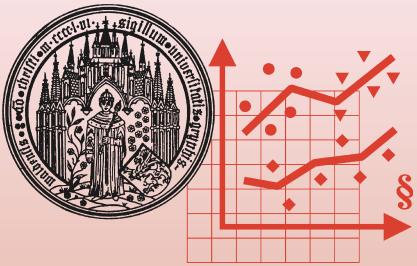
Schriften zum Strafvollzug,
Jugendstrafrecht und zur
Kriminologie

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

Band 36/3



Frieder Dünkel, Joanna Grzywa,
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in collaboration with
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Juvenile Justice Systems in Europe

Current Situation and Reform Developments

Vol. 3
2nd revised edition

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

2nd revised edition

MG 2011
Forum Verlag Godesberg

Bibliographische Information der Deutschen Nationalbibliothek

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

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

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

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Volume 1

Romania

Andrea Păroşanu

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

The first Criminal Code of Romania from 1865 made reference to juveniles in Section VI "Reasons for Sentence and Mitigation of Punishment". It tied in with ordinances from 1850 and stipulated that children between 8 and 15 years were criminally responsible if they had been aware of the consequences of their actions. However, it was assumed that children of this age group had no conscience of doing wrong. If the court provided counter-evidence that the juveniles were aware of the wrongfulness of their actions, they were held criminally responsible. The age group of 15 to 20 year olds was fully criminally responsible, although the fact that they had not reached majority yet was a reason for mitigation of punishment.[1] One of the basic principles of the Criminal Code was that all measures and penalties imposed on juveniles were of an educational nature, not punitive.

In 1936, a new Criminal Code was enacted, which raised the age of criminal responsibility to 14 years.[2] New terms with regard to minors were introduced, such as child (*copil*) for those aged 10 to 14 years and young adults (*adolescent*) aged 14 to 19 years. Minors of the age group 14 to 19 years were only criminally responsible where they acted with discernment.[3]

1 Art. 62 Criminal Code of 1865.

2 Art. 138 Criminal Code of 1936.

3 Art. 139 para. 2 Criminal Code of 1936.

For juveniles who were not conscious of having acting wrongly the law provided educative, preventive, custodial and protective measures.[4] In case the court assessed that juveniles were aware of doing wrong when they had committed an act, safety measures like supervised freedom, re-educational measures or imprisonment could be ordered.[5]

In 1938, the penal law was amended and the age of criminal responsibility was lowered from 14 to 12 years. Furthermore, the term minor was introduced and replaced the terms child and adolescent and referred to all those who had not reached the age of 18 years. The law introduced a distinction between the group of 12 to 14 year olds, who were assumed to be unaware of doing wrong, and the group of 15 to 18 year olds, who were criminally responsible and treated like adults, but who could receive mitigated sentences.

In 1969, the penal law was reformed once more and referred again to the age limits of the 1936 Criminal Code. Criminal responsibility began at the age of 14 years, and a differentiation was made in the law between the age group of 14 and 15 year olds and the group of 16 to 18 year olds. The former were held criminally responsible if it was proven that they had shown judgement while committing an offence. As of the age of 16, youngsters were held fully criminally responsible.

The Law of 1969 extended the catalogue of educational measures on the one hand, but intensified sentences on the other. A maximum penalty was not determined, and penalties for juveniles were only reduced by one third. Although imprisonment was only imposed for heavy crimes, its use was not consistent with the socio-political conditions and shifting awareness within wider society.[6]

In 1977, Decree No. 218/1977 led to a significant change in the field of juvenile justice. The new regulation stipulated that imprisonment was abolished for all juveniles aged 14 to 18 years and introduced a wider range of educational measures.

Furthermore, the law made a distinction between non-custodial measures, such as supervision through the labour collective or school, and custodial measures like admission to a special school for work and re-education. Supervision through the labour collective or school meant that juveniles had to comply with determined instructions, supervised by the persons responsible for them and by their tutors. Where a juvenile's behaviour improved, the team could terminate the educational measure. Supervision was ordered for an indeterminate period but ended when the juvenile reached the age of 18 years. The measure of admission to a special school for work and re-education was ordered for a determinate period of between two and five years.

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4 Art. 140 Criminal Code of 1936.

5 Art. 141 Criminal Code of 1936.

6 *Basiliade* 1986, p. 1163.

Even though the political regime intended to reintegrate juveniles into society through work, the 1977 reform can be characterized as a liberal penal model. However, the reform was impeded by societal and economic conditions in the society of Romania that was not morally prepared to support the reform.[7] In practice, the special schools for work and re-education were criticized for their poor economic conditions and lack of qualified staff. Furthermore, no differentiation was made regarding the severity of offending or mental and physical disturbances.

Following societal changes after the 1989 revolution, in 1992 the legislator abrogated the ordinance of 1977 and returned to the regulations of 1969.[8] As a result, prison sentences were reintroduced for 14 to 18 year old juveniles.

After 1990, the Romanian legislator oriented itself towards international conventions like the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines),[9] the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)[10] and the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo-Rules).[11] In 1996, with regard to provisions concerning minors, penal law was amended and the catalogue of educational measures was again extended.[12] Among others, the new Law provided that the educational measure of supervised freedom could be combined with certain obligations stipulated by law, such as community service.

At present, no independent juvenile justice law exists in Romania. One chapter of the Criminal Code contains provisions regarding minors.[13] Sanctions for juveniles are divided into educational measures (*masurile educative*) and penalties (*pedepsele pentru minori*).

Juveniles are criminally responsible at the age of 14 years. Penal law differentiates between the age group of 14 and 15 year olds and the age group of 16 and 17 year olds. 14 and 15 year olds are criminally responsible if they commit a criminal act with discernment. 16 and 17 year olds are fully criminally responsible. Educational measures and penalties are to be applied to all juveniles who offend with discernment. There are no special provisions in Romanian penal

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7 Stanoiu 1994, p. 8-9.

8 Law No. 104/1992.

9 The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Resolution No. 45/112, 1990.

10 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Resolution no. 40/33, 1985.

11 United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), Resolution no. 45/110, 1990.

12 Law No. 140/1996.

13 Chapter V, Criminal Code.

law that are specifically applicable to young adult offenders. For them, the same provisions apply as for adults.

Children up to the age of 14 years are not criminally responsible, and consequently they can be subjected only to protective judicial or administrative measures. The Law on the Protection and Promotion of the Rights of the Child (Law No. 272/2004) regulates measures designed for children who are under the age of penal responsibility and who commit offences, as well as for juveniles in need of protection.[14] The legal groundwork for Law No. 272/2004 can be found in the Law on the Protection of Minors of 1970. It provided for protective measures of an educational character that were enforced by local commissions for children who were not criminally responsible.[15] Law No. 272/2004 is oriented on the United Nations Convention on the Rights of the Child and places a strong focus on the child's best interest. It provides for special dispositions regarding family care, foster family care, placement in a shelter, assistance and support, and day care services. The child welfare system has improved significantly since the revolution of 1989, shifting from an institutionalized to a family based system. Before 1989, pro-natality politics under the communist regime had led to a growing number of children. The State created special institutions (generally named "orphanages") to accommodate and cater for children whose parents could not afford to raise them. As a result, all over the country large institutions were established, characterized by a lack of qualified staff and poor economic conditions, replacing traditional patterns of child welfare. In 1990, an estimated 100,000 children were in such institutions.[16] The number of children living in institutions or family-type care dropped to almost 78,000 in 2006, with about one third of that figure living in institutions.[17] After 1989, many institutions were closed, new forms of residential care were established and the number of children placed in foster care has been increasing over the years.

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

When one looks at developments before 1989, it can be seen that the number of police registered minors was comparatively low. A phase of increased registered juvenile delinquency can be observed between 1980 and 1989, reaching its peak in 1985 with 8,600 police registered juveniles, including a significant number of

14 Law No. 272/2004.

15 Law No. 3/1970.

16 National Authority for the Protection of the Child's Rights. For information, visit their website at: www.copii.ro/content.aspx?id=66.

17 See UNICEF 2006.

street children and institutionalized children.[18] The phenomenon of street children and institutionalized children are some of the characteristics that influenced juvenile delinquency in transitional Romania after the revolution.[19] In the following years, the number of police registered juveniles declined considerably, also due to the practice on behalf of the prosecution to charge fewer juveniles in order to create statistics corresponding to communist ideologies.

Regarding the dynamics of juvenile delinquency in the period of transition, statistics indicate a significant increase in the number of police registered minors (see Table 1). The number of minors increased from 2,868 in 1989 to 5,490 in 1990 and to 9,909 in 1991. Also, the share of minors among all persons investigated by the police doubled from five percent in 1989 to ten percent in 1991. The number of young adults aged 18 to 21 years rose from 6,127 in 1989 to 7,084 in 1990, and reached 11,002 in 1991.[20]

There was continuous growth in the number of registered crimes committed by minors from 1989 to 1998, peaking in the period from 1996 to 1998. The number of investigated minors increased almost fourfold from 1990 to 1997. After 1998 the number of investigated juveniles decreased, slightly increased in 2001 and dropped in the following years, remaining relatively stable in recent years.

Table 1: Number of children, juveniles and young adults registered by the police

Year	Total persons registered by police	Offence rate*	Children up to 14 years of age	Minors 14-17 years old	Young adults 18-30 years old
1990	56,282	422	---	5,490	25,941
1991	97,248	601	---	9,909	42,684
1992	106,255	635	---	10,371	46,238
1993	163,367	965	2,281	14,279	63,757
1994	174,765	1,043	2,381	16,231	70,905

18 *Radulescu*, Sociologia problemelor sociale ale varstelor, 1999, cited in *Grecu/Radulescu* 2003, p. 349.

19 Communist politics forbidding abortions (since 1966) and contraception led to a high number of abandoned children in Romania. 'Street children' is the term for all homeless children who run away from their families and who work, live and sleep in the streets, children who have been neglected, abused or misused by their families, or children who spend most of their time on the streets begging, but live with their families. Due to numerous projects after 1989, many children could be reintegrated into society.

20 *Brezeanu* 1994, p. 62, 88, 113.

Year	Total persons registered by police	Offence rate*	Children up to 14 years of age	Minors 14-17 years old	Young adults 18-30 years old
1995	196,876	1,310	3,167	17,234	80,000
1996	211,138	1,423	3,437	18,317	87,421
1997	249,779	1,601	5,388	22,118	100,933
1998	263,939	1,774	6,871	20,511	102,500
1999	239,346	1,619	730	15,389	92,080
2000	240,344	1,577	637	15,874	94,634
2001	247,727	1,519	503	16,510	94,885
2002	230,850	1,432	464	15,206	83,525
2003	206,766	1,274	378	13,583	73,605
2004	185,270	1,069	410	14,698	65,527
2005	170,563	963	616	14,637	62,831
2006	188,786	1,077	491	14,292	67,238

* Offences registered by the police per 100,000 inhabitants.
Sources: Romanian Statistical Yearbook 2006, 2007.

The total number of prosecuted minors increased after 1989, having more than doubled by 1991. In 1997, the figure was more than three times higher, peaking in that year at 13,674 charged minors. After 1997, the number decreased nearly continuously to 4,613 by 2007 (see *Table 2*).

The increasing number of prosecuted minors since 1989 is also reflected in the constantly growing share of juveniles among all charged persons. In 1989, minors accounted for 6.6% of all charged persons, reaching 11% in 1999 and rising to 13% in 2005. In recent years, this proportion of charged juveniles has dropped to almost 10%.

In the period between 1989 and 2007 most registered offences were property related, especially theft and robbery. The overwhelming majority of registered juveniles were charged with theft, accounting for 80% of all charged juveniles in 1997 and 66% in 2007. The absolute number of registered juveniles charged with theft increased continuously from 1989 to 1997. It was almost three times higher in 1993 compared to 1989, and had increased more than fourfold by 1997, with 11,010 registered minors being charged with this offence. After 1997, the number decreased continuously to one third by 2007.

Regarding robbery, a similar tendency could be observed in the years following 1989. Compared to 1989, in 1990 the number of minors charged with

robbery had doubled, was even four times higher in 1991 and almost six times higher in 2005. After 2006, when the number of minors charged with robbery was at its highest level with 1,102, it dropped considerably to 558 in 2007.

The majority of cases of theft and robbery were committed by gangs.[21] In general, a growing number of offences committed by minors acting in groups can be observed in Romania. Most minors offend in complicity with adults and only in fewer cases with other minors.

Since 1989, the number of registered offences against life and bodily integrity has also increased. In 1989, 369 juveniles were charged with offences against life and bodily integrity, increasing to 617 in 1991 and peaking at 620 in 1997. Following a significant decrease in the number of accused minors in 1999 (460) the number again increased in 2007, reaching levels similar to the state of affairs of 1997. Regarding murder and sexual offences such as rape, there have been no significant changes over the last years. After a rise in the years following 1989, the number of offences declined, only to increase again after 2000. The number of murders increased slightly from 1989 to 1991 and then dropped by half by 1999. Since then, the levels of such offending have increased and remained stable in recent years. The share of minors among all persons charged with murder increased slightly from 4.5% in 1990 to 6.2% in 2005.[22]

Regarding cases of rape, the number of charged minors rose significantly in the years after 1989 and had almost tripled by 1991. Since then there has been no clear cut trend, with the figures dropping to 78 in 1999, increasing again in 2002 and finally declining yet again to 107 in 2006. Overall, a sensitive increase as regards the seriousness of violent crimes through the way of acting and participation has been observed.

Other registered offences that minors were more commonly charged with in the period in question were mainly battery, bodily harm, begging, vagrancy and offences that bring harm to social life relations such as prostitution and insult. As to prostitution, in the period from 1989 to 1999, juvenile prostitution made up 18.8% of all juvenile delinquency on average.[23] New patterns of crime emerged especially after 2000, including possession of firearms, vandalism, traffic offences, counterfeiting, drug related offences, human trafficking and incitement to prostitution.

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21 See *Banciu/Radulescu* 2002, p. 257.

22 *Balica* 2008, p. 190.

23 *Coca-Cozma/Craciunescu/Lefterache* 2003, p. 43.

Table 2: Number of prosecuted juveniles (14-17) for certain categories of offences*

Year	Total	Population by age group: (14-17 years)	Per 100,000	Offences against the person	Thereof: Murder	Thereof: Rape	Property offences	Thereof: Theft	Thereof: Robbery
1989	3,810	1,506,027	253	369	72	119	2,950	2,652	191
1990	4,554	1,518,616	300	405	53	234	4,011	3,586	367
1991	8,520	1,559,721	546	617	80	303	7,619	6,628	802
1992	9,210	1,608,135	573	569	75	220	8,286	7,131	909
1993	10,141	1,584,947	640	501	77	167	9,035	7,614	906
1994	11,658	1,565,534	745	524	79	172	10,531	9,289	822
1995	12,611	1,528,609	825	556	73	163	11,251	9,912	781
1996	12,439	1,478,156	842	554	58	140	11,074	9,906	728
1997	13,674	1,396,132	979	620	73	98	12,100	11,010	814
1998	10,918	1,322,006	826	508	63	78	9,590	8,744	619
1999	8,231	1,294,004	636	460	40	78	7,097	6,327	646
2000	7,322	1,282,661	571	495	52	105	6,316	5,600	584
2001	8,576	1,346,673	637	499	64	101	7,336	6,518	704
2002	7,811	1,391,137	561	590	89	139	6,527	5,736	713
2003	7,267	1,388,797	524	510	59	91	6,129	5,369	668
2004	7,915	1,399,028	566	513	70	110	6,760	5,892	786
2005	7,868	1,286,569	612	540	75	115	6,711	5,528	1,092
2006	6,709	1,139,544	589	500	64	107	5,722	4,542	1,102
2007	4,613	1,034,006	446	614	75	108	3,634	3,046	558

* The statistics within the Activity Report only refer to the selected offences and do not include data on other offences.
Source: Public Ministry, Activity Report 2007, Romanian Demographic Yearbook 2006, 2007, 2008 for population data.

However, the registered increase in juvenile delinquency has been influenced by a number of factors and can serve only as an orientation. When comparing the qualitative and quantitative aspects of delinquency in Romania before and after 1989, it should be taken into consideration that official judicial statistics differ in communist and post-communist Romania. Under the communist regime, judicial statistics were not published and real tendencies in juvenile delinquency were kept secret.[24] Furthermore, the phenomenon of juvenile offending was euphemized, because the dimension of criminality was filtered slightly by certain factors that were introduced (for instance amnesties, see below).[25] Due to the lack of transparency of statistical data there were only few studies on trends in the delinquency of juveniles and adults. Therefore, it should be pointed out that it is difficult to accurately compare the evolution of juvenile delinquency before and after 1989. Moreover, judicial statistics do not reflect the real phenomenon of juvenile delinquency in its whole dimension. There are no studies about self-reported delinquency in Romania. So the official registered data cannot be put into perspective as in many other countries that use these methods.

The growing number of registered offences has to be seen in the light of societal transformation. The revolution in 1989 led to drastic changes in Romania, including growing social and economic discrepancies. The gap widened between a small number of persons who quickly accumulated wealth in a short period, and the majority of the population that was economically disadvantaged. Societal instability in post-revolutionary Romania was one of the factors that led to a rise in criminality. The national crime rate increased from 194.5 per 100,000 inhabitants in 1988 to 699 in 1992.

The Romanian population has faced tremendous socio-economic changes, characterized by unemployment, inflation, high levels of corruption, social marginalization and a decline in the system of social protection. About 70% of the economically active population were affected by the socio-economic transition process and had to change their work-place and occupation.[26] Particularly young people were exposed to a high rate of unemployment, which exceeded 20% in 2005.[27]

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24 See *Basiliade* 2006, p. 237. In this sense, a study conducted by a multidisciplinary team (George Basiliade, Stefania Simionescu, Ancheta sociala in sistemul probatiunii judiciare, Consfatuirea Nationala de Medicina Legala, 29-30 June 1964) to analyze the bio-psychosocial components of the personality of the minor offender, was interrupted by representatives of the former General Prosecutor's Office because the content of the study was considered an attempt to introduce principles of "bourgeois sciences" in Romania, such as criminology or criminal sociology.

25 See for instance *Stanoiu* 1994, p. 10.

26 UNDP 2003-2005, p. 8.

27 Ibid., p. 25.

Increasing criminality is especially attributed to a declining influence of social control institutions such as the family, school or labour collective. Economic reforms had a considerable impact on families, resulting in a higher degree of poverty, domestic violence, deterioration of education, child abuse and family breakdown.[28] Poverty increased in Romania, especially during the economic recession from 1996 to 1999, reaching its peak in 2000 and then subsequently stabilizing in the following years.[29] The poverty rate among children is particularly high. In 2006, about one quarter of all children were living in poverty.[30]

Another reason can be seen in the fact that the legislator failed to create a legal framework to adequately respond to new forms of delinquency that began to emerge after the revolution.[31] Reforms in the field of juvenile justice, such as the new Criminal Code, occurred relatively late.

Furthermore, it is worth mentioning that from 1988 to 1990 a large number of incarcerated persons were released, which could also have had an influence on the offending rate. In 1988, on the basis of an Amnesty Decree (No. 11/1988), more than 90% of the prison population (adults and minors) were released, many of whom had been incarcerated for severe crimes. Following an amnesty between 23 December 1989 and April 1990 (Decrees No. 3/1989 and 23/1990) during the revolution, over 70% of all incarcerated persons (including minors) were released. Hence, among others, prisoners convicted for severe crimes were released back into society, disturbing public safety during the turbulent revolution.[32]

With regard to the personal and family background of juvenile offenders, a study on behalf of UNICEF and the Romanian Ministry of Justice[33] from October 2003 to March 2004 revealed that out of 701 juvenile delinquents 84% were of Romanian ethnic origin, eleven percent were Roma, two percent were Hungarian, two percent were Turkish and one percent was German. Regarding family environment and education, 55% of juvenile offenders had grown up in a violent domestic environment. 16% of the minors had no education, 24% were

28 *Grecu/Radulescu* 2003, p. 348.

29 UNDP 2003-2005, p. 26.

30 UNICEF, Romania, Overview.

31 *Brezeanu* 1994, p. 175-176.

32 *Brezeanu* 2007, p. 61-62.

33 The study was performed with the technical assistance and financial support of UNICEF Romania in partnership with the Ministry of Justice and with funds provided by the Government of The Netherlands (MATRA Program). Contributions to the report were made by the National Authority for Child Protection and Adoption, National Institute of Criminology, Center for Legal Resources, Gallup International Romania and Association Alternative Sociale Iasi.

drop-outs and 35% were pupils in 5th to 8th grade.[34] In general, the majority of juvenile offenders in Romania in the transition period from 1990 to 2000 lacked familial socialization, characterized by running away from home, school dropouts and also alcohol and lacquer abuse.[35] In recent years, the number of minors with deficiencies in family socialization has been on the rise again due to an increasing number of children and minors who are left at home by their parents who migrated for employment. In 2008, the number of "home alone children" reached about 350,000,[36] accounting for every tenth child and hence increasing the number of children and juveniles in need of protection.

Regarding gender, the overwhelming majority of young offenders are male. Female juvenile offenders make up only a small percentage. As the UNICEF Study shows, 94% out of 701 offenders were male and 6% were female.[37] Nevertheless, the percentage of female delinquents has slightly increased over recent years, but crime rates are significantly lower compared to male juvenile offenders. The majority of offences committed by girls are theft, bodily harm and robbery. Overall, offences committed by girls tend to be less serious than those committed by male minors.[38]

In terms of the age factor of juvenile delinquents, studies suggest that the age of juveniles committing offences has been slightly decreasing in recent years.[39] The majority of juvenile delinquents are aged 16 and 17 years, followed by the category of minors aged 14 and 15 years.[40]

The media report on increasing levels of juvenile delinquency and a rise of female minor delinquents. The majority of journalists tend to generalize and emphasize the sensational when reporting on minor offenders, without mentioning the underlying causes of juvenile delinquency. It is worrying that personal data (names, addresses) and pictures of the delinquent are published, which clearly undermines regulations on the protection of children at risk.[41]

According to the UNICEF Study, the following offences were at the centre of media reporting: robbery, burglary, theft, begging, drug use and dealing,

34 UNICEF 2005, p. 36-37.

35 *Banciu* 2007, p. 2.

36 UNICEF 2008, III. Data refer to the entire minor population (0 to 18 years old).

37 UNICEF 2005, p. 36. See also *Micle/Liiceanu/Saucan* 2007, p. 145. According to the study, between 2002 and 2005 out of the total number of minor defendants 5.5% were girls and 94.5% boys.

38 *Micle/Liiceanu/Saucan* 2007, p. 142-143.

39 See *Micle/Liiceanu/Saucan* 2007, p. 156; *Banciu/Radulescu* 2002, p. 265.

40 UNICEF 2005, p. 35; *Banciu/Puscas* 2006, p. 3.

41 The regulations on the protection of the child at risk forbid the publication of compromising pictures, interviews or statements of children at risk.

human trafficking and prostitution. Reports are brief and do not present detailed causes or effects of the offences, mentioning personal data that infringe the privacy rights of minors.[42] Another study published in 2002 revealed that media reports showed quite a consistent picture regarding property related offences in comparison to official statistics, but over-estimated violent offending by young people. The media pay more attention to very serious offences such as homicide and rape and over-represent them compared to police statistics which indicate far lower figures.[43] In general, the media do not refer to the ethnicity of juvenile offenders. According to the 2002 study, in just 3% of cases the ethnic origin was mentioned and referred to as having been of Roma origin.[44]

3. The sanctions system

3.1 Informal sanctions

The Code of Criminal Procedure and the Criminal Code provide for the suspension of criminal proceedings in cases in which the committed act does not represent the social danger of an offence, for instance if the offence is too trivial to justify prosecution. Suspension of criminal proceedings is legally based on Article 10 of the Code of Criminal Procedure[45] and Article 18^{1} of the Criminal Code, which provides for the removal of penal responsibility. In this case, the prosecutor replaces penal responsibility with administrative responsibility and applies an administrative sanction such as a reprimand.

As a further informal sanction in terms of diversion, victim-offender mediation has emerged in recent years. The legal basis is the Law on Mediation and the Organisation of the Mediator Profession.[46] In 2010[47] the Code of Criminal Procedure was amended and refers directly to mediation, providing that criminal proceedings are to be suspended if a mediation agreement according to the legal requirements has been reached.

The Law on Mediation provides for victim-offender mediation in a separate chapter and is applicable both to minors and adults. It stipulates principles and

42 UNICEF (2005), p. 177.

43 *Damboeanu* 2002, p. 554.

44 *Damboeanu* 2002, p. 562.

45 The cases stipulated by Article 10 Criminal Code are for instance the act has not the degree of social danger of an offence, the preliminary complaint is missing or has been withdrawn, or the lack of one of the constitutive elements of an offence.

46 Law No. 192/2006.

47 The "Small Reform Law" No. 202/2010 was adopted in order to accelerate civil and criminal proceedings.

the procedure of mediation and determines standards regarding the formation and the profession of the mediator. Mediators need to be authorized by the Council of Mediation and subsequently enrolled in an officially approved list. A mediator shall not be heard as a witness in a criminal procedure unless the involved parties relieve a mediator of his/her professional discretion. The process of mediation is voluntary for the parties. Participants are free to revoke their agreement to assist mediation at every stage of the mediation process.

Regarding victim-offender mediation, the law stipulates, for the case that mediation has been successful prior to the initiation of criminal proceedings, that the victim is excluded from filing charges for the same offence later on. In case mediation takes place after the criminal proceedings have been opened, the process is suspended as long as the mediation process is still ongoing. The mediator has the duty to inform the court about the result of mediation. If victim-offender mediation is successful, the court will dismiss the case.

The use of mediation is limited to such offences where criminal action is initiated upon prior complaint of the victim, or reconciliation of the parties removes criminal liability according to criminal law dispositions. According to the Criminal Code, such offences are battery or other forms of violence, bodily harm, breaking and entering, seduction, theft upon prior complaint and similar offences.

Unfortunately, the law does not provide for the involvement of police officers, for instance to inform the victim of the possibility of victim-offender mediation and to pave the way for a broader application thereof. Also, a further obstacle for wider application could be the fact that the parties have to pay for mediation services themselves.

3.2 Formal sanctions

Formal sanctions applicable to minors are listed in a special chapter in the Criminal Code. As already mentioned above, there is no independent law on juvenile delinquency in Romania. The Criminal Code contains a graded catalogue of sanctions, divided into educational measures and penalties. Educational measures are given priority over penalties, which shall only be applied if an educational measure would not be sufficient for correcting the minor's behaviour. In choosing a sanction, the degree of social danger of the committed act, the minor's physical condition and degree of moral and intellectual development, his/her behaviour, the conditions in which he/she lived and was raised, and further aspects likely to characterize the minor shall be taken into account.

The Criminal Code sets out the following educational measures:

- reprimand (mustrarea)
- supervised freedom (libertatea supravegheata)
- admission to a re-education centre (internarea intr-un centru de reeducare)

- admission to a medical-educational institution (internarea intr-un centru medical-educativ)

A reprimand is intended to show a minor the degree of seriousness of his/her criminal behaviour, and to advise him/her to adjust and improve his/her behaviour. The measure can be seen as a warning for the juvenile that a more severe measure or a penalty will be imposed should he/she re-offend. Reprimands are pronounced by the court at the trial.

Supervised freedom means that the minor will be placed under special supervision in order to watch closely over the minor in order to correct his/her behaviour. Persons responsible for the supervision of minors are – depending on the circumstances – the parents, foster parents, legal guardians, or, if they cannot ensure satisfactory supervision, a trustworthy person, preferably a close relative, or an institution legally authorized with the supervision of minors. The court orders supervised freedom for the duration of one year, which means the measure can be neither shortened nor extended and can thus not be imposed on minors over 17 years of age. The measure ends no later than when the minor has achieved majority. The court can decide that the juvenile shall fulfil one or more of the following obligations:

- not to frequent certain places,
- not to come into contact with certain persons,
- to carry out unremunerated activity in an institution of public interest selected by the court for a duration of between 50 and 200 hours, not exceeding three hours per day, after school and during holidays.

After issuing a measure of supervised freedom, the court shall inform the minor's school or place of work, and where applicable, the court chooses the institution where the minor is to carry out the specified activity.

If the minor infringes determined rules, eludes supervision or commits an act prohibited by criminal law, the court revokes supervised freedom and instead orders the measure of admission to a re-education centre. Where the act provided by criminal law is an offence, the court can order placement in a re-education centre or apply a penalty. The term of one year begins on the date when the measure of supervised freedom service commences.

Admission into a re-education centre is ordered when the other educational measures are deemed insufficient, and the offender and the offence do not yet justify the imposition of a penalty. The measure focuses on the education of the minor, providing for the possibility of school education or vocational training. The school building and training centre are located on the premises of the re-education centre. In principal, the juveniles spend their full time in the centre. However, minors have the possibility to leave the centre during holidays, or for activities such as museum visits, excursions, etc. under supervision.

The measure is imposed for an indeterminate period, but can only last until the minor reaches the age of 18. However, the court can order that the measure

be prolonged by another two years (until the person reaches the age of 20), if it is necessary for achieving the initially intended aim of the admission.

If at least one year has passed since admission to a re-education centre and the minor has shown clear signs of correction, of seriousness in study and in the acquisition of professional training, he/she can be released before coming of age. This release is, however, conditional, because the court can revoke it should the minor behave inappropriately.[48]

Admission to a (principally closed) medical-educational institution is ordered for minors who are in need of medical treatment and special education due to their physical and mental condition. The measure is imposed for an indeterminate period but ends when the minor turns 18. In case it is necessary for achieving the purpose of admission, the court can extend placement for up to two further years starting from the minor's 18th birthday. If medical treatment is no longer necessary, the measure must be annulled and if necessary the court can place the youngster in a re-education centre. At present, there are no medical-educational institutions in Romania.

If during his/her stay in a re-education centre the minor commits a new offence for which the law prescribes the penalty of imprisonment, in a medical-educational institution or following early release, the court shall revoke admission and impose a penalty. Where a penalty is deemed unnecessary, the measure of admission shall be maintained and release shall be revoked.

Where the court feels that educational measures are insufficient for correcting the exhibited behaviour, it can impose a penalty instead. In doing so, it takes the degree of social danger and the individual circumstances of the minor into account. Romanian penal law divides penalties into imprisonment and fines. The limits of penalties (between 15 days and 30 years) are reduced by half for youngsters. After reduction, the maximum term of the penalty shall not exceed 5 years. If the law provides for the penalty of life imprisonment for an offence, the minor shall receive a penalty of 5 to 20 years.

Furthermore, the court can apply that serving the penalty be conditionally suspended. The period of suspension consists of the length of the imposed prison term to which six months to two years are added. In case the applied penalty is a fine, the period of conditional suspension is six months.

The court can combine the conditional suspension of the penalty of imprisonment with the supervised or controlled suspension of the penalty for the duration of the trial period, but only until the minor reaches majority. The minor will be supervised by a person or an institution as already described above regarding the measure of supervised freedom. At the same time, the court can also

48 In practice, some criticize that the measure is ordered for an indeterminate period, the term 'improvement of behaviour' is open for ambiguity and discretion and depends on subjective factors.

order one of the obligations mentioned in the measure of supervised freedom, such as community service.

4. Juvenile criminal procedure

4.1 Preliminary proceedings

Criminal procedure includes different stages: preliminary proceedings, trial and the execution of sentences.

In a criminal procedure involving minors, the Code of Criminal Procedure is applied, which stipulates procedural provisions relating to minors in a special chapter.[49] These dispositions ensure that minors are entitled, in addition to the rights provided for adults, to their own age-specific rights regarding preventive measures, and to guarantee that criminal processing does not damage the physical, psychological or moral development of the minor.

Lead institutional actors involved in preliminary proceedings are the police and the Public Prosecution Service. The police conduct the preliminary proceedings under the supervision of the Public Prosecutor's Office. The purpose of preliminary criminal prosecution is to find evidence for the committed act, to identify the delinquent and to assess his/her responsibility to finally state whether the suspect should be referred to the trial stage.

The law stipulates that legal assistance for minors is obligatory at the preliminary stage. During short detention and pre-trial detention, minors shall be separated from adults in areas specifically designated for minors.

In case the minor is under the age of 16 years, the involved criminal prosecution body may order that probation officers, parents or tutors, curators or supervisors of the minor be involved in the preliminary proceedings.

During the preliminary phase, the same preventive and security measures can be applied to minors as for adults, yet with special provisions regarding minors. Preventive measures are short detention, the prohibition from leaving the place of residence, and pre-trial detention. Regarding security measures, medical internment, or obligations to undergo medical treatment and protection measures can be applied to minors.

Regarding preventive measures, for the age group of 14 to 16 year olds the measures of short detention and pre-trial detention can only be ordered if the minor has committed an offence for which the law provides the sentences of life imprisonment or more than 10 years imprisonment. Criminal law states that the short detention of minors of this age group cannot exceed 10 hours and an extension can be imposed by the prosecutor for no more than a further 10 hours. Minors older than 16 years can be held in short detention for up to 24 hours, like

49 Dispositions introduced by Law No. 281/2003.

adults. According to the law, the police or public prosecutor notify the minor's parents or tutor, curator or supervisor about the imposition of a preventive measure. In the case of short detention, this occurs immediately, and within 24 hours in the case of pre-trial detention. If the minor is held in pre-trial detention, the Probation Services shall also be informed.

Minors can make use of the same legal remedies as adults, such as the complaint (against the order of the criminal prosecution body), an appeal (against the decision of the court by which the preventive measure was imposed) and a final appeal. Respect for the rights of (and observance of the special regime provided by law for) minors in short detention or in pre-trial detention is ensured by the control of a judge designated by the chairman of the court, by visits to detention facilities by the prosecutor and other authorities provided by law to visit preventive detainees.

Until 1989, there was the institution of the 'minor's prosecutor' which provided for a specialization in cases involving minors. Cases were prosecuted and resolved by the same prosecutor. The institution of the minor's prosecutor was abolished in 1990. In recent years, there have been advanced trainings and skill enhancements for the specialization of prosecutors. Special units are being created at present at the level of the prosecutor's office and the police in order to ensure competence in the solution of cases involving minors.

Once the investigations have been completed, the prosecutor may close the case for procedural reasons (such as the absence of a complaint from the victim in cases where the prior lodging of a complaint is necessary), suspend the case or submit the file to the court. Among other reasons, suspension of the case is possible when the act committed does not represent the social danger of an offence, for instance if the damage caused by the committed act is of little account and does not justify prosecution, if there is no defined offence in the law that covers the exhibited behaviour, or if somebody else but the minor committed the offence.

4.2 Judicial trial stage

In Romania, there are four court levels within the judicial system: courts of first instance (Local Courts), tribunals (one for each county and one for Bucharest), specialized tribunals (such as commercial tribunals or the tribunal for family and minors), Courts of Appeal and the High Court of Cassation and Justice. The two degrees of judicial redress are appeal and final appeal (recourse). Judges dealing with minors' cases sentence either sitting alone, or in panels of two or three, depending on the court level (court of first instance, Court of Appeal, or tribunal)[50]. Judges are designated by the chairmen of the judicial body, or, as the

50 Art. 54 Law on the Organisation of the Judicial System, Law No. 304/2004.

case may be, by the chairmen of the sections who decide on the composition of the panel of judges, normally at the beginning of the judicial year, with the approval of the executive college of the judicial body in order to ensure the continuity of the panel.

The Law on the Organisation of the Judicial System initially provided for the establishment of Family and Minor Courts with competences in civil and penal law, which now remained as one possibility within the law. For reasons of better implementation, the law now stipulates that Courts of Appeal, tribunals and Local Courts in Romania establish special sections or panels (*sectii/ complete specializate*) for criminal and civil matters with competencies in family cases and cases involving minors.[51]

At present, there exists one specialized Family and Minor Court, operating in Brasov (*Tribunal Brasov*) since November 2004.[52] The establishment of the court was realized within the framework of a 'Phare project' in cooperation with the French Ministry of Justice.[53] The court was initially established as a court of first instance for minors as suspects or victims. Later on, in 2005, the court also became a court of judicial control, dealing with appeals and final appeals.

As a court of first instance in criminal cases, the Family and Minor Court only deals with grievous offences such as murder, homicide, rape, torture, robbery resulting in death, money laundering, intellectual and industrial property related offences, etc., as provided by Art 27.1 of the Code of Criminal Procedure, which account for only a small share of the offences committed by minors. The Court of Appeal decides on judgments made by the courts of first instance (Local Courts). As a Court of Final Appeal in penal cases, the court rules over decisions of Local Courts.

Prior to the establishment of the Family and Minor Court in Brasov, activities for setting up specialized courts for minors were carried out in different cities in Romania, such as the pilot project for a specialized court in the city of Iasi in the year 2000. The project was extended in the following years to other cities in the same county as well as to two other counties in Romania.[54] The courts are now operating as tribunals with special sections.

Although the Law on the Organisation of the Judicial System provides for the establishment of special sections or panels dealing with minor's cases, practically in addition to criminal proceedings involving minors, trials against adults are also held there. As well, judges working in the specialized sections or panels for family matters do not deal exclusively with family cases but with

51 Art. 35-39 Law on the Organisation of the Judicial System.

52 In May 2008, four judges were working at the court.

53 PHARE RO 2003/IB/JH-09 (2006).

54 The NGO Association Alternative Sociale Iasi, the Magistrates Association of Iasi and the British Embassy supported the project.

other legal matters as well. Except for the Family and Minor Court in Brasov there are no other courts in Romania that are completely specialized in family matters or cases involving minors. Iasi tribunal is the only court with a section completely specialized in penal matters involving minors.

As regards the specialization of judges working on cases involving minor offenders and victims, there is no explicit requirement for the judges in terms of special training. Within the framework of the mentioned Phare project between the Ministries of Justice in France and Romania, from 1 October 2004 to 30 November 2006, 490 judges and public prosecutors were trained in juvenile justice.[55] Beside judges and public prosecutors, probation officers, judicial administration officers and staff of the National Administration of Penitentiaries also participated in training courses on juvenile justice.

Furthermore, the National Institute of Magistrates, the Ministry of Justice and non-governmental organizations (such as the Association Alternative Sociale Iasi) regularly organize training courses on juvenile justice issues for judges and prosecutors, upon which participants receive a certificate. Seminars cover topics such as the role of the judge and prosecutor regarding the protection and promotion of the rights of the child, psychology, mental, physical and sexual abuse, trafficking in children and domestic violence, relevant EU-legislation and practice of the European Court of Human Rights. The National Institute of Magistrates organizes numerous training courses on juvenile justice as well as the annual summer school for judges and public prosecutors in Sovata. Courses were also organized in cooperation with the German Foundation for International Legal Cooperation on topics such as "Protection of Minors in Criminal and Civil Law" and "Youth Courts".

If the principle that proceedings including minors should be held in specialized courts (sections, panels or tribunals) is not respected, the sentence will be null and void. This principle is also valid when a minor turns 18 during trial proceedings. Law no. 356/2006 brought changes to the Code of Criminal Procedure, which had previously stipulated that normal penal procedure should be applied when a minor turned 18 in the course of the proceedings. Now, the Code states that when an accused has committed an act while under the age of 18 years, special dispositions of the Code of Criminal Procedure shall be applied.

Criminal procedure law also states that sessions where juvenile delinquents are tried shall be held in camera and separately from sessions involving adults. In practice it has been observed that proceedings are not always held separately. Juveniles have in fact come into contact with adult defendants and were present at their hearings, although progress has been made to ensure the closed character of the sessions.[56]

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55 PHARE RO 2003/IB/JH-09 (2006), p. 6.

56 See for instance UNICEF 2005, p. 100.

The Code of Criminal Procedure provides that sessions be public where minor and adult defendants are charged together. However, proceedings can be conducted separately. Regular provisions of the Code of Criminal Procedure regarding public sessions are given priority, but all other special provisions for minors apply regarding the ruling of cases by designated judges working on cases involving minors, obligatory delivery of evaluation reports, the parties summoned, the execution of sentences, etc. This aspect was approved by a decision of the High Court of Cassation and Justice in 2005.[57]

According to the Code of Criminal Procedure, the Probation Service shall deliver evaluation reports, which are ordered either by the Public Prosecutor's Office or the court. The Probation Service (formerly known as Social Reintegration and Supervision Services) plays an appreciated role in trial proceedings. They prepare so-called 'evaluation reports' on the risk that the minor poses to public safety as well as a social prognosis. Moreover, the Probation Service supervises court-ordered educational measures and obligations, reports to the court on the development of a minor in the course of the enforcement of measures, provides psycho-social counselling and assistance, and aftercare. The Probation Service also offers counselling to victims.

Besides personal data, the evaluation reports contain information on the behaviour of the minor, his/her intellectual and moral development, psychological profile, physical condition, school performance, perspectives on reintegration, living conditions, police record and his/her behaviour before and after having committed the act. The reports are based on conversations with the minor, his/her parents and other persons or institutions in close contact with him/her, such as the family doctor, teacher etc. The absence of an evaluation report is a procedural error and results in the nullity of the trial.

Until the year 2007, a Board of Guardians undertook 'social inquiries' with minor defendants and results were brought before the court. The reports gave information on the behaviour of the minor, his/her physical and mental condition, living conditions, information on the past of the minor, fulfilment of parental duty, care and supervision etc. Often, social inquiries were incomplete and very formal and thus not very useful for judges. Comparing the social inquiry with the evaluation report as regards human resources, provided information, support in rendering a decision whether to apply an educational measure or a penalty, the actual regulation based on the evaluation report has been deemed by many practitioners as being superior to its predecessor.[58]

The proceedings are held in presence of the accused, unless the minor absconds from justice. Beside the involved parties, representatives of the Probation Service, parents or tutors, custodians, and other persons whose presence the court

57 Decision No. 3854/2005.

58 See for instance *Iordache* 2007, p. 162.

considers necessary are summoned to trial. Their presence is not mandatory, and the trial is not adjourned in case the summoned persons do fail to appear.

In case the minor is under the age of 16 years, the judge may dispose that the minor shall not take part in the proceedings if he/she considers that the judicial investigation and hearing may negatively affect the minor.

Legal assistance is obligatory at the trial stage. The Bar Association appoints a lawyer after request from the court, unless the minor has already chosen a lawyer. In the different procedural stages, another lawyer is appointed due to the fact that every institution has to ensure mandatory legal assistance and also due to the Bar's internal organization.[59] Hence, the minor may be defended by different lawyers during criminal prosecution, trial at court of first instance, appeal and final appeal. Lawyers are not specially trained for cases involving minors and there are no guidelines on such special training.

Legal proceedings in cases involving minors often last for a long time, due to a lack of human resources and overburdened courts. Therefore, sanctions cannot be promptly applied. There are however exceptions, and some courts try cases with minors within a reasonable amount of time. For instance, the average duration of a legal proceeding in criminal as well as civil matters at the Family and Minor Court in Brasov is up to six months as regards first instance, appeal and final appeal.[60]

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

A large number of juveniles are issued an order of no further criminal prosecution by the prosecutor, who turns penal responsibility into administrative responsibility, which can theoretically result in a reprimand or a small fine (Art. 91 Criminal Code). These cases of delinquent minors over 14 years where criminal prosecution is not initiated should be basically referred to the Child Protection Directorate, but the police and the Public Prosecutor's Offices do not refer all cases. Thus most cases stop at the level of the Public Prosecutor's Office.[61]

As statistical data relating to the county of Iasi show, in the period from 1998 to 2002, out of 2,558 minors investigated, in 62% (1,574) of the cases criminal proceedings were suspended. Due to probation projects widely applied in Iasi County since 1998, in which police officers and prosecutors were specialized on cases involving minors, a growing trend of dismissal could be

59 UNICEF 2005, p. 106.

60 Bilantul activitatii tribunalului pentru minori si familie Brasov in perioada 01.01.2007-31.12.2007, p. 14-15.

61 UNICEF 2005, p. 149-150.

observed.[62] Nationwide statistical data about this form of diversion show that the number has been growing over recent years. In 1995, 28.2% of the cases involving minors were suspended on the basis of Art. 18[1] Criminal Code, rising to 53.1% in 1999, to 69,2% in 2003 and reaching 80.8% in 2007.[63]

There are no nationwide statistical data regarding the application of victim-offender-mediation involving juveniles. Therefore, results of evaluation studies of the first victim-offender mediation pilot projects will be presented instead.

In 2002, two pilot centres in the cities of Bucharest and Craiova were established to provide victim-offender mediation. The projects, aiming at introducing restorative justice elements in Romania, were carried out within the scope of the programmes "Restorative Justice – a possible answer to juvenile delinquency" and "Enhancement of the Juvenile Justice System and Victim Protection". The legal basis for the victim-offender mediation projects lay in several ordinances of the Ministry of Justice.[64] The centres operated in cooperation with the Direction of Probation Services (then called: Direction of Social Reintegration and Supervision) within the Ministry of Justice, the Centre for Legal Resources, and the foundation "Family and Child Protection". The target group were minors and adolescents aged 14 to 21. A team of two mediators, a psychologist and a social worker carried out the mediation process. The chosen cases mainly involved offences against bodily integrity, harassment, damage to property, insult – all offences in the case of which the victim has to file a complaint. In 2004, the category of cases was extended and also included theft.

The pilot project was evaluated in 2003[65] and 2004[66] with the aim of analyzing the overall functioning of the centres and the problems they encountered in order to optimize the centres' activities. Some of the findings of the evaluations, which were carried out by scientists from the Institute of Sociology of the Romanian Academy, were as follows:

- One positive result was a high grade of satisfaction among the involved parties, and that mediation met their interests and needs for resolving the case in a de-penalized manner.
- Among the obstacles found was the cooperation with other judicial institutional actors such as the police and the public prosecutors, which was not predominantly positive. The pilot centres were not seen as official public centres, which resulted in a lack of acceptance. Public

62 *Balahur* 2004, p. 95.

63 Source: Public Ministry, Prosecutor's Office attached to the High Court of Cassation and Justice.

64 Ministry of Justice Ordinances No. 1075/C2002, 2415/C/2003, 400/C/2004.

65 Evaluation study by *Radulescu/Banciu* 2004.

66 Evaluation study by *Radulescu/Banciu/Damboeanu/Balica* 2004.

prosecutors were not fully aware of the aim, content and impact of the projects. Judges were less sceptical than the other institutional actors regarding victim-offender mediation, but it has nonetheless been noted that judges did not sufficiently inform the involved parties in criminal proceedings about the availability of mediation. The majority of judges in the counties in which the projects took place did not inform the parties and did not transfer cases to the mediation centres.

- A further obstacle was that after mediation, the parties had to appear before the court again to inform the judge about the outcome of the process, even if it was positive.
- As well, some mediators reported great difficulties in convincing victims and offenders to participate.

Beside the difficulties, the overall evaluation of the projects was positive and a continuation and extension of the projects was recommended. Unfortunately, due to a lack of further financial resources, the activities within the centres were stopped at the end of the year 2004.[67] Over the following years, mediation centres in different cities in Romania have been established by NGOs, providing for mediation services including victim-offender-mediation. Since 2004, the mediation centres in Romania have organized professional training courses for mediators and legal practitioners in partnership with experts from abroad. Still, the implementation of mediation varies in the different projects. However, the initiatives are grounded on general restorative justice principles and offer alternative ways of dealing with the aftermath of offences and enhancing community safety.

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

In 1977, legislative changes led to the abrogation of the penalty of imprisonment for minors, regardless of the offence committed. Penalties were replaced by educational measures such as admission into a special school for work and re-education, and supervision through the labour collective or school. In the period from 1980 to 1989, the majority of convicted minors were sent to special schools of work and re-education (between 48.2% and 67.5%).

67 From 2002 to 2003, financial support was provided by the Centre for Legal Resources and the UK Department for International Development, and in 2004 through Phare.

Table 3: Number of convicted minors and imposed educational measures

Year	Total convicted minors	Supervision through the labour collective or school (in %)	Admission into a school for work and re-education (in %)
1980	1,819	51.8	48.2
1981	2,272	40.0	59.9
1982	3,179	38.8	61.2
1983	4,936	35.8	64.2
1984	5,449	32.5	67.5
1985	5,686	34.8	65.2
1986	5,322	35.7	64.3
1987	4,460	36.1	63.9
1988	1,334	44.9	55.1
1989	2,789	44.3	55.7

Note: In the years 1984, 1986, 1987 and 1988 amnesty decrees were issued for some penalties and amnesty actions for some offences.
Source: Romanian Statistical Yearbook 1993, 645.

In recent years, the number of educational measures applied to minors has slightly increased. This development to promote educational measures is also due to the establishment of the Social Reintegration and Supervision Services in 2002. However, courts are still quite reluctant to apply educational measures. Compared to penalties, the number of educational measures is still low.

Courts have also been quite reluctant to order community service as part of the educational measure of supervised freedom. This can be traced back to the fact that the infrastructure to apply community service is not yet fully developed and the number of institutions for serving community work is still quite low. Furthermore, changes in the Criminal Code over recent years led to incertitude and reduced motivation to apply this educational measure.[68]

On the other hand, a tendency has emerged in the courts to impose custodial sentences to a wide extent. Even though prison sentences shall only be imposed if educational measures are deemed insufficient, courts mainly impose prison sentences. However, it must be noted that the number of prison sentences has

68 *Dumitru* 2006, p. 58.

declined significantly over recent years and educational measures are being more frequently applied.

After 2002, when the predecessor to today's Probation Services was established, the share of imprisonment decreased and an increased number of such sentences were conditionally suspended. In 1993, conditional suspensions made up 3.8% of all ordered sanctions, rising to 18.4% in 1996 and to 22.7% in 2002.[69]

In the year 1996, of 10,377 convicted minors 4,667 (almost half) were given prison sentences. In the following years the number of minors sentenced to prison dropped and accounted for roughly one quarter of all sentences in 2006 – or 1,638 out of 6,145 convicted juveniles.

69 See *Banciu* 2004, p. 92.

Table 4: Number of convicted minors, applied sanctions between 1990 and 2006

Year	Convicted minors	Supervision through the labour collective or school	Admission into a school for work and re-education	Fine	Reprimand	Supervised freedom	Admission into a reeducation centre	Admission into a medical-educational institution	Imprisonment	Other*
1990	1,983	1,641	342	---	---	---	---	---	---	---
1991	3,784	3,072	712	---	---	---	---	---	---	---
1992	4,590	2,632	1,958	---	---	---	---	---	---	---
1993	6,940	---	---	164	650	1,813	2,241	37	1,772	263
1994	9,121	---	---	309	930	1,931	919	41	4,167	824
1995	9,783	---	---	407	926	1,711	551	35	4,557	1,596
1996	10,377	---	---	447	1,003	1,860	465	18	4,677	1,907
1997	11,802	---	---	538	1,476	2,027	620	34	5,167	1,940
1998	11,196	---	---	394	1,669	1,927	649	42	5,149	1,366
1999	8,797	---	---	375	1,170	1,328	434	22	4,091	1,377
2000	6,738	---	---	284	684	1,019	291	29	3,215	1,216
2001	6,726	---	---	267	510	1,057	277	33	3,029	1,553
2002	7,005	---	---	289	452	886	361	23	2,867	2,127
2003	6,820	---	---	314	466	914	247	12	2,577	2,290
2004	6,341	---	---	234	453	537	235	4	1,794	3,084
2005	6,796	---	---	237	491	702	298	4	1,860	3,204
2006	6,145	---	---	269	436	557	344	10	1,638	2,891

* Conditional and supervised conditional suspension of the penalty of imprisonment, community service.
Source: Ministry of Justice.

