the role of the *International Juvenile Justice Observatory* in the promotion and dissemination of the results of the project by its director *Cédric Foussard*.

The research covered by the AGIS-project is divided into two parts, or phases:

The first phase was dedicated to an overview of the legal situation of juvenile justice systems, the development of reported juvenile delinquency (with special emphasis being placed on problem groups like young migrants, violent and drug offenders etc.), the sentencing practice and the development of community and residential treatment/education facilities in the Member States of the European Union, including the new members and (possible) candidates for membership. The national reports that are compiled in this publication were prepared by domestic researchers in each country, in adherence to the same structural outline (see the outline below). The national reports are compared in

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in cooperation with our department in a research project on youth violence in the countries of the Baltic Sea region. In 2003 we published a reader covering the problems of youth violence based on the proceedings of an international conference at Greifswald organised by our department in 2001 (*Dünkel/Drenkhahn* 2003). In the years 2002-2005 we conducted an international empirical survey funded by the Ministry of Culture and Education of the Federal State of Mecklenburg Western-Pomerania/Germany on "Juveniles as victims and offenders of violence in the countries of the Baltic Sea region" ("Mare-Balticum-Youth-Survey"), covering empirical data of about 4,500 pupils in Estonia, Finland, Germany, Lithuania, Poland and Sweden. The results of the youth violence study comparing countries of the Baltic Sea region are to be found in *Dünkel/Gebauer/Geng/Kestermann* 2007; see also *Dünkel/Gebauer/Kestermann* 2005. The participating researchers were members of the mentioned network and some of them also authors of the national reports in this volume.

several chapters that give an overview of some of the subthemes of the national reports, such as diversion and community sanctions and measures and their application (see *Dünkel/Pruin/Grzywa* in this volume), preliminary deprivation of liberty (see *Dünkel/Dorenburg/Grzywa* in this volume) or juvenile imprisonment (see *Dünkel/Stańdo-Kawecka* in this volume). Further concluding chapters describe different models of juvenile justice systems and major issues such as the age groups that these systems cover (see *Pruin* in this volume). One special issue appears to be particularly interesting: the question of how to deal with young adult offenders (aged 18 to 21). There is a clear tendency in juvenile justice policy to include young adults into the remit of juvenile justice provisions, as the phase of transition to adulthood has been elongated over the past decades (see *Dünkel/Pruin* in this volume). Included are two papers delivered by the aforementioned non-profit organizations. The first paper deals with the issue of Non-Governmental Organisations and their role in the field of juvenile justice and welfare systems (see *Legaz/Padovani/Brutto* in this volume). In the second one, *Cédric Foussard* describes the work of the *International Juvenile Justice Observatory*, which provides a large range of relevant information and activities on developments in juvenile justice and practice worldwide.

The second phase of this project will focus on examples of good practices in each of the participating countries. These examples shall be described in a second national report, and shall be evaluated in terms of their practicability (including their adequacy for policy transfers to other countries) and their efficiency in reducing crime and rehabilitating young offenders. These reports will be finalised in 2010.

The project started in April 2006 with a two–year grant from the AGIS-programme of the European Union (JLS/2006/AGIS/168). A first conference was held in Greifswald in June 2006. The primary purpose of this first meeting was the further development of the outline for the first national reports.

A second conference, arranged and organized by the *Don Calabria* Institute, took place from 15-18 March 2008 in Verona (Italy).

The last conference under the AGIS-scheme focused more on the reports on "good practices" for the envisaged follow up project. This meeting was organized by the *Diagrama Foundation* and the *International Juvenile Justice Observatory* (IJJO), and took place from 20-22 October 2008 in Valencia (Spain). The end of the European AGIS-project coincided with the 3rd International IJJO Conference "Juvenile Justice Systems in Europe: current situation, trends in applicable models and good practices" which also took place in Valencia (Spain). During these two days more than 500 practitioners and experts from 50 different countries in Europe, America, Africa and Oceania analyzed juvenile justice systems and practices in the different European Union Member States as well as the rest of the world, giving as final result proposals for the harmonization and standards for juvenile justice systems at the European level.

The national reports were all drafted according to the following outline, with a maximum volume of 35 pages:

1.	**Historical development and overview of the current juvenile justice legislation** (Justice or welfare approach, relation between welfare and justice, age groups covered by the juvenile justice system etc.) (max. 2 pages)
2.	**Trends in reported delinquency of children, juveniles and young adults** (with particular emphasis on violent offenders, drug offenders, young migrants, male and female juvenile delinquency etc., statistical data since 1980) (max. 4 pages)
3.	**The sanctions system. Kinds of informal and formal interventions** (diversion with and without conditions, mediation, educational measures, combined sanctions, youth imprisonment etc.) (max. 3 pages)
4.	**Juvenile criminal procedure** Involvement of juvenile welfare/justice agencies, social workers, defence counsels; risk assessment strategies, the role and professional training of juvenile prosecutors and judges etc. Characteristics of juvenile criminal procedure, juvenile courts, rights of appeal etc. (max. 3 pages)
5.	**The sentencing practice – Part I: informal ways of dealing with juvenile delinquency** (diversion, victim-offender mediation etc., statistical data since 1980) (max. 2 pages)
6.	**The sentencing practice – Part II: the juvenile court dispositions and their application since 1980** (max. 3 pages)
7.	**Regional patterns and differences in sentencing young offenders** (max. 2 pages)
8.	**Young adults (18-21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices** (possibilities and practice to apply sanctions of the juvenile justice system on young adults) (max. 3 pages)
9.	**Transfer of juveniles to the adult court** (Legal conditions and practice for a transfer to the adult court, waiver; crimes, age group etc.) (max. 2 pages)
10.	**Preliminary residential care and pre-trial detention** (Legal conditions, statistical data etc.) (max. 2 pages)

11.	**Residential care and youth prisons – legal aspects and the extent of young persons deprived of their liberty** (age groups in residential homes and in youth prisons; transfer to adult prisons etc.) (max. 3 pages)
12.	**Residential care and youth prisons – development of treatment/vocational training and other educational programmes in practice** (max. 3 pages)
13.	**Current reform debates and challenges for the juvenile justice system** (max. 2 pages)
14.	**Summary and outlook** (max. 1 page)

Although there was a clear limit for the length of the reports (see above), it soon became evident that our approach had been far too ambitious and that it was impossible to correspond to these restrictions when trying to deliver differentiated material and data. The results are national reports that are often twice the size we had envisaged and anticipated. Other problems that we faced were the language barriers. Many reporters' first language was not English, and therefore a considerable amount of time and effort had to be devoted to language editing and translations (which was done for the most part by the English Ph. D.-student *Philip Horsfield* who is attached to the Department in Greifswald). But also the participants of the research project *Michele Burman* and *David O'Mahony* provided valuable assistance in language editing. It took us more than a year to get the national reports ready for publication.

Fortunately, an "excellence initiative" of the Federal State of Mecklenburg-Western Pomerania supported the project with another two years grant starting in December 2008. This will enable us to also complete the second phase of the project, the collection and compilation of experiences of "good practices" in the field of juvenile justice in Europe.

The publication at hand, consisting of four volumes totalling almost 1,900 pages, is probably the most comprehensive database on juvenile justice systems in Europe. We hope that politicians, researchers and the public will be attracted by this unique material, and that juvenile justice policy will further develop reform strategies which are "evidence based" and based on the legal and practical information that is compiled in these volumes.

Finally we wish to express our deep gratitude to the organizations funding the project, particularly the European Commission, Justice and Home Affairs, the Ministry of Culture and Education of Mecklenburg-Vorpommern and *Diagrama Foundation* as well the *Don Calabria* Institute mentioned above. The final version of the manuscript was prepared by Mrs. *Kornelia Hohn* at the

Department of Criminology at Greifswald. We wish to thank her for this and her wider contribution to the project as a whole.

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The role of non-governmental organisations in juvenile justice: The "Don Calabria Institute" (Italy) and "Diagrama Foundation" (Spain)

Alessandro Padovani, Sabrina Brutto, Francisco Legaz[1]

1. The definition of NGOs: Integration of civil society

The term "Non-Governmental Organization" (NGO) became popular with the Charter of the United Nations,[2] which used this expression to identify those entities participating in international proceedings that could not be defined as states or international organisations. Article 71[3] of the Charter granted NGOs consultative status for the Economic and Social Council. For this reason, at an earlier stage the term NGO had only been used to describe those organisations that operated within the United Nations. Later, especially from the 1980s onwards, the term was primarily used for defining national and international non-profit organisations. Nowadays, non-governmental organisations are

1 With cooperation of *Ignacio Mayoral* and *Antonio Salinas* (Diagrama Foundation – Legal Department) and *Ellen Vangestel* (Diagrama Foundation – Translation Department).

2 Charter of the United Nations, signed by the 51 original Member States and adopted in San Francisco on June 26, 1945; entered into force on 24 October 24 1945.

3 Article 71 of the United Nations Charter reads as follows: "*The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned*".

characterized by their private status and public aim. They maintain a direct connection with citizens and take on an important role in bringing attention to issues of various groups of civil society. NGOs contribute directly to the cohesion of communities on a local, regional, national and even international level, by allowing citizens to be active parts of the societies they live in.

The idea of socially protecting the citizens (i. e. the so called "welfare approach") which was pursued in Europe since the second half of the 20th century has gone through some important changes over the last few years, mainly because of the globalization process and its consequences (social and demographic changes, migration, globalised economy, technological revolution, the increased costs of public services, increasing competitiveness, an increase of social problems,[4] the changing role of the state, etc.). This situation requires balancing a competitive society on the one hand and an adequate social protection for European citizens on the other. This is the major task and the framework for NGOs in Europe, especially those that provide social services and work as important actors in the welfare systems and as representatives of the citizens.

A recent doctrine called "new public management" promotes to minimise the direct prominence of the State in society through a decrease in bureaucracy and through an increase in the effectiveness in public actions. In this situation, the so called "Third Sector"-organisations have a very important role in satisfying the demands of European citizens. They act as mediators between the public and private sector; they provide social services and create social capital which serves as a unifying element in highly competitive and individualised societies.

The extent of public services provided by NGOs differs in each European country due to the peculiarities of different welfare systems and the specifics of judicial and political traditions. In some countries NGOs have a direct mandate (after signing corresponding agreements or management contracts) to provide social services. In other countries – especially in Central and Eastern European countries – their task is to build an infrastructure for social services which does not exist in this form or which is not sufficiently developed. They oftentimes try to obtain acceptance and competences from the local, regional or national authorities.

NGO's values and principles concentrate on the needs of society and not on profits: due to their non-profit character, all financial benefits are re-invested in order to achieve social objectives.

The importance of "Third Sector"-organisations in Europe has been subject of considerations by the European Union institutions on numerous occasions, most notably the *Communication from the Commission of 6 June 1997 on*

4 E. g. immigrants, illegal workers etc.

promoting the role of voluntary organisations and foundations in Europe (COM (97) 0241 final) and the later *European Parliament Resolution* on this Communication (COM (97) 0241-C4-0546/97).

2. Qualitative aspects of NGOs

2.1. An integrated system

For the development of the rights of children and adolescents the impact of the United Nations Convention on the Rights of the Child is evident. The Convention, approved on 20 November 1989 by the United Nations General Assembly and ratified by 191 countries, argues that every child is an individual and as such his/her civil, economic, social and cultural rights are to be recognized.

Analysing the international panorama, we see the growing role of NGOs in this field. The reason for this development can be found in the specific qualities of non-governmental cooperation on both a theoretical and operative level: NGOs often have – due to their exchange with other NGOs – remarkable knowledge about the international practice, and they furthermore benefit from a deep knowledge of the local situation due to their work in direct contact with the local population. This enables them to provide effective interventions on a local level. NGOs are particularly valued for their minimal bureaucratic burden, allowing for a more rapid mobilisation and realisation of interventions. Additionally NGOs are able to represent regional views at a national and/or international level.

2.1.1 Reasons for NGOs to participate in juvenile justice systems

Among the many social services provided by NGOs, the juvenile justice sector plays an important role. NGOs collaborate with judicial and administrative authorities, but also with many private and public agencies and institutions. This cooperation regards different activities such as:

a) providing services for the execution of measures or sanctions imposed by judicial authorities;
b) developing projects and interventions based on regional conditions like specific networks;
c) providing mediation or reconciliation services as extrajudicial solutions for the conflict between offender and victim (restorative justice);
d) realising the juvenile's social integration.

Professional experts (e. g. social workers, psychologists, etc.) working in NGOs provide their services and concentrate their actions on the direct work with juvenile offenders (and, in case of mediation and reconciliation, also with the victims) in order to solve the conflict created by the offence committed.

NGOs especially provide re-educational and re-socialising interventions for juvenile offenders by promoting the resources and skills which compensate the deficits and shortages causing their problematic behaviour.

NGOs are only competent to provide these services after a delegation from the juvenile justice public authorities. However, the fact that public services as a manifestation of the state authority are transferred to NGOs sometimes produces concerns. Facing those, we can state the following:

The delegation of juvenile justice services from the state to NGOs does not mean that the governments do not fulfil their functions and public responsibilities. Delegated juvenile justice services still belong to the corresponding government, which maintains full responsibility and which guarantees the respect for the rights of the minor offenders. As mentioned above, NGOs work in private non-profit entities. This means that they do not look for any financial profit from their activity to share among partners and shareholders. In fact, the limited financial margins that they might have are re-invested in their own social activities.

It is important to highlight that the cooperation of the private "Third Sector" is required for the execution of sanctions and measures in the field of juvenile justice. NGOs dispose of manpower and expertise for the development and the implementation of individual programmes. They are furthermore able to offer qualified professionals. This circumstance shall not be described as a difference to the public sector, but the added value of NGOs is their active social network which allows them to offer diversified programmes. Furthermore, the NGOs working with continuity with the same type of "clients" manage to develop relationships with more organisations working with and for juveniles. The knowledge of the family and social reality of the minor becomes an additional value for high quality work.

Other various reasons can be added to promote the management of juvenile justice programmes through NGOs: Measures in the field of juvenile justice mainly include social, educational and developmental elements instead of punitive or commercial ones. This is established by the international rules and implemented in all European juvenile justice systems. NGOs are trained to pursue these aims. As mentioned above, the private sector, including the non-profit one, is characterised by its greater flexibility, adaptability and agility in solving problems and attending the needs that might arise. This makes it efficient and consequently allows saving costs for public administration, which may be used for other programmes and projects.

The EU Member States – given the consolidation of their democratic political systems, their advanced judicial and institutional structures and their level of social and economic development – count on a large number of institutions and procedures through which major attention to the rights of children is guaranteed. The important role of NGOs, whose objective is to defend human and children's rights, is emphasised in paragraph 7.5 of the *Opinion of the European Economic and Social Committee on The Prevention of juvenile delin-*

quency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union – 2006/C 110/13 (OJEU of 9 May 2006).

One of the strengths of NGOs is that they allow for direct contact to both the government and the citizens. The field of "deviant minors" is in continuous flux and often affected by bureaucratic and political constraints. Consequently, it becomes difficult to keep track of the constant changes of the juvenile's reality and to provide timely interventions of assistance and counselling. Joint responses between NGOs and public administration are able to closely monitor the emergence of hardship and deviance. They can develop *ad hoc* paths which meet the needs of individual cases and propose actions to be carried out by highly qualified workers with experience in the correspondent field.

2.1.2 Characteristics and conditions for the participation of NGOs

Non-profit organisations position themselves as complementary rather than as substitutive to the public sector. An important characteristic of NGOs is their ability to offer an immediate, tailored and effective response to the need for an intervention which respects the minor and considers his family, his social and cultural background and the different programmes and services which are available in the region. NGOs create cooperation among the various types of services with the aim to identify and to adopt common goals.

NGOs in juvenile justice systems have however always to consider the minors' rights and guarantee the quality and efficiency of the provided services. There are various mechanisms to obtain this objective. NGOs try for example to be as specific and detailed as possible in the setting of contracts or management agreements between the public administrations and the NGOs. External control mechanisms shall be used for the work of NGOs, which can stem from the juvenile justice system itself (i. e. judges and public prosecutors for minors) as well as from independent institutions (like the ombudsman). These mechanisms should be directly accessible for juveniles in NGO-projects or programmes.

Considering all standards, NGOs can play a very important part in the juvenile justice systems of the different European countries by allowing the integration of existing initiatives in civil society and by offering social and human capital.

2.1.3 Internal structure: Elasticity and flexibility

Public institutions often have rigid structures and in practice sometimes the operating times are inadequate related to the urgency of a juvenile's problem. NGOs are trying to overcome this problem, offering specialised and individualised responses and interventions in a timely manner. In general the internal structures in NGOs allow them to organize and implement effective and timely interventions.

Fundamental for the improvement of their work is the continuous exchange of ideas based on dialogue and communication, founded on a common language.

Whereas public institutions often have to use standard practices (due to a lack of personnel and time), the private sector sometimes can easier offer individualised responses, based on direct contact with the juveniles and the time for an extensive understanding of the case.

2.2 The political role of the NGOs and lobbying actions in local and national programmes

Organisations of the Third Sector which operate on a local level do not appear to have much political influence as they must be accredited by the public authorities which finance the activities and regularly have to renew the cooperation-contracts. Therefore, at first glance it could appear that the relationship is one-sided since the NGO must respond to the demands of the public authorities and therefore to the demands of the current politics.

It is important to emphasise, however, that the same public authorities are likewise influenced by the NGOs because they depend on their competences and experiences. The Third Sector has become a permanent and continuous authority for the understanding of social needs and influences decisions in the public administration. The NGOs, in fact, grasp the dynamics and critical questions of social evolution and create appropriate responses to changing societies. The public authorities use this knowledge to understand reality better and to propose their own answers and ideas.

2.3 A permanent dialogue with society

In order to achieve its aim, a non-governmental organisation must continuously communicate with the society to learn and to operate. The communication is generally done on a regional level, as NGOs consider cultural realities for their daily practice. The possibility of NGOs to communicate with other organisations enables them to disseminate the results of their own actions and to gain information from others. With the help of the new technology the exchange can be intensified and can promote common values and interests. Furthermore, NGOs can carry forth their campaigns easier and mobilise a greater number of individuals. This rapid improvement in technology and in the means of communication facilitates the participation of the public, allowing greater dialogue and social interaction.

3. Examples for the work of NGOs: The "Don Calabria Institute" and "Diagrama Foundation – Psychosocial Intervention"

3.1 Don Calabria Institute (Italy)[5]

In Italy, the Don Calabria Institute works nationwide with juvenile offenders as well as with juveniles with social problems, including street children. Don Calabria Institute started to support children in need in the early 1900s. The institute has been able to create a network that involves effective co-operation on several levels between all relevant actors in the field of juvenile justice, including local police and local and regional governments. Don Calabria Institute's mission is to promote the well-being of young people through the development of specific services and initiatives. The headquarter in Verona "Comunità San Benedetto", manages day and residential centres and carries out interventions in the field of education, prevention and integration for offenders as well as young people and minors at risk. Additional services are located in Milan, Ferrara and Palermo. Over the years, Don Calabria has expanded its activities to many countries outside Italy like Brazil, Argentina, Uruguay, Paraguay, Chile, Angola, Kenya, Philippines, India, Russia, Romania and Colombia.

The following two examples give an impression of the daily work of this NGO.

3.1.1 Example 1: AZIMUT: network for the integration of unaccompanied foreign minors

In project AZIMUT, Don Calabria Institute is working in close cooperation with the Veneto Region, the Prefectures (regional offices of the government), the juvenile court of Venice and the public prosecution service. All of them dedicate their efforts to finding new ways for the integration of unaccompanied foreign minors. The phenomenon of unaccompanied foreign minors has notably increased in recent years in Italy, especially in the northern and central regions. It is complex (due to different cultural backgrounds, history and languages the young migrants bring with them as well as the different laws and international

5 The authors would like to thank *Roberto Alberti* (responsible for the "Service of Orientations to Labour-Education"), *Catia Zerbato* (referent for "Foreign Minors") and *Elisa Zoni* (coordinator of "Communities for Minors") for their cooperation.

human rights instruments which have to be observed) and requires intervention on several levels.

The project – financed by the Veneto Region – aims to build a stable network of services for developing a joint response to the urgent need for the reception of unaccompanied foreign minors and for their successive integration through the development of different programmes. The priority lies in finding solutions that permit integration in a context which is, as far as possible, familiar and normal. The minors are often disoriented and distrustful. Reconstructing their history forms the basis for the work with those minors. The careful communication between the minor and the various parties involved is fundamental from the first contact onwards. After this initial recognition a personalized educational plan (PEI) is created, considering that another future for the minor is possible with the help of an integrated system of services. The activities carried on by Don Calabria Institute can be divided into three operational threads:

1. Development/consolidation of a network through meetings with the parties involved on a regional and local level (justice and public authorities, social services, health agencies, schools and employment agencies).
2. Training of all involved parties in legislative aspects and on practices to favour a clear definition of each party's role.
3. Direct interventions for the unaccompanied foreign minors, offering access to a systematic programme of integration (i. e. first reception as an efficient response to both the need for public safety and the minors' protection, placement in structures that adequately respond to the requirements of the minor, development of an individualised educational programme that respects the needs of the minor, scholastic and vocational training, etc.).

Multi-disciplinary teams work with the juveniles. The existing network of Don Calabria and the contacts to the judicial authorities is conducive for the implementation of these new practices.

3.1.2 Example 2: Service of Orientation to the Labour-Market (Servizio Orientamento Lavoro Educazione – SOLE)

In project SOLE, Don Calabria cooperates (as a coordinator) with social services (of the public sector and the Third Sector) and private companies. The aim of the project is to integrate juveniles and young adults (aged 16 to 26) into the labour market. The project is funded through the public administration and private institutions.

The project offers in particular help to those juveniles and young adults who have been excluded from traditional schooling and vocational training (drop-

outs). These young people regularly lack significant role models, are often characterised by fragile personalities or by being foreigners, or have sometimes come into contact with the criminal world. Employment can serve as a starting point for an individualised educational intervention, and may as well be a step towards the development of an own identity. Employment in a company with the support of SOLE aims to help the juvenile

1. to develop skills, abilities and relationships to other juveniles and to adults in small and large group contexts;
2. to substitute deviant behaviour with behaviour that respects norms and roles;
3. to improve the ability to deal with reality and experiences that come with everyday life and significant relationships;
4. to improve basic autonomy (hygiene, clothing, food, organisation of time, respect for commitments);
5. to encourage minors and young adults to take responsibility.

Juveniles and young adults can participate at SOLE after the public social services of the region contact the coordinator of the project. In a first interview between the coordinator of SOLE and the juvenile, in presence of the social services and the parents, the aims of the programme are defined and a work-training contract is signed. The primary rules which the young person must comply with in order to maintain the work position are described. SOLE helps to introduce the juvenile/young adult to the company and maintains continuous contacts to a tutor inside the firm (the employer or a colleague) and to the young person him/herself. In occasion of the delivery of pay, the coordinator of SOLE collects the attendance record and discusses it (if need be inquiring about the motive for any absences or late arrivals). Open communication among all parties involved is essential for the success of the programme. The project aims to confront the young person with the working members of society, with working times and with their own ability to learn and contribute to the employment activity. At the end SOLE sends a final report of the young person's personal development to the social services that requested the participation of the young person in the project, and discusses the possibility of a hiring.

The wide network of Don Calabria and its contacts to social service workers and other institutions enable the project to offer diversified responses to the young people in need of help.

3.2 Diagrama Foundation (Spain)[6]

Diagrama Foundation is an independent non-governmental organisation set up in 1990, committed to the defence of childhood and young people's rights, paying special attention to those with social difficulties and young offenders. In order to fight against the social exclusion of children and young people at risk, Diagrama Foundation operates at the national and international levels. Therefore, different projects and programmes are currently being carried out in several European countries and other parts of the world.

In July 2007 Diagrama Foundation was granted the consultative status with the United Nations Economic and Social Council because of its long experience in educative and integrative intervention with children and young people in danger of social exclusion, especially those in conflict with the law. Therefore, the main objective of Diagrama Foundation is to create real opportunities for children and young people at risk in order to promote their inclusion into society and on the job market through educational and professional integration programmes focusing on the childcare system, the prevention of juvenile delinquency, the management and execution of custodial sentences and other kinds of measures imposed by courts on young offenders and the development of professional integration programmes. Two examples shall demonstrate how Diagrama works in practice.

3.2.1 Example 1: Integrating young people at social risk into the labour market

To (re-)integrate young people at risk into the labour market, Diagrama Foundation collaborates closely with the public administration (on a local, regional, national and European level) as well as with private companies.[7] In young people's lives, having a job is an important factor in the process of social integration and stability. The project targets young people in or with social difficulties, especially those in conflict with the law, who have reached the legal age to work. It follows a multidisciplinary approach and offers individualised support and trainings for the job search.

To set up a personalised plan for the young person, his/her needs and challenges are compiled. In most cases, the young person is not ready to enter professional life directly and needs to run through different trainings like workshops for the development of social skills or for the job application, to

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6 The authors would like to thank *Juanjo Periago* (Diagrama Foundation, Legal Department) for his cooperation.

7 The project is financed by the public administration.

improve the professional qualifications. Additionally, support is offered at the place of work itself. This is a dynamic process which includes information, continuous assessment and training if necessary.

Diagrama Foundation decides about the entry of a young person into the project, sets up an individualised plan in cooperation with the young person and implements this plan until the socio-professional integration of the young person is completed. The NGO continuously reassesses the plan and adapts it, if necessary, in case of new circumstances. Diagrama furthermore establishes a network of companies willing to collaborate with the project by offering jobs for young people at risk of social exclusion (e. g.: *Círculo de Empresas con Responsabilidad Social – Circle of Companies with Social Responsibility*) and setting up a database for local resources and services.

The involvement of different members of the community to promote integration into the labour market can best be achieved by NGOs because they can establish ties to persons and companies which are willing to integrate young people.

3.2.2 Example 2: Educational intervention in the field of custodial measures

The current Spanish legislation (Organic Law 5/2000 of 12 January 2000, regulating the criminal responsibility of minors) provides five types of custodial measures (closed, semi-open, open, therapeutic and weekend detention) whose common characteristic is that the juvenile offender is separated from his/her social and family environment and sent to an establishment where he/she is deprived of his/her freedom and subjected to a highly structured life regime. Diagrama foundation works with juveniles aged 14 years upwards who are deprived of their liberty. Aim is the re-education and social reintegration of these minors by giving them the appropriate cognitive and behavioural skills. Once they get their liberty back they shall evolve into free and responsible citizens and face the daily needs and problems without breaking the basic rules of social cohabitation.

The best interest of the juvenile and the right to freely develop his/her personality are the basic principles for all decisions and actions. All projects offered in detention centres aim to provide the minor at all times with the necessary information and thus support that he/she can exercise the rights that he/she is entitled to. Interventions should be interdisciplinary and promote the sense of responsibility and the respect for the rights and liberties of others. The actions have to be adapted to the age, personality and social circumstances of the juvenile offenders. Diagrama tries to encourage the collaboration of the juvenile's parents and family members.

Diagrama, for example, promotes academic activities (schooling) for juveniles deprived of their liberty which are individually adapted to the juveniles'

needs and which can be realised both in educational units at the detention centre itself or in institutions outside.

Furthermore, Diagrama runs vocational trainings at the detention centres where minors can learn mechanical skills which benefit their future socio-professional reintegration. After participating in such training programmes the juveniles receive an official diploma which gives them the possibility to access the job market in the best possible conditions. Diagrama furthermore offers the juveniles productive jobs (where they get a salary for their work) in the detention centres or at companies outside. Fluent communication and coordination between the practitioners working at the centres is supported. Diagrama offers continuous trainings for all employees at the centres, making their work more demanding and professional.

NGOs qualify for the work in open and closed institutions for juvenile offenders in particular because they represent the civil society into which the offender should be reintegrated. Employees of NGOs can serve as adult role models for the juveniles. In general, it is often easier for them to gain the minor's confidence and affection than it is for public officers. They furthermore bring their knowledge from the "outside world" into the institutions.

Supporting cooperation and information exchange: The International Juvenile Justice Observatory

Cédric Foussard

1. Introduction

Juvenile delinquency has become a field of major concern for European countries and a common issue for all Member States.[1] However, crimes, responses to crime, offenders, risk factors, legislation, and penal systems vary from country to country. While some countries have adopted a moderate system of "minimum intervention" (priority of diversion and of educational measures), others have introduced elements of restorative justice into their juvenile justice system (mediation, family group conferencing).[2] As a result, it is difficult to identify a "single" European model of juvenile justice.[3] Nevertheless, despite different approaches for juvenile justice, membership to the *European Union* leads to the responsibility to ensure that specific rights are granted to children.

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1 European Economic and Social Committee 2006, p. 75: "*There is clearly a widespread perception among European countries that juvenile delinquency is on the rise, and that the offences concerned are becoming more serious. Under these circumstances, the public is calling for more effective control mechanisms, leading many countries to stiffen their youth legislation. This serves to underline the need for coordination and guidance measures in order to facilitate European level governance of this phenomenon, and also for well-designed information policies*".

2 See for example *Dünkel* and *Christiaens et al*. in this volume.

3 *Dignan* 2006; *Cavadino/Dignan* 2006.

In the last few decades, *Europe* has experienced a period of change; policies and practices are harmonized in *Europe* in many areas, including juvenile justice. Much work has already been done, with the aim to improve legal systems for juveniles. In spite of this, there is still much to be done. There is a lack of integration of international instruments and national resources on juvenile crime prevention. This is partly due to the abovementioned differences which slow down the development of a common European judicial culture.

There is a concerning tendency towards toughening up youth legislation by decreasing the minimum age of criminal responsibility and extending periods of deprivation of liberty for minors, among other measures.[4] Reasons are numerous, though the stigmatization of young offenders by the mass media and intensifications in young offenders' legislation are the main contributions to this. The public is often unaware of the real situation behind the media stories and consequently demands more punitive laws from the government. Nevertheless, most international and European documents define the term "juvenile" as a *person who has reached the age of criminal responsibility but not the age of majority;* however, these documents also extend mainly *to those immediately below and above these ages"*.[5] Juvenile offences are defined as "*actions which are dealt with under criminal law. In some countries it also extends to antisocial and/or deviant behaviour which may be dealt with under administrative or civil law*".[6]

In order to adequately address the youth crime problem that European countries are facing, it is highly recommended to present efforts of the various juvenile justice agencies and actors, and to work together towards the development of a common network of juvenile justice systems, based on the international conventions and recommendations in this field. The juvenile justice system has to integrate organisations and institutions for justice, health and education and youth welfare organisations, with the aim of using all possible resources to (re)integrate young offenders into society.[7]

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4 See *Dünkel/Grzywa/Pruin/Šelih* in this volume.

5 The *United Nations* also defined this term in the "*Beijing Rules*" (Standard Minimum Rules for the Administration of Juvenile Justice, adopted by General Assembly resolution 40/33 of 29 November 1985): "*A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult*" (art 2.2a).

6 In the "*Beijing Rules*", the offence is described as "*any behaviour (act or omission) that is punishable by law under the respective legal systems*" (2.2b). The text defines the juvenile offender as "*a child or young person who is alleged to have committed or who has been found to have committed an offence*" (2.2c).

7 Council of Europe Recommendation (2003) 20 adopted by the Committee of Ministers on 24 September 2003, see https://wcd.coe.int/ViewDoc.jsp?id=70063. Juvenile Justice Systems are defined as a "*formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as*

Currently, there are several organisations that have taken on the task of creating a network that deals with children in conflict with the law. One example is the *International Juvenile Justice Observatory*, an international foundation conceived as an inter-disciplinary system of information, communication, debates, analyses and proposals concerning different areas which affect the development of juvenile justice in the world.[8] The phenomenon of juvenile crime and the development of juvenile justice should be studied and analysed from a global perspective, taking into account the plurality of situations worldwide. Based on this, the *International Juvenile Justice Observatory* generates impartial proposals for good practices and policies affecting juveniles and young offenders, taking into account economic, political, social and legal contexts.

At a European level, a juvenile justice network could provide comparable and updated information on every aspect of youth justice, painting a reliable picture of juvenile crime, and allowing legal practitioners to discuss and analyse the most appropriate method to address the problem at hand ("*good practices*"). In addition, due to the growing use of internet and of digital communications by all public authorities and by civil society, the exchange of information about juvenile justice is now technically possible.[9] Using IT in the juvenile justice system may help to improve the different actors' and agencies' ability to carry out their mission and enable the *European Union* to dispose of the necessary materials to further improve human rights standards and promote transnational cooperation in the field of juvenile justice in Europe.

2. Legal framework for juvenile justice

The international institutions concentrate on how young offenders should be treated by national justice systems, in contrast to adult offenders, mainly because juvenile justice systems follow two aims simultaneously: making the juveniles responsible for their acts and at the same time protecting them because of their age.

Over the past few decades, special juvenile justice laws have been adopted and modified in most European countries (e. g. *France* in 1945, *Spain* in 2000[10] etc.). Furthermore, international as well as regional organisations refer to the

the police, the prosecution service, the legal professsion, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support".

8 OIJJ: www.oijj.org.

9 Integrated Information Sharing in Juvenile Justice Systems, see http://it.ojp.gov/why/files/Juvenile-Justice.pdf.

10 See *Fundacion Diagrama* 2008: "Comments on the regulations of the Organic Law 5/2000 of January 12th, regulating the criminal responsibility of minors".

importance of specific solutions for and responses to children and young people in conflict with the law.

However, such international or regional documents do not go as far as to allude to cooperation and coordination between the states, in particular by means of a network of juvenile justice practitioners because of the differences between national juvenile justice approaches.

2.1 Guarantees based on UN rules

Concerning the rights of children in conflict with the law, the Convention on the Rights of the Child, adopted by United Nations General Assembly in resolution 44/25 of 20 November 1989, has become one of the main documents of reference. Article 37 of the Convention sets out rights and procedural guarantees for children involved in a criminal process (e. g. prohibition of all forms of torture or inhuman or degrading treatment or punishment; restrictions for the deprivation of liberty; regulations for the humane treatment of young prisoners; access to an independent authority, etc).[11]

The *United Nations* also elaborated some specific "rules" for the treatment of juvenile offenders, in particular for the Administration of Juvenile Justice ("*Beijing Rules*") in November 1985. This document pronounces a series of regulations for each step of the juvenile justice process which have to be observed (concerning investigation and prosecution, judgement, non-institutional treatment, institutional treatment etc.). The text emphasises the importance of juvenile social policy and of specific responses from the justice system to the needs of the juvenile offenders, with respect to the particular special regulations in each member state.

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11 Art 37: "*States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action*".

Moreover, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*[12] emphasize that deprivation of liberty of young offenders has to be used only as a last resort, limited to exceptional cases for the minimum necessary period and in respect of the juvenile's human rights. The document entails guarantees for young prisoners (i. e. presumption of innocence, right to legal counsel, right to education, right of recreation, right to practice his own religion, right to communication with the outside world etc.) and rules concerning the enforcement of custodial sanctions (concerning for example registration, movement and transfer). Finally, the document underlines the importance of research, planning, policy formulation and evaluation, and recommends the development of statistics concerning juvenile justice and young people's needs, as well as the evaluation of this information.

In addition, UN rules have strengthened the importance of multidisciplinary and transnational cooperation. Indeed, in 1990, the *General Assembly* adopted *Guidelines for the Prevention of Juvenile Delinquency* ("*Riyadh Guidelines*")[13]. This document emphasizes the importance of prevention policies, the integration of society and family in this matter and the need for involvement of young people in the development of national social policy. According to the United Nations, effective juvenile delinquency prevention should be centred on close interdisciplinary co-operation between national and local public organisations, with the involvement of public and/or private agencies which work with or for juveniles (for example school or vocational training, child-care organisations, health care, law enforcement and judicial bodies acting from detailed analysis). Also, the Guidelines stress the role of education within the prevention system. The document includes a section 6 on "Research, Policy Development and co-ordination".

It is clear from closer analysis that all relevant *United Nations* documents emphasize the importance of (judicial) rights for children, considering their special needs. The aforementioned competent agencies have to act according to this aim. As well as penal and judiciary elements, the countries have to implement educational approaches. Consequently, national juvenile justice systems provide for multi-disciplinary and multi-institutional approaches in this field (with the aim of protection, education and skill enhancement) which involve a diversity of persons and organisations experienced in juvenile cases.

However, despite these common principles, each country retains its own particularities (concerning for example culture, economy, social systems) and each

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12 Adopted by the UN General Assembly in the Resolution 45/113 of 14 December 1990. The United Nations defines deprivation of liberty as "*any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority*" (Art 11).

13 Resolution 45/112 of 14 December 1990.

stakeholder service has its own responsibilities in implementing these principles. Certain non-governmental organisations aim to promote the application of the principles which are described in these international documents.

The *International Juvenile Justice Observatory* (IJJO) aims to promote the international documents on juvenile justice, to make the international principles for the treatment of juvenile offenders known worldwide. The *IJJO* international campaign "*Legal Assistance for Children in Conflict with the Law*" aims at providing resources for the different juvenile justice actors to assure the application of the juvenile's right to legal assistance which is laid down in the above mentioned international documents. The *IJJO* hopes to provide an international and inter-disciplinary vision of legal assistance for young offenders, including the creation of a legal database of international and national legislation concerning this right of assistance.

The IJJO's aim is to motivate States to update their juvenile justice legislation in accordance with the international documents.

2.2 Recommendations at the European level

In the same way as at the *UN* level, regional institutions have adopted documents in juvenile justice matters in the form of recommendations, without binding character for the Member States. In *Europe*, the *Council of Europe* and the *European Union* have adopted specific documents about the treatment of young offenders and their legal guarantees.

The *Committee of Ministers of the Council of Europe* adopted two significant Recommendations concerning juvenile justice. The *Recommendation R(1987)20 on Social Reactions to Juvenile Delinquency*[14] emphasizes the priority of educational measures in penal systems, taking account of the personality and the specific needs of the minor. Consequently, deprivation of liberty has to be avoided as far as possible. In this document, the *Committee of Ministers* recommended to the governments to review, if necessary, their legislation and practice about the prevention of juvenile crime by implementing a comprehensive policy promoting the social integration of young people or by the introduction of specialised programmes to implement measures of diversion and mediation and to guarantee the application of Children's Rights in penal proceedings. This could be for instance by implementing a comprehensive policy promoting the social integration of young people or through the introduction of specialised programmes. The *Committee* also encouraged the development of comparative research in juvenile justice matters.

The *Recommendation R(2003)20 on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice* states in the preamble that

14 Adopted on 17 September 1987 at the 410th meeting of the Minister's Deputies.

"responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community".[15]

The European Union institutions have just recently also issued some documents in the field of juvenile justice.

The *European Economic and Social Committee's Opinion* "*Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union*" (2006/C110/13) recommends the development of a common strategy for dealing with juvenile delinquency as a goal of the *European Union*. Whereas there are a lot of documents about the treatment of juveniles in general, there is still a lack of specific texts about juvenile offenders. The *Committee* recommends coordination and cooperation between the European Member States to better manage the phenomenon and elaborate appropriate information policies. To prevent youth violence, it calls on Member States to adopt strategies which combine measures of prevention and intervention based on the respect of the best interest of the child.[16]

The resolution of the *European Parliament* of 2007 on this subject[17] supports all initiatives of cooperation between international institutions to share experiences, information and statistical data to improve the awareness of the situation of children in the EU.[18]

Moreover, the *European Commission Communication* "*Towards an EU Strategy on the Rights of the Child*"[19] has launched the idea of a European Forum for the Rights of the Child involving institutional organs (Member States, *UNICEF, Council of Europe* etc.) and international organisations "as an area of exchange and good practices".[20]

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15 Council of Europe Recommendation nº R (2003) 20 Recommendation adopted by the Committee of Ministers on 24 September 2003, see https://wcd.coe.int/ViewDoc.jsp?id=70063.

16 *European Economic and Social Committee* 2006, No. 2.3.

17 "*Towards an EU strategy on the rights of the child*" (INI/2007/2093) www.europarl.europa.eu/oeil/file.jsp?id=5479632.

18 No. 11, 12, 32, 41.

19 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF.

20 The *International Juvenile Justice Observatory* takes part in the Forum as "Expert NGO".

3. Making international standards work through cooperation

The aim of juvenile justice cooperation is to inspire actions and policies at the transnational and national levels and to promote efforts of all those who actively support children's rights by setting out a catalogue of common strategies for improving the conditions in which children live.

Already in 1995, in the report on a European strategy for children[21], the *Parliamentary Assembly* of the *Council of Europe* encouraged children's rights as a political priority by adopting a comprehensive, consistent and coordinated approach to childhood policy, as well as multidisciplinary structures at all deliberation and decision-making levels, in particular at the ministerial level. This report recommended supporting the establishment of national and transnational coalitions of all relevant partners. The Assembly highlighted the importance of the creation of a permanent multidisciplinary intergovernmental structure able to deal with all issues related to children, in order to guarantee children's rights in Europe.

3.1 European initiatives for improving cooperation and exchanging knowledge about juvenile justice

As already mentioned, national juvenile justice systems in *Europe* vary considerably (and the international documents are generally not binding) even if there is a common basis[22] and some convergence. Nevertheless, as recognised in the different European recommendations, *Europe* aims to foster the cooperation and the exchange of good practices. The development of sustainable cooperation must start by sharing common tools such as, for instance, statistics on crime and criminal justice. This is recognised in the Hague Programme adopted by the European Council in 2004 as a key tool to facilitate the harmonisation process: '*...In this respect the European Council welcomes the initiative of the Commission to establish European instruments for collecting, analysing and comparing information on crime and victimisation and their respective trends in Member States, using national statistics and other sources of information as agreed indicators*'[23].

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21 Doc 7436 of December 14, 1995-1403-12/12/95-1-E, http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc95/EDOC7436.htm.

22 "*Justice des mineurs délinquants en Europe: à défis similaires, diversité des réponses nationals*", www.strategie.gouv.fr/IMG/pdf/noteveille26.pdf.

23 The Hague Programme Official Journal C 53 of 3.3.2005, p. 11 at http://eur-lex.europa.eu/.

According to the European Economic and Social Committee[24] much remains to be done to improve the cooperation regarding prevention and the treatment of young offenders. The Opinion underlines a need to improve national knowledge in juvenile justice matters, to organise experts meetings to promote the exchange of experiences and good practices[25], to study the development of juvenile justice[26] and to establish statistical recording at a European level.

As an answer to the *European Union*'s call stronger efforts at the EU level, the *AGIS* project "*Juvenile Justice Systems in Europe- current situation, reform developments and good practices*"[27] is a good example for a successful cooperation between experts, academics and practitioners from all over Europe. Several of the main results of this important research project were presented at the *III International IJJO Conference*, held in *Valencia*, in October 2008 in order to develop new recommendations in *Europe* by the elaboration of a Joint Declaration. This declaration was widely supported by experts, as well as relevant governmental bodies at the European, national, regional and local level.

Europe wide, besides the Child Friendly Justice Strategy, networks of experts and practitioners working in juvenile justice could also enable a rapprochement within the national children's rights standards for young offenders. All these initiatives at the EU level should lead to the elaboration and application of minimum rules for young offenders as the *Council of Europe* has already expressed in the *Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures*.

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24 See *European Economic and Social Committee* 2006.

25 See *European Economic and Social Committee* 2006, No. 7.2.3.

26 See *European Economic and Social Committee* 2006, No 7.2.4.

27 "*Juvenile justice systems in Europe - current situation, reform developments and good practices*", financed with the help of the AGIS Programme. The *Department of Criminology* in *Greifswald* (*Germany*) as well as the *Don Calabria Institute* (Italy) and *Diagrama Foundation* established this project which is based on an international network of juvenile justice experts. The aim is to collect knowledge about the legal situation and actual reforms or reform proposals and the practice of juvenile justice agencies as well as the courts (sentencing practice, development of treatment and educational facilities etc.). It also pays attention to the legal situation and practice in residential care institutions and/or youth prisons. A further focus is put on gathering examples of "good practices" in the field of juvenile justice and juvenile institutions.

3.2 Importance of information and best practices exchange

In 1996, the *UN Declaration on Youth Crime Prevention and Juvenile Justice*[28] recommended the establishment of a world-wide system of networks in this matter to improve the communication between young people, non-governmental organizations, intergovernmental organisations, governments and United Nations institutions and to get to know better the different systems among the United Nations and their mechanisms in relation to the prevention of juvenile delinquency and juvenile justice.

As stated in the Recommendation of the *Committee of Ministers* of the *Council of Europe*, "*the juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs."*[29] These different agencies and actors should facilitate multidisciplinary and multi-agency responses addressed to children in conflict with the law.

In *Vienna*, UN Member States adopted a "*Declaration on Crime and Justice: Meeting the Challenges of the Twenty First Century*".[30] They recognized the necessity of *"closer coordination and cooperation among States in combating the world crime problem, bearing in mind that action against it is a common and shared responsibility. In this regard, it has been acknowledged the need to develop and promote technical cooperation activities to assist States in their efforts to strengthen their domestic criminal justice systems and their capacity for international cooperation."*

Following these recommendations, some agencies and NGOs have been set up at the international level in the field of juvenile justice, such as the *International Juvenile Justice Observatory*, the *UN Interagency Panel for Juvenile Justice*, the *European Network of Ombudsmen for Children* (ENOC), the *European Crime Prevention Network* (EUCPN), etc.

Since 2003, the *International Juvenile Justice Observatory* (IJJO) has been actively promoting information and communication exchange among its collaborators from all over the world. In order to better coordinate the exchange of information among EU State Members public authorities and other actors that must play a key role in any harmonisation of juvenile justice systems in Europe,

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28 http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1L1V47035I863.43536&profile=bibga&uri=search=SL~!Vienna%20Declaration%20on%20Youth%20Crime%20Prevention%20and%20Juvenile%20Justice%20(1996)&menu=search&submenu=alpha& source=~!horizon.

29 Recommendation Rec (2003) 20 of the Committee of Ministers of the Council of Europe to Member States concerning new ways of dealing with juvenile delinquency and the role of juvenile justice http://wcd.coe.int/ViewDoc.jsp?id=70063.

30 A/RES/55/59 ftp://ftp.anpf.ro/ANPF/DocumenteONU/Rezolutia_2001.pdf.

the *IJJO* has set up a European juvenile justice network. The reasons for a network in juvenile justice information systems are multiple: the need for precise knowledge about juvenile crime and the development of juvenile justice systems,[31] the improvement of the set of indicators on interventions with young offenders,[32] the improvement of alternatives to deprivation of liberty, the public awareness of children's rights[33] and a wide diffusion of scientific research results by using the internet which allows wide accessibility.

3.3 The International Juvenile Justice Observatory

The International Juvenile Justice Observatory (IJJO) is an International Public Utility Foundation based in Brussels (Belgium). Its objective is to create a permanent international service to provide information for academics and professionals in juvenile justice all over the world, as well as entities concerned by the situation of young people at risk of social exclusion and reclusion. The IJJO is financed by public grants at the local, national and international level, as well as by private donations from foundations and organizations.[34] The author is one of the permanent full-time employees and executive director of the IJJO.

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31 Recommendation Rec (2003) 20 Part VI. Monitoring, evaluation and dissemination of information, No. 23: "*To increase the knowledge base as to what interventions work, funds should be allocated to the independent scientific evaluation of such interventions and the dissemination of findings to practitioners*". The aim of the above mentioned AGIS Project also covers the exchange of research results in the field of juvenile justice and diffusing the good practices in this matter. http://esa.un.org/coordination/ngo/-session/views/viewer.asp?Document=E/C.2/2007/R.2/Add.32&Number=4&view=2007_R2_Add_32_e.pdf&jumpto=4&session_db=..%5Cdb%5CPrevious_Sessions%5C%5Csession_data.mdb, p.11.

32 Recommendation Rec(2003)20.

33 Recommendation Rec(2003)20 Part VI, No. 25: "*To counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet. This should be accomplished without making available personal information or other data that may lead to the identification of an individual offender or victim*".

34 Further funding is obtained by the European Commission, Directorate-General, Justice, Freedom and Security, Brussels. In addition the IJJO is financed by public grants at local, national and European level as well as by private donations from foundations and organizations with the same objectives as the IJJO. The IJJO activities were supported by the European Commission in particular through an Operating Grant of the Prevention of and Fight Against Crime Programme of the General Directorate of Justice, Freedom and Security as well as other programmes as Daphne III, Security and Safeguarding Liberties, AGIS etc. The IJJO has developed different collaboration agreements with public institutions in charge of children's rights and juvenile justice such as the French Ministry of Justice, the County Council of Justice and Public Administra-

The IJJO agrees to carry out its activities promoting the main international texts like the Convention on the Rights of the Child, the United Nations guidelines for the prevention of juvenile delinquency (Riyadh Guidelines), the United Nations standard minimum rules for the administration of juvenile justice (Beijing Rules) and the United Nations standard minimum rules for non-custodial measures (Tokyo rules), etc.

The IJJO's work is based on an international and interdisciplinary vision of juvenile justice, aiming at creating a future for minors by using strategies which stimulate the international development of appropriate policies, legislations and intervention methods in the context of "Global Juvenile Justice without Borders". Therefore, the IJJO coordinates research and studies related to the different problems that arise in the field of juvenile justice.

Since its creation in 2003, the IJJO has developed an international network of over 7,000 expert users and collaborators coming from over 120 countries. Moreover, NGOs, Public administrations, academics and training institutions, focused on education, reintegration and prevention, are the main basis, ground and target group of the IJJO. In this context, the aim of the IJJO is to contribute to the progress and improvement of policies, stimulate the development of new educational intervention programmes and researches that concentrate on minors at risk of social exclusion.

In addition, a network of entities with a consultative status with the International Juvenile Justice Observatory has been set up in order to create a group network of active observers, allowing the collaboration with the IJJO in its objectives and missions.

Through its website, the IJJO disseminates online information among civil society, users and collaborators who have access to a wide database which is updated on a daily basis and which contains over 25,000 documents of all sorts (press, events, reports, legislation, and training) on juvenile delinquency and youth justice.

Moreover, the IJJO develops campaigns, such as the international campaign "Legal assistance for children in conflict with the law" and the campaign "Two

tions of the Generalitat Valenciana as well as non-profit organizations as Enfance et Partage (France), Fundación Diagrama (Spain; see for the activities of Diagrama Foundation –"Fundación Diagrama" – *Padovani/Brutto/Legaz* in this volume; the president of the Diagrama Foundation, *Francisco Legaz*, is also president of the IJJO, see wwwIJJO.org; further information on the Foundation can be found under www.fundaciondiagrama.es) and Universities as the French National Centre for Scientific Research Migrinter and finally international institutions as the United Nations- Latin American Institute for the Prevention of Crime and Treatment of offenders (ILANUD), etc. Thanks to these different agreements and financial support, the IJJO has developed specific activities as conferences, training sessions, research projects etc. The IJJO headquarters is based in Brussels, and the technical office in Salamanca-Spain, where a multidisciplinary team is involved in the different research activities, organization of seminars, and update of the IJJO online resources.

decades of juvenile justice: progress since the adoption of the Convention on the Rights of the Child" in order to raise public awareness on topics related to juvenile justice. Furthermore, every two years, the IJJO organises an International Conference where numerous experts from different fields come together to analyse juvenile justice systems, action and intervention models which can be applied in various countries.[35]

The Observatory also created the International School for Juvenile Justice (ISJJ) as a training and research space on an international level whose main purposes are to reinforce the generation and dissemination of knowledge and the development of internet-based training actions in the different juvenile justice fields.

The ISJJ is also a way to promote meetings, cooperation and networking among professionals, researchers, teachers, agents and public and private organs who are active in the field of juvenile justice. Its main fields of action cover the most important questions concerning prevention, educational intervention, the judicial framework, protection of minors, social inclusion, etc.

The IJJO aims at being closer to local reality, thus, it has created continental observatories: the European, African and Latin-American Juvenile Justice Observatories. These local IJJO branches respond to the need of assisting States from within civil society to apply the international rules on the protection of the rights of the child and young people efficiently, facilitating the permanent study and improvement of juvenile justice systems.

Based on the differentiating aspects and the common points that converge on the map of all juvenile justice systems in Europe, the International Juvenile Justice Observatory (IJJO) promoted the creation of the European Juvenile Justice Observatory (EJJO) as a positive element in the convergence process of regulations and good practices in Europe.

In order to carry out the most important objectives and activities, the EJJO relies on the European Council for Juvenile Justice, which belongs to this Observatory, for meetings, discussions and analysis supervised at all time by the EJJO Board of Administration.

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35 The subjects of the conferences were prepared in cooperation with the Department of Criminology at the University of Greifswald (*Frieder Dünkel*). The first conference took place in Salamanca (27-29 October 2004) on the subject "Juvenile Justice and the Prevention of Delinquency in a globalized world." The second conference on "Juvenile Justice in Europe – A framework for the integration" was organized at Brussels on 24/25 October 2005. The third conference was organized in connection with the final meeting of the participants of the present AGIS-project in Valencia on 21/22 October 2008, see the introductory paper of *Dünkel et al.* in this volume. The subject of the conference – in conformity with the AGIS-Project – was "Juvenile Justice Systems in Europe – Current situation, trends in applicable models and good practice." The conference proceedings and main results can be obtained from the IJJO-website under www.ijjo.org.

The European Council for Juvenile Justice, as part of the EJJO, joins representatives, all of which belong to the Member States, of competent public administrations in juvenile justice, universities or academic centres and NGOs which are experts in legislation, execution, supervision, research or intervention in the field of juvenile justice.

The members of the Council will be those bodies, institutions or entities appointed specifically by the board of administration of the EJJO. The IJJO has a benchmarking function concerning cooperation and exchange of good practices and information.

4. Conclusion

From all international and European documents mentioned above, it is obvious that there is a strong need to support transnational and inter-institutional cooperation between all juvenile justice organisations. In order to provide a sustainable response to this need, it is important to start by building a common base of knowledge, and by sharing and/or harmonizing effective tools and instruments to describe efforts and deficiencies of international juvenile justice systems.

Having exact knowledge on youth crime and young offenders would also allow to draw a clear picture of the real situation rather than to rely on the image created by the mass media. This in turn could decrease the demand for harsher and more punitive sentences and increase support for restorative justice.

Civil society, through a permanent network of experts, researchers and practitioners, has already developed several interesting and ambitious initiatives following the concept of what works, based on a continuous evaluation of the results. This path should be followed by the European institutions and networks in the field of juvenile justice, to encourage national decision makers to integrate the international regulations and instruments which will guarantee the minimum rights of children in conflict with the law.

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Country reports

Austria

Karin Bruckmüller, Arno Pilgram, Günter Stummvoll

1. Historical development and overview of the current juvenile justice legislation

The reactions provided for under Austrian criminal law in cases of juvenile delinquent behaviour are covered by a special Act, the so-called Juvenile Court Act (*Jugendgerichtsgesetz* 1988 – JGG).[1] This Act aims at taking into account the special, development-related characteristics of juvenile delinquency by focusing on the transitional period between the ages of criminal minority of children and the full criminal majority of adults. This Federal Act contains substantive and procedural regulations, including regulations on the enforcement of imprisonment. It also allows for extra-penal measures according to family law or the law of youth welfare.[2] The youth welfare measures are listed under the Youth Welfare Act (*Jugendwohlfahrtsgesetz* 1989 – JWG). The purpose of this Act is to provide counselling and support for families, for example supporting education, though interventions are also permissible in cases where the legal guardians do not fulfil their obligations.

1 This report shows the legal situation of and the developments up to Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Jugendstraftaten, Federal Law Gazette (Bundesgesetzblatt – BGBl.) 1988 No. 599, as amended by BGBl. I 2006 No. 102. – For the most recent reports on Austrian legislation in the field of juvenile justice, compare *Löschnig-Gspandl* 2002; *Höpfel* 2004; *Bruckmüller* 2006*; Jesionek* 2007. Some chapters of this report you can find more detailed in *Bruckmüller* in the Handbook "Juvenile Justice" of *Junger-Tas/Decker* 2006.

2 The possibility to order such an extra-penal measure by the judge was canceled with the last amendment in 2007, see BGBl. I 2007 Nr. 93.

The Juvenile Court Act defines "juveniles" as persons between 14 and 18 years of age at the time of the offence. The JGG contains specific provisions for age groups within and beyond these brackets. For 14 and 15 year olds it specifies particular grounds for immunity. For so-called "young adults" (*Junge Erwachsene*), i. e. persons between 18 and 21 years of age, the code of procedure outlined in the JGG applies. Some prison law provisions can be applied up to the age of 22, some up to the age of 24, and a certain few up to the age of 27 years. Minors, i. e. persons not yet 14 years of age, are below the age of criminal responsibility; however, corrective orders can be put into place by the courts according to provisions of family law or youth welfare.

Looking at the history of the Austrian JGG, the main policy trends can be understood as follows (*Jesionek* 2003): In 1928, the first JGG Act took its cue from the idea of education. Conventional punishments, both fines and imprisonment, were to be used only as measures of last resort where juvenile delinquency is involved (*Neumair* 1996). During the Nazi era (1938-1945) the JGG remained nominally in force; in practice it was rendered inoperative by a great number of special provisions (*Jesionek* 2007). In 1945 it became part of Austria's legal system again.

In 1988 the JGG was subjected to a sweeping reform. Not only was the age of criminal majority raised from 18 to 19 years but the whole system of juvenile jurisdiction was given an entirely new footing. This comprehensive reform was designed with a view to achieving decriminalisation and better rehabilitation results (*Jesionek* 1990; *Bogensberger* 1992; *Jesionek* 2001). On this basis, a new form of immunity from punishment was introduced for misdemeanours committed by juveniles aged 14 and 15 years old at the time of the offence. For the same reason, the potential for non-intervention and diversion through victim-offender-mediation *(Tatausgleich)* was included. With diversion the JGG assumed a pioneering role.[3] For cases in which conventional criminal penalties proved unavoidable, legislation made sentencing more flexible by removing minimum sentences. Equally in the spirit of the principle of last resort, emphasis was put on special prevention (*Spezialprävention*), as opposed to general deterrence (*Generalprävention*), which can be taken into consideration only in exceptional cases. As the JGG acknowledges the principle of special prevention, it also clarifies the limits of educational theory (*Jesionek* 2001; *Burgstaller* 1997; *Triffterer* 1988; *Köck* 1999) within juvenile criminal law. Although historically the JGG stemmed from educational thinking, in the weighing of sentences any educational needs could only be considered in so far as this is justified and necessary within the legal framework of special prevention. The need for education over

3 After a test run of victim-offender-mediation on the basis of positive experience and acceptance, not only from the legal community but also from the general public, the "out of court-settlement" and other measures of diversion were introduced into adult criminal law as well.

and above punishment can be met outside the boundaries of penal law through the family or youth welfare organisations (*Jesionek* 2007).

In addition to procedural simplifications special regulations with regard to penal custody were introduced. Release of information pertaining to the criminal records of individuals was restricted in order to avoid the stigmatisation of offenders as much as possible.

Another important matter was to ensure continuance of cooperative, coordinated activities of juvenile jurisdiction, youth welfare jurisdiction and youth welfare agencies in the interest of the juvenile. The juvenile judge, therefore, was no longer exclusively concerned with criminal matters, but is also in charge of related aspects of youth welfare. Therefore, a system of separate Juvenile Courts was put in place in the larger cities, in particular in Vienna (Vienna Juvenile Court – *Jugendgerichtshof Wien*). Juvenile judges, youth welfare courts, youth welfare agents and Juvenile Court Assistance (*Jugendgerichtshilfe*) all had their offices in the same building, which ensured close cooperation. In the rest of the country special departments for juvenile cases were established within the regular criminal courts.

In recent years, Austrian legislation has moved "backwards", shifting towards a more punitive stance. An amendment in 2001 lowered the age of civil majority from 19 to 18 years in the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch* – ABGB) (*Fuchs* 2002). For this amendment it was argued that the 1988 reform had granted access to the more flexible and lenient juvenile justice system to an age group commonly associated with a great deal of criminality. By way of compensating for this move certain new procedural regulations were introduced for young adults. This legislation recognised that crime levels in this age group can rise temporarily due to the difficulties associated with adjusting to adulthood. However, it fell short of meeting the demand for a comprehensive penal law for "young adults" (covering either the three years up to the age of 20 or extending the age bracket to include all adults under 25, see *Miklau* 2002).

In 2003, the Vienna Juvenile Court was closed down. Its agenda was carved up and integrated into several district courts (*Bezirksgerichte*) and the Vienna Regional Court for Criminal Matters (*Landesgericht für Strafsachen Wien*). The network for the exchange of information that had existed until then between criminal and family judges as well as with the Youth Welfare Authority (*Jugendwohlfahrtsträger*) was considerably reduced. It was only possible to ensure continuing cooperation between juvenile judges and the Juvenile Court Assistance, as the latter was relocated to the building of the Vienna Regional Court for Criminal Matters.

In order to foster cooperation with the other agencies involved, a project was underway in Vienna to once again team up juvenile judges and prosecutors with psychologists and social workers in a "Juvenile Competence Centre" (*Jugendkompetenzzentrum*). Juvenile jurisdiction, which is also applied in the case of

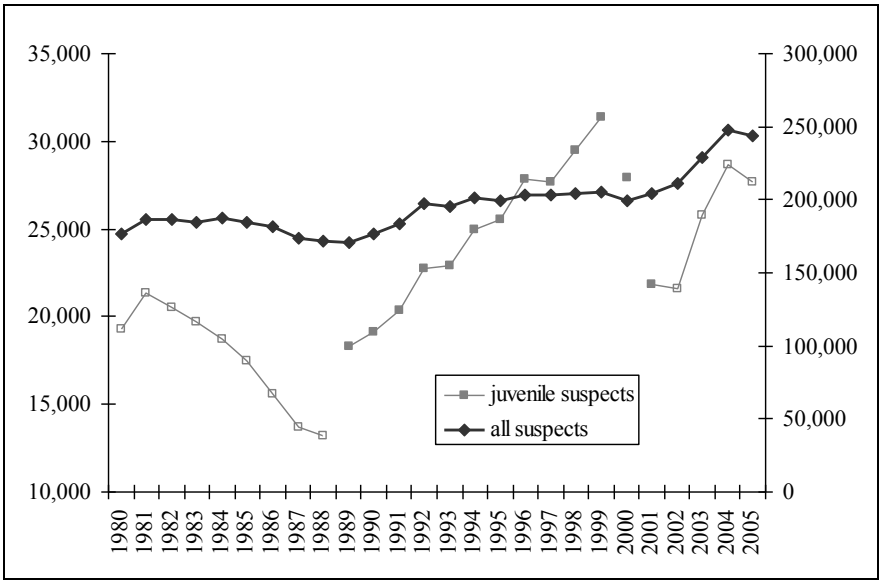
young adults, and family and youth welfare jurisdiction should again be practiced under the same roof. (*Jesionek* 2007). But this project has been postponed for financial reasons.

2. Trends in reported delinquency of children, juveniles and young adults

In Austria, data on delinquency and respective suspects are recorded by the Ministry of the Interior. In annual publications crime statistics are published which distinguish suspects according to age, gender, and nationality. However, data that combine the features age and nationality have only been available since the introduction of the electronic data system in 2001 and can only be obtained from the Ministry upon special request.

2.1 General trends

Figure 1: Recorded Suspects



Source: 1980-1999 Polizeiliche Kriminalstatistik, 2000-2005, Kriminalitätsbericht. Statistik und Analyse' (annual report published by the Ministry of the Interior).

Figure 1 compares long-term trends in the number of recorded juvenile criminal suspects and all suspects in Austria. In contrast to the gradual overall

change, the development of juvenile suspects can be divided into at least two phases: a period of clearly declining numbers of recorded suspects up until 1988 was followed by a period of steady increase to the present. The two significant leaps in 1989 and 2001 reflect the way juvenile delinquency was defined in the criminal law. During the period from 1989 to (30 June) 2001 juveniles included young suspects up to the age of 19, whereas before and after these dates 19 year olds were counted as young adults. This has major consequences for the statistics since youngsters of this age represent a large group of suspects.

Charges against children show a similar trend: A decline until the end of the 1980s was followed by a tripling during the 1990s, which lead to a sharper increase in the number of recorded minors compared to juveniles. Later the trends in criminal records correspond again. In contrast, young adults (under 25 years of age) remained comparatively unobtrusive during the 1990s, whereas charges proportionally increased after the year 2000.

Table 1 shows the consequences of the different dynamic of developments of charges against juveniles and adults. At first, the proportion of juvenile suspects dropped from 10.9% to 7.7%. However, a clear increase could be observed during the 1990s from 10.7% to 15.3%. When in 2001 the upper age limit was reduced from 19 years to 18 years the proportion of juvenile suspects dropped to 11.6% in 2004. In addition, *Table 1* shows that the proportion of juveniles among all delinquents varies with regard to the type of offence: In 2005, the proportion of juveniles of all suspects charged for property offences amounted to 15.3%, whereas the proportion for violent crimes was only 7.7%. Finally, the figures indicate an enormous increase in the proportion of juveniles who were charged for drug offences up to the year 2000 (27%). This can be explained by more severe control practices by the police with a focus on dealing on the street where foreigners were involved to a large extent (experience shows that the identification of a foreigner's age is a difficult matter, and often previously undocumented young adults state a wrong age to escape severe prosecution). After all, today the share of young suspects of all recorded suspects amounts to 40% and corresponds with the situation in 1980. During the observation period the proportion temporarily fell to approximately one third of the total suspect population.

Table 1: Proportion of young suspects among all recorded suspects

	% Children*	% Juveniles**				% Young adults***	% All young suspects	N
	All offences[a]	All offences[a]	Violent crimes[b]	Property crimes[b]	Drug offences[c]	All offences	All offences	All suspects
1980	1.7	10.9	6.2	18.4	12.2	28.6	41.2	176,799
1984	1.4	10.0	6.3	16.2	5.9	28.2	39.6	187,019
1988	1.0	7.7	4.6	12.6	6.3	26.4	35.1	171,419
1989	0.8	10.7	7.9	15.7	10.7	22.3	33.8	170,773
1994	1.3	12.4	8.3	18.2	18.7	20.3	34.0	201,757
1999	1.7	15.3	9.5	21.6	28.5	19.2	36.2	205,312
2001	2.1	14.0	9.2	18.6	27.1	24.1	40.2	203,877
2004	2.2	11.6	7.4	16.1	6.7	26.1	39.9	247,425
2005	2.4	11.4	7.7	15.3	5.5	26.0	39.8	243,493

* Children: 10-<14 (since 2000: <14).
** Juveniles: 14-<18 (1989-2000: 14-<19).
*** Young adults: 18-<25 (1989-2000: 19-<25).
Unfortunately the crime statistics of the police do not allow for a better alignment of age groups in the Juvenile Court Act (JGG).
a) According to the Criminal Code (*Strafgesetzbuch*) and accessory criminal law.
b) Violent crime means exclusively offences against life and limb; property crime also includes violent offences e. g. robbery.
c) Drug offences: violations of SMG (or SGG before 1997).
Source: 1980-1999 Polizeiliche Kriminalstatistik, 2000-2005 Kriminalitätsbericht. Statistik und Analyse (annual report published by the Ministry of the Interior).

A look at the prevailing form of crime shows that juvenile offending is predominantly characterised by property crime. In 2005, 55% of all juvenile suspects were reported to the police for some form of property related offence. With regard to all suspects in Austria, property crime is less dominant (41%).

Table 2 shows the distribution of suspects by type of crime for juveniles and for all suspects in Austria.

Table 2: Pattern of recorded crime with juveniles and all suspects

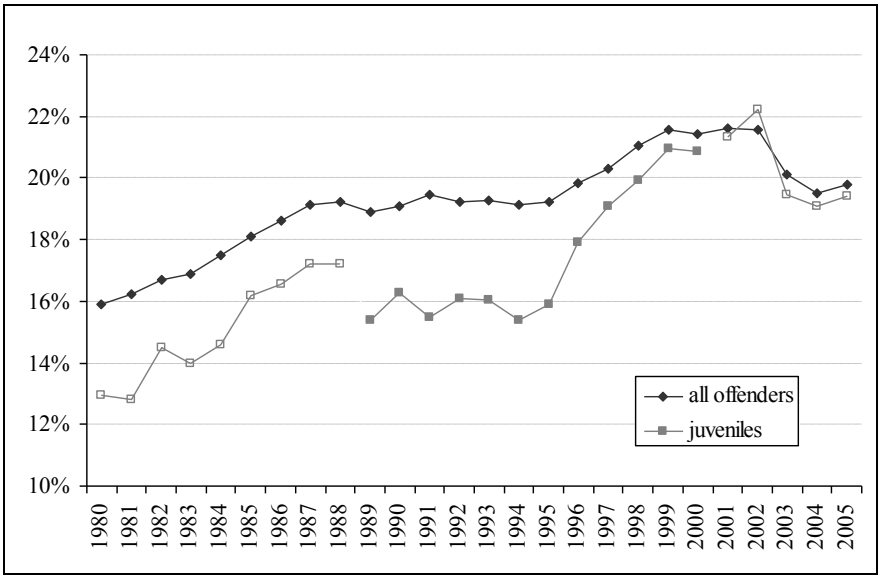
	Juveniles in %*				All suspects in %			
	Total[a]	Violent crimes[b]	Property crimes[b]	Drug offences[c]	Total	Violent crimes[b]	Property crimes[b]	Drug offences[c]
1980	100	27	61	3	100	48	36	3
1984	100	29	61	2	100	46	37	3
1988	100	27	63	2	100	46	39	3
1989	100	34	56	2	100	47	38	2
1994	100	27	55	8	100	41	38	6
1999	100	25	52	14	100	40	37	8
2000	100	26	47	17	100	40	36	9
2004	100	23	59	6	100	36	42	10
2005	100	24	55	5	100	35	41	10

* Juveniles: 14-<18 (1989-2000: 14-<19).
a) According to the Criminal Code (*Strafgesetzbuch*) and accessory criminal law.
b) Violent crime means exclusively offences against life and limb; property crime also includes violent offences e.g. robbery.
c) Drug offences: violations of SMG (or SGG before 1997).
Source: 1980-1999 Polizeiliche Kriminalstatistik, 2000-2005, Kriminalitätsbericht. Statistik und Analyse (annual report published by the Ministry of the Interior).

2.2 Gender

Figure 2 shows the proportion of female suspects, both among juvenile suspects as well as among all recorded suspects in all age groups. It is clear that for a long time juvenile females were represented in crime statistics to a less extent than females in general. However, assimilation to the overall trend has occurred since 1996 when female proportions in delinquency started to increase among juveniles. Today we can observe almost congruent lines of juvenile female proportions and the overall proportion of female suspects in crime records. The female proportion of suspects now amounts to approximately 20%.

Figure 2: Proportion of females among juvenile and all suspects



Source: 1980-1999 Polizeiliche Kriminalstatistik, 2000-2005 Kriminalitätsbericht. Statistik und Analyse. (annual report published by the Ministry of the Interior).

It is interesting to see differences in the proportions of female juvenile crime with regard to offence types. Whereas the trend-lines for violence and property crimes closely follow the slightly increasing trend in female proportions of the total suspect-population, females show a very different trend in cases of violent crimes and of drug offences. The share of females suspected of violent crimes continually increased from 13% in 1980 to 21% in 2005, and decreased from almost 50% in the mid 1980s to 23% of juvenile suspects for drug offences. Though female offending is still less frequently reported in all age groups, the pattern of police recorded crime of female juveniles very much resembles the pattern of their male contemporaries (see *Table 3*).

Table 3: Proportion of females among juvenile suspects (in %)

	All offences[a]	Violent crime[b]	Property crime[b]	Drug offences[c]
1980	13	10	14	40
1984	15	13	15	49
1988	17	15	18	38
1989	15	15	15	34
1994	15	14	15	26
1999	21	16	24	22
2000	21	17	23	24
2004	19	18	18	26
2005	19	17	19	23

a) According to the Criminal Code (*Strafgesetzbuch*) and accessory criminal law.
b) Violent crime means exclusively offences against life and limb; property crime also includes violent offences e.g. robbery.
c) Drug offences: violations of SMG (or SGG before 1997)
Source: 1980-1999 Polizeiliche Kriminalstatistik, 2000-2005, Kriminalitätsbericht. Statistik und Analyse (annual report published by the Ministry of the Interior).

2.3 Foreigners

Since 2001 it has also been possible to analyse data on juvenile suspects with regard to their nationality. *Table 4* shows the proportion of foreigners among juvenile suspects as compared to all suspects. Their share shows a steady increase but – in contrast to adults – it recently dropped from 25% in 2004 to 20% in 2005. Altogether the share of foreigners of police recorded juvenile suspects is not higher than is the case with suspects from all age groups. In 2005 foreign juvenile suspects amounted to 20% of all juvenile suspects, but to 29% of all suspects in Austria.

Table 4: Proportion of foreigners among (juvenile) suspects

	Juvenile suspects			All suspects		
	All	**Foreigners**	**Foreigners %**	**All**	**Foreigners**	**Foreigners %**
2001	21,873	4,206	19	203,877	47,457	23
2002	21,561	4,692	22	210,713	51,448	24
2003	25,804	6,014	23	229,143	59,478	26
2004	28,700	7,072	25	247,425	71,478	29
2005	27,678	5,518	20	243,493	70,339	29

Source: Special statistical information from the Ministry of the Interior (Sept. 2007).

Compared to the pattern of recorded crime of Austrians, foreign juveniles show less involvement in violent and drug related crimes, and more involvement in property related offending (see *Table 5*). However, differences for drug offences according to the SMG (*Suchtmittelgesetz*) have been decreasing.

Table 5: Pattern of recorded crime by nationality of juvenile suspects

	Austrian juveniles				Foreign juveniles			
	All suspects[a] N	**Violent crime[b] %**	**Property crime[b] %**	**Drug offences[c] %**	**All suspects[a] N**	**Violent crime[b] %**	**Property crime[b] %**	**Drug offences[c] %**
2001	17,667	20.7	50.1	21.5	4,206	20.8	52.4	15.7
2002*	16,869	28.9	70.0	23.0	4,692	23.0	73.8	17.1
2003	19,790	24.9	57.6	16.5	6,014	19.8	61.1	18.1
2004	21,628	25.1	56.4	16.8	7,072	17.3	66.4	15.7
2005	22,160	24.5	53.8	15.7	5,518	21.7	58.3	14.6

* Since 2002 suspects are recorded in the crime statistics not only for the "leading offence" but for all offences. Obviously, this alteration led to unreliable data for the year 2002.

a) According to the Criminal Code (*Strafgesetzbuch*) and accessory criminal law.

b) Violent crime means exclusively offences against life and limb; property crime also includes violent offences e.g. robbery.

c) Drug offences: violations of SMG (or SGG before 1997).

Source: Special statistical information from the Ministry of the Interior (Sept. 2007).

3. The sanctions system: Kinds of informal and formal interventions

Juvenile law covers a wide range of sanctions in the JGG. It includes sanctions that are familiar with adult penal law, but have been adapted to the needs of juveniles and include special options that only apply to juveniles (but not to young adults). Thus §§ 4-13 JGG offer grounds for immunity, options of diversion, conviction without punishment, and conviction with a suspended sentence. The traditional fine and prison sentences – for which § 5 JGG contains modifications for juveniles – are also included. These last two sanctions may only be implemented as measures of last resort (*ultima ratio*). Given a defendant's unlawful, culpable offence the court and the public prosecution respectively must always – on a case-by-case basis – opt for the sanction that has the least severe impact on the lifestyle of the minor, yet which at the same time has the best special preventative effect (*Jesionek* 2001; *Löschnig-Gspandl* 2002). According to the general sentencing rules of Austrian Criminal Law, sentencing must take both the offence and the culpability of the offender into account. It should reflect the circumstances and motivation that led to the act as well as the personality of the offender.

All possible sanctions are presented below in order of increasing severity. This will be followed by a brief presentation of the so-called preventative measures and of court orders based on family and welfare law provisions.

3.1 Grounds for immunity

There are two rules to be noted in Austrian juvenile criminal law, in cases of delayed maturity on the one hand and of moderate misdemeanours committed by juveniles under the age of 16 on the other. For the age group of 14 and 15-year-olds § 4 (2) 1 of the JGG excludes punishment if the juvenile offender was incapable of distinguishing between right and wrong or of acting accordingly due to certain circumstances. This so-called delayed maturity (caused e. g. by social or psychological defects, child neglect or by illness), which must be evidenced by an "unusual level of development retardation", must be examined in relation to the criminal act in question. Such cases are cleared up with the help of expert witnesses. There is another reason for non-punishment for juveniles under 16. There is immunity for members of this privileged group for any moderate misdemeanour (petty offence), if the juvenile, having committed a misdemeanour without serious guilt, does not show special reasons which speak for the enforcement of juvenile penal law to prevent the offender from committing further acts (§ 4 (2) 3 JGG, which refers to § 42 Criminal Code, *Strafgesetzbuch* – StGB).

In all such cases the public prosecutor must drop the charge and notify the youth welfare court, which in turn can apply appropriate family or welfare measures.

3.2 Diversion

If there is sufficient evidence to support it, the prosecution authority[4] must decide whether the juvenile shall be tried in court or whether one of the other measures outlined in the JGG should be adopted. The JGG allows the court to decide on diversion, too (*Schwaighofer* 2001).

3.2.1 Non-Intervention (Absehen von der Verfolgung)

The prosecutor and the judge may drop a juvenile's case if the offence is punishable by a fine or not more than five years of imprisonment (which corresponds to a 10-year sentence in adult penal law), unless measures of interventionist diversion appear necessary to prevent the juvenile from re-offending. Non-intervention is not an option if the crime has lead to the death of a person (§ 6 JGG).

The premise of presumed innocence should be noted. Non-intervention is particularly recommended in cases of petty misdemeanours by non-problem juveniles, for whom a special preventive effect results from the mere fact that the authorities have become involved (*Jesionek* 2007; *Schroll* 2006).

3.2.2 Diversion with intervention

Austrian legislation also includes the concept of diversion with intervention. The public prosecutor decides on diversion as an intervention when it is not possible to simply drop the case and yet there are no grounds of general prevention that make it seem indispensable to institute criminal proceedings including the pronouncement of a sentence (§ 7 JGG). This applies to juveniles but not to young adults. Furthermore, the prosecutor may only use this instrument in the case of criminal offences that carry the penalty of a fine or not more than five years of imprisonment, and if the remaining general pre-conditions of a diversion measure are met. Cases of "severe guilt", a resulting death or in which there are grounds of special prevention that require punishment are excluded (*Schütz* 1999). Under these preconditions the courts are also entitled to deal with young offenders using diversionary measures. There is only one significant difference: diversion by the court is allowed in more severe cases. As opposed to

4 In Austria the function of Staatsanwalt is not adequately described by the English expression "prosecutor". The role of the Staatsanwalt rather resembles that of a "procurator" who has the obligation to be objective.

the prosecutor, the court can go beyond the limit of offences with a maximum sentence of five years of imprisonment. However, there is a doctrinal controversy as to how far the extension of the rule goes. The victim's consent is not required in cases of diversion (§ 8 JGG) and diversion measures when applied by the court never amount to a conviction.

The implementation of diversion is independent of the agreement or cooperation of the victim, but is based on the principle of consent of the suspect (*Höpfel* 2002). The diversion options[5] range from suspending prosecution for a probation period (§ 90f StPO)[6] to an out-of-court settlement – such as victim-offender mediation, known as *Tatausgleich* (§ 90g StPO) – to community services (*Gemeinnützige Leistung* – § 90d StPO) and fines without conviction (so called *Geldbußen*, § 90c StPO). Whenever possible, compensation or a settlement should bear a direct relation to the diversion measure, although it must be appropriate to the capabilities of the juvenile and must not unnecessarily impede a young person's societal reintegration. Diversion measures implemented by the public prosecution or the court are recorded in the court register for a period of five years. However, no entry in police records is made; hence there is no criminal record.

3.2.3 The field of narcotic drug offences

In cases involving narcotic drugs, the public prosecution must drop the charge for a probation period of two years if a person only possessed or purchased a small amount of narcotic drugs for their own consumption, or committed a criminal act in order to finance the purchasing of drugs (§ 35 Drug Law; see *Schwaighofer* 1997). This special form of diversion – which in historical terms is actually one of the roots of the entire system – must be deemed more appropriate under the aspect of special prevention than a conviction. Prior to withdrawing the charge, information must be gathered from the Ministry of Employment, Health and Social Welfare and an opinion must be obtained from the local health authority in the case of a small amount of cannabis on whether or not the accused must undergo health-related treatment. Such treatment may include; monitoring by a doctor, or taking part in a rehabilitation, or substitution programme, or even undergoing psychotherapy. The preliminary withdrawal of the charge may also take place if the accused agrees to be supervised by a parole officer. In the case of withdrawal symptoms, the ministry and, in some cases, the local health authorities must be informed.

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5 In § 7 JGG a reference to § 90 Code of Criminal Procedure (*Strafprozessordnung* – StPO) can be found.

6 The suspension can possibly be bound to duties (directives or obligations).

3.3 Conviction without sentence

After the trial, instead of pronouncing a short sentence (up to three months of imprisonment) (*Schroll* 2006) the court may convict the juvenile offender and abstain from passing sentence, if the official conviction is considered sufficient to prevent the offender from committing further criminal acts and no exceptional general preventative grounds are found to pre-empt such an approach (§ 12 JGG) (*Schroll et al.* 1986). Hence, a formal conviction is made, yet no sentence is passed. Thus the offender has been given a warning but has not been stigmatized. No sentence may be passed in retrospect. Whether or not a conviction without sentence can be passed is left to the discretion of the court.

The conviction is recorded in the register but will be expunged after only three years.

3.4 Conviction with suspended sentence

As an alternative to a conviction without sentence the court may retain the right to pass a sentence with a probation period of between one and three years (§ 13 JGG). A prerequisite for this is for the court to consider a conviction and the mere threat of a sentence, alone or in combination with other measures, as sufficient. This course is only open in absence of any general preventative concerns against such an action being taken. Once again, the implementation of this measure is left to the discretion of the court. A conviction with a suspended sentence can be combined with a personal directive and/or the appointment of a parole officer if this is deemed necessary or advisable on grounds of special prevention. Passing sentence in retrospect is only possible if the convicted person commits another criminal offence within the probation period and reasons of special prevention speak in favour of such action or if the offender disregards a court directive with bad intent or stops seeing his or her parole officer. Here, too, the conviction is deleted from the criminal record after three years.

3.5 Fines and imprisonment

In passing a judgment that involves a fine or a prison sentence, the court must consider the minimum and maximum punishments provided in the Criminal Code. There are some modifications for juveniles (§ 5 (2) to (6) JGG).

Fines can be substituted for short prison terms (of up to six months), if the maximum prison sentence for the criminal offence does not exceed five years (ten years for juveniles) (§ 34a (2) StGB). Both fines and imprisonment can be suspended in whole (§ 43 StGB) or in part (§ 43a StGB). The probation period after a suspension lasts one to three years, and may be terminated after one year

if new facts support a good prognosis of the young person abstaining from crime in the future.

3.5.1 Fines

With regard to fines the maximum possible sentence for juveniles is halved compared to the provisions for adults. In Austria, the prevailing system of fines is the day fine. In passing sentence, the first step includes the setting of a number of daily rates commensurate to the offence and the degree of responsibility of the young offender. These are set according to the general rules on sentencing. The second step lies in determining the amount of each daily rate. Here the personal circumstances and the financial capability of the convicted individual are the main determinants when passing the sentence (*Leukauf/Steininger* 1992). The minimum daily rate is € 2 and the highest is € 500. The relevant figures for calculating the daily rate are the net daily income of the offender, which defines the upper limit, and the minimum subsistence level defining the lowest limit. Yet juveniles, such as those still at school, frequently have no income. In such cases the limits are determined by their pocket money. What must also be taken into consideration is the portion of the family income that is spent on the offender as well as the monetary equivalent of sports, hobbies and holidays as well as potential sources of income, such as holiday jobs if this constitutes a viable option and if the job is suited to the offender (*Platzgummer* 1980; *Lässig* 2002).

3.5.2 Imprisonment

The shortest possible prison sentence is one day. Any time spent in police or pre-trial detention must be deducted from the total sentence. For serving time in prison maximum sentences are halved for juveniles (§ 5 JGG), and there are no minimum sentences. There are however two exceptions. Life or 10-20 year sentences are replaced by 1-15 years if the juvenile committed the offence when he or she was 16 or older, and 1-10 years if the offence was committed before the age of 16. A possible sentence of 6 months up to 10 years replaces a possible prison sentence of 10-20 years. The possibilities for the suspension of a prison term in whole or in part are expanded for juveniles.

The serving of the sentence may be delayed for juveniles for more than one year if necessary. In addition to health, family or financial reasons, completion of a job-training programme or preparation for a professional qualification or university studies are also considered valid grounds for delay. This is applicable only if the sentence to be served does not exceed one year.

Early release from an unconditional prison term is possible after one half of the term has been served provided the prognosis is fair. After two-thirds of the term, however, release must be granted unless there is a high risk of re-offending. A minimum of one month in prison has to have been served before early

release becomes an option. Minors are exempt from all considerations of general prevention. Early release must be combined with the assignment to a parole officer unless there are reasons to believe there will be no relapse.

3.6 Preventative measures

In addition to, or as an alternative to formal punishment, Austrian penal law also provides for so-called preventative or prophylactic measures (§ 21 et seq. StGB). The applicability of this option is not determined by the culpability of the offender, but solely by the danger he or she represents to the public. As regards alternative forms of imprisonment, the placement of insane offenders, of criminal offenders with diminished responsibility, or of criminal offenders in need of drug rehabilitation in an institution is of rather theoretical relevance for juveniles (see *Table 10*).

3.7 Adverse consequences of legal rules

In accordance with Austria's Criminal Code many regulations entail adverse consequences that the defendant will suffer in addition to the direct consequences of the conviction. These so-called legal consequences may include the automatic loss of their job, their driving licence or their permit of residence. Administrative authorities use these legal consequences for juveniles also, even though the juvenile penal law explicitly forbids these consequences (§ 5 (10) JGG) (*Jesionek* 2001).

3.8 Orders based on youth welfare law (*Familien- und jugendwohlfahrtsrechtliche Verfügungen*)

The JGG also deals with orders stemming from family and youth welfare law (§ 2 and § 3 JGG); these apply to minors, i. e. those not yet 18 years old. They also apply to individuals below the age of criminal majority (i. e. not yet 14) who have committed a punishable offence. Such a court order has to be shown as necessary when the underage person is being charged with a punishable offence and there is a legitimate concern that his or her personal development is endangered. For example, a court order may be issued to support the legal guardian in caring for the child, or the right of custody for a child may be taken away, placing the child to a home or a flat-sharing community.

These are not reactions within penal law, but rather the court orders are regarded as extra-penal law. In principle, the procedure follows the rules of family law, and it belongs to the jurisdiction of the youth welfare courts. Only in exceptional circumstances can the criminal judge, if it is deemed necessary, pass a family and youth welfare court order for the duration of the accompanying

penal case. Upon the completion of the penal case, the file must immediately be handed over to the competent family judge. The reason for this concentration of responsibility is "the need to react as quickly as possible to a concrete endangerment of the minor" (*Jesionek* 2001).

As already mentioned, these orders were canceled with the last amendment in 2007 (BGBl. I 2007 No. 93).

4. Juvenile criminal procedure

In principle criminal procedures against juveniles and young adults follow the rules laid down in Austria's Code of Criminal Procedure for adults. The JGG does however include a number of provisions for juveniles, the majority of which also apply to young adults (§ 46a JGG). On the one hand these provisions strengthen the legal protection of juveniles and young adults and offer them general support during the court proceedings; on the other, they are aimed at bypassing their stigmatization even more than is the case for adults.

At the district and regional courts special departments have been set up for juvenile criminal cases. The judges and prosecutors in charge of juvenile criminal matters are theoretically required by law to be pedagogically skilled and to have a certain expertise in psychology and social work (§ 30 JGG). In practice, little attention is paid to this requirement in staffing juvenile departments (*Jesionek* 2007). In-service training is available through the private association of juvenile judges.

Subject-matter jurisdiction as a rule follows the maximum sentence for the punishable offence as stated by the law (§ 27 JGG):

- offences with a maximum sentence of up to one year fall within the remit of district courts;
- offences with a maximum sentence of more than one year fall within the remit of regional courts.
- Within the competence of regional courts
- offences with a range of sentences of up to five years (barring i. e. sex offences) are adjudicated by a single judge;
- offences with a range of sentences of between five and ten years are adjudicated by a court of lay assessors; and
- offences with a range of sentences of more than ten years and certain political offences are adjudicated by a jury court.

The issue of competence, i. e. whether the case will be tried by a court of lay assessors or a jury court, is determined not on the basis of the sentence range stated in the penal code but on the basis of the reduced sentences for juveniles.

As regards the composition of the court care has to be taken that lay assessors/jurors include persons experienced in dealing with juveniles. Therefore the law stipulates for a court of lay assessors consisting of two judges and two lay

assessors to include at least one lay assessor who is or was a teacher or someone working in youth welfare, or some other project beneficial to young people. Jury courts (consisting of three judges and eight jurors) have to include at least four such persons. In addition to this the law stipulates that at least one lay assessor or two jurors must be the same gender as the accused (§ 28 JGG).

In juvenile criminal cases the venue does not depend on where the crime was committed but rather – and without exception – on the usual place of abode of the accused. This means the trial has to be conducted as close as is feasible to the young person's home, so that the life of the accused is not unduly disrupted during the trial (§ 29 JGG).

The young offender is afforded increased protection by a number of regulations that are different from the normal provisions of the Penal Code. During the entire proceedings the young offender is entitled to have a confidential person (e. g. legal guardians, teachers or probation officers (§ 37 JGG)) by his or her side during questioning, if he or she so wishes. Legal guardians (normally the parents) benefit from all significant procedural rights (e. g. the right of access to the files) that the juvenile has (§ 38 JGG); this is not the case for young adults. To further strengthen the protection of juveniles – who are predominantly ignorant of the legal system – special provisions have been made regarding the provision of defence counsels, that are more stringent than those for adults (§ 39 et seq. JGG). In proceedings before a regional court there will always be a defence counsel. On the district court level a defence counsel is obligatory if the juvenile is in detention pending trial and it takes a defence counsel to ensure the safeguarding of the juvenile's rights throughout the proceedings. In principle a mandatory defence starts with the first interrogation. The state shall bear the costs for a court-appointed legal counsel if the accused is unable to do so. If defence is not obligatory, a Juvenile Court Assistance representative is entitled to provide support in district court proceedings (*Jesionek* 2001). As regards mandatory defence, the general rules of the penal code for adults also apply to young adults.

In principle, trials of juveniles and young adults are public. However, the public may be excluded to a greater extent than is possible in the case of adults and will be excluded whenever this is deemed in the interest of the young person (§ 42 JGG). In concrete terms this happens whenever public proceedings might reflect negatively on the development of the accused or on his or her future, e. g. on his or her education (*Schroll* 2006). During legal proceedings, all television and radio recordings or transmissions, filming or photographing are prohibited as a general rule. Moreover, the identity of minors accused or convicted of an offence is specifically protected under media law from being revealed (§ 7a *Mediengesetz;* for adults different provisions apply). Hence, even when the accused has been found guilty the juvenile may sue for compensation if any report in the mass media has disclosed his/her identity. In addition to this, the release of information on juvenile penal cases is closely restricted so as not to negatively impact the future career of the minor and not to endanger or destroy

any future vocational or professional chances (§ 33 JGG). Relevant information has to be passed on to the Youth Welfare Agency but must not be passed on to the school (*Jesionek* 2007). Reintegration into society should be encouraged and stigmatisation should be avoided by restricting access to police records and by shortening the length of the period before the records of minors are deleted. After a specific period of time has elapsed the police record is deleted automatically. The convicted person is then considered as having a clean criminal record. Juvenile offences are deleted after five years, the exception being multiple convictions (§ 3 *Tilgungsgesetz*).

In juvenile criminal cases the young offender is further protected by special legal remedies in that, contrary to general rules, all orders and decrees other than verdicts issued in the course of the trial may also be appealed against within 14 days.

Juveniles and young adults are also buffered against procedural costs (§ 45 JGG). They are obliged to repay them only if payment does not seriously jeopardize their livelihood. Reimbursement of costs is therefore only sought in exceptional cases (*Jesionek* 2007). Cost absorption by the Federal State in cases where a prescribed therapy is not covered by social insurance (§ 46 JGG) is another measure designed to prevent juveniles from being saddled with too great a financial burden. This is done in order to facilitate their reintegration.

In cases of juvenile offending, victims' rights are defined in principle by the general provisions of the code of criminal procedure. Victims' rights were considerably enhanced in Austria by the Framework Decision on the Standing of Victims in Criminal Procedures (dated 15 March 2001). Among other improvements, the reform of the code of criminal procedure which entered into force on 1st January 2008, has accorded victims far-reaching rights as regards communication and information (for instance, as to progress of the trial or, under certain conditions, the release of the accused) as well as rights of cooperation and control (for instance, participation in the main trial and the right to put forward questions).

However, Juvenile Court law contains special provisions that may limit the rights of the victims of juvenile delinquents. For instance a "private suit" and a "susidiary suit" of juvenile crimes are both inadmissible. Crimes that are normally prosecuted only at the victim's request have to be prosecuted by the Public Prosecutor, if authorized by the victim to do so. This is contingent on certain preconditions: when it is deemed advisable on pedagogical grounds or in view of justified demands of the victim that go beyond a desire for retaliation. There are further limitations in the case of a possible motion for a mistrial (§ 44 JGG).

Important assistants in juvenile criminal cases are social workers (particularly those associated with the Court Assistance Service) and probation officers. A probation officer, if he or she was already assigned to the case of the juvenile or young adult in the pre-trial phase, is entitled to be present and to be heard at the main trial (§ 40 JGG). This gives him/her opportunity to report on the

background of his or her "charge" and to provide the necessary information on which to base the most effective sanction. (*Schroll* 2006). He or she is also entitled to abstain from any statement in court in order to protect his or her client (*Aussageverweigerungsrecht*).

Social workers associated with Court Assistance are also entitled to take part in the main trial on the side of the accused: as has already been mentioned above, they can take the role of defence counsel in district court proceedings.

The primary function of the Court Assistance lies in supporting the courts and the public prosecutor's office (§ 47 et seq. JGG). This is the main reason why it should be housed in the court building. In the pre-trial phase it is up to the Court Assistance to identify the salient facts on which to base decisions as to pre-trial or preliminary detention. Throughout the entire proceedings they are entitled to make suggestions regarding how to avert dangers for the minor defendant's health or educational development. A particularly valuable service they perform for the courts are the so-called *youth inquiry reports* (§ 43 JGG). These comprehensive reports on the background and living conditions of the juvenile are designed to serve as stepping-stones for the courts in their decision-making processes, particularly as regards choice of sanction and the severity of the sentence. Therefore it is necessary to research the living conditions and family circumstances of the accused, along with his or her development and all other circumstances that could help to establish the bodily, mental, and spiritual state of the young person. In case of doubt, a medical expert or a psychologist can be consulted. It is left to the judge's discretion as to which inquiries are necessary on a case-by-case basis (*Jesionek* 2003). Other contexts for Court Assistance to become active are through out-of-court settlements or the organisation of community work within a diversionary framework. Court Assistance can also help in identifying suitable training courses and therapy of all kinds, especially in cases of drug addiction.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency: Diversion with and without intervention

Juvenile-specific measures of diversion without intervention were introduced in 1988. The regulations in §§ 4 and 6 JGG provide the basis for the possibility to refrain from prosecution on a wide scale. Previously, "diversion" was not applied in a strict sense, it was merely in the course of § 42 StGB as an acquittal, if there was no need for punishment. However, the application of § 42 StGB has never been statistically recorded by age group.

Since the implementation of the JGG in 1989 the practice of non-intervention following § 6 JGG has been counted, but the practice following § 4 JGG was not recorded in the "Prosecutor's Information System" (StaBIS), until 2002.

Also, diversion according to the drug law is not targeted at juveniles, and thus preliminary suspension according to the drug law under the precondition of a medical check and treatment was not recorded by age group before 2002. All this makes it difficult to quantify the practice of diversion for juvenile procedures in the past. The limits set by the data-sources become obvious in several approaches for clarification (*Pilgram* 2001; *Burgstaller* 2007).

It is not entirely clear in how far the introduction of diversion according to the JGG has replaced the application of § 42 StGB. Therefore the quantitative significance of diversion becomes apparent only indirectly in the convicted proportion of all juvenile suspects. This proportion, however, already dropped before the JGG-reform in 1988 from 42% in 1984 to 27% in 1988. In 1989, when the JGG entered into force, this rate fell even further to 15% (despite the additional consideration of 18 year olds). Today 12% of juvenile suspects are convicted (see for a summary *Table 6*).

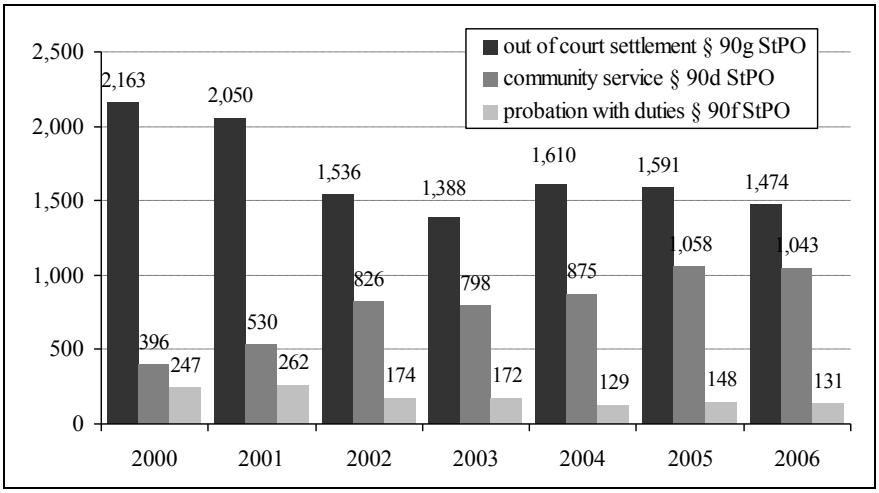
Yet it is important to clearly point out, the following calculations refer to the criminal suspects recorded in the police crime statistics on the one hand and to prosecutor's and court statistics on the other hand. It must be acknowledged that it is not possible to reproduce criminal processes or transaction-rates of cases per year, but it is our intention to show relations of recorded suspects and legal decisions by the prosecutor and the court. The time lag between criminal recording and legal decision making causes an over-estimation of rates in times of declining recordings, and conversely an under-estimation of rates in times of increasing recordings.

During the 1990s the intervention-aspect of diversion gained importance. Diversion according to the Drug Law (SMG) boosted from approx. 1.800 cases in 1990 to approx. 12.000 cases in 2001 (for all age-groups), or from 48% to 57% of the registered suspects according to the drug law (*Eisenbach-Stangl/ Pilgram* 2005, Tables 14A/14B). Since that peak in 2001 absolute figures have stagnated and percentages have dropped again (42% in 2003).

Victim-offender mediation started in 1985 as a pilot project for juvenile offenders with 119 cases. In 1989, the first year after the official introduction (§ 7 JGG) 1,236 cases were registered, and within the following ten years the number of cases doubled (2,579 cases in 1999), which meant a maximum of 8.2% of all juvenile suspects.

After the general introduction of diversion in 1998 § 7 JGG refers to the general regulation in the Code of Penal Procedure (§ 90 StPO). After the implementation of diversion also for adults the emphasis is laid, for both juveniles and adults, on the more penalty like community service (§ 90d StPO) at the expense of victim-offender mediation (§ 90g StPO) (see *Figure 3*).

Figure 3: Diversion with intervention



Source: Annual reports of Neustart.

In 2005, exactly two thirds of all juveniles recorded in the crime statistics in the same year were treated "informally", i. e. without a formal conviction, but 28% had some form of social intervention, for instance; medical treatment according to the SMG (14%), victim-offender mediation (6%), community service (4%), fine without conviction (2%), or supervision by the probation officer (1%).

Measures of diversion without intervention are equally important, although informally dismissed cases can not be clearly distinguished (the reason for this is found in the undifferentiated recording of § 4 JGG, which states the immunity of minors and allows cases against juveniles to be dismissed due to marginal guilt). Besides diversions and convictions, informal dismissals and acquittals amount for approximately one third of all recorded cases (see in summary *Table 7*).

Table 7 also shows that almost twice as many boys than girls are convicted in relation to recorded suspects (11.6% boys; 6.7% girls). Nevertheless, girls are not over-represented in diversions with intervention, but rather enjoy informal dismissals and acquittals (non-intervention).

The difference of treatment between Austrian and foreign juveniles is minor but noteworthy. They are equally distributed in measures of non-intervention. However, diversion with intervention according to the SMG, victim-offender mediation and community service are applied less frequently in cases involving foreign offenders. As a consequence, conviction rates are higher for foreigners (16% of recorded suspects) than for Austrians (9% of recorded suspects).

Summary Table 6: Legal administration of juvenile justice procedures (personal statistics) total and/100 juvenile suspects (minors)

		1984	1988	1989	1994	1999	2004
Juvenile suspects* **		18,725	13,180	18,315	24,966	31,357	28,700
Suspects: Children* **		2,684	1,741	1,416	2,607	3,531	5,499
Total minor suspects		**21,409**	**14,921**	**19,731**	**27,573**	**34,888**	**34,199**
Diversion: non-intervention	Dismissal: grounds for immunity § 4 JGG [b] total and/100 total minor suspects	---	---	---	---	---	5,505 16.1%
	Suspension of charge: non-intervention § 6 JGG total and/100 juvenile suspects	---	---	---	---	9,114 29.1%	4,767 16.6%
Diversion with intervention[a] total and/100 juvenile suspects	Probation period without duties (offers)	---	---	---	---	1,319 4.2%	296 1.0%
	Victim-offender mediation § 90g StPO (offers)*	---	712 5.4%	1,236 6.7%	2,341 9.4%	2,579 8.2%	1,610 5.6%
	Prelim. suspension, dismissal according to drug law SMG	---	---	---	---	---	3,803 13.3%

		1984	1988	1989	1994	1999	2004
	Probation period with duties (BwH) § 90f StPO (offers)*	---	---	---	---	519 1.7%	129
							0.4%
	Community service § 90d StPO (offers)*	---	---	---	---		875
							3.0%
	Fine without conviction § 90c StPO (offers)	---	---	---	---	---	562
							2.0%
Total diversion with intervention							**7,275**
							25.3%
Convictions** **total and/100 juvenile suspects**	§ 12 JGG: Conviction without sentence – admonition	863	501	257	83	88	49
		4.6%	3.8%	1.4%	0.3%	0.3%	0.2%
	§ 13 JGG: Conviction with suspended sentence	3,259	1,417	738	722	857	392
		17.4%	10.8%	4.0%	2.9%	2.7%	1.4%
	Suspended fine	274	141	162	198	336	326
		1.5%	1.1%	0.9%	0.8%	1.1%	1.1%
	Partly suspended fine § 43a/1 StGB	---	41	59	69	119	77
			0.3%	0.3%	0.3%	0.4%	0.3%

		1984	1988	1989	1994	1999	2004
	Fine	1.281	478	485	512	636	471
		6.8%	3.6%	2.6%	2.1%	2.0%	1.6%
	Fine and suspended imprisonment § 43a/2 StGB	---	6	32	17	27	20
			0.0%	0.2%	0.1%	0.1%	0.1%
	Suspended imprisonment	1,710	956	807	1,239	1,176	1,267
		9.1%	7.3%	4.4%	5.0%	3.8%	4.4%
	Partly suspended imprisonment § 43a/3+4 StGB	---	29	59	177	218	388
			0.2%	0.3%	0.7%	0.7%	1.4%
	Imprisonment	313	152	186	289	268	305
		1.7%	1.2%	1.0%	1.2%	0.9%	1.1%
Total convictions and/100 juvenile suspects		**7,809**	**3,562**	**2,808**	**3,349**	**3,764**	**3,336**
		41.7%	**27.0%**	**15.3%**	**13.4%**	**12.0%**	**11.6%**
Convictions/100 convictions	§ 12 JGG: Conviction without sentence – admonition	11.1%	14.1%	9.2%	2.5%	2.3%	1.5%
	§ 13 JGG: Conviction with suspended sentence	41.7%	39.8%	26.3%	21.6%	22.8%	11.8%
	Suspended fine	3.5%	4.0%	5.8%	5.9%	8.9%	9.8%

		1984	1988	1989	1994	1999	2004
	Partly suspended fine § 43a/1 StGB	---	1.2%	2.1%	2.1%	3.2%	2.3%
	Fine	16.4%	13.4%	17.3%	15.3%	16.9%	14.1%
	Fine and suspended imprisonment § 43a/2 StGB	---	0.2%	1.1%	0.5%	0.7%	0.6%
	Suspended imprisonment	21.9%	26.8%	28.7%	37.0%	31.2%	38.0%
	Partly suspended imprisonment § 43a/3+4 StGB	---	0.8%	2.1%	5.3%	5.8%	11.6%
	Imprisonment	4.0%	4.3%	6.6%	8.6%	7.1%	9.1%
Total convictions		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Annotation:
a In cases of diversion only the offers by prosecutor or court are counted, not the completions. Therefore diversion rates are over-estimated.
b Dismissal according to § 4 JGG do not distinguish between paragraph 1 and 2, i. e. between children and juveniles - therefore the relation to total minor suspects.

Source:
*) Data by *Verein Neustart* (annual reports).
**) All other data concerning diversion: Special information by the Austrian Federal Computing Centre (BRZ) (based on VJ-data) September 2007.
***) 1984-1999 'Polizeiliche Kriminalstatistik', 2000 und 2004 'Kriminalitätsbericht - Statistik und Analyse' (annual report by the Ministry of the Interior).
****) Gerichtliche Kriminalstatistik (annual report by Statistik Austria).

Summary Table 7: Legal administration of juvenile justice procedures (personal statistics)/100 juvenile suspects (minors); 2005 by personal characteristics

		All juveniles	Male	Female	Austrians	Foreigners
Juveniles suspects* **		**27,678**	22,302	5,376	22,160	5,518
Suspects: Children* **		**5,742**	4,206	1,536	3,695	1,374
Total minor suspects		**33,420**	26,508	6,912	25,855	6,892
Diversion: non-intervention	Dismissal: grounds for immunity § 4 JGG[b]/ 100 total minor suspects	**5,788**	4,030	1,723	4,472	1,316
		17.3%	15.2%	24.9%	17.3%	19.1%
	Suspension of charge: non-intervention § 6 JGG/ 100 juvenile suspects	**4,651**	3,396	1,242	3,774	877
		16.8%	15.2%	23.1%	17.0%	15.9%
Diversion with intervention[a] total and/100 juvenile suspects	Probation period without duties (offers)	**249**	188	59	219	30
		0.9%	0.8%	1.1%	1.0%	0.5%
	Victim-offender mediation § 90g StPO (offers)*	**1,552**	1,322	228	1,326	226
		5.6%	5.9%	4.2%	6.0%	4.1%
	Prelim. suspension. dismissal according to drug law SMG	**3,759**	2,917	840	3,472	287
		13.6%	13.1%	15.6%	15.7%	5.2%

		All juveniles	Male	Female	Austrians	Foreigners
	Probation period with duties (BwH) - § 90f StPO (offers)*	**351**	296	53	313	38
		1.3%	1.3%	1.0%	1.4%	0.7%
	Community service § 90d StPO (offers)*	**1,192**	985	205	1,019	173
		4.3%	4.4%	3.8%	4.6%	3.1%
	Fine without conviction § 90c StPO (offers)	**529**	447	82	449	80
		1.9%	2.0%	1.5%	2.0%	1.4%
Total diversion with intervention		**18,225**	13,694	4,471	15,157	3,068
		27.6%	27.6%	27.3%	30.7%	15.1%
Convictions** total and/100 juvenile suspects**	§ 12 JGG: Conviction without sentence – admonition	**57**	45	12	45	12
		0.2%	0.2%	0.2%	0.2%	0.2%
	§ 13 JGG: Conviction with suspended sentence	**426**	355	71	352	74
		1.5%	1.6%	1.3%	1.6%	1.3%
	Suspended fine	**326**	176	60	281	45
		1.2%	0.8%	1.1%	1.3%	0.8%
	Partly suspended fine § 43a/1 StGB	**96**	82	14	80	16
		0.3%	0.4%	0.3%	0.4%	0.3%
	Fine	**422**	372	50	348	74
		1.5%	1.7%	0.9%	1.6%	1.3%

		All juveniles	Male	Female	Austrians	Foreigners
	Fine and suspended imprisonment § 43a/2 StGB	**12**	12	0	12	0
		0.0%	0.1%	0.0%	0.1%	0.0%
	Suspended imprisonment	**1,064**	937	127	744	320
		3.8%	4.2%	2.4%	3.4%	5.8%
	Partly suspended imprisonment § 43a/3+4 StGB	**244**	225	19	101	143
		0.9%	1.0%	0.4%	0.5%	2.6%
	Imprisonment	**270**	256	14	86	184
		1.0%	1.1%	0.3%	0.4%	3.3%
Total convictions/100 juvenile suspects		**27,678**	22,302	5,376	22,160	5,518
		10.7%	11.6%	6.7%	9.4%	15.8%
Convictions/100 convictions						
	§ 12 JGG: Conviction without sentence – admonition	**1.9%**	1.7%	3.3%	2.2%	1.4%
	§ 13 JGG: Conviction with suspended sentence	**14.4%**	13.7%	19.6%	16.9%	8.5%
	Suspended fine	**11.0%**	6.8%	16.6%	13.5%	5.1%
	Partly suspended fine § 43a/1 StGB	**3.3%**	3.2%	3.9%	3.8%	1.8%
	Fine	**14.3%**	14.4%	13.8%	16.7%	8.5%

		All juveniles	Male	Female	Austrians	Foreigners
	Fine and suspended imprisonment § 43a/2 StGB	**0.4%**	0.5%	0.0%	0.6%	0.0%
	Suspended imprisonment	**36.0%**	36.2%	35.1%	35.8%	36.6%
	Partly suspended imprisonment § 43a/3+4 StGB	**8.3%**	8.7%	5.2%	4.9%	16.4%
	Imprisonment	**9.1%**	9.9%	3.9%	4.1%	21.1%
Total convictions		**100.0%**	100.0%	100.0%	100.0%	100.0%

Annotation:
a In cases of diversion only the offers by prosecutor or court are counted, not the completions. Therefore diversion rates are over-estimated.
b Dismissal according to § 4 JGG do not distinguish between paragraph 1 and 2, i. e. between children and juveniles - therefore the relation to total minor suspects.

Source:
*) Data by *Verein Neustart* (annual reports).
**) All other data concerning diversion: Special information by the Austrian Federal Computing Centre (BRZ) (based on VJ-data) September 2007.
***) 1984-1999 'Polizeiliche Kriminalstatistik', 2000 und 2004 'Kriminalitätsbericht - Statistik und Analyse' (annual report by the Ministry of the Interior).
****) Gerichtliche Kriminalstatistik (annual report by Statistik Austria).

6. The sentencing practice – Part II: The Juvenile Court dispositions and their application

6.1 General trend

In Austria the court has a variety of options for convictions. The respective data are presented in ascending order from the least to the most severe reaction in *Tables 6* and *7* above. The most significant changes over time are the clear decrease in the total number of convictions from 7,809 cases in 1984 to 2,808 in 1989. That drop is considerable, as in 1989 the juvenile law already included 19 year-olds. This major change reflects a decrease of reported juvenile offenders as well as the introduction of the Juvenile Court Act 1988 (JGG) and the allowance for measures of diversion by the prosecutor and the court. During the 1990s the conviction rates slightly increased to 3,764 in 1999. The drop after 2000 is due to the exclusion of 19 year-olds from the Juvenile Court procedure.

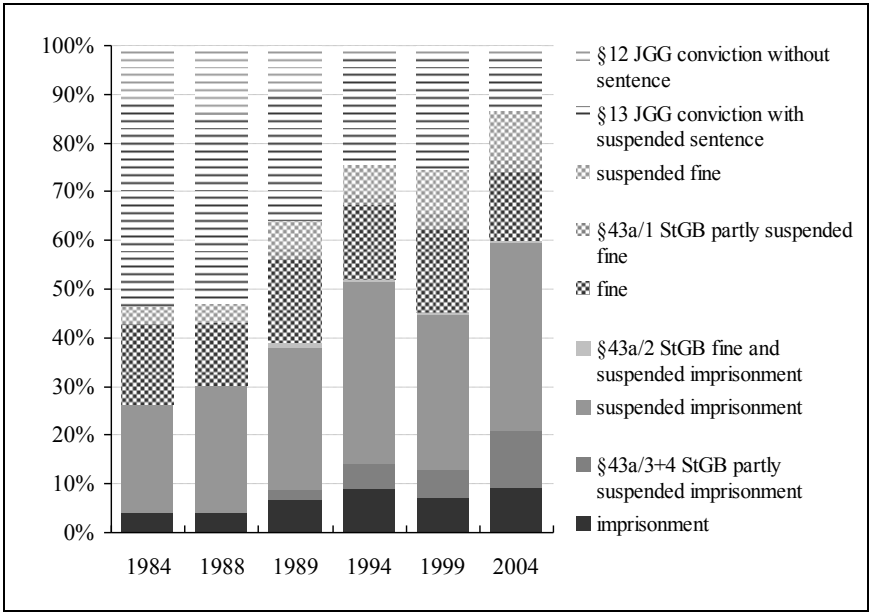
In comparing the years 1984 and 2004 (with equal age brackets falling under Juvenile Court law) with respect to court sentences, diversion – which was first piloted and subsequently introduced in law by an amendment in 1988 – is mainly applied as a substitute for convictions without sentence and convictions with suspended sentences. Their share of all court responses to juvenile offending dropped from 22 to 1.6 per 100 suspects (see in summary *Table 6*). The lessened application of § 12 and § 13 JGG accounts for two thirds of the general drop in sentences, while fewer unconditional fines (substituted by fines without conviction) and conditional prison sentences account for the rest. The specifically restrained formal reactions to juvenile offenders – used particularly for younger, not previously convicted, socially integrated and informally controlled persons – have lost lose ground.

This kind of court response and the measures connected to it are largely supplanted by diversion with intervention on order of the prosecutor or the court. If we add the diversionary measures according to drug law, in 1984 a rough estimate of 45 out of 100 juveniles charged by the police experienced an informal or formal intervention in response to their offence, while in 2004 the number was only 37. One can notice a doubly cautious juvenile justice system, decreasing formalisation, as well as increasing non-intervention. In view of these facts the increase in the number of juvenile suspects recorded by the police seems less significant and worrying. The number of juveniles who are affected by intrusive court measures is not rising in the way that is suggested by police data and public images of juvenile crime.

However, the changing distribution of sentences has to be considered: In case of a formal conviction today at least 20% of juveniles serve an unconditional or at least a partly unsuspended prison sentence. In relation to the number of juvenile offenders recorded by the police, currently more juveniles face a

prison sentence than 20 years ago (2.4 vs. 1.1 per 100). This indicates a growing differentiation, not to say polarization of court responses to juvenile offenders (see *Figure 4*).

Figure 4: Convictions of youth offenders – all offenders

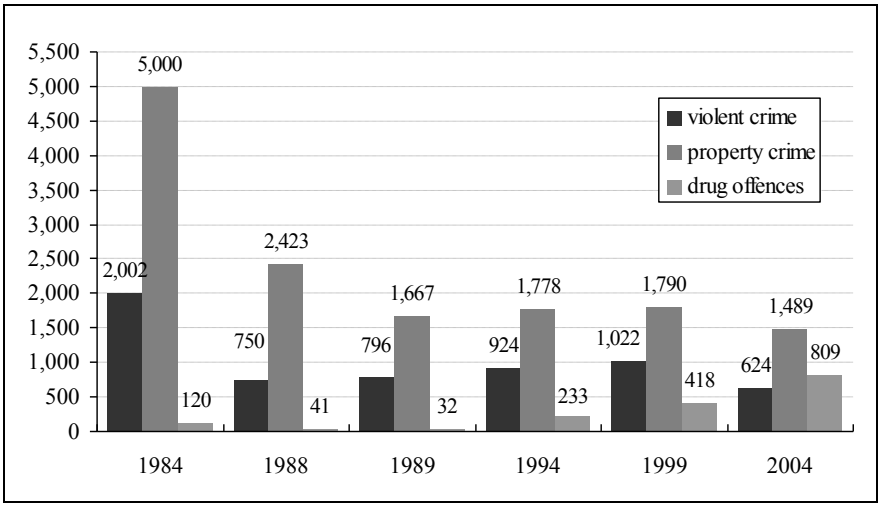


Source: Gerichtliche Kriminalstatistik, annually published by Statistik Austria.

6.2 Convictions by offence group

The trends as described above generally also apply for property crime and violent crime, while convictions for drug offences have increased. In 2004, 45% of all convictions were imposed for property offences, 24% for drug offences and 19% were imposed for violence (see *Figure 5*).

Figure 5: Sentenced young offenders by type of crime



Source: Gerichtliche Kriminalstatistik, annually published by Statistik Austria.

As mentioned above, the number of partly unconditional prison sentences did not decline. As a matter of fact the proportion of prison sentences in all sentences in 2004 is five times as high as it was in 1984. This is mainly due to the sentencing practice in rapidly increasing numbers of drug cases. With these cases the share of prison sentences rose from 3 to 34% (see *Table 8*).

Table 8: Partly suspended or unconditional imprisonment for juvenile offenders by type of crime (in %)

	1984	1988	1989	1994	1999	2004
All offences	4.0	4.3	8.7	13.9	12.9	20.8
Violent crime	1.6	1.1	2.0	5.6	6.0	6.6
Property crime	4.9	5.2	12.3	18.0	16.1	22.3
Drug offences	3.3	4.9	6.3	22.7	14.6	34.0

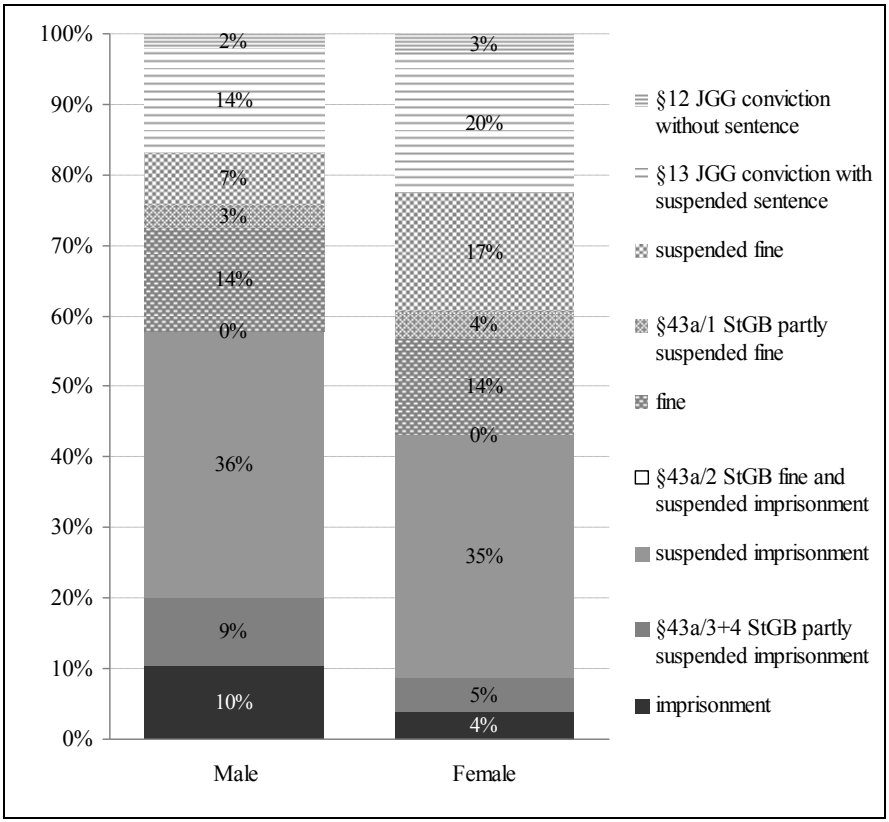
Source: Gerichtliche Kriminalstatistik (Statistik Austria), group of offences as defined there (*Straftaten gegen fremdes Vermögen*, *Straftaten gegen Leib und Leben*, *Straftaten nach dem SMG*).

6.3 An analysis of most recent conviction data in 2005

6.3.1 Gender

In 2005, 2,953 convictions were imposed on juveniles. The female proportion varies significantly with the kind of conviction: The overall female proportion amounts to 12%. This compares to 19% of females among juvenile suspects recorded by the police. Nonetheless higher proportions of females are found with less severe convictions. In the most severe categories of convictions (partly suspended imprisonment and imprisonment) females are under-represented (see in summary *Table 7*, *Figure 6*).

Figure 6: Convictions of male and female juveniles in 2005, all offences

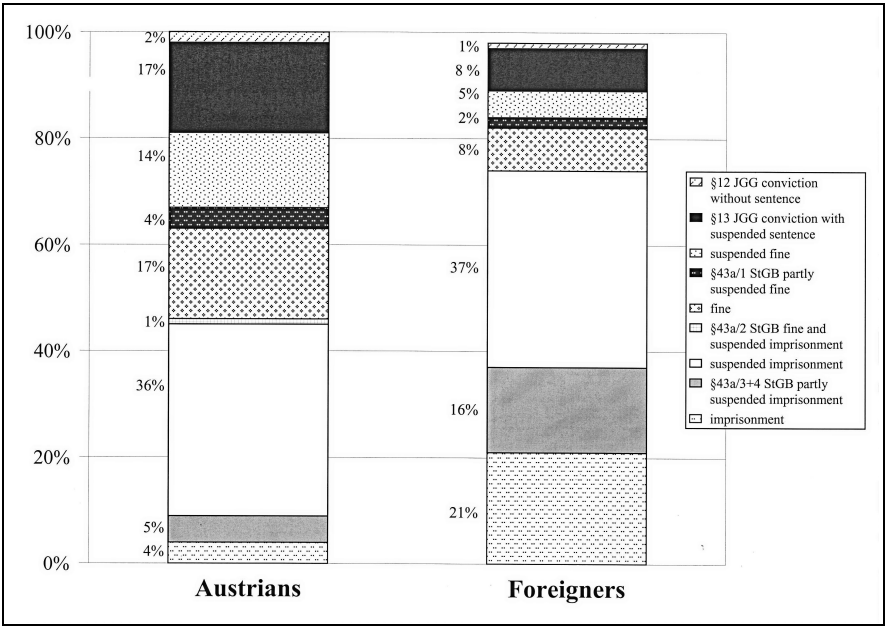


Source: Gerichtliche Kriminalstatistik, annually published by Statistik Austria.

6.3.2 Foreigners

In 2005, of all convicted juveniles 30% were foreigners, while their share among all juvenile suspects was only 20%. The harsher the sentences the more the foreigners are over-represented. 59% of partly suspended prison sentences and 68% of unconditional prison sentences relate to foreign juveniles. A look at the distribution of imposed sentences (see *Table 7*, *Figure 7*) shows that foreign juveniles usually receive more severe sentences than Austrians: 21% of all convicted foreigners are sentenced to imprisonment as compared to only 4% of Austrian offenders.

Figure 7: Convictions of Austrian and foreign juveniles, all offences



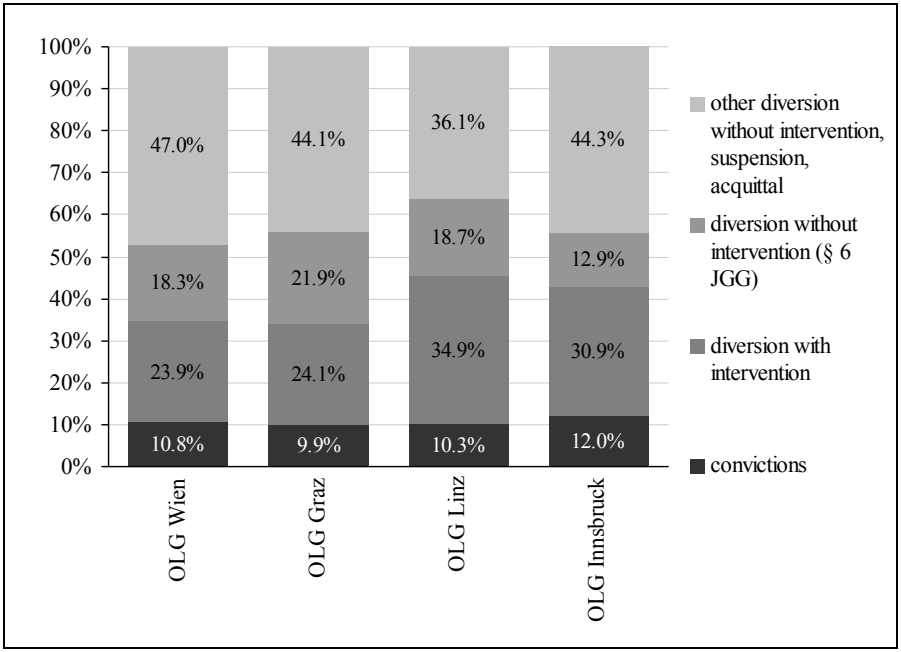
Source: Special data analysis by Statistik Austria, based on Gerichtliche Kriminalstatistik.

7. Regional patterns and differences in sentencing young offenders

Routine statistics on court sentences do not allow for regional differentiation below the level of court of appeal-districts (OLG-Sprengel). Individual studies have repeatedly exhibited that there is also considerable variation within these large units.

If we relate court decisions in juvenile cases in 2005 to juvenile suspects recorded by the police only minimal differences between the four court districts can be identified regarding the rates of formal conviction. However, if we also consider diversion with intervention, a clear West-East differential appears with regard to "interventionism". Looking to the Western court of appeal-districts, in Innsbruck (covering the provinces Tyrol and Vorarlberg) 43% and in Linz (provinces Upper Austria and Salzburg) 45% of all offenders are subjected to special attention by Juvenile Courts. In the Eastern court of appeal-districts Vienna (provinces Vienna, Lower Austria and Burgenland) and Graz (provinces Styria and Carinthia) only about 35% are treated this way. Their cases are not just dismissed formlessly or dismissed due to lacking maturity, minor guilt or of a predictably small penalty. The prosecutor or judge offers, i. e. demands victim-offender mediation, community service, time on probation without or with certain directives (such as having to attend a training course or to undergo therapy, health control, supervision by a probation officer etc.) or a formal court sentence is passed (see *Figure 8*).

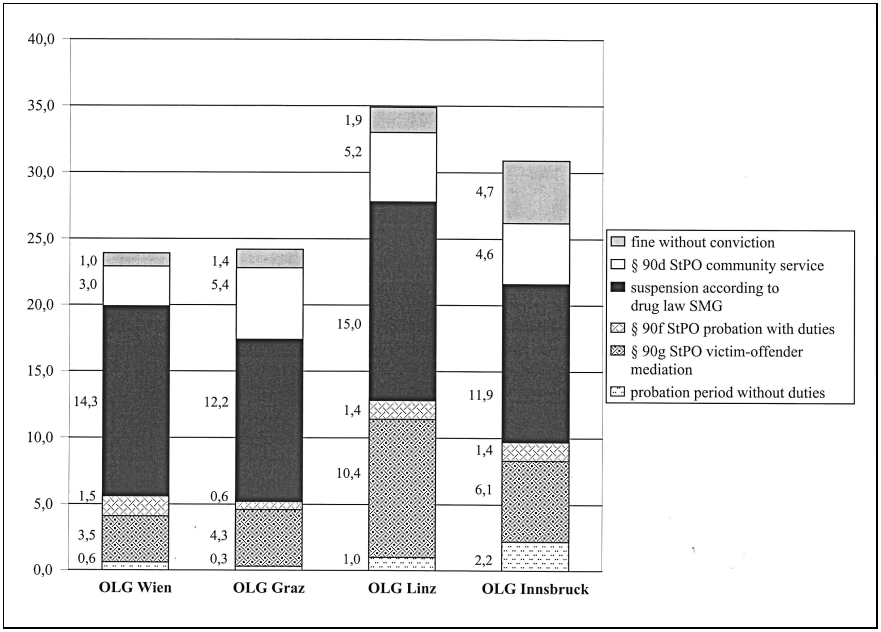
Figure 8: Court handling of police charges against juveniles in 2005, by upper court district



Source: Special conviction data analysis by Statistik Austria, based on Gerichtliche Kriminalstatistik; special data provided by the BRZ (Bundesrechenzentrum), based on StaBIS and BISJustiz (data information system of the public prosecution and courts).

A closer look at the practice of diversion (mainly through the prosecutor) reveals a different use of victim-offender mediation. In the court of appeal district Linz victim-offender mediation is offered three times more than in the East and South of the country. On the other hand in the court of appeal district Innsbruck fines without conviction are more widespread than in the other regions (see *Figure 9*).

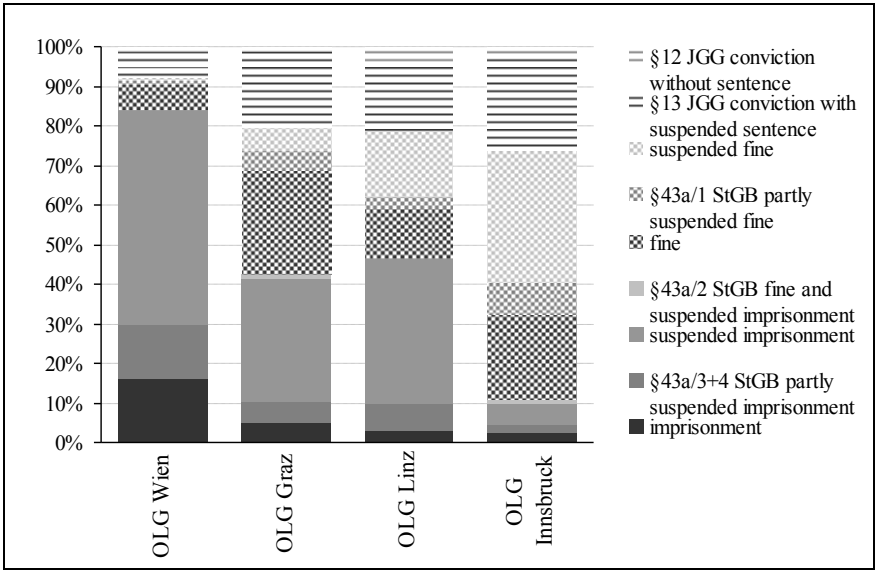
Figure 9: Kind of diversion with intervention in 2005, by upper court district, per 100 suspects



Source: Special data provided by the BRZ (Bundesrechenzentrum), based on StaBIS and BISJustiz (data information system of the public prosecution and courts).

Yet the most significant difference can be observed with sentences and sanctions. Conviction without or with suspended sentence (acc. to §§ 12 and 13 JGG) and (fully or partly) suspended or unsuspended fines are much more frequently used in Western Austria. There the prison sentences account for no more than 2% of all convictions, whereas in the East of the country (court of appeal-district Vienna) they account for 9%. Suspended imprisonment is the first choice here. In this region at least 3 out of 100 juvenile offenders charged by the police end up in prison, two to three times as many as in the other districts (see *Figure 10*).

Figure 10: Court sentence against juveniles in 2005, by upper court district, per 100 suspects



Source: Special conviction data analysis by Statistik Austria, based on Gerichtliche Kriminalstatistik.

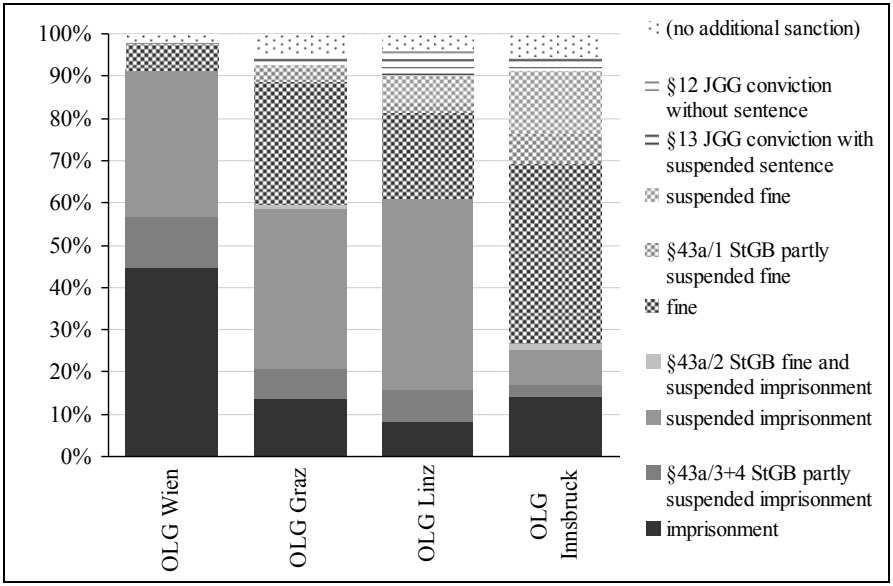
The regional difference does not drop when the criminal record of juveniles is taken into consideration. Even with repeat offenders the fine – mostly unsuspended in these cases – predominates in the Western parts of the country (court of appeal-district Innsbruck). Unconditional imprisonment still remains exceptional. This is feasible because first-time offenders in general receive a conviction with or without a suspended sentence or a suspended fine at the most.