After 1990, the number of definitively convicted juveniles increased. In 1990, 43.5% of accused minors were convicted, rising to 78.2% in the year 1994 and to 92.9% in 1997.[70] In the following years the number of accused minors decreased slightly. A similar development was to be seen as regards convicted adults. Between 1990 and 1997, the crime rate[71] rose steadily and peaked in the year 1997 at 496 definitively convicted persons per 100,000 inhabitants. The increased number of convictions from 1990 to 1997 is especially related to the rising number of juveniles suspected of having committed an offence in that time period. In the year 1990, the number of suspected juveniles was 5,490 rising to 14,279 in 1993 and culminating at 22,118 in 1997 (see *Table 1* above). Furthermore, it could be observed that the number of registered heavy crimes during that time period increased.

In addition, the court system has undergone reorganizations after the political changes in 1989, which had an impact on the efficient functioning of the courts. In the years after 1989, a tendency of the courts could be observed to be quite lenient towards juvenile offenders, whereas after 1993 court sanctioning became harsher, which was also due to a drastic increase in registered juvenile delinquency.[72]

The years following 1990 were also characterized by a number of legal changes and reforms, resulting in the establishment of new offences and the abrogation of some forms of crime.

7. Regional patterns and differences in sentencing young offenders

With regard to the sentencing practice against juvenile delinquents, there are no statistics and studies which provide information about regional distinctions.

The only statistics providing data on the regional level (counties) are offered by the Prosecutor's Office, indicating the number of juveniles prosecuted in each county. However, no studies are yet available which relate these numbers to the juvenile population data in the respective counties.

70 *Grecu/Radulescu* 2003, p. 356.

71 In Romania, the crime rate refers to the number of persons definitively convicted per 100,000 inhabitants.

72 See *Banciu/Radulescu* 2002, p. 251.

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

Romanian law does not contain special provisions with regard to young adults. Thus, the general adult law is applied to this age bracket. However, there are some exceptional provisions in the Criminal Code that refer to young adults.

With regard to the educational measure of admission into a re-education centre, the court can order the prolongation of admission for minors who have turned 18 for a maximum of two more years if it is necessary in order to achieve the purpose of admission. The measure of admission into a re-education centre cannot yet be directly imposed on young adults. Such measures can merely be prolonged under the above mentioned conditions if the minor has achieved majority.

Regarding the sentencing practice, courts may impose milder sanctions against young adults due to their age. The Criminal Code does not explicitly refer to the age of the accused as grounds for mitigation, but in practice judges often impose less harsh sanctions against adolescents. In their sentence motivation, judges often refer to the fact that the prospects of reintegration are better for young adults.

9. Transfer of juveniles to the adult court

The Law on the Organisation of the Judiciary from 2004 provides that proceedings involving minors have to be tried before specialized courts. There exists only one specialized Family and Minor Court in Romania (in Brasov). The majority of courts are in the process of establishing special panels and sections to try cases involving minors. If a minor commits an offence, these special panels, sections or the Family and Minor Court are competent for dealing with the case. The law in Romania does not provide for referrals or transfers to an adult court.

10. Preliminary residential care and pre-trial detention

The Code of Criminal Procedure states in a separate chapter that minors are – besides the rights that apply to adults – entitled to special rights according to their age, taking into account that deprivation of liberty should not harm the minor's physical, mental or moral development. The periods for detaining minors are significantly reduced compared to those provided for adults. According to the Code of Criminal Procedure, for the age group from 14 to 16 years pre-trial detention is provided if the minimum sentence of the committed offence is 10 years of imprisonment. Pre-trial detention for minors of this age group shall not exceed 15 days. In exceptional cases, pre-trial detention may be

prolonged, but shall not exceed 60 hours during preliminary proceedings. If a sentence of life imprisonment or a sentence to imprisonment of more than 20 years has to be imposed, as an exception a prolongation for up to 180 hours is possible.

The Code of Criminal Procedure stipulates that pre-trial detention for minors aged 16 to 18 years shall not exceed 20 days, but in existence of legitimate reasons the period can be prolonged several times, each time for another (maximum of) 20 days. Altogether, however, the period of pre-trial detention shall not exceed 90 days. Only in exceptional cases, if a sentence to life imprisonment or to imprisonment for more than 10 years is to be expected, pre-trial detention can be prolonged for a maximum of 180 days.

The Code states further that within 24 hours the parents, legal guardian or the Probation Service shall be notified and a lawyer is to be appointed. Minors shall be kept separately from adults during pre-trial detention. With regard to re-education centres, a preliminary placement for minors is not provided.

Judges, public prosecutors and other authorized institutions observe compliance of the rights stipulated for minors. Minors can make use of legal remedies such as complaints against measures of the investigation authorities, and appeals against judicial decisions.

According to a criminological study of the Prosecutor's Office by the High Court of Cassation and Justice, in 1989 almost one quarter of all accused minors was placed in pre-trial detention. This figure rose to almost 45% in 1990. In 1991, the share of accused minors even surpassed the proportion of accused adults in pre-trial detention by almost 3%. In the years following 1991, the share of accused minors being sent to pre-trial detention decreased and was around 16% in 1999.[73]

According to a study by UNICEF, from 2003 to 2004, 20% of suspected juveniles were held in pre-trial detention, 3% were held in custody, 6% were arrested in another case, and the majority of the accused (71%) stayed in liberty during the criminal proceedings.[74]

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

Imprisonment has its legal basis in the Law on the Execution of Criminal Penalties,[75] which has been in force since October 2006. With this law, several distinct forms of imprisonment were instituted. Concerning the imprisonment of juveniles, there are closed (custodial), half-open and open (non-custodial) types

73 Cited in: *Banciu/Radulescu* 2002, p. 249.

74 UNICEF 2005, p. 46.

75 Law No. 275/2006.

of imprisonment. The regime of maximum security is not applied to minors. The Law further prescribes that juveniles and adults have to be kept separated from each other.

The so-called re-education centres have their legal basis in the Decree on the Execution of the Educational Measure of Committal to a Re-education Centre[76] and the Law on the Execution of Criminal Penalties.

A further important measure that was taken for modernizing the prison system was the shift of the General Direction of Penitentiaries (former denomination) from the subordination of the Ministry of Interior to the Ministry of Justice in 1990, which cleared the way for a demilitarization of the prison staff, which was one of the main objectives of the Action Plan for the Reform Strategy of the Judicial System from 2005-2007. Moreover, the shift to the Ministry of Justice was to bring activities closer to judicial authorities than to other national authorities such as the police.[77]

At present, Romania has two prisons for minors and young adults (*penitenciare de minori si tineri*) in Craiova and Tichiliesti, as well as three re-education centres (*centre de reeducare*) in Buzias, Gaesti and Targu Ocna. As of July 2007, there were a total of 264 juveniles in re-education centres, comprising 82 juveniles (all male) in Buzias, 73 (62 male, 11 female) in Gaesti and 109 (all male) in Targu Ocna.[78] Since 2005, the number of juveniles in re-education centres has slightly increased. All three re-education in Romania are defined as half-open institutions.[79]

Most juveniles in custody serve their sentences in special prison units established in regular adult prisons. As of July 2007, there were a total of 638 juveniles in prisons and re-education centres, of which 83 were imprisoned in Craiova juvenile prison and 114 in Tichilesti.[80]

A comprehensive study from 2004 covering 780 juveniles in custody[81] shows that 50.2% of them were kept in adult prisons, 30.1% in juvenile prisons and 19.7% in re-education centres. Roughly two thirds (64%) of the detainees were 17, followed by 24.5% 16 year olds. The shares of 14-, 15- and 18-year-olds are significantly smaller (14-year-olds: 1.5%, 15-year-olds: 7.1%, 18-year-olds: 2.9%). The high rate of illiteracy among detained juveniles is a cause for concern, reaching 20.5% for boys and 35.7% for girls. Most juveniles had been charged with theft

76 Decree No. 545/1972.

77 See *Brezeanu* 2007, p. 60.

78 Source: National Administration of Penitentiaries.

79 The juveniles institutionalized in re-education centres are involved in closed-regime activities within the centre as well as in open-regime activities in the community.

80 Source: National Administration of Penitentiaries.

81 *Banciu/Puscas* 2006.

(45.1%) or robbery (37.2%).[82] Slightly more than half of the convicted juveniles (50.6%) had previously committed other criminal offences.[83]

Since the revolution, Romania has seen a strong decrease in the number of juveniles kept in prisons and re-education centres. While there were still about 5,600 juveniles in custody in 1992, this number dropped to about 1,500 in 2000. In 2006, it sank even further to about 750 juveniles.

Table 5: Number of juveniles in re-education centres and juvenile prisons

Year	Total number of persons sentenced to imprisonment and persons held in pre-trial custody	Juveniles	In re-education centres	In juvenile prisons
1992	44,011	5,625	3,448	2,177
1993	44,521	4,676	2,278	2,398
1994	43,990	3,303	1,104	2,199
1995	45,309	2,675	620	2,055
1996	42,445	2,289	548	1,741
1997	45,121	2,613	532	2,071
1998	52,149	2,178	529	1,649
1999	49,790	1,792	477	1,315
2000	48,267	1,521	359	1,162
2001	49,840	1,432	279	1,153
2002	48,081	1,396	238	1,158
2003	44,878	944	178	710
2004	39,031	851	170	681
2005	36,700	864	195	669
2006	34,038	756	216	540

Source: National Administration of Penitentiaries.

82 *Banciu/Puscas* 2006, p. 3-5.

83 Ibid., p. 13.

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

For the past years, legislative and administrative measures have been taken in order to improve conditions in penitentiaries and re-education centres in Romania.[84] As already mentioned, one of the most important measure was the adoption of the Law of the Execution of Criminal Penalties, which introduced a differentiated detention regime, increased the rights of the detainees and strengthened judicial oversight over sentences served. The law provided for the institution of a delegated judge for the execution of criminal penalties in order to supervise and control law enforcement and to guarantee the rights of the detainees. Furthermore, the law aimed at creating living conditions in compliance with European standards and focused on the social reintegration of offenders.

With regard to improving the efficiency of human resources and to professionalizing human resource management, the National Administration of Penitentiaries has elaborated a Strategy for the Development of the Penitentiary System 2007-2010. Also, the adoption of Law No. 293/2004 on the status of civil servants of the National Administration of Penitentiaries has led to changes regarding human resource policy in order to continue the process of demilitarization and to promote a new staff mentality.

By setting up a special Juvenile Unit within the National Administration of Penitentiaries in 2005, Romanian penal justice became more specialized with respect to the treatment of juvenile offenders. One of the unit's chief responsibilities was to provide psychosocial counselling to juveniles and young adults in order to improve their chances of successful re-integration. Unfortunately, as a result of re-organization within the National Administration of Penitentiaries, the unit was closed down again in 2008.

Following the reforms, the capacity to develop programmes which aim at the rehabilitation and the social reintegration of adult and minor prisoners has improved in Romania. In 2001, specialists from the Ministry of Education and Science and the former Directorate-General of Penitentiaries elaborated the educational framework for schools in subordination of the General Direction of Penitentiaries, aiming at the development of a new structure in the educational system, which led among others to transforming re-educational centres from custodial institutions to educational centres, focusing on the protection of the minor offender. Also, within this framework, the first psycho-pedagogic

84 Especially before 1989, prisons were over-crowded and characterized by a lack of human resources. Still, in 2003, the prison population rate in Romania was 229, which was more than twice the Western European average rate, and the overcrowding rate lay at 140%.

teachers specialized on therapeutic activities for minors emerged.[85] Today, re-education centres and youth prisons provide for a wide range of education programmes and professional trainings.

One of the guiding principles of re-education centres aims at fostering the juvenile's education and personal development. Further principles include

- fostering physical and intellectual development,
- treating the juvenile as an individual,
- maintaining and developing relationships with the family and the community,
- fostering activities within the community and
- providing school education and professional training.

In re-education centres, juveniles are given the chance to receive school education (including both elementary and secondary education) and professional training (several professions), to take literacy courses, and to participate in sports and cultural activities. In addition to this, activities such as going on trips and visiting sports events help to re-integrate the juveniles into the community. Group and individual therapies aim at strengthening the juveniles' social competence and self-confidence. Since the numbers of juveniles and young adults in re-education centres as well as in prisons have dropped sharply over the past few years, teachers, social workers, psychologists, psychiatrists, therapists and chaplains can now provide more individual and intensive care.

A study from 2002,[86] in which 135 juveniles and young adults in re-education centres and juvenile prisons were asked, among other things, about their participation in professional training and their satisfaction with it, brought the following results:

- Half of the juveniles had participated in professional training courses.
- Those juveniles who had not participated gave as reasons, among other things, their insufficient level of previous education (13%) and the length of their stay, which had been too short to finish the course (4%).
- 47% of the juveniles interviewed said they were satisfied with the professional training they had taken, 26% were very satisfied, 19% indifferent, 3% dissatisfied and 1% very dissatisfied.

The study suggests an adaptation of professional training in institutions to better reflect contemporary market demands and demands arising from the fact that some of the juveniles came from rural areas.

As in re-education centres, juveniles and young adults detained in juvenile prisons are given the opportunity to follow programmes of schooling, receive professional training and take part in a range of activities, such as physical education, creative development and special educational programmes (e. g.

85 *Gheorghe/Puscas* 2003, p. 184-185.

86 *Ene/Witec* 2002, p. 6-16.

human rights, family education, communication skills, conflict management, health, preparation for life after prison, choice of future profession). Courses are managed by the prisons' educational staff, teachers and volunteers from NGOs.

Moreover, juvenile prisons provide psychotherapeutic activities, including psychotherapy, drama and art therapy. In order to prepare the juveniles for their life after prison, other activities such as sightseeing trips and outings to museums, the theatre or soccer games are also organized. Youth prisons work with governmental and non-governmental organisations for elaborating rehabilitation programmes. To foster the social re-integration of minors and enhance programmes, the National Administration of Penitentiaries collaborates with different actors such as the Ministry for Education, Science and Youth to elaborate school programmes for minors in re-education centres and youth prisons, as do the National Agency for Work and the Institute for Educational Sciences. Various non-governmental organisations like Terre des Hommes and Jean Valjean are involved in the development of seminars for "training trainers" on the prevention of child abuse in the institutional field.

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

Since 2000, and particularly in 2004, Romania has taken a number of measures to reform its juvenile justice system. This has happened especially with the prospect of the country's accession to the European Union. In this process, the establishment of Family and Juvenile Courts – or at least specialized court departments in each of Romania's 41 districts, which is currently under way – has been of prime importance. However, one of the main difficulties remains, namely that judges do not exclusively try cases involving minor and family matters, which is also due to a lack of personnel, so there is no real specialization yet on juvenile matters in the court system.

The formation of an effective juvenile justice system is further exemplified by the setting up of the Department of Probation Services within the Ministry of Justice in 2006, which offers special services for juveniles and which is tasked with improving rehabilitation measures. All reform endeavours follow to a large extent the Recommendations of the European Commission.

Romanian penal law is currently being reformed and the new Criminal Code[87] is supposed to take effect in 2011. Among other things, it includes a number of changes with regard to juvenile offenders:

- The formerly distinct categories of "educational measure" and "juvenile sentence" are to be united under the term "educational measure".

87 Law No. 286/2009.

- Educational measures shall be subdivided into custodial educational measures and non-custodial educational measures.
- Custodial educational measures will comprise detainment in education centres and juvenile prisons.
- The catalogue of non-custodial educational measures shall be reformed. These include supervision by a probation officer, participation in educational programmes (similar to the German social training courses), juvenile curfew at weekends, compulsory daily schedules under supervision of a probation officer, etc.
- The proposed regulations also include a maximum term of imprisonment of 15 years.

14. Summary and outlook

Romania's juvenile justice system is still under development. Since 2000 it has been improved through various reforms, which led to, among other things, a decrease in juvenile prison sentences and an increased application of educational measures. However, the number of prison sentences still significantly exceeds the number of educational measures, and it is still common to sentence juveniles to imprisonment. This shows, on the one hand, that the concept of (re-) education has still not gained general acceptance in Romania's system of juvenile justice, and that "antiquated" conceptions of criminal justice remain dominant. On the other hand, the high percentage of prison sentences is due to other factors as well, such as a general lack of staff and institutions to carry out educational measures. The development of Juvenile and Family Courts or specialized sections and panels within the courts and the development of the Probation Services is clearly an important step into a new direction that will pave the way for a wider application of non-custodial interventions. Although the number of judges and prosecutors who have received special training on juvenile justice issues has increased in recent years, there is still a need for a wider provision of training, including for other practitioners involved in the processing of cases concerning minors such as police officers and lawyers.

In order to provide alternatives to court sanctions, diversion measures aiming at referring minors to treatment programmes should be incorporated into the criminal justice system. In connection with this, more weight should be given to measures such as victim-offender mediation and restoration in juvenile justice. Also, cooperation and communication between the different institutions involved should be improved. Finally, it should be considered to extend the juvenile justice system to include young adults.

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Russia

Nikolai Shchedrin[1]

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

The changes in Russian society, following the death of Stalin, resulted in the adoption of new criminal legislation, which brought with it a softening of the law as regards juveniles. The Criminal Code of the RSFSR of 1960 set the age of criminal responsibility at 16 but, for certain specific crimes listed in the Code, the age was 14. Only about half the sanctions listed for adults were to be used for juveniles, and compulsory measures of an educational nature could be used instead of criminal sanctions. The Code introduced conditions under which a juvenile could be freed from criminal responsibility or sanctioning. The great majority of cases involving insignificant offences by juveniles were to come before a government-social organ – the commission for juvenile affairs, operating under the local government, which adopted educational measures both for young children and for juveniles. Preventive work in relation to vagrancy and to offending by juveniles was the responsibility of special sections of the police force, with the assistance of social organizations; the organization of prevention was regulated, primarily, by instructions issued by Ministries of Internal Affairs of the USSR and the RSFSR.

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1 The original Russian article has been slightly shortened and translated by *Mary McAuley*. Three tables (giving Krasnoyarsk data) have been omitted and so has the extensive footnoting, giving Russian sources, and the Russian literature bibliography. The reader who knows Russian, and needs the references, should turn to Professor *Shchedrin* for a copy of the original. The only additions made by the translator are this footnote, and footnotes 2, 4-7, and 9 which provide the non-Russian reader with an explanation of Russian terms.

Russia's change of direction at the beginning of the 1990s brought the drafting and adoption of new legislation. While there was no dramatic shift in the criminal-justice approach to juveniles, certain innovations were introduced. The new Criminal Code of the Russian Federation of 1996, in an action not seen since tsarist times, contained a special section "Criminal responsibility of juveniles". Likewise the Code for Implementation of Sentences (1996) and the Code of Criminal Procedure (2001) included specific sections relating to juveniles. In June 1999 a federal law "The basic principles of the system for the prevention of the neglect of children and youth offending" was passed. It covered questions relating to the prevention of delinquency, the social and pedagogic rehabilitation of delinquents, the safeguarding of their rights and interest, and also the identifying of and countering damaging influences on a juvenile's spiritual and physical development. Detailed elaboration of the provisions of the law which relate to the activities of the institutions and officials responsible for working with the juveniles is to be found in departmental normative acts: decisions of the Plenum of the Supreme Court of the Russian Federation, orders issued by the Procurator General, and the Ministries of Education, Health, and Internal Affairs. Particular issues relating to the safeguarding of the rights of juveniles, adoption, and guardianship are regulated by other legislation.

Criminal law distinguishes three age groups:

a) children[2] or those under the age of criminal responsibility
b) juveniles (14-17 years) for whom there exist special provisions in criminal law
c) adults, 18 and above, for whom the general rules on criminal responsibility and sanctions apply.

The new Criminal Code of 1996 preserved the principle of 16 as the age of criminal responsibility, with a lower age of 14 for specified crimes.[3] The comparison of the corresponding articles with those of the previous Code suggests a certain lowering of the age of criminal responsibility. But the new Code allows the officer of the law greater flexibility in applying the Code to a

2 Russian legal terminology distinguishes between 'young children' (maloletki) and 'adolescents' (nesovershennoletniye – literally 'under adult age'). Those under the age of criminal responsibility are usually referred to as 'young children'; the 14-17 year olds as 'adolescents', which I have translated as 'juveniles' throughout.

3 Part 2, article 20: homicide and attempted homicide, wilful GBH, wilful BH, kidnapping, rape, sexual offences with violence, theft, robbery, robbery with violence, extortion, illegal possession of a motor vehicle or other means of transport without the intention of theft, wilful destruction or damage to property with aggravated circumstances, a terrorist act, taking a hostage, giving a false report of a terrorist attack, hooliganism with aggravated circumstances, vandalism, theft or extortion of weapons, ammunition, explosives and explosive materials, theft or extortion of narcotic or psychotropic substances, putting the means of transport or communication out of action.

specific offender. If the juvenile "as a consequence of psychological immaturity, not caused by mental ill health, could not at the time of committing the socially-dangerous act fully recognize the facts and social danger of his actions (or lack of actions) or control them, he is not to be held criminally responsible"(Part 3, article 20).[4] A similar approach exists in relation to the maximum age for a juvenile. Article 96 of the Criminal Code allows the court, in exceptional circumstances, to take into account the action and the personality of the offender and apply the rules for juveniles to persons aged 18-20.

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

There is little statistical analysis of offences by young (under 14) children which would be classified as criminal for an older age-group. Different sources suggest that during the 1990s between 60-88,000 children, who committed such offences, annually came to the attention of the police.

Criminal offences by juveniles are documented more fully in statistical bulletins. Between 1986 and 2005 the share of juvenile crime in all registered crime averaged at 12.6%, but with considerable variation in different years. Since 1993 its share has decreased (see *Table 3*). The peak both for crimes, and for those identified in connection with crimes, was 1991-1995 (*Table 1*). Subsequently crime begins to fall apart from a blip in 1999. Criminologists point to the relationship between high crime figures and the least favourable periods in recent Russian history. The rise in 1999 followed the financial crisis of 1998.

Table 3 shows us that the age group of 16-17 year olds dominates among those identified. The share of the 14-15 year old age group declines from 1997. Girls constitute, on average, 7.4% of those identified by the police, and their share remains roughly constant. Between 1990-1997 the share of young offenders without a regular source of income doubled, thereafter this has declined, but roughly one in three committing a crime has no regular income. The percentage of those who have already committed an offence is relatively high (13.3-17.6%).

Group crime accounted for 60%-70% of all juvenile crime between 1990 and 2002; in recent years its share has declined slightly. Robbery with violence, wilful destruction of property, theft, and rape are the most common group crimes. One in three or four group crimes involves the participation of adults, usually those under 21, and these crimes are usually the more serious ones. Acquisitive crimes dominate the statistics while, at the same time, recent years have seen a significant increase in the number and the share of those which are accompanied by violence, and of violent crimes. If in 1988 the figure for homi-

4 The definition of a crime in Russian is 'a socially dangerous act', specified as such in the Criminal Code. Russia also has an Administrative Code, which lists administrative offences; these do not have the status of crimes.

cide (per 100,000 of the relevant age group) was 4.0, in 1993 it was 12.5, and in 2000 17.4; the relevant figures for GBH for these years were 8.3, 23.1, and 28.2. Other research findings point to the more rapid increase in violent crime. If the number of juveniles, identified in connection with a crime, fell by 4.7% between 1991 and 2004, and 6.2% between 1997 and 2004, the number of homicides (for these two periods) increased by 3.7 and 1.5 times; GBH by 4.2 and 2.1 times; robbery with violence by 2.2 and 1.3 times. At the same time theft, hooliganism, and crimes associated with the use of drugs have declined. New types of crime are occurring: hostage-taking, extortion, pimping, currency fraud, computer crime.

Table 1: Juveniles offenders identified in Russia 1966-2005 (average annual figures)

	1966-1970	1970-1975	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000	2001-2005
Nos. identified	81,100	90,100	104,700	110,800	134,300	192,000	176,100	152,100
% change over preceding period		+11,1	+11,6	+10,6	+12,1	+43,0	-8,3	-13,6
% change in comparison with 1966-1970	100	111.1	129.1	136.6	165.6	236.7	217.1	187.5

Source: *Kudryavsev/Eminov* 1995, p. 280; *Ministry of Internal Affairs and Court Department under the Supreme Court of the Russian Federation*, statistical handbooks.

Table 2: Juvenile crime in Russia 1966-1990 (average annual figures)

	1966-1970	1970-1975	1976-1980	1981-1985	1986-1990
Homicide and attempted homicide	669	804	785	440	308
As % of total juvenile crime	0.9	1.0	0.8	0.4	0.2
Wilful grievous bodily harm (GBH)	1,569	2,051	2,299	1,205	808
As %	2.3	2.5	2.4	1.1	0.6
Rape and attempted rape	1,912	2,448	2,982	3,263	2,745
As %	2.8	3.0	3.1	3.0	1.9
Robbery with violence	1,634	1,720	1,940	1,341	1,573
As %	2.4	2.1	2.0	1.2	1.1
Robbery	6,842	7,832	8,000	7,577	9,033
As %	9.9	9.7	8.4	7.0	6.5
Theft	29,139	33,087	43,529	58,852	91,004
As %	42.3	41.2	45.9	55.1	66.0
Hooliganism	17,545	17,935	17,775	15,092	12,478
As %	25.4	22.3	18.7	4.1	9.0
Other	9,542	14,276	17,459	18,963	19,760
As %	13.8	17.8	18.4	17.7	14.3
Total	68,852	80,153	94,769	106,733	137,709
%	100	100	100	100	100

Source: *Kudryavsev/Eminov* 1995, p. 280.

Table 3: Crime and juvenile offenders in the Russian Federation

	1980	1989	1990	1992	1994	1996	1998	2000	2001	2002	2004	2005
Recorded crimes with juvenile participation	---	159,976	162,718	199,291	221,649	202,935	189,293	195,426	185,379	139,681	154,414	154,734
As % of total recorded crime	---	18.0	17.2	16.4	14.0	11.0	10.3	8.9	9.0	9.1	9.8	9.1
Crimes per 100.000 juveniles (14 -17)	---	1,965	1,974	2,405	2,563	2,296	2,029	2,012	1,877.5	1,414.3	1,581.9	---
Juveniles identified in connection with a crime	98,580	150,051	153,169	188,186	200,954	192,199	164,787	177,851	172,811	140,392	151,890	149,981
% comparison with 1980	100	152	155	191	204	195	167	180	175	142	154	152
Juveniles as % of all identified offenders	11.1	17.7	17.1	16.4	13.9	11.9	11.1	10.2	10.5	11.2	12.4	11.6
Identified as offenders per 100.000 juveniles (14 –17)	---	1,843	1,858	2,270	2,324	2,181	1,767	1,831	1,750	1,423	1,556	---
14-15-years old identified	---	---	47,709	59,316	65,198	62,600	43,844	48,727	51,892	40,098	46,004	44,559

	1980	1989	1990	1992	1994	1996	1998	2000	2001	2002	2004	2005
Percentage of all juveniles identified	---	---	31.1	31.5	32.4	32.6	33.2	32.8	30.0	28.6	30.3	29.7
Girls	---	---	10,732	12,910	16,372	---	12,866	15,232	14,110	11,107	11,981	12,859
As % of all juveniles identified	---	---	7.0	6.9	8.1	9.0	7.8	8.6	8.2	7.9	7.9	8.6
Juveniles without steady source of income	---	---	21,815	38,689	45,325	---	---	---	57,612	46,996	49,633	48,327
As % of all juveniles identified	---	---	20.7	30.0	33.4	41.1	42.9	---	33.3	33.5	32.7	32.2
Juveniles committing a group crime	---	---	103,833	127,949	130,559	---	105,961	114,127	109,798	85,529	85,005	79,106
As % of all juveniles identified	---	---	67.8	68.0	65.0	60.9	64.3	64.2	63.5	60.9	56.0	52.7
Juveniles committing a second offence	---	---	20,923	25,021	30,313	---	29,206	29,472	29,946	25,479	22,250	24,095
As % of all juveniles identified	---	---	13.7	13.3	15.1	---	17.6	16.6	17.3	18.1	14.6	16.1

Source: Ministry of Internal Affairs and Court Department under the Supreme Court of the Russian Federation.

Table 4: Categories of juvenile crime

	1980	1989	1990	1992	1994	1996	1998	2000	2001	2002	2004	2005
Total :juvenile offenders identified in connection with a crime	98,580	150,051	153,169	188,186	200,954	192,199	164,787	177,851	172,811	140,392	151,890	149,981
Total (%)	---	100	100	100	100	100	100	100	100	100	100	100
Homicide and attempted homicide	---	479	534	637	1,310	1,361	1,302	1,694	2,126	2,118	2,021	1,820
As % of total	---	0.3	0.4	0.3	0.7	0.7	0.8	0.9	1.2	1.5	1.3	1.2
Wilful GBH	---	945	1,040	1,147	2,424	2,309	1,985	2,739	3,539	3,864	4,271	3,646
As % of total	---	0.6	0.7	0.6	1.2	1.2	1.2	1.5	2.1	2.8	2.8	2.4
Rape	---	---	---	---	---	---	1,174	1,008	1,151	1,105	1,215	1,141
As % of total	---	---	---	---	---	---	0.7	0.6	0.7	0.8	0.8	0.8
Hooliganism	---	---	---	---	---	---	13,626	14,983	16,298	16,814	1,409	1,003
As % of total	---	---	---	---	---	---	8.3	8.4	9.4	12.0	0.9	0.7
Robbery with violence	---	---	---	---	---	---	5,180	6,044	6,756	6,748	6,545	6,392
As % of total	---	---	---	---	---	---	3.1	3.4	3.9	4.8	4.3	4.3
Robbery	---	---	---	---	---	---	15,498	15,458	15,102	15,060	20,011	23,375
As % of total	---	---	---	---	---	---	9.4	8.7	8.7	10.7	13.2	15.6

	1980	1989	1990	1992	1994	1996	1998	2000	2001	2002	2004	2005
Theft	---	---	8	---	---	---	94,242	105,899	98,750	65,392	84,235	79,329
As % of total	---	---	---	---	---	---	57.2	59.5	57.1	46.6	55.5	52.9
Offences related to narcotics	---	---	---	---	---	---	8,374	6,746	5,607	4,181	2,997	2,704
As % of total	---	---	---	---	---	---	5.1	3.8	3.2	3.0	2.0	1.8

Source: Ministry of Internal Affairs and Court Department under the Supreme Court of the Russian Federation.

In 2004 the Ministry of Internal Affairs had on its register roughly 400 extremist youth groups, with about 19,500 members; 119 groups identify themselves as skinheads, a further 25 are associated with the nationalist party, Russian National Unity. Both the media and criminologists draw attention to extremist and 'race' crimes but the official statistics on juvenile crime do not have a specific line item for these. The nationality of offenders and their victims is not registered. The statistics do not support the media's concern with drug addiction among juveniles. Both in numbers and percentage terms crimes connected with drugs are clearly decreasing (*Table 4*). Less than 1% of crimes are committed by youngsters under the influence of drugs compared with a figure of 20% for those under the influence of alcohol.

No analysis of the 18-21 age group exists. Criminal activity of the 18 to 24-year-olds is higher than that of juveniles.

3. The sanctions system

Russian criminal law makes no distinction between formal and informal sanctions. Measures which are analogous to informal sanctions in German law are only envisaged for young children, i. e., for those who have committed a socially-dangerous act but are under the age of criminal responsibility. In these cases, the commissions for juvenile affairs[5] can adopt any of the following measures:

a) Require the individual to make a public apology, or one privately to an individual;
b) Issue a caution;
c) Issue a reprimand or a severe reprimand;
d) Oblige repayment of damages by a 15-year old, if he/she is earning and the repayment is not more than half a month's minimum wage, or to make good the damage within this limit;
e) Fine a 16-year old within the limits laid down by law;
f) Place a child under the supervision of parents, guardian, the work collective or a social organization, given their agreement

To understand the logic of the Russian legislator we need to distinguish three concepts: criminal responsibility, criminal sanction and compulsory educational measures. The legislation contains no definition of "criminal responsibility". Its scope is one of the most disputed subjects in the theory of criminal law. It is usual to identify all the adverse consequences that flow from a guilty act, forbidden under the Criminal Code, as constituting criminal

5 Renamed 'commissions for juvenile affairs and defence of their rights', known colloquially as KDN, the abbreviation we use.

responsibility: conviction, sanctioning (punishment)[6] and a criminal record. Some experts include compulsory educational measures under "criminal sanctions", others do not. A criminal sanction (art. 43 Criminal Code) is defined as "a measure of state coercion, imposed by a sentence of the court. A sanction is imposed upon a person, recognized as guilty of committing a crime, and consists in the deprivation or restriction of the rights and freedoms of the said person as laid down in the Code". A criminal sanction is applied "with the intention of restoring social justice, and also with the intention of correcting the behaviour of the convicted, and preventing further crimes".

Sanctions include:

a) Fine;
b) Prohibition from engaging in a specific type of employment;
c) Compulsory (community) work;
d) Corrective work;
e) Arrest;
f) Deprivation of liberty.

Fine: of between two weeks to 6 months salary, regardless of whether the juvenile has the means to pay; the court can make parents or legal representatives responsible for the payment (a provision criticized by most experts).

Compulsory (community) work[7]: from 40-120 hours to be undertaken in leisure time; maximum 2 hours per day for under 15s, 3 hours for 15-16 year olds.

Corrective work: from two months to one year, for those currently unemployed, organized by the local authority together with the Inspectorate, and to be undertaken in the juvenile's locality; 2-5% of the earnings are withheld;

Arrest: from 1 to 4 months in an "arrest-house".

Custody: a maximum of 6 years for those under the age of 16; 10 years for 16-17 year olds. A custodial sentence cannot be imposed upon an under-16 year old who commits a minor or less serious crime for the first time, and for 16-17 year olds who commit a less serious crime for the first time. For serious and particularly serious crimes the length of sentence is half that for adults.[8] In

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6 In Russian the same word – *nakazaniye* – is used for a sentence, a sanction, and punishment. Hence *Dostoevsky's* novel is Prestupleniye and nakazaniye (Crime and Punishment) and the Federal Service for the Implementation of Sentences (or Sanctions) is *Federalnaya sluzhba ispolneniya nakazanii*. I have throughout used 'sanction' as the most appropriate translation.

7 Community work, introduced as a sanction in 2005, is referred to in the legislation as 'obligatory' or 'compulsory' work rather than as 'social' or 'community' work, probably to distinguish it from the 'voluntary' social work that was a marked feature of the Soviet system.

8 The Criminal Code distinguishes between less than serious crimes (wilful and careless actions) for which the upper limit for custody is two years; less serious, and serious

circumstances when the young offender, serving a conditional (suspended)[9] sentence, commits a new but less than serious crime the court, taking into account the circumstances and the personality of the accused, can impose a further conditional sentence. The court can draw the attention of those implementing the decision to aspects of the offender's personality.

Compulsory educational measures can be imposed in cases when the offender is not held criminally liable or is not made subject to a criminal sanction. The first case may arise when the juvenile has committed a minor or less serious crime, and it is considered that the educational measures will be effective. The legislation, which does not define "compulsory educational measures", simply lists: a warning, supervision by parents, guardians or a specialized state institution, obligation to compensate for the damage done, restrictions on leisure activities and the setting of particular requirements as regards behaviour, prohibition from visiting certain localities, curfew, restrictions on traveling, requirement to return to school, or to find work (with assistance). A juvenile, sentenced to custody for a less serious or for a serious crime, can have the sanction lifted by the court which, instead, commits him or her to a secure special educational establishment (under the Ministry of Education). As a rule the young person remains in the institution until the age of 18, within a maximum period of 3 years.

In addition to the above, almost all the circumstances which warrant exemption from criminal liability for adults apply to juveniles; genuine remorse, reconciliation with the victim, statute of limitation, change of circumstances. These apply when the crime is of a minor or less serious nature, and committed for the first time.

Conditional sentences can be imposed in all cases when the sentence would be one of correctional work or a maximum of 8 years custody. The nature and circumstances of the crime and the offender's personality are taken into account. During the period of the sentence (from 6 months to 5 years) the convict can be obliged not to change residence, employment, place of education without notification; not to frequent certain localities; to undergo a course of treatment for alcoholism, drug addiction or venereal disease, etc. The court can annul or impose any of these measures during the period of the sentence. Depending up behaviour, the court can a) annul the sentence and the criminal record, b) lengthen the sentence by no more than one year c) impose custody.

A juvenile sentenced to custody can be released on parole after serving no less than one or two thirds of the sentence, depending upon the gravity of the

crimes with an upper limit of 10 years; and particularly serious crimes with no upper limit, and tougher sanctions. These are for terms for adults.

9 Since 1997, under the new Criminal Code, 'suspended sentences' have been replaced entirely by what we would term 'suspended conditional sentences', i. e., conditions are attached, whose infringement will bring the offender back to court.

crime. During parole, the same restrictions or obligations as those imposed during a conditional sentence may apply. If they are not observed, the court can return the juvenile to the place of detention to complete the sentence.

The law of 1999 refers to both individual- preventive measures and a variety of supportive and preventive measures to be carried out by the police sub-departments or departments of juvenile affairs for children who are placed on the police record. Courts, commissions on juvenile affairs (KDN), the procuracy and police can issue instructions on measures to be adopted.

4. Criminal procedures for juveniles

Procedures for dealing with a socially-dangerous act (as defined in the Criminal Code) committed by a juvenile depend upon whether or not he/she has reached the age of criminal responsibility. In the case of children who are under the age, the investigating officer, procurator or judge either rules that prosecution is inadmissible or closes the case and passes the details without delay to the commission for juvenile affairs, the KDN. The commission should decide whether to impose educational measures or to apply to court for a ruling on the placement of the child in a special educational institution. The commission's procedures for dealing with such cases are relatively simple: there is little prior preparation, the child and his/her legal representatives attend, decisions are taken by a majority vote at the meeting which must be attended by no less than half of the commission's members. If the commission decides in favour of applying for a court order on placement in a secure institution, the case is referred to the police or prosecutor for the collecting of additional documentation (on the child's living conditions, health, etc.) before the court takes the final decision.

There is no special system of juvenile justice for the review of cases involving juveniles who have reached the age of criminal responsibility but the legislation takes some account of the age of the offender by specifying that juvenile cases fall into a category of cases "with more complex procedures". Art. 420 of chapter 50 of the Code of Criminal Procedure refers to "the exceptions" noted in chapter 50, and other sections of the Code refer to special procedures for juveniles. These provisions attempt to take into account the need to prioritize protection, to individualize court proceedings and also to enrich the proceedings by giving a significant role to non-legal expert knowledge (psychological, pedagogical, medical and psychiatric). A case prepared against a juvenile must include: age and place of birth, living conditions, education, mental health and other personality traits, and any influence exerted by his/her elders. Where possible, in a case which involves a crime committed together with an adult(s), the juvenile is tried separately.

The Code recommends that juveniles awaiting trial should be under the care of parents, guardians, trustees or other trustworthy persons, or of representatives of specialist institutions for children. The Supreme Court issued a special

instruction that courts should check carefully any request from the organs of preliminary investigation that the juvenile be detained on remand. Detention on remand cannot be used for an under 16-year old, suspected or accused of committing a minor crime or less serious crime, and only in exceptional circumstances for other juveniles accused of a first minor offence.

The interrogation of a juvenile suspected, charged or on trial cannot last for longer than 2 hours, and a maximum of 4 hours during one day. A defender and legal representative must be present. In the case of an under 16-year old, or a juvenile with mental health problems, a teacher or psychologist must be present, and has the right to ask the youngster questions and, at the end of the session, to read the protocol and add any comments in writing. The prosecutor, investigator, representative of other agencies, or judge can authorize the participation of a teacher or psychologist where this is requested or considered appropriate. There are particular procedures for summoning a juvenile suspect (through his/her legal representatives) and for removing a juvenile from the court room, if necessary. The judge can rule to hold a closed hearing in the case of an under 16-year old.

The Code of Criminal Procedure distinguishes four parties 1) the court, 2) the prosecution, 3) the defence, 4) other participants.

The court plays a leading role at both pre-trial and trial stages: the judge takes decisions on remand and also, after sentencing, those which relate to detention or release on parole. Also, practically any action (or lack of action) by an investigator, procurator or other official can be appealed before the court. The gravity of the crime determines the composition of the court, which may consist of a single justice of the peace, a single district court judge or a collegium, a regional court or, in specific circumstances a judge and jury. A sentence can be referred to an appeal court or court of cassation, and a sentence, already implemented, can be referred for review.

The prosecution includes the procurator, investigator, the victim, and civil plaintiff. The procurator is authorized to carry out, on behalf of the state, a criminal prosecution and to supervise the activities of those carrying out enquiries or preliminary investigation. Where preliminary investigation is not necessary, enquiries can be conducted by officers of the police, the fire-service, captains of sea and river ships, etc. Preliminary investigation may be carried out by police investigators, procurators, officials of the security service or of the drugs and narcotics agency. The Supreme Court (2000) recommended that juvenile cases should be heard by more experienced judges, with some knowledge of pedagogy, psychology, sociology. Similar recommendations exist in the instructions issued by the law and order ministries. But in practice such a specialization is only to be found among the police (who carry out the investigation in the majority of cases involving juveniles), and among the judges and procurators in large towns and at regional level. Those who do specialize in juvenile cases do not as a rule receive any professional training.

The defence includes the juvenile, either suspected, charged, or during trial, the 'defender' and the legal representative of the juvenile, and civil defendant. The juvenile must have a 'defender' who can be a defence lawyer or advocate. The court can also allow the participation of a close relative of the accused or other individual whom the accused requests. From the beginning of the first interrogation or questioning, the juvenile's legal representative must be involved (a parent, guardian, representative of the institution that has guardianship of the accused). The legal representative has the right to know of the charges, to participate in the interrogation or, with the investigator's permission, in other parts of the investigation; to give and present evidence; to be made aware of the protocols and, upon completion of the investigation, of all the materials of the case; to attend the court hearing, and to enter a complaint of the behaviour of any official or of the court.

Other participants include witnesses, experts, and translators/interpreters. Given the obligation of the court to establish the details of the living conditions and educational environment of the accused, representatives of educational institutions or social organizations and, if necessary of any other institution, including of the KDN, of the health, educational, employment departments of the local authority , and psychologists may be included. Psychological expertise is frequently requested.

5./6. The sentencing practice

During the past eight years more than 40,000, or approximately a quarter of all 14-17 year olds identified in connection with a crime, have, each year, been exempted from criminal liability (*Table 5*). For Krasnoyarsk krai the figure for the same period is on average 20%. We do not have data which provides reasons for the exemptions. They can include: reconciliation, real repentance, the use of compulsory educational measures, or an amnesty. Given that a juvenile can be freed from criminal liability at different stages during the processing of a case, different agencies record the statistical data. It would require research to analyze them. Any analysis is further complicated by the fact that an action may be recorded twice: both by the investigative agencies when they 'close' the case and transfer it to court, recommending compulsory educational measures, and by the court. However, evidence suggests that the 1996 Criminal Code's making the adoption of such compulsory measures exclusively the prerogative of the courts has significantly reduced their use. They tend to be used predominantly for children under the age of criminal responsibility. Despite the Supreme Court's recommendation (2000), they are used in only 2-3% of cases where the juvenile stands trial. The numbers and percentages of juveniles freed from criminal liability (before trial), and subject to such measures, is not recorded in the federal or regional statistics.

Table 5: Further actions taken in regard to 14-17 year olds identified in connection with a crime

	1998	1999	2000	2001	2002	2003	2004	2005	Average 1998-2005
Number identified	164,787	183,447	177,851	172,811	140,392	145,577	151,890	149,981	160,842
in %	100	100	100	100	100	100	100	100	100
Freed from criminal liability	32.561	37.164	29.291	29.982	52.058	48.768	54.384	50.890	41.887
As % of total	19.8	20.3	16.5	17.4	37.1	33.5	35.8	33.9	26.0
Convicted	132,226	146,283	148,560	142,829	88,334	96,809	97,506	99,091	118,955
% of total	80.2	79.7	83.5	82.6	62.9	66.5	64.2	66.1	74.0
Convicted and given criminal sanction	127,739	143,526	115,363	130,768	77,312	95,756	96,305	96,946	110,465
% of those convicted	96.6	98.9	77.6	91.6	87.5	98.9	98.8	97.8	92.9
Convicted but no criminal sanction	4.487	2.757	33.197	12.061	11.022	1.053	1.201	21.45	8.490
% of those convicted	3.4	1.9	22.4	8.4	12.5	1.1	1.2	2.2	7.1
Compulsory educational measures adopted	---	---	753	882	718	631	1,034	1,800	970
% of those convicted but no criminal sanction	---	---	2.3	7.3	6.5	59.9	86.1	83.9	11.4
Placed in specialist institution	---	---	337	432	280	346	642	539	429
% of those convicted but no criminal sanction	---	---	1.0	3.6	2.5	32.9	53.5	29.9	5.0

Source: Ministry of Internal Affairs of Russia and Court Department under the Supreme Court of Russia: delinquency and violation of the law. Overview of activities of the Federal Courts of General Jurisdiction and Justices.

Only 11.4% of those who are held criminally liable but are exempted from a criminal sanction receive measures of a compulsory educational kind (henceforth PMVV). (*Table 5*) In the Krasnoyarsk region the percentage is higher (28.6%) and shows signs of increasing. However a sample survey of 357 criminal cases from 2006/07 produced the following: PMVV was used in 11 cases where the juvenile was exempted from criminal liability and in two cases where no criminal sanction was imposed. The measures used under PMVV are quite limited. They include: placing under the supervision of parents or a children's department, restricting leisure activities (curfew after 10 p. m., exclusion from public places after 9 p. m., and from places selling alcohol or from computer clubs), the requirement to attend school, and to register with the police. Placement in a special educational institution is very rare (*Table 5*). Some regions do not have such an institution, and the places are limited. Reasons for the infrequent use of PMVV include: lack of clarity in the legislation, lack of understanding of the purpose of such measures, unwillingness or inability to use them effectively, and the lack of a developed infrastructure to support them. In addition, PMVV has to compete with an alternative measure: a conditional custodial sentence.

The judge or the procurator can close a criminal investigation of a first-time minor or less serious crime if the two sides agree and the victim is compensated for any damage. There are no published statistics on this. In the majority of such cases the procurator, judge, or criminal investigator notes the compensation made, and the request of the victim to close the case. Mediation, usually at the request of the accused, is an informal process. As of now specialist structures, responsible for initiating and conducting mediation, do not exist.

Of the six sanctions listed in the Criminal Code only three are used at present. Arrest is not used because there are no arrest houses. Prohibition against engaging in a particular occupation is extremely rare in juvenile cases. Compulsory (community) work, introduced in 2005, is still used infrequently because its practical implementation awaits resolution. Even in the statistics it is only registered under the heading 'other measures' (*Table 6*).

Table 6: Sentences imposed by courts on 14-17 year olds

	1998	1999	2000	2001	2002	2003	2004	2005	Average 1998-2005
Number sentenced to a criminal sanction	127,739	143,526	115,363	130,768	77,312	95,756	96,305	96,946	110,465
%	100	100	100	100	100	100	100	100	100
Deprivation of liberty	31,890	34,407	29,407	29,624	18,934	25,236	20,831	23,530	26,732
% of total	25.0	23.9	25.5	22.7	24.5	26.4	21.6	24.3	24.2
Correctional work	431	370	398	510	381	599	1,481	1,957	766
% of total	0.3	0.3	0.3	0.4	0.5	0.6	1.5	2.0	0.7
Conditional sentence**	94,170	10,7462	84,758	99,840	57,651	69,213	62,150	55,871	78,890
% of total	73.7	74.9	73.5	76.3	74.6	72.3	64.5	57.6	71.4
Fine	1,248	1,162	800	794	346	708	7,967	8,824	2,731
% of total	1.0	0.8	0.7	0.6	0.4	0.8	8.4	9.1	2.5
Other sanctions*	---	125	0	0	0	0	3,876	6,764	1,346
% of total	---	0.1	0.0	0.0	0.0	0.0	4.0	7.0	1.2

* Since 2005 compulsory (community) work has been included under 'other'sanctions.
** Conditional custody sentence.

The use of fines has increased significantly in recent years. This is because a fine can be paid by a parent or guardian. Corrective work only accounts for 1% of sentences but its use is increasing. As previously, the percentage of those sentenced to custody remains high (24.2% on average during 1998-2005 for Russia as a whole). While in percentage terms the use of custody has shown a slight decrease, the absolute numbers have hardly changed: from 23,944 in 1990 to 23,510 in 2005 (*Table 6*). A similar situation exists in the Krasnoyarsk region, and here more than half receive long sentences – from 3-10 years.

A conditional custodial sentence remains the most widely used sanction. In 1997 'suspension' was formally abolished in favour of 'conditional'. Since then the share of conditional custodial sentences averages around 70% for Russia a whole; the figure for Krasnoyarsk is 73%. To a certain extent the awarding of conditional custodial sentences compensates for the inadequate use of PMVV. Conditions attached to the sentence (and the consequences if they are not observed) make it, in theory, a much more effective measure. However, in reality, the conditions are as poorly designed as those listed under PMVV. Given the absence, in Russia, of an adequate infrastructure, it is rare to find, for example, obligatory attendance at psychological or other training courses.

7. Regional patterns and differences in sentencing young offenders

There are no statistical data on different regions. However, the data on the sentencing practice in the Krasnoyarsk region show very similar patterns. Therefore regional variations do not play a major role in the Russian academic and political discussion.

8. Young adults and the juvenile (or adult) criminal justice

The Criminal Code allows the court, in exceptional cases, to apply "juvenile measures" to 18-19 year olds, apart from that of placing an individual in a special secure educational institution or in a juvenile colony. However, the statistics do not include data specific to this age group, and court practice and discussion with judges in Krasnoyarsk suggests that such measures are rarely used, if at all. Judges refer to the absence in the law of clear criteria for their use, and the recent recommendations of the Supreme Court have included no mention of this age group. Since, in Russia, juveniles come before adult courts, a more pressing issue is that of transferring juvenile cases to juvenile courts. First pilot projects recently have started, one of them in Rostov/Don.

9. Transfer of juveniles to the adult court

As there do not exist specialised juvenile courts, the problem of a transfer to adult courts is not relevant.

10. Preliminary residential care and pre-trial detention

The legislation allows for two types of temporary detention for those who have committed a criminal act. The first is placement in a Centre for the Temporary Holding of Juveniles, under the Ministry of Internal Affairs, in accordance with the conditions laid down by the 1999 law "On preventive work with vagrancy and juvenile offending". The following categories of children may be placed in a TsVSN:

1. Those, under a court order, awaiting transfer to a secure special school.
2. Those awaiting a court decision on transfer to a secure special school who are either at risk, or likely to commit a further socially dangerous act, or have no place to live, or have refused to appear in court.
3. Those who have absconded from a secure special school.
4. Those who have committed a socially dangerous act but are under the age of criminal responsibility, are at risk, are likely to repeat the action, have no place of residence, or no documents.

The 1999 law allowed for a placement in a Centre for no more than 48 hours on the basis of an order by the head of the police department or his authorized officer. The director of the Centre should immediately notify the procurator. However, a review by experts from the Council of Europe suggested that the law lacked sufficient judicial safeguards of the rights of the child, and in 2003 the law was amended: within 24 hours of a child being placed in centre, the relevant materials must be presented to a judge who, within a further 24 hours, must review them in the presence of the child, legal representative, defender, procurator, police officer, and director of the centre; a representative from the KDN and adoption agency may also attend. The judge then takes a decision on whether the child should be held at the Centre for a period not exceeding 30 days, or whether he/she should be released. Under exceptional circumstances the period of detention can be extended for a further 15 days. The decision can be appealed against or taken by the procurator to a higher court.

Data on numbers placed in the centres is not published systematically but the following figures, from the MVD information department, have been quoted: 24,441 in 2001; 20,595 in 2002 and 20,093 in 2003. (Approximately 60% of those held in the centres are children under the age of criminal responsibility who have committed socially-dangerous acts or administrative offences.)

Custodial remand is one of six measures which can be used while the juvenile is under investigation or awaiting trial. Articles 108 and 423 of the

Code of Criminal Procedure stipulate that in each case the alternative of placing the youngster under supervision must be considered; custody should only be used in serious or particularly serious cases; exceptionally in less serious cases. The investigator or investigating official, with the procurator's approval, or the procurator himself, apply to the judge, with the relevant materials; in such cases the procurator himself must question the suspect or accused. A decision is made by a district court judge in the presence of the suspect or accused, the procurator, and defender; the juvenile's legal representative has the right to be present. The judge either grants the request, refuses the request, or delays a decision for a maximum of 72 hours for the presentation of additional materials in support of the request. Only new circumstantial evidence relating to the need to detain the juvenile can be considered at this stage. The judge's decision can be appealed through cassation. Should custody be granted, the legal representatives of the juvenile are to be notified without delay.

Article 109 of the Code of Criminal Procedure restricts custodial remand to a maximum of two months. This can be extended by the district court to 6 months in a case when the preliminary investigation is incomplete, and to a maximum of 12 months in a particularly complicated case.

Conditions of detention on remand are covered by a federal law dating from 1955. Detainees are held in an Isolation Centre (SIZO, run by the prison system) but can be transferred to Temporary Isolation Centres for up to 10 days in cases when a SIZO is too far from court jurisdiction for the detainee to be brought to court during a day. The law specifies better living conditions for juveniles, higher rations, daily exercise of not less than two hours with sport and physical exercises, the watching of television and where possible films. Detainees have access to secondary education, and cultural activities are provided. They are allowed to acquire text books and school materials, and to receive them in parcels, without restrictions on weight.

The published figures for 2004 quote 17,200 requests for custodial remand for juveniles of which 14,700 or 85.5% were granted. In 2005 the figure for requests rose to 19,500. These included 4,800 for particularly serious crimes, 10,300 for serious crimes, 4,100 for less serious crimes, and 289 for minor crimes. If we compare these figures with those for juveniles identified in connection with a crime (*Table 5*), we note that custodial remand was used in 9.7% of the cases.

12. Residential care and youth prisons – Legal aspects and the extent of young persons deprived of their liberty. The implementation of sanctions in the case of juveniles

The following chapter includes compulsory educational measures which include placement in a special secure educational establishment and the implementation of criminal sanctions.

12.1. Placement in a secure special educational institution

This is regulated by the 1999 law but we should note that the term "implementation of compulsory educational measures" does not appear in the law itself, rather there is reference to a system of "individual-preventive work" to be undertaken by a number of persons or agencies. These include: the KDN, the departments of social welfare, education, guardianship, for youth, health, employment, and the police. Those who will be responsible for working with the juvenile who remains in the community will be listed in the court's decision: parents, legal representatives or a specialist agency, and, most commonly, the police department which works with juveniles (supervising the observation of curfew, and other special measures). In recent years specialist institutions, aimed at providing social rehabilitation programmes, and referred to in the 1999 law, have begun to appear: rehabilitation centres, shelters for children which provide support to those in difficult circumstances and in urgent need, centres for children left without parental support. A decree of 2000 spelt out the key parameters for the work of such centres. Given that their financing is the responsibility of the regional authorities and municipal education departments, they are dependent upon the financial state of the region. They are only at a very early stage of development and play no real part in implementing compulsory educational measures. In none of the cases we looked at did these institutions figure.

Nor in Russia, at present, do the different centres of social-psychological support, or of professional training, the clubs and sports centres which exist in the large towns play any part in implementing compulsory educational programmes.

Young people between the age of 11 and 18, who need special educational facilities and have special educational needs are placed in secure special educational institutions under the Ministry of Education, if:

1. at the time of committing a socially-dangerous act, specified in the Criminal Code, they have not reached the age of criminal responsibility;
2. they have reached the age of criminal responsibility but as a consequence of their mental age could not have understood the nature and consequences of their actions or failure to act;

3. they have been convicted by the court of a less serious crime and placed in a special educational institution in lieu of a criminal sanction

Three types of such institutions exist: 1) special general educational schools for juveniles, 2) special professional technical schools for convicted juveniles, and 3) special (correctional) educational institutions for those who have special needs. The term of the placement can be shortened by the court if the juvenile is transferred to another institution because of age, health, or to provide better conditions for his or her education; if the juvenile no longer needs the education or has to be removed on health grounds. The placement can only be extended by the court in response to a request from the juvenile in order to complete secondary education or professional training. The students are fully supported by the state; orphans and those abandoned by their parents are covered by the legislation for these categories of children.

The children have the right to maintain contact with their parents, and also can be allowed out for holidays. Travel expenses and a subsistence allowance are covered by the institution.

Regulations cover: the security of the territory and property; safe living conditions for the children; prevention of their leaving the premises without permission; constant surveillance and control of the children, including at night time; random searches of the children's belongings, and contents of parcels; censorship of all their correspondence except that to the court, procurator, and ombudsman, and to their defence lawyer. It is prohibited to subject the children to measures of physical or psychological force; to use measures which do not take into account the age of the child, and which are degrading; to restrict contact with parents or legal representatives; to cut the food ration or exercise time; to involve the children in measures to maintain discipline. Socially useful work should not be imposed as a disciplinary measure. However, in exceptional cases, to avert a dangerous situation which threatens the life and health of others or of the state, officials can use physical restraint. Officials must give warning of this, unless the situation makes this impossible. They must without delay report such a case to the procurator. The KDN is responsible for oversight and control of the conditions in the institutions – the teaching, living conditions and treatment of the children.

12.2 The implementation of criminal sanctions

In addition to the Code for the Implementation of Sentences of the Russian Federation, there are several laws regulating different aspects of the implementation of criminal sanctions. Further regulations are provided by Instructions issued by the relevant ministries or agencies. There is no separate law relating to juveniles but their treatment receives specific mention within the general rules.

We can divide the institutions which deal with juveniles between 1) those which implement sentences which the juvenile serves in the community – fines,

compulsory (community) work, corrective work and 2) those which implement sentences of detention – arrest, custody.

The great majority of sentences are implemented by the following agencies: the Inspectorate for the implementation of sentences, arrest houses, juvenile (educational) colonies, and other organs belonging to the Federal Service for the Implementation of Sentences (FSIN). The collection of fines is administered by the federal service of court bailiffs. Compulsory or corrective work, and prohibition on occupying a profession, is administered by the Inspectorate. Although a conditional sentence is not a criminal sanction, the Inspectorate also supervises the behaviour of the convicted. A feature of the system relating only to juveniles is that those who are not sentenced to custody remain on the records of the local police department responsible for juveniles.

The Code provides for the sentencing of juveniles to short sentences in arrest houses but, given that they do not exist, this sentence is not used. (The Ministry of Justice, following a cost calculation, has drawn up draft legislation which would abolish this sentence.) Juveniles sentenced to deprivation of freedom serve their sentence in an educational colony.[10] On 1 January 2007 there were 65 colonies, of which three were for girls, with 12,752 inmates, of whom 853 were girls. The percentage of juveniles among all those serving custodial sentences has decreased from 3.2% in 1994 to 1.8% in 2007. The decline in absolute numbers over the period is not so marked but is noticeable since 2001 (*Table 7*). Given the fall in numbers and some increase in numbers of staff, the staff-inmate ratio has improved: on 1 January 2007 there were 12,990 staff to 12,752 juveniles whereas in 2001 the ratio was 6 to 10. A positive sign is the absolute and relative drop in the younger age group (14-15 year olds) – from 3,740 or 20% in 1994 to 864 or 7% in 2007.

The legislation provides for four types of regime: 1) standard 2) light 3) privileged 4) strict. On 1 January 2007 the percentages under these regimes were as follows: standard 57%; light 31%; privileged 9%; and strict 3%. All begin their sentence under a standard regime. The only exceptions are those convicted for premeditated crimes, committed while in custody. After a defined period and given good behaviour (as regards education and work), convicts can be transferred to a more favourable regime (in terms of their rights and freedoms), up to and including freedom on parole. In contrast, those guilty of malicious infringement of the rules can be transferred to a stricter, less favourable regime. In this way the legislator has included a ‘step’ system into the implementation of custodial sentences for juveniles. The inmates are fed and clothed by the state, and provided with medical care. The differences between the regimes consist, in the main, in the number and type of restrictions that exist: the amount that can

10 The latest regulations covering the regime and conditions within a juvenile educational colony (VK) were issued on 6 October 2006 by an Order (No. 311) of the Ministry of Justice.

be held on a personal account for spending on provisions or personal needs; the number of short (4 hour) and long (3 day) visits allowed. For example, those under a privileged regime live, as a rule, in a hostel outside the colony but supervised by its administration. There are very few restrictions on their spending, receipt of parcels, and short visits. They can wear civvies and have 6 extra visits. Those on a strict regime live in an isolated building into which they are locked during leisure time; they can only spend up to 3 times the minimum wage, and have 6 short visits during the course of a year.

With the aim of correcting the juveniles' behaviour and preparing them for an independent existence, a complete secondary education and professional training is carried out on the base of the colony schools and workshops. Three quarter of the inmates are aged between 14 and 18. As a general rule they serve their sentence in a single colony within the boundaries of the region where they lived and were sentenced. Where this is not possible (because there is no colony) they are sent to the nearest available one.

Article 139 of the Code allows for a juvenile who reaches the age of 18 but whose sentence is not yet completed to remain in the colony to complete his or her education or professional training, but not beyond the age of 21. The colony governor makes the request to the procurator. The over-18s continue to receive material support and rations as for the younger convicts. The figures suggest that the absolute number of the over-18s fluctuates and during recent years has shown little growth but its weight in the total number has significantly increased. As Table 8 shows over-18s constitute about a quarter of all inmates today. Those 18-year olds who have poor records are either transferred to an isolation section of the colony which functions under a standard regime for adults, or they are sent to an adult colony.

Most of the juveniles are released on conditional parole and on completion of sentence. A very small number receive a pardon. We do not have data on other reasons for release but we assume from the data in table 9 that the missing percentages include those freed under an amnesty, a successful appeal against a sentence, the substitution of a softer sentence, for health or other reasons (in 2002, for example, there was a major amnesty).

Table 7: Characteristics of young people serving sentences in juvenile colonies (as of 1 January)

	1994	1996	1998	2000	2002	2004	2006	2007
Number in juvenile colonies	19,099	20,849	19,763	21,957	18,677	16,491	14,545	12,752
As % of total prison population	3.2	3.0	2.8	2.9	2.5	2.4	2.2	1.8
Among those in juvenile colonies:								
girls	917	1,136	1,262	1,349	1,139	945	1,040	843
As %	4.8	5.4	6.4	6.1	6.1	5.7	7.2	6.6
14 -15 years old incl.	3,740	4,313	3,067	3,490	2,330	1,909	1,047	864
As %	19.6	20.7	15.5	15.9	12.5	11.6	7.2	6.8
16 -17 years old incl.	12,321	13,729	13,182	14,152	11,711	11,359	9,716	8,424
As %	64.5	65.8	66.7	64.5	62.7	68.9	66.8	66,1
18 years plus	3,038	2,807	3,514	4,315	4,636	3,223	3,782	3,464
As %	15.9	13.5	17.8	19.7	24.8	19.5	26.0	27.2
No. transferred to adult colonies	7,422	8,617	8,216	8,622	7,592	6,589	6,988	7,781
As %	38.9	41.3	41.6	39.3	40.6	40.0	48.0	61.0
No. serving second sentence	494	1,558	1,256	1,056	912	848	684	524
As %	2.6	7.5	6.4	4.8	4.9	5.1	4.7	4.1

Source: Data provided by the Head of the Legal department, Federal Service for Implementation of Sentences, Professor *O. Filimonov*.

Table 8: Numbers and reasons for release from juvenile colonies

	1994	1996	1998	2000	2002	2004	2005	2006
Total number released	9,116	8,917	8,963	12,835	14,288	9,438	5,871	6,199
%	100	100	100	100	100	100	100	100
Upon completion of sentence	2,135	3,195	3,193	1,523	826	1,402	1,575	2,000
As %	23.4	35.8	35.6	11.8	5.7	14.8	26.8	32.2
On parole	5,943	5,493	5,470	5,597	2,579	7,076	4,241	3,694
As %	65.1	61.6	61.0	43.6	18.0	74.9	72.2	59.5
Pardoned	10	10	35	40	2	5	1	7
As %	0.1	0.1	0.3	0.3	0.0	0.0	0.0	0.1

Source: Data provided by the Head of the Legal department, Federal Service for Implementation of Sentences, Professor *O. Filimonov*.

The reward system in the colony includes: Appreciation, award of a monetary prize, or bonus; extra short or long visits; permission to spend extra on buying provisions or other items; early annulment of previous penalties; the right to attend sporting/culture activities outside the colony; the right to spend time outside the colony with parents or legal representatives; transfer from strict to standard regime.

For breaking the rules, the juvenile can be issued with a reprimand; a disciplinary fine up to 200 rubles; prohibited from watching the cinema for a month; placed in the disciplinary isolation cell for up to 7 days, while continuing to attend school. Figures suggest that infringements and the number of placements in disciplinary isolation (about half of all punishments) are decreasing (*Table 9*).

Table 9: Use of disciplinary isolation cell in juvenile colonies (as of 1 January)

	1994	1996	1998	2009	2002	2004	2006	2007
Total no. of violation of rules	12,800	12,168	9,914	10,153	6,257	5,106	5,467	8,658
As %	100	100	100	100	100	100	100	100
No. in isolation cell	7,017	5,955	5,326	5,157	3,471	2,777	2,525	2,669
As %	54.8	48.9	53.7	50.7	55.4	54.3	46.1	30.8

Source: Data provided by the Head of the Legal Department, Federal Service for Implementation of Sentences, Professor *O. Filimonov*.

A council of trustees composed of representatives of business, NGOs and citizens assist the colony administration; parents committees also are set up to correspond to groups within the colonies.

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

We draw the following conclusions from our review of legislation and practice:

1. The Russian legislator has not, as of today, chosen to design a separate, detailed law to regulate substantive, procedural and other aspects of the response to juvenile law-breakers but, rather, has retained the previous approach. This consists of including certain exceptions to the general norms when the individual is a juvenile. The Criminal Code (1996), Code of Criminal Procedure (1996) and the Code on the Implementation of Sentences (2001) contain sections which allow for the particularities of a young age to be taken into account. For the first time in Russian history the 1999 law on "The basic principles of the system for the prevention of the neglect of children and youth offending" identified a range of measures of an individual-preventive nature for children under the age of criminal responsibility who have committed a socially-dangerous act, and for juveniles exempted from criminal liability or sanctions; it also specified the competencies and interaction of the various bodies, institutions, officials and social organizations, responsible for carrying out individual-preventive work with young offenders.
2. Today's Russian legislation, in terms of taking the personality of the young offender and his or her interests into account, is more progressive than earlier legislation and, in general, its principles and

norms meet international standards.[11] At the same time recent legislation has included not a few unclear or contradictory clauses, and left gaps. Some have been attended to but a significant number remain and are the subject of dispute. We group them as follows:

a) The rulings on age. In particular, the absence in the legislation not only of a clear definition of a young child (*maloletnyi*) but, compared with that for other juveniles, the existence of weaker procedural safeguards against errors and arbitrary decisions for this age group, commands attention. Not infrequently views are expressed in favour of lowering the age of criminal responsibility to 13 or even 12. Further, in our opinion, article 96 of the Criminal Code is deficient in that it provides no clear rules for using particular responses to young people aged between 18 and 21, which results in their not being used.

b) The rulings connected with the use of sanctions for juveniles. On the one hand, the majority of experts continue to view sanctioning as the key and universal instrument for the prevention of juvenile crime. Attention is drawn to the very poor array of available sanctions, including the introduction of new measures which curtail freedoms, and the use of house arrest. The provision that parents or legal representatives of the young offender can pay a fine is criticized as contradicting the principle of individual responsibility. On the other hand, support for a greater use of PMVV is growing. We share the view that the future basis of juvenile criminal justice in Russia should rest on dispensing with criminal investigations for juvenile offenders, and on the use of PMVV. To achieve this, the legislation on the use of such measures needs to be amended, safeguards protecting the rights of the juveniles should be strengthened, and there will need to be clearer and more concise rulings on the imposition and implementation of the measures.

c) Rulings on the body (institution) responsible for reviewing criminal cases. Many specialists are convinced that the review of such cases by a court, which follows the rules on criminal procedure, is the best guarantee against unprofessional behaviour and arbitrariness. Others, on the contrary, argue that this encourages the stigmatizing of juveniles and therefore it would be preferable either wholly or partly to entrust decision making to a non-judicial organ – the KDN. In recent years there has been a considerable shift in public opinion in favour of

11 Specialists have drawn attention to a few discrepancies: 1) in Russia the principle of confidentiality in a court hearing exists only for those under 16 years of age; 2) certain conditions relating to the detention of juveniles in the centres of temporary isolation contradicted article 5 of the European convention on the rights and freedoms of the individual, but these were corrected in amendments to the 1999 law made in 2003-2004.

creating a juvenile justice system but the range of opinions is wide: from "cosmetic changes" to be achieved by increasing the specialization of the participants to the creation of a separate and self-sufficient system of juvenile justice whose arsenal will contain, for the main part, educational measures. At the same time the professional community has not resolved the issue of which model of a specialized court should apply in Russia: a family court, a juvenile court, or specialist *kollegii* of courts of general jurisdiction. The Concept (strategy) of court reform of 1991 referred directly to the need to set up juvenile courts and, as a preliminary measure, setting up specialized *kollegii* in federal courts and regional courts. A draft law, giving specialized courts the right to review not only civil and administrative but also criminal cases passed its first reading in the *State Duma* in 2002. It has progressed no further.

3. Furthermore, the possibilities which the existing legislation provides are not made use of as they might be. The impediments include:

a) The unfavourable socio-economic and social-psychological situation. Despite the improvement in the economic situation and some lessening of social tension, the polarization of the population in terms of income and the alienation of the ruling elite from the population continue. The threat of terrorism serves as useful excuse and argument against modest democratic achievements and in support of an excessive centralization of power. The ideals of freedom, equality, justice and mercy which, at the beginning of the 1990s, inspired a change of direction in Russia, are now largely forgotten. The consumer orientation of society gains pace, a striving to achieve western standards of consumption at whatever the cost. The increase in competitiveness accompanied by weak safeguards for the non-competitive sector of society, to which children belong, creates a fertile ground for neglect, and for offending and criminal behaviour by juveniles. This, in its turn, adds to the burden placed upon the structures whose responsibility it is to work with young delinquents. Without the resources to engage in skilled professional activities, these structures adopt a formal, simplistic approach to their work. Simple and radical means are traditionally chosen to solve very complex social problems, and one such is the stronger use of repressive punitive measures.

b) The inadequacy of resources provided by the state and society and the lack of control over their expenditure. As earlier, laws and programmes are adopted without the backing of sufficient resources. For example, it took 8 years after the passing of the Criminal Code, for compulsory (community) work to be introduced; 10 years have passed but arrest has still not been introduced. Measures, being planned or introduced, are not considered from a cost-benefit point of view. Accounts of

expenditure are not published. Financing for the implementation of the 1999 law (on preventive measures) is the responsibility of the regional and municipal authorities, most of whom have deficit budgets. Partly for this reason the new Russia still has no proper infrastructure for social work and psychological-pedagogic support for juveniles. As a result the effectiveness of using PMVV as an alternative to custody is negligible. Recidivism, for example, among those who receive a conditional sentence (the most widely used of all the sentences) is between 55-60%. Many regions have no open or secure special educational institutions. (One author puts the number of open institutions at 11, with 1,600 children, the number of secure at 50 with 4,000.) Opportunities for setting up refuges, schools and other institutions which could meet state, regional and municipal contracts for individual-preventive programmes for juveniles are limited. Not a single normative act makes provision for such contracts.

c) The lack of qualified personnel. There are many higher education institutions which produce lawyers, social workers, psychologists and teachers specializing in pedagogy but specialist training for those who work with young offenders has not yet been introduced. With the exception of judges, work with young offenders is not prestigious or properly paid. There is no competition and professional selection for posts. The principle that those among judges, procurators, investigators and other officials who review and oversee juvenile cases should be specialists is often infringed. The individuals concerned receive no additional professional training and are allowed to work without the appropriate certificates. From time to time there are calls for a return to the socialist system of prevention, under which a huge army of dilettantes, relying on their level of education and culture, dispensed justice and decided the fate of juveniles. The idea of involving the public in crime prevention is an admirable idea provided, in the words of M. S. Kruter, that "the work is headed by professionals and they are assisted by members of the public who have had the necessary training, are undertaking the work voluntarily, and follow the rules and regulations".

d) Lack of appropriate organizational support. The normative acts do not spell out clearly the competencies of the many institutions involved in prevention and for this reason parallelism and duplication occurs. It is essential to reorganize one of the key institutions, the KDN, which is required, almost entirely on a voluntary basis, to carry out simultaneously functions which are difficult to combine – those of an organizer, coordinator of work with juveniles, guardian of their rights, and of an administrative-judicial organ. Moreover, not only do the norms on workloads for those employed by the local government

departments that work with juveniles have no scientific basis, they are simply not observed because of shortage of funding. Criteria for evaluating either the whole system which works with young offenders or its separate parts do not exist. The absence of such terms as "management" or "risk management" in either the normative acts or in the working vocabulary that describes the response to juveniles indicates how underdeveloped such concepts are.

e) Lack of appropriate informational-analytic support. The analysis of the judicial (criminal) response to juveniles is a difficult matter, which is clearly demonstrated by the way in which the statistical records are organized. First criminal statistics in Russia are presented in age cohorts – 14-15, 16-17, 18-24, 25-29, 30-39, 40-49, 50 and older, which do not correspond to accepted patterns of moving from one age to group to another. Second, until 1985, criminal data were secret and even today are not published in full. Third, at present the collection, processing and publication of the statistics is carried out by several agencies – the Ministry of Internal Affairs, the Procuracy, the Court Department, the Federal Service for the Control of Narcotics, the Chief Administration for the Implementation of Sentences – which, possessing a monopoly over the information, not infrequently distort the data to serve their departmental interests. The statistical categories have no criminological basis and are not uniform. Reports are published irregularly and are not complete. Fourth, the new Criminal Code and Code of Sentencing have been in operation since 1997, and the Code of Criminal Procedure from 2003, which have changed enforcement practices and, consequently, the statistical picture. Fifth, and finally, the analysis of registered crime does not reflect the true picture because of the assumed high level of latent crime, and research into this is not conducted. However repeated proposals for a review of the system of agency statistics meet with little support.

f) Continuous monitoring and analysis of deviant juvenile behaviour, risk assessment, and also the evaluation of the effectiveness of the activity of the various services is not carried out at the present time. Resources for this are not included in budgets at different levels, and grants to support research in this area are not available.

14. Summary and future prospects

As regards future developments, we identify three potential strategies.

1. Adapting the existing justice system in line with international standards. This is what is happening at the moment via a) the introduction of special statutes or articles which make corrections to the existing codes b) the adoption of legislation which, although introducing positive

changes, essentially strengthens the previous approach to the resocialization of juveniles. Russian legislation formally meets the international standards specified for criminal justice in juvenile cases, and this group receives preferential treatment under the criminal justice system, but in real terms these developments lead to a dead end. Despite the attempts to give criminal procedures a substantial social focus, in this scenario the functioning of the court system retains pride of place, and the tasks of positive socialization and the welfare of the juveniles come second, although it should be the other way round.

2. Radically changing the justice system, by means of adopting a special law on juvenile justice (juvenile courts). Draft laws, proposed by *Melnikova* and *Vetrova*, and by a group led by *Yermakov*, have several weaknesses. First, they are limited to reform of the court system and barely touch upon the institutions responsible for resocializing the young offenders. Second, the preconditions for a radical reform of the situation in Russia do not yet exist, i. e., a detailed and widely accepted conception of reform; a critical mass of specialists, able to support and implement a new project; the text of a draft law which would receive majority support among specialists and legislators; the necessary material and financial resources. Without this even the most progressive law is doomed to fail and will be damaging because it will discredit the excellent idea of juvenile justice.
3. Combining two parallel and mutually supportive strategies: the design and adoption of a "Law on juvenile justice" and the carrying out of innovative projects which create elements of a juvenile justice system. This strategy, the one proposed by *Maksudov* and *Fliamer*, seems to us to have the most potential and be the most realistic. In our view, the innovative process should take the lead, and the design of the draft law should follow. The feasibility of this approach has been demonstrated by the introduction of new methods of responding to young offenders, of new technologies and interactive schemes, including those of restorative justice, in a number of regions (Moscow, St. Petersburg, Tatarstan, Rostov, Vladminir, Bryansk, Krasnoyarsk, Primorsk and others). The innovative projects not only change the operation of the justice system but also the thinking of those who participate in the projects, and thus they become an original way of training specialists of a new kind. The innovative projects as of now are carried out within the bounds of existing legislation, where there is still scope for further experimentation. Conflicts are bound to arise but, in our view, these could be resolved through local legal experiments, which would receive a legal basis through the adoption of a law "On experimentation in the sphere of creating a juvenile justice system in certain regions of the Russian federation". In the course of three to five years the results

of the experimentation would be assessed, and the most viable and best practices constitute the basis for a "Law on juvenile justice".

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Remark: The web-sites of the leading Russian NGOs working in the field of juvenile justice include translations of some items into English, see: www.prison.org; www.sprc.ru; www.nan.ru; www.penalreform.org.

Scotland

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Preliminary remarks

Scotland is a small jurisdiction, with a population of just over five million people, of which just under 600,000 are aged between 8 and 16 years of age. It has distinctive criminal justice, education and social work systems distinguishing the systems of prosecution, criminal procedure, sentencing, prison and parole from those in England and Wales.

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

The Social Work (Scotland) Act 1968, implemented in 1971, introduced a distinctive approach to dealing with the problems of children and young people in Scotland. Up until that time, child offenders aged 8 to 15 years were dealt with by specialised 'Juvenile Courts', set up by the Children and Young Persons (Scotland) Act 1937. In May 1961, following concerns about the way in which the Juvenile Court system affected children, the Secretary of State for Scotland set up a Committee, chaired by Lord *Kilbrandon* (a High Court Judge), 'to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedures of courts dealing with such juveniles' (*Kilbrandon Committee* 1964/1995, p. 5).

In 1964, the Kilbrandon Committee put forward a radical and far-reaching set of recommendations which profoundly affected the way in which children and young people were dealt with in Scotland (*Lockyer/Stone* 1998). The

Committee proceeded from the assumption that children and young people appearing before the Juvenile Courts, as offenders, truants, or being beyond parental control displayed similar underlying difficulties as those suffering from a lack of parental care, and had a common set of needs for special measures of education and training. Young people who offend were to be viewed not simply as offenders but as young people whose upbringing had been unsatisfactory, and where responsibility for their offending behaviour should be a shared one between the young person, the family, the community and the state (*Whyte* 2004). The key principles adopted by the Committee were a separation between the establishment of issues of disputed fact and decisions on the treatment of the child; the use of lay panels (not lawyers) to reach decisions; the recognition of the needs of the child; an emphasis on the role of the family, and the adoption of a preventative and educational approach.

Following the Committee's recommendations, which were integrated into the Social Work (Scotland) Act 1968, Juvenile Courts were abolished and replaced by Children's Hearings which deal with both children in need of care and protection and children who offend.

1.1 The Scottish Children's Hearing System

The Children's Hearing System began operating in 1971, and took over from the courts most of the responsibility for dealing with children and young people under 16, and in some cases under 18, who commit offences or who are in need of care and protection. The Children (Scotland) Act 1995 (the 1995 Act) provides the current statutory framework for the Children's Hearings System.[1]

The Children's Hearing System is unique to Scotland. It has provided a system of care and justice for vulnerable and troubled children and young people for over 30 years, and has been widely acclaimed as 'Scotland's most original and distinctive contribution to child welfare' in the twentieth century (*Murray/Hill* 1991, S. 297). Although widely regarded, the Children's Hearings System is not without its critics, and, in recent years, there has been serious consideration by practitioners, academics, children's organizations and Government of the way ahead for the Hearings System. It has faced increasing numbers of referrals of children on care and protection grounds, and there are real concerns about the provision of adequate services within the context of limited resources.

Until 2011, the age of criminal responsibility in Scotland was 8 years, one of the lowest in Europe. Although, in practice, the Children's Hearings System gave protection from prosecution to children and young people aged 8–16 years who offend by retaining them within a welfare-based system, and it was only on

1 The Children (Scotland) Act 1995 now incorporates the Children's Hearings System into a wider statute concerned with most aspects of child welfare.

the instructions of the Lord Advocate in Scotland that children and young people could be prosecuted in the criminal courts,[2] growing concerns from children's rights proponents and legal commentators led to the Scottish Government increasing the age of prosecution to 12 years, whilst retaining the age of criminal responsibility at 8 years, which means that children aged 8-12 years can still be referred to the Children's Hearings System (see section 4. below for more detail).

1.2 Scotland's Legal Framework

Scotland, unlike many European countries, does not have a criminal code. Criminal law is derived from several sources: common law (or case law) based on long-standing legal rules derived from legal precedent and judicial decisions on cases; the authoritative works of several 18th and 19th century legal writers, and; legislation usually in the form of Acts of Parliament, but also including any other binding international legislation, such as that of the European Parliament, and the European Convention on Human Rights. Most of the criminal offences in Scotland are common law offences, rather than statutory offences.

The UK recently underwent a process of Devolution of power away from London. Until Devolution, the UK national government in Westminster maintained control over criminal justice and other areas of public and social policy relating to Scotland, despite the fact that Scotland always has had a separate legal and education system to England and Wales. Scotland achieved Devolution in 1999, and this has brought significant changes in political conditions, and the creation of a new Scottish Parliament. The Scottish Parliament now has legislative competence over most aspects of the law and the legal system in both civil and criminal matters, including the prosecution system, the courts administration and certain judicial appointments. It has authority to legislate on all devolved matters, and can amend or repeal existing Acts of the UK Parliament as well as pass new legislation of its own for Scotland. It can also consider and pass private legislation promoted by individuals or bodies, such as local authorities.

In mid 2007, following a Scottish general election, the incoming Scottish National Party changed the name of the executive arm of government in Scotland from the Scottish Executive to the Scottish Government. The Scottish Government Justice Department, under the Justice Secretary, is responsible for the administration of civil and criminal law and justice, the operation of the courts, the provision of legal aid and liaison with the legal profession in

[2] Section 42(1) of the Criminal Procedure (Scotland) Act 1995 states that "No child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate, or at his instance; and no court other than the High Court and the sheriff court shall have jurisdiction over a child under the age of 16 years for an offence.

Scotland. The Justice Department is also responsible for the relationship of Scots law with international law and other legal systems, including those of other parts of the UK.

Since Devolution, there has been a plethora of legislative, policy and practice changes, alongside a new emphasis on bottom-up policy development, multi-agency partnerships and networks within Scotland. Whilst there has been considerable debate for some time on the problems posed by youth offending, in many ways mirroring some of the concerns expressed in England and Wales, the work taken forward to address youth offending has developed and expanded greatly since Devolution.

In 1999, the Government announced its commitment to review youth justice, and set up an Advisory Group on Youth Crime to assess the extent and effectiveness of options available to the Children's Hearings System and the criminal courts involving persistent young offenders. Their report identified responses to 14-18 year old offenders as requiring most attention (Scottish Executive, 2000), and put forward recommendations for a strategic multi agency approach which would seek to balance the needs of the 16 and 17 year old offender with public concern over the need to address offending behaviour, particularly for what was understood to be a relatively small number of persistent offenders (circa 2,300) responsible for a significant amount of offending (i. e. 25% of all crime). Although the Hearing System can deal with young people up to the age of 18 years, in practice most young offenders of 16 and 17 are dealt with in the adult criminal system, constituting a dramatic shift from the holistic 'needs-based' approach of the Hearings system, to an institutionally and conceptually different system whose main goal is punishment (*McNeill/Batchelor* 2002; 2004).

Whilst the Report's recommendations were broadly accepted, they were never fully realised, as subsequent developments in Scotland began to follow a more punitive, "correctionalist" agenda, with a 'toughening-up' of policy towards young offenders and the introduction of several 'get tough' initiatives.

Since 2002, when the UN Committee on the Rights of the Child commented favourably on Scotland's approach to youth justice (apart from the low age of criminal responsibility), the public debate about youth offending has been accompanied by various plans and strategies by the Scottish Executive (now the Scottish Government). A number of policy initiatives have been aimed at enhancing the effectiveness of the youth justice system. The National Standards for Scotland's Youth Justice Services[3], developed by the Improving the Effectiveness of the Youth Justice System Group within the Scottish Executive, were published in 2002, setting out a series of objectives aimed at improving the quality of the youth justice process and services for children and young people in Scotland. The standards entail more than procedural compliance; by also implying

3 www.scotland.gov/uk/library5/justice/nssyjs-00.asp.

objectives they have clear implications for the nature of the services required and for the ways in which effectiveness should be assessed.

In 2002, *Scotland's Action to Reduce Youth Crime* (Scottish Executive 2002a) took forward a key recommendation of the Executive's earlier review of youth crime (Scottish Executive 2000), which was that 'what works' principles should be incorporated into an expanded range of services, programmes and interventions for persistent offenders, and that all of these would be accessible to the Hearings System, and the criminal prosecution services alike (Scottish Executive 2000, para. 19). The 'what works' paradigm has led to government prioritization of evidence-based policy and practice, investment in research and evaluation, and the promotion of accredited programmes for offenders. 'What works'-offender programmes are focused on targeting offender behaviour by tackling criminogenic needs, rather than generic welfare needs, and tend to involve planned intervention, over a specified period of time, and are characterized by a sequence of activities designed to achieve clearly defined objectives. Because 'what works' programmes are aimed at behavioural change, they may be seen as rehabilitative in nature, yet because they target offending behaviour, rather than the offender, they have the potential to undermine the more child-centred approach adopted by social work services. Such approaches are also heavily influenced by cognitive-behavioural methods of risk assessment, and social workers in Scotland now undertake risk assessment using standardised assessment tools (ASSET/YLS-CMI) for all Hearings referrals.

Scotland's Action to Reduce Youth Crime included a '10 Point Action Plan', which set out measures to tackle persistent offending by young people (Scottish Executive 2002a). These included Fast Track Hearings for under 16 year olds; a pilot Youth Court for persistent offenders aged 16 to 17 years and a review of the scope for imposing Anti-Social Behaviour Orders, Community Service Orders and Restriction of Liberty Orders on persistent young offenders, all of which have been subsequently introduced. The 10 Point Plan acknowledged the need to tackle, not just the crime itself, but its underlying causes. It had 5 aims, to:

1. Increase public confidence in the youth justice system;
2. Give victims a greater stake;
3. Ease the transition between youth justice and adult court systems;
4. Provide all young people with the opportunity to fulfil their potential; and
5. Promote early intervention with young children as a preventive measure.

Early intervention was always meant to be an essential element of the Children's Hearings System, and, in many ways, the System remains an early intervention system for those children who would benefit from compulsory measures of care and protection. The importance of social welfare and educational intervention to prevent later antisocial or delinquent behaviour was implicit in the Kilbrandon Report, yet whilst the importance of 'early years' investment was stressed it was never coherently reflected in policy or resourcing. A research review on children and offending in Scotland conducted

in the mid-1990s maintained that "Early intervention should be acknowledged as a key guiding principle on which to devise a strategy for preventing crime by children and young people" (*Asquith et al.* 1995). Yet the reality of early age provision was found to be "minimal", not planned on a comprehensive basis, and "dependant on the goodwill of local authorities" (*Asquith et al.* 1995).

Following Devolution, there has been the recognition of the need for "increasingly effective universal provision for all children and their families to reduce or compensate for conditions which expose children to harmful behaviours of all kinds." (Scottish Executive 2000). The 10 point Action Plan identified two key strands of prevention: (i) the provision of educational, cultural, sport and voluntary activities for all young people to give opportunities to fulfil their potential, and; (ii) early intervention measures aimed at tackling the root causes of offending behaviour, through a co-ordinated multi-agency partnership of Local Authority departments, the police, parents, schools, health and the voluntary sector. Local youth justice strategy groups are charged with the development of effective preventative approaches by police, social work departments, schools, health professionals and so on, to avoid the need for children and young people to attend a Children's Panel: and to more closely integrate the youth justice system and an authority's service planning for vulnerable children.

In 2001, the publication *For Scotland's Children* highlighted the weaknesses prevailing at that time in the provision and delivery of services to children, young people and their families, and made recommendations for the improvement of services. Recognising the importance of a collective approach to the planning and delivery of services, the Local Government Act (2003) placed a duty on local authorities and their partners to develop Community Plans to bring together the delivery of local services.

The Scottish Executive consultation *Early Years Strategy* (2003) brought programmes together in an approach based on the integration of services to meet universal needs, at the same time as targeting families and children needing extra support. The strategy built on existing initiatives to promote an integrated approach to local needs assessment, service planning, and service development across key agencies (local government, health, voluntary organisations, and parents). Several separate programmes targeting vulnerable young children were launched to support the new social justice agenda, and the Scottish Government supports a range of parenting programmes either directly or in partnership with other agencies, including Sure Start Scotland, Aberlour Parenting Development Project[4] and Starting Well. The Youth Crime Prevention Fund (£11 million over 3 years) was launched in October 2003, to support new and existing projects that "reduce and prevent offending by young people through effective early intervention and by providing a range of support to children at risk of offending, their parents and families and by offering more effective support to victims."

4 www.surestart.gov.uk/aboutsurestart/help/contacts/scotland and www.aberlour.org. uk.

In 2003, following the tragic death of a young girl who was tortured and beaten by family members, the Government in England and Wales published the green paper *Every Child Matters*, which built on existing plans to strengthen preventative services. *Every Child Matters* focused on 4 themes:

- Increasing the focus on supporting families and carers.
- Ensuring necessary intervention takes place before children reach crisis point and protecting children from falling through the net.
- Addressing issues of accountability and poor integration in social services.
- Ensuring that the people working with children are valued, rewarded and trained.

The concerns outlined in *Every Child Matters* were the broad protection of young people, and the consultation which followed prompted a debate about the broader provision and management of services for children, young people and families. Following the consultation, the Government published *Every Child Matters: the Next Steps*, and passed the Children Act 2004, providing the legislative spine for developing more effective and accessible services focused around the needs of children, young people and families. *Every Child Matters* is UK wide but a number of documents flowed from it which are pertinent to Scotland, in particular the *Quality Improvement Framework for Integrated Children's Services* (Scottish Executive 2006e) and *'Getting it Right for Every Child'* (GIRFEC) ensuring the creating of an action plan for every child going through the Children's Hearings System. GIRFEC places the child at the centre and promises much in terms of tackling the repetition and lack of coherency in working with young people and their families through use of a single shared assessment, and a joined up planning and record system.

Along with the expansion of programmes, there has been a major overhaul of both the organization and management of youth justice in recent years, signalling an increased managerialism in the sector. Multi-agency youth justice teams, involving representatives from the police, social work, health services, the voluntary sector, and the Children's Reporter, are now involved in strategic planning and the expansions of services for young offenders. Since 2000/01 the Executive has provided funding for the 32 regionally-based Local Authorities specifically for youth justice work. Local Authority youth justice teams have the responsibility of ensuring that effective, evidence based services are being delivered which meet the needs of particular areas. This is achieved either through the delivery of services direct from Local Authority youth justice practitioners or through the commissioning of services from the many voluntary organisations involved in the provision of youth justice services.

In November 2004 the Scottish Executive issued Integrated Children's Services Planning guidance to local authorities, NHS boards and other planning partners asking them to draw together their separate plans and priorities for school education, children's social work, child health and youth justice into integrated Children's Services.

Another significant development has been the establishment of 8 regionally-based Community Justice Authorities (CJAs) in Scotland to provide leadership and strategic direction in the management of offenders.[5] Their main role is to plan, co-ordinate and monitor the provision and delivery of offender services by local partners, and assess the impact these services have on reducing re-offending. Their responsibilities include the allocation of resources across criminal justice social work services. A range of statutory partners work with CJAs, including the police, the prosecution service (COPFS), the court service, criminal justice social work services, the prison service, as well as a range of voluntary organizations which work with offenders and/or their families.

The Reducing Reoffending Programme was established following the publication of *Protecting Scotland's Communities: Fair, Fast and Flexible Justice* in December 2008. The programme aims to reduce offending and reoffending and enhance public safety as well as reducing Scotland's prison population, which has been steadily increasing despite an overall decrease in crime rates. The 'Young People Who Offend' strand of the programme is reviewing the current systems, processes and practices in place for dealing with the offending behaviour of 16 and 17 year olds and those presenting a risk of serious harm with the aim of reducing the number of young people (under 18) being dealt with in the criminal justice system and receiving custodial sentences.

The 'Whole System Approach' is being developed through the Reducing Reoffending Programme, and seeks to employ methods to ensure that only those under 18 who really need formal measures – such as compulsory supervision by the Children's Hearings System, prosecution, secure care or custody – are taken through this process. This is essentially an attempt to put into place a more streamlined and consistent response to young people that works across all systems and agencies (the 'whole system') which incorporates the introduction of multi-agency 'early and effective' intervention; a more 'joined–up' approach to serious and persistent young offenders' the introduction of multi-agency screening to identify opportunities for diversion from prosecution and diversion from custody; improvements in the use of risk assessment and risk management planning to support decision making; greater use of restorative justice, and; greater use of community disposals.

5 The Community Justice Authorities (Establishment, Constitutions and Proceedings (Scotland) Order, contained in the Management of Offenders (Scotland) Act 2005, provided for the creation of the CJAs in April 2006.

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

The following sections present statistical trend information relating to offending behaviour by children and young adults in Scotland.[6] For the purposes of this paper, procedural legal definitions are used; 'children' being defined as under 16 years, and 'young offender' as 16-21 years.

All available data sources about youth offending in Scotland have their limitations. Gathering comparable and reliable information about the numbers of young people going through the Children's Hearing System and the criminal justice system is problematic as some agencies count cases, not individuals (e. g. number of referrals to the Procurator Fiscal) and some young people commit more than one offence (and so can go though the system(s) more than once in any given year). Data about the number, age and gender etc. of offenders only becomes available within the criminal proceedings data and the conviction data. An individual may be proceeded against on more than one occasion over the course of the year, with several charges involved on each occasion. Those under 21 are more likely than older offenders to be convicted on a number of occasions and hence to be counted more than once. Unfortunately, information on migrant status is not provided in official statistical information.

2.1 Numbers of referrals dealt with by the Children's Hearings System

Using figures from the late 1970's, *Martin*, *Fox* and *Murray* (1981) found that almost three quarters of referrals to the Reporter were on offence grounds. Today's figures are dramatically different, as *Table 1* shows. Referrals (on all grounds) have increased steadily, from 26,862 in 1996/97 to 53,883 in 2005/06, the highest ever figure. The increase in referrals on non-offence grounds has been much more marked than that for offences. In 2005/06, 40,931 children were referred because of concerns about their care and protection, up 9% from 2004/05 and up 179% since 1996/97. A much smaller number, 17,624, were on offence grounds, up less than one percent from 2004/05 and up 29% since 1996/97 (SCRA 2006). More children are referred to the Reporter because they have suffered from lack of parental care (17,801 children) than because they have offended (17,624 children) (*SCRA* 2006). Clearly, the demand on the System is increasing substantially, although, to put it into perspective, the Hearings System deals only with 6% of children in Scotland.

6 Where possible, trend information dating back to 1980 is supplied; where this is not the case, earlier data were either unrecorded, unpublished, or unavailable.

Table 1: Children Referred to Reporter (offence and non-offence grounds) 1996/97 and 2005/06

Number of children referred to Reporter		1996/97		2005/06	
		Number	(%)	Number	(%)
All Grounds	Girls	9,349	35	22,533	42
	Boys	17,513	65	31,229	58
	Total	26,862	100	53,883	100
Non Offence Grounds*	Girls	6,961	48	19,843	48
	Boys	7,513	52	20,975	52
	Total	14,474	100	40,818	100
Offence Grounds*	Girls	2,962	20	4,222	24
	Boys	11,589	80	13,392	76
	Total	14,551	100	17,614	100

* These figures include children who have also been referred on both offence and non offence grounds.

Note: The table records numbers of grounds referred to the Reporter, not numbers of children; an individual child can be referred on several grounds at any one time.

Source: Adapted from SCRA Annual Report 2005/06.

For the last 20 years, the referral rates on offence grounds have remained relatively stable for boys (around 40-45 referrals per 1,000 population in the 8-15 year age group), whilst the rates for girls have risen (from 8 referrals per 1,000 population in 1985 to 12 referrals per 1,000 population in 2000-2001). The most common age for referral to the Reporter are 14 and 15 years, for both boys and girls. The types of grounds under which children are referred to the Reporter are set out in *Table 2*.

Table 2: Grounds of Referral for Children Referred to the Reporter, 2003-2006

Grounds for Referral	Number of children referred		
	2003/04	2004/05	2005/06
(a.) Beyond control of any relevant person	4,183	4,558	5,107
(b.) Bad associations or moral danger	2,590	3,083	3,004
(c.) Lack of parental care	16,266	16,781	17,801
(d.) Victim of a Schedule 1 offence*	12,929	16,270	17,331
(e.) Member of the same household as a victim of a Schedule 1 offence*	1,788	1,684	1,629

Grounds for Referral	Number of children referred		
	2003/04	2004/05	2005/06
(f.) Member of the same household as a Schedule 1 offender 1	1,022	816	876
(g.) Member of the same household as an incest victim or perpetrator	23	15	36
(h.) Not attending school	3,407	3,137	3,291
(i.) Allegedly committed an offence	16,470	17,494	17,624
(j.) Misused alcohol or drugs	1,611	1,369	1,426
(k.) Misused solvents	44	29	17
(l.) In the care of the local authority, and special measures are necessary	77	50	36
Total* children *referred**	*45,793*	*50,529*	*53,883*

* Any of the offences in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply).

** These totals count every child referred to the Reporter once for the year. A child may be referred to the Reporter more than once in the year on the same and/or different grounds.

Source: Adapted from SCRA Annual Report 2005-2006.

Between 1996/97 and 2005/06, the number of children brought to a Hearing by the Reporter increased by 9% (up from 13,112 to 14,282). The welfare of the child, using minimum intervention principles is of paramount concern in the Children's Hearings System. Decisions are made by a lay tribunal comprising a reporter and lay panel members. They can: a) take no further action; b) require the young person to be supervised by a social worker whilst still living at home; or c) require the young person to be supervised in a residential setting. The number of children made subject to compulsory Supervision Requirements (the principal outcome of a Hearing) increased from 12,644 in 2006-07 to 13,219 in 2007-08.

2.2 Young people and reported crime

Following a more general pattern across the western world, the sharp increase in Scottish crime rates in the latter decades of the twentieth century has seen a gradual lessening and levelling off in more recent years (Scottish Executive 2006a). Overall crime (all ages) has decreased significantly from a peak in 1991, and remained relatively stable since 2000/01, although some crimes, notably drug-related crimes, have increased gradually.

A review of the offender files carried out by the Scottish Criminal Records Office in 2001 revealed over 76,000 recorded offenders under the age of 21 years (including those whose cases were still pending). According to Audit Scotland (2002, p. 10) this represents one in twelve young people in Scotland.

Table 3 illustrates estimates provided in a report on crimes committed by young people (aged 21 and under) in Scotland (*DTZ Pieda Consulting* 2005). The report draws on several official data sources, including police recorded crime statistics, the Scottish Crime and Victimisation Survey, Children's Hearings data, and data from the courts. Using this data, it is estimated that 43% of all crime is attributable to young people aged under 21 years. These crimes are weighted firmly in favour of public order offences, and low-level theft: fire-raising (86%), vandalism (75%), theft of motor vehicles (75%), theft by opening lock-fast places (65%), handling offensive weapons (59%) and housebreaking (55%). Conversely, young people are less likely to commit crimes of indecency (41%), other crimes of dishonesty such as fraud and reset (30%) and motor vehicle offences (26%) (*DTZ Pieda Consulting* 2005).

Table 3: Estimated proportion of selected crimes due to young people, 2005

Crime category	No. of recorded crimes	% of incidents due to young people	No. of recorded crime due to young people
Crimes of violence	16,461	42	6,957
Crimes of indecency	6,552	41	2,705
Crimes of dishonesty	235,668	54	127,284
Fire-raising, vandalism etc	95,470	75	71,953
Other Crime	72,883	39	28,588
All Crime	427,034	56	237,487
All Offences	508,855	33	167,243
All Crimes and offences	935,889	43	404,730

Source: Adapted from *Scottish Executive* (2005) Measurement of the Extent of Youth Crime in Scotland.

Table 4 breaks down these findings by age-category and gender. In keeping with the international picture, it is estimated that the bulk of youth crime is attributable to those aged 18-21 (49%), with those aged under 15 disproportionately

responsible for offences such as fire-raising, vandalism and indecency.[7] Young men are responsible for the majority of youth crime (87%), with a far smaller proportion attributable to young women (13%).

Table 4: Proportion of youth crime due to specific age-groups and gender (2005)

Crime category	15 years and under in %	16-17 years in %	18-21 years in %	Males in %	Females in %
Crimes of Violence	24	20	56	90	10
Crimes of Indecency	60	14	27	85	14
Crimes of Dishonesty	34	17	49	85	15
Fire-raising, vandalism etc.	65	12	23	90	10
Other Crimes	24	16	60	90	10
All Crimes and Offences	*36*	*15*	*49*	*87*	*13*

Source: Adapted from *Scottish Executive* (2005) Measurement of the Extent of Youth Crime in Scotland.

2.3 Criminal convictions and young offenders

Paradoxically, the further an offender progresses in the criminal justice system, the more becomes known about him or her. As the reliability of data on offenders increases, there is a corresponding decrease in its reliability to offending per se. Though at this point in the criminal process it is possible to analyse offending by age and gender, it should be emphasised that the statistics relate to criminal convictions, rather than crimes. As can be seen from *Table 5*, criminal convictions for all age-categories, and for both males and females, have decreased steadily over the past two decades. Males are far more likely to be convicted of an offence than females, and the proportions attributable to both genders have remained relatively constant. The most common age of conviction, however, varies quite considerably between genders. Where for males the peak age has remained steady at 18, for females the peak age has fluctuated around the age of 20. For both males and females, however, the majority of convictions are attributable to under-21s.