In the court of appeal-district Vienna the contrary is the case, with the prison sentence being the regular sentence for repeat offenders. The reason is that suspended imprisonment is already the entrance sanction. In the central and southern provinces (court of appeal-districts Linz and Graz) suspended imprisonment is the first choice with repeated offenders (see *Figures 11* and *12*).

These differences in sentencing cannot be explained by differences in crime patterns. The composition of the offenders differ only a little. In analysing data for convictions because of special offences, for instance of burglary, we have the same results.

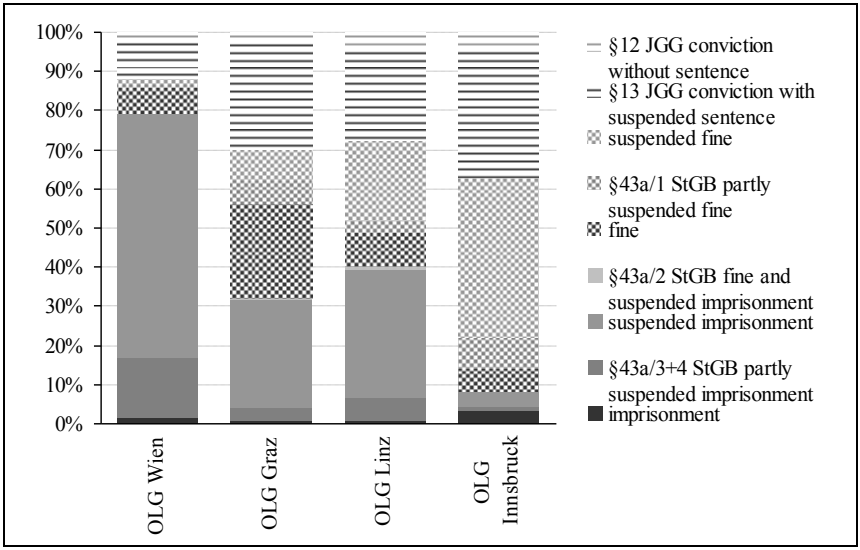
In contrast to the significant differences in court sentencing patterns the differences in recidivism (subsequent conviction rates in the four regions) are not noticeable (*Pilgram* 1994).

Figure 11: Court sentence against juveniles with criminal record in 2005, by court of appeal-district



Source: Special conviction data analysis by Statistik Austria, based on Gerichtliche Kriminalstatistik.

Figure 12: Court sentence against juveniles without criminal record in 2005, by court of appeal-district



Source: Special conviction data analysis by Statistik Austria, based on Gerichtliche Kriminalstatistik.

8. Young adults (18-21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

The 2001 amendment to the JGG brought young adults, i. e. persons of at least 18 but not yet 21 years of age, within the remit of the JGG. However, the benefits that result from this are mainly confined to the procedural regulations of the JGG (see *Section 4* above). The legislator ultimately failed to meet the demands that had repeatedly been articulated (*Jesionek* 2001) to create a comprehensive body of penal law for adolescents with substantive law regulations (*Miklau* 2002). Young adults are therefore adjudicated according to adult penal law in sentencing. The range of sanctions and the rules for apportioning sentences are those of the Austrian Criminal Code. The StGB provides for the following exceptions for young adults:

Maximum sentences are lowered (§ 36 StGB). The prison sentence imposed by the judge must not exceed 20 years in the case of young adults. A life sentence is therefore not possible; the maximum sentence that replaces life imprisonment is 20 years and the threat of a term of 10 to 20 years is commuted

into a 5 to 20-year term. In the case of the lowest threats the minimum sentence is reduced or removed altogether.[7] In all other respects the threat of punishment remains the same as for adults.

Being below 21 years of age at the time the crime was committed is to be considered as mitigating factor when sentencing (§ 34 StGB). This means that young adults will benefit from a reduced sentence compared to adults, even though the difference will be less marked than in the case of juveniles (*Schroll* 2002).

As is the case with juveniles, young adults can have the commencement of serving their sentence postponed under certain circumstances, such as to enable them to complete vocational training etc. (*Schroll* 2002).

If the young adult has to serve a sentence, there is the possibility of a release on parole at an earlier date than would be possible for an adult. The minimum time to be served in this case is one month (§ 46 (2a) StGB).

Contrary to the situation adults are confronted with, the law also provides for considerable intervention by probation officers in the case of young adults (§ 50 StGB). The realization of decrees regarding medical or psychosocial treatment and drug withdrawal is facilitated by the fact that in the absence of social insurance coverage the costs of therapy will be absorbed by the state.

9. Transfer of juveniles to the adult court

In Austria it is not possible at present to transfer a juvenile offender to the criminal court for adults, and there are currently no trends pointing in this direction. The tendency, if any, seems to be going in the other direction: young adults are subsumed under the procedural regulations that apply to juveniles. In order to safeguard the application of the modified procedural regulations of the JGG to the juvenile defendant, the proceedings take place before a juvenile judge also in cases where an adult is complicit in the punishable offence (§ 34 JGG).

10. Preliminary residential care and pre-trial detention

10.1 Legal provisions

Pre-trial detention *(Untersuchungshaft)* is governed by the Code of Criminal Procedure and has to be imposed where there is the risk of absconding, suppressing evidence, or of an imminent criminal act. In addition to the general rules – which require its application to be proportionate to the offence, i. e. to

7 Minimum sentences of more than one year are reduced to one year; minimum sentences of one year are reduced to six months; the minimum sentence is removed if the threat does not transcend a five-year term.

the probable punishment, and as short as possible – detaining minors in pre-trial detention is limited strictly (§ 35 et seq. JGG). Not only is the maximum duration shorter but the special criteria are also more stringent. Pre-trial detention is not permitted – even granting the existence of the legal preconditions – if the purpose of detention can be achieved with the "softer" methods of a family law or youth welfare law directive. This is the case, for example, if the aim can be achieved by the minor undergoing treatment for drug addiction or placement in a home, or in a residential care facility.

Moreover, minors may only be detained if the attendant disadvantages for their personal development or rehabilitation are not out of proportion with the offence. The assessment of proportionality must therefore be conducted with utmost care. However, the proportionality rule applies not only to detention in relation to the offence, but also to the probable punishment. In a recent ruling, the Supreme Court has taken the view to interpret this literally and thus exclude any pre-trial detention as long as no punishment at all is to be expected (conviction without sentence, conviction with suspended sentence). To avoid the unnecessary extension of the time in custody and the delays in legal proceedings, the duration of police arrest should generally not exceed 48 hours. If the young suspect has to stay in pre-trial detention, the first review should take place at a hearing after 14 days, the second after a month, with subsequent hearings taking place every other month. The maximum period for pre-trial detention of minors may not exceed three months. In cases within the jurisdiction of mixed courts or jury trials it is six months, and can be for up to one year in extraordinary cases.

To protect the rights of minors as comprehensively as possible, the JGG grants the minor a special right of involving trusted adults in the first pre-trial proceedings. The trusted adult will usually be the legal guardian, a relative or a probation officer. In addition to this the juvenile is entitled to the services of a counsel of defence; where necessary a court-appointed legal defence counsel must be provided. The legal guardian must be notified that the juvenile has been arrested, unless there is a plausible reason not to do so.

10.2 Statistics

In Austria data concerning juvenile pre-trial detention are not available for the full observation period. However, the introduction of electronic prisoner files (IVV) in 2001 allows for a complete presentation of juvenile incarceration in prisons.

Table 9: Incarceration of juveniles

	Total juveniles		Incarceration per 100 juvenile suspects				
	Suspects	Prison entries	Total	Male	Female	Austrians	Foreigners
2001	21,873	897	4.1	4.8	1.4	2.7	9.9
2002	21,561	861	4.0	4.7	1.7	1.8	12.0
2003	25,804	1,265	4.9	5.7	1.6	1.7	15.3
2004	28,700	1,329	4.6	5.2	2.0	1.6	14.0
2005	27,678	816	2.9	3.4	1.2	1.3	9.6

Source: Information by prison directorate, based in IVV-Data (BRZ-Austria), own calculations.

Statistics show a temporary but considerable increase of incarcerations of juveniles in absolute and relative figures. This is to be explained by a general increase of foreigners (especially from third countries) among suspects, mostly accused of drug offences. It should be noticed that in those cases an age classification at the moment of incarceration follows their own unverified statements, because many of them are found without any legal documents. In the years 2003 and 2004 one out of twenty juvenile suspects (5%) was taken into custody at least for a short time.

Table 10 shows the average numbers of juveniles in custody per year. The mean number of days in prison per entry shows that there is a rather high but diminishing fluctuation of juveniles in Austrian prisons. The average total time in prison for juveniles is increasing. Unfortunately no data about time spent in pre-trial detention are available. Yet it can be noticed that for the years 2003 and 2004 juveniles in pre-trial detention clearly outnumbered juveniles in custody. In total, more than 50% of juveniles in Austrian prisons were in pre-trial detention. In other words: Juveniles spend a large part of their incarceration as pre-trial detainees.

Table 10: Juveniles in prisons by kind of incarceration

	2001	2002	2003	2004	2005	2006
Pre-trial detention	63	61	135	139	94	94
Custody	64	54	63	104	97	77
Preventative detention	3	3	4	5	6	3
Other	2	1	2	2	1	1
Total incarceration	132	119	204	250	199	174
Days in prison per entry	54	50	59	69	89	84

Annotation: Adolescence at the time of incarceration.
Source: Information by prison directorate, based in IVV-Data (BRZ-Austria), own calculations.

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

11.1 Legal provisions

Austria's criminal law provides for juveniles to serve their sentences in youth prisons, not in residential care facilities. Residential care is only regulated in the Youth Welfare Act (§ 28 JWG) as a form of educational support.

Regulations on the enforcement of prison sentences do not differ significantly from those of adults. As a rule minors are subject to the provisions of the Law on Penal Execution (*Strafvollzugsgesetz* – StVG); special provisions of the JGG have to be taken into account (§§ 51-60 JGG).

What is important in terms of the penal system is the age at which a convict commences to serve his or her sentence. Convicts up to the age of 18 fall under the regulations of the juvenile penal system. If it can be taken for granted that there will be no negative or other detrimental effects on juvenile convicts, persons who are not yet 22 years of age may begin to serve their sentence in the juvenile penal system. The relevant decision lies within the discretion of the competent court. If a convict is already in the juvenile penal system, he or she may remain in it under the aforementioned preconditions until he or she turns 24. If the person in question has to remain in detention beyond that age, he or she may remain in the juvenile system if the remainder of the sentence does not exceed one year, or if the transfer to the adult system would entail substantial setbacks for the prisoner. The relevant decision is within the discretion of the head of the penal institution and the Ministry of Justice. Persons 27 years of age have to be transferred to the regular penal system.

The Ministry of Justice is responsible for the choice of institution. Juveniles are to be assigned to the institution where the objectives of the juvenile penal system are met in the best possible manner. Moreover, the special regulations of the JGG are also supposed to prevent "criminal contagion" by eliminating contact with adult inmates. For this reason, young offenders should serve their sentence in special institutions, or at least in a prison section away from adults. For the time being Austria has only one special institution for male juveniles (Gerasdorf), which is reserved for individuals with sentences of more than six months (*Schroll* 2006; *Jesionek* 2003). Female convicts with sentences this long are housed in an institution reserved for women (Schwarzau). In all other cases juveniles serve their sentences in special sections of the penal institutions associated with particular courts (*Stummer-Kolonovits* 2004). As has been mentioned already, juveniles have to be kept separate from adults outside the juvenile penal system. According to the JGG this separation can only be lifted if a detrimental influence on the juvenile can be discounted. This exception is to be handled extremely restrictively (*Schroll* 2007). It is to be applied in practice only in special cases, for instance, in order to obviate isolation if there are too few juveniles in an institution (*Jesionek* 2001). According to heads of institutions, exceptions are also made if juveniles need the calming, positive influence of an adult.

The primary objective of the juvenile penal system is bringing about a change of heart in the juvenile that enables a prognosis that he or she will not relapse into crime. In addition to this, juveniles receive vocational training to the extent that is possible and are set tasks from which they profit in pedagogical terms (*Jesionek* 2001; *Schroll* 2006).

Special enforcement regulations concern specific issues that need to be taken into consideration in the treatment of young offenders, such as nutrition appropriate to their physical development, physical exercise, fresh air as well as the need for schooling. School tuition and job training are to be given special importance within the juvenile penal system so that it is possible to finish compulsory schooling and/or to start or complete vocational training as apprentices. To obviate stigmatisation no indication may be made on report cards etc. that a degree was acquired within the framework of the penal system. For the same reason it is also important to note that prisoners are not publicly exposed, in particular during transfer or when working outside the penal institution. In addition, visiting times and the right to receive parcels are expanded, and regulations regarding house arrest and solitary confinement are less strict. Both of these groups of measures are intended to support juveniles in maintaining contact with the outside world.

Young offenders serve their sentences in more relaxed conditions (*gelockerter Vollzug*). During the day common-room doors and sometimes even the gates are not locked. Prisoners are only guarded – if at all – in a limited manner when working outside the premises, and there is the possibility for them to leave the

institution for work or for educational purposes. While petitioning for early release, leave of up to five days may be granted (*Jesionek* 2001).

After a release on parole juveniles must be issued a probation order, during which social workers will be at their side to monitor and aid their return to "normal life". In a way similar to the judges and public prosecutors who are involved in juvenile cases, all persons dealing with minors in youth prisons should have pedagogical skills and an understanding of the basics of psychology and psychiatry. These skills are needed so that conflicts and problems may be spotted and resolved more easily. On this account a "mentoring system" is in place in which each prisoner is assigned to a guard who watches over him or her and acts as a confidential person (*Jesionek* 2001).

So-called enforcement commissions – composed of seven adults – monitor the treatment of prisoners and the lawfulness of its enforcement. They report to the Ministry of Justice and, if necessary, make comments. They are, however, not allowed to give any instructions.

11.2 Statistics

In Austria the number of prisoners has increased remarkably since the year 2000 from approximately 6,800 to 8,600 persons. This increase of one fifth was surpassed in the specific group of juveniles and particularly young adults. The number of juvenile prisoners had almost doubled by 2004, while the number of young adults in prison almost quadrupled with no turnaround in sight (see *Table 11*).

This increase in the number of young prisoners clearly exceeds the respective increase of recorded suspects in that period, and is largely made up of foreigners. In addition, the increase of young prisoners clearly exceeds the increase of foreigners recorded as suspects by the police, which is indicative of more severe sentencing practice in Juvenile Courts (see *Table 12*, *Figure 13*). In particular with regard to young adults, the fact that 19 year olds are generally no longer – and older suspects less frequently than before – treated according to the JGG may have caused this alarming trend. However, statistical data on the frequency with which the JGG is applied for over 18-year-olds are not available.

Table 11: Prisoners in penitentiary institutions (average occupancy per year), by gender

	Average total occupancy per year	Juveniles			Young adults		
		Male	Female	Total	Male	Female	Total
2001	6,806	131	10	141	185	12	197
2002	7,223	116	13	129	421	21	442
2003	7,707	197	16	213	509	23	533
2004	8,232	242	16	258	653	25	678
2005	8,659	194	15	209	703	22	725
2006	8,639	172	11	183	658	26	684

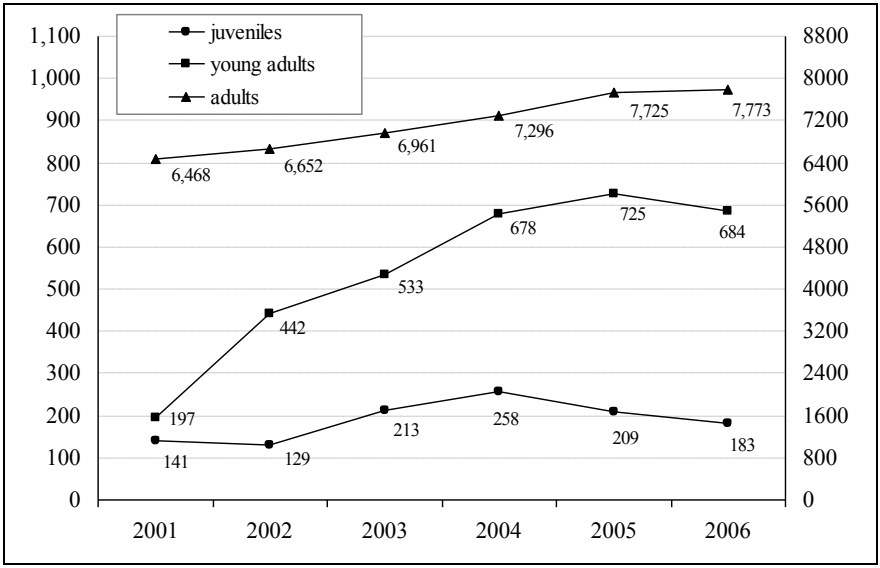
Annotation: Figures of juveniles include some persons in *Justizgewahrsam* (minors in mother-child departments).
Source: Information by prison directorate (October 2007) based on IVV-data (BRZ Austria).

Table 12: Prisoners in penitentiary institutions (average occupancy per year), by citizenship

	Juveniles			Young adults		
	Austria	EU-Europe	Third countries	Austria	EU-Europe	Third countries
2001	82	7	53	108	24	65
2002	71	9	49	239	49	154
2003	74	15	124	266	48	219
2004	80	16	162	273	46	358
2005	75	12	122	245	51	429
2006	90	11	82	285	44	354

Annotation: Figures of juveniles include some persons in *Justizgewahrsam* (minors in mother-child departments).
Source: Information by prison directorate (October 2007) based on IVV-data (BRZ Austria).

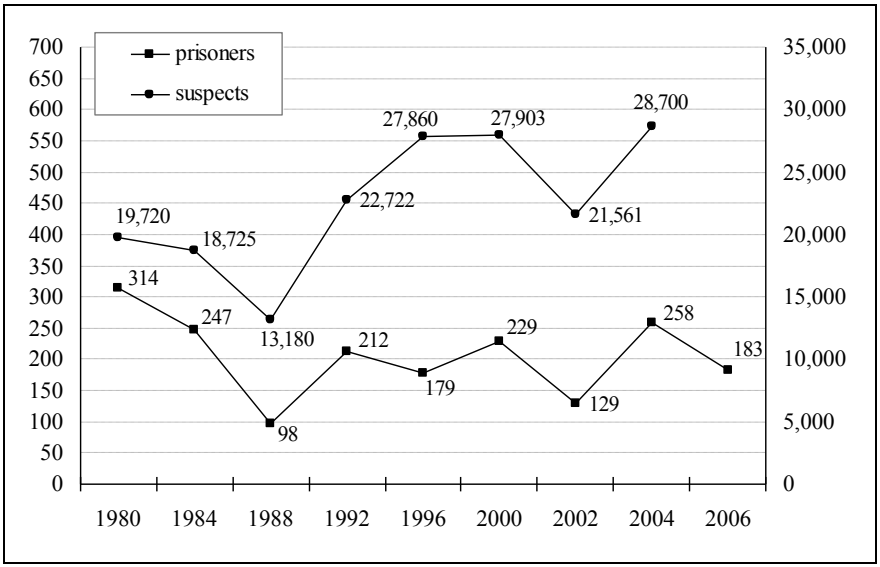
Figure 13: Prisoners under responsibility of the Ministry of Justice, by age



Source: Information by prison directorate (October 2007) based on IVV-data (BRZ Austria).

A long-term assessment of juvenile prisoners shows that during the early 1980s before the introduction of and in the course of intensive debate during the run-up to the JGG in 1988 the number of prisoners decreased to one third (twice as much as the number of registered juvenile suspects by the police). During the 1990s the prison rates remained relatively steady despite an increase in the number of recorded juvenile suspects by two thirds. The fact that prison population rates have increased to a larger extent than conviction rates and the number of registered suspects has been a feature of recent years since the turn of this century.

Figure 14: Juvenile suspects and prisoners



Source: Polizeiliche Kriminalstatistik (annually published by Ministry of Interior); Statistische Übersicht über den Strafvollzug (annually published by Ministry of Justice till 2000; afterwards IVV-data BZR-Austria).

In Austria, decisions on placing juveniles in residential care homes are a political matter of the province-authorities. Therefore, residential care is poorly documented and is largely studied on a national level. An analysis for the 1960s and 1970s shows that the "de-institutionalisation" of juveniles is most evident in the field of justice, but less obvious in the field of child welfare, where voluntary care in homes seem to supersede cases of care imposed by a court order. The principle of a maximum of consensual public education and open homes could be maintained (*Pilgram* 1988).

The Austrian Youth Welfare Act (JWG) provides regulations of "care support" in various forms. "Full residential care" is defined under § 28 JWG as measures of care and upbringing of minors in a foster family, or with other persons as defined under § 21 (2) (relatives), or in a residential home and other institutions like flat-sharing communities. Moreover, the law differentiates between voluntary care and compulsory care that follows a court order without consent of the legal guardian (parents).

The legal order for caring support is regarded as a last resort where a voluntary agreement fails. However, there are no closed educational institutions for juveniles in Austria. The reason for voluntary or compulsory "full residential

care" can be found in misbehaviour of parents or the minor or both, or in cases of criminal offending against the minor or by the minor, or in other behavioural difficulties. The welfare statistics of youth do not differentiate between these practices. A relatively high female proportion in youth-homes (45%), especially in cases of compulsory "full residential care" (up to 55%), in contrast to prisons, gives evidence that juvenile girls are sent to homes as "victims" rather than "trouble-makers".

Table 13: Juveniles in prisons and in "full residential care"

	Prisons	Homes and other residential care		
		Legal order	Agreement	Total
2001*	141	404	1,301	1,705
2002*	129	424	882	1,306
2003*	213	445	1,632	2,077
2004**	258	574	2,003	2,577
2005**	209	589	2,107	2,696
2006**	183	601	2,156	2,757

*) From 16 to 18 years of age.
**) From 14 to 18 years of age.
Source: Information by prison directorate on the basis of IVV (October 2007); Annual Youth-Welfare Statistics (Statistik Austria).

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

In principle, custodial sentences of more than 6 months for juveniles have to be served in special youth prisons. For female juveniles no such special institution exists. They spend their time in a department of the only Austrian prison for women in Schwarzau (Lower Austria). After the closing down of the Vienna Juvenile Court and the respective prison in 2003 there is only one special youth prison for males left, located in Gerasdorf (Lower Austria). The Juvenile Court prison in Vienna is now part (a department) of the biggest Austrian prison complex, the detention centre of the Vienna Regional Court for Criminal Matters.

The principle of placing juveniles separately intends to protect young inmates but also serves to better meet their special needs. Youth prisons have to fulfil specific requirements; above all they have to provide for school education

and vocational training. § 58 (5) JGG concerns the special treatment of juveniles in prison: "In the special youth prisons prisoners have to have regular lessons. In other prisons where juveniles are confined lessons have to be held as far as feasible." These lessons are to eliminate deficiencies of elementary school education and to advance general education.

If juveniles do not receive school education or vocational training they are obliged to work. Yet according to the law, they have to be occupied with work that is beneficial for their education. For the sake of finishing vocational training the deferment of a juvenile's imprisonment can be conceded for up to one year (it is unknown how much use is made of this rule of § 52 JGG).

Court prisons outside Vienna generally lack sufficient schooling and vocational training opportunities for juveniles in pre trial detention or in penal custody just because of their small number. In Vienna half of the detained juveniles obtain vocational training in training shops for about a dozen professions. Most of the other prisoners receive lessons to catch up on school education, or they participate in training courses (e. g. German or English language, ECDL) that fit to their generally short stay in court prison. In the Vienna prison juveniles also have access to two computer training centres with about 25 places.

The youth prison in Gerasdorf has a long tradition in vocational training. 80% of the inmates there are attending respective training courses. In consequence of the rather long sentences they have the opportunity to complete at least one year apprenticeship. The prison disposes of its own state vocational school and teaching staff. Appropriately equipping and stocking the training shops for modern technical professions (like auto mechanic, metal worker) causes some problems, as does the shortage of guard personnel who provide the practical training in the shops and the tutoring of E-learning. E-learning has been implemented in the course of a European funded pilot project (TELFI) lasting over several years which aims to extend the pedagogic offers, to install short trainings, to facilitate language training and to overcome shortcomings in theoretical education. However, now that funding has ceased and the integration of tele-learning into the regular education and training programme in prison seems to be at risk.

Sadly, there is no routine reporting about the running and results of schooling and vocational training measures for juveniles in Austrian prisons. The practice of medical treatment or treatment with psychotherapy with juvenile prisoners is equally poorly documented. As a matter of fact the youth prison and prison departments for juveniles are comparably well staffed with social workers and psychological staff. The concentration of juvenile and mentally ill prisoners in a combined new prison building and justice competence centre in Vienna has not yet been decided. If this plan were to be realised it could in fact imply a shift from the traditional vocational training focus to the provision of psychological care and treatment.

13. Current reform debates and challenges for the juvenile justice system

For a long time, youth crime has found very little response in public debates in Austria. Despite the fact that the long-term development of criminal record statistics would justify an intense point of contention no less than in Germany, we find tranquillity when it comes to discuss the dimensions of crime committed by youngsters (*Pilgram* 2002). Occasionally "violence in schools" is discussed, but this happens in the context of debates about the school-system and school-reform and not as a catalyst for reform of criminal policy in the juvenile justice system. There is neither a debate about youth as "folk-devils" or as particular trouble-makers, nor is there a call for special provisions for "high-risk individuals" in closed educational institutions like in some other European countries. This is because of authorities, including the police, prosecution, education and youth welfare, which all count on "cooling out strategies", but also avoid expert debates about controversial issues of crime prevention.

One side-effect of this "tranquillised public" is the clear deficit in official data and scientific research about the experience and backgrounds of young people and the meaning and effect of criminal law interventions (*Fuchs* 2007).

In the course of the last decade the rise of recorded juvenile delinquency and delinquency by young adults has been mainly affected by "new foreigners" (mostly from third countries) and petty drug crime. These phenomena have resulted in counter-actions in the Immigration Law and in general tough regulations in the drug-law. They have, however, not challenged juvenile justice policies so far, as the particular status of youngsters as suspects or offenders generally remains uncontroversial. Reforms and measures have been demanded and were accomplished in the foreign-police-law and a more efficient policing of the drug-law, but not in the JGG. Since the reform in 1988 the JGG underwent only minor adaptation to some amendments to general penal law regulations, e. g. after the general introduction of diversion in the criminal proceedings. The most recent amendment to the JGG was enforced in 2000, which in essence meant a mere matching of the youth-age in penal law and in civil law (without implementing a separate penal law for young adults at the same time).

This hold-up of reforms and the decision from 2003 to dissolve the Juvenile Court in Vienna and to transfer its function to the Regional Court for Criminal Matters and to several District Courts in Vienna, as well as to integrate the juvenile prison into the prison of the Regional Court for Criminal Matters, shows its negative effects today. In response to the recent increase of criminal cases and imprisonment and the prison overcrowding, the challenge is to provide the necessary resources and conditions in order to re-establish an independent juvenile justice system including a separate institution for detention.

It is still unclear how far the plans for the establishment of a "justice centre of excellence for youth affairs" in Vienna will also include the re-erection of the juvenile justice court. However, the duties of legal welfare will presumably remain with the district courts and the duties for young adults will stay fragmented. The practical cooperation between Juvenile Courts, juvenile prosecution, youth welfare courts and juvenile care institutions will be a further challenge for the future.

14. Summary and outlook

It can be concluded that in many cases in the past the Austrian JGG had the function of a precursor for legal innovations that were realised later in the general penal law. The amendment to the JGG in 1988 was once more a great advancement. The possibility to renounce the criminal procedure for the sake of reconciliation between offenders and victims ("out of court settlement"), which was introduced as an experiment at first, represented a pioneering advance in European criminal justice systems (*Pelikan/Trenczek* 2006). This special form of "diversion with intervention", mainly under the leadership of the state prosecutor, could reduce legal convictions without leaving criminal acts unanswered.

With the amendment to the penal procedure law in 1999 diversion was generalised and the advance of the juvenile justice system shrank even more: today the criteria for diversion predominantly have the adult offenders in mind. As a consequence we find victim-offender mediation even with juveniles as a more formal, legalistic procedure and just way of material compensation. One side-effect of formalisation is the principal demand to pay fees to cover court-expenses. The former alternative to a sanction tends towards becoming a form of alternative sanction itself. The economy of the procedure and the avoidance of expensive and counter-productive sanctions come to the foreground in the practice of diversion, whereas the pedagogic aspects lag behind.

In recent times, as elsewhere in Europe, the focus of the penal reform has shifted to the improvement of the situation of victims in the criminal procedure, with particular concern for minor victims. On the other side, the process of "individualisation" in the reaction to offenders seems to become limited also for juvenile delinquents. This is, for example, reflected in the compulsory order for probation for conditionally released offenders under the age of 21, or in the missing explicit denial of general preventive considerations in the recent amendments of the juvenile law. In fact juvenile prisoners may profit from the now intended extension of conditional release and other political measures for "custody relief", the reduction of prison overloads, without being the target group of further measures of procedural de-criminalisation themselves.

There is no measurement of the development of juvenile delinquency independent from police statistics in Austria, i. e. no periodical and standardized self-report study of delinquency (*Stangl et al.* 2006). The observed increase of

selectivity and reluctance in sanctioning by the courts put the official crime statistics recorded by the police and respective impressions of juvenile delinquency into perspective. Convictions without sentence or with suspended sentence (§§ 12, 13 JGG) are gradually being replaced by intervention of the prosecutor, but also by the provided option for non-intervention (§§ 4 and 6 JGG). Also, suspended and partly suspended fines are being replaced by fines without conviction (diversion according to § 90c StPO).

Not all delinquent juveniles profit from this development in the same way. In particular juveniles from third countries without a clear residential status in Austria are still treated harshly. They face imprisonment and prison on remand to a high extent, whereas the reform of the juvenile justice system privileges Austrian juveniles. Today, foreign juveniles can merely profit from new regulations, which allow for the preliminary suspension of at most half of the punishment, if they are considered illegal residents and are willing to leave the country voluntarily.

But it can not be confirmed that the more reserved legal practice of sanctioning and punishment against Austrian or settled juveniles has lead to a stronger involvement of legal-welfare activities, orders for "full residential care" or accommodation in juvenile homes.

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Belgium

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Introduction

In comparative studies, the Belgian juvenile justice system has always been mentioned as one of the most welfare oriented in Europe (*Put/Walgrave* 2006). In the last few decades, several Western European countries have abandoned welfarism and have taken a punitive turn (*Bailleau/Cartuyvels* 2007; *Muncie/Goldson* 2006). At first sight, Belgium is not heading in that direction: the age of criminal responsibility remains very high (18 years) and juvenile justice is still underpinned by a mainly protective philosophy. However, it is important to take a closer look at this strong welfare image of the Belgian juvenile justice system, for the *law in books* does not (necessarily) correspond with the *law in action*. In the same way political discourse and policy rarely resemble the views of professionals in the field. Policy documents therefore do not equal street level or daily practices. Moreover, recent reform (2006) of the juvenile justice system has introduced new (penal as well as restorative) elements into the welfare-oriented Belgian model.

Due to a process of federalisation in the 1970s and 1980s Belgium has been transformed into a Federal State consisting of three communities: French, Dutch and German. This process had consequences for the organisation of the competencies concerning the juvenile justice system and the societal reaction to juvenile delinquency. The judicial reaction to youth delinquency remained a federal matter, while the execution of educational measures (imposed by the juvenile judge or court) became a community competence.

Because of the Belgian state structure and the tension between theory and practice, it is rather difficult to present the Belgian juvenile justice system and its practice in all its complexity. Therefore this report aims to outline the main

features of the Belgian juvenile justice system and must be read as an introductory but critical report on the Belgian juvenile justice system today.

1. Historical development and overview of the current juvenile justice legislation

From the beginning of the 20th century, with the Children's Act of 1912, the Belgian juvenile justice system has been underpinned by the idea that children should be protected and (re)educated rather than punished. The main purpose of juvenile justice is to reintegrate and to rehabilitate. Within this protection or welfare model, young offenders are not considered to be responsible for their acts. Rather the offences they commit are considered to be symptoms of underlying problems. As a consequence, interventions of the Juvenile Court were not grounded on the offences and on the principle of proportionality, but on the young offender's personality and social context. Instead of punishments, protective measures were imposed "in the best interest of the child" (*Christiaens* 1999).

From the beginning of the 20th century, young offenders were tried by a special court (*kinderrechtbank*) and a specialised judge (*kinderrechter*). It is important to stress that this early child protection system concerned not only young offenders (under the age of 16) but also minors who were considered to be in danger because of pre-delinquent or bad behaviour. Different age groups were covered by the Belgium juvenile justice system at the beginning of the 20th century: under the age of 16 for young offenders and pre-delinquent youngsters, and under the age of 18 for badly-behaving children, whose parents could file a complaint to the Juvenile Court, or for children who were found begging or in vagrancy. Consistent with the welfare and protection philosophy, Belgian youngsters were (theoretically) not punished but were re-educated through protection measures or welfare sanctions (*Garland* 1981). Until 1965, young offenders over the age of 16 were prosecuted before (adult) penal courts. Protection measures, provided by the Act of 1912, consisted of: (1) warning (*admonestation*), (2) placement of the minor in public as well as private facilities and/or the placement in a foster family, (3) custody at Her Majesty's pleasure (*terbeschikkingstelling*) until the age of legal majority, which made detention in public "closed institutions" possible. Finally, every protective measure imposed by the Juvenile Court could be associated with the probationary measure of *liberté surveillé*, an important innovation of the 1912 Act. Notwithstanding the new welfare approach, the Belgian Children's Act of 1912 did not totally abolish detention in prison for children less than 16 years of age. In exceptional cases these children could be placed in adult prisons during the pre-trial phase.

Finally, the Belgian Act of 1912, based upon the welfare model, introduced a new, specialised and unique judge, and a procedural model that confirmed the

"paternalistic" role of this magistrate. Within the Belgian juvenile justice system the same judge handles the case throughout the entire procedure (pre-trial phase, trial and execution of measures). This can be seen up to the present as one of the key characteristics of the juvenile justice system.

In 1965 a reform of the law was passed by the Belgian Parliament, by an almost unanimous vote. The new Youth Protection Act confirmed the welfare and protection model. The 1965 reform resulted in a more elaborated welfare model for the juvenile justice system. First, it is important to note the introduction of voluntary social welfare interventions. Youngsters (and their families) in danger or in need could call upon new local social welfare boards (*jeugdbeschermingscomités*) for social intervention and assistance. This voluntary welfare protection was directly related to the coercive judicial social welfare protection, and families who were unwilling to co-operate "freely" could be forced to do so by the Juvenile Court. Therefore this extension of the juvenile justice system can be (and was) characterised as an extension (and thus net-widening) of the *police des familles* or social control of juveniles and their families (*Donzelot* 1977; *Van de Kerchove* 1976).

Second, the 1965 reform increased the age of criminal responsibility from 16 to 18 years. Since then Belgium has had one of the highest age limits of *doli incapax* in Europe and the world. However, this rise in age limit was "compensated" by the introduction of a legal waiver mechanism. The possibility to transfer cases to adult penal courts concerned young offenders between the ages of 16 and 18. This transfer was not based upon the offence, but rather on the opinion of the Juvenile Court that welfare measures were no longer adequate for the minor in question. Thirdly, the Act of 1965 held the possibility of putting minors in pre-trial detention in an adult prison in exceptional cases (Article 53). This possibility was seen as a sort of "in case" escape from overcrowded youth institutions. However, the use of this pre-trial "adult" detention pointed towards a problematic "short sharp shock" practice that, eventually, would lead to the decision of the European Court of Human Rights in *Bouamar v. Belgium* (1988) (*De Hert et al.* 2007). This decision was at the origin of the abolition of Article 53 and the subsequent creation of a provisional federal institution (prison) for pre-trial detention of minors in Belgium (see also *Sections 10-12* on residential care). At the same time, in *Bouamar v. Belgium* the European Court of Human Rights condemned the lack of legal rights for minors during the pre-trial phase, which led to the Act of 1994 that strengthens the legal position of minors (e. g. the right to legal assistance and the right to be heard before any "provisional measure" is taken during the pre-trial phase).

A federalisation process (1970-1988) transformed Belgium into a Federal State consisting of three communities – a French, a Dutch and a German community. This process had important consequences for the reorganization of competencies within the juvenile justice system. The judicial response to youth delinquency remained a federal matter, while the execution of the educational

measures ordered by the Juvenile Court became a competence of the communities. Moreover the communities became almost exclusively competent concerning legislation and interventions towards "children in danger".

This division of competences resulted *de facto* in a reform (restructuring) of the intervention possibilities of the Belgian juvenile justice system. At the federal level, the juvenile justice system can prosecute juveniles for "facts described as a penal offence". At the community level, the same juvenile justice system can prosecute juveniles who are considered to be in danger because of their own behaviour or of their problematic educational and/or family context (*problematische opvoedingsituatie*, *enfant en danger*). This category of problematic, non-delinquent youngsters can include youngsters with a wide range of problems, from being a victim of abuse to being the author of bad behaviour.

After almost four decades of discussions on the juvenile justice system and the reform of the Juvenile Protection Act of 1965, a reform was passed through parliament in 2006. Key features of this reform can be synthesised as follows: (1) the model of a welfare system remains the stated characteristic of Belgian juvenile justice; (2) parents should be held responsible for their problematic or delinquent offspring; (3) the practice of alternative sanctioning acquires a formal and legal status within the juvenile justice system; (4) the reinforcement of the waiver or transfer mechanism for serious young offenders, and (5) the implementation of a restorative response to young delinquents complementary to the classical welfare sanctions of the Juvenile Court.

It is important to stress that this reform took place within the legal framework of the 1965 Act. The basic principles of the welfare model remain at the core of the Belgian juvenile justice system. However, we can notice the infiltration of a penal and a restorative logic within the reformed Belgian welfare model. For example, from now on, juvenile justice judges will have to give full justification for their decisions in a more objective way. Therefore, a list of criteria guiding the decision of the Juvenile Court was introduced (Article 37). It is relevant that the seriousness of the crime is formally recognised as an element in the "sentencing" or decision-making process. Another example is, of course, the formal implementation of restorative justice procedures in the Belgian juvenile justice system. These procedures, mediation and family group conferencing, are introduced as a complementary possibility of societal reaction to a committed offence. As we will elaborate below, we can point out that the actual juvenile justice system in Belgium draws on a hybrid model rather than a "pure" welfare model (*Christiaens/Dumortier* 2006; *Christiaens/Cartuyvels* 2007).

2. Trends in reported delinquency of children, juveniles and young adults

2.1 The problem of the Belgian statistics on juvenile delinquency

In fact we can simply state that, since the end of the 1980s, no reliable police and/or judicial data on the phenomenon and on the prosecution of juvenile delinquency have been collected in Belgium. The systematic production and accessibility of data on juvenile crime and crime control has long been a problem. Figures, if available, are scattered over several federal, regional and local agencies and hence are neither reliable nor comparable (*Goedseels* 2002, p. 30). Officially published police statistics do not specify age as a descriptive parameter. This means that there are no specific juvenile delinquency statistics available at this level. Thus, on the basis of these statistics it is impossible to establish how many youngsters came into contact with the police and for which offences. Only regional data and fragmented figures exist, for example, regarding local phenomena of delinquency.

Basic judicial statistics on youth prosecution and Juvenile Courts are partial and inadequate for the period since the 1980s. As described above, the Belgian Juvenile Court has jurisdiction over youngsters (1) charged with committing "facts described as a penal offence", (2) who are considered to be in danger. The formerly existing Juvenile Court statistics, designed with a merely administrative (caseload) goal, were classical activity statistics (*Vanneste et al.* 2005). These statistics only made it possible to distinguish between young delinquents and "problematic" youngsters. No figures were produced on delinquent behaviour as such. However, after 2000 not even these basic judicial statistics were published. The authorities in Belgium were and are simply not able to give a correct indication of the amount of youngsters that come into contact with the juvenile justice system, of the offences prosecuted and of the measures and interventions decided upon them. Therefore we cannot provide information on trends in juvenile crime for the past decades. However, we hope that juvenile justice policy will change in that respect.

2.2 A governmental project - first report on prosecution figures for 2005

Recently a governmental project on juvenile justice statistics resulted in a first report on prosecution figures for 2005 (*Vanneste et al.* 2007). The year 2005 can be considered as reference year zero. Although the published figures concern only the number of minors and their "facts" that were communicated to the public prosecution office by the police or by welfare agencies, it is still a start.

We still do not have any data on the treatment and social reaction by the juvenile justice system. Nevertheless, what do these statistics tell us about youngsters brought into the Belgian juvenile justice system?

In 2005 more than 66,000 minors in more than 82,000 judicial cases were registered at the Public Prosecutor's office. They represent about 3.3% of the Belgian population under the age of 18. More than half of them entered the judicial system for offences (55%), the other 45% because of problematic or dangerous behaviour (*Vanneste et al.* 2007). Of all youngsters registered at the Public Prosecutor's office almost 65% were boys and 35% were girls. However, this gendered image changes when we look at the delinquent and non-delinquent cases. Juvenile delinquency cases are characterised by a greater gender difference: 77% boys against 23% girls (*Vanneste et al.* 2007, p. 45). In non-delinquent cases (problematic behaviour, pre-delinquency or victim situations) these gender differences are non-existent: 52% boys and 48% girls (*Vanneste et al.* 2007, p. 45).

The average age of all registered youngsters is about 12.5 years, but here again there is an important difference between delinquent and non-delinquent cases. Youngsters registered at the Public Prosecutor's office for delinquency were aged around 14 to 15 years on average. Those registered because of problematic behaviour or dangerous circumstances were generally younger (average age around 10.3 years). The figures of the 2005 report confirm the age-linked evolution of juvenile delinquency, showing an important increase of reported delinquent behaviour in the older (16 and 17 years) age groups (*Vanneste et al.* 2007, p. 47). Juvenile delinquency reported and registered in 2005 mainly concerns property crimes (42%), followed by violent crime (17.8%, various offences against persons). Traffic-related offences represent 14.4% of all registered delinquent acts, followed by drug-related behaviour (11.3%) and offences against public authorities (10.2%) (*Vanneste et al.* 2007, p. 50). However, it is important to note local differences between judicial districts, and between the three Belgian communities in relation to the categories of cases (delinquent and non-delinquent) as well as the categories of offences.

2.3 Self-report studies

Official and administrative data can provide a constructed and misleading image of juvenile offending behaviour. Self-report studies were invented precisely to escape these limitations and to expose juvenile delinquent behaviour beyond judicial registration. In Belgium (official) systematic national self-report data is not available. Since the 1970s, self-report research has been carried out by different official as well as academic stakeholders (*Born* 1987; *Goedseels/ Vettenburg/Walgrave* 2000; *Junger-Tas* 1976; *Junger-Tas et al.* 1994; *Spaey* 2004; *Vercaigne et al.* 2000; *Vettenburg et al.* 2007). Hence, these studies used different survey instruments, targeted different delinquent or problematic behaviour,

and different age groups and were used with very different population samples. Therefore, the available Belgian self-report data are difficult to compare over time and space. However, we can say that these studies confirm the general findings of self-report studies from other countries. For example, they confirm that a considerable share of young Belgian respondents admit to having committed at least one offence in the past year (over 50%) (*Van Dijk et al.* 2006). Regarding age, the same curve occurred as in other studies: a peak at the age of 15-16 and a decline from the age of 17 (*Goedseels et al*. 2000). Another important general result of these self-reports is that most offences (70-90%) are never discovered (*Goedseels et al.* 2000). Recently, Belgian researchers participated in the ISRD-2 survey (*Gavray/Vettenburg,* for the 2005 EU-study see *van Dijk et al.* 2005). However, the results of this international self report study are not yet available.

3./4. The sanctions system and juvenile justice procedure according to the new Belgian Youth Justice Act of 2006

As mentioned in the historical introduction, due to the complex state structure of Belgium, and hence the need to find political compromises, a general reform of the Youth Protection Act of 1965 has not been achieved (*Brolet/Dumortier* 2004). This means that the "old" Youth Protection Act and the age of criminal responsibility at 18 still remain the basis of the new legislation. The aim of the reform of 2006 was "only" to "modernise" the old Act. Nevertheless, this modernisation has reformed the old welfare model in quite a fundamental way by introducing aspects of restorative justice and "just deserts". The aim of making young delinquents (and their "failing" parents) more "responsible" for their delinquent acts has often been stressed in policy documents that accompany the recent reform (*Christiaens/Dumortier* 2006).

When a juvenile has committed or is alleged to have committed a criminal offence, three levels of interventions are important: (1) the Police, (2) the Public Prosecutor and (3) the Juvenile Judge.

3.1/4.1 The Police

At the level of the police authorities, the new Act of 2006 does not foresee anything new. According to the law, the police act under the authority of the Public Prosecutor, to whom they have to report all crimes. In theory the police cannot decide to withdraw charges, nor do they have any autonomous competence to respond to acts of juvenile delinquency. In practice, however, they often give unofficial warnings (cautions) and may also require juveniles to participate

in educational training such as traffic courses or to make restitution for minor damages (*Van Dijk/Dumortier/Eliaerts* 2006).

There exist no specific legal rules for arrest and police custody of minors. The *Cour de Cassation* decided that, like in adult cases, deprivation of liberty of a minor should be confirmed within 24 hours by a (juvenile) judge (*Cour de Cassation*, 15/05/2002). The minor should then be transferred to a youth institution. The individual rights of juveniles during police custody are not clearly regulated. Assistance of a lawyer is only provided before the Juvenile Court (compulsory) and during mediation procedures (optional).

3.2/4.2 The Public Prosecutor

When confronted with an offence committed by a minor, the Public Prosecutor has always been authorised to dismiss the case. Besides these traditional competences of the Belgian Public Prosecutor, the new Act introduces three possibilities for action on juvenile delinquency. From now on, the Public Prosecutor can issue the youngster and his/her parents with (1) "a warning", (2) a "mediation offer", or (3) a "parental stage". These two last measures require some further description.

The introduction of mediation in the old welfare system is one of the major innovations of the new Act of 2006. Mediation has been made possible both at the level of the Public Prosecutor and at the level of the juvenile judge. Following the new Act, the participants must be explicit in accepting mediation. Entitlement to legal assistance is foreseen and the law guarantees the confidentiality of the mediation process. Nevertheless one might wonder whether these legal provisions are and can be guaranteed in practice. The offer of mediation, for example, is initiated by the Public Prosecutor, who has the power to prosecute whenever a youngster does not voluntarily agree to participate in mediation, or by the juvenile judge who can always react more "thoroughly" when there is no co-operation (*Eliaerts/Dumortier* 2002).

It should also be mentioned that mediation is not a real alternative or "diversionary" approach in the traditional welfare model. Even when mediation is successful the Public Prosecutor can still prosecute the youngster and, at the level of the juvenile judge, mediation (even in successful cases) can be cumulated with other measures (see below). In this way, mediation seems to become one out of many possibilities in the panoply of welfare measures. The purpose of this reform is that this loss of diversionary aspirations (discharge, non-intervention) will lead to more serious cases being sent to mediation processes, since the judicial actors are always in a position to demand or impose extra measures when mediation does not result, in their eyes, in a sufficient reaction vis-à-vis the youngster. Again one might wonder how this kind of reasoning is reconcilable with the diversionary philosophy of "giving back the conflict" and withdrawing judicial control (*Christiaens/Dumortier* 2006).

Moreover the recent General Comment no. 10 on children's rights in juvenile justice of the UN Committee for the Rights of the Child (2007) clearly states that "the completion of the diversion by the child should result in a definite and final closure of the case" (§ 27).

The introduction of the parental stage is another important innovation of the new Act of 2006. As is the case with mediation, parental stages can be imposed by both the Public Prosecutor and the juvenile judge. According to the legislature, this new reaction should be seen as a "sanction" targeting failing parents who "clearly show a lack of interest" for the delinquent behaviour of their offspring. This parental stage consists of 30 hours and in general includes individual as well as group counselling. Parents who refuse to follow these parental classes can be punished with a fine or imprisonment (for a maximum of seven days). The new possibility to punish parents for the delinquent behaviour of their children, together with the use of vague legal descriptions, has been heavily criticised by academics and fieldworkers (*Delens-Ravier* 2008). The Constitutional Court saved the Belgian legislature, however, by claiming that the new "sanction" against parents was in fact a "welfare measure" aimed at sustaining these failing parents (*Constitutional Court*, 2008, Arrêt n. 49/2008, B.8.2).

Finally, it should be noted that the new Act does not foresee the possibility of imposing community service or intermediate treatment at the level of the Public Prosecutor. This leads to the supposition that these actions are no longer tolerated under the new Act, even though research has demonstrated their growing importance in daily practice, at least in certain judicial districts (*Van Dijk/Dumortier/Eliaerts* 2006).

3.3/4.3 The Juvenile Judge

As mentioned above, since the Children's Act of 1912 and re-confirmed by the Youth Protection Act of 1965, the juvenile judge has been a single seated and "specialised"[1] judge who follows the youngster throughout the whole judicial process: pre-trial phase, trial and enforcement (post-trial phase). The new Act of 2006 did not change this old idea of the welfare-oriented juvenile judge completed with the Legal Rights Act of 1994.

The central criterion of judicial intervention is "the best interest" of the child. Emphasis is laid on reintegration and rehabilitation through "protection measures". Since the Legal Rights Act of 1994 these protection measures are always amenable for appeal and the presence of a lawyer is compulsory

1 This specialisation refers to the fact that the juvenile justice judge, even though he/she is an "ordinary" judge of the *Tribunal de Première Instance* (and so definitely a "jurist"), is also used to handle juvenile cases and shows a specific interest in children's matters (e. g., by pursuing further training or conferences on children's matters).

whenever the juvenile judge wants to impose a (new) measure. Appeal is handled by a single seated juvenile judge of the Court of Appeal (*Cour d'Appel*). During trial the court hearings are public, but names or other private information on the minor (and his or her family) cannot be disclosed by the press or media. Law obliges to fully respect the privacy of the minors at all stages of the proceedings.

Nevertheless the new Act of 2006 did introduce a new list of criteria to render judicial decisions more objective (whether they are made during pre-trial, trial or execution of measure). This list refers to criteria, among others, like "the personality of the minor", but also "the seriousness of the offence" and "public safety". At the same time the criteria for the decision to place a minor in public "Community Institutions" became more stringent. Age limits, as well as criteria concerning the seriousness of the offence were introduced. These new criteria are applicable for all placements in "Community Institutions" at every stage of the judicial procedure (pre-trial, trial, enforcement), but will be covered in *Sections 10-12* below on residential care and pre-trial detention.

During the pre-trial phase, the juvenile judge can take "provisional measures" in order "to investigate the youngster's personality and home situation" (an investigation run by the social services of the Juvenile Court) and, if necessary, "to guard" him. Within that scope, the juvenile judge can either place the youngster "under supervision" of the social service of the Juvenile Court (with or without the imposition of additional conditions), or impose a measure of "provisional placement" (with a competent person, in a private institution or, under certain conditions, in a public "Community Institution").

The new Act states that these provisional measures should only be taken for the shortest time possible and that they should never be issued with the aim of sanctioning youngsters in an immediate way. Nevertheless we notice that the "provisional measures" can consist of fulfilling 30 hours of community service, interdiction on leaving the parental house, and placement in a "closed" public Community Institutions (see also *Sections 10-12* on residential care below). Hence the "provisional measures" in practice leave plenty of possibilities to *sanction* a minor immediately during the pre-trial phase. At the same time the Act does not foresee real stringent criteria concerning the duration of the measures during the pre-trial phase. Moreover, pursuant to the new Act, these provisional measures can also be cumulated.

Besides these traditional "provisional measures" the new Act also allows the juvenile judge to offer mediation during the pre-trial phase, which again may be cumulated with other measures.

As a consequence, one can easily claim that the new Act offers very broad possibilities to intervene during the pre-trial phase even though research has identified the growing importance of the pre-trial phase as the "decisive phase" and the tensions this brings with the respect of human rights and children's rights, like the right to a fair trial (before any measure is taken instead of

afterwards) (*Dumortier* 2006; *Van Dijk/Dumortier/Eliaerts* 2006). As a counterforce, the new Act of 2006 stated that these provisional measures could only be imposed when there are "sufficient serious indices of guilt". However, quite remarkably, the Belgian Constitutional Court thought this to be unconstitutional. After all, the judge that has decided whether there are indices of guilt during the pre-trial phase cannot be allowed to sit during the trial phase (i. e., the right to an independent judge). Instead of introducing the obligation of a different juvenile judge during trial, the Constitutional Court has opted to abolish a new legal guarantee for youngsters during the pre-trial phase (Constitutional Court, 2008, Arrêt n.°49/2008).

Finally it should be mentioned once again that the Everberg Act of 2002 allows the juvenile judge to place a minor in pre-trial detention in the Federal Centre of Everberg, which further widens the juvenile judge's possibilities to intervene during the pre-trial phase (see *Sections 10-12* below on residential care and pre-trial detention).

Once *at trial* the juvenile judge has a range of measures at his or her disposal. In contrast with the old Act of 1965, the sentencing guidelines in the new Act of 2006 foresee the principle of subsidiarity. First of all, the juvenile judge has to consider a mediation or group conferencing, then a "written project proposed by the youngster", then the possibility of imposing a measure of "supervision" (with or without further conditions) and only as a last resort the possibility of a custodial sentence (by preference in an "open" institution, otherwise in a "closed" institution). These measures, which can be imposed in a cumulative way, call for some further elaboration.

Firstly, we notice again the importance of restorative justice initiatives in the new Act. As contrasted with the level of the Public Prosecutor, besides victim-offender-mediation, the juvenile judge can also impose a group conference (*Herstelgericht Groepsoverleg*). This group conference is characterised by the fact that both victim and offender are allowed to invite significant others and that a police officer and social worker can be present.

Secondly, the "*written project*" proposed by the minor to the juvenile judge can be aimed at restoring the damage caused by the offence, apologising, participating in mediation, following intermediate treatment for a maximum of 45 hours, etc. This "written project" is an innovation that is surrounded more by questions than by answers. It is not quite clear what the legislature exactly expects from this measure, nor how this "written project" should emerge in practice. We assume that the lawyer of the minor will have to play an important role in informing and encouraging here. Otherwise, if the social services of the Juvenile Court or the juvenile judge should even whisper what the minor should propose, this written project can easily become an instrument to "self inflict" what the Juvenile Court in fact wants to impose (*Christiaens/Dumortier* 2006).

Thirdly, a wide range of community measures are foreseen to keep the minor in freedom instead of placing him/her in custody: warning (*admo-*

nestation), supervision by the social services of the Juvenile Court (with or without further conditions), intensive educational supervision, community service for a maximum of 150 hours, community treatment by psychological services, etc. It is important to note here that only the first three measures can be imposed on children under the age of 12 years, thus excluding the possibility of imposing community service on young children.

Fourthly, the new Act introduces a diversification of the possibilities to residentially place a minor. Besides the old possibilities to place a youngster (1) with a "competent private person" (foster family), (2) in a private institution or (3) in an "open" or "closed" Community Institution, the new Act of 2006 creates the additional possibilities to (4) place a minor with a "(legal) corporate body" in order to fulfil a "positive achievement" or (5) to place the minor in a hospital, in a service that organises withdrawal courses (alcohol, drugs) or in an "open" or "closed" juvenile psychiatric institution.

As mentioned above, the new Youth Justice Act of 2006 introduced new legal criteria for the placement of minors in Community Institutions (see *Sections 10-12* below). Moreover, pursuant to the new Act, the juvenile judge has to specify in his or her judgment the duration of the placement, a duration that can only be prolonged in the exceptional case of "continuously bad behaviour" or "dangerous behaviour towards oneself or others". The new Act also introduces the possibility for juvenile judges to adjourn placement if the minor is prepared to perform up to 150 hours of community service.

To complete this overview of the juvenile judge's options at trial, one should not forget that the juvenile judge can also transfer juvenile delinquents aged 16 and above to adult courts (see *Section 9* on the transfer of youngsters) and/or impose a parental stage (see above).

During the execution of the measure, the juvenile judge can revise the measure at any time, always taking into account the legal criteria imposed by the new Youth Justice Act (especially concerning placements in Community Institutions). Finally, in principle all measures imposed by the juvenile judge end at the age of majority (18 years). Nevertheless, the juvenile judge can extend provisional measures until a person turns 20. Measures taken at trial can also be prolonged until the minor turns 20 if he/she requests this or in case of "continuously bad or dangerous behaviour". In cases where a minor committed an offence after the age of 16 or in cases of very serious offences committed by children older than 12 years, the juvenile judge can even prolong measures until the offender has turned 23.

5./6. Sentencing practice: Diversion and alternatives

As explained above, due to the Belgian state structure and the division of competences related to juvenile justice practice, we are confronted with a lack of integrated federal and regional statistical data since the 1980s. Because of this

lack of simple statistical data, we are unable to say how many youngsters are tried by the Belgian Juvenile Courts and what measures are imposed on them. Nevertheless some scarce sources are available.

On the one hand, we can rely on scientific research, as for example *Vanneste's* research on the decisional practice of the Belgian juvenile magistrates in 1999 (*Vanneste* 2003). These insights are rather out-of-date, of course, and they take no account whatsoever of the new Act of 2006, and hence they should be tested by new and more recent research. On the other hand, we can work with the (fragmented) data from the French and Flemish communities on the execution of measures (alternatives, community services, education, mediation etc.). As a consequence, these data (on how many youngsters passed through institutions and services of the communities) cannot be linked to the general population tried by the Juvenile Courts. Thus, it is impossible to contextualise this quantitative information.

Moreover, the development of diversionary and alternative sanctions within the Belgian context is complex. The Belgian system theoretically had no provisions for diversion or informal ways of dealing with young offenders at the level of the police or Public Prosecutor. However, the rise of "alternative sanctions" in the 1980s was clearly a bottom-up movement, setting up all kinds of diversionary and alternative sanctions projects in the field. These pilot experiences (1980s) were generalised during the 1990s, but with clear differences between the northern, Flemish speaking community and the southern, French speaking community. Most notable are the differences in the development of restorative justice mediation practices.

Research has made clear that in the 1990s diversionary or informal ways of sanctioning young offenders (*Vanneste* 2003) were still very "marginally" applied in practice. Only 4.2% of the prosecutor's decisions concerning young offenders resulted explicitly in an alternative sanction (*Vanneste* 2003). For example, youngsters who successfully completed community service or victim-offender mediation would not be prosecuted before the Juvenile Court. In about 70% of all cases, the Public Prosecutor's decisions resulted in a dismissal of the case. However, these dismissals may represent the front window for a more informal practice of dealing with young offenders (diversion).

The new Act of 2006 formalised these practices of diversion and (in)formally dealing with young delinquents at the level of the prosecutor. The cautioning of young offenders and their parents was formally introduced as a "low level" intervention. Indifferent parents of young offenders can also be required to follow a parental stage. More important was the formalisation of restorative mediation as an early reaction to juvenile offending. Within the reformed Belgian juvenile justice system, priority must be given to the principle of restoration. However, no data are available about these "new" ways of dealing with young offenders at the level of the Public Prosecutor.

The 1965 Act provided alternative ways for dealing with young offenders by the juvenile judge and the Juvenile Court. It was not until the 1980s that this sanctioning practice was set up through different local pilot-projects. In general, the discourse held that these sanctions had to be an alternative to the detention or placement of young offenders in public institutions. However, studies of Belgian informal practice illustrate quite the opposite: these alternative ways of dealing with young offenders functioned more as an alternative to the dismissal of cases, resulting in net-widening rather than in a "deinstitutionalisation" or a reduction of incarceration of youngsters (*Vanderhaegen/Eliaerts* 2002). *Vanneste's* research on the decisions of juvenile judges and Juvenile Courts (in 1999) reveals that only 16% of imposed measures were alternative sanctions. Detention or placement in an institution remained central to the sentencing practice of the Belgian Juvenile Courts and judges (*Vanneste* 2003). Almost 50% of the sentencing decisions in 1999 were of a custodial nature, a significant proportion involving confinement in closed public institutions (26%). Community measures (alternative sanctions or probation) are used more frequently and account for 48% of the sentencing practice of Juvenile Courts and judges. These measures involve imposing community service or an educational training programme (16%), a measure of supervision by the social services (18%) or a reprimand (14%). Transferring youngsters to the adult courts remains exceptional (3% of all judgements).

7. Regional patterns and differences in sentencing young offenders

As mentioned above as a result of federalisation in the 1980s the three regions/communities of Belgium are competent for the execution of educational measures as well as for the legislation and interventions towards "children in danger".

As mentioned as well (see *Sections 2* and *5/6*) there are no statistics available regarding the development of juvenile delinquency nor regarding sentencing practices. But nevertheless there are some regional differences in these informal as well as formal sentencing practices. These regional (north-south) differences are rooted in different public policies towards alternative sanctions and measures related to the regional competences. On the one hand, over the past 20 years, community services developed rapidly in the French-speaking community with community service measures being imposed in up to 1,200 cases in 2004 (*Vanneste et al.* 2005, p. 25). On the other hand, restorative mediation was less developed and utilised in the French-speaking community. In the French-speaking judicial districts, mediation imposed at the prosecutor level accounted for an average of 250 young offenders per annum (between 2001 and 2004). Mediation ordered by the Juvenile Court or judge amounted to 140 per

annum (*Vanneste et al.* 2005, p. 25). A follow-up study will be necessary to analyse how the formal introduction of restorative mediation in 2006 within the Belgian juvenile justice system will eventually change this practice in the French-speaking region.

In Flanders the situation is rather inverted. There, restorative justice mediation was successfully developed and has become the most important alternative measure for young offenders: in 1999 about 600 juveniles were sent to mediation, today (2007) almost 3,500 youngsters are sent to the mediation services by the prosecutor or by the juvenile judge (www.osbj.be). This success of mediation in Flanders can be linked to the Flemish policy, influenced by the strong presence of the restorative justice perspective through the work of *Lode Walgrave* and his research group at the University of Leuven. The introduction of family group conferences in the Flemish community must be understood in the same way. At the beginning of the 2000s a pilot project was set up (*Vanfraechem/Walgrave* 2004). The reform of 2006 formally introduces and confirms the pilot practice of the family group conferences introduced two years previously. In 2007, 32 family group conferences were arranged by the Flemish services (www.osbj.be). However, data concerning the daily practice of the mediation process reveals a more modest "success" (www.osbj.be). Less than half (44%) of all cases of mediation are actually successful. Most mediation sessions consist of simple contact between the service and the offender or the victim (48% in 2005 and 56% in 2007). The same data from the Flemish community demonstrate that only a small part of all started mediation procedures result in direct contact between victim and offender (9% in 2005). Moreover, there are important geographical differences. In 2005 the Antwerp district produced one-third of all mediation cases in the Flemish community (*Van Doorselaer* 2005, p. 210). Thus, restorative justice practices with young offenders within the Flemish community can not be called an overwhelming or all-around success.

As will be mentioned later there are regional differences in court transfers (see *Section 9*) and placements in residential care and pre-trail detention (see *Sections 10-12*) as well.

8. Young adults (18-21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

There is no category of young adults in Belgium. An offender who is 18 years and older at the time of committing a crime, is considered to be an adult, thus criminally responsible and within the scope of the adult criminal justice system.

There are no special provisions for young adults within the Belgian criminal justice system: for example, there is no possibility to transfer young adults aged

between 18 and 21 to the juvenile justice system or to apply protective child welfare measures in these cases.

As mentioned above (see *Section 3.3/4.3*) in some specific cases the juvenile judge can extend provisional measures until the age of 20 years or even 23 years. However, this is reserved for offenders who were under 18 at the time of offending.

9. Transfer of juveniles to the adult court

Since 1992 the age of criminal and civil majority in Belgium has been 18 years. Above this age young adults are considered to be adults. Under this age youngsters are prosecuted within the juvenile justice system. However, two exceptions to this general rule exist: (1) transfer or waiver, and (2) youngsters aged 16 or more who are prosecuted for traffic-related offences are automatically brought before the Police Court. The Police Court, if it considers a welfare measure to be more adequate or necessary, can "transfer" the juvenile to the juvenile justice system.

In 1912 the age limit of criminal responsibility was 16 years. By 1965, the debate on whether or not to raise the age of criminal responsibility resulted in a compromise. The age of criminal responsibility was raised from 16 to 18 with the Youth Protection Act of 1965 (YPA). Under that legislation, juvenile offenders under 18 were tried by the Juvenile Court. However, if the Juvenile Court judged that youth welfare measures were not suitable (or were no longer suitable) in order to rehabilitate the young offender, it could transfer the youngster to an adult court.[2] The 1965 YPA considers transfer to be an exceptional decision. The legislature created this exceptional mechanism for young offenders "steeped in anti-social behaviour" (*Lox* 1966). In other words, transfer was created for the so-called "hard core" or serious young offenders. As the transfer mechanism was intended to be exceptional, the Juvenile Court was required to give extensive justification for its decision. Although the criteria for transfer were not specified, the personality of the young offender was decisive in the decision whether or not to transfer a case. For this reason, in order to obtain relevant information on the personality and the social context of the young offender, two inquiries were (and still are) required: a medical-psychological examination, carried out by a psychiatrist, a psychologist or a multidisciplinary team of experts, and a social inquiry, carried out by social workers (*Nuytiens et al.* 2005). Neither the seriousness of the offence nor previous contacts with the juvenile justice system were prerequisites for a transfer. The Juvenile Court

2 In fact, the Juvenile Court transfers the case to the Public Prosecutor, who – theoretically – can still dismiss the case or propose mediation. In practice, this only happens sporadically, because as a rule, it is the Public Prosecutor who requests the transfer.

could take these elements into account, however, if they provided information on the personality of the young offender (*Goiset* 2000).

Since transferred offenders were equated with adults, all criminal penalties could be imposed, including imprisonment. Life imprisonment could be imposed, and prison sentences were served in adult prisons (*Nuytiens et al.* 2005). Although international conventions prescribe the separation of children and adults, transferred offenders usually share accommodation with adult prisoners (*Nuytiens et al.* 2006).

Surprisingly, although politicians came under heavy pressure and a retributive discourse prevailed, the lower age limit (16 years) for transfer was not altered. With the reform of 2006, the regulations concerning criteria, motivation, the authorised adult court and punishment after transfer were altered. First, the criteria for transfer were slightly adapted. A young offender, because of the seriousness of his crime or because a previous welfare measure had proven ineffective, could be transferred to the adult penal system. The 2006 Act introduced two non-cumulative criteria for transfer to an adult court. First, a fixed list of offences eligible for transfer. Hence, transfer is now restricted to young offenders who commit serious offences such as rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide. This amendment of the law in fact consolidates practice, as juvenile judges indicated that they do consider the gravity of the offence. Mandatory sentencing in the Crown Court for grave offences, as in England and Wales, was proposed, but not retained.

Furthermore, the transfer decision has to be preceded by at least one youth measure. However, our research reveals that one out of five youngsters transferred to an adult court were never previously convicted by the Juvenile Court. On the other hand, the Juvenile Court had never imposed any youth measure before transfer on only 1.4% of the transferred offenders. This means that in most cases, transfer is indeed preceded by a youth measure, but this measure is generally imposed in the preliminary phase, often without a conviction. Bearing in mind the overrepresentation of "first offenders", it may be more relevant to adopt the requirement of a previous conviction.

Secondly, the transfer to the adult criminal courts was reformed. From 2006 onwards, transferred juvenile offenders are tried by a special Extended Juvenile Court that has to apply (adult) penal law. Before the change in law, transferred offenders were actually tried by adult courts. The young offender appeared before the Magistrates' Court[3] or the Crown Court[4] depending on the gravity of the offence(s). With the 2006 Act, the "Extended Juvenile Court" was

3 In Dutch: *Correctionele Rechtbank*.

4 In Dutch: *Hof van Assisen*. This Court, where professional judges are assisted by 12 laymen, deals with the most serious offences.

established.[5] The Extended Juvenile Court would pass judgment on less serious offences, and the most serious crimes would still be sentenced in the Crown Court. However, the Constitutional Court annulled this provision because it would engender inequality. While one group would be tried by specially trained judges, the other group would be sentenced by judges without any special youth justice training. In order to restore an equal situation, the Government has chosen to abandon this two-track model. In future[6] all transferred offenders will appear before the Extended Juvenile Court.[7] This court applies the rules of criminal law. Hence, all criminal penalties – including prison sentences – can be imposed, with the exception of life imprisonment. As a result, the upper limit is now 30 years of imprisonment. The reform of 2006 abolished the life sentence for minors (under the age of 18), establishing the maximum penalty at 30 years of imprisonment. Finally, the execution of custodial sentences for transferred young offenders will take place in specially established federal youth detention centres.[8]

In the past the Juvenile Court seldom resorted to a transfer. Transfer decisions constitute only 3% of the Juvenile Court's judgments (*Vanneste* 2001).[9] The number of transfer decisions fluctuated between 104 and 150 in the years 1999-2003 (*Nuytiens et al.* 2005).

Table 1: Number of transfer decisions between 1999 and 2003

Year	**1999**	**2000**	**2001**	**2002**	**2003**
Absolute number of transferred juveniles	104	127	128	150	139

However, the application of transfer shows remarkable geographical diversity. Firstly, transfer was used far more often in the French speaking part of Belgium. Second, it seems that, for the years 1999, 2000 and 2001, 86% of all transfer decisions were imposed in only 7 of 27 judicial districts. Moreover, the

5 While the Juvenile Court is presided over by one juvenile judge, the Extended Juvenile Court consists of two juvenile judges and one judge of the Correctional Court.

6 The law has to be adapted by 2009. At the time of writing, transferred offenders still appeared before the Crown Court.

7 Another option would be, e. g., installing a specialized Crown Court for transferred offenders, a solution proposed by the Constitutional Court as another option.

8 The same goes for pre-trial detention. At the time of writing these federal youth prisons still had to be created.

9 The Juvenile Court can make preliminary decisions as well as definite decisions ("judgements"). Only a judgement can hold a transfer decision.

Juvenile Court of Brussels proved to be the absolute winner, accounting for 47.1% of all transfer decisions (*Nuytiens et al.* 2005).

In general, we can state that transfer of youngsters in Belgium has been (until now) practised moderately and modestly. Due to small fluctuations in the numbers over a short period of years, it can be read as an increasing trend or otherwise as a rather stable phenomenon. The transfer possibility within the juvenile justice system can be described as a political and policy-sensitive mechanism. Hence, increased media and political attention for certain phenomena of youth crime, local prosecution policies or capacity problems and overcrowding in the residential (closed) youth institutions can produce important differences from year to year or between districts.

Transferred youngsters are brought before adult penal courts and are subjected to (adult) penal law. A recent analysis of the penal outcome of transferring youngsters to the criminal courts reveals that an important proportion of transferred youngsters pass through prison at some point (*Nuytiens et al.* 2006). This is mainly due to the use of pre-trial detention during their penal trajectory. Indeed, only 17.4% of transferred minors are sentenced to immediate imprisonment. Most of the transferred youngsters are convicted to a (partly) suspended sentence (probation or postponement of sentence) (*Nuytiens et al.* 2006).

The fact that, henceforth, (1) transferred young offenders will be tried by an Extended Juvenile Court and (2) special federal detention centres will be opened, could alter the exceptional character and moderate practice of transfer in Belgium. Further empirical research will have to look into the effects of this possible "adulteration" of the Belgian juvenile justice system.

10.-12. Residential care and pre-trial detention

Only public institutions are allowed to organise the detention of minors in Belgium. However, the first federal institution that specifically aims to detain minors during the pre-trial phase, the Everberg Centre, was opened as recently as 2002. Before 2002, during the pre-trial phase the juvenile judge could place a youngster in an open or closed Community Institution. These Community Institutions treated indiscriminately the juveniles who were placed there during the pre-trial phase and those who were sentenced to custody there after trial. Exceptionally, when there was no place available in these Community Institutions, the juvenile judge was allowed to place a minor in an adult prison for a maximum of 15 days (Article 53 of the Youth Protection Act of 1965). As mentioned earlier, in practice this latter opportunity led to the imposition of "short sharp shock" detention, and in 1988 the European Court of Human Rights condemned this practice in the case of *Bouamar v. Belgium*. When Belgium finally abolished Article 53 in 2002, and with it the possibility of placing minors in adult prisons during the pre-trial phase, this situation immediately drew media attention to the

release of young delinquents due to a claimed lack of capacity in the Community Institutions. Only two months after the abolition of adult detention during the pre-trial phase, the Everberg Act of 2002 was passed and an old military casern situated near the village of Everberg received its first delinquent boys (*Christiaens/Dumortier* 2002).

Consequently, there are now two kinds of youth detention institutions: (1) the more welfare-oriented Community Institutions where pre-trial and convicted youngsters are mingled indiscriminately together, since the main aim of these institutions is the welfare of the child, and (2) one federal centre that is emblematic of the emerging penal-oriented approach and functions solely as a pre-trial youth detention centre in order to protect public safety.

A growing detention capacity

Following the federalisation process of the 1980s and during the 1990s, closed (secure) detention capacity for juveniles was limited to around 100 places in Belgium.

Table 2: Capacity of residential institutions

	Closed places boys	Closed places girls	Open places boys	Open places girls	Total places
Flemish Community	90	40	126	10	266
French Community	80	5	110	34	229
Belgium	170	45	236	44	495

However, at the time of writing, the Belgian public institutions comprised a total capacity of approximately 500 places (see *Table 2*). The capacity for closed (secure) detention has almost doubled since 1997. Most of these institutions are run and managed by either the Flemish or French-speaking Community, but as just mentioned, one institution has been created by the federal authorities – the Everberg Centre – in order to protect society against serious delinquent boys for whom there is no place available in Community Institutions. Recently, the Federal Minister of Justice "proudly" announced the creation of new Everberg-like institutions (in old 19th century prisons), increasing federal capacity up to a total of 330 places. This announcement confirms the trend that started at the end

of the 1990s towards increasing the overall detention capacity for minors in Belgium.

Community institutions

Community Institutions can be characterised as open or closed institutions. The former, in general, have less rigid disciplinary regimes and provide more possibilities for exiting the institution (for reasons of schooling, visiting parents, etc.). The latter provide a more structured daily regime with fewer possibilities to leave the institution, focussing more instead on the protection of the public.

Pursuant to the new Youth Justice Act of 2006 certain legal criteria should be fulfilled in order to place a minor in a community institution (whether this happens during the pre-trial phase, at trial or after sentencing). Minors who have reached the age of 12 and who have committed (or are alleged to have committed) an offence of a certain seriousness (punishable with three years of imprisonment or more if the offence was committed by an adult) can be sent to "open" Community Institutions. For "closed" institutions the criteria are even more stringent. The minor has to be at least 14 years old (in exceptional cases the age of 12 is accepted) and should have committed (or be alleged to have committed) an offence punishable with at least five years imprisonment if the offence had been committed by an adult. Certain "violent offences" can also result in placement in open or closed Community Institutions. In cases of recidivism the legal criteria concerning the seriousness of the offence become less stringent for both types of institutions (*Christiaens/Dumortier* 2006). Minors who have not complied with a protection measure imposed by the juvenile judge can also be sent, under certain conditions, to an open or closed Community Institution. In this case a clear maximum duration of six months is prescribed, with no possibility of extension.

The Community Institutions play a double role in Belgian juvenile justice practice. On the one hand they fulfil a mission of observing and guarding the minor during the pre-trial phase. This leads to an "observation report" which should guide the juvenile judge in imposing the most appropriate measure during trial. On the other hand the Community Institutions also have a mission to re-educate minors who have been sent there by the juvenile judge following trial. However, there is no specialisation at the institutional level in this perspective since all minors are mingled.

A placement in a Community Institution during the pre-trial phase is normally ordered for three months, a period that can be prolonged by the juvenile judge once for three months and subsequently on a monthly basis. At trial, when the juvenile judge wants to order a placement in a Community Institution, he has to specify the duration of the placement, a duration that can be prolonged by the juvenile judge in the exceptional case of "continuously bad

behaviour" of the youngster or "dangerous behaviour towards him/herself or others".

Pursuant to Flemish legislation, minors who grow up in a "problematic educational situation" can also be placed in (Flemish) Community Institutions. Hence the Flemish Community Institutions can have a mixed population of delinquent and non-delinquent minors. In practice this situation especially occurs in the community institution for girls at Beernem (Flanders).

Concerning girls, it should be mentioned that there are some important differences between the Flemish community and the French communities, the latter investing more in open places for girls than in closed (secure) places. Again, however, it should be mentioned that in practice the "closed places" for girls in Flanders resemble much more the "open places" for girls in the French community than, for example, the "closed" and high-security places for boys in Everberg. The institutional capacity for girls has also been increased since the 1990s. The construction of a "cage" in the open Community Institution for boys at Mol is noteworthy, which consists of ten "closed places" for girls. There is no "mixed education" within this institution. On the contrary, the girls and boys are separated by fences.

When we finally take a look at the educational and pedagogical programmes in youth Community Institutions, we should first of all mention that there are important differences between the Flemish and French communities. In the French-speaking public institutions, there is a growing diversification of the daily regimes and the duration of placements (see *Table 3*) depending on (1) the aim of placement (observation, orientation, "reception of the minor" or education) and (2) whether the institution is open or closed, the latter being more oriented towards the protection of the public and hence characterised by a more rigid regime.

Table 3: Diversity of regimes and of maximum duration of placement in the French-speaking Community

	Education/Open regime	Orientation/ Open regime	Reception/ Open regime	Education/ Closed regime	Observation and orientation/ Closed regime
Braine-Le-Château				Undeterm. duration (33 places)	30 days (10 places)
Fraipont	Undeterm. duration (36 places)		15 days (10 places)	3 months (11 places)	
Wauthier-Braine	Undeterm. duration (22 places)	40 days (10 places)	15 days (10 places)		40 days (10 places)
Jumet	Undeterm. duration (12 places)	40 days (10 places)			
Saint-Servais (girls)	Undeterm. duration (24 places)		15 days (10 places)	42 days (5 places)	
Everberg (Federal Centre/Fr. speaking wing)					2 months and 5 days (26 places)

Source: *Artuyvels et al*. 2009.

In the Flemish-speaking community, little (official) information and/or research on the content and effectiveness of educational programmes is available. It seems that several Flemish Community Institutions work on a "phase-based programme", meaning that all newcomers enter a "reception" phase before moving into small "group units" in the institutions. As is the case in the French-speaking community, the closed or open architecture and character of the institution plays its role in daily institutional life. Certain institutions apply a "token system" meaning that the youngsters have to accumulate a number of points distributed by the educators in order to avoid a sanction (withdrawal of a privilege).

The Flemish Community Institution of Mol recently established a "treatment unit" (*Behandelunit*) for boys exhibiting a high risk of recidivism. The educational programme in this unit consists of five consecutive phases where the boys gradually receive more liberty but at the same time more responsibilities. The

programme specifically focuses on aspects such as learning to self-impose limits, extending personal competences, and restoration, inclusion and social re-integration. The recently constructed "cage" for girls in the (Flemish) Community Institution for boys at Mol is said to function in practice as a "time out" placement for girls who do not behave well in other, more open, public or private institutions.

After-care is rarely foreseen by Belgian Community Institutions, even though in the French-speaking community, during a minor's stay in the institution much attention is given to the elaboration of a leaving project (*projet de sortie*) on what to do once a youngster is released. Finally, it should be mentioned that in most Belgian public institutions minors can be held in isolation cells.

No specific Belgian legislation exists that governs the rights of complaint for minors deprived of their liberty. Every placed minor can, however, write to the juvenile judge to complain at any time. Both the French and Flemish communities also have their own Children's Rights Commissioner who is allowed to visit the institutions at any time. The Youth Justice Act of 2006 also states that the juvenile judge has to visit minors placed in a Community Institution on a regular basis. Within the Flemish Community mention can furthermore be made of the Flemish Act of 2006 regulating the legal position of minors in the Flemish Protection System and the *Jo-lijn* (where all minors and parents confronted with the Flemish Protection System can call for information and complaints). However, these initiatives do not result in "hard enforceable rights" for placed minors.

The Federal Centre of Everberg

Besides the Community Institutions there is also one closed federal centre, the Everberg Centre. This institution only plays a role during the pre-trial phase by offering pre-trial detention for boys aged over 14 years who are alleged to have committed a crime of a certain seriousness (punishable with five years imprisonment or more if committed by an adult) and for whom there is no place available in a Community Institution. They are initially placed by the juvenile judge for a period of five days, after which the judge has to reconsider whether to prolong the pre-trial detention for one month. After that month the juvenile judge again has to reconsider whether a prolongation for one month is necessary. After a maximum of two months and five days the minor can no longer be held at the Everberg Centre.

When Everberg was opened in 2002, the federal authorities explicitly referred to the need for public safety, one of their constitutional prerogatives. As a consequence the Everberg Centre became a highly secured (prison-like) youth institution with a closely secured perimeter (double and high fences, numerous cameras), a strict daily regime, federal guards, and food brought daily from the

nearby adult prison of Leuven. Nevertheless, it was also deemed necessary to foresee a pedagogical approach oriented towards the observation and the orientation of the boys detained (cf. the observation reports produced by the Community Institutions during the pre-trial phase).

Since this pedagogical approach belongs to the constitutional prerogatives of the Communities, both Flemish- and French-speaking authorities are involved in the daily organisation and management of the Everberg Centre. Due to different priorities and cultural sensibilities we notice a different pedagogical organisation in the Flemish- and in the French-speaking wings of the Everberg Centre, the latter investing much more in social and pedagogical workers surrounding the minors. The complex Belgian state structure, sometimes quite visible "on the ground", renders the daily management of the institution complex and at times surreal (e. g. the organisation of smoking breaks has led to numerous discussions since the different authorities have different priorities and views on the issue).

Taking into account the short and security-oriented stay at the Everberg Centre, the diversity of nationalities and cultural background of the boys, and the low degree of investment in a pedagogical approach (at least in the Flemish wing), one cannot be surprised that the right to education and schooling of the child as prescribed by Article 28 of the UN Convention on the Rights of the Child is hardly met. Moreover since the Everberg Centre is not regarded by federal authorities as a "real" prison (so that a minimal pedagogical approach by the communities is foreseen), the Belgian federal legislation concerning the legal position and the basic rights for detainees (2005) is not deemed applicable, nor has there been any Commission created to supervise this youth detention centre. As a consequence, one is tempted to cite the prophetic words of the American US Supreme Court dating from 1966: "There is evidence in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protection accorded to adults, nor the solicitous care and treatment postulated for children" (*Kent v. United States*, 383 US 555 (1966)).

Minors in detention or residential care

As already pointed out, we are again confronted with a lack of consistent statistical data concerning the juvenile justice system and its application. Concerning the detention of minors in both Community Institutions and the federal detention centre (Everberg), systematic and comparable official statistics (e. g. on average daily population or population flux) are not available. Statistical data are available yet fragmented, originating from different sources, changing and of diverse construction. Thus, this makes it difficult to give comprehensible figures on young delinquents in detention or residential care in Belgium.

Table 4: Total admissions to the Community Institutions and the federal detention centre

	2000	2002	2004	2005	2006	Population 12-17 years	Rate per 1,000
Admissions Flemish Community	1,056	1,097	1,200	1,216	1,207	433,495	2.78
Admissions French Community	1,076	1,432	1,608	1,712	1,844	328,721	5.60
Total Belgium	2,132	2,529	2,808	2,928	3,051	768,154	3.97

Source: *Cartuyvels et al*. 2009.

From the above *Table 4* we can note an increase in the residential population of youngsters in the later years. The introduction of Everberg federal detention centre in 2002 is notable in this evolution. This gives rise to two important reflections. First, the expansion of capacity clearly induced a rise in the use of detention or institutional placement of minors. Second, this evolution mainly concerns pre-trial detention (at Everberg) and/or detention for short periods. Research on the placement/detention of youngsters in 2000 established an average duration of detention of three months (*Florizoone/Roose* 2000). Through this short detention, Community Institutions were functioning as a "turntable": a waiting hall before being forwarded to other facilities. Juvenile judges, however, might also have more "punitive" goals in using this as "short-sharp shock" detention. After all, the question is, how can any re-educational programme be developed within this short period, not to mention it having any effect?

Recent research on the first detention of Flemish young offenders confirms the above reflections. An analysis of a cohort of youngsters placed in a Community Institution or in the federal centre for the first time (2001-2003) made it clear that there is still a practice of "rapid" detention. About 60% of the cohort had almost no judicial record but were nevertheless placed in custody by a first or second intervention of the juvenile judge. Moreover, the duration of this first detention was generally rather short: around 58% were of eight weeks or less (*Christiaens/Dumortier* 2006).

13./14. Conclusions: Current debates and challenges

In 2006 Belgium saw its "old" Youth Protection Act of 1965 modernised into a hybrid model of welfare, restorative justice and "just deserts". Since then the debate on how to react to juvenile crime seems to have reached a level of saturation. It looks as though the new Youth Justice Act of 2006, after decades of reform propositions and alternative practices, has engendered a period of acceptance. Politicians and field workers seem more or less satisfied that the reform of the old Act of 1965 has finally been achieved without too much damage being done. After all, the welfare model and the old Youth Protection Act of 1965 remain the basis of the new Youth Justice Act. At the same time, however, proponents of, on the one hand, restorative justice and, on the other hand, tough (penal) approaches can hardly be described as the "losers" of this recent reform.

On the contrary, restorative justice approaches, following the new sentencing guidelines in the Youth Justice Act of 2006, receive the "gold medal" for preferable judicial responses to juvenile delinquency. And (political) proponents of tough approaches have recently "proudly" announced a notable enlargement of highly secured federal youth detention capacity. Since the new Act of 2006 states that these federal institutions will also be used for transferred youngsters, one can seriously wonder whether this enlargement will not increase the number of transferred minors in Belgium.

As a consequence this ready acceptance of the new Act might be a major pitfall. Moreover, the "modernization" of the old Protection Act of 1965 managed to sail around many fundamental questions and critiques on the Belgian youth justice system. A first fundamental question remains the respect for children's rights. In this sense we specifically want to stress, on the one hand, the continuing importance in law and in practice of the pre-trial phase as the "decisive phase" and the tensions this causes for fundamental human and children's rights. On the other hand, the new Act of 2006 did not take any steps towards improving the legal position of juveniles deprived of their liberty (e. g., lack of right to complain). Finally, the continuing (political) support and encouragement for the transfer of minors can hardly been regarded as in concordance with the UN-Convention on the Rights of the Child.

Secondly, we notice the continuing policy and practice of mixing delinquent and non-delinquent children in the youth protection system, even in closed (Flemish) Community Institutions. The recent reform did not even try to go into this question to any extent. Moreover, huge societal and scientific attention for punitive responses to delinquent children does not have to divert our attention from the important presence of "problematic" (but non-delinquent) children within the juvenile protection system. Are these children also to be confronted with punitive tendencies? Within this perspective it is necessary to mention that in 1999 (and 2004) the Federal Parliament passed an Act that regulated the possibility for local authorities to sanction "incivilities" of adults and youngsters

in an administrative and speedy fashion. Research is needed to unravel the influence of this new legislation on the sanctioning practice towards (non-delinquent) juveniles and its relation to the youth protection system. After all, pursuant to legislation from the French and the Flemish Communities, "problematic behaviour" by youngsters (like "incivilities") should normally be handled by the juvenile protection system on the basis of welfare-oriented principles and in the best interests of the child.

Finally, the governmental authorities in Belgium show an obstinate incapacity to collect and centralise statistical data on the phenomenon of youth delinquency and on the reactions of the youth protection and the juvenile justice systems. This situation turns any scientific research on the Belgian youth justice system's practice into a hazardous enterprise. Within this context, governmental policy like increasing residential capacity seems anything but evidence-based.

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Bulgaria

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Preliminary remarks

The juvenile justice system in Bulgaria today is the result of turbulent historical developments in the course of which it has experienced diverse socio-political and ideological influences. Throughout this history juvenile justice has always been at the margins of academic research. The available data allow us to trace this development and map its present-day shape to a certain extent, although in many respects it is deficient and in some even confusing. This report draws on the official data, some of which were solicited specifically for the purposes of the present study, as well as on academic and non-governmental research. In addition, the research team undertook field research to gather fresh data on the latest developments in the field of juvenile prison reform.

1. Historical development of the juvenile justice legislation and practice

Juvenile justice as a specific element of the criminal justice system gained its recognition soon after Bulgaria became an independent state as a result of the Russian-Turkish War in 1877-1878. This recognition, however, went no further than a couple of provisions in the Criminal Law of 1896. These provisions envisaged a reduction of the sentences in cases where juveniles commit the crimes provided for in the law. The age of criminal responsibility under that law was set at ten years. Juveniles aged between 10 and 17 years were only criminally responsible where they had acted intentionally, and were entitled to a significant reduction of their sentences (e. g. death penalty substituted with

imprisonment for five to ten years; imprisonment for up to ten years reduced to imprisonment for up to two years etc). Adult persons aged between 17 and 21 years were fully criminally responsible but could also receive mitigated sentences (e. g. substitution of a death penalty with 15 years of imprisonment; all other terms of imprisonment were to be reduced by one third). Some of the penal measures specific to juveniles envisaged placement in "institutions for moral education" (*възпиталища*).[1] No such institutions however had been created until after the First World War. Until that time, juveniles served their sentences in adult prisons. Despite the fact that Bulgaria was largely a peasant society with strong informal social control at the family level, statistics show that the number of sentenced juvenile and young adult offenders was quite high, and was constantly on the increase during the first three decades of the 20th century. From 1899 to 1930, the number of sentenced juveniles and young adults more than tripled.[2]

Gradual urbanization, the influx of immigrants in the cities and the spread of juvenile crime after the war all pressured the system to establish special institutions for juveniles. These were established by private charitable organizations, such as the Sofia-based Society for Combating Child Criminality (SCCC), with some help from the government.[3]

Placement in an institution for delinquent behaviour as a sanction was made possible in 1907, also in the framework of civil law. Art. 64 of the Persons Act envisaged a possibility for "the father who is not able to put an end to the evil deviations of his child" to ask for an order by the chairperson of the district court for his/her placement in a correctional/educational institution, which was different from the "institutions for moral education" mentioned above.[4] This was a rather informal procedure that did not require a written motion. The order itself could be oral, and there was no requirement for it to be reasoned. How-

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1 Criminal Law of the Kingdom of Bulgaria (Наказателенъ законъ на Царство България), Official Gazette, No. 40 from 21 February 1896, art. 57 and 58.

2 In 1899, 1.965 juveniles and young adults were sentenced in Bulgaria. There was a sharp increase in the first few years of the new century (+70% to 3.348 in 1905). The overall numbers remained quite stable around this mark up to 1911 (3.255), and an increase only in the number of sentenced juveniles from 1.210 in 1911 to 1.712 in 1920 (about 40%) marked the beginning of a sharp upward trend in the overall figures up to 1930 (6.347). It should be added that this increase from 1920 to 1930 was predominantly attributable to more young adults being sentenced (an increase by over 100%, compared to around 23% for juveniles). Source: *Райчев* 1939, p. 20.

3 Cf.: Дружество за борба съ детската престъпностъ, 1917-1942: Двадесет и пет години борба съ детската престъпностъ, София, 1943 (hereafter SCCC, Twenty Five Years of Struggle with Child Criminality).

4 Persons Act (Законъ за лицата), Official Gazette, No. 273 from 17 December 1907, art. 64.

ever, this procedure was not applied in practice. One factor for this was that the first and only such institution was opened in Sofia only as late as 1939.[5]

An important legislative step towards the welfare approach was the adoption of the Juvenile Courts Act in 1943.[6] The law established those courts as special bodies which had jurisdiction to hear the cases of all persons less than 17 years of age who had committed offences. Juvenile courts could impose punishments on juveniles between 12-17 years of age and educational measures on children below 12 years of age. Punishments included ordinary imprisonment in adult prisons (mitigated for children), placement in a juvenile prison, placement in an institution for moral education (*възпиталище*) and the imposition of a fine. Educational measures included: advice, warning, reprimand, obligation to apologize, to work, to refrain from alcohol-consumption and others. They also included placement under specific educational supervision by the family, a charitable organization or an institution. The adoption of the Juvenile Courts Act was acclaimed by the organizations involved in child welfare. It formally entered into force in 1947, but was never implemented. Juvenile courts were never set up.

After 1944, the entire justice system in Bulgaria was restructured in line with the principles of the communist ideology. The latter was oriented towards the welfare approach, combined with a strong emphasis on institutional control of delinquent behaviour, and indoctrination with the official ideology. This approach created a juvenile justice system that, for all its emphasis on the child's welfare, in many respects turned its back on due process of law.

Juvenile delinquent behaviour under communism was dealt with by two systems: the criminal justice system and the juvenile delinquency system, both closely following the Soviet model. In addition, there was a generally applicable possibility to impose an administrative punishment which could include several days of administrative detention for petty hooliganism although in the case of juveniles this system was largely subsumed into the juvenile delinquency system. Criminal law and procedure underwent several reforms. They assumed their more or less final shape in 1956. With the new Criminal Code the age of criminal responsibility was set at 14 years of age. The Code, along with the laws regulating civil status, established a distinction between minors (*малолетни*), i. e. children below 14 years of age, and adolescents (*непълнолетни*), i. e. those between 14 and 18 years of age.[7] Adolescents were subject to criminal law sanctions under "special rules for adolescents" whereas minors were completely excluded from the scope of application of the Code. This distinction survived all

5 SCCC, Twenty Five Years of Struggle with Child Criminality, p. 7.

6 Juvenile Courts Act (Законъ за съдилищата за маловръстни), Official Gazette, No. 39 from 20 February 1943.

7 From now on in this report we will use the term *juvenile* as a designation of a more general concept, which includes both minors and adolescents.

subsequent amendments of the criminal law and procedure, and remains valid at present.

At the same time, in the 1950s the Bulgarian juvenile justice system adopted the Soviet model of "combating anti-social behaviour" by means of correctional measures, including placement of both minors and adolescents in labour correctional institutions under a special procedure, distinct from the generally applicable criminal law. In 1956, the then Chief Prosecutor of Bulgaria travelled to the Soviet Union and immediately upon return praised that model for its welfare approach in a special article of the official "Socialist Law" review.[8] Soon afterwards, in June 1958, Parliament adopted the Combating Child Criminality Act.[9] That law was subsequently replaced by the Combating Minors' and Adolescents' Anti-Social Behaviour Act, better known internationally as the Juvenile Delinquency Act (JDA).[10]

The JDA established governmental bodies that were designed to deal with the delinquent behaviour of juveniles outside of the judicial system. Those bodies included commissions for combating juvenile anti-social behaviour at the central, district and municipal level.[11] They were meant to focus on prevention, sanctioning and the execution of imposed measures. The system of sanctioning provided for under JDA was promoted by the government as a barrage to the frequent use of the criminal justice system against juveniles.[12] That system aimed at involving a wide spectrum of bodies in its activities, both governmental and non-governmental (such as trade unions, the komsomol and others).

This dual system of parallel criminal and special correctional regimes for combating non-criminal anti-social behaviour was preserved after the fall of communism in 1989. As juvenile justice has always been at the margins of public debate and of low political priority, reform was totally neglected during the first years of democratic change. Steps towards reforming the old system and introducing due process guarantees for placement in correctional institutions started as late as 1996 with the amendments of the JDA. They were, however, insufficient and did not affect the system seriously. In many respects placement

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8 See *Сребров* 1956, p. 31-44.

9 Combating Child Criminality Act (Закон за борба с детската престъпност), Izvestia, No. 13 from 14 June 1958.

10 Combating Minors and Adolescents Anti-Social Behaviour Act (Закон за борба срещу противообществените прояви на малолетните и непълнолетните), Izvestia, No.11 from 7 February 1961, with many amendments, the latest one from 23 December 2005 (hereafter Juvenile Delinquency Act- JDA).

11 With the amendment of the JDA of September 1988 the district commissions were abolished. Hereafter municipal commissions will be referred to as "local commissions".

12 Thus, in the reasons to the first version of the law, see: Мотиви към законопроекта за борба против детската престъпност, in: *Димитров* 1959, p. 8.

in juvenile correctional institutions continued to be at variance with a number of international due process standards, and the practice of its implementation continued to be arbitrary. A second major positive reform of the JDA took place in July 2004 effecting a transfer of the power to make placement decisions to judges. Decisions not involving deprivation of liberty remained in the ambit of the local commissions.[13]

2. Trends in reported delinquency of juveniles

Crimes and anti-social behaviour of juveniles are registered with the "children's pedagogical rooms" (CPRs), special offices established by law in the municipalities or municipal districts. The Regulations on Children's Pedagogical Rooms from 1998 oblige the CPR's inspector to uncover and register all minors and adolescents who have committed crimes or who are engaged in anti-social behaviour on the basis of information from the Ministry of the Interior, judicial bodies, local administrations, local commissions for juvenile delinquency, non-governmental organizations, educational institutions, and the general public.[14] Thus, the annual reports of the children's pedagogical rooms are the best source to inquire about the trends in reported juvenile delinquency. Of course, as with all official sources of data on delinquent behaviour, those reports have to be treated with all requisite precaution, as the data provided depend on a range of subjective contingent factors, such as the activity and personal ambition of the local inspector or his/her superior; on his/her interpretation of the vague concept of anti-social behaviour; on the technical and administrative resources at his/her disposal; on the confidence his/her office enjoys within the local community, and on the willingness of victims to file complaints. Needless to say, all of these factors vary with time, location and personality. No other research methods to document juvenile delinquent behaviour have ever been tried in Bulgaria.

Table 1 below presents the trends in the number of children registered for anti-social behaviour and for crimes with the children's pedagogical rooms in the period 1990-2006.

13 For more on how these reforms were triggered see *Section 13* below.

14 Regulations on Children's Pedagogical Rooms (Правилник за детските педагогически стаи), Official Gazette, No. 92 from 7 August 1998, art. 7, pt. 1 and 8.

Table 1: Children registered with children's pedagogical rooms for anti-social behaviour and for crimes in the course of each year

	Anti-social behaviour	Anti-social behaviour	Anti-social behaviour	Crimes	Crimes	Crimes	Anti-social behaviour and crimes
	Minors	Adolescents	Total	Minors	Adolescents	Total	Total
1990	1,759	2,285	**4,044**	1,043	3,017	**4,060**	**8,104**
1992	1,878	3,409	**5,287**	1,584	7,007	**8,591**	**13,878**
1994	2,183	4,704	**6,887**	1,954	8,677	**10,631**	**17,518**
1995	2,087	3,802	**5,889**	2,251	7,993	**10,244**	**16,133**
1996	2,143	4,327	**6,470**	2,219	9,175	**11,394**	**17,864**
1998	3,580	8,208	**11,788**	2,845	7,961	**10,806**	**22,594**
2000	3,564	6,741	**10,305**	1,989	5,367	**7,356**	**17,661**
2002	3,631	7,439	**11,070**	2,113	6,540	**8,653**	**19,723**
2004	4,038	9,305	**13,343**	2,723	7,423	**10,146**	**23,489**
2005	3,297	9,110	**12,407**	2,447	7,273	**9,720**	**22,127**
2006	3,142	7,623	**10,765**	1,860	6,681	**8,541**	**19,306**

Source: National Statistical Institute, information provided for the specific purposes of this research for the period 1990-1999. For the period after 1999: Национален статистически институт, Противообществени прояви на малолетни и непълнолетни лица през 2006 г. (National Statistical Institute, Anti-social behaviour of minors and adolescents in 2006), at: www.nsi.bg/SocialActivities/Crime2006l.htm, accessed on 15 April 2007. The NSI was unable to provide data for the years before 1990 and for crimes in 1999.

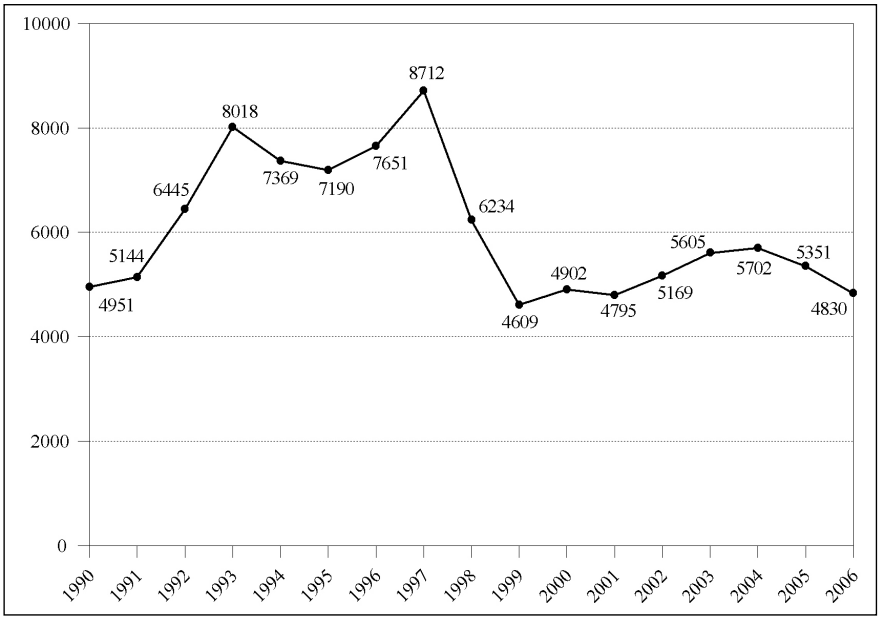
The table shows all cases of registered delinquent behaviour and crimes committed for each year, many of them by the same juveniles. It becomes clear from this data that there was an overall increase in registered offending and anti-social behaviour by juveniles throughout the 1990s, with the exception of 1995. There was a sharp increase in 1998, which was however followed by a drop in the numbers up to 2000. This inconsistent yet overall upward trend continued during the subsequent years, largely due to increased anti-social behaviour. The trends for both minors and adolescents follow roughly the same pattern.

However, the figures for adolescents are much higher both for offending as well as for exhibiting anti-social behaviour. The numbers continued to go up until 2004 when they reached their peak, and then started to gradually decrease. Whereas for every year up to 1998 the number of registered crimes committed by juveniles outnumbered registered anti-social behaviour, after 1998 the opposite was the case – registered anti-social behaviour outweighed registered offending. In fact, after 1998 the number of registered crimes in Bulgaria in total for the entire period, as well as on average on an annual basis, was less than during the pre-1998 period, despite the general upward tendency for registered anti-social behaviour. There is no clear explanation for these trend developments but certainly the fact that anti-social behaviour, undifferentiated as it is, could be interpreted by the CPR inspectors in an unlimited variety of ways, coupled with the policy of all the governments after 1997 to be tougher on crime, contributed to those results.

Figure 1 below shows trends in the number of children newly registered with the CPRs in the course of each given year in the period 1990-2006. The sharp decline between 1997 and 1999 was due to the fact that, according to the old (i. e. pre-1998) regulations, inspectors were obliged to register children who could be influenced by "criminal or amoral persons" within their family or wider social environment, in addition to registering offenders.[15]

15 Regulations on the Children's Pedagogical Rooms (Правилник за детските педагогически стаи), Official Gazette, No. 4 from 15 January 1971 (repealed), art. 9.

Figure 1: Children newly registered with the children pedagogical rooms in the course of the year

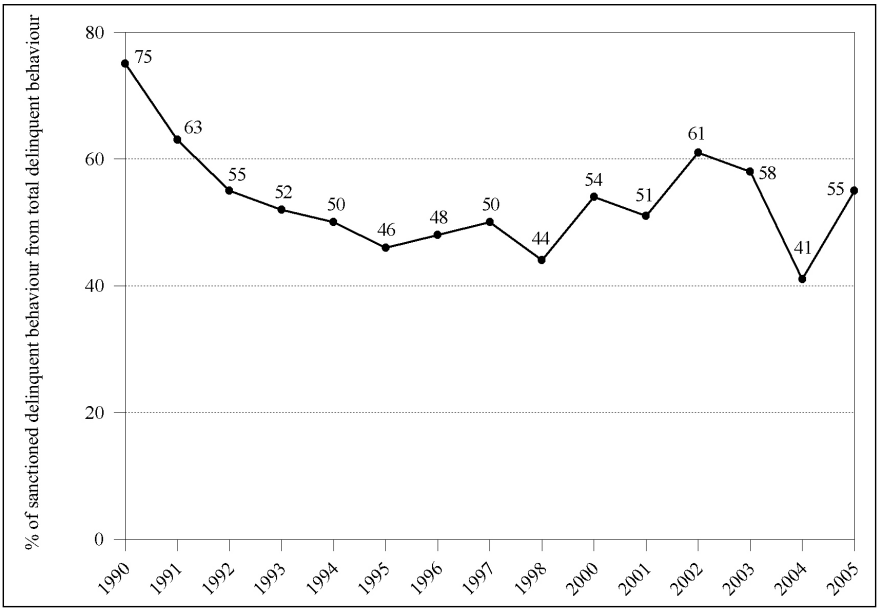


Source: National Statistical Institute, information provided for the specific purposes of this research.

The trend in the above graph after 1998 is compatible with the similar trend exhibited in *Table 1* above. It shows a gradual increase in the number of newly-registered children from 1998 to 2004, when they reached their peak (excluding the cases of contact to criminal or amoral persons as stated above), and then started to decrease in the following years.

Figure 2 below presents the trends in juvenile delinquent behaviour (including anti-social behaviour and offences) that was sanctioned by the criminal courts or by local commissions, as a share of all reported delinquent behaviour. The statistical basis is mixed – it combines the overall number of correctional measures indicated by the local commissions (which can be more than one) with the number of juveniles who were sentenced by the criminal courts or who received correctional measures indicated directly by the criminal courts (who can be sanctioned with one sentence or correctional measure for more than one offence). This approach however is consistent for every year in the period 1990-2005 and is, therefore, indicative of the trends.

Figure 2: Delinquent behaviour resulting in a sanction in percent by year



Source: National Statistical Institute, information provided for the specific purposes of this research and information on the number of juveniles sanctioned for crimes and for anti-social behaviour from the sources cited below in *Sections 5* and *6*.

For the most part, the difference between sanctioned delinquent behaviour and registered juvenile delinquency is a result of the discretion that the secretaries of the local commissions, the local commissions themselves, the prosecutors and the courts can exercise when sanctioning (see in detail *4.* below). The relatively high proportion of sanctioned delinquent behaviour during the two years following the beginning of democratic change in 1989 can be explained by the inertia from the communist time, when all or most delinquent behaviour ought to be formally sanctioned. After 1992, the share of sanctioned delinquent behaviour stabilized between 45% and 60%, with very few (and not major) fluctuations. Larger shifts are evident for and characteristic of the period after 1998.

The share of girls registered with the CPR for both anti-social behaviour and crimes in the period 2000-2006 was 20-24%, peaking at 24% in 2005 yet with

no clear cut upward or downward tendencies.[16] The respective share of young migrants is negligible and is not registered by the official statistics.

The most typical crime for which juveniles were registered with the CPR over the past two decades is theft. For seven years in the period 2000-2006 theft constituted between 65% and 72% of the all registered juvenile offending with no clear cut upward or downward trends.[17] Drug-related crimes account only for a small share of all registered delinquent behaviour, constituting 3-4% of all juvenile offending since first being registered by the CPR in 2003 – again, with no clear cut upward or downward tendencies.[18]

3. The sanctions system – kinds of informal and formal interventions

3.1 The sanctions system for juveniles under the Criminal Code

Existing Bulgarian criminal law envisages a special sanctions system for juveniles who are criminally responsible, as well as special rules for establishing their criminal responsibility. In theory, those rules are designed to take into account the specific characteristic of juveniles' immaturity and the need to respond to their deviant behaviour through correctional action rather than through retribution. The existing Criminal Code of Bulgaria, which was passed in 1968, establishes the following aims of criminal punishment: rehabilitation, general deterrence and individual deterrence (which includes incapacitation as its subset).[19] For the criminally responsible juveniles, however, it states that rehabilitation and preparation for "socially useful labour" should be its "primary objective".[20]

The Criminal Code contains the irrebuttable presumption that minors, i. e. children below the age of 14, cannot understand the nature and the meaning of criminal acts and are, therefore, not criminally responsible.[21] Minors can, how-

16 Source: National Statistical Institute, Anti-social behaviour of minors and adolescents in 2006, web site accessed on 23 December 2007.

17 Source: National Statistical Institute, Anti-social behaviour of minors and adolescents in 2006, web site accessed on 23 December 2007.

18 Source: National Statistical Institute, Anti-social behaviour of minors and adolescents in 2006, web site accessed on 23 December 2007.

19 Criminal Code (Наказателен кодекс), Official Gazette, No. 26 from 2 April 1968, with numerous amendments, the latest one from 19 December 2006, art. 36, para 1.

20 Criminal Code, art. 60. This does not exclude the other two objectives though, cf.: *Гиргинов/Трайков* 2000, p. 361-362.

21 Criminal Code, art. 32, para. 1.

ever, be subject to correctional measures, which can only be indicated by the local commissions, yet not by the criminal courts (see *3.2* below). Adolescents, i. e. children between 14 and 18 years of age, are only criminally responsible if they understand the nature and the meaning of the concrete criminal act they have perpetrated.[22] This understanding needs to be proven in every specific individual case. If the court has doubts regarding the psychological maturity of the young person in question it shall obtain an expert opinion.[23] The court failing to find necessary evidence that the person understands the nature and the meaning of the criminal act may serve as a ground for the higher court to overturn the verdict of the lower court.[24] "Understanding the nature and the meaning of the act" is a condition for criminal responsibility but it is not a condition for the applicability of "correctional measures" including deprivation of liberty in a "correctional boarding school" by a court or by a local commission.[25]

Once their criminal liability has been established, adolescents are subject to special rules for imposition and execution of criminal sanctions. They are also subject to special rules as regards the effects of their convictions. The prosecutor may decide not to initiate or to discontinue preliminary proceedings in cases where an adolescent commits a crime that poses no serious danger to the public due to aberration or frivolity. The court has the discretion to decide against trying the case or to acquit the offender where any of the correctional measures provided for by the JDA can successfully be applied.[26] In such a case, the court may itself indicate a correctional measure or refer the case to the local commission.[27] Before the reform of the JDA in 2004, the prosecutor, after discontinuing the preliminary proceedings, could either place an adolescent in a correctional boarding school him/herself, with no judicial review, or refer the case to the local commission for a correctional measure to be imposed. Since 2004, the prosecutor can only refer the case to the local commission and has no power to indicate correctional measures him/herself. At present, he/she continues to have

22 Criminal Code, art. 31, para. 2.

23 Decree No.6 from 30 September 1975 of the Plenary Session of the Supreme Court as amended by Decree No. 7 from 6 July 1987 (hereafter Decree No. 6/1975). However, under the general principles of criminal procedure, also applicable here, judges are not bound by expert opinions.

24 Decision No. 58 of the Supreme Court, First Chamber, from 9 May 1990 on Case No. 33/90.

25 Criminal Code, art. 31, para 3. Cf. also: *Стойнов* 1999, p. 128.

26 Criminal Code, art. 61, para. 1. According to the prevailing doctrine, "aberration" refers to the emotional impulsiveness whereas "frivolity" refers to the insufficient concentration and consistency of the intellectual comprehension. Cf.: *Гиргинов/ Трайков* 2000, p. 382.

27 Criminal Code, art. 61, para. 2.

the sole responsibility for deciding whether the alleged act poses a serious threat to the public or not. The jurisprudence and the doctrine have so far failed to set clear criteria to guide this prosecutorial decision.[28]

Of the 11 types of criminal sanctions provided for by the Criminal Code in the case of adults, at present only four can be imposed on adolescents. These include imprisonment (effective or conditional, i. e. postponed under the condition that the person who was sentenced does not commit another crime within a certain period of time), probation, public reprimand and deprivation of the right to practice a specific profession or activity.[29] As the latter is very rarely applied, there are in fact only three effective sanctions. Probation can only be indicated in cases of adolescents who are 16 years and older. Probation is a recent innovation in the Bulgarian system, and has been available since 1 January 2005. It includes a number of measures, such as: obligatory registration with the present address; periodic meetings with a probation officer; restrictions of free movement; inclusion in courses for professional qualification; correctional labour and gratuitous work for public benefit. Of them, all but the latter two measures can be imposed on adolescents.[30]

The Criminal Code envisages an extensive system of replacement sanctions and mitigations for adolescent offenders. For the purposes of this replacement system the Code distinguishes between young persons younger than 16 years and those 16 years and older. As applicable to both categories the law requires the replacement of:[31]

a) Imprisonment for more than five years with imprisonment for up to three years.
b) Imprisonment for up to five years with imprisonment for two years but no longer than the one envisaged by the law.[32]
c) Fine with public reprimand.

As applicable to under-16s the law requires replacement of:

a) Life imprisonment with or without the possibility of early release with imprisonment for a period of between three and ten years.
b) Imprisonment for more than ten years with imprisonment for up to five years.
c) Probation with public reprimand.

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28 Cf. *Гиргинов/Трайков* 2000, p. 378-379.

29 Criminal Code, art. 62.

30 Criminal Code, art. 42a, para. 2 and 4.

31 Criminal Code, art. 63, para. 1.

32 E. g. if the Code provides for one year of imprisonment in the general provision the replacement should not result in sentencing the juvenile to two years of imprisonment.

As applicable to over-16s the law requires replacement of:[33]

a) Life imprisonment with or without the possibility of early release and imprisonment to more than 15 years with imprisonment for five to 12 years.
b) Imprisonment for more than ten years with imprisonment for two to eight years.

In certain cases, the Criminal Code mandates the replacement of a prison sentence not with shorter-term imprisonment but rather with a correctional measure provided for by the JDA. This takes place at the end of the hearing and the correctional measure is indicated directly by the criminal court in place of a verdict. In cases where the sentence envisages imprisonment for less than one year, that sentence can subsequently be revised upon motion by a prosecutor or the local commission, and the judge may indicate a correctional measure instead.[34] The other sanctions, including conditional imprisonment, cannot be replaced by a correctional measure in this manner. In both cases such a replacement cannot be indicated for a person who committed the crime as an adolescent but is to be sentenced or was sentenced as an adult. Nor can it be indicated for a person who committed a crime while serving a prison sentence.[35] Nor do the rules for replacement apply in cases of repeated conviction where the court finds that the person must serve the sentence where that sentence's term is less than six months or where the perpetrator has already served a prison term.[36]

Compared to adults, sentenced adolescents are in a more favourable position with regard to the effects of criminal sanctions. While for adults the probation period ranges from three to five years in cases of sentences to conditional imprisonment, in cases of persons who were sentenced to such punishments as adolescents it ranges from one to three years.[37] When a juvenile is sentenced to probation he/she can be required to serve one of several probation measures, including: obligatory registration with their present address; periodic meetings with a probation officer; restrictions of free movement; inclusion in courses for professional qualification (see *Section 3* above). These are organized by the territorial probation services of the Execution of Punishment Directorate of the Ministry of Justice. The law requires that courses for professional qualification take the needs of the labour market and the interests of the sentenced person into account. They are to be organized in cooperation with the Ministry of Labour

33 Criminal Code, art. 63, para. 2.

34 Criminal Code, art. 64, para. 1 and 2.

35 Criminal Code, art. 64, para. 3.

36 Criminal Code, art. 64, para. 4.

37 Criminal Code, art. 69, para. 1.

and Social Policy and the Ministry of Education.[38] All persons sentenced to probation are individually evaluated by a probation officer at least every six months. After having served one quarter of the probation period to which they have been sentenced, their conditions of probation may be loosened.[39]

The probation system however has only been in force in Bulgaria since 1 January 2005. Therefore no statistics are available on the frequency with which the different types of probation measures are imposed and on the way in which they are executed.

As opposed to adults the court can entirely or partially release adolescents from serving the sentence the execution of which has been postponed. With regard to early release from prison, an adult prisoner qualifies for what the law terms "conditional early release" if he/she has served at least one half of his/her sentence. By contrast, an adolescent prisoner can benefit from conditional early release after serving only one third of his/her sentence.[40] In a similar way, adolescents benefit by right from more favourable conditions for rehabilitation in the execution of their sentences compared to adults.[41]

3.2 The sanctions system under the Juvenile Delinquency Act

The Juvenile Delinquency Act aims at combating juvenile anti-social behaviour.[42] Unlike the Criminal Code, this law does not establish a system of concrete provisions that specify the meaning of anti-social behaviour. According to the prevailing interpretations under the communist regime, anti-social behaviour would mean any breach of the criminal law, of other legal provisions and "deviations of the correct development and upbringing" by the juveniles.[43] Another authoritative commentator interpreted anti-social behaviour as any act in breach of the law and of the "communist morality".[44] But even in the communist society with its extensive system of informal social control based on ideology the position of the legal doctrine itself was ambivalent towards such an approach, recognizing that it opens the door for arbitrariness and abuse. Thus already at that time commentators expressed concern that "the absence of a legal definition does not facilitate the strict observance of socialist legality".[45] With the amendment of the JDA in July 2004 a very general definition of anti-social behaviour was introduced, which did not contribute significantly to clarifying its meaning. According to this definition "anti-social behaviour is an act that is socially dangerous and illegal or contradicts morals and good manners".[46]

38 EPA, art. 141в.

39 EPA, art. 141k.

40 Criminal Code, art. 71, para. 1.

41 Criminal Code, art. 86, para.1, pt. 4.

Statistical data on the implementation of the JDA, including data from 2005, show how the local commissions interpreted anti-social behaviour, and clarify the arbitrary way in which the law has been applied (see *Section 5* below). Anti-social behaviour in their interpretation goes way beyond the behaviour for which the criminal law penalizes adults and as such contradicts international standards.[47]

The sanctions system under the JDA comprises 13 correctional measures, most of which can be imposed on juveniles by local commissions for combating the anti-social behaviour of minors and adolescents as mentioned above. The local commissions, composed of between 7 and 15 members, are appointed by the municipal mayors in every municipality or municipal district. They are chaired by one of the deputy-mayors and include administrative officials, police officers, educators, psychologists, lawyers, physicians and local activists. A prosecutor from the district prosecutor's office is obliged by law to attend all their meetings.[48] The local commissions are guided and controlled by the Central Commission for Combating Anti-social Behaviour of Minors and Adolescents, although they also report to the local authorities. Until 1996, the Central Commission was a structure within the Chief Prosecutor's Office. With the amendment of the JDA in 1996, it was transferred to the Council of Ministers and was thus shifted from the judicial to the executive branch. It is chaired by a Deputy Prime-Minister and is composed by a number of top governmental officials and court administrators.[49] The Central Commission guides and controls the local commissions, collects statistical information, develops policies, and coordinates the activities of governmental bodies aiming at combating juvenile delinquency.

The local commissions are empowered to indicate 11 of the correctional measures envisaged in the JDA. The remaining two, which involve deprivation of liberty, can only be imposed by the district courts. The correctional measures

42 JDA, art. 1.

43 See *Здравков* 1967, p. 19. *Здравков* was former Secretary of the Central Commission for Combating Anti-Social Behaviour of Juveniles.

44 See *Хинова* 1984, p. 117.

45 See *Хинова* 1984, p. 117.

46 JDA, art. 49a, pt. 1.

47 See among other authorities the UN-Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), which provide that "legislation should be enacted to ensure that any conduct not considered an offence or penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.", G.A. Res. 45/112, annex 45, GAOR Supp. (No. 49A) at U.N. Doc. A/45/49 (1990).

48 JDA, art. 6.

49 JDA, art. 4, para. 1.

can be imposed on both minors (aged 8-14) and adolescents (aged 14-18). Those measures include:[50]

1. Warning;
2. An obligation to apologize to the victim;
3. Obliging the perpetrator to participate in consultations, trainings and correctional programs;
4. Placement under the specific supervision of parents or carers with an obligation to strengthen their care and control;
5. Placement under the educational supervision of a public educator;
6. Prohibition to visit certain places and entertainment venues;
7. Prohibition to meet or otherwise contact certain persons;
8. Prohibition to change his/her current address of residence;
9. Obligation to repair the damage caused;
10. Public works;
11. Placement in a social-pedagogical boarding school;
12. Warning for placement in a correctional boarding school under the condition that the juvenile does not re-offend within six months;
13. Placement in a correctional boarding school.

This system of sanctions was shaped with the amendments of the JDA of July 2004. All of those sanctions save for No.6-8 above, also existed under the previous versions of the law, along with "reprimand" and "placement under the educational supervision of a work collective or public organization". The latter two were abolished in 2004.[51]

The initial version of the JDA envisaged placement in a labour correctional school as the most severe measure but also provided for the possibility of placement in "other educational or medical-educational institutions".[52] This latter possibility was however soon abandoned and throughout the 1970s and 1980s labour correctional school was used as the only institution for the execution of the most severe correctional measure. Social-pedagogical boarding schools were created in 1969 to host children who lived in environments that can have a negative influence on them or who were victims of abuse and neglect rather than offenders.[53] With the amendments of the JDA in 1996, these schools were made part of the system of institutions in which to accommodate juvenile offenders. Before that year they were ordinary boarding schools – within the educational system – for socially vulnerable children. The JDA is unclear and seems to have contradicting views regarding the duration for which a young person can be placed in a correctional institution. According to one of its

50 JDA, art. 13, para.1.

51 Cf. for details: *Ковачева* 2004, p. 49-50.

52 JDA, version from 7 February 1961.

53 See: *Петров* 2000, p. 62.

provisions the term should not exceed three years.[54] Another provision however provides for this term to be extended until the juvenile turns 16.[55] The law also allows the juvenile to stay in the institution if he/she so wishes until 18 years of age and even longer if he/she wants to complete the respective educational degree requirements.[56] After the adoption of the 2004 amendments to the JDA these provisions were strongly criticized as unclear and contradictory.[57]

The JDA also provides possibilities to sanction the parents or guardians of children who behave anti-socially for not taking proper care of them. The local commissions have the following three sanctions at their disposal that can be issued against parents/guardians:[58]

a) Warning,
b) An obligation to attend lectures and consultations on educational matters,
c) A fine ranging between 50 and 1.000 BGN (25-500 Euro).

Fines can be replaced with up to 160 hours of public works if the persons who are to be sanctioned request this.

4. Procedure in cases of juvenile delinquent behaviour

4.1 Juvenile criminal procedure

In October 2005, the Bulgarian Parliament adopted a new Criminal Procedure Code (CPC), which entered into force on 29 April 2006. While the new code, as a whole, establishes a procedure that is more efficient and provides for better due process guarantees, very little has changed in the provisions dealing with juveniles. Juveniles can be transferred to adult courts under two conditions that are provided for in art. 394 of the Criminal Procedure Code: where an adult is tried for a crime perpetrated by him/her as an adolescent; and where an adolescent perpetrator is tried for a crime he/she has committed in complicity with an adult.[59] In this latter case, there is no involvement of educators in the composition of the court. When an adult perpetrator is tried for a crime committed as a juvenile, he/she is not entitled to free legal assistance due to his/her then age.[60]

54 JDA, art. 30, para. 2.

55 JDA, art. 30, para. 3.

56 JDA, art. 30, para. 4.

57 Cf.: *Цонев* 2005, p. 9.

58 JDA, art. 15, para. 1.

59 CPC, art. 394.

60 Decision No. 327 of the Supreme Court, First Chamber, from 26 August 1996 on Case No. 141/96.

However, the Supreme Court has ruled that some of the guarantees of the special procedure for juveniles also apply in cases where adolescents are tried by ordinary courts or are investigated as adolescents. Those guarantees include:

a) Participation of a pedagogue or a psychologist in the interrogation of the adolescent.
b) Notification of the parents or guardians of the submission of the investigation, and a right for them to attend.
c) Summoning of the parents/guardians to the trial and allowing them to participate in the collection and verification of evidence.
d) Mandatory participation of a prosecutor.
e) Removing the adolescent from the courtroom while not being questioned.
f) Prohibition of private prosecution.[61]

The CPC provides specific rules for the participation of juveniles in criminal procedure as victims, as witnesses and as defendants. For understandable reasons the regulation of their participation in proceedings for the examination of cases involving crimes committed by juveniles is most extensive. Several specific rules deal with juveniles as victims of crime. In these cases, the CPC provides for a possibility for the prosecutor to bring a civil action on his/her own initiative on behalf of the juvenile victim in the framework of the criminal proceedings.[62] Where there is a conflict of interests between the juvenile and his/her parents or legal guardians, the investigative official, the prosecutor or the court is required to appoint a "special representative" who must be a lawyer.[63]

A separate set of provisions governs the participation of a juvenile as a witness. One of those provisions establishes an obligation for the official conducting the interrogation to question a minor only in the presence of a pedagogue or psychologist, and also in the presence of a parent or guardian where necessary. In the case of adolescents, experts and parents/guardians are to be involved only if the respective body finds this necessary.[64] The experts assist the investigation, and may ask questions with the permission of the official conducting the interrogation. They cannot be questioned and cannot serve as expert witnesses in the same proceedings.[65] After they have been interrogated as

61 Decree No. 6/1975.

62 Criminal Procedure Code (Наказателно-процесуален кодекс), Official Gazette, No. 86 from 28 October 2005, in force since 29 April 2006, art. 51.

63 CPC, art. 101.

64 CPC, art. 140, para 1 and 2.

65 Decision No. 327 of the Supreme Court, Second Chamber, from 14 July 1982 on case No. 334/82.

witnesses in trial, adolescent defendants have to be removed from the courtroom unless ruled otherwise by the court.[66]

The most discussed rules on criminal procedure involving juveniles are those governing their participation as defendants. The CPC has a separate section establishing a number of rules in that regard. The first requirement is that the persons conducting the investigation involving adolescent defendants – as opposed to minors – must have "appropriate training".[67] This provision has been broadly interpreted by the courts as requiring investigators with special training to perform all investigative actions, not only for the interrogation of the defendant.[68]

The composition of the trial courts that hear juvenile cases differs from courts that hear adult cases. Criminal courts for juveniles sit with one judge and two lay assessors in cases involving crimes that imply up to 15 years of imprisonment or lesser punishments and with two judges and three lay assessors in cases involving crimes that are punishable by more than 15 years of imprisonment. All assessors must be educators.[69] This means that in the most common case of juvenile crime, which is that of crimes resulting in imprisonment for up to five years, an adolescent's case would be heard by one judge and two assessors, whereas a case involving an adult would be heard by one judge only. In any case, an adolescent would be heard by a court that includes at least two educators in its composition.

The CPC provides for the participation of a pedagogue or a psychologist in the interrogation of an adolescent. These experts have the right to make remarks on the exactness or completeness of the matters recorded in the records of the proceedings.[70] Parents or guardians of an adolescent defendant, however, can only take part in the pre-trial proceedings at a later stage – when the investigation has been submitted to the parties upon completion. At this point, they are to be notified and can participate if they so request.[71]

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66 CPC, art. 280.

67 CPC, art. 385.

68 Decision No.400 of the Supreme Court, Second Chamber, from 28 August 1993 on Case No. 328/93.

69 CPC, art. 390, para. 1 and 2.

70 CPC, art. 388.

71 CPC, art. 389. Although the new CPC was adopted in 2005 in this point it failed to ensure compatibility with the Recommendation Rec(2003)20 of the CoE Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice. Paragraph 15 of this recommendation reads: "While being questioned by the police [juveniles] should, in principle, be accompanied by their parent/legal guardian or other appropriate adult."

Trials of adolescents normally proceed behind closed doors unless the court decides that an open trial lies in the public interest. Hearings are attended by the parents/guardians who are summoned and have the right to participate in the collection and verification of evidence. Their absence, however, cannot serve as an obstacle to the examination of the case. The participation of a public prosecutor is obligatory but private prosecution, i. e. participation of a private party on the prosecution's side, is prohibited.[72] Adolescent defendants can be temporarily removed from the courtroom where necessary to clarify facts which may have a negative effect on them.[73] Participation of a defence counsel is obligatory.[74]

4.2 Procedure for indication of correctional measures under the Juvenile Delinquency Act

The procedure for indicating JDA correctional measures has always been and continues to be less formal than the criminal procedure. The amendments of the JDA in 1996 and 2004 did however have a relatively formalizing effect. There are two ways in which a juvenile case can enter the procedure – through the criminal procedure as a form of diversion, and directly. The direct route is initiated by the secretary of the local commission for juvenile delinquency. He/she keeps a register of all cases of anti-social behaviour reported by the courts, the prosecutors, the police, and in the form of complaints from private citizens.[75] The secretary appoints two public educators who are not members of the local commission to investigate the cases and to report back within seven days.[76] Often, however, the cases originate at the CPRs which are headed by inspectors who have to be pedagogues and who are appointed by the Minister of the Interior.[77] The inspector of the CPR is vested with the special task of uncovering juvenile offenders and referring their cases either to the local commission, the police or to prosecutors.[78] The inspector, therefore, has an

72 CPC, art. 392.

73 CPC, art. 393.

74 CPC, art. 94, para. 1, pt. 1. Legal defence, however, is not obligatory when the perpetrator committed the crime as a juvenile but is tried as an adult unless there are other grounds for obligatory legal defence (Decision No. 327 of the Supreme Court, First Chamber, from 26 August 1996 on Case No. 141/96).

75 JDA, art. 16, para. 1.

76 JDA, art. 16, para. 2.

77 JDA, art. 26. CPRs are also often located at police premises.

78 JDA, art. 27. Since the 1996 reform the CPR were obliged to also deal with crimes and offences with juvenile victims.

important role in gathering evidence before the adjudication of the case by the local commission. As the law is quite unclear and general in many points – including the definition of anti-social behaviour and in establishing any rules of evidence – it de facto vests much discretion in the secretary, including the power to refrain from initiating a "correctional case" if the matter is "manifestly trivial".[79]

Correctional cases are heard by a three-member panel consisting of a chairperson who is to be a lawyer and two members of the local commission, all appointed by the chairperson of the local commission.[80] Within a short period of time the panel sets the date for the case to be heard. The juvenile and his/her parents or carers are obliged to be present at the hearing. The 2004 amendment to the JDA introduced some minimum due process guarantees for the hearing, such as the possibility to remain silent, to cross examine witnesses, and to be represented by a lawyer. The latter was explicitly prohibited in the old version of the law.[81] If the juvenile or his/her family does not or is unable to hire a lawyer, a representative of the local "Social Assistance" directorate assumes the obligation of an ex officio public defender.[82] The hearing takes place behind closed doors although the panel may invite experts and representatives of the school which the juvenile attends and may give them the floor during the proceedings.[83] At the end of the hearing, the panel issues a decision, whereby it indicates one or more of a range of correctional measures with the exception of placement in a correctional institution, which can only be imposed by a court. Alternatively, the panel may make the proposition to the district court to place the juvenile in a correctional institution. Furthermore, it can refer the case to the prosecutor if it feels that the matter should be dealt with in the framework of criminal procedure. Finally, the panel can terminate the case if it cannot prove the juvenile's guilt or if the matter is "manifestly trivial".[84] This decision can be appealed to the district court if it involves the indication of a correctional measure, unless that measure is a warning or an obligation to apologize. Until 1996, the local commissions could indicate all possible correctional measures, except for placement in a correctional institution. Placement was indicated by the Minister of Education (until 1988 upon motion by the district commissions and in the period 1988-1996 upon motion by the local commissions). With the 1996 amendments of the JDA, the local commissions were empowered to place

79 JDA, art. 16, para. 3.

80 JDA, art. 11, para. 2.

81 JDA, former art. 19, para. 4.

82 JDA, art. 19, para. 4.

83 JDA, art. 19, para. 5 and art. 20, para. 6.

84 JDA, art. 21, para. 1.

juveniles in a social-pedagogical boarding school, and to propose to the district court that they be placed in a correctional boarding school.

Under the 2004 amendments of the JDA all placements in a correctional institution (social-pedagogical or correctional boarding school) take place through the district court. The court sets the date for a hearing no later than 14 days after it receives a proposal from the local commission. The hearing takes place behind closed doors in the presence of the juvenile, his/her parents or carers, his/her defence and the chairperson of the panel of the commission that filed the proposal.[85] The court is free to collect new evidence, to indicate any correctional measure that it considers appropriate, or to refer the case to the prosecutor for criminal prosecution. Its decision to indicate placement in a correctional institution can be appealed only once to the regional court. Unlike under the criminal procedure, there is no legal obligation to involve any educators as assessors in the proceedings either at the district court level, or upon appeal at the regional court level.