7 The report authors (see *DTZ Pieda Consulting* 2005, p. 36; para 4.38) make clear that this finding is anomalous, but do not offer any explanation.

Tables 6 and *7* disaggregate the figures on criminal convictions by offence-type, for males and for females respectively, for the years 1996-2006. The totals listed are total convictions for the gender in question for each offence. As *Table 6* illustrates, though total male convictions for all crime and offences has decreased significantly over the past decade (from 130,961 in 1996 to 108,189 in 2005-06), under 21 convictions have decreased still more rapidly (from 31,852 in 1996 to 24,413 in 2005-06); a similar trend is in evidence for crimes of dishonesty over the same time period (8,919 to 3,146 for under-21s; 23,259 to 13,781 for total convictions). Non-sexual crimes of violence have decreased at a similarly significant rate (1,560 to 588 for under-21s; 4,019 to 1,820 for total convictions); while crimes of indecency have decreased slightly overall (546 to 542), the rate has increased slightly for under-21s (94 to 116). Over the past decade crimes of fire-raising and vandalism have increased for under-21s (1,908 to 2,078) while decreasing overall (4,796 to 4,234). Finally, 'other crimes' (predominantly drug-related crime and crimes not elsewhere classified) have increased slightly for under-21s (3,495 to 3,866), and more substantially overall (11,707 to 14,392).[8]

For females, *Table 7* shows some quite important trends. Overall, female convictions for all crimes and offences increased notably for the first few years of this century, before decreasing slightly; convictions for under-21s decreased steadily over the same period. For crimes of dishonesty, though the overall rate has decreased slightly over the past ten years (from 4,820 in 1996 to 3,697 in 2005-06), the number attributable to under-21s has decreased more rapidly (1,046 to 549). In both crimes of indecency and non-sexual crimes of violence, rates for under-21s and total convictions have shown similar decreases over the time-period. Both overall and for under-21s, convictions for fire-raising and vandalism, and other crimes, have increased slightly.

8 Non-Sexual Crimes of Violence: homicide, serious assault, robbery and (pre-2001) handling offensive weapons; Crimes of Indecency includes: sexual assault (from 2002 sub-categorised as rape and attempted rape, indecent assault), lewd and indecent behaviour; Crimes of Dishonesty includes: housebreaking, theft by opening a lock-fast place, theft of a motor vehicle, shoplifting, other theft and fraud; Fire-raising, Vandalism etc includes: fire-raising, vandalism; Other Crimes include: Crimes against public justice, drugs, and (2001 onwards) handling offensive weapons.

Table 5: Number of persons* with a charge proved per 1,000 population by age and gender, 1988-2006

	1988		1990		1995		1999/00		2000/01		2004/05		2005/06	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Total	*76*	*11*	*74*	*12*	*65*	*11*	*55*	*8*	*48*	*8*	*56*	*10*	*53*	*9*
Under 16	1.1	0.08	0.7	0.04	0.7	0.07	0.3	0.02	0.2	0.04	0.4	0.07	0.5	0.03
16	121	11	107	9	80	9	60	6	44	5	56	6	65	7
17	224	20	216	22	194	18	163	19	141	16	146	17	141	20
18	251	21	253	24	247	25	205	26	193	24	182	23	177	23
19	243	22	235	24	218	24	200	26	180	23	181	23	170	20
20	216	24	214	25	200	24	185	26	169	23	166	25	158	20
21-25	162	24	163	26	163	26	154	23	140	22	148	28	135	24
26-30	111	21	114	22	110	22	106	16	96	16	121	24	112	23
31-40	72	14	72	15	70	15	64	10	56	10	73	16	70	14
Over 40	30	4.4	29	4.7	25	4	20	2.7	16	2.5	22	4.3	22	4

* Number of occasions when a person had a charge proved.

Notes: Includes sex not known; excludes companies. Includes age not known; uses mid-year population estimate for those aged 8-70. Uses mid-year population estimate for those aged 8-15, and those aged 41-70.

Source: Amended from Scottish Executive (1998) *Criminal Proceedings In Scottish Courts, 1996* and Scottish Executive (2007) Criminal Proceedings in Scottish Courts 2005/06.

Table 6: Males under the age of 21 with a charge proved by main crime/offence, 1996-2006 (Total = total male convictions)

	1996		1998		2000		2002		2004/05		2005/06	
	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total
All crimes and offences	*31,852*	*130,961*	*29,445*	*120,482*	*24,392*	*101,208*	*24,881*	*106,096*	*24,545*	*112,494*	*24,413*	*108,189*
All crimes	15,976	44,327	13,908	39,401	11,360	33,802	10,458	35,443	10,250	37,151	9,794	34,859
Non-sexual crimes of violence	1,560	4,019	1,400	3,710	1,445	3,808	613	1,900	664	2,010	588	1,820
Crimes of indecency	94	546	91	579	85	449	66	446	99	556	116	542
Crimes of dishonesty	8,919	23,259	7,863	20,630	5,939	17,040	4,796	17,573	3,576	15,366	3,146	13,781
Fire-raising vandalism etc.	1,908	4,796	1,757	4,228	1,558	3,597	1,671	3,706	2,113	4,502	2,078	4,324
Other crimes	3,495	11,707	2,797	10,254	2,333	8,908	3,312	11,818	3,798	14,717	3,866	14,392

Table 7: Females under the age of 21 with a charge proved by main crime/offence, 1996-2006 (Total = total female convictions)

	1996		1998		2000		2002		2004/05		2005/06	
	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total	Under 21	Total
All crimes and offences	*3,314*	*21,308*	*3,366*	*18,667*	*3,059*	*16,366*	*3,033*	*18,499*	*3,020*	*21,468*	*2,948*	*19,902*
All crimes	1,602	7,362	1,712	7,481	1,542	6,013	1,431	6,570	1,275	7,259	1,102	6,714
Non-sexual crimes of violence	66	284	77	302	96	315	67	289	63	327	48	257
Crimes of indecency	49	433	56	742	28	202	17	113	13	229	13	295
Crimes of dishonesty	1,046	4,820	1,136	4,585	989	3,813	913	4,200	712	4,216	549	3,697
Fire-raising vandalism, etc.	123	380	149	417	122	352	122	423	168	501	163	476
Other crimes	318	1,445	294	1,435	307	1,331	312	1,545	319	1,986	329	1,989

Source: Adapted from Tables 6(a) and 6(b) Scottish Executive (2007) *Criminal Proceedings In Scottish Court 2005/06*. From 2002, sexual assault recorded separately, under rape and attempted rape, and indecent assault. For the purposes of continuity, the table retains the old classification.

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

3.1 Alternatives to prosecution

3.1.1 Diversion, mediation and restorative justice

Policy direction in Scotland is aimed at prevention and early voluntary intervention with compulsion only as a last resort and, as such, there are a range of alternatives to prosecution, including diversion to social work services, mediation and restorative justice practices. Whilst mediation is less well-developed in Scotland, the number of restorative justice services for young offenders are growing.

Diversion is specifically targeted towards key groups of accused in Scotland, including young offenders. Diversion from Prosecution is the referral of an accused to social work or other agencies where it is believed that formal criminal justice proceedings are not necessary (i.e. where there is no overriding public interest for a prosecution). The accused is then dealt with through 'diversion schemes' which aim to address underlying causes of offending. Diversion is designed to prevent individuals being prematurely "up-tariffed" into a custodial sentence and to stop the cycle of offending/punishment before it starts. The decision as to whether or not an accused should be diverted is taken by the Procurator Fiscal.

The Report of the Advisory Group on Youth Crime (Scottish Executive, 2000) called for a “greater emphasis on prevention, diversion and the concept of restorative justice, including the victim perspective” in its youth justice programme. Policy since then has been to encourage greater use of diversionary mechanisms. The introduction of restorative approaches, in particular family group conferences, into youth justice practice has resulted in the development of new mechanisms for involving parents, families and victims directly in decision making and in problem resolution for young people. SACRO (Safeguarding Communities – Reducing Offending) provides services in criminal justice, conflict resolution and restorative justice and reparation, and the leading provider of restorative youth justice services in over 20 local authorities. In addition, there are a number of other providers including local authorities and other voluntary sector agencies playing a key role in ensuring restorative justice services are available throughout Scotland.

A family group conference provides a mechanism for making decisions about how best to deal with a young person's criminal behaviour by involving them, the victim, and supporters of both, typically brought together with a trained facilitator to discuss the incident and the harm it has brought to the victim and to the group of supporters. The conference provides an opportunity

for participants to consider the facts of what happened; for victims to explain how they have been harmed and to question the offender. Supporters, in particular parents and carers, have an opportunity to examine the consequences, to describe how they have been affected by the incident and how they can contribute to some resolution. At the end of the conference, the participants can look to the future by trying to reach an agreement on how the person can make amends.

3.2 Sanctions

There are 5 young offender institutions in Scotland, geographically dispersed and often located within an adult prison. Young people can also be housed temporarily in other adult prisons across Scotland, although this practice is under review by the Scottish Prison Service. The measures available to a court in sentencing a person with a charge proved depend on whether the accused is an adult (21 or over), a young offender (aged 16 but less than 21) or a child (under 16 or under 18 with a current supervisory requirement from a Children's Hearing).

There are a range of formal sanctions that may be imposed on young offenders prosecuted through the criminal courts in Scotland, ranging from custodial detention to an expanding number of community-based disposals, including electronic monitoring (tagging). There are also a wide range of services and 'dedicated programmes' that can be imposed by the court, i. e. offending reduction programmes, addictions services, and alcohol and drug awareness programmes.

3.2.1 Custodial sentences

Where children aged under 16 years have committed a very serious offence (such as murder), they will be referred to the Procurator Fiscal, and prosecuted before a criminal court. This could culminate in one or more of a range of court-imposed sanctions. For those aged under 21 years, detention is the ultimate sanction available to the Scottish criminal courts (for those aged over 21 years, it is imprisonment). Under Section 51 of the Criminal Procedure (Scotland) Act, 1995, young people from the ages of under 16 up to 18 years can be remanded to secure care when they appear in court rather than a Children's Hearing. This often occurs when the child is accused of a serious offence. Those convicted of an offence and imprisoned under the age of 16 are sent to secure care until their 16th birthday, although the Scottish Government has recently extended the upper age for secure care in these cases to 18. Thereafter, they are transferred to a young offender institution (YOI) which houses young prisoners up to the age of 21, and thereafter moved to an adult prison.

Scotland also has dedicated secure accommodation units, spread across the country. These are intended to provide secure accommodation for young people under 16 years in need of care and those who have offended. Most young people in secure accommodation are placed there on the authority of a Children's Hearing, with approximately one third sent as a result of a court order, either serving a sentence for a serious crime or on remand. Around 250 young people are placed in secure care every year in Scotland (*Johnstone* 2010). These units are run by the local authority and provide a full curriculum of care, delivering a range of educational, health and behavioural programmes for young people who are putting themselves or others at risk. Where a young person is subject to a supervision requirement through the Children's Hearings System and pleads or is found guilty in a sheriff or High court, the sheriff is required to request advice from the Children's Hearing. If a young person appearing on indictment, who is subject to a supervision requirement through the Hearings System, receives a custodial sentence, secure care can be considered as an option. If a young person is not subject to a supervision requirement but is under 17 years and 6 months, advice from and disposal by the Children's Hearing System remains an option to courts. This could also include a secure order as an alternative to custody, if the requirements within section 70 of the Children (Scotland) Act 1995 are met, which are that the child is likely to abscond and/or cause injury to him/herself or some other person.

Summary of custodial sentences:

- Sentence a young offender to a young offender's institution (YOI) for a period not greater than that of imprisonment which the court could have imposed on an adult.
- Recall to YOI an offender who is under supervision following detention in a YOI for a previous offence.
- Sentence a young offender under 18 years of age convicted of murder to detention for an indeterminate period. (The effect of these sentences is normally detention or further detention in a YOI).
- Sentence a child to a specified period of detention in a place and on such conditions as Scottish Ministers may direct.

3.2.2 Community sentences

For both young and adult offenders, increasing use has been made of an ever-expanding list of community-based (non-custodial) sentences in Scotland. There has also been a focus on forms of surveillance, including the controversial introduction of Restriction of Liberty Orders (RLOs) (monitored by electronic tagging). Community-based disposals are run by local authority criminal justice

social workers, who are responsible for the provision of a range of statutory services to the criminal justice system, including the supervision of offenders subject to social work disposals imposed by the courts.

Summary of community sentences:

- Impose a Probation Order with or without various conditions including a requirement to do unpaid work.
- Impose a Community Service Order requiring offender to undertake unpaid work.
- Impose a Supervised Attendance Order as a disposal of first instance for those aged 16 and above (piloted in a small number of courts).
- Impose a Restriction of Liberty Order.
- Impose a Drug Treatment and Testing Order.
- Impose a Community Reparation Order (piloted in a small number of courts).
- Impose an (criminal) Antisocial Behaviour Order.

3.2.2.1 Probation Orders (POs)

Probation is one of the most commonly used community sentences. Offenders can be placed on probation for a period of between 6 months and 3 years. The main purpose of probation is to work with offenders to prevent or reduce their reoffending, and the PO will have an Action Plan in which the offender agrees to address their offending behaviour and its underlying causes. POs can be used very flexibly by the courts and additional conditions can be attached regarding the offender undertaking unpaid work; the offender's place of residence; curfew; financial recompense to the victim; or attendance at a specialist programme such as alcohol or drug treatment.

3.2.2.2 Community Service Orders (CSOs)

Alongside Probation[9], CSOs remain the most commonly used community sentence. An offender given a CSO is required to carry out unpaid work of benefit to the community for between 80 and 240 hours in summary proceedings (i. e. where the Sheriff sits without a jury) and 300 hours in solemn proceedings (i. e. before a Sheriff and jury). The law restricts CSOs to offences which would otherwise have resulted in imprisonment or detention.

While a CSO allows the offender to remain in the community it also requires them to carry out work designed to provide direct benefit to the

9 www.scotland.gov.uk/Topics/Justice/criminal/16906/6823.

community as a whole, ranging from an individual placement providing assistance to elderly or disabled people, to group work on outdoor environmental improvement projects. All work is intended to be challenging and demanding for the offender and is supervised within a framework of National Objectives and Standards. These standards require the offender to comply with various conditions in terms of both their personal conduct and work performance. Failure to comply with the conditions of a CSO can result in a breach of the order and the offender being returned to court. In such cases the court has the power to revoke an order and deal with the offender in any way which would have been appropriate to the original offence, including imposing a custodial sentence. CSOs are relatively more common amongst young offenders (84.2 orders per 10,000 population for 18-20 year olds and 60.3 orders per 10,000 population for 21-25 year olds).

3.2.2.3 Supervised Attendance Orders (SAOs)

SAOs were first introduced in Scotland on a pilot basis in 1992 and rolled-out nationally during the mid to late 1990s following legislative amendments in 1995. The SAO is an alternative to imprisonment for people who default on court-imposed fines, commanding the support of sentencers and other court personnel, social work staff and offenders. SAOs provide a community-based alternative, substituting the unpaid portion of a fine for a period of constructive activity designated by the social work department. SAOs run for between 10 and 100 hours as ordered by the court (subject to a limit of 50 hours for an outstanding amount of up to £ 200).

3.2.2.4 Drug Testing and Treatment Orders (DTTOs)

Introduced in 1999, a DTTO is a high tariff disposal for drug-misusing offenders who might otherwise receive a custodial sentence, and is available to both the High Court and Sheriff Court. The intention is to tackle those whose offending is a direct result of their drug-misuse. The DTTO has two objectives: to reduce the amount of acquisitive crime committed to fund drug misuse, and to reduce the level of drug misuse itself. DTTOs contain features unique to a community disposal, including a requirement for regular reviews by the court to enable sentencers to monitor progress and a requirement that the offender consent to regular, random drug tests throughout the Order. Importantly the DTTO does not expect nor require immediate total abstention and a positive test result will not immediately constitute a breach of the order.

3.2.2.5 Restricted Liberty Orders (RLOs) and Electronic Monitoring

Electronic tagging and monitoring of *adult* offenders was first introduced in 1995 under the Criminal Procedure (Scotland) Act which allowed for courts to impose a RLO, which require the offender to be in a specified place or, if more appropriate, not to be in a specified place, for a stipulated period of time. The Antisocial Behaviour etc (Scotland) Act (2004) provided for the introduction of electronic monitoring for children aged under 16 years, and the courts can now impose an RLO on a young person restricting them to a specific place for up to 12 hours a day. Children's Hearings Systems also have the power to impose conditions restricting the movement of a young person, where that young person meets the criteria for secure accommodation, that is: that the young person is likely to abscond and, if so, is likely to be at risk and; is likely to injure him-/herself or others. Where this occurs, an Intensive Support and Monitoring Service (ISMS), which is a community based service covering all of the young person's needs, is put in place to support these arrangements. ISMS is part of a disposal for Children's Hearings to use as a direct community alternative to secure accommodation, although the use of such a service varies across the country. Young persons aged 12 or over, receive an intensive, tailored, multi-agency support package. Where necessary a young person can also be subject to Movement Restriction Condition, requiring the young person to remain at home or some other specified location for up to 12 hours per day, monitored by an electronic tag.

Although the Scottish Government claim that ISMS are designed with welfare needs of the child in mind, it is hard not to see this and other similar developments as signalling yet another shift from the welfarist concerns and ethos of minimal intervention espoused by Kilbrandon. Of significance is that these measures are being implemented in a context of falling crime rates, and in which convictions for young offenders under 21 years are decreasing, and offence referrals to the Children's Hearings System are relatively stable.

3.2.2.6 Anti-Social Behaviour Orders (ASBOs)

In common with England and Wales, Scotland has also seen the introduction of deeply contentious Anti-Social Behaviour Orders (ASBOs) which combine elements of both criminal and civil law. The Anti-Social Behaviour etc. (Scotland) Act 2004 allows for the imposition of an ASBO (or an interim ASBO) on young people from the age of 12, although a Children's Hearing must be held before such an order is made.

In Scotland, as in England and Wales, such developments must be seen within the context in which a gradual elision has taken place between the community safety and youth justice agendas, marking a shift from a more child-centred focus to a wider focus on the concerns of neighbourhoods and victims of

crime and incivilities. However, it is important to note that the Scottish approach to tackling antisocial behaviour by children differs somewhat from that of England and Wales. In England, the practice of using ASBOs against young people is widespread with about half of all ASBOs being granted against young people, and the 'naming and shaming' of children commonplace in a significant number of areas (*Burney* 2005). In contrast, the use of ASBOs for 12-15 year olds in Scotland must complement the Children's Hearing System, which represents a considerably more holistic, welfare-based approach. Whilst a breach of an ASBO constitutes a criminal offence, unlike in England and Wales, children under 16 cannot be detained. Rather he or she is reported jointly to the Procurator Fiscal and the Children's Reporter, and possible penalties include a range of community-based disposals (discussed below).

Anti-social behaviour legislation also has the potential for criminalising parents, where Parenting Orders are breached. Parenting Orders were introduced by part 9 of the Antisocial Behaviour etc (Scotland) Act 2004[10], and implemented by way of a 3 year national pilot which began in April 2005. A Sheriff may make a Parenting Order on the application of a Reporter or Local Authority but, before it can be imposed, parents must have refused to engage voluntarily with support made available to help improve their parenting.

3.2.3 Other sentences

There are a range of 'other' sentences available to the court in sentencing of young offenders: the court may order an Absolute Discharge (with no conviction recorded in summary procedure) or, following a deferral of sentence, make no order; the court may also admonish the offender or make an order to find caution, or; the court may remit the disposal of a child to a Children's Hearing.

4. Juvenile criminal procedure

Until recently, Scotland had one of the lowest ages of criminal responsibility in Europe – 8 years. Although in practice, those aged under the age of 16 are mainly dealt with by the Children's Hearings System and rarely end up in court, the very low age of criminal responsibility has been the subject of strong criticism from the UN Convention of the Rights of the Child, as well as children's rights proponents and legal commentators from within Scotland. In 2000, an advisory group to the Scottish Parliament recommended raising the age of criminal responsibility from 8 to 12 years (children under the age of 8 are deemed 'doli incapax' (incapable of evil)). The Scottish Executive responded and referred the matter to the Scottish Law Commission for review. In 2002, the

10 www.opsi.gov.uk/legislation/scotland/acts2004/40008-j.htm#102.

Scottish Law Commission recommended raising the age of criminal responsibility to 12 years, and these recommendations were incorporated in the Criminal Justice and Licensing (Scotland) Act (2010), which can be seen as an attempt to bring Scots law more into line with jurisdictions across Europe. The Criminal Justice and Licensing (Scotland) Act gained Royal Assent in June 2010 and the relevant provisions came into force in March 2011. Section 52 of the Act essentially revoked the power of the Crown to prosecute children under 12 in an adult court. This is not quite the same as decriminalisation of those under 12; rather it confers immunity from prosecution for 8 to 11-year-olds. The legal presumption that 8 to 11-year-olds could be held to have the mental capacity to commit a crime remains. Now, no one under the age of 12 can be charged with an offence. Criminal proceedings against those aged 12 to 16 years are still strictly controlled by the Lord Advocate's Guidance.

Unlike in England and Wales, there is no general right of prosecution in Scotland. The prosecution is undertaken by the Lord Advocate in the interests of the public as a whole. The police give details of alleged crimes to the local Procurator Fiscal (the public prosecutor), who decides whether or not to prosecute and determines the level of court, and so plays an important gate-keeping role.

All that may appear in the media about a criminal prosecution involving an adult or juvenile accused person, is a fair and accurate report of legal proceedings, published contemporaneously and in good faith. The Scottish judiciary takes a very severe attitude toward any potentially prejudicial publicity before or during the trial.

Where a young person is brought before a court, the case follows the adult processes of any case being brought on a criminal charge. A duty solicitor is available to advise and represent those held in custody at their first appearance. If the offence is so serious it is brought before the High Court, the young person has the same right to a Defence Counsel as an adult accused person. Legal aid is available to assist with the costs of court proceedings and legal advice, and assistance is available to assist with the costs of seeking advice from a solicitor. Those aged over 12 years are generally considered to be capable of choosing legal representation to defend legal proceedings, without parental involvement.

There are three levels of criminal court in Scotland. The High Court of Justiciary (the Supreme Court) tries the most serious crimes (such as murder, armed robbery, and rape). All High Court cases are presided over by a judge, with a 15 person jury. Cases in the High Court are prosecuted by Advocates or Solicitor-Advocates (Advocate Deputes) who are appointed by the Lord Advocate, in whose name all prosecutions are brought in the public interest. The High Court can impose a maximum sentence of life imprisonment, and fines of unlimited amounts. The Sheriff Courts, of which the recently incepted Youth Courts are a part, deal with less serious offences. There are two methods of prosecution in the Sheriff Court, solemn procedure (a sheriff with a 15 person jury) or summary procedure (a sheriff without a jury). Solemn procedure is used

in serious cases where the charge can attract a custodial sentence in excess of 3 months or a fine of more than £ 5,000. Summary procedure is used in less serious cases, with sentencing powers restricted to 3 months. The third level of criminal court is the District court which deals with minor offences under summary procedure, and which are administered by the local authority. The maximum sentence that a District court can impose is 60 days imprisonment, or a fine of £ 2,500. The legislative basis for most criminal court activity is included in the Criminal Procedure (Scotland) Act 1995.

Local authorities have a statutory duty to provide services to the court, including the provision to the court of social enquiry reports (SERs), a form of social background report on offenders. Prepared and submitted by criminal justice social workers, SERs provide information on the offender's circumstances, character and physical and mental condition, and address issues concerning the offence and the offending behaviour, in order to inform the court's decision-making on case disposal. A range of personal and social factors are addressed in SERs, including family circumstances, relationships, accommodation, lifestyle, education, health, employment, financial circumstances, as well as assessing risk of re-offending and risk of harm (*Scottish Executive* 2000). The court must always obtain an SER in certain cases. In relation to young offenders, this is in cases where the offender is aged under 16, or aged between 16 and 18 and is subject to a supervision requirement under the Children's Hearings System; where those under 21 face a custodial sentence, or before imposing certain community disposals.

4.1 The Children's Hearing System

The Children's Hearing System (see http://www.childrens-hearings.co.uk/) is comprised of regionally-based welfare tribunals comprised of lay 'panels' of trained volunteers drawn from the local community,[11] which engage all parties, including the child and the child's family, in reaching a decision as to whether compulsory supervision, education and/or training are required.[12] Professional staff with a social work or legal background work as 'Reporters' to the system.[13] Reporters act as gatekeepers to the Children's Hearings System. The role of the Reporter is to receive referrals of children and young people and

11 Panel members (aged 18-60 years) are recruited from the public, undergo selection and training processes, and are appointed by the Secretary of State for Scotland.

12 There is a Children's Panel for each local area, and currently across Scotland there are over 2,000 lay panel members.

13 Reporters are employed by the Scottish Children's Reporter Administration (SCRA) which was established under the Local Government etc. (Scotland) Act 1994 (c39) to administer the Reporter service. SCRA is a non-Departmental Public Body of the Scottish Government.

initiate inquiries into their circumstances, in order to decide whether a Hearing should be called to consider compulsory measures of care and supervision. The main source of referrals to the Reporter is the police but other agencies such as social work or education and indeed any member of the public may make a referral. On receipt of a referral, Reporters will decide what action to take: whether the evidence is sufficient to support the grounds for referral and, if so, whether compulsory measures for supervision might be required.

As previously stated, the grounds (reasons) on which a child can be brought to a Children's Hearing are diverse, and include both care and protection and offence grounds. A Hearing will consider a case where the child and the child's parent or guardian accept the grounds for referral stated by the Reporter. Where the grounds are not accepted, or where the child does not understand them, the Hearing must either discharge the referral, or: refer the grounds to a Sheriff Court to determine whether they are established. Where one of the grounds is that the child has committed an offence, the same standard of proof as that required in criminal proceedings (i.e. proof beyond reasonable doubt) is applied. Where the court is satisfied that the grounds are established, the case is remitted back to the Reporter to reconvene a Hearing.

After acceptance or establishment of the grounds, the Hearing discusses the grounds and any reports. The aim is to reach consensus about what should happen, in the best interests of the child, as a result of the Hearing. Normally the child and the child's parents (or guardian) must attend the Hearing, and the parents may bring representatives. A Hearing may appoint a 'safeguarder' to protect the interests of the child where it identifies a conflict between the child and parents. In cases where complex legal issues are involved, or where the Hearing may be considering secure accommodation, a legal representative for the child may be appointed. Other people who may be present include any social workers involved in the case, a representative from the child's school or any other person who the Hearing think might assist.

The welfare of the child is paramount. At all times, the Hearing must be governed by what it considers to be the 'best interests of the child.' That is the 'paramount' consideration but two other 'overarching principles' are also important: first, the child must be given an opportunity to express his/her views, and so Hearings are characterised by an emphasis on procedures which attempt to maximize the participation of children and their families; and second, the Hearing should not do anything unless it is better for the child than doing nothing, i. e. a principle of "minimum intervention". The overall task of the Hearing is to decide whether or not to order compulsory measures of supervision for a child and, if so, whether any conditions should be attached. A Children's Hearing is an administrative tribunal, not a court of law and thus does not decide whether the child is 'guilty' of the offence; indeed, if there is a dispute over the facts, the case is referred to court. Currently, child offenders aged between 16-

17 can be dealt with in the Hearings system, but they are more generally processed through the courts.[14]

Broadly speaking there are three main possibilities open at a Hearing. First, the Hearing can be continued if the panel members feel that they do not have enough information to reach a decision. *Inter alia* the Hearing may require the child to attend or reside at a clinic or hospital etc for up to 22 days for a report to be prepared. Second, the Hearing may discharge the referral if they are not satisfied that compulsory measures of supervision are necessary. This means, essentially, that no further action can be taken against the child as a result of the offence which led to the referral.

Third, the Hearing may make a 'supervision requirement' if this is considered to be in the best interests of the child. This may be residential (including secure accommodation) or non-residential. It may require the child to live at a particular place, or with foster carers, or with a particular family member. A supervision requirement may also require the child to comply with certain conditions. For instance, she/he may be required to attend school or a training unit regularly, or attend a drug or addiction project, or a programme designed to address offending behaviour, or regularly meet a social worker, or co-operate with a plan drawn up by a social work department. Compulsory measures can only be justified when they are in the 'best interests' of the child and local authority social work departments must implement these. In practice, the majority of Hearings do result in a supervision requirement. The system is not about punishment, but rather about 'social education' and there is a focus on early and minimal intervention. Nevertheless this is a formal intervention process requiring due process safeguards for those who are made subjects of it. Whilst the Children's Hearing System is characterised by an informal rhetoric it involves formal legal processes and outcomes.

Prior to a hearing, legal advice may be obtained to inform the child or the child's parents about their rights at a Hearing. Legal aid may be obtained for representation in the Sheriff Court, where a case has been referred to the court for establishment of grounds. Following the case of *S v Miller* 2001 SC 977, which commented adversely on the absence of legal aid in Children's Hearings, it was decided that a proceedings before a Children's Hearing fall within the ambit of Article 6 of the ECHR, since a child's right to liberty, and right in relation to family law, might be affected. Since that case, legal representation has been provided free of charge for a child where the issues are legally

14 Although the Hearings System can, in principle, deal with young people up to the age of 18, in practice, it tends to deal with those up to the age of 16, and the police tend to refer most offenders aged over 16 to the Procurator Fiscal (the public prosecutor in Scotland). In effect, then, the transition to court takes place at 16 years, although there is an option for Sheriffs to remit those up to 17 and a half years back to the Panel for advice and/or disposal.

complex. The decision as to whether a child should have a lawyer is entirely in the hands of the Children's Panel however; there is no statutory mechanism by which a child can compel, or even request, the appointment of a solicitor, nor refuse the services of a solicitor appointed by the Panel.

Both the child and the child's parents (or other relevant person) have the right to appeal to the Sheriff Court against the decision of a Hearing. This will be granted if the Sheriff is satisfied that the decision was "not justified in all the circumstances of the case". The decision of the Sheriff may be appealed, but only on a point of law, to the Sheriff Principal or the Court of Session.

4.2 Persistent young offenders and Fast-Track Hearings

A key national target of the Scottish Executive was to reduce the numbers of persistent young offenders, defined as a young person with five offending episodes within a six month period. The delivery challenge was to achieve this target of reducing the number of such offenders by 10% by 2006. The reasons given for targeting young people who offend persistently were that not only that they account for a disproportionate quantity of offences, but they were also growing in number by contrast with a stable pattern for infrequent offenders (*SCRA* 2006). Furthermore, Children's Hearings panel members and professionals involved in the Hearings system believed it worked least well for young people who offend seriously or persistently (*Hallett et al.* 1998), and that there was a risk of such offenders graduating to adult court (*Waterhouse et al.* 2000).

A baseline data report indicated the extent of the challenge faced by all those involved in reducing persistent offending by young people, and simultaneously provided the basis for performance management information (*PA Consulting* 2004). The report showed that 7% of young people referred to the Reporter on offence grounds were persistent offenders as defined, and that group were responsible for a third of offence referrals (2004: 3-4). The relatively small number of young people involved in persistent offending (between 1,300 and 1,400), are seen to be responsible for a disproportionate level of crime and antisocial behaviour in a number of local communities throughout Scotland (*SCRA* 2006, p. 9). The national target of a 10% reduction in the number of persistent young offenders was not achieved; indeed the number increased nationally by 16% between 2003-04 and 2005-06. Whilst efforts continue across many fronts and agencies to achieve a new target reduction of a further 10% by 2008, the most recent data, for 2006-07, shows a continuing rise in numbers.

A Fast-Track Hearings pilot was introduced in a number of sites in early 2003, targeting persistent offenders under 16. Fast Track Hearings were distinguished by the speed with which referrals were processed. The main aim was to improve practice, processes and outcomes with respect to the ways that the Hearings System and associated services dealt with young people who persistently offend. Particular objectives were to: speed up the time taken at

each stage of decision-making (and hence for young people to see the connection between their actions and the official response); promote more comprehensive assessments including appraisals of offending risk; ensure that all young people who persistently offend and who require an appropriate programme have access to one, and; reduce re-offending rates as an overall result of the efforts made in such cases. An evaluation showed that, in most respects Fast Track was largely meeting its objectives, in that the findings were positive with regard to reduced time-scales and other aspects such as assessment and action plans, but much less so with regard to impact on offending trends (*Hill et al.* 2005, p. 25). However, Fast Track Hearings were scrapped shortly after the evaluation, despite assurances from Scottish Ministers that Fast Track resources should be given to all Local Authorities to help them meet national standards for youth justice and to improve the quality and timeliness of the system nationally.

4.3 Youth courts

The minimum age that an offender may be dealt with as an adult is 16 years and, unlike other parts of the United Kingdom, Scotland deals routinely with young people aged 16 and 17 in criminal justice proceedings. A Sheriff Youth Court, with designated Sheriffs, was introduced for 'persistent young offenders' aged 16 and 17 in 2003. This initiative was proposed as a means of 'easing the transition between the youth justice and adult justice system', and for increasing public confidence in Scotland's system of youth justice. Initially established as a 2 year pilot in one Sheriff Court, following the evaluation of the pilot (*McIvor et al.* 2004), a second pilot Youth Court was incepted, even though the amount of referrals to the Youth Court were far less than anticipated (*McIvor et al.* 2006).[15]
The objectives of the Youth Court were:

- To reduce the frequency and seriousness of re-offending by 16 and 17 year old offenders, particularly persistent offenders (and some 15 year olds are referred to the court);
- To promote the social inclusion, citizenship and personal responsibility of these young offenders whilst maximizing their potential;
- To establish fast track procedures for those young persons appearing before the Youth Court;
- To enhance community safety, by reducing the harm caused to individual victims of crime and providing respite to those communities which experience high levels of crime; and

15 The feasibility study estimated that around 600 cases would be referred in a year; there were 147 referrals involving 120 young people in the first six months of the pilot.

- To test the viability and usefulness of a Youth Court using existing legislation and to demonstrate whether legislative and practical improvements might be appropriate (Youth Court Feasibility Project Group 2002).

There are two criteria for allocation to the Youth Court. One is 'persistent offending' and the definition used is "at least three separate incidents of alleged offending in the previous six months" (including the current charge), which is somewhat different from that used in the Fast Track Hearings. The other criteria for allocation is "contextual criteria", used as an indication of risk, and which lead the police and/or the Procurator Fiscal to believe that the offender is vulnerable to progress to more serious offending which would diminish community safety. As pointed out by *Piacentini* and *Walters* (2006, p.49) 'contextual criteria' emerges as a 'catch-all' category for referring young offenders who fail to meet notions of 'persistent offender' and the lack of clear definition gives rise to a lack of consensus between different professional groups as to how the referral criteria should be interpreted. The evaluations by *McIvor et al.* (2004; 2006) showed that almost twice as many offenders were referred to the Youth Court on "contextual" grounds than on the grounds that they were persistent offenders.

5./6. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency and Part II: The juvenile court dispositions and their application since 1980

Compared with other jurisdictions in the western world, there are very few formal, codified rules governing sentencing in Scotland. Scotland is also unusual in that there has been no concerted programme of sentencing reform, nor has there been substantial legislation which attempts to provide a formal systematic structure for sentencing. Unlike many European jurisdictions, penalties for crimes are not determined by statute in Scotland. Rather they are determined by the powers of the sentencing court and the procedures under which the prosecution takes place (i. e. High, Sheriff Solemn or Sheriff Summary and District).

There are statutory maximum penalties for some offences but these simply set a penalty ceiling and do not give sentencers any guidance as to the appropriate sentence in a given case. The Crime and Punishment (Scotland) Act 1997 makes provision for minimum sentences. However, these only apply to a relatively small number of very serious and publicly sensitive cases appearing before the High Court. Within the sentencing framework of the court and the maximum penalties set down by Parliament, sentencers in Scotland therefore exercise wide discretion to decide the appropriate sentence in each case (*Tata/Hutton* 1998).

The peak age for conviction in Scotland is 18 years. 7% of 18 year old males in the Scottish population were convicted for a crime or relevant offence (such as common assault or breach of the peace) on at least one occasion during 2005/06; the corresponding proportion for females was 1%.

The use of custody as a proportion of all sentences, for all age groups, rose from 10% in 1995/96 to 14 % between 2000/01 and 2002/03, before falling to 12 % in 2003/04 and 2004/05, and falling again by four percent in 2005/06. Overall, direct receptions to custody have decreased for young offenders (see for details *Table 14* below under *Section 11./12.*). In particular, for those aged under 16 years, direct custodial sentences are rare.

Young offenders can be sentenced to custody for a range of crimes and offences. However, as shown in *Table 8*, for the most part (and except for the most serious crimes) sentences are relatively short (under four years).

Table 8: Young offender direct sentenced receptions: Length of sentence imposed by selected main crime/offence, 2006/07

Main Offence	No.	Average sentence imposed	< 30 days	30-59 days	60-89 days	90 days	3-6 mth	6 mth – 2 yrs	2-4 yrs	4 yrs + more
		(days)	%	%	%	%	%	%	%	%
Serious assault/ murder	329	692	-	-	1	4	6	53	24	11
Robbery	105	562	-	1	1	1	12	55	27	3
House breaking	153	210	1	3	10	12	31	40	3	---
Theft	19	169	5	5	21	5	21	42	-	---
Theft from m. veh.	16	214	-	6	13	19	19	38	6	---
Theft of a m. veh.	78	172	3	4	13	18	31	31	1	---
Shoplifting	88	136	2	17	11	11	32	26	---	---
Fraud	14	135	-	7	29	21	7	36	---	---
Drugs	50	503	6	4	6	4	14	32	30	4
Petty assault	402	181	1	5	14	15	26	38	1	---
Breach of peace	176	119	7	11	27	20	20	13	1	---
Unlawful use of motor vehicle	56	156	5	7	9	13	30	36	---	---

Source: Adapted from *Scottish Executive* (2007): Criminal Proceedings in Scottish Courts, 2005/06 (m. veh. = motor vehicle).

Whilst use of custodial detention for both young offenders and adult offenders has slackened over time, community sentences imposed by the courts have increased dramatically in usage. In fact, while all other types of sentence, including financial penalties, have decreased, community sentences have grown year on year, with an increasingly diverse range of sentencing options available to Scottish courts. *Table 9* shows convictions which resulted in a community sentences across all age groups.

Table 9: Convictions resulting in community sentence by age and gender: 2000/01-2004/05

	2000/01	2001/02	2002/03	2003/04	2004/05
All persons*	12,487	13,800	15,941	15,557	16,952
Under 18	1,385	1,359	1,531	1,481	1,732
18-20	3,155	3,284	3,595	3,118	3,240
21-25	2,919	2,259	4,016	3,856	3,906
26-30	1,839	2,125	2,380	2,344	2,723
31-40	2,189	2,530	2,967	3,195	3,541
Over 40	1,000	1,141	1,451	1,563	1,810
Males**	10,632	11,658	13,340	12,963	14,215
Females**	1,855	2,142	2,598	2,594	2,737

* Excluding companies and including a small number of convictions where the gender of the offender was not known.

** Includes a small number of convictions where the age of the offender was not known.

Source: Adapted from *Scottish Executive* (2006d) Criminal Justice Social Work Statistics, 2005/06.

Structured Deferred Sentences

The pilot Youth Courts have made extensive use of "structured deferred sentences", commonly used in the adult criminal court. Sentence is deferred for a period of time to allow the offender to participate in a particular programme, and demonstrate that s/he has changed their behaviour. After the successful completion of the programme(s), the offender returns to court and the expectation is that s/he will be admonished. The value of this sentence to the court is that it allows some work to be done to address offending behaviour without attaching a criminal conviction to the offender. The danger, of course, is that the offender is receiving a punishment which is disproportionate to the

seriousness of the offence and that failure to complete the programmes to the satisfaction of the court may lead to an additional sentence.

Imposition of ASBOs

Thus far, however, very few ASBOs have been imposed on young people in Scotland, although almost three quarters of Antisocial Behaviour Contracts (ABCs) currently involve young people under 16. In late 2006, the Scottish Executive published the results of a survey of Local Authorities and Housing associations which focused on the use of ASBOs in 2005/06 (DTZ Consulting and Heriot Watt University, 2006). In that year, a total of 344 ASBO applications were submitted to the courts. Well over half of all ASBO subjects were aged over 26 years, while just over a tenth were aged 18 or under. Four ASBOs were granted in respect of 12-15 year olds, as *Table 10* shows.

Table 10: Persons Subject to ASBOs Granted in 2005/06: Breakdown by Age and Gender, in %

Age Group	Female	Male	All
12-15 years	0	2	1
16-18 years	6	16	12
19 -25 years	31	28	29
26 years and over	63	54	57
Total	100	100	100

Note: Figures may not sum to 100% due to rounding.
Source: DTZ survey.

As well as recording the number of ASBOs granted in relation to young people, the Survey also collated cases involving young people where the Local Authority had 'actively considered' an ASBO application to the court. In all, 98 cases were reported to have been considered during 2005/06 and, of these, six were considered and approved as applications to the court, 61 were considered and subsequently rejected, while 31 remained unresolved at the time of the survey. Survey respondents were asked about the reasons for decisions not to proceed with court applications in cases involving young people. Overwhelmingly, the main reason was that, following examination, alternative measures were considered to be more appropriate. This suggests that agencies are taking time to consider all possible options for young people involved in anti-social behaviour, seeking ASBOs only when other options are seen to have failed. Decisions not to proceed solely due to lack of support from the Children's Hearing System or

insufficient evidence were reported to be extremely rare. Local Authorities reported making extensive use of alternative measures to counter antisocial behaviour involving young people. Cited examples included Anti-Social Behaviour Contracts (ABCs), parental agreement contracts, intensive support, parenting classes, mediation, diversionary activities, referrals to other agencies such as the Children's Hearing System or social services, community wardens and police notices. The range of tools being used corresponds to the fact that 60 cases being considered for an ASBO were rejected in favour of alternative measures (*DTZ* 2006).

7. Regional patterns and differences in sentencing young offenders

Scotland's population currently totals just over 5 million, with the majority of the population living in larger urban areas in the central belt of the country. A significant proportion of Scotland's criminal justice business is carried out the criminal courts located in Scotland's major cities, mainly Glasgow and Edinburgh. In Scotland, at present however, there is very little systematic information available about sentencing in general, or specifically on regional patterns and differences in sentencing of young offenders.

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

This has been addressed elsewhere in the paper, see *Section 2, 3, 4, 5/6, 10, 11/12.*

9. Transfer of juveniles to the adult court

It is possible for young people to be retained in the Hearing System up until the age of 18 years through the extension of supervision requirements (the principal mode of disposal). However, the Hearings System seems reluctant to retain 16 and 17 year olds, with most supervision requirements being terminated (often on the recommendation of social workers) as soon as children reach their 16th birthday (*Waterhouse* 1999).

The overwhelming majority of 16 and 17 year old offenders are dealt with in the criminal courts. The courts do have the power to remit such cases to the Children's Hearings system for advice and/or disposal. If the young person is currently subject to a Children's Hearings supervision requirement, then the court must refer the case back to Children's Hearings System for advice, but in practice few cases are remitted for disposal by the courts.

Young offenders under 16 years of age can not be transferred to the adult criminal court. Only in very serious cases the High Court is responsible, but this is not a question of transfer but of the competency of the court.

10. Preliminary residential care and pre-trial detention

One particular and significant aim of Scottish youth justice is that no child shall be detained for any prolonged period except on the authority of a Sheriff of a Children's Hearing. Pre-trial detention of a young person is possible, but very rare. Generally, a young person arrested for an offence will be released on the basis of a legal requirement to attend at court or at a Children's Hearing on a future date when the case will be considered. Where the alleged offence is of a more serious nature, they may be detained in a 'place of safety' (for up to 3 days) (such as a residence provided by the local authority, a police station, a hospital, or other suitable place) until he or she can be brought before a sheriff or an emergency Children's Hearing. In such cases, and Emergency Hearing will be set within 3 days the offence will be jointly reported to the Procurator Fiscal and the Children's Reporter. At the earliest opportunity, a decision will be reached on how the case is to progress – whether through the Children's Hearings System or through the courts.

Where the Procurator Fiscal retains the case, the young person will be brought before court on the next lawful day, and if it is decided to proceed to trial, and bail is opposed, the sheriff may order his or her detention, although special considerations apply to the place where they may be detained.[16] If aged under 16 years, then the young person is detained under the supervision of the local authority social work department (not prison); for those over 16 years and already subject to a supervision requirement under the Hearings System, the court may similarly place the child with the local authority rather than in prison. Those over 16 years and not on supervision, and those between the ages of 14 and 16 years who are certified by the court to be "unruly or depraved"[17] are committed to a remand centre.

Unruly certificates

Up until recently, All young people aged 14-16 (and up to 18 if on supervision to the Children's Hearings system) who are alleged to have committed a criminal offence can be detained in police cells or in a prison or Young Offenders Institution if they are deemed by the police or the court to be 'unruly or depraved' – a measure that is commonly referred to as an 'unruly certificate'

16 Section 51(1) Criminal Procedure (Scotland) Act 1995.

17 Section 51(1) (b) Criminal Procedure (Scotland) Act 1995.

(H.M. Inspectorate of Constabulary for Scotland, 2008). Sections 24 and 297 of the Criminal Procedure (Scotland) Act 1975 provided that where a child over the age of 14 years appears before a court charged with a crime or offence and the court considers that, because of the child's unruly character, release on bail or detention by a local authority is not appropriate, the child may be detained in the prison system on the authority of the court. A 'police unruly certificate' is a formal recording of a child being held in a police cell, usually only for a few hours but often overnight, because of unruly behaviour and pending a referral to the Reporter if the young person is under 16. A 'court unruly certificate' following referral to the Children's Panel and concurrently to the Procurator Fiscal because of a serious incident, allows a sheriff to order a young person under 16 who is deemed 'unruly or depraved' to be detained in a secure unit, an adult prison or a young offender institution pending trial or sentence (Criminal Proceedings (Scotland) Act 1995). Such detention can be up to a maximum of 90 days in length, compared with remand which is up to 110 days.

The majority of children held on unruly certificates were aged 15 years, and the most common crimes for which unruly certificates were imposed were for crimes of violence. The average time spent in custody (before sentence, if any) was 16-17 days, although three quarters of receptions spend less than 14 days in custody (Prison Statistics Scotland 2006/07). In 2008-09, 11 children were held in prison custody compared with 15 in 2007-08, following a peak of 33 in 2006-07. The average time spent in prison on an unruly certificate was 10 days in 2007-08, down from 30 days in 1999-00. Following concerns about the detention of children under 16 years in prison facilities, the use of unruly certificates were abolished under the Criminal Justice and Licensing Act (2010), but Scotland still allows their retention in secure care or an equivalent 'place of safety' pending disposal of the case in court.

Bail

In Scotland bail can be granted for all crimes, including the most serious offences such as rape and murder. The responsibility for deciding whether or not to grant bail is a matter for the courts. The court may refuse to grant bail for a number of reasons, for instance, that the accused is likely to interfere with the Prosecutor's inquiries, or re-offend, or abscond, or that given the nature of the offence it is in the interests of justice that bail should not be granted. There are four standard conditions of bail in Scotland. These are that the accused:

- appears at the appointed time at every sitting of the court of which he is given due notice;
- does not commit an offence whilst on bail;
- does not interfere with witnesses or obstruct the course of justice;
- is available for the purpose of any report requested by the court.

In addition to the standard conditions, the courts can impose further additional conditions, such as that the accused will reside at a specified address; that he or she surrenders their passport; that he or she will not alter their appearance, and so on.

There are 3 main types of bail services. Bail Information Schemes provide verified information to the courts to assist in decision making. The aim is to provide independent, factual verified information about accused persons held in police custody prior to a court appearance the following day. Bail Accommodation is the provision of assistance in finding suitable accommodation, and aims to decrease unnecessary custodial remands by assisting those who are either homeless or who are otherwise unable to offer an acceptable address. Courts can attach a condition of residence to a bail order. Bail Supervision schemes identify individuals, based on assessed need, who require a level of intensive support and would suffer extreme difficulties if sent to custody. Under Bail Supervision, priority is given to those with mental health problems, women accused, single parents and young people aged between 16 and 17.

Remand

As *Table 11* shows, though the total number of individuals (all ages) remanded in custody following arrest has increased over the past decade, the number of young offenders remanded has steadily decreased, from 323 in 1996/97 to 284 in 2005/06. Young people between 16 and 21 years are typically remanded in YOIs.

Table 11: Average daily remand population in penal establishments by sex, age and type of remand, 1996/97-2005/06

	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06
Total*	1,021	927	971	976	881	1,019	1,247	1,246	1,216	1,242
Male	975	880	919	922	835	956	1,158	1,158	1.132	1,159
Female	46	46	52	54	45	63	87	87	84	83
YOs	323	268	289	270	220	256	251	251	260	284
Adults	698	659	682	706	661	763	995	995	959	958
Untried**	938	822	874	873	771	898	1,085	1,085	1,031	1,025
CAS***	83	105	97	103	109	120	161	161	185	217

* Components may not add to totals due to rounding.
** Includes unrulies.
*** Convicted awaiting sentence.
Source: Adapted from *Scottish Executive* (2006) Prison Statistics Scotland 2005/06.

Place of Safety legislation

In Scotland, both the Criminal Proceedings (Scotland) Act 1995 and the Children (Scotland) Act 1995 refer to places of safety for the retention of children and young people. In the former, such places are an equivalent to remand, pending either summary proceedings, a trial or sentence. In the latter, they are used to safeguard the welfare of the young person or because of a likelihood that s/he will fail to attend court or comply with conditions. A place of safety is therefore not necessarily for children and young people with mental health concerns, but to protect a child or young person from either harming themselves or others, or from absconding. A place of safety can include police cells (temporarily pending transfer to a more 'suitable' place of safety or pending a court appearance within days), secure units and local authority residential units.

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

Secure Accommodation

Scotland currently has a provision of 106 secure care places, within dedicated secure care units. These units provide a full curriculum of care, delivering a range of educational, health and behavioural programmes and undertake tailored programmes of work to prepare young people for their transition back into the community.

Approximately two thirds of young people in secure accommodation are placed there on the authority of a Children's Hearing. The remaining third are subject to a criminal court order, either serving a sentence for a serious crime or on remand (*Walker et al.* 2005). In recent years, between 200 and 250 young people have been admitted to secure care in Scotland each year, with about 90 in placement at any one time. The majority are boys but girls typically account for more than a quarter, most being placed for welfare reasons, rather than offending. There was an average of 81 residents in secure accommodation through-out 2005/06 (87 in 2004/05 and 92 in 2003/04) and that half of all young people admitted to secure accommodation during the year were 15 years old (*Scottish Executive* 2006c). Though *Table 12* shows a decline in the use of secure accommodation for most age-categories, it has been increasingly employed for individuals aged 16 and over. Importantly, too, though long-term stays in secure

accommodation are becoming rarer, very short-term stays (under one month) are becoming more common.

Table 12: Young People in Secure Accommodation: 1994-2006 by gender, age, and length of stay

		1994	1996	1998	2000	2002	2004	2005	2006
Gender	Boys	16	61	59	71	69	67	54	62
	Girls	14	23	24	16	27	24	29	20
	Total	81	84	83	87	96	91	83	82
Age	13yrs. & under	13	8	12	7	17	8	10	11
	14yrs.	21	20	11	20	13	18	16	19
	15yrs.	35	46	40	38	40	36	38	33
	16yrs. & over	12	10	20	22	26	29	19	19
Length	Up to 1m.	16	13	16	17	16	23	22	25
	1 - 2mths.	17	17	13	13	13	16	12	9
	2 - 3mths.	11	10	5	12	16	6	8	7
	3 - 6mths.	18	20	24	22	25	27	24	20
	6mths. - 1yr.	9	17	14	12	17	10	11	17
	1yr. or more	10	7	11	11	9	9	6	4
	Total	81	84	83	87	96	91	83	82

Source: Adapted from *Scottish Executive* (2006) Secure Accommodation Statistics 2005/06.

In the case of *S vs. Miller* (2001), judges in the Court of Session ruled that whilst the placing of a child in secure accommodation under the supervision of a local authority does amount to deprivation of the child's liberty in terms of Article 5 of the UN Convention on the Rights of the Child, this is justified for the purposes of "educational supervision" of a minor in terms of Article 5(1) (d). This arose from recognition by the Court of two significant points. First, the requirement for Children's Hearings to hold the child's welfare as their paramount consideration in making any decision and second, the obligation on managers of secure establishments in Regulation 4 of the Secure Accommodation (Scotland) Regulations 1996 to "ensure that the welfare of a child placed and kept in such accommodation is safeguarded and promoted and that the child receives such provision for his education, development and control as is conducive to his best interests".

A gap between the demand and supply of secure places became apparent from late 2007. The excess capacity left independent providers financially unsustainable. An independent working group, Securing Our Future Initiative (SOFI), was convened under the auspices of the National Residential Child Care Initiative in September 2008, and asked to develop proposals for making the best use of Scotland's secure resources to improve outcomes for young people and their communities; and to address the challenges facing providers and purchasers as a result of excess capacity. SOFI published its report in February 2009 and made nine recommendations, including the mothballing of 12 of Scotland's secure care places and the introduction of more effective commissioning. All recommendations were accepted.

Custodial Detention

The Scottish Prisons Service (SPS) is the executive agency responsible for running Scotland's 16 penal establishments, most of which are for adult male offenders. Young offenders under 16 years will usually be detained in secure accommodation. Those aged between 16 and 21 years can be sentenced to detention in one of the 5 Young Offender Institutions (YOIs). A young person may be temporarily detained in an adult prison if suitable secure accommodation or a place in a YOI is not available.

Prison accommodation, and the rights and privileges afforded to prisoners in Scotland, are broadly comparable with England and Wales. Prisoners who exhaust the internal grievance procedure may apply to the independent Scottish Prisons Complaints Commissioner. The Criminal Procedure (Scotland) Act 1995, Part V, outlines various provisions regarding the detention of young offenders. The system is similar to that of adult imprisonment, the main differences being in the rules relating to visitation rights and other privileges. Specifically, young offenders have far broader exercise and recreation rights than inmates in adult prisons.

There are statutory arrangements governing the early release of prisoners. As in England and Wales, offenders serving terms of less than four years may be automatically released at specific points in their sentences. Those detained for longer require Parole Board approval. In Scotland, Ministers are statutorily obliged to give effect to the Parole Board's directions.

Table 13 illustrates the rates of imprisonment for all forms of confinement, prison, and YOIs. It can be seen that the number of young offenders has generally declined, although this is off-set by an increase in the number of adult prisoners. Scotland has a relatively high incarceration rate overall, and proportionately larger numbers of young people in custody than in comparable sized European countries. Yet youth crime in Scotland is not increasing, indeed it is decreasing (Cavadino and Dignan 2006; Scottish Prisons Commission, 2008).

Table 13: Persons with a charge proved by main penalty and sentenced to custody, 1986-2005/06

Penalty	1986	1989	1991	1994	1997	2000/1	2003/4	2005/6
Total	*184,276*	*173,594*	*178,966*	*159,178*	*151,555*	*113,206*	*133,592*	*128,442*
Prison	9,859	9,091	9,222	11,583	12,070	11,390	13,136	12,719
YOI*	5,434	4,531	4,318	4,472	4,823	4,253	3,406	3,225

Source: Adapted from Criminal Proceedings in Scottish Courts, 1996 and Criminal Proceedings in Scottish Courts 2005/06. Figures for YOIs include Detention Centres which were only available to courts until 1988.

As *Table 14* illustrates, the number of young people direct sentenced to custody has varied quite significantly since 1990, from a peak of 3,111 in 1996, to a low of 1,908 in 2004/05. The general trend, however, is that of a decrease; though the number of direct sentences has increased since the low last fiscal year, to 2,170 in 2005/06. Almost all of these sentences are given to 16-20 year olds (as under-16s are usually dealt with by the Children's Hearing System), with the peak age fluctuating between 18 and 19 years although, as reported above in relation to offending, the peak age for females is generally higher, at around 20. The bulk of these sentences are consistently meted out to males, who account for between 94 and 98% of direct sentences yearly.

Table 14: Young offender direct sentenced receptions to penal establishments by age, 1990-2005/06

	Age	1990	1993	1996	98/99	00/01	02/03	04/05	05/06
Total	<16yrs.	1	4	4	7	1	1	-	2
	16yrs.	185	147	226	192	100	132	123	134
	17yrs.	493	586	644	531	349	373	310	375
	18yrs.	640	735	762	712	512	481	494	515
	19yrs.	685	795	715	732	629	592	527	570
	20yrs.	715	785	760	650	721	628	454	574
	Total	2,719	3,052	3,111	2,824	2,312	2,207	1,908	2,170

	Age	1990	1993	1996	98/99	00/01	02/03	04/05	05/06
Males	<16yrs.	1	4	4	7	1	1	---	2
	16yrs.	182	143	221	186	97	126	117	134
	17yrs.	472	580	626	497	332	353	292	366
	18yrs.	628	716	749	676	497	4450	469	489
	19yrs.	671	780	696	707	589	562	497	546
	20yrs.	686	754	750	605	669	593	412	545
	Total	2,640	2,977	3,046	2,678	2,185	2,085	1,787	2,082
Females	<16yrs.	---	---	---	---	---	---	---	---
	16yrs.	3	4	5	6	3	6	6	-
	17yrs.	21	6	18	34	17	20	18	9
	18yrs.	12	19	13	36	15	31	25	26
	19yrs.	14	15	19	25	40	30	30	24
	20yrs.	29	31	10	45	52	35	42	29
	Total	79	75	65	146	127	122	121	88

Notes: In 1995, a new system of recording came into use.
Source: Adapted from *Scottish Executive* (2006b) Prison Statistics Scotland 2005/06.

Table 15 gives an indication of the varying trends in sentence length for young offenders sentenced to prison from 1990 to 2005/06. The average sentence length has increased steadily, for both males and females, over the period; though in both cases, sentence length reached its peak in the early years of this century, and have since either decreased or levelled off. In the main, lesser sentences (under 3 months) have decreased gradually in usage, with medium-term sentences (6 months-2 years) having decreased quite rapidly. Longer-term sentences (two years and above), however, appear to have been used more frequently over the past twenty years, combining two to four year sentences with four years and above (excluding life), we see an increase from 137 in 1990 , to 230 in 2005/06.

Similarly, life sentences have increased sharply, from six in 1990 to 15 in 2005/06. Though the increase in use of long-term sentences is more pronounced for males, traces are also discernible in the context of female sentencing.

Table 15: Numbers of young offender direct sentenced receptions to penal establishments by length of sentence, selected years 1990-2005/06

All persons	1990	1993	1996*	98/99	00/01	02/03	04/05	05/06
Total	2,719	3,052	3,111	2,824	2,436	2,207	1,908	2,170
< 30 days	75	52	89	92	59	76	50	57
30 days/1mth	240	173	126	n/a	n/a	n/a	n/a	n/a
31-59 days	286	221	186	198	105	110	89	125
60 days/2mth	405	348	307	n/a	n/a	n/a	n/a	n/a
61-89 days	417	376	337	331	248	217	248	384
90 days/3mth	751	805	741	659	537	339	406	427
3-6 mth	353	463	538	500	429	357	411	417
6mth-2yr	723	925	993	848	842	812	511	515
2yr-4yr	82	163	170	117	120	137	127	154
4+yr	55	82	80	65	83	86	56	76
Life	6	3	22	14	13	13	10	15
Average sentence imposed (days)**	194	244	253	225	267	297	267	276

* New recording practices were introduced in 1995.
** Excluding Life sentences.
Source: Adapted from *Scottish Executive* (2006b) Prison Statistics Scotland 2005/06.

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

Despite the uncertainty about the future of Children's Hearings, a key strength of the Scottish youth justice system is that it has thus far largely managed to avoid the more punitive approach taken in England and Wales. However, the dominance of welfarism within Scottish youth justice has diminished quite markedly in recent years (*Burman et al.* 2006; *McAra* 2004; 2008). Recent policy and legislative developments in youth justice, such as the introduction of Anti-Social Behaviour Orders (ASBOs), Restriction of Liberty Orders (RLOs) and electronic monitoring for young offenders, as well as the introduction of Youth Courts have impacted on the criminal justice response to youth offending and the management of young offenders which, taken together, pose serious challenges to the Kilbrandon ethos.

It has also become quite clear, in the relatively short period since the European Convention on Human Rights (ECHR) was incorporated into Scottish domestic law, that rights claims will continue to challenge and change aspects of the existing juvenile and criminal justice systems. There is little doubt that human rights considerations will affect the way victims and offenders are treated and the extent to which the criminal and juvenile justice systems can be part of a co-ordinated policy to promote crime prevention and community safety through broader policies on social inclusion.

14. Summary and outlook

In Scotland, in recent years, there has been a media-fuelled perception of an increase in youth crime, which is not matched by research or statistical evidence. Devolution saw the establishment of a Justice Department, and two Justice Committees, which placed criminal justice issues more firmly on the political agenda. Certainly, in the years immediately post-Devolution, virtually every aspect of criminal justice became subject to intense scrutiny in the form of consultation, review and legislation. This was accompanied by the vigorous introduction of targets and efficiency measures in the governance of crime, and restructuring of the delivery of criminal justice services. As elsewhere, youth crime and youth justice, in particular, became increasingly politicised.

The Scottish juvenile justice system, which enjoyed a high degree of stability from the 1970s through the mid-1990s, has undergone significant changes, and is now clearly under threat. Along with the erosion of the welfare-base of Scotland's youth justice system, there has been an increasing penalisation of 16 and 17 years olds through the (re) introduction of a court-based system. The Youth Court sits awkwardly alongside rational and instrumental forms of adult justice with the effect of further criminalisation arising from the subversion of welfare and need (*Piacentini/Walters* 2006, p. 51). Despite the inclusion of restorative practices in Scotland's juvenile justice system, youth justice is in danger of losing its distinctive Scottish identity (*McAra* 2008).

Recent years have witnessed a new era of juvenile justice, one that is underpinned by a complex set of rationales that tend to locate the interest of society above the interest of the child. It is hard not to conclude that policy has slowly shifted from a concern with the social and personal needs of young offenders to a focus on the nature and frequency of their offences. With an emphasis on persistent offending, the development and expansion of programmes based on 'what works' principles (focused on criminogenic needs rather than welfare based needs) pose yet more of a challenge to the welfare-oriented and child-centred ethos of Kilbrandon.

McNeill and *Batchelor* (2004) remark that hopes that the particular Scottish context with its welfare-oriented tradition of youth justice, might act as a buffer against the wholesale adoption of the correctional approaches and punitive penal

politics that characterise other jurisdictions, may well prove 'optimistic' and 'forlorn' unless Scotland manages to retain some of the traditional strengths of the Scottish system. Much will depend on the direction taken by Scotland's new Scottish Nationalist party minority administration. Right now in Scotland, we are faced with the danger of escalating punitive approaches in relation to young offenders that have been shown not to work, while holding back from embracing approaches to persistent offending that might work, but might not be "politically correct" in both a broad and narrow sense, due to a fear of them being seen to be too "soft" an option.

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Serbia

Milan Škulić

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

Juveniles (*maloletnici*) are considered to be a group with special developmental needs, whose mental and physical health requires special protection and care, and this includes appropriate legal protection. The Law on Juvenile Perpetrators of Criminal Offences and Criminal-Justice Protection of Underage Persons,[1] passed in the National Assembly of the Republic of Serbia on 29 September 2005, for the first time fully regulates the criminal legal position of juveniles in Serbia.[2] This area of law was previously regulated by specific parts of substantive, procedural and enforcement legislation. Unlike the Criminal Code and the Criminal Procedure Code, the Law on Juvenile Criminal Offenders represents *lex specialis*.

Some fundamental issues concerning juveniles were regulated by the Penal Code passed in the Principality of Serbia in 1860[3] where 12 years was considered the age of criminal responsibility (*krivično delo*). For those who, at the time of committing an offence, had not reached 12 years of age, there was an absolute presumption of criminal irresponsibility.[4] Prior to this, in 1847, Serbian legislation distinguished between adult and juvenile offenders in some laws, for

1 Official Gazette of the Republic of Serbia, No. 85/05, Belgrade, September 2005.

2 Application of this Law began on 1 January 2006, and the purpose of vacatio legis was to prepare all actors to the proceedings for the new legislative environment.

3 The Criminal Code of Prussia from 1851 served as a model for that Code, and some solutions from the 1851 Criminal Code of Baden were used, too.

4 See *Perić* 2007, p. 92.

example in the Law on Theft, which stated that juveniles should receive only half of the prescribed sentence.[5]

Children under the age of 12 were not considered responsible for criminal offences. Juveniles between 12 and 16 years were considered responsible for criminal offences only if "they had committed a premeditated crime or offence". They could only be punished for "crimes" by being sentenced to prison for one to ten years, and for an "offence" by being sentenced to half of the punishment which they would have received had they been older.[6] In cases where it was proven that a committed act was not premeditated, they were not considered criminally responsible, but if it were established that the offence had been committed out of "bad habit", they would be remanded in one of the correctional institutions until they were 18 years old. In accordance with the 1860 Code, individuals between 18 and below 21 years of age held a special status, in that they could be convicted to just two thirds of the sentence provided for by the law, and capital punishment was excluded.

The 1929 Criminal Code of the Kingdom of Yugoslavia was significant for regulating the criminal and legal status of juveniles, entailing a number of progressive solutions. This Code provided for three categories of juvenile criminal offenders: the category of minors (up to 14 years of age), the category of younger juveniles (from 14 to 17) and the category of older juveniles (from 17 to 20). Criminal responsibility of younger juveniles was assessed according to the elements of sanity (i. e. the mental health of offenders, their mental maturity), and younger offenders who were mentally mature (i. e. those who were found to be so in the criminal proceedings) were sub-classified into those who required correctional measures and those who did not.[7] The punishing of older juveniles was slightly less severe compared to adult sentencing, although no capital punishment or life imprisonment could be imposed on them.

Many changes to the laws referred to above were applied after World War II, particularly in the amended Criminal Code of 1959. When developing new legislation during this period, legislators paid special attention to juvenile offenders and sought more appropriate correctional measures for this group.

The Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles (hereinafter: the Law on Juveniles) introduced a number of new

5 See *Nikolić* 1991, p. 48.

6 The Criminal Code knew the so-called tripartite classification of delinquency into: crimes, petty offences and offences. Such classification no longer exists in the current criminal law in Serbia, because the Criminal Code is related only to the issues of crimes, whereas a separate area of legislation is focused on petty offences as less serious criminal acts.

7 See *Čubinski* 1934, p. 104-195.

developments, such as mandatory specialisation of judges,[8] a higher jurisdiction of District Courts for juveniles in the first instance proceedings, alternative sanctioning measures, and new educational measures. The law also excludes the possibility of initiating criminal proceedings and of pronouncing and implementting criminal sanctions against children (up to 14 years of age).

The Serbian Law on Juveniles contains provisions which are in line with Rule 8 of the United Nations Standard Minimum Rules concerning alternative measures to institutional treatment. In addition to prison sentences, the Law also provides for warnings and guidance measures (admonition by the court and specific obligations), and increased supervision measures (increased supervision by parents, adoptive parents or guardians, in a foster family, by the guardianship authority, or increased supervision with daily attendance in a relevant rehabilitation and educational institution for juveniles).

The Law on Juveniles is well in line with international standards for the protection of juvenile offenders, set forth under the United Nations and the Council of Europe Conventions and the United Nations Recommendations (the Beijing-Rules, the Riyadh-Guidelines, Rules of the UN for the Protection of Juveniles Deprived of their Freedom, and the Tokyo-Rules).

The Law does not provide for special and fully (organisationally) independent Juvenile Courts, as this would require a complicated reform of the court system and additional financial resources. Nowadays, many other countries with a rich legal tradition (e. g. Germany) resolve this issue in a similar way. The Law provides for the specialisation of juvenile judges (*sudija za maloletnike*) in the field of children's rights and offending by young people in line with the Beijing-Rules, whereas teachers, mentors and other professionals are elected. Genuine jurisdiction of District Courts is determined in the first instance; hence the proceedings against juveniles are held before the juvenile judge and the juvenile bench of the District Court.

The concept of a juvenile, from a criminal law perspective, is determined under Article 3, paragraph 1-3 of the Law on Juveniles. In Serbia, a juvenile offender is a person who was aged 14 but not yet 18 at the time of offending. The age of 14 represents the lowest age limit below which no jurisdiction of criminal authorities may be exercised. This age limit has been effective in Serbia for a long time, and it has been so in several other countries, too,[9] although there are some differences in that respect.[10] The approach is based on the assumption

8 See *Škulić* 2006, p. 95-96.

9 For instance, the minimum age limit of criminal responsibility is eight in Scotland, ten in England/Wales, thirteen in France, fourteen in Germany, Austria, Italy and Spain and the majority of Eastern European countries, fifteen in Scandinavia, sixteen in Poland, Portugal and Andorra, and eighteen in Belgium and Luxembourg.

10 For more detailed elaboration, see *Škulić* 1998, p. 19-27.

that, only when a child has turned 14 will he or she have reached a degree of personal development that justifies the application of criminal sanctions. A younger juvenile (*mlađi maloletnik*) is someone who is aged 14 or 15 years at the time of the offence, while older juveniles (*stariji maloletnik*) are aged 16 and 17. The classification into younger and older juveniles is significant for the implementation of some substantive provisions (e. g. for the application of certain sanctions; in trials against an adult for a criminal offence committed while still under-aged), the application of certain procedural provisions (for instance the maximum applicable period of pre-trial detention) etc. Further classifications within age limits determined by calendar aim to lessen the shortcomings of this criterion because daily practice indicates that the maturing process of one's personality and the legal age limits need not coincide.

Another category of criminal offenders existed in the former Yugoslav Criminal Code of 1959 – the category of young adults (*mlađe punoletno lice*). This age group includes those who are 18 at the time of offending but not yet 21 years of age at the time of trial.[11] In some situations, being aged between 18 and 21 at the time of offending is of importance, given that there is a ban on pronouncing thirty to forty years of imprisonment against perpetrators of this age group.

The Law on Juveniles does not allow for a juvenile to be sanctioned solely on the basis of being at risk (e. g. he/she is homeless, drug addicted, without a family, forced to beg on the streets etc). There is no legal possibility for such intervention due to the principle of legality that is reflected in general Serbian criminal law. In accordance with Article 1 of the Serbian Criminal Code, criminal law sanctions cannot be ordered in response to an act that had not been defined as a criminal offence before it was committed, and a punishment or other criminal sanction that had not been legally prescribed before the criminal offence was committed cannot be issued. In accordance with Article 2 of the Serbian Criminal Code, a penalty and measures of warning can only be imposed on a perpetrator who is guilty of committing a criminal offence. Of course, it is possible to apply some specific measures to juveniles and children whose lifestyle deems them 'at risk' (e. g. drug addictive, no family care etc.). However, such formal responses do not occur in the criminal procedure or in the form of criminal sanctions, but rather in the social procedure in accordance with family law and governed by decisions of the guardianship authorities. A similar state of affairs applies when children (e. g. those under the age of 14) commit crimes. Formally, such acts are not crimes,[12] because the subjective or mental

11 See also *Perić* 1995, p. 77-78.

12 In accordance with Article 14 of the Serbian Criminal Code, a criminal offence is an action or omission that the law has defined as a criminal act, unlawful and committed with premeditation or out of negligence. A criminal offence shall not exist if

prerequisite (guilt) of a criminal offence is not met. Rather, merely objective elements of the criminal offence are given when children offend – a human act (action or omission), which is unlawful and proscribed as a criminal act by law. In accordance with Article 2 of the Law on Juveniles, neither criminal sanctions nor other measures provided under the Law on Juveniles may be pronounced or applied to a person who is under fourteen years of age at the time of offending. Yet this does not mean that no measures are applied to offending children. Indeed certain measures can and in fact must be applied, but these are social welfare measures like placement with another family, providing for education, or providing medical or psychiatric treatment for drug addiction. These interventions can be ordered by the guardianship authority or by the Civil Court in family proceedings in accordance with the Family Code.

Furthermore, where a child or juvenile is living on the street, is forced to beg or generally lacks proper family care etc., such situations can constitute an offence by his/her parents or other persons in a special relationship with the child or juvenile.[13] When, in the criminal procedure against parents or other persons accused of neglecting or abusing a minor, the court estimates that it is necessary to apply social welfare measures to a child or juvenile, the guardianship authority will be informed accordingly.

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

In the last few decades, rates of juvenile delinquency in Serbia have fluctuated. From the beginning of the 1960s until the end of 1972, the incidence of juvenile delinquency was quite high. However, from 1972 to 1982, according to surveys and court statistics, the juvenile delinquency rate decreased. Then from 1983 onwards there was an increase in the number of juvenile criminal offenders, which had fallen again by the beginning of the 1990s.[14] In 1993, the number of

unlawfulness or guilt has been excluded, even though all other major features of a criminal offence as defined by the law have been met.

13 Namely, in accordance with Article 193 of the Criminal Code of Serbia, there is an offence that entails the neglect and/or abuse of a minor. A parent, adoptive parent, a guardian or any other person who – by gross negligence of his/her duty to take care of and bring up a minor s/he is obliged to take care of – neglects said minor, shall be sentenced to imprisonment not exceeding three years. A parent, adoptive parent, guardian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to mendacity or for gain instigates him/her into doing other acts detrimental for his/her development, shall be sentenced to between three months and five years of imprisonment.

14 It should be pointed that in Serbia, 'reported offenders' are those who are recorded by the police and who are thus covered in the statistics. Therefore, the presented data do not necessarily cover all cases that were reported to the authorities by the public or that

reports on juvenile delinquency reached their highest level, followed again by a decrease in the following years. Since 2000, the number of reports has stabilized (see *Table 1* and *Figure 1*). The 1990's also saw rather high levels of serious juvenile offending. It is not entirely clear what the figures from that period can be primarily attributed to, but most probably the cause lay in the political, economic and general social instability of that time, especially regarding the civil war in former Yugoslavia and in the surroundings of Serbia (but not in Serbia in that time),[15] enormous inflation, very high social turbulence, general crises of social and ethical values etc.[16]

Table 1: Number of reported juvenile persons[17]; number of male and female offenders

Year	No. of reported juvenile offenders	No. of male offenders	No. of female offenders
1982	4,923	4,611	312
1985	4,892	4,569	323
1990	5,058	4,748	310
1995	5,064	4,882	182
2000	3,458	3,334	124
2004	3,120	2,972	148

Source: Statistics Institute of the Republic of Serbia.

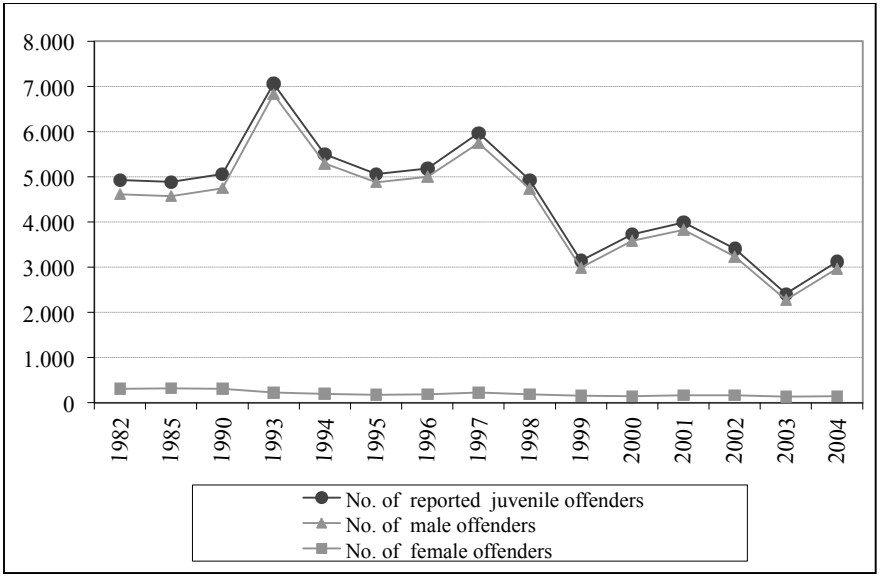
were detected by the police, but rather are only those cases that were registered / recorded in the statistics.

15 On the contrary, during the war in Serbia in 1999, i. e. on the territory of Serbia, the rate of juvenile delinquency declined.

16 For more, see *Aleksić/Škulić* 2007, p. 243f.

17 Traditionally, the numbers of reported offences and reported persons in the area of juvenile delinquency have been the most valid statistical data, although in a strict legal sense, it is not possible to equate the persons who are only reported for crimes (there is the procedural effect of the presumption of innocence) with offenders as a notion of substantial criminal law, i. e. the persons whose guilt can be proven beyond doubt in the criminal procedure and who are formally and finally convicted.

Figure 1: Number of reported juvenile persons; number of male and female offenders



Source: Statistics Institute of the Republic of Serbia.

Within the reported juvenile population, every year a certain number of female offenders arise, but in the last few years their share has been lower. The Statistics Institute data from the year 1981 show that 6.3% of reported juvenile offenders were female, while the figure for 2002 was 5%.

It is very interesting that the number of reported juveniles was significantly reduced in 1999 (37.9% fewer than in 1998, but only 14.9% lower than in 2000) and in 2003 (25.8% fewer than in 2002 and 22.6% lower than in 2004). The explanation could be based on one of the general criminological and etiological interpretations of the influence of extreme social tensions and events, like war for instance.[18] A possible reason could be the general political and social situation in Serbia in the years 1999 and 2003. In 1999, the Federal Republic of Yugoslavia (and Serbia especially) was heavily bombed by NATO forces, resulting in the death of several thousand Serbian citizens. In 2003, the Serbian Prime Minister Djindjic was assassinated which subsequently left Serbia in a state of emergency for several months. Some of the decline in the rate of juvenile delinquency in these critical years was in accordance with the rate of

18 See *Ignjatović* 2008, p. 257, 263.

general delinquency, and is balanced with general criminological theses and historical experiences that, in times of war or similar major social crises, the rate of delinquency is lower than in so-called "normal" times. The opposite attitude is also in reflected in certain theory, namely that, in times of war, the rate of juvenile delinquency increases.[19] There is also a belief that during war, the overall rate of male delinquency drops, while the delinquency of females increases.[20] However, the statistical examples and factual experiences from Serbia in 1999 cannot confirm that statement.

The delinquency of foreign juveniles is not significant in Serbia from a statistical perspective. In fact, there is a large refugee population in Serbia as a consequence of the Yugoslav Civil War, but the majority of the persons who were victims of ethnic cleansing in Croatia or who had to leave other parts of the former Yugoslav Republic (especially Bosnia and Herzegovina) are of Serbian nationality and have regularly received Serbian citizenship in recent years.

With reference to the age structure, one can see that 70% of the reported juveniles were between 16 and 18 years of age.

Table 2: Reported juvenile offenders, by age

Age	14 years		15 years		16 years		17 years	
Gender	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
1997	617	24	1,195	62	1,472	58	2,458	82
1998	466	39	951	32	1,202	43	2,119	74
1999	337	32	604	30	749	43	1,298	54
2000	395	21	675	39	845	29	1,663	55
2001	319	14	771	33	995	50	1,738	68
2002	310	15	581	51	852	47	1,493	59
2003	270	15	410	24	500	36	1,097	63
2004	284	11	538	36	783	41	1,367	60

Source: Statistics Institute of the Republic of Serbia.

Data from the Statistics Institute of the Republic of Serbia show that a large majority of juveniles were reported for property related offences, most frequently theft and robbery, with incidences ranging from 82% to 84% year by

19 For further information and details, see *Milutunović* 1981, p. 341-342.

20 See *Eliot* 1962, p. 175.

year. Other property related offences, such as burglary, are less frequent, accounting for around 8% of all cases.

In terms of frequency, the second – albeit considerably smaller – group comprises criminal offences against life and limb, most frequently heavy and light bodily injuries. The third most frequent offence category comprises criminal acts against a person's dignity and morals, commonly the criminal offence of rape. The fourth group comprises juveniles against whom traffic safety charges are brought.

Table 3: Reported Juveniles, by type of the offences

	1999	2000	2001	2002	2003	2004
Total	2,942	3,458	3,640	3,251	2,415	3,120
Criminal acts against life and limb	262	301	289	369	310	374
Criminal acts against person's dignity and moral (sexual crimes)	32	34	20	39	35	29
Criminal acts against liberties and rights of mankind	7	11	12	12	-	15
Criminal acts against the economy	41	43	40	55	42	49
Criminal acts against private property	2,350	2,714	2,923	2,374	1,656	2,128
Criminal acts against traffic safety	92	102	128	138	84	127
Criminal acts against public order	29	64	64	93	89	112
Other criminal acts	129	189	164	116	199	286

Source: Statistics Institute of the Republic of Serbia.

Based on all displayed data, one can conclude that, in Serbia, juvenile crime is overwhelmingly related to property offences, which account for approximately 90% of all juvenile crime each year. These are followed by criminal offences against life and limb.

Re-offending is common among juveniles. Official statistics are not sufficiently accurate in this respect. They do not consider the fact that a person who has committed a criminal offence as a juvenile, and who then reoffends as an adult, is technically a re-offender, but is not registered or treated as such. This is due to the fact that offences committed as younger juveniles are deleted from the criminal record when a person reaches the age of majority. Consequently the official rate of re-offending among juveniles ranges between 17% and 18%, whereas in reality, according to objective assessments, the figure lies at roughly

80%, which is even higher than the rate of re-offending among adults (65%).[21] As may be expected, re-offending is more common among juveniles who have committed property related offences. Court statistical data on past convictions shows that juveniles are reconvicted for the same type of offence.

In addition to the Statistics Institute data, we shall now turn to data from the Ministry of the Interior that relate to sexual offences and criminal offences involving the abuse of psycho-active substances. Unfortunately, a uniform statistical methodology has not yet been introduced in Serbia, such that there are differences between the police data and the official data from the Republic of Serbia. Therefore, in this article we have focussed mainly on official data from the Statistics Institute. However, the Ministry of the Interior data can serve well for the analysis of trends relating to specific forms of crime. This data is also very useful as it refers to the last several years for which the Statistics Institute of the Republic of Serbia has not yet processed data.

Table 4 shows data from the Ministry of the Interior (police data) from 1991 to 2006 on the number of juveniles who committed sexual offences. Such offences are also covered in *Table 3* under the term offences against personal dignity and moral. Due to the fact that such terminology appeared old fashioned and out of balance with the actual essence and severity of such crimes, the nomenclature was changed through the Criminal Code of 2006 to crimes against sexual freedom (Chapter XVIII Criminal Code of Serbia). The difference between these offences in *Tables 3* and *4* is merely terminological.

Table 4: The number of juveniles who committed sexual offences in Serbia between 1991 and 2006 (according to the unofficial and not publicly available police statistics)

Total number of offenders per year	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**
	37	37	41	49	68	61	43	35
Total number of offenders per year	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
	38	31	31	26	25	41	32	46

Source: Ministry of the Interior.

As explained, sexual offences account only for a small share of all reported juvenile crime. This is in line with adult offending, where the levels are similarly low. It is, however, traditionally considered that there has always been a relatively large dark figure. According to an earlier survey based on data for

21 See also *Škulić/Stevanović* 1999, p. 359-360.

1990, sexual offences in Serbia make up approximately 0.5% of all criminal acts committed by adults, and around 0.3% of juvenile crime.[22]

Table 5: Production, Storage and Distribution of Narcotics to the Market, according to the unofficial and publicly unavailable police statistics

1991	1993	1995	1997	1999	2000	2001	2002	2003	2004	2005	2006
1	6	9	27	65	57	74	54	201	190	179	241

Source: Ministry of Interior.

The police data from 2003 onwards show a significant increase in offences relating to drug abuse. This rise results almost entirely from legislative changes. In 2003, the very possession of narcotics for personal use was criminalised, which could be questionable in a criminal political sense. The basic *ratio legis* of this legislative development, which is also reflected in the 2006 Criminal Code, is a need for delivering evidence more easily in practice because it used to be very difficult to prove that drugs were possessed for the purpose of trafficking. However, one can still identify a rising a trend of this type of juvenile delinquency since the beginning of the 1990s, which was seen as a reason for major concern and as requiring indispensable, urgent steps to be taken. That in particular is the reason why this problem is reflected considerably in the National Strategy for the Prevention of Criminality.

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

Serbian legislation has not seen the introduction of more complex systems of alternative measures, although certain novelties can be observed. The mechanisms within the criminal procedure laws on the discretionary assessment of whether or not to prosecute remain (hereinafter: the principle of expediency (*načelo oportuniteta*)). The introduction of diversion orders (*vaspitni nalozi*) by the Law on Juveniles as an alternative for solving criminal offences committed by a juvenile is a novelty. The order implies that, in addition to criminal sanctions (*krivične sankcije*) envisaged for this category of offenders, there are diversion orders which are not real sanctions, but rather a special type of measure sui generis. Diversion orders can be applied under certain conditions, depending on the stage of the proceedings, by either the competent juvenile

22 See *Škulić* 1999, p. 475.

public prosecutor or by a juvenile judge, before the proceedings against a juvenile have been opened or in the course of the proceedings. The purpose of diversion orders is the avoidance of formal criminal proceedings or, where proceedings have already been instigated, to dismiss the case i. e. to "divert" it.

Diversion orders, one or more, can be applied to a juvenile offender for criminal offences that are punishable with a fine or with imprisonment of up to five years (Article 5 of the Law on Juveniles[23]). The width of this provision, which is optional, allows diversion orders to be used quite extensively, as it covers both "petty" and "medium criminality" criminal offences.

Diversion orders can only be applied for if certain subjective requirements are met. The juvenile should plead guilty to the offence, but his/her approach (attitude) to the offence as well as to the victim (*oštećeni*) are also of importance. The latter is particularly significant because victims have been receiving increased attention in modern criminal law. Another precondition for the imposition of a diversion order is that the offender is aged between 14 and 18 years at the time of its imposition. This excludes adults who offended as juveniles, and more importantly the age group of young adults.

Diversion orders include:

- Settlement with the injured party in order to alleviate the detrimental consequences either in full or in part, by means of compensation, apology, work or otherwise;
- Regular attendance of classes or work;
- Engagement, without remuneration, in the work of humanitarian organisations or community work (welfare, local or environmental);
- Undergoing relevant check-ups and drug and alcohol treatment programmes;
- Participation in individual or group therapy at a suitable health institution or counselling centre (Article 7).

At the time of selecting a diversion order, two further (equally important) requirements will be taken into consideration. On the one hand, the interest of the juvenile criminal offender will be assessed, as will the interest of the victim on the other. Settlement with the injured party is found today in a number of European and overseas legal systems, and many authors find that it is the most valuable alternative to repressive sanctions under criminal law.[24]

The application of diversion orders is restricted insofar as their content should not impede the juvenile's schooling or employment. The duration of a diversion order may not exceed six months, but the competent authority shall not specify the exact duration when rendering its decision (Article 8, § 2). The

23 For simplicity, hereinafter all articles that state no legal source are from the Law on Juveniles.

24 See *Perić* 2005, p. 30.

competent authority is authorised to substitute or alter an imposed diversion order with another where it finds that this would be more appropriate for meeting the needs of the victim and/or the offender. At any time in the course of serving an order, the competent authority can revoke it, should the purpose thereof have already been achieved i. e. if the juvenile has complied with the diversion order he/she had taken on.

In selecting and implementing a diversion order, the competent juvenile state prosecutor (*tužilac za maloletnike*) or juvenile judge should consult certain specified persons (the juvenile's parents, adoptive parents, legal guardians) and/or the guardianship authority, and pass joint decisions resulting from cooperation with these subjects. The role of these persons, i. e. the guardianship authority, is consultative. Their possible disagreement, therefore, will not have any impact on the decision passed by the competent authority. The latter will render its decision via an informal procedure so as to avoid the detrimental and possibly traumatic effects of formal criminal proceedings (Article 8, § 3).

Victim-offender settlements were introduced as a type of diversion order by Article 7, § 1, the first time such a mechanism has existed in Serbian legislation. However, this form of order has not been exercised fully in practice due to a lack of appropriate by-laws. This problem is further enhanced by the fact that our court practice seems to be relatively conservative. Since then, appropriate by-laws have been developed, and a proposal for a Law on Amendments and Additions to the Law on Juveniles is in under development, which will allow a broader application of such settlements. The proposal of the Law on Amendments to the Law on Juveniles (presented in more detail below) also introduces the required elements of a separate mediation procedure that aims at reaching a settlement between juvenile offenders and the injured parties.

For decades, in Serbia criminal proceedings involving juveniles have disposed of a mechanism for proceeding according to the principle of expediency (unconditional discharge), and the latest Law on Juveniles introduced for the first time the possibility to conditionally discharge juveniles (*Uslovljeni oportunitet*). In two scenarios the public prosecutor (being the only authorised prosecutor in proceedings against juveniles), irrespective of the existence of evidence indicating that a juvenile has committed a criminal offence, may still decide *not* to instigate the proceedings against the juvenile:[25]

1) with regard to the gravity of the criminal act: when reference is made to a criminal offence punishable by imprisonment of up to five years or a fine, if the public prosecutor finds that it would not be appropriate to conduct the proceedings against the juvenile, given the following cumulatively prescribed circumstances: a) the circumstances relating to the offence: aa) the nature of the criminal offence, and bb) the circumstances under which a criminal offence has been committed, and b) the circumstances relating to the juvenile: aa) his/her

25 For more detail, see *Škulić* 1997, p. 66-68.

previous living circumstances, and bb) personal characteristics of the juvenile (Article 58, § 1). Should the juvenile's personal characteristics be deemed to justify such a decision, the juvenile public prosecutor, following an agreement between him/her and the guardianship authority, may refer the juvenile to a youth home or an educational institution for up to thirty days (Article 58, § 2);

2) when a penalty is already being enforced against the juvenile: when the enforcement of a penalty or an educational measure against the juvenile is already in progress, the juvenile public prosecutor may decide not to press charges for another criminal offence committed by the juvenile if, due to the gravity of the new offence as well as the sentence or educational measure already being served, the conduction of proceedings and the issuance of a criminal sanction for that offence would serve no purpose (Article 58, § 3).

In accordance with the Law on Juveniles, applying the principle of expediency can also be made subject to certain conditions in the form of obligations that the juvenile has to fulfill. These obligations can be, for instance, appropriate diversion orders as a sort of "para-sanction", including the different educational measures (mediation, community service etc.) mentioned above. The juvenile public prosecutor's decision not to prosecute criminal offences of a certain degree of gravity can also be made subject to the consent of the juvenile and his/her parents, adoptive parent or guardian, as well as to the juvenile's readiness to accept and comply with one or more diversion orders (Article 62, § 1).

In selecting particular diversion orders, the juvenile public prosecutor shall have regard for their suitability for the character of the juvenile and his/her living circumstances, while taking into account his/her readiness to co-operate in their implementation (Article 62, § 2). Furthermore, the enforcement of diversion orders involving victim participation requires the agreement of the latter as a special condition (Article 62, § 3). If the juvenile fully complies with the imposed diversion order, the juvenile public prosecutor shall drop all charges and/or dismiss the motion of the injured party to instigate the proceedings (Article 62, § 4). The juvenile public prosecutor can also reject charges and/or motions of the injured party if the juvenile complies only partially with his/her conditions, when he/she feels it would not be pertinent to instigate further proceedings, due to: 1) the nature of the criminal offence and the circumstances of its commission, 2) the previous living circumstances of the juvenile, his/her personal character, and 3) reasons for failure to fully comply with the accepted ordered recommendation (Article 62, § 5). On the other hand, if the juvenile fails to comply with the imposed diversion orders, or only complies to a degree that justifies further proceedings, the juvenile public prosecutor files a motion with the juvenile judge of the competent court to initiate preparatory proceedings (Article 62, § 6).

Where the juvenile public prosecutor decides to conditionally discharge the juvenile, he/she shall notify the injured party that the criminal charges and/or the

motion of the injured party, who shall not be entitled to request the initiation of the proceedings, have been rejected (Article 62, § 7). If a juvenile has made full restitution of the damages resulting from the criminal offence, the injured party shall not be entitled to exercise property claims, and where damages have been compensated only in part, the victim can exercise his/her property claims in civil proceedings (Article 62, § 8).[26]

The Law on Juveniles provides for sanctions (*sankcije*) that are applicable to juvenile perpetrators of criminal offences. There are three categories of sanctions: educational measures (*vaspitne mere*), juvenile prison sentences (*kazna maloletnickog zatvora*) and security measures (*mere bezbednosti*). One can notice that educational treatment is predominant, and repressive responses are exceptional. Similar to other modern legislation in other countries, the purpose of these measures is not repression, but rather they are primarily of educational importance.[27] Within the framework of the general purpose of penal sanctions (Article 4 of the Criminal Code),[28] the purpose of criminal sanctions against juveniles is to influence the development and enhancement of their personal responsibility, education and proper personality development through supervision, protection and assistance as well as by providing general and professional qualifications in order to ensure the juveniles' resocialisation.

The following educational measures are defined by Law:

- Warning and guidance (*mere upozorenja i usmeravanja*): court admonition and alternative sanctioning; Admonition and guidance are pronounced when such measures are required in order to influence the character and behaviour of the juvenile.
- Measures of increased supervision (*mere pojačanog nadzora*): increased supervision by parents or adoptive parents, in a foster family or by the guardianship authority, increased supervision with daily attendance in a relevant rehabilitation and educational institution for juveniles. Increased supervision measures are pronounced when a juvenile's education and development require longer-lasting measures under qualified supervision and assistance, without separation from his/her current environment.
- Institutional measures (*zavodske mere*): remand in a rehabilitation institution, remand in a correctional institution, committal to a special

26 See *Škulić* 2006, p. 100-101.

27 See also *Heine/Locher* 1985, p. 5.

28 According to the Criminal Code of Serbia (Art. 4), criminal sanctions shall be the following: penalties, warning measures, security measures and educational measures. The general purpose of prescribing and imposing criminal sanctions shall be the prevention of offences that violate or jeopardize the values protected by criminal legislation.

institution for treatment and for acquiring social skills (*posebna ustanova za lečenje i osposobljavanje- stavila bih* – special institution for cure and correction). Institutional educational measures are imposed on juveniles requiring rehabilitation, medical treatment and the acquisition of social skills over a longer period of time, and involve the complete separation of the juveniles from their current environment. They are meant to provide an opportunity to have a greater influence on juveniles. Institutional measures are pronounced as a last resort and may last, within the limits set forth under this Law, only as long as is necessary to achieve the purpose of educational measures (Article 11).

The juvenile prison sentence is not applicable to all juveniles. Only educational measures may be applied to younger juveniles.[29] This approach originnates from the understanding that the said age group has generally not yet reached the proper level of bio-psycho-social development, and hence cannot be punished.[30] Primarily, educational measures are applied to older juveniles too, but they may be exceptionally sanctioned by being sent to the juvenile prison. In order to sentence a juvenile to juvenile imprisonment, if he/she must be an older juvenile who has committed a criminal offence punishable by imprisonment of longer than five years. Additionally, sentences to juvenile imprisonment can be pronounced should it not be justifiable to order an educational measure due to a high degree of guilt, or the nature and the gravity of the criminal offence.

The third category of penalties applicable to juveniles is security measures. Security measures can be additionally imposed on juveniles who are sentenced to educational measures or juvenile imprisonment (Article 39). The security measure of mandatory treatment of alcoholics and the measure of mandatory treatment of drug addicts may not be ordered together with admonition and guidance measures. The security measure of mandatory psychiatric treatment and confinement in a medical institution may be ordered as a stand-alone intervention.[31]

29 See *Stojanović* 2005, p. 205.

30 For further details, see *Babić/Marković* 2008, p. 505, p. 511.

31 In accordance with Article 79 of the Criminal Code of Serbia, the following security measures may be imposed on an offender: mandatory psychiatric treatment and custody in a medical institution; mandatory psychiatric treatment at liberty; mandatory medical treatment for drug addiction; mandatory medical treatment for alcoholism; prohibition from practicing a profession, activity or duty; prohibition from driving a motor vehicle; confiscation of objects; expulsion of a foreigner from the country and publishing of a judgment. Prohibition (restraint) from practicing a profession, activity or duty cannot be imposed on juveniles.

4. Juvenile criminal procedure

The procedure against a juvenile offender should be informed by educational values, in line with a number of international acts. The *International Covenant on Civil and Political Rights* (1966) states in Article 14, § 4[32] that, "during the proceedings against juveniles, their age and their interest concerning their rehabilitation shall be considered." By virtue of a recommendation by the Ministerial Committee of the Council of Europe,[33] it is envisaged, inter alia: "that specialised proceedings should be conducted against juvenile offenders, including special care and treatment, if necessary", and at the same time, 'the system of juvenile criminal sanctions must continue putting the main focus on the objectives of education and social integration', taking into account the objectives of the UN Standard Minimum Rules (Beijing-Rules), according to which it is required to "allow the juveniles to have fast and efficient trials, without undue delays, to give rise to the educational impact."

Before the formal judicial criminal procedure, there is one procedural phase which is in the police jurisdiction under supervision of the public prosecutor. It should be noted that this is not a formal investigation, but rather a "pre-criminal procedure". However, there are major differences in this procedural phase depending on whether a suspected offender is an adult or a juvenile. In obtaining information from a juvenile (police interview) the law enforcement officer shall do so in the presence of the juvenile's parents, adoptive parents or guardians. Information is collected by a juvenile police officer who has acquired special skills in the field of children's rights and juvenile delinquency (Article 60). In the classical pre-criminal procedure, suspects can legally be placed under short term arrest by the police for up to 48 hours (Article 229 Criminal Procedure Code), a possibility that does not exist when dealing with juvenile suspects (Article 61). If the police have arrested a juvenile suspect and believe that grounds for detention exist, they still have no legal basis for detaining him/her. Rather, the police have to bring him/her before the competent judge. Generally, the investigation in Serbian criminal procedure is in the jurisdiction of the investigating judge,[34] but the law does not provide for that type of judge in juvenile criminal procedure. In the juvenile criminal procedure of Serbia there is

32 This provision is essentially, i. e. in terms of contents and in a broader sense, related to Article 6 of the European Convention.

33 Recommendation No. R (87) 20 of the Ministerial Committee of the Council of Europe.

34 According to the new Criminal Procedure Code of Serbia, which shall be implemented in that part as of 31 December 2008, the investigation shall be in the competence of the public prosecutor. This change will, however, only apply to adult criminal procedure. In the juvenile criminal procedure the current system shall remain, i. e. without a formal investigation and with the preparatory procedure as a fist phase of the procedure instead, which is in the competence of the juvenile judge.

in fact no formal investigation. Instead, the first phase of the formal procedure is the preparatory procedure which is led by the juvenile judge.

First instance proceedings against a juvenile are conducted before a juvenile judge and juvenile court bench of the District Court. The juvenile bench (*veće za maloletnike*) in the first instance court shall comprise a juvenile judge and two lay judges, one male and one female. The juvenile court bench is presided over by the same juvenile judge as the one responsible for leading the preparatory proceedings of the case. From a theoretical perspective, this rule can be viewed as a special procedural principle in the juvenile criminal procedure, as "the principle of functional connection between the preparatory proceedings and phase of trial".[35] The juvenile judge of the first instance court conducts preparatory proceedings and performs other tasks in juvenile proceedings. The juvenile bench of the higher court – comprised of three judges – shall have second instance jurisdiction. The juvenile bench in first instance of the higher court consists of two judges and three lay judges. Juvenile judges and juvenile bench judges must be persons who have acquired special qualifications in the field of children's rights and juvenile delinquency. Lay judges are elected from the ranks of teachers, professors, educators and other qualified persons experienced in working with children and youth.

A juvenile may not be tried in absentia (Article 48). When undertaking procedural actions, participants to the proceedings are required to exercise due care so as to minimize any detrimental effects the criminal proceedings may have on the juvenile's development. In particular, one must have regard to the juvenile's level of maturity, his/her personal traits and to the protection of his/her privacy.

A juvenile shall have a defence counsel during the first questioning and throughout the proceedings (Article 49). Failure by the court to allow for such defence would constitute a severe violation of procedural provisions. The juvenile himself or his close persons, such as legal representative or relatives, shall select the defence counsel (*branilac maloletnika*) who has to be an attorney with special qualification in the field of the rights of the child and juvenile delinquency.

The guardianship authority (*organ starateljstva*) in juvenile proceedings is a specific subject, but not a party to the proceedings. The said authority is entitled to be informed about the course of the proceedings, to put together proposals during the proceedings and to indicate facts and evidence that are of importance for finding appropriate dispositions. In order to allow the guardianship authority to successfully carry out activities in the proceedings, the Law provides for the obligation of the juvenile public prosecutor to notify the relevant guardianship authority of any proceedings (Article 53). Should the prosecutor fail to fulfil his/her obligation, it shall be done by the juvenile judge.

35 See also *Škulić* 2008, p. 162-163.

Proceedings instigated against juveniles comprise the following basic stages:[36] 1) the preparatory proceeding, which is conducted by the juvenile judge (replacing the court investigation, which does not exist in juvenile cases), 2) the proceeding before the juvenile court bench, which can be conducted in session of the bench or in a hearing, and 3) the appeal proceedings. In the preparatory proceeding against a juvenile, the facts required for the evaluation of his/her maturity are given particular priority. These provisions represent the greatest departure from established proceedings against adult offenders. When examining the character of a juvenile, the opinion of the guardianship authority must be attained.

The guardianship authority plays a significant role in providing assistance following the enforcement of institutional measures and juvenile prison sentences. Any institutional measure implies the complete separation of a juvenile from his/her environment for a limited period of time. Once a sanction has been served, a juvenile should return to his/her original environment. In order to facilitate this process, the guardianship authority is continuously in touch with the juvenile during the course of the institutional measure or juvenile prison sentence and notifies the court about any changes. However, the guardianship authority should also be in touch with the juvenile's family and the institution where the sentence is being served. This form of contact aims at enabling the guardianship authority to prepare the juvenile for release, but also to prepare his/her family for receiving him/her so that he/she can participate in "regular" social life in the easiest possible manner.