4.3 Sanctions and procedures in cases of petty hooliganism and hooliganism during sports events

Juveniles aged between 16 and 18 can be held responsible for petty hooliganism. The sanction system and the procedure are governed by the Decree for Combating Petty Hooliganism (DCPH).[86] According to this decree, juveniles may be detained in places of detention that are under the authority of the Ministry of the Interior for up to 15 days, or they can be fined. The decree defines petty hooliganism as behaviour – such as cursing, obloquy or other abusive language used in a public place – that demonstrates disrespect to citizens, public authorities and the public in general, or fighting, squabbling or other similar activities that violate public order. Petty hooliganism is not a crime under the Bulgarian system; it is considered an 'administrative offence' despite the fact that it can be responded to with deprivation of liberty. The punishment under DCPH does not carry a criminal record for the perpetrator with all its consequences. The Criminal Code on its part contains a criminal offence of "hooliganism", which is subject to a harsher punishment. The courts have distinguished between the criminal and the administrative offence of hooliganism on the basis of the differing degrees of threat that the two pose to society.[87]

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85 JDA, art. 24, para. 3.

86 Decree for Combating Petty Hooliganism (Указ за борба с дребното хулиганство), adopted by the Presidium of the National Assembly, Official Gazette, No. 102 from 31 December 1963 with many amendments, the latest one from 30 November 2004.

87 Decree No. 2 of the Plenary Session of the Supreme Court from 29 June 1974 on Case No. 4/74.

The procedure under the DCPH is initiated with a protocol prepared by officials of the Ministry of the Interior, mayors or deputy mayors. The protocol describes the act as well as the identity of the perpetrator and the witnesses.[88] On the basis of this protocol the director of the respective regional office of the MoI files the case with the district judge (within 24 hours) who hears the case under an accelerated procedure (within another 24 hours) and issues a judgment which is not subject to appeal.

The DCPH provides for a possibility for both the judge and the local MoI director to refer the case to the local commission. The DCPH in fact mandates such referrals in cases of juveniles if – the nature of the offence and the personality of the perpetrator considered – there is reason to believe that a correctional measure will work better than an administrative punishment.[89] While this rule does not bar the possibility to bring the juvenile before the court for petty hooliganism per se, it certainly reduces such cases in practice. In fact measures under the DCPH are very rarely applied. In April 2007 the research team addressed five district courts with a request to provide information on the number of juveniles to whom such measures had been applied in the course of 2006. Three district courts (in Pazardzhik, Pleven and Sliven) reported that no such measures had been applied during that year. The Smolian District Court reported one such case and the Kurdzali District Court stated that it had applied such measures in three cases.

In Bulgaria, both juveniles and adults can also be sanctioned through the procedure envisaged by the recently adopted Protection of Public Order during the Organization of Sports Events Act (PPODOSEA).[90] This law aims at preventing hooliganism during sports events through information-gathering, imposing certain obligations on organizers, and sanctioning perpetrators of 'sports hooliganism'. The law enumerates a number of offences that it aims to sanction, such as cursing, obloquy, using obscene expressions, fighting, invading the playing field, damaging or destroying property etc. Juveniles between 16 and 18 years of age can be sanctioned under this law with detention for up to 10 days in MoI detention facilities, fines or public works.[91] In this case, too, the sanctioning system is within the framework of an administrative procedure and is similar to the one under the DCPH. It too starts with a protocol from the MoI officials, which then goes to the district court judge within 24 hours. The judge may indicate a sanction, refer the case to the prosecutor for criminal prosecution,

88 DCPH, art. 2.

89 DCPH, art.1, para. 4.

90 Protection of Public Order during the Organization of Sports Events Act (Закон за опазване на обществения ред при провеждането на спортни мероприятия), *Official Gazette*, No. 96 from 29 October 2004, the latest amendment from 10 October 2006, art. 21.

91 PPODOSEA, art. 22, para. 1 and 25, para. 4.

refer the case to the local commission for the imposition of a correctional measure, or relieve the perpetrator from administrative responsibility.[92] This decision cannot be appealed.

Both the DCPH and the PPODOSEA allow for some minimum due process guarantees during the hearing. The procedure and the rules of evidence – where not regulated by these acts – are regulated by the Administrative Offences and Sanctions Act, which in turn refers to the CPC. The accelerated procedures under both the DCPH and the PPODOSEA, however, give rise to concerns under art. 6.3.b of the European Convention on Human Rights.[93] The lack of possibilities for appeal in a procedure that envisages deprivation of liberty per se raises concerns under art. 2.1 of Protocol 7 of the European Convention of Human Rights.[94] The PPODOSEA allows the case to proceed at the trial phase in the absence of the perpetrator, and the district judge to exercise discretion on the issue of admissibility of witness testimonies.[95] Apparently, these provisions can impede the right of the person accused to cross-examine witnesses.

5. The sentencing practice – Part I: Sanctioning under the Juvenile Delinquency Act

The local commissions and the courts provide data to the National Statistical Institute for all indicated correctional measures on an annual basis. They also generalize them by type and report separately for correctional measures indicated in cases of anti-social behaviour and crimes. *Table 2* below shows data on correctional measures indicated for anti-social behaviour and for crimes under the JDA for the entire country for selected years in the period 1990-2005 as provided by the National Statistical Institute. It also presents data about the delinquent behaviour that served as grounds for indicating such measures. The types of anti-social behaviour and crimes are presented as reported by the local commissions and the courts.

92 PPODOSEA, art. 33, para. 1.

93 Art. 6.3.b of the European Convention of Human Rights provides: "Everyone charged with a criminal offence has the following minimum rights to have adequate time and facilities for the preparation of his defence."

94 Art. 2.1 of the Protocol 7 of the European Convention of Human Rights provides: "Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal."

95 PPODOSEA, art. 32, para. 2.

Table 2: Correctional measures imposed for anti-social behaviour and for crimes under the JDA by year (1990-2005)

	1990	1992	1994	1995	1996	1998	2000	2001	2002	2004	2005
For anti-social behaviour – total	**1,837**	**2,066**	**2,844**	**2,072**	**2,083**	**2,007**	**1,832**	**1,587**	**1,812**	**2,191**	**2,265**
Escape from home	276	324	418	361	233	239	296	284	276	268	331
Escape from school	433	708	975	566	624	454	-	-	-	360	249
Escape from a children's institution	-	-	-	-	-	-	136	116	102	86	51
Vagrancy	141	144	196	130	167	178	232	201	279	230	172
Use of alcohol	149	199	197	123	133	118	69	79	76	75	78
Use/distribution of drugs	49	35	54	24	23	91	50	51	109	126	177
Prostitution (after 2000 also includes homosexual practices)	-	-	102	57	46	86	44	42	71	78	66
Other "anti-social behaviour"	789	656	932	811	857	841	1,005	815	1,112	968	1,141

	1990	1992	1994	1995	1996	1998	2000	2001	2002	2004	2005
For crimes – total	**3,168**	**4,531**	**5,283**	**4,621**	**5,322**	**5,307**	**4,212**	**4,614**	**6,173**	**6,636**	**7,727**
Theft	2,367	3,596	4,280	3,751	4,394	4,147	3,220	3,486	4,535	4,791	5,700
Robbery	81	145	286	234	225	172	119	122	173	204	237
Theft of a vehicle	363	268	239	185	210	147	85	94	83	128	121
Sex crimes	64	73	-	-	-	-	53	57	78	65	63
Bodily injury	46	47	-	-	-	-	93	136	152	201	302
Causing bodily injury to persons older than 18 years	-	-	58	38	32	46	-	-	-	-	-
Hooliganism	125	178	178	172	205	224	339	374	674	381	377
Crimes against persons younger than 18 years	-	-	72	48	58	120	-	-	-	-	-
Other crime	122	224	170	193	198	451	303	345	478	866	927

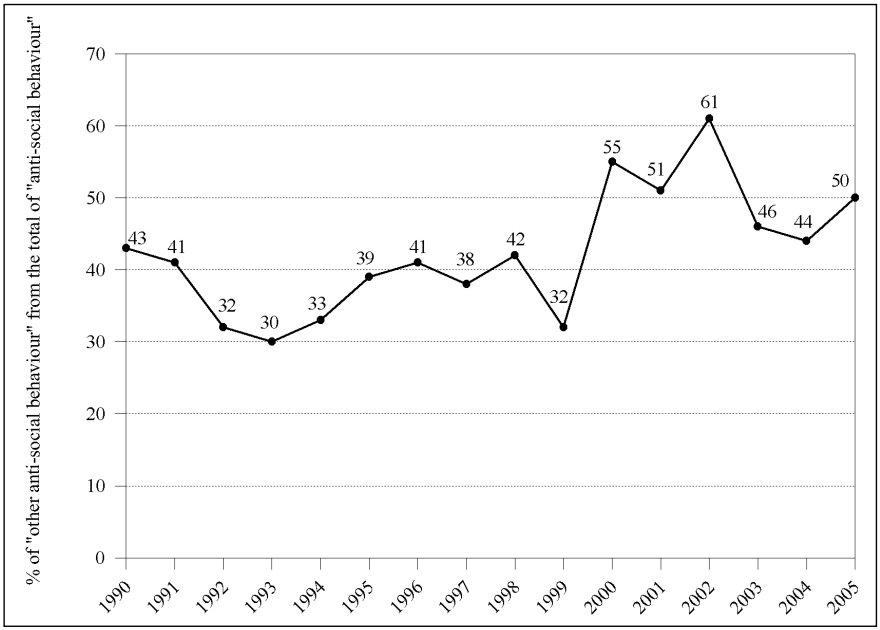
Source: National Statistical Institute, information provided for the specific purposes of this research, The NSI was unable to provide data for the years before 1990,

It becomes clear that the number of correctional measures indicated for crimes is two to three times larger than their number for anti-social behaviour. This difference grew over time – it was roughly 1:2 at the beginning of the period at hand and increased to roughly 1:3 by 2005. If we are to name the most common grounds for the imposition of a JDA correctional measure throughout this period it would be theft. The number of correctional measures indicated for theft alone increased 2.4 times from 1990 to 2005. Interestingly, it did not decrease in the period 2001-2005 when the overall crime rates in Bulgaria were declining (see *Section 6* below).

Whereas in the case of crimes the typology follows the respective provisions of the Criminal Code, it is much more complicated in the case of anti-social behaviour. With anti-social behaviour and its general definition, it is only possible to discern what the local commissions and the courts believed is anti-social by looking at the application of JDA measures in practice. This is attempted in the first half of *Table 2*, which offers a typology of the anti-social behaviour through generalizing the practices of the local commissions and the courts in application of the law. Thus, some of the major flaws in the Bulgarian juvenile justice system become immediately clear. None of the types of anti-social behaviour of juveniles found above constitutes a crime if exhibited by adults. The nature of these acts suggests that in sanctioning such behaviour the state substitutes informal social control that is normally exercised by the family and peers in a democratic society through some type of a formal social control.

However, maybe even more importantly, the official statistics do not fit into any typology. In a vast number of cases, correctional measures were indicated for anti-social behaviour that was termed “other”. *Figure 3* below presents the shares of this undefined anti-social behaviour for the period from 1990 to 2005.

Figure 3: Undefined "anti-social behaviour"



The arbitrary application of the JDA in practice which is indicated by the huge shares of undefined "other anti-social behaviour" is particularly evident after 1999. In the period 2000-2005 more than half of the total number of correctional measures, which were indicated for anti-social behaviour, were responses to forms of behaviour that cannot be easily allocated to a specific typology.

Correctional measures indicated under the JDA vary and only a small proportion of them are custodial. *Table 3* below presents the structure of correctional measures for 2005.

Table 3: Correctional measures by type in 2005

	For Anti-Social Behaviour		For Crimes		Total	
	N	%	N	%	N	%
Warning	875	38.6	3,034	39.3	**3,909**	**39.1**
Obliging to apologize to the victim	62	2.7	229	3.0	**291**	**2.9**
Obliging to participate in consultations, trainings and programs	129	5.7	346	4.5	**475**	**4.8**
Placement under the specific supervision of parents or carers	342	15.1	1,212	15.7	**1,554**	**15.5**
Placement under the supervision of a public educator	439	19.4	1,496	19.4	**1,935**	**19.4**
Prohibition to visit certain places and entertainment venues	47	2.1	121	1.6	**168**	**1.7**
Prohibition to meet or contact certain persons	55	2.4	189	2.4	**244**	**2.4**
Prohibition to change present living address	25	1.1	66	0.9	**91**	**0.9**
Obligation to repair the damage	15	0.7	46	0.5	**61**	**0.6**
Public works	73	3.2	245	3.2	**318**	**3.2**
Placement in a SPBS	64	2.8	91	1.2	**155**	**1.6**
Warning for placement in a CBS	90	4.0	550	7.0	**640**	**6.4**
Placement in a CBS	49	2.2	102	1.3	**151**	**1.5**
Total	**2,265**	**100**	**7,727**	**100**	**9,992**	**100**

Source: National Statistical Institute, information provided for the specific purposes of this research.

Of a total of 9,992 imposed measures 3,909 were warnings (39%). Placements in the two types of educational/correctional institutions (SPBS and CBS) accounted for only 3% with a total of 306 being ordered. The remainder were measures that were to be implemented in a community setting. Under the JDA the local commissions are responsible for implementing all correctional measures imposed on juveniles and their parents and for exercising control over the execution of these interventions.[96]

In addition to imposing and executing correctional measures, the local commissions also have an extensive preventive mandate. The JDA obliges them to develop plans for combating juvenile delinquency; to coordinate all preventive activities in the territory of their municipality; to control all institutions involved in exercising corrective measures; to follow the personal development of juveniles who have served prison sentences or who have been released from correctional institutions, and to take all necessary measures to further foster that development, for instance by establishing support centres, consultations, hotlines etc.[97]

6. The sentencing practice – Part II: The juvenile criminal court dispositions and their application since 1980

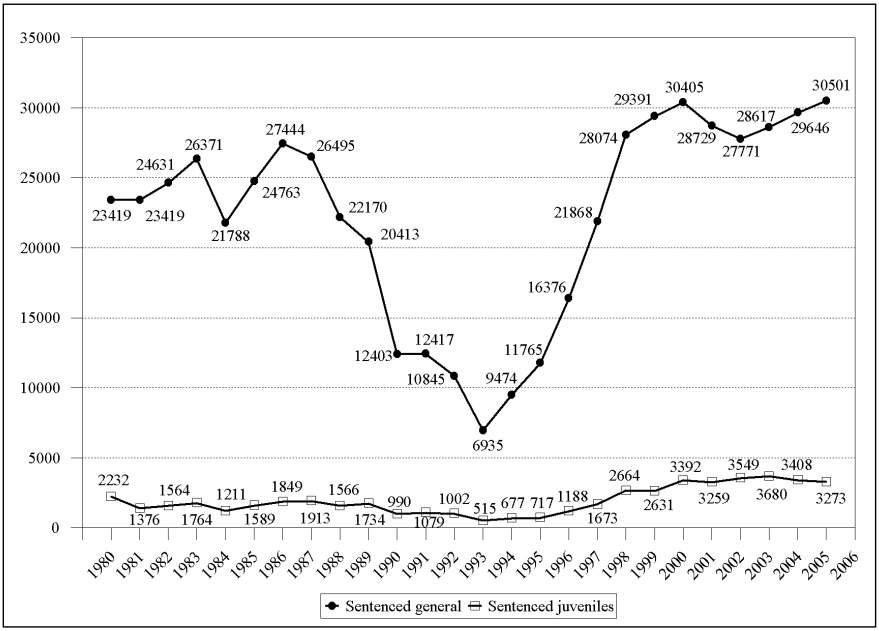
In order to better understand sentencing trends in the framework of the criminal procedure with respect to juveniles in Bulgaria over the past decades, we will have to compare these with the general tendencies in sentencing across all age groups. These tendencies are presented on the basis of the data on crimes and sentenced persons gathered and published annually by the National Statistical Institute (NSI). *Figure 4* below presents the trends in sentencing for all crimes via the number of persons convicted for criminal offences in the period 1980-2005. The graph also shows the number of sentenced juveniles per year in order to give some indication of their share of all sentenced persons and the development of this proportion.[98]

96 JDA, art. 10, para.1г.

97 JDA, art. 10.

98 Source: Национален статистически институт, Престъпления и осъдени лица (National Statistical Institute, Crime and sentenced persons), all the annual publications and electronic databases for the period 1980-2005. Unless indicated otherwise, statistical data cited below are from these publications.

Figure 4: Number of sentenced persons (general und juveniles) under criminal procedure in Bulgaria



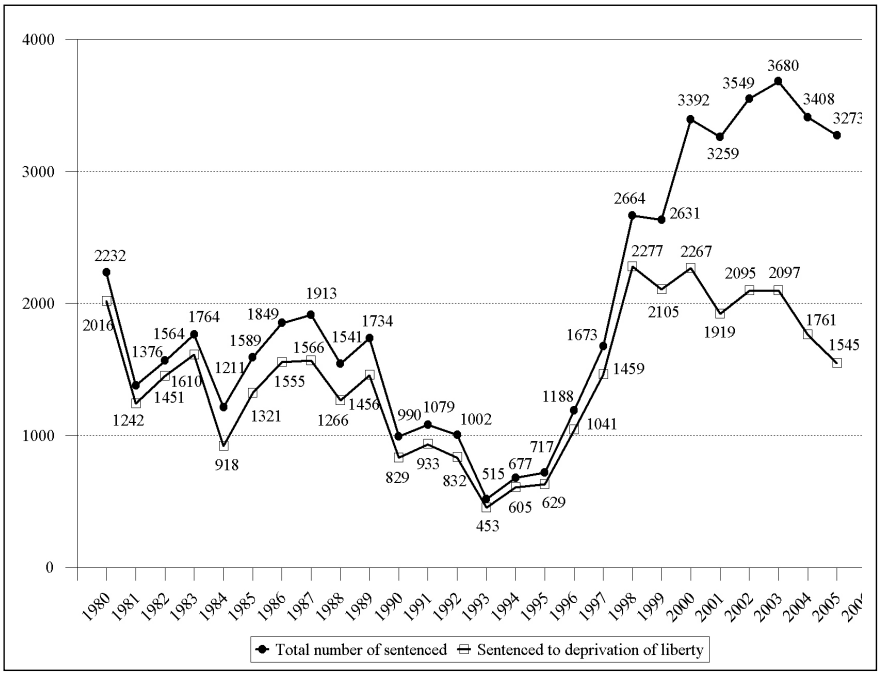
The data shows a huge decline in the number of persons sentenced in the first half of the 1990s, reaching its low point in 1993. For that year the number of sentenced persons is almost four times lower than the pre-1989 peak in 1986 and 3.4 times lower than the peak of 2005. This had nothing to do with the crime rates but was rather a result of a serious dysfunction of the criminal justice system and of the judiciary in general during the first years of democratic change. Further proof for a detachment of general sentencing practices from the crime rates is the upward trend in sentencing in the period 2002-2005. This is a period of a marked decrease in the crime rates in Bulgaria as indicated by several crime victimization surveys.[99] This upward general trend was partly due to the introduction in 1999 of the possibility to dispose of cases by an agreement between the perpetrator and the prosecutor/victim during pre-trial proceedings, which made it possible to process more cases and to deal with some of the backlog

99 According to the estimates of the Center for the Study of Democracy based on police registration statistics and crime victimization surveys in the period 2001-2005 the share of victims of most common crimes fell from 17.5% of the population in 2001 to 10.6% in 2005, while the criminal acts registered by the police in the same period decreased by 17.5%, see *Center for the Study of Democracy* 2006, p. 17.

from previous years. The number of agreements went up quickly and in 2002 criminal cases concluded by agreements already accounted for 25% of all cases, reaching 35% in 2005. This tendency, however, did not do much to change the overall structure of criminal repression in Bulgaria. In the year 2000, 61% of all sentences were custodial; in 2002 their share went up to 66%, and in 2005 it fell to 60%, i. e. close to the 2000 level with a stable ratio between effective and conditional imprisonment. The overall prison population was on the increase throughout this period and in 2005 – at 11,436 – it was more than 25% higher than the figure for the year 2000.

Against this background, the trends in the criminal sentencing of juveniles in the period 1980-2005 exhibit certain peculiarities as shown in *Figure 5* below:

Figure 5: Juveniles sentenced under criminal procedure – total, and to deprivation of liberty

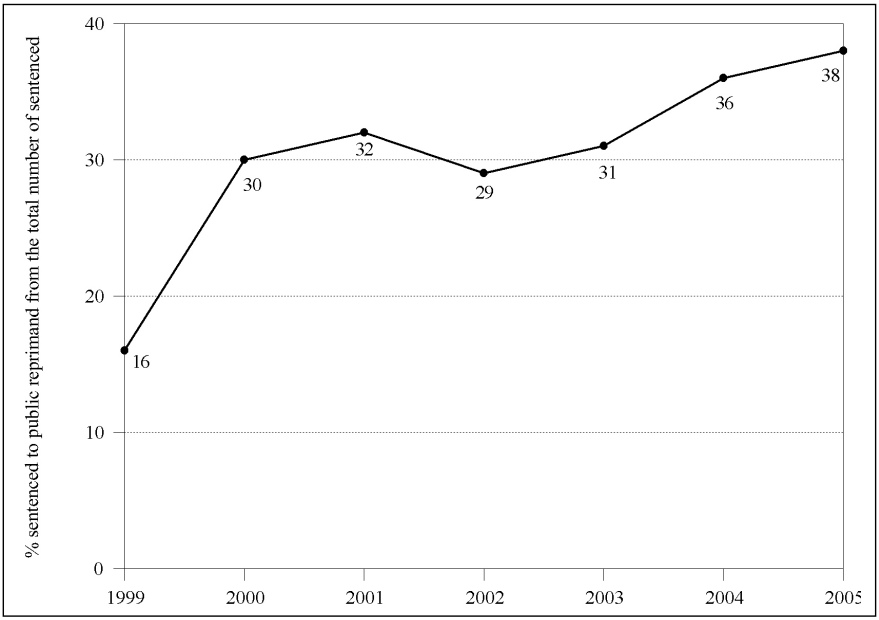


In the case of juveniles we can again observe a decline in the absolute number of sentenced young persons in the 1990s, reaching a lowest point of the last 25 years in 1993 as was also the case with overall sentencing figures as seen above. The share of juveniles among the total number of persons sentenced

through criminal procedure, however, was much more stable, increasing after 1999 and peaking in 2003. This peak was then followed by gradual decline.

More importantly, however, as *Figure 5* shows, up to 1998 the share of sentenced juveniles who were deprived of their liberty was around 80-90% of the total and was stable for a period of almost two decades. In fact, it also varied within these percentages prior to 1980. After 1998 the two trends progressively digressed, and in 2005 the share of juveniles who were sentenced to deprivation of liberty was 'only' 47%. The major factor contributing to these unique trends has been the possibility to conclude agreements since 1999, which in the case of juveniles produced different effects than in the case of adults. The period 1999-2005 saw a rapid increase in the share of juvenile cases that were concluded with agreements. In 2002 the figure lay at 30% of all cases, while in 2005 it had increased to 41%. At the same time, the number of juveniles sentenced to public reprimand grew rapidly. *Figure 6* below presents this trend.

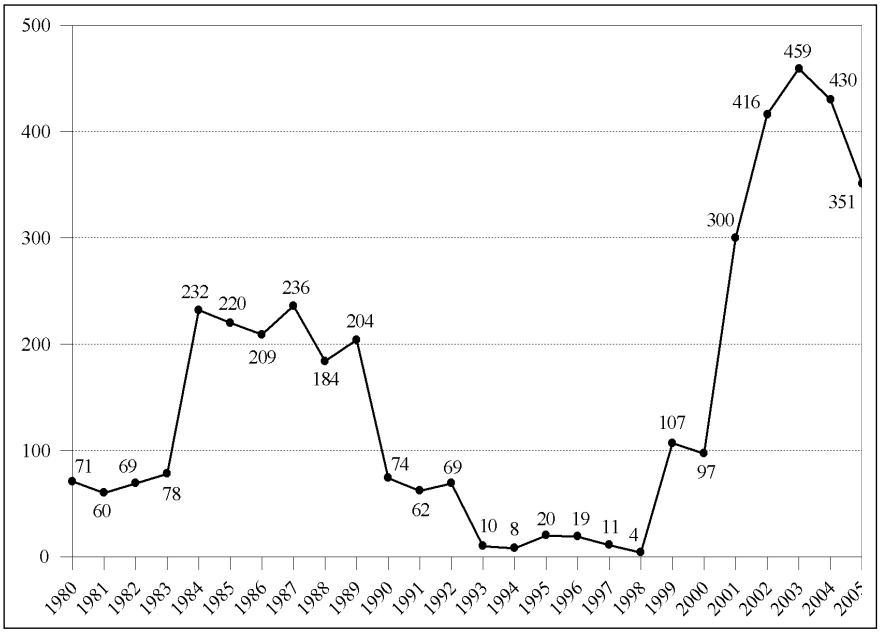
Figure 6: Share of juveniles sentenced to public reprimand



Another factor which contributed to the decline in the use of sentences to deprivation of liberty in cases of young offenders after 1999 was the increased practice by the criminal courts of directly placing young offenders in a correctional boarding school (CBS) under art. 64, para.1 of the Criminal Code (see *Section 3* above). In this case, too, the possibility to conclude an agreement

apparently contributed to this tendency. *Figure 7* below presents the dynamic of the placements at a correctional institution by the criminal courts as a form of diversion in the period 1980-2005.

Figure 7: Placement in CBS through criminal procedure



The number of persons placed in the CBS through criminal proceedings is only a small share of the total number of young persons who are accommodated in this particular type of institution. Furthermore, they constitute an even smaller share of the overall population of all juvenile correctional institutions in general, which also encompass the social-pedagogical boarding schools, which are a much larger network than that of the CBS with many more inhabitants (see *Section 11* below). As can be taken from *Figure 7*, the number of placements in the CBS through the criminal courts in the period 1993-1998 was very low, and it increased rapidly thereafter to reach a peak in 2003. After that year, it started decreasing, while at the same time the number of indications of public reprimands increased. Still, in 2005 it remained at a much higher level compared to any year of the last decade of communist rule (1979-1989).

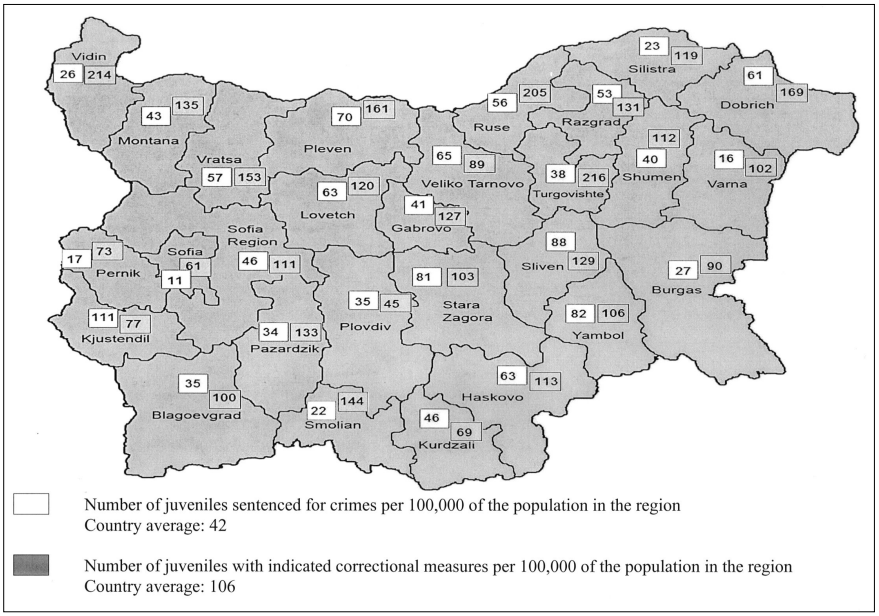
7. Regional patterns and differences in sanctioning practices under the criminal procedure and under the Juvenile Delinquency Act

As the juvenile criminal procedure and the procedure for imposing JDA correctional measures in Bulgaria are integrated, it appears appropriate to consider the regional differences in their implementation together. These differences can be explored on the basis of the NSI data on sentenced juveniles and juveniles with indicated correctional measures by region. For the purposes of the present study we will do this on the basis of data for 2005.[100]

Figure 8 below presents data for 2005 on the number of juvenile offenders sentenced by the criminal courts and the number of juveniles with indicated correctional measures per 100,000 of the population in each of the 28 regions of Bulgaria. It allows for a comparison of the regional data with the national average.

100 All statistical data below are taken from three sources: *National Statistical Institute (NSI)*: the official publication on crimes and sentenced persons for 2005; the publication of the NSI: Population and Demographic Processes – 2004 and the information provided by the NSI for the specific purposes of this research.

Figure 8: Juveniles sentenced for crimes and with indicated correctional measures in 2005 by region



Source: National Statistical Institute: Information provided for the specific purposes of this research.

Interpreting the above is challenging as it is hard to find any simple and all-encompassing correlation between the two sets, as well as between them and the available data on regional demography. There are regions (Vratsa, Dobrich, Haskovo, Sliven, Lovech, Ruse, Pleven) where high criminal sentencing rates correlate with high JDA sanctioning rates, and which can be seen as being "tough" on both crime and non-criminal deviant behaviour. At the same time, there are regions in Bulgaria (Kjustendil, Veliko Tarnovo, Kurdzali, Stara Zagora) with relatively high levels of criminal sentencing and low levels of sanctionning under the JDA. For these, we can assume that criminal sanctioning compensates for the lenient attitudes of the local commissions. The third category of regions (Vidin, Pazardzik, Smolian, Turgovishte) includes regions with relatively low criminal sentencing rates coupled with high rates of sanctioning under the JDA. In this case, the assumption would be that it is the other way around – sanctioning under the JDA compensates for lenient attitudes on behalf of the criminal courts. And, finally, there is the category of regions (Sofia, Plovdiv, Pernik, Burgas, Varna) where both criminal sentencing and

sanctioning according to the JDA are low. The curious thing about the latter category is that these are the most urbanized regions where one would expect higher levels of juvenile delinquency.

There are other facts too that are hard to explain if we assume a correlation between high rates of delinquency sanctioning on the one hand, and high delinquency rates, loose social bonds and urban life on the other. All but one (Ruse) of the regions with high criminal sentencing rates and high JDA sanctioning rates are more rural, i. e. with greater proportions of the population living in villages than the national average (29.8%), and most have shares of population under the working age that are close to the national average. Yet, the levels of both types of sanctioning in these regions are quite high. In these cases it is hard to find other explanations than the influence of some subjective factors in the work of the criminal justice and the juvenile delinquency systems.

8. Young adults (18 -21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

There are no special legal provisions in Bulgaria regarding applicable sanctions, procedural issues or sentencing of young adult offenders or delinquents.

9. Transfer of juveniles to an adult court

There is no possibility of the transfer of juveniles to an adult court.

10. Preliminary residential care and pre-trial detention of juveniles

Remand measures applicable to adolescents under the criminal procedure differ from those for adults. For the adolescents they include:

a) Supervision by the parents/guardians;
b) Supervision by the head of the correctional institution where he/she was placed;
c) Supervision by officials under the JDA;
d) Detention.

The CPC specifically provides that adolescents shall only be detained "in exceptional cases".[101] This serves two purposes: to avoid deprivation of liberty, which is one of the most serious infringements of the constitutional rights of the citizens, and to relieve the intensity of the procedural coercion in the specific

101 CPC, art. 386, para. 2.

situation of a juvenile.[102] According to the interpretation of the Supreme Court, a case is exceptional where the criminal act poses a serious public danger, or when remand purposes cannot be served by another measure.[103] Adolescents who are detained are to be kept separately from adults, and their parents and educational institutions are to be immediately informed of their detention.[104]

Special preliminary measures and pre-trial detention of juveniles are governed by the CPC in cases where juveniles are charged in the criminal procedure framework, and by the JDA in cases of anti-social behaviour. In practice, juvenile offenders whose cases are processed through either one of these procedures may ultimately receive sanctions envisaged under the other procedure.

The CPC provides that the defendant may be detained if he/she is charged for a crime that is punishable with imprisonment and if there is a real danger that he/she might abscond or re-offend. If there is no evidence pointing to the contrary, such danger is presumed to exist where:

a) The charge is for a crime which had been committed for a second time or which suggests dangerous recidivism;
b) The charge is for a severe and intentional crime and the defendant had previously been sentenced for another severe intentional crime to an effective imprisonment of no less than one year;
c) The charge is for a crime for which ten or more years of imprisonment are prescribed.[105]

Pre-trial detention cannot exceed two months. There are however two exceptions to this general rule: it cannot exceed one year if the charge is for a severe intentional crime or more than two years if the charge is for a crime that is punishable by imprisonment for fifteen years or more.[106]

The official statistics do not include data that allow an estimate of the extent to which each one of the above measures is applied. From May to November 2004 the Open Society Institute – Sofia conducted a representative survey of 838 court files, which included information on criminal cases started in the period 1 January 2000 – 1 July 2002, for the specific purposes of assessing the extent of access to legal aid in criminal proceedings.[107] Files of both juveniles and

102 See *Манев* 2002, p. 364.

103 Decree No. 6/1975.

104 CPC, art. 386, para. 4.

105 CPC, art. 152, para. 1 and 2.

106 CPC, art. 152, para. 4.

107 For more information on the methodology of the survey cf.: Институт "Отворено общество", Достъп до правосъдие: Служебна защита по наказателни дела (Open Society Institute, Access to justice: Ex officio defense in criminal cases), София, 2005, p. 7-13.

adults were studied regarding a number of indicators. One of them was the imposition of remand measures. Drawing on this information, *Table 4* below presents comparable data on the remand measures indicated for defendants in five age groups who went through the criminal procedure in the above stated period.

Table 4: Remand measures indicated in criminal proceedings by age groups (% of defendants in the age group who were issued the respective remand measure)

Age group	14-17	18-25	26-35	36-54	Over 55
Subscription	0	41.4	44.5	46.7	53.7
Bail	0	11.5	8.1	8.0	22.0
Home arrest	0	0.4	0	0.4	0
Detention	16.1	28.4	22.7	17.8	14.6
Measures for adolescents	79.0	2.3	0	0	0
No measure	1.6	8.0	13.4	16.0	0
No information	3.2	8.0	11.3	10.7	9.4

Source: Database of the 2004 OSI survey.

The above data makes it clear that the majority of remand measures that are imposed on juveniles are the three types of supervision envisaged exclusively for them in the law. Further study of the database shows that of those three types, supervision by parents/guardians was most frequently applied. *Table 3* also shows, somewhat surprisingly, that detention in cases of juveniles is used nearly as frequently as in cases of defendants who are older than 35 years.

Adolescents are predominantly detained in the investigation detention facilities of the Ministry of Justice, while a limited number are also held in the two juvenile prisons in Boychinovtsi and Sliven. In the investigation detention facilities, adolescents are placed in separate cells individually or with other adolescents for the entire period of their detention. There have however been cases, albeit isolated, in which young people detained on remand were placed together with adult detainees for short periods of time.[108] The conditions of detention in the investigation detention facilities in Bulgaria are often inhuman, with overcrowding, bad hygiene, and lacking access to fresh air and natural

108 See CEDH, Affaire Georgiev c. Bulgarie, Arrêt, 15 décembre 2005, Requête no 47823/ 99.

light. There are also no activities and in many facilities even no opportunities for outdoor exercise.[109]

The JDA envisages a possibility to detain a juvenile in a home for temporary placement of juveniles in several cases:

- If it is not possible to establish his/her permanent or present address.
- Where he/she is a vagrant, prostitute, uses alcohol or drugs.
- If he/she has left the state institution in which he/she was placed.
- After he/she has committed an anti-social act and his/her family situation is such that it is not possible for his/her parents to appropriately attend for him/her.[110]

As the name indicates, detention in such an institution is "temporary" for the purposes of transferring the juvenile to another institution or while criminal or juvenile justice proceedings involving the young person are ongoing. Confinement to a home for temporary placement of juveniles can be for no longer than 15 days (in exceptional cases for up to two months). It takes place through an administrative order by the local chief of the regional police department. A young person can only be detained for more than 24 hours if this is deemed necessary by the prosecutor.[111] No *habeas corpus* proceedings before a court are envisaged however, and thus this deprivation of liberty is in clear contradiction with Art. 5, paragraph 4 of the European Convention on Human Rights.[112]

There are five homes for the temporary placement of juveniles in Bulgaria. No official statistical data is collected on the number of their juvenile inmates and the actual duration of their stay in those institutions.

11./12. Deprivation of liberty for juveniles

11.1/12.1 Prisons

Adolescents in Bulgaria serve their prison sentences in two prisons, which the Criminal Code and the Execution of Punishments and Detention in Custody Act term correctional homes. These are the correctional home for boys in the town of Boychinovtsi and the correctional home for girls in the town of Sliven, which is in fact a special section of the women's prison in that city. While both

109 See *Bulgarian Helsinki Committee* 2005a.

110 JDA, art. 35, para. 1.

111 JDA, art. 37.

112 Art. 5, para. 4 of the ECHR provides: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his released ordered if the detention is not lawful."

institutions host mainly adolescents, young adult prisoners between 18 and 20 years of age can too serve their sentences there if they want to complete their education or receive some professional training. This is provided for by the Criminal Code which requires that such cases are sanctioned by the correctional home's Pedagogical Council and by the prosecutor.[113]

The Execution of Punishments and Detention in Custody Act (EPDCA) specifically governs the imprisonment of adolescents. It provides for a more lenient regime of imprisonment for them compared to that for adults. Only three categories of regime may be applied to adolescents – lenient, general and strict. The court normally sentences to lenient and general regime imprisonment, for it may indicate strict regime only in "exceptional cases" – if the adolescents have already served a term of imprisonment, if they have escaped from prison, or have committed gross or systematic violations of the internal order and discipline or if the remainder of the penalty is more than five years.[114] All educational and correctional activities are supervised by a Pedagogical Council, which is to be established at each correctional home.[115] The prison governor imposes disciplinary measures including, among others, up to five days isolation in a disciplinary cell.[116]

As shown in *Figure 9* below the number of adolescent prisoners in the juvenile correctional home for boys has fluctuated over the past 15 years. The respective trend for the correctional home for girls was more stable.

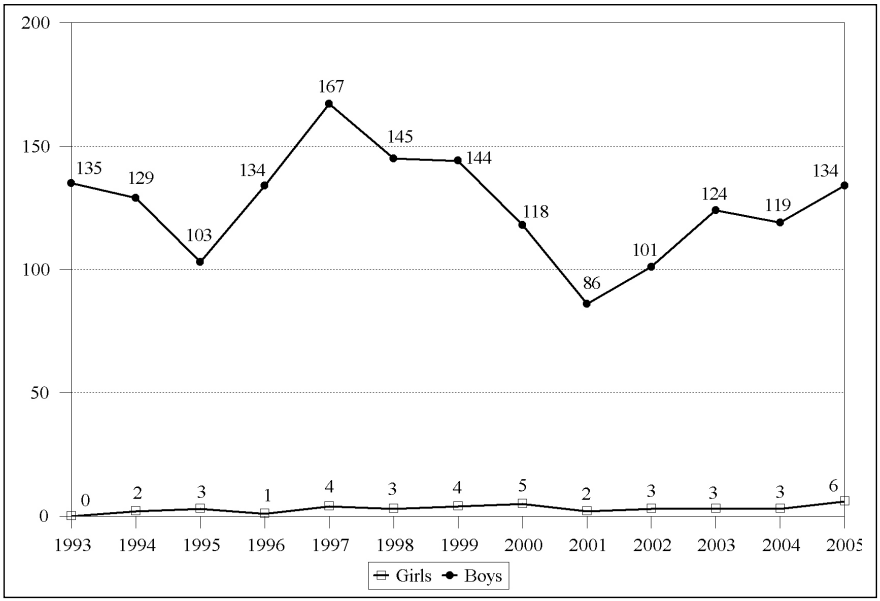
113 Criminal Code, art.65, para.2.

114 Execution of Punishments and Detention in Custody Act (Закон за изпълнение на наказанията), Official Gazette, No.25 from 3 April 2009, art.191.

115 EPDCA, art.188.

116 EPDCA, art.193, para.1. This measure is exercised in conditions of solitary confinement. Rule 67 of the U.N. Rules for the Protection of Juveniles Deprived of their Liberty prohibits imposition of disciplinary measures that constitute solitary confinement [U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 40/33, annex, 40, 40 U.N. GAOR Supp. (No.52) at 205, U.N. Doc A/45/49 (1990)].

Figure 9: Number of inmates in the correctional homes for boys and for girls on 1 January



Source: Information provided by the administration of the Boychinovtsi and Sliven Correctional Homes.

The research team conducted visits to both correctional homes in April 2007 for the specific purposes of this study. The material conditions in the correctional home for girls were better than in that for boys. The daily regime of the inmates normally focuses around the school, in which all of the inmates are enrolled. In both homes the schools offer the opportunity to attain a secondary education diploma that does not indicate that the school is located in a prison.

Regarding out-of-school activities – including correctional work – some are available in the correctional home for boys both inside and outside of the institution, but their provision is deemed unsystematic and insufficient even by the staff themselves. Most of these activities take place on the premises of the correctional home in the form of lectures, sports activities and activities organized in several clubs – a crafts club "Skilful Hands", a Christian religious club "Alfa Course" and an icon-painting club. Occasionally children are also involved in organizing their own theatre, dancing and singing performances. Theatre performances are sometimes organized jointly with young people from the town. The correctional home has a library with around 8,000 books and daily subscriptions to some of the most popular newspapers and magazines.

Internal order in the correctional home for boys was enforced very strictly and in a military manner. Boys would stand up and stand to attention every time a staff member or an outside adult person passed by. They would ask for formal permission to enter and to exit a staff member's office even when they were merely delivering coffee. This obviously hampered good communication, an essential element in maintaining a positive atmosphere in a correctional institution. In the course of 2006 the governor of the correctional home imposed 89 disciplinary punishments, 18 of which were effective isolations and 14 were conditional isolations[117] in a disciplinary cell.

Out-of-school activities in the correctional home for girls in Sliven are more diverse and more inclusive than those in Boychinovtsi. All girls participate in a variety of activities based on their individual rehabilitation programmes. These include work (sewing), floriculture and cooking courses, personal development courses, dancing and theatre performances. The girls have at least one hour of physical exercise every day and have access to the prison library. The girls took part in most of the school and out-of-school activities together with the adult prisoners from the women's prison.

Disciplinary practices in the correctional home for girls are much less harsh than those in the correctional home for boys. Since the beginning of 2007 only one girl has been punished with an extraordinary order for cleaning duties. The psychological atmosphere in the home was relaxed and easy going, with much more meaningful communication between the staff and the inmates than in Boychinovtsi.

Both juvenile prisons have been subject to frequent inspections from different governmental bodies. In 2007 they were visited by the Ombudsperson in the course of his program of visits to places of detention. Non-governmental organizations also visit these institutions to monitor human rights issues and standards.

11.2/12.2 Educational/correctional institutions

Juveniles who are placed in correctional institutions – the harshest measure that the JDA provides – serve their terms in two types of institutions: Correctional Boarding Schools (CBS) and Social-Pedagogical Boarding Schools (SPBS).[118] These two types of institutions have different origins. The CBS are heirs to the labour correctional schools and have always been institutions for the involuntary confinement of juveniles. The SPBS, on the other hand, only became institutions

117 Conditional isolation is not enforced if the person does not re-offend within three months.

118 CBS and SPBS will be referred to below also as "correctional schools" or "schools for delinquent children".

for the involuntary confinement of juveniles as late as 1996.[119] Although at present there is very little difference between the two types of institutions, the recently adopted Regulations on the Structure and Activities of the CBS and SPBS still distinguish between the two along these lines. While under these regulations the CBS are only for juvenile offenders, SPBS may also host children for whom "there exist some prerequisites for involvement in delinquent behaviour".[120] After the local commission indicates a correctional measure, the Ministry of Education and Science is responsible for allocating the respective juvenile to one of the correctional schools in Bulgaria.[121]

Historically the SPBS network has been much larger than the CBS, both in terms of the actual number of institutions and the number of students placed there. *Table 5* below shows this difference through the number of the respective institutions and the number of children placed there between the school years 2000/2001 and 2005/2006.

Table 5: Number of correctional institutions and number of children placed in them by school year

	2000/2001		2001/2002		2002/2003		2003/2004		2004/2005		2005/2006	
	Schools	Inmates	Schools	Inmates	Schools	Inmates	Schools	Inmates	Schools	Inmates	Schools	Inmates
CBS	9	551	8	449	7	465	6	422	6	419	6	346
SPBS	21	2,503	20	2,300	19	2,057	18	1,842	18	1,544	17	994

Source: National Statistical Institute: Education in Bulgaria for 2005, p. 45, 47 and for 2006, p. 43 and 45.

The Bulgarian Helsinki Committee (BHC) – a Sofia based human rights NGO – has been monitoring human rights in the juvenile correctional institutions within the Ministry of Education and Science since 1995. Twice, in 2001

119 See *Section 3* above. After 1996 the number of CBS gradually decreased.

120 *Minister of Education and Science* (2006): Regulations on the Structure and Activities of Correctional Boarding Schools and Social-Pedagogical Boarding Schools. (hereafter Regulation on CBS and SPBS), art. 2 and 3. The JDA does not allow the courts to place juveniles in correctional institutions on this particular ground and the SPBS cannot accept students from other sources.

121 Regulation on CBS and SPBS, art. 8.

and 2005, the organization published comprehensive reports in which it summarized the results of these monitoring activities. According to the BHC conclusions, placements in correctional schools before 2004 in the absence of appropriate due process guarantees were quite arbitrary. They were particularly arbitrary in the case of SPBS where, in contrast to CBS, placement was taking place only through the local commissions, without even a formal judicial review.[122] The placement procedure in the SPBS was additionally regulated in 1998 by the Ministry of Education and Science. This regulation provided a possibility to place a juvenile in such a school by a decision of the CPR inspectors, in addition to the possibilities provided for by the JDA.[123] Placements were used for a variety of purposes: as punishment for a delinquent act; to compel children – particularly of Roma families – to go to school; to fill the institution with the necessary number of students to prevent its closure in order to protect the jobs of its personnel in a period where the general number of children in school age in Bulgaria was on a constant decrease. In fact, as the 2005 BHC report on the schools for delinquent children observes, many of the children placed in correctional schools do not show up for school and the school principals seem to be lenient about their absence, caring more about students' registration in the school on paper and less about their actual education.[124] When the European Committee for the Prevention of Torture (CPT) visited the CBS in Yagoda in April 2002, it found that only 15 students out of the 42 who were registered in the school record were actually present.[125]

Roma are heavily overrepresented among the inmates of correctional institutions. According to the 2001 BHC report, the number of Roma children in the entire system of CBS/SPBS was 65% of the total number of students,[126] and according to the 2005 BHC report, around 60% of all children placed in CBS and SPBS were Roma.[127]

Figure 10 below shows how the number of inmates in those institutions developed in the period from 1980 to 2005. It should be taken into account that

122 *Bulgarian Helsinki Committee* 2001, p. 11-12.

123 *Ministry of Education and Science* (1998): Guidelines for the Organization of the Activities in the Schools of General Education, Special and Professional Schools for the 1998-1999 School Year. p. 106. These placements were apparently unlawful but were nevertheless used extensively for several years before the July 2004 amendment of the JDA.

124 *Bulgarian Helsinki Committee* 2005, pp. 18-19. This BHC report is entitled "In the Name of the Institution" to stress the degree to which placements in CBS and SPBS are driven by internal institutional logic, instead of by correctional purposes.

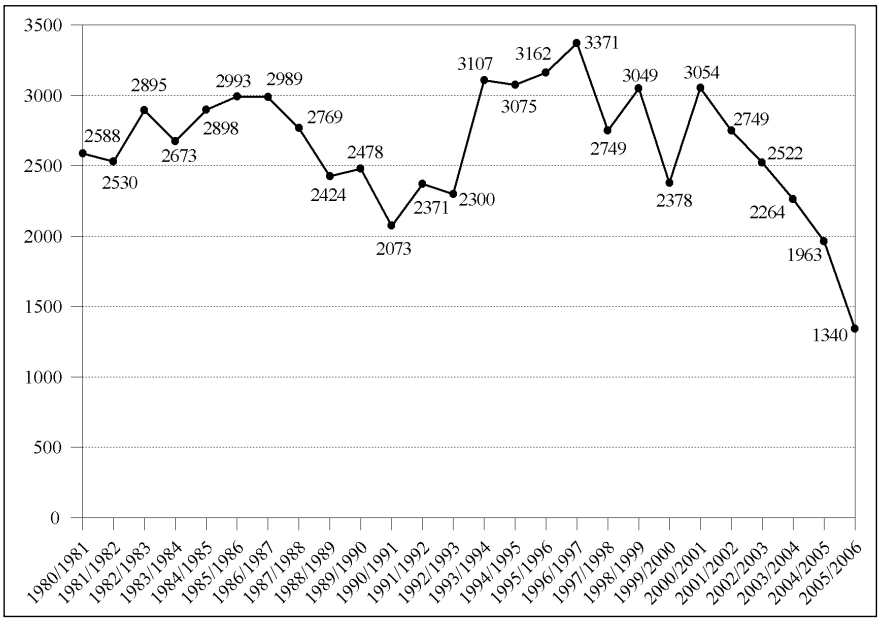
125 *CPT* 2004, para. 183.

126 *Bulgarian Helsinki Committee* 2001, p. 23.

127 *Bulgarian Helsinki Committee* 2005, p. 18.

the figures below are enrolled students, and do not represent how many students actually attended school.

Figure 10: Number of students in the schools for delinquent children



Source: Annual publications of the National Statistical Institute on education in Bulgaria.

As it becomes clear, the above figures have their own dynamics, which do not reflect the developments either of reported delinquent behaviour or of sanctioned delinquent behaviour. After the 2000/2001 school year there was a clear tendency of decrease in the number of students in the schools for delinquent children. In the period from 2000/2001-2003/2004 the decrease could be attributed to two factors: a policy of deinstitutionalization of child care prompted by the requirements of the EU accession process, and a general progressive decrease in the number of children in Bulgaria due to negative demographic tendencies. After the 2004/2005 school year, a third factor was added – difficulties in obtaining placement decisions from the courts due to the more formalized procedure and the necessity to collect and present convincing evidence.

Most CBS and almost all SPBS are located in remote villages, some being inaccessible in bad weather. According to the BHC data, the average distance from district centres in 2001 was 20-25 km, with certain schools located some

50-75 km away.[128] Most institutions were apparently deliberately established at such remote locations in order to prevent inmates from escaping. However this had a number of rather negative effects on the possibilities of hiring qualified personnel and ensuring adequate equipment, as well as supervision by the MES regional inspectorates.

School principals have to be trained educators and are responsible for organizing the educational process and "correctional-educational activities" in the schools. As the last BHC report observes, as of 2005 "in the great majority of these institutions no educational process that deserves that name has been organized".[129] As for correctional activities we, again, have to make a number of rather grim observations: insufficiently qualified personnel to organize them; lack of necessary equipment; little interest in children to participate and, ultimately, little or no effect on their behaviour.[130]

A serious problem for the CBS/SPBS system was physical and sexual abuse of inmates. The 2005 BHC report observes that many children placed in CBS and SPBS are subjected to physical, sexual and psychological violence ranging from imposition of disciplinary measures that are not provided for under the internal regulation of the institutions to physical and sexual assaults by other inmates.[131]

CBS and SPBS are rarely inspected by the regional inspectorates of the Ministry of Education and Science or by the other governmental bodies that have duties to oversee the execution of compulsory measures or to monitor human rights, such as the Prosecutor's Office, Regional Child Protection Departments, and the Ombudsperson. And even when such visits do take place, they are for the most part formal and rarely bring serious dysfunctions and abuses to light.[132]

13. Current reform debates and challenges

Due to a low degree of political and public interest inspiration for reform debates on the juvenile justice in Bulgaria were mostly attributable to external influences. In 1996, in the wake of Bulgaria's periodic report review before the

128 *Bulgarian Helsinki Committee* 2001, p. 391-392.

129 *Bulgarian Helsinki Committee* 2005, p. 84.

130 *Bulgarian Helsinki Committee* 2005, p. 58-68.

131 *Bulgarian Helsinki Committee* 2005, p. 68-78. According to one observer, violence and sexual abuse in children's institutions increased after 1990 as did most of the other dysfunctions of the system, such as staff abuses and disinterestedness, absence of correctional activities and lack of supervision. (see: *Петров* 2000, p.68-69). That author however does not provide sources for these assertions.

132 *Bulgarian Helsinki Committee* 2005, p. 84.

UN Committee on the Rights of the Child, Human Rights Watch published its report on the children of Bulgaria where it dealt, among other issues, with the need to reform the procedure for placement in juvenile correctional institutions. The report specifically recommended that "the Bulgarian government take steps towards adopting and implementing legislation for the creation of a juvenile court system to which the functions of the Local Commissions for Combating Juvenile Delinquency would be transferred".[133] As a reaction the authorities amended the JDA, introducing some changes including judicial review of decisions for placement in labour correctional schools, but in general the system remained unchanged. In January 1997 the Committee on the Rights of the Child recommended "a comprehensive reform of the system of juvenile justice" so that "particular attention should be paid to the right of children to prompt access to legal assistance and to a judicial review".[134] In the meantime, non-governmental organizations continued to press for further changes in the law.[135] When those took place with the 2004 amendments of the JDA, most academics writing on juvenile justice accepted the legislative changes.[136] Some even demanded that the reforms go further, including calls for a completely new law on juvenile delinquency.[137] There was also a minority, however, that fiercely opposed the amendments, claiming that they constituted a deviation from the progressive principle of dealing with juvenile delinquent behaviour outside of formalized judicial procedures.[138]

Over the past decade, several other issues emerged that became subject of public discussion and reform efforts in the field of juvenile justice. Between 2002 and 2004 UNDP-Bulgaria carried out a project titled "Improved Juvenile Justice", which had three objectives:

- Improving the interaction between judicial and extra judicial juvenile justice systems.
- Ensuring greater effectiveness of community measures and punishment.
- Child protection and guaranteeing the child's best interest.[139]

133 Cf.: *Human Rights Watch*, 1996, p. 25.

134 *CRC* 24/01/97, CRC/C/15/Add. 66, para. 34.

135 Cf. *Bulgarian Helsinki Committee* 2005 and *Bulgarian Helsinki Committee* 2001.

136 See: *Ковачева* 2004 and *Цонев* 2005.

137 See: *Иванов* 2006, p. 145.

138 Cf.: *Станков* 2006.

139 See a short description of the project at: http://europeandcis.undp.org/index.cfm?menu=p_search/p_result/p_projects&ProjectID=388, accessed on 4 May 2007.

The major focus of the project was piloting and gradually introducing probation for juveniles. Two municipalities – Blagoevgrad and Burgas – along with the Open Society Foundation, were partners to the UNDP in this project.

In January 2003, the government adopted the National Strategy for the Prevention of and Fight against Anti-Social Behaviour and Juvenile Delinquency (the National Strategy).[140] The National Strategy defines in rather general terms some principles on which the prevention and combat of juvenile delinquency in Bulgaria are to be based, as well as some risk factors which play a role in influencing the anti-social behaviour of juveniles. The latter include unemployment and low standards of living; changes in the system of values and negative attitudes toward social norms; insufficient leisure activities; traumatic relations with the family and social environment; lack of sufficient control and self-control of personal behaviour; exclusion from the educational system. The main areas of reform outlined by the National Strategy include:

- Enrichment of the prevention programmes, and introduction of new and more diverse sanctions and educational measures to combat delinquent behaviour.
- Shortening the duration of court proceedings involving juveniles.
- Introducing more due process guarantees and possibilities to appeal imposed sanctions.
- Speeding up of the procedures for limiting parental rights in cases where due care for a child is lacking.
- The introduction of full judicial control over the separation of a child from his/her family.
- Improving the expertise and qualification of the specialized bodies involved in combating juvenile delinquency.
- Increasing civil society participation in the imposition of preventive and sanctioning measures.
- Pilot opening of transitional prison facilities for juveniles.

The National Strategy was followed by an Action Plan for its implementation for the period 2003-2006,[141] which the Council of Ministers adopted in November 2003. It spells out in concrete terms activities and responsible agencies for their implementation. The Action Plan envisages numerous concrete actions at both central and local levels, including legislative changes, the development of programs in the areas of employment, education, health care, social welfare, institutional reform and leisure. The Action Plan foresaw the 2004 amendment of the JDA, the most important reform in juvenile justice legislation since 1989. Many of the other measures that it envisages were also implemented. However, there has been no formal evaluation of its implementation so far.

140 *Council of Ministers* 2003a.

141 *Council of Ministers* 2003.

14. Summary and outlook

The juvenile justice system in Bulgaria is in a process of transformation from a state-centred paternalistic approach, adopted during the communist period, in which government institutions assumed roles that are properly played by informal structures, such as the family and peers. This transformation, which is grounded entirely into the welfare approach, tries to overcome arbitrariness in sanctioning, which the paternalistic approach was flawed by, as well as to introduce responsibility and oversight into the implementation of sanctions. While the reform started with some delay after the fall of communism, it achieved considerable results, especially with the 2004 amendments to the JDA. It is however far from complete. A number of problematic areas call for further reform. Such further reform includes:

- Doing away with the present concept of anti-social behaviour through introducing internal differentiation in the concept by defining the elements of specific offences, in keeping with the principle that any conduct not considered an offence or penalized if committed by an adult should not be considered an offence, and should not be penalized if committed by a juvenile. This is going to be a further step towards grounding the sanctioning of juvenile delinquency in the principles of the rule of law, non-discrimination and the best interest of the child.
- Re-thinking of the use of the current correctional-educational institutions (CBS and SPBS) as places for deprivation of liberty. In their present form, they do not serve any useful individual or social purpose. On the contrary, they are places of violence and neglect, with multiple detrimental effects on the personal development of their inmates.
- Further reform of the substantive and procedural aspects of criminal law dealing with juveniles through reducing the imprisonment sanctions that are too harsh; limiting discretion in diversion; involving parents in investigative activities; inclusion of educators as members of the court panels, also when a juvenile is tried for a crime that he/she committed in complicity with an adult.
- Further reforms in the procedure for the imposition of JDA correctional measures by eliminating the existing contradictions and ambiguities, establishing clear rules of evidence, and involving educators in the court panels that both indicate correctional measures or review the correctional measures imposed.
- Improving conditions in the juvenile prisons and especially in the correctional home for boys in all of their aspects, including material conditions, possibilities for rehabilitation, disciplinary sanctions, qualification of the staff and inspections. Conditions in the investigation detention facilities require even more radical reform as at present they,

with few exceptions, impose inhuman conditions with lasting damaging effects on juveniles.

- Separation of the bodies involved in prevention from those investigating and sanctioning juvenile delinquent behaviour.

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Croatia

Igor Bojanić

1. Historical development and overview of the current legislation on juvenile criminal law

When speaking of the historical development of juvenile criminal law in Croatia, it is necessary to point out in advance that limited data are available on the position of juveniles in medieval law sources. Some city statutes contained provisions on punishment that were more lenient on juveniles and that only considered the upper age limit of juvenile status. Under the influence of Canonical Law that age limit was rather low, at 12 for girls and the age of 14 for boys. Since the mid 19th century, the Austrian Criminal Code of 1852 had been in effect in Croatia, Slavonia and Dalmatia. The 1918 Decree of the Vice-Roy of Croatia, Slavonia and Dalmatia on the punishment and protection of youth was particularly important for the further development of juvenile criminal law in Croatia. It contained detailed substantive and procedural criminal law provisions applicable to juveniles aged 14 to 18. It was also the first time that matters relating to the sanctioning and protection of juveniles were systematically regulated by a single piece of legislation. A special procedure was developed for dealing with juvenile delinquents, as were special court departments, court monitoring of the enforcement of educational measures, and so on. The legal position of juveniles in the Kingdom of Yugoslavia was regulated by the Criminal Code and the Criminal Procedure Act of 1929. However, both pieces of legislation also adopted several provisions of the Decree of 1918. There were three categories of young perpetrators: children under 14, younger juveniles aged 14 to 16, and older juveniles from the age of 17 up to 21. Children could not be persecuted or punished, but could be forced to submit themselves to educational measures. The key criterion for the treatment of younger juveniles – and thus the criterion for the application of special sanctions – was a young

person's level of maturity. Older juveniles were treated in the same manner as adult perpetrators with the exception that milder obligatory sanctioning was foreseen for them. Immediately after World War II, the legal position of juveniles in Yugoslavian legislation was fairly unfavourable, focussing greatly on repressive reactions. Their legal situation was improved in 1959 when the Criminal Code of 1951 was amended. Juvenile status was completely separated from that of adult delinquents, a step that was based on an increased comprehension of (and scientific findings in) the fields of social pedagogy, psychology, criminology and criminal policy. All provisions relating to juveniles were gathered in a special chapter of the Criminal Code. A completely new system for sanctioning juveniles was introduced, in which educational measures were foreseen as the main responses to juvenile offending. The only punishment that was provided for was juvenile imprisonment as an extraordinary sanction. Juveniles aged 16 and above could be sentenced to imprisonment if their offence implied a greater degree of severity and dangerousness. The scope of the juvenile regime was extended – albeit to a limited extent – to include the new age category of younger adults.

Possibilities for individualized juvenile treatment increased significantly, particularly in regard of selecting the most appropriate educational measure. By adopting the concept of separated competencies in the criminal legislation within former Yugoslavia, Croatia gained its own Criminal Code for the first time in 1977, which provided a possibility for Croatia to independently arrange the legal status of juvenile delinquents. This possibility has been used to further develop and improve the juvenile's legal position in criminal law, primarily by introducing new educational measures and providing wider possibilities for individualized treatment. This legislation was in place from the independence of the Republic of Croatia in the 1990s up until the major legislative reform of 1997.

In the Republic of Croatia, the Juvenile Courts Act (*Zakon o sudovima za mladež*) (hereinafter: JCA) currently applies to young offenders. The JCA came into effect on 1 January 1998 as an integral part of the new Croatian criminal legislation. This Act was amended in 2002 by the Law on Changes and Amendments to the JCA, the only amendment to date since its enactment. An expert working group engaged in drafting a legal text took a number of different influences and sources into consideration: the Croatian legal heritage; solutions from the application of previous legislation and respective court practices; recent legal texts on juvenile criminal law from other European countries; numerous recommendations by the UN and the Council of Europe. The JCA contains provisions for young perpetrators of criminal offences (*mladi počinitelji kaznenih djela*) i. e. juveniles and young adults in the substantive criminal law, provisions on courts, criminal procedure and the execution of sanctions as well as regulations on the protection of children and juveniles. This model has good role models in both the German and Austrian legislation.

Provisions of the Criminal Code (hereinafter: CC), the Criminal Procedure Act (hereinafter: CPA), the Courts Act, the Law on the Protection of Persons with Mental Disorders, and laws that regulate the execution of sanctions and other general regulations, are only applied if not prescribed otherwise by the JCA.

A juvenile (*maloljetnik*) is a person who is – at the time of committing a criminal offence – 14 but not yet 18 years of age. A young adult (*mlađi punoljetnik*) is a person who at the time of committing a criminal offence is 18 but not yet 21 years old (Article 2 JCA). Based on the age at the time of committing the criminal offence, juveniles are divided into younger juveniles (*mlađi maloljetnici*) (14 to under 16) and older juveniles (*stariji maloljetnici*) (16 to under 18). This sub-classification implies particular substantive and procedural consequences. The JCA also recognizes, but does not expressly define, the notion of an adult perpetrator: an adult is a person who has reached the age of 21 at the time of committing a criminal offence. A person under the age of 14 (i. e. a child, *dijete*) at the time of offending is not criminally responsible. He or she cannot be prosecuted for criminal behaviour and no sanction foreseen by the JCA can be imposed. This becomes apparent from Article 10 CC, according to which the criminal legislation does not apply to a child who has not reached the age of 14 at the time of committing a criminal offence. However, empirical studies have shown that certain groups (for instance persistent young offenders) often already become delinquent as children. In these cases the necessary educational measures can only be provided by the juvenile social care (welfare) system.

The JCA leans towards the concept that no special courts – that are organisationally separate from other courts – are responsible for decision-making in juvenile criminal cases. Rather, there are special councils and judges for youth issues in the courts which are competent according to the general regulations. The Republic of Croatia has an inclination towards the justice approach in its treatment of juvenile offenders, whereby important significance is attributed to social care services, which are involved in different ways in juvenile criminal proceedings and in the process of executing criminal sanctions. The function of a social care service is evident to the fullest in the application of out-of-court measures to children, as well as in the treatment of juvenile perpetrators against whom the criminal procedure has been terminated or is not initiated based on the principle of opportunity (discretionary diversion). The substantive criminal law of the JCA begins with the principle of subsidiarity in the application of criminal law sanctions (*načelo supsidijarnosti primjene kaznenopravnih sankcija*). This gives priority to diversion and to the prioritization of education over punishment when choosing a sanction (*načelo odgoja umjesto kažnjavanja*). In accordance with the principle of culpability (*načelo krivnje*) – *nulla poena sine culpa* – which in the Croatian criminal law considers it impossible to impose any criminal-law sanction on a person who is not guilty, educational measures (*odgojne mjere*) and juvenile imprisonment (*maloljetnički zatvor*) can only be imposed on

offenders who were mentally capable at the time of the offence, who perpetrated the act with intent or out of negligence and who were aware of the unlawfulness of their behaviour.

2. Statistics on reported and convicted young offenders

Since children cannot commit criminal offences, official judiciary statistical reports do not cover data on reported offending by under-14 year olds. According to data from the State Attorney's Office, for the last eight years (since the JCA came into effect), the average annual number of those perpetrators has been at around 760 (the lowest number of registered children was 716 in 2002; the highest was 891 in 2001).

Based on the data on reported juveniles according to offence categories, from 1980 to 1998 (when both the JCA and CC came into effect) criminal offences against property (especially theft and larceny) were particularly dominant, accounting for almost 90% of all offences for which juveniles were reported. The same conclusion can be drawn in the analysis of convicted juvenile perpetrators. Since the JCA came into effect, certain changes can be noticed in the structure of criminality. Besides criminal offences against property, there has been a significant increase in criminal offences against values protected by international law, of which the abuse of narcotic drugs is most predominant (e. g. in 2005, 99% of criminal offences against values protected by international law committed by juveniles were various forms of drug offences stated in Article 173 CC). Such change can be explained by the fact that the 1998 Criminal Code made the possession of narcotic drugs a criminal offence, including the possession of very small quantities for personal use. On average, criminal offences against property and against values protected by international law account for 80% of both reported and convicted juvenile offenders. Due to the aforementioned changes, but also due to quite differently regulated JCA sanctions that are applicable to juveniles, statistical data are provided for the period from 1998 to 2005. Regular statistical reports on reported adult perpetrators of criminal offences do not specifically show the number of young adult offenders. Hence, the review of statistical data for the criminality of juveniles and young adults is focused on conviction data according to age, sex and offence categories. There are no particular data on young migrant offending since that type of criminality does not represent a distinct problem in Croatia. Neither does the criminality of ethnic minorities. Since full statistical data for 2006 on reported and convicted young offenders have not yet been completed, figures for that year are briefly referred to throughout the article.

Table 1: Reported juvenile suspects of criminal offences

	Year	1998	2000	2002	2003	2004	2005
Criminal offences	**Total**	1,896	2,375	2,822	2,909	2,731	2,630
	Against life and limb	137	99	92	129	143	134
	Against values protectted by international law	151	448	703	649	676	409
	Against property	1,280	1,474	1,614	1,720	1,696	1,659
	Against public safety of persons, property and safety in traffic	125	104	101	113	90	89
	Other	203	250	312	298	326	339

Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

Table 1 shows that, since 2003, the absolute number of reported juvenile offenders has been decreasing. As already mentioned above, property crimes and drugs offences account for a large share of juvenile offending. At this point it is also necessary to point out offences against life and limb (murder, aggravated murder, negligent homicide, bodily injury, affray), which only account for five percent of all reported juvenile offenders. In 2006, a total of 2,830 juveniles were reported, of whom 61.7% were suspected of property offences and 14.5% for criminal offences against values protected by international law.

Looking at conviction data for the stated period in absolute figures, it can be noted that the number of convicted juveniles has increased since 1998. The data on both age and sex of convicted juveniles (see *Table 2*) show a correlation between the increase in the number of convictions and the juveniles' age (a significant percentage of older juveniles compared to younger juveniles) as well as a lower share of female juvenile perpetrators. In 2006, a total of 974 young offenders were convicted. A more detailed breakdown into age groups and gender is not possible yet for 2006.

Table 2: Convicted juveniles by age and gender

	1998	2000	2002	2004	2005	Average N/%
Total*	506 100	787 100	994 100	963 100	855 100	821 100
Total women	23 4.5	41 5.2	51 5.1	52 5.4	46 5.4	42.6 5.2
Younger Juveniles (14-16)	280 55.3	353 44.9	359 36.1	328 34.1	279 32.6	319.8 39.0
Women	13 56.5	13 31.7	24 47.1	14 27.0	18 39.1	16.4 38.5
Older juveniles (16-18)	226 44.7	434 55.1	635 63.9	635 65.9	576 67.4	501.2 61.1
Women	10 43.5	28 68.3	27 52.9	38 73.1	28 60.9	26.2 61.5

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

The number of convicted young adults (see *Table 3*) increased up to 2004. However, this trend has made a downward turn since 2004, with 2,501 young adults being convicted in 2006. To a certain extent, from 1998 to 2005 the share of young women among this age group is – albeit slightly – more significant in comparison to juvenile female perpetrators, accounting for an average of 6.5%, compared to 5.2% for juveniles.

Table 3: Convicted young adults by gender

	1998	2000	2002	2004	2005	2006	Average in %
Total*	1,323 100	1,815 100	2,436 100	3,055 100	2,750 100	2,501 100	100
Men	1,243 94.0	1,698 93.6	2,273 93.3	2,857 93.5	2,563 93.2	2,323 92.9	93.4
Women	80 6.0	117 6.4	163 6.7	198 6.5	187 6.8	178 7.1	6.6

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

The structure of offences for which juveniles are convicted (see *Table 4*) follows the pattern of the crimes for which juveniles are reported. They are most frequently convicted for criminal offences against property and for the abuse of narcotic drugs. The latter has by far experienced the sharpest increase, rising from a share of 3.7% in 1998 to 26.8% in 2002. This increase in drug offences has had the consequence that the share of convictions for property crimes has decreased, particularly in comparison to the pre-1998 period. Of the 974 juveniles who were convicted in 2006, 13.9% were convicted for various forms of narcotic drugs abuse and 61.6% for property offences.

Table 4: Convicted juveniles according to the committed offence

	Year	1998	2000	2002	2004	2005	Average in %
Criminal offences	**Total***	506 100	787 100	994 100	963 100	855 100	100
	Against life and limb	35 6.9	53 6.7	45 4.5	42 4.4	56 6.5	5.7
	Against values protected by international law	19 3.7	135 17.1	266 26.8	190 19.7	139 16.2	18.2
	Against sexual freedom	11 2.2	9 1.1	11 1.1	18 1.9	13 1.5	1.8
	Against property	380 75.1	509 64.7	539 54.2	560 58.2	505 59.1	60.9
	Against public safety of persons, property and safety in traffic	26 5.1	36 4,5	47 3.5	46 4.8	27 3.2	4.3
	Against public order	16 3.2	26 3.3	30 3.0	43 4.5	56 6.5	3.9
	Other	19 3.8	19 2.4	56 5.6	64 6.6	59 6.9	5.1

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

The number of convicted young adults has been increasing considerably (see *Table 5*), and the trend follows the same pattern as the figures on reported young adult delinquents. Here, too, the largest shares are attributable to perpetrators of property offences and crimes against values protected by international law. More than 70% of all young adults were convicted of these criminal offences in 2006.

In comparison to their juvenile counterparts, a larger share of young adult offenders is convicted of criminal offences against the 'public safety of persons, property and safety in traffic'. This disparity is, however, by no means as severe as was the case in 1998. In 1998, 17.9% of all young adult convictions were for crimes of this offence category, compared to 5.1% for juveniles. By 2005, the difference had decreased to only 6.6% (8.8% for young adults and 2.2% for juveniles). In addition, there is a significantly sized category of perpetrators who were convicted for criminal offences against the authenticity of documents (counterfeiting in the majority of cases).

Table 5: Convicted young adults by groups of criminal offences

	Year	1998	2000	2002	2004	2005	Average in %
Criminal offences	**Total***	1,323 100	1,815 100	2,436 100	3,055 100	2,750 100	100
	Against life and limb	73 5.5	82 4.5	100 4.1	115 3.8	103 3.7	4.3
	Against values protected by international law	202 15.3	442 24.4	727 29.9	943 30.9	734 26.7	25.2
	Against property	535 40.4	679 37.4	929 38.1	1,179 38.6	1,190 43.3	39.7
	Against authen-ticity of documents	122 9.2	103 5.7	121 5.0	148 4.8	129 4.7	6.3
	Against public safety of persons, property and safety in traffic	237 17.9	291 16.0	273 11.2	321 10.5	242 8.8	12.9
	Against public order	52 4.0	74 4.1	69 2.8	122 4.0	114 4.1	3.8
	Other	102 7.7	144 7.9	217 8.9	227 7.4	238 8.7	7.9

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

The data on prior convictions are important when investigating juvenile offenders, because they can on the one hand act as an indicator for a young offender's negative personal development, while simultaneously being a sign for the possible inefficiency or inadequacy of previously imposed measures and

sanctions. The share of recidivists in the total number of convicted juveniles is no reason for increased concern, even though the data on the structure of recidivism suggest a predominance of so-called special recidivism. On average, from 1998 to 2005 almost 60% of re-offending juveniles had previously been convicted for the same criminal offence. In 2006, there was an increasing trend in the share of juveniles with previous convictions, with 7.5% of the 974 convicted juveniles re-offending, of whom in turn 53.4% committed the same offence.

Table 6: Convicted juveniles by prior convictions

Year	1998	2000	2002	2004	2005	Average in %
Total*	506 100	787 100	994 100	963 100	855 100	100
Prior convictions	30 5.9	21 2.7	31 3.1	33 3.4	44 5.1	4.25
Same offences	19 63.3	13 61.9	16 51.6	17 51.5	26 59.1	59.0
Other offences	11 36.7	8 38.1	15 48.4	15 45.4	11 25.0	37.7
Same and other offences	---	---	---	1 3.0	7 15.9	2.4

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

3. System of sanctions. Types of informal and formal sanctions

The possibility of applying informal sanctions (*neformalne sankcije*) was first introduced in the Republic of Croatia through the enactment of the JCA which enables the extended application of the opportunity principle of criminal prosecution compared to earlier juvenile criminal legislation. The State Attorney can decide not to prosecute if a juvenile is willing: (a) to correct or compensate – in accordance with his/her own possibilities – the harm caused by the offence; (b) to involve himself/herself in the work of humanitarian organizations or provide services that are of communal or ecological significance; (c) to participate in a rehabilitation programme for drug and other addictions; (d) to become involved individually or in a team in the field of youth counselling (Article 64 § 1 JCA). After the juvenile has fulfilled his/her obligations in cooperation with and under

the supervision of the Centre for Social Care, the State Attorney makes the final decision not to initiate criminal proceedings against the juvenile (Article 64 § 2 JCA). Within the framework of such possibilities, a project has been initiated in the Republic of Croatia regarding the assessment of possibilities for an out-of-court settlement (*izvansudska nagodba*). This project has been realized within the framework of the so-called 'special obligations' (an educational measure), whereby a juvenile or a young adult, in accordance with what is possible to them, corrects or compensates the harm caused to the injured person. The form and level of compensation are determined in a meeting with the victim which is guided by a professional mediator. This is one of the available state reactions to offending that do not require the initiation of formal criminal proceedings. A starting assumption is that a person who commits a criminal offence should assume responsibility for his/her behaviour and be able to meet the victim in person to – in accordance with his/her own possibilities and in joint agreement with the victim – correct or compensate the harm caused.

Formal sanctions (*formalne sankcije*) that can be imposed on juvenile offenders include educational measures, juvenile imprisonment and safety measures (*sigurnosne mjere*) (Article 4 § 1 JCA). Only educational measures can be pronounced against younger juveniles aged 14 and 15 (Article 4 § 2 JCA). Educational measures as well as juvenile imprisonment can be imposed upon older juveniles under conditions prescribed by Article 4 § 3 JCA. Safety measures can only be applied to juveniles under the conditions prescribed by Article 4 § 4 JCA. According to Article 5 of the JCA, within the general purpose of criminal law sanctions (see Article 6 CC: special and general prevention), the purpose of juvenile sanctions is to provide protection, care, help and supervision, to influence a juvenile's upbringing and overall personal development, and to strengthen personal responsibilities by ensuring a juvenile offender's general and professional education. This implies that special prevention is pivotal within the framework of juvenile justice. Educational measures correspond primarily to the pedagogical status of the young offender, while punishment stands in correspondence to his/her degree of culpability. One particularity of sentences to juvenile imprisonment is that they correspond not only to his/her culpability but also to the pedagogical status of the offender to a certain degree. The basis for the application of juvenile sanctions is the principle of individualization which is attained within the framework of broadly established possibilities to choose from educational measures and which place the ultimate emphasis on their individual preventive effects. In choosing the appropriate educational measure, legal provisions emphasize the principle of proportionality. Furthermore, the principle of subsidiarity is emphasized in that the court should apply the educational measure that can serve the overall purpose of juvenile interventions with the least possible degree of intrusion and severity.

The JCA provides a total of eight educational measures: (1) court reprimand, (2) special obligations, (3) assignment to a disciplinary centre, (4) increased

supervision and surveillance, (5) increased supervision and surveillance combined with the obligation to report to an educational institution every day, (6) assignment to an educational institution, (7) assignment to a correctional institution and (8) assignment to a special educational institution (Article 6 § 1 JCA). Court reprimands, special obligations and assignments to a disciplinary centre are pronounced in cases in which it is deemed necessary to influence a juvenile's personality and behaviour through admonition, guidance or other adequate measures. The same goal applies to increased supervision and surveillance (including a possibility to oblige a young offender to report daily to an educational institution) which is applied when a juvenile's education and development require more lasting measures coupled with professional surveillance and support, yet without there being any need to separate a juvenile from his/her environment (Article 6 § 2 JCA). A young offender can be assigned to an educational, a correctional or a special educational institution (institutional educational measures) when he/she is in need of more lasting and more intensive educational influence, or where health treatment measures are necessary that require him/her to be separated from his/her current environment and surroundings. Institutional educational measures are used as the ultimate means and can – within the limits foreseen by the law – only last as long as is necessary for the educational measure to fulfil its purpose (Article 6 § 3 JCA). The abovementioned ways of influencing the education and development of a juvenile's personality are not mutually exclusive. They can rather be complementary to each other in each concrete case.

Article 7 JCA contains a special provision that states the circumstances that the court has to take into consideration when selecting the most appropriate educational measure. These circumstances include: the juvenile's age; his/her level of physical and mental maturity; his/her mental characteristics as well as personal circumstances; the severity and nature of the criminal offence; motives for committing the offence and the circumstances in which it is committed; the offender's behaviour after having committed the offence and particularly whether he/she, if possible, has tried to prevent harmful consequences from occurring or has tried to compensate the damages and/or harm caused; his/her living conditions; state of health; family circumstances; education and upbringing; whether he/she has committed criminal offences before and a juvenile sanction has already been imposed on him/her. When pronouncing the educational measure, the court is not bound to the scope of punishment that is prescribed for a particular criminal offence. Rather it has to make a decision within a wide spectrum of possibilities offered by the eight educational measures.

Of the educational measures that have been more frequently applied in practice since the enactment of the JCA, one should primarily point out the imposition of special obligations. Under previous legislation, special obligations had been applied conjointly with orders to increased supervision and surveillance, while under the JCA both have become separate sanctions that can

now also be imposed individually. The court can require a young offender to meet one or more special obligations if it feels that there is a need to influence a juvenile and his/her behaviour through adequate orders, requirements or prohibitions (Article 9 § 1 JCA). The court can oblige a juvenile: (1) to apologize to the victim, (2) to correct or compensate the harm caused by the criminal offence, (3) to attend school regularly, (4) not to miss work, (5) to undergo training for a profession that suits the juvenile's abilities and preferences, (6) to accept and maintain a job, (7) to engage in the work of humanitarian organizations or services of community or ecological significance, (8) to refrain from visiting particular bars or venues and to stay away from a specific group of people that has a negative influence on him/her, (9) to commit himself/herself, with the consent of a legal guardian, to professional medical treatment or to addiction treatment, (10) to engage in the individual or team work of youth counselling centres, (11) to take part in courses for vocational training, (12) not to leave the place of (temporary) residence for a longer period of time without prior consent from the Centre for Social Care, and (13) to be assigned to the competent institution for training drivers in order to be tested for knowledge on road traffic regulations (Article 9 § 2 JCA). In selecting particular obligations, the court will take the juvenile's readiness to cooperate in the implementation thereof into consideration and customize the obligations to the circumstances in which the offender lives (Article 9 § 3 JCA). Obligations can last for up to one year (Article 9 § 4 JCA), and can be amended or (partly/entirely) revoked (Article 9 § 5 JCA). One important provision in this regard is that the Centre for Social Care is responsible for monitoring the fulfilment (and in the case of some the implementation) of obligations (see *Sections 2*, *7* and *9*).

In practice, Increased Supervision and Surveillance is also an important educational measure. It is imposed when the court feels that the influence of parents or legal guardians on a juvenile's education (upbringing), behaviour and personal development is not sufficient for achieving the purpose of educational measures, and it is necessary to pursue more lasting measures of education accompanied by supervision and surveillance by a competent service (Article 11 § 1 JCA). Competent services are determined by a professional who will – in cooperation with a juvenile, his/her parents, a guardian, bodies of social care, education and upbringing, medical doctors and other professionals – continuously influence the personality and behaviour of a juvenile, take care of his/her treatment and supervise the fulfilment of his/her obligations and duties (Article 11 § 2 JCA). Once this measure has been pronounced, the court issues the parents/guardian special instructions and commits them to fully cooperate with a professional (Article 11 § 3 JCA). The court subsequently decides on the duration of the intervention, which can range from six months to two years (Article 11 § 4 JCA). Besides this educational measure, where necessary the court can additionally pronounce one or more special obligations to improve the prospects of its success (Article 11 § 5 JCA). Cases in which the competent

service reveals that parents are being uncooperative, and/or are not acting in accordance with special instructions, have to be reported to the State Attorney (Article 11 § 6 JCA).

The court can assign a juvenile to an educational institution (which in Croatia are all open institutions) when a young person needs to be removed from the environment in which he/she lives, and where such a placement is necessary to enable a more lasting impact to be made on his/her personality, development and upbringing (particularly regarding education and vocational training) with the help, supervision and surveillance of educators and other professionals (Article 14 § 1 JCA). The measure can be executed in smaller residential units that provide possibilities for education, work, entertainment, sports and other contents, depending on the possibilities, resources and infrastructure of each unit (Article 14 § 2 JCA). A juvenile remains in the educational institution for a period of between six months and two years. Every six months the court reassesses whether there are either grounds for the execution of this measure to be terminated, or for it to be replaced with an other educational measure (Article 14 § 3 JCA).

Assignments to correctional institution – which is closed institutions – is pronounced by the court where a juvenile needs to be removed from his/her environment and when it is necessary to apply increased measures of education that consider his/her expressed behavioural disorders or a lacking readiness to accept educational influences. When making a decision to pronounce this measure, the court will particularly consider the degree and nature of the offence committed and whether or not the juvenile in question has been sentenced to educational measures or to imprisonment in the past (Article 15 § 1 JCA). A juvenile can be placed in a correctional institution for a period of between six months and three years. As is also the case with placements in educational institutions, every six months the court reassesses whether or not there are grounds to lift the intervention or for replacing it with another educational measure (Article 15 § 2 JCA).

Juvenile imprisonment as a punishment has particularities regarding the rules for its imposition, duration, purpose and content (Article 23 § 1 JCA). Juvenile imprisonment can be imposed on older juveniles for criminal offences for which the law prescribes five years in prison or a more severe punishment, if – taking the nature and degree of the offence and a high degree of culpability into consideration – it is deemed necessary to impose a punishment (Article 23 § 2 JCA). The JCA also contains a special provision on the duration of juvenile prison sentences. Juvenile imprisonment can not be shorter than six months and may not exceed five years. However, in cases of criminal offences for which the law prescribes long term imprisonment, or for the concurrence of at least two criminal offences for which the law foresees more than 10 years of imprisonment, a juvenile can be sentenced to up to ten years (Article 24 § 1 JCA). The term of incarceration to which a young person can be sentenced may not exceed the maximum duration that is prescribed by adult law for the respective offence.

However, the court is not obliged to impose the shortest possible prison term (Article 24 § 2 JCA). When sentencing juveniles to imprisonment, the court will take all circumstances that influence the degree of punishment into consideration (Article 56 § 2 CC), bearing particularly in mind the degree of the juvenile's maturity, and the time necessary for his/her upbringing, education and vocational training. There is the proviso that the punishment can be shorter than the degree of culpability suggests necessary, if this is sufficient for achieving the purpose of punishment (Article 24 § 3 JCA). Juvenile imprisonment is an intervention of last resort in Croatian juvenile criminal law (*ultima ratio*) and it is implemented only in an exceptionally rare number of cases in practice.

The elasticity and variability in the sanctions that can be applied to juvenile offenders were increased significantly by the introduction of 'withholding the imposition of juvenile imprisonment' (*pridržaj izricanja maloljetničkog zatvora*), which is similar to what is often termed a suspended sentence (probation) and which is implemented to a greater extent in practice. The court can pronounce that a young person is guilty of an offence and can simultaneously suspend the imposition of juvenile imprisonment when it feels that it can prevent a perpetrator from re-offending by pronouncing culpability and threatening him/her with the imposition of additional punishment should he/she re-offend. The court can additionally impose the educational measure of increased surveillance and one or more special obligations (Article 27 § 1 JCA). Should the juvenile offender fail to meet these requirements, or should he/she re-offend during the period of suspension that the court has set (between one and three years; the time of probation), the court can enforce the imprisonment of the juvenile for the previous offence (Article 27 § 2 JCA). Once one year of the probation period has passed, and after having heard the representatives of the Centre of Social Care, the court can definitively withhold the imposition of a prison sentence if the new facts indicate that a juvenile is unlikely to commit further criminal offences (Article 27 § 3 JCA). Suspending the imposition of juvenile imprisonment is not a special sanction, but rather a modality of juvenile imprisonment.

In addition to educational measures and juvenile imprisonment, juveniles can also be issued a number of safety measures, which are: compulsory psychiatric treatment; compulsory addiction treatment; expulsion of foreigner from the country and forfeiture. Older juvenile offenders can also be prohibited from driving a motor vehicle (Article 30 JCA).

4. Juvenile criminal procedure

Juveniles who are charged with criminal offences are sentenced by Juvenile Courts. The competence of these courts ceases when a perpetrator reaches the age of 23 (Article 35 JCA), not only for the trial procedure but also for the enforcement of juvenile sanctions. Furthermore, juvenile departments composed

of the juvenile councils and juvenile judges have been established in municipal and county courts. A juvenile council has also been established in the Supreme Court of the Republic of Croatia (Article 36 JCA). The JCA requires that juvenile judges in the Municipal and County Courts as well as State Attorneys who appear before these courts have to have expressed inclinations towards the education, needs and progresses of young people. Furthermore, they are required to have basic knowledge in the fields of criminology, social pedagogy and social care (Article 37 JCA). Such a provision is a clearly expressed requirement for specialization, and the basic criteria are given for electing judges and State Attorneys for juveniles, which commit them to continuous professional advancement. Police officers who deal with cases of juvenile offending have to be specialized in issues of juvenile criminality. In the juvenile councils lay juvenile judges who participate in the trial (Article 40 § 1 JCA) come from the line of professors, teachers, educators and other persons who have experience in the upbringing and education of young persons (Article 40 § 2 JCA).

There is an investigating judge in the department for juveniles who is appointed by the president of the County Court in the annual work schedule (Article 41 JCA). The Investigating Judge is not the same as the Juvenile Judge. The Investigating Judge participates in pre-trial proceedings and decides on whether or not proceedings should be initiated, based on the evidence he/she has gathered. His/her scope of action is limited: he/she acts in proceedings against juveniles that are connected to an adult proceeding; investigations against young adults; proceedings committed by adults against children and juveniles. Municipal and County Courts with established juvenile departments as well as State Attorney Offices that appear before these courts have associates outside the legal profession: social pedagogues, social workers and psychologists (Article 42 § 1 JCA). These professionals collect data in court on the juvenile's personality during the pre-trial criminal proceedings; give a professional opinion in the council's session or at trial regarding which sanction would be most justified/appropriate; collect data on the prospects of successfully executing educational measures; or give an opinion to the juvenile council regarding the need to terminate or replace educational measures. The associates of the State Attorney Office gather data that are necessary for the State Attorney to make a decision regarding the purposefulness of initiating proceedings against a juvenile, and to justify the termination of pre-trial criminal proceedings (Article 42 § 2 JCA).

The competence of Juvenile Courts includes trials for criminal offences committed by adults against children and juveniles. There are 27 specified criminal offences that are stated in the Criminal Code to which this provision applies, with the exclusive or primary goal of protecting children's and juveniles' physical integrity, health, uninterrupted sexual development, education and harmonized development of personality. These offences mostly cover offences against sexual freedom and sexual morality as well as criminal offences

against family and youth issues. Procedural provisions related to these offences contain a range of additional guarantees focused on the optimal degree of protection of children and juvenile victims. In this regard, the legislator has tried to prevent so called secondary victimization (adverse influences on a victim during criminal proceedings) as much as possible. Special attention should be given to provisions related to the considerate interrogation of children or juveniles as witnesses/victims (Article 119 JCA). Thus, for example, a novelty of the JCA of 2002 prescribes it as obligatory that a child or a juvenile be interrogated with the help of a pedagogue, psychologist or other professional, while the number of interrogations is limited to the maximum of two (Article 119 § 2 JCA).

When it is discovered during the proceedings that the suspect was a child at the time of offending, the criminal proceedings are terminated and the data on the offence and the perpetrator are forwarded to the Centre for Social Care. The criminal proceedings against a juvenile for all criminal offences are only initiated at the request of the State Attorney (Article 45 JCA). The victim cannot act as the prosecutor (Article 46 JCA). If the State Attorney – acting on the principle of legality – refrains from requesting that proceedings be initiated or renounce their initiation, the victim can file a request for the Council to initiate or continue the procedure. If the Juvenile council of the higher court decides that proceedings should be initiated or continued, the State Attorney must take over the proceedings which are further conducted with him/her as the authorized prosecutor.

In cases of criminal offences for which the law prescribes a fine or up to five years imprisonment, the State Attorney can decide against initiating criminal proceedings – even when there is a reasonable suspicion that a juvenile has committed the offence in question – if he/she assumes that formal proceedings would not be purposeful considering the nature of the criminal offence, the circumstances in which the offence was committed, the juvenile's past and his/her personal traits. In order to determine these circumstances, the State Attorney can request a statement from the parents or guardian, other persons and institutions, or ask one of the above mentioned professional associates of the State Attorney's Office to provide him/her with those data. Where necessary, the State Attorney can invite those persons and the juvenile to the State Attorney's Office in order to obtain direct information (Article 63 § 1 JCA). State Attorney decisions against the initiation of criminal proceedings are forwarded to the victim and to the Centre for Social Care, stating the reason for such a decision while instructing the victim that he/she can assert his/her property-rights claims through a lawsuit. If the police have filed a report in the context of the case, they will also be notified about this decision (Article 63 § 2 JCA).

The State Attorney can base the decision of whether or not to initiate criminal proceedings on the juvenile's readiness to fulfil particular obligations, and thus some informal sanctions appear in Croatian juvenile criminal law (Article 64 JCA). In cases in which a juvenile offender is already serving an imposed measure or punishment for a previously committed offence, or where such a

sanction has already been pronounced for another offence but has not yet been enforced, or a juvenile is – upon a decision of the Centre for Social Care – placed in a social care institution, the State Attorney can decide against initiating the criminal proceedings for the juvenile's new criminal offence. This is possible if – taking into consideration the degree and nature of the offence and motive out of which it was committed – the proceedings and the respective sentence for that offence would serve no further purpose (Article 65 § 1 JCA).

A juvenile cannot be tried without being present, and when a juvenile is interrogated – as well as when conducting other activities in the presence of a juvenile – one has to act considerately so that the way in which the formal criminal proceedings are conducted does not harm his/her personal development (Article 48 JCA).

The presence of a defence counsel is already obligatory for the first interrogation in cases of offences for which the law prescribes more than three years of imprisonment. For cases involving criminal offences for which the law foresees more lenient degrees of intervention, a juvenile only needs a defence counsellor if the juvenile judge considers this necessary (Article 49 §2 JCA). In cases of mandatory defence, if a juvenile and his/her legal guardian do not have a defence counsellor, the juvenile judge appoints one by virtue of the office. When appointing a defence counsellor, it must be taken into consideration that an attorney-at-law has to be chosen who has expressed inclinations and basic knowledge in the field of education (i. e. upbringing) and care of young persons.

Juvenile Courts and State Attorney Offices report to the Centres for Social Care when facts that are determined in the course of criminal proceedings indicate a need for steps to be taken to protect the rights and welfare of a juvenile (Article 51 JCA). In the proceedings against a juvenile, the role of the representative of the Centre for Social Care is emphasized. He/she has the right to be acquainted with the course of criminal proceedings, to make suggestions throughout this course and to warn about facts and evidence that need to be taken into consideration in order to make the right decision (Article 52 § 1 JCA).

All institutions participating in juvenile criminal proceedings (the Juvenile Court, the State Attorney Office, the police forces, Centre for Social Care, and other bodies and institutions) from which information, reports and opinions can be requested, are required to act with urgency in order to allow the proceedings to advance as swiftly as possible (Article 54 JCA). This requirement for urgency and speediness is one of the incontestable maxims of criminal proceedings against juveniles. One of the functions of juvenile criminal proceedings is halting the negative development of a young offender's personality, something that is significantly difficult to achieve with slow and long lasting procedures.

Without the court's permission, neither the course of criminal proceedings against a juvenile nor a respective ruling may be made public. Only those parts of the decision may be proclaimed for which the court has given its approval. In such cases neither the name of a juvenile nor any other data that may reveal his/her identity are allowed to be published.

It is particularly worth mentioning the existence of provisions for collecting data on juveniles in pre-trial criminal proceedings. At that stage of the procedure, besides the facts related to the criminal offence, the age of a juvenile, the circumstances necessary to evaluate his/her mental development, environment and circumstances he/she lives in as well as other circumstances that concern his/her personality are also to be determined in particular. To do so, the juvenile's parents, his/her guardian and other persons who may be able to provide the necessary data are questioned. Also, the Centre for Social Care is required to provide a report that compiles these findings. Data on the juvenile's personality are attained by the juvenile judge. He/she can entrust the task of collecting these data with a professional associate and/or the Centre for Social Care. Medical doctors, psychologists or pedagogues can be summoned when it is necessary for expert witnesses to examine and determine a juvenile's state of health, mental development, psychological traits or inclinations (Article 70 JCA). A juvenile judge determines alone in the preparation of certain actions to be carried out, and in doing so, he/she has to act in accordance with the provisions of the CPA (particularly considering the rights of the defendant to defence, the rights of the injured person and collecting evidence necessary to make a decision). According to the Article 71 § 1 JCA a juvenile judge shall by himself or herself determine the way of performing particular actions, and while doing so, he or she shall act in accordance with the provisions of the Criminal Proceedings Act with special regard for a defendant's right to defence, rights of the injured party and collection of evidence necessary for decision-making. Particular actions, which are carried out in a way determined by the juvenile judge himself, are in fact investigatory actions regulated by the CPA: search of premises and persons, temporary deprivation of objects, interrogation of suspects, interrogation of witnesses, giving expert opinion, etc.

Once the juvenile judge has examined all known circumstances related to the offence and to the juvenile's personality he/she delivers the files to the State Attorney. He/she in turn then has to request within eight days that the pre-trial criminal proceedings be supplemented, to announce a withdrawal from the proceedings, to request that the proceedings be terminated, or to give an argued motion for the punishment, i.e. implementation of an educational measure (Article 75 JCA). A supplement that the State Attorney can request is related to the data regarding a juvenile personality and circumstances related to committing a criminal offence. These supplements are sometimes necessary for the State Attorney in order to make a decision on a further course of action. A suggestion regarding the sanction must be specified.

If the State Attorney determines that there is no basis for criminal proceedings against a juvenile, he/she can request that the proceedings be terminated by the juvenile judge who then also has to inform the victim(s) of this decision. Within eight days of receiving this notification from the juvenile judge, the injured party can file a request at the juvenile council of the higher

court that the proceedings be continued. If the juvenile council decides that the victim's demand is reasonable, the competent State Attorney must proceed with the criminal proceedings (Article 76 JCA). The State Attorney can also come to the conclusion that it serves no purpose to continue with the proceedings against a juvenile (unconditional decisions on not to initiate proceedings from Articles 63 and 65 JCA), in which case the motion to terminate the proceedings is forwarded to the juvenile judge and the Centre for Social Care is informed. If the Juvenile Judge dismisses the State Attorney's motion, he/she will ask the juvenile council of the higher court to make a decision in this regard. Where the Council does not confirm the motion for terminating the procedure, the competent State Attorney must continue with the proceedings against a juvenile (Article 77 JCA).

The motion of the State Attorney for an educational measure or punishment contains, *inter alia*, the data collected on the juvenile's personality. As far as possible, the content of those data has to be presented in a manner that is not harmful to the juvenile's education or development. When the president of the Council receives the motion from the State Attorney and determines that there is no reason for conducting the proceedings or that continuing proceedings would not be purposeful, he/she will request the juvenile council of the higher court to make a decision on it. That Council may in turn terminate the proceedings or decide that the proceedings should continue before the court of first instance. If the president of the Council does not request the decision of the higher courts' Council, or when the higher court's Council decides that the proceedings against a juvenile should be continued, the president of the Council is bound to schedule the Council's session or the trial within eight days. The punishment or institutional educational measures can be pronounced only after the trial. Other educational measures can be pronounced at the Council's session.

The CPA establishes rules that apply to the trial in terms of its preparation, conduction, record and course, but the court may abandon these rules due to the reason of purposefulness. A juvenile's parents/guardian and the representative of the local Centre for Social Care are also summoned to the trial, even though the trial still continues should they fail to appear. Trials involving juvenile suspects are conducted in camera. The Council may allow the presence of persons at the trial who deal with the protection and education of juveniles, the prevention of juvenile crime, and academic scholars. During the course of the trial, the Council may request that some or all persons be dismissed from the court except for the State Attorney, defence counsellor and the representative of the Centre for Social Care. During the presentation of particular evidence or the parties' speech, the Council may order that the juvenile be removed from the session due to possibly harmful effects that the presentation may have on his/her education or development. If it is important for the juvenile's defence, the Council will inform him/her about the content and course of the proceedings that took place during his/her absence (Article 83 JCA). When making a decision, the juvenile council is bound to the description of the criminal offence (state of facts) as it is

stated in the State Attorney's motion for punishment or pronouncement of an educational measure. However, the Council is not obliged to choose the sanction that the state attorney recommends (Article 85 § 1 JCA). Within eight days of announcing his/her decision, the president of the Council is obliged to produce this decision in written form. Should there be justified reasons for these eight days to be exceeded, the deadline can be exceptionally extended up to fifteen days in total (Article 85 § 7 JCA).

Judgements and rulings that result in the imposition of a punishment, of an educational measure or that result in the termination of the proceedings, can all be appealed, so long as the person in question has the right to appeal according to the rules of the CPA, and that this motion occurs within eight days of having received the decision (Article 87 § 1 JCA). Defence counsellors, State Attorneys, spouses, cousins in direct line, adoptive parents, guardians, siblings and foster parents can appeal in favour of the juvenile as well as against a juvenile's will (Article 87 § 2 JCA). However, persons who appeal in favour of juvenile can give up on the appeal only with the juvenile's consent (Article 87 § 3 JCA). The appeal court may alter the decision of the court of first instance by pronouncing a more severe sanction, yet only if such an action is motioned in the appeal. If the court of first instance does not impose juvenile imprisonment or an institutional educational measure, the appeal court can only pronounce those sanctions if an oral trial is held. Juvenile imprisonment for a longer duration or a more severe institutional educational measure than that pronounced by the decision of the court of first instance can also be pronounced at the session of the Council of the lower court (i. e. the appeal court, see Article 88 JCA).

5. Sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

In deciding how to sanction a reported criminal offence, the State Attorney can apply the principle of opportunity, and by applying Article 64 of the JCA he/she can decide not to initiate criminal proceedings where a juvenile is ready to fulfil particular obligations (to correct or compensate the harm caused by the offence, to get involved in the work of humanitarian organizations or provide services that are of communal or ecological significance, to enter a rehabilitation programme against drugs and other addictions). This in turn opens the door to informal reactions to juvenile offenders. Since 1998 the principle of opportunity has seen increasing application in the practice of State Attorney's offices. For example, out of the total number of State Attorney's decisions regarding the report of criminal offences in 2005, the principle of opportunity was applied in 49.73% of cases (including the application of Article 64 of the JCA on so-called conditional discharge of the case).

As far as the realization of the mentioned project regarding out-of-court settlement is concerned, it is necessary to point out that services for the out-of-court settlements began operating in 2001 in three Croatian cities (Zagreb, Split and Osijek). An assessment of their activities was conducted after five years of service (more than 350 cases), and showed that settlements were successful in more than 80% of all cases. Due to the apparent success of the measure, there are plans for a nationwide introduction of the out-of-court settlement and for extending its scope to cover adult offenders. A network and infrastructure for the delivery of the service are to be developed, which are to be connected to international partners. Regarding the implementation of the project, it is worth pointing out that in 2001 the State Attorney's Office published guidelines on the implementation of the pilots based on Article 64 of the JCA in the municipal State Attorney's Offices in Osijek, Split and Zagreb. The directives state criteria and assumptions for the application of the principle of purposefulness, and special obligations for the out-of-court settlement: the injured persons have to be physical persons; there has to be a high degree of certainty that the juvenile or young adult actually committed the criminal offence in question; that participation in the out-of-court settlement is voluntary; that the criminal offence is punishable by five years imprisonment or a fine; the out-of-court settlement is not applicable for petty offences; criminal recidivism by itself still does not render the out-of-court settlement inapplicable in all cases. According to the criteria emphasised in the guidelines, the out-of-court settlement should not be applied in the following circumstances: a single offender has harmed more than one person; premeditated offences, or offences that demonstrate a certain degree of brutality or coldness; a juvenile or young adult is already registered (and being proceeded against) for more criminal offences or a more severe criminal offence; or if other sanctions have already been imposed and are deemed to have been ineffective; where criminal proceedings for another offence are underway simultaneously; where the perpetrator demonstrated severe behavioural problems prior to the offence for which the social care services have undertaken specific measures of care and protection. It looks as though the prosecutors follow these guidelines in practice. However, there has been a lack of empirical research and evidence on this issue up to now.

6. Sentencing practice – Part II: Juvenile court dispositions and their application

An analysis of the courts' sentencing of juvenile offenders shows that – in line with the legislator's intentions – juvenile imprisonment is only imposed in extraordinary cases. The number of prison sentences is held to a minimum by the application of a wide spectrum of educational measures. Hence, in the

Republic of Croatia, only one to two percent of all sanctions against juvenile offenders are sentences to imprisonment.

Regarding educational measures, it is necessary to point out that from 1980 up to the implementation of the JCA, two educational measures had been most frequently applied: court reprimand (as the most lenient sanction), and increased supervision and surveillance. In that period, these two interventions accounted for around 80% of all imposed educational measures issued against juveniles. The introduction of special obligations as an independent educational measure has severely reduced the significance of reprimands. At present, special obligations and increased supervision and surveillance are the most important educational measures in practice. The wide spectrum of possibilities for selecting educational measures has not yet been fully utilized. *Table 7* also clearly shows the affirmation of suspended juvenile imprisonment ('withholding the imposition of juvenile imprisonment') as an institute which is similar to the suspended sentence. According to the Croatian CC, the suspended sentence is an independent sanction in which a sentence is pronounced but it will be not carried out if the perpetrator in the particular period (from 1 to 5 years) does not commit a new criminal offence. In the case of suspended juvenile imprisonment, the perpetrator is only threatened by the pronouncing juvenile imprisonment, but it is however not pronounced (see also *Section 3* above). Statistics for 2006 do not suggest significant changes. Out of 974 court sentences against juveniles in 2006, 92.8% were educational measures (special obligations accounting for 34.1%, increased supervision and surveillance totalling 39.1%), 1.2% were prison sentences and 6% were sentences to suspended juvenile imprisonment.

Just over ten percent of convicted young adult offenders are sentenced to sanctions provided by juvenile criminal law (see *Table 8* below). As is also the case for juvenile offenders, juvenile imprisonment is also the last resort (*ultima ratio*) when sentencing young adults. From 1998 to 2006, on average only 0.6% of all sentences against this age group were to juvenile imprisonment. Another noticeable development has been the continuous increase in the imposition of suspended juvenile prison sentences. In 2006 such sentences accounted for nearly five percent of all sanctions imposed on young adults, compared to just 0.5 percent in 1998. The data in *Table 8* also show that the increased suspension of prison sentences has been paralleled by a significant decrease in the imposition of educational measures.

Table 7: Convicted juveniles by pronounced sanctions

Year	1998	1999	2000	2001	2002	2003	2004	2005	Average in %
Total*	506 100	697 100	787 100	884 100	994 100	875 100	963 100	855 100	100
Educational measures	498 98.4	672 96.4	762 96.8	852 96.4	959 96.5	827 94.5	905 94.3	794 92.9	95.8
Reprimand	128 25.7	137 20.4	118 15.5	87 10.2	88 9.2	53 6.4	69 7.6	6 5.8	12.6
Special obligations	18 3.6	71 10.6	176 23.1	206 24.2	347 36.2	267 32.3	309 34.1	295 37.2	25.2
Disciplinary centre	42 8.4	51 7.6	46 6.0	43 5.0	19 2.0	27 3.3	16 1.8	22 2.8	4.6
Increased supervision & surveillance	244 49.0	298 44.3	322 42.2	387 45.5	385 40.1	380 45.9	394 43.5	305 38.4	43.6
Increased supervision & surveillance/daily reporting to educational institution	24 4.8	29 4.3	19 2.5	16 1.9	11 1.1	14 1.7	28 3.1	16 2.0	2.7
Educational institutions	30 6.0	65 10.0	50 6.6	61 7.1	49 5.1	43 5.2	48 5.3	72 9.1	6.8
Correctional institution	8 1.6	16 2.4	26 3.4	50 5.9	55 5.7	35 4.2	31 3.4	34 4.3	3.9

Year	1998	1999	2000	2001	2002	2003	2004	2005	Average in %
Special educational institution	4 0.8	5 0.7	5 0.6	2 0.2	5 0.5	8 1.0	10 1.1	4 0.5	0.7
Juvenile imprisonment	4 0.8	12 1.7	11 1.4	5 1.7	8 0.8	11 1.2	7 0.7	14 1.6	1.2
Suspended juvenile imprisonment	4 0.8	13 1.8	14 1.8	17 1.9	27 2.7	7 4.2	51 5.3	47 5.5	3.0

* First line: absolute numbers; second line: percentages.
Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

Table 8: Young adults convicted to juvenile law sanctions

	1998	1999	2000	2001	2002	2003	2004	2005	2006	Average in %
Total convicted*	1,323 100	1,862 100	1,815 100	2,004 100	2,436 100	2,984 100	3,055 100	2,750 100	2,501 100	100
Educational measures	32 2.4	159 8.5	175 9.6	226 11.3	310 12.7	269 9.0	224 7.3	135 4.9	103 4.1	7.8
Juvenile imprisonment	2 0.2	8 0.4	9 0.5	17 0.8	11 0.5	16 0.5	24 0.8	25 0.9	20 0.8	0.6
Suspended juvenile imprisonment	6 0.5	7 0.4	20 1.1	22 1.0	40 1.6	116 3.9	110 3.6	85 3.1	118 4.7	2.2

* First line: absolute numbers; second line: percentages.

Source: Republic of Croatia, Central Bureau of Statistics: Statistical Yearbooks, 1998-2006.

7. Regional pattern differences in sentencing young offenders

Unfortunately, data that would allow an analysis of regional sentencing patterns in the Republic of Croatia are not gathered and thus not available.

8. Young adults in the juvenile criminal law and adult criminal law

Young adult offenders are persons who are 18 but not yet 21 years old at the time of committing a criminal offence. A suspect's age at the time of trial is irrelevant. Young adult offenders are subject to the provisions of the CC and to the criminal law provisions of other Acts of the Republic of Croatia, with proviso of conditions foreseen by the JCA and provisions valid for juvenile offenders (Article 108 JCA). The JCA does not contain the provision from earlier legislation that juvenile sanctions are applied to young adults extraordinarily. A court can impose upon a young adult the educational measures of special obligations and increased surveillance, as well as the punishment of juvenile imprisonment. If at the time of trial a young adult has not reached the age of 21, he/she can also receive an institutional educational measure. The court will pronounce the juvenile sanction when it can be concluded, considering the type of a criminal offence and the way it was committed, that it is to the great extent a demonstration of the perpetrator's age, and that the circumstances related to his/her personality justify a belief of the court that the purpose of the sanction will be achieved by pronouncing educational measures or the punishment of juvenile imprisonment. Educational measures that are imposed on young adults last no longer than up to his/her 23rd birthday. The maximum term of juvenile imprisonment is limited to 10 years. However, where a young adult at the time of trial has already turned 21, the court can impose a regular sentence to imprisonment in place of juvenile imprisonment. Yet, where a young adult at the time of trial has already turned 23, the court will impose a regular sentence to imprisonment instead of juvenile imprisonment (Article 109 § 2 JCA). Where an educational measure or juvenile imprisonment are imposed on a young adult, safety measures can be applied under the same conditions as against juveniles (Article 109 § 3 JCA). Where the general criminal law is applied against a younger adult offender, the court is not bound to impose the least severe measure of punishment that is prescribed for the relevant criminal offence (except within the limits prescribed for mitigating punishment). Nor can it impose a prison sentence of up to 12 years, except in cases of offences for which the punishment of long-term imprisonment is prescribed, or if the young adult has committed at least two offences for which total prescribed punishment exceeds 10 years (Article 110 § 1 JCA). The safety measure of forbidding the

performance of vocation, professional activity or duty cannot be applied (Article 110 § 2 JCA).

An adult who has reached the age of 21 cannot be tried for an offence committed as a younger juvenile (Article 31 § 1 JCA). An adult person who at the time of the trial is not yet 21 can only be tried for offences committed as a younger juvenile if the law prescribes a prison sentence of more than five years for the offence in question. In such cases, only an institutional educational measure can be pronounced. In considering whether one of those measures should be pronounced, and which, the court takes into consideration all of the circumstances from the time of committing the criminal offence (particularly the severity and nature of the offence), the time that has passed since the offence was committed, the behaviour of the perpetrator (especially whether or not he/she has since behaved in accordance with the law), his/her family circumstances and the stated purpose of the measure in consideration. The pronounced measure can last at most until the offender turns 23 (Article 31 § 2 JCA).

Where an adult has committed a criminal offence while aged 16 or 17 (i. e. an older juvenile), he or she can be sentenced to the educational measure of special obligations, increased surveillance or to a term of juvenile imprisonment. Where the adult in question is not yet 21, institutional educational measures can also be imposed. The decision of whether to impose one of these sentencing options is governed by the same factors as stated in the previous paragraph concerning the offences committed by younger juveniles who are now adults. The pronounced measures can last at most until the perpetrator turns 23 (Article 32 § 1 JCA). Except the previously mentioned provision, an adult person who has committed an offence while aged 16 or 17 and who has reached the age of 21 can be issued the punishment of imprisonment instead of juvenile imprisonment. If at the time of trial the offender turns 23, the court shall impose a regular prison sentence rather than juvenile imprisonment. The punishment of imprisonment, regarding the rehabilitation and legal consequences of the sentence, has the same legal effect as a juvenile prison sentence (Article 32 § 2 JCA).

9. Transfer of juveniles to the adult court

Considering the clearly determined competence of Juvenile Courts, the JCA does not provide for transfers of juveniles to adult courts.

10. Preliminary residential care and pre-trial detention

Acting either alone or in response to a motion of the State Attorney, the juvenile judge can temporarily place a juvenile under the supervision of the Centre for Social Care for the course of the pre-trial proceedings, in order to provide him/her with help and protection. A juvenile can, however, also be placed tem-

porarily in a social care institution (*privremeni smještaj u ustanovu socijalne skrbi*) when it is deemed adequate under the given circumstances, in order to protect the juvenile from further endangerment of his/her development and to prevent the temptation of reiterating the criminal offence (Article 72 § 1 JCA). Decisions on temporary placements are rendered by the juvenile judge, and the juvenile council of the same court is responsible for dealing with appeals against such rulings. It should be noted that an appeal against this ruling does not prevent its execution (Article 72 § 2 JCA).

The juvenile judge can order a juvenile to be put to pre-trial detention (*pritvor u pripremnom postupku*). Justifications for secure custodial pre-trial are to be in line with the reasons stated in the CPA: if there are indications that the juvenile may abscond; if there is a reasonable suspicion that he/she will destroy or tamper with evidence and/or threaten or intimidate witnesses; if special circumstances justify the concern that he/she will repeat the offence or commit another offence; if the case in the frame of which he/she is to be remanded involves one of the following criminal offences, and if the circumstances and manner of commission justify pre-trial detention: murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion or any other criminal offence for which the law prescribes the eight or more years of imprisonment. Detention can be implemented only as a last resort, should be proportional to the gravity of the offence, and expected sanction as well as it should be reduced to the shortest possible time and only applied if its purpose cannot be obtained by the application of the precautionary measure or temporary placement as mentioned above (Article 73 § 1 JCA).

Where a placement is made, the juvenile judge must immediately inform the parents, guardians or institutions to which the juvenile is trusted for upbringing and care, as well as the Centre for Social Care about detention (Article 73 § 2 JCA). When – due to the circumstances of the concrete case – the juvenile judge cannot proceed, the investigating judge will decide on detention and inform the juvenile judge (Article 73 § 3 JCA). Based on the ruling on detention rendered by the juvenile judge, detention can generally last for no longer than one month. The council of the same court can prolong detention for another month and at most for yet a further month in exceptional circumstances (Article 73 § 4 JCA). As a rule, juveniles are detained separately from adults (Article 74 § 1 JCA). The juvenile judge can place a juvenile in detention together with an adult where a longer period of detention would imply a long phase of isolation if separated, and where it is possible to put him/her in a room with an adult who would not have a detrimental effect on him/her (Article 74 § 2 JCA). Juveniles in detention should be provided with the possibility of work and tutoring that is beneficial for their education (i.e. upbringing) and vocation (Article 74 § 3 JCA). The juvenile judge is responsible for supervising the conduct of detained (especially young) juveniles, to visit them in detention, to receive written and oral complaints from them and to take the necessary steps for alleviating any detected irregularities

(Article 74 § 4 JCA). In practice, the legal provisions on detention are applied extremely rarely (similarly to the punishment of juvenile imprisonment).

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

In this section of the report, one firstly has to emphasize some provisions of the JCA on the execution of educational measures and juvenile prison sentences. The purpose of executing educational measures through protection, care, surveillance and education is to make an impact on the overall mental and physical development of a juvenile and to strengthen his/her personal responsibilities (Article 74 § 3 JCA). Throughout the execution of educational measures, one has to act in a way that observes the juvenile's personality and dignity, to induce his/her physical, mental, ethical and intellectual development and to guard his/her physical and mental health (Article 92 JCA). The execution of educational measures is governed by the juvenile's individual treatment programme that is to the greatest possible extent adjusted to his/her personality, and that is in concordance with contemporary achievements of both science and practice.

Individual programmes are designed based upon the complete division of a juvenile's particular characteristics, cause and type of the criminal offence, other types of behavioural disorders, the offender's level of education, his/her life path and family circumstances. Individual programmes contain: motivational means suitable for the juvenile's personal traits, involvement in education and vocational training, leisure time, work with the juvenile's parents (i.e. guardian or other family members) and other forms of influences on the juvenile (Article 93 JCA). If in the course of enforcing an educational measure, the Juvenile Court determines facts and circumstances that indicate a need for measures for the protection of juvenile rights and welfare (measures stemming not from criminal, but for example from family law), it is bound to inform the centre for social care about it. Supervision of the enforcement of measures lies in the hands of the Juvenile Court that issued the measure in first instance. The head of the institution in which an institutional educational measure is being enforced has to report to the Court and the competent State Attorney on how the juvenile has been behaving and on the success of the measure applied. Where it is deemed that a measure has been successful, the head of the institution will make the motion to the court to exchange or terminate the execution of the educational measure. The juvenile judge and the State Attorney are bound to visit juveniles placed in the institution at least twice a year and determine the legality and correctness of the treatment as well as the achieved educational success. The educational measure of assignment to a correctional institution (which can be pronounced to a younger adult as well) can be executed by perpetrators aged 14 but not yet 23.

The law also prescribes the intended purpose of juvenile imprisonment. The enforcement of prison sentences needs to ensure the development of the personal responsibility of convicted juveniles, and prepare them to live and behave in accordance with the law and needs of shared life in wider society upon release (Article 102 JCA). While serving their sentences, convicted juveniles should be provided with relevant vocational training based upon their knowledge, competences, inclinations and current activity, insofar as the institution can provide for it. The basis for treatment is the following: involvement in work that is educationally purposeful with appropriate compensation, enabling and inducing juveniles to uphold relations with the outside world via letters, telephone calls, visits, leaves, sport activities and providing conditions to meet religious needs. Competent persons participating in the treatment service must have sufficient knowledge in the fields of pedagogy and psychology.

Juvenile prison sentences are served in the penitentiary for juveniles and in the penitentiary for young adults or in special units of the penitentiary for adult convicts in exceptional cases. Convicted juvenile prisoners generally serve their sentences in a group setting rather than being strictly separated. Separations are only possible if the state of health of the prisoners requires so or if it is deemed necessary for maintaining discipline and safety in the penitentiary. The overall principle of accommodating males and females separately is however still in place. Males and females are placed in separate penitentiaries or in special units within them. Convicted juveniles serve their prison sentences in the juvenile specific penitentiaries until they reach the age of 23. If the sentence has not yet been fully served at that time, they are transferred to adult penal institutions. Exceptionally, a person who reaches the age of 23 while imprisoned may remain in the juvenile prison if it is necessary for him/her to complete his/her education or vocational training or if the remainder of the sentence is no longer than six months. The absolute maximum at which a person must be transferred or released from a juvenile penal institution is 27 (Article 104 JCA).

Table 9: Juveniles serving the educational measure of assignment to a correctional institution by age

Age	2001	2002	2003	2004	2005
14-16 (N)	12	14	5	5	2
%	12.6	13.5	5.6	5.7	2.3
16-18 (N)	33	41	31	35	31
%	34.6	39.4	34.8	39.8	35.6
18-21 (N)	50	49	53	48	49
%	52.7	47.1	59.6	54.5	56.3
21-23 (N)	---	---	---	---	5
%					5.7
Total (N)	95	104	89	88	87
%	100	100	100	100	100

Note: In the observed period, 62 of the total number of assignments to correctional institutions were women, i.e. 13.4%.

Source: Ministry of Justice, Annual reports on state and work of penitentiaries, prisons and correctional institutions, 2001-2006.

Table 10: Juveniles serving the sentence of juvenile imprisonment by age

Age	2001	2002	2003	2004	2005
16-18 (N)	1	0	1	2	0
%	6.3	---	4.3	7.7	---
18-21 (N)	10	14	11	13	22
%	62.5	53.8	47.8	50.0	95.7
21-23 (N)	5	12	11	11	1
%	31.3	46.2	47.8	42.3	4.3
Total (N)	16	26	23	26	23
%	100	100	100	100	100

Note: Out of total number of juveniles sentenced to juvenile imprisonment, there were 5 women, i. e. 4.4% in the observed period.

Source: Ministry of Justice, Annual reports on state and work of penitentiaries, prisons and correctional institutions, 2001-2006.

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programs in practice

The responsibility for the enforcement of assignments to correctional institutions and sentences to juvenile imprisonment lies with the Administration of the Prison System of the Ministry of Justice. There are currently two correctional institutions in which this particular institutional educational measure is executed, and juvenile prison sentences are enforced in the special unit of the penitentiary centre in Požega. The share of juveniles in the total imprisoned population is in fact insignificant: in 2005, 3% were juveniles serving a sentence of placement in a correctional institution and 1% was serving a sentence to juvenile imprisonment. At the end of 2005, a total of 87 persons (71 male and 16 female) were executing sentences to the educational measure of placement in a correctional institutions. The majority of them were young adults at that time. Furthermore, about 80% of them were perpetrators of property offences. The most frequent duration of this educational measure ranges from 6 months to one year and from one to two years. More than 80% of them were primary school dropouts or had only completed primary school education. Also, at the end of 2005 no inmate serving the sentence of juvenile imprisonment was in fact still a juvenile. The majority of them were young adults. Almost half of the inmates convicted to juvenile imprisonment served sentences of up to two years (48%), and every fourth inmate was serving a 5 to 10 year juvenile prison sentence. Here, too, the majority of inmates were perpetrators of property offences, and a little bit more than one fourth (26%) had committed a criminal offence against life and limb. The lack of formal education highlighted above also applies to the population serving juvenile prison sentences, with only four percent of them having attained a high school diploma.

Accordingly, in the course of enforcing placements in correctional institutions as well as juvenile prison sentences, one has to place a particular emphasis on education. Increased activities related to education have been evident through identifying educational needs, the development of adequate educational programmes and the motivation of inmates to get actively involved in the proposed programmes. The activities stated are structured into three parts: literacy training and completing primary school education regardless of prisoner age; training for a concrete vocation; the continuation of previously commenced high school education.

Particular attention is drawn to placements in correctional institutions. When reporting to the correctional institution, a juvenile is placed in the department of reception, educational work programming and registration where he remains for 30 days. The primary role of this department is to adjust the juvenile to the living conditions in the institution and to gain insight into the juvenile's persona-

lity, upon which any educational work in the institution is based. Each member of the expert team (psychologists, social workers, social (pedagogues)) makes his/her own observations using specific methods and techniques, in accordance with the ethical principles of their profession. Based upon individual diagnosis and opinions of expert team members, the head of department suggests an individual sentence programme that is used to individually direct treatment procedures. Juveniles who have not completed primary education are obliged to attend it, and upon their arrival they are registered with the school that operates within the correctional institution. After they have completed primary education, there is a possibility to obtain vocational training if this is foreseen in the individual programme for implementing the educational measure.

Juveniles are also provided with the possibility to work in accordance with their physical and mental abilities, vocational training and capabilities of the correctional institutions. Additional professional programmes are also conducted in the correctional institution, in which juveniles can be included in accordance with their individual sentence programmes. Besides the additional expert work with juveniles who have problems with substance abuse, there is further supplementary expert activity within four categories for personal growth and development and which are based on several therapy directions: reality therapy, gestalt therapy and neuro-linguistic programming. Throughout the course of executing placements in correctional institutions, the juveniles participate in various sessions related to different leisure time activities: sports, computers, music, arts, journalism, horticulture, photography and sculpting.

13. Current reform debates and challenges for the juvenile justice system

Since the JCA only contains principles and basic provisions on the execution criminal law sanctions for juveniles, a draft proposal for a law governing in more detail the enforcement of sanctions against juveniles for criminal offences and contraventions is currently in the legislative procedure. This proposal puts an emphasis on the protection of juveniles' rights, in accordance with the Croatian Constitution, the JCA and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") of 1985. Furthermore, it points out the principle of executing an individual sentence programme that is adjusted to each juvenile's personality, as well as the importance of monitoring administration and conducting inspections of the competent ministry and the court through control hearings. The draft also aims to introduce the notion of assessing the degree of an offender's risk behaviour, pointing to a need for differential treatment of juveniles. One particular novelty is the possibility for the ministry that is competent for social care to entrust the enforcement of educational measures to associations of citizens or legal persons

who deal with the education of juveniles and work with them (for instance humanitarian associations, although the draft does not provide precise associations or state certain persons). For the first time, the protection of juveniles against stigmatization during the execution of an educational measure is also prescribed by law. Furthermore, the draft proposal prescribes in detail conditions under which a juvenile can exit the educational or correctional institution for external therapy or important family matters. The proposal also strongly affirms the principle of openness in executing institutional educational measures as well as the principle of humanity instead of walls in serving the sentence of juvenile imprisonment. In addition, for the first time volunteer-work has been introduced to the system, by which external associates (for instance citizen's associations, individual volunteers) of the local community are involved in the educational and correctional institutions, with the goal of improving the prospects of successfully integrating juveniles into the local community. For example, these associates are entrusted with the surveillance of juveniles who are conditionally released from the institutions.

There is currently also a draft law in preparation that more intensively regulates the out-of-court settlement as a means of diversion.

The idea of juvenile imprisonment for younger juveniles has not found support in expert circles. Parenthetically, this idea is in line with the aggravation of criminal law repression that the latest novelty of the CC in 2006 entailed, which *inter alia* introduced the possibility of also sentencing young adult offenders to long term imprisonment (in duration of 20 to 40 years).

14. Summary and outlook

Since the JCA came into effect in 1998, the new and truly contemporary juvenile criminal law has been in force in the Republic of Croatia. The JCA, as *lex specialis*, contains substantive law provisions for juveniles and younger adults, provisions on courts, criminal proceedings, the enforcement of sanctions and regulations on the protection of children and juveniles under criminal law. Juvenile Courts are not organizationally separated from other courts, but special councils and juvenile judges are competent according to general regulations. Their competence ceases when a perpetrator reaches the age of 23. The Republic of Croatia accepts the judiciary model of treating juvenile perpetrators of criminal offences, whereby services of social protection are significantly involved not only in the criminal proceedings but also in the enforcement of sanctions. The JCA clearly requests specialization in the field of juvenile criminal law, especially for judges and State Attorneys. The JCA is based on the principle of subsidiarity in applying sanctions and prioritizes out-of-court reactions to juvenile offending, while the implementation of sanctions is characterized by the principle of education. Provisions of the JCA open up a wide spectrum of possibilities for applying the principle of individualization

when sanctioning juveniles (the Law prescribes eight types of educational measures, juvenile imprisonment and the possibility of applying safety measures) in order to achieve special preventive effects which is particularly emphasized in this field. It is also necessary to point out special obligations (13 in total) as independent sanctions which, within the framework of educational measures, are more frequently applied in judicial practice. In comparison to prior legislation, the possibilities for applying the principle of opportunity are much wider, particularly related to the application of informal sanctions. This principle is not related only to the actions of the State Attorney, but rather the court can also decide upon its application. The use of the out-of-court settlement as a means of diversion is currently in its experimental phase. Legal presumptions for ordering detention and juvenile prison sentences, as well as their practical implementation, clearly show that such limitations of freedom are *ultima ratio* in juvenile criminal law. In practical terms, withholding the imposition of juvenile imprisonment (which is similar to suspended sentence (probation)) has been of increasing importance. Procedural provisions of the JCA aim to ensure the juvenile the most favourable position in the proceedings, whereby one has to particularly point out the provisions directed at the most appropriate treatment of a juvenile and at achieving the most rapid conclusion of proceedings as possible. The idea of special prevention is most evidently depicted in basing the execution of sanctions on juveniles' individual treatment programmes. Contemporary solutions stated in the JCA do not exclude the possibility of further upgrading of the juvenile criminal justice system. With respect to the aforementioned, there are proposals for a more detailed regulation of sanction enforcement in cases of juvenile perpetrators of criminal offences and contraventions, as well as of out-of-court settlements as diversionary measures *de lege ferenda.*

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Cyprus

Despina Kyprianou

1. Historical development and overview of the current juvenile justice legislation

1.1 Introduction

At the beginning of the 20th century, separate jurisdictions and penal laws for children were established in European countries. The concept of juvenile misconduct as well as the suitable social reaction to it changed, and the perception shifted from the punitive idea towards the rehabilitative approach where the "children in need" had to be treated and educated. In the 1960s, these interventionist models were criticized by children's rights and emancipation movements, and in the early 1980s societal and economic changes led to a change in public and political opinion in favour of an increasingly punitive approach to delinquency, criticizing the pure rehabilitative model as naïve. As a consequence, in many Western countries, more attention has been paid to the 'justice' element in dealing with juvenile offenders, including a stricter punishment-orientation (*Walgrave*/*Mehlbye* 1998). In Cyprus, this debate on the proper reaction to juvenile delinquency has been a very delayed one, for two principal reasons: a) It was not until 1960 that Cyprus became an independent state and thus, until then, all of its legislation and policies regarding socio-legal phenomena were defined by its foreign rulers and b) compared to other countries, crime rates in Cyprus, including the rates of juvenile delinquency, remained at a very low level. After Cyprus gained its independence, and more specifically in the 1970s, the first public discussions on juvenile delinquency

began to emerge.[1] As a result of these discussions, and after consultation between the public services involved, a procedure was agreed for the dealing with juvenile offenders (see *Section 4.2*). Occasional discussions on the issue of juvenile delinquency also occurred during the 1980s and 1990s that resulted in some amendments of the juvenile legislation. The most important such change was the enactment of the 'Probation/Guardianship and other ways of treating convicted persons Law' of 1996 (Law 46 (I)/96), but it was during the early years of the 21st century that political and public interest in the topic of juvenile delinquency increased, resulting in more (attempted) changes in the law, but most importantly in the allocation of more money and resources for the implementation of the legislation.

1.2 Legislation

Separate juvenile laws in Cyprus originated from the British Colonial period (1878-1960). Legislation and policies concerning youth justice appeared to be more oriented toward a rehabilitative welfare approach which aimed at treating 'children in need' and ensuring their welfare, rather than the punitive approach that was adopted for adult delinquents. This welfare orientation was especially reflected in the Juvenile Offenders Act/Cap 157 and the Children's Law/Cap. 352 which were enacted during the British period but remained in force also after Cyprus regained its independence in 1960.[2]

Nowadays, the most important laws which regulate juvenile justice or include some sections relevant to juvenile criminal justice are the following:

a) The Criminal Code (Cap. 154), especially section 14,
b) The Juvenile Offenders Law/Cap. 157,
c) The Children's Law/Cap. 352,
d) The Probation/Guardianship and other ways of treating convicted persons Law of 1996 (Law 46 (I)/96).

1.2.1 The Criminal Code (Cap. 154) – Age of Criminal Responsibility

The age of criminal responsibility varies across Europe. In the large variety of age categories and judicial systems, *Walgrave* and *Mehlbye* (1998) see a 'first indication of the confusion in finding a system to respond adequately to the

1 See, for example, the proceedings of a conference organized by the Ministry of Justice in 1972 on 'Procedures and methods of dealing with Young Offenders'.

2 Article 188 of the Constitution provides that the Laws previously applicable should remain in force in the Republic to the extent that they do not contravene the Constitution, until repealed or amended by its Laws.

transitional period between the child, presumed to be innocent and not punishable, and the adult, presumed to be responsible and punishable'.

In Cyprus, until 2006, section 14 of the Criminal Code (Cap. 154) distinguished between different age groups in an effort to recognize differences in maturity and understanding. Until 1999, the three different categories were defined as follows:

1) Children up to 7 years of age were not criminally responsible for any act or omission. They were regarded as 'doli incapax', incapable of telling right from wrong and, therefore, they could not be prosecuted.
2) Children aged 7 to 12 years were not criminally responsible for an act or an omission, unless it was proven that at the time of committing the act or making the omission, they had the capacity to know that their behaviour was wrong. Therefore, children of this age had limited criminal responsibility depending upon their awareness of the seriousness of the offence.
3) Children and young persons aged 12 to 16 years were criminally responsible, but they were dealt with according to the Juvenile Offenders Law, Cap. 157.

The 1999 Amendment Law 15(I)/99 introduced the following changes in the above age groups:

1) Children up to 10 years of age were not criminally responsible for any act or omission. The age of criminal responsibility was raised from 7 to 10 years.
2) Children aged 10 to 12 years were not criminally responsible for an act or an omission, unless it was proven that at the time of committing the act or making the omission, they had the capacity to know that their behaviour was wrong.
3) Young persons aged 12 to 16 years old were criminally responsible but they were dealt with according to the Juvenile Offenders Law, Cap. 157.

Quite recently, Amendment Law 18(I)/2006 raised the lowest limit of criminal responsibility from 10 to 14 years and abolished the category of limited criminal responsibility. In 2003, the UN Committee on the Rights of the Child had reported on the situation of children's rights in Cyprus and suggested, among other things, an upper limit for the age of criminal responsibility. Based on this report the Social Welfare Services and the National Committee for the Convention of the Rights of the Child prompted the Ministry of Justice and the Attorney General's Office to proceed to the amendment of the existing legislation regarding the age of criminal responsibility. The Bill was submitted to Parliament in 2004 and was passed into Law in 2006. Therefore, the current situation in Cyprus is that children under the age of 14 are not criminally responsible at all and young persons up to the age of 16 are criminally responsible, but dealt with according to the Juvenile Offenders Law.

1.2.2 The Juvenile Offenders Law/Cap. 157

The very first separate piece of legislation for juvenile criminal justice was introduced in Cyprus in 1935 (Law 39/1935). In 1946, a new law was enacted – the Juvenile Offenders Law/Cap 157 – 'to consolidate and amend the previous law relating to juvenile offenders' which still constitutes the foundation of the law that is currently in force nowadays.

According to the Juvenile Offenders Law a child is 'a person under the age of 14 years' and a young person is a person who is 14 years of age or upwards and under the age of 16 years'. The provisions of this Law used to be applied regarding both of these categories of juvenile offenders. However, after the enactment of Law 18(I)/2006, which raised the age of criminal responsibility from 10 to 14 years (as stated earlier), we can no longer talk about young offenders under 14 years in terms of criminal procedure. This age group can only be dealt with via civil law, especially the Children Law/Cap 352 (see *Section 1.2.c*).

In the Juvenile Offenders Law there are provisions for a Juvenile Court with a jurisdiction to hear criminal cases against young persons and children, except in cases where they acted in complicity with adults. The Law provides that the Juvenile Court shall sit in a different building or room from the ordinary sittings of the District Court, or on different days or at different times. As far as practicable, provisions shall be made for preventing young offenders from associating with adult offenders while waiting before or after their attendance to the court trial. In order to protect young offenders from the harmful influence of adult suspects, juveniles shall be separated from the adults.

Furthermore, public participation in court hearings is restricted to the parties directly involved in the trial, except where the court states otherwise. In addition, the publication of the name, address, school, photographs or anything else likely to lead to the identification of the child or young person before the Juvenile Court is strictly prohibited, unless the court explicitly gives this permission.

The Law also provides that the Social Welfare Services ought to be informed whenever a young person is prosecuted, what he/she is being charged with, and also the day and time at which he/she is to appear in court. As will be shown below, though, according to the agreed procedure followed by the police, the social services and the Attorney General's Office regarding young offenders, in practice the social services are notified at a much earlier stage when a child or young person has committed an offence.

When a young person is charged with an offence, the court may in its discretion also require the attendance of his/her parents or guardian and may make such orders as are necessary to achieve this.

When the court is satisfied that a juvenile is guilty, it has a wide range of discretion in how to further deal with the case. In order to be able to act in the best interest of the young person, the court may obtain information regarding his/her general conduct, home environment, school record, medical history, and

may ask him or her any question arising from such information. For all juvenile offenders, the Social Welfare Services provide the court with reports which ideally provide evidence of the intellectual, emotional, psychological and social development of the child. According to Article 12 of the Juvenile Offenders Law, the following choices are available to the court:

a) dismissing the charge;
b) imposing probation;
c) committing the offender to the care of a relative or other responsible person;
d) sending the offender to a reform school; and
e) ordering the offender to pay a fine or to restore the damages for which he or she was liable.

Should the court feel that there is no other alternative, as a last resort it can also sentence a young offender to imprisonment.[3]

As a concluding remark, it has to be noted that in practice not all of the provisions of the Juvenile Offenders Law are adhered to, especially those regarding the communication of the information on the venue and time of the trial, and the separation of juvenile offenders from adult offenders. Moreover, the choice of sending the offender to a reform school is no longer available as the only existing reform school was actually closed in 1986.

1.2.3 The Children Law/Cap. 352

Since its enactment in 1956, the Children Law has not undergone any major overhauls. Generally, it provides for the care and welfare of children in need or in danger.

The Law, among other things, provides for various measures that the Director of the Social Welfare Services can apply in cases of children in need of care without judicial proceedings.

Section 63 refers to the circumstances under which a child under 16 years can be recognised as a child in need of care and protection. Section 64 provides that, if the Juvenile Court is satisfied that a person brought before it is a child in need of care or protection, it may apply a series of measures that are always in the best interest of the child. The court may either order that the young person be sent to a reform school, commit him/her to the care of a responsible person, order his/her parents or guardian to enter into a recognizance to exercise proper care and guardianship, or place him/her under the supervision of a welfare officer or a probation officer for a specified period not exceeding three years.

3 At the time when children under the age of 14 were criminally responsible, before the enactment of Law 18(I)/2006, only the rest of the methods – a) to e) – were available to deal with them, since imprisonment was strictly prohibited for children.

All the measures mentioned above are considered to be taken via civil law, although some of them are identical to measures known under criminal law.

1.2.4 The Probation/Guardianship and other ways of treating convicted persons Law (Law 46 (I)/96)

The 'Probation/Guardianship and other ways of treating convicted persons Law' was passed in 1996 and replaced the Probation of Offenders Law (Cap. 162). It introduced a wide range of sentencing options into the criminal justice system, such as guardianship orders, which could be combined with an obligation for community work or education/training, probation measures and other alternative sanctions. All of these measures could be applied both to adult and juvenile offenders. The introduction of this legislation was warmly welcomed by all actors in the system but it took eight years for the new law to be implemented, because the first five social workers were appointed as probation officers no earlier than in 2004. These probation officers are responsible for supervising and guiding the convicted persons according to court orders for a period of one to three years and are obliged to report regularly to the court. The success of this law obviously depends on the availability of adequate staff and the broad availability of appropriate programmes for diversion within which an offender can *inter alia* perform community work or attend an education or training session. At first, as will be shown below, courts were reluctant to impose alternative sanctions due to the absence of available programmes, but especially due to the very limited number of probation officers.

2. Trends in reported delinquency of children, juveniles and young adults

2.1 Introductory note

Before drawing any conclusions in this section of the chapter, prior notice must be drawn to the fact that systematic gathering of data on crime and crime control has been a problem in Cyprus for decades. The only available official statistics on crime rates are the Criminal Statistics of the Statistical Service of the Republic. However, these are mainly based on Police Statistics which in the past have appeared to be inconsistent. For example, in 2003 the police made dramatic changes the recording practice for serious offences and as a result, since then a much larger number of cases are being recorded. Consequently, as of 2003, the figures are not strictly comparable with those of previous years.

Generally speaking, criminality in Cyprus is among the lowest in the world compared to international standards as indicated by International Crime Statistics. Recently, recorded crime levels have increased from 4,340 to 7,256

between 2000 and 2003 and have continued to increase to 7,955 in 2006. This means that the crime rate has increased from around 626 crimes per 100,000 of the population in 2000 to 1,007 per 100,000 of the population in 2003 and 1,039 per 100,000 of the population in 2006. As already mentioned, to a certain extent these changes appear to have been caused by the introduction of the new counting rules of the police. Despite these changes, though, Cyprus still has relatively low levels of police recorded crime.

2.2 Juvenile criminality

Levels of juvenile delinquency in Cyprus are also low. It has been on the increase, albeit with considerable fluctuations. During the last decade, increasing political and public interest in juvenile delinquency could be observed, which has been fuelled by some tragic examples of juvenile violence, such as a case in which a pupil stabbed one of his classmates, or a couple of serious incidents of vandalism. A growing fear within the population can be observed, and incidents of young people stealing, threatening people and vandalizing receive intense media coverage nearly every day. This creates the impression that youth crime in Cyprus has increased severely, a perception which is not reflected in the official statistics (see *Table 1*).

That being said, it should be remarked that the available statistics – especially for the last few years – are not absolutely comparable with previous years, for a series of reasons: for example, since 1984, the official statistics have excluded juvenile perpetrators of motoring offences. Furthermore, it is not entirely clear whether cases of children who commit minor offences, and who are subsequently referred by the police to the Department of Social Welfare Services to be treated as children in need of care and protection (see above *Section 1.2.c* and *4.2*), are always included in the statistics. Moreover, a curious decline in the number of juvenile offenders can be observed in 2003 compared to previous years (only 89 offenders!) which should be read in comparison to the numbers presented in *Table 5* (presented under *Section 5* below). *Table 5* shows the numbers of prosecuted juvenile offenders and the number of juveniles who are not prosecuted, and that the latter category has been on a steep decrease. In fact, it shows an almost complete disappearance of the category of juvenile offenders who are not prosecuted but are dealt with through out-of-court procedures. It is assumed that the numbers in those tables are seriously affected by the change in the policy of the Attorney General's Office regarding juvenile offenders which will be explained in further sections of this chapter. If the assumption made in *Section 5* is true that the police might not record a number of juvenile cases and instead just refers them to the social services without notifying the Attorney General, then there is a good possibility that the rate of juvenile criminality might have been higher during those years, but this is not reflected in the official statistics.

Table 1: Juvenile Delinquency

	1976	1980	1985	1990	1995	2000	2003	2004	2005
Juveniles Involved									
Males	259	262	304	201	289	221	57	293	238
10-11*	28	11	16	15	24	11	0	2	2
12-13	46	51	65	54	48	40	7	52	25
14-15	185	200	223	132	217	170	50	239	211
Females	11	17	16	19	14	5	2	7	19
10-11*	0	0	0	2	0	0	0	0	0
12-13	3	4	0	11	5	0	0	1	2
14-15	8	13	16	6	9	5	2	6	17
Total	**270**	**279**	**320**	**220**	**303**	**226**	**59**	**300**	**257**
Coefficient of juvenile offenders*	130	189	310	258	312	339	89	454	392
Citizenship**									
Cypriot	127	273	267	209	276	185	48	275	235
Foreigner	1	6	53	11	27	41	11	25	22

	1976	1980	1985	1990	1995	2000	2003	2004	2005
Living arrangements**									
Father and mother	112	212	246	169	244	179	41	265	210
Mother only	11	15	35	37	35	19	4	7	27
Father only	2	3	15	3	11	14	3	6	5
Grand parents	0	0	0	0	0	1	2	0	1
Other relatives	0	0	0	0	0	1	0	0	1
Hostel	0	12	4	4	0	0	0	0	1
Other	3	37	20	7	13	12	9	0	0
Not stated	0	0	0	0	0	0	0	22	12
Juvenile convicted									
Males	126	101	56	36	13	63	52	257	183
Females	2	1	1	1	0	2	2	6	15
Total	**128**	**102**	**57**	**37**	**13**	**65**	**54**	**263**	**198**

* Coefficient of juvenile offenders: juveniles involved in the commission of serious offences only, aged 10-15 per 100.000 population in the corresponding age group. As from 1999 onwards the age limit for juvenile offenders changed to 10-15 instead of 7-15 years (Ammendment Law 15009). Thus for the years 1976-1998 the tigures for the age group 10-11 represent the age group 7-11.

** For 1976, the figures refer to convicted juveniles.

Source: Statistical Service of the Republic of Cyprus 2005.

Having all the above in mind, the following can be observed for the 2005 figures: The total number of juveniles involved in the commission of offences during 2005 was 257, of whom 238 were boys and 19 were girls. The number of girls involved in the commission of offences increased from 2.3% in 2004 to 7.4% in 2005. Offences against property remain the largest group of both serious and minor offences committed by juveniles, accounting for 59.1% of the total in 2005. Offences against the person accounted for 11.3%, while malicious injuries to property and offences against the public had shares of 10.9%, and 10.1% respectively.

Of the juveniles involved in the commission of offences, 65.0% were aged 15, 23.7% were 14 years old and 8.2% were 13 years old. The remaining 3.1% were in the age group of 10 to 12 year olds. 81.3% of the juvenile offenders were living in urban or greater urban areas. About 81.7% of the juveniles were living with both of their parents, 12.5% with one of their parents (usually the mother), and only a few had other living arrangements. Of the 257 juveniles involved in the commission of offences, 22 were foreigners (8.5% of the total). Frequently, juveniles are induced to delinquency by other (sometimes adult) persons. Of the total number of juvenile offenders, 33.5% had adult accomplices, 42.4% had juvenile accomplices and 23.3% acted alone.[4]

2.3 Young adults

There are no comparable long-term data for young adults *involved* in the commission of offences, but there are data for *convicted* young adults. *Table 2* below shows the number of convicted young adults from 1976 to 2006, divided into two age groups: a) Young adults between 16 and 20 years old and b) Young adults between 21 and 29 years old. It also presents the %age of convicted young adults in relation to the total number of adults convicted in each year. For example, in 2005 convicted young adults between 16 and 20 years old constituted 26.2% of the total number of adults convicted in that year, while young adults between 21 and 24 years old accounted for 17%.

4 Statistical Service of the Republic of Cyprus.

Table 2: Young Adults convicted for criminal offences

	1976	1980	1985	1990	1995	2000	2004	2005
16-20	*105 25.4	117 25.8	157 22.5	132 20.9	129 20.5	204 23.9	340 24.2	413 26.2
21-24	87 21.0	76 16.8	119 17.1	123 19.5	105 16.7	139 16.3	268 19.1	267 17.0

* First line: absolute numbers; second line: percentages.
Source: Statistical Service of the Republic of Cyprus 2005.

The next two Tables (*Tables 3* and *4*) present the absolute numbers of males and females of these age groups convicted for criminal offences during the period of 1976-2005. It is obvious that the female representation is very limited.

Table 3: Young adult males convicted for criminal offences

	1976	1980	1985	1990	1995	2000	2004	2005
16-20	103	114	152	122	123	199	317	387
21-24	85	72	110	114	98	126	251	247

Source: Statistical Service of the Republic of Cyprus 2005.

Table 4: Young adult females convicted for criminal offences

	1976	1980	1985	1990	1995	2000	2004	2005
16-20	2	3	5	10	6	5	23	26
21-24	2	4	9	9	7	13	17	20

Source: Statistical Service of the Republic of Cyprus 2005.

3. The sanctions system (kinds of informal and formal interventions)

As has already been stated, the emphasis in juvenile criminal justice, and especially in the reaction to a juvenile offender, is less on punishing and reprisal and more on the protection and education of the young person. There are two distinctions that have to be made: The first one is between the reaction to non-criminal actions or actions committed by children not criminally liable on the

one hand, and the reaction to criminal actions committed by juveniles on the other. The second distinction is between out-of-court measures and measures imposed by a judge.

3.1 Criminal v. non criminal actions

When Juvenile offenders are criminally liable (thus, 14 years old and above) and commit a criminal offence, they can either be dealt with outside of the court system or be prosecuted and, if found guilty, a judge could impose a series of measures that are provided by law (see *Section 4.2* below). However, there is the possibility that a child under 14 years of age behaves in a way that may be considered as a crime had he/she been an adult. There is also the possibility that a young person, although criminally liable, commits actions that can be characterized as antisocial or problematic but not criminal. What measures can be taken in order to deal with such actions?

1) Firstly, the police, to whose attention such an act has come, can simply take no further action because the behaviour in question is viewed as being very minor, petty and unimportant (police diversion).
2) Secondly, children or young persons can be referred by the police to the Social Services where they are treated as children in need of care and protection. The Director of Social Welfare Services is empowered by legislation to take the child into his/her care. The Children Law/Cap. 352, as well as the regulations governing the policy of the Social Services Department, provide for various measures that Social Services can take in relation to a child in need of care, without judicial proceedings. The priority lies with the forms of voluntary assistance for families and children with behavioural problems, such as counselling, day-care for children, foster families etc.
3) Measures resulting from judicial proceedings will only be imposed if the possibilities for voluntary assistance are exhausted or insufficient. The Children Law/Cap. 352, as has been shown above, provides that a social welfare officer can refer a child to a Juvenile Court which in turn has the following choices available:
   a) order the child to be sent to a reform school,
   b) commit the child to the care of a responsible person,
   c) order his parents or guardian to enter into a recognizance to exercise proper care and guardianship,
   d) place the child under the supervision of a welfare officer or a probation officer for a specified period not exceeding three years.

3.2 Out-of-court measures v. prosecution and measures imposed by a judge

3.2.1 Out-of-court measures

As already stated earlier in this section, when juvenile offenders are criminally liable (14 years old and above) and commit a criminal offence, they can still be dealt with the outside of the court system in order (*inter alia*) to avoid them coming into contact with the Criminal Justice System too early. As far as this choice is concerned, there are the following possibilities:

a) The police can simply take no further action against a minor suspect and merely issue a warning/caution. Theoretically, according to the agreed procedure between the police, the Social Services and the Attorney General's Office (see *3.1* above), the police cannot make this decision by itself without prior consultation with the Social Services and the Attorney General's Office. However in practice, this can still occur especially regarding very minor offences.

b) When the Juvenile Committee decides that prosecution is not advisable and the Attorney General agrees to this, either no further action is taken, the police are directed to issue a warning to the young offender, or the young offender is referred to the Social Services and can be subjected to the same measures as in the cases of children in need of care and protection (see *Section 3.1*).

It should be stated that, apart from these measures that can be taken regarding young offenders, there are no other diversion programmes or victim-offender mediation schemes that can be applied. This is the case not only as far as young offenders are concerned, but also regarding adult offenders. At the moment, though, a draft bill providing opportunities for mediation in criminal (as well as in family law) cases is currently being discussed in Parliament.

3.2.2 Prosecution and measures imposed by a judge

Apart from being dealt with out of court procedures, a juvenile offender can always be prosecuted. If found guilty, a judge could impose the following series of measures available by law:

a) According to the *Juvenile Offenders Law (Cap. 157)*, the choices available to the court in dealing with a juvenile offender are the following:
   - dismissing the charge,
   - imposing probation,
   - committing the offender to the care of a relative or other responsible person,
   - sending the offender to a reform school,

- ordering the offender to pay a fine or to restore the damages that he/she has caused,
- only as a last resort, and after having been persuaded that there was no other alternative, the Court may also sentence the offender to imprisonment.

b) The Probation/Guardianship and other ways of treating convicted persons Law (Law 46 (I)/96) has introduced a wide range of other sentencing options for juvenile offenders (which can be also applied to adult offenders):
   - Imposition of a guardianship order; for a specified period not exceeding three years the court can place the young offender under the supervision of a probation office and it may also set certain obligations that have to be obeyed,
   - impose a guardianship order combined with an obligation for community work, provided that the young offender consents to it,
   - order a guardianship order combined with an obligation to attend a tutorial or training session, provided that the young offender consents to it,
   - absolute discharge,
   - conditional discharge.

c) Section 5 of the Treatment of Drug Addicted Juveniles and Convicted Persons in Detoxification and Rehabilitation Centres Law of 1990 (57(1)/1992) provides the courts with another measure – the so-called treatment order – that can be imposed especially for drug addicted juveniles. Treatment orders can be issued after an application by the juvenile's guardian supported by an affidavit which has to satisfy the court that the juvenile needs immediate treatment otherwise his mental/physical health are in jeopardy, there are foreseeable dangers for his future and his life, or he/she is likely cause harm to him/herself or to others. The length of this order may not exceed 24 months, and can be renewed every three months. However, this provision of the Law has never been enacted, since it presupposes the existence of treatment centres that operate according to regulations issued by the Ministry of Health. These regulations until now have not been issued. The Law Committee of the Anti Drug Council for quite a long time has been working on a new law which will hopefully introduce practicable and effective provisions.

4. Juvenile criminal procedure

In this section, the various stages of juvenile criminal procedure will be briefly presented, focusing on the role of the different criminal justice agencies.

4.1 Investigation and handling of cases by the police

Police Regulation No. 5/18 titled 'Interrogation and Handling of Cases Involving Juvenile Offenders' explains the ways in which the police handle juvenile offenders in accordance with the provisions of the Juvenile Offenders Law, Cap. 157. Explanations are given for the police procedures for children under the age of 14, as well as for young persons between 14-16 years of age who are involved in various offences.

Furthermore, this Police Regulation includes general instructions, where it is emphasized that when the police handle cases concerning juveniles, they have to bear in mind, among others, the following:

1) The interrogation and the taking of statements from juveniles must be done in the presence of a parent or guardian (Article 12.3 of the "Rights of Persons being Arrested and taken into Custody" Law 163(I)/2005).
2) In cases involving students/pupils, arrest and interrogation in the school must be avoided. If this is necessary, it must be done with the consent and in the presence of the school's director or his/her representative.
3) In case of an arrest or accusation of a juvenile, the parent or guardian and the District Police Commander must be notified immediately.
4) When a juvenile is held in custody in a police station, any association with an adult who is not a relative must be avoided.

Furthermore, Article 6 of the "Rights of Persons being Arrested and taken into Custody" Law provides that when a juvenile is arrested, the social services are also to be informed if the best interest of the juvenile requires it.

4.2 Decision whether or not to prosecute

In Cyprus, the Attorney General's Office is fully responsible for the prosecution policy in the Republic. In theory, the Office exercise control over all prosecutorial decisions made by the police, especially those concerning diversion from prosecution. In practice,[5] the Attorney General closely deals with only the most serious cases, and those regarded as exceptional, complex, or in need of particular attention.

As far as the handling of juvenile cases is concerned, as early as in 1978, an agreement was reached between the Department of the Social Welfare Services, the Police and the Attorney General which evolved from the idea that cooperation and collaboration between a wide range of youth justice services helps to find outcomes that are in the best interest of the juvenile. The agreement was the result of discussions within a Commission that was set up for a review of the

5 See *Kyprianou* 2009 (forthcoming), *Tornaritis* 1983 and *Loucaides* 1974.

way in which juvenile offenders are being handled within the system. The Commission comprised representatives from the Attorney General's Office, the Ministry of Justice, the Police, the Judiciary, and the Social Welfare Services.

The principal points of that agreement were the following:[6]

1) When a child under the age of 14 commits a minor offence, the police carry out a preliminary investigation in order to determine whether the child was really involved in the commission of the crime. If this is the case, then the police refer the case to the District Welfare Officer to be dealt with by him/her, according to the powers that the law invests him/her with (see *Section 1.2.c* and *3.2* above). The District Welfare Officer shall inform the police of his/her decision.
2) When a child under the age of 14 commits a serious offence or when a young person between 14 and 16 years old commits any offence (minor or serious), the police carry out the usual investigation and they inform the offender's parents and the District Welfare Officer. The latter then has to prepare a social report outlining the juvenile's background, family circumstances, character etc. In each district of the jurisdiction, a committee is established, which is made up of representatives from the police and the Social Welfare Services. The committee is responsible for reviewing juvenile cases and has to suggest whether or not prosecution would be advisable. For minor cases, if the committee comes to an agreement, it can make a final decision itself.[7] For more serious cases or where there is a disagreement, the committee's suggestions as to the proper disposal of cases and a review of the Social Welfare Services' report are forwarded to the Attorney General's Office along with the relevant criminal file. Law Officers could endorse or overrule the decision of the committees.[8]

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6 See Minutes of the meeting of the Commission for the review of the way juvenile offenders are being handled within the system on the 07/11/1977.

7 This is a debatable practice having in mind the absolute powers of the Attorney General regarding prosecutorial decision. For further discussion, see, inter alia, *Kyprianou* 2009; *Tornaritis* 1983.

8 There is a relatively high rate of traffic offences committed by juveniles (especially the offence of driving a motorcycle without license) in Cyprus. Therefore, there is a special policy regarding these offences: The Attorney General, after a meeting at the Law Office with the Assistant Chief of the Police, representatives of the Traffic Department of the Police, and of the Social Welfare Services, issued a circular (dated 26/06/1997) stating that: 'The first time that a juvenile committed such an offence, he would not be prosecuted. Instead, he would be cautioned in the presence of his parents and he would be warned that if the same offence was committed again, he would be prosecuted for both offences.' Furthermore, the circular stated that there is no need that the special procedure mentioned above to be followed nor for the Social Welfare Services to prepare a report for this category of cases.

The above mentioned procedure concerning juvenile offenders was followed until 2003, and although it experienced some difficulties, it was judged as being beneficial and constructive.[9] When a new Attorney General (Mr. *Nikitas*) was appointed in 2003, a very different philosophy of prosecutorial policy in general was adopted compared to the one followed by all previous Attorney Generals. His approach was characterized by a great degree of respect for judicial power[10] and the values associated with a public trial. He strongly believed that the public interest was served by sending cases to courts and that the Attorney General should not try to usurp courts' powers by diverting cases on a regular basis. Mr. *Nikitas* strongly believed that neither the Attorney General nor the police had the right to filter cases out of the system due to mitigating factors concerning the defendant. He argued that these cases should be decided in an open forum and all the relevant factors could be taken into consideration by the judge. Unavoidably, the policy regarding juvenile offenders was also affected. Consequently, during his tenure he very rarely accepted the Juvenile Committee's suggestions to divert juvenile cases from prosecution. As a result of that policy, as well as of observed delays in the preparation of reports for juveniles and, therefore, delays in the final disposition of juvenile cases, on 30 September 2003 the police announced that they would cease to follow the agreed procedure of 1978. This was followed by a very negative reaction by the Social Welfare Services and Members of the Parliament, as well as by very adverse criticism on the part of the media.

After a series of consultations between all the public services involved, it was agreed that from May 2004 the previous procedure regarding the handling of juvenile cases would be followed again. It was also agreed that the whole procedure should be speeded up, and that a specialist (e. g. a psychologist) would take part in the meetings of the Juvenile Committees where this was practicable and advisable. The Attorney General, though, informed the police and the Social Welfare Services that the suggestions of those committees will not be uncritically accepted by his Office. Therefore, until the resignation of Mr. *Nikitas* in 2005 the functioning and the effectiveness of the committees were somehow problematic. Since 2005, when a new Attorney General was appointed (Mr. *Clerides*), a return to the previous philosophy of the Attorney General's Office regarding juvenile delinquency could be observed. Right from the beginning of his tenure Mr. *Clerides* made it clear that he supports the

9 Report of the Social Welfare Services sent to the Police and the Attorney General's Office dated 19/11/93.

10 Which could be partly explained by the fact that, before his appointment, he was a Supreme Court Judge.

functioning of the Juvenile Committees and that he believes that juveniles should only be prosecuted as a last resort.[11]

4.3 Court procedures

As remarked in *Section 1*, the Juvenile Offenders Law provides for a Juvenile Court which deals with all juvenile criminal cases apart from those where juveniles are co-accused with adults. The Juvenile Court consists of a judge who is a member of the District Court. Article 5 of the Law provides that the Juvenile Court shall sit in a different building or room than the ordinary sittings of the District Court, or on different days or at different times. Moreover, it is provided that young offenders shall not be associated with adults, with whom they are jointly charged, before or after their attendance in court.

It is laid down in Article 5.4 that the trial of juvenile criminal cases will not take place in public except where the court allows it. Other provisions of this Law state that when a young person is charged with an offence, the Court may in its discretion also require the young offender's parents of guardian to attend, and may make such orders as are necessary for ensuring their attendance. Furthermore, the Social Welfare Services are to be informed of whenever a young person is being prosecuted, of the grounds for his/her prosecution and of the day and time at which he/she is going to appear in court.

Article 10 of the Juvenile Offenders Law provides for the procedure that is to be followed during the trial. It is the same procedure that is applied during summary trials for adult offenders, albeit with some modifications. Firstly, the Juvenile Offenders Law allows a more lenient and humane environment, and secondly, the trial judge is given a more interventionist role (e. g. the judge is allowed ask witnesses such questions as appear to be necessary, contrary to the usual accusatorial criminal procedure).

Once a juvenile's guilt has been established, there is a broad range of choices for the Juvenile Court on how to deal with the young offender. These options will be analyzed in the next section.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

As has been elaborated above, the police, the social services and the Attorney General's Office have agreed a procedure for handling juvenile offenders. In a nutshell, juveniles under 14 years old are not to be prosecuted for minor

11 See, *inter alia*, the Circular of the Attorney General to the Chief of the Police dated 20/09/2005 and the Circular of the Attorney General to the Ministry of Justice dated 12/03/07.

offences (before 2006 when they were still criminally liable). Furthermore, the Juvenile Committees make a suggestion as to whether or not a young offender should be prosecuted. This duty is exercised in cases of children under 14 who have committed a serious criminal offence, and for all juvenile offenders between 14 and 16 regardless of the severity of the crime committed. When a young offender is not prosecuted, he or she can be subjected to the following options: a) no further action or a warning/caution. b) referral to the social services who can apply all of the measures that can be taken in cases of children in need of care and protection (see *Section 3.1*) can be also applied. Unfortunately, no statistics are available on how the social services deal with juvenile offenders. This is due to the fact that the social services statistics merely provide data on all measures imposed without making any distinction between referred offenders and care cases.

Table 5 shows the number of juveniles involved in the commission of offences between 1980 and 2005, broken down according to whether or not they were prosecuted. As a result of the change in the policy of the Attorney General's Office (discussed above), it can be remarked that, after 2003, the official number of prosecuted juvenile offenders has dramatically increased, while the number of those not prosecuted has almost disappeared. However, when viewing this table one needs to keep the reservations expressed in *Section 2* about the limitations of these statistics in mind. Furthermore, the statistics cannot absolutely reflect the real state of affairs. For instance, statistics provided by the Social Welfare Services[12] indicate that in 2003, 254 juveniles between 14 and 16 years of age were referred to the social services by the police, while the official figures provided by the Statistical Service indicate that only 1 single offender was not prosecuted. Therefore, one can assume that a number of juvenile offenders were in fact not being prosecuted and were referred to the social services without the Attorney General being notified. Since the appointment of a new Attorney General in 2005, the previous prosecutorial policy of the Office regarding juveniles has been adopted again and, therefore, although there are no official statistics available for this period yet, unofficial numbers indicate a return to the previous situation.

12 See the Report of the Department of Social Welfare Services for 2003, available on the internet: http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlannualrpt_gr/dmlannualrpt_gr?OpenDocument.

Table 5: Prosecuted und not-prosecuted juveniles who were involved in the commission of offences

Year	Prosecuted	Not Prosecuted
1980	109	170
1985	66	254
1990	46	174
1995	30	273
2000	91	135
2002	97	8
2003	58	1
2004	299	1
2005	257	0

6. The sentencing practice – Part II: The juvenile court dispositions and their application since 1980

When a juvenile offender is prosecuted and found guilty, a judge can impose a series of measures provided by law. Before that, though, a pre-sentence report prepared by a social worker is mandated, which is a professional assessment of the young offender to detect the nature and causes of his or her offending behaviour. The purpose of these reports is to assist the court in determining which sanction best suits the juvenile in each individual case. The range of sanctions that a judge can impose on juvenile offenders has been discussed under *Section 4.2* above. Statistics show that courts impose the sentence of imprisonment extremely rarely. Until 2005, the most commonly applied alternative method of dealing with juvenile offenders was the imposition of a fine. In many cases, courts had expressed their disappointment because there were not many alternatives for dealing with young offenders. Probation was also an option and it had been imposed in a number of cases (for example, 21% of the cases in 1983, compared to 50% of those convicted who were bound over or fined), but not quite extensively.

The passing of the 'Probation/Guardianship and other ways of treating convicted persons Law' (Law 46 (I)/96) in 1996 was warmly welcomed. It introduced many alternative sanctions, the most important being guardianship/ probation orders which could be combined with community work or education/ training orders. However, it took a considerable amount of time before the implementation of these new legal provisions actually began. As stated earlier,

the first five social workers responsible for supervising and guiding convicted offenders were only appointed in 2004. Therefore, the courts were at first very reluctant to impose guardianship/probation orders due to the very limited number of social workers appointed as probation officers. As a consequence, in 2002 only 23.1% of all convicted juveniles received a guardianship/probation order, a share that did not change in the following two years (23.1% in 2003, and 23.2% in 2004). However, in 2005 this %age almost doubled (a guardianship/probation order was imposed on 51.5% of those convicted). A further increase is to be expected, as during the last two years the number of social workers appointed for supervising the court orders has been significantly increased.

Table 6: Juveniles convicted and sentence imposed

Sentence	2002		2003		2004		2005	
	N	%	N	%	N	%	N	%
Absolute discharge	1	1.3	0	0	3	1.1	0	0
Conditional discharge	0	0	0	0	0	0	0	0
Committed to the care of a fit person	1	1.3	0	0	1	0.4	0	0
Probation order	18	23.1	13	24.1	61	23.2	102	51.5
Community Service	0	0	0	0	0	0	8	4.0
Fine and Binding over	10	12.8	5	9.3	23	8.7	17	8.6
Fine	34	43.6	23	42.6	123	46.8	50	25.3
Binding over	2	2.6	5	9.3	35	13.3	9	4.5
Imprisonment	4	5.1	1	1.9	6	2.3	2	1.0
Suspended term of imprisonment	8	10.2	7	13.0	11	4.2	10	5.1
Total	78	100	54	100	263	100	198	100

7. Regional patterns and differences in sentencing young offenders

Due to the size of the jurisdiction, there are no significant differences in the sentencing of young offenders in various regions of the country.

8. Young adults (18-21 years old) and the juvenile criminal justice system: legal aspects and sentencing practices

Theoretically, young persons between 16 and 21 years of age are treated as adults as far as their criminal responsibility is concerned. However, there are a few exceptions to this general rule. For example in Article 6 (b) of the 'Rights of Persons being Arrested and taken into Custody' Law (163(I)/2005) it is provided that when a person under the age of 18 is arrested the social services are also informed if the best interest of the young offender requires it. Article 10 of the same Law provides that the interrogation of persons under the age of 18 must be done in the presence of his/her attorney and if he/she so wishes in the presence of a parent or guardian (Article 12.3).

Furthermore, when a person under the age of 18 is held in custody at a police station, he or she must be detained in a separate cell.

As far as prosecution is concerned, there are no statistics available that indicate the influence of young age on the decision of whether to prosecute or not. However, some research has shown that, according to the Attorney General's policy, the young age of an offender, especially in the case of a minor offence, advocates against prosecution.[13]

Table 7: Convicted young adults aged 16-20 and sentence imposed in 2005

Sentence	Males	Females
Absolute discharge	2	0
Conditional discharge	0	0
Binding over	4	0
Fine	157	5
Fine and binding over	28	1
Probation order	54	3

13 See *Kyprianou* 2009 and the relevant circulars of the Attorneys General included in her research.

Sentence	Males	Females
Probation order and fine	0	1
Suspended term of imprisonment	50	7
Suspended term of imprisonment and fine	8	1
Imprisonment	75	8
Imprisonment and fine	0	0
Community service	5	0
Probation order and community Service	2	0
Suspended term of imprisonment and community service	2	0
Total	387	26

The young age of the defendant consists one of the mitigating factors that the court would take into consideration in order to choose the type and the duration of the sentence it would impose. Courts have declared that in principle they should, as far as possible, avoid sending young offenders to prison (see, *inter alia*, *Panicos Menelaou et al. v. The Republic* (1971) 2 CLR 146 and *Charalambos Tryfona alias Aloupos v. The Republic* (1961) 2 CLR 246).[14]

Table 7 above shows the sentences imposed on convicted young adults in 2005. In 80% of the cases an alternative sanction was chosen while in 20% of the cases imprisonment was judged as being unavoidable.

9. Transfer of juveniles to the adult court

In Article 2 of the Juvenile Offenders Law Cap. 157, it is provided that a Juvenile Court has the jurisdiction to hear criminal cases against young persons and children, except in cases where they are co-accused with adults. In the latter case, juveniles are tried by an adult court.

14 The judiciary has been attempting to encourage the legislature and the executive to create alternative forms of treating young offenders for many years already. See, for example: 'I have given careful and anxious consideration to this case because I believe that young men must be given a chance to reform. It is a pity that in Cyprus we have no "borstal institutions" as in England. Young men of the age of 16 and upwards can be committed to these institutions to be trained and given a chance to reform. I am in a position to know that during the past seven or eight years the courts in Cyprus have repeatedly asked the legislature to establish such institutions, but without any result. I now take this opportunity of expressing the hope that the responsible authorities in our new Republic will consider establishing the borstal system in Cyprus at the earliest possible moment' (*Charalambos Tryphona* alias *Aloupos v. The Republic*, 1961 C.L.R. 246, at page 252).

10. Preliminary residential care and pre-trial detention

As we have already seen, before the enactment of Amendment Law 18(I)/2006 juveniles under the age of 14 could be held criminally responsible. However, even at that time Article 12(2) of the Juvenile Offenders Law Cap. 157 strictly prohibited the imprisonment of a child under 14 years of age. In *Costas Evgeniou v. The Police* (1984) 1 CLR 327 the Supreme Court stated that once Law 12/75 in effect equated pre-trial detention with imprisonment, and given that Article 12(2) of Cap. 157 absolutely prohibited the imprisonment of a child under 14, placing children under 14 in pre-trial detention was also prohibited.

As far as the current situation regarding pre-trial detention is concerned, Articles 6 and 7 of the Juvenile Offenders Law provide the following:

Art. 6 (1): Where a person apparently under the age of sixteen years is apprehended with or without a warrant and cannot be brought forthwith before a Court, any police officer not below the rank of sergeant or the police officer in charge of the police station to whom such person is brought shall inquire into the case. This officer may release him or her on a recognizance, with or without sureties, that either the offender himself/herself, his/her parents or guardian, or another person whom the police officer deems acceptable enters into. The sum is to be such as will, in the opinion of the officer, secure the suspect's attendance at the hearing of the charge, and shall so release him unless

a) the charge is one of homicide or another grave crime;
b) it is necessary in his interest to remove him from association with any undesirable person; or
c) the police officer has reason to believe that his release would defeat the ends of justice.

(2) Where such person is not released on recognizance under the provisions of subsection (1), the police officer to whom such person is brought shall cause him to be detained in a police station until he has been brought before a Court.

Art. 7 (1): Where a young person is not released on bail, a Court shall, where practicable, instead of committing him to prison commit him to custody in a police station, where he/she is to be for the period for which he is remanded or until he is thence delivered in due course of law. (2): A commitment under this section may be altered or, in the case of a young person who proves to be of so unruly a character that he cannot be suitably detained in such custody, or to be of so depraved a character that he is not a responsible person to be detained in this manner, be revoked by any Court acting in or for the place in or for which the Court which made the order acted, and if it is revoked the young person may be committed to prison.

Furthermore, Article 20 of the Law on "Rights of Persons being Arrested and taken into Custody" provides that when a person under the age of 18 is held in custody of a Police Station, he must be kept in a separate cell.

11./12. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty and development of treatment/vocational training and other educational programmes in practice

In Cyprus, juvenile offenders are only very rarely sentenced to imprisonment. This is required by Article 12 of the Juvenile Offenders Law which provides that sentencing a juvenile to imprisonment must be a last resort that is only applied when the court believes there is no other alternative. This restrictive imposition of prison sentences is reflected clearly in the court statistics. Imprisonment was imposed only once in 1999, not at all in 2000, four times in 2002, once in 2003, six times in 2004 and twice in 2005.[15] There are no special youth prisons in Cyprus due to the very small number of juvenile inmates that they would cater for.

According to the Juvenile Offenders Law, young offenders whom the court finds in need of care or protection can be placed in a reform school. The only reform school that has ever existed in Cyprus was the Lapithos Reform School which was founded in 1943[16] and run until 1986, when it was closed down due to high running costs and the small numbers of inmates. Its closure was also a result of a new philosophy of how to deal with young offenders, which favoured a more community based (*o*ut-of-detention-centre) approach.

Nowadays, residential placements for juveniles are only provided by the Social Welfare Services either on a voluntary basis or based on their powers according to the Children Law. There are four types of accommodation in which young people can be placed:

State Institutions for Children

There are currently four state institutions for children operating in Cyprus; in Nicosia, Limassol, Larnaca and Paphos. Children who are under the legal care of the Director of the Social Welfare Services, between 5 and 14 years of age, are placed in these state institutions. Daily services are provided to children of families that are supported by the Social Welfare Services and cannot provide appropriate care, control and protection for their children due to a wide range of troubles or problems that they might be facing.

15 Statistical Service of the Republic of Cyprus (2005).

16 See *Clifford* 1962, p. 47.

Nicosia Youth Hostel (boys)

The Nicosia Youth Hostel has been in operation since 1957. It accommodates boys between 13 and 21 years of age who can not stay elsewhere due to various possible reasons or children who exhibit serious behavioural problems and other difficulties who are sent there on action taken by the Director of the Social Welfare Services according to his powers provided by the Children's Law.

Youth Hostel for teenage girls

The Youth Hostel for teenage girls was opened on 3 March 1998. It is the only national state institution that provides care and protection for teenage girls.

Special State Institution for teenagers

Since November 1997, the Larnaca Youth Hostel has been accommodating vulnerable teenagers who have nowhere else where they can stay.

The protection, support and rehabilitation of a juvenile and his/her successful re-integration into society are important principles when a youngster is placed in a youth institution. The institutions mentioned above organize special courses for the juveniles in the areas of education, care, recreation and sports.

13. Current reform debates and challenges for the juvenile justice system

Many times, in the past, there have been efforts to create unified, consolidating legislation that provides for all aspects of juvenile justice. In 2003 a Draft Law entitled 'The Juvenile Law' was introduced in Parliament by a Member of Parliament, which was followed by another Draft Bill, this time introduced by the Government, which covered the same or similar issues set out in the first Draft Law. Both of these draft laws attempted to unify the previous legislation regarding juvenile justice, and were discussed together at a special subcommittee of the Parliament, created especially for this reason. After an intensive period of consultation between the subcommittee and all services and departments involved, serious disagreement about various parts of the Draft Bill became evident and, therefore, the Department of Social Welfare Services agreed to prepare a new version of the Draft Bill which is currently in the preparation phase. It is estimated to be introduced to Parliament in a few months as new and comprehensive legislation that covers all juvenile justice issues.

Furthermore, a few years ago, the Ministry of Justice and Public Order, aiming to develop a National Crime Prevention Policy and a Policy Formulation concerning the Treatment of Offenders, established an Anti-Crime Council. The

Council is chaired by the Minister of Justice and is composed of key agencies that have an active role in the prevention of crime and treatment of offenders. The members constituting the Council come both from governmental and non-governmental agencies. They represent the Ministries of Labour and Social Insurance, Education and Culture and the Ministry of Health. There are also representatives from the Attorney General's Office, the Supreme Court, the University of Cyprus, the Youth Board, the Cyprus Radio Television Authority, the Union of Cyprus Municipalities and the Pancyprian Welfare Council. According to the Ministry of Justice, the main goals of the Anti-Crime Council are:

1) The design, development and implementation of a Nationwide Crime Prevention and Treatment of Offenders Strategy based on European and International Strategies.
2) The coordination and cooperation of society's most important units, as well as members with professional expertise in the area of crime prevention and offender treatment.
3) The promotion of scientific criminological research projects, which will gradually improve the knowledge and understanding of certain criminal behaviours and will provide valuable data to the Crime Prevention Strategy.

The Council has looked into the situation in Cyprus and in other European countries, regarding the prevention of crime and treatment of offenders and have prepared a report. This report has included suggestions concerning a number of preventive programs and actions that are applied to the general population and high-risk groups and programs and measures for the treatment of offenders and the social rehabilitation of detainees. A significant part of this report has especially examined the situation in the country regarding juvenile crime and has taken the views of experts who had both practical and theoretical knowledge about the way in which children are processed through the criminal justice system.

Furthermore, a research study regarding juvenile delinquency has been carried out.[17] The first objective of this study was to measure the prevalence of delinquent behaviour in the age groups of 14-18 in Cyprus, focusing on a variety of deviant behaviour, including traffic violations, school violations, use of threat, property damage, thefts, burglaries, consuming pornographic material, sexual involvement with and without payment, cigarettes smoking, alcohol consumption to the degree of getting drunk, use of cannabis, cocaine, LSD etc and participation in para-religious organizations or activities. The second objective was to attempt to identify the correlates of delinquency. It has examined, *inter alia*, attitudes and perceptions of juveniles regarding school, family and society in general, life satisfaction, experience with the police and welfare services, religiosity, deviant attitudes of friends and parents, communication with parents

17 For more detailed results, see *Stylianou* 2007.

etc., and tried to achieve a deeper understanding of the casual mechanics involved in these relationships. The most important conclusion regarding the extent of the juvenile delinquency was that, contrary to the general impression, the problem of juvenile delinquency in Cyprus concerns mainly minor offences rather than very serious or violent ones. However, it points out that the problem of juvenile delinquency is correlated with the changing type of the Cypriot society which used to be characterised by the closeness of family ties, a sense of honour and reputation, social pressures of education and achievement etc. The gradual disengagement from this paradigm influences the extent and the mature of the phenomenon of juvenile delinquency in Cyprus.

Based on the report of the Anti-crime Council and the studies carried out, a National Plan of Action for the primary, secondary and tertiary prevention of criminality has been designed, which covers the period 2005–2010 and includes special provisions for juvenile delinquency. The Action Plan includes specific measures and programs with timetables and financial costs and they have been designed on the basis of the cooperation and coordination of all competent bodies. They concern the legislation, the institutions of family and school, mass media, employment, entertainment, treatment of offenders, prison institution and rehabilitation of offenders and detainees. For instance, they encourage the re-drafting and the unification of the legislation on juvenile justice and they emphasise the need of a specialised juvenile court staffed with properly trained judges, who are able to cater to the needs of young offenders. They also argue for the necessity of specialization within the Police organization, and call for the establishment of a police unit specializing in juvenile justice within the Police. This unit has already been established. Furthermore, they make suggestions for the better functioning of the Juvenile Committees responsible for making suggestions as to the prosecution of juvenile offenders, stressing the need for speedier procedures and advocating the involvement of psychologists and parents in the decision-making process. This suggestion has also began to materialise, since, as stated above, the current Attorney General has made it clear that he wishes to reorganize and improve the functioning of those Committees. Moreover, they suggest a series of alternative measures regarding methods of dealing with young offenders away from judicial proceedings.

14. Summary and outlook

Legislation concerning juvenile justice in Cyprus originates from the British Colonial period and appeared to be more oriented to a rehabilitative welfare approach aimed at treating ‘children in need’ and ensuring their welfare, rather than on a punitive approach. Nowadays, the most important laws which regulate juvenile justice are the Juvenile Offenders Law, the Children Law and the Probation/Guardianship and other ways of treating convicted persons Law of 1996.

Summarizing the legal provisions on juvenile justice, the following can be said: In Cyprus, children less than 14 years old are not criminally responsible and young persons up to the age of 16 are criminally responsible but dealt with according to the Juvenile Offenders Law. In that Law there is provision for a Juvenile Court with a jurisdiction to hear criminal cases against young persons and children. The Law provides that the Juvenile Court shall sit in a different building or room from that, in which the ordinary sittings of the District Court are held. Furthermore, public participation in court hearings is restricted to the parties directly involved in the trial, except by leave of the court. When the court is convinced of the guilt of a young person, it has a wide range of discretion on how to deal with the case including (a) dismissing of the charge; (b) ordering probation; (c) committing the offender to the care of a relative or other responsible person; (d) sending the offender to a reform school; and (e) ordering the offender to pay a fine or to restore the damages. Only as a last resort, if there is no other alternative, the court may also sentence the offender to imprisonment. Statistics show that courts extremely rarely impose the sentence of imprisonment. Until 2005, the most usual alternative method of dealing with juvenile offenders was the imposition of a fine. However, with the introduction of the Probation/ Guardianship Law, especially since 2005, when a significant number of social workers for supervising the court orders were appointed, guardian–ship/probation orders are extensively used for convicted juvenile offenders.

As has already been stated, the emphasis in juvenile criminal justice, and especially in the reaction to a juvenile offender, is less on punishing and reprisal and more on the protection and education of the young person. Therefore, when juvenile offenders commit a criminal act they should not always be prosecuted. On the contrary, it is argued that prosecution should be the last resort. In 1978, an agreement was reached between the Department of Social Welfare Services, the Police and the Attorney General regarding the way decisions as to the prosecution of juveniles should be taken which has been followed since then, with the exception of a short period of time. A Juvenile Committee with representatives from the Social Welfare Services and the Police make a suggestion based on which the Attorney General decides as to the prosecution of a young offender. When prosecution is not seen as appropriate, either no further action is taken or the Police are directed to give simply a warning to the young offender, or he is referred to the Social Services and the same measures can be taken as in the cases of children in need of care and protection.

Comparing to other countries, in Cyprus, crime rates, including the rates of juvenile delinquency, remain on a very low level. Occasional discussions on the issue of juvenile delinquency occurred during the 1980s and 1990s, resulting in some amendments of the juvenile legislation the most important being the enactment of the Probation/Guardianship and other ways of treating convicted persons Law of 1996 (Law 46 (I)/96), and the rise of the age of criminal liability. But it was during the early years of the 21st century that an increasing

political and public interest in the topic of juvenile delinquency could be observed. The occurrence of some shocking juvenile crimes left a strong impression on the general public of an escalating juvenile delinquency, although this has not been reflected on the official statistics. A few years ago, the Ministry of Justice aiming to develop a National Crime Prevention Policy and a Policy Formulation concerning the Treatment Of Offenders established an Anti-Crime Council which has proposed a series of measures, *inter alia*, regarding juvenile justice. Proposals concern the legislation, the institutions of family and school, the treatment and rehabilitation of young offenders, a series of alternative measures regarding methods of dealing with young offenders etc. It is hoped that all of these suggestions will continue to be implemented and the topic of juvenile justice will continue to be studied and discussed based on scientific research, reliable data and open-minded ideas.

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Czech Republic

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Summary

The following report – which is in German – describes the development of juvenile justice in the Czech Republic since the first substantive juvenile justice legislation in 1931 in the former unified state of Czechoslovakia. In 1993 the Czech and Slovak Republic became separate independent States. In 2003 a new Juvenile Justice Act was introduced in the Czech Republic. This reform brought a shift towards educational measures including elements of restorative justice within a system which can be characterized as an educationally oriented justice model. Also, specialized Juvenile Courts have been in place since 1 January 2004.

The English speaking reader may acquire information about the juvenile justice reform in the Czech Republic from *Válková*'s article in the International Handbook of Juvenile Justice (see *Válková* 2006a). There are, however, some new developments which are contained in the present chapter. In January 2009 the Czech legislator passed a new Criminal Code (in force from 1 January 2010 onwards) and lowered the age of criminal responsibility from 15 to 14. However, as soon as July 2009 Parliament approved an amendment to the CC that abolished this change and returned the age of criminal responsibility to 15. Further, preventive detention (*Sicherungsverwahrung*) was introduced (already in force from 1 January 2009) not only in penal law for adults but also for juveniles according to the Juvenile Justice Act. New trends in sentencing by using the new alternative sanctions introduced in 2003 can be observed.

The Czech Juvenile Justice Act of 2003 (cited below as JGG) created a system of Juvenile Courts for children under 15 who are not criminally liable, and juveniles aged 15-17. Children are in no case criminally liable, but the Juvenile Court may impose educational and/or protective measures on them (including – as a last resort – the placement in secure educational institutions or closed mental-health institutions). Juveniles are criminally liable only if they are

capable of recognizing their wrongdoing and are also capable of controlling their actions.

In addition, the Czech Juvenile Justice Act has expanded the possibilities for diversion with or without (educational) interventions. Although victim-offender-reconciliation and mediation have been much promoted by the juvenile justice reformers, the implementation thereof apparently remains rather modest. Diversion in general is not frequently applied in practice; the proportion of prosecutorial diversion has only slightly increased from about 10% to 18% (from 2000 to 2006). The practice of court diversion is much more prominent (see below).

The main sanctions of the Juvenile Court are the so-called conditional sentence (probation with and without supervision by the Probation Service) and community service orders, although diversion (by the prosecutor or judge) and other educational and "protective" court ordered measures should have priority. In 2006, 43% of the sanctions ordered by the Juvenile Courts were conditional prison sentences without supervision, and a further 7% were supervised conditional sentences. Community service orders accounted for 21%. Court based diversion was issued in 20% of the cases either in the form of a conditional (12%) or an absolute discharge (8%).

The new forms of supervision by the Probation Service and social workers of other organizations have gained importance, although the deficits of staffing and of regulations for the implementation of community sanctions are still evident. Nevertheless, the use of juvenile imprisonment as well as of pre-trial detention has decreased considerably. In 1995, 86% of court sanctions were community sanctions and 14% were sentences to youth imprisonment. 11 years later, only 7% of the sanctions issued by the Juvenile Court were custodial and 93% were community sanctions. Deprivation of liberty has really become a measure of last resort. This was partially supported by further law reforms of criminal procedure (e. g. in 2002 and 2004 restricting pre-trial detention).

The daily prison population of sentenced juveniles used to be more than 300 in the 1980s and more than 200 in the early 1990s. Since then it has dropped to about 100 in 2006. The reduction of the juvenile population in pre-trial detention has been even more impressive: after a sharp increase since 1989 to more than 600 in 1994 it decreased to slightly over 200 at the end of 1999 and no more than 59 in 2006. This result was achieved particularly by shortening the length of stay in pre-trial detention. In the year 2000, three out of four detainees had to spend more than two months in pre-trial detention, whereas this proportion has dropped to only one third in 2006.

Juvenile crime policy in the Czech Republic seems to be under pressure for a more repressive approach, although juvenile delinquency has decreased considerably since the mid 1990s. On the other hand, the main orientation of a moderate educational approach has survived the recent reforms of Penal Law in 2009. The future of juvenile justice will depend on improved implementation of

educational measures, including mediation, and furthering the acceptance of professionals working in juvenile justice as well as of society as a whole.

1. Historische Entwicklung und Überblick über die gegenwärtige Gesetzgebung zum Jugendstrafrecht

Am 11. März 1931 wurde das erste tschechoslowakische Gesetz verabschiedet, welches das Jugendstrafrecht und die ihm entsprechende Sondergerichtsbarkeit selbständig regelte. Dieses am 1. Oktober 1931 in Kraft getretene Gesetz wurde allerdings nach der kommunistischen Machtübernahme (1948) zum 1.8.1950 durch das Strafgesetzbuch ersatzlos gestrichen.[1] Seitdem gab es 53 Jahre lang kein selbständiges Jugendstrafrecht. Dies betrifft sowohl die ehemalige Tschechoslowakei als auch nach dem Zerfall der Föderation im Jahre 1993 die beiden neuen selbständigen Republiken – die Tschechische Republik und die Slowakische Republik. Trotz zahlreicher Novellierungen der Strafgesetzbücher nach dem Jahre 1989 blieben die Sonderbestimmungen über die Verantwortung der Jugendlichen und ihre Bestrafung in den 1990er Jahren in beiden Ländern praktisch unverändert.

Während sich in der Tschechischen Republik in der zweiten Hälfte der 1990er Jahre die Meinung durchsetzte, die von den positiven österreichischen und deutschen Erfahrungen mit einem selbständigen besonderen Jugendstrafrecht beeinflusst war, blieb in der Slowakei auch nach der Verabschiedung der neuen Strafgesetzbücher im Jahre 2005 die Rechtsstruktur erhalten. Demnach sind die die Jugendlichen betreffenden Sonderbestimmungen nach wie vor auch in dem für Erwachsene geltenden Strafgesetzbuch und in der allgemeinen Strafprozessordnung enthalten. Dadurch entwickelten sich die beiden Länder auseinander.[2] Diese unterschiedliche Entwicklung zeigt sich nicht nur auf der legislativen Ebene, sondern auch im Bereich der von den Gerichten gegenüber Jugendlichen praktizierten Strafpolitik. So hat sich die Slowakei für einen Ansatz entschieden, den man als *neoliberales Modell* bezeichnen könnte, und der sowohl justizielle (*juvenile justice model*), als auch besserungserzieherische (*neo-correctionalist model*) Züge aufweist. Die Tschechische Republik hingegen setzte bei der Schaffung des neuen Sondergesetzes ähnlich wie die Schweiz oder Nordirland auf das Modell der wiedergutmachenden Justiz (*restorative justice model*).[3]

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1 Ausführlicher dazu vgl. *Miřička/Scholz* 1932; *Šámal/Válková/Sotolář/Hrušáková* 2007.

2 Vgl. zum slowakischen Recht den Beitrag von *Válková/Hulmáková/Vrablová* in diesem Band.

3 Vgl. etwa die Statistikdaten über die Struktur der verhängten Jugendsanktionen, von denen im Jahre 2006 in der Slowakei unbedingte Freiheitsstrafen knapp 13% ausmachten, während ihr Anteil in der Tschechischen Republik nur 6,8% betrug. Diese strengste Jugendsanktion wurde damit von den tschechischen Jugendgerichten, verglichen mit den

Eine mit der Vorlage eines Jugendstrafgesetzes beauftragte Expertengruppe hat in der zweiten Hälfte der 1990er Jahre einen Entwurf für ein Sondergesetz über die Jugendgerichtsbarkeit vorbereitet, welches das Parlament der Tschechischen Republik am 25. Juni 2003 als Gesetz Nr. 218/2003 Sb. über die Verantwortlichkeit Jugendlicher für rechtswidrige Taten und über die Jugendgerichtsbarkeit (nachstehend abgekürzt als JGG) beschloss. Dieses Jugendgerichtsgesetz trat am 1. Januar 2004 in Kraft, nachdem es vorher ein langwieriges und kompliziertes Gesetzgebungsverfahren mit zahlreichen, oft politisch veranlassten Pausen durchlaufen hatte. So wurde dem Ergebnis in der Form eines Sondergesetzes mit Misstrauen und Skepsis begegnet. Denn für zahlreiche Opponenten war es unvorstellbar, dass mit dem Gesetz der Auftrag, eine positive Wende in der Jugendkriminalität zu bewirken, erreicht werden könne.

Neben den Bedingungen der strafrechtlichen Verantwortlichkeit Jugendlicher sind im neuen Gesetz auch Regeln für das Verfahren vor den Sondergerichten für Jugendliche enthalten. Außerdem führt das Gesetz ein System von miteinander in Wechselbeziehung stehenden Erziehungsmaßnahmen, Maßregeln und Strafmaßnahmen ein. Zusätzlich werden die Verantwortung von Kindern unter fünfzehn Jahren, die Handlungen begangen haben, die ansonsten strafbar wären, der Verlauf des in diesen Sachen geführten Verfahrens und die Entscheidungsfindung des Jugendgerichts über die Anordnung einer der drei Arten von Maßnahmen bzw. über das Absehen von der Verurteilung geregelt.

Das Gesetz deckt damit zwei Altersgruppen ab: Kinder unter fünfzehn Jahren (eine untere Altersgrenze ist nicht bestimmt) und Jugendliche, die zum Tatzeitpunkt zwar das fünfzehnte Lebensjahr vollendet haben, jedoch nicht älter als 18 Jahre sind. Entgegen der ursprünglichen Absicht der Gesetzesverfasser wurden die Heranwachsenden, d. h. die jungen Erwachsenen im Alter von 18 bis 20 Jahren in den Geltungsbereich des Gesetzes nicht aufgenommen.

Obwohl sich die meisten der 99 Paragraphen des neuen Gesetzes fast ausschließlich mit Jugendlichen beschäftigen und deshalb als Bestimmungen strafrechtlicher Natur konzipiert sind, sind im dritten Hauptstück 8 Paragraphen ausschließlich der Problematik der „Kindertäter“ unter 15 Jahren gewidmet, die strafrechtlich nicht verantwortlich sind. Das Verfahren vor dem Jugendgericht findet in solchen Fällen ausschließlich nach der Zivilprozessordnung statt, und die in Frage kommenden Maßnahmen, die vom Charakter her durchaus einigen der gegen die jugendlichen Täter anzuordnenden erzieherischen Sanktionen ähneln können, werden ausschließlich als erzieherische Eingriffe zugunsten des Kindes bezeichnet und vollzogen. Diese Maßnahmen haben rein erzieherischen Charakter und keinen Bezug zur Schwere des begangenen Delikts.

Urteilen der in der Slowakei wirkenden allgemeinen Strafgerichte in nur rund der Hälfte der Fälle verhängt. Vgl. unten sowie den Bericht über die Slowakei von *Válková/Hulmáková/Vráblová* in diesem Band.

Allerdings regelt das Gesetz erstmals in seinem allgemeinen Teil gemeinsame Grundsätze für die Verantwortung und für das Verfahren, die sowohl auf Jugendliche als auch auf Kinder unter 15 Jahren anzuwenden sind. Diese Prinzipien spiegeln in Abgrenzung zu den allgemeinen Strafgesetzbüchern nicht nur ganz andere philosophische Ansätze, sondern auch das Interesse wider, bei beiden Altersgruppen eine abgestufte Skala von überwiegend erzieherischen und therapeutischen Maßnahmen zu nutzen.

In den Vordergrund stellt das Gesetz die Bemühung des Jugendlichen oder des Kindes, Verantwortung für eine Tat zu übernehmen, durch die ein Schaden am Vermögen, am Leib oder an der Seele bzw. ein sonstiger Nachteil verursacht worden ist, und sich unmittelbar mit den Auswirkungen der Tat auf das Leben anderer Menschen auseinanderzusetzen. Viele gesetzliche Bestimmungen basieren – oft auch ausdrücklich – auf den Prinzipien der wiedergutmachenden Gerechtigkeit (*restorative justice*).

Im Einklang mit dieser Auffassung steht auch die neue Gesetzesterminologie. Demnach begeht ein Jugendlicher als Täter keine Straftat, sondern eine Verfehlung. Es kann gegen ihn auch keine Strafe verhängt, sondern nur eine Strafmaßnahme angeordnet werden.

Die neue rechtliche Regelung führt das Institut der sog. relativen strafrechtlichen Verantwortung ein, indem nicht jeder Jugendliche automatisch mit der Vollendung des 15. Lebensjahrs strafrechtlich voll verantwortlich wird. Neben der Schuldunfähigkeit bzw. der verminderten Schuldfähigkeit, die genauso wie bei Erwachsenen mit ein Grund ist, weshalb ein Jugendlicher strafrechtlich nicht oder nur beschränkt zur Rechenschaft gezogen werden kann, legt das Gesetz eine neue Bedingung für die Bestrafung des Jugendlichen fest. Danach muss der Jugendliche eine entsprechende Stufe geistiger und moralischer Reife erreicht haben, auf der er in der Lage ist, nicht nur die Gefährlichkeit seines Verhaltens zu erkennen, sondern auch entsprechend dieser Erkenntnis zu handeln.[4]

Neu wurde bei den Jugendlichen das Institut der tätigen Reue geregelt, welches ermöglicht, dass bei weniger schweren Verfehlungen mit einer Strafdrohung von bis zu 5 Jahren die Strafbarkeit erlischt, wenn die im Gesetz abschließend aufgeführten Bedingungen erfüllt werden.

Kinder unter 15 Jahren oder Jugendliche, die zwar aufgrund ihrer Unreife oder wegen einer seelischen Störung strafrechtlich nicht verantwortlich sind, die aber eine rechtswidrige, ansonsten strafbare Tat begangen haben, können laut JGG vor ein Jugendgericht gestellt werden, das gegen sie einige der drei Arten von Maßnahmen verhängen kann, die im dritten Hauptstück des Jugendgerichtsgesetzes spezifiziert sind (siehe i. E. unten *Kapitel 3*).

Gegen einen Jugendlichen, der eine Verfehlung begangen hat, können nach dem JGG drei Arten von Maßnahmen angeordnet werden: Strafmaßnahmen, Maßregeln und Erziehungsmaßnahmen (siehe unten *Kapitel 3*).

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4 Das Konzept entspricht der Einsichts- und Handlungsfähigkeit i. S. d. deutschen § 3 JGG.

2. Entwicklung der registrierten Kinder-, Jugend- und Heranwachsendenkriminalität – Überblick

Die registrierte Jugendkriminalität hat sich seit den 1980er Jahren in der Tschechischen Republik tiefgreifend verändert. Nach einer relativ stabilen Epoche in der zweiten Hälfte der 1980er Jahre, als die Anzahl der aufgeklärten Jugendstraftaten zwischen 9.805 und 11.365 lag, änderte sich die Situation infolge der sich seit 1989 in der Tschechischen Republik vollziehenden gesellschaftlichen Wende in den anschließenden Jahren. So erhöhte sich die Zahl der polizeilich registrierten Delikte vor allem in den Jahren 1990-1993 deutlich und erreichte im Jahre 1996 einen Höhepunkt (Verdoppelung gegenüber 1990, vgl. *Abbildung 1*). Seit 1997 ist sie wieder rückläufig und liegt seit 2003 sogar unter den Werten des Jahres 1989.

Ebenfalls deutlich gestiegen sind die polizeilich registrierten Taten von Kindern unter 15 Jahren, deren Zahl sich im Jahre 1993 gegenüber 1990 verdoppelte und sich bis 1999 sogar mehr als verdreifachte. Seit 2000 ist die Zahl der von strafunmündigen Kindern unter 15 Jahren begangenen Delikte allerdings gleichfalls rückläufig. Die Zahlen in den Jahren 2004-2006 lagen dementsprechend sogar unter den Werten des Jahres 1990.

Wie in *Abbildung 1* erkennbar wird, stieg auch der Anteil der Jugendstraftaten an der Gesamtzahl der aufgeklärten Straftaten zunächst sehr deutlich. Gegenüber der zweiten Hälfte der 1980er Jahre, als er sich auf rund 11% belief, betrug er in den Jahren 1991 bis 1994 durchschnittlich etwa 17%, wobei er im Jahre 1992 mit 17,4% am größten war. Seit 1995 ging dieser Anteil jedoch bis zum Jahre 1999 stark zurück. Damals lag der Anteil unter 8%. Ein weiterer erheblicher Rückgang ergab sich in den Jahren 2002 und 2003. Damals waren Jugendliche mit 7,2% an den aufgeklärten Straftaten beteiligt. In den darauf folgenden Jahren ging der Anteil noch weiter zurück, sodass er im Jahre 2004 5,9% und im Jahre 2005 sogar nur 5,6% betrug. Auch bei den Kindern unter 15 Jahren hat sich seit 1990 ihr Anteil an den aufgeklärten rechtswidrigen Taten zunächst erhöht. Allerdings stieg die Kurve langsamer als bei den Jugendlichen. Diese Tendenz setzte sich bis ins Jahr 1996 fort. Damals wurde der Höhepunkt erreicht (7,4%). Darauf folgte ein ständiger langsamer Rückgang ihres Anteils. Ein erheblicher Rückgang wurde in den Jahren 2002 und 2003 beobachtet, in denen der Anteil der von Kindern unter 15 Jahren begangenen Taten unter 4% sank. In den Jahren 2005 und 2006 waren es sogar nur noch 2,3%.

Eine ähnliche Entwicklung lässt sich auch bei der Zahl der verfolgten Jugendlichen und der Kinder unter 15 Jahren feststellen, die eine rechtswidrige Tat begangen haben (vgl. *Abbildung 2*). Der Anstieg der registrierten Jugendkriminalität sowie des Anteils der Jugendstraftaten an der Gesamtheit der aufgeklärten Straftaten in der ersten Hälfte der 1990er Jahre ist sicher den für die allgemeine Zunahme der Kriminalität in Tschechien nach dem Jahre 1989 maßgeblichen

Faktoren zuzuschreiben.[5] Vielleicht war aber auch ausschlaggebend, dass die am Strafverfahren beteiligten Organe bzw. die Polizei vermehrt die Gruppe der jugendlichen Täter in den Blick nahmen. Das ist möglicherweise darauf zurückzuführen, dass die registrierte Teenagerkriminalität allgemein weniger kompliziert und aus der Sicht der Polizei auch einfacher aufzuklären war. Es liegt nahe, die registrierte Kinder- und Jugendkriminalität mit der demographischen Entwicklung in der Tschechischen Republik zu erklären. Demnach lässt sich bei den Kindern unter 15 Jahren schon seit den frühen 1990er Jahren ein ständiger Rückgang dieser Altersgruppe an der Bevölkerung feststellen, der bei den Jugendlichen ungefähr in den Jahren 1993-1994 begann. Damals wurden die starken Jahrgänge aus der Mitte der 1970er Jahre erwachsen. Wie die *Abbildung 2* zeigt, stimmt diese Erklärung nicht. Denn ein ständiger und relativ erheblicher Rückgang der Verfolgung von delinquenten Jugendlichen und Kindern unter 15 Jahren ist auch dann deutlich erkennbar, wenn die Zahlen auf 100.000 Bewohner der entsprechenden Altersgruppe berechnet werden.[6]

Teilweise wird die Meinung vertreten, dass zum Rückgang der registrierten Kinder- und Jugendkriminalität seit der zweiten Hälfte der 1990er Jahre wahrscheinlich auch eine geringere Aktivität der Polizei bei der Ermittlung des rechtswidrigen Verhaltens dieser Altersgruppe sowie etwa die Amnestie im Jahre 1998 beigetragen haben.[7] Der Rückgang der registrierten Kinder- und Jugendkriminalität in den Jahren 2002 und 2003 könnte auch zum Teil mit einer Entkriminalisierung zusammenhängen, die im Zuge der Änderung der Schadenshöhen im Strafgesetz durch die Novelle Nr. 265/2001 Sb. zusammenhängen. Dies betrifft vor allem die rechtswidrigen Taten von Kindern unter 15 Jahren, für die weniger schweren Eigentumsdelikte mit niedrigen Schadenshöhen typisch sind.

Hinsichtlich der Struktur der Kriminalität überwiegen bei Kindern und Jugendlichen weniger schwere Formen der Eigentums- und Vermögensdelikte. So machte etwa im Jahre 2006 der Diebstahl bei Kindern unter 15 Jahren fast 55% und bei Jugendlichen 51% der aufgeklärten Taten aus.

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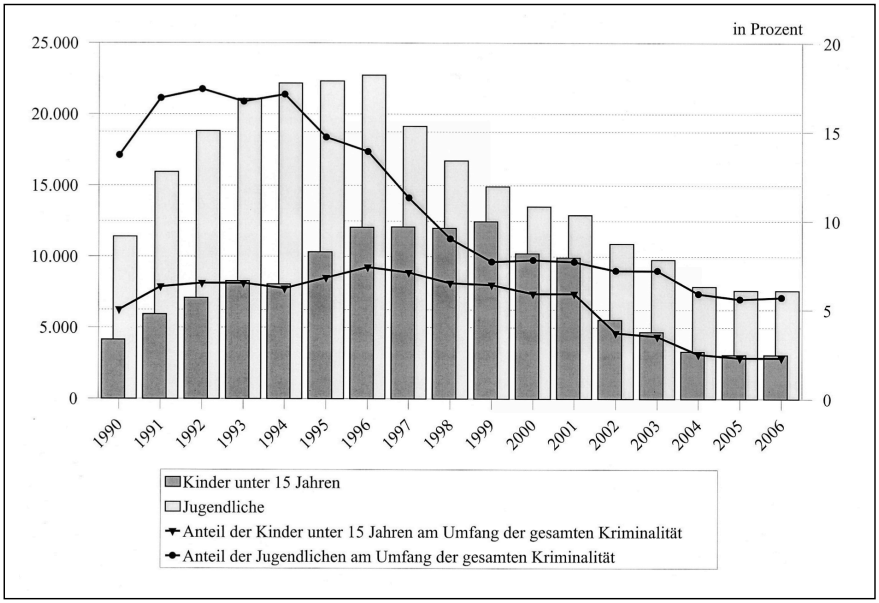
5 Vgl. *Kuchta/Válková/u. a.* 2005, S. 141-142.

6 Allerdings ist bei der Interpretation dieser Daten zu beachten, dass bei den Kindern unter 15 Jahren zum 1.7.2005 die Altersgruppe von 4-8 Jahren am geringsten vertreten war.

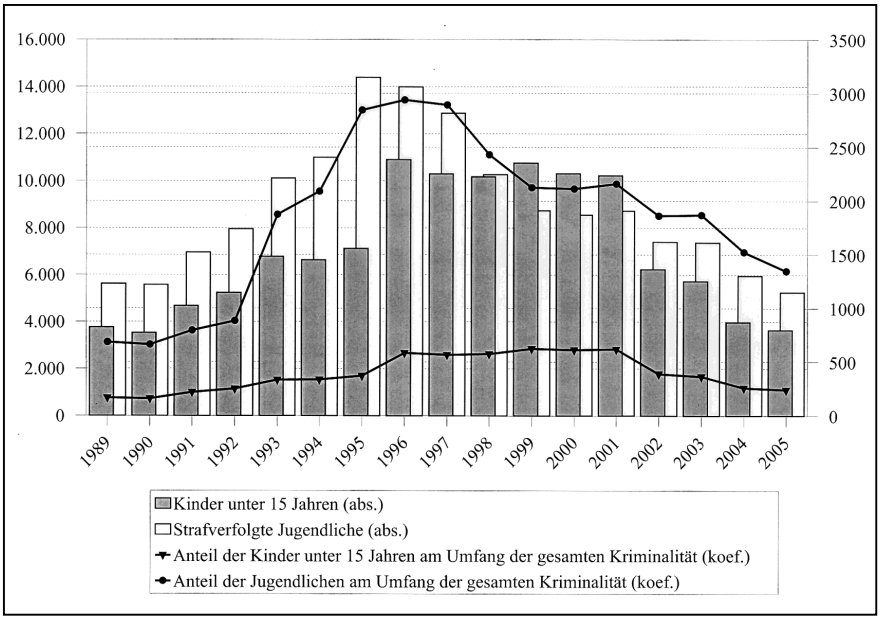
7 Vgl. *Marešová* 1999, S. 19-20.

Abbildung 1: Registrierte Jugendkriminalität in der CR. Delikte von (strafunmündigen) Kindern und von Jugendlichen



Quelle: Statistische Übersichten der Kriminalität 2000-2006, Polizeipräsidium der Tschechischen Republik.

Abbildung 2: Strafverfolgte Jugendliche und (strafunmündige) Kinder



Anmerkung: Für die Zeit 1989-1992 wurde die Angabe über die Zahl der Bewohner im Alter von 15-19 Jahren verwendet. Der Koeffizient ergibt sich aus der Umrechnung auf 100. 000 Bewohner der entsprechenden Altersgruppe. Bei der Anzahl der geahndeten Jugendlichen ist auch das verkürzte Ermittlungsverfahren berücksichtigt.

Quelle: Statistikjahrbücher des Generalprokurators (GP) ČSFR (1991, 1992), GP ČR (1993) und des Justizministeriums ČR (1994-2006). Statistikdaten über die Altersstruktur der Bevölkerung zum 1.7. des jeweiligen Jahres (im Jahre 1989 zum 31.12.1989), Statistikjahrbücher der Tschechischen Republik, Tschechisches Statistikamt, 1990-2006.

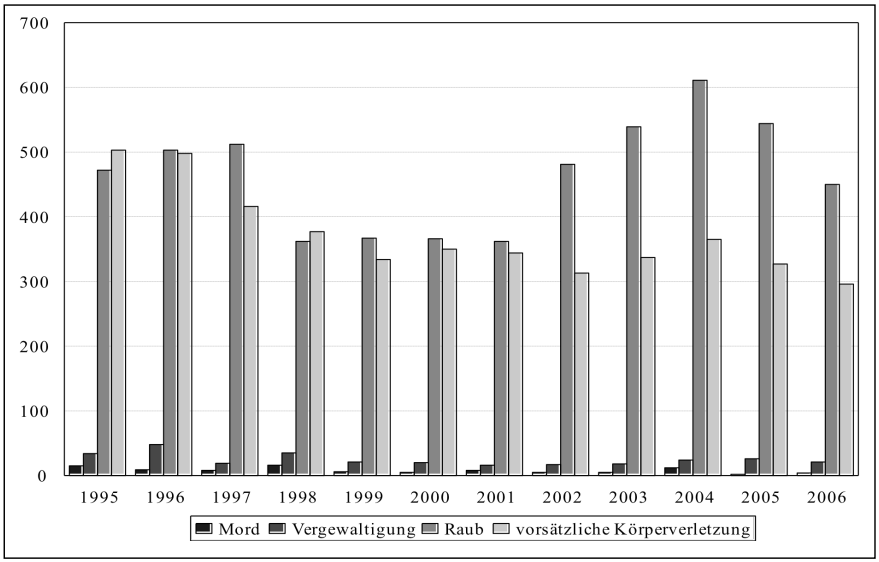
Ausweislich der Polizeilichen Kriminalstatistik der Tschechischen Republik ist die Gewaltkriminalität[8] bei Kindern unter 15 Jahren generell zwischen 1990 und 1997 wesentlich gestiegen. In den darauf folgenden vier Jahren war sie Schwankungen unterworfen, und seit 2002 lässt sich ein stabiler und relativ er-

8 Hierbei ist anzumerken, dass in der PKS der Tschechischen Republik zu den Gewaltdelikten beispielsweise der Hausfriedensbruch nach § 238 StGB bzw. der unbefugte Eingriff in Nutzungsrechte am Haus, an einer Wohnung oder an einem Geschäftsraum (§ 249a) zählen, die nicht unbedingt mit Gewalt gegen Menschen einhergehen. Hingegen ist etwa die Straftat der Vergewaltigung nicht darin enthalten, weil sie als Straftat gegen die sexuelle Selbstbestimmung betrachtet wird.

heblicher Rückgang der Gewaltkriminalität von Kindern unter 15 Jahren feststellen. Im Jahre 2006 waren es 544 Fälle, somit weniger als die Hälfte gegenüber 2001 (1.285 Fälle). Dabei handelte es sich 2006 in der Regel um Raub- (n = 239) oder Körperverletzungsdelikte (n = 127), während Tötungs- oder Vergewaltigungsdelikte die absolute Ausnahme darstellten (n = 6).

Auch bei den Jugendlichen kam es – wie erwähnt – zwischen 1990 und 1996 zu einem Anstieg der registrierten Gewaltkriminalität, die jedoch in den Jahren 1997-2000 relativ stark zurückging, sodass die Zahl dieser Taten im Jahre 2000 fast den Stand der frühen 1990er Jahre erreichte. In der Zeit von 2001 bis 2004 ist die Zahl zunächst gestiegen und dann wieder gesunken. 2006 waren es nur 771 Fälle. Damit wurde der Tiefstand des gesamten Beobachtungszeitraums erreicht (vgl. *Abbildung 3*). Schwere Delikte wie Mord und Vergewaltigung sind anteilsmäßig und im Laufe der Jahre unverändert nur geringfügig beteiligt. Raubdelikte kommen zwar häufiger vor, machten allerdings 2006 bei Kindern unter 15 Jahren 7,7% der ansonsten strafbaren Handlungen und bei Jugendlichen nur 5,9% der registrierten aufgeklärten Jugendstraftaten aus.

Abbildung 3: Entwicklung der registrierten Gewalthandlungen von Jugendlichen (in abs. Zahlen)



Quelle: Statistikübersichten über Kriminalität 2000-2006, Polizeipräsidium der Tschechischen Republik.

Im Zusammenhang mit der Problematik der Gewaltkriminalität wird häufig nicht nur seitens der Polizei und der Gerichte, sondern auch von den Mitarbei-

tern im Schulwesen darauf hingewiesen, dass die Schwere der Taten, die Brutalität und die Aggressivität der Kinder- und Jugendlichen zunähme.[9] Diese Behauptungen beruhen jedoch auf keinen durch objektive kriminologische Forschung und Dokumentation belegbaren Informationen.

Der Anteil der Drogendelikte – konkret der „unerlaubten Herstellung und des Besitzes von Betäubungsmitteln und Suchtgiften" im Sinne der §§ 187, 187a StGB (Aufbewahrung von einer nicht geringen Menge zum eigenen Gebrauch), „Herstellung bzw. Besitz von Mitteln zur Herstellung von solchen Stoffen" nach § 188 StGB und „Förderung des Suchgiftgebrauchs" nach § 188a StGB – machte in den Jahren 2000-2006 bei Kindern unter 15 Jahren ca. 2,5 bis 4,1% und bei Jugendlichen 2,8 bis 4,8% der Gesamtzahl der registrierten Kinder- und Jugenddelinquenz aus. Seit 2001 lässt sich ein Rückgang der Anzahl dieser Straftaten feststellen (vgl. *Tabelle 1*).

Tabelle 1: Polizeilich registrierte Drogendelikte von Kindern (unter 15 Jahren) und Jugendlichen in der CR (in abs. Zahlen)

Jahre	Kinder unter 15 Jahren	Jugendliche
2000	271	652
2001	252	411
2002	225	484
2003	163	446
2004	82	233
2005	125	249
2006	111	216

Quelle: Polizeipräsidium der Tschechischen Republik: Polizeiliche Kriminalstatistik 2000-2006.

Die Untersuchung der Kriminalität der einzelnen nationalen, bzw. ethnischen Minderheiten im Gebiet der Tschechischen Republik ist sehr problematisch, weil derzeit solche Daten in den Kriminalstatistiken nicht erfasst sind. Jedoch lässt sich mit Hilfe älterer Statistiken[10] und durch Expertenschätzungen

9 Vgl. *Marešová* 1996, S. 27.

10 In der Tschechischen Republik waren diese Daten ursprünglich in den Kriminalstatistiken erfasst. Bis zum Jahre 1993 wurden sie in den Polizeistatistiken aufgeführt. Danach war es möglich, die Unterlagen zwecks qualifizierter Schätzung zu wissenschaftlichen

ein höherer Anteil von Tätern unter der Romajugend feststellen. Das zeigt sich vor allem bei Kindern unter fünfzehn Jahren. In den Jahren 1998 und 1999 machte der Anteil der Romakinder 26% der Kinder unter 15 Jahren, die eine rechtswidrige Tat begangen haben, aus. Dieser Anteil hatte im Beobachtungszeitraum 1990-1999 im Jahre 1991 mit 32,9% den Höhepunkt erreicht. Jugendliche Roma-Angehörige betrafen in den Jahren 1990 und 1991 21% aller registrierten jugendlichen Straftäter. Zugleich wird angenommen, dass dieser Anteil seit 1992 ständig zurückgegangen ist, wobei er in den letzten untersuchten Jahren auf 11-14%[11] geschätzt wird. Dazu muss gesagt werden, dass die höhere Zahl der delinquenten Kinder und Jugendlichen unter den Roma zum Teil durch eine andere Altersstruktur der Roma-Bevölkerung bedingt ist, die durch einen höheren Anteil jüngerer Personen gekennzeichnet ist.[12]

Ausländische Jugendliche stellen nur einen relativ geringen Anteil an der Gesamtzahl der strafrechtlich auffälligen Ausländer dar. Im Beobachtungszeitraum 1995-2006 waren es höchstens 4,2% und seit 2000 ist ein Sinken dieses Anteils zu beobachten,[13] der derzeit zwischen 1,7% bis 2% aller straffälligen Ausländer ausmacht. Im Jahre 2006 waren es 1,9%. Im Vergleich dazu machte im Jahre 2006 der Anteil der Jugendlichen an der Gesamtzahl der registrierten Täter 4,7% aus. Ausländische Jugendliche sind an allen Straftätern seit 2000 nur mit 0,1% vertreten.[14] Der geringe Anteil der jugendlichen Ausländer ist auch dadurch bedingt, dass nur Personen erfasst werden, die keine Staatsbürger der Tschechischen Republik sind. Somit werden die Jugendlichen der zweiten bzw. dritten Generation der Einwanderer nicht gesondert erfasst, weil sie bereits Staatsbürger der Tschechischen Republik sind. Es ist jedoch davon auszugehen, dass sich im Gebiet der Tschechischen Republik nicht allzu viele ausländische Jugendliche befinden.

Zwecken zu erhalten. Seit 2000 werden diese Informationen im Zusammenhang mit dem Datenschutzgesetz Nr. 101/2000 Sb nicht mehr gesammelt.

11 Vgl. *Moulisová* 2001, S.159-160.

12 Nach der Volkszählung von 1991 waren Roma-Jungen im Alter von 0 bis 14 Jahren an der Bevölkerung der Roma mit 38%, Männer im Alter von 15 bis 29 Jahren mit 30,5% Prozent vertreten, während in der Gesamtbevölkerung der Anteil aller Jungen im Alter von 0 bis 14 Jahren 22,2% und der Männer im Alter von 15 bis 29 Jahren 22,9% betrug, vgl. *Kalibová* 1997, S. 27.

13 Mit ein Grund für den Rückgang war vielleicht, dass es infolge einer Änderung des Aufenthaltsgesetzes in den Jahren 2000 und 2001 insgesamt weniger Ausländer gab, die eine ständige Aufenthaltserlaubnis oder eine Aufenthaltsbewilligung für mehr als 90 Tage besaßen. Jedoch nimmt diese Zahl seit 2002 zu, vgl. Tschechisches Statistikamt, http://www.czso.cz/csu/cizinci.nsf/kapitola/pocet_cizincu.

14 Statistikübersichten über die Zahl der registrierten Personen bei ausgewählten Straftaten, Polizeipräsidium der Tschechischen Republik, 1995-2006.

Aus der Gendersicht betrachtet, ist die Jugendkriminalität vorwiegend eine Domäne der Jungen. Die jugendlichen Mädchen machten in den Jahren 1989-2005 nicht einmal 10% aller angeklagten Jugendlichen aus. In den Jahren 2000-2005 schwankte ihr Anteil zwischen 7,5% und 8,1%.[15]

3. Das Sanktionensystem. Formen informeller (Diversion) und formeller (gerichtliche Verurteilung) Sanktionen

Die Folgen der von Jugendlichen begangenen Verfehlungen und der von strafunmündigen Kindern unter 15 Jahren begangenen, ansonsten strafbaren Taten sind vorwiegend im JGG geregelt, das die rechtlichen Regelungen über die Sanktionen im Strafgesetz (formelle Sanktionen) und Teilbereiche der Strafprozessordnung (Diversion und Vollzug der formellen Sanktionen) erheblich modifiziert. Die StGB-Normen gelten für Jugendliche nur subsidiär. Mit Wirkung vom 1.1.2004 wurden durch das JGG neue Arten von Sanktionen und Möglichkeiten der Kombination eingeführt, die es den am Strafverfahren beteiligten Organen erlauben, entsprechend den individuellen Bedürfnissen der Jugendlichen einzuschreiten.[16]

Das JGG hat den Zweck der Jugendsanktionen und die Prinzipien ihrer Verhängung gegenüber dem Erwachsenenstrafrecht erheblich modifiziert. Einer der Hauptansätze, nämlich das Konzept der wiedergutmachenden Justiz, spiegelt sich vor allem im § 3 Abs. 1 JGG wider. Demnach haben die Jugendsanktionen vor allem darauf hinzuwirken, gestörte soziale Beziehungen zu erneuern, das Kind unter fünfzehn Jahren oder den Jugendlichen wieder in sein familiäres und soziales Umfeld einzugliedern und rechtswidrigen Taten vorzubeugen. Nach § 9 JGG wird mit den anzuordnenden Maßnahmen bezweckt, Bedingungen für das

15 Statistikjahrbücher der Kriminalität, GP ČSFR (1991, 1992), GP ČR (1993) und JM ČR (1994-2006).

16 Dazu wäre zu erwähnen, dass es bis 1989 nur eine sehr beschränkte Skala von alternativen Strafen für Jugendliche gab. Auch die allgemeinen Prinzipien der Bemessung von Jugendstrafen und ihre einzelnen Arten waren, verglichen mit der Bestrafung der erwachsenen Täter, nur wenig modifiziert. Erst ab der ersten Hälfte der 1990er Jahre wurden schrittweise weitere Alternativstrafen eingeführt, namentlich mit Wirksamkeit ab dem 1.1.1996 die Strafe der gemeinnützigen Arbeit, ab dem 1.1.1998 das bedingte Absehen von der Verurteilung mit Aufsicht und die bedingte Strafe mit Aufsicht. Zugleich wurde die Diversion im Strafverfahren verankert, ab dem 1.1.1994 die bedingte Einstellung des Strafverfahrens, ab dem 1.9.2005 der Täter-Opfer-Ausgleich und ab dem 1.1.2002 die Einstellung des Strafverfahrens mangels Zweckmäßigkeit im Sinne des § 172 Abs. 2s StPO eingeführt. Mit Wirkung vom 1.7.2004 waren es dann die Aussetzung der Erhebung der öffentlichen Klage nach § 17 sowie die Einstellung des Strafverfahrens nach der Durchführung eines Täter-Opfer-Ausgleichs. Alle diese Sanktionen waren zwar auch gegen Jugendliche anwendbar, jedoch unter den gleichen Bedingungen wie bei Erwachsenen.

„moralische und soziale Wachstum“ des Jugendlichen zu schaffen, und zwar unter Beachtung der bisherigen geistigen und moralischen Entwicklung, seiner persönlichen Eigenschaften, seiner familiären Erziehung und seines sonstigen sozialen Umfelds. Zugleich ist er vor schädlichen Einflüssen zu schützen. Dabei ist der Begehung von weiteren Verfehlungen vorzubeugen. Um diese Ziele zu erreichen wurde in das JGG eine neue Kategorie von Sanktionen eingeführt, nämlich die Erziehungsmaßnahmen.[17] Diese können selbständig oder in Kombination mit anderen Arten von Maßnahmen bzw. mit der Diversion i. V. m. einer Intervention angeordnet werden, und zwar sogar während des laufenden Strafverfahrens, wenn der Jugendliche einwilligt. Weitergehende Strafmaßnahmen dürfen nur dann angeordnet werden, wenn die Diversion im Strafverfahren bzw. die Erziehungsmaßnahmen und die Maßregeln offensichtlich zur Erreichung des Erziehungsziels nicht ausreichen.

In § 3 Abs. 3 JGG ist auch die Forderung verankert, dass die Maßnahme der Art und dem Grad der Gefährlichkeit der begangenen Tat angemessen sein soll. Was die Arten der Sanktionen anbelangt, werden eindeutig die alternativen Maßnahmen bevorzugt. Die Strafmaßnahme des unbedingten Freiheitsentzugs soll nur als *ultima ratio* Anwendung finden. Nähere Informationen über informelle Sanktionen – Diversion im Strafverfahren – sind in *Tabelle 2* enthalten. *Tabelle 3* enthält Daten zu den formellen Sanktionen.

In § 93 JGG ist geregelt, welche Maßnahmen erzieherischer Art gegenüber Kindern unter 15 Jahren angeordnet werden können, falls diese eine ansonsten strafbare Tat begehen. Namentlich kommen folgende Maßnahmen in Frage:

a) erzieherische Pflichten;
b) erzieherische Beschränkungen;
c) Verwarnung;
d) Zuteilung zu einem therapeutischen, psychologischen oder zu einem sonstigen geeigneten erzieherischen Programm im Zentrum für Erziehungshilfe;
e) Aufsicht eines Bewährungsbeamten;
f) Schutzerziehung (eine Art Heimerziehung, die in den Einrichtungen des Kultusministeriums vollzogen wird).

Die Anordnung der Schutzerziehung ist entweder fakultativ, wenn es für die Sicherstellung der Erziehung des Kindes unerlässlich ist, oder zwingend bei Kindern, die zum Zeitpunkt der ansonsten strafbaren Tat das 12. Lebensjahr vollendet haben und nicht älter als 15 Jahre sind, sofern die Tat im besonderen

17 Manche dieser Erziehungsmaßnahmen überschneiden sich inhaltlich mit den im § 26 Abs. 4 StPO aufgezählten „angemessenen Pflichten und Beschränkungen“, die gegen die Jugendlichen in Verbindungen mit ausgewählten Sanktionen vor dem Inkrafttreten des JGG angeordnet werden konnten und nach wie vor gegen erwachsene Täter verhängt werden können.

Teil des Strafgesetzes mit einer außerordentlichen Strafe bedroht ist. Wenn es zur Erreichung des Gesetzeszwecks (§ 1 Abs. 2 JGG) genügt, dass die Tat des Kindes vom Staatsanwalt oder vor dem Jugendgericht behandelt wird, so kann das Jugendgericht auch von der Verhängung einer Maßnahme absehen. Die Maßnahmen nach § 93 JGG werden im Rahmen der Zivilgerichtsbarkeit angeordnet und sollen bezwecken, dass in geeigneter Weise auf erzieherische Probleme, die zur Delinquenz der schuldunfähigen Kinder geführt haben, reagiert werden kann. Dennoch beinhalten diese Maßnahmen (bzw. zumindest einige von ihnen) faktisch einen bedeutenden Eingriff in die Rechte und in das Leben des Kindes sowie u. U. weiterer Personen.

g) Sog. ambulante oder stationäre Schutzheilbehandlung (eine Art medizinischer Behandlung, die in den Einrichtungen des Gesundheitsministeriums vollzogen wird).

Diese Maßregel kann seit Sommer 2011 auch bei Strafunmündigen unter 15 Jahren angeordnet werden, die eine ansonsten strafbare Tat begangen haben, allerdings ausschließlich nur im Zivilverfahren (nicht wie bei Jugendlichen und Erwachsenen im Strafverfahren). Der Unterbringung findet getrennt von Erwachsenen statt; die obligatorische Die Notwendigkeit der Fortdauer der Maßregel ist mindestens einmal innerhalb von innerhalb 12 Monaten zu überprüfen.

Tabelle 2: Diversion im Jugendstrafverfahren

Voraussetzungen: - der Verdacht ist begründet, - der Jugendliche ist bereit, Verantwortung für die begangene Tat zu tragen, sich mit den Ursachen der Tat auseinanderzusetzen und den Schaden nach Kräften gutzumachen.
Diversion ohne weitere Intervention
Einstellung des Strafverfahrens mangels Zweckmäßigkeit (§ 172 Abs. 2c, StPO) Sie wird unter gleichen Bedingungen wie bei den Erwachsenen verfügt: - Mit Rücksicht auf die Bedeutung der von der Tat berührten geschützten Interessen, die Art und Umstände der Tatausführung und ihre Folgen und - im Hinblick auf das Verhalten des Beschuldigten nach der Tat wurde der Zweck des Strafverfahrens bereits offensichtlich erreicht. Sie steht nur dem Staatsanwalt im Ermittlungsverfahren zu.
Diversion ohne weitere Intervention oder mit Intervention

Absehen von der Strafverfolgung (§ 70 JGG)

Erfolgt nur bei Jugendlichen, vorausgesetzt,
- die Verfehlung ist mit einer Freiheitsstrafe von maximal 3 Jahren bedroht,
- die Strafverfolgung ist mangels öffentlichen Interesses an der weiteren Verfolgung des Jugendlichen im Hinblick auf die Schwere der Verfehlung und die Person des Jugendlichen nicht zweckmäßig bzw. eine Bestrafung nicht notwendig, um den Jugendlichen von der Begehung weiterer Verfehlungen abzuhalten.
- Das Absehen von der Strafverfolgung findet vor allem dann Anwendung, wenn der Jugendliche bereits erfolgreich ein Bewährungsprogramm absolviert hat, und wenn der Schaden ganz oder wenigstens zum Teil gutgemacht wurde. Es bedarf nicht der Zustimmung des Geschädigten und wird im Ermittlungsverfahren vom Staatsanwalt und im Hauptverfahren vom Jugendgericht verfügt.

Diversion mit einer Intervention

Bedingte Einstellung des Strafverfahrens (§ 307 ff. StPO)

Sie wird unter gleichen Bedingungen wie bei den Erwachsenen verfügt:
- Die Verfehlung ist mit einer Freiheitsstrafe von maximal 5 Jahren bedroht.
- Geständnis des Jugendlichen
- Wiedergutmachung des Schadens, Abschluss einer Vereinbarung mit dem Geschädigten über den Schadenersatz bzw. über sonstige Ausgleichsmaßnahmen.
- Die Einstellung erscheint mit Rücksicht auf die Person des Beschuldigten und seine bisherige Lebensführung bzw. die Umstände der Tat ausreichend.
- Die Bewährungszeit beträgt zwischen 6 Monaten und 2 Jahren.
- Wurde der Schaden noch nicht gutgemacht, so wird der Jugendliche verpflichtet, ihn in der Bewährungszeit gutzumachen.
- Es können auch Erziehungsmaßnahmen angeordnet werden.
- Die Einstellung bedarf nicht der Zustimmung des Geschädigten und wird im Vorverfahren vom Staatsanwalt und im Hauptverfahren vom Jugendgericht verfügt.

Im verkürzten Ermittlungsverfahren kann unter fast gleichen Bedingungen die:

Bedingte Einstellung der Strafsache (§ 179g StPO)

- verfügt werden, und zwar nur vom Staatsanwalt im verkürzten Ermittlungsverfahren, Bewährungszeit maximal ein Jahr, Schadenersatz

Täter-Opfer-Ausgleich (§§ 309 ff. StPO)

Die Bedingungen sind die gleichen wie bei den Erwachsenen:
- Die Verfehlung ist mit einer Freiheitsstrafe von maximal 5 Jahren bedroht.
- Eine Erklärung, dass die Tat begangen wurde (ohne die Rechtswirkungen eines Geständnisses für den Fall, dass das Verfahren wieder aufgenommen wird).
- Zum Zeitpunkt der Entscheidung muss der Schaden oder der Nachteil gutgemacht bzw. müssen Wiedergutmachungsbemühungen eingeleitet worden sein.

- Zahlung eines Betrags für wohltätige Zwecke.
- Die Einstellung reicht im Hinblick auf die Schwere der begangenen Tat, das Ausmaß, in dem das öffentliche Interesse berührt wurde, und die Person des Beschuldigten sowie seine persönlichen und familiären Verhältnisse aus. - Er bedarf der Zustimmung des Geschädigten. Der Ausgleich wird im Vorverfahren vom Staatsanwalt und im Hauptverfahren vom Jugendgericht verfügt. Im verkürzten Ermittlungsverfahren kann unter gleichen Bedingungen die: **Einstellung der Strafsache nach der Genehmigung des Täter-Opfer-Ausgleichs (§ 179c Abs. 2f StPO)** - verfügt werden, und zwar nur vom Staatsanwalt.

Tabelle 3: Formelle Jugendsanktionen nach dem JGG

Erziehungsmaßnahmen	**Maßregeln**
- Als selbständige Maßnahmen oder in Kombination mit dem Absehen von der Verhängung der Strafmaßnahme. - Mit der Zustimmung des Jugendlichen auch während des Verfahrens vor der Entscheidung in der Sache selbst. - Nach Möglichkeit im Rahmen der Diversion oder von sog. vorbeugenden Maßnahmen. **Aufsicht eines Bewährungshelfers, Bewährungsprogramm** (bedarf der Akkreditierung durch das Justizministerium der Tschechischen Republik sowie der Zustimmung des Jugendlichen). **Erzieherische Pflichten** **Erzieherische Beschränkungen** **Verwarnung**	**Schutztherapie** unter den gleichen Bedingungen wie bei Erwachsenen. **Einziehung** unter den gleichen Bedingungen wie bei Erwachsenen. **Sog. ambulante oder stationäre Schutzheilbehandlung** (d. h. eine medizinische Behandlung) unter den gleichen Bedingungen wie bei Erwachsenen; obligatorische Überprüfung der Notwendigkeit der Fortsetzung dieser Maßregel sowohl bei Jugendlichen als auch bei Erwachsenen mindestens einmal innerhalb von 24 Monaten. **Schutzerziehung** Vollzug in den Einrichtungen des Kultusministeriums. Dauer: max. bis zum 19. Lebensjahr. Nur bei Jugendlichen bzw. bei Kindern unter 15 Jahren, die eine ansonsten strafbare Tat begangen haben. **Sicherungsverwahrung** (seit 1.1.2009) unter den gleichen Bedingungen wie

	bei Erwachsenen; der Vollzug findet getrennt von Erwachsenen statt; obligatorische Überprüfung der Notwendigkeit der Fortsetzung der Maßregel mindestens einmal innerhalb von 6 (bei Erwachsenen innerhalb von 12) Monaten

Absehen von der Verhängung der Strafmaßnahme ohne weitere Intervention

Anders als bei Erwachsenen auch bei einem entschuldbaren Rechtsirrtum,
- unter gleichzeitiger Anordnung einer Erziehungsmaßnahme oder Maßregel,
- bedingtes Absehen von der Verhängung der Strafmaßnahme
Probezeit bis zu einem Jahr, wird vom Bewährungshelfer überwacht.

Strafmaßnahmen

subsidiär gegenüber Erziehungsmaßnahmen und Maßregeln sowie gegenüber der Diversion im Strafverfahren

- gemeinnützige Arbeit
Dauer: 50-200 Stunden, sie darf weder die Gesundheit, Sicherheit noch die moralische Entwicklung der Jugendlichen gefährden.

- Geldstrafe
Einmalig im Ausmaß von 1.000 CZK bis 500.000 CZK oder in der Form von Tagessätzen zwischen 100 CZK und 1.000 CZK für einen Tag bis zu 500 Tage; nur wenn der Jugendliche erwerbstätig ist oder seine Vermögenslage die Verhängung einer derartigen Strafmaßnahme erlaubt.

- Geldstrafe mit einer bedingten Nachsicht der Vollstreckung
(bedingte Geldstrafe); Probezeit: bis zu 3 Jahre.

- Verfall einer Sache oder eines sonstigen Vermögensvorteils
unter den gleichen Bedingungen wie bei Erwachsenen.

- Berufsverbot
darf der beruflichen Vorbereitung des Jugendlichen nicht hinderlich sein und dauert längstens 5 Jahre.

- Ausweisung
1-5 Jahre, jedoch darf der Jugendliche nicht der Gefahr der Verwahrlosung ausgesetzt werden.

- bedingte Freiheitsstrafe
Der Freiheitsentzug darf nicht länger als 2 Jahre andauern, die Probezeit beträgt 1-3 Jahre.

- bedingte Freiheitsstrafe mit Aufsicht
Der Freiheitsentzug darf nicht länger als 3 Jahre andauern, die Probezeit beträgt 1-3 Jahre.

- unbedingte Freiheitsstrafe
Das Höchstmaß der im Strafgesetz angedrohten zeitlichen Freiheitsstrafen wird bei Jugendlichen auf die Hälfte herabgesetzt, wobei die Obergrenze des Strafrahmens fünf Jahre nicht über- und die Untergrenze ein Jahr nicht unterschreiten darf. Ist bei einer Verfehlung gegen Erwachsene die Verhängung einer außerordentlichen Strafe erlaubt und ist zugleich der Grad der Gefährlichkeit besonders hoch, so kann fakultativ ein Freiheitsentzug von 5 bis 10 Jahren verhängt werden. Der Vollzug findet getrennt von Erwachsenen statt.

4. Jugendgerichtsbarkeit und Jugendverfahren

Die Gerichtsbarkeit in Angelegenheiten der Jugendlichen und Kinder unter 15 Jahren obliegt den Jugendgerichten (§ 4 JGG). Die dem Jugendgericht zustehende Kompetenz bedeutet, dass für die Erledigung von Jugendsachen bei Amts- (Bezirks-), Land- und Oberlandesgerichten ein Sondersenat für Jugendliche eingerichtet ist und in gesetzlich festgelegten Fällen der Vorsitzende eines solchen Senats zum Einzelrichter für Jugendliche bestellt wird (§ 2d). Somit ist das System der Jugendgerichtsbarkeit weder selbständig noch vom bisherigen Gerichtssystem unabhängig. Im Gegenteil, die Jugendgerichte wirken im Rahmen des Systems der allgemeinen Gerichte als Sondereinheit. Die allgemeinen Regeln zur Bestimmung der sachlichen Zuständigkeit gelten auch für die Jugendgerichte (§ 1 Abs. 3 JGG, § 29 Abs. 1 StGB.).

Das Jugendgerichtsverfahren ist durch *besondere Grundprinzipien* charakterisiert, die vor allem in den §§ 3 und 4 JGG enthalten sind.

Namentlich handelt es sich um:

- das Prinzip des auf Wiedergutmachung abzielenden Ansatzes bei der Behandlung und Erledigung von Jugendstrafsachen (*Prinzip der wiedergutmachenden Strafrechtspflege*);
- den Grundsatz der minimalen Intervention bzw. des geringstmöglichen Eingriffs (*Prinzip des Vorrangs der Erziehung vor der Strafe)*;
- den Grundsatz der Minimierung negativer Nebenwirkungen eines Strafverfahrens zur Vermeidung unerwünschter Stigmatisierung (*Prinzip des Schutzes der Privatsphäre und der Person des Jugendlichen)*;
- den Grundsatz der Beschleunigung des Verfahrens bei gleichzeitiger Einhaltung der Forderung nach einer individualisierten Lösung des konkreten Falls (*Prinzip der rechtzeitigen und zugleich fallgerechten Reaktion*);
- den Grundsatz einer auf die Problematik der delinquenten Jugendlichen spezialisierten Justiz (*Prinzip der Spezialisierung*);
- den Grundsatz der Zusammenarbeit zwischen spezialisierten Einrichtungen, insbesondere mit den Organen der Kinder- und Jugendhilfe (Jugendwohlfahrtsträger), mit Konfliktvermittlungsstellen, der Bewäh-

rungshilfe und weiteren Institutionen und Bürgern, die auf diesem Gebiet arbeiten (*Prinzip der Zusammenarbeit*);

- den Grundsatz der Stärkung der Position des Geschädigten und seiner Interessen (*Prinzip der aktiven Teilnahme des Opfers am Verfahren*).

Mit einem gewissen Vorbehalt der sich aus den Eigentümlichkeiten des zivilgerichtlichen Verfahrens ergebenden Besonderheiten sind diese Prinzipien auch für das vor einem Jugendgericht stattfindende Verfahren in Angelegenheiten von Kindern unter fünfzehn Jahren grundlegend.

Das Jugendverfahren ist auch dadurch gekennzeichnet, dass die Ermittlungen, die Entscheidungsfindung und der Vollzug von Strafsachen Personen anvertraut sind, deren Kenntnis der Problematik der Jugenderziehung eine Gewähr dafür bietet, dass der erzieherische Zweck des Verfahrens erfüllt wird. Alle im Jugendgerichtsgesetz vorgesehenen Organe, d. h. Jugendrichter, Staatsanwälte und Polizeiorgane (§ 2f JGG), ebenso wie Beamte der Konfliktvermittlungsstellen und Bewährungshilfe in Jugendstrafsachen müssen eine berufliche Spezialisierung für den Umgang mit Jugendlichen aufweisen (§ 3 Abs. 8 JGG).

Die örtliche Zuständigkeit des erstinstanzlichen Gerichts (§ 37 Abs. 1 JGG) in Jugendsachen weicht von den für Erwachsene geltenden Regelungen ab. Das Verfahren obliegt grundsätzlich dem Jugendgericht am Wohnsitz des Jugendlichen. Gibt es keinen festen Wohnsitz gilt die Zuständigkeit des gewöhnlichen Aufenthalts oder des Arbeits-/Ausbildungsplatzes. Ähnlich erfolgt auch die Bestimmung der örtlichen Zuständigkeit der Staatsanwaltschaft und der in Jugendsachen spezialisierten Polizeiorgane, die sich nach dem Wohnsitz des Jugendlichen, bzw. nach dem Ort seines längerfristigen Aufenthalts richtet.

Nach dem JGG ist es nicht erlaubt, Verfahren gegen Kinder unter fünfzehn Jahren mit dem Jugendstrafverfahren zu verbinden, weil das Verfahren in Angelegenheiten der Kinder unter fünfzehn Jahren ausschließlich nach den Vorschriften für das zivilgerichtliche Verfahren mit den im dritten Hauptteil des JGG geregelten Abweichungen erfolgt.

Besonderheiten im Verfahren gegen Jugendliche sind vor allem der Anspruch auf notwendige Verteidigung (§§ 42 Abs. 2, 3 und 4, 44 JGG) sowie der Schutz der Persönlichkeit und der Privatsphäre (§§ 52-54 JGG). Darüber hinaus haben alle nach dem JGG tätigen Organe den Jugendlichen laufend über seine Rechte zu belehren und ihm die Möglichkeit zu geben, sie auszuüben (§ 42 Abs. 5 JGG). Außerdem kann die Möglichkeit der Vertretung durch den gesetzlichen Vertreter (§ 43 Abs. 1 JGG) auch den Rechten des Jugendlichen zugeordnet werden (§ 43 Abs. 1 JGG).

Der im Jugendgerichtsgesetz neu festgelegte strikte Schutz der Privatsphäre der Jugendlichen und der Kinder während des gesamten Verfahrens stellt eine konsequente Anwendung des verfassungsrechtlich verankerten Prinzips der Unschuldsvermutung dar. Dieses Prinzip wird ausdrücklich auch mit dem Schutz der persönlichen Daten und der Privatsphäre im Interesse der Vermeidung schädlicher Einflüsse (§ 3 Abs. 5 JGG) verknüpft. Für Jugendliche finden sich

entsprechende Regelungen in §§ 52-54 JGG. Demnach gilt generell, dass niemand eine Information veröffentlichen darf, die den Vor- und Zunamen des Jugendlichen enthält oder die seine Identifizierung ermöglicht. Dieses Verbot ist zeitlich unbegrenzt und betrifft nicht nur das gesamte Strafverfahren, sondern auch die Zeit danach (§ 53 JGG). Außerdem gilt es nicht nur für Jugendrichter, Staatsanwälte und Polizeiorgane, sondern für jeden, der Informationen über die Strafverfolgung des Jugendlichen, ihren Verlauf und über ihr Ergebnis hat.

Es ist verboten, die Öffentlichkeit über den Verlauf und Ausgang des Verfahrens zu informieren. Zugleich ist es untersagt, Texte oder Bilder zu veröffentlichen, die eine Identifizierung des Jugendlichen ermöglichen. Dieses Veröffentlichungsverbot wird nur durch die öffentliche Verkündung des Gerichtsurteils im Sinne des Artikels 96 Abs. 2 S. 2 der Verfassung durchbrochen.

Ein Urteil mit einem Schuldspruch (nicht ein freisprechendes Urteil) darf in den Massenmedien nur ohne die Angabe des Vor- und Familiennamens des Jugendlichen sowie unter Wahrung eines angemessenen Schutzes des Jugendlichen vor unerwünschten Wirkungen einer solchen Publizität veröffentlicht werden. (§ 54 Abs. 3 JGG).[18]

Der für die Öffentlichkeit durch das JGG in einem noch nie da gewesenen Maß umfassend garantierte und früher nahezu fehlende Schutz der Privatsphäre und der Persönlichkeit des Jugendlichen im Strafverfahren[19] stieß vor allem im Zeitraum unmittelbar nach der Reform im Jahr 2004 auf erbitterten medialen Widerstand. Es wurde lautstark darauf hingewiesen, dass das Gesetz gegen das verfassungsrechtlich garantierte Prinzip des Rechtes der Öffentlichkeit auf Information verstoßen würde. Außerdem wären derartige Verbote im Internetzeitalter „unsinnig".[20] Kein Wunder, auch in Tschechien kämpft die Presse, ähnlich wie im Ausland, gegen den Rückgang der Leserzahlen. Hierzu eignen sich am ehesten Boulevardthemen, darunter reißerische Storys, in denen das geringe Alter des Täters, die Brutalität seiner Tat und die negative Verhaltensprognose für die Zukunft[21] die Hauptrolle spielen.[22] Mittlerweile sind die Medien es gewohnt,

18 In Ausnahmefällen kann der Senatsvorsitzende unter Beachtung der Person des Jugendlichen sowie im Hinblick auf die Art der Verfehlung entweder weitere Beschränkungen der Veröffentlichung des rechtskräftigen Strafurteils verfügen, d. h. den Schutz der Interessen des Jugendlichen erweitern (§ 54 Abs. 4a JGG). Er kann aber auch im Gegenteil bei einer besonders schweren Verfehlung, falls im Hinblick auf den Schutz der Gesellschaft erforderlich, beschließen, das Strafurteil mit Angabe des Vor- und Zunamens sowie weiterer persönlicher Daten des Jugendlichen zu veröffentlichen. Das bedeutet eine faktische Schwächung des Schutzes der Privatsphäre und der Persönlichkeit des Jugendlichen (§ 54 Abs. 4b JGG).

19 Vgl. *Sotolář* 2004, S. 283.

20 Vgl. etwa *Polívka* 2004, S. 11.

21 Vgl. *Blažková/Frydecká* 2004, S. A3.

22 Vgl. *Tomášek* 2005, S. 226-229.

das Verbot der Veröffentlichung persönlicher Informationen über Jugendliche zu befolgen, und verletzen es (anders als im Jahre 2004[23]) nicht, bzw. „weniger sichtbar". Diese positive Entwicklung ist jedoch nicht auf die Androhung der Geldstrafe zurückzuführen, denn das Gericht kann für eine solche Gesetzesverletzung nur eine einmalige Geldstrafe von bis zu 50.000 CZK (d. h. höchstens ca. 1.800 €) verhängen.

Der Schutz der Privatsphäre und der Persönlichkeit des Jugendlichen durch das Veröffentlichungsverbot hängt sehr eng mit der gesetzlich erheblich eingeschränkten Teilnahme der Öffentlichkeit an der Hauptverhandlung in Jugendstrafsachen zusammen. Das Gesetz (§ 54 Abs. 1 JGG) regelt sehr streng, wer an diesen Phasen des Gerichtsverfahrens teilnehmen darf. Neben dem jugendlichen Angeklagten und seinen beiden Vertrauensleuten, seinem Verteidiger, den gesetzlichen Vertretern und Verwandten in gerader Linie, den Geschwistern, ggf. den Ehegatten oder Lebensgefährten, sind es nur noch der Verletzte und sein Bevollmächtigter, Zeugen, Sachverständige, Dolmetscher, das zuständige Organ der Kinder- und Jugendhilfe, Beamte der Konfliktvermittlungsstelle und Bewährungshilfe sowie ein Vertreter der Schule oder der Erziehungseinrichtung.

Nicht einmal diesem per JGG neu konzipierten Schutz des Jugendlichen vor negativen Folgen des öffentlichen Strafverfahrens blieb scharfe Kritik seitens einiger in der Strafjustiz tätiger Fachleute erspart. Ihre ablehnende Haltung gegenüber der neuen rechtlichen Regelung schlug sich in einer Verfassungsbeschwerde nieder, in welcher geltend gemacht wurde, dass diese Bestimmungen geltenden Verfassungsprinzipien widersprächen. Konkret sah man darin den Verstoß gegen das Recht auf Öffentlichkeit des Gerichtsverfahrens. Das Verfassungsgericht wies die Beschwerde als unbegründet zurück.[24] In seinen umfangreichen Entscheidungsgründen verwies es auf geschichtliche und kulturelle Zusammenhänge sowie auf Prioritäten, die in der Tschechischen Republik bei einer Kollision von einzelnen verfassungsrechtlich geschützten Rechten und Freiheiten durchzusetzen sind.[25] Mit dieser Entscheidung schuf es auch einen Rahmen für gerichtliche Entscheidungen über die Bewilligung von Ausnahmen zu den obigen Verboten.

Der dritte Hauptteil des Jugendgerichtsgesetzes hat die Reaktion auf die Begehung von ansonsten strafbaren Taten durch strafrechtlich nicht verantwortliche Kinder unter 15 Jahren (bzw. durch strafrechtlich nicht verantwortliche Jugendliche) zum Gegenstand. Dieses Verfahren findet Anwendung, wenn der begründete Verdacht besteht, dass ein Kind einen Straftatbestand erfüllt hat, für den es strafrechtlich mangels Alters (bzw. beim strafrechtlich nicht verantwortlichen Jugendlichen wegen seines Reifezustandes bzw. mangels Schuldfähigkeit

23 Vgl. *Hrušáková* 2006, S. 170.

24 Erkenntnis des Verfassungsgerichts Pl. ÚS 28/04 vom 8.11.2005.

25 Vgl. *Válková* 2006, S. 97.

zum Tatzeitpunkt) nicht zur Rechenschaft gezogen werden kann. Von der inhaltlichen Ausrichtung her zerfällt das Verfahren in zwei Phasen:

a) In der ersten Phase gilt es vor allem zu klären, ob das Kind eine ansonsten strafbare Tat begangen hat.
b) Wenn das Kind einer entsprechenden Tat überführt worden ist, geht es in der zweiten Phase darum, ausgehend von dieser Tat eine geeignete Reaktion vor allem in der Form einer Maßnahme zu finden (§ 93 JGG).

Das Verfahren nach dem dritten Hauptteil des JGG ist ein zivilgerichtliches Verfahren sui generis. Es handelt sich um freiwillige Gerichtsbarkeit und um ein Verfahren, das zwar auf der in der Zivilprozessordnung enthaltenen rechtlichen Regelung der Gerichtsbarkeit in Sachen Minderjähriger (§ 176 ff ZPO) beruht, jedoch durch das Jugendgerichtsgesetz (vgl. §§ 89-95 JGG in Verbindung mit § 96 JGG) modifiziert wurde. Dennoch ist es mit den Vormundschaftssachen nicht zu verwechseln, weil es eine ganz spezifische Tatsache zum Gegenstand hat, nämlich die Reaktion auf die Begehung einer Tat, die ansonsten strafbar wäre.

Das Gesetz sieht zwei Reaktionsformen auf die Begehung von Straftaten durch strafunmündige Kinder vor: Wenn es zur Erreichung des Gesetzeszwecks (§ 1 Abs. 2 JGG) genügt, dass die Tat des Kindes vom Staatsanwalt oder vor dem Jugendgericht behandelt wird, kann das Jugendgericht vom Ausspruch jeglicher Maßnahme absehen. (§ 93 Abs. 7 JGG.) Anderenfalls sind vom Jugendgericht die im dritten Hauptteil des JGG gesetzlich vorgesehenen Maßnahmen zu treffen. Diese sind so zu wählen, dass die Persönlichkeit des betroffenen Kindes, sein Alter, seine geistige und moralische Reife, der Gesundheitszustand sowie seine persönlichen, familiären und sozialen Verhältnisse in ausreichendem Maße berücksichtigt werden. Zugleich müssen sie dem Charakter und der Gefährlichkeitsstufe der begangenen Tat (vgl. § 93 JGG) entsprechen.

Die Bedeutung des Begriffs der „ansonsten strafbaren Tat", die den Gegenstand des Verfahrens nach dem dritten Hauptteil des JGG bildet, ist aus dem Strafgesetz und aus dem Jugendgerichtsgesetz herzuleiten. Denn das Zivilrecht bestimmt den Tatbegriff nicht. Das JGG bezeichnet jene Handlungen als ansonsten strafbare Taten, die in Anbetracht der konkreten, die Person des Täters charakterisierenden Umstände zwar straffrei sind, die aber ansonsten nach den allgemeinen strafrechtlichen Normen strafbar wären. Dabei müssen sowohl die Kausalität des Handelns für den Taterfolg als auch die Erfüllung des subjektiven Tatbestands nachgewiesen sein. Wenn etwa ein Kind jemanden tötet, liegt nur dann eine ansonsten strafbare Tat im Sinne des Mordes nach § 219 StGB vor, wenn der Tod durch das Verhalten des Kindes herbeigeführt wurde, das Kind mit direktem oder bedingten Vorsatz töten wollte und keine Rechtfertigungsgründe vorliegen.

Für die Verhandlung vor dem Jugendgericht gilt der Mündlichkeitsgrundsatz. Das Jugendgericht lädt die Parteien, ihre Vertreter und sonstige notwendige Verfahrensbeteiligte ein. Im JGG sind folgende Personen als Parteien des Verfahrens aufgeführt: das minderjährige Kind, das zuständige Organ der Kinder-

hilfe, die gesetzlichen Vertreter des Kindes, Personen, denen das Kind zur Erziehung oder in Pflege übergeben wurde sowie Personen, deren Rechte und Pflichten im Verfahren behandelt werden sollen. Der Staatsanwaltschaft kommt nur dann die Parteistellung zu, wenn sie einen Antrag auf die Einleitung des Verfahrens gestellt hat. Jedes Kind muss während des gesamten Verfahrens einen Rechtsbeistand haben (ein Rechtsanwalt, der durch das Jugendgericht bestimmt wird, § 91 Abs. 2 JGG).

Die Berücksichtigung der fehlenden strafrechtlichen Verantwortlichkeit und der besonderen Situation des Kindes, das der Begehung einer ansonsten strafbaren Tat verdächtigt wird, und das durch die öffentliche Verhandlung seiner Tat unverhältnismäßig traumatisiert werden könnte, hat den Gesetzgeber dazu veranlasst, den Schutz im Gerichtsverfahren zu verbessern, indem der allgemeine Grundsatz der Öffentlichkeit der Verhandlung durchbrochen und den Zugang zu Informationen beschränkt wurde (s. o.). Verhandlungen finden im Rahmen des Verfahrens nach dem dritten Hauptteil des JGG grundsätzlich unter Ausschluss der Öffentlichkeit statt, wobei das Gesetz ausnahmsweise die Teilnahme der Öffentlichkeit ermöglicht, wenn das Jugendgericht diese Vorgehensweise vor allem aus erzieherischen Gründen für geeignet hält (§ 92 Abs. 2 JGG).

Vom Inhalt her darf keine über den Verlauf der mündlichen Verhandlung veröffentlichte Information den Vor- und Zunamen des Kindes enthalten. Es darf auch keine Angabe gemacht werden, anhand derer das Kind identifizierbar wäre (§ 53 Abs. 1 und § 54 Abs. 2 JGG.). Außerdem untersagt § 54 Abs. 2 JGG, alle Bilder des Kindes und Texte mit Bezug auf seine Identität zu veröffentlichen. Das Gesetz garantiert auch den Schutz der Privatsphäre weiterer Verfahrensbeteiligter. Geschützt wird in erster Linie, wer durch das Verhalten des Kindes einen Nachteil erlitten hat (das Opfer). Auch über die gesetzlichen Vertreter des Kindes dürfen keine Informationen veröffentlicht werden, die sie identifizierbar machen würden (§ 52 JGG). Ungeachtet einer öffentlichen oder nichtöffentlichen mündlichen Verhandlung wird das Urteil stets öffentlich verkündet. Die Medien können das Ergebnis dieses Verfahrens nur nach Eintritt der Rechtskraft des Urteils veröffentlichen, jedoch ohne Namensnennung des Kindes, sonstiger Verfahrensbeteiligter, des Vormundes oder anderer Vertreter. Das Kind ist vor unerwünschten Wirkungen der Veröffentlichung angemessen zu schützen.

Bei den delinquenten Kindern war es ähnlich wie bei den Jugendlichen: Direkt nach dem Inkrafttreten des neuen Gesetzes haben sich die Medien bemüht, die Bestimmungen in der Öffentlichkeit in Verruf zu bringen. Dieses ist jedoch nicht gelungen. In der Praxis werden nicht einmal die dem Jugendgericht per Gesetz eingeräumten Befugnisse ausgeschöpft, den Schutz der Privatsphäre und der Persönlichkeit des Kindes in Sonderfällen zu durchbrechen.

5. Strafzumessungspraxis – Teil I: Informelle Reaktionen

Die Diversion im Jugendstrafverfahren hat eine relativ kurze Geschichte. Zwar standen schon vor dem Inkrafttreten des JGG einige Diversionsmöglichkeiten zur Verfügung, die bei Jugendlichen unter den gleichen Bedingungen wie bei Erwachsenen anzuwenden waren. In der Rechtspraxis in Jugendsachen hat sich bis jetzt nur eine von ihnen stärker durchgesetzt. Aus *Tabelle 4* wird ersichtlich, dass die bedingte Einstellung des Strafverfahrens die von den Staatsanwälten im Ermittlungsverfahren am häufigsten genutzte Diversionsart ist. In den Jahren 2000 bis 2006 machte sie jährlich zwischen ca. 700 und etwas mehr als 1.100 Fälle aus. Der Rückgang der absoluten Zahl der Jugendlichen in den Jahren 2003-2005 lässt sich zum Teil dadurch erklären, dass gegenüber den Vorjahren insgesamt weniger Jugendliche strafrechtlich verfolgt wurden. Zum Teil hängt dies mit einer Novellierung der Strafprozessordnung zusammen.[26] Mit Wirkung zum 1.1.2002 wurde zwar das sog. verkürzte Ermittlungsverfahren (Vorverfahren) eingeführt, allerdings konnten in diesem Rahmen bis zum 1.7.2004 keine Diversionsentscheidungen (gem. § 179g StPO) getroffen werden.

Tabelle 4: Diversion im Ermittlungsverfahren bei Jugendlichen – Entscheidungen der Staatsanwälte (in abs. Zahlen)

	2000	2001	2002	2003	2004	2005	2006
Bedingte Einstellung des Strafverfahrens	849	1.128	1.055	851	864	734	911
Täter-Opfer-Ausgleich	0	0	1	3	0	0	0
Absehen von Strafverfolgung	0	0	0	0	87	77	96
Bedingte Einstellung gem. § 179g StPO	0	0	0	0	7	5	30
Einstellung gem. § 179c Abs. 2f StPO	0	0	0	0	0	0	0

Quelle: Statistikdaten der Staatsanwaltschaften 2000-2006, Justizministerium der Tschechischen Republik.

Die Anteile der Jugendlichen, bei denen das Strafverfahren (Ermittlungsverfahren, einschließlich des verkürzten Ermittlungsverfahrens) bedingt eingestellt

26 Novelle der Strafprozessordnung Blatt Nr. 265/2001 Sb.

wurde, an allen strafverfolgten Jugendlichen,[27] schwankten in den Jahren 2000–2006 zwischen 9,9% und 17,7%. Dabei lässt sich mit Ausnahme des Jahres 2003 ein leichter Anstieg dieses Anteils feststellen (von 11,5% auf bis zu 14,6%), der im Jahre 2006 mit 17,7% am deutlichsten war.

Im Gegensatz zur bedingten Einstellung des Strafverfahrens findet der Täter-Opfer-Ausgleich (Tatausgleich) im Ermittlungsverfahren im Wesentlichen keine Anwendung. Diese Diversionsart wird auch bei erwachsenen Tätern kaum genutzt. Neben den allgemeinen Problemen mit der Umsetzung[28] dürfte bei Jugendlichen noch mehr als bei Erwachsenen eine Rolle spielen, dass sie häufiger finanziell nicht in der Lage sind, den Schaden voll zu ersetzen und außerdem einen Betrag für wohltätige Zwecke zu spenden, noch bevor der Ausgleich genehmigt werden soll.

Auch die neue Diversionsart für Jugendliche, das Absehen von der Strafverfolgung, hat sich bis jetzt in der Anwendungspraxis kaum durchgesetzt. Zwischen 2004 und 2006 belief sie sich auf 77 bis 96 Fälle pro Jahr. Zum einen ist diese Diversionsart im tschechischen Recht erst seit relativ kurzer Zeit verankert, sodass sich die zuständigen Organe mit ihren Besonderheiten noch nicht ausreichend vertraut machen konnten. Zum anderen wird dieser Umstand etwa im Sonderbericht der Obersten Staatsanwaltschaft[29] auch damit erklärt, dass die gesetzlichen Anwendungsvoraussetzungen nicht näher ausgeführt und oft nicht erfüllt sind. Deshalb ist in der Praxis von der im JGG deklarierten vorrangigen Anwendung der verschiedenen Diversionsmöglichkeiten im Strafverfahren bis jetzt wenig zu merken (vgl. *Tabelle 4*).

Zu den verschiedenen Diversionsarten ist anzumerken: Sie werden im Ermittlungsverfahren auch deshalb nur beschränkt eingesetzt, weil es für die Staatsanwälte aufwändiger ist, sie anzuwenden und den Vollzug der mit Interventionen verbundenen Diversion zu kontrollieren, als schlicht Anklage zu erheben. Hinzu kommt, dass auch das Gericht das Verfahren i. S. d. Diversion einstellen kann.

Zu der im Gerichtsverfahren angewandten Diversion stehen nur die Daten des Justizministeriums aus den Jahren 2004-2006 zur Verfügung. Diese geben die Zahl

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27 Es handelt sich inhaltlich um dieselbe Diversion wie bei der bedingten Einstellung des Strafverfahrens, die jedoch im verkürzten Ermittlungsverfahren anwendbar ist. Im Hinblick darauf kommt sie deshalb nur für Straftaten mit einer Strafrahmenobergrenze von bis zu 3 Jahren in Frage.

28 Nach Angaben von Praktikern ist diese Diversionsart verwaltungsmäßig und technisch kompliziert. Dadurch verlängert sich das Verfahren. Darüber hinaus sind die Beschuldigten daran wenig interessiert. Es wird das Institut der bedingten Einstellung bevorzugt. Manchmal stellen die Geschädigten unhaltbare Forderungen. Außerdem ist die Öffentlichkeit über den Täter-Opfer-Ausgleich schlecht informiert, vgl. *Rozum/Kotulan/Háková* 2005, S. 48-49.

29 Vgl. *Oberste Staatsanwaltschaft* 2005, S. 57.

der Jugendlichen an, gegen welche die Jugendgerichte im jeweiligen Jahr die einzelnen Diversionsarten genutzt haben. Auch im Hauptverfahren rangierte die bedingte Einstellung des Strafverfahrens mit 297-385 Fällen pro Jahr an erster Stelle, während die anderweitigen Einstellungen des Strafverfahrens jährlich 41-65 Fälle und der Täter-Opfer-Ausgleich sogar lediglich 0-8 Fälle pro Jahr betrafen.

6. Strafzumessungspraxis – Teil II: Jugendgerichtliche Sanktionen und Anwendungspraxis seit 1980

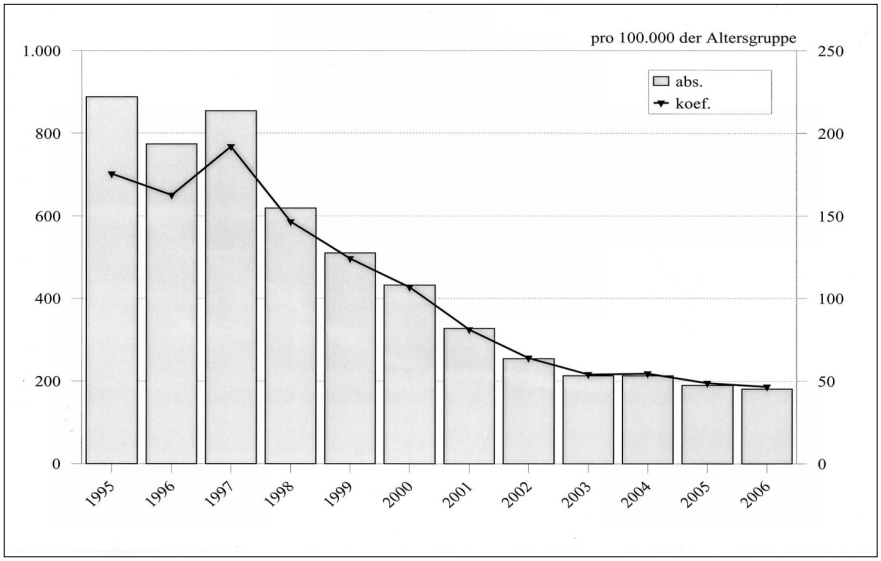
Die Verhängung der formellen jugendgerichtlichen Sanktionen hat sich in ihrer Entwicklung in den letzten Jahrzehnten gewandelt. Diese Änderungen hängen einerseits mit einer Reihe von Gesetzesreformen zusammen, andererseits wären sie ohne geeignete Träger undenkbar gewesen, die bei der Umsetzung der alternativen Strafen mitwirken. Für die zweite Hälfte der 1980er Jahre war ein relativ hoher Anteil von unbedingten Freiheitsstrafen charakteristisch, der in den Jahren 1987-1989 zwischen 16,3% und 21,5% schwankte. Am häufigsten wurde die bedingte Freiheitsstrafe (Strafaussetzung oder bedingte Strafnachsicht) verhängt, und zwar in 62,4-69,1% der Fälle. Die wegen Vergehen verhängten Maßregeln der Besserung machten zwischen 7,6% und 9,2% aus. Der Anteil der Geldstrafe lag bei 1% und das Absehen von der Verhängung der Strafmaßnahme wurde in 5,5-6,1% der Fälle genutzt. In der ersten Hälfte der 1990er Jahre ist ein leichter Rückgang der unbedingten Freiheitsstrafe zu erkennen. Ihr Anteil schwankte zwischen 12,1% und 15,9%. Zugleich war in den Jahren 1990-1994 zu beobachten, dass sowohl die bedingten Freiheitsstrafen mit Werten zwischen 66,4% und 72,6% als auch das Absehen von der Verurteilung und die Geldstrafe zunahmen.[30] In den darauf folgenden Jahren wurde ein Rückgang der Anteile der beiden zuletzt genannten Sanktionen verzeichnet. Erst gegen Ende der 1990er setzten sich infolge legislativer Änderungen[31] langsam mehrere alternative Strafen durch.

Seit 1997 ist ein ständiger Rückgang der unbedingten Freiheitsstrafe zu beobachten, und zwar sowohl in absoluten Zahlen als auch relativ bezogen auf 100.000 der Altersgruppe.

30 Vgl. *Válková* 1995, S. 479.

31 Siehe hierzu bereits oben *Kapitel 3*.

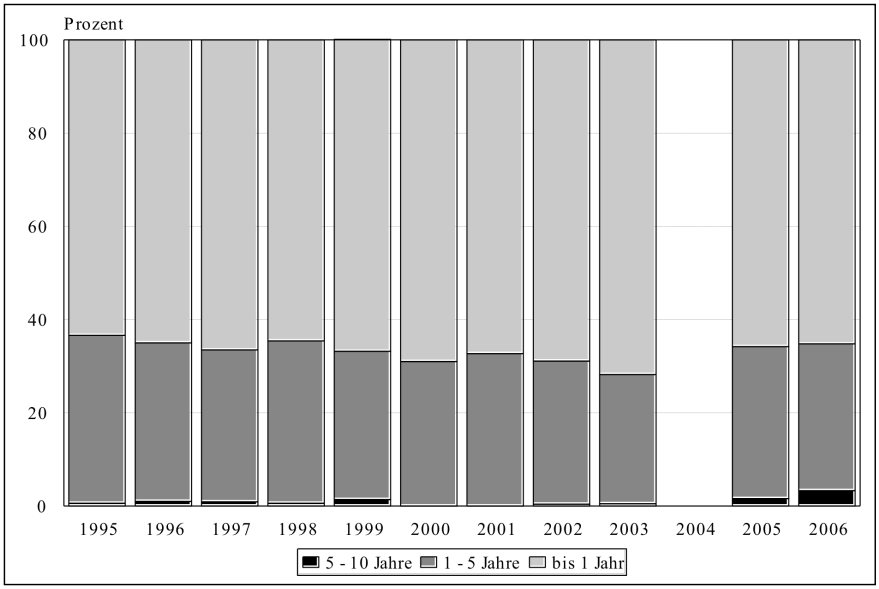
Abbildung 4: Unbedingte Freiheitsstrafe bei Jugendlichen



Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006. Statistikdaten über die Altersstruktur der Bevölkerung zum 1.7. des jeweiligen Jahres: Statistikjahrbücher der Tschechischen Republik, Tschechisches Statistikamt, 1995-2006. Der Koeffizient ergibt sich aus der Umrechnung auf 100.000 der entsprechenden Altersgruppe.