Until the Law on Juveniles was passed, there was no legal requirement for cases relating to juvenile offenders to be prioritized in the court's or prosecutors' work schedules. These cases were not marked as urgent in the so called "annual schedule" or within the valid Court Rules of Procedure. Nor were they to be recorded in particular records, i. e. supplementary record books. However, with the Law on Juveniles coming into force, the operation of court management, registry offices, judges and public prosecutors will have to undergo changes. The key to new solutions lies in the hands of court presidents and public prosecutors who can, inter alia, initiate changes of by-laws, primarily to the Court Rules of Procedure, taking into account other solutions as to amendments and additions to the Law on Juveniles, including the Law on the Organization of Courts, the Law on Judges, etc.

The experiences so far underline the importance of a specialized training and improved communication of the professionals involved in the criminal procedure in order to prevent detrimental effects of the procedure itself and to further the development of the juvenile. Juveniles are a particularly vulnerable group, which has to be taken into account by a strict application of protective legal regulations.

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36 For details see *Škulić* 2003, p. 121-123.

As already stated above, the Law on Juveniles does not provide for the establishment of specialized Juvenile Courts (*sudovi za maloletnike*) because currently it would require extensive reforms that would in turn require a long period of time to develop and implement.[37] Also, levels of juvenile delinquency in Serbia are not particularly high, and the number of juveniles who run through the juvenile criminal procedure is similarly low. Consequently, there is no reason for establishing a completely separated judicial system for juveniles. However, the principle of specialization of judges, prosecutors, defence attorneys and police officers is vital and highly significant in the new Serbian juvenile criminal procedure, including cases in which the victim is a juvenile. The Law on Juveniles provides for the compulsory specialization of judges presiding over the court bench in cases against juvenile offenders. Judges must have special qualifications and skills in the fields of children's rights and juvenile delinquency. This is also required of public prosecutors, specialized police officers and the respective attorneys. In order to specialize the juvenile justice authorities efficiently, the genuine competence of courts relating to juvenile cases has been changed. Only juvenile benches of District Courts are competent in first instance proceedings.

The right to appeal rulings can be exercised by defendants, victims, the public prosecutor, the spouse of the defendant, a partner he/she is living with unofficially, direct-line blood relatives, legal representatives, adoptive parents, siblings and foster parents. Appeals can be lodged against court verdicts that order juvenile prison sentences (*kazna maloletničkog zatvora*) or educational measures, including decisions to dismiss cases (Article 80). The guardianship authority, not being party to proceedings, does not have the right to appeal. The juvenile public prosecutor is the only authorized body that can file appeals both to the benefit and to the detriment of a juvenile.

An appeal has a limited suspending impact. Appeals lodged against judgements ordering juvenile prison sentences or decisions ordering institutional educational measures may delay the enforcement of the sanction in question. However, upon agreement with the parents and an interview with the juvenile, the court may decide nonetheless to remand a juvenile to serve the prison sentence or institutional measure. Decisions ordering other educational measures are enforced regardless of the appeal, and no exceptions have been provided for.

When deliberating in session, the second instance bench will summon a juvenile to the session only if the presiding judge of the bench or the bench itself finds that his/her presence will be useful. Such a decision of the competent authority should conform to the needs of the protection of the juvenile's character.

37 See *Perić* 2005, p. 118.

A second instance bench may only overturn the first instance decision by pronouncing more severe measures if this is requested in the appeal (Article 81, § 1).

If the first instance decision does not entail a juvenile prison sentence or institutional measure, the second instance bench may pronounce such punishment and/or measure only after having held a hearing. The second instance bench may also order a longer juvenile prison sentence or a harsher institutional measure than pronounced in the first instance decision (Article 81, § 2).

A request for the protection of legality as an extraordinary legal remedy may be filed upon the following grounds: when a court decision is in violation of the law or when a juvenile is unjustifiably sentenced to juvenile imprisonment or an educational measure (Article 82). The law is violated in cases when the commission of facts has been established properly and in full, but the application of procedural provisions in order to indentify the facts was improper. The request for the protection of legality against enforceable decisions (verdicts and judgements) may be filed only by the competent juvenile public prosecutor. The persons entitled to appeal may only encourage the prosecutors, yet cannot file such a request themselves. A request for repeating the proceedings is also an extraordinary legal remedy that is decided upon by the same court bench that was competent in the first instance proceedings.

The juvenile judge and the juvenile public prosecutor are required to monitor the enforcement of institutional educational measures by visiting the juvenile in the respective detention facilities or institutions and by directly inspecting and reviewing the juvenile's progress reports (Article 84, § 1). These are drafted by the management of the respective institutions every six months, and the juvenile judge may request such a report in shorter time periods (Article 84, § 3). For non-institutional educational measures, these reports are drafted by the competent guardianship authority within the same time periods. The juvenile judge can additionally order that such a report be drafted by a particular qualified court assistant (social worker, psychologist, special pedagogue etc., Article 84, § 2).

In Serbian criminal procedure the victim has traditionally had a significant role to play. This role is connected to the type of the offence that has been committed, of which there are three: 1) criminal offences that are prosecuted officially, which are the majority of offences or so-called classical crimes, like murder, rape etc.; 2) criminal offences that are prosecuted officially, but a formal request of the injured party is needed – for example thefts between family members etc., and 3) the offences which can be only privately prosecuted, for example, insult, defamation etc. The injured party is a person whose personal or property rights have been violated or endangered by a criminal act, and the injured party with a request is a person affected by a criminal act for which the Criminal Code requires prosecution ex officio, but only upon the request by the injured party. In most cases the injured party is the victim of the crime, but in

some cases (for example murder) it may be rather the relatives of the person who has been killed.[38]

In cases of official prosecution (the first and most common category of offences), the victim or injured party according to the Criminal Procedure Code is entitled to some procedural initiatives. At the main hearing the injured party has the right to present evidence, question and remarks on the statements of the accused, of witnesses, and experts, and make other proposals. The injured party also has the right to view documents and evidence. Generally, the injured party has the same rights in juvenile criminal procedure as in procedures involving adult offenders, yet there are also exceptions. This is especially due to the fact that a main hearing in the juvenile criminal procedure does not necessarily take place, and that there may be no investigation, but only a preparatory procedure that is conducted by the juvenile judge who will later be the judge presiding over the juvenile court panel. Also, the juvenile criminal procedure is not public, and regularly the victim or injured party does not attend, which in turn relieves him/her of the opportunity to actually make direct use of his/her procedural involvement. Suggestions and proposals can however also be made in writing.

According to Article 75 the public shall always be excluded from juvenile proceedings. The bench may allow persons engaged in the education and protection of juveniles to attend the main hearing. The bench may order all or certain persons to leave the main hearing, except for the juvenile public prosecutor, defence counsel and guardianship authority representative. During the presentation of particular evidence or statements of the parties, the bench may order the juvenile to leave the courtroom.

The criminal procedure is initiated and conducted upon the request of the authorized prosecutor. For offences which are prosecuted officially, so-called *ex officio* offences, the public prosecutor is primarily an authorized prosecutor, but he/she has no monopoly of the criminal prosecution. In criminal proceedings against adults, it is possible that under certain circumstances the injured person becomes the authorized prosecutor instead of the public prosecutor.[39] No legal provision is made for private prosecution or for the injured party to be subsidiary prosecutor in cases involving juveniles. Juveniles can only be

38 For details see *Škulić* 2007, p. 117-118.

39 In such cases, the injured party formally becomes the "injured party as the plaintiff", or the so-called subsidiary prosecutor. If the public prosecutor assesses that there is no basis for initiating or extending a criminal procedure, the injured party may replace him as the prosecutor, under conditions stipulated by the law, unless such a possibility is exceptionally excluded under the provisions of the Criminal Procedure Code (see Art. 16). For criminal offences for which prosecution is undertaken on request of the injured party or based on a private prosecution, the request or private prosecution is to be submitted within three months from the date the authorized person becomes aware of the criminal offence and the perpetrator.

prosecuted by the juvenile public prosecutor, which also applies to cases of offences that – in adult law – are regularly prosecuted privately.

Criminal proceedings against a juvenile are instituted – for all types of criminal offences – only by the specialized juvenile public prosecutor (Article 57).

Criminal offences prosecuted upon motion or private suit may be instituted if the injured party files a motion to prosecute with the competent juvenile public prosecutor within the deadline provided in the provisions of the Criminal Procedure Code. If the juvenile public prosecutor does not file a request to institute proceedings against a juvenile, he/she shall notify the injured party in this regard within eight days. The latter may not undertake criminal prosecution, but is entitled, within eight days of receiving the notification, and if not notified then within three months from the day criminal charges or the motion were rejected, to request that the juvenile court bench of a higher court rules on initiating proceedings.

In the criminal procedure against adults, the injured party has a right to claim for indemnification, provided that this does not considerably delay proceedings. Such a claim may consist of a demand for the compensation of damages, the recovery of an object or the annulment of a certain legal transaction (Article 232 CPC).[40] However, there is an exception in the juvenile criminal procedure. In accordance with Article 79, the court may only order a juvenile to cover the costs of criminal proceedings and to make restitution in respect of a property claim if the court has pronounced punishment. If an educational measure has been ordered, or the proceedings have been discontinued, the costs of the proceedings will be covered by the budget, and the injured party will be directed to file a property claim by civil action. If a juvenile has an income or property, the court can also order him/her to cover the costs of the proceedings and compensate property claims when an educational measure has been issued or where the juvenile bench finds that neither a juvenile prison sentence nor an educational measure would be appropriate.

The new Criminal Procedure Code of Serbia[41] provides some legal possibilities for the special protection of witnesses and injured persons in criminal proceedings.[42] These provisions can be applied not only in the general

40 A motion to assert a claim for indemnification in criminal proceedings can be made by a person who is entitled to litigate an issue in a civil action. If a damage arising out of the commission of a criminal offence is made to state or social property, the authority entitled by law to protect such property may participate (see Art. 233 CPC).

41 This Code has entered into force in part eight days after its publication in the Official Gazette of the Republic of Serbia (May 2006), and is fully applied as of 31 December 2008.

42 A witness who due to old age, illness or serious disability is unable to comply with the summons, may be examined in his/her place of residence or another place (Art. 108 § 4

criminal procedure against adults, but also in cases involving juvenile defendants.

The third part of the Law on Juveniles (Articles 150-157) also contains special rules for the protection of children and juveniles who are victims of some specific crimes, e. g. rape, incest, severe bodily harm, robbery, extortion, family violence, child trafficking etc. The primary goal (*ratio legis*) of these legal possibilities is the minimization of so-called secondary victimization.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

As already indicated, diversion is exercised based on the principle of expediency. The requirements for exercising such diversion are regulated in Article 58 of the Law on Juveniles. For criminal offences punishable by up to five years of imprisonment or a fine, the juvenile public prosecutor may decide not to raise charges even where evidence for a reasonable suspicion is given that the juvenile has committed the offence. This decision to withdraw charges is possible where the prosecutor gets to the conclusion that it would not be appropriate to prosecute the juvenile due to the nature of the criminal offence and the circumstances under which it was committed, the offender's previous life and his/her personal characteristics. In order to determine these circumstances the juvenile public prosecutor may request information from the juvenile's

CPC). Those injured parties and witnesses shall be examined in a sensitive way whom the authority in charge of the proceedings has assessed as being appropriate in view of their age, experience, lifestyle, gender, state of health, and the nature or consequences of the crime or other circumstances of the case, and where examination according to the formal premises of the proceedings might have harmful effects on their state of mind and physical state (Art. 110 § 1 CPC). The most vulnerable injured parties or witnesses can be examined at their homes or in an authorized institution/organization which employs experts for the examination of very sensitive persons. When the responsible authority deems this necessary for providing assistance to the most vulnerable injured party or witness, he/she shall be granted an authorized representative during the examination. Questions to these persons can only be asked via the authority in charge of the proceedings, which will address the injured party or witness with special care, trying to avoid any harmful effects of the criminal proceedings. The injured party or vulnerable witness may be examined with the assistance of a psychologist, social worker or some other expert, when this is deemed necessary for preventing harmful effects of the criminal proceedings on his/her person and mental and physical state. The authority in charge of the proceedings may decide to use picture and sound transmission devices in the examination of such persons. Such an examination is held in absence of the parties and other participants of the proceedings. Consequently, the parties, defence lawyer and persons who have the right to ask questions shall do so through the authority in charge of the proceedings, psychologist, pedagogue, social worker or other expert. The injured party or witness may not be confronted with the defendant, and may be confronted with other witnesses only at their own request.

parents or guardians, other persons or institutions and, when necessary, may summon these persons and the juvenile to directly give information. The prosecutor may request the opinion of the guardianship authority on the purpose to be served by prosecuting the juvenile, and may delegate the collection of such information to a professional (social worker, psychologist, specialist pedagogue etc.). Where an examination of a juvenile's personal characteristics is deemed necessary, the juvenile public prosecutor may, in agreement with the guardianship authority, remand the juvenile to an institution for examination of character, to a youth home or an educational institution (*vaspitna ustanova*) for up to thirty days.

Where a juvenile is already serving a penalty or an educational measure and has committed a further offence, the juvenile public prosecutor may decide not to raise charges for that second offence if, due to the gravity thereof as well as the sentence or educational measure already being served, conducting further proceedings and pronouncing a criminal sanction for the new offence would serve no purpose.

If the juvenile public prosecutor decides that it is not pertinent to initiate proceedings against a juvenile, he/she shall give a reasoned notification to the guardianship authority and the injured party within eight days from receiving the information on which his/her decision is based. Within a further eight days, the guardianship authority and the injured party may request the juvenile court bench of a higher court to rule on instituting proceedings in terms of Article 57, § 3. Should they not have received such a reasoned notification, the term for filing such a request with the higher court is extended to three months. The juvenile public prosecutor shall also notify the law enforcement authority of his/her decision not to initiate proceedings, if such an authority had filed criminal charges.

According to Statistics Institute data, 3,251 complaints against juveniles were submitted in 2002. The proceedings were not instigated in 415 cases, of which 168 can be attributed to the principle of expediency. The cases of diversion have to be related to the 3,004 cases, which in principle could have been accused. The proportion of diversionary decisions therefore is 5.6%.

Table 6: The number of proceedings which were not instigated in 2002

Total number of submitted complaints	The proceeding not instigated				
	In total	Lack of evidence	No offence	Reason of relevance	No criminal responsibility
3,251	415	77	30	168	140

Source: Statistics Institute of the Republic of Serbia.

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

Surveys and data from the Statistics Institute show that from 1980 onwards there have been major fluctuations in the levels of juvenile delinquency. Some periods saw significant increases in the number of convicted juveniles, while in others the numbers dropped off again, so that there is no truly clear-cut trend.

Table 7: Convicted juveniles in the period between 1983 and 2002

	1983	1985	1990	1995	2000	2002
Total	**2,398**	**2,230**	**2,967**	**3,184**	**2,274**	**2,322**
Younger juveniles	**969**	**915**	**1,255**	**1,312**	**785**	**862**
Educational measures	969	915	1,255	1,312	785	862
Disciplinary measures	319	329	511	517	406	410
Meas. of increased superv.	560	527	690	751	351	416
Institutional measures	90	59	54	44	28	36
Older juveniles	**1,429**	**1,315**	**1,712**	**1,872**	**1,489**	**1,460**
Juvenile imprisonment	35	45	7	30	20	32
5-10 years	7	6	2	4	6	5
2-5 years	7	22	1	9	7	7
1-2 years	21	17	4	17	7	20
Educational measures	1,394	1,270	1,705	1,842	1,469	1,428
Disciplinary measures	465	444	715	684	636	624
Meas. of increased superv.	811	754	910	1,098	771	730
Institutional measures	118	72	80	60	62	74
Security measures	1	4	5	40	30	55
Past conviction	190	154	179	236	206	174

Source: Statistics Institute of the Republic of Serbia.

The data presented in *Table 7* above show that approximately 40% of convicted juveniles are aged 14 and 15, while the remaining 60% are aged between 16 and 18. Regarding different types of sanctions, in the highlighted period the courts ordered juvenile prison sentences in 0.5% to 1.7%, while overall, educational measures accounted for more than 95% of all court decisions.

Table 8: Regional sentencing practice in 2002*

	Juvenile prison				Educational measures and security measures				
	Total	All	2 yrs +	Up to 2 yrs	All	Admonition	Increased Supervision	Institutional measures	Security measures
Serbia	2,322	29	9	20	2,336	1,025	1,146	110	55
Central Serbia	1,576	26	9	17	1,592	617	863	67	45
District Courts									
Belgrade	511	20	7	13	520	127	342	22	29
Čačak	38	---	---	---	38	22	15	1	---
Jagodina	77	1	---	1	77	26	44	6	1
Kragujevac	107	---	---	---	107	60	40	7	---
Kraljevo	72	---	---	---	72	35	35	2	---
Kruševac	83	2	---	2	83	38	26	18	1
Leskovac	33	1	1	---	32	10	21	1	1
Negotin	19	1	---	1	19	7	9	2	1
Niš	88	---	---	---	91	60	24	4	3
Novi Pazar	49	---	---	---	49	31	17	1	---
Pirot	21	---	---	---	21	12	9	---	---
Požarevac	52	---	---	---	54	5	47	---	2
Smederevo	21	---	---	---	22	9	10	2	1
Šabac	131	---	---	---	134	64	66	1	3

	Juvenile prison				Educational measures and security measures				
	Total	**All**	**2 yrs +**	**Up to 2 yrs**	**All**	**Admonition**	**Increased Supervision**	**Institutional measures**	**Security measures**
Užice	55	---	---	---	55	19	35	1	---
Valjevo	50	---	---	---	52	6	44	---	2
Vranje	79	---	---	---	79	34	44	1	---
Zaječar	90	1	1	---	90	52	35	2	1
Vojvodina	746	7	4	3	741	408	283	40	10
District Courts									
Novi Sad	237	1	1	---	237	109	115	12	1
Pančevo	81	3	2	1	83	24	43	11	5
Sombor	90	---	---	---	92	65	24	1	2
Sremska Mitrovica	104	---	---	---	107	74	24	6	3
Subotica	115	2	---	2	114	70	40	2	2
Zrenjanin	119	---	---	---	119	66	45	8	---

* The "total" number in the table is not the number of criminal sanctions issued against juveniles, but rather the number of sanctioned juveniles. As a consequence, the figures can very well differ from the absolute number of imposed sanctions. For example, security measures can be imposed together with or as supplements to other sanctions or measures, e. g. with juvenile prison and certain educational measures. The number of sanctions and the number of sanctioned juveniles are only the same in those court regions that issued no security measures in 2002 (Čačak, Kraljevo, Kragujevac, Novi Pazar, Pirot, Užice, Vranje and Zrenjanin).

Source: Statistics Institute of the Republic of Serbia.

7. Regional patterns and differences in sentencing young offenders

In order to exemplify regional variations and differences in sentencing depending on different District Courts, we have set out the statistical data of 2002 in *Table 8*.

The data in *Table 8* show that in 2002, 22% of all convicted juveniles came from the Belgrade District Court area. Also noticeable is that the majority of convicted juveniles come from the territories of larger cities (Kragujevac, Novi Sad). Judges in larger cities impose juvenile prison sentences more frequently, whereas judges in small towns seem to opt for educational measures. The central reasons for this difference is that juveniles in large urban centres more frequently commit serious offences compared to the juveniles who live in rural areas. Also, the issue of drugs offences is more problematic in large cities.

Tables 7 and *8* only contain data from central Serbia and the autonomous province Vojvodina. The other province "Kosovo and Metohija is outside Serbian state jurisdiction since June 1999 and was under UNO protectorate in accordance with the UNO Resolution 1244. Data on juvenile delinquency for the years 1999 to today from Kosovo and Metohija are not fully available (see also the report by *Helmken* in this volume).

8. Young adults (18-20 years old) and the juvenile (or adult) criminal justice system – Legal aspects and sentencing practices

Taking into account that age limits suffer from specific shortcomings, a lot of efforts are being made to alleviate their arbitrary effects. In addition to the classification within the lower and the upper juvenile age limit into younger and older juveniles, a new category of young adult offenders has been introduced. Young adults were identified in our legislation as a separate category for the first time in 1959, and Serbian criminal legislation has included sanctioning solutions for adults who committed offences while under the age of 18 since the 1959 amendments to the Criminal Code.

The age category to which specific provisions on juveniles can be applied includes offenders between 18 and 20 years of age. These specific provisions are not only from the substantial criminal law, e. g. the system of sanctions, but also include the rules of juvenile criminal law. In accordance with Article 46 of the Law on Juveniles, the main procedural provisions for juvenile criminal procedure shall apply in proceedings against persons under reasonable suspicion of having committed a criminal offence as juveniles, and who have not reached 21 years of age when proceedings are commenced. This is possible if, prior to the commencement of the main hearing, and based on an examination of the

young adult's character, it is determined that an educational measure may be ordered. However, not all these perpetrators will be considered as young adults, but only those who meet other requirements as well. Consequently, there is a difference in practice between young adults to whom provisions for juveniles are applied, and adults who have not attained 21 years of age at the time of the offence.

With reference to the application of the provisions of the Law on Juveniles, it is not only important that a person committed a criminal offence before turning 18. The fact that a perpetrator has not reached 21 years of age at the time of the trial is equally important. This implies that there is a double criterion, i. e. the age at the time of the commission of the offence, and the offender's age when on trial.[43]

The court may impose on young adults any measure of specific obligations, the measure of increased supervision by the guardianship authority, and the measure of remand in a correctional facility. Juvenile prison sentences cannot be imposed on this category of offenders, when they were at least 18 when committing the offence.[44]

Some of the aforementioned educational measures may be imposed on young adults "should one be able to expect, given the traits of his/her character and the circumstances under which the offence was committed, that these educational measures will serve the purpose which would have been equally served by pronouncing a sentence".

Regardless of the fact that the new legislation does not explicitly underline that the application of these provisions may be considered exceptionally, it is nonetheless implied. Namely, the person involved is an adult within the criminal and legal context, and is punishable by a criminal sentence as a rule. The assumption is that, in addition to the facts relating to the criminal offence, the court should resolve the issue of the offender's criminal responsibility based on the rules that apply to adults. Exceptionally, however, if one can expect – given the traits of the offender's character and the circumstances in which the offence was committed – that an educational measure will serve the purpose which would have been equally served by pronouncing a criminal sentence, only then does the court have the right to order the aforementioned educational measures.

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43 Thus, as an example, if someone breaches the Criminal Code when aged 16, and is charged while aged 19, he/she is eligible for certain educational measures or a sentence to juvenile imprisonment. If due to the offender's personality educational measures appear to be inappropriate, juvenile imprisonment can be ordered instead. Where the latter is also deemed inappropriate, the principle of expediency is applied. General criminal law sanctions for adults cannot be imposed. If someone offends at the age of 19 and is subsequently charged before he has turned 21, certain educational measures can be applied if these serve the purpose in the concrete case.

44 More about this problem: *Lazarević/Grubač* 2005, p. 24.

The Law does not require it to be ensured that an educational measure will serve the same purpose which would have been served by imposing a sentence, but rather only emphasises that it is sufficient to expect that it will so happen.

The Law provides for the opportunity to apply security measures to young adults. In addition to an educational measure having been pronounced already, the court can also apply proper security measures as well.

An adult who has reached the age of 21 may not be proceeded against for a criminal offence that he/she had committed as a younger juvenile (14 and 15 years of age, see Art. 40).

In order to impose the measures of specific obligations on an adult, increased supervision by the guardianship authority or committal to a correctional facility, or a juvenile prison sentence, it is required that the person in question has not turned 21 at the time of trial, and that criminal prosecution has not reached the stage of limitations. It is important whether the person in question committed a criminal offence as a younger or older juvenile in the case of ordering the juvenile prison sentence. This sanction can only be considered if other requirements by law for pronouncing the juvenile prison sentence have been met, and only in cases of adults who have not turned 21 at the time of trial, and who committed the criminal offence as an older juvenile.

Even when all requirements have been met, it does not necessarily mean that a proper educational measure or a sentence to juvenile imprisonment will be pronounced. This decision still lies in the hands of the court. When making assessments on whether and/or which sanction it will order, the court should consider all circumstances of the case, such as: the gravity of the criminal offence, the time that has elapsed since the offence, the perpetrator's traits of character, and the purpose to be served by a certain intervention (Article 80, § 2).

The interpretation of the legal sanctioning requirement – that "a perpetrator has not turned 21 at the time of the trial" causes some confusion. This concept is interpreted variably in practice. According to some, the age of 21 should be assessed as counting up until the end of the first instance proceeding. According to others, the age at the end of the second instance proceeding is of relevance, and yet others think that proceedings which might follow upon extraordinary legal remedies should also be taken into account. The second approach is most frequently found in practice.[45]

Once one of the indicated sanctions has been pronounced, the court can order a proper security measure as well.

Should the person in question have already turned 21 at the time of the trial, he/she may receive a prison sentence or a suspended sentence instead of a juvenile prison sentence. Thus, one assumes that a person has committed a criminal offence as an older juvenile, and that all requirements for pronouncing the sentence of juvenile imprisonment have been met, but that at the time of the

45 See *Perić* 1995, p. 59.

trial he/she is older than 21. A person who has turned 21 at the time of the trial can also be issued security measures, given the fact that a prison or suspended sentence has been ordered instead of juvenile imprisonment.

9. Transfer of juveniles to the adult court

The Law on Juveniles only provides for one possibility for a jurisdiction other than the juvenile judge or juvenile bench to conduct the proceedings against juveniles, and for this competence to be transferred instead to the judge or the bench competent for cases against adult criminal offenders.

In the majority of cases juveniles offend in complicity with adults, but their roles in the commission of the offence may differ. The question then subsequently arises regarding how the running of proceedings should be resolved. For such cases, the law envisages that the proceeding against a juvenile should be split and conducted in line with the provisions of the Law on Juveniles. This rule is applied irrespective of the criminal offence, whether or not a younger or an older juvenile is involved, etc. However, there is an exception to this rule that allows for the proceeding against a juvenile and the proceeding against an adult offender to be merged and conducted in line with the general provisions of the Criminal Procedure Code (Article 51). This exceptional solution is particularly underlined by court practice.

Such a "merger" can be performed on the condition that it is indispensable for achieving a broad clarification of the issues of the case at hand. The respective decision lies in the hands of the juvenile bench of the competent District Court, and cannot be appealed. Merging adult and juvenile proceedings is an optional right of the court.

Practice holds the position that the proposal of the public prosecutor to merge the proceedings should be carefully assessed, so as to avoid possible considerable differences from arising between the established facts in one proceeding and those in the other. In theory, the proceedings can be merged at any stage. There is, however, the opinion that such a merger should only follow once the preparatory proceedings have been conducted, so that the relevant issues could have been sufficiently clarified. In any case, such a decision must be passed before the main trial has been completed.

Only cases in which a juvenile participated as an accomplice, agitator or helper in the commission of a criminal offence together with an adult should be merged. Once the proceedings have been merged, they can be separated again if the reasons on which the merger was based have ceased to exist. Separation of cases is possible before the completion of the main hearing. Should the proceeding against a juvenile be separated again, the juvenile bench (of the District Court) will be competent for adjudication, and not the bench competent for the merged case.

In merger cases, the bench proceeding against adult offenders will be competent, although practice holds the position that, for reasons of relevance, the merged proceedings should be conducted by the juvenile bench. In such (merged) proceedings, a juvenile can only receive sanctions set forth in the Law on Juveniles. In such cases, it is also mandatory for some of the procedural provisions of the Law on Juveniles to be applied (that he/she cannot be put on trial in absence, that he/she must have a defence counsel, that no one may be released from duty to testify on circumstances required to evaluate the maturity of a juvenile, urgency of the case, summoning of juveniles, etc.). The application of other provisions of the Law on Juveniles is optional.

In such cases, where a first instance judgement pertaining to the juvenile is revoked, and the case is returned to the first instance court for trial to be repeated, the proceeding should be conducted by the juvenile bench, so long as the reasons for the merger have ceased to exist.

10. Preliminary residential care and pre-trial detention

During the preparatory proceeding, the juvenile judge may temporarily remand a juvenile in a home, an educational or similar institution, place him/her under the supervision of a guardianship authority or in a foster family (hereinafter: temporary placement measure (*mera privremenog smestaja*)) if this is necessary for separating the juvenile from his/her current environment or to provide the young person with assistance, supervision, protection or accommodation (Article 66, § 1).

Temporary placement measures for juveniles are a significant tool for the juvenile judge, and serve certain educational purposes. Taking into account the basic task that they need to accomplish, i. e. separating of a juvenile from a certain environment, such temporary placement measures are not classed as criminal sanctions (*krivične sankcije*), despite having identical names.

The period of time spent in facilities involved in some of these preliminary measures will be included in the duration of the educational measure of remand in an educational institution, a correctional facility or the ordered sentence of juvenile imprisonment should any of these later be pronounced.

The juvenile judge's decision in this regard can be appealed; however appeals do not postpone the enforcement of the decision. Appeals have to be lodged within 24 hours, and can be made by the juvenile, his/her parents or legal guardians and defence counsel, as well as the juvenile public prosecutor.

Temporary placement measures may be ordered not only during the preparatory proceeding, but also in the proceeding before the juvenile bench. Consequently, the presiding judge of the bench or the juvenile bench itself may always pass a decision on a temporary measure by judgement, and equally revoke it once the need for the measure has ceased to exist.

When a juvenile is concerned, the Law excludes any possibility for this person to be detained by the police (interior authorities) for the purpose of collecting information or conducting an interview. A juvenile will be taken to the juvenile judge immediately, who will then resort to appropriate measures as authorised by law.

The preliminary measure of detention (*pritvor*) is intended to ensure the juvenile's presence, and is only exceptionally resorted to against juvenile offenders (Article 67). Unlike institutional measures provided for under Article 66 (placement in a home, an educational or similar institution, placement under the supervision of a guardianship authority or in a foster family), the use of detention does not have to be in the juvenile's interest (Article 67, § 1). Detention does not imply educational treatment, nor is it used for collecting data on the juvenile's character. It can be ordered by the juvenile judge when one of the reasons set forth under Art. 142 of the Criminal Procedure Code have been met. General rules set out in the CPC apply in that respect.[46]

The general requirements for ordering detention include the existence of a reasonable degree of suspicion that the person in question has committed a criminal offence, which is also a requirement for placing a person in the position of the defendant in the criminal proceedings. In addition, the existence of a concrete legal ground is required for detention to be ordered.[47] The reasons for ordering detention can be classified into several groups:

1) detention can be ordered with respect to the gravity of the criminal offence in question – when the criminal offence is punishable with a prison sentence exceeding ten years and the detention is justifiable due to the exceptionally serious consequences of the criminal offence;
2) detention can be ordered to ensure the presence of the defendant during the criminal proceeding, when some of the following alternatively identified reasons exist for resorting to that type of measure: a) if the defendant is hiding, b) if it is not possible to establish the identity of the accused, c) if other circumstances exist that indicate a danger of absconding, or d) if the defendant, having been properly summoned, has not appeared at the main hearing;
3) detention can have the aim of preventing the delivery of evidence from being obstructed by the defendant. The danger of an illicit impact on evidence sources may be reflected in two modalities: a) with respect to substantive evidence, if there are circumstances indicating that the defendant will destroy, hide, change or forge evidence or traces of a criminal offence, or b) if, with respect to persons as sources of evidence (danger of collusion), specific circumstances indicate that the

46 See in more detail Škulić 2009, p. 36.

47 See in more detail *Jekić/Škulić* 2005, p. 124.

defendant will impede the proceeding by exerting influence on witnesses, accomplices or persons bearing or concealing evidence;

4) detention can be ordered for preventive reasons, i. e. to prevent the commission of further criminal offences if specific circumstances indicate that the defendant will re-offend, or that he/she will complete an attempted criminal act, i. e. that he/she will carry out a criminal offence that he/she is threatening to commit;
5) detention can be ordered with respect to the type of ruling and the pronounced sentence, if the following requirements are cumulatively met: a) the first instance court passed a judgement and pronounced a prison sentence of five years or more, b) the defendant is not already in detention, and c) a detention order is justifiable due to the exceptionally serious consequences of the criminal act.

The preliminary detention of juveniles is exceptional and of an extremely subsidiary nature. It can only be considered when the appropriate purpose cannot be served by means of a temporary placement measure. In this respect (Article 67), no differentiation is made in terms of a juvenile's age, so detention can be ordered against both younger and older juveniles. The old practice reflected the opinion that detention orders against younger juveniles could be considered only in exceptional and specifically justified cases.

By virtue of Article 67, § 2, the period of time spent in detention (but also any other deprivation of freedom set forth under Article 66) shall be credited against subsequently ordered sentences of juvenile imprisonment or institutional educational measures.

Article 67, § 3 regulates how much time a juvenile can be forced to spend in preliminary detention during the preparatory proceeding, irrespective of his/her age. In this phase of proceedings, periods in detention may not exceed thirty days. Should justifiable reasons exist, detention can be extended by a maximum of a further thirty days. Extension-decisions are passed by the juvenile bench of the same court that evaluates the extent to which the reasons for the extension are justified. Court decisions ordering pre-trial detention or extensions thereof can be appealed before the juvenile bench of the directly higher instance court competent in the second instance.

Article 67, § 5 regulates the maximum period of detention that can be imposed once the preparatory proceedings have been completed, i. e. once a proposal for ordering a criminal sanction has been submitted. Once this submission has been made, the duration of detention depends on whether the case at hand involves a younger or an older juvenile. Where the latter are concerned, detention may not exceed six months maximum, while for the former, the same measure may not exceed four months. This is in fact the only provision that takes differences in the age of juveniles into consideration regarding preliminary detention. If the educational measure of remand to a correctional facility or a sentence of juvenile imprisonment has already been

ordered in the first instance proceedings, but this decision has been appealed, a juvenile may be detained for another six months at the most.

Preliminary detention shall be immediately annulled once the reasons upon which the enforcement (or the extension) of detention was based have ceased to exist. The application for abolishing detention in the preparatory proceeding will be considered by the juvenile judge in agreement with the juvenile public prosecutor. Should the decision to annul detention be passed by the juvenile bench, members of the bench may include the juvenile judge conducting the preparatory proceeding.

As a rule, juveniles in detention shall be separated from adult offenders. This provision should be primarily understood as an attempt to prevent juveniles from being exposed to potentially detrimental influences of adults. Exceptionally, the juvenile judge can decide to detain a juvenile together with an adult – as long as the adult in question will not have a negative impact on the young person – in order to avoid that the juvenile spends long periods of time in isolation which could be harmful to the development of his/her character. The juvenile judge must always take the traits of character and the needs of every juvenile detainee into account.

According to data of the Statistics Institute of the Republic of Serbia, 3,251 complaints involving juveniles were submitted in 2002. Pre-trial detention was ordered by the courts in only 100 of these cases. In six cases, the period spent in detention was up to three days. 25 juveniles spent between three and 15 days in preliminary detention, while between 15 days and one month of detention were served in 35 cases. 20 juveniles spent between one and two months in pre-trial detention, and 12 cases involved stints in detention exceeding three months. The measure of separating a juvenile from his/her environment during the preparatory proceeding was ordered in 90 cases.

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

Legislation in the Republic of Serbia prescribes the existence of institutional educational measures that presume that a juvenile should spend a continuous period of time in one of the institutions intended for this purpose. Institutional educational measures are applied both in cases of educational neglect and in cases of criminal offending.

Remand in an educational institution is pronounced when a juvenile needs to be removed from his/her environment and to be provided with assistance from – and constant supervision by – experts. This measure is enforced in institutions that otherwise accommodate other categories of juveniles who have not committed crimes, but who have suffered educational neglect, who have been abandoned, etc. (i. e. juveniles in need of care and protection).

The duration of this measure is relatively indefinite, with only minimum and maximum periods of stay being stipulated (between six months to two years). At the time of sentencing, the court does not specify the duration of stay, instead deciding on this issue subsequently, depending on the achieved level of educational success (Art. 20). The court must review its decision every six months in order to determine whether conditions have been met that favour a discontinuation of the measure, or that indicate a need for it to be substituted by another measure.

The measure of remand in a correctional facility is the most rigorous educational measure available, for it borders on a sentence to juvenile prison. The purpose of this measure, which is only served in an institution intended only for juvenile criminal offenders, can only be achieved through increased supervision and through the provision of special expert educational programmes. This measure is intended for repeat offenders who have previously received other educational measures or sentences of juvenile imprisonment. A juvenile can remain in a correctional facility for at least six months and for no longer than four years. The court decides on the specific duration of the measure within this statutory range.

The general purpose of sentencing juveniles is to influence the development and enhancement of their personal responsibility, education and proper maturation of personality. This is to be achieved by means of supervision, protection and assistance, as well as by providing them with general and professional qualifications in order to ensure their resocialisation and reintegration into the community. In addition to these objectives, the purpose of juvenile imprisonment is to have an intensified influence on juvenile offenders not to commit criminal offences in the future, while serving as a deterrent to other juveniles.

Juvenile imprisonment was introduced into Serbian legislation in 1959. In order to pronounce this sanction, the Law on Juveniles stipulates that the following mandatory conditions must be met cumulatively: the juvenile in question must be aged 16 or 17 years (an older juvenile), and the committed offence has to have a legally prescribed prison sentence of more than five years. The length of sentence to be ordered is based on the maximum sentence prescribed by law – the minimum prescribed sentence is not relevant. The Law also stipulates that a high degree of guilt must be given.[48]

These conditions are mandatory. In addition it must be considered that juvenile imprisonment is of an optional character and represents a measure of last resort. Hence two further conditions are cumulatively stipulated which are significant for the courts when sentencing. The first is subjective in nature and relates to the offender, while the second is of an objective character and relates to the nature of the crime. Juvenile imprisonment can be pronounced if the imposition of an educational measure would be unjustified due to a high degree

48 See *Stojanović* 2006, p. 100 ff.

of guilt and the nature and seriousness of the offence. A high degree of guilt is given, for instance, when a juvenile, in committing a crime, exhibits persistence, brutality, cruelty, a lack of sympathy, offends in a group, etc. The extent of special preconditions for the imposition of juvenile imprisonment is indicative of it being a sanction of last resort that the courts only rarely impose. Only older juveniles can be sentenced to juvenile imprisonment. In this context, the offender's age at the time of committing the offence is of relevance, and not his/her age at the time of the proceedings (Article 28).

The prescribed minimum duration of sentences to juvenile imprisonment is six months, a limit which indicates that the legislator has considered the shortest period of detention necessary for achieving a certain effect during the enforcement of the sentence (Article 29). As far as the general maximum limit is concerned, the new legislation has introduced two possibilities for the longest duration. The ordinary (and most frequently applied) upper limit is five years. However, if the crime committed carries a prison sentence of twenty years or more as stated by the law, a sentence to juvenile imprisonment can last for up to ten years. This upper limit also applies where at least two particularly serious criminal offences have been committed concurrently that are punishable with a combined prison sentence in excess of ten years.

One of the particularities of juvenile imprisonment is that it is pronounced for periods of full years and months, and cannot be pronounced in days, irrespective of what length of time is at issue.

Juvenile prison sentences are served in juvenile correctional facilities, which are closed in nature, with security guards and other barriers that prevent escape. The rule is that juvenile prison sentences are served communally, i. e. young offenders serve their sentences in shared facilities. There are only two exceptions to this rule: if the medical condition of a juvenile requires him/her to be accommodated separately, or if such separation is deemed necessary for maintaining security, order and discipline in the institution. The measure of seclusion in a separate room (solitary detention) cannot be subject to this provision, as this is primarily a disciplinary measure.

If sentenced persons are female, the juvenile prison sentence is enforced in a separate women's ward of the penal correctional facility. The law specifies that a penal correctional facility for women is to be semi-open in character, with only security guards representing the basic barrier to escape.

Adult persons sentenced to juvenile imprisonment are accommodated in a special ward of the prison. The same ward accommodates juveniles who attain majority while serving a juvenile prison sentence. This also applies to prisons for women.

The law stipulates that, regardless of the length of the pronounced sentence, persons can remain in the juvenile penal correctional facility up to the age of 23. Persons above that age are transferred to a penal correctional facility for sentenced adults. It is considered that the change in treatment will not have

adverse consequences because persons are viewed as being fully developed once they have turned 23.

The law prescribes certain exceptions to this rule. Article 139 stipulates that persons aged 23 can remain in juvenile penal institutions in order to complete their education or to attain professional qualifications, however no longer than until they turn 25. The same possibility also applies when the remaining portion of a juvenile prison sentence does not exceed six months.

The court can release sentenced juveniles on probation if one third of the sentence, but at least six months, have been served, if the young person's achievements and behaviour within the institution allow it to be reasonably expected that he/she will be of good behaviour upon release and will refrain from committing criminal offences (Art. 32). The court can make such probation conditional, by attaching a measure of increased supervision and one or more relevant alternative sanctions to the order.

According to data of the Statistics Bureau of the Federal Republic of Serbia, in 2002 the number of sentenced juveniles was 2,322, of whom 92 were female. 32 (1.4%) juveniles received sentences to juvenile imprisonment. Five juveniles were sentenced to terms of more than five years; seven juveniles received prison terms of between two and five years; the remaining 20 juveniles were sentenced to terms of up to two years in juvenile penal correctional facilities. If we consider sentenced persons by the type of crime committed, we can note that, in 2002, 16 juveniles were sentenced to juvenile penal correctional facilities for committing crimes of aggravated assault (murder or infliction of grievous bodily harm), 14 juveniles committed crimes against private property (aggravated theft and robbery) and two juveniles were sentenced for committing traffic violations resulting in serious consequences. Of the total number of sentenced juveniles, institutional educational measures were pronounced in 110 cases.

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

Persons serving juvenile prison sentences or any other penal sanction are provided with conditions for acquiring elementary and secondary education and job training.

Juveniles should be provided with education, vocational and job training for a vocation that is in accordance with their abilities, interests, schooling and work experience at that time. Additionally, the possibilities and resources offered by the penal correctional facility where the sanction is being served cannot be ignored, as they are not unlimited and, based on current conditions, often tend to be very modest (Article 138, § 1).

In working with sentenced juveniles, it is also appropriate to include them in educationally useful work experience for suitable remuneration, and to permit and support communication with the outside environment through letters, telephone calls, visits, leaves of absence, etc. The participation of sentenced juveniles in sports, cultural and artistic activities should also not be neglected (Article 138, § 2).

Professionals who work with juveniles must have special knowledge from a particular field of pedagogy, psychology and penology (Art. 138, § 3).

Working hours in juvenile penal correctional facilities should not impede schooling, vocational training, physical education or participation in cultural and artistic activities (Article 141).

The time spent by a juvenile in a penal correctional facility should be structured in such a way as to fulfil several requirements: performance of a particular job, schooling and vocational training.

Institutional sanctions for juveniles in Serbia are enforced in two locations. Measures of remand to a correctional institution are enforced in Krusevac, while juvenile prison sentences are served in Valjevo.

The educational correctional institution (*vaspitno-popravni dom*) in Krusevac offers an eight-year elementary school programme. Classes are organized according to adult educational programmes, meaning that two grades are completed in one year. The institution in Krusevac offers professional training for 27 different vocations (trades). As far as secondary school is concerned, juveniles attend one of the secondary schools in the town on a part-time basis, while training is organized in the institution so they can pass exams in the schools in town. In particular cases, when it is assessed that this is possible, juveniles attend secondary school in town on a full-time basis and attend classes every day. The diplomas they receive do not indicate that the juveniles acquired their education in the educational correctional institution. Currently, 162 persons are serving institutional educational measures in Krusevac, of whom 10 are female juveniles. Regarding the age structure in the institution, around 50% are actually juveniles, while the remaining 50% have in the meantime reached the age of majority in the course of serving their sentence.[49]

In the penal correctional institution in Valjevo there used to be an adult education elementary school. As this school did not receive accreditation, currently classes are held at the institution by teachers that teach regular elementary school. As far as secondary education is concerned, classes are organized at the institution according to the block system, with classes being taught by teachers that teach regular secondary school. Exams are also organized and taken in the institution. In particular cases, there is a possibility for a juvenile to take his/her exams in a regular school outside the institution. Also, there are three workshops

49 These data stem directly from the director of the educational correctional institution in Krusevac.

where juveniles are trained in one of three possible trades (metalwork, welding and carpentry).

It can occur that a prison sentence is too short to allow juveniles to be enrolled in school or to complete a school diploma, but they are provided instead with the opportunity to gain practical knowledge in the workshops. Diplomas issued to the juveniles are regular school diplomas that give no indication of the correctional institution. The European Agency for Reconstruction project "Creating Conditions and Capacities for Vocational Training" is currently underway and aims to provide conditions to offer training in 26 different vocations. Besides this, computer equipment will be acquired as part of the project in order to provide juvenile prisoners with computer training. Currently, 34 persons – who in the meantime have all reached the age of majority – are serving juvenile prison sentences in Valjevo.[50]

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

The problem of juvenile delinquency and juvenile and youth judiciary has attracted considerable attention over the past several years in Serbia, both in terms of legal penal theory and in terms of practice. Especially since the Law on Juvenile Criminal Offenders came into force on 1st January 2006, the specialization of all services that are involved in the official treatment of juveniles has become a more central issue. This Law requires the existence of specially trained policemen for juveniles, public prosecutors for juveniles, juvenile judges as well as lawyers who are specially trained in legal issues concerning juvenile offenders. All juvenile judges and prosecutors for juveniles, as well as policemen working with juveniles in Serbia, have completed the first round of specialist training, receiving respective certificates and thereby fulfilling the formal conditions for taking part in procedures involving juveniles. Since the Law also insists that officials working with juveniles receive continuous further training, a second training cycle for persons who have attained the first certificate is well under way.

Training is conducted by the Judiciary Centre of the Republic of Serbia, and is provided by prominent experts from the fields of juvenile delinquency and juvenile judiciary, in terms of both theory and practice. Whilst the first training cycle primarily concentrated on informing practitioners of the new legislative possibilities, the second cycle is significantly more interactive and is based on the idea of resolving practical problems that they might encounter in the penal, material and procedural legislation for juveniles. Besides this, one part of the

50 These data come directly from the deputy director of the penal correctional institution in Valjevo.

training relates to practical aspects of working with juveniles in a judicial proceeding, where particular significance is given to working with children and juveniles who are victims of crimes. This has its formal basis in the sense that one particular section (Chapter III) of the Law on Juveniles is devoted to the protection of children and juveniles who are victims of crimes and who are injured parties in criminal proceedings. This approach by the Serbian legislator – regulating the penal legal positions of both juvenile offenders and juvenile victims within the same piece of legislation – is based on the general idea that juveniles require a special penal legal status, and on the notion that treating juvenile victims humanely can prevent detrimental consequences from arising. Practice indicates that unfortunately, and all too frequently, children and juveniles who have themselves suffered violent victimisations often go on to commit such crimes themselves later in life. Therefore, there is a clear need for this initiative for appropriate treatment in minimizing so-called secondary victimisation, which in turn contributes to a potential reduction in crime in general.

Sometimes it is metaphorically said that "the child is the man's father" (meaning that the child is the father of the man that it grows up to be). Hence, it can be considered that, if a "delinquent child" is at issue, inadequate treatment increases the likelihood of that child growing up to be "an adult who is a far more dangerous criminal". Also, treating "child victims of violent crimes" inadequately in formal criminal proceedings can result in a series of problems in later stages of its life – where a man who grows up from a child that was the victim of crime often faces enormous psychological and other problems that constantly follow him. This is one of the fundamental reasons why the Serbian legislator sought to regulate the issue of juvenile delinquency and the basic problems of juvenile victimisation in one and the same law.

The Law on Juvenile Criminal Offenders is an entirely new law that has been assessed very positively by renowned experts, who have pointed out that it provides "a good basis for the reform of criminal law for juveniles that contains elements of Yugoslav and Serbian traditions, while combining them with reasonable innovations that correspond to international trends."[51] This law is also assessed as having been "very well put together". Its particular value is deemed to be its insistence on obligatory training for lawyers tasked with defending juveniles.[52] However, even though a completely new law is at issue which contains a series of very good solutions and represents a very solid normative foundation, it has left considerable room for useful innovations.

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51 Expert opinion on the Law on Juvenile Perpetrators of Criminal Offences and Criminal-Justice Protection of Underage Persons, given by *Frieder Dünkel* (expert of the Council of Europe), Belgrade, 2005, p. 10.

52 Expert Opinion on the Law on Juvenile Perpetrators of Criminal Offences and Criminal-Justice Protection of Underage Persons, given by *Richard Sedillo*, lawyer from France, Belgrade, 2005, p. 11.

The formal basis for amendments and additions to this new law which has been in force since 1st January 2006 is founded on the fact that, according to the Amendment Act of 1st June 2007, the new Criminal Procedure Code of Serbia should come into force in 2009,[53] introducing a series of far-reaching changes into Serbian criminal proceedings. However, the implementation of that new CPC was postponed once again until 1st June 2010, because of the practical and technical problems with the new concept of the prosecutorial investigation that completely was abolished in September 2009 by the Code of Amendments of the Criminal Procedure Code of 2001.[54] Because of serious amendments in the CPC (Code of Amendments of the Criminal Procedure Code), some changes in the part of the Law on Juveniles are still necessary or desirable.

In view of the fact that in its largest part the Law on Juveniles represents *lex specialis* with respect to the Criminal Procedure Code as the *lex generalis*, it is necessary for a number of provisions of the Law on Juveniles to be reconciled both in legal-technical terms and in a fundamental sense with the new criminal procedural rules in Serbia. This was the reason why, in February of 2007, the Judiciary Reform Committee of the Republic of Serbia formed a working group tasked with the preparation of the Draft Law on Amendments and Additions to the Law on Juvenile Criminal Offenders.

The working group has completed its work, and the resulting Draft has been adopted by the Judiciary Reform Committee, where the Ministry of Justice submitted it to the legislative procedure, with the expectation that it will be adopted by the Serbian Parliament soon. Besides the mentioned reconciliation with the Criminal Procedure Code, the Draft also introduces a series of other innovations. In addition to correcting certain lesser oversights in the Law on Juveniles, its greatest significance lies in the stipulation of several provisions that more precisely regulate the procedure for reaching settlements between juvenile offenders and the injured party. The Draft envisages the creation of conditions that allow for this educational intervention to be finally implemented in practice. In the Serbian sentencing practice, there have been virtually no recorded cases of mediation (even though the Law on Juveniles allows for this form of disposal) as practice holds the position that the provisions of the Law on Juveniles are too general and lack specifics. Furthermore, our judiciary and prosecutorial practice are traditionally very conservative and slow in accepting such innovations. This issue has now been resolved in two ways: on the one hand, several provisions should expand the Law on Juveniles in regard to such settlements, facilitating their application in practice and encouraging everyone involved in the procedure to more readily accept such a method of concluding a case. On the other hand, it allows for compliance with Chapter XXX of the

53 Official Gazette of the Republic of Serbia, No. 46, Belgrade, May 2006.

54 Official Gazette of the Republic of Serbia, No. 72, Belgrade, September 2009.

Criminal Procedure Code of Serbia which regulates in considerable detail the settlement procedure between the accused and the injured party in a criminal procedure.

All experiences in the application of the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles are very favourable and, as has been explained, it can be expected that amendments to this law will contribute to a far better legal position for juveniles in Serbia. Particular progress has been made due to the fact that, in accordance with the requirements of this law, intensive training has already been underway for two years for all officials who take part in procedures involving juveniles, including the defence lawyers. The view that juveniles do not only deserve a special normative status and special legislation, but that the professionals who work with them need to be specially educated and trained as well, appears to have finally taken seriously in Serbia. This conception is fully in the spirit of the idea that "all laws are only worth as much as the people who enforce them."