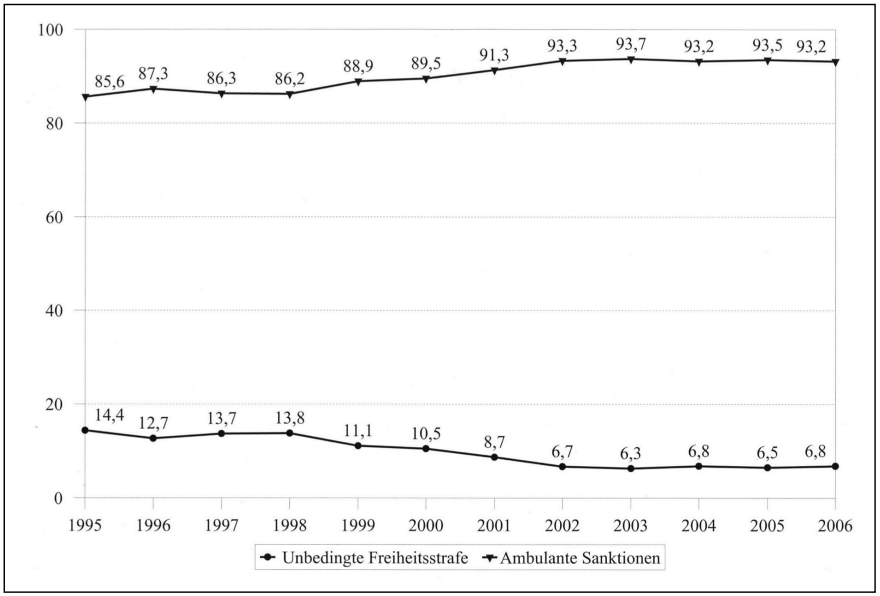
Bezogen auf die Dauer der ausgesprochenen unbedingten Freiheitsstrafen wurde am häufigsten die Freiheitsstrafe unter einem Jahr verhängt. Diese Strafe bewegte sich im Beobachtungszeitraum 1995-2006 zwischen 71,8% und 63,4%. Dennoch lässt sich in den Jahren 2000-2006 im Vergleich zu den Vorjahren ein Anstieg des Anteils der Strafen von einem Jahr bis zu 5 Jahren sowie von 5 bis zu 10 Jahren feststellen (vgl. *Abbildung 5*). Das überrascht bis zu einem gewissen Grad nicht allzu sehr, zumal sich angesichts des ständigen Rückgangs der Verhängung dieser Sanktionen die Struktur der Täter ändert, gegen die sie angeordnet werden. Dass der Anteil der gegen Jugendliche nur in wirklichen Ausnahmefällen in Frage kommenden Freiheitsstrafen von 5 bis 10 Jahren in den Jahren 2005 und 2006 stieg, ist zum Teil auch darauf zurückzuführen, dass im Jahre 2004 Jugendliche häufiger wegen Tötungsdelikten verurteilt wurden, als es dem Jahresdurchschnitt des Beobachtungszeitraums entspricht. Noch immer handelt es sich insoweit aber um seltene Einzelfälle.

Abbildung 5: Dauer der unbedingten Freiheitsstrafe bei Jugendlichen (in %)



Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006.

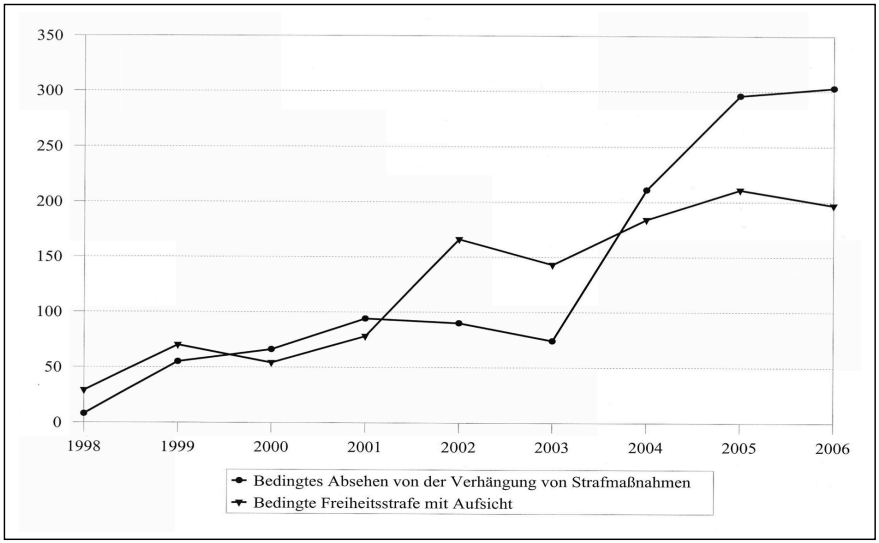
Abbildung 6: Ambulante Sanktionen und unbedingte Freiheitsstrafe bei Jugendlichen (in %)



Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006.

Dass nicht nur die unbedingte sondern auch die bedingte Freiheitsstrafe verdrängt wurde, ist vor allem auf die immer häufigere Verhängung der gemeinnützigen Arbeit zurückzuführen, die seit 2000 häufiger ausgesprochen wird als die unbedingte Freiheitsstrafe. Im Jahr 2003 betrug der Anteil der gemeinnützigen Arbeit an allen verhängten Strafen fast 24%. Zu beobachten war auch eine vermehrte Anwendung der bedingten Freiheitsstrafe mit Bewährungsaufsicht (vgl. *Abbildung 7*), wobei dieser Anstieg langsamer erfolgte als derjenige der gemeinnützigen Arbeit. Hingegen lässt sich seit 2000 ein deutlicher Rückgang der Zahl einfacher bedingter Freiheitsstrafen (Strafaussetzungen) feststellen.

Abbildung 7: Entwicklung der Sanktionen mit Aufsicht (in abs. Zahlen)



Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006.

Hinzuzufügen ist, dass sich die oben genannten Änderungen bei den Jugendlichen deutlicher bemerkbar machten als bei den verurteilten Erwachsenen.[32]

Dass der Anteil der gemeinnützigen Arbeit in den ersten Jahren nach ihrer Einführung nur allmählich zunahm, ist nicht nur der konservativen Haltung der Gerichte, sondern auch den Problemen mit der Kontrolle ihrer Vollstreckung[33] zuzuschreiben, die weder rechtlich noch faktisch gesichert war. Hinderlich war, dass die gemeinnützige Arbeit ursprünglich nur für Gemeinden verrichtet werden konnte. Nicht zuletzt waren auch die mangelnde Vorbereitung der an der Anwendung beteiligten Träger und die fehlende Aufklärung in der Öffentlichkeit zusätzliche Gründe für die langsame Zunahme.[34] Auch die neu eingeführte Führungsaufsicht fasste angesichts dieser Umstände nur sehr langsam Fuß.

Interessant ist es auch, sich mit den Veränderungen der Sanktionspolitik nach dem Inkrafttreten des JGG, somit seit 2004 zu befassen. Bei der Interpreta-

32 *Kuchta/Válková* 2005, S. 294 f.

33 Die Konfliktvermittlung und Bewährungshilfe wurde erst durch das Gesetz Blatt Nr. 257/2000 Sb. mit Wirksamkeit ab dem 1.1.2001 rechtlich verankert, wobei die Bewährungsbeamten mit der Kontrolle des Vollzugs dieser Sanktion betraut sind.

34 Vgl. *Vůjtěch/Hanák/u. a.* 1998, S. 94-97.

tion der Daten muss man allerdings berücksichtigen, dass der Zeitraum relativ kurz ist, und dass es zu Beginn der Geltung des JGG laut Mitteilung des Justizministeriums keine ausgearbeiteten bzw. angepassten Richtlinien für die Erfassung statistischer Daten gab, in denen die Änderungen der rechtlichen Regelung berücksichtigt waren. Dadurch waren möglicherweise in den Jahren 2004 und 2005 die Eingangsdaten für die Statistik fehlerhaft. Das Jahr 2006 dürfte diesbezüglich korrekt sein.

Wie aus *Tabelle 5* ersichtlich, wurde im Jahre 2006 als Hauptsanktion an erster Stelle die bedingte Freiheitsstrafe (43%) und an zweiter Stelle die gemeinnützige Arbeit (20,7%) verhängt. Relativ häufig kamen das Absehen von der Verhängung der Strafmaßnahme nach § 11 JGG (8,1%) und das bedingte Absehen von der Verhängung der Strafmaßnahme (11,5%) sowie die bedingte Freiheitsstrafe mit Aufsicht (7,4%) zum Einsatz. Die unbedingte Freiheitsstrafe betrug 6,8%. Der Anteil der Geldstrafe ist zu vernachlässigen (0,3%).

Tabelle 5: Struktur der gerichtlich verhängten Sanktionen bei Jugendlichen im Jahre 2006 (in %)

Bedingte Freiheitsstrafe	43,0
Unbedingte Freiheitsstrafe	6,8
Bedingte Freiheitsstrafe mit Aufsicht	7,4
Gemeinnützige Arbeit	20,7
Geldstrafe	0,3
Absehen von der Verhängung der Strafmaßnahme (§ 11 JGG)	8,1
Bedingte Absehen von der Verhängung der Strafmaßnahme	11,6
Absehen von der Verhängung der Strafmaßnahme unter gleichzeitiger Anordnung einer Erziehungsmaßnahme oder Maßregel (§ 12 JGG)	1,4
Andere Sanktionen	0,7

Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006.

Unter Beachtung der zuvor genannten Grenzen lässt sich feststellen, dass nach dem Inkrafttreten des JGG die Institute „Absehen von der Verhängung der Strafmaßnahme[35] und vor allem „ Bedingtes Absehen von der Verhängung der Straf-

35 Das JGG hat in § 11 JGG die Anwendungsmöglichkeiten des Absehens von der Verhängung der Strafmaßnahmen bei Jugendlichen erweitert. Dadurch unterscheiden sie sich von den erwachsenen Straftätern.

maßnahme“ deutlich mehr zum Einsatz kamen. Dabei war bereits in den Vorjahren eine langsame Erhöhung des Anteils dieser Sanktionen zu beobachten. Nachdem dieser in den Jahren 1998-2003 zwischen 0,2 und 2,2% geschwankt hatte, betrug er im Jahre 2006 schon 11,5% der Hauptstrafen. Darüber hinaus ist ein erheblicher Anstieg der absoluten Zahl der mit einer Aufsicht verbundenen Sanktionen (vgl. *Abbildung 7*) erkennbar. Allerdings sollte man nicht vergessen, dass seit dem Jahr 2004 das bedingte Absehen von der Verhängung einer Strafmaßnahme nicht obligatorisch mit der Verhängung der Aufsicht verbunden ist.

Relativ häufig wird die Bewährungsaufsicht auch als Erziehungsmaßnahme verhängt. Die im JGG neu definierten Erziehungsmaßnahmen wurden im Jahre 2004 in insgesamt 195 Fällen angeordnet. Im Jahre 2005 waren es 424 und im Jahre 2006 insgesamt 438 Fälle von rechtskräftig verurteilten Jugendlichen[36] (mehr dazu siehe *Abbildung 8*).

Was die Struktur der gegen *strafrechtlich nicht verantwortliche Kinder* unter 15 Jahren verfügten Maßnahmen anbelangt, wurde im Jahr 2005 als häufigste Reaktion von der Verhängung einer Maßnahme abgesehen (66,1%). Die Aufsicht durch einen Bewährungshelfer machte 26,5%, die Aufnahme in ein Erziehungsprogramm 5,1% und die Schutzerziehung 2,3% aus.[37] Auch hier wird die Bewährungsaufsicht relativ häufig angeordnet.

Um besser beurteilen zu können, inwieweit sich die Prinzipien des JGG durchsetzen, ist das Augenmerk auch auf die Umsetzung der Sanktionen in der Praxis zu richten. Dies gilt sowohl für Sanktionen mit Aufsicht, als auch für die verschiedenen Diversionsvarianten. Es gibt Hinweise darauf, dass die Aufsicht aufgrund der starken Überlastung der Konfliktvermittlung und Bewährungshilfe noch nicht ausreichend implementiert ist.[38]

Außerdem stellt sich die Frage, ob bzw. inwieweit ein sog. Net-widenig-Effekt eintritt. Wie aus den *Abbildungen 6* und *9* ersichtlich wird, hat sich das

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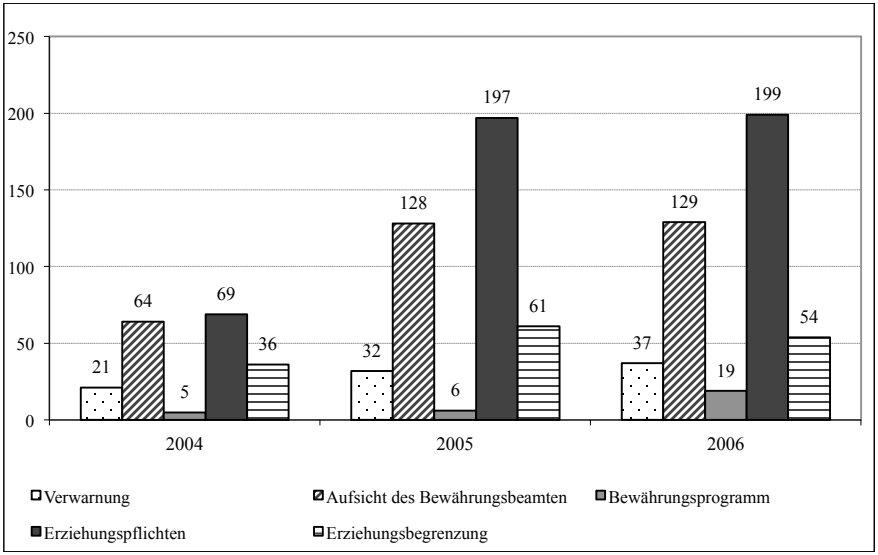
36 Dem ist hinzuzufügen, dass die Verhängung und Durchführung einiger neu eingeführter Erziehungsmaßnahmen, insbesondere der Bewährungsprogramme nach § 17 JGG als völlig neue Art von Erziehungsmaßnahmen direkt nach dem Inkrafttreten des JGG dadurch erschwert waren, dass viele Programme noch nicht akkreditiert waren. Bis jetzt hat das Justizministerium der Tschechischen Republik 24 Bewährungsprogramme akkreditiert. Hinzu kommt, dass die einzelnen Regionen bezüglich der Zahl der dort zugelassenen Programme und ihrer Verfügbarkeit Unterschiede aufweisen, vgl. Probační programy akreditované v roce. Ministerstvo spravedlnosti ČR. (Bewährungsprogramme, die für das Jahr 2007 akkreditiert wurden. Justizministerium der Tschechischen Republik), http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=3413&d=168387.

37 Statistikübersicht über die von den Gerichten zu erledigenden Aufgaben, Teil 2. Justizministerium der Tschechischen Republik, 2006.

38 Die Informationen von Praktikern verdeutlichen, dass dieses Problem mangels einer ausreichenden materiellen Sicherstellung und personellen Besetzung der Konfliktvermittlung und Bewährungshilfe tatsächlich existiert, vgl. *Vesecká*, 2005, S. 17; vgl. auch *Rozum/Kotulan/Háková* 2005, S. 78.

Verhältnis zwischen den Alternativsanktionen und der unbedingten Freiheitsstrafe nach Inkrafttreten des JGG nicht allzu sehr geändert. Erkennbar ist eher ein gewisser Rückgang bei der Verhängung der gemeinnützigen Arbeit und seit 2006 auch der einfachen bedingten Freiheitsstrafe, während die bedingte Freiheitsstrafe mit Aufsicht zugenommen hat. Dennoch sieht man auch, dass die beiden Institute „Absehen von der Verhängung der Strafmaßnahme“ und „bedingtes Absehen von der Verhängung der Strafmaßnahme“ vermehrt zum Einsatz kommen. Das deutet auf einen Trend zum häufigeren Gebrauch der weniger eingriffsintensiven Reaktionen hin.

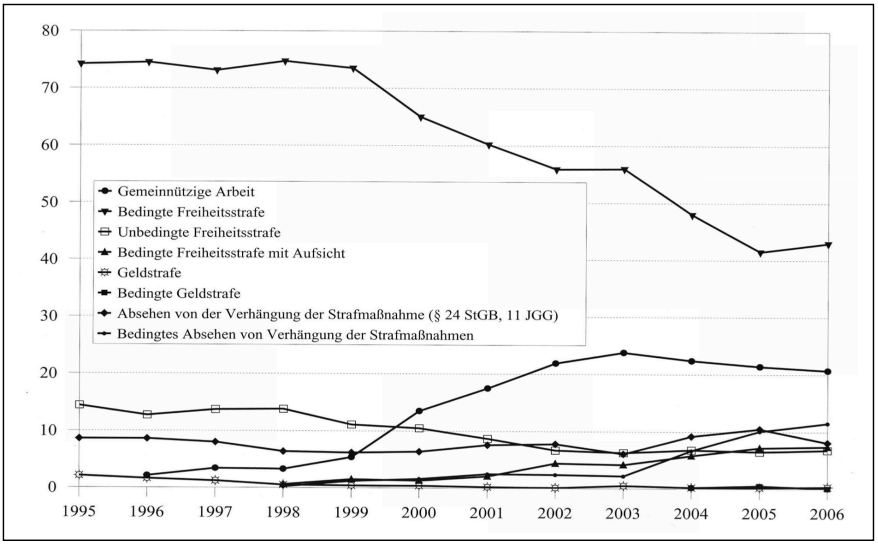
Abbildung 8: Erziehungsmaßnahmen bei gerichtlich verurteilten Jugendlichen, 2004-2006 (in abs. Zahlen)



Anmerkung: Es handelt sich um die Gesamtzahl der zu den jeweiligen Arten von Erziehungsmaßnahmen verurteilten Jugendlichen. Aus den zugänglichen Statistikdaten lässt sich jedoch nicht feststellen, wie viele von ihnen als selbständige - Sanktion ohne die Kombination mit einer anderen Sanktion verhängt worden sind.

Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006.

Abbildung 9: Entwicklung von ausgewählten gerichtlich verhängten Sanktionen gegen Jugendliche (in %)



Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 1995-2006. Es handelt sich um Maßnahmen, die als Hauptsanktion verhängt worden sind.

7. Regionale Muster und Unterschiede bei der Strafzumessung junger Rechtsbrecher

Die Regionen der Tschechischen Republik sind von der Kriminalität ungleichmäßig betroffen. Die meiste Kriminalität wird in Prag registriert, wo die Polizeistatistik in der Regel über drei Viertel der registrierten Fälle ausweist. Danach folgen Nordmähren und Nordböhmen. Überdurchschnittlich sind auch West- und Mittelböhmen betroffen. Die geringste Kriminalität wird üblicherweise in Südböhmen verzeichnet. Diese Reihenfolge bleibt auch nach der Umrechnung der Kriminalität auf die Zahl der Bewohner des jeweiligen Gebiets gewahrt.[39]

Bei der Zahl der Verurteilungen steht Nordmähren an erster Stelle, gefolgt von Nordböhmen und Prag. Die wenigsten Verurteilten gibt es wiederum in Südböhmen. Bei den Jugendlichen gilt, mit nachstehendem Vorbehalt, das oben Gesagte: Die meisten verurteilten Jugendlichen werden für gewöhnlich in Nordmähren und Nordböhmen registriert, die wenigsten in Südböhmen. Davon ausgenommen ist Prag, weil dort die Jugendlichen weniger oft verurteilt werden

39 Vgl. i. E. *Marešová* 2006, S. 7-24.

als im gesamtstaatlichen Durchschnitt. Dies steht im Kontrast zu der großen Zahl der alljährlich in Prag verurteilten erwachsenen Straftäter.[40]

Es wird nicht standardmäßig untersucht, wie die Jugendsanktionspolitik in den jeweiligen Regionen umgesetzt wird. Es stehen zwar einige ausgewählte Daten zur Verfügung, die jedoch mit äußerster Vorsicht zu genießen sind. Im Jahre 2006 wurde z. B. die bedingte Einstellung des Strafverfahrens relativ bezogen auf 100 Verurteilte der Altersgruppe der 15-17-Jährigen am häufigsten gerade in Regionen mit dem niedrigsten Kriminalitätsanfall, namentlich in Südböhmen und Südmähren, genutzt. In den Regionen mit einer hohen Kriminalitätsrate wie etwa in der Hauptstadt Prag und Nordböhmen war das Gegenteil der Fall (siehe *Tabelle 6*). Diesem Ergebnis entspricht auch die festgestellte Häufigkeit der verhängten Strafmaßnahmen des unbedingten Freiheitsentzugs. Denn diese Sanktion wurde gerade in der Region mit den wenigsten verurteilten Jugendlichen am seltensten genutzt. Im Gegensatz dazu wird diese Jugendsanktion in Nordmähren vergleichsweise häufig verhängt (vgl. *Tabelle 7*).

Tabelle 6: Jugendliche bei denen das Strafverfahren bedingt eingestellt wurde (2006)

	Bedingte Einstellung des Strafverfahrens	Koeffizient pro 100 Verurteilte
Tschechien	911	17,9
Prag	54	14,3
Mittelböhmen	79	20,7
Südböhmen	86	25,9
Westböhmen	78	16,8
Nordböhmen	84	9,3
Ostböhmen	78	16,1
Südmähren	242	27,8
Nordmähren	210	16,5

Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 2006.

40 Vgl. näher Jahrbücher der Kriminalität, herausgegeben vom Justizministerium, Prag, 2001-2005.

Tabelle 7: Anteil der zu ausgewählten Sanktionen verurteilten Jugendlichen pro 100 verurteilte Jugendliche im Regionalvergleich (2006)

	Unbedingte Freiheitsstrafe	Gemeinnützige Arbeit	Bedingte Freiheitsstrafe mit Aufsicht
Tschechien	6,5	19,8	7,1
Prag	6,7	12,4	16,6
Mittelböhmen	4,6	17,9	10,7
Südböhmen	1,7	13,8	12,9
Westböhmen	6,0	19,0	12,6
Nordböhmen	5,1	21,4	5,6
Ostböhmen	5,7	26,4	6,4
Südmähren	5,5	29,7	5,3
Nordmähren	9,7	14,6	3,1

Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 2006.

Diese Angaben könnten zu Schlüssen bezüglich einer milderen oder strengeren Strafpolitik verleiten. Jedoch führt der Blick auf die statistischen Daten über die Anzahl der im Jahr 2006 verfügten Erziehungsmaßnahmen zu einer vorsichtigen Interpretation.

Tabelle 8: Erziehungsmaßnahmen bei gerichtlich verurteilten Jugendlichen (2006)

	Zu Erziehungsmaßnahmen verurteilte Jugendliche (in abs. Zahlen)	Koeffizient pro 100 verurteilte Jugendliche
Tschechien	438	15,8
Prag	38	19,7
Mittelböhmen	22	11,2
Südböhmen	8	6,9
Westböhmen	66	23,2

	Zu Erziehungsmaßnahmen verurteilte Jugendliche (in abs. Zahlen)	Koeffizient pro 100 verurteilte Jugendliche
Nordböhmen	59	11,5
Ostböhmen	68	23,0
Südmähren	90	22,7
Nordmähren	87	11,2

Quelle: Statistikdaten des Justizministeriums der Tschechischen Republik, Prag, 2006.

Die Erziehungsmaßnahmen wurden am häufigsten in Westböhmen verhängt, das durch einen hohen Kriminalitätsanfall gekennzeichnet ist. An zweiter Stelle liegt Ostböhmen und an dritter Stelle Südmähren. Darüber hinaus ist aus den Statistiken nicht ersichtlich, ob eine Erziehungsmaßnahme unter gleichzeitigem Absehen von der Verhängung der Strafmaßnahme oder in Kombination mit einer Strafmaßnahme verfügt wurde. Somit bedarf es einer weitergehenden Analyse, um statistisch nachweisbar behaupten zu können, dass es tatsächlich erhebliche Unterschiede bei der Umsetzung der Sanktionspolitik in den einzelnen Regionen der Tschechischen Republik gibt. Außerdem hängt die Umsetzung der Erziehungsmaßnahmen direkt davon ab, wie weit in den jeweiligen Regionen Bewährungsprogramme und sonstige erzieherisch ausgerichtete Kurse zur Verfügung stehen, mit anderen Worten, wie breit und bunt das Angebot der den Richtern zur Auswahl stehenden Möglichkeiten ist. So bringen die genannten Statistiken möglicherweise nur zum Ausdruck, inwieweit die Infrastruktur für Erziehungsmaßnahmen vorhanden ist, jedoch nicht, ob die Jugendrichter bereit sind, sie gegenüber Jugendlichen anzuwenden. Diese Vermutung wird durch die zugänglichen Daten über die Anwendungspraxis gestützt. In jedem Fall verdient die Problematik der Erfassung der regionalen Unterschiede in der Jugendsanktionspolitik mehr Aufmerksamkeit als bisher (siehe dazu *Tabelle 8*).

8. Heranwachsende im Jugend- und Erwachsenenstrafrecht

Die ursprüngliche Absicht der Autoren des Entwurfs des Jugendgerichtsgesetzes, in den sachlichen Geltungsbereich dieser Norm drei Altersgruppen einzubeziehen, nämlich Kinder unter 15 Jahren, Jugendliche zwischen 15 und 17 Jahren und junge Erwachsene, d. h. Heranwachsende im Alter von 18 bis 20 Jahren, konnte schließlich nicht verwirklicht werden. Die zuletzt Genannten verblieben (allerdings nicht unter der Bezeichnung als „junge Erwachsene“) in einem dem Reformvorschlag gegenüber erheblich reduzierten Umfang im Geltungsbereich des allgemeinen Strafgesetzes: Das Strafgesetz erlaubt es bei Personen, die im „Alter nahe des Jugendalters“ sind (nach der Rechtsprechung bedeutet dies eine

altersmäßige Nähe zum 18. Geburtstag, höchstens bis zur Vollendung des 21. Lebensjahrs), im Falle eines bedingten Absehens von der Bestrafung auch Erziehungsmaßnahmen nach dem Jugendgerichtsgesetz zu verhängen (§ 26 Abs. 5 StGB.) Das Alter nahe der Volljährigkeit kann auch dann berücksichtigt werden, wenn der im Strafgesetz angedrohte Strafrahmen im konkreten Fall für den jungen Erwachsenen unverhältnismäßig streng wäre. In einem solchen Fall kann das Gericht die Freiheitsstrafe im Rahmen eines um ein Viertel herabgesetzten Strafrahmens (§ 40 Abs. 5 StGB) bemessen. Bei besonders schweren Straftaten kann diese Milderungsmöglichkeit nicht angewendet werden.

Das „Alter nahe des Jugendalters" stellt darüber hinaus einen allgemeinen, im Strafgesetz ausdrücklich aufgeführten Milderungsgrund dar, den das Gericht bei der Bemessung einer konkreten Strafe (§ 33b StGB) zu berücksichtigen hat.

Die ungenügende Berücksichtigung der besonderen Situation der jungen Erwachsenen in ihrem biologischen, sozialen, geistigen und moralischen Reifungsprozess zeigt sich auch daran, dass in der Tschechischen Republik diese Altersgruppe nicht gesondert statistisch erfasst oder untersucht wird. Deshalb existieren auch keine aussagekräftigen Daten über die Sanktionspraxis gegenüber dieser spezifischen Altersgruppe. Die jungen Erwachsenen werden gemeinsam mit allen erwachsenen Straftäter ab dem Alter von 18 Jahren erfasst.

9. Überweisung von Jugendlichen an Erwachsenengerichte

In der Tschechischen Republik ist es nicht möglich, einen Jugendlichen an ein Erwachsenengericht zu überweisen. Denn es gilt die Regel, dass die Verfehlungen des Jugendlichen vor dem Jugendgericht zu verhandeln sind, und dass auf das Verfahren über diese Verfehlung die Sonderbestimmungen des JGG Anwendung finden. Von dieser Regel werden im § 73 JGG nur zwei Ausnahmen zugelassen, in denen die Sonderbestimmungen über das Jugendstrafverfahren keine Anwendung finden, und zwar:

- in Verfahren über Verfehlungen, die der Beschuldigte sowohl vor als auch nach Vollendung des achtzehnten Lebensjahrs begangen hat, wenn die nach Vollendung des achtzehnten Lebensjahres begangene Tat im Strafgesetz mit der gleichen oder mit einer schwereren Strafe bedroht ist,
- oder wenn die Strafverfolgung erst eingeleitet wird, nachdem der Jugendliche das neunzehnte Lebensjahr vollendet hat.

Dennoch wird der Täter bezüglich der vor der Vollendung des 18. Lebensjahrs begangenen Verfehlungen materiellrechtlich wie ein Jugendlicher behandelt.

10. Vorläufige Unterbringungen im Erziehungsheim und in der Untersuchungshaft

Die rechtlichen Regelungen der Haft im Jugendstrafverfahren sind in den §§ 46-50 JGG enthalten, welche die allgemeinen, subsidiär anwendbaren Haftbestimmungen der §§ 67 ff. StPO erheblich modifizieren. Die Haftgründe für jugendliche und erwachsene Straftäter sind allerdings identisch (§ 67 StPO[41]), ebenso gilt für beide Tätergruppen das generelle Haftverbot, das bis auf wenige Ausnahmen bei allen Vorsatzdelikten mit einer Strafobergrenze von bis zu zwei Jahren und bei Fahrlässigkeitsdelikten mit einer Strafobergrenze von bis zu drei Jahren gilt. Hingegen gibt es erhebliche Unterschiede bei der Haftdauer und bei der Entscheidung über die Verlängerung der Untersuchungshaft. Bei Kindern unter 15 Jahren kann Haft generell nicht angeordnet werden.

Die Untersuchungshaft bei Jugendlichen kann höchstens für die Dauer von zwei Monaten angeordnet werden, bei besonders schweren Verfehlungen höchstens für die Dauer von 6 Monaten. Diese Frist kann verlängert werden, und zwar nur jeweils einmal im Ermittlungs- und im Hauptverfahren. Der Jugendliche kann somit im Normalfall maximal bis zu 6 Monate in der Haft verbleiben. Nur bei besonders schweren Verfehlungen kann er ausnahmsweise bis zu 18 Monate in Untersuchungshaft bleiben. Eine Haftverlängerung im Jugendstrafverfahren bedarf stets eines gerichtlichen Beschlusses. Die Haft ist in Jugendstrafsachen als *ultima ratio* konzipiert, weil das Gericht immer die Frage klären muss, ob der Haftzweck nicht mit anderen Mitteln erreicht werden kann. Dazu dienen zum einen strafverfahrensrechtliche Institute wie das Gelöbnis des Jugendlichen, die Bürgschaftserklärung einer vertrauenswürdigen Person oder einer Bürgerinitiative, die Aufsicht durch einen Bewährungshelfer oder eine Kaution. Die Regelungen für diese Alternativen sind identisch mit denjenigen für Erwachsene und finden dementsprechend bei Haft wegen Verdunkelung oder Verdunkelungsgefahr keine Anwendung. Bei Jugendlichen kann zusätzlich noch die Haft durch eine Übernahme in Pflege durch eine vertrauenswürdige Person im Sinne des § 50 JGG ersetzt werden, wenn sowohl diese Person als auch der Jugendliche zustimmen. Es handelt sich um ein neues, erst im JGG verankertes Institut, das auch bei Haft wegen Verdunkelungsgefahr angewandt werden kann. In der Praxis wird es aber nicht allzu oft genutzt. Denn gerade bei den von der Untersuchungshaft bedrohten Jugendlichen findet sich in der Regel weder im Rahmen der Familie noch im unmittelbaren sozialen Umfeld eine solche ver-

41 Es handelt sich um drei Haftgründe: Die konkrete Befürchtung, dass: 1. der Beschuldigte flieht oder sich verbergen wird (Flucht oder Fluchtgefahr), 2. er noch bisher unvernommene Zeugen bzw. Mitbeschuldigte beeinflusst oder das Strafverfahren anderweitig vereitelt (Verdunkelung oder Verdunkelungsgefahr), 3. er die strafbaren Handlungen wiederholt bzw. die versuchte, vorbereitete oder angedrohte Straftat vollendet (Wiederholungs- oder Ausführungsgefahr).

trauenswürdige Person, die zugleich den erforderlichen Einfluss auf den Jugendlichen hätte.[42] Außerdem ist es möglich, auch andere Optionen zu nutzen. Dazu gehören etwa die Unterbringung des Jugendlichen in den Einrichtungen des Kultusministeriums aufgrund einer angeordneten Heimerziehung[43] oder die sog. „frühzeitige" Hilfe des Bewährungshelfers, die sowohl in einer fachlichen Hilfe als auch in der Bemühung besteht, die Einstellung des Jugendlichen außerhalb des Aufsichtsrahmens positiv zu beeinflussen.[44] Die Haft bei Jugendlichen, die das 18. Lebensjahr noch nicht vollendet haben, ist getrennt von den Erwachsenen zu vollziehen.

Es zeigt sich, dass die Untersuchungshaft in der Praxis gegen Jugendliche tatsächlich nur ausnahmsweise verhängt wird, und zwar entweder bei sehr schweren Verfehlungen, oder bei sog. jugendlichen Gewohnheitstätern, die mittlere und schwere Taten begehen und bei denen frühere Maßnahmen gescheitert sind. Es handelt sich um Jugendliche, gegen die früher Schutzerziehung bzw. Heimerziehung verhängt wurde, und die wiederholt aus den Vollzugseinrichtungen fliehen und auf der Flucht erneut Straftaten begehen.[45]

Die Zahl der in Untersuchungshaft genommenen Jugendlichen ist seit 1996 erheblich gesunken (siehe *Abbildung 10* und *Tabelle 9*). Während Ende 1999 227 beschuldigte Jugendliche in den Untersuchungshaftvollzugsanstalten untergebracht waren, betrug ihre Zahl Ende 2006 nur noch 59, wobei es sich nur in zehn Fällen um fünfzehnjährige Jungen handelte. Zu dieser positiven Entwicklung haben neben demografischen Faktoren, dem Rückgang der Jugendkriminalität und der Reform der Jugendstrafpolitik (vgl. hierzu oben *Kapitel 2)* vor allem zwei wichtige legislative Änderungen beigetragen, deren Ziel es war, die Anordnung der Untersuchungshaft an bedeutend strengere Voraussetzungen zu knüpfen.[46] Dass gerade diese legislativen Änderungen den verfolgten Zweck erfüllt haben, ergibt sich auch aus den Statistikdaten der Staatsanwaltschaften. Daran wird erkennbar, dass in der Zeit nach 2002 und verstärkt nach 2004 deutlich weniger Jugendliche im Ermittlungsverfahren in Untersuchungshaft genommen

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42 Vgl. *Oberste Staatsanwaltschaft* 2005, S. 51-52.

43 Es handelt sich um eine nach dem Familiengesetz im zivilgerichtlichen Verfahren zu treffende Erziehungsmaßnahme.

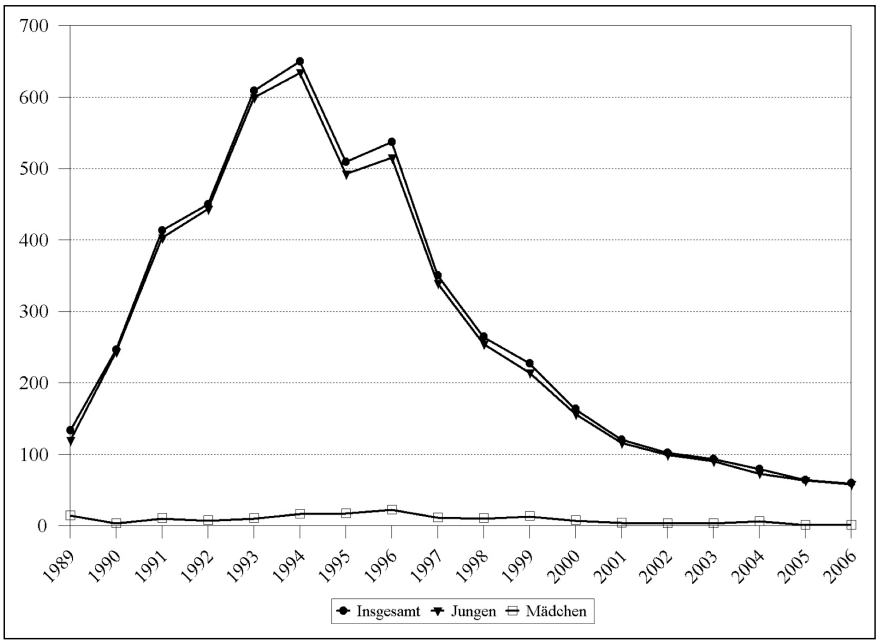
44 Vgl. *Šámal* 2004, S. 33 f.

45 Vgl. *Oberste Staatsanwaltschaft* 2005, S. 47 ff.

46 Zuerst wurde die Strafgesetznovelle Blatt Nr. 265/2001 Sb umgesetzt. Sie trat am 1.1.2002 in Kraft. Darin wurde etwa das obige Haftverbot bei weniger schweren Delikten verankert. Ferner wurden die Haftalternativen erweitert und zugleich wurde zwingend die regelmäßige Haftprüfung vorgeschrieben. Am 1.1.2004 traten weitere Verschärfungen der Voraussetzungen für die Verhängung der Untersuchungshaft in Kraft. Sie betreffen die Haftprüfung und sehen eine Verkürzung der Haftdauer vor, gelten jedoch nur für Jugendliche und sind im JGG verankert.

wurden. Zugleich hat sich die Dauer der Jugendhaft im Ermittlungsverfahren stark verkürzt. Denn im Jahr 2000 betrug der Anteil der Jugendlichen, die sich im Ermittlungsverfahren höchstens zwei Monate in Untersuchungshaft befanden, 23,5%. Danach erhöhte sich dieser Anteil und machte im Jahre 2006 bereits 66,7% der Gesamtzahl der im Ermittlungsverfahren in Untersuchungshaft genommenen Jugendlichen aus.

Abbildung 10: Jugendliche in Untersuchungshaft (Stichtag: 31.12.)



Quelle: Jahrbücher des Vollzugsdienstes 1996-2006, Vollzugsdienst der Tschechischen Republik.

Tabelle 9: Jugendliche in Untersuchungshaft im Ermittlungsverfahren (in abs. Zahlen)

	2000	2001	2002	2003	2004	2005	2006
Jugendliche in Untersuchungshaft	544	427	313	330	236	206	204

Quelle: Statistikdaten der Staatsanwaltschaften 2000-2006. Justizministerium der Tschechischen Republik.

11./12. Jugendstrafvollzug und Heimerziehung

Der unbedingte Freiheitsentzug als Strafmaßnahme beinhaltet die strengste Jugendsanktion. Das Gesetz setzt voraus, dass im Hinblick auf die Person des Jugendlichen, auf die Umstände des Einzelfalls oder auf vorher getroffene, ergebnislose Maßnahmen die Verhängung einer anderen Strafmaßnahme offensichtlich nicht ausreichend erscheint, um das Zweck der Wiedereingliederung zu erreichen (§ 31 Abs. 2 JGG).

§ 77 JGG nimmt auf die Ausbildung des Jugendlichen besondere Rücksicht. Demnach kann der Vollzug eines ein Jahr nicht übersteigenden Freiheitsentzugs einem Jugendlichen, der sich in einer schulischen oder beruflichen Ausbildungsmaßnahme befindet, auf dessen Antrag längstens für die Dauer von zwei Jahren aufgeschoben werden. Hat der Jugendliche während dieser Zeit seine Berufsausbildung erfolgreich abgeschlossen, so kann das Jugendgericht vom Vollzug der Maßnahme des Freiheitsentzugs gänzlich absehen. Der Jugendliche gilt dann als nicht vorbestraft.

Eine weitere Bestimmung (§ 78 JGG) erlaubt es, die Zeit zu verkürzen, die der Jugendliche aufgrund eines Strafurteils des Jugendgerichts in der Jugendstrafvollzugsanstalt zu verbringen hat. Für Jugendliche ist keine Mindestvollzugsdauer einer unbedingten Freiheitsstrafe festgeschrieben. Auf Antrag des Staatsanwalts oder des Leiters der zuständigen Jugendstrafvollzugsanstalt kann das Gericht somit den Jugendlichen bei Erfüllung der im Strafgesetz für die bedingte Entlassung allgemein festgelegten Bedingungen praktisch jederzeit aus dem Vollzug bedingt entlassen. Dem Jugendlichen selbst steht kein derartiges Antragsrecht auf bedingte Entlassung aus der Vollzugsanstalt zu. Er darf genauso wie der Erwachsene einen solchen Antrag erst nach der Verbüßung der Hälfte bzw. bei Verbüßung einer Strafe von 5 bis 10 Jahren nach zwei Dritteln der Strafe stellen.

Der Vollzug der Jugendfreiheitsstrafe findet gemäß dem Gesetz über den Vollzug der Freiheitsstrafe Blatt Nr. 169/1999 Sb. (nachstehend nur Strafvollzugsgesetz genannt und als StVG abgekürzt) ausschließlich in Jugendstrafvollzugsanstalten bzw. in Vollzugsabteilungen für Jugendliche getrennt von den

übrigen Teilen einer Justizvollzugsanstalt statt. Mit dem Inkrafttreten des Jugendgerichtsgesetzes wurde ab dem 1.1.2004 das Jugendalter im Sinne des Strafvollzugs um ein Jahr verlängert. Der Jugendliche darf erst dann in eine Justizvollzugsanstalt für Erwachsene überstellt werden, wenn er das 19. Lebensjahr vollendet hat (ungeachtet dessen, dass der Jugendliche gem. § 2d JGG durch das Alter zwischen 15 und 17 Jahren definiert ist).

Der eigentliche Vollzug der Freiheitsstrafe in der Jugendstrafvollzugsanstalt ist zum einen im Gesetz über den Vollzug der Freiheitsstrafe, andererseits in der Durchführungsordnung für den Vollzug der Freiheitsstrafe geregelt. Beide Regelwerke wurden im Jahr 1999 verabschiedet. Der konkrete Umfang und die Aufzählung der Rechte und Pflichten der verurteilten Jugendlichen ergeben sich aus §§ 60-65 StVG.

Im Rahmen der Jugendstrafvollzugsanstalten werden die Jugendlichen nach den vier Differenzierungsgruppen A, B, C und D unterteilt, wobei es, je nach Verhalten und der während des Vollzugs der Freiheitsstrafe erzielten Erfolgen, möglich ist, Übergangsgruppen zu schaffen. Die Ausbildung und die geeignete Form der beruflichen Vorbereitung finden in vier Hauptgruppen statt. Um die negativen Folgen der Isolierung infolge des Vollzugs zu begrenzen, ist auf Jugendliche im verstärkten Maße durch verschiedene Programme, die ihre soziale, moralische und berufliche Weiterentwicklung fördern sollen, individuell einzugehen. Im Vordergrund stehen sowohl die Übernahme der persönlichen Verantwortung für die begangene Verfehlung als auch die Stärkung der Fähigkeit, Alltagsprobleme selbständig zu lösen sowie aggressive Reaktionen und sonstige unangemessene Verhaltensweisen zu vermindern. Über die Zuordnung des Jugendlichen zu einer der Differenzierungsgruppen entscheidet der Anstaltsleiter aufgrund der Empfehlungen der Fachmitarbeiter, zu denen Psychologen, Sonderpädagogen, Sozialarbeiter und Erzieher zählen.

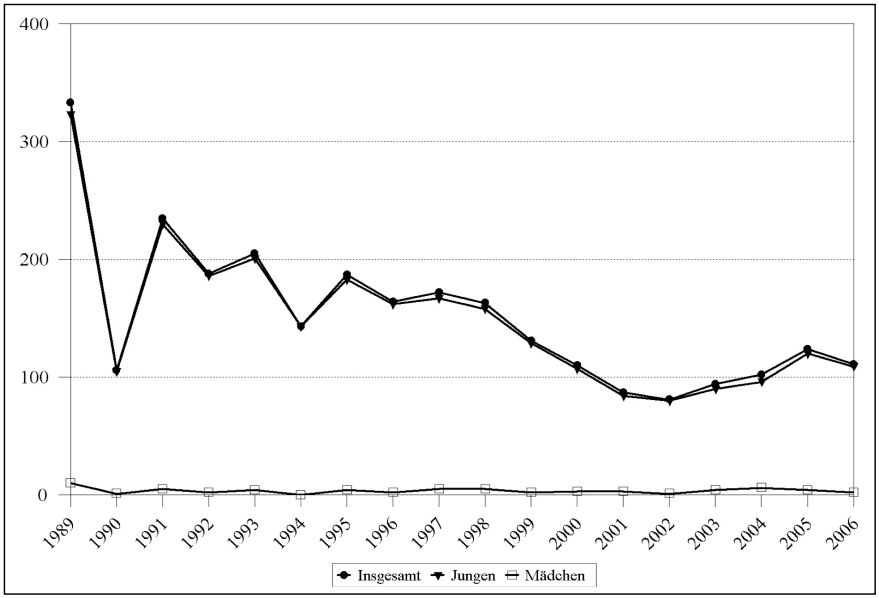
Wie auch in anderen Justizvollzugsanstalten üblich erlässt der Anstaltsleiter auch für die Jugendstrafvollzugsanstalt eine Hausordnung, die den Tagesablauf der jugendlichen Insassen regelt.

Dem in elektronischer Form publizierten und im Internet öffentlich zugänglichen Jahrbuch des Vollzugsdienstes der Tschechischen Republik,[47] ist eine relativ verlässliche Übersicht zu entnehmen, die sowohl Zahlen der gegenwärtig in Jugendstrafvollzugsanstalten untergebrachten Verurteilten als auch ihre Altersstruktur, Dauer der verhängten Strafen u. ä. enthält.

Langfristig betrachtet (über fast zwei Dekaden) wird ein erheblicher Rückgang der Zahl der verurteilten Jugendlichen registriert, die zum 31.12.2002 (mit insgesamt 81 jugendlichen Insassen) ihren Tiefstand erreicht hat. Die Zunahme der Zahl jugendlicher Strafgefangener in den letzten vier Jahren war nur unbedeutend – zum 31.12.2006 waren es 111 Jugendliche, davon zwei Mädchen.

47 Abrufbar unter: http://www.vscr.cz.

Abbildung 11: Verurteilte Jugendliche in Haftanstalten (Stichtag: 31.12.)



Quelle: Jahrbücher des Vollzugsdienstes 1996-2006, Vollzugsdienst der Tschechischen Republik.

Wichtig ist auch der gleich bleibende, relativ niedrige Anteil der jugendlichen Strafgefangenen an der Gesamtzahl aller zur unbedingten Freiheitsstrafe verurteilten Strafgefangenen, der seit 1999 zwischen 0,6% und 0,8% schwankt.

Bezüglich der Altersstruktur der jugendlichen Strafgefangenen (zum 31.12.2006) handelte es sich um lediglich einen 15-jährigen Jungen, um 6 16-jährige Jungen, um 26 17-jährige Jungen, um 76 18-jährige Jungen und um zwei achtzehnjährige Mädchen. Aus dieser Übersicht wird deutlich, dass die jüngste Altersgruppe der 15- bis 16-jährigen Jugendlichen nur ausnahmsweise in eine Jugendstrafvollzugsanstalt (insgesamt 7 Jugendliche) gelangt, und dass davon ausschließlich Jungen betroffen sind.

Was die Zahlen der statistisch ausgewiesenen bedingt entlassenen Jugendlichen anbelangt, so ist in der Praxis noch nicht zu bemerken, dass die Staatsanwälte und Anstaltsleiter das ihnen durch die Jugendstrafrechtsreform eingeräumte Recht nutzen, den Jugendlichen ohne Rücksicht auf die bis dahin verbüßte Strafdauer aus der Jugendstrafvollzugsanstalt bedingt zu entlassen, wenn sich sein Verhalten und seine Einstellung positiv ändern.

Die Zahl der auf Beschluss des Anstaltsleiters aus der Jugendstrafvollzugsanstalt in die Justizvollzugsanstalt für Erwachsene überstellten Gefangenen gilt als wichtiger Indikator dafür, ob der Jugendstrafvollzug eher auf Repression oder auf Erziehung ausgerichtet ist. Bis zum Jahre 2003 konnte eine Überstellung immer nach der Vollendung des 18. Lebensjahrs des Jugendlichen erfolgen. Nach dem 1.1.2004 (im Zusammenhang mit der durchgeführten Reform der Jugendgerichtsbarkeit) darf der Jugendliche erst nach der Vollendung des 19. Lebensjahrs überstellt werden. Wie aus der Statistik hervorgeht, traten mit Ausnahme des ersten Jahres der Geltung des neuen Gesetzes (2004), in dem die Zahl der überstellten Jugendlichen auf 9 gesunken war, keine dramatischen Schwankungen nach unten oder nach oben auf. Dennoch sind die Zahlen der Überstellten nicht zu vernachlässigen. Im Jahre 2006 wurde ca. die Hälfte aller 18-jährigen Insassen der Jugendstrafvollzugsanstalten überstellt. Dabei gilt eine derartige Überstellung immer als Verschärfung des Strafvollzugs, auch wenn einige Jugendliche selbst das nicht unbedingt so empfinden. Denn ihre Zeit ist im Erwachsenenstrafvollzug mit weniger Programmen und obligatorischen Aktivitäten ausgefüllt als im Jugendstrafvollzug.

Ausländische Jugendliche spielen bei der Unterbringung in Jugendstrafvollzugsanstalten keine nennenswerte Rolle. Im Jahre 2006 waren es beispielsweise nur vier. Dabei hat es sich vermutlich um slowakische Staatsbürger gehandelt, die im Jahre 2006 über ein Drittel aller verurteilten in tschechischen Gefängnissen einsitzenden Ausländer ausmachten.

Von den ethnischen Minderheiten nehmen bei den verurteilten Jugendlichen ohne Zweifel die jugendlichen Roma einen wesentlichen Anteil ein, der auf bis zu ein Drittel geschätzt wird. Im Kontrast dazu sind die Roma in der Gesamtbevölkerung der Tschechischen Republik mit weniger als 3% vertreten. Diese Schätzung ist aber objektiv nicht belegbar, weil es im Interesse der Minimierung der Diskriminierungsgefahr und des Schutzes der persönlichen Daten der Verurteilten untersagt ist, derartige Daten zu erfassen.

Der Vollzug der Jugendfreiheitsstrafe findet in der Tschechischen Republik in drei Jugendstrafvollzugsanstalten statt. Namentlich handelt es sich um ein Gefängnis in Všehrdy, das über eine Justizvollzugsanstalt für männliche Verurteilte mit einer Gesamtkapazität von 584 Personen verfügt. Zum 31.12.2006 waren hier insgesamt 583 Personen untergebracht. Damit war die Anstalt zu 99,8% belegt. Im Gefängnisareal befindet sich ein architektonisch getrenntes, selbständiges Gebäude für den Jugendstrafvollzug, in dem zum 31.12.2006 51 männliche Jugendliche ihre Strafe verbüßten. Weiterhin gibt es ein Gefängnis in Opava (Troppau), das eine Justizvollzugsanstalt für verurteilte Männer und Frauen mit einer Gesamtkapazität von 450 Personen hat. Zum 31.12.2006 waren hier bei einer Kapazitätsauslastung von 96,7% insgesamt 435 Personen untergebracht. In der architektonisch getrennten Jugendstrafvollzugsanstalt haben hier zum 31.12.2006 insgesamt 52 männliche Jugendliche ihre Strafe verbüßt. Für Mädchen dient schließlich die Frauenvollzugsanstalt in Světlá nad Sázavou mit einer

Gesamtkapazität von 520 Personen, in der eine Sonderabteilung für weibliche Jugendliche eingerichtet ist. Zum 31.12.2006 waren hier zwei 18-jährige Verurteilte untergebracht.

Die Schutzerziehung stellt eine andere, dem Strafvollzug nicht vergleichbare institutionelle Maßnahme dar, die nach dem Jugendgerichtsgesetz wegen einer Verfehlung nicht nur gegen Jugendliche, sondern auch gegen Kinder unter 15 Jahren verhängt werden kann (§§ 21-23, 82-87, 93 JGG). Diese Maßregel wird in Erziehungseinrichtungen vollzogen, die das Kultusministerium nach dem „Gesetz Blatt Nr. 109/2002 Sb. über den Vollzug der Heim- oder Schutzerziehung und über die vorbeugende Erziehungshilfe in Schulanstalten“ einrichtet. Erziehungseinrichtungen in diesem Sinne sind Diagnosezentren, Kinderheime mit Schule und Erziehungsheime. Der Vollzug der Schutzerziehung beginnt meistens in einem Diagnosezentrum, in das die Kinder und Jugendlichen eingewiesen werden, um aufgrund der Ergebnisse einer umfassenden Untersuchung in der für sie geeigneten Schulungseinrichtung untergebracht zu werden. Für Kinder, bei denen eine Schutzerziehung angeordnet wurde, sind Kinderheime mit einer Schule, für Jugendliche Erziehungsheime bestimmt. Dabei ist zu betonen, dass diese Einrichtungen auch dem Vollzug der Heimerziehung von Kindern und Jugendlichen dienen, die wegen einer Verhaltensstörung eingewiesen wurden, die (noch) kein kriminelles Verhalten darstellt.

In letzter Zeit sind im Zuge der Novelle stark überwachte Sondereinrichtungen für schwer verhaltensgestörte Kinder entstanden, die wiederholt schwere Delikte begehen, und bei denen mildere Formen der ambulanten bzw. auch stationären Einflussnahme versagt haben. Diese Einrichtungen werden einerseits von einem Teil der Öffentlichkeit als deutliche Reaktion auf die Verübung schwerer Delikte durch nicht strafbare Kinder begrüßt, andererseits von einigen Fachleuten dafür kritisiert, dass die Insassen durch architektonische Ausstattung (Kameras, Abhöreinrichtungen) und durch die Bewachung (durch besonders geschultes Personal) einem willkürlichen Eingriff in ihre Privatsphäre ausgesetzt sind[48] und dadurch auf unannehmbare Weise stigmatisiert werden.

Weder die Zahl der Kinder noch die Zahl der Jugendlichen, die wegen der Begehung von strafbaren Handlungen in Erziehungseinrichtungen des Unterrichtsministeriums untergebracht sind (d. h., gegen die das Gericht eine Schutzerziehung verhängt hat), ist besonders hoch. So waren etwa zum 31.10.2005 in den Schulungseinrichtungen für den Vollzug der Schutzerziehung insgesamt 155 Kinder und Jugendliche untergebracht.[49]

48 Vgl. *Velechovská* 2003, S. 9 f.

49 Statistikdaten des Kultusministeriums – Institut für Informationen im Bildungsbereich, www.uiv.cz.

13. Aktuelle Reformdebatten und Herausforderungen an das Jugendstrafrechtssystem

Nach mehr als 10 Jahren wurde die Vorbereitung des neuen Strafgesetzes abgeschlossen und im Januar 2009 der entsprechende Entwurf letztendlich vom Parlament verabschiedet; das neue Strafgesetzbuch ist am 1.1.2010 in Kraft treten. In engem Zusammenhang mit dieser Reform wurden auch einige nicht unbedeutende Änderungen des Jugendgerichtsgesetzes beschlossen:

- Änderungen der Grundlagen der strafrechtlichen Verantwortung der Jugendlichen: Die strafrechtliche Verantwortung sowohl von Jugendlichen als auch von Erwachsenen wurde anders gestaltet, denn für die Strafbarkeit wird keine sogenannte gesellschaftliche Gefährlichkeit verlangt.
- Die Erweiterung der bisherigen Skala der ambulanten Sanktionen bei Jugendlichen (wie auch bei den Erwachsenen) um den Hausarrest.
- Die Erweiterung der bisherigen Skala der ambulanten Maßnahmen bei Kindern unter 15 Jahren um einige erzieherische Maßnahmen, die bisher ausschließlich Jugendlichen vorbehalten waren. Ferner wurde 2011 durch die Novellierung des JGG die bisherige Skala der Maßnahmen bei Kindern um die sog. Schutzheilbehandlung, d. h. eine ambulante oder stationäre medizinische (Zwangs-)Behandlung, erweitert.
- Bei altersmäßig geringfügig über 18-jährigen Heranwachsenden wurden die Möglichkeiten erweitert, Erziehungsmaßnahmen mit weiteren Sanktionen nach dem Jugendgerichtsgesetz zu kombinieren.

Außerdem wurde schon im Jahr 2008 (in Kraft seit 1.1.2009) durch die Novelle des StGB vom 1961 die bisherige Skala der Maßregeln um die Sicherungsverwahrung erweitert. Sicherungsverwahrung kann auch gegenüber Jugendlichen angeordnet werden.

14. Zusammenfassung und Ausblick

Die gewonnenen Erkenntnisse über die Entwicklung der Gesetzgebung, die Auswertung ausgewählter Statistikdaten über die Jugendkriminalität und über die in der Tschechischen Republik gegen diese Altersgruppe der Delinquenten angewandte Sanktionspolitik der letzten 20 Jahre erlauben folgende Rückschlüsse:

- Die in der ersten Hälfte der 1990er Jahre deutlich angestiegene registrierte Jugendkriminalität erreichte im Jahre 1996 ihren Höhepunkt und geht seither zurück, wobei dieser Rückgang seit 2003 sowohl bei den Jugendlichen als auch bei den Kindern unter 15 Jahren sehr markant ist.
- Die gegen die delinquenten Jugendlichen in den letzten zwei Jahrzehnten angewandte Sanktionspolitik hat erhebliche Änderungen erfahren,

die unmittelbar mit einem gesellschaftspolitischen Klimawechsel nach dem Jahr 1989 zusammenhingen. Während in den 1980er Jahren unbedingte Jugendstrafen ca. ein Fünftel aller verhängten Sanktionen ausmachten, sind sie seit 2002 an der Gesamtstruktur aller verhängten Jugendsanktionen bereits mit weniger als 7% vertreten. In Übereinstimmung damit ist seit 2001 ein sehr deutlicher Rückgang der Zahl der Jugendlichen festzustellen, die im Rahmen der Strafverfolgung in Untersuchungshaft genommen werden.

- Die bedingte Freiheitsstrafe bleibt zwar nach wie vor die häufigste Reaktion auf Jugendkriminalität, aber es werden häufiger auch die gemeinnützige Arbeit sowie die Aufsicht durch einen Bewährungshelfer ausgesprochen, und zwar sowohl im Rahmen der Diversion als auch als Alternative zur Verhängung einer bedingten Strafe. Dieser Trend korrespondiert auch mit der steigenden Zahl von bedingten Einstellungen des Strafverfahrens. Der Täter-Opfer-Ausgleich findet hingegen bei Jugendlichen kaum Anwendung. Eine weitere im JGG aus dem Jahre 2003 verankerte Diversionsform, das Absehen von der Strafverfolgung, setzt sich ebenfalls nur sehr langsam durch. Die Jugendstrafrechtsreform fand im Jahre 2003, nach einem schwierigen und langen Gesetzgebungsverfahren, in der Verabschiedung des Jugendgerichtsgesetztes einen vorläufigen Abschluss, das, ausgehend von den Prinzipien der wiedergutmachenden Justiz (restorative justice), eindeutig erzieherische Aspekte in den Vordergrund stellt und die Kategorie der delinquenten, strafrechtlich nicht verantwortlichen Kinder unter 15 Jahren mit einbezieht.
- Fast unmittelbar im Anschluss daran verbreiteten die Gegner dieser Reform – mit Hinweis auf wirklichkeitsfremde Statistiken und Forschungsergebnisse über eine angebliche Zunahme der Jugendkriminalität und über die steigende Brutalität – Vorschläge zur Verschärfung des Gesetzes, nach denen Verfehlungen von Jugendlichen und Kindern strenger geahndet werden sollten. Diesbezüglich wurde am häufigsten verlangt, die Altersgrenze strafrechtlicher Verantwortlichkeit von den bisherigen 15 auf 14 Jahre herabzusetzen, neue Sanktionen (etwa die Sicherungsverwahrung) einzuführen oder die bestehenden Strafen, auch bei Jugendlichen (durch Verlängerung des Höchstmaßes der Freiheitsstrafe für besonders schwere Taten) zu verschärfen. Dagegen ist einzuwenden, dass die bei der Anwendung des neuen Gesetzes auftretenden Gesetzeslücken und Fehler nicht so schwer wiegen, dass sie sich nicht relativ einfach durch Gesetzesberichtigungen oder durch reine Auslegung der strittigen Bestimmungen beheben ließen. Im Rahmen der Verabschiedung des neuen Strafgesetzes im Januar 2009 (das am 1.1.2010 in Kraft getreten ist) wurde zwar die Herabsetzung der relativen Strafmündigkeit von 15 auf 14 Jahre beschlossen, allerdings

hat das Parlament schon im Juli 2009 einem Abgeordnetenentwurf bezüglich der Wiederheraufsetzung der Strafverantwortlichkeitsgrenze auf 15 Jahre zugestimmt, so dass diese Altersgrenze weiterhin bei 15 Jahren bleibt.

- Seit 1.1.2009 kann bei Jugendlichen ebenso wie bei Erwachsenen die neue Maßregel der Sicherungsverwahrung angewendet werden. Andere Forderungen nach weiteren Strafverschärfungen bei Jugendlichen wurden zwar abgelehnt, jedoch kann seit Sommer 2011 nunmehr auch bei unter 15-jährigen Kindern die sog. Schutzheilbehandlung in (ggf. geschlossenen) medizinischen Einrichtungen angeordnet werden.
- In der Anwendungspraxis stellen der fortdauernde Mangel an Bewährungshelfern und qualifizierten Sozialarbeitern, an Geldmitteln zur Förderung ambulanter Behandlungsprogramme für delinquente Jugendliche zusammen mit der unzureichenden Differenzierung und Profilbildung in den Erziehungseinrichtungen die größten Schwächen des derzeitigen Jugend(straf)rechtssystems der Tschechischen Republik dar.

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Denmark

Anette Storgaard

1. Historical development and overview of the current juvenile justice legislation

Neither Denmark[1] nor any other Scandinavian Country has a particular juvenile justice system or juvenile justice law. In principle juvenile offenders are treated within the same complex of codes and routines as anybody else. But on the other hand, each of the countries has exceptions from the general system in order to maintain the needs, interests and rights of children and juveniles. Roughly, this means that extra efforts are made to divert the youngest offenders from prison and to keep them within the Child Welfare System.

The criminal as well as the procedural and social legislations are based on the fundamental consideration that cases against our youngest citizens require rehabilitative rather than punitive responses. Therefore, alternatives to imprisonment, such as social measures and suspended sentences, are very much close by. In order to direct a person's conduct into a more appropriate direction, reactions towards juvenile crime are frequently met with non-custodial measures. In practice, offenders under the age of 18 benefit from a number of sentencing policies and options that are not available to adults (for instance shorter sentences and diversion to the welfare authorities).[2]

Deviant behaviour by persons below the age of 14 (before 1st of January 2010: 15) is looked upon as a challenge for the Child Welfare System, and from the day a person is 14 years old, a new door into the justice system is opened.

1 This article predominantly covers Denmark. In some cases, other Scandinavian countries are mentioned. When no country name is mentioned, the text deals with Denmark.

2 See *Kyvsgaard* 2004.

This new route is however not necessarily the first alternative to be used. From the age of 14 up to the age of 17 a criminal act may lead to a variety of non-custodial orders – supervised by the Child Welfare System – or to prison or alternative institutions with different levels of security. Through which door the "offender" is led depends on the circumstances of each given case, such as the type and nature of the committed offence, the youngster's criminal record, and the child welfare representative's perception of the situation. Great efforts are made to divert the young offenders away from prison. Young offenders who are sentenced for a crime are mostly placed in a child welfare institution that the competent child welfare representative recommends. For apprehended offenders who have reached the age of 18 the criminal justice route is unavoidable. In practice, however, first time offenders of non-serious crimes still have a good chance of avoiding prison until they reach the age of 21 years. Persons aged 18 and over who receive suspended sentences are supervised by the Probation Service. In other words, children below the age of 14 cannot be punished, regardless of the "offences" they commit. Juveniles aged between 14 and 17 years are eligible for traditional punishment, but are more likely to be immediately diverted to supervision or institutionalisation by the Child Welfare System. If they are sentenced, most frequently they will be handed over to the Child Welfare System before they end the period of the penalty. Finally, young adults up to 20 years of age may sometimes be punished more leniently than "real adults" (21 and over), as long as their criminal records give no reason to believe that they are experienced offenders.

Whip and reformatories were ordinary responses to child-offending in the first half of the nineteenth century. Up until 1866 whipping was used as an ordinary penalty against children aged at least ten. In the Criminal Code of 1866, corporal punishment against males below the age of 18 and females below the age of 12 was abolished.[3]

Youth imprisonment was introduced by the Criminal Code that came into force in 1933. The duration of youth prison sentences was not fixed at the time of sentencing, as it depended on when (within a period of one to three years) the prison administration found the juvenile to be ready for release. Youth imprisonment was rarely used in the 1960s, and was subsequently abolished in 1973 due to massive critique that targeted in particular the unpredictable duration of such sentences.

During the second half of the 20th century, leading principles of offering help and support to deviant children and juveniles became even more dominant, principles that are still leading today. Within the last decade, however, the principle of providing children and juveniles with help and support has come to be increasingly challenged, as still more ways of providing help are edging closer and closer to the practical reality of punishment. This is for instance the

3 See *Greve* 2002, p. 164-167.

case with the so called "Youth Sanction", which does bear resemblance to the concept of youth imprisonment.

The legal age of criminal responsibility in Denmark (as in the other Scandinavian countries) has been 15 in the period 1933-2009. From 1905 to 1933 the age of criminal responsibility was set at 14. Before 1905 it was a common opinion that those who were mature enough to discern between right and wrong and were able to act according to this discernment, were punishable.

On different occasions at least one Danish political party[4] has argued that this age should be lowered. But up until autumn 2009 there has been no substantial support from other parties to this viewpoint. However, the party succeeded in implementing a decision of lowering the age of criminal responsibility to 14 as the Parliament decided on the state budget for 2010. This lowering is of course not just for one year like the rest of the budget.[5]

To put the legal age of criminal responsibility into a relevant perspective of today it is worth mentioning that the age of (sexual) consent is 15. However, a Dane is given the right to vote, to marry, to withdraw/apply for membership of a church, to apply for a driver's license and to decide on his/her own personal and financial circumstances, and to buy cigarettes at the age of 18.

2. Trends in reported delinquency of children, juveniles and young adults

According to official crime statistics there is no doubt that the number of criminal offences in Scandinavia as well as in Denmark is much larger today than it was in 1950. The increase – measured over a long period – is to a large degree the consequence of an increase in registered theft. Criminological research – and even more the political argumentation – has accordingly been dominated by descriptions of an ever increasing population of young offenders. But alternative descriptions and analyses have challenged this and showed a levelling off in this trend during the 1980s and both increases and decreases in the 2000s. Consequently, in spite of elevated numbers it would not be correct to characterize the post-war period as an ongoing increase of juvenile crime.[6]

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4 Dansk Folkeparti, which is very much like the Social Democrats in relation to some aspects of Social Policy, but extremely right wing in terms of issues of immigration. Recently (2008) the proposal was very actively brought forward in a period of a couple of weeks with bad events initiated by young immigrants and descendents. The proposal was formally brought before Parliament 1998-99-B 59. www.folketinget.dk/Samling/-19981/beslutningsforslag_som_fremsat(B59.htm.

5 Finanloven. At the same time there were some more vague decisions on the introduction of juvenile judges, which is quite a new phenomenon in *Denmark*.

6 See *Estrada* 2004.

While theft, shoplifting and the like are balancing out, this cannot be said about the trend in violence (see *Table 1* below). Different scientific sources, however, indicate that increases in reported crime are not automatically accurate depictions of actual developments. Self-report studies on juvenile crime among 15 year old students indicate lower levels of violence in 1999 than in 1979 (Denmark)[7] and lower levels in 2001 than in 1999 (Sweden).[8]

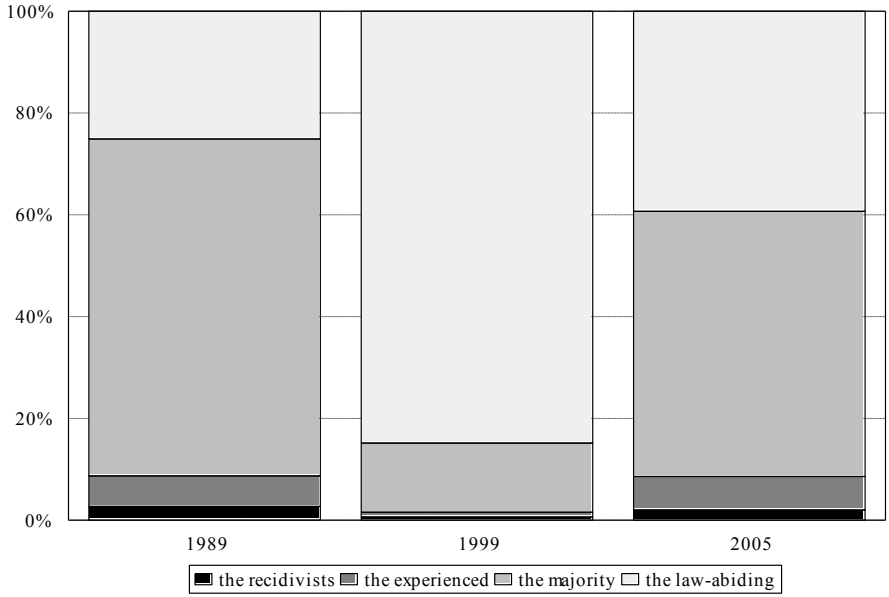
In 2006 a research study followed up on earlier reports on self reported crime among 15 years old juveniles. One of the main conclusions was that the majority of Danish youth is involved in crime – however, not in serious offending (see *Figure 1*).[9] Those involved in more serious crimes form a small minority of less than 10%. There is no increase in the prevalence rates between 1989 and 2005, on the contrary, the proportion of law-abiding juveniles increased.

7 See *Estrada* 2004.

8 See *Andersson* 2004.

9 See *Balvig* 2006.

Figure 1: Self-report results from Denmark (*Balvig* 2006)



Note: The law – abiding group (No. one from the right) are those respondents who reported that they have never or at the most once stolen money, cigarettes or alcohol from their own parents. The majority (No. two from the right) are the respondents who have committed less serious thefts or other breaches of the Criminal Code, except for burglaries, car-thefts and robberies. The experienced group (No. three from the right) are respondents who reported to have committed relatively serious thefts once or twice, for instance burglary, car-thefts or robberies. The recidivists (No. four from the right) are defined as those respondents who have committed relatively serious thefts three times or more, for instance burglary, car-thefts or robberies.

Figure 1 indicates that a shift has taken place from the "majority" to the "law-abiding", yet without there being significant change in the total of these two groups. Their combined share has remained stable at about 90% of the age group. At the same time, the group of recidivists has become smaller.

The research also shows that 98.5% of the respondents had not committed a burglary within the last year, and 99.5% had reported not to have stolen a handbag (may be seen as robbery). 15.6% reported to have shoplifted, and 28% admitted their involvement in a fight within the last year prior to the study.

The levels of self-reported crime are not indicative of juvenile crime becoming an increasing social problem in Denmark. However, statistics on juveniles being convicted for crimes indicate a different tendency (see *Table 1*).

Table 1 shows:

- The number of juveniles sentenced for robbery is small, but has been increasing almost constantly over the 10 year period under investigation.
- The number of juveniles sentenced for serious drug crimes is small, but also shows a rising trend.10
- The total number of court decisions involving juveniles for sex-crimes was increasing up until 2006, whereas the number of sentences for the most serious sex-crime – rape – has varied at a low level.
- Regarding violent offences, a considerable increase is apparent at least up until 2006. But it is also beyond any doubt that the increase is a result of more responses to minor violence. For 2007 the two "murders" were both "merely" attempted.

10 Drug crimes may be deemed a breach of the Criminal Code (serious), which may result in up to ten years of imprisonment and even up to 16 years of imprisonment where the offence is very serious. Drug crimes are most frequently sentenced in accordance with the Drugs Code, which may result in up to two years of imprisonment, but mostly end in a fine. The choice of Code depends on the amount and type of drug in question.

Table 1: Number of Criminal Court decisions involving juvenile offenders aged 15-17 (abs.)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Sex-crime (Total)	38	20	30	19	30	42	25	25	37	49	68	58	56
Rape	10	0	3	5	7	8	2	4	3	1	4	4	6
(Attempted) murder	1	2	1	1	0	1	0	0	2	2	1	2	2
Violence (Total)	496	426	410	446	484	696	752	781	920	1,150	1,135	1,221	1,111
Minor	373	309	308	313	334	523	551	574	664	778	778	841	778
Serious	50	56	46	34	53	67	82	73	96	118	90	113	104
Most serious	0	0	4	0	0	1	0	0	0	1	1	0	0
Against pub servant	32	18	19	47	51	55	50	75	97	130	138	145	124
Thefts etc. (Total)	4,249	3,953	3,747	3,682	3,347	3,587	3,534	3,200	3,387	3,757	4,032	3,829	3,220
Shoplifting	1,320	1,315	1,282	1,371	1,210	1,194	1,024	911	1,024	1,230	1,293	1,163	996
Robbery	87	89	113	110	114	143	155	135	183	166	199	196	175
Drugs	3	1	0	7	2	1	7	5	6	10	13	11	9
Other Criminal Code	99	50	73	68	74	83	104	98	112	202	184	201	205
Total Criminal Code	**4,886**	**4,452**	**4,261**	**4,223**	**3,937**	**4,410**	**4,422**	**4,109**	**4,464**	**5,170**	**5,433**	**5,320**	**4,601**
Total Spec. Codes	**569**	**465**	**349**	**388**	**313**	**332**	**397**	**379**	**429**	**821**	**1,319**	**1,275**	**1,031**
Drugs	61	66	57	99	70	91	109	119	135	252	632	660	536
Total	**5,455**	**4,917**	**4,610**	**4,611**	**4,250**	**4,742**	**4,819**	**4,488**	**4,893**	**5,991**	**6,752**	**6,595**	**5,632**

Source: Ungdomskriminalitet 1996-2006 and Ungdomskriminalitet. (Youth Crime 1996-2006 and Youth Crime) 1998-2000.

The absolute number of juveniles sentenced for crimes that are described in the Criminal Code has been increasing. However, the number of juveniles sentenced for crimes described in so called Special Codes (such as the Drug's Code, the law against possession of illegal weapons (including knives), the Traffic Code, laws on the protection of environment and security in workplaces, and others) has been increasing even more markedly. This is particularly evident for 2004 onwards.

To a large degree the increase in criminal decisions concerning Special Codes must be explained by:

- Changes in the law,
- an anti-orthodox trend among juveniles and
- an intensive police strategy against drugs and deviant and disturbing juvenile behaviour.

At the beginning of 2004, an amendment to the Drugs Code defined that any possession of all kinds of drugs must be responded to with the issuance of a fine. Before this amendment, it had been common practice to warn a person when he/she was caught in possession of what was estimated to be meant for his own immediate personal use. Contrary to fines, warnings are not included in the statistics. Furthermore, the police have been extremely active in Christiania[11] as well as against the so-called Hash-clubs.[12]

Likewise there has been an evident tendency of anti-orthodox behaviour among some groups of juveniles not least concentrated around a fight for a specific house in Copenhagen. Due to political demands, and in contrast to previous (1970s to 1990s) Danish police strategy, the police have been responding more offensively since the turn of the century. Since spring 2008 there have been some signals from the police that it is seriously considering returning to a less offensive attitude towards episodes of purely orderly (not criminal) character.

It is worth noting that from 1995 to 2006 the share of criminal disposals against 15 to 19 year old juveniles among all sanctions was stable at between 11% and 13%. The share of the 20 to 39 years age group was larger, but nonetheless stable with a slightly decreasing trend. Adults aged 40 years and upwards increase their share of the total number of criminal disposals. The average age of persons receiving a criminal disposal rose from 33.6 years in 1995 to 35.3 years in 2006.[13]

Taking a closer look at the distribution of gender in sentencing, it is worth noting that, in 2006, 81% of all criminal disposals were targeted at men and 17%

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11 A well known alternative community in Copenhagen, where to some degree a kind of "self-justice" had been tolerated by the authorities. After a process taking a couple of years, Christiania has now (2008) more or less been „normalized".

12 Dealing hash (cannabis) from private addresses instead of on the streets.

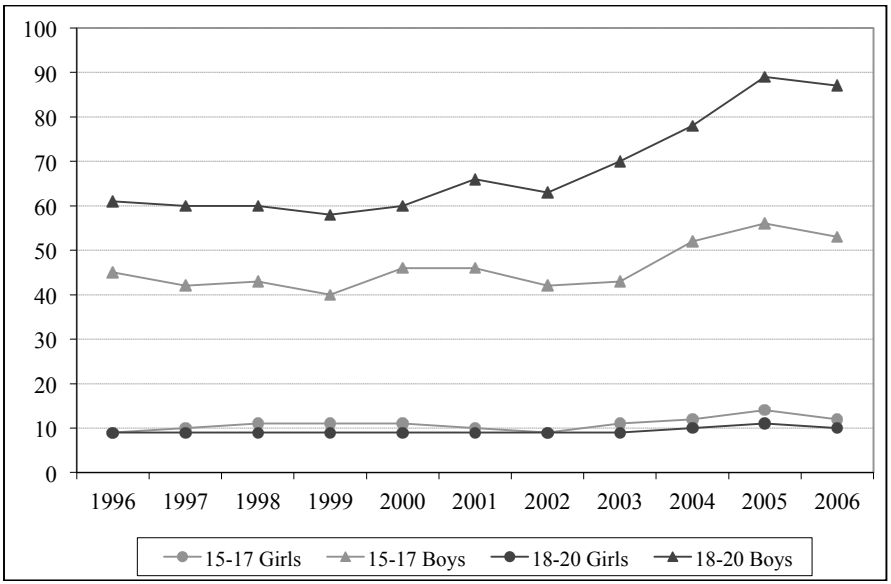
13 Criminality 2005, p. 22 and Criminality 2006, p. 22.

involved females (the remaining two percent were directed at companies). This is indicative of a slightly increasing trend for females, as in 2003 only 14% of the disposals that were imposed were directed against women. However, women have come to less frequently breach the Criminal Code, while at the same time more women were sentenced for breaches of the Traffic Code in 2006 than in the preceding years.

It remains to be pointed out that, firstly, an apparent increase in the female share among all convictions can not be attributed to the youngest end of the age spectrum. Secondly, among the youngest offenders, girls form a smaller share than all females do among all convicted persons. Thus, offending by females tends be centred more in the higher age brackets.

If we focus on the youngest offenders, there is no doubt that boys are more criminally active than girls. Among 15 to 17-year-olds the ratio of girls to boys is 1 to 5. This ratio is smaller in the 18 to 20 year old age group (1 to 8). This difference can be explained by the fact that there are more convicted men among 18 to 20-year-olds than among the 15 to 17-year-olds. However, the share of girls among the latter has been increasing a bit more than among the former (see *Figure 2*).

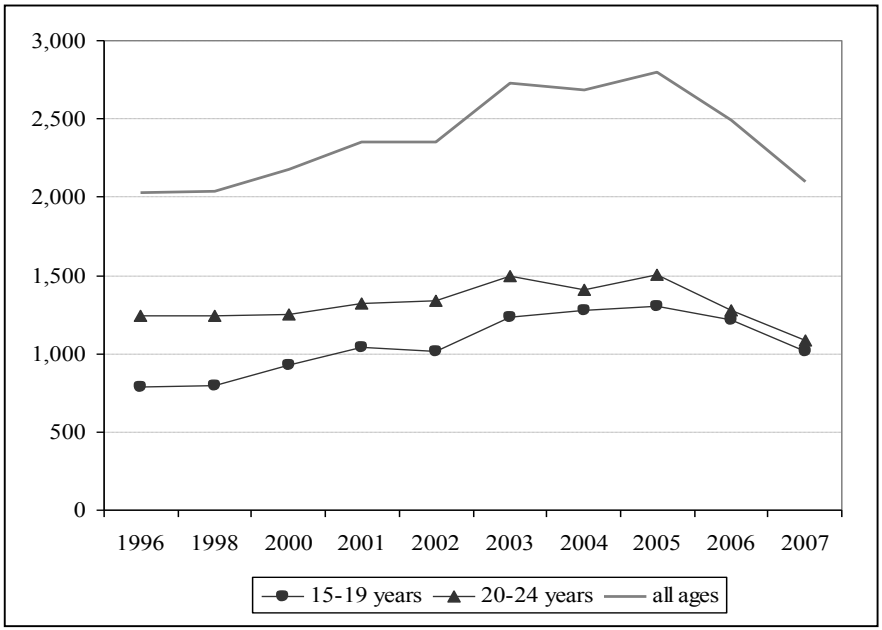
Figure 2: The number of criminal disposals per 1,000 in each group of age and gender



Source: Ungdomskriminalitet 1996-2006.

Figure 3 shows the development in the number of juveniles who are sentenced to deprivation of liberty. Such sanctions are: unconditional imprisonment, partly conditional imprisonment, conditional imprisonment, the so-called Youth Sanction, and secure imprisonment. Secure imprisonment is of an indeterminate nature and is used only very rarely (once or twice per year), and almost never in cases of juvenile offending.

Figure 3: Juveniles aged 15-19 and young adults aged 20-24 years sentenced to deprivation of liberty per 100,000 of the respective age group

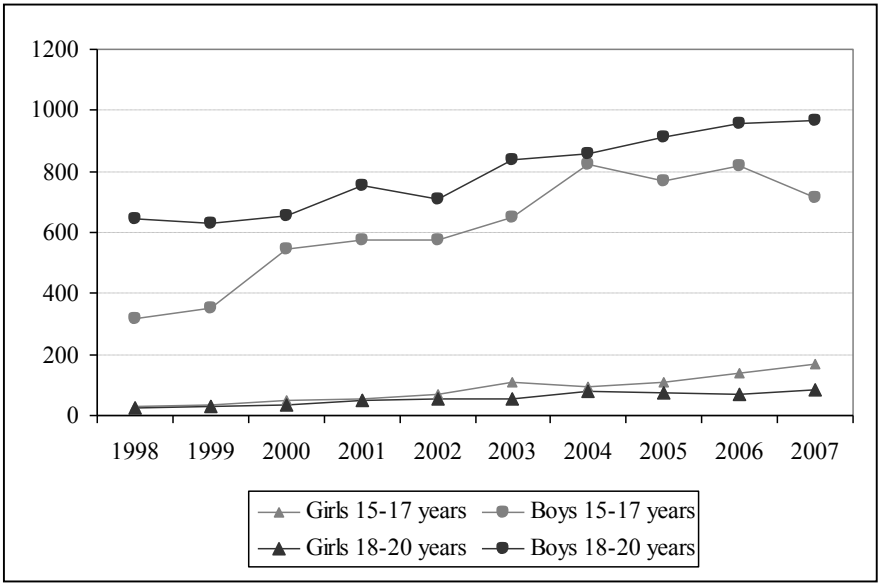


Source: Criminality 2000. Danmarks Statistik 2001. Criminality 2004. Danmarks Statistik 2005. Criminality 2007. Danmarks Statistik 2008.

As it almost never happens that severe sentences stem from breaches of the Special Codes, the increase in severe sentences against juveniles is due to breaches of the Criminal Code. First and foremost, there has been an increase in the number of severe sentences for violent crime. The increase since 2003 stems mainly from cases of violence and robbery. However, *Table 1* above shows that a very large part of the increase in violence is due to an increase in less serious violent offending.

It is often claimed that girls have become more and more violent. The development in the criminal disposals issued against boys and girls for violence (Criminal Law section 244-246) is illustrated in *Figure 4*. Unfortunately, this information is only available in absolute numbers.

Figure 4: Juveniles and young adults sentenced for violent crimes according to gender



Source: Ungdomskriminalitet 1998-2007.

Statistical data on the nationality of convicted offenders is lacking, so an attempt to describe this issue cannot build on one single piece of research or source of data. A consequence of the fact that experiences must be collected from different sources is that all of the little pieces do not form a homogeneous and coherent picture of the actual situation.

While reading the following it should be kept in mind that, according to the Danish Ministry of Justice and Statistics Denmark, 84.7% of all charges and 89.9% of all criminal disposals were filed or issued against Danish citizens in 2004.[14]

At irregular intervals, statistics are published that compare the registered offending of national groups to their share in the total population of their

14 Criminality 2004, p. 27 and Charges in 2004 according to national background.

national group in Denmark. One relatively new publication covers the period of 1995 to 2002.[15] The level of criminal sentences for male foreigners increased from 1995 to 2000 but it was stable from 2000 to 2002. In 1995 the level of sentences was 24% higher for foreign men than for all men and in 2000 and 2002 it was 38% higher.

The increase is markedly higher for descendents than for immigrants. In 1995 male descendents had 64% more sentences for crimes and in 2002 they had 98% more sentences than all men sentenced by Danish courts. For immigrants the sentences were 21% and 30% above the general level in 1995 and 2002 respectively, including a modest decrease from 2000 to 2002. Descendents form 10% of the foreign men of this age, so the difference means much more in relative than in absolute terms.

Concerning women, the experience has been similar but at a much lower level. Women found guilty of at least one crime form 1% of the total population but 1.8% of the female descendant population and 1.4% of the female immigrant population.[16]

It is a general experience that criminal activity varies considerably by age, degree of urbanization and other social and economic conditions (like for insaffiliation with the labour market). Since these conditions differ between immigrants and the population on average, these differences may in part explain some of their overrepresentation.

Table 2: Overrepresentation of male immigrants and descendents receiving penal disposals, corrected for demographic and social differences

	Percent overrepresentation
Not corrected	+50%
Corrected for differences in age	+38%
Corrected for differences in age and education	+30%
Corrected for differences in age and income	+14%
Corrected for differences in age and socio-economic differences	+4%

Source: Ministry of Justice of Denmark: Sigtelser 2004 fordelt efter indvandrerbaggrund og oprindelsesland.

15 When nothing else is mentioned the statistics refer to the male population between 15 and 64 years, as the minimum age of criminal responsibility in Denmark has been 15 in the period covered by the statistics.

16 News from Statistics Denmark 2004.

Statistics Denmark have not attempted to correct all differences at the same time, so it cannot be said whether or not there would be any difference in crime frequency if this was done, and if so how large the gap would be.

While attempting to determine whether (or to which degree) criminal activety is higher among persons with a foreign background than for persons with a Danish background, it should be considered whether the overrepresentation in registered crime is solely due to a higher level of criminal activity among foreigners *or* whether foreigners also tend to have a higher probability of detection and apprehension. The assumption that foreigners are more often caught for their crimes than Danes is founded on Danish studies as well as several research experiences from other countries.[17]

The major share of the overrepresentation of foreigners within the penal system relates to violations of the Criminal Code, mainly theft (178%), whereas rape (110%) and violence (130%), with their comparatively heightened media coverage, both have a lower degree of overrepresentation. In absolute figures 84 immigrants and 10 descendents were sentenced for sexual crimes in 2002 compared to 441 out of the rest of the population. The overrepresentation in 2002 is smaller than in 2000 concerning violence and sexual crimes. Two thirds of all penal dispositions concern the Traffic Code. Foreigners are overrepresented in breaches of the Traffic Code by 8%.

It is a general assumption that the crime rate is especially high among young descendents, but this is not really the case. Regarding 15 to 19-year-olds, the crime rate is equal for immigrants and descendants. They both have a frequency that is 72% higher than the frequency for the entire 15-19 year old offender population. In comparison, the group of 20-29 year old immigrants and descendants has a frequency which is 139% above that for the age group as a whole (2002).[18] This picture is confirmed and stressed for 2005.

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17 *Holmberg/Kyvsgaard* 2003, p. 129 conclude: "Persons with a foreign background are, in fact, more likely to be arrested and remanded in custody without a subsequent conviction than are persons with a Danish background, even when their age, gender and crimes are readily comparable." But they do not pretend to have found the explanation for it. They stick to what they can tell from their own research, which besides the statistics stems from observations of police patrols: "All previous studies on Danish police work regarding minorities agree that persons with a foreign background will often attract a disproportionate amount of police attention. They also agree that confrontations between the police and members of such groups are not entirely uncommon." And further: "Based as it is on group probability rates, this kind of police practice is self-reinforcing: the more control, the more illegal acts will be discovered. Police targeting on certain groups will yield evidence that can only reinforce the notion that these groups are worthy of special attention-and will contribute to their overrepresentation in the criminal justice system. This problem seems impossible to solve; it is inherent in proactive policing, and it does not only concern ethnic minorities."

18 Crime and national origin 2002.

Table 3: All registered crimes 2004 and 2005. Crime frequency according to gender, age and national origin

Gender	Nationality	N for all ages		Age 15-19 (%)		Age 20-29 (%)	
		2004	2005	2004	2005	2004	2005
Male	**Danish**	101,409	115,064	7.9	7.9	8.9	9.8
	Total foreigners	14,866	16,765	13.3	12.9	13.5	14.1
	Not western	12,554	13,947	13.9	13.6	16.9	17.6
	Total	116,275	131,829	8.5	8.4	9.4	10.3
Female	**Danish**	23,714	30,495	1.2	1.4	1.7	2.1
	Total foreigners	2,832	3,425	2.3	2.4	1.9	2.1
	Not western	2,050	2,448	2.3	2.5	2.2	2.1
	Total	26,546	33,920	1.3	1.5	1.7	2.4

Source: Danmarks Statistik 2004.

The tendency in the 2005 figures compared to earlier is that among the youngest offenders (15-19 years old) the difference between Danes and foreigners is becoming smaller.

To put it in short: there is a tendency of punishing juveniles more severely. There may have been an increase in registered juvenile crime, but at least to some degree this must be seen as a result of changes in laws and police strategies. There is no reasonable basis for the supposition that more severe sentences result in less crime.

Juvenile foreigners seem to be relatively more criminally active than Danes of the same age. Yet they also seem to be more at risk of being apprehended by the police. Further, the difference between Danes and foreigners shrinks when corrected for age, education, socio-economic conditions etc. In 2005 there was a slight decrease in registered crime by (especially juvenile) foreigners.

3. The sanctions system

The sanctions system in general consists of the ordinary penalties of fines and of imprisonment, which can both be imposed either in a suspended or unsuspended form (though a suspended fine is not a realistic option). A suspended prison sentence may be strengthened by the condition of having to fulfil a community service order. An unsuspended sentence may in some cases be substituted by electronic monitoring by the Department of Corrections.

These sentencing options are available both to adults as well as to juveniles down to the age of 14. However, there are both mandatory and facultative rules and practices that apply specifically to juveniles that limit the imposable length of prison sentences and also provide possibilities for diversion which are not (at least not to the same degree) possible in cases involving adult offenders.

Furthermore, there is a legally defined possibility (which is also limited in internal instructions) for the prosecutor to withdraw or drop the charges. The offender being below 18 years of age is a legal reason for charges to be withdrawn in minor cases on the condition that the offender is taken into care. Imprisonment, fines and community service orders are all regulated in the Criminal Code (sections 31-67 inclusive), while electronic tagging is regulated in the Code on the Execution of Penalties (CEP; section 78). Withdrawal of the charges is mentioned in the Code of Criminal Procedure (sections 718-728, especially section 722, subsections 2 and 3).

Even if children below the age of 14 cannot be punished and can only be investigated to a certain degree, their "criminal behaviour" can still result in legal reactions. This shall be described under *3.1*.

3.1 Reactions to offending by children

In Denmark there are different legal ways of intervention in the lives of children as a consequence of criminal behaviour (which cannot be prosecuted under Criminal Law). The "spirit" in all reactions is to do what is in the best interest of the child. Consequently the intention should not be – directly or indirectly – to punish the child, but rather to guide its behaviour into a more appropriate direction. This basic ideology is – at least from a Scandinavian point of view – a typical and important characteristic in the Scandinavian Welfare Model.

Interventions are regulated in the set of rules for Child Welfare. They may be more or less intervening or even severe. The first intervention will most typically be a voluntary preventive measure in the family, for instance by some pedagogical support organised as either group-therapy, face-to-face conversations or supervision. Intervention will gradually be stepped up following the gravity of the child's behaviour or – more likely – the gravity of the problems at home as a whole.

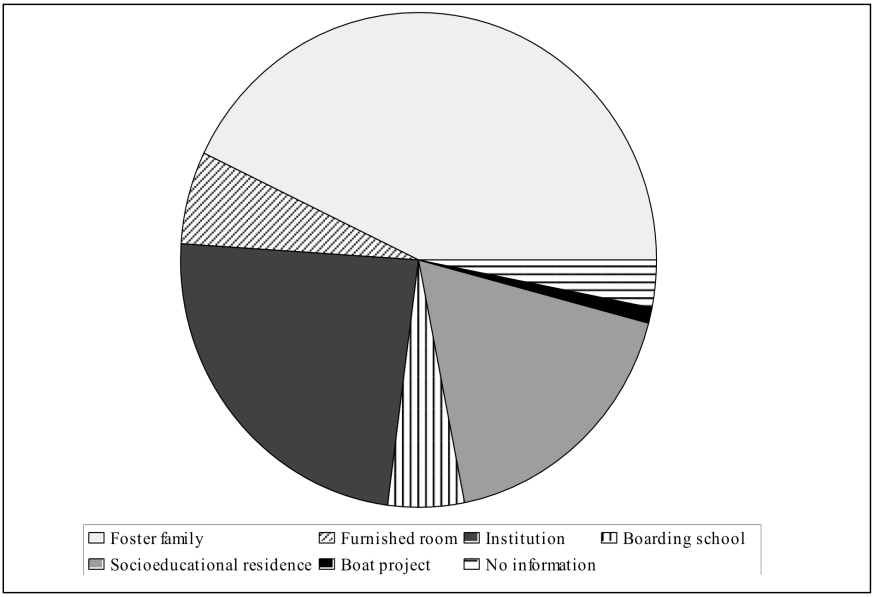
By the end of 2006[19] a total of 14,276 children below the age of 18 were residing outside home. By the end of 2007 this figure had increased to 14,960. The distribution between different types of placements was stable from the first year of statistics to the second.[20] 43% (6,372) were in foster families, 770 (5%) were

19 Børn og unge anbragt udenfor hjemmet. Årsstatistik 2006 og 2007.

20 The year 2006 was the first year ever in which Denmark had centrally organised statistics on the placing of children outside home.

in boarding schools, 923 (6%) were placed in furnished lodgings or the like, 2,749 (18%) resided in socio-educational residences and 3,591 (23%) were in a social welfare institution (141 of whom were in a so called secure unit). A small group of 62 persons was in a kind of "project" like for instance a so called "boat-project". Due to statistical difficulties it was not possible to determine the form of placement of 493 persons. *Figure 5* below breaks down the 14,960 persons below the age of 18 according to the form of outside placement they had been subjected to in 2007.

Figure 5: Main types of placements outside home of persons below the age of 18 by the end of 2007



Source: Børn og unge anbragt udenfor hjemmet. Årsstatistik 2006 and 2007.

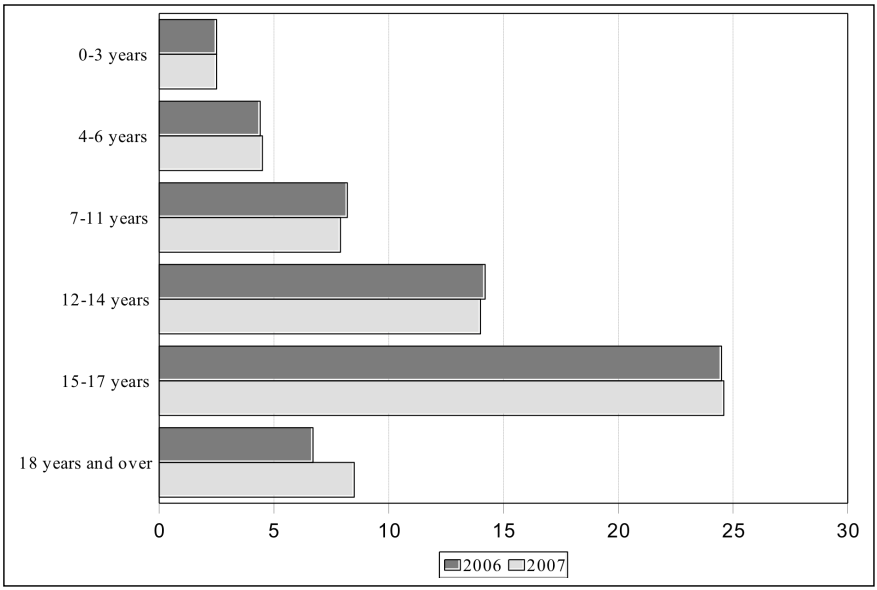
The number of persons below 18 placed outside their homes was greater at the end of 2007 than had been the case at the end of 2006 (see above). Interestingly, the number of new placements in 2007 (3,245) was smaller than the figure for 2006 (3,573), which is indicative of longer stays in the respective forms of placement.

A child below 18 years of age may be placed outside home after an agreement between him or her (depending on age) and/or the (custodial) parents. However, it may also be removed from its home environment without consenting or agreeing to it. In 2006, the acceptance rate accounted for 89% of

all placements, slightly decreasing the following year to 87%. In both years 8% of the placements were enforced despite of a negative attitude on behalf of the child or its parents. Another two to three percent of placements were based on a sentence to the so-called Youth Sanction. Finally, in a small number of cases the matter of acceptance could not be determined.

Figure 6 below shows how many children per 1,000 children in the age-group were placed outside their home by the end of 2006 and 2007 respectively.

Figure 6: Placements of children and juveniles outside home per 1,000 of the different age groups, 2006 and 2007



Source: Børn og unge anbragt udenfor hjemmet. Årsstatistik 2006 and 2007.

In 2006, about 3,600 out-of-home placement decisions were passed. Of these, 1,900 involved boys, while the remaining 1,700 saw a girl being removed from the home environment. The share of boys exceeded that of girls in all age groups except for the 12 to 14 year olds, where a total of 475 girls and 441 boys were removed from home following a decision by the social authorities.

The legal grounds for placing a child below 18 years of age away from home are laid out in the social legislation. From 2006 the local social authorities, the competent body for making placement decisions (in cases of lacking consent, the decision is made together with a judge), were ordered to register the decisive reason for making placements. In 86% of all placements, the decisive

reason for removing a child from home lay in the child's living circumstances in a very broad sense, i. e. the way the family works (or does not work) as a family as well as the behaviour of the child (school attendance, relation to crime, alcohol or drugs etc.). The remaining 14% were justified on grounds related to the family's conditions. In 11% (384) of the cases in the category first mentioned the decisive reason (or in some cases one of the decisive reasons) had been criminal behaviour by the child.

Persons aged 14-17 may end up in a social institution either because they have been sentenced to unsuspended (if they don't end up in prison) or suspended imprisonment or to a youth sanction. This age group will nonetheless have gone through the ordinary criminal procedure and have been found guilty of a crime for which the law allows such a sentence. However, at the same time such social institutions also house children of all ages who have been removed from their homes with or without the agreement of the parents (or the children themselves). There are strict legal definitions of when this is possible, for instance, if the child is suffering from abuse or neglect, or has exhibited criminal behaviour.

In 2009 and 2010 new legal rules were introduced that allow the imposition of obligations on parents to make their children behave. Parents who fail to comply with such an obligation can have their social welfare child subvention withdrawn as a consequence (for three months at a time). Furthermore, the so called "juvenile obligation" was introduced by these recent reforms. This is an obligation for a juvenile aged 12 and above to behave properly, and one of the criteria for its imposition by the welfare authorities is criminal behaviour (but without a court procedure which is only possible for juveniles who have reached the age of 14). A juvenile obligation may be combined with electronic monitoring (an electronic bracelet of the same type which is used as an alternative to imprisonment).

In a social welfare institution a 17 year old convicted juvenile may end up next door to a 17 year old child[21] that was taken away from home by the social welfare authorities. Though being neighbours the two individuals may be subjected to different regimes, for example in terms of possibilities for spending time in company with others, receiving visitors, frequenting a school outside the institution and so on.

Finally, in relation to crimes committed by children, it should be mentioned that Victim Offender Mediation until January 2010 has only been an option in some parts of Denmark, and never when the "offender" is a minor. However, Finland and Norway (*Nordic Ministries of Justice* 2000, pp. 91 and 105) have nationwide Victim Offender Mediation schemes, which may be brought into

21 When a person is removed from his/her home environment by the social authorities, he/she is defined as being a child. In the criminal law context, however, the nomenclature changes when a person has turned 14.

action in cases with children below 15 years of age. In Norway, when the "accused" is not yet 15 years old the case follows the rules of civil procedure. Consequently the child may agree to pay compensation for an "offence" for which his guilt cannot be tried in court because of his age. This setup has very much in common with a withdrawal of charges or a suspended sentence as "nobody can be ordered to appear for mediation, but the Child Welfare System stipulates as a condition for refraining from intervening with measures that the child appears for mediation" (*Nordic Ministries of Justice* 2000, p. 91).

3.2 Sanctions against juveniles without deprivation of liberty

Withdrawal of charges, fines and suspended sentences form the basis of the non-custodial punishments. Most typically the public prosecutor respectively the courts are legally encouraged to have them in mind before considering imprisonment in cases involving juveniles.

In 1998, the so-called Youth Contract was introduced in Denmark as a special condition in connection with a withdrawal of charges. The aim was to introduce a quicker and more adequate reaction to forms of offending that had not caused personal harm and that had been committed by juveniles who did not already have a substantial criminal record. By including not only the offender but also the parents and the social authorities in the preparation and signing of a contract before having it approved by the court, it was hoped that all parties (not least the parents) would feel more committed. Like all non-custodial measures the Youth Contract always contains a standard condition of not re-offending within a certain period of time. Furthermore, it places individual obligations on the juvenile to participate in certain activities, for instance to finish school and to complete a social training program. If the juvenile fulfils the period and the obligations of the contract, the event will be deleted from his or her criminal record one year after the contract was signed, i. e. practically once it has been fulfilled. "Normally" withdrawals of charges are deleted after two years.

According to evaluations, the Youth Contract does not however seem to have sped up the process markedly (*Kyvsgaard* 2004). Also, a study of recidivism after having fulfilled a Youth Contract compared to recidivism after an ordinary withdrawal of charges delivers no convincing proof that contracts in fact reduce recidivism. The research points out that, in the light of (among other things) the fact that withdrawal of charges already has a strikingly lower recidivism rate than (other) penalties this may not be all that surprising. 20% of juveniles whose charges are withdrawn relapse into crime within two years, a figure that is very close to the recidivism rates for Youth Contracts and community service orders. The re-offending rates among juveniles who receive suspended sentences or who serve a prison sentence are 33% and 48% respectively. Of prisoners who have served sufficient time in prison three months or more)

and who are consequently paroled, 65% commit new crimes within 2 years.[22] "New crimes" are defined as crimes that qualify for a penalty that is more severe than a fine (*Stevens* 2003).

Sweden and Finland have community service orders specifically dedicated to juveniles. This is not the case in Norway and Denmark, though the Norwegian CSO was replaced by a Community Penalty in 2002, which may turn out to be easier to individualise than the former CSO (*Matningsdal* 2004). Community service orders were introduced in Denmark at the beginning of the 1980s. Historically they have not been used much in cases of juveniles. However, this appears to have changed somewhat in the last two or three years. Apart from this slight tendency, more than 50% of all community service orders in Denmark as well as in Finland are issued to drunken drivers among whom there are no juveniles (*Clausen* 2007, p. 25; *Lappi-Seppälä* 2004, p. 224).

In cases of withdrawn charges as well as suspended sentences with or without community service orders, a compulsory requirement of leading a law-abiding life for the following period will always be included. In addition, a duty to comply with a number of conditions concerning residence, school attendance, work, leisure-time activities, etc. will often follow (*Storgaard* 2004, p. 191) in juvenile cases. Except for cases which result in a community service order[23] the Child Welfare System is responsible for preparing cases for court, as well as for supervision, support and control, tasks that are entrusted to the probation services when adults are involved.

3.3 Sanctions against juveniles including deprivation of liberty

Like the rest of the Scandinavian countries, Denmark ratified the UN Convention on the Rights of the Child in the early 1990s. Article 37c of this Convention states that every child deprived of its liberty must be separated from adults unless it is considered in the child's best interest not to do so. The following intends to present an overview of the legal possibilities to deprive juveniles of their liberty. This is done in part in the light of Article 37c, and partly in a general descriptive manner.

In Denmark, juvenile offenders are deprived of their liberty in prison, in a secure or open social institution, or in a so called pension administered by the Department of Corrections. Denmark has no juvenile prisons. There is one

22 The recidivism rates for CSO and imprisonment are general, i. e. do not only refer to juveniles.

23 Rigsadvokatmeddelelse (RM) 4/2007 [Instruction 4/2007 from the National Police Headquarter] section 3.3.3, p. 7.

prison for young men up to 23 years and for women of all ages. This is the State Prison in Ringe, which has about 80 cells.

Denmark has legal and administrative rules in order to secure that young criminals do not go to prison when alternative solutions are possible. The alternatives should be adequate social institutions of different degrees of security or – in Denmark – so called pensions (or boarding houses), belonging to the Department of Corrections but much more hostel-like than prisons. There are eight pensions in Denmark with a total of 150 places, which is elaborated further under section *5.* below.

The decision of placing a juvenile sentenced to imprisonment in an institution or pension is made by the Department of Corrections. Consequently the decision of moving a juvenile (back) to prison as long as the sentence has not been fulfilled is made by the same Department. The use of alternative institutions is regulated in the Code on the Execution of Penalties, section 78.

Apart from the pre-trial prisons, which are of high security standards, Denmark has two categories of prisons – closed prisons with high levels of security, and open prisons with lower security standards. All together there are about 4,000 places behind bars in Denmark.

It is obvious that the Scandinavian countries do seek to divert juveniles from ordinary prisons, but at the same time none of them definitely prohibits that convicted juveniles below the age of 18 could serve a prison sentence together with older prisoners. To some extent, 10-15 years after its ratification Article 37c CRC still looks to pose a challenge to Scandinavia.

Throughout a year, the average number of convicted juveniles being held in prisons is around 10, whereas between 150 of the same age group stay in pensions belonging to the Department of Corrections in accordance with section 78 of the Code on the Execution of Penalties. Additionally, around 10 juveniles are in pre-trial prisons on a any given day of the year.

There are different ways of complying with the Convention of the Rights of the Child. Denmark almost fully excludes juveniles from prisons, whereas Sweden has taken the consequences of its ratification by introducing "closed juvenile care" for juveniles up to the age of 18 (1999). "Closed juvenile care" is fulfilled in youth institutions and the maximum duration is four years (Swedish Criminal Code, chapter 31, section 1a). The rate of juveniles in adults' prisons in Sweden has been zero since "closed juvenile care" was introduced.

Not to be confused with the Youth Contract (mentioned above), Denmark introduced the so called "Youth Sanction" by an amendment to the Criminal Code on 1st July 2001 (Criminal Code, section 74a). Contrary to the Youth Contract, the Youth Sanction is meant for juveniles with a more substantial criminal career. It is imposed by the courts, but implemented on each individual by the social authorities. The Youth Sanction deprives persons of their liberty without placing them in prison.

This Danish sanctioning novelty was the result of a strong political demand for action against serious juvenile offending. The Youth Sanction is defined as an alternative to a prison sentence of between one and 12 months, and sometimes up to 18 months under certain circumstances.[24] It comprises three phases lasting for a total of two years. The first period must take place in secure accommodation, followed by a period in an open residential institution. Both institutional phases are managed by the Social Welfare System and not by the criminal justice system. In this context the focus is less on imposing a punishment and more on help and support. However, the means of power, i. e. for instance the legal instruments for the prevention of disorder and disciplinary measures in the institutions – not least the category of secure accommodation – are very much like those of a prison. In total, the placements in (different categories of) institutions may not exceed one and a half years, and of this period up to one year may be served in secure accommodation. The third and final phase of the Youth Sanction lasts at least six months, and involves a form of aftercare or supervision in freedom. As the length of a Youth Sanction is two years, the length of the last period of supervision depends on how much time has been spent in the institutional phases (*Kyvsgaard* 2004). As will be clear to the experienced reader, the Youth Sanction has very much in common with the youth prisons that were closed down in the 1970s after having been criticised severely for the unpredictability of the duration of the deprivation of liberty.

The Youth Sanction was imposed about 55 times in its first year of operation. An analysis of the very first sanctions imposed concludes that a major part of the sentences might have resulted in imprisonment for three months or less (*Vestergaard* 2004). This fact leads to considerations about proportionality between the offence and the imposed measure, as well as regarding equality. For instance, take a 17-year-old and an 18-year-old who commit a crime together. The court may send the 18-year-old behind bars for three months in accordance with the gravity of the crime. The 17-year-old may in turn receive a Youth Sanction, consisting of a 12 month stay in a secure (social) institution, followed by six months in an open institution, and ending with six months of supervision. This matches the expectation neither of proportionality nor of equality.

Comparing the optional reactions to a 17 year old and an 18 year old offender having committed equal crimes or even having cooperated in the same offence, it must be mentioned that they may both begin in pre-trial detention (which happens often in practice). For the 17-year-old, who is sentenced to a Youth Sanction, the period in pre-trail prison does not influence the duration of his or her institutionalisation, but for the 18-year-old, who for instance receives a three month prison sentence, the length of pre-trial period must be deducted from the prison term. Finally, there is a possibility (not least for relatively young

24 Rigsadvokatmeddelelse (RM) 4/2007 [Instruction 4/2007 from the National Police Headquarter], section 4.5, p. 2.

persons with no former sentences) for persons sentenced to three months or more of imprisonment of being released on parole. Most often early release occurs after two thirds of the sentence have been served.

Imprisonment should be used less frequently against juveniles than in general. This is common in the Scandinavian countries, but the ways in which the limitation of imprisonment is described and prescribed can differ. It may be prescribed either as advice to and possibilities of using non-custodial penalties on juveniles for more (and more serious) crimes than when the offender is an adult, or there may be age-specific fixed maximum limits for the duration of imprisonment. In some cases, i. e. in Denmark, both forms of limiting the use of penal custody on juveniles are available. The Danish Criminal Code prohibits definitely more than eight years of imprisonment for persons who are under 18 at the time of the offence (section 33, subsection 3). In 2004 one 17 year old juvenile was sentenced to eight years of imprisonment for the killing of an Italian tourist in Copenhagen.

3.4 Summary

In summary, persons below the age of 14 are not criminally responsible but may receive support from the Child Welfare System. Such support is most likely to take the form of help, supervision or an agreement to place the person in a foster home. It may also consist of being removed from home by force. Offenders over 14 and below the age of 18 may receive support from the Child Welfare System without going to court, but it is more likely that they will appear in court and be sentenced to follow the instructions of the Child Welfare System. Consequently no penal sanctions can be imposed on those under 14 and both penal sanctions and social support may be imposed on those between 14 and 17 (inclusive).

The possible kinds and intensity of support are the same if founded on criminal behaviour (with or without being sentenced), alcohol-/drugs abuse or severe problems in the home environment. In all cases the support starts at a very minor degree of intervention and can be stepped up gradually until a removal from home (without the consent of the person in question or the parents) becomes unavoidable.

The social authorities are responsible for supervision, support and providing advice on relevant circumstances when a juvenile is accused and sentenced. This applies to supervision in relation to a conditional sentence as well as supervision in relation to early release from prison.

It is a well-known problem that investigation and court procedures take time. Among other things, the intention behind the introduction of Youth Contracts in Denmark was to speed up the process. The other main ambition was to lower the risk of recidivism by creating greater and closer commitment by the juvenile, the parents and the social authorities. To date, it has not yet been convincingly proven that any of these aims have been fulfilled. On the other

hand, it cannot be ruled out that juveniles on a Youth Contract may be having a good and constructive time.

From the point of view of ideology, skills and social training, the prison staff is mainly focussed on security, whereas the staff in social institutions are more specialised in social skills, individual needs, education and so on.

Social authorities act within the ideological framework of "offering help and support". The penal system, on the contrary, identifies itself with "conviction", "security" and "force". This leads to different attitudes towards (or views on) fundamental legal principles like proportionality and equality. While in the penal system proportionality is a question of the relation between offence and punishment the social authorities seem to stress proportionality between individual needs and practical/economical possibilities for the authorities to offer help. Regarding the issue of equality, the penal system measures equality as a question of equal punishment for equal crimes, while the social authorities measure equality in the distribution of the possible amount of help, resources and economical support in equal portions. This causes unexpected and unintended risks of inequality and a lack of proportionality, which is likely to be best exemplified by the Danish Youth Sanction.

The integration of social training and punishment does not automatically implicate a more lenient or humane reaction. Different from the court and the penal system, the social authorities neither proportionate the specific measure to the specific offence, nor do they (at least not always) define length and elements of a measure beforehand. In some (the majority of all) cases the only time limit is a general maximum period of institutionalisation or supervision that is prescribed in the court decision within the maximum legal limits, like in the case of the Youth Sanction.

From the point of view of legal rights one important difference between prison and social institutions is the fact that the court always decides the duration of the sentence, whereas social workers sometimes have a great deal of influence on the duration of stay in a social institution.

Finally, even if the prisons do mainly have single-cells the UN Convention on the Rights of the Child might still be on the agenda. Within different sets of rules it is possible in all the Scandinavian countries, including Denmark, that a juvenile serves a sentence in an ordinary prison under ordinary conditions. In practice thought the number of juveniles staying in prisons as well as pre-trial prisons (2005: roughly 10 in each category on any day of the year)[25] will always be minimized, and juveniles will always profit from extraordinary attention from the prison staff.

25 Department of Corrections, statistics 2005, p. 24.

4. Juvenile criminal procedure

Section 4.1 below is a brief description of the investigation and registration rules and practises concerning child-offending. As children below the age of 14 cannot be taken to court and sentenced, section *4.1* does not mention the court procedure. The court procedure is described in section *4.2*, which also covers the investigation and registration of crimes by juveniles.

4.1 Investigation and registration of children's crime

Even if there is no legal possibility for criminally prosecuting children below the age of 14, there are some practices concerning the investigation of children's behaviour when criminal offences have been committed by children or by somebody else while children were present. To some degree, this is legitimated by the fact that persons above the age of criminal responsibility may be involved in the same offence and they – for their part – should be held responsible. Furthermore, there may be a need to clarify the scope of the crime and to secure that items are returned.

It is a consequence of the fact that children cannot be accused that they have no legal defence. Defence under investigation which is an option for juveniles and adults is also not possible for children who are under the suspicion of having committed a crime. In order to minimize the risk of harm and maximize the security of the child against whom criminal investigation takes place, the parents and the social welfare systems are to be notified and are expected to be present during interviews with – or interrogation by – the police. This is a common Scandinavian attitude that is laid out in different formulations of rules. There are exceptions, however, as for instance in Denmark, where notification may be postponed if it is necessary in the interest of the investigation (*Nordic Ministries of Justice* 2000, p. 108).

As a consequence of the fact that the behaviour of a child cannot lead to legal conviction, the possibility of instigating legal inquiries against a child are limited. Though there is the legal possibility of detaining a child when necessary in order to clear up a criminal case, a child may under no circumstances be taken into custody.

In Norway everybody, including children, may be taken in by the police for up to four hours. This time limit is absolute. The measure is of an orderly, not a penal nature (*Nordic Ministries of Justice* 2000, p. 91). There is thus no requirement that the person brought in must satisfy the conditions of criminal responsibility – neither concerning guilt nor age. Likewise the Danish Police Code (no. 444 of 9 June 2004) provides the possibility of detaining somebody (regardless of age or guilt) for not more than six hours in order to prevent the person from threatening public order or personal health. If a child is under the

influence of alcohol or drugs it may be taken care of by the police by being locked up. But if a child is not yet 12 years old it cannot be placed in detention.

The "six hour rule" in the Danish Police Code has much in common with the Norwegian "four hour rule". However, the Police Code does not change the general rule in the Danish Constitution that bestows upon everybody who is arrested by the police the right to see a judge within 24 hours. It is not a legally defined presumption for being arrested that a person has reached the age of criminal responsibility (Procedural Code, section 755). When a child is arrested, it must be kept in an office or the like and may never be placed in a jail or prison cell. Children will, in any case, be let out before 24 hours have passed as there is no legal possibility for the judge to decide to detain them any longer.

When a child in Denmark is suspected of a serious crime, it will be noted in the investigative record. This is a file with no public access that functions as a tool for the police in their investigation of crimes. The amount of such notes about crimes committed by children is stable. Over a 10-year period from 1992 to 2002 between 9 and 11 per 1.000 children aged 10-14 years were registered each year (*Børnekriminalitet* 1992-2002).

Sweden is the only Scandinavian country where a court possesses the legal possibility of deciding whether a child is guilty of an offence (trial of evidence) or not. This is a facultative option which the prosecutor may put into action at the request of the social welfare authorities, the parents or custodial parents, and is presupposed to be reserved for cases where a child is suspected of a very serious crime. The court shall state whether or not the child is found guilty of the crime in question, but can naturally issue no reaction. The possibility of trying the guilt of a child in court has almost never been used in practice (*Nordic Ministries of Justice* 2000, p. 96).

At first sight it seems odd and contradictory to prove the guilt of a person who cannot be punished, and without doubt the labelling of the child as "guilty" may have severe consequences for its future. The system, however, may be defended from other perspectives. It may be argued that the purpose of using the trial of evidence is mainly to prove the innocence of the child, and this will most definitely be in the interest of the "accused" child e. g. in case the child, though innocent, has already been found guilty by public opinion. There may also be mitigating circumstances which would never come forward if the case was not tried in court.

Mediation or Victim-Offender-Programmes are available in different Scandinavian countries. In Finland as well as Norway and since January 2010 also Denmark such programmes may be used in cases "against" minors as well as persons older than 14 or 15 (*Nordic Ministries of Justice* 2000, pp. 105 and 91). In Norway, when the "accused" is not yet 15 years old the case adheres to the rules of civil procedure. Consequently the person may agree to pay compensation for an "offence" for which his guilt cannot be tried because of his age. Furthermore, the total setup has very much in common with the withdrawal of

charges or a conditional sentence as "nobody can be ordered to appear for mediation, but the Child Welfare System stipulates as a condition for refraining from intervening with measures that the child appears for mediation" (*Nordic Ministries of Justice* 2000, p. 91). For more detail on victim-offender programmes in Denmark see sections *3.1* and *4.2*.

4.2 Investigation and court procedure in cases of juvenile offenders

In the case of Denmark it makes no sense to talk about juvenile police or Juvenile Courts. Apart from the Maritime and Commercial Court the Danish court system has only one tier. In the Local Courts (City Courts), civil cases as well as criminal cases are treated by the same judges in the same rooms. In principle, neither police officers nor juridical or lay-judges need further education or training to act in a juvenile criminal case. But as an element of the state budget for 2010 (*Finansloven*) it was decided by the majority in the Parliament to introduce so called "juvenile-judges" in all cases towards 14-18 years old offenders. The new category of judges is meant to be ordinary judges trained to keep an extra eye on non-custodial measures. On the other hand all existing punishments, including imprisonment, are – like always – available to all age-groups of offenders.

Apart from this new decision, which is not (yet) implemented in the Procedural Code, Denmark (as well as the other Scandinavian countries) has one basic set of general rules on criminal procedure, i. e. investigation and court procedure, in all criminal cases – no matter how old the suspect is as soon as he/she is 14 years old or older. It is, for instance, a general rule in all Scandinavian countries that a suspect in a criminal case has the right to legal defence[26] from the moment where he/she is charged. It is furthermore a general rule in Scandinavian countries that suspects have the right to refuse to talk to the police as well as in court, and they cannot be punished for lying to either of the two authorities.

The police and the judges are, however, obliged to be aware of a few internal instructions as well as legal and practical supplements to the general rules in order to maintain specific needs and interests of charged or accused juveniles.

The concrete supplements to ordinary procedure differ from one Scandinavian country to another. It is a common rule, however, that the police are obliged to inform the Child Welfare Services (Social Welfare System) whenever an offence that has allegedly been committed by a juvenile is being investigated. This obligation often includes the duty to invite the authority (and/or the parents) to be present during questioning. In some of the bigger Danish police districts the

26 This is laid down in section 730 of the Danish Code of Criminal Procedure.

police have formed a subgroup that especially focuses on investigation juvenile cases.

In Sweden, for instance, the parents – or other adults caring for the juvenile – must be informed at the stage of suspicion. They must also be convened for the questioning of the juvenile. The social authorities must be informed if there is a possibility that the juvenile has committed a crime punishable with imprisonment. Furthermore a preliminary investigation against a person under the age of 18 must be conducted by a person particularly suited for this work, and preliminary investigations against juveniles must be conducted at particular speed in Sweden (*Nordic Ministries of Justice* 2000, p. 97). Finland has similar rules to Sweden (*Nordic Ministries of Justice* 2000, p. 101).

In Denmark, however, the police are only legally obliged to inform the social authorities and – if possible – invite them to be present at questioning in cases where the charge relates to violations of the Criminal Code, or where the offence is punishable with imprisonment according to any other law. Such information is not required of the Danish police, however, in cases of questionings in connection with apprehension of the suspect during or in direct connection with the committing of the offence, provided that the punishment in the concrete case will be no more severe than a fine (*Nordic Ministries of Justice* 2000, p. 111). During the investigation juveniles may be taken into pre-trial detention and even solitary confinement (total isolation from other people apart from the legal defence and prison staff) in accordance with the same legal conditions as adults. In practice the authorities make efforts to find alternative placements to avoid juveniles from being kept in ordinary custody (see section *10.* below). Since 1st July 2008[27] the Danish Procedural Code has had time-limits for pre-trial detention. Unless the court finds very specific reasons, nobody may be held in pre-trail detention for longer than six months if the charge against the offender cannot result in more than 6 years of imprisonment. If the charge can possibly lead to more than 6 years of imprisonment, the maximum duration of pre-trial detention is one year.

Regarding juveniles below the age of 18, the limits are four and eight months respectively, depending on the possible sentence being for up to or more than six years. In juvenile cases, however, specific reasons may also allow for longer pre-trial imprisonment.

The time limits for solitary confinement in pre-trial detention can be found in section 770c of the Procedural Code. Solitary confinement must be decided explicitly in court and may, if the suspect is under the age of 18, never exceed four weeks unless there is a charge of activities against the State. Furthermore, there is a general time-limit of two weeks of solitary confinement if the charge can in no case result in a sentence of four years of imprisonment or more. This also applies to juveniles.

27 Amendment to the Procedural Code no. 493, now section 768a.

In Norway there is a rule that explicitly excludes the possibility of arresting or remanding persons in custody under the age of 18 except for situations where it is especially required. However, juveniles as well as adults may be held according to the "four hour rule" and in this case there is no special rule on informing the social authorities or the parents.

While preparing a juvenile case for court, the social authorities – instead of the Probation Service – are responsible for examining the offender's personal background and for providing advice concerning possible conditions of a conditional sentence. The only exception from this is in those (few) cases where the conditions are considered to be a community service order. In those cases the Probation Service is also put in charge of the preparation for the court appearance, finding a relevant community service place, and for providing supervision during the implementation of the CSO.

As mentioned above it is the main rule that a person – irrespective of age – has the right to legal defence from the time when he/she is charged by the police. Furthermore, there are certain situations during the investigation in which the court must appoint a legal defence. The more relevant examples for such situations are firstly when the prosecutor asks the court for permission to take secret investigative steps such as phone tapping. If the court permits such steps (first and foremost depending on the degree of suspicion) it is obliged to appoint a lawyer for the suspect. The appointed lawyer may or may not subsequently become the suspect's legal defence should prosecution follow.[28]

Secondly, legal defence must be appointed in case the prosecutor asks the court to take a person into pre-trial detention.[29] Of course, when a person is taken into pre-trial detention he/she is more than likely to be well aware of the situation at hand and may have already chosen a legal defence counsel. In that case the court is not obliged to appoint one.

When the investigation has come to an end and the case is taken to court, a legal defence counsel must be appointed in all cases where lay-judges or a jury are present.

When a suspect confesses his/her guilt in advance this fact enables a quick and speedy procedure without lay-judges. This requires the question of legal defence to be considered seriously. If the defendant is in pre-trial detention up until the court procedure, legal defence is mandatory even in case of a full confession. On the other hand, if the defendant was not in pre-trial detention and makes a full confession in court, a legal defence counsel is not mandatory if the court finds it proper to act without one.[30] The same applies for cases without a confession and without any risk of a conviction to more than a fine. In the cases

28 Procedural Code, section 784.

29 Procedural Code, section 731, subsection 1.

30 Procedural Code, section 831, subsection 1.

where legal defence is not mandatory it must be offered explicitly, i. e. the defendant has the right but not the duty to have a legal defence.

The main reason for a defendant to refuse legal defence is the issue of costs. Legal defence is always mandatory in the Courts of Appeal (*Smith et al.* 2008, p. 275 f.).

Roughly spoken, the costs (which include the salary of the defence lawyer, and expenses for medical and technical assistance, but exclude salaries of interpreters) must be covered by the suspect if he/she is found guilty, and covered by the state if the verdict is not guilty. If the offender is not able to pay immediately (which is often the case) the state will temporarily cover the costs and demand the money at a later date, maybe after the sentence has been served. The sum to be paid is decided in court immediately after sentencing and the age of the sentenced person is not a mitigating factor in this regard. Thus, juveniles and adults can both be obliged to pay (*Smith et al.* 2008, p. 881 f.).

It is laid down in Article 65 of the Danish Constitution that laymen should be involved in the criminal court procedure. Accordingly, both lay judges and juries are present in both the Local Courts as well as in the Courts of Appeal.

Following the reform of the Danish court system that was implemented step by step between the 1st January 2007 and 2008,[31] the absolute majority of criminal cases begin in one of the 24 Local Courts, and lay judges must be present if there is the possibility of a penalty more severe than a fine being imposed, and the defendant does not confess. In cases where the penalty is likely to be more severe than a fine but not more than four years of imprisonment, one juridical and three lay judges must be present. The juridical and the lay judges each have one vote in the determination of guilt as well as regarding sentencing.

Furthermore, if there is a possibility of imprisonment for four years or more there will be three juridical judges and six jury members in court. A suspect can only be found guilty if four jury members and two juridical judges cast their vote in favour of a guilty verdict. In the sentencing phase, the jury-members have one vote each and the juridical judges have six votes altogether, i. e. two votes each.

A Local Court decision may be appealed to one of the two Courts of Appeal and – in some cases and only after special permission – to the Supreme Court. The constitution of the Court of Appeal depends on the constitution of the court in which the initial decision was made. Where lay judges were present in the Local Court, there will be three juridical judges and three lay judges in the Court of Appeal. Each of them has one vote.

In the more serious cases which were treated as jury-cases in the Local Courts three juridical and nine jury-members are present in the Court of Appeal. In appeal cases, regarding the question of guilt, each jury member and each judge has one vote, but guilt can only be confirmed with the votes from at least

31 Newest announcement of the Procedural Code in its full length.

six jury members and two judges. Regarding sentencing in appeal cases each jury member has one vote and each judge has three votes. If the votes are equal the result will be the alternative which is better for the defendant.

Courts of Appeal can retry both the sentencing as well as the investigation of evidence, while the Supreme Court is limited to re-sentencing. Lay-judges or juries are never part of the decisions in the Supreme Court.

Court proceedings are always open to the public unless the court agrees to one of the parties' claims for a legal degree of secrecy, which can be that no names must be mentioned in the media, that the media may be present but not write a report or that proceedings be conducted behind "closed doors". The legal reasons for keeping the public at a distance most typically lie in protecting the victim (i. e. a child having been sexually abused). Other reasons can be to hide the identity of a witness, for instance, if the witness is a police officer with special tasks, or the witness is a civilian who may have reasons to fear for his/her own security if he/she speaks in court, RPL § 856 (*Smith et al* 2008, p. 631 f.). It is also a legal reason for the closing of the doors or the prohibition of reporting from court if the defendant is below the age of 18.[32]

It is most common that victims appear in court and claim damages. When the criminal case has been closed the judge immediately fixes the size of damages to be paid by the offender (*Smith et al.* 2008, p. 774). If criminal guilt could not be established it is sometimes possible for a "victim" to initiate a civil case to claim damages. This has for instance occurred in cases where police officers had been found not guilty of violence under arrest, but were afterwards obliged to pay damages in court (*Smith et al.* 2008, p. 950). Besides claiming for damages or where the victim is also a witness, victims play no role in criminal courts.

Victim-offender-programmes are to be implemented nationwide in Denmark since January 2010, and contrary to the previous local programmes they are going to be an option in cases with minor "offenders", i. e. in cases where the suspect is not yet 14 years old. Furthermore, these programmes are not used as alternatives to an ordinary court procedure, but only as a supplement. There is nothing in the concept of mediation which indicates that it should be specifically directed at juveniles, and there it is not to be classed as a means of diversion. When a person above the age of criminal responsibility has passed a victim-offender-programme he or she then has to go through a court procedure, and the rules on mediation make no provision for a reduction in sentence. Victim-offender mediation is also mentioned above in *Sections 3.1* and *4.1*, and in *Section 5*. below.

32 Procedural Code, section 29, subsection 3, 1) and section 30, 1).

4.3 Summary

The overall aim of all criminal investigations is to find the truth and to prove it, and juvenile crime is no exception to this. Nevertheless, there is no doubt that even if a person has passed the age of criminal responsibility, and with there being no procedural system specifically for juveniles in Denmark, effort is made to divert the juvenile from the ordinary system. The focus is kept on the perspective of help and support instead of punishment. On the other hand, where diversion is deemed the wrong solution, it is possible that even a 14-year-old ends up in prison (see *Section 3.3* above and *Section 12* below on the issue of prisons).

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

Informal ways of dealing with juvenile delinquency are legalised by the delegation of discretionary powers to local authorities to decide in each concrete situation.

The prosecutors in Local Courts, who in practice are closely linked to the police,[33] have limited – or at least legally described – discretionary power in the early stages before a case comes before the court. In some cases the police have the power to issue a juvenile with an enjoinment (a warning), to withdraw the charges, or – if this is an option in the concrete local area – to encourage victim-offender mediation. Furthermore, there is the possibility of "closing" very minor cases.

An enjoinment (warning) is not mentioned in the law or in the statistics. In practice, the police tell a person that what he/she has done is not acceptable and that he/she might be fined, but that in this case nothing more will happen if the behaviour is not repeated. The enjoinment is issued in the context of a conversation, at which the parents may also be present. Nothing about practice or regulations in relation to enjoinments is registered.

"Withdrawing charges" may be described as semi-formal. On the one hand they are described and defined in the Code of Criminal Procedure in §§ 722 and 723. On the other hand, however, the prosecutor is also entrusted with a certain degree of discretionary power. Yet an obligatory element of withdrawing the charges is that the person does not re-offend within a period of one or two years.

The decision on whether or not to withdraw the charges is ultimately made by the prosecutor, while the individualized conditions must be confirmed in

33 In Denmark the prosecution is organised as follows: The police are responsible for all criminal investigation. In relation to Local Courts, however, the head of the police is also the head of the prosecution (academic jurists). The majority of all criminal cases start in Local Courts.

court. When everything is clear this is a very short and informal process. Warnings and withdrawal of charges are both forms of diversion from the court, and thus from ordinary punishment.

In accordance with the diversion strategy, strong indicators for targeting these measures are an offender's young age, cases involving minor crimes, and a short criminal history.

1995 withdrawal of charges and closed cases formed:

- 525 out of 2,680 (20%) dispositions towards 15 years old persons per 100,000 of the age group,
- 1,161 out of 6,110 (19%) dispositions towards 16-year-olds,
- 1,289 out of 6,642 (19%) dispositions towards 17-year-olds and finally
- 399 out of 3,764 (11%) dispositions per 100,000 inhabitants of all ages in Denmark.

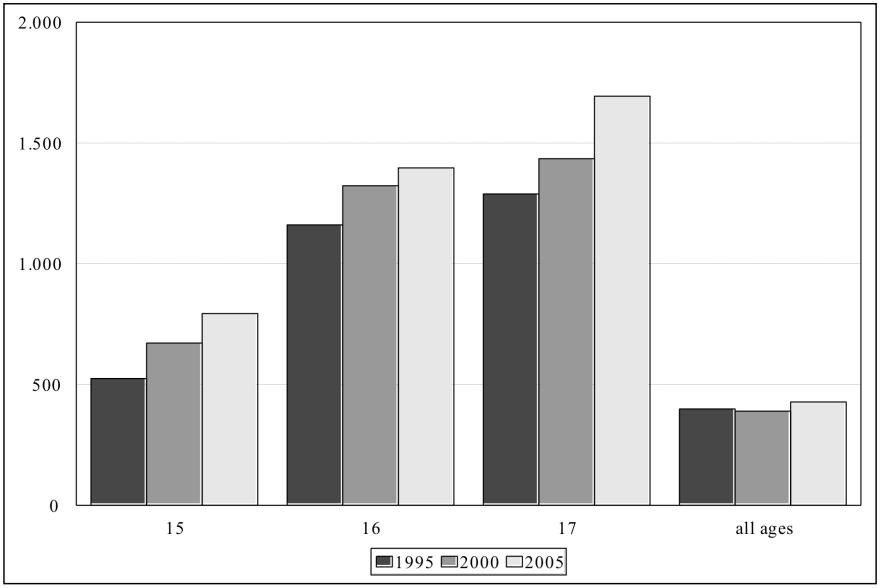
2000 withdrawal of charges and closed cases formed:

- 672 out of 3,096 (22%) dispositions towards 15 years old persons per 100,000 of the age group,
- 1,323 out of 5,738 (23%) dispositions towards 16-year-olds,
- 1,435 out of 6,376 (23%) dispositions towards 17-year-olds and finally
- 390 out of 3,737 (10%) dispositions per 100,000 inhabitants of all ages in Denmark.

2005 withdrawal of charges and closed cases formed:

- 794 out of 3,892 (20%) dispositions towards 15 years old persons per 100,000 of the age group,
- 1,397 out of 8,449 (17%) dispositions towards 16-year-olds,
- 1,694 out of 9,386 (18%) dispositions towards 17-year-olds and finally
- 428 out of 4,974 (8%) dispositions per 100,000 inhabitants of all ages in Denmark.

Figure 7: Withdrawal of charges and closed cases per 100,000 inhabitants in each age group



Source: Criminality 1995, Danmarks Statistik. 1996. Criminality 2000, Danmarks Statistik. 2001. Criminality 2005, Danmarks Statistik. 2006.

Even though the use of lenient dispositions against juveniles has increased, the total number of all dispositions has increased even more, so that the share of lenient dispositions tends to have decreased (see *Figure 8* below).

Victim-Offender-Mediation is not an alternative to court and punishment, but rather an informal supplement to the traditional and formal treatment of a criminal case. The programme is initiated and run by the National Crime Prevention Counsel, but the police/prosecutor decides if a case is to be referred for mediation. This demands that both parties (victim and offender) agree to this option. Furthermore, until recently it required that the crime was committed within the geographical area in which the programme was active. This meant the island Seeland outside the capital of Denmark, Copenhagen and one of the police districts in Copenhagen were included in the programme. Since spring 2009 there has been an ongoing debate about whether mediation should in future be seen as a supplement or as an alternative to criminal procedure. It has now been decided to keep the program as a supplement to criminal justice.

5.2 Summary

Informal dispositions are founded on discretionary power delegated to an administrative authority by law. Before the juvenile comes to court the discretionary power lies mainly with the social authorities, the police and the prosecutor (police and prosecutor are located and organised together). They must decide if the case should be closed or a conditional withdrawal of charges should be considered.

6. The sentencing practice – Part II: The juvenile court disposals and their application

The absolute number of criminal court disposals in Denmark increased from 143,806[34] in 1990 to 173,706 in 2007. The increase was not completely stable. The peak of the period was 2005 with 218,974 disposals.[35] It is by all means reasonable to assume that the decrease from 2005 to 2007 can in part be attributed to wide ranging reforms of police organization and court structures, which will have had a negative effect on efficiency in the stated period.

From 1990 to 2007, court disposals can be broken down according to age groups as follows: 11% to 13% of the disposals concerned 15 to 19-year-olds (with the exception of 1990 where the figure was 16%). In 1990, 19% of all court disposals were issued against 20 to 24-year-olds. This share decreased almost constantly to 14% in 2006 and 15% in 2007. Contrary to this, the share of dispositions concerning the 40-49 age-group increased from 15% in 1990 to 20% in 2007. A similarly significant increase can be observed for persons aged 50 and above, whose shares rose from 10% to 17% in the highlighted period.[36] The average age of all law-breakers who have received a criminal disposition is over 30 years, with a rising tendency (2007: 34.7 years).

The numbers above cover dispositions for breaches of all kinds of laws connected to criminal responsibility. On average, the age of persons who are sanctioned by the courts for breaches of the criminal law is always lower than the age of persons who receive a court disposition for breaking other laws such as the Road Traffic Act or the Acts on taxes, environmental protection, protection of safety in the workplaces etc. The difference in average ages is at its

34 This number only includes court disposals ordered against individuals. About 2,000 sentences against companies are not included. Also, one individual may have received more than one disposition in the same year.

35 Danmarks Statistik 2000, 2003 and 2008.

36 Danmarks Statistisk 2001 and 2008.

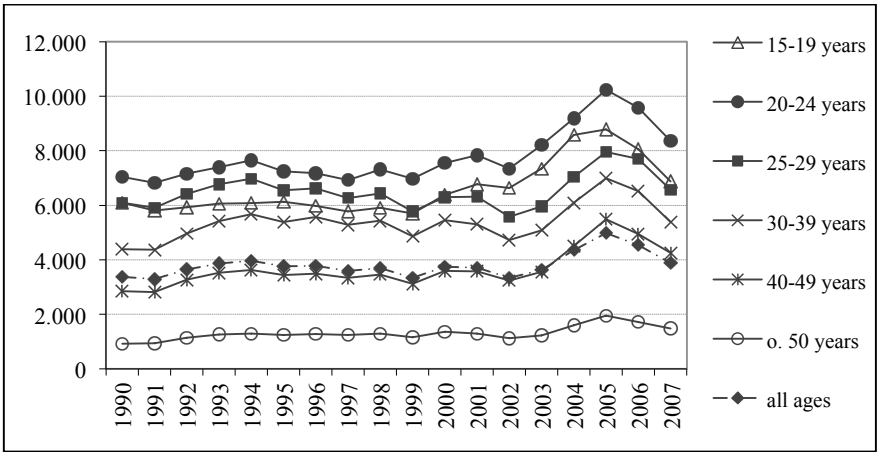
smallest when comparing dispositions issued for breaches of the criminal law and those ordered for breaches of the Act on the Prohibition of Drugs.[37]

In spite of an average age over 30, there is no doubt that young people are more criminally active than older people. *Figure 8* below shows that in the years 1990-2007 the 20 to 24 year olds were consistently and markedly the age-group that received the highest number of criminal dispositions per 100,000 of the total age group. Since 1999 the 15 to 19-year-olds have been in second position and have even increased the gap to the 25 to 29-year-olds. The average age for all criminal dispositions has been consistently rising throughout the highlighted period up to 2005, coming very close to the number of dispositions for the 40 to 49-year-olds.

From 2002 to 2005 the number of criminal dispositions increased for all age groups, followed by a subsequent decline from 2005 to 2007. As mentioned above, there is no doubt that this fall can to some (a large) extent be explained by decreased efficiency on behalf of the police and the courts due to reorganization.

Figure 8 shows the development per 100,000 in each of the age groups (not absolute numbers).

Figure 8: Criminal dispositions per 100,000 in each age-group

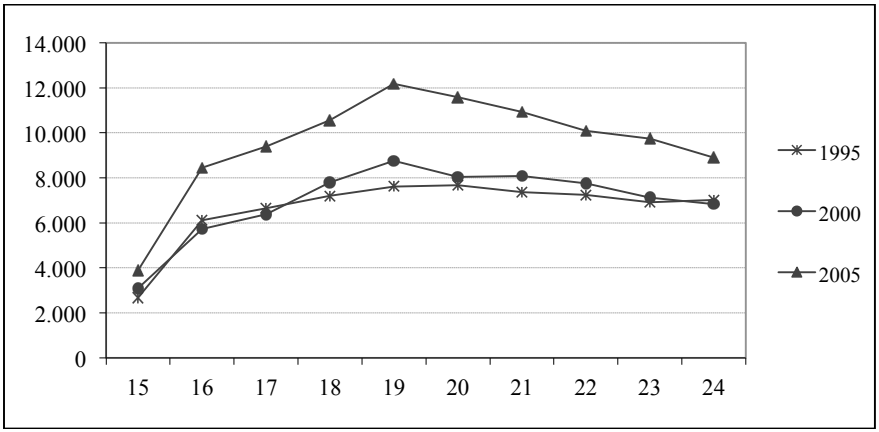


Source: Danmarks Statistik 1999, 2000, 2003 og 2008.

37 The Act on the Prohibition of Drugs (or The Drugs Act) is the so called "soft" drugs rule (maximum two years of imprisonment). The "hard" drugs' rule is § 191 in the Criminal Law.

Taking a closer look at the criminal court disposals issued against the youngest age groups in *Figure 9* below, we can state the following: firstly, there is a visible peak at the age of 19. Secondly, the level of 2005 is markedly higher than the levels of 1995 and 2000, which are close to equal though with a slight sign of increase from 1995 to 2000.

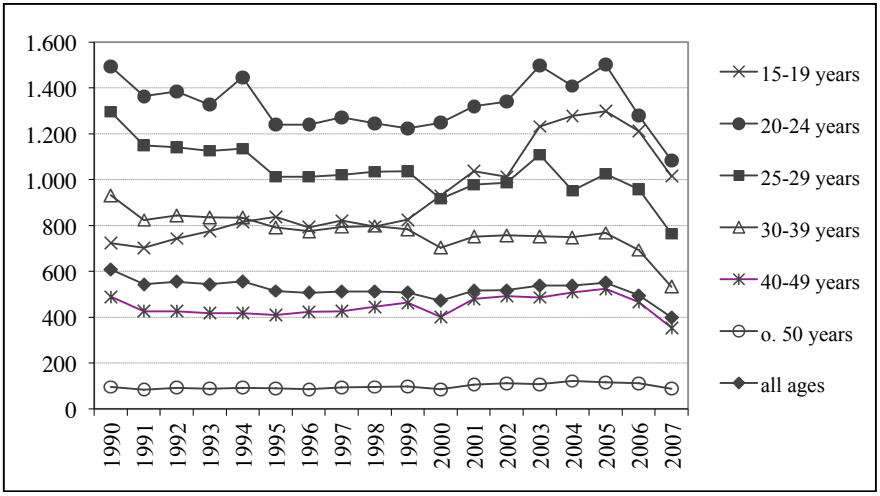
Figure 9: Criminal dispositions against 15 to 24 year olds per 100,000 in each age group; 1995, 2000 and 2005



Source: Danmarks Statistik 1996, 2001 and 2006.

There are different legal criminal dispositions. If we concentrate briefly on the more severe dispositions that are available to the courts, it becomes apparent that young offenders form a larger share than the older age groups. This is connected to the fact that the more severe dispositions are more often related to breaches of the Criminal Law, which contains the offences that juveniles more typically commit, such as theft, assault, criminal damage etc. Furthermore, as a result of political decisions, the criminal justice responses to, for instance, violence have seen intensifications in recent years.

Figure 10: Sentences to imprisonment per 100,000 in each age group



Source: Danmarks Statistik 1999, 2000, 2003 and 2008.

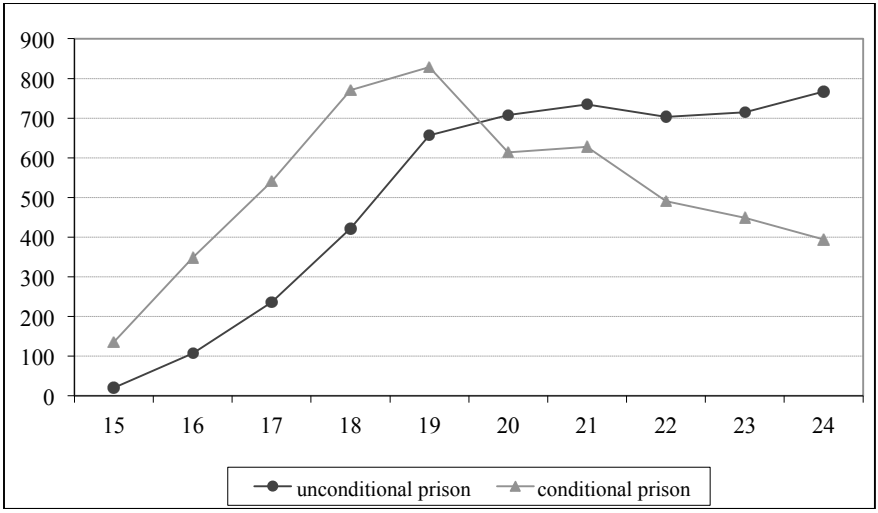
Figures 11a-c below show the number of conditional and unconditional prison sentences that were imposed in the years 1995, 2000 and 2005 per 100,000 inhabitants of the different age groups. When compared across all three figures, it becomes evident that the overall levels of the curves have been on the increase over time. This applies for both conditional and unconditional imprisonment.

For 1995 the curves are almost parallel up until the age of 19. Above that age, the curves diverge, with conditional sentences decreasing and unconditional sentences increasing. As can be seen in *Figure 11a*, unconditional prison sentences were only very rarely imposed on 15 year olds in 1995 (with a rate of 20 per 100,000).

Despite the fact that the rate of unconditional prison sentences issued against 15-year-olds was ever so slightly higher in 2000 compared to 1995 (39 per 100,000), the overall trend for this form of sanction was very similar in 1995 and 2000 regarding persons aged up to 21. After that age, in the year 2000 unconditional sentences decreased (which was not the case in 1995) and the rates of conditional and unconditional imprisonment in 2000 showed a noticeable degree of convergence (*Figure 11b*).

The levels for 2005 as indicated in *Figure 11c* were markedly higher compared to the years before. The rate of the unconditional sentences against 15 year old juveniles (85/100.000) has more than doubled compared to 2000, and had increased almost four-fold compared to 1995.

Figure 11a: Conditional and unconditional prison sentences per 100.000, in each age group, 1995



Source: Figures 11a-c: Danmarks Statistik 1996, 2001 og 2006.

Figure 11b: Conditional and unconditional prison sentences per 100.000, in each age group 2000

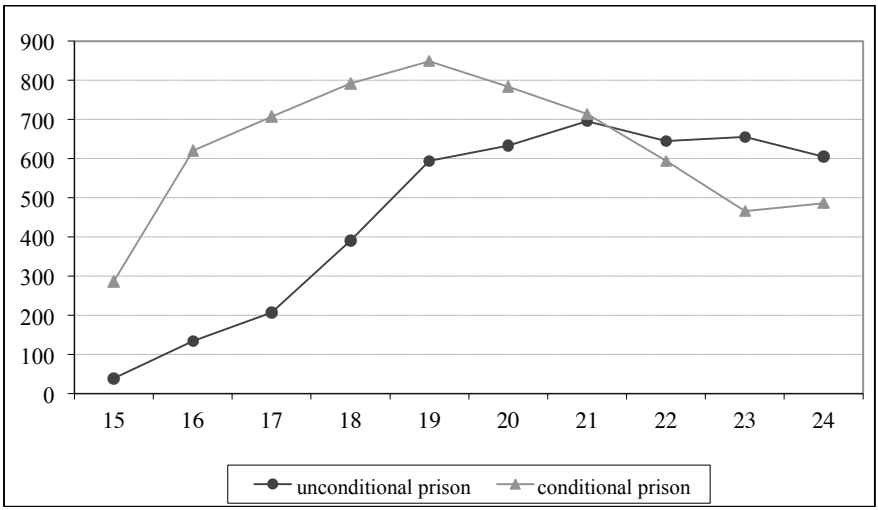
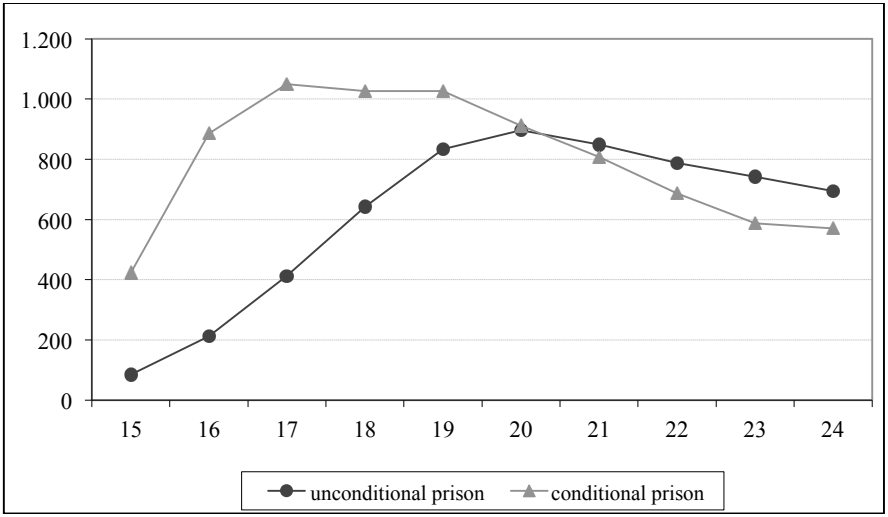


Figure 11c: Conditional and unconditional prison sentences per 100.000, 2005



In addition to prison sentences, the Youth Sanction (see section *3.3* above) must also be regarded as a severe sentence. In the official Danish crime statistics (Criminality, Danmarks Statistik) it is in some cases included in the unconditional prison sentences. This is not without good reason, as the Youth Sanction is applied in cases of serious offending by juveniles who are in substantial need of (social) treatment. Since its introduction, the application of the Youth Sanction has seen noticeable increases (see *Table 4* below).

Table 4: The number of sentences to Youth Sanction, from 2001 to 2006

Period/Year	Sentences to Youth Sanction
1 Jul 01 – 31 Dec. 02	77
2003	72
2004	98
2005	102
2006	114
2007	102

Source: Danmarks Statistik 2006, 2007 and 2008.

To briefly recapitulate, from the statistics presented thus far we can conclude that the overall experience in Denmark has been an intensification of the sentencing of juvenile offenders. What these data do not tell us, however, is how the sentences are carried out (see in this respect below).

After court, a variety of informal ways of dealing with juvenile delinquency may come into force. Ways of more or less informal diversion are available in case a juvenile is sentenced to either conditional or unconditional imprisonment. In both cases, discretionary administrative powers may influence the concrete execution of the penalty.

Where a juvenile aged 17 years or younger "qualifies" for unconditional imprisonment, the court may sentence him/her to a Youth Sanction (see section *3.3* above) and thereby divert him/her to the Child Welfare System. In doing so, the court only gives directives on the maximum duration of the "institutionalization phase" of the sanction. Besides that the two year period is ruled by administrative and pedagogical authorities.

The court may also sentence a juvenile to imprisonment knowing that, due to the age of the offender, strong efforts must be made in order to keep him/her out of prison. One instrument to keep juveniles out of prison is § 78 CEP, which says that a convicted person may temporarily or for all or the remainder of the term of sentence be placed in a hospital, foster care, in a suitable home or a social institution if, for instance, there are (due to the convicted person's age, health or special circumstances) special reasons for not placing or keeping him/her in prison. There is no doubt, theoretically nor practically, that young age is a reason in itself to arrange alternative placements, and juveniles are often taken directly to a social institution or pension (see more about pensions below) without ever entering the prison in which they formally are to be serving the sentence. General conditions for placing a person in an alternative institution, including pensions, are that he/she (or his/her parents if a juvenile is not yet 18 years old) accepts the arrangement, that he/she does not commit further crimes and that the public's trust in justice will not suffer from it.

A prisoner (or a person sentenced to imprisonment) may be placed in a pension immediately from court as pensions are a combination of homes and institutions run by the Department of Corrections. Alternatively, he/she may be placed in an institution in the resort of the health or the social security system. This is formally more complicated because other authorities than the correctional system must be drawn in to cooperate in the implementation. What is of particular relevance here is the fact that the Child Welfare System must find and allocate institutional places and has to finance a juvenile's stay if he/she is to be placed in a social institution.[38] Unfortunately there are no statistics on how many dispositions in accordance with § 78 result in a placement in a pension, and how many lead to other institutions.

38 See *Engbo* 2005, p. 309 f.

In absolute numbers we have about 400 disposals according to § 78 every year. About one third of these disposals are based on grounds of young age, and another third is due to serious drug problems. The last third is formed by prisoners with all kinds of specific problems as, for instance, alcohol, psychiatric or social reasons. It is predominantly only juveniles who go directly from court to pensions. The majority of those persons being placed in a pension go to prison and then spend the closing phase of a longer prison sentence in a pension.

Transfer between a prison and one of the pensions run by the Department of Corrections is an administrative remedy in the hands of the prison authorities. In 1990 there were 150 places in pensions, whereas in 2005 there were eight pensions in the country with a capacity of 180 places. The average annual use of the pensions' capacity is 88-92%. In 2005 the average use was 91%, which was somewhat lower than the average use of the total prison capacity (97%).

Court disposals without elements of immediate imprisonment may either be fines (which are of no relevance here), withdrawal of charges, or conditional sentences. The latter two can both be combined with conditions and the legal possibilities of stipulating the conditions are identical according to § 57 of the Penal Act, which mentions – as examples of conditions – the observance of special stipulations concerning place of residence, work, education, use of spare-time, taking up residence in a suitable home (must be time-limited and usually not more than one year), submittal to treatment (alcohol, drugs, psychiatric problems etc.), payment of compensation, and submitting to measures pursuant to § 40 of the Law of Social Services. Furthermore, there is the possibility of sentencing a person to a conditional sentence on the condition of doing community service (chapter 8 in the Penal Act).

It must always be a condition of the conditional sentence – with or without a community service order – that the convicted person does not re-offend during the probationary period, and that he/she observes any conditions that may be imposed in accordance with § 57 of the Penal Act.

If the juvenile is not sentenced to imprisonment it may occur that the court decides the juvenile must be institutionalized as a condition for not being sentenced to unconditional imprisonment. In these cases the Child Welfare System is obliged to find a place in an institution.

In the majority of cases, however, the court decides that the convicted juvenile has to obey the orders from the Child Welfare System given within the idea and framework of § 40 of the Law of Social Services mentioned above. In these cases institutionalization is only one (and normally not the first) option and the decision is in the hands of the Child Welfare System.

Where charges are withdrawn or a conditional sentence is imposed, the person is not locked up. In juvenile cases the Child Welfare System – and not the Probation Service, which is the responsible authority when the convicted person is over 18 years old – has both the duty and the discretionary power to organise supervision, find a mentor or even an institution or a foster family etc.

Local traditions, knowledge of the individual juvenile, practical possibilities, available resources etc., all influence the solution as well as the degree of patience in case something goes wrong.

§ 60 of the Penal Act stipulates that if the conditions attached to a withdrawal of charges or a conditional sentence are breached, the case may end up before the judge again, and it is up to the judge to: 1) warn the person, 2) by order amend the condition and extend the period of probation within the legal limit which is normally three years, or 3) by sentence, impose a punishment or other legal consequences for the offence committed, or, where a more concrete punishment was prescribed in the terms of the conditional sentence, decide that the punishment is to be executed, i. e. the person must be locked up in prison. In practice, a breach of conditions must be either serious (for instance a new crime) or continuous (for instance not attending meetings with the supervisor on several consecutive occasions without good reason) before a case ends up in court. To a large degree and within a wide scale of discretionary power of the supervisor, irregularities in the fulfilment of conditions are dealt with administratively outside of the courtroom.

Stipulation of concrete, individual conditions and bringing irregularities to an end is part of the informal discretionary power of the supervisor in the everyday-dealing with juvenile justice. Consequently, to a certain degree a juvenile's experience of a conditional sentence may depend on local traditions and (financial) possibilities as well as the specific supervisor.

To sum up on convicted juveniles: After having been sentenced by the judge, it is the sentence imposed that determines whose discretionary power the juvenile is referred to. If a juvenile is fined he/she just has to pay the fine. If a conditional sentence is imposed, the court may decide on a mandatory start in a social institution, but more often this decision is transferred to the Child Welfare System. If the juvenile is sentenced to a Youth Sanction he/she goes directly to a secure youth institution and stays there for the duration (up to 12 months) decided by the court. Finally, if the juvenile is sentenced to unconditional imprisonment discretionary power is transferred to the prison system to either 1) place him/her in a prison, 2) to take him/her directly to one of the pensions belonging to the prison system (according to § 78 CEP), or 3) to find another suitable institution through dialogue with the Child Welfare System.

7. Regional patterns and differences in sentencing young offenders

It has been mentioned above that local traditions, resources etc. may influence the practice of discretionary power within the Child Welfare System. This is at least to some degree part of the concept of the Social Welfare System, which to a large extent has decentralised core competences and powers.

Decentralisation has never been an (official) central issue, neither within the court system nor within the penal system. On the contrary, there is an expectation of equality and uniformity. It happens that experts in penal law discuss possible differences in court decisions. The considerations/speculations are most often related to possible differences between the Eastern and the Western High Courts.[39] In some situations, for instance in the introductory period of community service, it has been evident that the Western High Court is more restrictive in the introduction of new (more lenient) concepts. At that time, however, community service orders were almost never used against juveniles.

8. Young adults (18-20 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

As there is no specific juvenile court or penalty system it would make little to no sense to talk about extending the juvenile system.

The Youth Contract and the Youth Sanction are both out of the question in cases where the offender was 18 years old when the offence was committed.

Before 2004 there had been a few rules in the Criminal Code that provided judges with a facultative option to make the sentence more lenient, not only when the offender was not yet 18 years old, but also when he/she was under 21. These rules have now been changed and the age is no longer explicitly mentioned for mandatory consideration. When a suspect is under 18 years old the preparation for court etc. is taken care of by the Child Welfare System (see above). When he/she has already reached the age of 18 his/her case is prepared by the Probation Service, which is also responsible for providing supervision etc.

Normally a person becomes ineligible for the Child Welfare System at the age of 18 years, not only in relation to crime but also generally. Sometimes if a specific programme or plan has been initiated before the offender turned 18, it can be continued if it is judged to make more sense to fulfil it in the Child Welfare System. This is not only a possibility if the juvenile has become a client of the Welfare System by his own will, but also if he/she was sentenced to stay in the institution or to follow the instructions of the Child Welfare System.

39 Most criminal cases start in City Courts and may be appealed to either the Eastern or the Western High Court.

9. Transfer of juveniles to the adult court

In Denmark there are neither different courts nor different judges for different age groups or different types of crime.[40] A court is a court and a judge is a judge, and transfers between jurisdictions are thus not possible.

10. Preliminary residential care and pre-trial detention

In spite of the age of criminal responsibility some police investigation can also be conducted in cases of suspected children below this age. Children may be detained by the police, too. Before, during or immediately after an investigative step, for instance an interview by the police, the Social Welfare System and/or the parents must be informed.

2005 the police made 50,358 arrests of which 4,245 (8%) involved juveniles aged 15, 16 or 17. In the same year the courts remanded 4,955 persons to pre-trail detention, of whom 288 (5%) were 15, 16 or 17 years old. As already mentioned above, not all of them are placed in closed custody. A large proportion of them are expected to be placed in more adequate conditions in a social institution or a pension. There are no age-related legal limitations for the application of pre-trial detention or of solitary confinement within pre-trial detention but on the other hand Section 770b of the Danish Procedural Code presumes that solitary confinement would have an especially negative impact on juveniles.

The question of taking individuals below the age of 18 into solitary confinement before trial has been tried and confirmed by the Supreme Court. In the case U1999.1415H[41] where two boys aged 15 and 16 had been held in solitary confinement after having confessed to a robbery, the Danish Supreme Court stated that the solitary confinement of juveniles below the age of 18 is not in contradiction to the UN Convention on the Rights of the Child, Article 37c, or to Article 3 of the European Convention on Human Rights. At the same time, however, the court stated that in this particular case an alternative placement in an institution should have been ordered instead. There has been a strong tendency towards retaining a larger number of pre-trial prisoners for a long period of time. While in 2000 there had been 350 pre-trial imprisonments for periods of at least three months, the figure rose to 570 by the year 2004. In 2000 there were 23 cases of pre-trial detention periods longer than one year. In 2004, this figure had increased to 83 cases.[42]

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40 Except for maritime and trade cases.

41 Supreme Court decision. Weekly Magazine for Lawyers. 1999, p. 1415.

42 See www.jm.dk.

In February 2008 a proposal for a new regulation of this issue was presented to Parliament, the main point of which focussed on limiting the maximum duration of pre-trial detention to one year.

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

There are no official statistics on children and juveniles in residential care before 2006. However, some statistics have been published for 2006[43] that cover all kinds of placements, meaning placements (not) accepted by the client/parents, as well as placements based on social as well as on criminal legislation.

The total number of persons under 18 years of age who were placed outside their home in 2006 was 14,300. One fourth of them were placed in social institutions, with the bigger part of the remainder being in foster care. Regarding 15 to 17-year-olds, 25 out of 1,000 of this age group reside outside of their home.

In 11% of all cases crime had been the decisive reason for them to be placed outside the home. It is not possible, however, to determine whether the crime was tried in court because the numbers regard juveniles in institutions as a result of crime, and not for juveniles convicted for crimes. Offending is a legal reason (within the social legislation) for removing a child from home. Age and proof of guilt are not important in these situations as the placement is intended as help and support.

When a juvenile aged 14-17 years is sentenced to a Youth Sanction, he/she is taken to one of the same social institutions as mentioned above. At first he/she must stay in a secure social institution, and later is moved to an open regime.

Juveniles sentenced to imprisonment may in fact go to prison, but the majority is directly referred to a more appropriate institution, which means one of the social institutions where juveniles also go for social reasons following decisions by the social authorities. This takes place in accordance with Section 78 of the CEP.

Consequently at least three categories of young persons can be found door to door in the social youth institutions: those placed there on grounds of help and support, those sentenced to a Youth Sanction, and some of those sentenced to imprisonment.

When a male juvenile in Denmark is to serve a sentence under so-called open conditions (the choice between open and closed prison is not made in court but administratively) he is placed in the open prison closest to his home according to the principle of offering the optimal possibility of staying in contact with relatives.

43 Børn og unge anbragt udenfor hjemmet. Årsstatistik 2006 and 2007.

In open as well as closed prisons the inmates have the duty to work or to attend school or training during the day. Their time at work is shared with other inmates than those in their own unit. At night they are locked up in their cells. In closed prisons every prisoner is locked up in his/her own single-cell, but in open prisons it is more common that only the main entrance to the unit, which usually houses 15-25 prisoners, is locked (see more under *Section 3* above).

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

In Denmark there had been no statistics on children (aged 0-18) in residential care until 2006. Apart from the fact that we do not really know how many children were (and still are) in residential care (and where for that matter) at the end of 2006, it is not possible to be any more precise, see *Section 3* above.

Youth prisons – in the sense of prisons used solely for juveniles under 18 years of age – do not exist in Denmark. However, in Ringe State Prison (see *Section 3.3* above) four places are dedicated to 15,[44] 16 and 17 years old prisoners. They were opened around 1990 and are always in use. What is interesting about those four places is that they cooperate with a social institution outside the prison, and within the framework of section 78a CEP (mentioned in *Sections 3* and *11* above) inmates can be moved from prison to the social institution when deemed appropriate. Where something goes wrong they are able to return the person to prison administratively, which is much faster than if they had to wait for a court decision. In the social institution there are both secure and open places. The four places in Ringe are meant for juveniles with extra needs. There are still persons below 18 years of age in other parts of the prison and in other prisons as well. In the prison as well as the cooperating social institution, efforts are made to occupy the juveniles in an adequate and meaningful way, first and foremost by giving them some traditional school lessons but also by offering them practical activities.

The pensions, which are often used for serving sentences when the offender is very young (see *Section 3* above), are also used for persons (including juveniles) coming from prison. One pension that deserves individual mention is the pension in Skejby, which houses persons from prison and persons without a criminal record at the same time. The pension simply rents out rooms to students and other juveniles who need a cheap place to live. The idea is to establish a situation that is as close as possible to what awaits the persons under release. In the pension those with a criminal record are called "the plusses" and those without a record are called "the minuses", a nomenclature that can indeed sometimes

44 It will probably be lowered to 14.

seem confusing for outsiders. This sometimes confuses the surroundings. The pension is not only used for juveniles. However, evaluation has indicated that, compared to others, fewer persons who were released through Skejby re-offended. Pensions do not occupy their residents actively, but rather function more like hostels. Residents are occupied through their surroundings either in schools or at work-places.

13. Current reform debates and challenges for the juvenile justice system

Compared to the 1980s and 1990s criminal policy has moved from being an issue for experts to being an issue for politicians. Not that the experts do not exist and do not share what they know, but the politicians have occupied the scene with demands for "quick responses", "toughness" etc. The "knowledge" of politicians is not always based on scientific knowledge.

The development in the number of police reported offenders aged 10 to 14 has not been constantly increasing in this decade. In 2001 9.6 out of 1,000 persons of this age-group were reported for an offence. In 2002 the figure dropped to 8.9, rising again to 9.2 one year later. In the years 2004 to 2006, the figures were respectively 12.4, 11.7 and 10.5 per 1,000 of the total 10-14 years old population.

On the other hand, initiatives of a more preventive character are also in place, for instance the establishment of mentoring programmes in neighbourhoods. It is not possible to report how many of these initiatives in fact exist, but it can be stated that some are organised by the Probation Service and some by the Crime Prevention Council.

In all parts of Denmark there is a kind of "contact-organ" consisting of representatives from Schools, Social Services and the Police (SSP). The overall task of the SSP groups is to work towards the prevention of juvenile crime. However, the ways in which these SSPs work differ greatly. At least in some parts of the country the SSP-groups are trying to be more pro-active. One big issue is "letters of concern" to parents when their children do show problematic trends which might end up in crime. The SSP-groups are initiated by the Crime Prevention Council and can legally exchange confidential information on individuals. The "letters of concern" are sent from the police to the parents in order to make the parents more aware of their children's behaviour and attitudes to life. It has not yet been evaluated whether or not this initiative makes a difference.

14. Summary and outlook

Criminal justice policy has shifted from being a field for experts to a political scene. As politicians need to be seen as "producing results" not all new steps are based on evidence. The consequence of this is that projects are opened and closed before they can be evaluated for whether or not they might make a difference. Another consequence is that a single case that shakes the media may influence the agenda more than actual evidence.

The Welfare State idea is founded on diversion and postponement of imprisonment. In that sense a close cooperation of the support system and the penal system puts leniency forward. On the other hand, when politicians occupy the scene and are influenced by "short memories" and single cases, the tradition of cooperation may result in a symbiosis between care and punishment, which should be considered in the light of legal rights and equality.

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45 The decision of lowering the age of criminal responsibility was part of the state budget for 2010. This is a link to the published text on it from the ministry of finances.

46 At the meeting of the Nordic Ministers of Justice in June 1999, the ministers decided to appoint a working group with the objective of examining youth crime for mutual exchange of experiences. The report from the working group is not printed for the public.

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England and Wales

James Dignan

Preliminary remarks

England and Wales form part of the United Kingdom together with Scotland and Northern Ireland. Each territory operates its own distinctive and, in many respects, radically different juvenile justice system, however, which is why they are dealt with separately in this volume. The combined geographical area for England and Wales is 151,174 km^2. The combined population for the two countries is 60,209,500[1] (of which Wales accounts for 2,958,600). The population density for the two countries is 398.

The system of government in England and Wales[2] takes the form of a Parliamentary democracy. Although traditionally a unitary state, a new constitutional framework was established in 1999. This resulted in the creation of a new Scottish Parliament with wide-ranging devolved powers over most aspects of Scottish domestic law and an Assembly for Wales (based in the nation's capital, Cardiff) which enjoys more limited law-making competence in the spheres of health, education, economic development, culture, the environment and transport. Responsibility for all other matters remains vested in the Westminster Parliament situated in England's capital, London.

Economic and demographic statistics are normally quoted for the United Kingdom as a whole and show that the estimated GDP in 2005 was $30,300 while the unemployment rate for 2005 was estimated at 4.7 percent.

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1 Official mid-2005 population estimates.

2 For simplicity, the rest of this paper will follow the normal convention of referring to the country as 'England' instead of using the more technically correct but cumbersome appellation 'England and Wales'.

1. Historical development and overview of the current juvenile justice legislation

As a common law country, England has no criminal code, whether in respect of adult or young offenders. Consequently, the system of criminal proceedings for dealing with young offenders is regulated, for the most part, by special Acts of Parliament, the most important of which are set out below. However, this legislative framework is less prescriptive, in many respects, than that found in many civil law countries since the English common law tradition generally permits any action to be taken that is not specifically proscribed by law. Since this principle also applies to criminal justice agencies, the latter have traditionally enjoyed fairly broad discretionary powers except where these are specifically curtailed by Act of Parliament.

Historically, the emergence of a distinct juvenile justice system in England can be traced back to the Children Act of 1908, which established the country's first Juvenile Court. This was simply a modified version of the adult criminal court, from which it was differentiated chiefly by virtue of the fact that it was convened in a separate venue or at different times from adult court hearings and that public access was restricted. In most other respects the proceedings were indistinguishable from those operating in other inferior or lower courts catering for adult offenders. At this stage, and indeed throughout most of the next century, the Juvenile Court also exercised jurisdiction over children in need of care and protection as well as those who were suspected of committing criminal offences. However, the former constituted a relatively minor aspect of the court's overall caseload and, in contrast with the juvenile justice systems operating in many other countries at the time, was accorded much less prominence at an ideological and conceptual level also (*Bottoms* and *Dignan* 2004, 23).

For a time it looked as if the English juvenile justice system might come to more fully embrace a welfare-oriented philosophy of the kind that has characterised many other systems around the world, and this incipient shift was reflected in two key Acts of Parliament. In 1933 a statutory duty, which is still in force, was imposed on every court in dealing with a child or young person, whether as an offender or otherwise, to 'have regard to the welfare of the child' in making its decisions and to ensure that 'proper provision is made for his education and training' [Children and Young Persons Act 1933, s. 44(1)]. In the absence of any significant institutional or procedural changes, however, the impact of this change remained somewhat muted since the courts retained the power to impose a variety of punitive sentences including custodial ones. Moreover an official committee had a few years earlier explicitly rejected the possibility of refashioning the system along the lines of the juvenile welfare tribunals that had been adopted elsewhere (*Home Office* 1927, 19).

Just over three decades later, however, a major reform programme was initiated, the main aim of which was to accord much greater priority to the principle of the welfare of the child, even in respect of criminal matters. This culminated in the Children and Young Persons Act of 1969, which was intended to radically reform the way young offenders were dealt with, even though the main institutional framework based on the existing Juvenile Court and its personnel was to be left intact. The aim of the Act was to put an end to the prosecution of young offenders below the age of 14 for any offence apart from homicide, and to make them subject to civil care proceedings instead. It also envisaged the gradual elimination of criminal proceedings for all but the most serious juvenile offenders over the age of 14, and even these were to be dealt with by means of a placement in care as opposed to punitive custody. Even though the Act reached the statute book, however, a change of government in 1970 meant that it was only partially implemented and that a number of key sections never took effect. Consequently, the anticipated switch to a welfare-based approach never materialised and the hegemony of the 'modified criminal court' has subsequently never seriously been threatened.

During the subsequent two decades, a number of other Acts of Parliament were enacted but the changes they introduced – mostly affecting the sentencing powers of the courts – proved to be relatively short-lived or inconsequential. Indeed, for just over a decade – between the mid 1980s and mid 1990s – the direction of English juvenile justice policy was influenced less by legislative developments than by the beliefs and activities of juvenile justice practitioners. Known collectively as the "Youth Justice Movement", these practitioners espoused a philosophy based on the principle of 'minimum-intervention' which they sought to put into effect by promoting the diversion of young offenders, wherever possible, from prosecution and custody. In order for it to succeed, the approach relied on the willingness of the police to exercise their discretionary powers to caution young offenders rather than prosecuting them, and on those responsible for sentencing them to use non-custodial measures in place of custody and residential care. It also benefited from a willingness on the part of the government to support the practice of cautioning, partly on resource grounds, but also because for a time it was persuaded that juvenile offenders who were diverted from prosecution were less likely to reoffend than those who became involved in judicial proceedings. During the 1990s, however, the government withdrew its support from this approach in favour of a much more hard-line 'law and order' strategy, which it hoped would reverse its electoral fortunes, and this precipitated a steady decline in the influence of the juvenile justice movement, which accelerated as the decade progressed.

For most of the twentieth century, the English juvenile justice system incorporated two distinct jurisdictional strands encompassing child welfare and protection matters and criminal proceedings respectively. In the Children Act of 1989 these two strands were disentangled and a separate set of institutions was

established so that the 'care jurisdiction' could operate independently from the 'criminal jurisdiction', though the changes did not come into effect until October 1991. At around the same time the jurisdiction of the Juvenile Court was extended by one year to encompass those who have not yet reached their eighteenth birthday and, as a result of this change, it was also renamed as the Youth Court (Criminal Justice Act 1991).

The next major legislative reforms were introduced following the election of a new Labour government that came to power in 1997 after a period of eighteen years in opposition. Once elected, reform of the English youth justice system was one of its principal policy priorities and a flurry of radical reforms was introduced during its early years in office. The two most important pieces of legislation were the Crime and Disorder Act of 1998 and Part I of the Youth Justice and Criminal Evidence Act of 1999. The changes that were introduced by these important Acts were initially piloted in selected areas of the country before being implemented nationally in June 2000 and April 2002 respectively.

The detailed changes will be described in the following sections, but the sheer scale of the reform programme is worth noting since it encompasses not just a variety of institutional and procedural reforms but a radical change of direction. At a formal level the shift is characterised by the adoption of a new principal aim for the youth justice system, which is 'to prevent offending by children and young persons' (s. 37, Crime and Disorder Act 1998). Other key aims are to improve the efficiency of the system, to require young offenders and their parents to assume more responsibility for the former's offending behaviour; and to introduce elements of a restorative justice approach. The overall effect has been to render the youth justice system significantly more interventionist and correctionalist than it was. So many changes have been made since 1998 that the current system is often referred to as 'The New Youth Justice' (e. g. *Goldson* 2000).

The age of criminal responsibility in England and Wales is 10, which is one of the lowest in Europe. For many years the severity of this low age threshold was mitigated to some extent by virtue of the doctrine of doli incapax whereby children under the age of fourteen were presumed to be incapable of committing an offence unless the prosecution could establish in court that they appreciated the difference between right and wrong. This doctrine was repealed in 1998, however, as part of the new youth justice reform programme. Juvenile offenders – between their tenth and eighteenth birthdays – form a distinct legal category and are dealt with by the youth justice system. Young people under the age of 18 cannot be sentenced to adult prisons, but custodial penalties are routinely available for young offenders from the age of fifteen upwards. Custody may normally only be imposed on offenders between the ages of twelve and fourteen if they are deemed to be 'persistent' (a term that is not defined in the legislation). However, children as young as ten years of age who are convicted of certain particularly serious offences may be sentenced to a form of custody known as

long term detention, which is also available for offenders up to 17 years of age. Offenders between their eighteenth and twenty first birthdays fall into a separate legal category known as 'young adult' offenders.

This rather complex history has resulted in the emergence of two quite distinct 'jurisdictional regimes', both of which can result in the imposition of formal measures – including the use of detention – on young people. First there is the 'regular' juvenile criminal justice jurisdiction with its associated judicial processes culminating in the possibility of court-imposed sanctions that could include detention on children who are over the age of criminal responsibility. In addition, however, there is also a quite separate civil jurisdiction that can also result in the imposition of a range of compulsory interventions (including a placement in 'secure accommodation', which is a form of detention) on children who are thought to be in need of care and protection even when they are below the age of criminal responsibility. In addition, this already complex picture has been further complicated by the recent introduction of a separate set of hybrid measures – the best known of which is the 'anti-social behaviour order' – that combine elements of the civil and criminal law. These 'quasi-criminal' interventions are imposed by a separate set of adult civil law courts and can impose a variety of restrictions on young people who are deemed to have acted in an anti-social manner. Where these orders are breached, however, this can also result in custodial sentences being imposed on children who are below the age at which they would normally be liable to imprisonment, though they have to be above the age of criminal responsibility.

2. Trends in reported delinquency of children, juveniles and young adults

The number of known juvenile and young adult offenders (i. e. those cautioned or convicted) for selected years is shown in *Table 1* (below). Because of certain changes in the way crime statistics are collected and recorded, however, the figures need to be interpreted with care. Prior to 1993, young offenders were no longer considered to be 'juveniles' once they had reached their seventeenth birthday, but by this stage the number of known juvenile offenders had fallen from 218,200 in 1980 to 141,900 in 1992, a reduction of 35 percent. Thereafter, the number of juveniles (who now included 17 year-olds) fluctuated somewhat for most of the following decade, but after the 'low' of 181,100 recorded in 2002 numbers have risen steadily in each subsequent year to reach 217,000 (an increase of 19.8 percent) by 2005.

Table 1: Number of known juvenile offenders (cautioned and prosecuted), 1980-2005*

Year	Total	Male	Female	Violence	Robbery	Theft	Drugs
1980	218,200	182,600	35,600	10,700	900	114,800	-
1985	209,700	170,800	38,900	11,300	1,100	119,500	-
1990	149,300	123,400	25,900	11,200	1,600	67,100	2,600
1992	141,900	110,700	31,200	9,300	600	60,000	2,300
1994	186,700	148,600	38,100	16,800	2,300	78,800	9,700
1995	188,400	150,700	37,700	14,200	2,500	75,600	10,100
1996	187,800	152,900	34,900	14,800	3,000	69,200	9,400
1997	183,600	150,500	33,100	15,500	3,000	60,500	11,600
1998	196,200	158,200	38,000	15,600	2,700	65.900	13,700
1999	194,400	157,900	36,500	14,500	2,600	62,300	12,600
2000	189,000	152,600	36,400	14,600	2,700	57,800	11,600
2001	193,600	156,200	37,400	15,500	3,300	55,800	12,800
2002	181,100	146,700	34,400	16,200	3,200	43,500	14,400
2003	184,900	148,200	36,700	17,600	3,100	44,900	14,600
2004	201,300	158,000	43,300	20,600	3,100	49,200	12,600
2005	217,000	167,600	49,400	18,300	3,500	50,300	12,600

* For the period 1980-1992 (i. e. before the raising of the maximum age of the juvenile justice system from the 17th to the 18th birthday, effective in October 1992) the relevant age breakdown is 10-16.
For the period 1994-2005 the relevant age breakdown is 10-17.

Source: Calculations based on data derived from annual volumes of *Criminal statistics, England and Wales.*

In addition to these 'global' trends, however, there have also been some interesting trends within particular offence categories. For example, the last decade (1995-2005) has seen a steady increase in the number of juvenile offenders who are cautioned for or convicted of violent offences (9 percent), robbery (52 percent) and drug offences (30 percent). At the same time, however, the number of juveniles who are cautioned for or convicted of theft or handling offences declined very substantially (by 45 percent between 1995 and 2002), but has recently started to rise again, increasing by 15.6 percent between 2002 and 2005. One possible explanation for these latest trends is that they reflect a recent

government commitment to drastically increase the number of offenders who are brought to justice by imposing targets on the police. One way for the police to achieve these targets is by increasing the number of young offenders who are cautioned or brought before the courts for relatively minor theft or handling offences instead of devoting resources to clearing up more serious offences such as those involving drugs and violence.

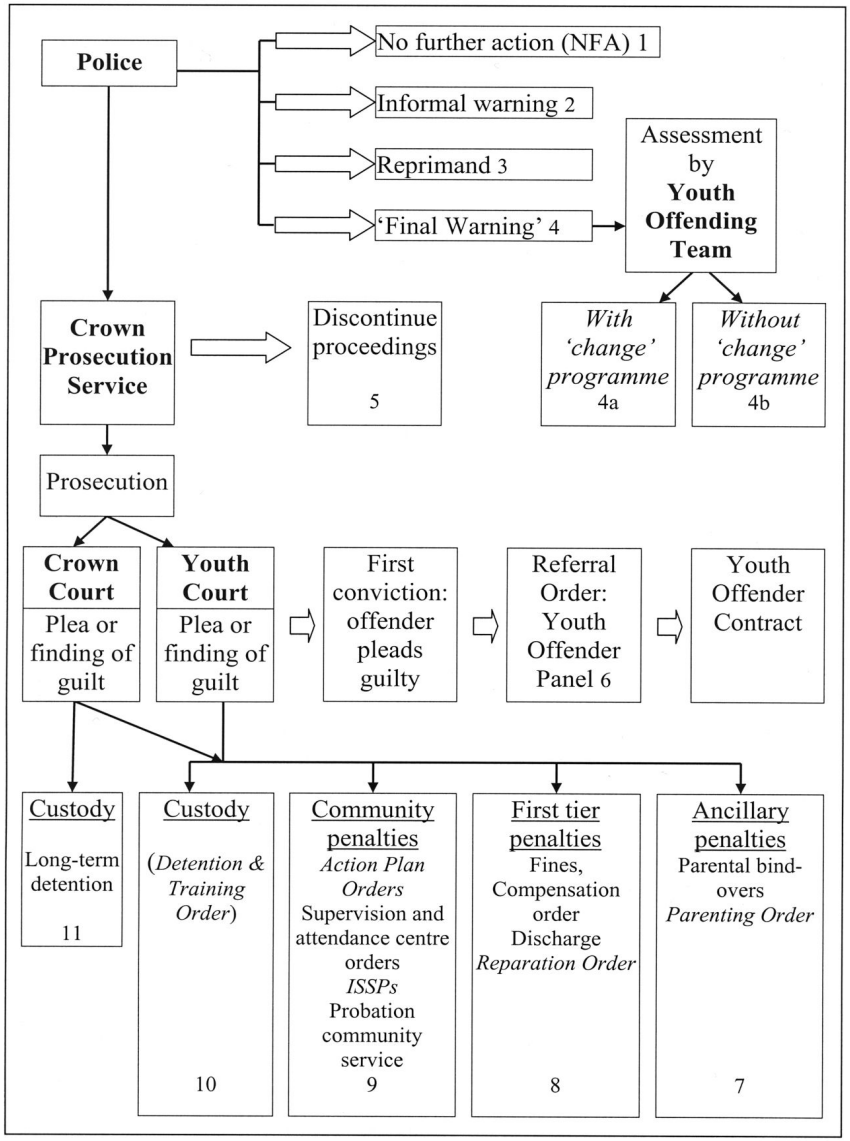
It is well known that 'known offender' data provides an incomplete and potentially misleading picture of the true scale of juvenile offending, however, since they fail to capture those crimes that are not reported to or recorded by the police or which do not result in a conviction. Nor do they provide a reliable indication of general trends in the volume of juvenile delinquency since they may also reflect changes in practice on the part of criminal justice agencies and, in particular, the police.

Self report surveys are not subject to these limitations, and can thus help to provide a fuller picture of overall trends, despite the limitations to which they are likewise prone (*Coleman/Moynihan* 1996). Annual self report data for England and Wales are only available since 1999, and only relate to secondary school children, which has the effect of excluding those aged 10 and 17. The survey shows that the self-reported offending rate for 11-16 year olds has remained broadly stable over the last few years, with around one-in-four admitting to at least one offence in the previous twelve months (Audit Commission, 2004; *Phillips/Chamberlain* 2006).

3. The sanctions system: kinds of informal and formal interventions

A flowchart depicting the structure of the current English youth justice system and the way it operates including the principal formal and informal interventions is provided in *Figure 1* below. Aspects of the system that have been introduced or radically reformed since 1998 are shown in italics. The principal agencies that are responsible for dealing with young offenders, which are the subject of this section, are shown in bold.

Figure 1: The English youth justice system (for under 18s)



KEY = Continued processing ⇨ = Processed out of the system (end of intervention). Italics indicate aspects of the system that have been introduced or radically reformed since 1997.

Figure 1 depicts the range of informal and formal interventions that are available within the context of the regular youth justice system. Various 'diversionary' measures are available, for which the three principal 'gatekeepers' are the police, the Crown Prosecution Service and the Youth Court itself. One option that is open to the police is to take no further action (NFA), which effectively means that the case is dropped (box 1). This is frequently done where there is insufficient evidence linking an offence to the suspected offender, or the offence itself is very trivial. Alternatively, they may decide to issue an informal warning (box 2), which means that no formal record is made and the incident cannot be mentioned in any future criminal proceedings. Since 1998, however, this practice has been discouraged by the Home Office, which is keen to ensure that offenders are held accountable for any wrongdoing. Consequently, the approach that is now favoured relies on a graded system of formal warnings leading up to a prosecution in the event of further reoffending.

Until recently, the principal form of diversion took the form of a non-statutory 'police caution', a warning that was administered in person by a police officer as authorised by the traditional common law discretion available to the police. Since 2000, however, police cautions for juvenile offenders have been replaced by a new statutory regime that was introduced by the Crime and Disorder Act whereby the appropriate response for a young offender committing a minor offence for the first time is for the police to issue a reprimand (box 3), which is a formal warning that is recorded. If a further minor offence is committed this is liable to be dealt with by means of a ‘final warning’ (box 4), which is intended as a ‘last chance’ measure after which any further offending is almost certain to result in prosecution.

When a young person is to be issued with a final warning the police are also required to refer the case to the local youth offending team, which is expected to undertake an assessment to identify the factors that may have been responsible for the offending behaviour. If it is felt appropriate, the final warning may be accompanied by some form of intervention that is intended to address such problems (box 4a), and the Home Office has made it clear that it expects this to be the standard outcome where a final warning is issued. The system of reprimands and final warnings is thus intended to operate on a progressive ‘three strikes and you’re out’ basis, culminating almost inevitably in a prosecution following a third minor offence, though if any of the previous offences are felt to be sufficiently serious the police are expected to move straight to a prosecution rather than proceeding further down the diversionary route.

If the police do decide to prosecute an offender, the case is then referred to the Crown Prosecution Service (CPS), which has the final say over whether a prosecution proceeds to court or is discontinued (box 5). Discontinuation may occur because the CPS considers either that the available evidence is insufficiently strong or that it is not in the public interest to prosecute, in which

case the CPS could (but rarely does) refer the case back to the police with a recommendation that the offender be reprimanded or warned.

When a young offender who is under the age of eighteen is prosecuted, the case is normally dealt with by the Youth Court, though exceptionally such offenders may be tried and sentenced instead by the Crown Court (see below), which is the court that is normally responsible for dealing with the more serious adult offenders. Where a young offender is prosecuted before the Youth Court for the first time and decides to plead guilty a special procedure (introduced in April 2002) comes into operation since the court is normally obliged to deal with such cases by passing a sentence known as a "referral order" (box 6). This order requires the young offender to attend one or more meetings convened by another newly created body known as the "youth offender panel" (or "YOP"), which was introduced by the Youth Justice and Criminal Evidence Act of 1999.

The YOP is convened by the local youth offending team (YOT), which also provides one member of the three-person YOP panel, the other two being lay members who are drawn from an approved list of volunteers. The YOP procedure was inspired in part by restorative justice thinking and consequently the victim of an offence may also be invited to attend, in addition to the young offender and his or her parents. The purpose of the panel meeting is to provide a forum in which the offence can be discussed with the victim, if present, and to devise an appropriate "contract" containing one or more elements that are intended to prevent further offending, though reparation also features prominently. The duration of the order (between 3 and 12 months) is determined by the Youth Court on the basis of the seriousness of the offence, though the terms of the contract are a matter for negotiation within the panel. Although the referral order technically counts as a first tier court disposal, provided the young offender complies with the terms of the contract, no conviction is recorded and the slate is effectively wiped clean, which is why this procedure can also be thought of as a form of diversionary process. If no agreement can be reached, however, or the offender fails to comply with the agreement, the young offender will be returned to the court to be sentenced for the original offence.

For offenders who are prosecuted and sentenced in the normal way, a wide range of disposals is available and since 1991 these have been organised hierarchically according to their severity in terms of three principal bands: first-tier penalties (boxes 7 and 8), community orders (box 9) and custodial penalties (boxes 10 and 11).

Prior to 1998, the principal 'entry level' or first-tier penalty for dealing with less serious offences was the conditional discharge (box 8). This effectively constitutes a threat or warning of future punishment for a given offence, but one that is only imposed if the offender comes before the courts again within a specified period (which could be up to three years in duration). Other first tier penalties that also pre-date the 1998 Crime and Disorder Act include the fine

and compensation order, both of which may be imposed either on young offenders themselves or their parents.

The reparation order is a first-tier penalty that was introduced by the 1998 Crime and Disorder Act, and was originally envisaged as a new principal 'entry level' penalty for less serious offenders in place of the conditional discharge. Such orders require young offenders to make reparation either to the victim of the offence (provided the victim consents to this) or to the community at large (e. g. by doing unpaid work). Although the court is supposed to specify the nature of the reparation that is to be undertaken, in practice the YOT has an important part to play in assessing and advising what may be appropriate, and also in facilitating and monitoring it. The reparation that is imposed must be proportionate to the seriousness of the offence, and may not exceed 24 hours in total, while the reparation order itself lasts for a maximum of three months. Although the courts are required to give reasons for not imposing such an order where they have the power to do so, in practice its usage appears to have been largely eclipsed by the introduction of the referral order, as will be seen in the next section.

In addition to these standard first tier penalties, the Youth Court may also impose a number of ancillary measures (box 7), some of which have been around for a considerable time. One such measure is the parental bind-over, which is a common law power[3] that enables the court to require any person against whom it is directed to 'be of good behaviour and keep the peace' on forfeit of a specified sum of money. The power is not restricted to convicted offenders but can also be used against others including parents of offenders, witnesses or complainants. Since 1998 another ancillary measure that has also been available in respect of the parents or guardians of young offenders or those who have behaved in an anti-social manner is the "parenting order", which consists of two main elements. The first requires parents to attend counselling or guidance sessions, which can last for up to three months and are intended to inculcate and improve parenting skills. The second may require parents or guardians to exercise a measure of control over their child (for example by ensuring that they attend school, or avoid certain people or places) for a period of up to twelve months. The order itself does not count as a criminal conviction. Failure to comply with the order (which is supervised by YOT workers), however, does constitute a criminal offence that is punishable with a fine of up to £ 1,000.

A wide variety of community orders[4] are also available, though some of them are subject to age restrictions (box 9). The action plan order is intended to

3 In the absence of a criminal code, English judges have historically had the power to create law by establishing precedents that are generally binding on lower courts unless and until they are overturned by Act of Parliament.

4 In June 2007, the government announced plans to replace the current rather complex system of community orders for offenders under the age of 16 with a single more fle-

provide a short (3 months) but intensive and individually tailored intervention in a young person's life, focused on addressing the factors that are felt to be responsible for the offence though it may also include some form of reparative activity. The attendance centre order (also available for young adult offenders) requires a young person to attend a centre, typically run by the police on Saturday afternoons, to engage in physical education and other activities designed to inculcate a sense of discipline or social skills, for sessions up to a maximum of 36 hours. Community service orders[5] and probation orders[6] are only available for offenders aged 16 to 17, though it is also possible to combine both sets of requirements (supervision plus unpaid work) in the form of a combination order[7]. Offenders below the age of 16 may be sentenced to a supervision order, which is equivalent to a probation order. Curfew orders (with or without electronic monitoring) require a person to be at a specific place between two and twelve hours a day and may last for up to three months if the offender is under 16 or up to six months if over 16. The drug treatment and testing orders is restricted to offenders over the age of 16 who consent to undergo regular drug treatment and testing in the community while under supervision by the probation service.

An additional condition that may be attached to a community order is the intensive supervision and surveillance programme (ISSP, which is also available as a bail condition) which combines intensive community based surveillance (often accompanied by electronic monitoring) with rigorous interventions that are designed to tackle the factors associated with a persistent young offender's offending behaviour.

Turning, finally, to the custodial options that are available, young offenders between the ages of 12 and 18 may in certain circumstances be given a "detention and training order" (DTO) for a period of between four and twenty-four months (box 10). The first half of a DTO is served in custody, while the second half is served under supervision in the community. For those young offenders who are, exceptionally, dealt with by the Crown Court, additional custodial options are also available apart from the range of sentencing options that can be imposed in the Youth Court. If the offence in question is one of murder, the appropriate measure is a mandatory indeterminate sentence of long-term detention (box 11). For other serious offences the maximum penalty that

xible order, to be known as a 'youth rehabilitation order' (Criminal Justice and Immigration Bill, 2007). This will last between one and twelve months and will enable courts to select one or more requirements from a comprehensive menu of fourteen options derived from the existing discrete penalties (*Cavadino/Dignan* 2007, 334).

5 Officially these were known as community punishment orders between 2001and 2005.

6 Officially these were known as community rehabilitation orders between 2001 and 2005.

7 Officially these were known as community punishment and rehabilitation orders between 2001 and 2005

may be imposed is the same period of determinate custody as would apply in the case of an adult offender. This is also known as “long-term detention”, to distinguish it from the detention and training order.

The measures that have been described above all apply to young people who have admitted or been convicted of a criminal offence. It is important to note, however, that a wide range of purely preventive interventions has been introduced in recent years, many of which are aimed at young people thought to be 'at risk' of offending, even though they are below the age of criminal responsibility. Most of these lie outside the scope of this report (but see *Cavadino/Dignan* 2007, for details). In addition, the government has also introduced a variety of measures since 1998 that are intended to deal with 'anti-social behaviour', many of which are directed at young people who are over the age of criminal responsibility, and three such measures merit a brief mention even though they are not initially triggered by the commission of a specific criminal offence.

First, local authorities now have the power to introduce local child curfews banning children under the age of sixteen from the streets or other public places at night unless they are accompanied by a responsible adult. Second, the police now have the power to issue dispersal orders against groups of two or more young people under the age of 16 if found congregating in designated areas, requiring them to disperse and, if after 9 p.m., to return home. Third, and even more controversially, a quasi-criminal intervention known as the anti-social behaviour order (ASBO) has been introduced. ASBOs may be imposed by a magistrates' court against anyone over the age of ten, who has acted in an anti-social manner, which is defined as 'behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household'. Although technically a 'civil order', breach of its requirements constitutes a criminal offence that can result in a custodial sanction being imposed even though the 'offender' may be too young to qualify for a 'regular' custodial sanction (see above for age limits).

ASBOs have aroused a number of concerns. The 'behaviour' in question is vague and ill-defined and yet the fact that they are technically 'civil' measures means that they are subject to the less demanding civil standard of proof, so applications are rarely refused. In addition, since applications are heard in the ordinary magistrates' court, the normal restrictions on publicity do not apply even in the case of young 'offenders', many of whom have been deliberately 'named and shamed' by the media. However, the most serious concern relates to the fact that ASBOs are dragging many young people into the criminal justice system and exposing them to the threat of criminal sanctions including the use of custody for behaviour that would in the past have been dealt with informally.

4. Juvenile criminal procedure

An overview on the English youth court system and the specific competences of the different courts is already given by *Figure 1* in *Section 3* above.

In contrast to many other European countries there is very little specialisation whether in terms of personnel, training or functions, with regard to the more 'traditional' English youth justice agencies such as the police and the prosecution authorities. The position is somewhat different in respect of the Youth Court, which has inherited the rather more specialised ethos of its predecessor, the Juvenile Court. The Youth Court is a slightly modified division of the magistrates' court, which forms the lower tier of the English criminal court system and is responsible for trying and sentencing all but the most serious cases. The three "magistrates" or "justices of the peace" (the two terms are inter-changeable) who generally preside over these courts are ordinary lay (meaning non-legally qualified) members of the public. They are nominated by a local committee and appointed by a government minister to serve on a part-time basis. From the 1930s onwards, those wishing to sit in the Juvenile Court have had to belong to a specially constituted panel, for which they are selected by their peers on the grounds that they are felt to be 'specially qualified for dealing with juvenile cases'. No formal qualifications are required, however, and the degree of specialisation is likely to be constrained by the fact that the pool from which they are drawn is limited to the membership of the ordinary lay bench. In recent years steps have been taken to change the layout of the Youth Court and modify its proceedings with a view to opening up the proceedings to encourage greater participation by young defendants and their parents.

As part of the post-1998 youth justice reform programme two additional sets of bodies have been established with important operational responsibilities concerning young offenders who are the subject of formal interventions. The first is a series of locally-based multi-agency teams known as Youth Offending Teams (or YOTs), which are responsible for co-ordinating and providing youth justice services within their area. Youth offending teams are also responsible for assessing young offenders with reference to their perceived risk of reoffending, and a formal assessment instrument known as ASSET has been introduced for this purpose. The composition of YOTs is partially prescribed by statute since each team must contain representatives of the local authority social services department, the police, probation service, local education and health services, though it may also include others. By seconding suitably qualified or experienced staff from each of these agencies to work together in a much more focused way the YOTs are intended to bring about a much more co-ordinated and integrated approach to policy-making and the delivery of youth justice services. And to this extent the youth justice system does now operate on a more specialised basis than in the past, when the bulk of social service department employees were generalist social workers. The second new body to have been established as part

of the youth justice reform programme is the Youth Offender Panel, but its composition and functions will be discussed in more detail when examining youth justice procedures and diversionary measures.

So far, mention has only been made of agencies with operational responsibilities. Before turning to see how the system operates in practice, however, another significant organisational change that was brought about by the 1998 reform programme involved the creation of a major new agency known as the Youth Justice Board for England and Wales, which has been given overall strategic responsibility for overseeing and implementing the policies that emanate from government policy-makers.[8] Its specific functions include advising government ministers on how the principal preventive aim of the youth justice system might most effectively be pursued, setting national standards, promoting good practice and monitoring the operation of the youth justice system including the activities of the youth offending teams. In addition, since April 2000 it has assumed responsibility for commissioning custodial and other secure facilities (now known collectively as the "juvenile secure estate") and for allocating young offenders to such facilities. This has already been dealt with in *Section 3* above.

Young people who are dealt with within the context of the 'regular' youth justice system are entitled to various additional safeguards, not all of which are routinely extended to adult suspects and offenders. One such safeguard is a right to privacy and anonymity since Youth Courts are not generally open to the public and, unlike adult offenders, are not liable to have their identities and the details of their offences disclosed by the media. This shield against adverse publicity, however, is only available to those who are dealt with in the Youth Court, which has resulted in some important and controversial exceptions (see above).

Like their adult counterparts, young defendants in England and Wales have traditionally been entitled to publicly funded legal assistance, including a right to legal representation and advocacy where required. One important exception, however, concerns the recently introduced referral order procedure (see below), for which public funding is not available – though lawyers are entitled to attend – despite well-founded concerns that this could be in breach of Article 6 (the 'fair trial' provision) of the European Convention on Human Rights (see *Bottoms/Dignan* 2004, p. 137-143). Young people who are deprived of their liberty are entitled to complain about their treatment to the Prisons and Probation Ombudsman, though the latter has expressed concern at the surprisingly low number of complaints emanating from young people in custody (Prisons and

8 Prior to 9 May 2007, the government department with responsibility for policy-making in this field was the Home Office, but following a major departmental reorganisation the responsibility is now shared between two newly created government departments: the Ministry of Justice and the Department for Children, Schools and Families.

Probation Ombudsman 2004). The Youth Justice Board has responded to such concerns by commissioning independent advocacy services that will operate in custodial institutions catering for young offenders (see *Sections 10* and *11* below).

Until recently the proceedings in Youth Courts were little different from those operating in adult magistrates' courts, but in recent years steps have been taken to reduce the formality and make them less intimidating in an attempt to encourage greater participation by young defendants and their parents. Another 'concession' extended to convicted young offenders is that the sentencing powers of the Youth Court are much more limited than those of the Crown Court (see *Section 3* above).

5. Sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

Table 2 (below) shows what effect the above-mentioned changes in the procedure relating to informal interventions have had on the 'diversion rate' for young offenders (*Bottoms/Dignan* 2004, p. 34).

Table 2: Cautioning Rates* for Young Offenders for Indictable Offences in England and Wales, 1970-2005

a) For the period 1970-1992 (i. e. before the raising of the maximum age of the juvenile justice system from the 17th to the 18th birthday, effective October 1992)

	Persons aged 10-13		Persons aged 14-16	
	Males	Females	Males	Females
1970	50	66	24	39
1975	63	83	33	57
1980	65	85	34	58
1985	79	93	51	78
1990	90	96	69	86
1992*	91	97	73	90

b) For the period 1992-2000 (i. e. after the raising of the maximum age of the juvenile justice system to the 18th birthday, effective October 1992)

	Age 10-11		Age 12-14		Age 15-17	
	M	F	M	F	M	F
1992†	96	99	86	96	59	81
1993	96	99	83	95	59	80
1994	95	100	81	94	56	77
1995	94	99	79	93	54	76
1996	94	99	77	91	51	72
1997	93	98	74	89	49	68
1998	91	97	72	88	48	67
1999°	87	96	69	87	45	64
2000°	86	95	68	86	43	63
2001°	86	95	66	85	42	64
2002	83	94	63	84	41	62
2003	85	92	66	83	44	65
2004	85	93	67	86	45	68
2005	87	95	69	87	47	69

Notes:

* All data shown are the 'cautioning rates' for the year, age-group and gender in question. The 'cautioning rate' is the number of persons cautioned, divided by the number of persons found guilty or cautioned, multiplied by 100.

† The raising of the maximum age of the juvenile justice system occurred in October 1992, and data for that year are therefore given (with different age breakdowns) in both part (a) and part (b) of the table.

° 'Reprimands' and 'final warnings' (under the 1998 Crime and Disorder Act) have been counted as cautions in calculating data for these years.

During the period in which the philosophy of 'minimum interventionism' was ascendant (prior to 1993), there was a marked increase in the cautioning rate across all age/gender groups. The effect was particularly marked in the case of males aged fourteen to sixteen, in respect of whom the cautioning rate more than doubled during the twelve year period 1980-1992 (from 34 percent in 1980 to 73 percent in 1992). As *Table 2* also shows, there are consistent differences in the

cautioning rate by age and also by gender. However, the cautioning rate almost certainly understates the 'actual' diversion rate since it does not include data on police informal warnings (see *Figure 1* under *Section 3*), which are also known to have increased during the 1980s and 1990s, though as these are not recorded their impact is not quantifiable.

Following the 'law and order' backlash against the 'minimum intervention' orthodoxy, there was a marked reduction in the cautioning rate across all age groups, though the effect was much stronger for males than females and was more pronounced for older males than younger ones. Between 1992 and 2002 the reduction in the cautioning rate for male offenders was 13 percent in the case of 10-11 year-olds, 26 percent in the case of 12-14 year-olds and 31 percent in the case of 15-17 year-olds. The 'new youth justice' reforms introduced by the 1998 Crime and Disorder Act did nothing to reverse the trend though there are signs that the decline has now come to an end as there have been slight increases in the cautioning rates for all age groups and across both genders since 2003.

6. Sentencing practice – Part II: Youth court dispositions and their application since 1992

Tables 3a-3c show the pattern of sentencing for young offenders across the relevant age groups from 1992 to 2004, a period which covers the high water mark of the 'minimum intervention' philosophy through to the 'new youth justice' reforms associated with the legislative changes that were introduced in 1998 and 1999 (see *Section 1* above). During the early part of this period one of the commonest disposals across all age ranges was the conditional discharge, a penalty that effectively does no more than warn the offender not to offend. Given the very high caution rate during the same period, this pattern of sentencing drew criticism from both the *Audit Commission* (1996, 35) and the Labour Party (which was at that time in opposition to the government) that "little or nothing" happened to the great majority of children and young people formally processed by the English youth justice system at that time. This was something that the 'new youth justice' reform programme of 1998 was designed to address and, as can be seen, the Youth Courts have for the most part implemented the changes in the way the government intended.

Table 3: Sentencing of Children and Young Persons aged 10-17 for indictable offences, England and Wales, 1992-2004

a) Persons aged 10-11

Year	Referral Order†	Discharge	Fine	Superv. Order	Attend. Center	Repar. Order	Action Plan	Custody	Other	Total	N. (thous.)
Males											
1992	*	61	5	20	13	*	*	-	1	100	0.2
1993	*	58	1	20	17	*	*	1	2	100	0.2
1994	*	65	2	20	10	*	*	0	3	100	0.3
1995	*	66	5	17	12	*	*	-	1	100	0.3
1996	*	65	4	20	9	*	*	-	1	100	0.2
1997	*	58	5	23	12	*	*	1	1	100	0.3
1998	*	61	2	24	11	P	P	0	2	100	0.4
1999	*	54	4	30	7	P	P	1	5	100	0.6
2000	P	38	3	24	8	12	11	0	4	100	0.5
2001	P	19	3	22	8	22	18	-	6	100	0.5
2002	41	12	2	18	3	9	8	0	6	100	0.5
2003	55	12	0	16	0	3	8	0	6	100	0.5
2004	56	10	1	14	2	3	5	1	8	100	0.4

Year	Referral Order†	Discharge	Fine	Superv. Order	Attend. Center	Repar. Order	Action Plan	Custody	Other	Total	N. (thous.)
Females											
1992	*	62	15	15	-	*	*	-	8	100	0.01
1993	*	58	-	25	17	*	*	-	-	100	0.01
1994	*	60	-	20	20	*	*	-	-	100	0.01
1995	*	94	-	-	6	*	*	-	-	100	0.02
1996	*	67	17	17	-	*	*	-	-	100	0.01
1997	*	65	6	24	-	*	*	-	6	100	0.02
1998	*	72	3	17	7	P	P	-	-	100	0.03
1999	*	60	4	23	13	P	P	-	-	100	0.05
2000	P	41	3	19	10	10	14	-	2	100	0.06
2001	P	30	5	7	5	16	23	-	14	100	0.04
2002	51	17	4	11	-	4	9	-	4	100	0.05
2003	69	3	-	18	1	1	1	-	7	100	0.1
2004	61	13	-	13	-	2	4	-	7	100	0.1

b) Persons aged 12-14

Year	Referral Order†	Discharge	Fine	Superv. Order	Attend. Center	Repar. Order	Action Plan	Custody	Other	Total	N. (thous.)
Males											
1992	*	47	8	20	21	*	*	3	2	100	4.7
1993	*	44	6	25	24	*	*	0	2	100	5.3
1994	*	45	6	26	21	*	*	0	1	100	6.6
1995	*	44	6	28	20	*	*	1	1	100	6.8
1996	*	43	5	29	20	*	*	1	1	100	6.4
1997	*	43	5	30	19	*	*	2	1	100	6.8
1998	*	42	5	31	18	P	P	2	2	100	7.7
1999	*	39	6	30	18	P	P	3	5	100	8.3
2000	P	28	6	26	13	7	10	6	3	100	8.2
2001	P	17	5	23	9	14	17	8	7	100	8.5
2002	29	10	3	21	5	8	11	7	6	100	8.3
2003	41	9	2	19	4	4	7	6	8	100	7.6
2004	41	10	3	18	3	4	7	5	9	100	8.0

Year	Referral Order†	Discharge	Fine	Superv. Order	Attend. Center	Repar. Order	Action Plan	Custody	Other	Total	N. (thous.)
Females											
1992	*	64	7	20	6	*	*	0	2	100	0.6
1993	*	60	6	22	10	*	*	0	2	100	0.6
1994	*	64	5	22	8	*	*	0	1	100	1.0
1995	*	60	7	23	9	*	*	0	1	100	1.0
1996	*	56	5	24	12	*	*	1	1	100	1.0
1997	*	56	4	25	12	*	*	1	2	100	1.0
1998	*	55	6	28	9	P	P	0	1	100	1.3
1999	*	51	6	27	10	P	P	1	4	100	1.4
2000	P	35	7	26	7	8	10	2	4	100	1.4
2001	P	24	6	21	4	15	20	2	8	100	1.6
2002	38	12	2	18	3	8	11	4	4	100	1.5
2003	50	11	1	17	2	3	7	3	6	100	1.6
2004	53	9	2	16	2	3	6	2	7	100	1.6

c) Persons aged 15-17

Year	Referral Order	Discharge	Fine	Superv. or Probation Order	CSO	AC	Comb. Order	Curfew	Repar. Order	Act. Plan	Cus-tody	Other	To-tal	N. (thous.)
Males														
1992	*	29	19	17	10	10	0	*	*	*	11	2	100	28.8
1993	*	30	12	20	9	12	2	*	*	*	14	2	100	26.2
1994	*	29	13	21	8	11	2	*	*	*	14	2	100	28.6
1995	*	28	12	22	8	11	2	0	*	*	15	2	100	30.1
1996	*	27	12	22	8	10	3	0	*	*	16	2	100	32.5
1997	*	26	12	21	8	10	4	0	*	*	17	2	100	33.6
1998	*	26	13	21	8	9	4	0	P	P	16	2	100	35.0
1999	*	24	14	20	9	10	4	0	P	P	16	3	100	35.0
2000	P	20	14	17	9	8	4	1	4	5	15	3	100	33.9
2001	P	15	14	17	8	6	3	2	7	9	15	4	100	34.3
2002	17	11	11	16	6	4	3	3	4	6	16	3	100	33.7
2003	25	11	9	16	5	3	3	4	3	5	13	3	100	31.4
2004	26	11	8	15	4	4	3	6	3	5	14	1	100	31.8

Year	Referral Order	Discharge	Fine	Superv. or Probation Order	CSO	AC	Comb. Order	Curfew	Repar. Order	Act. Plan	Cus-tody	Other	To-tal	N. (thous.)
Females														
1992	*	53	16	20	4	3	0	*	*	*	2	3	100	3.6
1993	*	50	13	24	4	4	1	*	*	*	3	1	100	3.1
1994	*	50	10	24	3	6	1	*	*	*	4	1	100	3.8
1995	*	48	11	24	4	6	1	0	*	*	4	1	100	4.0
1996	*	46	10	27	5	6	1	0	*	*	4	1	100	4.2
1997	*	42	10	28	4	6	2	0	*	*	6	2	100	4.6
1998	*	41	10	29	4	5	2	0	P	P	6	2	100	5.1
1999	*	39	11	28	4	5	2	0	P	P	6	3	100	5.2
2000	P	30	11	24	5	5	2	1	5	6	7	3	100	5.2
2001	P	22	10	24	4	4	2	1	10	12	7	4	100	5.3
2002	26	13	6	20	2	2	2	2	6	8	8	5	100	5.1
2003	36	12	5	21	2	2	1	3	3	6	7	2	100	4.9
2004	36	12	5	19	1	2	1	4	4	6	7	3	100	5.0

Notes: The table is based on statistics contained in the relevant volumes of the *Criminal Statistics for England and Wales*. Since 2002, however, the published statistics no longer provide a break-down for young offenders within the relevant age bands. However, the relevant statistics for 2003-2004 on which the above calculations are based were very kindly provided by the Home Office Research, Development and Statistics Department.

* This sentence not legally available in the year shown.

P This sentence available only in a limited number of pilot areas in the year shown; these cases have therefore been included in the 'other' column for that year.

† Referral orders were implemented nationally on 1 April 2002.

During this period the proportionate use of the conditional discharge has declined dramatically across all age ranges and irrespective of gender, though the effect is particularly pronounced for younger offenders, a higher proportion of whom have no previous court appearances. During the first phase of the reform programme, covering the period 2000-2001, the principal 'beneficiaries' of the declining use of the conditional discharge were the newly introduced reparation order and action plan orders. From 2002, however, when the second phase of the reforms – involving the introduction of the referral order and youth offender panels – commenced, this semi-mandatory disposal almost immediately became the most frequently used measure across all age ranges. This contributed to a further reduction in the use of conditional discharges, but also took 'market share' from across the range of disposals including the reparation and action plan orders.

With regard to the use of custodial sentences, there was a marked increase in their usage for 15-17 year-olds of both sexes during the 1990s, though the rate stabilised for males around the mid-1990s before declining slightly in more recent years. The introduction of more permissive custodial sentencing powers in the Crime and Disorder Act for offenders aged 12-14 also resulted in very sharp increases in the proportionate use of custody for both boys and girls in this age group, though there are again signs that this surge may have peaked in 2002, since when there has been a partial decline. The Youth Justice Board expressed concern about these trends, because of the difficulties they cause in making appropriate provision for juveniles who are held in custodial facilities, and in 2001 it took the unusual step of writing to all Youth Courts to this effect. Despite the subsequent modest reduction in the proportionate use of custody the absolute number of young people who are sentenced to custody has continued to grow, as has the average length of custodial sentences imposed, as a result of which the overall size of the juvenile custodial population continues to be a matter of serious concern for the YJB.

7. Regional patterns and differences in sentencing young offenders

The Youth Justice Board has at various times drawn attention to striking regional variations in custodial usage between Youth Courts in different parts of the country. Between October 2000 and September 2001, for example, the ratio of custodial to community sentences ranged from 1:3 in some areas to 1:26 in another, a difference that could not wholly be accounted for by differences in offence seriousness (*Youth Justice Board* 2001, 2002, 19; see also *Bateman/ Stanley* 2002). In addition, the evaluation of the pilot youth justice reform programme in 1998 also disclosed marked variations in the take-up of newly introduced measures such as the reparation order and action plan order by

different courts in areas that were piloting the reforms prior to national implementation (*Holdaway et al.* 2001, 65).

8. Young adults (18-21 year olds) and the juvenile (or adult) criminal justice system: Legal aspects and sentencing practices

Young adult offenders (between their 18th and 21st birthdays) fall into a separate legal category, but in most respects the way they are dealt with much more closely resembles that of adult offenders than juveniles. Thus, they receive old-style cautions as opposed to reprimands and warnings and are tried in the normal magistrates' and Crown courts alongside adult offenders rather than in Youth Courts. Accordingly, they are liable to be dealt with in almost exactly the same way as adult offenders in terms of the type and severity of penalty. One of the few concessions until now has been that they cannot legally be given adult sentences of imprisonment, but are sentenced instead to detention in a young offender's institution. Some young offenders are accommodated in adult prisons, but only on split sites, with dedicated wings set apart for them. Although the prison regime and quality of life they experience is little different from that of adult prison inmates, it has meant that young offenders including young adults have until now been held separately from adult offenders.

In 2000 a law was passed that will abolish the special sentence of detention in a young offender institution for this group of offenders (s. 61 Criminal Justice and Court Services Act 2000) if it is implemented, but this has not yet happened. In May 2007, the government announced that in view of the serious problem of prison overcrowding it was not intending to abolish the measure until it had developed an appropriate approach for 18 to 24 year old young adult offenders. In the meantime, however, the problem of prison overcrowding in the London area had become so acute that in April 2007 the decision was taken to send up to 80 young adult offenders who were being held on remand while awaiting trial to one of three adult prisons in order to free up space in Feltham young offender institution for sentenced juvenile offenders to be accommodated closer to where they live. Although it was planned to place young adult remand prisoners on separate landings some mixing with adult inmates seemed inevitable, prompting concerns for their safety. Such concerns were not alleviated by reports that the task of assessing which young adults should be placed in adult prisons would be assigned to private security officers responsible for transporting inmates to and from court in prison vans (Guardian, 31 April 2007).

9. Transfer of juveniles to adult courts

Although most juvenile offenders are tried and sentenced in the Youth Court, there are exceptions. Young offenders who are charged with an exceptionally serious offence (including murder and crimes that would in the case of adult offenders carry a maximum term of imprisonment of 14 years), for example, are tried and sentenced in the Crown Court, which is the normal venue for serious (indictable) adult offenders. Moreover, juveniles who are jointly charged with a person aged 18 or over may be tried in an adult court if the Youth Court takes the view that the interests of justice require this. Until 2000, it was also possible for the Youth Court to commit a young offender to be sentenced by the Crown Court if the presiding magistrates considered that their own sentencing powers were inadequate, but this power was abolished by the Crime and Disorder Act 1998, following the introduction of the detention and training order.

Until recently, juvenile defendants who were tried in the Crown Court were exposed to exactly the same degree of formality and the same procedures – including trial by judge and jury – as in a normal adult trial. Moreover, they were not entitled to the same protection from unwelcome publicity as they would have been in the Youth Court, unless the court was persuaded to issue a specific restraining order. The use of substantially unmodified adult criminal proceedings in such cases was challenged in the European Court of Human Rights in 1999, following a highly publicised Crown Court trial involving two very young children who were accused of murdering a toddler when they were just ten years of age. Although some limited concessions were made to the normal seating and timetabling arrangements, the Court held that the adult nature of the court environment prevented the two defendants from participating effectively in the trial court proceedings, which constituted a breach of Article 6 of the European Convention on Human Rights (Cases of *V. and T. v. the United Kingdom,* [2000] 30 E.H.H.R. 121).

The government responded to the judgment by modifying the proceedings in such cases in an attempt to make them less intimidating, humiliating and distressing for young defendants and so improve their ability to understand the proceedings and also to participate more actively. These somewhat limited concessions were found wanting in a subsequent case, however, involving an 11 year old boy who suffered from serious learning impairments, and who was assessed as having a developmental age of between 6 and 8. The European Court found that the defendant's rights to a fair trial had been breached and concluded that nothing short of a specialist tribunal that is capable of making proper allowance for the defendant's handicaps would satisfy the fair trial requirements in such a case [E.C.H.R., *SC v. the United Kingdom* (2004)]. A review of the criminal courts conducted by Lord Justice Auld (2001) recommended that young defendants accused of 'grave crimes' should be tried by a specially constituted Youth Court, comprising a judge and at least two

experienced youth panel magistrates. Although this would go some way to meeting the stipulations of the European Court of Human Rights, it would also have the controversial effect of denying such offenders the right to be tried by judge and jury, whereas this safeguard would continue to be available for adult offenders charged with similar offences.

The total numbers of defendants under 18 sent for trial in the Crown Court since 1991 are shown in *Table 4*. As can be seen, there was a marked reduction in the period 1991-1993, following the raising of the maximum age of offenders who could be tried in the Youth Court from the 17th to the 18th birthday, which took effect from 1 October 1992. This was because the Youth Court had traditionally committed fewer cases for trial in the Crown Court than had adult Magistrates' Courts, so the raising of the age limit extended this more lenient ethos to seventeen year-old defendants. From 1994 to 1997 there was a steady rise in the number of persons committed to the Crown Court, though it peaked in 1997, since when there has been a gradual (albeit uneven) reduction.

Table 4: Juveniles aged under 18 appearing at the English Crown Court for trial, 1991-2005 (data given to nearest hundred)

Year	Nearest total number
1991	5,200
1992	4,700
1993	2,700
1994	2,700
1995	3,300
1996	4,300
1997	5,200
1998	5,000
1999	4,900
2000	5,000
2001	4,600
2002	5,100
2003	4,100
2004	4,200
2005	3,000

Source: Annual volumes of Criminal Statistics, England and Wales.

10. Preliminary residential care and pre-trial detention

The rules relating to remand in custody which regulate the circumstances in which young suspects may be detained in custody pending trial are complex and differ in certain respects according to the age of the suspect. Generally speaking special considerations apply to defendants below the age of 17, while those over this age are dealt with in much the same way as adults. Magistrates have the power to remand a young person in custody or release on bail, with or without conditions. There is a general principle that defendants should be released on bail unless there are very strong reasons for refusing to do so, but the presumption is reversed in the case of defendants over the age of 17 who are charged with very serious offences (such as murder, manslaughter and rape), where the court has to give reasons for granting bail. Bail may also be refused in the following circumstances: where the defendant has a history of breaching bail conditions; is thought unlikely to appear in court or likely to commit further offences or interfere with witnesses while on bail or custody; or it is thought to be required for their own welfare or protection. Even where bail is granted, it may be subject to conditions, which can sometimes be onerous, for example where the offender is required to take part in an Intensive Supervision and Surveillance Programme (see above).

Where bail is refused, a juvenile defendant who is under the age of 17 may be remanded to live in local authority accommodation of various kinds, which includes placement in lodgings, in a community home, with relatives, in the defendant's own home or with foster carers. In exceptional cases a young person may be remanded to a secure placement, but only if certain criteria are met (for example where the offender is charged with a serious or sexual offence, is likely to abscond from non-secure accommodation, or is thought likely to injure themselves or another person). Young offenders may also be remanded to custodial institutions where this is felt necessary in order to protect the public from serious harm on the part of the young person.

Prior to 1994 it was government policy to phase out the use of penal establishments for juvenile offenders on remand, at which point the power to remand in custody was restricted to boys, aged 15-16. That year marked a change of policy, however, as the power to order custodial remands was extended firstly to 12-14 year olds and, more recently, to include 10 and 11 year-olds also.

In 2005/6 a total of 6,561 custodial remand decisions were made, which represented just fewer than six percent of the total number of remand decisions (111,168). The great majority of custodial remand decisions – 87 percent – involved remands in custody as opposed to court ordered secure remands, and 16-17 year-olds accounted for just over three quarters (76 percent) of the total. However, 43 of the custodial remand decisions involved defendants as young as 12 years of age (one was only 11), four of which (plus the eleven year old) were remanded to a custodial institution (Source: *Youth Justice Board* 2007). The

number of custodial remand decisions fell by 11.8 percent from 2002/3 to 2005/6 while the number of decisions involving a remand to local authority secure accommodation fell by 35.8 percent during the same period. Part of this decline is attributable to a reduction in the amount of remand accommodation available and an increase in the use of intensive supervision for defendants who might previously have been remanded in custody.

11. Residential care and youth prisons – Legal aspects and the extent to which young persons are deprived of their liberty

Young offenders (under 18) who are held in detention (whether on remand or after sentencing) may be housed in a variety of facilities that are collectively known as the "juvenile secure estate". The position is complicated by the fact that there are three main types of juvenile secure facilities: young offender institutions (YOIs), secure training centres (STCs) and secure children's homes (SCHs), each of which has different historical antecedents and different operating authorities. Consequently, they differ markedly in terms of their numbers, size, operating philosophy, level of resourcing, standard of accommodation and types of regime on offer.

The most numerous and also the largest are the young offender institutions that are owned and managed by the Prison Service and which house young offenders between the ages of 10 and 20 inclusive. There are currently around 20 YOIs with places for about 2,600 boys and a further half dozen or so separate units located within women's prisons with places for around 100 girls. Between them, young offender institutions account for approximately 85 percent of the places available within the secure estate but are not considered suitable for vulnerable young offenders or those with special needs.

A second type of facility consists of local authority secure units, which are owned and operated by local authority social service departments though they are overseen by the Department of Health and the Department for Children, Schools and Families.[9] They trace their origins to an earlier and more welfare oriented phase in English juvenile justice history, and house not only young offenders but also some young people in need of care and protection who require secure accommodation in their own best interests. There are 17 such establishment but because they are relatively small (with an average of just 14 beds each) they only provide around 6.5 percent of the places available within

9 A new Joint Youth Justice Unit was established on 13 November 2007, merging the responsibilities of the Ministry of Justice's Youth Justice and Children's Unit and those of the Young Offender Education Team which used to be run by the Offenders Learning and Skills Unit of the former Department for Education and Skills.

the secure estate. Rather unusually, they cater for both boys and girls within the same unit.

The third type of institution comprises an even smaller number of secure training centres (four in total) that are operated by the private sector under contract from the Home Office. They owe their origins to a short-lived custodial sentence known as the "secure training order" that was introduced in 1994, but which has subsequently been abolished. Each centre houses around 60 juvenile offenders and their 'contribution' to the total number of places available within the secure estate is marginally greater than that of the secure children's homes at 8.5 percent (Parliamentary written answers, 9 March 2007).

Technically the Youth Justice Board is responsible for commissioning and purchasing places in the juvenile secure estate, and also for allocating individual young offenders to a particular institution. Allocation decisions are taken by a centralised unit known as the secure accommodation clearing house and are supposed to be based on a variety of factors including the age and vulnerability of the child, any specific needs, location and distance from home plus availability of places. Because there are too few specialist places available catering for the needs of the youngest and most vulnerable offenders, however, young offenders are frequently assigned to whatever accommodation is available, which often results in even the most vulnerable youngsters being sent to the least suitable type of accommodation in young offender institutions simply because that is all that is available on the day. Although the youth justice board is only responsible for offenders under the age of 18 at the time of sentence, such offenders often remain within the juvenile secure estate even after they turn 18 where it is felt that a move to an adult prison would disrupt their sentence and rehabilitation.

In February 2007, a total of 2,878 young offenders below the age of 18 were detained in custody, which is much higher than normal at this time of the year, prompting concerns that the already over-crowded juvenile secure estate might reach saturation point (just over 3,500 places) once the annual peak is reached during the autumn months. *Table 5* shows the number of juveniles held in custody on a given date for selected years, though changes in the way the statistics are compiled call for caution in deciphering the trends. Prior to 1992 and the raising of the maximum age of the juvenile justice system from the seventeenth to the eighteenth birthday (see above), the statistics relating to the number of juveniles held in custody excluded 17 year-olds, who were legally defined during this period as young adults. Further confusion is caused by the fact that prior to 2004, statistics were only recorded centrally in respect of those who were detained in prison service establishments, thereby excluding the relatively small number of offenders who were detained in other types of facilities. Nevertheless, certain general trends are apparent.

Table 5: Custodial population of children and young people designated as juveniles for selected years between 1980 and 2006

Year	Age range	Population in prison	Total population in custody
1980	14-16	1717	
1985	14-16	1218	
1990	14-17	1595	
1992	14-17	1328	
1993	14-17	1304	
1995	15-17	1675	
2000	15-17	2434	
2002	<18	2610	
2004	<18	2274	+ 267 SCH + 181 STC = 2722
2005	<18	2310	+ 237 SCH + 248 STC = 2795
2006	<18	2440	+ 225 SCH + 247 STC = 2912

Thus, it is apparent that the juvenile prison population was in sharp decline during the 1980s, at a time when the philosophy of 'minimum interventionism' was in the ascendancy. Even after the statistics began to differentiate between 17 year-olds and older prison inmates, causing an increase in the overall number of prisoners who were categorised as juveniles (from 1990 onwards), the decline in the use of custody for this age range continued until a low point was reached in 1993. Thereafter, the size of the juvenile prison population has continued to increase steadily during most of the succeeding period, despite determined efforts by the youth justice board to reverse the trend. By 2006 more than twice as many juveniles were being held in custody as in 1993 even after due allowance is made for the fact that the 1993 statistics only refer to those held in prison service facilities.

The continuing increase in the size of the juvenile custodial population is not attributable to an increase in the proportionate use of custody. Indeed there has been a steady reduction in the percentage of 10 to 17 year-olds who are sentenced to immediate custody from a high-point of 9.0 percent in 1997 to 6.3 percent in 2005 (Table 2.17, RDS NOMS 2007). However, the average length of sentence imposed on this age group was 10.5 months in 2005 compared with 7.7 months in 1995, an increase of over one-third. To some extent this could also reflect a change in the profile of offences for which this age group is dealt with

over the same time period (see *Section 2* above). However, another significant 'driver' is likely to have been the much harsher penal rhetoric emanating from politicians of all parties over the same period.

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

The quality of residential care that is available in youth custodial facilities including the level and standards of educational and vocational programmes on offer depends on a variety of factors. They include the size of the facility, its operating ethos, staffing levels and also the overall level of investment, but other factors such as the turnover of staff and inmates and length of sentence to be served can also make a difference.

Once again there are huge differences between the various categories of custodial establishments in which young offenders may be held, which make it impossible to generalise. Secure children's homes combine penal and therapeutic (controlling and caring) functions and are intended to cater for a diverse range of vulnerable young people and those with special needs. The cost of keeping a young person in such a facility costs £ 185,000 per annum, and staffing levels are generally high (approaching one-to-one). Most staff have child care qualifications. A government inspection in 2001 (H. M. Chief Inspector of Prisons, 2002) reported that the average spending on education and training was between £ 21,000 and £ 31,000 in SCHs, compared with around £16,000 in STCs and just £ 3,000 in YOIs. Despite this relatively generous level of resourcing, the small size of such units makes it difficult to provide a full range of educational and training opportunities catering for every specialist requirement. Moreover, the practice of placing violent or sexual offenders in mixed gender units with vulnerable non-offenders not surprisingly can give rise to operational difficulties.

Secure training centres are intended to house vulnerable young people who are remanded or sentenced to custody in a secure environment where they can be educated and rehabilitated. The annual cost of keeping a young person in a secure training centre is £ 164,000 and staffing levels are reasonably generous at an average of three staff to eight trainees. Although some staff have social work training the majority only have a basic nine-week training programme provided by the YJB. The regimes on offer tend to be reasonably constructive and educationally focused and, because of their larger size, all services can normally be provided on site. The annual average expenditure on education in 2001 was approximately £ 16,000, which enables STCs to provide 25 hours of formal education per week for 50 weeks of the year. In addition, STCs provide a dedicated team of staff to help young people maintain links with their family

and their local community as a means of securing educational or employment opportunities on release.

Despite being the most numerous, young offender institutions have an unenviable reputation as the 'Cinderella' of the juvenile secure estate, in terms of general resourcing, quality of life and expenditure specifically on education and training. They tend to be much larger, older and noisier with inferior accommodation and facilities and many suffer from high levels of overcrowding. Because they are staffed by prison officers few have any specialist training beyond a basic Juvenile Awareness staff programme, so their priorities tend to revolve around control and security. The average cost of keeping a young person in a YOI is just £50,000 per year, and this marked disparity is reflected in a markedly inferior staffing level of around 1 : 10 (3 to 6 officers per wing, each of which accommodates 30-60 young people within a unit that may contain as many as 360 male young offenders). The average expenditure on education in 2001 was just £ 3,000, and the combination of inadequate resourcing and overcrowding means that some YOIs struggle to provide much in the way of education and training at all.

Even in those institutions where conditions are more favourable, however, there are a number of general barriers that inhibit the delivery of high quality education and training. One problem has to do with the very high turnover involving large numbers of young people, many of whom may be serving terms as short as two to four months. A second problem is that many young offenders are highly disturbed and three-quarters have special educational needs. A third problem is associated with high staff turnover, which is compounded by the fact that responsibility for providing education for young people in custody is fragmented, some of it being provided in-house while much of it is contracted out, which makes it much more difficult to provide a well-planned co-ordinated service.[10] As a result of all these difficulties it is not surprising that there are also problems in ensuring continuity in the provision of educational and training programmes both while a young person is in custody and also following their release into the community.

10 On 14 November 2007, the Minister for Children, Schools and Families launched a consultation over a proposal to transfer responsibility for dividing education and training for young people in custody to local authorities.

13. Current reform debates and challenges for the juvenile justice system

13.1 Past and contemporary reform trends

Juvenile justice policy in England and Wales, as elsewhere, has been influenced over the years by a variety of factors. In social policy terms, the United Kingdom as a whole for many years charted a broadly social democratic course, particularly in the wake of the 1942 Beveridge Report with its clear commitment to the notion of universal social rights of citizenship and its willingness to offer some protection for those most vulnerable to the vagaries of market forces (*Cavadino/Dignan* 2006, p. 73). With regard to juvenile justice policy it was during this era that a strongly 'welfare-oriented' reform programme was adopted even though, as we saw in *Section 1*, many of the measures contained in the 1969 Children and Young Persons Act were doomed never to be implemented.[11]

From the mid-1970s onwards, the direction of social policy changed abruptly as a weakening economy helped to stimulate a neo-liberal revival in which a strident free market ideology flourished at the expense of more protectionist social democratic and welfarist aspirations. The foundations of the welfare state were not completely undermined during this period, though they were severely eroded. This remains the case even after ten years of a 'New Labour' government, since its commitment to social justice reforms has been severely tempered by its continuing support for free market ideology and economic policy.

With regard to juvenile justice policy, the election of a right-wing neo-liberal government led by *Margaret Thatcher* in 1979 on a strong 'law and order' platform did not, at least in the short term, have the impact on juvenile justice policy that might have been expected. The only overtly 'punitive' initiative during the 1980s involved the introduction of a harsher regime for detention centres, which was intended to deter young offenders by giving them a 'short sharp shock'. But throughout the 1980s the government continued to actively encourage other policies, such as cautioning, whereby more young offenders were diverted from prosecution altogether. It was only during the 1990s that juvenile justice policy (and penal policy in general) moved decisively in an unprecedentedly punitive direction. New Labour's approach to juvenile justice has been more eclectic. On the one hand it is less stridently punitive in its rhetoric. But on the other hand its unwavering pursuit of a 'preventive' agenda has taken it in an increasingly interventionist direction, whether dealing with

11 It was a very different story in Scotland, however, where a parallel contemporary reform programme did succeed in implementing an uncompromisingly welfare-based approach north of the border, as described in the chapter by *Burman et al.* in this volume.

repeat offenders, those who have offended or are being prosecuted for the first-time, or those who are perceived to be ‘at risk of offending’.

The fact that juvenile justice policy has not always responded immediately or predictably to the changing direction of England’s political economy over the last sixty years may to some extent be explained by the influence of other factors. They include the changing role and influence of various kinds of professionals – criminal justice practitioners, bureaucratic experts and management consultants – the mass media and also overseas influences.

One of the distinctive features of the English political system – with its ‘first-past-the-post’ electoral system in which the ‘winner takes all’ and its strong form of party discipline – is the extent to which responsibility for policy-making is vested in the hands of the ruling political party, a tendency that has become much more pronounced over the past thirty years or so. Until relatively recently the impact on juvenile justice policy was moderated by a number of factors, each of which has declined markedly in influence during the last three decades.

Prior to 1979 the main political parties adopted a largely pragmatic and non-ideological approach with regard to criminal and juvenile justice policy-making, and even when this bipartisan consensus broke down it took a while before the widening rhetorical and ideological gulf between the parties began to exert a dominant influence on the direction of juvenile justice policy. During the 1980s for example, as we have seen, juvenile justice practitioners and academics developed their own coherent 'minimum interventionist' philosophy and, under the auspices of the youth justice movement, succeeded for a time in influencing the direction of youth justice policy, particularly with regard to the diversion of young offenders from both prosecution and custody. Another moderating factor on the direction of juvenile and criminal justice policy-making during this period was the continuing influence of a professional, politically neutral, policy-making bureaucracy that continued to seek pragmatic rather than ideological solutions to the problems posed by a rising crime rate, rapidly increasing prison population, serious disorder within the prison system and ever-present resource constraints. The high-water mark of this more traditional approach to criminal justice policy making was the enactment of the Criminal Justice Act 1991, which sought to restrain the use of custody by the courts by endorsing a new sentencing framework based on the principle of 'just deserts'.

Gradually, however, the terms of the criminal and juvenile justice debate became more polarised as both the media and politicians sought to exert more control over the policy-making agenda. With regard to the media, one of the most significant developments in recent years has been the growing influence of the privately owned and controlled 'tabloid' press whose traditionally sensationalised reporting of crime stories has become increasingly politicised. One of the most obvious manifestations of this tendency has been the orchestration of public concerns and disquiet over the perceived prevalence or seriousness of youth

crime in general, which is often linked with the suggestion that official responses to the problem are inadequate and ineffective. At times the growing sense of 'moral panic' over the state of youth offending has been further inflamed by the sensationalist reporting of particularly horrific offences committed by young people, one of the most notable examples in recent years being the killing of a two-year old child, *James Bulger*, by two ten year old boys in February 1993. On other occasions the tabloid press have sought to influence the direction of penal policy more directly, for example by campaigning against the perceived leniency of the 1991 Criminal Justice Act. And at times they have even attempted (with some success) to influence the quasi-judicial decision-making process, one of the most notorious examples being the orchestration of a high profile petition by the Sun Newspaper that succeeded in its aim of influencing the decision of the Home Secretary when setting the minimum period of detention to be served by the killers of *James Bulger*.

The politicians' response to the changing political climate, which they themselves have helped to shape, has been to politicise the criminal justice agenda still further by promoting more populist punitive policies in the hope of gaining electoral support at the expense of their opponents. In their quest to exert more direct and partisan influence over the direction of criminal justice policy in general and juvenile justice policy in particular, politicians have effectively emasculated the traditional pragmatic influence of a professionalised civil service by appointing and responding to their own political advisers.[12] Not satisfied with setting the overall direction of penal policy, however, politicians have also sought to steer its implementation and execution by subjecting the autonomy that criminal justice professions and practitioners once enjoyed to much more centralised and directive forms of control. A powerful weapon in this quest has been the importation of various 'managerialist' techniques from the private sector, with the twin aims of improving the cost effectiveness and efficiency of the criminal justice and youth justice systems while at the same time rendering them more amenable to centralised control and direction.

To begin with this much more overtly partisan political strategy was exclusively associated with the Conservative Party that had initially sought to exploit the 'law and order' issue as a means of gaining electoral support during the late 1970s. Following a string of electoral defeats during the 1980s, however, a turning point was reached in 1993 when Tony Blair, as newly appointed shadow Home Secretary, sought to neutralise the Conservative Party's

12 One notorious episode cited by *Lacey* (2007, 21), which symbolises the dramatic change in the hitherto respectful and deferential relationship between politicians and senior civil servants, was the then Home Secretary *Michael Howard*'s unprecedented naming of *David Faulkner* – the senior civil servant most closely associated with the 1991 Criminal Justice Act – and public repudiation of his views during a radio interview in the early 1990s.

perceived advantage on this issue by advocating a much more hard-line approach encapsulated in the sound-bite: 'tough on crime and tough on the causes of crime'. Although this reduced the ideological gulf between the two parties it did nothing to depoliticise the issue since it precipitated a 'bidding war' in which both main parties strove constantly to outflank one another by adopting harsh populist policies and portraying their opponents as being 'soft' on crime.

Following its election victory in 1997, the 'New Labour' government has pursued a distinctive juvenile justice policy agenda that has blended elements of the 'law and order' approach that was popularised by their predecessors together with a much greater emphasis on the prevention of juvenile offending and reoffending, stronger support for certain restorative justice initiatives and an even more slavish adherence to the tenets of managerialism. The name that is often given to this somewhat eclectic mixture of policy preferences is 'neo-correctionalism', a term which conveniently encapsulates the adoption of a much more ambitious interventionist strategy that aspires to prevent crime and anti-social behaviour where possible and to increase the effectiveness of criminal justice responses aimed at those who do offend.

As for the external sources that have helped to shape the direction of English juvenile justice policy, the dominant influence by far – largely for historical, cultural and ideological reasons since it could hardly be said to be 'evidence-based' – has been the United States. The numerous examples that could be cited in a specifically youth justice context include the adoption of just deserts thinking in the 1980s, boot camps[13] in the 1990s and zero tolerance policies more recently. Moreover, *Tony Blair*'s attempt to reposition the Labour Party with regard to criminal justice policy was itself directly influenced by the success of *Bill Clinton*'s Democratic Party in the 1992 Presidential election. Other countries with which England has shared close historical and cultural connections such as New Zealand and Australia have also had a more modest influence recently, most notably with regard to the development of restorative justice approaches. Beyond this narrow band of countries it is much more difficult to find examples of policy transfers from other jurisdictions, particularly in a juvenile justice context, though with regard to the wider penal system the relatively rare examples include the short-lived introduction of unit fines in 1992 and the adoption of a prisons ombudsman in 1994.[14]

13 'Boot camp' is the name given to a type of custodial institution imported from the United States for a short time in the mid-1990s in which the harsh regime was organised along military lines.

14 Other countries, such as Germany and Sweden, had successfully introduced the concept of 'day fines' on which the English unit fine system was based. As for the ombudsman, an official independent of the authorities with the power to investigate grievances and provide redress to successful complainants, this institution was also pioneered in Sweden.

13.2 Current reform debates and challenges for the juvenile justice system

Ten years after the latest radical overhaul of the English youth justice system a number of pressing matters are giving rise to concern.

First, the sharp separation between the institutions and processes for dealing with young offenders on the one hand, and those in need of care and protection on the other, has fuelled well-founded criticisms that youth offending teams pay insufficient regard to the welfare needs of young offenders (*Chief Inspectors, England and Wales* 2002). Conversely, there are fears that too many looked after children in residential care are reported for committing minor offences so that they become the responsibility of youth offending teams rather than local authority social workers. Until recently, this deeply entrenched institutional and procedural divide has prevented many offenders with welfare needs getting the treatment and support they require. Whether the recent restructuring of ministerial responsibilities (see above) and the established new network of Children's Trusts will be capable of bridging this divide remains to be seen.

Second, the emphasis on the prevention of offending behaviour by young people appears to have resulted in a preoccupation with addressing a rather narrow range of offence-related risk factors (such as truancy, substance abuse, inappropriate peer relationships etc) at the expense of more deep-seated social factors such as poverty, social exclusion, inadequate or inappropriate educational provision etc. In this respect the oft-repeated Labour Party mantra that it would be “tough on crime, tough on the causes of crime' has always sounded more convincing with regard to the first half of the slogan than the second.

Third, it has been suggested that, in repudiating the nostrum that young offenders are likely to grow out of crime, the new youth justice system may have gone too far in the opposite direction by advocating early intervention for all (or nearly all) young offenders (*Bottoms/Dignan* 2004, 171). This view appears to be shared by many practitioners and even several key figures who until recently have been charged with implementing the government's youth justice strategy. They include *Rod Morgan* (2007), who is a former Director of the Youth Justice Board and *Rob Allen* (2006), who was a member of the Board between 1998 and 2006.

Fourth, there are some indications that the adoption of a more structured diversionary regime in which offenders relatively automatically progress from reprimand to final warning to (assuming one pleads guilty) a referral order can result in heavy-handed and inappropriate interventions for relatively trivial offences that arguably do not merit such a formal response.

Fifth, there are continuing concerns about both the stubbornly high number of children and young people who are held in custody (despite the falling crime rate) and also the conditions and treatment to which they are subject while in custody.

Sixth, while the English youth justice system has made some attempts to address the needs of victims, all too frequently these needs are subordinated to other pressing priorities such as speed of processing cases through the system or the preference for correctional interventions. Linked to this concern is the fact that support for victim-oriented approaches in England and Wales has drawn on an eclectic mixture of philosophical and policy traditions and consequently lacks the coherence and consistency of restorative justice strategies elsewhere, notably the one that has recently been adopted in Northern Ireland.

Finally, international criticisms that the current age of criminal responsibility in England and Wales is far too low are also echoed by many senior figures within the youth justice movement (for example *Allen* 2006; *Morgan* 2007), though in the current political climate there is little realistic prospect of any upward revision at least in the foreseeable future.

14. Summary and outlook

The recent history of the English youth justice system has been a highly turbulent one, with a tendency to veer from one approach to another within a relatively short space of time. Some positive achievements of the 1998 reform programme can be acknowledged. One is the bold and potentially very constructive emphasis on the benefits to be derived from a multi-agency approach that embraces both strategic and operational levels even though, as has been suggested above, it has failed to bridge the divide between the care jurisdiction on the one hand and the juvenile offending jurisdiction on the other.

The creation of a powerful new body, the Youth Justice Board, with strategic responsibilities for the development and implementation of juvenile justice policy also helped to foster a new sense of purpose and direction for the youth justice service at least for a time. More recently, however, this sense of coherence and consensuality has been somewhat undermined by the rather public disagreement between senior members of the Board and government ministers over key policy matters including the size of the youth prison population.

Attempts to reduce the delays in the time taken to deal with young offenders and to develop more constructive and meaningful forms of intervention for young offenders also deserve credit, as does the increasing emphasis that has been placed on meeting the needs of victims.

Despite these achievements, however, both the number of pressing concerns that have still to be addressed and the swelling chorus of demands for reform, many of which emanate from very influential sources, suggest that the English juvenile justice system's reputation for turbulence is unlikely to be relinquished in the slightly longer term even though the immediate prospects for another major overhaul of the system are not particularly promising.

Editorial note to the second edition

The present article was finished in 2007. The editors did not want to change this article, since the author could not be consulted regarding the update of its content. However, recent developments in sentencing as well as in policy debates are briefly presented in chapters 41 and 45.

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Estonia

Jaan Ginter, Jaan Sootak

1. Historical development and overview of the current juvenile justice legislation

In Estonia, provisions concerning criminal proceedings against juveniles are fully embodied in the Code of Criminal Procedure that applies to both juvenile and adult offenders.[1] There are several provisions that guarantee minors[2] extra protection, which are discussed in more detail throughout this report. Also, the Juvenile Sanctions Act provides an alternative system of sanctions for minors.[3] These interventions are applied by so-called juvenile committees and not by courts.

The minimum age of criminal responsibility is 14 years.[4] It corresponds to the age at which a juvenile becomes liable to criminal prosecution. For minors younger than 14 years and minors against whom criminal prosecution is deemed unnecessary, alternative proceedings have been designed. The Juvenile Sanctions Act[5] provides sanctions applicable to minors and concretises the competences of the juvenile committees. This Act applies to minors who:

1) at less than 14 years of age, commit an unlawful act corresponding to the necessary elements of a criminal offence prescribed by the Penal Code.

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1 Code of Criminal Procedure. Official Gazette, RT I 2006, 45, 332.

2 The translation of the Estonian Code of Criminal Procedure uses the term "minor" to refer to all persons under the age of 18.

3 Juvenile Sanctions Act. Official Gazette, RT I 2002, 82, 479.

4 Penal Code. Official Gazette, RT I 2001, 61, 364.

5 Juvenile Sanctions Act. Official Gazette, RT I 2002, 82, 479. During the Soviet period the minimum age of criminal responsibility was 14 years. For some years after regaining independence the minimum age of criminal responsibility was lowered to 13.

2) at less than 14 years of age, commit an unlawful act corresponding to the necessary elements of a misdemeanour prescribed by the Penal Code or another Act.
3) between 14 and 18 years of age, commit a criminal offence prescribed by the Penal Code, but the prosecution or court find that the person can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code, and criminal proceedings with respect to him or her have been terminated.
4) between 14 and 18 years of age, commit a misdemeanour prescribed by the Penal Code or another Act, but a body conducting extra-judicial proceedings or a court finds that the person can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code, and misdemeanour proceedings with respect to him or her have been terminated.

This Act also applies to minors who:

1) do not fulfil the obligation arising from § 8 of the Republic of Estonia Education Act to attend school;[6]
2) consume alcoholic beverages, narcotic or psychotropic substances.

Juvenile committees (hereinafter abbreviated as JCs) are formed in a county on the order of the County Governor.[7] A JC comprises seven members, and the secretary of the committee is responsible for its administration. The JC comprises persons with practical experience in the areas of education, social welfare and health care, a police officer, a probation officer, a staff employee of the county government, and the secretary of the JC.

Juvenile committees deal with juvenile offence matters if there is no corresponding local government committee. It co-ordinates the work in the field of crime prevention carried out with minors within its administrative territory.

2. Trends in reported delinquency of children, juveniles and young adults

The number of police-recorded crimes involving juvenile suspects (14-17 years old) was stable from 1995 to 2003. In recent years (2004-2006) the number has been substantially higher. The increase can not be explained by an increase in general criminality, because the general crime rate has been consistently decreasing since 2003.

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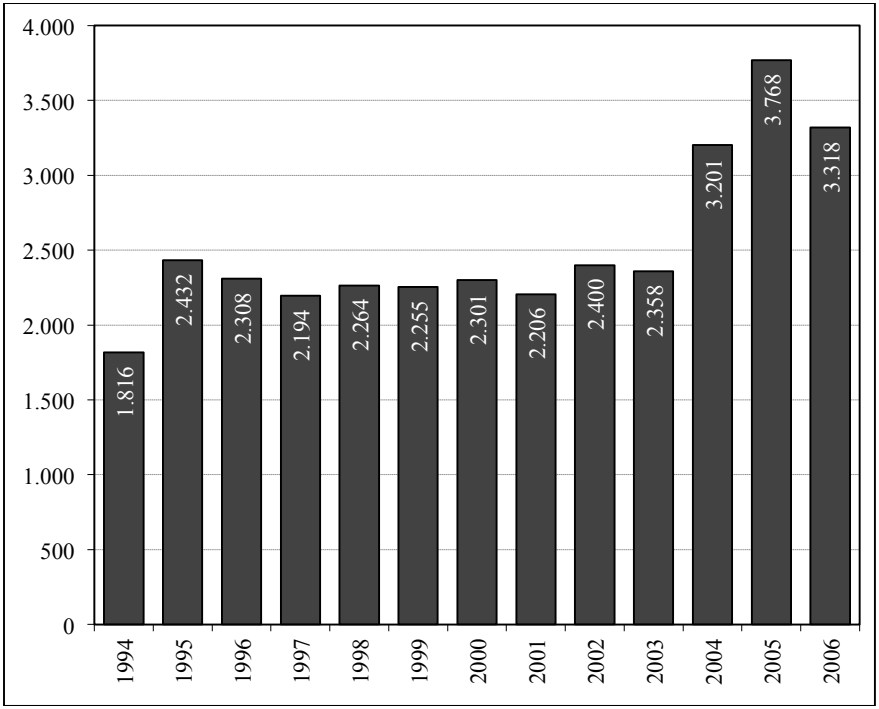
6 Education Act of the Republic of Estonia. Official Gazette, RT 1992, 12, 192.

7 Local governments may form a city or rural municipality JC with the approval of the county juvenile committee. The city district government may form a city district juvenile committee with the approval of the city government.

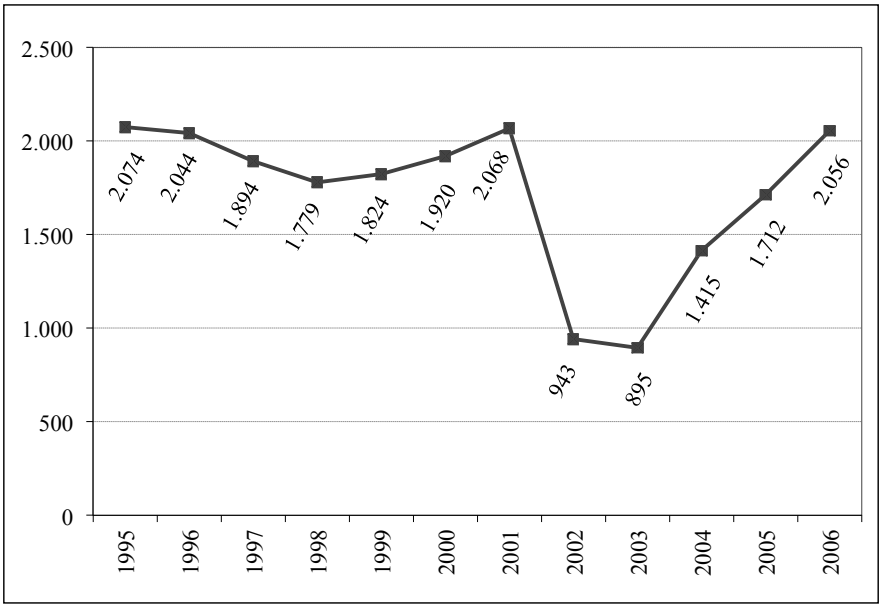
Figure 1: Number of crimes committed by juveniles (14-17 year olds)



Source: Report of the Police Department.

The number of juveniles who are prosecuted for crimes has not been so stable according to Ministry of Justice statistics. *Figure 2* indicates a sharp decrease in the numbers for 2002 and 2003, and an increase since then.

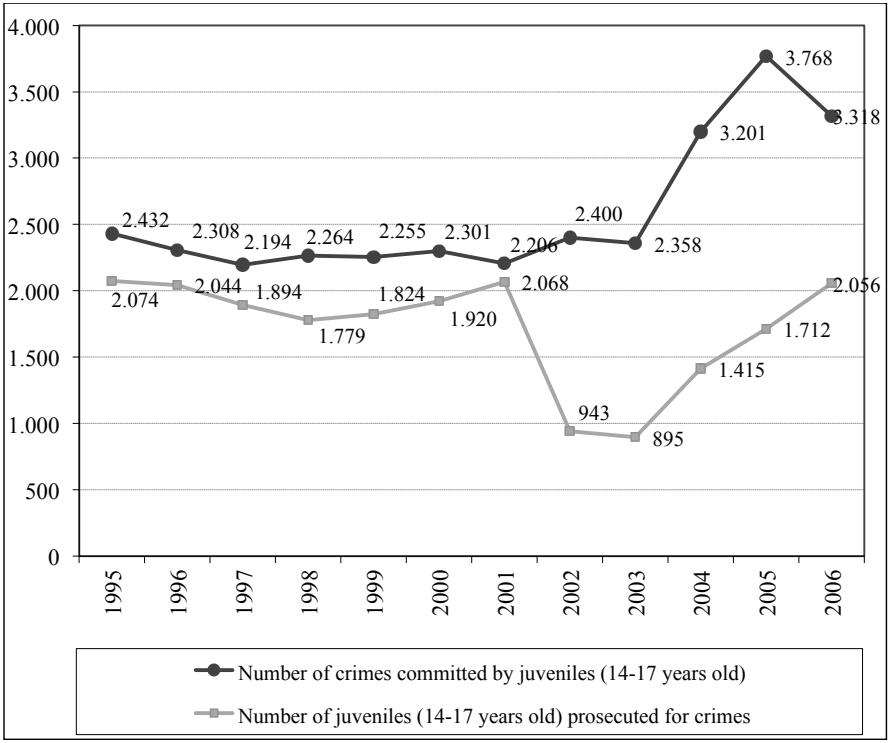
Figure 2: Juveniles prosecuted for crimes



Source: Data from the Department of Statistics database.

When combining the data from *Figures 1* and *2* (see *Figure 3*), it becomes evident that the data on prosecuted persons may be incomplete, because the extraordinary drop in the number of prosecutions in 2002 and 2003 is not paralleled by a respective drop in the number of criminal acts recorded by the police. Nonetheless, both sets of data confirm that juvenile criminality was stable from 1995 to 2001, and has been consistently increasing since 2003.

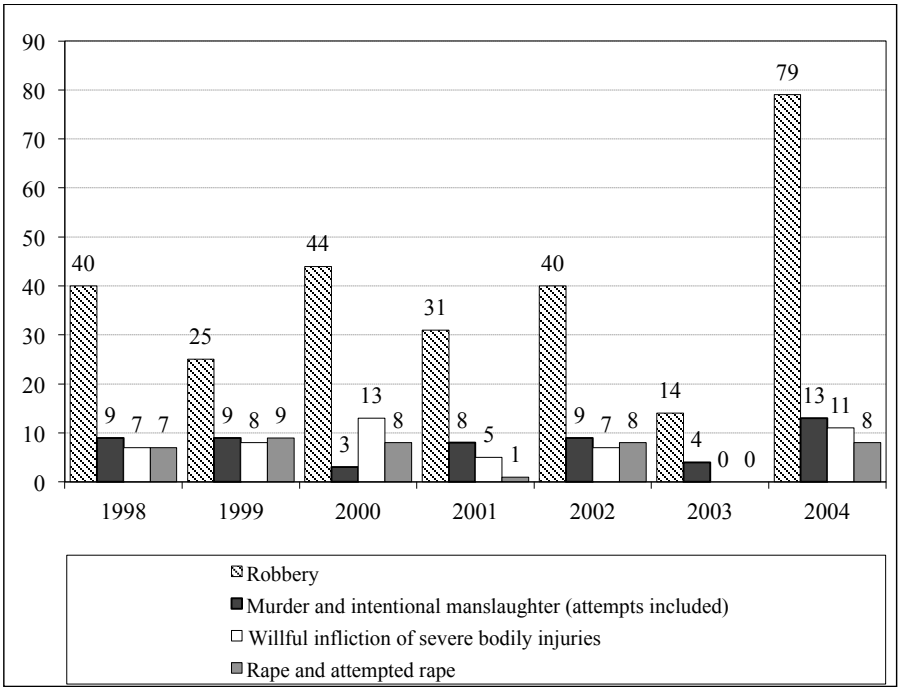
Figure 3: Number of crimes committed by juveniles and number of juveniles prosecuted



Source: Data from the Department of Statistics database.

Data concerning the number of juveniles who have been convicted in courts indicates that the conviction rate lacks stability. The extremely low number of convictions in 2003 is especially intriguing (see *Figure 4*).

Figure 4: Number of juveniles convicted of robbery, murder or intentional manslaughter (attempts included), wilful infliction of severe bodily injuries, rape (attempts included)



Source: Data from the Department of Statistics database.

3. The sanctions system. Kinds of informal and formal interventions

3.1 Overview

According to the Juvenile Sanctions Act, one or several of the following sanctions may be imposed on a minor:

1) Warning,
2) Sanctions concerning the organisation of study,
3) Referral to a psychologist, addiction specialist, social worker or other specialist for consultation,

4) Conciliation,
5) An obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home,
6) Community service,
7) Surety,
8) Participation in youth, social or medical treatment programmes,
9) Placement in a School for Students with Special Needs.

The most severe of these sanctions is the placement in a School for Students with Special Needs (SSSN). It is applicable to a minor who is at least 12 years old[8] and has:

1) at less than 14 years of age, committed an unlawful act corresponding to the necessary elements of a criminal offence or misdemeanour,
2) between 14 and 18 years of age, committed an unlawful act corresponding to the necessary elements of a criminal offence, but the prosecutor has terminated proceedings against him or her according to § 201 of the Code of Criminal Procedure based on the principle of opportunity (see *3.2*), or the court has decided to exempt the person from punishment (see *3.3*).

A minor is sent to an SSSN[9] if previously applied sanctions have not been successful, and if being sent to such a school is in the interests of his or her disciplinary supervision. The duration of placement is limited to a maximum of two years. Once the term of stay has been set, the date on which the sentence is to be commenced is fixed, taking the end of the academic year into consideration.[10] A juvenile committee needs the permission of a county or city judge to send a minor to an SSSN. Applications are reviewed in court according to Chapter 17 of the Code of Criminal Procedure and are settled by a court ruling.

Students at SSSNs are not allowed the possession of specific items and substances listed in a regulation approved by the Government of the Republic. The director of the school or a person authorised by the director has the right to open postal and other consignments sent to a student in order to confiscate prohibited items and substances. Such searches are conducted only in the presence of the student. The director or a person authorised by the director does

8 As an exception, a permit may also be applied for if the minor is at least 10 years of age and has committed a crime.

9 These special schools are founded on the basis of the Basic Schools and Upper Secondary Schools Act. Official Gazette, RT I 1999, 42, 497.

10 Vacancies in the SSSNs become available at the end of an academic year. Therefore, juveniles are predominantly sent to these schools at the beginning of the following academic period. If the two years' term ends near to the end of an academic year the term may exceed two years.

not have the right to examine the contents of a student's correspondence and messages forwarded by telephone or other public communication channels. For the exercise of disciplinary supervision, students are prohibited from leaving the territory of the school, except in the cases provided for in the statutes of the school.

Sanctions concerning the organisation of studies include:

1) sending students in basic education who have behavioural problems to separate classes.
2) sending them to long day groups.

Students in basic education who exhibit behavioural problems can only be sent to separate classes if such classes are available at a school near their place of residence. Overall, special classes are provided for pupils from 4th to 9th grade, and are limited to a capacity of twelve students. They follow the general curriculum, but can also resort to a simplified curriculum where necessary. As is also the case with special classes, whether or not a student can be required to join long-day groups depends on the availability thereof at the pupil's respective school.[11] Students in long-day groups remain at school once classes have ended. They prepare for the next school day and participate in other activities together. These students go home later than regular pupils, and it is expected that by the time they get home their parents will have finished work. Long-day groups thus aim at bridging periods of non-supervision.

According to the Juvenile Sanctions Act minors can be required to perform ten to fifty hours of community service. This measure is only applicable if the minor in question consents to it, and as long as the hours of service do not collide with work or studies. Community service of up to ten hours may be imposed on persons aged under 13. The duties that a juvenile can be required to fulfil within the scope of community service are determined by Government Regulation no. 181 from 18 August 1998[12] and include e. g. working in a library, or various activities in gardening and production. To perform community service, the juvenile is assigned a schedule and a contract is agreed between the juvenile, a social worker and the employer. Practice has shown, however, that finding places and partners for serving community service is in fact a difficult task.

11 Due to a lack of resources and inconvenient bus-schedules, the majority of schools do not (or cannot) offer special classes or long day groups.

12 Government Regulation no. 181 from 18 August 1998. Official Gazette, RTI, 1998, 75, 1237.

3.2 Prosecutorial discretion

According to § 201 of the Code of Criminal Procedure, the prosecutor can refuse to initiate criminal proceedings or can terminate proceedings, if:

1) the unlawful act had been committed by a minor incapable of guilt on the grounds of his or her age (i. e. being under 14 years old);
2) a criminal offence had been committed by a minor aged 14 to 17, but the prosecutor finds that he or she can be influenced without imposing punishment or a sanction prescribed in § 87 of the Penal Code.

In these cases the Prosecutor's Office refers all relevant documentation and materials to the responsible local JC which, in turn, can impose sanctions on the minor within the scope of its competence.

3.3 Court

3.3.1 Conviction and exemption from punishment

Where the prosecutor decides to charge a minor aged 14 to 17 with a criminal offence, the court can convict him/her and exempt him/her from punishment according to § 87 of the Penal Code. This can be done if the court takes the person's level of moral and mental development into account as well as his/her ability to understand the unlawfulness of the exhibited behaviour, or to act according to this discernment. The court may release the person from punishment and impose the following sanctions:

1) Admonition;
2) Subjection to supervision of conduct pursuant to the provisions of § 75 of the Penal Code;
3) Placement in a youth home or boarding school;
4) Placement in a school for pupils who need special treatment due to behavioural problems.[13]

A court may subject a person aged younger than 18 to up to one year of conduct supervision. On the basis of a report prepared by a probation officer, the court may extend the period of supervision by up to one year or exceptionally until the convicted offender turns 18.

Persons under 18 years of age can be placed in a youth home, a boarding school or a school for pupils with behavioural problems who need special treatment, for up to two years. The court may extend the term of stay in a youth

13 These institutions are in fact the same as SSSNs provided for by the Juvenile Sanctions Act. Just the translations of the two different acts use different terms. In Estonian the names of the institutions are identical.

home, boarding school or a special school by up to one year or, as an exception, until the end of the academic year.

3.3.2 Conviction and punishment

If a minor has been prosecuted and the court has sentenced him or her to be punished for an offence, all principal and supplementary punishments of the Penal Code can be applied. Estonia does not have a separate penal law for minors, and therefore the Penal Code also applies to them. §§ 44 and 45 of the Penal Code provide two forms of punishment as responses to criminal offences: pecuniary punishments and imprisonment. The sanctions available for dealing with misdemeanours – fines and detention – are regulated in §§ 47 and 48 PC.

Where a person commits an offence when aged under 18, the court can impose a fine of between 30 and 250 day fine rates. A fine cannot be imposed on an under 18 year old if he/she has no independent income (§ 44 V). Another age-specific provision is that persons younger than 18 at the time of the offence cannot receive life sentences or prison sentences exceeding ten years (§ 45 II).

Prison sentences of up to two years can be substituted for community service, so long as the offender consents to this substitution. One day of imprisonment corresponds to two hours of community service. The duration of community service shall not exceed eight hours a day. If a convicted offender performs community service during his or her free time from work or studies, the duration of community service shall not exceed four hours a day. Community service is not remunerated (§ 69 I and II Penal Code), but is rather a substitution of punishment (Chapter 4, division 2 of the Penal Code). According to the law, no special arrangements are made for minors.

If a court, taking the circumstances relating to the commission of a criminal offence and the personality of the offender into consideration, finds that serving the specified prison term is unreasonable, it may order the sentence to be suspended on probation. In such cases, the court can order that part or all of the sentence only be enforced if the offender intentionally re-offends or fails to comply with the imposed supervisory requirements and obligations provided for in § 75 within a period of probation determined by the court. Where the court decides to suspend part of the prison sentence, it has to clearly state which proportion is to be immediately served in custody and consequently the length of the probationary period, which ranges between 18 and 36 months (§§ 73-75 Penal Code). Legally, probation is a release from punishment (Chapter 5 of the Penal Code). According to the law, no special arrangements are made for minors.

4. Juvenile criminal procedure

Estonian law does not provide a special criminal procedure for juveniles. However, criminal procedure is Estonia contains several safeguards for protecting the interests of juveniles:

1) According to Articles 11 and 12 of the Estonian Code of Criminal Procedure, a court may declare in the interests of a minor that a session or a part thereof and/or pronouncement of a court decision be held in camera;
2) Article 45 states that the participation of a defence counsel is mandatory throughout the criminal proceedings if the defendant was a minor at the time of the criminal offence;
3) Information concerning pre-trial proceedings shall not be disclosed if this could jeopardize the interests of a minor (Article 214);
4) If the commencement of criminal proceedings is refused or if proceedings are terminated because an unlawful act was committed by a minor who was below the age of criminal responsibility, the investigative body or Prosecutor's Office refers the case materials to the local JC. Basically the same applies when a minor who has committed a criminal offence at the age of 14 to 17 can be influenced without imposing a punishment or a sanction prescribed in § 87 of the Penal Code. Here, the Prosecutor's Office terminates the criminal proceedings by a ruling and refers the criminal file to the local JC.

Larger police units have specialized officers who deal with juvenile offending. There are also specialized prosecutors whose workload is more concentrated on crimes committed by juveniles. The specialized police officers and prosecutors have special training modules on juvenile psychology and on particularities of working with juveniles.

Non-criminal sanctions mentioned in the Juvenile Sanctions Act are imposed according to the procedure described in Section One of this report.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency (diversion, victim-offender-mediation, etc.)

The measure that the JCs most commonly impose is the warning. There has been debate as to whether using warnings so extensively could cause juvenile delinquents to feel as though they had escaped punishment. One should not forget though that the JC procedure itself at least has some effect and therefore it should not be too surprising that approximately half of the proceedings end in a warning. The number of warnings has increased quite drastically since 2001

because the JC's caseloads have increased more swiftly than the availability of resources for alternative sanctions (see *Table 1*).