14. Summary and outlook

Political Culture and Juvenile Criminal Law

In the last decades, due to the disintegration of former Yugoslavia, civil war, economic embargos and recent political turbulences arising from the situations in Kosovo and Metohija, the political situation in Serbia has been very sensitive. This turbulent climate resulted in a reduction of political stability, which in turn can also be attributed to the large number of parliamentary and presidential elections that have taken place over the last decades. This state of affairs has affectted both the entire legal system and the criminal justice system as well. Many good points of the juvenile justice system reform could not be completely implemented due to these economical and political problems. However, there is nobody in the political so-called elite who is not aware of the necessity to have a robust and effective criminal law system for juveniles.

The new Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles was adopted in September 2005 with a great majority in the National Assembly. In fact, none of the relevant political figures and parties was against the new progressive solutions that the Code contains and envisages. It is now necessary to make some improvements in practice and to implement some new progressive legal possibilities. The Code is not completely new, but is rather a combination of traditional provisions of the previous juvenile criminal law of former Yugoslavia on the one hand, with new possibilities and improvements to it on the other. Despite some practical problems, the political climate for such a legislative approach is very good.

The adoption of a comprehensive law on juvenile justice has created a framework for institutional and policy reform that has to some degree obviated

the need for prolonged and painstaking "ministry-by-ministry" and "institution-by-institution" advocacy and negotiations. This step was necessary because the main institutions that are involved in the juvenile criminal procedure are under the helm of different ministries: a) juvenile judges and public prosecutors for juveniles – Ministry of Justice; b) social agencies – Ministry for Social Care; c) police for juveniles – Ministry of Interior Affairs. It is clear that legal reform alone cannot solve all of the problems connected with juvenile delinquency, but it is not least a vital step towards the solution of many of the problems that need to be solved as soon as possible in reforming the juvenile justice system. Despite some problems in the practice connected to this need for cooperation between different ministries, in which the concrete ministers are from different parties which are in the governmental coalition, vital steps have been made, but in some situations this did not occur quickly enough. For example, some sub-legislative acts connected to provisions of the Law on Juveniles have not yet been adopted. This in turn has the consequence that some of the new legal opportunities that the Code provides could not yet be fully applied in practice (for instance the provisions on mediation as a means of avoiding the classical criminal procedure).

The role of the mass media

The mass media traditionally have a great influence on public opinion in many spheres of civil society. They are particularly interested in criminal cases, and of course these themes are very interesting for the public and citizens, too.

Generally, the mass media in Serbia have rather strongly supported the recent reform of the juvenile justice system. In many situations the media provided good explanations and depictions of some of the new and promising legal opportunities that the recent reforms have introduced (for instance the mediation procedure). The regular specialist training of judges, prosecutors, police officers and defence attorneys has also been reflected positively.

In accordance with Article 55 of the Law on Juveniles, the course of juvenile criminal proceedings or the dispositions resulting from such proceedings are not allowed to be published without the court's permission. Which details of the proceedings or sentences are allowed to be made public are specifically stated by the court, but in any such case the name of the juvenile or other data that could be used to identify the juvenile may not be stated. There have been cases in which the media have made grave mistakes in their coverage of juvenile cases. In many of these situations there was the obvious intention to inform the public in a very sensationalist manner, which had or could have had a very negative influence on the concrete juvenile criminal procedure. This is a general problem in Serbia, and there have been some cases in which the mass media have failed to respect the presumption of innocence, or have reported in a way which potentially could have jeopardized the independency of judges, a problem that is even more serious when cases of juvenile delinquency are in question. As

a result, the new Criminal Procedure Code of Serbia of 2006 (which was fully implemented by January 2009) enables the court to fine, at every stage of proceedings, anybody (mass media, political figures, organisations etc.) who tries to influence the independency of judges or jeopardizes the presumption of innocence through public statements.[55]

The role of professionals

The juvenile justice system is very complex, and many actors – governmental and non-governmental, national and local – have a role play in it. The role of professionals in Serbia is of great importance for the practical implementation of juvenile criminal law provisions. There are different kinds of professionals whose roles are vital to the practice of criminal juvenile law, of whom some are especially significant: 1) the official actors of the criminal procedure – judges, public prosecutors, and policeman for juveniles in the pre-trial phase of procedure, 2) other actors of the criminal procedure – the defence counsel for juveniles, 3) the representatives of criminal law theory, and 4) other influential professionals, for instance experts of NGOs etc.

The provisions of the Law on Juveniles require that only authorized persons from the judiciary, police and advocacy can be involved in juvenile criminal procedure. The Judicial Training Centre of Serbia is authorized to organize regular training and special education of the judges, public prosecutors, lawyers who are defence attorneys for juveniles and the policemen who are members of specialized police units for juveniles. Only those persons who have completed this training and who have received a corresponding certificate from the Judicial Training Centre can actively participate in juvenile criminal proceedings. Both international and local organisations have been involved in this training. For example, in 2006 and 2007, UNICEF assisted in the training of specialized juvenile police units.[56] From 2006 to early 2008, the first two training cycles for judges, public prosecutors and lawyers for juveniles were completed (which entailed about 20 days of training per year). At present the Judicial Training Centre is preparing the third cycle of this training.

The acquisition of special skills and advanced professional education by persons engaged in the field of the rights of the child, juvenile delinquency and the protection of juveniles shall be within the ambit of the Judicial Training Centre in co-operation with the relevant ministries of the Republic of Serbia, scientific institutions, professional and expert associations and non-governmental organisations. The Centre organizes regular professional seminars, skills check-

55 See *Škulić* 2007, p. 27-28.

56 UNICEF Regional Office for CEE/CIS – Thematic Evaluation of UNICEF's Contribution to Juvenile Justice System Reform in four countries: Montenegro, Romania, Serbia, Tajikistan, Evaluation Report, Final Version, March, 2007, p. 26.

ups and other forms of supplementary professional advanced training and permanent education for juvenile judges, juvenile public prosecutors, judges and prosecutors acting in criminal matters for certain specified criminal offences that are committed against children and juveniles (the crimes specified in Art. 150 of the Law on Juveniles, for example, rape grievous bodily harm, neglect and abuse of a minor, family violence etc.), police officers, professionals from social welfare agencies, institutions and facilities for the execution of institutional sanctions, lawyers and other qualified persons.

In accordance with Serbian juvenile criminal law, the social service agencies also play a role in the juvenile justice system. The tasks of the Centres for Social Work include the supervision of children given non-custodial sentences for minor offences, liaison between children in residential facilities and their families, and support for children and juveniles who are released from such facilities. Due to the fact that the social service agencies in Serbia are within the competence of the Ministry of Social Care, and the other elements of the juvenile justice system (courts, judges and public prosecutors) belong to the Ministry of Justice and the Ministry for Internal Affairs (the police), there was a need for an improved coordination of activities and collaboration between these three ministries.

The influence of other legal systems and comparative juvenile criminal law

Serbia is principally very open for adopting good legal solutions and examples from other well-developed countries, and for transferring these comparative examples to its own legal system. Juvenile criminal law in Serbia has its main roots in the law of former Yugoslavia which was (and still is) very solid and contemporary, not only at the time when it was adopted, but also in the decades that followed. Former Yugoslavia did not belong to the so-called "real socialistic states" (east block in the time of the "iron curtain"), and the entire legal system of former SFRJ generally had more in common with the typical Western European legal systems. For example, the Criminal Code of former Yugoslavia (first adopted in 1953) was very similar to the Swiss Criminal Code.[57] The provisions of former Yugoslavian juvenile criminal law, and subsequently of the new Federal Republic of Yugoslavia, Serbia and Montenegro, and finally the Republic of Serbia, generally derived from three main legal sources: 1) the Criminal Code – general criminal law provisions like the age limit of criminal responsibility, forms of criminal sanctions for juveniles etc., 2) the Criminal Procedure Code – a special form of procedure for juveniles criminal cases, and 3) the Code on the Execution of Criminal Sanctions – the provisions on the practical implementation of criminal law provisions.

57 See *Stojanović* 2007, p. 17-18.

The main technical change in comparison to that time is that, since 1st January 2006, a special Law on Juveniles has been in place, which is so called "lex specialis", while the Criminal Code, the Code of Criminal Procedure and the Code on the Execution of Criminal Sanctions are all "*leges generalis*". This development was based on the general notion that consolidating the main legal provisions of juvenile criminal law in one Code is a good way to demonstrate that juvenile justice is a very important part of the overall legal system. This consolidation was influenced positively by European countries like Austria and Germany, but essentially, this positive influence of western legislation already occurred much earlier, in the time of former Yugoslavia. The development of penal and criminal legislation, and also of juvenile criminal law, was strongly influenced by the most progressive legislative examples of that time.

The Law on Juveniles provides a very solid normative foundation for the Serbian justice system to face the problems of juvenile delinquency. The official name of that Code is Law on Juvenile Perpetrators of Criminal Offences and Criminal-Justice Protection of Underage Persons. The second part of this title is not entirely formally correct, because the protection of juveniles and children is rather a matter for the Criminal Code, i. e. some parts of that Code, for instance the offences against life and limb, or the offences against the family etc. The Law on Juveniles (the Third Part, Articles 150 to 157) only contains some provisions concerning the protection of victims of certain offence types (e. g. rape, incest, severe bodily harm, robbery, extortion, domestic violence, child trafficking) in the criminal procedure. These provisions are primarily geared toward the prevention of secondary victimization, and are applied in all forms of formal criminal procedure in Serbia. The only condition for their application is that the victim of the offence is a child or a juvenile.

This Law retains a series of earlier traditional solutions, such as the age limit of criminal responsibility of 14 years, as well as the age groups of younger juveniles (14 and 15), older juveniles (16 and 17) and young adults (18 to 20). It also provides for a sanctioning system that is based, above all, around educational measures.

Juvenile criminal procedure in Serbia is regulated on the basis of modern foundations, where the desire to safeguard the best interests of the juvenile permeates the entire procedure which does not have a repressive character. Special attention is accorded to the application of diversion, where considerable significance is given to the conditional principle of discretionary assessment. In this, particular obligations can be imposed upon the juvenile so that, upon their fulfilment, the juvenile earns the right to be freed of criminal charges. This avoids the customary strictness and inelasticity of classic criminal procedure. The amendments to the Law on Juveniles create more specific provisions for the mediation procedure. On the one hand, this will relieve the criminal procedure of some of its workload, because designed objectives can be realized without following through with a classic criminal procedure. On the other hand, this will

permit the realization of certain higher objectives in the settlement between the juvenile perpetrator and his/her victim, who can also be a juvenile. Such treatment is of considerable importance both in terms of the legal system and in terms of protecting the interests of society, as this reduces the conflict potential within society itself.

In statistical terms, the number of crimes committed by juveniles has been decreasing in Serbia over the past several years. This certainly gives reason to be satisfied. However, it should not be ignored that the structure of juvenile offending indicates a hardly negligible number of serious crimes, including aggravated assault and grievous bodily harm – or more generally, crimes with elements of violence. For this reason, it is important to continue with all activities in the normative and practical fields, not just in terms of reducing juvenile delinquency, but also in terms of preventing it. Fortunately, there is a heightened awareness of this issue, and in recent years considerable strides have been made in this field, motivated by the familiar idea that if – metaphorically considered – "the child is the man's father", then it is extremely important for society that a child does not offend, in order to avoid it from heading toward "the point of no return" and toward a future "career of crime".

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UNICEF Regional Office for CEE/CIS – Thematic Evaluation of UNICEF`s Contribution to Juvenile Justice System Reform in four countries: Montenegro, Romania, Serbia, Tajikistan. Evaluation Report, Final Version, March, 2007.

Slovakia

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Summary

Until 1993, the territory of Slovakia was part of the Czechoslovakian Federation and therefore shared with it a common history of juvenile justice, with a first substantive juvenile law being passed in 1931 and the subsequent socialist legislation of the 1950ies and 1960ies. In contrast to the Czech Republic, the new Slovakian legislation after the state's independence did not establish separate juvenile justice legislation, but rather incorporated specific regulations for juvenile offenders in the substantive Penal Law as well as in the general Code of Criminal Procedure. The age of criminal liability is 14 (in the special case of sexual abuse 15). 14 year old juveniles are only criminally liable if they are capable of recognizing their wrongdoing and are also capable of controlling their actions while juveniles aged 15 to 17 are always criminally responsible. Young adults aged 18-20 years are considered as an age group for which punishment should be mitigated compared to adults aged 21 and above. They also receive special mention regarding youth imprisonment, in that they can stay in juvenile prisons or departments of the prison system in order to finish their schooling or vocational training and be released from there.

Children under 14 are not criminally responsible. Only educational measures according to Family Law can be imposed, including placements in residential homes as a last resort. The system of welfare placements in substitute families and homes is rather differentiated according to the educational, mental and health needs of children and juveniles.

Slovakia does not yet have a separate juvenile courts system. Penal matters involving juveniles are dealt with by the Lower District Courts. However, there are discussions for opening the floor for some specialisation within these courts. In any case, juveniles are always represented by a defence counsel and the pro-

cedural safeguards are taken seriously, although the trial in juvenile matters in general is held publicly which can infringe the juvenile's educational interests.

Police registered crimes by children and juveniles are not a major problem, although both the media and the public overestimate it. Since the mid 1990s official juvenile crime rates for all major offences have been on the decrease.

Since 1961 the sanctions system has provided for different forms of diversion, with such possibilities having been extended in 1994 and 2005. One form of diversion is combined with mediation but until now has been used only rarely. The most extensively used form is an absolute or conditional discharge for offences which are punishable with up to five years of imprisonment. In 2005 a new form of diversion was introduced: a kind of guilty plea which is called a "contract of guilt" and which (with the consent of the accused) can contain minor sanctions, particularly the compensation of the victim. The court sanction system comprises a variety of educational measures and penalties such as community service orders (40-150 hours), fines, suspended sentences (up to two years) and suspended sentences with supervision (up to three years) and finally unconditional imprisonment (maximum 15 years or life imprisonment). The minimum and maximum sentences for juveniles are reduced by half compared to adults (the minimum cannot be longer than two years, the maximum no longer than seven years). There are special mitigating circumstances for juveniles described by law, but there are also increased penalties for recidivist ("persistent") offenders, and even preventive detention as a security measure after having served a prison sentence seems to be possible for juveniles (although the law is not entirely clear in this regard).

Diversionary practice remains rather limited: in 2004-2006, 10-20% of the cases were (conditionally) discharged, another 8% were dismissed with a "contract of guilt" and only 0.1-2% were discharged following mediation. The courts' sentencing practice favours suspended prison sentences in about 70% of juvenile cases (figures are presented only for the period from 2000-2006). Another 7-12% of the cases are discharged (diversion by the court) and only 9-13% are accounted for by unconditional prison sentences. Fines and other sanctions – with less than 1% – do not play any important role.

The number of juveniles in pre-trial detention is low, but nonetheless a problem, whereas the number of sentenced juvenile prisoners has decreased by one third in the last few years. In 2006, 205 juveniles were sentenced to an unconditional prison sentence (3.8% of all prison sentences), and less than 100 were in juvenile prisons or departments on any given day.

The last reform of 2005 has enlarged the possibilities for diversion, mediation and educational measures, but has also increased the penalties for recidivist and violent juvenile (and adult) offenders. Further reforms are needed in order to improve the sentencing practice (towards restorative justice) and to establish a separate juvenile justice system.

1. Historische Entwicklung und Überblick über die gegenwärtige Gesetzgebung zum Jugendstrafrecht

Die Slowakei teilt – mit Ausnahme der Zeit während des Zweiten Weltkrieges – mit der tschechischen Republik eine gemeinsame politische, soziale und kulturelle Vergangenheit. Bis zum Zerfall der tschechoslowakischen Föderation im Jahr 1993 herrschte in beiden Ländern dasselbe Rechtssystem. Seit 1931 galt demzufolge auch in der Slowakei das Jugendstrafgesetz Nr. 48 aus dem Jahre 1931.[1] Dieses Gesetz wurde nach dem kommunistischen Putsch (1948) durch das damals eingeführte Strafgesetz zum 1.8.1950 ersatzlos gestrichen. Seitdem gab es in der ehemaligen Tschechoslowakei (und folglich auch in der damaligen Slowakei) kein eigenständiges Jugendstrafrecht. Die strafrechtliche Behandlung Jugendlicher wurde durch wenige Sonderbestimmungen im allgemeinen Strafgesetz und in der allgemeinen Strafprozessordnung aus dem Jahre 1961 geregelt.

Durch die Entstehung zweier selbständiger Republiken – der Tschechischen Republik und der Slowakischen Republik – am 1.1.1993 kam es zur Trennung der beiden Rechtssysteme, die sich bis heute unterschiedlich entwickelt haben. Im strafrechtlichen Bereich wurde dieses vor allem dadurch deutlich, dass die Slowakei im Jahre 2005 neue Strafgesetze erließ, die am 1.1.2006 in Kraft traten, während die Einführung neuer Strafgesetze in der Tschechischen Republik bis heute noch nicht gelungen ist. Weiterhin unterscheiden sich die beiden Länder dadurch, dass im Gegensatz zur tschechischen Republik die slowakischen Bestimmungen zum Jugendstrafrecht nicht in einem Sondergesetz, sondern im vierten Hauptteil des slowakischen Strafgesetzbuches[2] zu finden sind. Die verfahrensrechtlichen Bestimmungen sind in einem besonderen Abschnitt der slowakischen Strafprozessordnung[3] enthalten.

Das strafrechtliche System der Slowakei unterteilt junge Straftäter in drei Altersgruppen mit unterschiedlicher Rechtsstellung:

In die erste Gruppe fallen Kinder, die zum Tatzeitpunkt das 14. Lebensjahr, bzw. bei der Straftat des sexuellen Missbrauchs nach § 20 slStGB das 15. Lebensjahr noch nicht vollendet haben. Diese Kinder werden als schuldunfähig angesehen. Wegen der Begehung einer rechtswidrigen Tat können gegen sie nur Erziehungsmaßnahmen aus dem Familien- oder dem Jugendhilfegesetz verhängt werden. Gemäß § 37 Abs. 2 und Abs. 3 des slowakischen Familiengesetzes[4] ist es möglich, delinquente schuldunfähige Kinder, ihre Eltern bzw. sonstige Personen, die durch ihr Verhalten die ordnungsgemäße Erziehung des Kindes beeinträchtigen oder gefährden, zu ermahnen, soweit es im Interesse des Kindes liegt.

1 Vgl. den Landesbericht *Czech Republic* in diesem Band.

2 Nachstehend als slStGB abgekürzt.

3 Nachstehend als slStPO abgekürzt.

4 Familiengesetz, Blatt Nr. 36/2005 Z. z.

Die Kontrolle der Kindererziehung kann angeordnet werden. Dem Kind selbst können Beschränkungen auferlegt werden, um schädliche Einflüsse zu vermeiden und abzuwehren, welche die positive Entwicklung des Kindes gefährden oder beeinträchtigen können. Weiter können das Kind und die Eltern verpflichtet werden, sich einer Sozial- oder sonstigen Fachberatung zu unterziehen.

Sollte ein intensiverer Eingriff notwendig sein, so kann das Kind von den Eltern/Erziehungsberechtigten getrennt und für eine Zeit von höchstens 6 Monaten in einer der verschiedenartigen spezialisierten Einrichtungen oder in einem Resozialisierungszentrum für Drogenabhängige untergebracht werden. Die Aufenthaltsdauer in einem solchen Zentrum wird durch das Gesetz zeitlich nicht begrenzt.

Weitere Erziehungsmaßnahmen sind in § 12 Abs. 1 Kinder- und Jugendhilfegesetz[5] geregelt. Im Einzelnen findet man hier die Möglichkeit, das Kind, die Eltern bzw. sonstige Pflegepersonen des Kindes, die durch ihr Verhalten die positive psychische, körperliche oder soziale Entwicklung des Kindes gefährden, zu ermahnen, oder das Kind zur Teilnahme an einer Therapie in einer spezialisierten ambulanten Einrichtung bzw. an einem Erziehungs- oder Sozialprogramm zu verpflichten. Die Organe der Kinder- und Jugendhilfe können darüber hinaus auch Erziehungsmaßnahmen nach dem Familiengesetz anordnen, soweit diese nicht mit der Herausnahme des Kindes aus der Familie verbunden sind.

Ist die Erziehung des Minderjährigen ernsthaft gefährdet oder beeinträchtigt und haben mildere Erziehungsmaßnahmen keine Abhilfe schaffen können, so kann der Jugendliche gemäß §§ 55 ff. Familiengesetz in einem Heim untergebracht werden. Das Gericht hat dann mindestens zweimal im Jahr zu prüfen, ob die Voraussetzungen für diese Maßnahme noch vorliegen.

Die slowakischen Vorschriften außerhalb des Strafrechts bieten folglich relativ viele Möglichkeiten, auf delinquente, schuldunfähige Kinder zu reagieren. Vereinzelt wird Kritik dahingehend geäußert, dass es sinnvoller wäre, Erziehungsmaßnahmen komplett im Familiengesetz zu regeln,[6] da die in zwei Rechtsvorschriften enthaltenen rechtlichen Regelungen uneinheitlich und konzeptionslos seien.

Alle Erziehungsmaßnahmen dürfen nur unter der Voraussetzung angeordnet werden, dass dies im Interesse des Kindes liegt. Die Anwendung der zivilrechtlichen Erziehungsmaßnahmen beschränkt sich nicht nur auf Fälle der Kinderdelinquenz. Die Schutzerziehung nach § 105 slStGB darf jedoch bei strafunmündigen Kindern nur unter der Voraussetzung angeordnet werden, dass eine rechtswidrige Tat begangen wurde. Zwingend anzuordnen ist die Schutzerziehung, wenn Kinder, die zwar das 12., jedoch noch nicht das 14. Lebensjahr vollendet haben, eine rechtswidrige Tat begehen, die ansonsten mit lebenslanger

5 Kinder- und Jugendhilfegesetz, Blatt Nr. 305/2005 Z. z.

6 *Ficová/Svoboda* 2005, S. 1202 ff.

Freiheitsstrafe bedroht wäre. Im Gegensatz zur tschechischen Rechtslage kann die Schutzerziehung auch in professionellen Ersatzfamilien bzw. in stationären Gesundheitseinrichtungen vollzogen werden.

Als *Jugendliche* werden im § 94 slStGB Personen bezeichnet, die zum Tatzeitpunkt das 14., aber noch nicht das 18. Lebensjahr vollendet haben. Im Zuge der Verabschiedung des neuen Strafgesetzes wurden die Grundlagen der strafrechtlichen Verantwortlichkeit Jugendlicher maßgeblich geändert, indem das Alter der Strafmündigkeit von 15 auf 14 Jahre herabgesetzt wurde. Dieser Schritt wurde mit dem Anstieg der Jugendkriminalität, dem Missbrauch schuldunfähiger Kinder und ihrer Straflosigkeit bzgl. der Begehung von Straftaten sowie mit der Zunahme der Schwere der von Jugendlichen begangenen Straftaten begründet.[7] Als weitere Gründe für die Herabsetzung des Strafmündigkeitsalters wurden zum Beispiel die Beschleunigung der psychosozialen Entwicklung der Jugendlichen[8] und die Möglichkeit, schon früher auf das delinquente Kind mit strafrechtlichen Mitteln einwirken zu können, angeführt.[9] Allerdings gab es zur Herabsetzung des Alters auch andere Ansichten, die nicht nur auf die Gefahr einer übermäßigen Kriminalisierung und Stigmatisierung der Kinder, sondern auch auf praktische Probleme im Zusammenhang mit einer solchen Herabsetzung sowie auf den Umstand verwiesen, dass der Beginn der strafrechtlichen Verantwortung dann vor dem Ende der Schulpflichtzeit liege.[10] Das müsse man vor allem bei der Verhängung der unbedingten Freiheitsstrafe berücksichtigen.[11] In diesem Zusammenhang ist anzumerken, dass in der Slowakei im Gegensatz zu ähnlichen Vorschlägen in der Tschechischen Republik eine interessante Lösung für die strafrechtliche Verantwortung der vierzehnjährigen Kinder für die Straftat des sexuellen Missbrauchs eingeführt wurde. Demnach wurde der erhöhte Schutz der unter 15-jährigen Kinder vor sexuellem Missbrauch belassen und zugleich in § 22 Abs. 2 slStGB die strafrechtliche Verantwortung bei Personen ausgeschlossen, die das 15. Lebensjahr noch nicht vollendet haben.

Da die geistige und moralische Reifeentwicklung bei Teenagern höchst unterschiedlich verlaufen kann, wurde für die 14-Jährigen eine relative Schuldfä-

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7 *Prikryl* 2003, S. 437-438.

8 Důvodová zpráva k Vládnímu návrhu Trestného zákona, (Begründung zur Regierungsvorlage des Strafgesetzbuches) 1061 parlamentná tlač trestní (Strafrechtsunterlagen fürs Parlament).

9 *Vráblová* 2004, S. 935.

10 Die Schulpflicht beginnt in der Slowakei mit 6 Jahren und dauert 10 Jahre, also in der Regel bis 15. Somit kann kein 14-Jähriger, der nach der Gesetzesreform inhaftiert werden könnte, den Hauptschulabschluss bereits erreicht haben. Es müsste also ermöglicht werden, dass ein zu unbedingter Freiheitsstrafe verurteilter Jugendlicher im Jugendgefängnis die Hauptschule beenden kann.

11 *Mathern* 2003, S. 1105 f.

higkeit eingeführt. In § 95 slStGB wird als selbständige Voraussetzung für die strafrechtliche Verantwortung verlangt, dass der unter 15-jährige Jugendliche geistig und moralisch reif ist, das Unrecht seines Verhaltens zu erkennen und nach dieser Erkenntnis auch handeln zu können. Jugendliche, die das 15. Lebensjahr vollendet haben, sind dagegen absolut schuldfähig, und zwar ohne Rücksicht auf die konkrete Entwicklungsstufe der geistigen und moralischen Reife.

In Bezug auf die Einführung der relativen Schuldfähigkeit wurden in der Fachliteratur Befürchtungen geäußert, die im Strafverfahren zuständigen Organe könnten mit der Notwendigkeit einer Reifeprüfung der Jugendlichen durch Sachverständige überbelastet sein.[12] Aus der Begründung des Regierungsentwurfs zum slowakischen Strafgesetz folgt, dass man mit einer ähnlichen Handhabung wie in der Tschechischen Republik rechnet. Demnach soll der psychologische oder psychiatrische Sachverständige nur dann hinzugezogen werden, wenn der Jugendliche im Hinblick auf sein Alter einen deutlich unreifen Eindruck erweckt. In der Literatur ist diese Frage umstritten. Unstreitig ist, dass nach § 338 slStPO eine Beurteilung der Handlungs- und Einsichtsfähigkeit der unter 15-jährigen Jugendlichen zwingend erfolgen muss. Umstritten ist allerdings, ob die Prüfung der Schuldfähigkeit der Jugendlichen stets durch die im Strafverfahren zuständigen Organe und nur im Zweifelsfall durch einen Sachverständigen oder ausschließlich durch den letzteren zu erfolgen hat.[13]

Die Einführung eines formellen Verständnisses der Straftat im slowakischen Strafgesetz änderte auch wesentlich die Grundlagen der strafrechtlichen Verantwortlichkeit der Jugendlichen. Die strafrechtliche Verantwortlichkeit der Jugendlichen ist nicht mehr dadurch modifiziert, dass für ihre Strafbarkeit eine höhere Stufe der gesellschaftlichen Gefährlichkeit einer Tat als bei den Erwachsenen verlangt wird.

Trotz der Abschaffung dieser Regelung betrachtet man (im Gegensatz zum Erwachsenenstrafrecht) einige Jugendvergehen von geringer Schwere nicht als Straftaten. Es handelt sich um Fahrlässigkeits- und Vorsatzdelikte, die mit einer Freiheitsstrafe von bis zu 5 Jahren bedroht sind. Für diese gilt § 95 Abs. 2, wonach Jugendvergehen von geringer Schwere nicht als Straftaten angesehen werden.[14] Für Verbrechen gilt diese Regelung nicht. Somit ist das Verhalten eines Jugendlichen, das alle Tatbestandsmerkmale erfüllt, die das Gesetz zum Beispiel für einen Raub definiert, immer als Straftat zu werten. Gleiches gilt immer dann,

12 Vgl. *Mathern* 2003, S. 1105-1106.

13 Nachweise bei *Ivor u. a*. 2006, S. 762 und bei *Ivor u. a.* 2006a, S. 522.

14 Bei Erwachsenen gelten Vergehen von einer geringen Schwere ebenfalls nicht als Straftaten (materieller Verbrechensbegriff). Die Voraussetzungen dafür, wann eine geringe Schwere vorliegt, sind höher als bei Jugendlichen. Dabei sind Tatumstände und -folgen sowie die Tatmotive zu berücksichtigen.

wenn die strafbaren Handlungen nicht von nur geringer Schwere waren. Dazu wird untersucht, wie und unter welchen Umständen die Tat begangen wurde, welche Folgen sie hatte, wie hoch der Verschuldensgrad war und welche Motive der Täter hatte.

Eine weitere Modifizierung der allgemeinen Regelungen besteht darin, dass § 95 slStGB besondere Fristen für die Verfolgungsverjährung von Jugendstraftaten vorsieht. Weder in der Slowakei noch in der Tschechischen Republik können Jugendliche für so genannte Statusdelikte strafrechtlich belangt werden.

Eine letzte Altersgruppe erfasst Personen, die soeben dem Jugendalter entwachsen sind. Anders als in der vorherigen rechtlichen Regelung legt § 127 Abs. 2 slStGB direkt fest, dass soeben dem Jugendalter entwachsen ist, wer das 18., aber noch nicht das 21. Lebensjahr vollendet hat. Eine solche Beschränkung entspricht grundsätzlich der Festlegung der Altersgruppe der jungen Erwachsenen bzw. Heranwachsenden in anderen Rechtsordnungen.[15] Diese Gruppe unterscheidet sich im Bereich des Strafrechts von den übrigen erwachsenen Tätern dadurch, dass ihr Alter als Milderungsgrund im Sinne des § 36d slStGB zu berücksichtigen ist. Darüber hinaus enthält das slowakische Strafrecht keine weiteren Modifikationen für Heranwachsende. Dies gilt sowohl für die Grundlagen der strafrechtlichen Verantwortlichkeit als auch für die Rechtsfolgen der Straftaten.

2. Entwicklung der registrierten Kinder-, Jugend- und Heranwachsendenkriminalität

Bezogen auf die Charakteristik und das Ausmaß der Kriminalität reiht sich die Slowakische Republik ohne Zweifel in die Reihe der postkommunistischen Staaten Mittel- und Osteuropas ein. In diesen Ländern wurde die Kriminalität stark unterdrückt und unter Kontrolle gehalten und blieb dadurch relativ stabil. In der Zeit von 1975 bis 1989 lag der Anteil der Jugendkriminalität an der Gesamtkriminalität zwischen 14% und 17%, wobei in diesem Zeitraum bezogen auf diese Altersgruppe jedes Jahr zwischen 8.700 und 10.700 Straftaten registriert wurden.

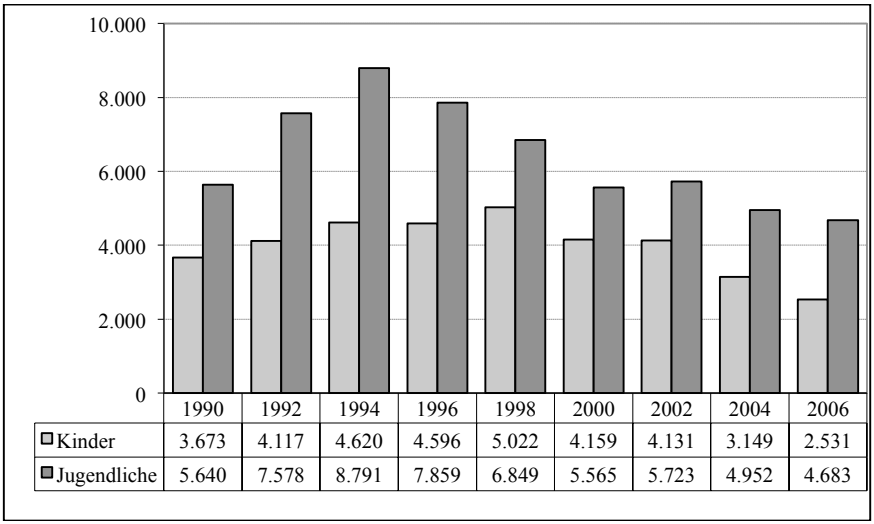
Die Zeit nach 1989 war in der Slowakei zunächst durch einen erheblichen Anstieg der registrierten Kriminalität geprägt. Für den Anstieg könnten als mögliche Faktoren die Dynamik der gesellschaftlichen Entwicklung, der Reformprozess und insbesondere die Entstehung großer sozialer Unterschiede ausschlaggebend gewesen sein.

Der starke Kriminalitätszuwachs war vor allem im Zeitraum der Jahre 1989-1993 zu beobachten (siehe *Abbildung 1*). Im Jahre 1993 wurde mit 9.313 Straftaten ein Höchststand in der nachkommunistische Phase erreicht. In den Jahren

15 Vgl. z. B. den Landesbericht *Germany* in diesem Band.

1994-2006 zeigte (mit Ausnahme eines leichten Anstiegs in den Jahren 1995 und 2002) die registrierte Jugendkriminalität fallende Tendenzen. Dabei ging die Zahl der Jugendstraftaten von 8.791 im Jahr 1994 auf 4.683 im Jahr 2006 zurück, womit sie sich beinahe halbierte. Allerdings ist der Rückgang der Zahl der Jugendstraftaten für sich genommen nur bedingt aussagekräftig. Von Bedeutung ist, wie sich der Anteil der Kriminalität dieser Altersgruppe an der registrierten Gesamtkriminalität entwickelt hat.

Abbildung 1: Registrierte Jugendkriminalität im Zeitraum 1989-2006: Strafbare Handlungen Jugendlicher und rechtswidrige Handlungen schuldunfähiger Kinder



	1990	1992	1994	1996	1998	2000	2002	2004	2006
Kinder	3.673	4.117	4.620	4.596	5.022	4.159	4.131	3.149	2.531
Jugendliche	5.640	7.578	8.791	7.859	6.849	5.565	5.723	4.952	4.683

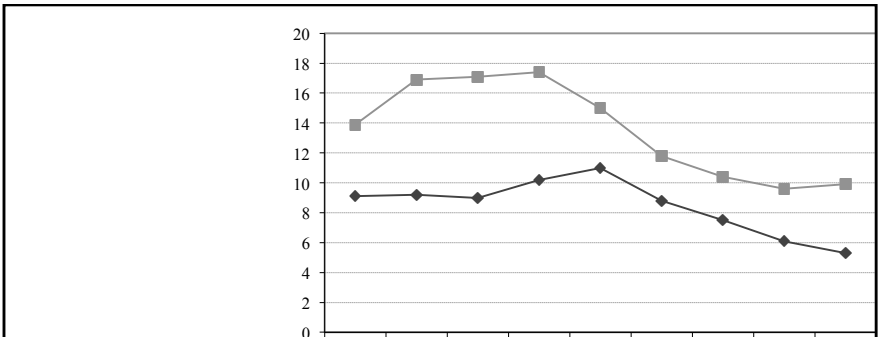
Quelle: Statistische Übersicht der Kriminalität 1989-2006, Präsidium des Polizeikorps der Slowakischen Republik.

Wie *Abbildung 2* zeigt, waren Jugendliche in den Jahren 1994, 1995, 1996 an der Gesamtkriminalität (mit einem Prozentsatz zwischen 17% und 18%) genauso beteiligt wie im Jahre 1993, als die Kriminalität die höchsten Werte erreichte. Rückläufige Tendenzen können erst nach dem Jahr 1998 festgestellt werden. Seitdem geht der Prozentsatz der Jugendkriminalität zurück und bleibt deutlich unter dem Wert von 17%. Derzeit macht der Anteil der Jugendkriminalität an der Gesamtkriminalität nicht einmal 10% aus. Der Rückgang der registrierten Jugendkriminalität (insbesondere bei den Vermögensdelikten) lässt sich in erster Linie mit der Novellierung der strafrechtlichen Vorschriften erklären, in deren Rahmen die Systematik der Vermögensdelikte geändert wurde. Infolge-

dessen werden viele Fälle, die vorher als Vermögenskriminalität eingestuft worden wären, nun lediglich als Ordnungswidrigkeiten qualifiziert.

Die Entwicklung der Delinquenz der schuldunfähigen Kinder (d. h. der unter 15- bzw. der unter 14-Jährigen, s. o. *Kapitel 1*) unterscheidet sich von der Entwicklung der Jugendkriminalität. In den Jahren 1993-1998 war (mit Ausnahme des Jahres 1995) eine Zunahme zu verzeichneten mit einem Höchststand von 5.022 Taten im Jahr 1998. Deutlich rückläufige Tendenzen sind erst ab dem Jahre 2000 zu beobachten. Damals belief sich die Zahl der von strafunmündigen Kindern begangenen Delikte auf rund 4.000 und lag im Jahre 2003 nur noch bei 3.700 Taten. Verglichen mit dem Jahr 1998 stellt dies einen Rückgang von mehr als einem Viertel dar. Die statistischen Daten zeigen noch weitere Abnahmen bis zum Jahr 2006. In diesem Jahr haben unmündige Kinder „nur" 2.531 Taten begangen. Es handelt sich um die bisher niedrigste Zahl seit 1989.

Abbildung 2: Anteil der Jugendlichen und der strafunmündigen Kinder an der Gesamtkriminalität



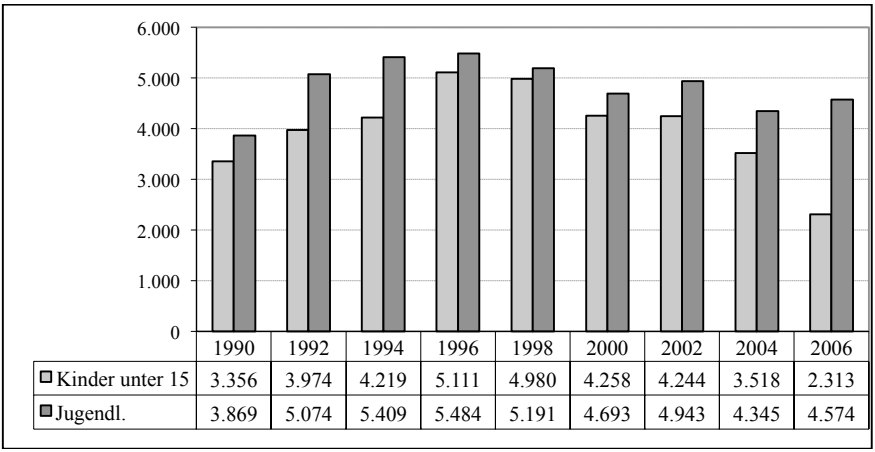
	1990	1992	1994	1996	1998	2000	2002	2004	2006
Anteil der Kinder unter 15 am Umfang der gesamten Kriminalität in %	9,1	9,2	9	10,2	11	8,8	7,5	6,1	5,3
Anteil der Jugendlichen am Umfang der gesamten Kriminalität in %	13,9	16,9	17,1	17,4	15	11,8	10,4	9,6	9,9

Quelle: Statistische Übersicht der Kriminalität 1989-2006, Präsidium des Polizeikorps der Slowakischen Republik.

Der Rückgang im Jahr 2006 ist in erster Linie auf die Absenkung des Strafmündigkeitsalters auf 14 zurückzuführen. Der Anteil der Delinquenz der strafunmündigen Kinder an der Gesamtkriminalität bewegte sich in der Zeit von 1993 bis 2006 zwischen 6% und 11%. Der Höchstwert wurde im Jahre 1997 erreicht, als die 11%-Grenze überschritten wurde. Seitdem ist ein langsamer

Rückgang des Anteils zu beobachten. Ein deutlicher Rückgang wurde in den Jahren 2004 und 2005 verzeichnet. Damals sank der Anteil der Taten von Kindern unter 15 Jahren unter das Niveau von 7%. Im Jahr 2006 betrug er sogar nur 5,3%. (siehe *Abbildung 2*).

Abbildung 3: Registrierte Jugendliche und strafunmündige Kinder im Zeitraum 1989-2006



	1990	1992	1994	1996	1998	2000	2002	2004	2006
Kinder unter 15	3.356	3.974	4.219	5.111	4.980	4.258	4.244	3.518	2.313
Jugendl.	3.869	5.074	5.409	5.484	5.191	4.693	4.943	4.345	4.574

Quelle: Statistische Übersicht - Präsidium des Polizeikorps der Slowakischen Republik.

Ähnliche Entwicklungen sind bei der Zahl der strafverfolgten Jugendlichen und der unter 15- bzw. 14-jährigen Kinder, die wegen rechtswidriger Taten registriert wurden, zu beobachten (siehe dazu *Abbildung 3*).

Aus den polizeilichen Daten ist ersichtlich, dass Vermögensdelikte den größten Anteil an der Jugendkriminalität ausmachen. Bzgl. strafunmündiger Kinder lag ihr Anteil an der gesamten Kinderdelinquenz im Zeitraum der Jahre 1989-2006 zwischen 61-89%. Der Anteil der von Jugendlichen begangenen Vermögensdelikte an der gesamten Jugendkriminalität bewegte sich in den Jahren 1989-2006 zwischen 64% und 85% (2006: 70%). An der gesamten Vermögenskriminalität waren Jugendliche im Jahr 2006 mit 22,2% und strafunmündige Kinder mit 11% beteiligt.

Die Gewaltkriminalität stellt eine weitere Kriminalitätsform dar, an der die Jugendlichen in erheblichem Maße beteiligt sind. Aus *Tabelle 1 und 2* folgt, dass Raub und Körperverletzung von Jugendlichen als auch von Kindern am häufigsten begangen wurden. Bezogen auf den Raub wurde bei Kindern das Maximum in den Jahren 1999 und 2000 verzeichnet. Anschließend ging diese Zahl (mit Ausnahme der Jahre 2004, 2005) langsam zurück. Bei jugendlichen Tätern trat der umgekehrte Fall ein: Nach einem starken Absinken auf 198 Fälle

im Jahr 2000 stieg die Zahl der Raubüberfälle nach und nach an. Im Jahr 2005 wurden 323 Raubstraftaten registriert. Am seltensten kamen bei den Gewaltdelikten Morde und Vergewaltigungen vor, zudem waren hier in den letzten Jahren rückläufige Tendenzen erkennbar. Bei den Jugendlichen bewegte sich die Zahl der Morde in den Jahren von 1997 bis 2006 zwischen 3 und 9 Fällen, die Zahl der Vergewaltigungen betrug 4-22 Fälle.

Tabelle 1: Entwicklung der Gewalttaten von strafunmündigen Kindern im Zeitraum 1997-2006 in abs. Zahlen

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Mord	0	0	0	1	1	1	1	1	2	0
Vergewaltigung	4	2	7	6	4	3	3	5	2	2
Raub	137	160	197	193	152	155	157	182	183	112
vorsätzliche Körperverletzung	125	140	122	125	132	103	116	122	119	79

Quelle: Statistische Übersicht der Kriminalität 1997-2006, Präsidium des Polizeikorps der Slowakischen Republik

Tabelle 2: Entwicklung der Gewalttaten von Jugendlichen im Zeitraum 1997-2006 in abs. Zahlen

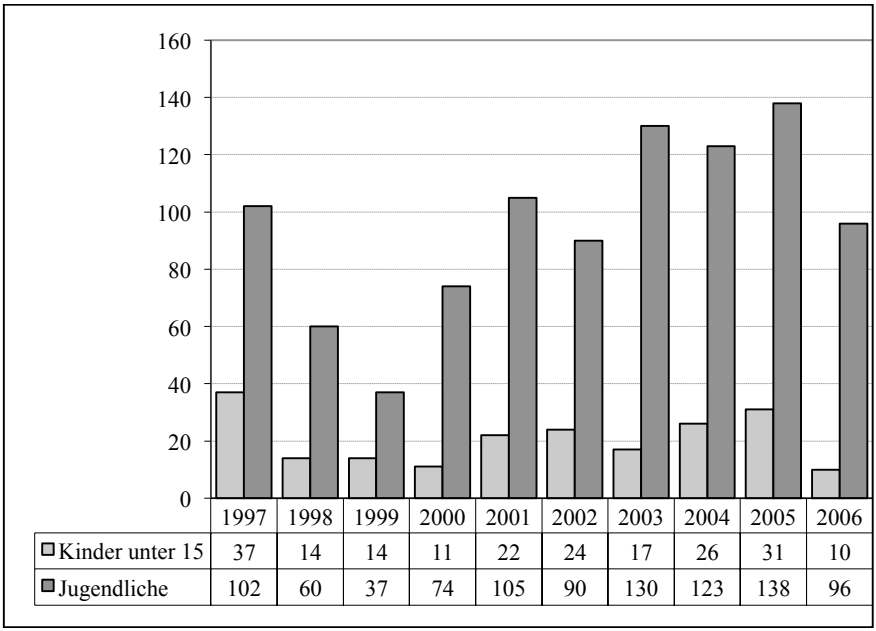
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Mord	8	9	7	6	6	2	8	7	5	3
Vergewaltigung	14	9	17	5	22	7	8	10	14	4
Raub	276	246	301	198	248	267	285	285	323	225
vorsätzliche Körperverletzung	343	267	271	254	233	250	245	222	273	210

Quelle: Statistische Übersicht der Kriminalität 1997-2006, Präsidium des Polizeikorps der Slowakischen Republik.

Die Beteiligung strafunmündiger Täter an der gesamten Gewaltkriminalität ist zwischen 1993 und 2001 von 3,7% auf 7,5% gestiegen. Im Jahr 2006 waren Kinder an der Gewaltkriminalität mit 4,8% beteiligt. Der Anteil der Jugendli-

chen an der Gewaltkriminalität blieb dagegen relativ stabil. Er lag in den Jahren 1993-1997 zwischen 8% und 10%, im Zeitraum 1998-2003 zwischen 6% und 7% (2006: 7,7%).

Abbildung 4: Drogendelikte von Kindern und Jugendlichen im Zeitraum 1997-2006 in der Slowakei (abs. Zahlen)



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Kinder unter 15	37	14	14	11	22	24	17	26	31	10
Jugendliche	102	60	37	74	105	90	130	123	138	96

Quelle: Statistische Übersicht der Kriminalität 1997-2006, Präsidium des Polizeikorps der Slowakischen Republik

Wie aus *Abbildung 4* ersichtlich, unterliegt die Entwicklung der Drogenkriminalität in der Slowakei ebenfalls starken Schwankungen. Allerdings gibt es hier besondere methodische Probleme zu beachten: Zum einen ist das Dunkelfeld bei dieser Kriminalitätsform besonders groß. Das hängt mit dem hohen Maß an Organisiertheit, Internationalisierung und Professionalisierung der Täter zusammen. Als ebenso schwierig und kompliziert erweisen sich die Entdeckung und die Aufklärung dieser Straftaten, vor allen Dingen, weil die Geschädigten selbst an der Aufklärung nicht interessiert sind. Zu den Ursachen und Bedingungen für Drogenkriminalität zählen insbesondere die unkontrollierbare Freizeit der Kinder und Jugendlichen, eine freizügige Haltung der Eltern gegenüber dem Diebstahl von Sachen und Geld aus der Wohnung und die anschließende Verheimlichung der Drogenabhängigkeit der Kinder, Langzeitarbeitslosigkeit, ein

niedriger Lebensstandard und soziale Hilfsbedürftigkeit. Polizeilichen statistischen Angaben zufolge lag der Anteil der Drogenkriminalität der strafunmündigen Kinder an der Kinderdelinquenz im Zeitraum der Jahre 1997-2006 zwischen 0,3% und 0,9%. Bei den Jugendlichen machten Drogendelikte zwischen 0,6% und 2,9% der Jugendkriminalität aus.

Der im Zeitraum der Jahre 2000 bis 2006 erfasste Anteil der strafverfolgten ausländischen Jugendlichen an der Gesamtzahl der strafverfolgten Ausländer lag zwischen 0,9% und 3,2%. Der durchschnittliche Anteil der ausländischen Jugendlichen an der Gesamtzahl der strafverfolgten Ausländer beträgt ungefähr 2,3%. Der Anteil der strafverfolgten ausländischen Jugendlichen an der Gesamtzahl der strafverfolgten Jugendlichen ist nicht nennenswert. Denn er lag zwischen 0,2% und 0,5%. Von der Staatsangehörigkeit her wurden unter den ausländischen Jugendlichen am häufigsten die Staatsbürger der Tschechischen Republik und der Ukraine strafrechtlich verfolgt. Die Statistiken der Generalstaatsanwaltschaft (*slovak.: Generalprokurator*) der Slowakei enthalten nicht die erforderlichen Angaben, um den Anteil der einzelnen nationalen, bzw. ethnischen Minderheiten an der gesamten Jugendkriminalität zu bestimmen. Wie den älteren Statistiken zu entnehmen ist, lag jedoch die Beteiligung der Roma an der Gesamtkriminalität im Zeitraum der Jahre 1986-2001 zwischen 3,9% und 5,8 %.

Eine geschlechterbezogene Analyse der Jugendkriminalität zeigt, dass die Jugendkriminalität hauptsächlich von Jungen beherrscht wird. Der Anteil der weiblichen Kinder an der registrierten Kinderdelinquenz lag im Zeitraum der Jahre 1999-2005 bei 10,3-21,5%, während der Anteil der jugendlichen Täterinnen an der gesamten Jugendkriminalität 4,7-5,7% ausmachte.

Tabelle 3: Angeklagte Jugendliche im Zeitraum 1994-2006

1994	1996	1998	2000	2002	2004	2006
5.695	5.353	5.049	4.276	4.267	3.611	3.541

Quelle: Statistische Übersicht für den Zeitraum 1993-2006: Strafverfolgte und angeklagte Jugendliche – Generalstaatsanwaltschaft SR

3. Das Sanktionensystem

3.1 Formen informeller Sanktionen (Diversion)

Nach aktueller Rechtslage gibt es im slowakischen Recht relativ viele Diversionsmöglichkeiten im Jugendstrafverfahren. (siehe hierzu *Tabelle 4*). Nicht möglich ist der Erlass eines Strafbefehls (einer Strafverfügung) gegen einen Jugendlichen, der zum Zeitpunkt des Erlasses das 18. Lebensjahr nicht vollendet hat. Die restlichen Diversionsarten sind ohne Rücksicht auf das Alter des Täters ge-

regelt und für Jugendliche bis auf geringfügige Abänderungen bei der Vereinbarung über die Schuld und Strafe nicht besonders modifiziert.