Table 1: Dynamics of the measures applied by the Juvenile Committees

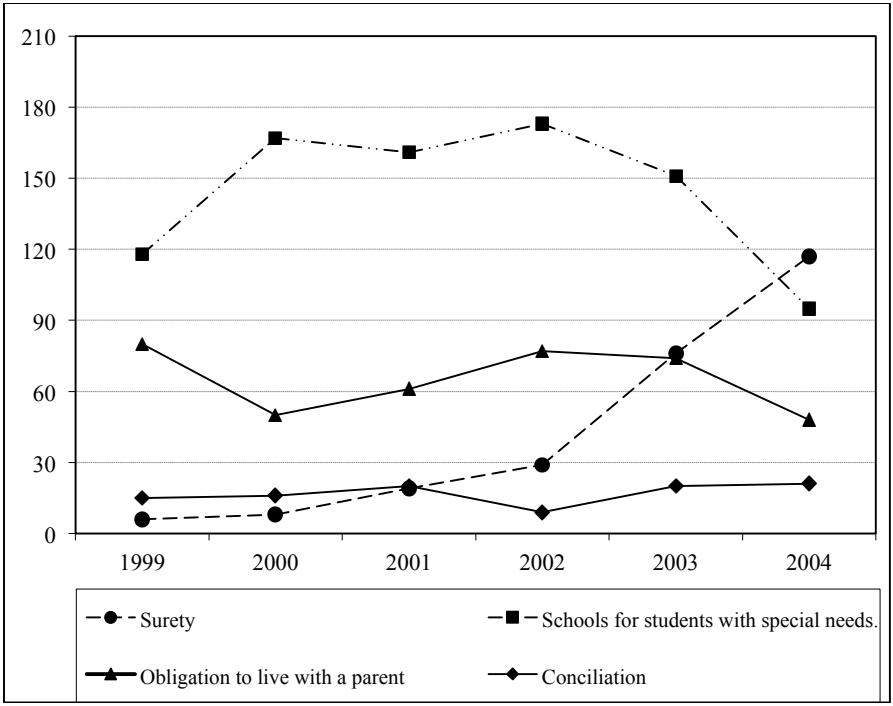
	1999	2000	2001	2002	2003	2004
Warning	709	669	744	1,053	1,745	2,405
Community service	95	152	194	299	550	802
Referral to a specialist for consultation	334	340	309	427	590	639
Sanctions concerning organisation of study	400	330	450	341	515	544
Social programs	90	114	117	143	234	282
Surety	6	8	19	29	76	117
Schools for students with special needs.	118	167	161	173	151	95
Obligation to live with a parent	80	50	61	77	74	48
Conciliation	15	16	20	9	20	21
Total	**1,847**	**1,846**	**2,075**	**2,583**	**3,955**	**5,094**

Source: Report on the Activities of Juvenile Committees 1999-2004.

Placements in SSSNs are by far less frequent. It is the most repressive intervention that the JCs have at their disposal, and has therefore rightly been applied with caution. The special schools have not proven to be very effective in re-socialising juveniles. Studies have indicated that the ratio of juveniles who re-offend after leaving these schools is very high.[14] Nevertheless, it has been impossible to abolish the schools altogether because the other alternatives simply have little to no effect on some juveniles.

14 Mauritius Institute. Studies 2007. Käesoleva uuringu materjalide kasutamine mittekommertslikel eesmärkidel on lubatud, viidates käesolevale allikale kui. "Retsidiivsus, KESA-Mauritius 2007".

Figure 5: Dynamics of the measures applied more rarely by the juvenile committees

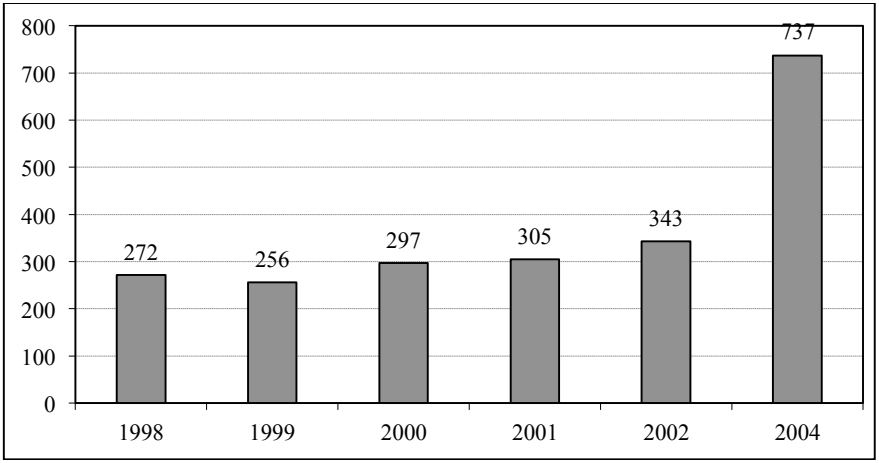


Source: Report on the Activities of Juvenile Committees 1999-2004.

6. The sentencing practice – Part II: Court dispositions and their application

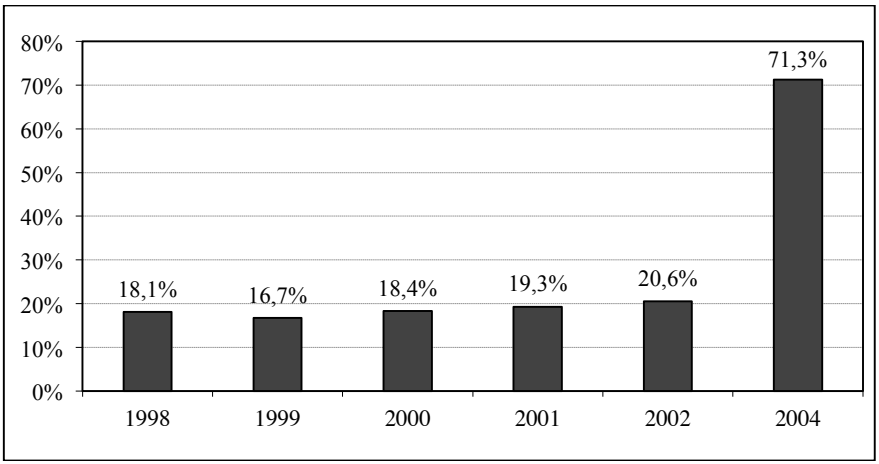
In recent years the majority of juvenile criminals have been diverted from the track of formal criminal procedure. Most cases are transferred to the juvenile committees. Therefore, the dynamics of sentencing indicate an increasing percentage of convicted juveniles who are unconditionally imprisoned (see *Figure 7*). The absolute number of unconditional prison sentences was rather low (and stable) from 1998 to 2002. But from 2002 to 2004 the number more than doubled (see *Figure 6*).

Figure 6: Number of juveniles sentenced to unconditional imprisonment in Estonia



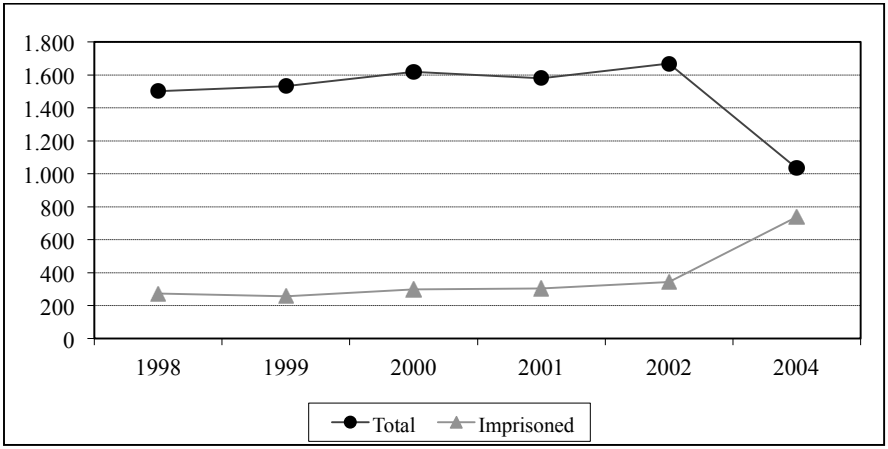
Note: The Department of Statistics data for 2003 is incomplete and included only 63 cases of unconditional prison sentences.
Source: Department of Statistics database.

Figure 7: Percentage of unconditional imprisonment among sentences of juveniles in Estonia



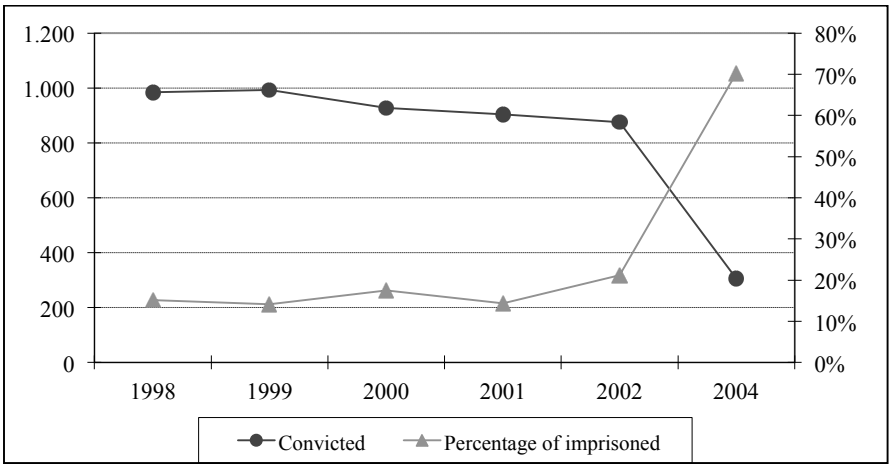
Source: Department of Statistics database.

Figure 8: Numbers of convicted juveniles and of unconditional prison sentences



Note: The Department of Statistics data for 2003 is incomplete and included only 63 cases of unconditional prison sentences.
Source: Department of Statistics database.

Figure 9: Number of juveniles convicted of larceny and percentage of unconditional prison sentences



* The Department of Statistics data for 2003 is incomplete and included only 45 cases of larceny.
Source: Department of Statistics database.

An analysis by the Ministry of Justice asserts that the trend changed in 2005, with conditional imprisonment being the most frequently used form of punishment (65% of all convictions). Unconditional imprisonment accounted for 19% of all juvenile cases, and 18% were relieved from criminal punishment and referred to a JC.[15]

7. Regional patterns and differences in sentencing young offenders

There are no data available that allow us to differentiate the sentencing practice according to different regions of the country.

8. Young adults (18-21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

Estonian substantive penal law provides no separate Code for minors and youths. According to § 33 of the Penal Code, a person is capable of guilt if he/she is mentally capable and at least 14 years old at the time of the offence. The Penal Code prescribes specifications for the application of punishment to minors (from 14 to 17 years of age) as has been described in section *3*. Nor does the Code provide any peculiarities for the age group of young adults.

The Imprisonment Act provides a separate Chapter 3 on the "Imposition of Imprisonment on Young Prisoners". According to § 77 of the Act, a young prisoner is a person who – when his/her punishment is enforced – is younger than 21 years of age. According to § 81 of the Act, the different age groups of juvenile and young adult prisoners are to be separated from each other. Further, both are to be separated from adults aged over 21. A prisoner who reaches the age of 21 in a juvenile prison shall be transferred to a prison for adults (§ 82).

9. Transfer of juveniles to the adult court

There are no Juvenile Courts in Estonia. The system of case-transfers to the juvenile committees is described in section *3*.

10. Preliminary residential care and pre-trial detention

Estonian criminal procedure contains no special regulations concerning the arrest of minors. During preliminary investigations, all preventive measures

15 Ministry of Justice. An Analysis of the Imprisonment of Juveniles.

prescribed in Chapter 4 of the Code of Criminal Procedure such as the prohibition from leaving ones place of residence (§ 128),[16] arrest (§ 130-134) and bail (§ 135) can be applied in cases of minors.

Similarly, Chapter 5 of the Imprisonment Act that regulates custody pending trial does not prescribe special conditions for minors. Nevertheless, according to § 93 clause 4, a minor who has been in custody for at least one month shall be allowed to continue to acquire basic education or general secondary education. If the minor in custody is committed to a punishment cell as a form of disciplinary punishment, then, according to § 100 (2), it may be applied only for up to 15 days (for adults, the maximum duration is 30 days).

The means prescribed in the Juvenile Sanctions Act (such as § 3 (1) pp 5; 7 and 9: obligation to live with a parent; surety; sending to an SSSN) can not be applied as preventive measures in the criminal procedure.

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

11.1 Imprisonment

The Imprisonment Act provides a separate Chapter 3 on the "Imposition of Imprisonment upon Young Prisoners". According to § 77 of the Act, a young prisoner is a person who is younger than 21 years of age when his or her punishment is enforced. As mentioned above, according to § 81 of the Act, different age groups of young prisoners (14; 15; 16-17 and 18-20 years of age) are separated from each other. A prisoner who reaches 21 years of age in a juvenile prison shall be transferred to a prison for adults (§ 82).

Up until April 2008, male minors served their sentences in Viljandi juvenile prison.[17] On 1 January 2006 a total of 111 male convicted offenders were serving a prison sentence, of whom 37 (or 33.3%) were minors (14 to 17 years old) and 74 (or 66.7%) were young adults.

No direct manufacturing activity takes place in Viljandi juvenile prison. Prisoners work as part of their vocational training. The main line of their work lies in the restoration of furniture, which includes both restorations of regular office equipment as well as of antique furniture. In addition, prisoners learn masonry, house painting and locksmith skills.

In effect, the main differences between the imprisonment experience of young prisoners and that of adults lies mainly in work and education.

16 "Prohibition from leaving ones place of residence" obliges a suspected or accused person not to leave his or her residence for more than twenty-four hours without receiving prior permission from the body conducting the proceedings.

17 Since April 2008 male minors have served their sentences in Viru Prison.

Concerning minors who work, all distinctions that are made in Labour Protection Laws that apply in the wider labour market also apply in prison, including the provisions on working hours (Imprisonment Act, § 83). According to § 5 of the Working and Rest Time Act, a reduction in the time that minors perform work is to be considered:

1) Four hours per day or twenty hours per week for 13 and 14 year old employees or those subject to the obligation to attend school;
2) Six hours per day or thirty hours per week for employees who are 15 years of age and not subject to the obligation to attend school;
3) Seven hours per day or thirty-five hours per week for employees who are 16 or 17 years of age and not subject to the obligation to attend school;
4) Seven hours per day or thirty-five hours per week for employees who perform underground work, work that poses a health hazard or work of a special nature.

Employees who are 13 or 14 years old or who are obliged to attend school may be required to work only during school holidays or as persons engaged in creative activities in the areas of culture, sport or advertising. Employees who are aged 13-17 years may be required to work (taking into account the restrictions on working time) on the condition that the work does not harm the health, safety, development or morality or interfere with the studies of the young employee. It is obligatory to provide young prisoners aged up to 18 years with basic education. According to their interests and aptitude, young prisoners shall also be granted the opportunity to acquire secondary vocational education (Imprisonment Act, § 84 Subsection (1), second sentence). It is also possible to study outside of the prison if the prison director gives permission to do so. Such permission is given for the examination period or for one academic year (Internal Prison Rules, Chapter 17).

In the interest of fulfilling the aims of imprisonment, a young prisoner can be granted the opportunity for more short- or long-term visits. As a rule, prisoners are permitted to receive at least one supervised visit per month for a short time (up to three hours) from their family members or other persons (Imprisonment Act, § 24) and one long-term visit per half a year (Imprisonment Act, § 25). A long-term visit implies that a prisoner is allowed to live together with a relative for one to three days (§ 25).

A prisoner who reaches 21 years of age in a juvenile prison shall be transferred to a prison for adults (Imprisonment Act, § 82). In exceptional cases, depending on the prisoner's character and individual treatment plan, a prisoner can be transferred to a prison for adults when he/she has reached the age of 18.[18]

18 This rule is applied if a young offender aged at least 18 is violent and is a threat to other juvenile inmates.

11.2 Placement in a School for Students with Special Needs

According to § 3 (1) p. 9 of the Juvenile Sanctions Act, a minor can be sent to an SSSN if he or she has committed an unlawful act corresponding to the necessary elements of a criminal offence or a misdemeanour. Minors are sent to this aforementioned school by a JC based on a court ruling (see *3.1*).

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

All male juveniles (31 inmates on 1 January 2008) serve their prison sentences in Viru Prison. General and vocational education is available in all prisons. Providing education serves the purpose of preparing an imprisoned person for release, by supporting integrated development and improving the prisoners' independent ability to cope with the requirements of social life outside. The development of the organisation of studies is based on the Recommendation of the Council of Europe "Education in Prison."[19] Education in prison is organised by the Ministry of Education and Research. In prisons one can obtain basic education, upper secondary education and vocational training. The most popular areas of vocational training are metalwork, woodwork and sewing. Prisoners who are acquiring education are exempted from mandatory work. Prisoners are eligible to apply for permission to study outside the prison. Studies are performed in Estonian and in Russian. Prisons arrange courses teaching the Estonian language to further the integration of non-Estonians into Estonian society. Studies are supported by the prison library. Viru Prison also employs a social pedagogue who provides minors with educational guidance and support. For more efficient co-operation between the prison and schools, and for providing the prisoners with guidance in educational issues, the prisons employ educational personnel. Hobby education as well as cultural and sporting events are organised by the "hobby leader".

The following special social rehabilitation programmes are offered in Viru Prison:

1. "Equal – New Horizons"
   The goal of the programme is to create new and practical mechanisms to facilitate the return of the sentenced juveniles into society, their entry into the labour market and the start of their independent life. The programme targets male juvenile inmates, and includes the following activities:

19 Rec. R (89) 12 on education in prison.

- every year, a group of at least 10 juveniles acquires B-category driver's licenses;
- a separate handicraft class where six inmates make rag carpets and learn textile work under tutelage;
- more in-depth personal profile and crime sociology studies are carried out with the target groups;
- four times a year, groups of eight inmates go on military trips, usually lasting for three days, which seriously test their physical and mental resistance and enable the participants to see themselves in completely different conditions. Such trips also provide them with a chance to test themselves and raise their level of self-confidence.

2. "With Adrenaline against Heroin"
   Although this programme was only run in Viljandi prison, and has now been discontinued, it is nonetheless worthy of a brief description. The goal of this programme was to introduce young people to new ways of achieving a sense of well-being, self-fulfilment and an understanding of the importance of life through extreme activities. Target groups are young inmates who are pessimistically inclined and/or suffer from addiction problems. The programme was based on an approach used in Bordeaux, France. There, parachuting was used as a preventative programme for problematic youths. When parachuting from an airplane, a person experiences a rush of adrenaline that brings about the same sense of well-being as drugs. The programme includes 10 hours of theoretical training and one parachute-jump. The programme also disciplines the inmates, since the number of people wishing to participate is significantly greater than the number of allocated places in the programme.

3. Anger Management
   The goal of the programme is to improve the participants' knowledge of what happens to them when they become angry, to explain to them why anger management is useful, and to give the students a chance to manage their anger through role-playing exercises. In addition, it is also important to provide the participants with the experience of group work, and to direct them in how to monitor and analyze their own behaviour, and to generate and increase an interest in self-development. The target group comprises inmates who exhibit impulsive and aggressive behaviour. The course consists of nine meetings, with each session lasting for a maximum of two hours. For a less successful group one session topic may have to be discussed for two sessions which extends the course length.

4. "At Freedom's Threshold"
   The goal of the programme is to rehabilitate and prepare the inmates for life in normal society by teaching them to think positively, to have a positive outlook on life, and by creating opportunities for useful leisure time activities. The programme also offers various means for spending time with the family and supports the families whose sons are in the institution. The target groups are juvenile detainees, who have six to twelve months left until their release, as well as their parents. Lectures for the inmates take place over a six month period. Field trips with family members and lectures for the parents are held at least four times a year.[20]

13. Current reform debates and challenges for the juvenile justice system

The Ministry of Justice has designed "The Action Plan for Decreasing Juvenile Crime in 2007-2009." According to the Action Plan there will be specialized judges in all courts to try juvenile cases. Special training will be provided for police officers, prosecutors and judges dealing with juveniles.

In April 2008 the use of Viljandi juvenile prison was discontinued. Instead, juveniles now serve their sentences in the new Viru prison (in Ida-Viru county) with 1,000 places in total. Young prisoners shall serve their sentences there in a separate division.

14. Summary and outlook

In the Estonian legal system, provisions concerning criminal proceedings against juveniles are fully embodied in the Code of Criminal Procedure that applies both to juvenile and to adult offenders. Estonia does not have a separate penal law for minors and therefore the Penal Code also applies to them. There are several provisions guaranteeing minors extra protection. The minimum age for criminal responsibility is 14 years. It corresponds to the age at which a juvenile becomes liable to criminal prosecution.

There is an alternative system of sanctions for minors provided by the Juvenile Sanctions Act that is applied by juvenile committees instead of courts. For minors younger than 14 years and minors against whom criminal prosecution is deemed unnecessary, the Juvenile Sanctions Act provides a number of different sanctions.

In recent years the majority of juvenile criminals have been diverted from formal prosecution, with their cases being transferred to the local JCs. The most commonly imposed measure is the warning, which is applied in approximately

20 Ministry of Justice. A Selection of Rehabilitation Programmes in Prisons. 2005.

half of the cases faced by the JCs. The JCs have used the most repressive measure – sending a young person to an SSSN – with outmost caution.

The majority of juveniles who are not diverted and who are thus formally convicted receive prison sentences. Up until recently they had predominantly been sentences to unconditional imprisonment. However, the latest statistics indicate a newly central role of suspended sentences. The absolute numbers of juveniles in prison are rather low (31 persons on 1 January 2008).

The number of police recorded crimes in which the suspect is identified as a juvenile (14-17 years old) has been stable from 1995 to 2003. In recent years (2004-2006) the number has been substantially higher.

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Finland

Tapio Lappi-Seppälä

1. Historical development and overview of the current juvenile justice legislation

1.1 Overview

The age of criminal responsibility in Finland is 15 years. Originally the 1889 Criminal Code gave the courts the right to impose disciplinary penalties and to place seven to fifteen year-olds in reformatory schools. However, the reforms of the 1930s and 1940s removed children under the age of 15 from the ambit of the Criminal Courts and placed them under child welfare authorities. Finland adopted the system already applied in the other Scandinavian countries from the beginning of the century, where the main emphasis is on child welfare and social service, not on criminal justice. In more general terms, the creation of child protection legislation which granted municipal authorities the right to interfere in the behaviour of children during the shift of the 1800s and 1900s, signified the birth of a specific Nordic Juvenile Justice Model, as contrasted with continental European and Anglo-Saxon juvenile justice systems with specific Juvenile Courts and codes for young offenders only.

As the system today stands in Finland, all offenders under the age of 15 are dealt with only by the child welfare authorities. Young offenders aged 15 to 17 are dealt with both by the child welfare system and the system of criminal justice, while young adults aged 18 to 20 are only dealt with by the criminal justice authorities.

The functioning of these two systems – child welfare and criminal justice – is based on fundamentally differing principles. The criterion for all child welfare interventions is the best interest of the child. All interventions are supportive and criminal acts have little or no formal role as a criterion or as a cause for these

measures. The 'criminal justice side', on the other hand, makes much less difference between offenders of different ages. All offenders from the age of 15 years onwards are sentenced in accordance with the same Criminal Code. Strictly speaking, there is no separate juvenile criminal system in Finland in the sense in which this concept is usually understood in most other legal systems. There are no Juvenile Courts and the number of specific penalties only applicable to juveniles has been quite limited. Nevertheless, young offenders are in many respects treated differently to adults due to limiting rules for the full application of penal provisions. Offenders aged 15 to 17 receive mitigated sentences and there are additional restrictions in the use of unconditional prison sentences. They may also be sentenced to a specific community order (the so called *Juvenile Punishment Order*). Offenders under the age of 21 receiving a suspended sentence (conditional imprisonment) may be placed under supervision and serve their prison sentences in a specific juvenile prison.

In short: juvenile justice in Finland has one foot in the adult criminal justice system and another foot in the child welfare system. A balanced overview requires that both dimensions are taken into account.

1.2 Historical developments and juvenile justice reforms

Classic rehabilitation. Treatment modalities suited for the needs of juveniles have entered in the Finnish criminal justice system slowly. Major reform was carried out in the 1940s as the system of pre-sentence reports for young offenders, non-prosecution and waiver of sentences combined with referrals to child welfare authorities were included as part of the juvenile justice system. The 1940s reform also introduced supervision in connection with conditional sentences and the adoption of juvenile prisons, a specific institution for offenders between the age of 15 and 20. The introduction of the juvenile prison also brought with it a system of indeterminate sanctions. The prison term served in juvenile prison could be prolonged by a maximum of two years depending on the progress of the offender.

"Neo-classical non-interventionism". These fairly weak signs of a treatment orientation came under attack during the late 1960s and 1970s. The official reform ideology since the 1960s stressed decarceration, was heavily influenced by anti-treatment attitudes, and placed great emphasis on the idea of "minimum intervention". For juveniles, the aims of diversion and avoidance of institutional sanctions became essential goals. All major reform proposals between the 1960s and 1980s stressed the aim of avoiding custodial sentences for young offenders.

At the same time, however, the need for specific sanctions for juveniles was generally acknowledged. Wide disagreement existed on the contents and aims of such sanctions. The general neo-classical framework of the 1970s held a critical view of the prospects of penal rehabilitation. The idea of combining treatment and criminal punishment also met resistance from those who stressed the need to

have a clear-cut division of labour between these two systems: the aim of criminal justice was to express society's disapproval of the act, while the task of social welfare was to provide services and support. Reforming juvenile justice from these strict starting points turned out to be a difficult task. While there was agreement on the aim of avoiding the use of imprisonment, the alternative sanctions that were offered instead were deemed to be either lacking any meaningful content (for example the obligation to merely contact a police station) or blurring the tasks and roles of criminal justice and social welfare officials (such as supportive supervision combined with social work oriented programmes).

Consequently, the reform efforts from the 1960s to the 1980s were unable to introduce new forms of sanctions into the juvenile justice system. However, the critics of imprisonment turned out to be more successful, in terms of both legislative changes and in sentencing practice. The *Conditional Sentence Act* was amended in 1989 through the inclusion of a provision which allows young offenders to receive unconditional sentences only if there are weighty reasons calling for this. The critics of custodial sentencing had had an impact on court practices even before that. The share of young offenders below the age of 21 among all prisoners dropped by almost half between 1972 and 1985 – from 11% to 6%, and diminished even further between 1985 and 2006 (6% down to 2%).

"*The revival of the rehabilitative ideal*". During the 1990s the neoclassical sentencing structure was partially amended by the introduction of community service into the Finnish sanctions system, and by expanding the role of rehabilitative work and programmes in the prison enforcement in general. In the light of these changes pressures for reforming the fairly formal juvenile justice system increased. Positive results from the ongoing experiment on community service led the Ministry of Justice to initiate a reform project on juvenile justice as well. A new type of sanction, the *Juvenile Punishment Order* (JPO), was introduced as a part of the sanctions system in 1997. After a fairly long experimental phase, the sanction was formally introduced nationwide in 2005. During this process the Ministry of Justice also launched a commission to reassess the whole Finnish juvenile justice system in 2001, an effort that is still ongoing at the time of writing.

1.3 Age limits in the Finnish criminal justice system

There are three different age categories in the Finnish juvenile criminal justice system, which need to be addressed separately in the following: children under the age of fifteen, young persons between 15 and 17 years, and young offenders aged between 15 and 20 years.

Children under the age of fifteen. The age of criminal responsibility is fifteen years (Chapter 3, section 1 of the Penal Code). This age has remained the same since the Penal Code was adopted in 1889. Despite some critics and

discussions favouring a lowering of this age limit, this minimum age was retained in the total reform of the Finnish Penal Code in 2000. Even though offences committed by children under the age of fifteen cannot be dealt with by the courts as criminal offences, these children are subject to civil liability and may thus be ordered to pay compensation to the victim and forfeit property (e. g. weapons) to the State. Furthermore, children and their parents can participate in mediation. Acts committed by children under the age of 15 result in measures included in the Child Welfare Act; the case is forwarded to the municipal social welfare or child welfare board where further measures are then considered. The criterion for all child welfare measures is the best interest of the child (see below).

Young persons aged 15 to 17 years. Offenders aged between fifteen and twenty at the time of the offence are subject to the Young Offenders Act. However, provisions concerning young adults (18 to 20 years) are quite restricted. Most of the special provisions are applicable only to the 15 to 17 age group. The primary differences in the sentencing of young offenders and adult offenders lie in the fact that offenders aged fifteen to seventeen benefit from a mitigated scale of punishment. They also benefit from a greater possibility of further measures being waived. Furthermore, an offender who was under eighteen at the time of the offence cannot be sentenced to unconditional imprisonment unless there are weighty reasons for doing so. In addition, a JPO may be imposed on an offender who was younger than 18 at the time of the offence. Finally, there are also some differences in criminal procedure and in the enforcement of punishments.

Young adults aged 18 to 20. There are no specific arrangements applicable only to this age group. However, all offenders below the age of 21 (thus also the age category 18-20) are released on parole earlier than adults (first-time offenders after one third and others after half, while adults are released after half or two thirds). In addition, offenders under 21 may be placed under supervision within the framework of a sentence to conditional imprisonment.

2. Trends in reported delinquency of children, juveniles and young adults

2.1 Recorded crime

Typical juvenile offences (with high proportions of young suspects) are status offences related to alcohol possession and identity documents. Beyond these, car thefts, damage to property and robberies have unusually high proportions (19-28%) of juvenile suspects (less than 18 years old). Also, thefts and assaults have relatively high percentages (12-18%) among juvenile perpetrators.

Table 1: Reported crime (by suspects) 2005

Reported crime 2005	All (suspected offenders)	Below 18 y.	Juveniles%
Unauthorized possession of alcohol	3,130	2,953	94
Damage to property	19,082	5,935	31
Giving false identity	1,374	355	26
Car theft (joy-riding)	1,499	377	25
Robbery	1,555	385	25
Theft	64,860	10,974	17
Driving without a license	29,338	4,051	14
Assault	28,638	3,341	12
Forgery	6,429	573	9
Sexual offences	1,576	108	7
Credit card fraud	2,554	152	6
Obstruction of officials	2,245	132	6
Fraud	12,422	586	5
Drugs	15,425	792	5
Traffic offences	351,162	14,901	4
Drunk driving	26,109	1,087	4
Homicide (excl. attempts)	128	2	2
Tax offences	1,055	5	0.5

Source: Statistics Finland.

The offending structure according to different age groups is presented in *Tables 2* and *3*.

Table 2: Reported crime/1,000 according to age groups in 2005

	≤14 y.	15-17 y.	18-20 y.	21≥ y.
All offences*	34.1	207.4	373.5	131.5
All Penal Code offences**	31.6	132.6	255.3	78.4
Assault	2.3	13.2	19.4	5.5
Drugs	0.2	3.7	14.4	3.0
Drunk driving	0.2	5.3	14.2	5.6
Robbery	0.3	1.5	1.8	0.2
Theft	16.4	28.4	44.7	11.5

* Includes all traffic offences.
** Includes most serious traffic offences.
Source: Statistics Finland.

Table 3: Reported juvenile crime 2005 (share of juvenile crime as % of all offences)

	≤ 14 y.	15-17 y.	18-20 y.	21 ≥ y.
All offences*	1.7	6.3	10.9	81.0
All Penal Code offences**	2.6	6.6	12.2	78.6
Assault	2.6	9.1	12.8	75.5
Drugs	0.5	4.7	17.7	77.2
Drunk driving	0.2	4.0	10.3	85.6
Robbery	5.7	19.1	21.3	54.0
Theft	8.3	8.6	13.0	70.1

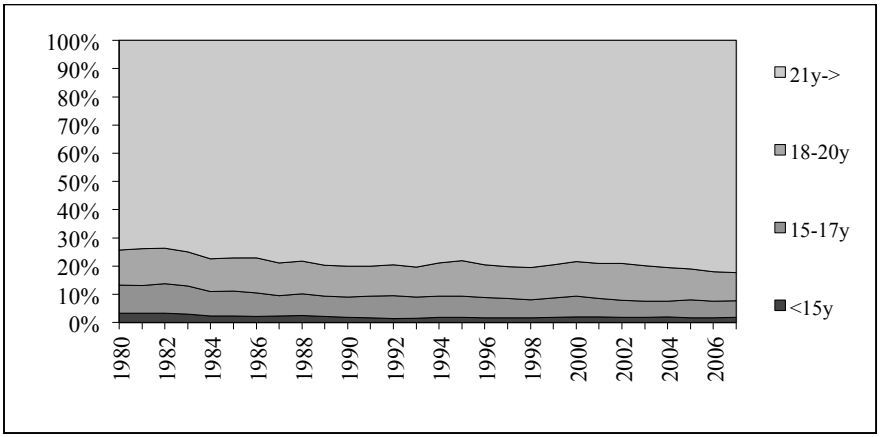
* Includes all traffic offences.
** Includes most serious traffic offences.
Source: Statistics Finland.

2.2 Trends in recorded crime

All offences against Penal Code provisions. The number of juveniles suspected of crimes against the Penal Code has been relatively stable in the last two decades and the proportion of young offenders has slowly decreased (see *Figure 1*). Major change in 1999-2000 (especially in the 18-20 years age group) has a technical

explanation. In 1999 large numbers of traffic violations were included in the Penal Code.

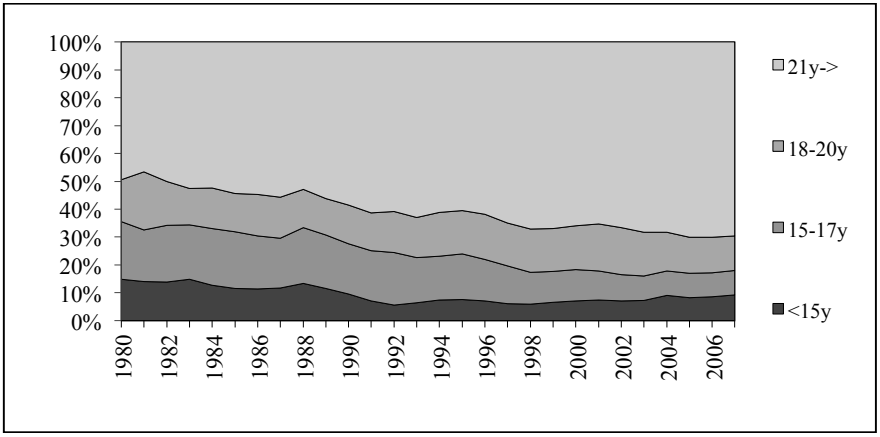
Figure 1: Reported crime, 1980-2007 (all offences against the Penal Code)



Source: Statistics Finland.

Theft. The rate of juvenile theft offences decreased in the 1990s. This is especially so in the age bracket of 15 to 17-year-olds (see *Figure 2*).

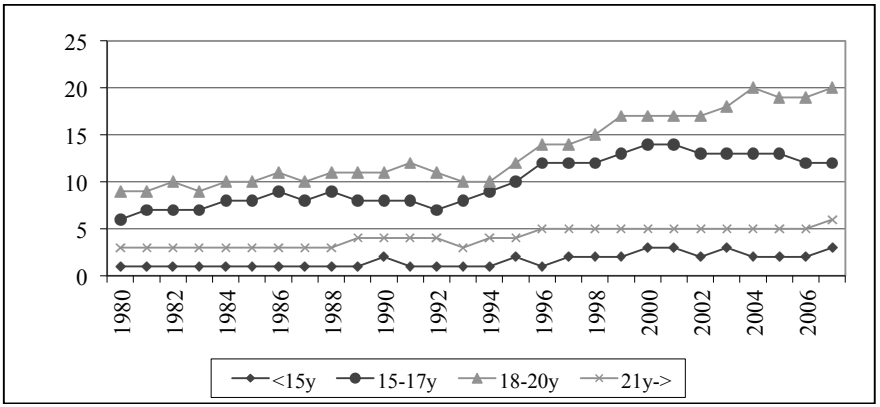
Figure 2: Reported theft offences, 1980-2007 (related to age groups, in percent)



Source: Statistics Finland.

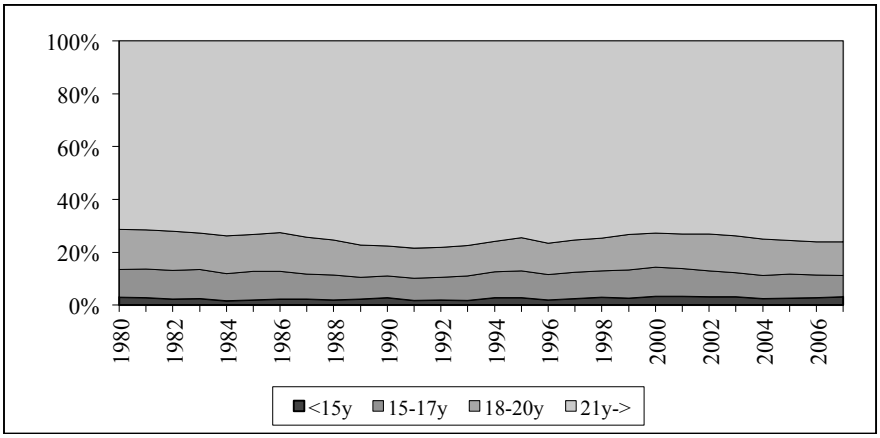
Assault. The rates of assaults committed by juveniles increased at the same time, particularly after 1995 when assault was redefined in the Penal Code reform. After 2000, the assault rate of 15 to 17-year-olds has decreased slightly while the rate of recorded assaults in the age bracket 18-20 increased (see *Figures 3a* and *3b*).

Figure 3a: Reported assault, 1980-2007 (assault/1,000)



Source: Statistics Finland.

Figure 3b: Reported assault, 1980-2007 (related to age groups, in %)

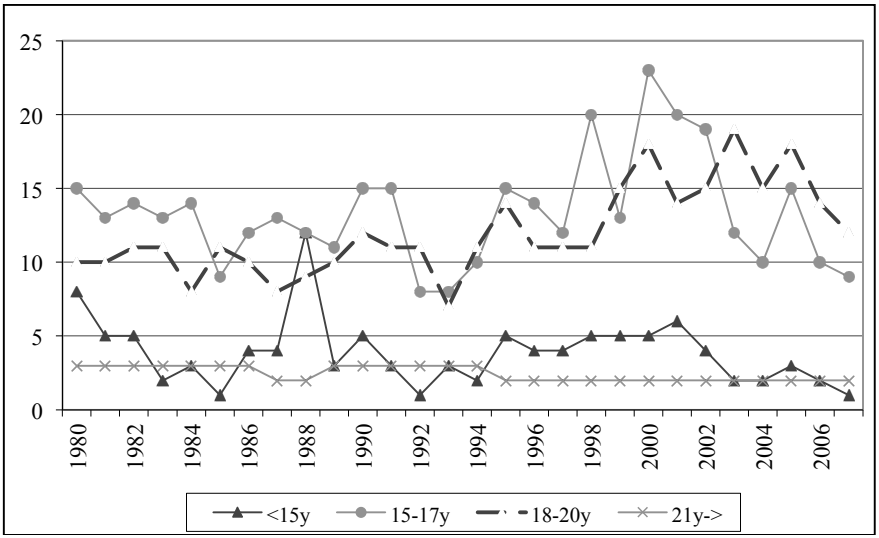


Source: Statistics Finland.

The post-1995 increase reflected the increase of assault offences committed by juveniles, while the number of juvenile persons involved in assaults has been more stable. The average number of assault offences per suspected person has thus increased in the young age groups. This probably reflects both behavioural changes and more efficient crime recording procedures by the police.

Robbery. Robbery rates are fairly stable or even declining. The term "robbery" also covers minor cases, such as stealing tobacco, alcohol or mobile phones by using or threatening to use force (see *Figure 4*).

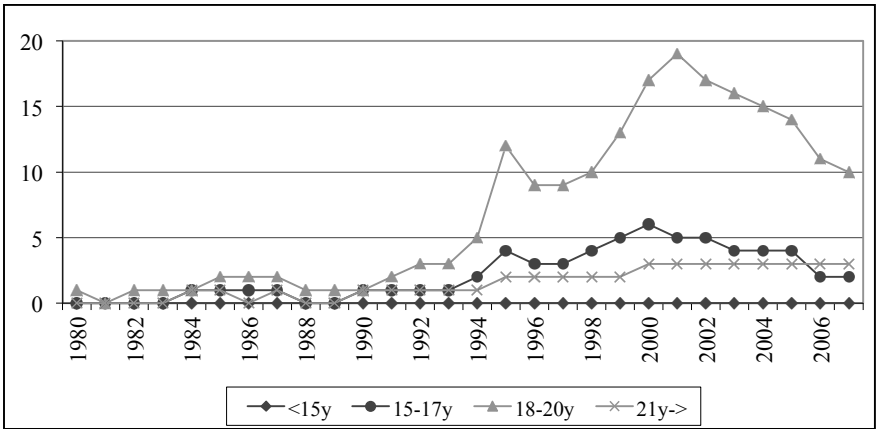
Figure 4: Reported robberies, 1980-2007 (robberies/1,000)



Source: Statistics Finland.

Drugs. During the 1990s Finland experienced its second major wave of drug related offending. The upward trend from 1996 to 2000 reflects the latter half of the wave. During the 2000s the drugs situation has remained fairly stable, and even appears to be declining (see *Figures 5a* and *5b*).

Figure 5a: Reported drug offences, 1980-2007 (drug offences/1,000)



Source: Statistics Finland.

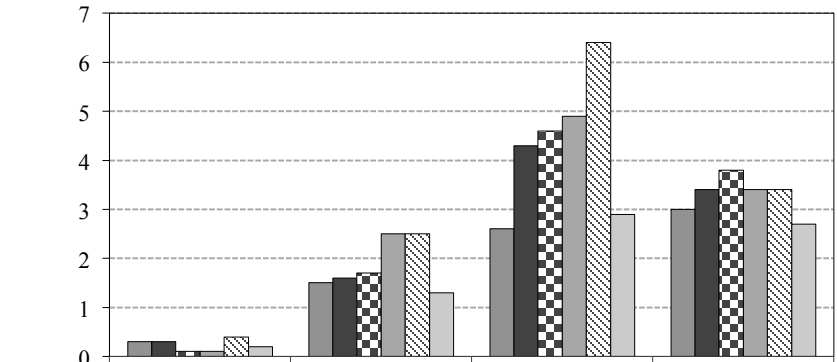
Figure 5b: Reported drug offences, 1980-2007 (in %)

Source: Statistics Finland.

Homicide. Statistically, juveniles are only very rarely involved in the perpetration of lethal violence. Homicide in Finland is dominated by socially

marginalised males aged between 40 and 50. The number of homicides committed by persons aged less than 18 years increased in the period from 1999 to 2002 (peaking at 13 offences in 2002). These exceptional cases also gained extensive media attention, which in turn lead to demands for government action to lower the age of criminal responsibility. After this short term peak the situation normalized and the number of juvenile homicides returned to the previous low level (see *Figure 6*).

Figure 6: Homicides (completed) according to age group, 1980-2006



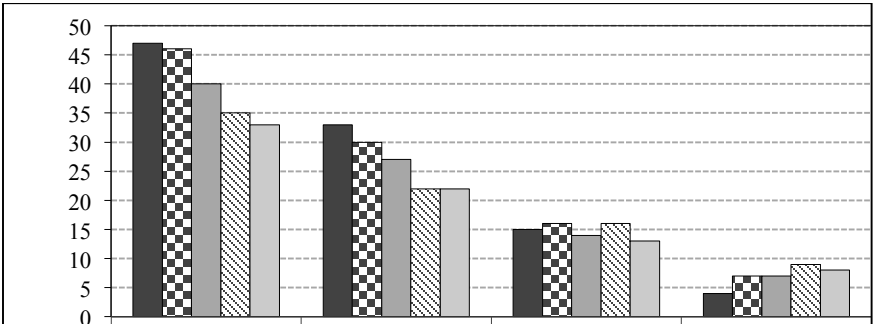
	< 15	15-17	18-20	21-
1980-84	0,3	1,5	2,6	3
1985-89	0,3	1,6	4,3	3,4
1990-94	0,1	1,7	4,6	3,8
1995-99	0,1	2,5	4,9	3,4
2000-04	0,4	2,5	6,4	3,4
2005-06	0,2	1,3	2,9	2,7

Source: Criminality in Finland 2007.

2.3 Self-reported crime

Surveys of self-reported crime among juveniles (ages 15-16) indicate that their participation in most offences typical of this age group has been declining or remained unchanged over recent years (see *Figures 7* and *8*).

Figure 7: The percentage of juveniles (15-16 y.) with specific offences during the last 12 months



	Theft	Damage	Violence	Drugs
1995	47	33	15	4
1996	46	30	16	7
1998	40	27	14	7
2001	35	22	16	9
2004	33	22	13	8

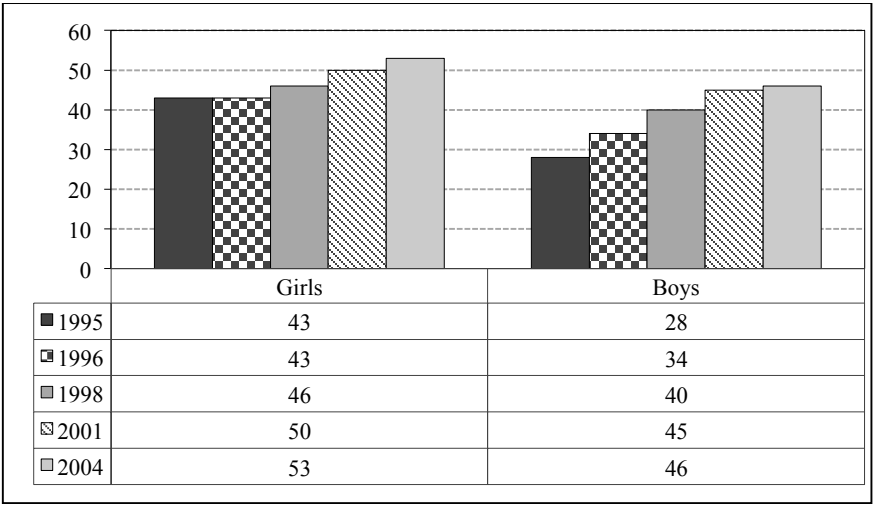
Source: Criminality in Finland 2007.

A similar degree of stability and/or slight decrease can be seen in the proportion of juveniles who have committed these offences at least five times. The percentage of juveniles who had not committed any offences during their lifetime rose in the 1990s (see *Figure 8*).[1]

Both the surveys of self-reported crime and the official statistics suggest that juvenile delinquency has become more polarised over the recent years in Finland. The share of youths who completely refrain from norm-breaking activities seems to be growing.

1 See in more detail *Kivivuori* 2002.

Figure 8: The proportion of youths (15-16 y.) who completely refrain from norm-breaking activities, in percent



	Girls	Boys
1995	43	28
1996	43	34
1998	46	40
2001	50	45
2004	53	46

Source: Criminality in Finland 2007.

At the same time, the attitudes of adolescents towards delinquent behaviour have become less tolerant. This all indicates that there has been a true decline in juvenile crime, partly associated with changes in social values and other behavioural patterns. However, at the same time new forms of criminal offending related to the internet and IT-technology have emerged, but which have not yet been fully captured in statistical measurements.

3. The sanctions system: Kinds of informal and formal interventions

The Finnish sanctions system is fairly simple. General punishments are fines, conditional imprisonment, community service and unconditional imprisonment. Specific punishments for young offenders include supervision connected with a conditional sentence, and the JPO. In addition, the law includes two forms of diversion: non-prosecution and waiver of punishment in the courts (discharge). As the sanctions system that applies to adults also basically applies to juveniles with certain modifications, both groups are dealt with simultaneously in the following section of this report.

3.1 Diversion

3.1.1 Non-prosecution

According to the principle of legality, prosecution must take place in all cases in which sufficient evidence exists of a suspect's guilt. The rigid requirements of the principle of legality are softened through the provisions of (diversionary) non-prosecution. The grounds for non-prosecution are strictly defined in the law.

The main grounds relate to the seriousness (petty nature) of the offence and the young age of the offender (young offenders under the age of 18). Thus, the prosecutor can waive prosecution when a penalty no more severe than a fine is to be expected for the offence, and the offence is deemed to be petty considering the harmfulness of the act or the culpability of the offender.

A second possibility for a waiver is when an offence is committed by a person under 18 years of age, and a penalty no more severe than a fine or imprisonment for at most six months is to be expected for the offence, and the offence is deemed to be the result of thoughtlessness or imprudence rather than heedlessness at the prohibitions and commands of the law (Chapter 1, section 7 of the Criminal Procedure Act).

Non-prosecution can also be based on reasons of equity or criminal policy expediency "when trial and punishment are deemed unreasonable or pointless considering the reconciliation between the offender and the complainant or other action taken by the offender to prevent or remove the effects of his offence,[2] his personal circumstances, other consequences of the offence to him, actions by the social security and health authorities, or other circumstances" (Chapter 1, section 8 of the Criminal Procedure Act). This section covers non-prosecution also on the basis of reconciliation and mediation (as well as other reparative actions taken by the offender). Victim-offender-mediation was specifically added to the law in 1995. Since then it has quickly gained more and more importance as a factor justifying non-prosecution (see below).

The fourth ground for non-prosecution deals with cases where an offender is charged for several offences, and prosecuting this particular offence would have no practical relevance (see also the grounds for the waiver of the sentence, below). In addition, there are specific provisions on non-prosecution in connection with certain offences (such as drug-offences and tax-offences).

Non-prosecution is most widely applied in cases of juveniles. In the 15-17 years age group, the share of non-prosecution varies at around 20% of all court disposals and 6% of all disposals (prosecutors fines included, see below in more detail).

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2 Note that the Finnish law does not recognize the possibility of plea bargaining and offers no "crown witness" provisions.

Table 4: Case-disposals and non prosecution by age groups, 2004

2004	15-17 years	18-20 years	Over 21 years
A. Court disposals	4,239	9,946	46,878
B. Disposals by courts and prosecutors	14,540	35,772	252,066
C. Non prosecution (N)	893	576	3,780
- as % of B	6	2	2
- as % of A	21	5	8

Source: Statistics Finland.

3.1.2 Mediation

Mediation provides the second and most genuine form of diversion in the Finnish criminal justice system.

The first mediation experiment was started in Finland in 1983. In 2006 mediation was established as a nationwide practice, organized by municipal authorities.

In Finland mediation does not constitute a part of the criminal justice system, but cooperates with the system as far as the referral of cases and their further processing is concerned. The Criminal Code has been revised so that it now mentions an agreement or settlement between the offender and the victim as a possible reason for waiving the imposition of measures and as a general mitigating factor in sentencing. However, it is notable that an agreement does not always guarantee non-prosecution or a mitigated sentence. A court hearing and a prosecutor decide on the relevance of mediation on a case to case basis.

The 2006 legislation did not change this basic character of mediation, but gives closer instructions on how to handle mediation cases where minors are involved. In this context mediation was also given an official definition in the law, referring to "(…) a non-chargeable service in which a crime suspect and the victim of that crime are provided the opportunity to meet confidentially through an independent conciliator, to discuss the mental and material harm caused to the victim by the crime and, on their own initiative, to agree on measures to redress the harm." (Law on Mediation, Chapter 1, section 1).

Mediation is based on voluntary work. Furthermore, participation in mediation is always voluntary for all parties. The municipal social welfare authorities usually assist in coordinating the mediation services, but mediators are not considered public officials. The persons who function as mediators are unpaid volunteers who have taken a training course of approximately 30 hours in preparation for the task. The training includes some basics of Criminal and Tort

Law. Mediation has not been restricted to any specific age group. However, in practice mediation has its most major impact among juveniles.

3.2 Punishments

3.2.1 Fines

The day-fine system. In Finland, the day-fine system is applied, ranging from between one and 120 day-fine units depending on each individual case. The number of day-fines is based on the seriousness of the offence while the amount of a day-fine depends on the financial situation of the offender. One day-fine corresponds roughly to one-third of the gross daily income of the offender. Fines are the most common penalty for all age groups, accounting for 74% of court sentences for 15–17 year olds, 62% in the 18–20 age group and 55% for those aged over 20.

Summary fines. A fine may be imposed either in an ordinary trial or, in the case of certain petty offences, through simplified summary penal proceedings (penalty orders).[3] The vast majority of fines are ordered in a summary process. In 1995, the power to order summary fines was transferred from the court to the prosecutor. Giving the prosecutor an independent right to impose fines was an important reform from the point of view of dividing powers between the prosecutor and the courts. It was also a substantial change in terms of numbers, affecting over 200,000 cases per year. However, in practice the change was not as significant, since under the "old" system summary fines had been prepared by the prosecutors and the courts had a tendency to "rubber stamp" the prosecutors' suggestions. In addition, the defendant always has the right to appeal against the prosecutor's decision and to take the case to court.

3.2.2 Imprisonment

A sentence to imprisonment may be imposed either for a determined period or for life. The general minimum sentence of imprisonment is 14 days and the general maximum is 12 years. Young persons under the age of eighteen cannot be sentenced to life imprisonment. Unconditional prison sentences are also seldom used for this age group. The annual number of prison sentences has varied from 50 to 100, which corresponds to about 1% of all sentences in this age group. About 8% of offenders aged between 18 and 20 are sentenced to imprisonment while the figure for adults (over 20) is 14%. Due to the small number of juvenile prisoners (at the moment 5 to 7 persons under the age of 18),

3 In addition, for minor traffic offences there is a summary penal fee that is set at a fixed amount (petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

there are no specific prisons for juveniles. However, the age of the prisoner and his/her specific needs are taken into account in the enforcement in several ways (see *4.7.2* below).

3.2.3 Conditional imprisonment

Sentences to imprisonment for up to two years can be imposed conditionally. The choice between conditional and unconditional imprisonment is based mainly on blameworthiness (harm, culpability and prior convictions). For offenders under 18 there is a clear prioritisation for imposing prison sentences conditionally and therefore unconditional sentences can be imposed only in exceptional cases. On the other hand, all prison sentences over two years must be imposed unconditionally. For 15 to 17-year-olds this is usually reserved for homicides, aggravated robberies and aggravated drug offences.

If conditional imprisonment alone is not considered to be a sufficient sanction for the offence, an unconditional fine ("subsidiary fine") may be imposed on the offender as well. This option has been used quite frequently in cases of drunk driving. In 2001, the scope of subsidiary sanctions was expanded. If the length of the sentence is between one to two years, a short community service order (20-90 hours) may be issued alongside conditional imprisonment.

In addition, young offenders under the age of 21 years (at the time of the offence) may be placed under supervision. In practice, about half of all conditionally sentenced young offenders under the age of 18 are placed under supervision. The role of supervision is basically supportive. Conditionally sentenced offenders under the age of 20 at the time of the offence may be put under community supervision if this is considered "justified in view of the promotion of the social adjustment of the offender and of the prevention of new offences". This decision is made by the court in connection with the original sentence. The supervision is the responsibility of staff members of the Probation Service or of voluntary private supervisors. Supervision primarily consists of regular meetings with a supervisor. In some cases, the offender is required to participate in various group activities. Supervision can be discontinued after six months if it is deemed no longer necessary.

A person who has been sentenced to conditional imprisonment can be ordered to serve the sentence in prison if he/she commits a new offence during the probation period for which the court imposes a sentence of imprisonment. Thus, a behavioural infraction alone is not enough for enforcement of a conditional prison sentence. An additional requirement for losing the benefit of a conditional sentence is that the charges for the new offence have been brought within one year of the end of the probation period. It is also possible to enforce only part of the earlier conditional sentence.

Conditional imprisonment is the "backbone" of community penalties in Finland. Around 20% of 15–17 year old offenders and 25% of other age groups

are sentenced to conditional imprisonment. This sanction has a strong position as an alternative to incarceration, corresponding to roughly one fourth of all sanctions imposed by the courts. Two out of three prison sentences are imposed conditionally.

Table 5: Conditional imprisonment in 2005

	15-17 years	18-20 years	Over 21 years
Court disposals 2005	4,252	8,873	53,674
Conditional imprisonment (N)	736	2,255	12,766
Share in %	*17*	*24*	*24*

Source: Statistics Finland.

3.2.4 Community Service

Prison sentences of up to eight months may be commuted to community service (from 20 to 200 hours). In order to ensure that community service will really be used in lieu of unconditional imprisonment, a *two-step procedure* has been adopted. First, the court is supposed to make its sentencing decision by applying the normal principles and criteria of sentencing without considering the possibility of community service. Second, *if* the result of this deliberation is unconditional imprisonment (and certain requirements are fulfilled), the court may transform the sentence into community service. In principle, community service may therefore be used only in cases in which the accused would otherwise receive a sentence to unconditional imprisonment.

Community service consists of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days per week. The intention is that this service would be performed over a period that roughly conforms to the corresponding sentence of imprisonment without release on parole (see above). Approximately half of the service places are provided by the municipal sector, some 40% by non-profit organisations and 10% by parishes. A maximum of ten hours can be served in an effort to address an offender's substance abuse problem, either in terms of a traffic safety course organised by the Traffic Safety Organisation or at a treatment clinic.

The Probation Service approves a service plan for the implementation and performance of a community service order. The plan is prepared in co-operation with the organization with whom the place of work has been arranged. The offender should be allowed an opportunity to be heard in the drafting of the service plan.

Since community service can only be ordered instead of unconditional imprisonment, and since young offenders may receive such prison sentences only in exceptional cases, community service is of rather limited relevance for offenders under 18. Each year, less than one percent of offenders under 18 are sentenced to community service. The corresponding figures in other age groups are four (18-20) and six percent (over 20).

Table 6: Community Service in 2005

	15-17 years	18-20 years	Over 21 years
Court disposals 2005	4,252	8,873	53,674
Community service (N)	14	378	2,978
Share in %	0.3	4.3	5.5

Source: Statistics Finland.

3.2.5 Juvenile Punishment Orders

Persistent efforts to reform juvenile justice finally led to partial success in 1996 when the JPO was introduced on an experimental basis in seven cities in 1997 as a new form of sanction. The experiment lasted eight years in total, after which, in 2004, the Finnish Parliament passed the Juvenile Punishment Act which came into force in 2005. Thereby, the new JPO became applicable in the whole country.

A JPO is a four to twelve month long community sanction comparable in severity to conditional imprisonment, and which should be used when the conditions set by the Act are fulfilled. The duration of a JPO is determined by the court, whereas the detailed content thereof is set by the Probation Service.

The Juvenile Punishment Order is something of a compromise between neo-classicist and social and rehabilitative approaches. It creates an additional rung in the system of sanctions and enables any movement towards custodial sanctions to be slowed down. In addition, it also has clear social and re-integrative goals. Enforcement is arranged in cooperation with the Social Welfare Board and the content of the order is based on programmes developed by the Probation Service and the social welfare authorities.[4]

Offenders aged 15 to 17 at the time of the offence can be sentenced to a JPO if, "in view of the seriousness of the offence and the circumstances connected with the act, a fine is to be deemed an insufficient punishment, and there are no weighty reasons that require the imposition of an unconditional sentence of imprisonment." JPOs are rated on the same severity level as conditional

4 See *Marttunen/Keisala* 2007.

imprisonment. The court should favour a JPO if it is deemed "justified in order to prevent new offences and to promote the social adjustment of the young offender". In practice, the main criterion is prior convictions.

As said above, the detailed content of the punishment is set by the Probation Service. Before the offender can be sentenced to juvenile punishment, the Probation Service must have drafted an enforcement plan which includes both their view on whether a sentence to a JPO is called for in the youth's particular social situation, and a preliminary outline of the content of the punishment. What is particular to the Finnish JPO is that the court cannot interfere in its content.

The JPO consists of work programmes, supervision and activity programmes that aim to promote social adjustment, the person's sense of responsibility and his/her social relations.

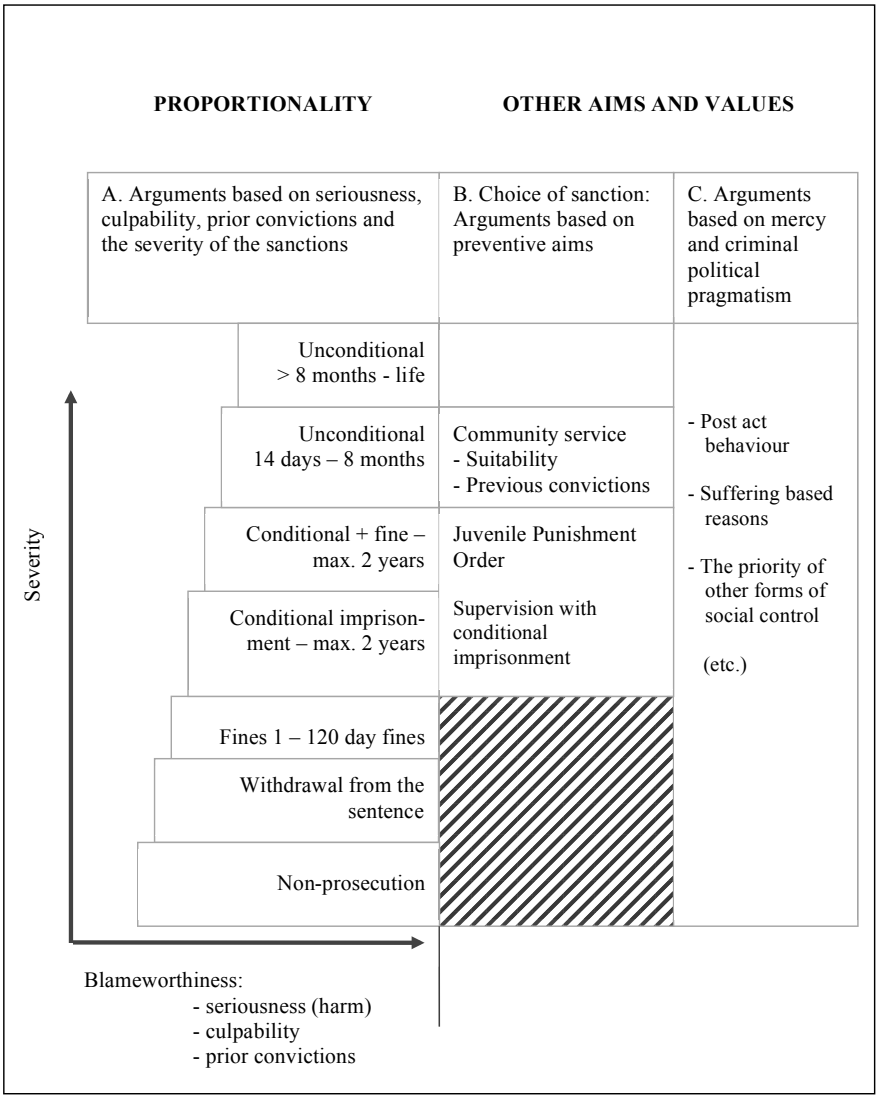
3.3 Sanctions and sentencing structure

The leading principle of sentencing – proportionality – requires that crimes are graded according to their internal seriousness and underlying degree of blameworthiness, and that penalties are graded according to their internal severity. The three principal punishments have been the fine, the conditional sentence and imprisonment. "Withdrawal of sentence" and "non-prosecution" are also usually classified as criminal sanctions in their mildest form (because they both include an assignment of guilt). These penalties can fairly easily be graded according to their severity in a kind of "ladder model", where different types of sanctions represent different levels of severity (non-prosecution → waiver of sentence → fine → conditional imprisonment → unconditional imprisonment).

Also, new community sanctions may be placed in this staircase-model. However, they will somewhat complicate the picture by adding a "third dimension". Community service is located roughly on the same level of severity as unconditional imprisonment (max. 8 months). JPOs and conditional imprisonment are located on an equal level as well. The choice between these sanctions (community service/imprisonment; JPO/conditional sentence) is made mainly on the basis of criteria other than those related to offence gravity and culpability.

The role of different sentencing principles and the internal relations of sentencing alternatives are summarized in the accompanying diagram (see *Figure 9*). The sanctions are situated on the ladder in accordance with their relative severity (the vertical dimension). In the horizontal dimension, three points of departure can be identified: the principle of proportionality (A), pragmatic and rehabilitative-oriented grounds for applying community-based sanctions (B), and the general mitigation of sanctions for reasons of criminal political pragmatism and equity (C).

Figure 9: Proportionality and other values in court decisions on punishment



Arguments of proportionality and sentence severity (levels 1–5). – Going horizontally from left to right within the framework of the principle of proportionality (sector A) implies an increase in the blameworthiness of the

conduct in question. At the same time, in the vertical dimension one moves towards more severe sanctions. The choice between fine and imprisonment, as well as the decision between conditional and unconditional imprisonment, is primarily based on the seriousness of the offence (the harm and the risk of harm), the culpability and the previous convictions of the offender, and on other factors described in Chapter 6, sections 2–4 of the Criminal Code. To a large extent these same arguments guide the use of non-prosecution and waiver of sentence as well. Also, the age of the offender is of importance.

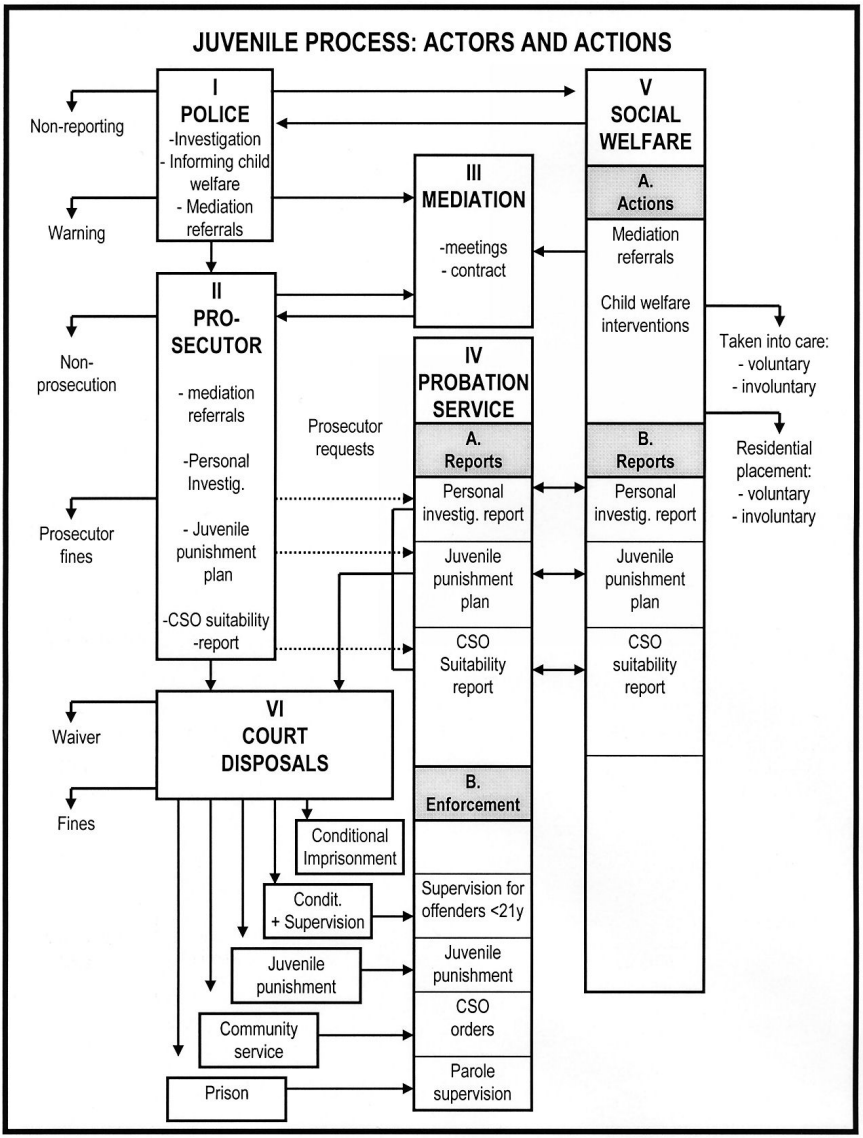
Preventive aims and community sanctions. – If there is more than one option on the same level of severity, the selection between them takes place mainly on the basis of criteria other than those falling under the principle of proportionality (in terms of crime seriousness, culpability and prior conviction). If the court decides in favour of a conditional sentence, and the offender was under 18 at the time of the offence, the court may impose the JPO. The decision is made primarily on rehabilitative and preventive grounds (level 3/4). If the court chooses an unconditional prison sentence of eight months or less, community service should be imposed instead of imprisonment if the offender is deemed suitable for community service, and previously issued community service orders are not a bar to this (level 5).

Mitigation based on "*harm/culpability-external*" *factors.* – The third group of arguments justifies a downward-deviation from the principle of proportionality into less onerous sanctions. Meritorious conduct of the offender after the act, repairing the damages, taking part in mediation or co-operating with the police may mitigate the sentence on more or less pragmatic grounds. Mitigation on the grounds of reasonableness and equity may enter into the equation if the offender is of an advanced age, there has been an accumulation of sanctions, or there is another serious reason for this. These factors may justify the use of a more lenient type of sentence, other mitigation in the sentence, or they may also justify a waiver.

4. Juvenile criminal procedure

Juvenile criminal procedure is based on co-operation between six major parties and agencies: I) the police, II) the prosecutor, III) mediation, IV) the Probation Service, V) social services and child welfare, VI) and the courts. The relationships between different actors and major actions are illustrated below (see *Figure 10*).

Figure 10: Actors and actions in the Finnish juvenile process



4.1 Police

The Finnish police are organised on a hierarchical national basis under the authority of the Ministry of the Interior and are subject to the Police Act. There are no special "youth police" in Finland. However, in some local areas, there are special arrangements at the police-level that concern juveniles.

If a child under the age of 15 is suspected of a crime, it can be questioned and the act can be investigated regardless of the fact that a child cannot be criminally responsible for the offence. A child under the age of 15 cannot in any case be arrested or remanded in custody.

When the person to be questioned is under the age of 18, the custodial parent and child welfare officials must be given the possibility of being present during questioning. The investigation is usually conducted by police officers who are specially trained to deal with juvenile crime.

In the criminal investigation, the police may not only question the young person but also use apprehension, arrest and custodial remands. Arrest and remands to custody are possible if the juvenile is suspected of a serious crime and it is necessary to prevent the continuation of criminality, absconding, or the destruction of or tampering with evidence. In practice, arrest is seldom used as a coercive measure against a juvenile (see *10.3.* below).

The police work in close co-operation with child welfare. It is the duty of the police to inform child welfare authorities whenever a person under the age of 18 is suspected of an offence. The police may also play an active part in making referrals to mediation.

4.2 Prosecution

The handling of juvenile cases places several special duties with the public prosecutor. Extra attention must be paid to the speedy handling of the case. Before proceeding with a case the prosecutor must consider diversionary options, non-prosecution and mediation. Non-prosecution may be accompanied by an oral caution which will be communicated to the young offender in form of a hearing in the prosecutor's office. Non-prosecution may also be linked with mediation (but not necessarily).

If non-prosecution is not an option, the case has not been referred to mediation, and it cannot be dealt with by a summary fine, actions taken by the prosecutor depend on the case at hand. A major share of the prosecutor's work at this point consists of requesting different reports from the Probation Service. These reports will subsequently be sent directly to the courts, which will take them into consideration when sentencing. At this point the prosecutor has, of course, an opportunity to express his/her views on the reports.

Personal investigation report. For each young offender under the age of 21 who is charged with an offence which is predicted to result in a sentence that is more severe than a fine, a *personal investigation report* must be prepared. The report is made either by social welfare officials or by the Probation Service, but the prosecutor must file the request for such a report. The aim of the personal investigation report is to provide the court with more detailed information concerning the background of the offender as well as of the circumstances of the offence. The request for a personal investigation report is addressed to the Probation Service, which will pass the request for social welfare authorities in those (smaller rural) regions where reports are prepared by the social services (and not by the Probation Service).

Prosecutorial discretion. While these reports are being drafted the prosecutor continues to prepare the charges, independently of these reports. According to the Finnish Criminal Investigations Act (Section 43), the prosecutor must decide without delay whether he or she shall prosecute, and where further prosecution is ordered, also raise charges without delay.

Speeding up the juvenile process has been one of the main targets of political attention in the 2000s. In the late 1990s, a conviction did not take place until three to five months after the crime. Also, co-operation between different officials had received criticism. In the year 2000 the Ministry of Justice started an experiment in which the criminal procedure of juveniles was shortened by means of effective co-operation between different officials dealing with juvenile delinquency to about half compared to the prior situation. The experiment shortened the procedure at all its stages and affected the police investigation, the prosecution, the court proceeding and the enforcement of punishment. Also, different kinds of supportive measures were better combined with the criminal procedure than had previously been the case. In practice, the police, the prosecutor, the judge, the Probation Service and welfare officials were in co-operation from the very beginning of criminal investigations.

4.3 Mediation

Mediation can start at any time between the commission of the offence and execution of the sentence and by any of the interested parties.

Once a case has been referred to the mediation office, the office contacts the parties in order to query their willingness to participate in mediation. Where this is successful, a first meeting is arranged. The mediation programme is managed by the municipal social welfare office. The initiative for submitting cases to mediation comes, as a rule, from the police or from the prosecutor. However, the consent of all parties is required before going into reconciliation. The sessions are often held in the evening, participants are addressed on first-name terms and the flow of discussion is relatively free. The mediator's principal role is only to mediate and act on a neutral basis. Once the process has started it normally leads

to a written contract that contains the subject (what sort of offence), the content of a settlement (how the offender has consented to repair the damages), the place and date of the restitution as well as consequences for a breach of the contract.

What happens after a successful mediation depends largely on the category and seriousness of the offence. In complainant offences, successful mediation automatically means that the prosecutor drops the case. In non-complainant offences it is under the discretion of the prosecutor whether he/she is willing to drop the charge. This would be possible according to the law if prosecution seemed "either unreasonable or pointless" due to successful reconciliation, and if non-prosecution did not violate "an important public or private interest". In mediation cases non-prosecution is, thus, always discretionary. Unlike in some other countries, mediation does not automatically divert the case from the criminal justice system. This may narrow its diversionary effect, but on the other hand, it also prevents mediation from becoming restricted to trivial cases.

The most important benefit from mediation for some offenders could be the avoidance of trial. For some victims, it could be the receiving of compensation. Juveniles think that mediation, as a procedure, is more pleasant than what the imagined trial would be. In particular the parties like the close personal contact in mediation, and the low level of bureaucracy and "officialism".

One of the main goals of mediation is to interrupt the criminal career of young offenders. The hope has been that the process of mediation would better get the young offender to realise his/her responsibility for the offence compared to the traditional criminal procedure. According to some studies, the offenders in the control group are somewhat more likely to commit a new offence than those who go through mediation.[5]

4.4 Reports by the Probation Service

The Probation Service plays different roles in different phases of the process. In the pre-sentence phase the Service is responsible for preparing reports and plans for the implementation of community sanctions. These reports include, first of all, the personal investigation report requested by the prosecutor. The report is compiled either by social welfare officials or by the Probation Service, depending on local resources and practical arrangements. The other reports include a juvenile punishment plan, a plan for conditional supervision and a community service suitability report. The Probation Service collects all the relevant information by contacting e. g. the social services, the offender and usually also the offender's legal guardians before deciding whether to recommend community service or a JPO in that particular case.

5 See *Mielityinen* 1999.

In all these cases the Probation Service has an active role, as these reports also include suggestions and proposals for the courts. The assessment of suitability for community service or eligibility for a JPO has a decisive impact on the court's decisions.

Preparing these reports takes place in co-operation both with the social services and the suspected offender. The service plan for a community service order is also prepared in co-operation with the organization with whom the place of work has been arranged. The offender should be allowed an opportunity to be heard in the drafting of the service plan. While assessing a person's eligibility for a JPO, the Probation Service works in close co-operation with the child welfare authorities.

4.5 Child welfare interventions

The criterion for all child welfare interventions is the best interest of the child. Also, interventions in the event of offences are predicated on the fact that the child is endangering his or her future. These interventions comprise in the first instance *support interventions in community care*. The authorities should undertake community-based supportive measures without delay if the health or development of a child or young person is endangered or not safeguarded by their environment, or if they are likely to endanger their own health or development. The most intrusive measures are the transfer of guardianship, placements in a foster home or in residential or other (institutional) care. These come into question for example when the community-based measures are insufficient and the minor (by using intoxicants, by committing more than petty criminal acts or by other comparable behaviour) seriously endangers his/her health or development (section 16 of the Child Welfare Act).

"Taken into care" may be voluntary or involuntary. In most cases all parties (the child and the parents) agree on the matter. Annually some 9,000 children (of all ages) are in public care, of which over 1,500 (20%) are placed involuntarily.[6] More precise estimates of the number of children who are in closed-like institutions due to their own behaviour are given in *Section 11.2* below.

6 Either against the will of the parents and/or the child. The true extent of "involuntariness" is hard to determine, since the parties may feel that the use of statutory rights to oppose the placement could in practice be futile (see *Pösö* 2004).

4.6 Courts and sentencing

There are no juvenile courts in the Finnish system. Juvenile cases are to be dealt with in ordinary courts.[7] The normal composition of the local court in juvenile cases is one legally trained judge and three lay judges. If called for by the complexity of the matter or other special reasons, the composition may be supplemented by a second legally trained judge and a fourth lay judge. Simple criminal cases may also be dealt with in the local court by one legally trained judge sitting alone if the maximum punishment for the offence in question is a fine or imprisonment for no more than eighteen months. Should the case be dealt with in this way, the most severe penalty that a judge can impose is a fine.

However, specific rules apply to the handling of cases involving young offenders. In the court proceedings, cases involving juvenile crimes must be taken to the main court hearing within two weeks of the summons (Chapter 5, section 13 of the Criminal Procedure Act).

If the case is tried in a court, a minor is entitled to free legal council, unless this would be obviously unnecessary. This right has to be taken into account *ex officio* also in cases in which the juvenile himself does not request to have a lawyer. In addition, if the person to be prosecuted is under the age of 18, the custodial parent and child welfare officials must be given the possibility to be present during trial.

In Finland, there are not two distinct procedural stages, in which the first would decide the question of a minor's guilt (conviction stage) and the other would pronounce the sanction (sentencing stage). Thus, no separate sentencing hearings are held. The sentence is imposed by the professional judge at the end of the trial.

If the minor is to be held responsible, the court cannot choose between pronouncing a punishment or an educational measure. The only available option would be the imposition of a criminal sanction. All educational measures are delivered through the separate child welfare system. However, some punishments (conditional imprisonment and a JPO) contain educational elements (see above).

4.7 Enforcement

4.7.1 Community sanctions

The Probation Service is responsible for the enforcement of community sanctions, which include supervision in connection with conditional imprisonment,

7 The court system in Finland is arranged in three tiers. The court of first instance for all offences is the local court. Appeals are heard by the six Courts of Appeal. The highest level is the Supreme Court, to which appeals can go only if the Supreme Court grants leave of appeal.

community service, a JPO and the supervision of parolees. All sanctions have distinct contents, and the tasks of the Probation Service vary accordingly.

Juvenile Punishment Orders. The enforcement of JPOs is based on work programmes developed by the Probation Service and the social welfare authorities. Its content has been structured in detail in a specific JPO handbook. The manual sets out the punishment framework and details the contents of all the different areas of work included therein. The different programmes utilized in a Juvenile Punishment Order concern *crime, motivation for change, anger management, society, social skills, traffic education* and *substance abuse*. Other parts of the enforcement consist of normal supervision and short term work obligations.

The purpose of supervision is to provide a young person sentenced to this sanction with support and guidance. The main role of the supervisor is to ensure that the enforcement plan is carried out, in other words, to see to it that the young offender adheres to the enforcement plan and any orders given on its basis. This includes regular meetings with the young offender as specified in the enforcement plan. The supervisor should also maintain contact with the site where the young offender is carrying out his/her service in order to ensure that the youth service is being carried out in a proper manner. The supervisor may also, if necessary, be in contact with the parents of the young offender.

The actual work component has, however, remained quite modest as a result of several involved time-consuming programmes. In practice, enforcement generally consists of a few (commonly two) weekly meetings that together take up some two to three hours.

If the person sentenced to a JPO violates the enforcement plan or orders given on its basis, the Probation Service should issue him/her a written reprimand. In the case of a more serious violation (for example not serving or interrupting his/her serving of the order), a report is prepared for the respective prosecutor. In more serious cases the prosecutor takes the matter to court, and in the less serious cases the matter is returned to the Probation Service, which continues with its enforcement of the punishment. In cases in which there is a serious violation of the conditions of a sentence to a JPO, the court decides on how the breach is to be sanctioned. It may extend the period of supervision or convert the Juvenile Punishment Order into another sentence that has to correspond to the portion of the intervention that has not yet been served. The type of sanction in question would usually be a sentence to conditional imprisonment that is supplemented (in one half of the cases) with an unconditional fine. In the more serious cases unconditional imprisonment may also be used as a backup sanction.

Community service. The performance of a community service order is supervised quite closely. The supervision is specifically focussed on ensuring that the work is performed properly. Unlike in the other Nordic countries, community service does not contain any extra supervision aimed at controlling

the offender's behaviour in general. Rather, supervision in this context is strictly confined to the young person's working obligations.

Minor violations are dealt with through the issuance of reprimands, while more serious violations are reported to the public prosecutor, who may take the case to court. If the court finds that the conditions of the community service order have been seriously breached, it should convert the remaining portion of the community service order into unconditional imprisonment. The hours that have already been worked should be credited in full to the offender. In this situation, the length of imprisonment should be calculated by applying the general conversion scale.

Conditional imprisonment and supervision. Supervision of conditionally sentenced juveniles has remained an under-developed feature of the Finnish juvenile justice system. In practice, half of the cases are supervised by volunteers (who usually have a social work background) and the other half by Probation Service officials. There have been but very few efforts to enhance the content of supervision. However, in recent years the practices that have been developed in connection with JPOs have been expanded to cover conditional imprisonment as well, at least in some regions.

4.7.2 Juveniles in prison

As noted (under *3.2.2* above) there are no specific juvenile prisons. However, the law requires that young offenders be separated from adults (should this be in the best interest of the juvenile) and that in the enforcement of a sentence special attention must be paid to the specific needs of juveniles. In practice this means that young prisoners are placed in prisons specialized with programme-work that is suited to younger age groups and that juvenile prisoners in these prisons are placed in separate wards. Consequently, the majority of prisoners under the age of 21 serve their sentence in a prison specialized in programmes for young adults. Other major criteria for allocating prisoners to prisons relate to the possibilities of maintaining ties to family, friends and to the local community.

Work Out Project (WOP). An ESF-funded WOP-project has been running in Kerava Prison since 2001. Its primary objective lies in improving the social skills of the young inmates through systematic and target-orientated work, both during the prison term and after release. To achieve this, the project aims to establish a model of networking actions in order to ensure that the rehabilitative efforts during the prison term are continued after release (the continuum of rehabilitation).

The project is targeted at male prisoners under 30 years of age who come from southern Finland. Participants are selected by the WOP-team on the basis of their applications and interviews. The prisoners in the project are accommodated in two separate wards (each with 12 inmates). Both wards are drug-free.

At the start of the sentence an individual plan for the future is drawn up in co-operation with the prisoner, the staff and the networkers in the prisoner's home community. The plan covers both the prison term and the post release phase. Plans, agreements and arrangements for the post release period are made by the networkers in the prisoners' home communities while sentence is still being served.

Work with inmates during the prison term focuses on holistic rehabilitation and the reinforcement of functional abilities. This work includes amongst others a structured rehabilitation programme (Kisko®) for substance abuse, debt- and economic counselling, education and work activities, family work and work with volunteer supporters, courses on employment, creative activities and physical education as well as group activities to enhance life management skills. This work is administrated by a multi-professional team including the project workers, special advisers, the assistant manager, the principle officer, and the prison officers of the ward.

Post-release work in the community is organized and co-ordinated by the WOP-project workers. This work can be characterized as intensive guidance with educational and therapeutic elements. It includes professional tutoring, housing support, service guidance and social work with intoxicant abusers, work with the clients' families and with other meaningful people close to the client. It is formally divided into an intensive phase of work with the client, and a follow-up period, with both phases lasting approximately six months. Much of the work is also concentrated on practical issues, such as taking care of some basic tasks of everyday life, like getting an ID-card, bank account, travel card, a continuation of debt- and economic counselling etc.

In the year 2006, between 1 April and 31 December 35 prisoners started the project (the average age was 22 years). Of these, 28 completed the programmes and seven dropped out. By the end of 2007, out of the 28 successful completions, half (14) had been integrated into work-life or education, 10 were in substance abuse or psychosocial rehabilitation programmes, and three were "drifting", but still maintained close contacts with the WOP-project workers. One participant has been sent back to prison for re-offending. Four other participants relapsed and had minor reconvictions, but their problems were sorted out by the project team. Unfortunately, no evaluations using control groups are available.[8]

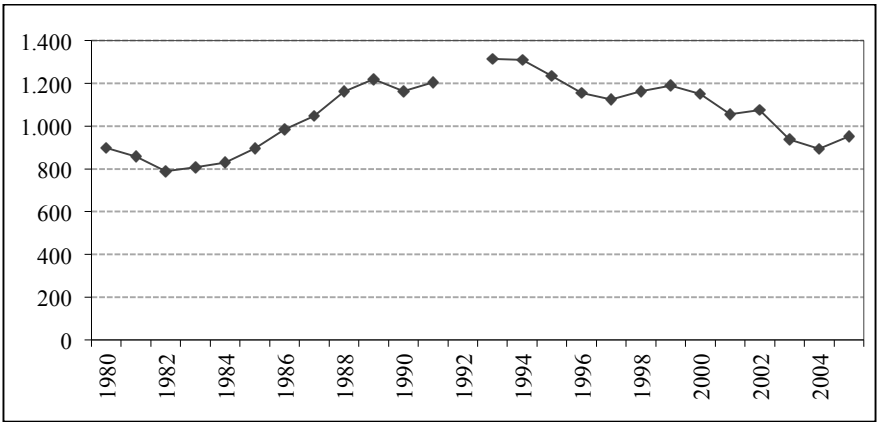
8 Some basic facts on the WOP-project are available at: http://www.rikosseuraamus.fi-/16925.htm.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

5.1 Non-prosecution

Non-prosecution among juveniles in the age group from 15-17 years has remained fairly stable (between 800 and 1,200) during the last 25 years (see *Figure 11*). This corresponds to some 5 to 6% of all cases dealt with by prosecutors in that age group (and around 20% of juveniles dealt with by the courts).

Figure 11: Non-prosecution in the 15-17 age group, 1980-2006



Source: Statistics Finland.

5.2 Mediation

While non-prosecution has been used in a fairly restrictive manner (as compared to many other jurisdictions), mediation plays a substantial role in Finnish juvenile justice. After the introduction of mediation in the early 1980s, the total annual number of mediation cases had exceeded 5,000 by the mid 1990s, which was then followed by a short decline. However, the enactment of the Mediation Act in 2006 extended mediation across the entire country. The latest statistics indicate that a little below 7,000 referrals to mediation were made in 2007. A single referral may include several offences. In total, 9,000 criminal offences were referred to mediation. The largest groups are violent offences and property offences (both with 40%).

The clear majority of cases involve either minor property offences or minor forms of assault and battery (around 40% in both cases).

Table 7: Statistics on mediation by type of offence in 2007

	N	%
All offences	9,054	100
Minor assault	623	6.9
Assault	2,965	32.7
Aggravated assault	60	0.7
Robbery	27	0.3
Theft	889	9.8
Fraud/embezzlement	493	5.4
Damage to property	1,983	21.9
Car theft	96	1.1
Disturbance of domestic peace	421	4.6
Unlawful threat	408	4.5
Defamation	353	3.9
Other	736	8.1

Source: Stakes, Ministry of Social and Welfare Affairs.

Most cases are sent to mediation by the police (72%) or by the prosecutor (24%). Only a small number of cases come directly from either the parties or the social welfare authorities (two percent each).

Table 8: Statistics on mediation in criminal offence cases according to the initiator, 2007

	N	%
In criminal cases, mediation was initiated by:	8,315	100
Police	5,977	71.9
Prosecutor	1,943	23.4
The parties	140	1.7
By the victim	65	-
By the offender	66	-
Social welfare authorities	153	1.8
Parents	22	0.3
Other	80	1.0

Source: Stakes, Ministry of Social and Welfare Affairs.

In around half of the cases in 2007 the offender was under the age of 21. 14% of the cases involved children below the age of criminal responsibility, and one fifth were attributable to the age group from 15-17. The majority of the victims were aged 30 and older.

Table 9: Mediation according to the age of the parties, 2007

	N	%
The age of the offender/perpetrator (at the time of the offence/event)	10,198	100
< 15 y.	1,422	13.9
15-17 y.	2,092	20.5
18-20 y.	1,499	14.7
21-29 y.	2,121	20.8
30-64 y.	2,928	28.7
65-y.	136	1.3
The age of the victim/plaintiff	7,375	100
< 15 y.	564	7.6
15-17 y.	674	9.1
18-20 y.	814	11.0
21-29 y.	1,709	23.2
30-64 y.	3,377	45.8
65+ y.	237	3.2

Source: Stakes, Ministry of Social and Welfare Affairs.

Just over 60% of all referrals ended in an agreement, and on average 90% of the resulting contracts were fulfilled. The majority of the contracts contained monetary compensation, but may also have included compensation through work, an apology or a promise not to repeat the behaviour.

Table 10: The number and content of mediation agreements, 2007

Agreements	N	%
In criminal cases during the year	5,540	62.9
In civil cases during the year	86	46.2
No agreement	1,321	15.0
The contents of the agreements		
Monetary compensation – N	3,271	
Monetary compensation – total €	1,573,099	
Work compensation – N	376	
Work compensation – value in €	102,832	
Property returned – N	48	
Behavioural agreements – N	343	
Apologies – N	1,969	
No demands (withdrawal from demand) – N	855	

Source: Stakes, Ministry of Social and Welfare Affairs.

6. The sentencing practice – Part II: The juvenile court dispositions and their application since 1980

6.1 Overall trends in penal policy 1960–2000

In the 1960s, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). The critique of compulsory care merged with another reform ideology that was directed against an overly severe Criminal Code and the excessive use of custodial sentences. The resulting criminal political ideology was labelled as "humane neo-classicism". It stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing, the principles of proportionality and predictability became the central values. Individualised sentencing and sentencing for general preventive reasons or perceived dangerousness were moved into the background.

Since the early 1970s Finland has shaped its sanctioning system in the spirit of "humane neo-classicism". The overall aim of these law reforms – 20 to 25 in total – was to reduce the use of imprisonment. The reforms started during the

mid-1960s, and continued up to the mid 1990s. The overall effect of these policy reforms is reflected in a dramatic fall in Finnish prison population rates. At the beginning of the 1950s the prison population rate in Finland was four times higher than in the other Nordic countries. Finland had almost 200 prisoners per 100,000 inhabitants, while the figures in Sweden and Norway were around 50. Even during the 1970s, Finland's rate continued to be among the highest in Western Europe. In the early 1970s Finland had some 120 prisoners/100,000 inhabitants, while the corresponding figures at that time in England and Wales were almost half. Today the situation is the opposite.

This policy of decarceration had even more dramatic effects on juveniles. Between 1985 and 2000 the number of prison sentences imposed by the courts on 15 to 17-year-olds fell from 400-450 to 60-70. Even more substantial changes took place in terms of the numbers of prisoners. In the same period, the overall numbers fell by 35% (from 4,500 to a little below 3,000). In the 18 to 20 age group, the figures fell by over 50% (200 to 100) and in the age group of 15 to 17-year-olds even by 75% (from 35 to less than 10). From 2000 to 2006 the overall prisoner rate increased by one third (but dropped again by 10% in 2007). However, the number of juvenile prisoners continued to decline, reaching a low of 77 prisoners aged 18 to 20 (two percent of the overall prisoner rate) and five prisoners aged 15 to 17 (which includes remand prisoners; this corresponds to 0.1% of the overall prisoner rate).

Table 11: Imprisonment and juveniles in Finland, 1975-2006

	Prison sentences in courts			Prisoners		
	Total	**18-20 y. (%)**	**15-17 y. (%)**	**Total**	**18-20 y. (%)**	**15-17 y. (%)**
1975	16,074	2,204 (13.7)	761 (4.7)	5,452	335 (6.1)	117 (2.1)
1980	10,242	1,243 (12.1)	358 (3.5)	5,088	238 (4.7)	60 (1.2)
1985	11,467	1,442 (12.6)	444 (3.9)	4,411	202 (4.6)	36 (0.8)
1990	11,657	1,417 (12.1)	346 (2.9)	3,441	175 (5.1)	33 (1.0)
1995	6,754	827 (12.2)	117 (1.7)	3,248	134 (4.1)	11 (0.3)
2000	8,147	850 (10.4)	65 (0.8)	2,855	95 (3.3)	9 (0.3)
2006	8,313	724 (8.8)	65 (0.8)	3,788	90 (2.4)	6 (0.1)

Source: Statistics Finland, Prison Administration and Criminal Justice Agency.

6.2 Implementation of different sanctions in the year 2005

Table 12: Penalties imposed on different age groups in year 2005

2005	15-17 y.		18-20 y.		21 y. and over	
	N	%	N	%	N	%
Waiver	230	5.4	95	1.1	701	1.3
Fines (court)	3,166	74.5	5,420	61.1	29,705	55.3
Conditional	736	17.3	2,255	23.8	12,766	23.8
Juvenile Punishment Orders	41	0.9	1	0	---	---
Community service	14	0.3	378	4.3	2,978	5.5
Prison	65	1.5	724	8.2	7,524	14
Total	4,252	100	8,873	100	53,674	100
Summary fines (prosecutor)	10,920		24,845		201,707	
Population	191,000		194,000		3,937,000	

Source: Statistics Finland.

In Finland fines are imposed by day-fines. Fines can be imposed either by the prosecutor or by the court. Prosecutors fines are used in the case of certain petty offences with simplified summary penal proceedings (penalty orders). Fines are the most common penalty for all age groups, accounting for 75% of court sentences for 15–17 year olds, 61% in the 18–20 age group and 55% for those aged over 20. Clear majority of fines are imposed by the prosecutor (representing over 90 % of all sanctions in all offender groups). The extraordinary high percentage of fines in Finland needs an additional explanation. Among the factors explaining the extensive use of fines are that also minor criminal cases are taken in Finland either to prosecutor or to the court, traffic offenses are often dealt by day-fines. In addition, a substantial number of fines in the group below 18 is imposed for unlawful possession of alcohol. Thus, in 2005 the majority (60 %) of all fines (total 14 000) in the age group 15-17 years were impose either for traffic offenses (45 %) or possession of alcohol (15 %). Almost half of the remaining fines (6000) are imposed for petty theft (2700). Assault and petty assault cover 5 % of fines.

Second alternative after fines is conditional imprisonment, covering 17 % of court dispositions in the age group of 15-17, and 24 % in the age-groups 18-20 and 21 or over.

The third alternative for young adults (18-20) was prison (around 8 % in the ague-group 18-20, however declining since 2005, see below), but only 1,5 % in the age-group 15-17. Community service is used only to young adults (18-20) and adults. It's scope in the younger age-groups is restricted by the fact that community service can be used only instead of prison sentences (max 8 months). As prison is used for offenders below 18 only in exceptional cases (and usually only for serious offenses) community service has a quite limited relevance for younger offenders. Each year, less than one percent of offenders under 18 are sentenced to community service. The corresponding figures in other age groups are four (18–20) and six percent (over 20).

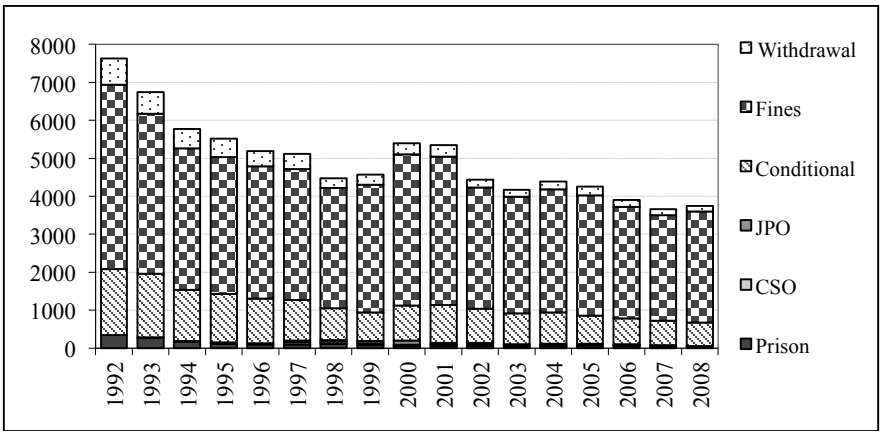
The new juvenile penalty (JPO) adopted in the mid 1990s, has made its way very slowly. By the end of the year 2005, approximately 40 to 60 young offenders had been sentenced to JPOs each year. This is associated with the strict requirement of issuing this sentence only in high risk cases. Almost two out of three persons sentenced to a JPO had received at least one prior conditional prison sentence. On average, the offenders had two or three prior convictions. The young offenders whom the courts deemed suitable for JPOs also tended to have been the focus of child welfare measures. They had problems with intoxicants to some extent; some had a serious problem with drug abuse or were continuously engaged in drinking. Thus, often the young offenders in this group had already been the focus of a large variety of measures imposed by the authorities. As the "candidates" for JPO already are under the interventions by the child welfare authorities, this new sanction has had evident difficulties in finding its own role in the Finnish juvenile justice system.[9]

9 See *Marttunen* 2008.

6.3 Trends in different alternatives

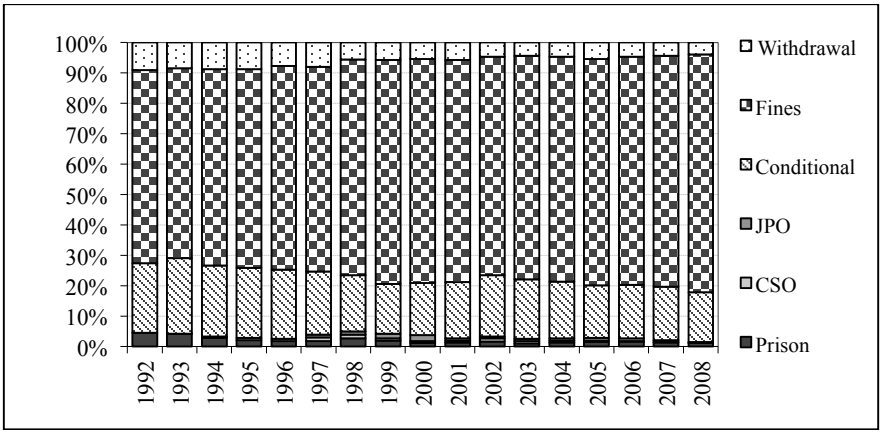
6.3.1 Ages 15 to 17

Figure 12a: The use of different sentencing alternatives, 1992-2008 (15 to 17-year-olds)



Source: Statistics Finland.

Figure 12b: The use of different sentencing alternatives, 1992-2008 (15 to 17-year-olds) in %

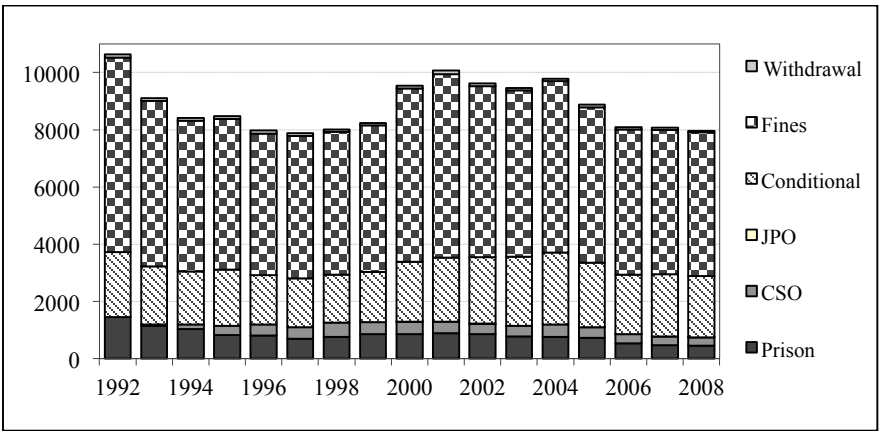


Source: Statistics Finland.

The overall number of imposed penalties fell during the first half of the 1990s. This was mainly due to a decrease in the number of property offences. The overall shares of different alternative have remained fairly stable.

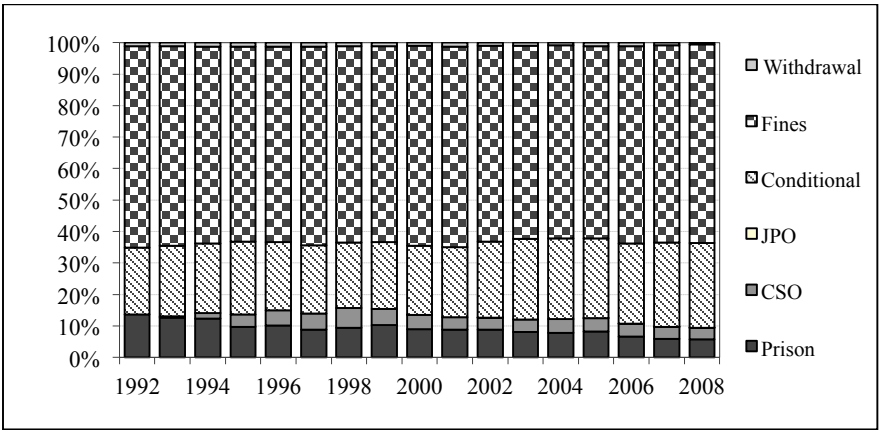
6.3.2. Ages 18 to 20

Figure 13a: The use of different sentencing alternatives, (18 to 20-year-olds)



Source: Statistics Finland.

Figure 13b: The use of different sentencing alternatives, (18 to 20-year-olds) in %



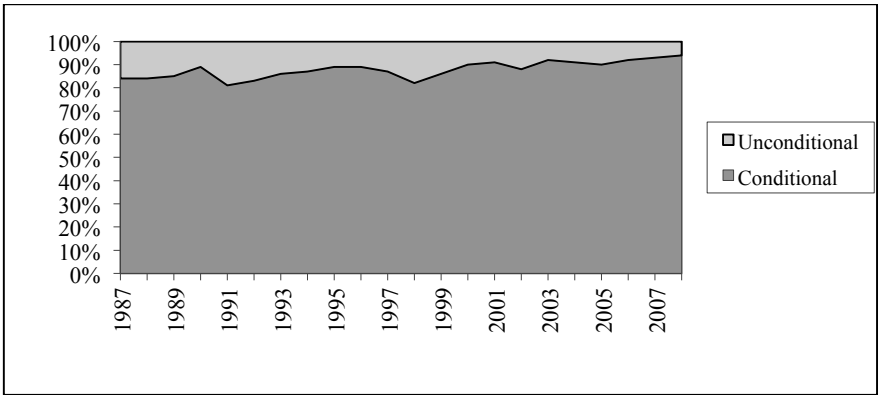
Source: Statistics Finland.

The number of sentenced young adults has declined since 2004 by one fifth. This concerns all sentencing alternatives. In relative terms, however, the number of prison sentences has had the steepest decline (- 40 %, see also below)

6.3.3 Unconditional and conditional imprisonment

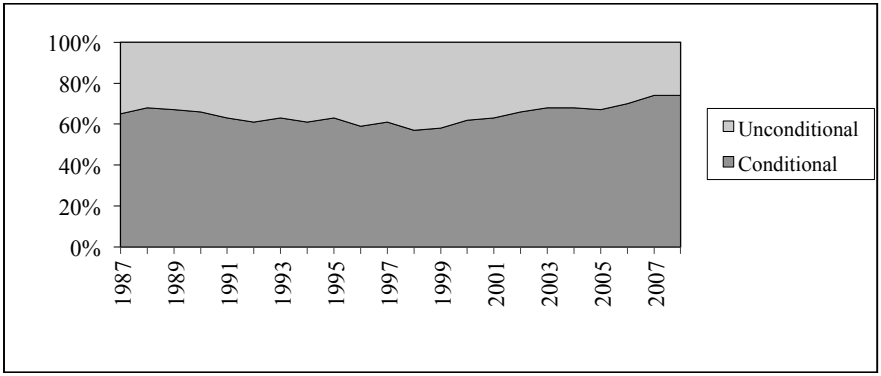
An increasing number of prison sentences in the 15 to 17 years age group have been conditional. This is also reflected in the declining number of unconditional prison sentences (see below). In the 18 to 20 years age group the overall trend was more or less stable in the period from 1987 to 2000. However, during the 2000s the share of unconditional prison sentences has been in decline.

Figure 14a: Unconditional and conditional imprisonment, (15-17 years old offenders, percentages)



Source: Statistics Finland.

Figure 14b: Unconditional and conditional imprisonment, (18-20 years old offenders, percentages)

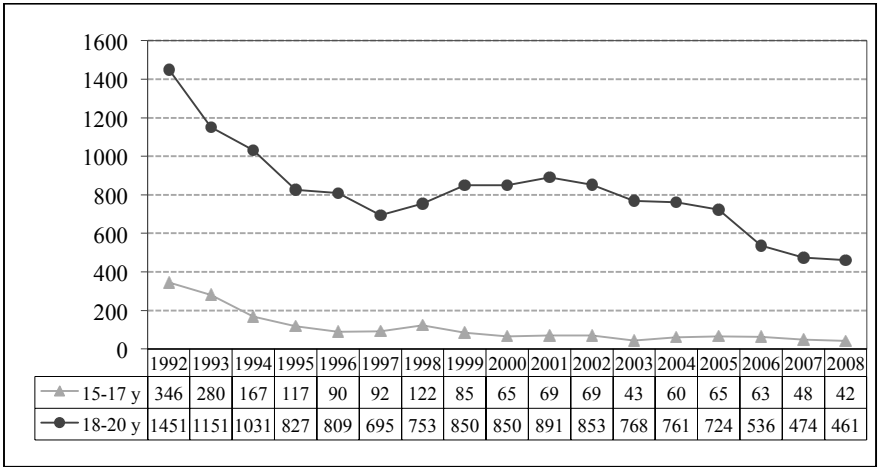


Source: Statistics Finland. Unconditional sentences include community service.

6.4 Imposed prison sentences

The absolute numbers of annually imposed unconditional prison sentences are presented in *Figure 15*.

Figure 15: Annually imposed unconditional prison sentences for young offenders, 1992-2008



	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
15-17 y	346	280	167	117	90	92	122	85	65	69	69	43	60	65	63	48	42
18-20 y	1451	1151	1031	827	809	695	753	850	850	891	853	768	761	724	536	474	461

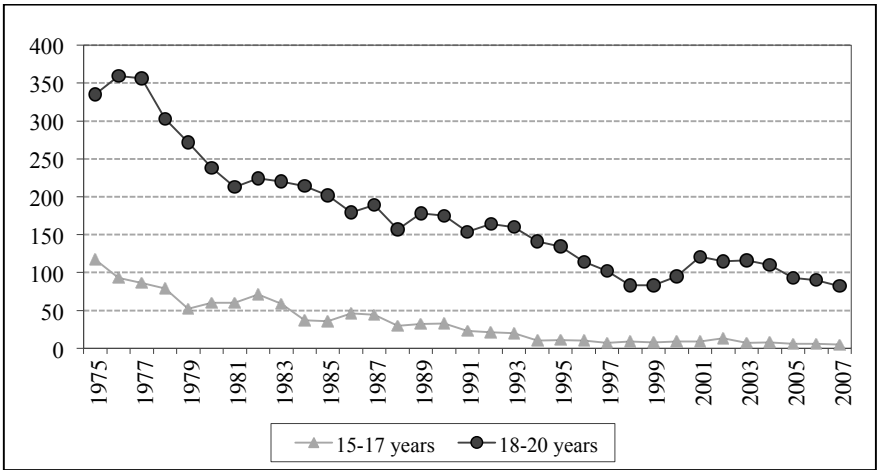
Source: Statistics Finland.

For 15 to 17 years old offenders, the number of unconditional prison sentences fell from over 400 in the late 1980s to well below 100 in the early 2000s, and finally to below 50 in the late 2000s. The corresponding change in the 18-20 years age group was from 1,500 in 1992 to 800 in the mid 1980s. The trend stabilised for a moment, as a part of an overall increase in the use of prison sentences, during the latter half of the 1990s. However, in 2006-2008 there has been a clear drop in the number prison sentences.

6.5 Stocks and flows in juvenile prisoners

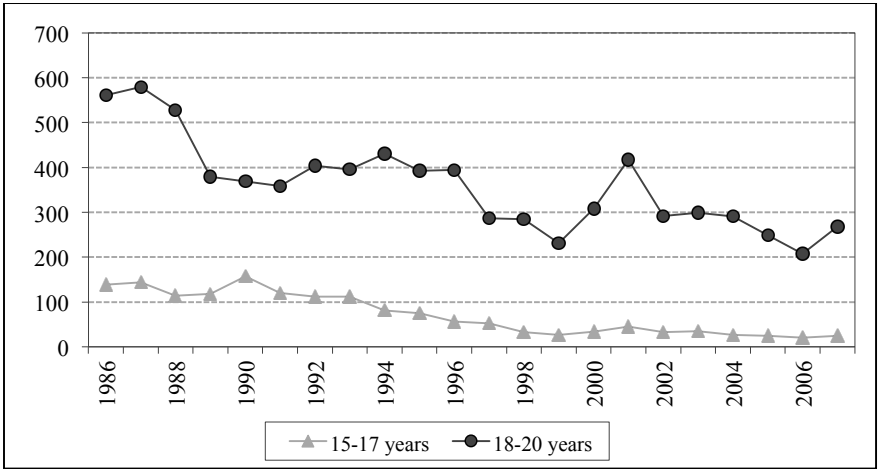
The numbers of prisoners in the 15-17 and 18-20 years old age groups from 1975 onwards are presented in *Figure 16.*

Figure 16: The number of juvenile prisoners, 1975-2007 (annual averages, absolute figures, remand included)



Source: Statistics Finland.

Figure 17: The number of juvenile prisoners, (admissions, remand included)



Source: Statistics Finland.

The number of prisoners aged 15 to 17 fell from over 100 in the mid-1970s to less than 10 in the 1990s. Prisoners from the 18-20 years age group fell from over 350 to less than 100. The percentage of juvenile and young prisoners in the overall prison population has also seen dramatic reductions.[10] The male/female ratio is about the same in both age groups: Around four to five percent of young prisoners are female (of all prisoners 5.5% are female). Corresponding changes can also be detected in the admission rates (see *Figure 17*).

7. Regional patterns and differences in sentencing young offenders

There are no data on regional differences in sentencing young offenders. However, the general sentencing practice for all offenders in Finland is fairly uniform in the sense that there are no systematic differences in sentence severity between different regions or geographical areas. On the other hand, it is possible to detect differences in sentencing practices even between courts within the same region. Sentencing patterns are monitored regularly with the help of court statistics, also at the individual court level. This information is also disseminated to the courts. This may explain part of the fact that the extent of unwarranted

10 See *Lappi-Seppälä* 2006, figure 12.3.

disparities in sentencing – even if they do exist in Finland – seems to be of a minor nature when compared to the (limited) information available from other countries.[11]

8. Young adults (18-20 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

The age group of young adults does not form a special category in the Finnish criminal justice system. As mentioned above (*1.3*), all offenders below the age of 21 are released on parole earlier than adults and may be placed under supervision as part of a sentence to conditional imprisonment. For sentencing practice data, see the *Figures* above.

9. Transfer of juveniles to the adult court

As juveniles and adults are dealt with through the same system, there are no transfers from a juvenile to an adult criminal justice system.

10. Preliminary residential care and pre-trial detention (remand imprisonment)

10.1 Arrest and detention

The pre-conditions for arrest and pre-trial detention are defined in the Pre-Investigation Act (1987). The suspect of an offence may be arrested if it is probable that he/she has committed an offence punishable by a minimum prison term of two years or more. If the minimum penalty prescribed in the law is below two years and at least one year, the suspect may be arrested if, having regard to the circumstances of the suspect or otherwise, it is probable that: the suspect will abscond or otherwise avoid criminal investigation, trial or enforcement of punishment; hinder the clearing up of the offence by destroying, defacing, altering or concealing evidence or by influencing a witness, a complainant, an expert or an accomplice; or continue his criminal activity. The suspect may also be arrested (in other cases than above) if his/her identity is not known and the suspect refuses to divulge his name or address, or gives evidently false information, or if he/she does not have a permanent place of residence in Finland and it is probable that the suspect will avoid criminal investigation, trial or enforcement of punishment by leaving the country (Pre-Investigation Act,

11 On reducing unwarranted disparities in sentencing, see in more detail *Lappi-Seppälä* 2001.

section 3 (1)). Anyone arrested must be either acquitted or detained within three days (Pre-Investigation Act, section 4 (1) and section 13).

Decisions on pre-trial detention (remand imprisonment) are carried out in three phases. First, the police issue a request for detention to the prosecutor, who then takes the case to court. Final decisions on detention are made by the courts. The conditions for pre-trial detention fall into two categories: Detention due to "probable cause" applies when the suspect of an offence may be detained, in accordance with the provisions in section 3 (1) (see above), if it is probable that he has committed the offence. Detention is also possible with a lower level of probability when this is deemed to be justified in order to obtain further evidence. "Where there is reason to suspect a person of an offence, the person may be detained even if it is not probable that he/she has committed the offence, but the other prerequisites for detention provided in section 3 (1) are fulfilled and the detention is of utmost importance in view of anticipated additional evidence." If the suspect has been detained on the latter grounds, the issue of detention shall be reviewed by the court within one week.

Whether the convicted person remains detained after conviction depends primarily on the length of the sentence. All offenders sentenced to imprisonment for two years or more will be detained without discretion. If the sentence is imprisonment for less than two years but at least one year, the convict shall be detained if it is probable that he/she will abscond or otherwise avoid the enforcement of the sentence, or continues with his/her criminal activity. For shorter sentences (less than one year) the offender may be detained if he/she does not have a permanent place of residence in Finland and it is probable that he/she will avoid the enforcement of the sentence by leaving the country; or the convict has been sentenced on different occasions to imprisonment for a number of offences, committed at short intervals, and the detention is necessary for the prevention of further offences of the same degree of seriousness.

The court's handling of the detention process is regulated by the Code of Criminal Procedure. As regards juveniles, one also has to take the provisions in the child protection legislation into account. For instance, the law requires that the child welfare authorities must be represented in preliminary investigations as well as in court hearings if the suspect is below the age of 18 years, unless this is deemed to be obviously unnecessary. If the person being questioned in pre-investigations is under 15, the person responsible for his/her care and custody, his/her guardian or another legal representative shall be provided the opportunity to be present during the questioning.

10.2 Provisions on remand imprisonment

Pre-trial detainees as well as post-trial detainees are classified as remand prisoners until the day their sentence is final and the actual enforcement of the prison term starts. The enforcement and conditions on remand imprisonment are

regulated in detail in the new Act on Remand Imprisonment (768/2005). These provisions were amended as a part of the general prison reform in 2006. The Act on Pre-Trial Detention has been adjusted to meet the standards and recommendations expressed in international agreements (including the CPT reports).

General principles of the Remand Act include the following: the rights of a remand prisoner may not be restricted more than necessarily required by the purpose and the security of remand imprisonment and the maintenance of prison order (Remand Act 1:4 §). Remand prisoners shall be treated fairly and with respect for their human dignity. Prisoners may not, without a justifiable reason, be placed in an unequal position due to race, national or ethnic origin, colour, language, sex, age, family status, sexual orientation, state of health, disability, religion, social opinion, political or professional activity or other reasons relating to the person. The law further requires that "when enforcing the remand imprisonment of juveniles, who have committed their offences when under 21 years of age, special attention shall be paid to the needs arising from the age and stage of development of the prisoner" (Remand Act 1:5 §).

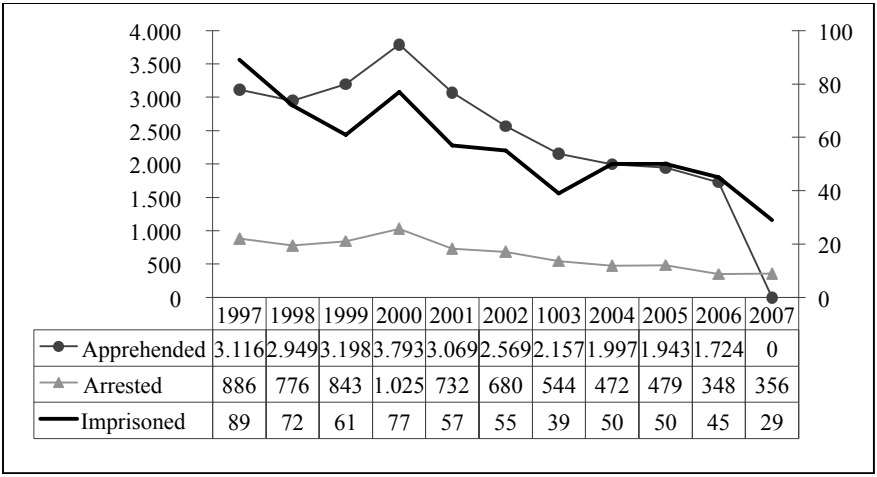
Remand prisoners must be kept separated from prisoners serving the sentence (unless there are special reasons at hand, defined in more detail by the law, Remand Act 3:1, 2 §). Concerning juveniles, the law requires that remand prisoners under the age of 18 must be kept separate from other prisoners, unless required otherwise by the best interest of the prisoner (Remand Act 1:3, 3 §). The same also applies to remand prisoners during transportation (Remand Act 14:3, 3 §).

The new Remand Act stresses that all remand-prisoners should be placed in specific remand prisons or other institutions of the Prison Administration. However, for practical reasons and especially during the early phase of the pre-trial detention period, suspects are also detained in police premises. This practice has received repeated criticism from the CPT. For the moment there are about 500 remand-prisoners in prison institutions and around 90 in police premises.

10.3 The number of juveniles apprehended, arrested and placed in remand imprisonment

The annual number of juveniles apprehended, arrested and imprisoned in a pre-trial phase is described in *Figures 18* and *19* below.

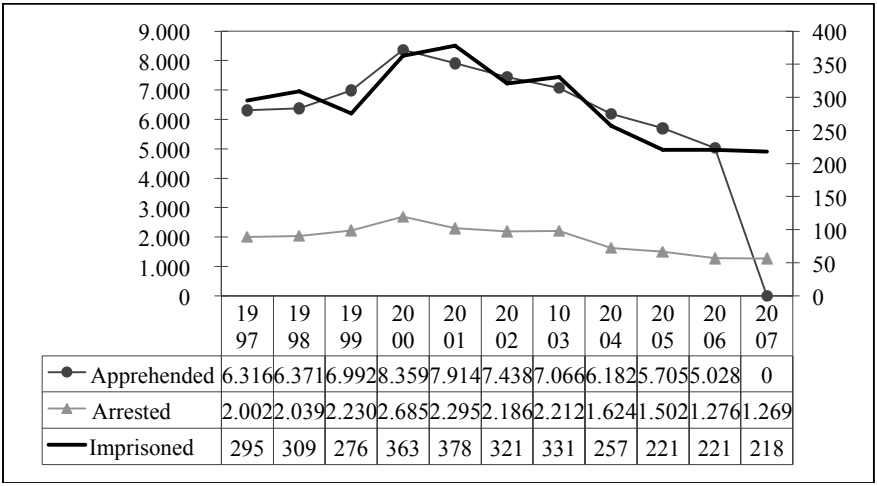
Figure 18: Juveniles (15-17 y.) apprehended, arrested and imprisoned (remand imprisonment)



	1997	1998	1999	2000	2001	2002	1003	2004	2005	2006	2007
Apprehended	3.116	2.949	3.198	3.793	3.069	2.569	2.157	1.997	1.943	1.724	0
Arrested	886	776	843	1.025	732	680	544	472	479	348	356
Imprisoned	89	72	61	77	57	55	39	50	50	45	29

* Data not available.
Source: Statistics Finland.

Figure 19: Young adults (18-20 y.) apprehended, arrested and imprisoned (remand imprisonment)



	1997	1998	1999	2000	2001	2002	1003	2004	2005	2006	2007
Apprehended	6.316	6.371	6.992	8.359	7.914	7.438	7.066	6.182	5.705	5.028	0
Arrested	2.002	2.039	2.230	2.685	2.295	2.186	2.212	1.624	1.502	1.276	1.269
Imprisoned	295	309	276	363	378	321	331	257	221	221	218

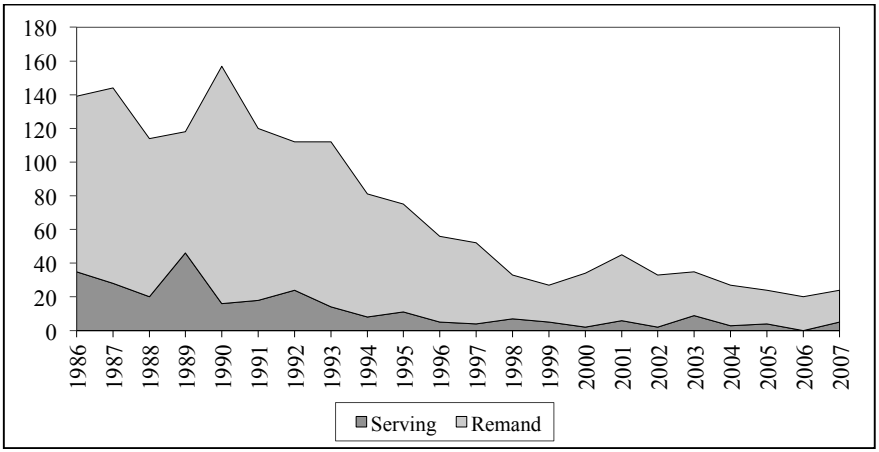
* Data not available.
Source: Statistics Finland.

All figures indicate a declining trend. The number of juveniles (15-17 years old) apprehended, arrested and imprisoned in 1997 was approximately 3,100, 900 and 90 respectively. Ten years later the figures had dropped to around 1,700, 350 and 30 respectively. In the 18-20 age bracket the corresponding figures were 6,300, 2,000 and 300 (1997), and 5,000, 1,300 and 220 (2007) respectively.

10.4 Juveniles as remand prisoners

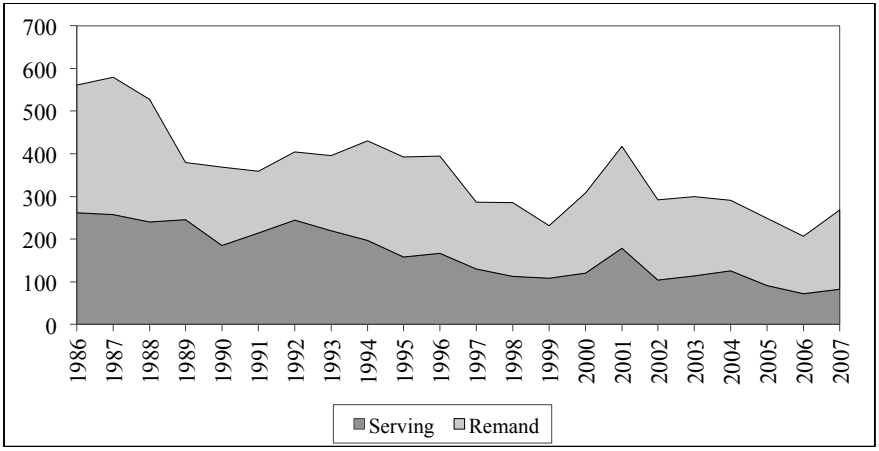
Figures 20 and *21* describe the trends in admissions to remand imprisonment (as well as prisoners serving their sentences) during the last 20 years. In this case the overall trend is declining, with the steepest decline being attributable to the 15-17 years age group.

Figure 20: Juveniles (15-17 y.) admitted to prison as remand prisoners or prisoners serving their sentence



Source: Criminal Sanctions Agency.

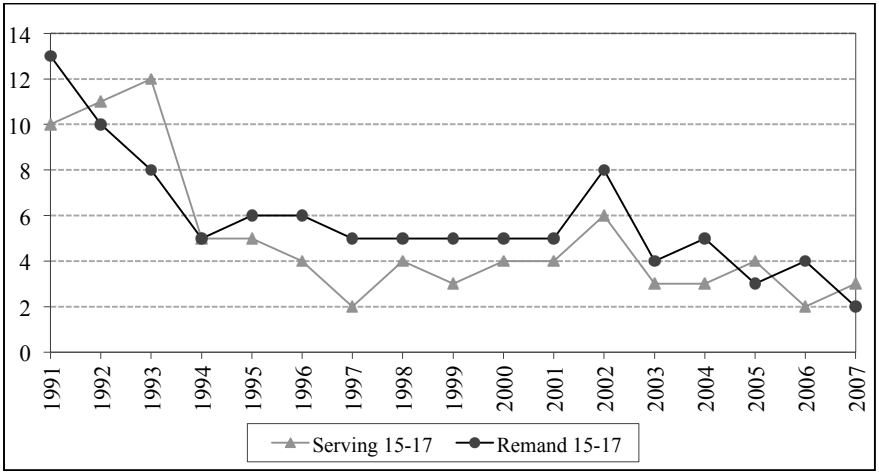
Figure 21: Young adults (18-20 y.) admitted to prison as remand prisoners or prisoners serving their sentence



Source: Criminal Sanctions Agency.

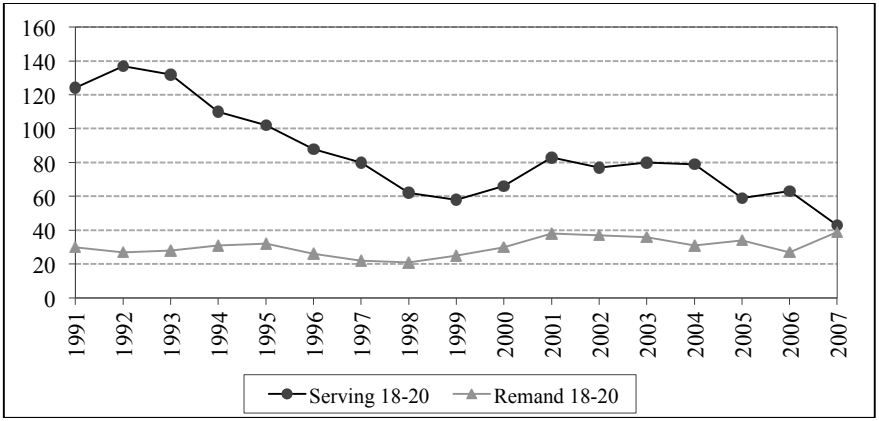
Figures 22 and *23* describe the annual number of juveniles held in prisons for different reasons (on any given day) from 1991 to 2007.

Figure 22: Annual averages of juveniles (15-17 y.) in prison as remand prisoners and prisoners serving their sentence



Source: Criminal Sanctions Agency.

Figure 23: Annual averages of young adults (18-20 y.) in prison as remand prisoners and prisoners serving their sentence



Source: Criminal Sanctions Agency.

Both the annual average number of remand prisoners as well as prisoners serving their sentence have been declining.

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

11.1 Deinstitutionalization in the child welfare system

The liberal reform (see chapter *1.2* above) movement of the 1960s and the 1970s did not confine itself to prisons and to criminal justice: all compulsory treatment, whether in prisons, mental hospitals or in institutions for alcoholics, was closely scrutinised. The child welfare system was no exception. The conditions and the treatment methods in state run reformatory schools were heavily criticised and the whole existence of the system was questioned. During the following decades the state run reformatory schools were practically shut down and the number of residents fell from 1,000 in the mid 1960s to 750 in the mid 1970s, and to around 300 in the early 1990s.

The treatment and working methods in child welfare underwent a profound change as well. Punitive elements disappeared. Misbehaviour and criminal conduct of the child as major motives for placement were replaced by needs-based arguments. During the 1980s the rhetoric of “in the best interest of the

child" was further combined with family centred approaches.[12] Simultaneously, emphasis was given to "right-based" arguments. Children became subjects who needed to be heard and whose rights must be appreciated.

Today the whole structure of these institutions looks very different. Large state run reformatory schools have been replaced by small residential units, with typically only 10 to 20 places. The majority of placements are voluntary. The outspoken motive for placement is the "best interest of the child". This, of course, does not preclude the possibility that criminal conduct has some relevance in the decision to place children in care (as a factor endangering the child's future mental and physical development). But since "crime" does not belong to the vocabulary of today's social work, and measures are not recorded on this basis, it is difficult to assess in how many cases the placement is partly motivated by "crime related reasons" (see *11.2* below). In addition, one should also take into account the measures taken by the health-care authorities, especially the use of psychiatric treatment. Children under 18 can be ordered to undergo treatment against their will if they are deemed to be suffering from a severe mental disorder which, if untreated, would become considerably worse or seriously endanger their health or safety or the health or safety of others, if all other mental health services are unavailable or inappropriate.

11.2 Residential care in child welfare today

Child welfare statistics have not been constructed from the same point of view as criminal justice statistics. There is no official record on the reason for care-orders (related either to family circumstances or the behaviour of the child), as the national child welfare statistics do not list child protection measures according to the causes for those measures. Separate analyses from primary sources indicate that the most common reasons are linked to parental alcohol consumption and mental health problems as well as to various forms of family conflicts. The older the child, the more reasons are linked to the child's destructive behaviour.

In 2008 a separate analysis was conducted in order to find out the number of children who are placed in child welfare institutions against their own will and for reasons associated with their own behaviour.[13] In 2005 the officials made 56 decisions in the age group of 10 to 14-year-olds, and 103 decisions in the 15-17 years age group, in which children were placed outside their home partly due to their delinquent behaviour. When this information is transformed into child welfare institution *population* figures, it indicates that there are about 100 10 to 14-year-old and 150 15 to 17-year-old minors in child welfare institutions with

12 See *Pösö* 1993.

13 See *Marttunen* 2008.

such a background each year. At the same time the number of prisoners under the age of 18 varies around five to seven.

Evidently, the child protection system plays a far more important role also as a form of social control, as compared to the criminal justice system. The Finnish dualistic system, where both social services and judicial authorities deal with juvenile delinquents, does not lead to cumulative sanctions at least from the criminal justice point of view. In other words, the juveniles who are taken into custody by the social services and placed into institutional care are not sentenced to JPOs. Instead, they commonly receive a conditional prison sentence. On the other hand, nearly half of all juveniles sentenced to JPOs or conditional imprisonment have at some point in their life been placed in care outside of their home. This suggests that the group of problematic juveniles consists largely of the same population both in the criminal justice and the child welfare system.

In the Finnish model the criminal justice and the child welfare systems seem, in a way, to complement one another. The JPO for instance comes into consideration when the means of the child welfare services are insufficient to respond to the juvenile's needs, and the intervention as a whole is supplemented by the JPO. Then again, the JPO can be suspended (temporarily at first) if the offender is placed in a child welfare institution. The Finnish child welfare system deals with cases that are elsewhere dealt with by Juvenile Courts.[14]

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

Changes in child welfare practices have been discussed in *Section 11* above. General trends in the criminal justice sanction system are dealt with in chapter *1.2*. Central features of enforcement practice are exemplified in chapter *4.7.2*.

13. Current reform debates and challenges for the juvenile justice system

13.1 Overview

Over a 30 year period, the Finnish Penal Code and its system of sanctions has undergone a total reform. In the 1990s, some of its neo-classical assumptions were contested through the introduction of community service in 1991 and the new Juvenile Punishment Order in 1997. Neither of these reforms though can be characterised as "repenalisations". The outspoken motive of community service

14 See in more detail *Marttunen* 2008.

was to replace short term prison sentences. The aims of punishing juveniles were more mixed but undoubtedly initiated by political motives to introduce a more "tangible and credible" alternative to the conditional prison sentence.

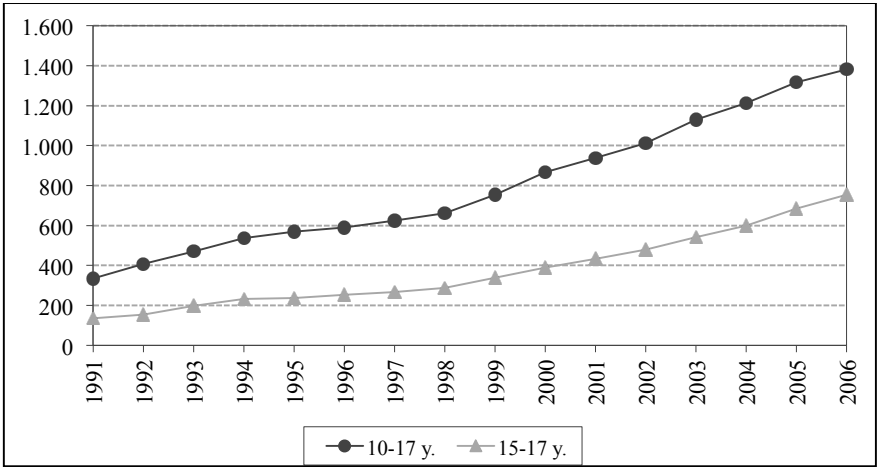
In the light of international standards, the Finnish child welfare system has coped quite well. The comments from the UN Committee on the Rights of the Child have been basically positive. In its 2000 report the Committee reiterated its satisfaction at the comprehensive social security system and the wide range of welfare services for the benefit of children and their parents, in particular free health care, free education, extended maternity leave, parental leaves, and an extensive day-care system. It also welcomed the efforts taken to reduce the impact on children of the economic recession in the first half of the 1990s.[15]

13.2 Causes of concern

However, there are also causes of concern. There are clear signs of decreased physical and mental well being of children, young people and their families. The child-welfare authorities have reported a steep rise in emergency-interventions. The number of children taken into foster-care has increased dramatically since the early 1990s (*Figure 24*). Also, the number of children in need of psychiatric treatment and the number of placements in psychiatric hospitals has been increasing.

15 The comments may be obtained from http://www.umn.edu/humanrts/crc/finland2000.html.

Figure 24: The number of children in foster (involuntary) care during the years 1991 to 2006



Source: Stakes, Ministry of Social and Welfare Affairs.

This may be a post-effect of the 1990s recession. The increase in the number of children in trouble reflects to a large extent the deteriorating social and economic position of their parents with more demanding and more insecure work-relations and with less time and less resources for parenthood. The UN Committee on the Rights of the Child pointed out these same concerns and "strongly recommended" the State to allocate more funds to families with children. In its third national report for the Committee (2003) the Finnish Government was able to report increased funds targeted for mental health services and for children and young people at risk of social exclusion.[16]

Current Finnish debate, also, contains worrisome elements familiar to most western jurisdictions. Youth violence has attracted considerable media attention, and contributed to public demands for government action to "do something". Isolated serious violent offences committed by juveniles with mental health problems were a cause of general concern during the early 2000s. In 2001 a majority of Finnish parliament members signed a (subsequently rejected) proposal to reduce the age of criminal responsibility – a topic that seems to be a recurring theme of discussions in parliament every two to three years. General public dissatisfaction towards the "repeated use of conditional imprisonment for young recidivist offenders" has also fed demands for "more tangible and

16 The report may be obtained from http://www.unhchr.ch/html/menu2/6/crc/doc/report/-srf-finland-3.pdf).

effective juvenile sanctions" such as new short-term prison sentences. So far these initiatives have not led to concrete legislative action. Research evidence revealing that, in general, juvenile crime has been in decline during the last 10 years, has served as an efficient back-up argument against the expansion of the criminal justice system and the widening of its remit.

13.3 Reform trends in juvenile justice

Up to date reform work within the Finnish juvenile justice system deals mainly with pragmatic issues, such as how to improve co-operation between different actors and how to avoid unnecessary delays in judicial processing. Efforts have been made to "speed up" the criminal process, especially by improving and enhancing the co-operation between different officials. Another debate has pondered the issue of whether the distinctive needs of young offenders should be taken into account to a greater extent within the criminal justice system, or whether rehabilitative aims should still be channelled mainly via the social welfare system. The need for more immediate actions in the case of evident re-offending risk has also been a subject of political concern.

In 2001 the Ministry of Justice launched a commission to address these issues. The commission had a general mandate "to establish a more rehabilitative perspective in the Finnish juvenile criminal system." The main part of the commission's proposals concentrated on improving co-operation between different officials and in speeding up the juvenile criminal process. The commission also proposed expanding the use of JPOs to include 18 to 20-year-olds. It also drafted plans for a new prevention oriented "liberty restricting juvenile arrest". The group rejected the idea of "custodial arrest" and proposed electronically monitored house-arrest and a locally defined restraint-order ("target arrest"). The new sanctions would not be classified as punishment, but as measures of security to be used mainly instead of remand.

The proposals of the juvenile committee are, for the most part, well considered and recommendable. Yet some risks are involved: one-sided managerialist aims to speed up the criminal process may undermine the more substantial values of dealing with offenders with proper depth and with the required expertise. Increased co-operation and increased exchange of information may also lead to more breaches of client confidentiality and decreased feelings of trust and confidence. Reborn optimism in rehabilitation also has its inherent risks. As long as rehabilitative measures are in the hands of child welfare authorities, the deep rooted and uncontested principle of voluntariness in social services is a solid guarantee against hidden coercion and punishment under the label of treatment. Once rehabilitation becomes incorporated into a system that is based ultimately on coercion, the more tempting it becomes to be led by good intentions and start to use coercive measures for the "good of the clients".

Reforming the law on Juvenile Punishment may still remain in the list of future reforms. The use of this opportunity has remained far behind what was intended, partly due to the selection criteria and the practices by the social services. The Probation Service also appears to have adopted a rather strict approach in its sanction recommendations and recommends a sanction other than a JPO in half of the enforcement plans. Finally, the courts do not always follow the Probation Service's recommendations: in around one fifth of the cases where a JPO had been recommended, the court decided differently. In a great majority of those cases, the court sentenced the offender to conditional imprisonment.[17]

14. Summary and outlook

All in all, proposals with manifestly punitive aims or those based on risk-assessments and incapacitation are hard to find in the current Finnish juvenile justice debate. However, the threats may also come from the "outside". In the past the juvenile justice system has benefited from favourable developments in adult criminal justice. But this door swings both ways. The bond is still there and possible changes in the adult criminal justice system may, again, have corresponding repercussions in the juvenile system.

The general international risk-factors within adult criminal justice include the tendency to politicise criminal justice policy and the increased pressure towards harmonising criminal law within the European Union. Some traces of these trends could be seen also in Finnish penal policy in the shift of the 2000s. The overall number of prisoners rose by almost 40 percent from 1999 to 2005. However, since then the trend has taken a downward turn by over 10%.[18] Taking into account that very few of the social, political, economic and cultural conditions which explain the rise of mass imprisonment in the United States and England and Wales apply to Finland, there may still be room for some optimism. Social equality and the demographic homogeneity of Finnish society may mitigate against unfounded repression. There are less racial and class tensions/distinctions, less fear and less frustration to be exploited by marginal political groups and less extreme demands for control and exclusion. Related to this, the welfare state was never openly discredited in Finland, not even during the deepest recession of the 1990s. The social and economic security granted by the Nordic welfare state can still function as a social backup system for a tolerant criminal justice policy.[19] Trust in, and legitimacy of the legal and political system may also play an important role. The fact that the Finns have, by international standards, a high level of confidence in their political and legal

17 See *Marttunen/Keisala* 2007.

18 See in more detail *Lappi-Seppälä* 2008.

19 See in more detail *Lappi-Seppälä* 2007.

system may partly explain why there has been no need for expressive gestures in penal policies. The political culture still encourages negotiations and appreciates expert opinion. And, especially regarding juveniles, in Finnish public policy juvenile crime and "children in trouble" are still viewed as problems arising from social conditions, and that these problems should be addressed by investing more in health services and in general child welfare – not in penal institutions.

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France

Jocelyne Castaignède, Nathalie Pignoux

1. Historical development and overview of the current juvenile justice legislation

Present French juvenile criminal law is the result of a long evolution during which two issues have contributed to reflexions and sometimes polemics: the concept of criminal responsibility, and the debate on education vs. repression. A look at the history of juvenile criminal law gives information on these topics.[1]

In 1810, the Criminal Code set penal majority at the age of 16 and judges had to examine whether the juvenile was capable of discernment. Only these juveniles could be convicted to a sentence, the latter being diminished by the system of mitigation due to the minor's age. A law of 12 April 1906 raised the age of criminal majority to 18, whereby a law of 22 July 1912 suppressed the question of discernment for persons under 13. A new jurisdiction was created - the Juvenile Court – the competence of which was to judge juveniles older than 13 when the offence was committed.

The basic text of juvenile criminal law remains the ordinance of 2 February 1945 on criminal juveniles (*ordonnance relative à l'enfance délinquante*). This piece of legislation proceeded from a new philosophy that shifts the focus away from the offence, to the person who committed it. The *Leitmotif* is the aim to protect rather than to punish. Three principles characterise this legal text: primacy of education over of punishment, specialisation of jurisdiction, and individualisation of treatment. The ordinance of 2 February 1945 created a new specialised judge, the juvenile judge (*juge des enfants*), and suppressed the question of discernment for juveniles of all ages. Concerning criminal sanctions,

1 For an overview of the French juvenile justice system, see also *Bailleau* 2007; *Courtin/ Renucci* 2007; *Wyvekens* 2006.

juveniles under 13 were only eligible for educational measures. Juveniles above 13 years of age could receive either educational measures or sentences, but with the former being prioritized. If a sentence was pronounced, a minor's age allowed for it to be mitigated – a provision that could however be dismissed for minors aged over 16.

The ordinance of 23 December 1958 extended the competences of the juvenile judge by including the judicial protection of juveniles in danger: this magistrate could consequently intervene as soon as he/she considered that a juvenile is in danger or in need of care, in terms of his/her health, security or morality, or if the conditions of his/her education are seriously compromised (Article 375 of the Civil Code). Recently, the law of 5 March 2007 (Nr. 2007-293) reforming the system of care for children enlarged the juvenile judge's criteria for intervention by adding to Article 375 of the Civil Code the serious compromising of conditions for the child's physical, affective, intellectual and social development. Yet the the law of 5 March 2007 underlines the subsidiarity of juvenile judicial protection: administrative protection through the Children's Social Care Service (*Aide sociale à l'enfance*, ASE) shall be examined first, and only when help from this service turns out to be impossible or ineffective in ceasing the situation of danger (the danger being too serious or parents not complying with the proposed measures) shall the judicial authorities be involved.

The current trend is to strengthen the orientation of the juvenile judge towards juvenile offenders; that proceeds from a hardening of juvenile criminal law in France over the last years, both in terms of the substantive criminal law and procedural regulations. It also contains a hardening that follows from a clarification of the notion of criminal responsibility.

Whereas the 1992 Criminal Code, in its new Article 122-8 (the only one dedicated to juveniles), mentioned the necessary acknowledgement of the juvenile's guilt, one had to wait until the law of 9 September 2002 (Nr. 2002-1138) on "orientation and programming for justice" to read in Article 122-8 about criminal responsibility: only juveniles "*capables de discernement*" will be responsible for offences in regard to criminal law. Imputability results from the capability of discernment. The same law of 2002 created, for instance, a new category of sanctions applicable to children (not criminally responsible) from the age of 10 – the educational sanctions. It also introduced a form of speedy processing called "*à délai rapproché*" ('to near delay') and secure educational centres (*centres éducatifs renforcés*).

The law of 9 March 2004 (Nr. 2004-204) on the "adaptation of justice to the evolution of criminality" modified the rules concerning juveniles' criminal records (*casier judiciaire*), consequently entailing a longer registration of offences therein. And recently, the law of 5 March 2007 (Nr. 2007-297 JO of 7 March 2007) on the prevention of delinquency continued to intensify penal responses to juvenile criminality: the application of forms of plea bargaining (*composition*

pénale) to juveniles which until now had been reserved to adults; real-time processing before the Juvenile Court; and a trend towards more severity for recidivist offenders over 16 by allowing the rules governing the mitigation of sentences to be put aside.

French juvenile justice is thus a current issue debate and has recently faced frequent legislative modifications, yet without the problem of the law's effectiveness and implementation being addressed. The trend has been towards an approximation of juvenile and adult law in terms of criminal procedure and sanctions, which has resulted in harsher and more severe sanctioning of the youngest offenders: the relationship between education and repression has been tending toward the latter, and this despite the acknowledgment by the Supreme Court on 29 August 2002 (decision Nr. 2002-461 DC) of a constitutional principle in juvenile justice: "The mitigation of juveniles criminal responsibility due to their age, as well as the need to strive for the educational and moral improvement of juvenile offenders through measures that are adapted to their age and their personality, and which are imposed by a specialised jurisdiction or in compliance with appropriate proceedings". If the strength of this principle is undeniable, it is nonetheless not a real obstacle for the legislator, because the Supreme Court (*conseil constitutionnel*) then reminds that the legislator must conciliate this principle with the "need to seek offenders and to prevent public disorder". Such logic can be found in the decision of 3 March 2007 (decision Nr. 2007-553 DC) that validated the changes to the ordinance of 2 February 1945 by stressing their educational goal and the necessity of individualised sentences. Therefore, censuring the legislator would not be a straightforward task for the Supreme Court, except if his plans are totally incompatible with the specificity of juvenile criminal law.

2. Trends in reported delinquency of children, juveniles and young adults

2.1 Demographic data

From a demographic point of view, French society has been getting older on average. The proportion of minors (persons under the age of 18) has been in constant decline among the entire population. They accounted for 25% of the population in 1980, but only for 21.6% in 2005, which corresponds to 13,572,415 persons. The proportion of young adults (in this context persons aged between 18 and 24) has also been decreasing. They accounted for 10.4% of the population in 1990, but for only 8.8% in 2005, totalling 3,958,517 persons. Adult and young women account for 51.5% of the total population. Foreigners accounted for 6.8% of the population in 1982, but their share dropped to 6.3% in 1990 and again to 5.6% in 1999 when they numbered roughly 3 million inhabi-

tants. According to the 1999 census (the last one to have been conducted at the time of writing), among the 14,380,000 persons under 19, 93.5% were born French, 2.2% became administratively French and 4.4% were foreigners, which in turn could be broken down as follows: Moroccan: 1%, Portuguese: 0.6%, Turkish: 0.5%, Algerian: 0.4%, Tunisian: 0.3%, Italian: 0.1%, Spanish: 0.1%, other EU States: 0.3%, and other non-EU States: 1.1%.

2.2 Registered juvenile delinquency

Registered juvenile delinquency corresponds to offences registered by the different forces of police and gendarmerie. It is compiled and released in statistics of the Ministry of the Interior, with *Table 1* showing the number of juveniles suspected of having committed a crime.

The number of juvenile suspects almost doubled between 1980 and 2007 (+95.3%), from 104,292 up to 203,699. Whereas the number had been quite stable between 1980 and 1985 (104,504 on average), it slightly decreased between 1986 and 1993 (95,263 on average), and then witnessed constant increase between 1994 and 2007 (109,338 in 1994, 175,256 in 2000, and 203,699 in 2007, with an average of 169,438 suspected juveniles each year).

In percentages, the proportion of juveniles among all suspects can be broken down into three phases. It fell between 1980 and 1986 from 15.2% to 11.1% with an average of 12.6% over seven years. It then increased between 1987 and 1998 from 12% to 21.8% – the highest percentage to date – keeping in mind that in 1998 juveniles accounted for just under 22% of the total population. Over 11 years (1987-1998), the average proportion of suspected juveniles was 14.9%. Since 1999, their share has slightly decreased, dropping from 21.3% to 18% with a 19.4% average over the last nine years. This rate is slightly lower than the juveniles' share in the overall French population – about 21.8% average over the last nine years.

Registered juvenile delinquency is characterised primarily by property offences. Thus, property offences – including thefts, robberies, concealing stolen goods, and damaging property – accounted for 63.3% of all offences committed by juveniles in 2007. In the same year, offences against persons – including homicides and attempted homicides, violence, deliberate insult, hostage-taking, wrongful deprivation of personal liberty, threats and sexual offences – constituted 23.3% of registered juvenile delinquency. Sexual offences alone, which include rape, sexual harassment, sexual assault, sexual infringement and procuration, accounted for 2.3% of all registered juvenile delinquency. Drug offences accounted for 8.7%. Economic and financial delinquency was the rarest category with 1.9%.

Table 1: Juvenile suspects

	1980	1985	1990	1995	2000	2005	2006	2007
Juvenile suspects	104,292	103,585	98,284	126,233	175,256	193,663	201,662	203,699
%	15.2	11.2	13.0	15.9	21.0	18.2	18.3	18.0
Property offences	---	86,373	76,776	93,707	108,685	114,200	116,610	117,806
%	---	83.4	78.1	74.2	62.0	59.0	57.8	57.8
Thefts, conceiving stolen goods	---	78,606	56,959	64,795	73,853	73,392	74,813	75,405
Burglaries	---		14,004	14,151	10,957	11,607	12,061	11,817
Damage to property	---	7,767	5,813	14,761	23,875	29,201	29,736	30,584
Against the person	---	6,163	7,472	14,883	28,342	37,609	44,293	47,464
%	--	6.0	7.6	11.8	16.2	19.4	22.0	23.3
Sexual offences	---	1,142	1,320	2,302	3,813	4,648	4,567	4,682
%	---	1.1	1.3	1.8	2.2	2.4	2.3	2.3
Drug offences	---	2,324	3,967	8,215	18,920	21,232	18,955	17,771
%	---	2.2	4.0	6.5	10.8	11.0	9.4	8.7
Economic offences	---	3,205	2,487	2,285	4,606	3,387	3,513	3,804
%	---	3.1	2.5	1.8	2.6	1.8	1.7	1.9

Source: Aspects de la criminalité et de la délinquance constatées en France.

Still, even if delinquency against the person remains secondary compared to property crimes, it has increased strongly over the last 23 years. Its proportion among all juvenile delinquency was only 5.9% in 1984. Sexual offences in general (1.1% in 1984), especially rape, have increased exponentially. 393 cases of rape were registered in 1984. The annual average since 2004 has been around 1,540 cases. Overall, 1,195 sexual offences were registered in 1984. To highlight the increase thereof: since 2005 the yearly average has been around 4,600.

Parallel to these developments, the proportion of property crime has strongly decreased. Accounting for an average of 83% between 1984 and 1987, its share has been under or around the 60% mark since 2004. However, violent thefts increased strongly after 1984 (3,530 in 1984, 7,743 in 1996, and 9,938 in 2001) before levelling off at around 8,700 offences per year since 2004. Accounting for 3.4% in 1984, their share among all juvenile offending reached 5.6% in 2001, before dropping to 4% since 2004. After having more than doubled between 1984 (4%) and 2001 (8.9%), the share of violent thefts among all juvenile offences against property has been nearly stagnant (8% in 2004, 2005 and 2006, 7.5% in 2007).

The development of the proportion of drug offences among all registered offences committed by juveniles can be divided into two phases. The first is a clear rise over the twenty years between 1984 and 2004, from 2.5% up to 12.4%. The second phase is the subsequent reversal of this trend, with figures dropping to 11% in 2005, 9.4% in 2006 and 8.7% in 2007. This recent decrease can be found not only in the percentage shares, but also in the absolute figures (22,950 in 2004; 21,232 in 2005; 18,955 in 2006 and 17,771 in 2007). However, the figures are nonetheless clearly higher than those of the 1980s and 1990s (2,636 offences in 1984, 11,354 offences in 1996). In the long term, economic and financial delinquency has slightly decreased, from 3% of all suspected offenders in the 1980s down to 1.8% since 2004.

Juveniles are over-represented in some offence categories. In 2007, they were responsible for 51.6% of all registered cases of arson, 46.2% of violent thefts without a weapon, and 32.9% of robberies. They committed 32% of all thefts (a more specific example: 56.8% of motorbike thefts), 39.8% of street thefts and 38.5% of thefts from vehicles. Regarding damage to property, juveniles accounted for 34.7% and even for 54.1% of damages to State property. They are slightly over-represented in rape (23.3%), especially in the rape of other juveniles (38.7%). In return, they are under-represented for drug offences (11.4%), homicides (4.6%), immigration offences (2.7%) and economic and financial delinquency.

Registered juvenile delinquency is dominated by males, even if the quantity and the proportion of female juveniles have constantly increased over the years. Between 1984 and 2007, the number of female juvenile suspects increased from 12,613 to 28,584. They accounted for 12% of suspected juveniles in 1984, and 14% in 2007. The absolute number of suspected female juveniles has increased

faster than the figures for males over the last 23 years (1984-2007: +126.6% for females, +89.5% for males).

There are (albeit small) differences in the structure of male and female delinquency. In 2007, female juveniles were mostly suspected of property offences (55.6%), then for offences against the person (22.9%). Comparatively, 58.2% of the boys were suspected for offences against property and 20.2% for offences against the person. Drug offences accounted for 9.2% of suspected boys and 5.8% of young female suspects. Sexual offences concern 0.5% of suspected girls and 2.6% of the boys. There is also a difference regarding economic and financial offences (fraud, defalcation, forgery and misuse of credit or cheque cards), in which girls are more involved. In 2007, 4% of girls were suspected of having committed such offences, compared to 1.3% for males. In the same year, girls accounted for 40.4% of suspects of falsification and counterfeiting of means of payment, 31.4% for fraud and defalcation (abuse of trust) and 29.4% for other forms of falsification, while accounting for only 14% of all suspected juvenile offenders.

Official statistics do not provide any indication on the nationality of juveniles placed under suspicion. They do not enable to select suspected juveniles according to their specific age. A 2002 Senate report pointed out the "rejuvenation" of police-registered juveniles. The proportion of juveniles under 13 rose to 49% of suspected children under 18 in 2001. The proportion of 14 to 16 year-olds remained stable and the proportion of 16 to 18 year-olds slightly decreased by 2%.

Statistics of the Ministry of the Interior do not provide any separate indication on young adults, and are gathered with the total of suspected adults.

2.3 Court registered delinquency of juveniles and young adults (sentenced young offenders)

Statistics on young offenders who are convicted and sentenced by the courts are provided by the Ministry of Justice. These data present major bias concerning juveniles because the main sources refer only to registered convictions. Yet, for juveniles, the criminal records are not exhaustive because regularly only 60 to 70% of decisions taken by juvenile jurisdictions are registered in the criminal records. Statistics concerning Youth Court magistrates and juvenile judges' decisions refer up to twice as many decisions than the numbers of convictions registered in the criminal records. Thus, in 2005, 53,701 convictions of juveniles were registered in the criminal records, whereas juvenile jurisdictions pronounced 74,043 convictions. Furthermore, statistics concerning juvenile jurisdictions suffer from further bias because they only count the number of pronounced measures and sentences. Thus, they do not give any clear indication of the number of convicted juveniles. For example, a juvenile with a reprimand

and a supervision order will be counted twice. The following results will refer only to convictions registered in the criminal record.

2.3.1 Quantitative aspects of convicted juveniles and young adults

Since the beginning of the 1980's, the quantity of convicted juveniles has seen major variations: 68,109 juveniles convicted in 1980, 61,782 in 1985, 37,677 in 1990, 18,365 in 1994, 24,006 in 1996, 38,170 in 2000 and 53,701 in 2005. A constant rise can still be noticed since 2002: 29,452 convictions in 2002, 32,418 in 2003, 44,929 in 2004 and 53,701 in 2005. The percentage of convicted juveniles in relation to all convictions has also seen strong variations: 8.4% in 1985, 6.5% in 1990, 3.8% in 1994, 4.8% in 1996, 6.5% in 2000 and 8.6% in 2005. Between 1984 and 2005, the average was 6.4%. These rates are clearly lower than the proportion of juveniles in the French population, which has decreased progressively from 25% in 1980 to 21.6% in 2006 (see *Table 2*).

Convicted juveniles are predominantly male. On average, between 1987 and 2005, males accounted for 91.7% of all convicted juveniles. They were responsible for 95.1% of serious offences (*crimes*), 91.8% of minor offences (*délits*) and 90.3% of misdemeanours (*contraventions de 5^{e} classe*) (see *Table 3*).

Table 2: Convictions of juveniles and young adults

	1985	1990	1994	1996	2000	2001	2002	2003	2004	2005
Total convictions (all ages)	**733,846**	**577,170**	**486,979**	**501,221**	**582,923**	**536,377**	**470,725**	**553,607**	**596,514**	**623,005**
%	100	100	100	100	100	100	100	100	100	100
Juveniles	61,782	37,677	18,365	24,006	38,170	37,928	29,452	32,418	44,929	53,701
%	8.4	6.5	3.8	4.8	6.5	7.1	6.3	5.9	7.5	8.6
18-19 year-olds	35.8	55,243	42,416	35,112	47,746	43,990	38,676	51,915	61,781	60,936
%		9.6	8.7	7.0	8.2	8.2	8.2	9.4	10.4	9.8
20-24 year-olds		126,934	107,174	107,766	119,794	113,708	101,216	121,517	127,755	129,129
%		22.0	22.0	21.5	20.6	21.2	21.5	22.0	21.4	20.7
Total *crimes**	**2,580**	**2,607**	**2,609**	**2,809**	**3,035**	**3,114**	**3,057**	**3,149**	**3,283**	**3,236**
%	100	100	100	100	100	100	100	100	100	100
Juveniles	220	147	206	310	559	631	498	559	643	528
%	8.5	5.6	7.9	11.0	18.4	20.3	16.3	17.8	19.6	16.3
18-19 year-olds	36.6	213	175	134	123	118	190	250	246	242
%		8.2	6.7	4.8	4.1	3.8	6.2	7.9	7.5	7.5
20-24 year-olds		609	502	431	432	429	492	545	524	595
%		23.4	19.2	15.3	14.2	13.8	16.1	17.3	16.0	18.4
Total *délits**	**612,052**	**469,137**	**410,077**	**413,812**	**446,815**	**414,175**	**376,115**	**434,089**	**485,466**	**550,841**
%	100	100	100	100	100	100	100	100	100	100

	1985	1990	1994	1996	2000	2001	2002	2003	2004	2005
Juveniles	58,114	35,269	17,136	22,702	36,437	36,236	28,224	31,018	42,926	51,708
%	9.5	7.5	4.2	5.5	8.2	8.7	7.5	7.1	8.8	9.4
18-19 year-olds	36.0	47,727	37,844	31,320	40,234	36,812	32,660	43,162	52,467	56,514
%		10.2	9.2	7.6	9.0	8.9	8.7	9.9	10.8	10.3
20-24 year-olds		106,553	92,621	91,752	92,890	88,084	80,415	94,173	104,000	117,004
%		22.7	22.6	22.2	20.8	21.3	21.4	21.7	21.4	21.2
Total *contraventions 5e classe**	**119,214**	**105,426**	**74,293**	**84,600**	**133,073**	**119,088**	**91,553**	**116,369**	**107,765**	**68,928**
%	100	100	100	100	100	100	100	100	100	100
Juveniles	3,448	2,261	1,023	994	1,174	1,061	730	841	1360	1,465
%	2.9	2.1	1.4	1.2	0.9	0.9	0.8	0.7	1.3	2.1
18-19 year-olds	34.5	7,303	4,397	3,658	7,389	7,060	5,826	8,503	9,068	4,180
%		6.9	5.9	4.3	5.6	5.9	6.4	7.3	8.4	6.1
20-24 year-olds		19,772	14,051	15,583	26,472	25,195	20,309	26,799	23,231	11,530
%		18.8	18.9	18.4	19.9	21.2	22.2	23.0	21.6	16.7

* *Crimes* – felony (serious) offences; *délits* – misdemeanours (minor offences), *contraventions 5e classe* – misdemeanours (petty offences).

Source: Annuaire statistique de la justice.

Table 3: Gender of convicted juveniles

	1987	1990	1994	1996	2000	2001	2002	2003	2004	2005
Convicted juveniles	44,350	38,507	18,365	24,006	38,170	37,928	29,452	32,418	44,929	53,701
Male %	90.8	91.0	92.4	92.5	91.3	92.3	91.9	91.3	90.9	91.5
Female %	9.2	9.0	7.6	7.5	8.7	7.7	8.1	8.7	9.1	8.5
Crimes	190	147	206	310	559	631	498	559	643	528
Male %	90.0	89.1	97.1	97.1	95.5	97.0	96.6	98.4	97.4	97.0
Female %	10.0	10.9	2.9	2.9	4.5	3.0	3.4	1.6	2.6	3.0
Délits	41,997	36,099	17,136	22,702	36,437	36,236	28,224	31,018	42,926	51,708
Male %	90.7	90.9	92.5	92.6	91.3	92.3	91.8	91.2	90.9	91.5
Female %	9.3	9.1	7.5	7.4	8.7	7.7	8.2	8.8	9.1	8.5
Contraventions 5e classe	2,163	2,261	1,023	994	1,174	1,061	730	841	1,360	1,465
Male %	93.5	91.9	88.8	88.8	88.2	90.8	92.1	91.1	88.7	89.7
Female %	6.5	8.1	11.2	11.2	11.8	9.2	7.9	8.9	11.3	10.3

Source: Annuaire statistique de la justice.

French juveniles account for 80.8% of the total number of convicted persons of the age group. With a yearly average number of 3,089 convictions, on average foreign juveniles accounted for 9.7% between 1988 and 2005, which is double their proportion in the total population of young people under 19. Juveniles whose citizenship remains unknown (9.5% of all convicted juveniles) also need to be considered. However, the proportion of foreign juveniles has decreased to less than 10% since 1996 (average of 11.9% between 1988 and 1995; average of 8% between 1996 and 2005) – and the same applies for non-declared juveniles (average of 12% between 1988 and 1996; average of 7.1% between 1997 and 2005) (see *Table 4*).

Table 4: Nationality of convicted juveniles

	1988	1990	1994	1996	2000	2001	2002	2003	2004	2005
Convicted juveniles	17,706	37,677	18,365	24,006	38,170	37,928	29,452	32,418	44,929	53,701
French	14,106	29,507	13,634	19,243	31,937	32,850	25,104	27,966	39,320	46,118
in %	79.7	78.3	74.2	80.2	83.7	86.6	85.2	86.3	87.5	85.9
Foreigners	2,303	4,318	2,251	2,195	2,760	2,991	2,540	2,891	3,422	3,396
in %	13	11.5	12.3	9.1	7.2	7.9	8.6	8.9	7.6	6.3
Unknown	1,297	4,682	2,480	2,568	3,473	2,087	1,808	1,561	2,187	4,187
in %	7.3	12.4	13.5	10.7	9.1	5.5	6.1	4.8	4.9	7.8

Source: Annuaire statistique de la justice.

Délits (minor offences) are the only offences for which detailed statistics on the citizenship of convicted foreigners can be provided. Representing on average 9.8% of juveniles convicted for such *délits*, foreigners (in decreasing order and on average between 1988 and 2005) came from North-Africa (56.1%), non-EU European states (22.7%), Africa without Maghreb (10.7%,) European Union (6.6%), Asia and Oceania (2.6%) and America (1.4%). However, these averages are not very significant, because the implication of these different populations has strongly varied over the last 17 years. Thus, the proportion of juveniles with North African origins has considerably decreased. Whereas they accounted for 66 to 70% of convicted foreign juveniles until 1997, their proportion has been about 35% since 2002. In 2005, they accounted for only 2.5% of all convicted juveniles for *délits* (8.9% in 1988). Also, the proportion of convicted juveniles from the EU showed a continuous decrease: 13.2% in 1988; 4.2% on average between 2000 and 2005. Among them, the Portuguese represented the large majority until 1995 (76.4% on average). Their proportion is now just under 40%. As a contrary development, the proportion of juveniles from non-EU States has strongly increased: 9.6% of convicted foreign juveniles in 1988,

44.7% in 2003, and 37.7% in 2005. Between 1988 and 1994, 70 to 80% of them were natives from Turkey. Nevertheless, the proportion of Turks among all non-EU foreign juveniles has decreased to less than 10% (see *Table 5*).

On average, between 1987 and 2005, children under 13 accounted for 3.6% of all 'convicted' juveniles.[2] Then follow juveniles between 13 and 16 with 40.3% and juveniles between 16 and 18 with 56%. These percentages also correspond to those of 2005. While the share of minors under 13 among all convictions has remained rather stable, their absolute number has exceeded to 2,000 mark since 2004 (2,140 in 2004, 2,113 in 2005). Moreover, their number and their proportion for all serious offence (*crimes*) convictions have considerably increased. Whereas the number of *crimes* committed by minors of 0-12 years of age was under 10 up until 1993, it was 21 in 1997, 52 in 1999, 58 in 2003, 84 in 2004 and 47 in 2005. Convictions of 0 to 12 year-olds for *crimes* accounted for, on average, 1.4% of juvenile convictions for crimes between 1987 and 1993. They accounted for, on average, 9.5% of juvenile convictions for crimes between 2001 and 2005 (see *Table 6*).

2 It has to be noted that convictions of minors under13 years of age are not criminal convictions as the age of criminal responsibility is 13 in France. However, they can be dealt with by Family Courts and sentenced to purely educational measures; see below.

Table 5: Nationality of juveniles convicted of *délits*

	1988	1990	1994	1996	2000	2001	2002	2003	2004	2005
Total of convicted juveniles for *délit*	16,776	36,099	17,136	22,702	36,437	36,236	28,224	31,028	42,926	51,708
French	13,343	27,658	12,680	18,134	30,452	31,328	23,994	26,680	37,475	44,308
%	79.5	76.6	74.0	79.9	83.6	86.5	85.0	86.0	87.3	85.7
Foreigners	2,189	4,083	2,104	2,093	2,642	2,883	2,470	2,834	3,330	3,330
%	13.1	11.3	12.3	9.2	7.3	8.0	8.8	9.1	7.8	6.4
EU	289	517	118	87	120	115	91	102	130	173
% of foreigners	13.2	12.5	5.6	4.2	4.5	4.0	3.7	3.6	3.9	5.2
Portugal	229	395	83	33	56	66	41	42	55	71
% of the EU	79.2	76.4	70.3	37.9	46.7	57.4	45.1	41.2	42.3	41.0
Europe outside EU	210	531	325	325	803	1,065	956	1,267	1,453	1,255
% of foreigners	9.6	13.0	15.5	15.5	30.4	36.9	38.7	44.71	43.6	37.7
Turkey	150	421	247	200	210	151	108	77	109	120
% of non-EU	71.4	79.3	76.0	61.5	26.2	14.2	11.3	6.1	7.5	9.6
Maghreb	1,490	2,679	1,392	1,359	1,241	1,180	901	919	1,120	1,302
% of foreigners	68.1	65.6	66.2	64.9	47.0	40.9	36.5	32.4	33.6	39.1
Algeria	780	1,163	509	523	538	463	346	355	465	576

	1988	1990	1994	1996	2000	2001	2002	2003	2004	2005
Marocco	542	1161	706	685	572	587	452	481	567	615
Tunisia	168	355	177	151	131	130	103	83	88	111
Africa outside Maghreb	142	252	195	232	359	396	408	402	411	437
% of foreigners	6.5	6.2	9.27	11.1	13.6	13.7	16.5	14.2	12.3	13.1
Asia Oceania	41	73	61	71	81	79	63	78	79	80
% of foreigners	1.9	1.8	2.9	3.4	3.1	2.7	2.6	2.8	2.4	2.4
America	17	31	13	19	38	48	51	56	137	83
% of foreigners	0.9	0.8	0.6	0.9	1.4	1.7	2.1	2.0	4.1	2.5
Unknown	1,244	4,358	2,352	2,475	3,343	2,025	1,760	1,514	2,121	4,070
%	7.4	12.1	13.7	10.9	9.2	5.6	6.2	4.9	4.9	7.9

Source: Annuaire statistique de la justice.

Table 6: Age of convicted juveniles

	1987	1990	1994	1996	2000	2001	2002	2003	2004	2005
Convicted juveniles	**44,350**	**37,677**	**18,365**	**24,006**	**38,170**	**37,928**	**29,452**	**32,418**	**44,929**	**53,701**
0-12 years old	1,979	1,346	913	664	1,257	1,126	925	1,281	2,140	2,113
0-12 (%)	4.5	3.6	5.0	2.8	3.3	3.0	3.1	4.0	4.8	3.9
13-15 years old	8,172	14,332	9,884	9,616	16,500	16,925	12,458	14,487	21,067	21,484
13-15 (%)	18.4	38.0	53.8	40.1	43.2	44.6	42.3	44.7	46.9	40.0
16-17 years old	34,199	22,829	7,568	13,726	20,413	19,877	16,069	16,650	21,722	30,104
16-17 (%)	77.1	60.6	41.2	57.2	53.5	52.4	54.6	51.4	48.3	56.1
Crimes	**190**	**147**	**206**	**310**	**559**	**631**	**498**	**559**	**643**	**528**
0-12 years old	2	0	12	12	28	46	40	58	84	47
0-12 (%)	1.1	0.0	5.8	3.9	5.0	7.3	8.0	10.4	13.1	8.9
13-15 years old	26	50	66	95	208	216	223	266	313	268
13-15 (%)	13.7	34.0	32.0	30.6	37.2	34.2	44.8	47.6	48.7	50.8
16-17 years old	162	97	128	203	323	369	235	235	246	213
16-17 (%)	85.3	66.0	62.1	65.5	57.8	58.5	47.2	42.0	38.3	40.3

	1987	1990	1994	1996	2000	2001	2002	2003	2004	2005
Délits	**4,1997**	**35,269**	**17,136**	**22,707**	**36,437**	**36,236**	**28224**	**31,018**	**42,926**	**51,708**
0-12 years old	1,940	1,308	862	618	1,192	1,042	870	1,195	2,020	2,018
0-12 (%)	4.6	3.7	5.0	2.7	3.3	2.9	3.1	3.9	4.7	3.9
13-15 years old	7,885	13,590	9,245	9,084	15,765	16,271	11,959	13,871	20,113	20,680
13-15 (%)	18.8	38.5	54.0	40.0	43.3	44.9	42.4	44.7	46.9	40.0
16-17 years old	32,172	21,201	7,029	13,000	19,480	18,923	15,395	15,952	20,793	29,010
16-17 (%)	76.6	60.1	41.0	57.3	53.5	52.2	54.5	51.4	48.4	56.1
Contraventions de 5e classe	**2,163**	**2,261**	**1,023**	**994**	**1,174**	**1,061**	**730**	**841**	**1,360**	**1,465**
0-12 years old	37	38	39	34	37	38	15	28	36	48
0-12 (%)	1.7	1.7	3.8	3.4	3.2	3.6	2.1	3.3	2.6	3.3
13-15 years old	261	692	573	437	527	438	276	350	641	536
13-15 (%)	12.1	30.6	56.0	44.0	44.9	41.3	37.8	41.6	47.1	36.6
16-17 years old	1,865	1,531	411	523	610	585	439	463	683	881
16-17 (%)	86.2	67.7	40.2	52.6	52.0	55.1	60.1	55.1	50.2	60.1

Source: Annuaire statistique de la justice.

Like the number of juvenile convictions, the raw number of convictions for young adults aged 18 and 19 has also swung: 60,060 in 1987, 55,243 in 1990, 22,535 in 1995, 47,746 in 2000, and 60,936 in 2005. Except for a small and temporary decline in 2001 and 2002, it has been rising overall since 1996: +73%. The share of this age category among all convictions has varied between 6 and 10.4%, with an average of 8.8% between 1987 and 2005. It saw a constant increase between 1995 and 2004, from 6% up to 10.4% (the highest level ever reached). There was still a slight decrease in 2005, down to 9.8%.

With 136,087 convictions in 1987, 126,934 in 1990, 107,766 in 1996, 119,794 in 2000 and 129,129 in 2006, adults between 20 and 24 accounted for an average of 21.5% of all convicted adults and juveniles between 1987 and 2005. Their proportion of all delinquency has been stable: 19.8% minimum in 1999, 23.2% maximum in 1987. It has shown a slightly decreasing tendency since 2003 (from 22% down to 20.7%), whereas the number of convicted 20 to 24 year-olds has increased by 27.6% since 2002 and by 6.3% since 2003.

Altogether, 18 to 19 and 20 to 24 year-old (young) adult offenders accounted for 27.5 to 37.4% of all convictions, with an average of 31.1% between 1984 and 2005, although they represented only 8.8 to 10.4% of the French population. Persons under 25, including juveniles, account for over one third of all convicted persons, although they account for only 30% of the French population (see *Table 2*).

2.3.2 Structural aspects of the delinquency of convicted juveniles and young adults

In general, the criminality of convicted adults and juveniles can be broken down as follows: on average, 82% minor offences (*délits*), 17.5% misdemeanours (*contraventions de 5^{e} classe*) and 0.5% *crimes*.[3] Between 1984 and 2005, the proportion of *délits* varied from 76.6 to 91.6%. The share of *contraventions* varied from 7.6 to 22.8%. The variation of the proportion of *crimes* was less significant, ranging from 0.3 to 0.8% at its peak.

Structurally, juveniles are mostly convicted for *délits*. Between 1984 and 2005 their proportion varied from 93.3 to 96.3%, with an average of 94.7%. *Contraventions de 5^{e} classe*, including also petty violence, road traffic offences and damage to property, are in second position. With an average proportion of 4.2%, they accounted for between 2.5 and 6% of juvenile convictions between 1984 and 2005. *Crimes* accounted for between 0.3 and 1.7% of juvenile convictions in that period. Their average proportion between 1984 and 2005 was

3 The legal differentiation according to the French Penal Code is made as follows: Crimes are offences punishable with at least five years of imprisonment. Contraventions are punishable by other means than prison sentences (fines, community service), and délits are all other offences punishable with prison sentences or alternative sanctions.

1%. The number and the rate of *crimes* have not stopped increasing. Whereas the 146 convictions for *crimes* registered in 1984 accounted for 0.3% of juvenile convictions, 643 convictions for *crimes* in 2004 accounted for 1.4%. But for the first time since 1994, their rate returned to the 1% mark in 2005, with absolute figures dropping as well (528 offences). It still remains higher than the general percentage of convictions for *crimes*, which was 0.5% in 2005 and also 0.5% on average over the last 22 years.

More precisely, sentenced juvenile criminality is mostly composed of property offences, which accounted for 73.5% of convictions between 1987 and 2005. These are followed by offences against the person (16.1% on average), drug offences (3.5%), road traffic offences (2.6%), offences against administrative or judicial order (2.3%), economic and financial offences (0.4%) and public order offences (0.1%). Other *crimes*, *délits* and *contraventions* account for a residual proportion of 0.4%.

Several trends have emanated over the last 19 years that relativize the previous averages. The proportion of property offences has linearly decreased from 83.8% in 1987 to 62.4% in 2005. Inversely, the proportion of convictions against the person has constantly and strongly increased (7.9% in 1987; over 20% since 2001; 21.7% in 2002, 20.6% in 2005). Following a drop between 1989 and 1998, the proportion of convictions for road traffic offences has since been consistently increasing (1.2% in 1998, 4.5% in 2005). The proportion of convictions for drug offences has also linearly increased since 1988 (1.9% in 1988, 3.9% in 1998, and 6.1% in 2005). The same trend can be observed for offences against administrative or judicial order (1% in 1988, 4.3% in 2005).

To sum up, sentenced juvenile criminality in 1987 was essentially structured as follows: 83.8% property offences; 7.9% offences against the person; 3.4% road traffic offences; 1.9% drug offences; 1% offences against administrative or judicial order. Changes in 2005 compared to 1987 saw drug offences and road traffic offences change places: 62.4% property offences; 20.6% offences against the person; 6.1% drug offences; 4.5% road traffic offences; 4.3% offences against administrative or judicial order.

Property offences are essentially thefts, concealing stolen goods, and damage to property. The proportion of thefts has decreased. They accounted for 70.5% of property offences in 2005, compared to 83.4% in 1990. Inversely, damage to property has linearly increased from 5.7% of convictions for property offences in 1987 up to 15.5% in 2005. Assault and bodily injury (*coups* and *blessures volontaires*) – as minor offences and misdemeanours (*correctionnel* and *contraventionnel*) – form the majority of offences against the person. Their proportion has been quite consistent (70.2% on average). Sexual *crimes* and *délits* (rape, sexual infringements) accounted for between 15 and 28% of convictions for offences against the person between 1987 and 2005. Homicides accounted for only 0.7% of offences against the person (see *Table 7*).

On average, between 1987 and 2005, the composition of sentenced criminality of *18* and *19 year-olds* was as follows: 87.4% *délits*, 12.2% misdemeanours (*contraventions de 5^e classe*) and 0.4% *crimes*. Its structure is slightly different from the juvenile one. Percentages of property offences and offences against the person are lower, and road traffic offences are the third most frequent offence type. The proportion of property offences was 40.9% in 2005 and 51.9% in 1987. Offences against the person, quite stable, come second with 13.8%, followed by road traffic offences (rising from 14.5% in 1987 to 22.7% in 2005), drug offences (rising from 7.1% in 1987 to 12.9% in 2005), offences against administrative and judicial order (rising from 2.3% in 1987 to 5.4% in 2005) and economic and financial offences (dropping from 5.7% in 1987 to 1.1% in 2005) (see *Table 8*).

Offending by *20* to *24 year-olds*, on average, can be broken down as follows: 83.5% *délits*, 16% misdemeanours, 0.5% *crimes*. With a yearly average of 184 offences for 18 to 19 and 538 for 20 to 24 year-olds (341 for juveniles), the proportion of convictions for *crimes* has never surpassed 1%, whereas the proportion of juveniles convicted for *crimes* has surpassed the 1% mark for 11 consecutive years. The larger proportion of young adults among convictions for misdemeanours can be explained by the reduced possibilities for juveniles to commit road traffic offences with a car.

The structure of sentenced criminality of 20 to 24 year-olds presents a major difference compared to juveniles and persons aged 18 to 19 because in 2005, property offences (26.9%) and offences against the person came second and third (13.9%) behind traffic road offences (38.1%). Until 2000, road traffic offences had been in second place behind property offences. Property offences and offences against the person now account for a smaller proportion with 40% of all convictions, compared to 51% in 1987. With a rising trend, drug offences come fourth (10.2% in 2005, 6% in 1987), followed by offences against administrative and judicial order, which are also on the increase (5.2% in 2005, 2.8% in 1987) (see *Table 8*).

Figure 7: Structure of juvenile legal criminality

	1987	1990	1994	1996	2000	2001	2002	2003	2004	2005
Total of convictions	44,331	38,483	18,361	24,002	38,157	37,909	29,446	32,413	44,921	53,686
Offences against persons	3,487	3,866	2,941	4,123	7,495	7,664	6,380	6,800	9,543	11,030
%	7.8	10.1	16.0	17.2	19.6	20.2	21.7	21.0	21.2	20.6
Crimes	130	116	174	261	459	490	418	480	546	442
Homicide	34	33	20	37	23	19	27	26	26	19
Assault and battery	12	18	18	22	51	38	28	33	21	25
Rape	84	65	136	202	385	433	363	421	499	398
Délits	2,385	2,656	2,036	3,249	6,460	6,681	5,708	5,955	8,461	9,871
Assault and battery	1,506	1,785	1,379	2,282	4,676	4,750	3,881	4,014	5,941	7,071
Sexual infringement	470	498	499	648	1193	1286	1371	1392	1672	1663
Contraventions de 5e classe	972	1094	731	613	576	493	254	365	536	717
Offences against property	37,143	30,925	14,067	17,771	26,603	26,223	18,863	21,102	28,551	33,494
%	83.8	80.4	76.6	74.0	69.7	69.2	64.1	65.1	63.6	62.4
Crimes	60	31	32	49	97	130	68	60	87	80
Délits	37,083	30,894	14,011	17,564	26,298	25,912	18,703	20,906	28,236	33,116
Theft	34,585	25,775	11,374	14,169	19,579	19,110	13,556	15,298	20,352	23,620
Concealing stolen goods		2,485	1,166	1,398	2,007	2,046	1,538	1,818	2,581	3,171
Fraud	382	413	348	532	1,240	1,375	840	846	1,206	1,417
Damage to property	2,116	2,221	1,123	1,465	3,472	3,381	2,769	2,944	4,097	4,908

	1987	1990	1994	1996	2000	2001	2002	2003	2004	2005
Contraventions de 5e classe	NC	NC	24	158	208	181	92	136	228	298
Road traffic offences	1,517	1,445	337	396	613	633	753	883	1,544	2,388
%	3.4	3.8	1.8	1.6	1.6	1.7	2.6	2.7	3.4	4.5
Economic crimes	237	185	61	76	176	146	123	136	190	264
%	0.5	0.5	0.3	0.3	0.5	0.4	0.4	0.4	0.4	0.5
Drugs	821	852	410	851	1,524	1,389	1,375	1,652	2,471	3,249
%	1.9	2.2	2.2	3.6	4.0	3.7	4.7	5.1	5.5	6.1
Public safety	341	364	175	232	431	471	470	466	557	687
%	0.8	1.0	1.0	1.0	1.1	1.2	1.6	1.4	1.2	1.3
Off. against public order	63	63	20	14	54	50	66	59	75	76
%	0.1	0.2	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.1
Off. against administrative and judicial order	463	512	271	471	1,105	1,189	1,309	1,278	1,780	2,287
%	1.0	1.3	1.5	2.0	2.9	3.1	4.45	3.9	4.0	4.3

Source: Annuaire statistique de la justice.

Table 8: Structure of offending by young adults

	18-19 year-olds				20-24 year-olds			
	1987	**1996**	**1999**	**2005**	**1987**	**1996**	**1999**	**2005**
Total convictions	**60,060**	**35,005**	**46,735**	**60,936**	**136,087**	**107,313**	**116,215**	**129,129**
Offences against persons	7,027	4,702	6,652	8,430	19,687	16,212	17,595	17,960
%	11.7	13.4	14.2	13.8	14.5	15.1	15.1	13.9
Crimes								
Homicide	27	31	10	35	118	104	91	78
Assault and battery	23	10	23	31	53	45	79	71
Rape	61	44	76	91	140	134	161	220
Délits								
Assault and battery	2,027	2,294	3,517	4,807	4,791	6,529	8,301	9,041
Sexual offences	460	276	350	462	1,414	999	948	1,208
Involuntary violence	1,398	431	516	890	4,644	2,334	2,051	2,444
Contraventions de 5e classe								
Assault and battery	941	599	816	1,035	2,323	1,944	2,149	2,413
Involuntary violence	1,826	643	671	57	5119	2,768	2,268	209
Others	264	374	673	1,022	1,085	1,355	1,547	2,276

	18-19 year-olds				20-24 year-olds			
	1987	**1996**	**1999**	**2005**	**1987**	**1996**	**1999**	**2005**
Offences against property	31,142	18,109	23,576	24,950	49,792	42,527	40,670	34,788
%	51.9	51.7	50.5	40.9	36.6	39.6	35.0	26.9
Crimes	126	45	36	77	390	159	131	214
Délits	---	---	---	---	---	---	---	---
Theft	25,867	14,443	17,112	16,645	38,625	32,272	28,209	21,773
Concealing stolen goods	2,953	1,657	2,717	2,988	5,236	4,379	4,912	4,741
Fraud, defalcation	842	438	860	1329	3075	1750	2305	2924
Damage to property	1,342	1,292	2,395	3,276	2,444	3,312	4,186	4,218
Contraventions de 5e classe	---	234	456	635	---	814	1,058	1,132
Road traffic offences	8,716	4,218	7,236	13,836	31,397	25,800	34,269	49,133
%	14.5	12.1	15.5	22.7	23.1	24.0	29.5	38.1
Economic crimes	3,448	296	478	690	12,709	1,385	1,782	1,600
%	5.7	0.9	1.0	1.1	9.3	1.3	1.5	1.2
Drugs	4,290	3,186	4,735	7,856	8,159	8,435	8,587	13,140
%	7.1	9.1	10.1	12.9	6.0	7.9	7.4	10.2
Public safety	85	24	36	172	---	---	---	---
%	0.1	0.1	0.1	0.3	---	---	---	---

	18-19 year-olds				20-24 year-olds			
	1987	**1996**	**1999**	**2005**	**1987**	**1996**	**1999**	**2005**
Off. against administrative and judicial order	1,352	1,308	2,239	3,295	3,839	4,673	6,203	6,707
%	2.3	3.7	4.8	5.4	2.8	4.4	5.3	5.2
Offences against Immigration Law	565	576	285	331	2,148	2,194	1,050	1,023
%	0.9	1.7	0.6	0.5	1.6	2.0	0.9	0.8
Military offences	2,128	1677	349	162	3,795	2,089	1,699	504
%	3.5	4.8	0.8	0.3	2.8	2.0	1.5	0.4

Source: Annuaire statistique de la justice.

3. The sanctions system

Criminal sanctions may be imposed on criminally responsible young offenders. Criminal responsibility can be seen as a consequence of guilt and imputability. Thus, only juveniles able of discernment can be criminally sanctioned. However, the study of criminal sanctions cannot refer only to the solely juridical concept of criminal responsibility and ignore the criminological concept of penal capacity, defined as the delinquent's ability to benefit from the sanction after his/her judgement. Thus, the judge will have to choose the most adequate response in face of the committed perpetration in order to lead the juvenile onto the track of socialisation; the sanction must have an operational goal. Therefore, the prime and central principle of education over repression was set by the ordinance of 2 February 1945. This principle, in the light of the more recent reforms of juvenile criminal law, has become more a complementarity of education and repression.

The ordinance of 2 February 1945 set up a binary system of educational measures, more precisely "protection, care, surveillance and educational measures", and sentences, applicable only to juveniles aged over 13 at the time of the offence, with educational measures having priority. The law of 9 September 2002 ended this system through the creation of a new sanctions category to be implemented in cases of minors aged 10 upwards: educational sanctions, which can only be pronounced by the Youth Court and the Jury Court, and not by the juvenile judge alone.

3.1 Educational measures

Educational measures applicable to juveniles are defined by academic doctrine as having a purely preventive aim through treatment and rehabilitation. For that purpose, educational measures can regularly be adapted to the development of the child, which means to his/her situation and personality. Some of these measures are similar to the ones that the juvenile judge can issue within the context of educational care, when a juvenile is considered in danger (Articles 375 and following of the Civil Code), such as placement in an educational institution. However, recent legal modifications have augmented the catalogue of educational measures, which now aim more and more at supervising juvenile offenders.

Educational measures are numerous and various; the juvenile judge can pronounce an exemption from an educational measure "if it seems that the juvenile's rehabilitation has been established, the damage has been repaired and the trouble due to the offence has ceased", which corresponds to a restorative justice perspective.

While the juvenile judge can pronounce that a juvenile be officially returned to his/her family (remise) and can issue a reprimand (admonestation), the Youth Court could not, until the law of 5 March 2007, reprimand the juvenile; it can now pronounce a solemn warning (*avertissement*) towards a juvenile over 13. However, it is regrettable that the legislator has now created two different forms of warning instead of just one, which would facilitate the understanding of the measure.

Created by the law of 22 July 1912 (on the establishment of Youth Courts), the measure of supervision (*liberté surveillée*) consists of letting the juvenile free while placing him/her under the surveillance and control of educators of the Judicial Youth Protection Service (*Protection judiciaire de la jeunesse*, PJJ), who are public servants under the helm of the Ministry of Justice. This measure cannot be pronounced as a main sentence, but rather can be added to any other measure ordered by a penal jurisdiction.

Educational placement, pronounced as a provisional measure or as a criminal sanction, concerns mainly four types of structures. First of all, placement can be executed in a social children's home (*maison d'enfants à caractère social*, MECS) or in an educational action centre (*foyer d'action éducative*, FAE), small structures which provide long-term lodging in order to enable a juvenile's rehabilitation and insertion into school or vocation. So called emergency placement centres (*centres de placement immédiat*, CPI) are dedicated to emergency hosting for a short time during which check-up and orientation will be conducted. The secure educational centres (*centres éducatifs renforcés*, CER) concern juveniles who need an important educational frame, and the placement is organised as break stays. The last category are closed educational centres (*centres éducatifs fermés*, CEF) created by the law of 9 September 2002, completed by the laws of 9 March 2004 and 5 March 2007. They can host juveniles placed under probation (before punishment), those who are convicted to suspended imprisonment with obligations, and juveniles who are in outside placement or on conditional release. They also cater for juveniles aged over 13 and re-offenders who are under intensive control for the elaboration of an individual insertion and vocational project. Closed educational centres are different from classical structures because the breach of obligations can lead to incarceration.

Judicial protection (*mise sous protection judiciaire*) is a form of educational care in criminal matters and enables the supervision of a person over 18, knowing that the placement of a person of this age can be prolonged only if he/she so requests.

The support or reparation measure (*mesure d'aide ou de réparation*) stresses the consequences of criminal law transgressions. Its character is educational, not only by the imposition of a sanction in general, but especially through the content thereof, the originality of which is that it can be pronounced at each stage of the criminal procedure. Defined as a "measure or activity to help or

repair the victim or in the interest of the community", its modalities are bright and correspond to a restorative approach.

The law of 5 March 2007 created a new educational measure, the measure of activities during the day (*mesure d'activité de jour*), which consists of a juvenile's participation in vocational or school insertion activities at an institution of a public or qualified private agency.

3.2 Educational sanctions

Created by the law of 9 September 2002, this new category of sanctions, applicable from the age of 10 and pronounced by the Youth Court, corresponds to the legislator's will to punish pre-teenagers more severely with the implementation of an intermediate tier between educational measures and sentences. Some of these educational sanctions are derived from the adult criminal law: *confiscation* of goods belonging to the juvenile which have been used to commit the offence or which resulted from it; prohibition of frequenting certain places, prohibition of relations with certain persons. The support or reparation measure, an educational measure, can also be pronounced as an educational sanction. The only innovative legal provision was the civic training course (*stage de formation civique*), the goal of which is to "remind the juvenile of his/her legal obligetions".

The list was recently augmented by the law of 5 March 2007. While the first educational sanctions more resembled sentences, the most recent additions to this tier of interventions are more similar to educational measures: execution of school work, solemn warning, placement-removal, placement in a residential/ boarding school.

The clarity of educational sanctions is limited, especially because the breach of an educational sanction can result in a placement measure, similar to a placement-punishment, the effectiveness of which is questionable.

3.3 Sentences

In the ordinance of 2 February 1945, sentences were subsidiary. Since the creation of educational sanctions by the law of 9 September 2002, sentences can be seen as additional. The educational measure shall be considered in priority, but "when circumstances and the juvenile's personality require it" a juvenile over 13 can be punished with an educational sanction or a sentence. Sentences applicable to juveniles are, unless exceptional (for example interdiction to enter French territory), the same as those sentences that are available for adults; specificities can be found in the enforcement-regime.

The fine to which a juvenile can be punished cannot exceed half of the fine provided for an adult, and cannot exceed 7,500 Euros. Should the juvenile fail to pay the fine, he/she cannot be judicially constrained.

Created by the law of 9 March 2004, the citizenship training course (*stage de citoyenneté*) shall "remind the convicted of the republican values which are tolerance and respect of human dignity on which society is based". Just a symbolic dimension distinguishes the *stage de citoyenneté* from the *stage de formation civique*, the former being a sentence and the latter an educational sanction. As to the law of 5 March 2007, it created a new kind of training course to make the juvenile sensitive to the dangers of drug use, which is most certainly an interesting instrument.

Juveniles over 16 can benefit from community work (*travail d'intérêt général*) as an alternative to custody, which entails the performance of unpaid work for a public or private qualified agency, and which is of "a formative nature or favours the social insertion of convicted juveniles".

The imprisonment of a juvenile seems hard to match with the educational goal that characterises juvenile criminal law. The choice of this sentence is required to be "especially motivated" according to Article 2 of the ordinance of 2 February 1945. Suspended imprisonment (*assorti du sursis*) involves simple suspended imprisonment (*sursis simple*), possibly combined with supervision, and suspended imprisonment with obligations (*sursis avec mise à l'épreuve*) which enables personalised school supervision or other supervision. The latter is executed by the juvenile judge whose competence in matters of sentence execution was considerably widened by the law of 9 March 2004. Unconditional imprisonment, regardless of offence severity, excludes any possibility of a minimum period of detainment (*période de sûreté*), as it is provided in the Criminal Law for adults only. The central problem lies in providing an appropriate detention regime. Such imprisonment must be executed either in a special quarter of pre-trial prisons or in a specialised prison or institution for juveniles. A plan to build juvenile prisons (EPM) was decided on in 2002, with the goal of promoting a prison around an educational project: the head of juvenile prison and surveillance comes from the prison administration, while the daily organisation is the responsibility of the PJJ.

Short custodial sentences can theoretically be executed as a placement under electronic monitoring. This decision would require the agreement of the parents or legal guardians. At present, this measure does not concern juveniles and its educational qualities for teenagers are questionable.

Social and judicial supervision (*suivi socio-judiciaire*), originally created only for sex offenders (law of 17 June 1998), can now also be pronounced against other juveniles. It includes surveillance and care measures with the aim of preventing reoffending, and can also include mandatory treatment if its necessity is established through a medical investigation report.

At the end of this short exposé on sentences, it is important to reaffirm the central principle of juvenile criminal law, the principle of sentence mitigation due to minority, a principle that has been of constitutional value since the Supreme Court decision of 29 August 2002. All juveniles aged 13 to 18 are to benefit from sentence mitigation because they have not yet reached the age of majority. While this principle is imperatively effective for juveniles between 13 and 16, its application can be set aside when a juvenile is older than 16 at the time of an offence. Until the law of 5 March 2007, decisions to set aside such mitigations (decisions that need to be specially justified) could only be felled "exceptionally and with regard to the circumstances of the offence and the juvenile's personality". The legislator, in order to restrain the field of sentence mitigation, has removed the expression "exceptionally" and also added the consideration of a situation where "the offence is a deliberate infringement against a person's life or physical or psychic integrity, and when it has been committed in a situation of reoffending (*récidive légale*)". In addition, reoffending exempts the Youth Court from having to motivate refusals of sentence mitigation. In actual fact, these modifications are more about legislative advertisement than about a real restriction of the judge's power.

4. Juvenile criminal procedure

The specialisation of jurisdictions is one of the basic principles of the ordinance of 2 February 1945: juvenile offenders are not dealt with by regular jurisdictions. In its decision of 29 August 2002, the Supreme Court stated again that measures against juvenile offenders are to be "pronounced by a specialised jurisdiction or an accordingly appropriated procedure". The procedure is then notably specific.

4.1 Institutional agents

The specialisation of institutional agents is organised at different levels by the ordinance of 2 February 1945 and by the Judicial Organisational Code. Educational interventions within the framework of criminal law were defined by the ordinance of 1 September 1945 by creating the Directorate of Educational Supervision (*Education surveillée*), which was restructured under the Judicial Youth Protection Service (*Protection Judiciaire de la Jeunesse*, *PJJ*) in 1990.

4.1.1 Judicial agents

Among specialised magistrates, the juvenile judge (*juge des enfants*) plays a pre-eminent role: he/she is the investigating magistrate (*juge d'instruction*), the sentencing judge (alone or presiding over the Youth Court – *tribunal pour*

enfants – whose two lay assessors (*assesseurs*) are non-profesional judges chosen for their interest in juvenile issues and their abilities) and the implementing judge (*juge d'application des peines*). Being a specialised judge of a first instance court, this judge benefits from special training given by the national school of magistrates (*Ecole nationale de la magistrature*), and also from continuous training throughout his/her career. The specialisation principle also applies to prosecutors because a deputy (*substitut*) *especially in charge of juveniles* is nominated in each local jurisdiction. Though, with regard to the growing role of the prosecutor in the treatment of criminal cases, it would be desirable for these magistrates to receive more elaborate training.

Specialisation also (sometimes partly) concerns the investigating magistrate in charge of juveniles for serious offences (*crimes*) or complex matters (particularly involving both juveniles and adults), and the special chamber for juveniles of the Appeal Court which is competent to judge in appeal criminal cases and educational care cases.

The specialisation principle knows some exceptions because some non-specialised magistrates can intervene: the *judge of proximity* deals with the *contraventions des quatre premières classes* (misdemeanours); the judge for civil liberties and detention (*juge des libertés et de la détention*) orders incarceration when a juvenile is under a measure of remand in custody before punishment; the Juvenile Jury Court for serious offences (*cour d'assises des enfants*) judges juveniles who have committed *crimes* and who are older than 16 at the time of the offence. It is different from the Adult Jury Court because the two professional magistrates, assessors of the court president, are chosen among juvenile judges of the appeal court.

An important element of the protective dispositions of the juvenile criminal procedure is that the assistance of a *lawyer* is systematic during the whole procedure, from the enquiry (the lawyer is there from the beginning of police custody) until judgement, even if the juvenile only incurs educational measures: Article 4-1 of the ordinance of 2 February 1945 indicates that "the juvenile must be assisted by a lawyer". If the juvenile or his/her legal guardians have not chosen one, "the prosecutor, the juvenile judge or the investigating magistrate nominate an assigned defence counsel", so that the juvenile can benefit from jurisdictional assistance. For a few years now, 'juvenile lawyers' have formed groups to assist juveniles in civil and criminal matters.

4.1.2 Institutions

A specific system is in place for the supervision of juvenile offenders. One part is under the responsibility of public agencies (the agents of the Judicial Youth Protection Service are public servants of the Ministry of Justice), another is formed by the private sector.

The scope of functions of the Judicial Youth Protection Service (PJJ) concerns both the juvenile "in danger" (in need of care) and the juvenile offender; but the current extension of the local authorities' (*départements*) competences towards educational assistance has led to a stronger reorientation of the PJJ towards criminal matters. The PJJ is devoted, on the one hand, to advise judicial authorities through the investigation measures, and to take care of the juveniles in the community (supervision) or in centres (educational placement) on the other. It is also responsible for intervening when juveniles are on probation (judicial control, suspended sentence with obligations) or serving sentences (community work, imprisonment).

The qualified associative sector comprises centres or services to which the judicial authority hands over juveniles; the accreditation of these centres is adjudicated by the local state authority (*arrêté préfectorale*). The file investigation is done by the PJJ regional head-office, which requires notice from the juvenile judge and the prosecutor. While the most important proportion of the qualified associative sector's activities concerns *juveniles in danger*, it also participates significantly in the care process of juvenile offenders. One of its major functions concerns educational placements: it manages the majority of secure and closed educational centres.

Regarding prevention, the local authority (*département*) plays a key-role through Nursery and Infant Protection (PMI - *protection maternelle et infantile*) and Social Childhood Care (ASE – *aide sociale à l'enfance*). As to the *mayor*, the law of 5 March 2007 on crime prevention strengthens his/her role by conferring him/her the general power to reprimand, and by enabling him/her to propose family support to a juvenile's parents.

4.2. The procedure

Dealing with juvenile criminality has become one of the priorities of public action, and has come to be characterised by the acceleration and systematisation of judicial responses. In this context, the procedure that is applicable to juveniles has seen frequent modification that has resulted in intensification thereof. It is not possible to describe this procedure in full or great detail, so only the main points will be elaborated here.

4.2.1 The inquiry

When a juvenile is held by the police or the gendarmerie in order to establish his/her identity, the prosecutor must be informed immediately. Police custody and police retention are governed by special rules that vary according to the age of the juvenile at the time of his/her hearing. Before the age of 10, the juvenile cannot subject to any coercive measures. Between the ages of 10 and 13, a juvenile can exceptionally be retained by a police officer when serious or

concordant indications allow the presumption that he/she has committed or tried to commit an offence punishable by at least five years of imprisonment. This retention (generally) lasts for no more than 12 hours, but can be renewed, and requires the agreement – and underlies the control – of a magistrate specialized in child care. Beyond age 13, juveniles can be placed in police custody (*garde à vue*) if there are plausible indications that he/she has committed an offence; the prosecutor is informed immediately. In both cases, the juvenile has to be examined by a doctor and to be assisted by a lawyer from the outset of the measure; hearings must be audiovisually recorded. Generally, police custody lasts no more than 24 hours, but can be renewed once if the juvenile is aged between 13 and 16 and if the offence is punishable by at least five years of imprisonment (*crimes*). Such an extension of custody requires a presentation to the prosecutor or to the investigating magistrate. In cases of less serious offences police custody cannot be prolonged. Since the law of 9 March 2004 against organised criminality, police custody of a juvenile aged over 16 can last for up to 96 hours, if offences have been committed as part of an organised gang, and under the condition that one or several adults were also involved. This derogatory disposition shows little conformity to the principles of the ordinance of 2 February 1945, even if the juvenile can meet a lawyer during the first hour of custody, which cannot be prolonged without presentation to a magistrate.

4.2.2 The prosecution

The prosecutor decides on how to proceed, and thus whether to institute further proceedings: settlement without continuation (*classement sans suite*) if the offence does not seem constituted on the one hand, and several options if the offence seems constituted on the other. The latter illustrates the increase in prosecutors' powers.

Alternative measures to prosecution (*mesures alternatives aux poursuites*) have the same goal as for adults following Article 41-1 of the Code of Criminal Procedure: to ensure the reparation of damages, to cease the disorder caused by the offence or to contribute to the offender's rehabilitation. All alternative measures to prosecution can be pronounced only after the parental authorities have been convocated and, except for the "*rappel à la loi*" (the minor is informed of the incurred sentence), they have agreed: orientation to a health, vocational or social structure (especially through a civic training course or through consultation of a psychiatrist or a psychologist), damage reparation, measures of direct reparation towards the victim with his/her consent, measures of indirect reparation to the community with the intervention of an educational agency. The law of 5 March 2007 enabled the use of plea bargaining (*composition pénale*) in cases of juveniles aged over 13 insofar as the offender's personality deems it appropriate; transaction between the prosecutor and an offender who admits guilt (which has to be validated by a judge); measures that can be applied

to adults (for instance to pay a fine or to take part in a training course) are applicable to juveniles, while some measures are specifically for juveniles (for example regular participation in school or in day activity programmes).

It is evident that the prosecutor has broad powers, which also cover the initiation of prosecution of a juvenile in order to bring him/her to court. The principle of mandatory investigation remains, however with exceptions.

4.2.3 The investigation

The investigation (French: *instruction*) of the case is executed by an investigating magistrate upon the request of the prosecutor when the offences in question are *crimes* (serious offences). If the offence constitutes only a misdemeanour (*contravention*) or a minor offence (*délit*), the juvenile judge (in the role of an investigating magistrate) will act, upon having been contacted by a judicial police officer. The investigation of the juvenile, ordered by the investigating magistrate or the juvenile judge after convocation of the parents and the hearing of the juvenile, confers some rights concerning the further continuation of the procedure (assistance of a lawyer who has access to the case file, demand of information). During the investigation, the juvenile can be under supervision or under placement; if he/she is older than 13, he/she can be put on probation or remanded in custody.

At the end of the investigation, the juvenile judge can issue a settlement ordinance (*non-lieu*) when there is insufficient evidence against the juvenile. He/she may also decide to judge the case him/herself and can then only pronounce educational measures, or forward the file to the Youth Court. The investigating magistrate, after the prosecutor has initiated proceedings, can order a settlement ordinance, or bring the case before the juvenile judge or the Youth Court in cases of minor offences (*délit*). If the juvenile is over 16 and the potential sentence is at least seven years of imprisonment, the case is mandatorily brought before the Youth Court. In cases of *crimes*, juveniles under 16 are brought before the Youth Court; when they are over 16, they are brought before the Juvenile Jury Court *(cour d'assises*).

In some cases, the investigation stage has been seen as inappropriate by the legislator (misdemeanour, or juvenile already known to the justice system), in which case accelerated/fast-track proceedings are used. Juveniles guilty of a misdemeanour (*contravention des quatre premières classes*) are punished by the proximity judge (*juge de proximité*) who can only pronounce a reprimand. Created by the law of 1 July 1996, the convocation by a judicial police officer enables the prosecutor to bring a juvenile directly before the juvenile judge. Before the judgment hearing, the prosecutor must have the educational situation of the juvenile evaluated by the PJJ. The law of 9 September 2002 created the procedure of near delay judgment (*jugement à délai rapproché*); the law of 5 March 2007 transformed it into a procedure of immediate presentation before

the juvenile jurisdiction by widening its scope of application: when the potential sentence is up to one year when caught in the act (*in flagranti*), or in other cases when it is up to three years. Investigations concerning the juvenile's personality must be up-to-date (not older than one year). The juvenile will be judged within 10 days and one month when aged 13 to 16, and within 10 days and two months when aged 16 and over. However, should the lawyer and the juvenile agree on it (and should there be no opposition from the parents) this delay can be shortened. The juvenile can then be judged on the day of his/her presentation.

4.2.4 The judgment

The judgment hearing takes place according to classic rules with still a mild degree of formalism. Juveniles are assisted by a lawyer before all penal jurisdictions. The juvenile and his/her parents are heard and, where deemed necessary, the educational service which is involved in the care and supervision of the juvenile. The juvenile can be dispensed to assist to the debates, fully or partly, if he wishes to do so. As to debates, they take place with restrained publicity (Article 14 of the ordinance of 2 February 1945), always without public audience, and the publication of transcriptions is prohibited.

While the composition of the *cour d'assises des mineurs* differs little from its adult counterpart, the Juvenile Jury Court can judge all offenders when the offence has been committed by a juvenile over 16 and by one or several adults.

All decisions felled by a juvenile jurisdiction can be subject to an appeal: the *chambre spéciale des mineurs* deals with judgments of the juvenile judge or the Youth Court; the Appeal Jury Court (composed of three professional magistrates and twelve jurors – rather than just nine as had previously been the case) deals with Jury Court judgments.

All last resort decisions can be subject to a final appeal to the highest judicial court (*pourvoi en cassation*), filed by the juvenile or his legal counsel according to the general procedural regulations.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

The law of 4 January 1993 augmented the alternative measures to prosecution that are applicable to both juveniles and to adults. Unfortunately there are no statistical data available for the time prior to 1993. The possibility to use plea bargaining in juvenile cases is even more recent and was introduced – as mentioned above – by the law of 5 March 2007. No statistical data exist yet on this reform. Numbers concerning alternatives to prosecution are available only for the years since 2000. Since this date, statistics distinguish the number of cases dealt with by prosecutors and the number of prosecutable cases. They also

enable us to measure the number and the proportion of definitive settlements due to the principle of opportunity, prosecution alternatives and prosecutions in relation to all prosecutable cases. For previous years, these three categories could only be measured in relation to all handled cases, which made a comparison impossible. Besides, statistics prior to the year 2000 provide no data on the repartition of prosecution alternatives.

Between 2000 and 2006, the number of cases treated by prosecutors and involving juveniles increased by 14.8%, from 152,018 to 174,533. One part of these cases – between 13.1 and 15.3% – resulted in a definitive settlement because the juvenile was discharged or because the offence could not be proven. The remaining cases (those to be prosecuted) have increased by 12.5% within 7 years, although their proportion among all treated cases has slightly decreased (86.9% in 2000, 85.1% in 2007).

These prosecutable cases can lead to three types of decisions:

- the opening of prosecution before the penal jurisdiction (juvenile judge) or before the investigation jurisdiction;
- an alternative to prosecution which avoids prosecution without a definitive settlement, and
- a definitive settlement because of the principle of opportunity, based on insufficient evidence, a plaintiff withdrawal, the deficient mental state of the juvenile, a plaintiff deficiency, the responsibility of the victim, the withdrawal by the victim, any other regularisation of the conflict or the pettiness of the trouble or damage caused by the offence.

Historically, the numbers and proportions of these three possibilities have strongly varied. In 2000, 22.3% of prosecutable cases led to a definitive settlement because of the principle of opportunity (expediency). 34.3% resulted in alternatives to prosecution, and 43.4% led to prosecution. This figure has changed since 2004. Alternatives are now favoured over prosecution. Thus, in 2006, 12.8% of prosecutable cases led to definitive settlements, prosecution was initiated in 40.6% of cases and prosecutors opted for alternatives in 46.7% of cases. Within seven years, the proportion of alternatives has increased by 36%. At the same time, the proportion of prosecution and definitive settlements has decreased by 6.9% and 74.8% respectively. Consequently, alternatives to prosecution have encroached less upon prosecution than upon definitive settlements.

Correspondingly, the "criminal response rate" of prosecutable cases (*taux de réponse pénale*) – i. e. prosecution by referring the case to the juvenile judge or court or by using alternatives to prosecution by the prosecutor – showed continuous increase. It was 77.7% in 2000, while in 2006 it was 87.3%. This significant increase can be explained by an increased use of the alternatives to prosecution. For a comparison, the criminal response rate was 80% for all criminal cases.

In raw numbers, definitive settlements decreased from 29,510 to 18,983 – a 55.5% drop between 2000 and 2006. Alternatives to prosecution increased from

45,326 to 69,318 – a rise of 52.9%. Despite its relative decrease among prosecutable cases, prosecutions have increased from 57,280 to 60,291 (+5.3%).

In the long-term, the rank of each alternative to prosecution has evolved. In 2000, they were, in decreasing order, as follows: *rappel à la loi* (a form of reprimand) (66.2%), criminal reparation (10.5%), mediation in criminal matters (7.9%), victim withdrawal (5.3%), other measures (4.3%), regularisation (3.2%), referral to a health, social or vocational structure (1.5%) and therapeutic constraint (1.2%).[4]

One major constant can be recognized: *rappels à la loi* (reprimands) constitute the large majority, with a proportion between 66 and 70%. However, whereas their number has increased by 45.9% in six years (43,797 in 2005 against 30,021 in 2000), their proportion has remained quite stable (+4.3% between 2000 and 2005). Furthermore, criminal reparation (almost systematically) comes second, while mediation has been on the decrease. The proportion of criminal reparation increased by 7.2% (4,772 in 2000, 7,159 in 2005, +50%). The number of mediation cases decreased from 3,561 to 2,636 (-35.1%). Its proportion decreased by 88.9% within six years (see *Table 9*).

Table 9: Orientation of prosecutable cases

	2000	2001	2002	2003	2004	2005	2006
Treated cases	152,018	161,208	162,069	163,162	168,809	168,174	174,533
Definitive settlement of non-prosecutable cases	19,902	21,629	23,474	24,992	25,704	25,323	25,941
%	13.1	13.4	14.5	15.3	15.2	15.1	14.9
Prosecutable cases	132,116	139,579	138,595	138,170	142,826	142,851	148,592
%	86.9	86.6	85.5	84.7	84.6	84.9	85.1
Definitive settlement	29,510	31,990	29,736	26,834	25,565	20,705	18,983
%	22.3	22.9	21.5	19.5	17.9	14.5	12.8
Alternatives	45,326	48,113	50,017	53,505	59,113	63,408	69,318
%	34.3	34.5	36.1	38.7	41.4	44.4	46.7
Reparation	4,772	4,972	5,275	5,935	6,203	7,159	---
%	10.5	10.4	10.6	11.1	10.5	11.3	---
Mediation	3,561	3,518	2,735	2,633	2,805	2,636	---
%	7.9	7.3	5.5	4.9	4.8	4.2	---
Therapeutical constraint	550	568	522	628	896	780	---

4 In 2005, the order was as follows: reprimand (69.1%), reparation (11.3%), other measures (4.8%), mediation (4.2%), regularisation (3.7%), victim withdrawal (3.2%), referral to a health, social or vocational structure (2.5%) and therapeutic constraint (1.2%).

	2000	2001	2002	2003	2004	2005	2006
%	1.2	1.2	1.0	1.2	1.5	1.2	---
Withdrawal	2,383	1,529	1,559	1,674	1,659	2,042	---
%	5.3	3.2	3.1	3.1	2.8	3.2	---
Regularisation	1,454	1,565	1,291	1,414	2,086	2,362	---
%	3.2	3.3	2.6	2.6	3.5	3.7	---
Reprimand	30,021	32,947	34,662	37,260	40,979	43,797	48,518
%	66.2	68.5	69.3	69.6	69.3	69.1	---
Referral to health, social, vocational structure	655	850	940	1,220	1,306	1,611	---
%	1.5	1.8	1.9	2.3	2.2	2.5	---
Others	1,930	2,164	3,033	2,741	3,179	3,021	---
%	4.3	4.5	6.1	5.1	5.4	4.8	---
Prosecutions	57,280	59,476	58,842	57,831	58,148	58,738	60,291
%	43.4	42.6	42.5	41.9	40.7	41.1	40.6

Source: Annuaire statistique de la justice.

6. The sentencing practice – Part II: The juvenile court dispositions and their application since 1980

First of all, and for reasons of comparison, it must be pointed out that, for adults and juveniles together, criminal sanctions pronounced in 2006 can be broken down as follows: 51.9% custodial sentences, 32% fines, 10% alternative sentences, 4.8% educational measures (inherent to juveniles), 1.3% exemptions from sentence and 0.1% educational sanctions (inherent to juveniles). 19.6% of all convicted persons were sentenced to unconditional imprisonment.[5]

Juvenile jurisdictions (juvenile judge, Juvenile/Youth Court, Juvenile Jury Court) can order three main types of interventions against juveniles who have committed an offence: educational measures, educational sanctions and sentences. The penal jurisdiction that has judged the juvenile for petty, minor or serious offences (*matière contraventionnelle, délictuelle ou criminelle*) can also exempt a juvenile from the imposition of a sentence or measure when (cumulatively) the rehabilitation of the convicted person has been ensured, the damage caused has been repaired and the trouble that the offence caused has ceased to exist.

5 In 1980, the distribution was as follows: 55.7% fines, 36.2% custodial sentences, 5.4% educational measures, 1.3% exemptions from sentence, and 1.2% alternative sentences. 16.9% of convictions were to non-suspended (unconditional) imprisonment.

Table 10: Sanctions applied to juveniles

	1980	1985	1990	1996	2000	2001	2002	2003	2004	2005	2006
All convictions	54,217	61,782	38,507	24,006	38,170	37,928	29,453	32,417	44,929	53,701	58,347
Sentences	17,366	25,724	15,633	10,261	16,777	16,766	13,986	15,465	21,277	24,425	26,417
%	32.0	41.6	40.6	42.7	43.9	44.2	47.5	47.7	47.4	45.5	45.3
Custodial sentences	12,270	19,323	11,884	8,937	14,638	14,695	12,311	13,730	17,781	19,552	20,327
Custodial sentences among all convictions (%)	22.6	31.3	30.9	37.2	38.4	38.7	41.8	42.4	39.6	36.4	34.8
Custodial sentences among all sentences (%)	70.7	75.1	76.0	87.1	87.3	87.6	88.0	88.8	83.6	80.1	76.9
Non-suspended imprisonment	4,460	6,414	2,491	2,533	4,299	4,368	3,875	4,413	5,104	5,231	5,809
Non-suspended imprisonment among custodial sentences (%)	36.4	33.2	20.9	28.3	29.4	29.7	31.5	32.1	28.7	26.7	28.6
Fines	4,979	5,961	2,943	622	1,250	1257	747	740	1,802	2,586	2,815
Fines among all convictions (%)	9.2	9.7	7.6	2.6	3.3	3.3	2.5	2.3	4.0	4.8	4.8
Fines among all sentences (%)	28.7	23.2	18.8	6.1	7.5	7.5	5.3	4.8	8.5	10.6	10.7

	1980	1985	1990	1996	2000	2001	2002	2003	2004	2005	2006
Alternative sentences	117	440	806	702	889	814	928	995	1,694	2,287	3,275
Alternative sentences among all convictions (%)	0.2	0.7	2.1	2.9	2.3	2.2	3.2	3.1	3.8	4.3	5.6
Alternative sentences among all sentences (%)	0.7	1.7	5.2	6.8	5.3	4.9	6.6	6.4	8.0	9.4	12.4
Educational sanctions	---	---	---	---	---	---	---	---	---	215	842
%	---	---	---	---	---	---	---	---	---	0.4	1.4
Educational measures	36,514	35,480	22,519	13,340	20,547	20,477	15,037	16,440	22,681	27,481	29,108
%	67.4	57.4	58.5	55.6	53.8	54.0	51.1	50.7	50.5	51.2	49.9
Exemption of sentence/measure	337	578	355	405	846	685	430	512	971	1,580	1,980
%	0.6	0.9	0.9	1.7	2.2	1.8	1.5	1.6	2.2	2.9	3.4

Source: Les condamnations en France.

An analysis of registered convictions shows that, all offences together, educational measures are the most frequently issued sanctions, with an average proportion of 56.6% from 1980 to 2006. Nevertheless, their proportion has a decreasing tendency. 36,514 educational measures were ordered in 1980, accounting for 67.4% of convictions. In 2006, for the first time, their overall share dropped below the 50% mark (49.9%), after having stagnated around 50-51% since 2002 (see *Table 10*). Reprimands and *remises à personne* (the parents must come to take the juvenile with them) account for nearly all ordered educational measures, with a cumulative average of 94.9%. Over the last 25 years (1980-2005) e reprimands accounted for an average of 67% of all educational measures (70.7% in 2005). Their proportion has been and remains quite stable. The average proportion of *remises à personne* for the same period is 27.9%, yet having decreased to only 21.5% in 2005, whereas it was over 28% until 1986 and over 30% between 1993 and 1996. Despite being of residual importance, 'placement under judicial protection' and 'supervision' have received increasing interest. With a raw number of 1,241, placements under judicial protection accounted for 4.5% of all educational measures in 2005, whereas their share was less than 1% until 1994.[6] Since 2000, supervision has accounted for between 2.7 and 4.6% of all educational measures, whereas its proportion was below 1% until 1991. The educational measure least applied since the mid 1990s is 'placement in supervised educational centres' (*établissements d'éducation surveillée*). With a share of only 0.4% in 2005, the application of this measure has dropped by 185% since 1980, where it was 2.2% (*Table 11*).

When viewed in terms of offence categories, the proportion of educational measures among all sanctions and their internal distribution vary greatly. For *crimes*, educational measures remain anecdotic because (almost systematically), *crimes* require the imposition of a sentence. The number and percentage share of educational measures have nonetheless increased. Until 1993, less than 10 educational measures a year were ordered (five on average). Their number is now over 20 (35 in 1999, 23 in 2005). Correspondingly, their proportion has increased from 2.6% of all convictions for serious offences (*crimes*) in 1987 to 4.4% in 2005.

Concerning less serious offences (*délits*), educational measures were the predominant sanction. Almost all educational measures (93% in 1987, 96% in 2005) were issued for such cases of *délits*.

6 0.4% in 1980 with 138 measures; 0.7% in 1987 with 180 measures; 0.6% in 1994 with 64 measures.

Table 11: Educational measures

	1980	1985	1990	1996	2000	2001	2002	2003	2004	2005
Total of educational measures	36,858	35,480	22,519	13,340	20,547	20,477	15,036	16,441	22,681	27,481
Reprimand	25,078	24,525	15,518	8,437	13,968	13,742	10,289	10,991	15,043	19,417
%	68.0	69.1	68.9	63.3	67.8	67.1	68.4	66.8	66.3	70.7
Surveillance by parents or other persons	10,549	10,272	6,523	4,018	5,233	5,273	3,470	3,957	5,598	5,912
%	28.6	28.9	28.9	30.1	25.5	25.8	23.1	24.1	24.7	21.5
Placement (surpervised education)	821	415	177	136	163	151	139	126	114	109
%	2.2	1.2	0.8	1.0	0.8	0.7	0.9	0.8	0.5	0.4
Judicial protection	138	180	104	176	341	460	380	588	981	1241
%	0.4	0.5	0.5	1.3	1.7	2.3	2.5	3.6	4.3	4.5
Supervision	---	38	165	535	777	791	694	728	881	728
%	---	0.1	0.7	4.0	3.8	3.9	4.6	4.4	3.9	2.7
Other measures	272	50	30	19	43	32	37	23	39	51
%	0.7	0.1	0.1	0.1	0.2	0.2	0.3	0.1	0.2	0.2
Educational measures for serious offences	---	---	2	19	22	28	27	28	25	23
Educational measures for minor offences	---	---	20,884	12,495	19,641	19,655	14,429	15,759	21,693	26,452
Reprimand	---	---	14,340	7,882	13,328	13,168	9,860	10,522	14,354	18,623

	1980	1985	1990	1996	2000	2001	2002	2003	2004	2005
%	---	---	68.7	63.1	67.9	67.0	68.3	66.8	66.2	70.4
Surveillance by parents	---	---	6,079	3,761	5,027	5,083	3,354	3,792	5,362	5,746
%	---	---	29.1	30.1	25.6	25.9	23.2	24.1	24.7	21.7
Placement (supervised education)	---	---	177	136	163	151	139	126	114	109
%	---	---	0.9	1.1	0.8	0.8	0.9	0.8	0.5	0.4
Judicial protection	---	---	104	176	341	460	380	588	981	1241
%	---	---	0.5	1.4	1.7	2.3	2.6	3.7	4.5	4.7
Supervision	---	---	165	535	777	791	694	728	881	728
%	---	---	0.8	4.3	3.9	4.0	4.8	4.6	4.1	2.8
Other measures	---	---	19	5	5	2	2	3	1	5
%	---	---	0.1	0.04	0.03	0.01	0.01	0.02	0.0	0.02
Educational measures for petty offences	---	---	1,633	826	884	794	580	654	963	1,006
Reprimand	---	---	1,178	555	640	574	429	469	689	794
%	---	---	72.1	67.2	72.4	72.3	74.0	71.7	71.6	78.9
Surveillance by parents	---	---	444	257	206	190	116	165	236	166
%	---	---	27.2	31.1	23.3	23.9	20.0	25.2	24.5	16.5
Other measures	---	---	11	14	38	30	35	20	38	46
%	---	---	0.7	1.7	4.3	3.8	6.0	3.1	3.9	4.6

Source: Les condamnations en France.

Between 1987 and 2005 educational measures accounted for an average of 54.2% of all ordered measures and sanctions in criminal matters. Their proportion has, however, decreased from 57% in 1987 to 51.2% in 2005. In 2005, the overall distribution of educational measures was as follows: reprimand (70.4%), *remise à personne* (21.7%), placement under judicial protection (4.7%), supervision (2.8%), and placement in supervised educational centres (0.4%).

Regarding minor offences (*délits*), educational measures are at the first rank. They accounted for in average of 72.1% of convictions until 1993, at a period during which imprisonment could be ordered in police matters. They have benefited from the interdiction to order imprisonment because their average proportion accounts for 77.3%. It is though decreasing the very last years: 79.5% in 2002, 70.8% in 2004, and 68.7% in 2005. Less educational measures means more fines, more alternative sentences and more exemptions of punishment.

As to petty offences (*contraventions de 5^{e} classe*) reprimands and *remises à personne* accounted for 95.4% of ordered educational measures in 2005. Their cumulated proportion was about 100% until 1992. Reprimands have always been the most important sanction with a stable average proportion over 70%. *Remises à personne* is in second place with an average proportion of 16.5%. They have slightly decreased, and other educational measures account for another 4.6% (see *Table 11*).

Among all offences over the last 25 years, sentences (imprisonment, fines, and alternative sanctions) accounted for 42% of juvenile convictions registered in criminal records on average. Over time, their proportion has increased: it was under 40% between 1980 and 1984 (32% in 1980). It is now around 45%. On average, sentences can be broken down into the following shares: 81.3% custodial sentences (youth imprisonment), 13.9% fines and 4.8% alternative sentences.[7] For 2005, of sentences against juveniles, 77% were custodial, 10.7% were fines and 12.4% were alternative sentences. In regard to all decisions taken towards juveniles, custodial sentences are in second place behind educational measures with an average of 34.5% over the last 25 years. Then follow fines (5.6% in average) and alternative sentences (2.2% in average).

The proportion of custodial sentence*s* among sentences and among all decisions involving juveniles has increased between 1980 and 2003. There has been a decrease since then, but it has nonetheless remained above the level of the 1980s. Thus, in 1980, 12,270 custodial sentences accounted for 70.7% of all applied sentences and 22.6% of all sentences and measures concerning

7 In 1980, it was: 70.7% custody sentences, 28.7% fines and 0.7% alternative sentences.

juveniles.[8] In 2005, their proportion among sentences was 80.1%, and their share among all convictions was 36.4%. The raw number of custodial sentences in 2005 was 19,552, an increase of 59.3% compared to 1980. Detention as a whole (including prison for *crimes*) concerns more than one out of three convicted juveniles. On average, over the last 25 years unsuspended imprisonment (*emprisonnment ferme*) has accounted for 30.3% of all custodial sentences and for 10.3% of all convicted juveniles. Over time, the number of unsuspended sentences to imprisonment has risen by 30.3% between 1980 and 2006 (4,460 in 1980, 5,104 in 2004, 5,231 in 2005 and 5,809 in 2006). At the same time, their proportion among all decisions made involving juveniles linearly increased between 1980 (8.2%) and 2003 (13.6%), before a slight decrease to 10% in 2005. It still remains above its level of the 1980s. In return, the proportion of unsuspended imprisonment among custodial sentences has strongly decreased since 1980 (36.4% in 1980, 26.8% in 2005), showing a gain of interest in applying suspended imprisonment (with or without probation) (see *Table 10*).

More than 95% of juveniles who are convicted for serious offences receive custodial sentences. Even if this number has increased (159 in 1980, 296 in 2005), unsuspended sentences to imprisonment have seen less and less application in cases of juveniles who are guilty of *crimes*. While 83.7% of juveniles guilty of *crimes* received unsuspended sentences in 1987, the share had declined to 56.1% by 2005. Regarding *délits*, 36.8% of convicted juveniles were issued custodial sentences. Their share among all decisions increased between 1987 (32.8%) and 2003 (42.6%), but has since then been on the decrease, however without dropping below the level of the 1980s (36.8% in 2005). In 1987, 9.6% of all juveniles who had been convicted of *délits* received unsuspended sentences to imprisonment. By 2003, this share had increased to 13.2%, but subsequently dropped to 9.5% in 2005. Since 1994, custodial sentences have not been an option in misdemeanour cases. Prior to 1994, an average of around 9% of juveniles who were convicted of misdemeanours received custodial sentences.

Regarding *délits*, the average length of unsuspended imprisonment sentences for juveniles was 3.2 months. This number has seen quite a degree of stability over the last 25 years. By comparison, the average length of unsuspended sentences to imprisonment for *crimes* was, except indeterminate imprisonment, 39.5 months in 2005. This average term of imprisonment has decreased over the years, having stood at over 50 months between 1988 and 1995.

The share of convictions to a fine has seen a great degree of variation over the last 25 years. Fines accounted for 28.7% of all pronounced sentences in 1980, 18.8% in 1990, and 7.5% in 2000 and, after an all-time low of 4.8% in 2003, their proportion increases again to 10.6% in 2005. The share of fines among all juvenile convictions was 9.2% in 1980, 7.6% in 1990, 3.3% in 2000

8 In 2003, they accounted for 88.8% of sentences and 42.4% of all juvenile convictions (13,730 cases).

and 4.8% in 2005. In about 85% of cases, sentences to fines are unsuspended or partly suspended (see *Table 10*).

Though still not being applied enough in practice, the use of alternative sentences has still increased – both in absolute figures and in terms of their share among all sentences and decisions towards juveniles. So, 177 alternative sentences in 1980 accounted for 0.7% of all sentences against juveniles, and for 0.2% of all decisions. In 1990, these numbers were 806, 5.2% and 2.1% respectively. They had not changed significantly up until the year 2000, but since 2003 the number of alternative sentences has increased 3.5-fold: from 995 to 3,275. In 2006 they accounted for 12.4% of all juvenile sentences and 5.6% of all convicted juveniles. As a consequence, their number has been multiplied by 18 between 1980 and 2006, while their proportion among all convictions has been multiplied by 25. Alternative sentences are composed to 97% of community work sentences (*Table 10*).

Issued far less frequently than educational measures and sentences, over the last 26 years, exemption from a sentence or measure accounted for an average of 1.3% of all decisions involving juveniles. This average is still not representative because the number and proportion of exemptions increased during this period (from 337 in 1980 to 1,980 in 2006 – an increase of 487%). Their proportion among all decisions increased from 0.6% to 3.3%. Even though the degree to which such exemptions are ordered remains insufficient, it is nonetheless a positive development towards achieving restorative goals (see *Table 10*).

Created in 2002, educational sanctions are the least frequently ordered disposals regarding convicted juveniles. They appear only in the 2005 and 2006 statistics. In 2005, 215 educational sanctions were pronounced and registered in criminal records, which accounts for 0.4% of all decisions. In 2006, this number was already four times greater, with 842 educational sanctions accounting for 1.4% of all convictions (see *Table 10*). Statistics concerning juvenile judges and Youth Courts' activities, including convictions which are not registered in the criminal record, indicate higher figures: 331 educational measures were ordered in 2003, 758 in 2004, 1,324 in 2005 and 1,637 in 2006. Their proportion among all decisions felled by the juvenile judges and Youth Courts for these four years was 0.45%, 1%, 1.8% and 2.2% respectively. These numbers reveal increased acceptance of educational measures by the juvenile judges (see *Table 12*).

Table 12: Activity of juvenile judges and youth courts

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total	68,801	75,289	75,359	77,419	77,068	74,139	76,516	74,043	74,973
Educational Sanctions	---	---	---	---	---	331	758	1,324	1,637
%	---	---	---	---	---	0.5	1.0	1.8	2.2
Sentences	28,103	31,905	32,529	32,788	33,491	31,920	32,365	30,372	29,433
%	40.9	42.4	43.2	42.4	43.5	43.1	42.3	41.0	39.3
Imprisonment (suspended or not)	7,379	8,297	7,624	8,305	8,475	7,043	6,630	6,203	5,809
among sentences in %	26.3	26.0	23.4	25.3	25.3	22.1	20.5	20.4	19.7
Suspended imprisonment	13,008	13,758	14,565	15,094	16,023	16,061	16,354	14,681	14,282
among sentences in %	46.3	43.1	44.8	46.0	47.8	50.3	50.5	48.3	48.5
Fines	5,283	6,261	7,074	7,262	6,760	6,226	6,703	5,448	4,838
among sentences in %	18.8	19.6	21.6	22.2	20.2	19.5	20.7	17.9	16.4
Community work	2,433	3,589	3,266	2,127	2,233	2,590	2,678	4,040	4,504
among sentences in %	8.7	11.3	10.0	6.5	6.7	8.1	8.3	13.3	15.3
Educational Measures	38,969	41,612	40,728	42,867	41,971	40,230	41,348	40,247	43,903
%	56.6	55.3	54.1	55.4	54.5	54.3	54.0	54.4	58.6
Exemption from sentence	1,729	1,772	2,102	1,764	1,606	1,658	2,045	32,710	33,630
Reprimand and *remise parents*	32,134	33,753	32,829	34,737	34,072	31,598	31,725		
Supervision, placement, judicial protection	4,767	5,563	5,625	5,398	5,261	5,663	6,185	9,637	10,273
Criminal Reparation	2,068	2,296	2,274	2,732	2,638	2,969	3,438		

Source: Annuaire statistique de la justice.

Unlike criminally registered convictions, data on the practice of juvenile judges and courts (available only since 1998) provide information about reparative criminal measures pronounced as educational measures by the penal jurisdiction. Rising continuously since data collection began, they numbered 2,068 in 1998, compared to 3,438 in 2004 – an increase of 66.2% (there are no quantitative data available for 2005 and 2006 because measures of criminal reparation are no longer counted separately, but cumulatively with other educational measures). For the same years, the proportion of reparation measures among all educational measures issued against juveniles increased from 5.3% in 1998 to 8.3% in 2004. This rise builds on the diminution of reprimands and *remises à parents* – a decrease by 1.3% (32,134 in 1998, 31,725 in 2004) and a proportion of 7.5% (see *Table 12*).

Disposals ordered by juvenile judges and courts in 1998 can be broken down as follows: 56.6% educational measures (38,969), 40.9% sentences (28,103) and 2.5% exemptions from sentence or measure (1,729). In 2006, this picture had changed to the following: educational measures and exemptions from sentence or measures, now impossible to distinguish from each other in the statistics, accounted for 58.6% of convictions (43,903). The proportion of sentences dropped to 39.3%, despite an increase in absolute numbers (29,433). 1,637 educational sanctions accounted for the remaining 2.2%. Continuously on the decrease, non-suspended imprisonment accounted for 26.3% of sentences in 1998 with 7,379 decisions, and only 19.7% in 2006 with 5,809 decisions (see *Table 12*).

7. Regional patterns and differences in sentencing young offenders

Since French official statistics are almost exclusively gathered at the national level, they do not provide significant local data. Therefore, we cannot compare the practices of juvenile judges and courts from different local regions. However, some quantitative data are available on the practice of prosecutors. These data cover prosecutable cases involving juveniles, and whether (and how) the prosecution proceeds with them. The prosecutors are investigated according to the Appeal Courts in the catchment area of which they are active (there are 35 Appeal Courts in France).

First of all, there are strong variations in the rates of "criminal response" ordered by prosecutors in juvenile cases, the notion of criminal response including prosecution and successful alternatives to prosecution. Whereas in 2006 the national rate was around 87.2%, the lowest rate was 74.5% for the *Fort de France* Appeal Court. The highest rate could be found at *Limoges* Appeal Court, with 96.6%. Ten Appeal Courts had a criminal response rate above 90%, 19 Appeal Courts were between 80 and 90% and only *Fort de France* was under

80%. In other words, opportunity settlements accounted for between 3.4% and 25.5% of all prosecutable cases, whereas their national average was 11.8%.

Disparities are also recognizable regarding the nature of criminal responses. Whereas the national average for formal prosecution was 42.4% in 2006, rates for individual Appeal Courts varied between 30.7 and 69.7% of all responses. Correlatively, successful alternatives to prosecution accounted for between 18.6% and 57.8% of all criminal responses. Their national average was 45.8%.

These numbers must be relativized for two reasons. First, the number of cases to be potentially prosecuted varies (sometimes greatly) from one Appeal Court to another, a disparity which can distort such a comparison. Thus, in 2006, the prosecution services of the Bastia Appeal Court treated 320 cases, while the ones of Paris and Versailles had 22,580 and 11,394 cases respectively. In Bastia, only 7.2% of 320 cases were closed via settlement, whereas the settlement rate was 13.4% in Paris and 13.9% in Versailles.

Secondly, the statistics do not connect the outcome of a case with the nature of the committed offence, with the age of the offender or whether or not he/she is a first-time offender. Therefore, we do not know if these disparities are justified by the different levels of offence or offending severity, or if they are an expression of different sanctioning policies.

8. Young adults (18-21 year-olds) and the juvenile or adult criminal justice system: legal aspects and sentencing practices

Formal and basic criminal law applicable to 18 to 21 year-olds does not differ from the rules applicable to all adults. Young adults are judged by adult jurisdiction (proximity judge, Police Court, Correctional Court and Jury Court for Serious Offences) and are punishable by sentences applicable to adults. Two nuances do, however, need to be mentioned in this context.

On the one hand, and according to the principle of legality, a young adult will be judged by a jurisdiction for juveniles and in accordance with the ordinance of 2 February 1945 (except the police custody rules) when the offence was committed while aged under 18. The young adult will then be judged by a jurisdiction for juveniles, and educational measures and educational sanctions can be imposed.

On the other hand, adult criminal law has been selectively modified in order to take into account the young age of the offender. Thus, at the stage of investigation, Articles 41 line 6 and 81 line 6 of the Code of Criminal Procedure oblige the prosecutor and the investigating magistrate to conduct investigations of the economic, family and social situation of adults who were under 21 at the time of the offence, and for whom custodial remand is considered. However, this obligation is limited to offences for which the potential sentence does not

exceed five years. For adults above 21 years of age, this enquiry is only facultative. Following the same approach, the fact that the prosecuted person is younger than 25 must be taken into account when considering whether to launch a social enquiry, a personality enquiry or a medical/psychological test (Article D 17 Code of Criminal Procedure). Besides, Article 16 bis of the ordinance of 2 February 1945 enables the educational measure of judicial protection to be prolonged beyond the age of 18 at the young adult's request. More generally, and in addition to the lowering of the age of majority from 21 to 18 in 1974, a decree of 18 February 1975 enabled every person under 21 who has serious difficulties of social insertion to ask the juvenile judge for a prolongation or the initiation of a judicial protection measure. At the post-sentence stage, Article 770 line 4 of the Code of Criminal Procedure stipulates for 18 to 21 year-olds the that convictions on their criminal records be deleted after three years. This regulation aims to improve the possibilities of rehabilitation for young adults. Finally, a specific regime is provided for adults below the age of 21 who are in detention. They are under "a specific and individualised regime that gives importance to school and training" (Art. D 521 C. Code of Criminal Procedure). They are basically isolated at night. Exceptionally, because of their personality or due to health reasons, they might be placed in a cell with other inmates of the same age (Art. D 521-1 C. Code of Criminal Procedure).

From a statistical perspective, it is important to point out that data from the French Ministry of Justice do not isolate the category of 18 to 21 year-olds. In return, figures are available for the 18 to 19 year-old age group (see *Table 13*).

At the beginning of the 1980s, 18 and 19 year-olds were mostly sentenced to fines. Custodial sentences came second, followed by alternative sentences, exemptions from sentence, and educational measures. Thus, in 1980, sentences pronounced against 72,266 convicted 18 and 19 year-olds were divided as follows: 53% fines (38,307), 44.4% custodial sentences (32,082), 1.1% alternative sentences (817), 0.9% exemption from sentence (663) and 0.5% educational measures (344).

Table 13: Sanctions imposed to 18-19 years old

	1980	1985	1990	1996	2000	2003	2004	2005	2006
Total	72,266	80,974	55,243	35,005	47,165	47,456	62,146	60,936	60,849
Custodial sentences	32,082	40,980	36,195	23,572	28,258	29,497	37,678	35,582	37,955
%	44.4	50.6	65.5	67.3	59.9	62.2	60.6	58.4	62.4
non-suspended imprisonment	13,391	17,218	12,226	74,59	86,76	10,407	12,848	12,904	13,972
non-suspended imprisonment	18.5	21.3	22.1	21.3	18.4	21.9	20.7	21.2	22.9

	1980	1985	1990	1996	2000	2003	2004	2005	2006
among all convictions (%)									
non-suspended imprisonment among all custodial sentences (%)	41.7	42.0	33.8	31.6	30.7	35.3	34.1	36.3	36.8
Fine	38,307	32,755	14,119	6,363	11,819	11,946	17,231	17,306	14,648
%	53.0	40.5	25.6	18.2	25.1	25.2	27.7	28.4	24.1
Alternative sentence	817	6,071	4,108	4,600	6,405	5,420	6,631	7,422	7,600
%	1.1	7.5	7.4	13.1	13.6	11.4	10.7	12.2	12.5
Educational measure	344	10	10	0	0	201	30	82	106
%	0.5	0.01	0.02	0.0	0.0	0.4	0.05	0.1	0.2
Exemption from sentence	663	1,158	811	470	683	392	576	544	539
%	0.9	1.4	1.5	1.5	1.5	0.8	0.9	0.9	0.9

Source: Les condamnations en France.

Since 1984 this distribution has seen significant changes. Custodial sentences have traded places with fines and are invariably in first place, ahead of fines, alternative sentences, exemption of sentence and educational measures. Besides the inversion between custodial sentences and fines, certain other trends came to light. Firstly, the proportion of custodial sentences continuously increased between 1984 and 1992 (the year with the highest level 71.2%). It then subsequently decreased to and stabilized around the 60 to 62% mark. Secondly, the share of fines dropped very steeply by almost 50% between 1984 (46.6%) and 2006 (24.1%), albeit having been on the rise since 1996, where fines accounted for only 18.2% (its all-time low). Thirdly, the diminution of the proportion of fines has benefited alternative sentences, the proportion of which rose from 1.1% in 1980 (817 measures) to 12.5% in 2006 (7,600 measures). By contrast, the number and proportion of exemptions from sentences (*dispenses de peines*) witnessed few variations: 663 in 1980 (0.9% of convictions), 539 in 2006 (1.9% of convictions). Their proportion has never exceeded 1.9% of all convictions against 18 and 19 year olds, and at their highest level they totalled 1,215 in 1986, before decreasing constantly.

Thus, in 2006, sentences against 18 and 19 year-olds were divided as follows: 62.4% custodial sentences (37,955), 24.1% fines (14,648), 12.5%

alternative sentences (7,600), 0.9% exemptions from sentences (539), 0.2% educational measures (106).

By comparison, 555,884 convicted adults in 2006 received the following sentences: 53.7% custodial sentences, 34.9% fines, 10.4% alternative sentences and 1% exemptions from sentence. We can deduce from these figures that 18 and 19 year-olds are more likely to receive custodial sentences and alternative sentences than other adults. In return, they are less frequently exempted from their sentences and receive fewer fines.

Compared to juveniles, 18 and 19 year-old young adults receive custodial sentences two times more frequently (62.4% vs. 34.8% for juveniles), they are five times more frequently fined (24.1% vs. 4.8%) and twice as likely to receive an alternative sentence (12.5% vs. 5.6%). At the same time, they receive significantly fewer suspended sentences than juveniles (0.9% vs. 3.4%). As a consequence, the general impossibility to issue young adults (who were older than 18 at the time of the offence) educational measures and educational sanctions is equalized by fines, alternative sentences and then custodial sentences.

In the period from 1980 to 2006, non-suspended imprisonment (including partially suspended custodial sentences) accounted for between 18 and 23% of all sentences and educational measures ordered against 18 and 19 year-olds.[9] Non-suspended imprisonment also accounted for between 30 and 42% of all custodial sentences.[10] Even if this proportion has increased since 2000, it remains below the level of the 1980s (more than 40% until 1987). Moreover, these numbers show that, among custodial sentences, suspended imprisonment is favoured over non-suspended imprisonment.

In comparison, the proportion of non-suspended imprisonment among convictions of 18 and 19 year-olds is systematically superior (0.7 to 3.7% depending on the year) to the share of non-suspended imprisonment among all adult convictions. At the same time, they are 1.5 to 3.5 times more frequently convicted to non-suspended prison sentences than juveniles. Thus, in 1980, 18.5% of 18 and 19 year-old convicts received non-suspended prison sentences, compared to 8.2% of juveniles and 17.7% of all convicted adults. In 2006, the figures were 23%, 10% and 20.6% respectively.

9. Transfer of juveniles to the adult court

The concept of specialised juvenile jurisdictions was first introduced by the law of 22 July 1912 and is one of the main principles of the ordinance of 2 February 1945. This principle was raised to one of constitutional value by the Supreme Court in its decision of 29 August 2002.

9 18.5% in 1980, 22.1% in 1990, 18.4% in 2000, and 23% in 2006.

10 41.7% in 1980, 33.8% in 1990, 30.7% in 2000, and 36.8% in 2006.

Only one derogation of this principle is stipulated by Article 21 of the ordinance of 2 February 1945 in cases of misdemeanours (*contraventions des quatre premières classes*): juvenile offenders are judged by the Police Court in a moderated form. The only available sanctions are fines and reprimands. For persons under 13 years of age – who cannot be punished with a sentence – only a reprimand can be pronounced. If the Police Court (in addition to a fine or reprimand) considers a surveillance measure to be in the interest of the juvenile, it will transfer the file to the juvenile judge.

This system was modified by the institution of the proximity judge (law of 9 September 2002), whose competence was widened by the law of 26 January 2005 to cover all misdemeanours. As a matter of fact, almost all of the Police Court's competency regarding juveniles has been transferred to the proximity judge.

It is open to criticism that the proximity judge, non-professional and not specialised in juvenile matters, can in fact punish juvenile offenders. Actually, his/her interventions are greatly restricted by the juvenile prosecution services. It is important that a first-time offender be dealt with by a (even partly) specialised magistrate – a first offence being a symptom that is to be treated most pertinently.

10. Preliminary residential care and pre-trial detention

During the investigation – the goal of which is establishing the truth and clarifying the circumstances of the offence and the juvenile's personality – it might appear necessary to supervise the juvenile's education, to strictly control his/her actions, or even to preliminarily incarcerate him/her. The judge in charge of the investigation – either the juvenile judge or the investigating magistrate – can decide at first to pronounce provisional educational measures. Three such educational measures can be ordered before punishment is imposed: supervision (*liberté surveillée*), placement and reparation. These measures can be modified at any time depending on the juvenile's development; their duration is not bound to temporal limits, but will cease should the juvenile turn 18 before punishment is ordered. A placement can be interesting in order to observe the juvenile and to initiate an educational process: the juvenile knows that the juvenile judge or court will refer to his/her personal development during his stay in preliminary care or detention when choosing the final sanction. The impact of a pre-sentence placement is thus considerable.

10.1 Supervision (*contrôle judiciaire*)

When the juvenile is older than 13 at the time of the offence and he risks receiving a prison sentence, he/she might be placed under supervision, "because of

the needs of prosecution or as a safety measure" (3,948 juveniles were placed under supervision in 2004). Since the Act of 9 September 2002 a new Article 10-2 of the ordinance of 2 February 1945 has more precisely governed the application of supervision in cases of juveniles, by reinforcing the formalism and specific obligations. The law of 5 March 2007 expanded the possibilities for placing persons aged between 13 and 16 under supervision.

A juvenile can be placed under supervision by the youth judge, the investigating magistrate, but also the *juge des libertés et de la détention* when the former two refuse imprisonment. The lawyer and parents of the juvenile must be convoked, and the notification of obligations must be issued by the judge him/herself. If the juvenile is under 16, the supervision decision must be preceded by a contradictory debate with a hearing of the prosecutor, the juvenile, his/her lawyer and – where deemed necessary – the representative of the care services. Juveniles aged between 13 and 18 in *crime* matters and between 16 and 18 in correctional matters can be placed under supervision under the same conditions as adults. For 13 to 16 year old juveniles, conditions are stricter in correctional matters: the potential sentence must be at least five years of imprisonment, and the juvenile has to have already been sanctioned before with an educational measure, an educational sanction or a sentence. However, if the potential sentence is equal to or exceeds seven years, reference to the criminal record has no longer been required since the law of 5 March 2007.

Juveniles aged between 13 and 18 in criminal matters and between 16 and 18 in correctional matters can be submitted to the same obligations or prohibitions as adults (but some are not adapted to them). Also, some specific obligations can be imposed: to submit to educational measures confided to the PJJ or a qualified agency; to respect conditions of a placement in an educational centre (especially a closed one). The law of 5 March 2007 added the obligation to accomplish a civic training course, and well-attended participation in school or vocational training up to the age of 18.

As to juveniles aged between 13 and 16, in correctional matters, the law of 9 September 2002 only instituted placement in a closed educational centre (*CEF*); the law of 5 March 2007 widened judicial control to other possibilities, in particular placements in a traditional centre.

Breaches of supervision can lead to imprisonment. However, for juveniles aged 13 to 16 who are placed under supervision for of a *délit* (correctional matters), remands in custody remain exclusively conditioned to the breach of a placement in CEF.

10.2 Custodial remand (pre-trial detention)

Pre-trial detention remains exceptional, in theory even more for juveniles than for adults. Articles 11, 11-1 and 11-2 of the ordinance of 2 February 1945 complete the provisions of the Code of Criminal Procedure.

Placement in pre-trial detention is ordered by the *juge des libertés et de la détention*, who is approached by the juvenile judge or the investigating magistrate, often upon the request of the prosecutor. Whenever a custodial remand of a juvenile is being considered, the PJJ is obliged to present a written report that details the juvenile's situation, in order to propose educational alternatives to detention. The investigating magistrate need not necessarily approach the *juge des libertés et de la détention* and can instead favour another solution: educational measures or supervision. The prosecutor can appeal this decision. If the investigating magistrate thinks that incarceration is necessary, he/she will contact the *juge des libertés et de la detention*, who will then make his/her decision following a contradictory debate. The PJJ report often plays an important role in this decision.

The motives for remanding juveniles in custody are the same as for adults. Article 144 of the Code of Criminal Procedure has isolated seven motives since the law of 5 March 2007 (Nr. 2007-291) on the reform of criminal procedure. The essential goals of pre-trial detention are: to preserve evidence, to prevent the pressuring of witnesses or victims, to prevent dialogue with co-offenders or accomplices, to protect the prosecuted person, to cease the offence or to prevent reoffending (motive the most evoked which explains the more frequent use of custodial remand towards juveniles than towards adults in practice), to cease exceptional and persistent public disorder provoked by the seriousness of the offence, the circumstances of its commission or the importance of the damage it has caused.

The amount of time a juvenile spends in custody when remanded depends on his/her age at the time of the offence, the nature of the offence (*crime* or *délit*) and on the length of sentence that he/she may receive. In criminal matters (*crimes*), the maximum term that person aged 13 to 16 can spend in pre-trial detention is one year (6 months renewable by a maximum of further 6 months). Juveniles aged 16 to 18 can spend no more than two years in pre-trial detention (one year plus potentially two additional six month periods). Prolongations of detention must be ordered by a justified decision after a contradictory debate.

In correctional matters (*délits*), if the possible sentence is less than or equal to seven years, the period that a juvenile aged over 16 can spend remanded in custody cannot exceed two months (one month renewable by another month). Where the possible sentence exceeds seven years, the maximum term of detention will be one year (4 months, can possibly be renewed twice). For juveniles aged between 13 and 16, the maximum duration is one month (15 days renewable by a further 15 days). Where the possible sentence is ten years of imprisonment, the maximum allowed term of detention is two months (one month renewable by another month). It is important to note that juveniles aged between 13 and 16 can only be remanded in custody when they intentionally breach obligations of supervision. It is thus an indirect custodial remand for these juveniles and must be the exception.

When a juvenile is under supervision after having been on remand for the same offence, and when he/she does not comply with the terms of a court order, the cumulated length of detention cannot exceed the maximum length in regard to the type of offence and the age of the juvenile by more than one month.

Juveniles remanded in custody can request their release at any time, which can then be pronounced by the investigating magistrate. Should such a release be approved (refusals to such requests have to be justified by the judge), he/she must subsequently subject him/herself to an educational measure or to supervision. This disposition, instituted by the law of 9 September 2002, aims at supervising the juvenile in order to prevent him/her from re-offending following his/her release from pre-trial prison.

On 1 January 2006, 65.4% of all juvenile inmates (479) were pre-trial detainees.

11. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty

The intensity of custody that convicted juveniles experience differs depending on whether they are placed in an educational centre or in prison.

11.1 Educational centres

The placement of a juvenile can be ordered as an educational measure by the juvenile judge or court for a variable length, which is sometimes limited by the respective rules that govern placement in the different kinds of institutions. The decision is formalised in a punishment: after having decided on the juvenile's criminal responsibility, the jurisdiction decides on the educational measure in a justified decision, and sets the term of placement to be served. The rights to receive visitors and the persons entitled to such visits will also be stated in the judicial decision. The measure can be executed even in case of an appeal.

The diversity of the available placement facilities allows for an adapted response to each case, the goal being the facilitation of the juvenile's socialisation. The various institutions also allow the type of placement to be adapted to the age of the juvenile and to the situation and circumstances that originally lead to his/her criminal responsibility. Care facilities for juveniles who are placed on the basis of the ordinance of 2 February 1945 are run and governed by the PJJ or qualified private agencies. Each form of accommodation has its particularities in order to develop its own educational care, with differing degrees of constraint.

Placement in an educational action centre (*FAE - foyer d'action éducative*) aims at helping juveniles by separating them for a while from their home environment. The goal is the advancement of school or vocational insertion for

juveniles who exhibit family or educational difficulties. The conditions for FAE are stipulated in PJJ note 2000-15K1 of 3 November 2000.

For juveniles who are more deeply involved in crime or who suffer greater marginalization, a new form of centre (as a continuation of stronger educational frame units – *unités à encadrement éducatif renforcé*) was created by the Council of Home Security's (*Conseil de sécurité intérieure*) decision of 8 June 1998: secure educational centres (*CER – centres éducatifs renforcés*). Conditions are listed in PJJ note 2000-778 of 13 January 2000. Placements in these institutions are organised as break stays for juveniles who need to be removed from their home, and who require intensive educational care. Sessions last for between three and six months, upon which the juveniles return to their families, supported by educational measures in the community.

The legislator introduced closed educational centres (*CEF – centres éducatifs fermés*) with the law of 9 September 2002. The new Article 33 which was subsequently included in the ordinance of 2 February 1945 defines the task areas of these centres as well as the criteria that public or private providing agencies have to fulfil. Agencies only qualify for the provision of such an institution if they offer "appropriate education and security". Concerning convicted juveniles, a CEF can host juveniles on probation or conditional release and – since the law of 5 March 2007 – can also cater for juveniles placed outside the prison. The Ministry of Justice specified the frame for taking care of juveniles in CEFs in a circular of 28 March 2003, referring to them as "a tool to prevent incarceration and to complete the current placement system". The capacity of these centres may not exceed fifteen juveniles, who benefit from constant educational support, which in turn is linked with high costs (almost 600 € per day and juvenile).

11.2 Prison centres

On 1 April 2007, 746 juveniles were in French prisons – 1.2% of the total prison population. In France, two thirds of imprisoned juveniles were remanded in custody (compared to only one third of the adult prison population). Thus, in most cases the sentence that is subsequently pronounced will cover this detention time, barring serious offences. In return, if a juvenile is released before the court and the jurisdiction punishes him/her to a non-suspended prison sentence, he/she will not be immediately imprisoned if the sentence is less than one year. Since the law of 9 March 2004, the juvenile judge has also been responsible for the supervision of juveniles' sentences, and can decide on the form of sentence (for instance conditional release with community service or placement outside prison, in particular in a CEF).

The general legal frame for juvenile custody is governed by Article 11 of the ordinance of 2 February 1945, dealing primarily with custodial remand, but with the essential part applicable to imprisonment after being sentenced: imprisonment

must be executed either in a special section of pre-trial prisons, or in a specialised juvenile prison. "As far as possible", juvenile inmates are to spend the night alone in their cells. Since the concept of periods of security (*période de sûreté*) is not applicable to juveniles, they can benefit from sentence reductions (remission, "good-time" for working or participating in rehabilitative programmes) or sentence planning right from the beginning of their detention. Regarding juvenile imprisonment, the Code of Criminal Procedure has recently been modified and completed by three decrees that aim at better defining the frame of juvenile detention and the conditions of its progress.

A first decree of 9 May 2007 (Nr. 2007-748 JO of 10 May 2007, p. 8292), concerning juvenile imprisonment, confirms the creation of specialised prison centres for juveniles and stipulates that a list of these juvenile prisons and of qualified quarters for juveniles will be set by an order (*arrêté*) from the Minister of Justice. Further, a new rule has been set: female juvenile inmates must be held in special units and placed under the surveillance of female staff. The decree also affirms the principle of night-time isolation, with the only acceptable exceptions being health or personality reasons. Finally, an inmate who has reached the age of 18 years while in detention can stay in a specialised prison until the age of 18 and a half (six months after his/her 18th birthday).

In addition, a second decree of 11 May 2007 (Nr. 2007-814 JO of 12 May 2007, p. 8713) – concerning the disciplinary regime of juvenile detention – takes into account the juveniles' situation in detention and includes more protective procedural rules on the one hand, and a special regime of disciplinary sanctions that can be applied to juveniles – which are generally less severe than had previously been the case – on the other. Thus, in cases of disciplinary misconduct, the report sent to the head of the centre must be supplemented with a PJJ report. When a disciplinary prosecution before the discipline commission is envisaged, a PJJ educator will orally present his/her observations of the juvenile's situation, and the decision that pronounces the sanction will be communicated to the judge for the execution of sentences (*JAP*) or to the juvenile judge.

The same decree creates a specific regime for juvenile disciplinary sanctions (less numerous and shorter than for adults). One article indicates that disciplinary sanctions are pronounced with regard to the age, the personality and the capacity of discernment of the juvenile. Disciplinary law is basically copied from the law attached to criminal responsibility. If the juvenile has committed serious breaches of discipline, he/she can be confined to a normal individual cell. Such confinement is even applicable to under-16s, however for no longer than for three days. Placement in a disciplinary cell appears to be an exceptional sanction that can only be imposed on persons aged older than 16, with a maximum duration of seven days. Moreover, this sanction does not suspend access to school or training, visits of family members or of other important persons who contribute to the juvenile's socialisation. Disciplinary law applicable

to juvenile inmates is different from adult provisions because of the consideration of age.

12. Residential care and youth prisons – Development of treatment/vocational training and other educational programmes in practice

The dialectic of education/repression enables the treatment of juveniles during the period in which they are deprived of their freedom, both in educational centres and in prisons.

12.1 Educational centres

In centres for educational action, the care process is structured as an individualized educational project, which is elaborated after the evaluation of the juvenile's potentialities and environment. Personalised educational support is favoured as a means for learning to deal with relations to others. As to its contents, the care process combines individual and collective activities: learning of basic/advanced school knowledge, vocational training, sports, culture, and health education.

The reinforced educational centres focus on juveniles who are already more involved in offending and who are in need of an important educational frame. Placement is organised as a break-stay for juveniles who need to be removed from their home, and who are in need of intensive educational care. Pedagogical projects based on activity programmes aim at developing the juveniles' abilities in order to envisage sustainable educational outcomes. Often centred on sports, humanitarian or community activities, projects are based on a pedagogic of success in order to allow the juvenile to attain a better self-image, which is vital for juveniles who are on the brink of marginalisation.

In closed educational centres, the mission of treatment and education is doubly constrained: judicially, because breaching placement obligations can lead to incarceration, and educationally, because a juvenile cannot leave the centre without being accompanied (leaving the institution unaccompanied is classed as abscondence). Juveniles in these centres undergo a global check-up (health, school and vocation, psychological) which then forms the basis upon which a multidisciplinary team elaborates an individualized project. Health care (and psychological monitoring if necessary), school activities to re-learn basics, activities around vocational training, and sports belong to the whole process. This care can be implemented in collaboration with outside institutions (PJJ, day-centres and school support). The closing stages of placement must be supervised in order to provide for a good transition and release from the CEF and "to guarantee educational continuity" (circular of 28 March 2003).

12.2 Prison centres

The Code of Criminal Procedure mentions in its statutory part that inmates under 20 – who are thus juveniles – be subjected to a "special and individualised regime that gives importance to education and vocational training". A second decree of 9 May 2007 (Nr. 2007-749 JO of 10 May 2007 p. 8293), concerning the prison regime for juveniles, renewed articles concerning juvenile imprisonment, the corresponding section of the Code now dealing solely with juvenile inmates.

While awaiting the construction of the planned juvenile centres to be completed (see below), convicted juveniles currently serve their prison sentences in special quarters of pre-trial prisons (*maisons d'arrêt*), where they benefit from a special regime. Separated from adult inmates, they have access to social and educational activities, but the educational staffing is insufficient: less than two educators for ten juveniles; the rate is six educators for ten juveniles in juvenile centres, with an educational presence during the whole day (7 a. m. till 9.30 p. m.).

Concerning female young inmates, due to their small number they do not benefit from the same regime and they serve their sentences in female quarters. This situation will change in concordance with the decree of 9 May 2007 related to juvenile imprisonment, in which it is stipulated that "female juvenile inmates are hosted in special units under the surveillance of female workers". The intensive educational care shall benefit young girls who, as future mothers, have an important role in transmitting values.

The modifications made to the juvenile prison law testify the will to ameliorate time spent in detention. The decree of 9 May 2007 on the juvenile detention regime stipulates that, in each juvenile prison, a pluridisciplinary team comprises representatives of different intervening services in order to ensure their collaboration and the oversight of each juvenile inmate. Thus, the PJJ ensures the continuity of juvenile inmates' educational and individualised school care. This decree implements dispositions which help to maintain family contacts, such as the use of telephones. Finally, the principle of continued access to school or training shall "constitute the biggest part of the inmate's timetable." The juvenile inmate shall also have "access to social, cultural, sport or leisure activities adapted to its age", and special attention shall be devoted to healthcare and food.

The decrees of 9 May 2007 pursue an amelioration of juvenile detention conditions that was already initiated by the law of 9 September 2002. This text created the legal foundations for new juvenile prison quarters and – above all – penitentiary centres for juveniles (*Établissements Pénitentiaires pour Mineurs*, *EPM*). The goal is to "favour the suppression of juvenile quarters for new specialised centres". Seven centres for juveniles are planned, four of which opened in 2007. Each centre, with the leitmotifs of school and exercise, must provide six units for ten teenagers each, with individual cells and communal

areas. The goal of the EPMs is to conciliate punishment and education. Thus, the direction is ruled by the prison administration while the organisation of the day falls under the responsibility of the PJJ. School, sport and cultural activities are organised in small groups and coordinated by a bipartite warden-educator, who is assisted by teachers, psychologists, psychiatrists and associative intervenors, in order to ensure an individualised regime for each juvenile.

The philosophy of the EPMs is welcome because it poses a new conception of prison: repression must serve education. A culture of cooperation between prison administration and youth protection still needs to be developed, and the concept of the 'educational prison' remains a challenge. Moreover, one problematic issue still remains: the geographical distance between the juvenile and his/her family, which in some cases could threaten to increase the difficulties faced in maintaining family contacts.

13./14. Current reform debates and challenges for the juvenile justice system – Summary and outlook

Since its promulgation, the ordinance of 2 February 1945 has been modified more than 20 times. Several adaptations have given to this text – despite its age – an operatory function under the condition that magistrates have sufficient means to implement it satisfactorily. As to the treatment of juvenile criminality, more than in other issues, the effectiveness of an act depends on its effectivity. However, that was not often considered in all successive reforms which, since a decade, have essentially been organised into two concepts: increased coercion and an acceleration of procedures. To exemplify the beginning of the intensification of how juvenile offending is responded to (defined as the neo-liberal orientation by some scholars, see e. g. *Bailleau* 2007), one can mention the law of 1 February 1994 that created a custodial measure for juveniles aged between 10 and 13 (strengthened by the law of 9 September 2002), and the law of 1 July 1996 that allows an immediate intervention of a police officer by bringing the juvenile before the juvenile judge for punishment. Acceleration of proceedings was enforced through the creation of the "near delay" (speedy) judgement (*jugement à délai rapproché*) by the law of 9 September 2002. Another reform in this sense was the law of 5 March 2007 which introduced the immediate presentation of a juvenile ("*présentation immediate*") before the juvenile jurisdiction.

During all this decade, with a strong emphasis on the consequences of the offence rather than on the offender's personality, and despite the acknowledgment by the Supreme Court (decision of the 29 August 2002) of a fundamental and constitutional principle in matters of juvenile justice, there has been a gradual diminution of specificities applicable to juveniles and, therefore, increasing approximation of juvenile and adult criminal law. On a broader scale, the direction of this approximation – the young category more and more resembling

the old category – is remarkable: the creation of educational sanctions by the law of 9 September 2002 applicable from the age of 10 is a clear example. For 16 to 18 years old multi-recidivists, a status of pre-majority has emerged, who seem to be being treated as 'small adults', when in fact they are yet to become adults. Their status of being offenders prevails over their status of being juveniles. The legislator appears to believe that quicker (acceleration of proceedings) and tougher (refusal of sentence diminution for reoffenders) punishment is what matters. The latest law of 5 March 2007 points in this direction.

Moreover, a draft law was presented the Parliament immediately after the June 2007 elections, one section of which implies an enhancement of repression in the responses to juvenile offending. The Minister of Justice indicated in June 2007 that, in case of second reoffending (i. e. third offence), sentence mitigation would be annulled for juveniles aged 16 to 18 who have committed *crimes* against the person and serious violent or sexual *délits*. Juveniles would then risk be receive the same sentences as adults, including legally prescribed minimum sentences. In fact, the project establishes minimum prison sentences for re-offenders. Such minimum sentences are about one third of the maximum sentence. However, this further intensification in unacceptable insofar as a first evaluation of the law of 12 December 2005 concerning the treatment of criminal offences for recidivists has not even been analysed yet. According to the Ministry of Justice, however, the judges' margin of appreciation shall remain. The fact that the principle of individualized sentences is a constitutional one shall be respected. Concerning the principle of sentence diminution, it cannot be reasonable to abandon it in some cases just because of legislation. It would be a pity to revert to one hundred years ago before the time when the law of 1906 brought the age of full criminal responsibility from 16 up to 18 years. However, according to the draft law, the possibility to mitigate sentences on grounds of minority can be maintained through a justified decision. Beyond the complexity of the projected modifications, one can have the uneasy impression that the legislator would rather risk censure by the Supreme Court than accord juvenile offenders proper consideration.

Altogether, the main challenge for juvenile justice has remained the same since the ordinance of 2 February 1945: it aims at socialising juveniles through education. In return, the context is different today: due to the economic situation, it has become more difficult to promote educational measures within vocational projects. Moreover, some teenagers exhibit troubles and problems that need specialised and expensive care. This once again brings the financial aspect to the foreground, in a time where the means to take care of children in danger are insufficient. This problem is not being tackled with enough maturity and impartiality.

Thus, in France, a recurring debate concerning the judges' laxity has progressively developed. Yet studies have shown that the response rate to offences committed by juveniles has been high. While youth jurisdictions have

not made extensive use of prison sentences, and have simultaneously imposed fewer 'soft' measures than before (such as reprimands or parental convocations), they have instead favoured sanctions with educational and socialising goals. The majority of treated juveniles do not reoffend. It is highly regrettable that the focus is concentrated on those juveniles who commit serious offences, and that modifications to the entire juvenile justice system that affect all offenders are geared only to this minority. Such an approach minimises (and is to some extent a slap in the face of) the huge amount of work that is and has been done by public and private associative agents, and on a broader scale, by the entire field of education. Work to educate young people and to prevent reoffending would be more productive with additional and/or better distributed means. The effectiveness of law would then be strengthened, for the benefit of juvenile offenders and of society as a whole.

The ordinance of 2 February 1945 had stipulated in a very innovative way the primacy of education over repression. Over the past decade, we witnessed increased complementarities of education and repression. Today, in 2008, the blurring of the boundaries of these two concepts can cause confusion and makes them difficult to differentiate from each other. It has become less and less clear what the crucial points of educational and socialising action actually are. The coherence of the whole juvenile legislation is progressively disintegrating, both in terms of criminal law (sanctions) and its forms (proceedings). The French legislator cannot continue to make aggravating modifications to the law without jeopardizing the overall autonomy of juvenile criminal law.

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