Besondere Diversionsarten, bei denen damit zu rechnen ist, dass sie in der Praxis gerade bei Jugendlichen eine wichtige Rolle spielen, sind die bedingte Einstellung des Strafverfahrens und der Täter-Opfer-Ausgleich.[16]

Ein weiterer, bedeutender Schritt in diesem Bereich wurde durch die Verabschiedung des Gesetzes über Vermittler und Bewährungshelfer, Blatt Nr. 550/2003 Z. z. (in Kraft getreten am 1.1.2004) gegangen.[17] Die Vermittler und Bewährungshelfer sind staatliche Beamte, deren Dienstbehörde das Gericht ist. Die Ausübung dieses Amtes setzt unter anderen voraus, dass der Bewerber die zweite Diplomprüfung eines rechtswissenschaftlichen, pädagogischen oder sonstigen gesellschaftswissenschaftlichen Studiums absolviert hat. Per Gesetz sind die Polizeiorgane und Staatsanwälte verpflichtet, den Vermittler und Bewährungshelfer über die sich für eine Vermittlung eignenden Fälle zu informieren und vor allem bei den Jugendlichen so vorzugehen, dass die Vermittlung möglich wird, sobald die öffentliche Anklage erhoben ist.

Bei der praktischen Umsetzung dieser Alternativen ist die Slowakei auf diesem Gebiet allerdings mit ähnlichen Problemen konfrontiert wie die Tschechische Republik. So wird etwa auf Einschränkungen der Vermittlungstätigkeit vor Erhebung der öffentlichen Anklage hingewiesen, die sich daraus ergeben, dass die zuständigen am Strafverfahren beteiligten Organe mit den zuständigen Ver-

16 Diese Diversionsmöglichkeiten waren bereits im Strafgesetz, Blatt Nr. 141/1961. Zb. verankert, namentlich als bedingte Einstellung des Strafverfahrens mit Wirksamkeit ab dem 1.10.1994 und als Täter-Opfer-Ausgleich mit Wirksamkeit ab dem 1.10.2002. Im Rahmen der Neukodifizierung wurden sie dann vom Gesetzgeber erweitert.

17 Interessanterweise wurde im Jahre 2002, noch vor der Einführung der Alternativstrafen mit Bewährungscharakter, unter der Leitung des Justizministeriums der Slowakischen Republik (bzw. einer zu diesem Zweck geschaffenen Arbeitsgruppe) ein Pilotprojekt für Vermittlung und Bewährungshilfe in Strafsachen durchgeführt. Es war das Ziel dieses Projekts, das Konzept der wiedergutmachenden Justiz zu fördern und hierfür einen Vermittlungs- und Bewährungsdienst einzurichten und im Strafverfahren verstärkt die Diversion unter Einbeziehung der Bewährungshilfe anzuwenden. Das Projekt fand an drei Amtsgerichten (Bezirksgerichten) statt, bei denen Vermittler und Bewährungshelfer angestellt wurden. Das Projekt erwies sich als erfolgreich und wurde im Jahre 2003 fortgesetzt. Im Jahre 2002 haben Vermittler und Bewährungshelfer im Rahmen dieses Projekts 55 Vermittlungsakten erledigt. Meistens handelte es sich dabei um Diebstahlsdelikte, Körperverletzung und Veruntreuung. Die Vermittlung hat sich auch bei Tätern bewährt, die der Minderheit der Roma und Sinti angehörten. Im Jahre 2003 waren es 61 Vermittlungsakten, wobei in insgesamt 57,4% der Fälle im Rahmen der Vermittlung eine Vereinbarung zustande kam, die in 83,3% der Fälle eingehalten worden ist (vgl. zur Evaluation des Pilotprojekts des Vermittlungs- und Bewährungsdienstes im Zeitraum 1.4.-31.12.2002 Justizministerium der Slowakischen Republik, http://www.justice.gov.sk/wfn.aspx?pg=l62&htm=l6/l614.htm, letzter Zugriff: 3.1.2007 und Evaluation des Projekts der Vermittlung und Bewährungshilfe in Strafsachen im Zeitraum 1.1.-31.12.2003 Justizministerium der Slowakischen Republik, http://www.justice.gov.sk/wfn.aspx?pg=l62&htm=l6/l613.htm, letzter Zugriff: 3.1.2006).

mittlern und Bewährungshelfern nicht ausreichend zusammenarbeiten. Probleme bereiten auch die relativ hohen Qualifikationsanforderungen an die Vermittler und Bewährungshelfer, die keine Übergangsbestimmungen für Leute mit praktischer Erfahrung auf diesem Gebiet vorsehen, die es ihnen erlauben würden, die erforderliche berufliche Weiterbildung nachzuholen.[18] Auch der Täter-Opfer-Ausgleich wurde im Gegensatz zur bedingten Einstellung des Strafverfahrens in der Slowakei (ähnlich wie in Tschechien) in der Praxis bisher nicht angenommen.[19]

Die beiden anderen Diversionsarten, d. h. die Möglichkeit der Einstellung oder der bedingten Einstellung der Strafverfolgung bei einem zur Wahrheitsfindung beitragenden Beschuldigten, fallen vermutlich bei der Altersgruppe der Jugendlichen im Hinblick auf die von ihnen überwiegend begangenen Straftaten kaum ins Gewicht. Dennoch ist es ohne Zweifel positiv zu werten, dass die Möglichkeit der Diversion auch bei relativ schweren Straftaten besteht, bei denen die zuvor genannten Diversionsarten angesichts der Strafdrohung von über fünf Jahren nicht anwendbar sind. Es ist zumindest vorstellbar, dass diese beiden Diversionsarten auch in Jugendstrafsachen relevant werden, und zwar in Fällen, bei denen Jugendliche, die in der Regel innerhalb der Hierarchie der organisierten Kriminalität oder einer delinquenten Gruppe ganz unten stehen, dazu missbraucht worden sind, Straftaten zugunsten einer solchen Gruppierung zu begehen.

Als völlig neue Diversionsart wurde in das slowakische Recht die Schuld- und Strafvereinbarung eingeführt, welche die Möglichkeit eröffnet, dass Staatsanwalt und Beschuldigter miteinander über ein Schuldanerkenntnis im Zusammenhang mit einer Strafvereinbarung verhandeln. Als „Strafe" werden in diesem Sinne auch das Absehen von der Verurteilung und das bedingte Absehen von der Verurteilung eines Jugendlichen verstanden. Diese Möglichkeit beschränkt sich ebenfalls nicht nur auf minderschwere Straftaten, sondern ist auch auf die schwersten Straftaten anzuwenden. Jedoch sind nach § 4 Verordnung, Blatt Nr. 619/2005 Z. z. über Bedingungen und über das Vorgehen des Staatsanwalts im Verfahren über die Vereinbarung eines Schuldanerkenntnisses unter anderem die Art und die Schwere der Tat bedeutende Aspekte für die Prüfung, ob eine Einstellung im konkreten Fall möglich ist.

Anders als bei den herkömmlichen Diversionsmöglichkeiten wie etwa bei der bedingten Einstellung des Strafverfahrens wird der Beschuldigte verurteilt und es wird eine Strafe festgesetzt, und zwar ohne eine mündliche Verhandlung der Sache vor dem Gericht des ersten Rechtszugs. Diese Vorgehensweise erhöht zweifellos die Anforderungen sowohl an den Staatsanwalt, etwa bei der Auswahl der für diese Diversionsart in Frage kommenden Fälle, als auch an den Be-

18 *Katona* 2005, S. 382-383.

19 *Marková* 2005, S. 264.

schuldigten und weitere Verfahrensbeteiligte, da so auf die Möglichkeit verzichtet wird, die Angelegenheit gerichtlich klären zu lassen. Der Schutz des Jugendlichen, für den es noch schwieriger sein kann als für einen erwachsenen Täter, sich der Bedeutung und der Folgen einer solchen Vereinbarung bewusst zu werden, wird dadurch verstärkt, dass auch der Verteidiger und der gesetzliche Vertreter der Vereinbarung zustimmen müssen. Ein ausreichender Rechtsschutz des Jugendlichen hängt somit sehr davon ab, wie aktiv sich Verteidiger und/oder gesetzlicher Vertreter während des Vereinbarungsverfahrens zeigen.

An den Verhandlungen kann auch die staatliche Behörde für Jugendhilfe teilnehmen. Allerdings bedarf die Vereinbarung nicht ihrer Einwilligung. Die Verhandlungen über die Strafe bzw. über eine sonstige Rechtsfolge können sich vor allem dann als ziemlich problematisch für den Jugendlichen erweisen, wenn die Beweisaufnahme im Ermittlungsverfahren insbesondere auf die Verschuldensfrage abzielt, und wenn deshalb keine ausreichenden Informationen über die Lebensbedingungen des Jugendlichen und über seine soziale Umgebung vorhanden sind, um die richtige Sanktion zu finden. Denn diese soll ja den spezifisch festgelegten Zweck der Jugendsanktionen erfüllen, darf nicht offensichtlich unverhältnismäßig sein und muss zugleich für alle Beteiligten akzeptabel sein. Die benötigten Informationen werden in der Regel auch dem Gericht fehlen, das die Vereinbarung genehmigen muss. Die Staatsanwälte müssen sich in Jugendsachen unter anderem immer über die Verhängung und den Vollzug der Jugendsanktionen und der verschiedenen Erziehungsmaßnahmen bzw. die Einhaltung erzieherischer Pflichten und Beschränkungen bei einer bedingten Freiheitsstrafe auf dem Laufenden halten.

Mit der durch das Gesetz, Blatt Nr. 422/2002 Z. z. durchgeführten Reform der Strafprozessordnung wurde auch der Täter-Opfer-Ausgleich in das slowakische Strafverfahren integriert. Mit der Zeit wurde auch diese Diversionsart für die Erledigung von Jugendstrafsachen herangezogen. Das eine gewisse Abweichung vom üblichen Ablauf des Strafverfahrens darstellende Institut des Täter-Opfer-Ausgleichs bedeutet nicht immer, dass das Strafverfahren einfacher wird. Denn die Erzielung einer für beide Seiten akzeptablen Einigung zwischen dem Beschuldigten und dem Geschädigten ist in vielen Fällen das Ergebnis von schwierigen Verhandlungen, welche die Mitwirkung eines erfahrenen Vermittlers erforderlich machen. Gerade dieser relativ komplizierte Prozess ist ein Grund dafür, dass die Möglichkeit des Täter-Opfer-Ausgleichs nicht häufiger angewendet wird (vgl. unten *Kapitel 5*).

Tabelle 4: Diversionsmöglichkeiten im Jugendstrafverfahren nach der slStPO

1. Bedingte Einstellung des Strafverfahrens (§§ 216, 217 slStPO)

kann fakultativ im Ermittlungsverfahren vom Staatsanwalt und im Hauptverfahren vom Gericht verfügt werden. Bewährungszeit 1 bis 5 Jahre, kombinierbar mit angemessenen Auflagen und mit einer Verpflichtung zum Schadensersatz. Voraussetzungen:

- nur bei Vergehen, die mit einer Freiheitsstrafe von bis zu 5 Jahren bedroht sind;
- Zustimmung des Beschuldigten;
- Erklärung des Beschuldigten, dass er die Tat begangen hat (gilt nicht als Geständnis);
- Ersatz des Schadens, Vereinbarung über den Schadenersatz bzw. sonstige, für den Schadenersatz notwendige Schritte;
- angesichts der Person des Beschuldigten und im Hinblick auf seinen Lebenswandel sowie auf die Umstände der Tat muss die Einstellung ausreichend sein;
- nicht zulässig bei Straftaten der Korruption oder bei der Verfolgung eines Amtsträgers bzw., wenn das Opfer tödlich verletzt wurde.

2. Täter-Opfer-Ausgleich (§ 220 slStPO)

kann fakultativ im Ermittlungsverfahren vom Staatsanwalt und im Hauptverfahren vom Gericht verfügt werden. Voraussetzungen:

- nur bei Vergehen, die mit einer Freiheitsstrafe von bis zu 5 Jahren bedroht sind;
- Zustimmung des Beschuldigten;
- Erklärung des Beschuldigten, dass er die Tat begangen hat (gilt nicht als Geständnis);
- Ersatz des Schadens, sonstige, für den Schadenersatz notwendige Schritte bzw. ein sonstiger Ausgleich des durch die Straftat entstandenen Nachteils;
- Überweisung eines an einen bestimmten Empfänger adressierten, gemeinnützigen Zwecken gewidmeten, in keinem offensichtlichen Missverhältnis zur Schwere der Tat stehenden Geldbetrags auf das Konto der Staatsanwaltschaft bzw. auf das Gerichtskonto;
- angesichts der Schwere der begangenen Tat, des berührten öffentlichen Interesses, der Person des Beschuldigten und im Hinblick auf seine Vermögensverhältnisse muss die Einstellung ausreichend sein;
- nicht zulässig bei Straftaten der Korruption oder bei der Verfolgung eines Amtsträgers , bzw. wenn der Tod herbeigeführt wurde.

3. Bedingte Einstellung der Strafverfolgung des zur Wahrheitsfindung beitragenden Beschuldigten (§§ 218 ff. slStPO)

kann fakultativ im Ermittlungsverfahren vom Staatsanwalt und im Hauptverfahren vom Gericht verfügt werden. Bewährungszeit von 2 bis 10 Jahren. Voraussetzungen:

- Vorliegen einer der im Gesetz abschließend aufgezählten Straftaten betreffend Korruption, organisiertes Verbrechen, Terrorismus, bzw. Verbrechen, die von einer Verbrecher- oder Terrorgruppe begangen wurden;
- der Beschuldigte hat sich in erheblichem Maße an der Aufklärung dieser Straftaten bzw. an der Ermittlung und Überführung des Täters beteiligt;
- das Interesse der Allgemeinheit an der Klärung der Tat ist größer als das Interesse an der Bestrafung des Beschuldigten;
- unzulässig gegen den Organisator, Anstifter oder Auftraggeber solcher Straftaten.

4. Einstellung der Strafverfolgung des zur Wahrheitsfindung beitragenden Beschuldigten nach § 215 Abs. 3 slStPO

kann fakultativ im Ermittlungs-/Vorverfahren vom Staatsanwalt und im Hauptverfahren vom Gericht verfügt werden. Voraussetzungen: identisch zu 3.

5. Schuld- und Strafvereinbarung (§§ 232 ff. und § 331 ff. slStPO)

Der Staatsanwalt kann fakultativ im Ermittlungsverfahren mit oder ohne Antrag des Beschuldigten ein Verfahren über eine Schuld- und Strafvereinbarung einleiten. Lehnt das Gericht die Vereinbarung ab, so darf das Geständnis des Beschuldigten im Rahmen der Schuld- und Strafvereinbarung nicht als Beweis für das Hauptverfahren verwendet werden. Voraussetzungen:

- die Ermittlungsergebnisse lassen den ausreichend begründeten Schluss zu, dass eine Straftat vom Beschuldigten begangen wurde;
- Geständnis und Schuldanerkenntnis des Beschuldigten, wobei die vorliegenden Beweise von der Richtigkeit des Geständnisses zeugen;
- zwischen dem Staatsanwalt, dem Jugendlichen und dem Geschädigten, soweit er den Schadenersatzanspruch erfolgreich geltend gemacht hat und an der Verhandlung teilgenommen hat, wird eine Vereinbarung abgeschlossen, die (zu ihrer Gültigkeit) der Zustimmung des gesetzlichen Vertreters und des Verteidigers des Jugendlichen bedarf;
- die Vereinbarung wird dem Gericht zur Genehmigung vorgelegt, das sie ablehnen kann, wenn es der Ansicht ist, dass Verfahrensvorschriften auf schwerwiegende Weise verletzt wurden, oder dass die vorgeschlagene Vereinbarung offensichtlich unverhältnismäßig ist.

3.2 Formen formeller Sanktionen (gerichtliche Verurteilung)

Die Bestimmungen über die gegen Jugendliche verhängbaren formellen Sanktionen wurden durch das neue Strafgesetz erheblich geändert. Derzeit lassen sich die Jugendsanktionen in drei Kategorien einteilen: Erziehungsmaßnahmen, Maßregeln (vorbeugende bzw. sichernde Maßnahmen) und Strafen (siehe *Tabelle 5*).

Die Notwendigkeit einer umfassenden Reform der Rechtsfolgen ergab sich daraus, dass sich nicht nur die allgemeinen Sanktionen, sondern auch die Jugendsanktionen kaum von der Lage vor dem Jahr 1989 unterschieden. Während in der Tschechischen Republik seit der Mitte der 1990er Jahre nach und nach neue Alternativsanktionen eingeführt wurden, die auch gegen Jugendliche verhängt werden konnten und sich in der Praxis durchsetzen, gab es in der Slowakei für Jugendliche lediglich die Freiheitsstrafe einschließlich der bedingten Freiheitsstrafe (Strafaussetzung zur Bewährung oder bedingte Strafnachsicht), den Verfall, die Ausweisung, die Geldstrafe und das Berufsverbot.

Das neue Strafgesetz hat nicht nur eine selbständige Kategorie von Sanktionen (die sog. Erziehungsmaßnahmen) eingeführt, sondern auch die Alternativen zur unbedingten Freiheitsstrafe erweitert. Einige der neu eingeführten Strafen sind modifiziert auch gegenüber Jugendlichen anwendbar, nämlich die gemeinnützige Arbeit, die bedingte Freiheitsstrafe in einer halboffenen Vollzugsanstalt oder die bedingte Geldstrafe (vgl. hierzu *Tabelle 5*) Die Bedingungen für ihre Verhängung ähneln denjenigen des tschJGG. Jedoch beträgt die Obergrenze für die gemeinnützige Arbeit bei Jugendlichen nur 150 Stunden und die Geldstrafe kann nicht in der Form von Tagessätzen verhängt werden.

Bei Geldstrafen ist es, ähnlich wie in der Tschechischen Republik, nach § 114 Abs. 3 slStGB zulässig, den Vollzug der Strafe bzw. ihres Restes dadurch zu ersetzen, dass gemeinnützige Arbeit im Rahmen eines Bewährungsprogramms verrichtet wird. Dieses Bewährungsprogramm ist jedoch im Gegensatz zur tschechischen Regelung, in der es eine der Erziehungsmaßnahmen darstellt, im Gesetz nirgendwo verankert.

Auch für das Absehen von der Verurteilung wurden bei den Jugendlichen die Anwendungsmöglichkeiten erweitert. Zum einen gibt es mehr Alternativen, bei denen eine Anwendung in Frage kommt, etwa wenn sich der Jugendliche im Vollzug einer Maßregel oder Erziehungsmaßnahme befindet, sofern es zur Erreichung des Gesetzeszwecks nicht erforderlich ist, eine Strafe zu verhängen. Zum anderen beschränkt sich das Absehen von der Verurteilung der Jugendlichen anders als bei den Erwachsenen nicht nur auf Vergehen, die weder den Tod noch eine schwere Körperverletzung zur Folge hatten. Vielmehr ist es zulässig, von der Verurteilung bedingt abzusehen und zugleich eine Bewährungszeit von einem Jahr festzulegen.

Bei Zustimmung des angeklagten Jugendlichen kann das Absehen von der Verurteilung mit Erziehungsmaßnahmen kombiniert werden. Eine Kombination

von Erziehungsmaßnahmen mit Maßregeln der Sicherung bzw. mit Strafen ist dagegen grundsätzlich nicht möglich. Bei bedingter Freiheitsstrafe ist es allerdings möglich, die inhaltlich ähnlichen Beschränkungen und Pflichten des § 51 Abs. 3 und 4 slStGB zu nutzen, die auch erwachsenen Tätern auferlegt werden können.

Alle obigen Änderungen stehen zweifellos im Einklang mit dem Zweck der Bestrafung der Jugendlichen, der in § 97 slStGB festgelegt ist. Darin werden die Erziehung des Jugendlichen zu einem ordentlichen Bürger, die Verhinderung von Rückfällen und ein angemessener Schutz der Gesellschaft zum vorrangigen Zweck der Strafe erklärt, die zugleich dazu beitragen soll, dass die gestörten gesellschaftlichen Beziehungen verbessert werden, und dass sich der Jugendliche wieder in die Familie und in das soziale Umfeld eingliedert.

Allerdings zeigen die Änderungen im Bereich der Bemessung der Freiheitsstrafe, dass die Anpassung der Strafe an die Schwere der Tat ebenfalls ein gesetzgeberisches Ziel darstellt. Eine solche Vermutung legt nicht nur die Anhebung der Obergrenzen für Jugendstrafen nahe. Darüber hinaus wurde auch das Strafmaß bei der Beurteilung der Erschwerungs- und Milderungsgründe bei Rückfall und Tatmehrheit allgemeinverbindlich modifiziert. Diese Modifizierungen gelten mit gewissen Einschränkungen auch für Jugendliche.

Für die Modifikation der Strafrahmen für Jugendliche gilt weiterhin die Regel, dass die Strafober- und -untergrenzen zu halbieren sind. Andererseits erfolgte eine Anhebung der höchstzulässigen Untergrenze auf zwei Jahre und der maximalen Obergrenze auf 7 Jahre. Ein Jugendlicher, der ein besonders schweres Verbrechen begeht, kann mit einer Freiheitsstrafe von 7 bis zu 15 Jahren bestraft werden. Unter einem besonders schweren Verbrechen versteht man nach § 11 Abs. 3, slStGB ein Verbrechen, das mit einer Freiheitsstrafe bedroht ist, deren Untergrenze mindestens 10 Jahre beträgt. Es handelt sich etwa um einen Raub, der einen beträchtlichen Schaden zur Folge hatte, bzw. um Diebstahl und sonstige Eigentums- oder Vermögensdelikte, deren Schadensausmaß „enorm" ist.[20] Dadurch wurde der Kreis der Delikte erweitert, die besonders streng bestraft werden können. Nach der vorherigen rechtlichen Regelung war die Verhängung einer Freiheitsstrafe von 5 bis zu 10 Jahren demgegenüber nur dann möglich, wenn die Tat mit lebenslanger Freiheitsstrafe bedroht war.

In der amtlichen Begründung zum Regierungsentwurf des Strafgesetzbuches ist nicht näher kommentiert, weshalb die höchstzulässigen Ober- und Untergrenzen der Freiheitsstrafe angehoben wurden. Es ist davon auszugehen, dass dies mit der generellen Verschärfung der Strafrahmen im slStGB zusammenhängt.

Neu konzipiert wurde im slStGB auch die Regelung der Milderungs- und Erschwerungsgründe. Die Milderungsgründe sind in § 36, die Erschwerungsgründe in § 37 abschließend aufgezählt. Im Rahmen dieser Aufzählungen wur-

20 Gemäß § 125 Abs. 1 beträgt ein beträchtlicher Schaden mindestens 800.000 Sk und ein „enormer" Schaden mindestens 4.000.000 Sk.

den auch einige Gründe neu geregelt, die besonders bei Jugendlichen maßgeblich sein können. Als Milderungsgrund ist in § 36b slStGB die Begehung einer Straftat aus Mangel an Wissen oder Erfahrung normiert. Als Erschwerungsgrund gilt nach § 37b slStGB die Begehung der Straftat in der Absicht, jemandem zu vergelten, dass er die aus dem Gesetz oder aus einer sonstigen allgemeinverbindlichen Vorschrift resultierenden Pflichten erfüllt. Damit ist gemeint, dass sich die Tat insbesondere gegen einen Lehrer oder Erzieher richtet.[21] Zu beachten ist allerdings, dass bei der Erhöhung des Strafrahmens bei Jugendlichen das im § 117 slStGB vorgeschriebene Höchstmaß nicht überschritten werden darf.[22]

Diese Modifikationen gelten nicht nur für die Strafrahmen der freiheitsentziehenden Sanktionen, sondern für alle Strafen, vorausgesetzt, es ist von ihren Wesen her möglich. Eine weitere zwingende Erhöhung der gesetzlichen Strafrahmen ist in § 38 Abs. 5 slStGB für wiederholte Verbrechen und in § 38 Abs. 6 slStGB für besonders schwere Verbrechen vorgeschrieben. Bei Jugendlichen kommt nur die Anhebung der Untergrenze um die Hälfte bei wiederholten Verbrechen in Frage, wobei man für die Anhebung der Untergrenze von den für die Jugendlichen reduzierten Strafrahmen ausgeht.[23] Selbst nach der Anhebung der Untergrenze um die Hälfte beträgt diese höchstens zwei Jahre.[24]

Das neue slStGB enthält zwar nicht mehr das Institut der besonders gefährlichen Rückfalltäterschaft, ermöglicht jedoch die verschärfte Bestrafung von

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21 Das Gesetz verlangt außerdem bei der Verhängung der Strafe das Verhältnis zwischen den Erschwerungs- und den Milderungsgründen zu bestimmen. Dadurch können bei der Zumessung der Freiheitsstrafe gegen einen Jugendlichen 3 Fälle eintreten: 1. Die Milderungs- und Erschwerungsgründe stehen im gleichen Verhältnis zueinander: Die Strafe ist im Rahmen der im besonderen Teil normierten, zu halbierenden Strafrahmen unter Einhaltung des im § 117 Abs. 1 und Abs. 3 slStGB festgelegten Höchstmaßes zu bestimmen. 2. Es überwiegt die Anzahl der Milderungsgründe: Die Obergrenze des gemäß § 117 Abs. 1 slStGB herabgesetzten Strafrahmens wird gemäß § 38 Abs. 3 slStGB um ein Drittel reduziert. 3. Es überwiegt die Anzahl der Erschwerungsgründe: Die Untergrenze des gemäß § 117 Abs. 1 slStGB herabgesetzten Strafrahmens wird gemäß § 38 Abs. 4 slStGB um ein Drittel erhöht. Die Ermittlung des einen Drittels basiert auf der neuen Regel des § 38 Abs. 8 slStGB. Demnach ergibt sich die Berechnungsgrundlage aus der Differenz zwischen der Ober- und der Untergrenze des gesetzlich festgelegten Strafrahmens.

22 *Prikryl/Samaš/Toman* 2006, S. 93.

23 Unter dem Begriff „wiederholt" wird verstanden, dass der Jugendliche ein Verbrechen verübt, nachdem er wegen eines anderen Verbrechens rechtskräftig verurteilt worden ist. Wenn der Jugendliche etwa einen Raub nach § 188 Abs. 1 slStGB (Strafrahmen 3-8 Jahre) begeht, obwohl er bereits wegen einer Erpressung nach § 189 Abs. 1 slStGB (2-6 Jahre) rechtskräftig verurteilt worden ist, so beträgt der modifizierte Freiheitsstrafrahmen zwei bis 4 Jahre. Nachdem die Untergrenze um die Hälfte angehoben worden ist, wird sie nicht weiter erhöht, wenn die Anzahl der Erschwerungsgründe überwiegt.

24 *Prikryl/Samaš/Toman* 2006, S. 97-99.

Rückfalltätern, die wiederholt ein besonders schweres Verbrechen verübt haben. Bei ihnen erhöht sich die Untergrenze gemäß § 38 Abs. 6 slStGB automatisch um zwei Drittel. Im Gesetz ist zwar die Anwendung dieser Strafschärfung auf Jugendliche nicht ausgeschlossen, aber sie kommt dennoch im Hinblick auf das im § 117 Abs. 1 und Abs. 3 slStGB normierte Höchstmaß nicht in Frage: Denn bei besonders schweren Verbrechen würde die Untergrenze bei einem Jugendlichen auch nach der Halbierung mindestens 5 Jahre betragen und somit die festgelegte Höchstgrenze von zwei Jahren überschreiten.

Die neu eingeführten gesetzlichen Strafrahmenmodifikationen zeugen davon, dass der Gedanke der Proportionalität zwischen der Strafe und der Schwere der Straftat stärker in den Vordergrund gerückt werden soll. Auch bei Jugendlichen soll das Prinzip der Verhältnismäßigkeit zwischen der Sanktion und der Schwere der Tat gestärkt werden, und zwar ungeachtet dessen, dass dieser Grundsatz in der Definition des Strafzwecks nach § 97 Abs. 1 slStGB nicht zum Leitprinzip erklärt wurde. Nichtsdestotrotz wird das Gericht in den obigen Fällen bei der Bemessung von Jugendstrafen verstärkt das Proportionalitätsprinzip beachten. Es ist zu erwarten, dass sich all dies zusammen mit der generellen Verschärfung der Freiheitsstrafdrohungen sowohl bei den Unter- als auch bei den Obergrenzen im besonderen Teil des slStGB auf die jugendstrafrechtliche Sanktionierungspraxis und insbesondere bei der Verhängung unbedingter Freiheitsstrafen auswirken wird. Vor allem die jugendlichen Täter von schwerwiegenden Straftaten und Intensivtäter werden diese Änderungen besonders zu spüren bekommen. Bei dieser Gruppe von Tätern einschließlich der 14-jährigen Jugendlichen ist folglich künftig damit zu rechnen, dass sich die unbedingten Freiheitsstrafen verlängern.

Erhebliche Änderungen wurden auch den Maßregeln der Besserung und Sicherung zuteil, die gegen Jugendliche verhängt werden können. Gemäß § 97 Abs. 2 slStGB liegt den Maßregeln und Erziehungsmaßnahmen der Leitgedanke zugrunde, die geistige, moralische und soziale Entwicklung des Jugendlichen positiv zu beeinflussen. Dabei sollen seine geistige und moralische Entwicklung, sein Charakter, die Erziehung in der Familie und sein soziales Umfeld berücksichtigt werden. Zugleich soll der Jugendliche vor schädlichen Einflüssen und die Gesellschaft vor Kriminalität geschützt werden.

Die Bedingungen der Anordnung der Schutzerziehung gegen Jugendliche nach slStGB unterscheiden sich nicht wesentlich von der Regelung dieser Maßregel im tschJGG.[25] Allerdings wird ihr Zweck dank der erweiterten Möglichkeiten besser erfüllt. Zum einen kann eine sichernde Anstaltserziehung verfügt werden. Ihr Vollzug erfolgt in Sondererziehungsanstalten des Unterrichts-

25 Voraussetzungen: a) Mangel an ordnungsgemäßer Erziehung für den Jugendlichen, der in der Familie, in der er lebt, nicht behoben werden kann, b) die bisherige Erziehung des Jugendlichen wurde vernachlässigt oder c) das soziale Umfeld des Jugendlichen gibt keine Gewähr für seine ordnungsgemäße Erziehung.

ministeriums, nämlich in Besserungsheimen für Kinder oder für Jugendliche, die insgesamt, bzw. deren einzelne Abteilungen auf die speziellen Bedürfnisse des Kindes ausgerichtet sind. Bei körperlich und geistig behinderten Jugendlichen findet diese sichernde Anstaltserziehung in Gesundheitseinrichtungen statt.

Daneben wurde auch der Vollzug der sog. familiären Schutzerziehung eingeführt. Diese wird in Familien durchgeführt, die sich beruflich der Ersatzerziehung widmen. Die familiäre Schutzerziehung unterscheidet sich von der familiären Ersatzerziehung (durch Pflegeeltern). Nach § 14 Abs. 7 Gesetz, Blatt Nr. 279/1993 Z. z. über schulische Einrichtungen können die Sondererziehungsanstalten des Unterrichtsministeriums ein Netz von Familien einrichten, die sich beruflich der Ersatzerziehung widmen und die organisatorisch diesen Einrichtungen angehören. Nach § 18 ist derjenige, der sich um die Kinder kümmert und sie erzieht, Angestellter einer solchen Einrichtung, wobei in einer solchen Familie mit Ausnahme einer größeren Geschwistergruppe höchstens drei Kinder untergebracht werden dürfen. Durch die familiäre Umgebung verbunden mit einer relativ kleinen Anzahl von Kindern in diesen Familien werden mögliche negative Aspekte der Konzentration von schwer erziehbaren Kindern in Gemeinschaftseinrichtungen beseitigt und zugleich die Möglichkeiten erweitert, auf den Jugendlichen Einfluss zu nehmen und ihn wieder einzugliedern.

Auch bei der sichernden Anstaltserziehung bietet die slowakische rechtliche Regelung eine relativ breite Auswahl an Sondererziehungsanstalten, in die Jugendliche mit Rücksicht auf ihr Alter, auf den Grad ihrer Schwererziehbarkeit bzw. auf ihren Gesundheitszustand eingewiesen werden können.[26]

Im slStGB ist auch eine andere vorbeugende bzw. sichernde Maßnahme neu geregelt – die Sicherungsverwahrung. Die Anwendungsmöglichkeiten dieser Maßregel sind relativ breit konzipiert und betreffen hauptsächlich Fälle, in denen gegen den Täter eine unbedingte Freiheitsstrafe verhängt worden ist, vorausgesetzt:

- der Verurteilte erkrankt im Laufe des Vollzugs der Freiheitsstrafe unheilbar seelisch und sein Aufenthalt in der Freiheit wäre für die Allgemeinheit gefährlich, oder
- der Verurteilte lehnt es ab, sich vor dem Ende des Strafvollzugs der Schutztherapie zu unterziehen, oder bei ihm hat die Schutztherapie wegen seiner negativen Haltung ihren Zweck verfehlt, bzw.
- der Verurteilte ist ein Sexualstraftäter bzw. ein Wiederholungstäter bei einer besonders schweren Straftat und das Gericht hält die Verwahrung nach dem Ende des Strafvollzugs für erforderlich.

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26 Die jeweilige Unterscheidung der Einrichtungen nach Alter, Grad der Schwererziehbarkeit und nach der gesundheitlichen Beeinträchtigung ist in § 3 ff. Verordnung, Blatt Nr. 119/1980 Zb. über den Vollzug der Anstaltserziehung und der Schutzerziehung in schulischen Einrichtungen verankert.

Die Sicherungsverwahrung wird in Verwahrungsanstalten vollzogen.[27] Im Zusammenhang mit der Einführung der Sicherungsverwahrung in das slowakische Sanktionssystem stellt sich die Frage, ob und wieweit sie auch gegen Jugendliche verhängt werden kann. Es ist festzuhalten, dass in den sich mit den Jugendlichen beschäftigenden Sonderbestimmungen des slStGB die Arten von Maßregeln im Gegensatz zu den Strafarten nicht abschließend aufgezählt sind. Nur die Schutzerziehung ist gesondert geregelt, weil sie eine Maßregel ist, die nur gegen einen Jugendlichen verhängt werden kann. Ausdrücklich ist im Gesetz nur die Verhängung der Führungsaufsicht gegen Jugendliche ausgeschlossen. Daraus ließe sich schließen, dass die Sicherungsverwahrung auch gegen einen Jugendlichen, sogar ohne Modifizierungen, angeordnet werden könnte. Es gibt jedoch keine spezifischen Bestimmungen, die regeln würden, wie die Sicherungsverwahrung von Jugendlichen zu vollziehen wäre. Zudem drängt sich die Frage auf, inwiefern die Anwendung dieser Maßregel bei Jugendlichen ohne besondere Modifikationen für diese Altersgruppe den spezifischen Zweck der Maßregeln bei Jugendlichen im Sinne des § 97 Abs. 2 slStGB erfüllen kann.

Tabelle 5: System der Jugendsanktionen nach dem slStGB

1. Erziehungsmaßnahmen
a. Erzieherische Pflichten und Beschränkungen: keine abschließende Aufzählung in § 107 slStGB (wie im tschJGG).
b. Mahnung mit Verwarnung: - kann in Verbindung mit dem bedingten Absehen von der Verurteilung verhängt werden; - im Ermittlungsverfahren nur mit Zustimmung des Beschuldigten.
2. Maßregeln
a. Schutzerziehung: längstens bis zur Vollendung des 18. (bzw. 19.) Lebensjahrs (gleiche Bedingungen wie im tschJGG); **Arten des Vollzugs:** - in Sondererziehungsanstalten; - in beruflichen Ersatzfamilien; - in Gesundheitseinrichtungen.
b. Sicherungsverwahrung: gleiche Bedingungen wie bei Erwachsenen.
c. Schutztherapie: gleiche Bedingungen wie bei Erwachsenen.
d. Einziehung: gleiche Bedingungen wie bei Erwachsenen.

27 Für den Vollzug dieser Maßregel wurde bis jetzt noch keine Rechtsvorschrift erlassen.

3. Strafen

a. gemeinnützige Arbeit
- nur bei Vergehen, die mit einer Freiheitsstrafe von bis zu 5 Jahren bedroht sind; Umfang: 40-150 Stunden; darf weder die Gesundheit, Sicherheit noch die moralische Entwicklung des Jugendlichen gefährden.

b. Geldstrafe
- von 1.000 bis 500.000 Sk;
- vorausgesetzt, er/sie ist erwerbstätig und seine/ihre Vermögensverhältnisse lassen dies zu, auch in der Form der bedingten Geldstrafe;
- mit einer Probezeit von 3 Jahren, auch mit der Verhängung angemessener Beschränkungen und Pflichten kombinierbar

c. Berufsverbot
- gleiche Bedingungen wie bei Erwachsenen;
- Tätigkeitsverbot;
- höchstens 5 Jahre;
- darf der Berufsvorbereitung nicht hinderlich sein.

d. Ausweisung
- Dauer: 1-5 Jahre
- Der Jugendliche darf durch diese Strafe nicht der Gefahr der Verwahrlosung ausgesetzt werden

e. Freiheitsstrafe,
auch in der Form der:
- bedingten Freiheitsstrafe (Freiheitsstrafen von bis zu 2 Jahren);
- bedingten Freiheitsstrafe mit Aufsicht (Freiheitsstrafen von bis zu 3 Jahren);
- Bewährungs-/Probezeit 1-3 Jahre.
- auch mit der Verhängung von Pflichten und Beschränkungen kombinierbar (mit einem ähnlichen Inhalt wie im tschechischen Recht). Strafrahmen wird halbiert, die Untergrenze darf höchstens 2 Jahre und die Obergrenze 7 Jahre betragen.
- besonders schwere Verbrechen, die mit Rücksicht auf die verwerfliche Art der Tatausführung, im Hinblick auf den verwerflichen Beweggrund, bzw. angesichts der schwer wieder gutzumachenden Folgen einen außerordentlich hohen Schweregrad aufweisen, können mit Freiheitsentzug von 7 bis zu 15 Jahren geahndet werden.

4. Jugendgerichtsbarkeit und Jugendverfahren

Das Jugendstrafverfahren ist in der Slowakei im dritten Teil, siebtes Hauptstück, Abschnitt 2 slStPO als besondere Verfahrensart geregelt. Man kann feststellen, dass die jugendstrafverfahrensrechtlichen Sonderbestimmungen denjenigen der bis zum 31.12.2005 geltenden Fassung der slStPO sehr ähneln.

Derzeit sind in der Slowakei keine besonderen Spezialisierungen für die beteiligten Organe am Jugendstrafverfahren vorgesehen. Aus § 347 Abs. 1 slStPO folgt aber, dass Jugendstrafsachen nur Personen anzuvertrauen sind, deren Erfahrungen im Leben und mit der Jugenderziehung Gewähr dafür bieten, dass der erzieherische Gesetzeszweck erreicht wird. Außerdem wird in der amtlichen Begründung zum Gesetzesentwurf empfohlen, künftig bei den Gerichten Sondersenate für Jugendstrafsachen einzurichten.

Generell haben die Jugendlichen in der Slowakei die gleichen Verfahrensrechte wie die erwachsenen Straftäter. Ihr verfahrensrechtlicher Schutz ist noch dadurch verstärkt, dass immer dann ein Fall der notwendigen Verteidigung vorliegt, sobald die öffentliche Klage erhoben worden ist. Außerdem kann die staatliche Behörde für Jugendhilfe (der Jugendwohlfahrtsträger) im Jugendstrafverfahren immer[28] als selbständiger Verfahrensbeteiligter auftreten, um ebenfalls die Interessen des Jugendlichen zu wahren. Das Gericht kann sie auch beauftragen, die Verhältnisse des Jugendlichen für Zwecke der Beweisaufnahme zu untersuchen.

Der Umfang des gesetzlich vorgeschriebenen Schutzes der Privatsphäre und der Identität der Jugendlichen im Jugendstrafverfahren unterscheidet sich nicht wesentlich von den für Erwachsene geltenden Regelungen. Die Hauptverhandlung in Jugendstrafsachen ist öffentlich. Allerdings hat das Gericht auf Antrag des Jugendlichen, des Verteidigers oder des gesetzlichen Vertreters die Öffentlichkeit auszuschließen, um die Interessen des Jugendlichen zu schützen. Für die Auskunft durch die am Strafverfahren beteiligten Organe gilt generell, dass gemäß § 6 Abs. 2 slStPO keine geschützten persönlichen Daten und keine Informationen privater Natur, die mit der strafbaren Handlung nicht direkt zusammenhängen, veröffentlicht werden dürfen. Dabei ist für den Schutz der Jugendlichen während des Strafverfahrens dadurch gesorgt, dass die am Strafverfahren beteiligten Organe die Interessen der Jugendlichen und der Geschädigten zu wahren haben, und dass deren Personalien nicht veröffentlicht werden dürfen. Um den erhöhten Schutz der in Untersuchungshaft befindlichen Jugendlichen zu gewährleisten, wird die Haft nur dann zugelassen, wenn der Haftzweck auf keine andere Weise erreicht werden kann. Das Gesetz enthält keine

28 Zu Ausnahmen siehe § 347 Abs. 3 slStPO.

weiteren Modifikationen, weder zum Vollzug der Alternativen zur Untersuchungshaft noch zur Haftdauer.[29]

In jüngster Zeit wurden auf mehreren wissenschaftlichen Konferenzen[30] Stimmen laut, die die Schaffung einer Sondergerichtsbarkeit für Jugendliche durchsetzen wollten.[31] Bisher ist es leider nicht gelungen, die Idee der Sondergerichtsbarkeit für Jugendliche im Rahmen von Gesetzesreformen durchzusetzen. Es gibt somit im Bereich der slowakischen Strafgerichtsbarkeit keine spezialisierte Gerichtsbarkeit für Jugendliche. Derzeit werden Jugendstrafsachen sowie Kinder- und Jugendhilfesachen (als Angelegenheiten der Zivilgerichtsbarkeit) von allgemeinen Gerichten erledigt.

5. Strafzumessungspraxis – Teil I: Informelle Reaktionen

Die von der Generalstaatsanwaltschaft der Slowakischen Republik stammenden statistischen Daten aus den Jahren 2004-2006 gewähren einen Gesamtüberblick über die Anwendung einzelner Diversionsarten im Jugendstrafverfahren. Durch die bedingte Einstellung des Strafverfahrens wurden im Durchschnitt 12-20% der Jugendstrafsachen, durch den Abschluss eines Täter-Opfer-Ausgleichs 0,1-2% und durch eine Schuld- und Strafvereinbarung knappe 8% der Jugendstrafsachen erledigt.

Im Bereich der informellen Reaktionen im Jugendstrafrecht ist die bedingte Einstellung des Strafverfahrens damit zur häufigsten Erledigungsform geworden. Wie den statistischen Daten der Generalstaatsanwaltschaft zu entnehmen ist, lässt sich im Beobachtungszeitraum der Jahre 2000-2006 ein Anstieg der absoluten Zahlen in der Praxis feststellen. Im Jahr 2006 wurden 709 Jugendstrafverfahren bedingt eingestellt (2004: 371). Dennoch nimmt der prozentuale Anteil der bedingten Einstellungen bei Jugendlichen an der Gesamtzahl der

29 Vgl. zur Untersuchungshaft *Kapitel 10* unten.

30 Vgl. *Čečot* 2000, S. 68-74.

31 Z. B. wurde auf der vom 25. bis 27. Oktober 2000 in Bratislava abgehaltenen Konferenz über Jugendkriminalität die Frage einer Sondergerichtsbarkeit für Jugendstrafsachen erörtert, die nach der ursprünglichen Absicht der Regierung hätte eingeführt werden sollen (Gesetzesvorhaben zur Neukodifizierung der Strafprozessordnung). Demnach hätte die Sondergerichtsbarkeit für Jugendliche auf spezialisierten Senaten allgemeiner Gerichte auf der Kreis- und Bezirksebene beruhen sollen. Es wurde vorgeschlagen, der Jugendstrafgerichtsbarkeit Kompetenzen in Strafsachen einzuräumen, deren Opfer oder Täter Jugendliche, und bei der Einweisung in ein Erziehungsheim auch unmündige Kinder wären. Somit sollte ein besserer Schutz der Jugendlichen und eine fundiertere Anwendung der betreffenden rechtlichen Sonderbestimmungen für Jugendliche erreicht sowie eine Rechtsprechung entwickelt werden, welche die neuesten interdisziplinären Erkenntnisse berücksichtigen sollte.

bedingten Einstellungen tendenziell eher ab. In Jugendstrafsachen wurde diese Diversionsart nur in 12-20,5% der Fälle genutzt, vgl. unten *Tabelle 6.*

Tabelle 6: Anteil der Jugendlichen bei denen das Strafverfahren bedingt eingestellt wurde, an allen bedingt eingestellten Strafverfahren im Zeitraum 2000-2006

	2000	2001	2002	2003	2004	2005	2006
Anteil der bedingten Einstellung des Strafverfahrens in %	13,2	19,8	20,5	16,4	13,7	12,0	12,5

Quelle: Statistische Jahrbücher der Generalstaatsanwaltschaft der Slowakei.

Die bereits oben (*Kapitel 3*) angesprochene relativ seltene Anwendung des Täter-Opfer-Ausgleichs wird auch durch die statistischen Daten der Generalstaatsanwaltschaft der Slowakischen Republik für das Jahr 2006 bestätigt. Aus ihnen geht hervor, dass die bedingte Einstellung des Strafverfahrens beinahe zehnmal häufiger vorkam als der Täter-Opfer-Ausgleich. Dieser Zustand rührt unter anderem daher, dass sich jede Diversionsart für einen anderen Täterkreis, für andere Verfahrenslagen und für Straftaten anderer Art eignet. Betrachten wir das Jahr 2006 und stellen die Fälle, in denen eine Diversionsart zum Einsatz gegen Jugendliche kam, der Gesamtzahl aller Fälle dieser Diversionsart gegenüber, so sehen wir, dass gegen Jugendliche die bedingte Einstellung des Strafverfahrens in 12,5% und der Täter-Opfer-Ausgleich in 12,7% der Fälle Anwendung fand.

Trotz der zuvor genannten geringeren Zahlen der abgeschlossenen Täter-Opfer-Ausgleichsverfahren ist nicht zu übersehen, dass die Anwendung im Beobachtungszeitraum eine ständig steigende Tendenz aufweist. Der Anteil der Jugendlichen, bei denen ein Täter-Opfer-Ausgleich zustande kam, lag bis 2006 zwischen 8,2% und 12,7%.

Die Schuld- und Strafvereinbarung ist die geschichtlich jüngste Diversionsart. Die gesetzlichen Anwendungsvoraussetzungen wurden erst durch die neu kodifizierte Strafprozessordnung Gesetz Blatt Nr. 301/2005 Z. z geschaffen, die am 1.1.2006 in Kraft trat. Von der Einführung dieser Möglichkeit erwartet man künftig insbesondere eine Beschleunigung und Effektivierung des Strafverfahrens. Da seit der Einführung dieser Diversionsart erst relativ kurze Zeit verstrichen ist, ist es schwer zu beurteilen, ob sie in der Praxis effektiv genutzt wird. Nach den Angaben der Generalstaatsanwaltschaft der Slowakischen Republik wurde die Strafverfolgung Jugendlicher im Jahre 2006 in 341 Fällen von der Staatsanwaltschaft durch den Abschluss einer Schuld- und Strafvereinbarung beendet. Diese Fälle machen 11,7% aller solcher Vereinbarungen aus. In 281

Fällen endete die Strafverfolgung mit der gerichtlichen Bewilligung einer Schuld- und Strafvereinbarung. Das sind 14,6% aller gerichtlich genehmigten Vereinbarungen (vgl. unten *Tabelle 7*).

Tabelle 7: Diversion in Jugendstrafsachen

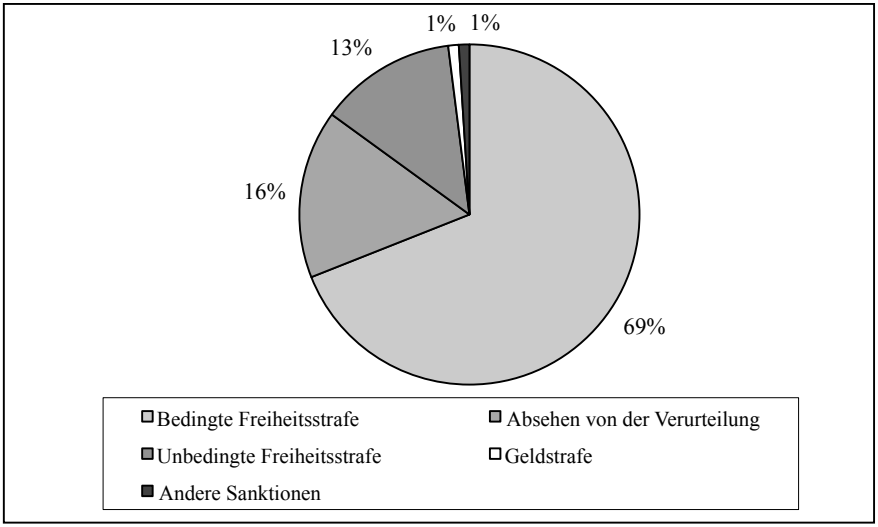
	2004	2005	2006
bedingte Einstellung des Strafverfahrens	371	460	709
Täter-Opfer-Ausgleich	4	19	74
Vereinbarung über Schuld und Strafanerkenntnis - genehmigt durch die Staatsanwaltschaft	0	0	341
Vereinbarung über Schuld und Strafanerkenntnis - gerichtlich genehmigt	0	0	281

Quelle: Statistische Jahrbücher der Generalstaatsanwaltschaft der Slowakei.

6. Strafzumessungspraxis – Teil II: Jugendgerichtliche Sanktionen und Anwendungspraxis

In der jugendstrafrechtlichen Sanktionierungspraxis spielt die bedingte Freiheitsstrafe (Strafaussetzung, bedingte Strafnachsicht) eine zentrale Rolle. In den Jahren 2000-2006 machte sie 67,6-72,8% aller verhängten Strafen aus, während sich die unbedingte Freiheitsstrafe auf 8,9-12,9% und die Geldstrafe auf 0,2-0,6% aller verhängten Strafen belief (vgl. *Tabelle 8*). Im Jahr 2006 entfielen auf die unbedingte Freiheitsstrafe 12,9%, auf die bedingte Freiheitsstrafe 69,4%, auf die Geldstrafe 0,6% und auf sonstige Strafen 0,9% (vgl. *Abbildung 5*). Im Beobachtungszeitraum hat sich die gerichtliche Sanktionspraxis gegenüber Jugendlichen nicht verändert.

Abbildung 5: Sanktionen gegen Jugendliche im Jahr 2006



Quelle: Statistische Jahrbücher des Justizministeriums der Slowakischen Republik, Gruppe Justizinformatik und Statistik des JM SR, www.justice.gov.sk/kop/stat/07/ta10graf.htm.

Tabelle 8: Entwicklung ausgewählter gerichtlich verhängter Sanktionen bei Jugendlichen im Zeitraum 2000-2006 (in %)

	2000	2001	2002	2003	2004	2005	2006
Unbedingte Freiheitsstrafe	11,8	8,9	11,1	12,2	10,9	12,4	12,9
Bedingte Freiheitsstrafe	69,9	72,8	71,6	67,6	70,7	68,7	69,4
Geldstrafe	0,2	0,4	0,5	0,2	0,2	0,4	0,6
Andere Sanktionen	0,4	0,8	0,8	1,2	0,8	1,1	0,9
Absehen von der Verurteilung	17,7	17,1	16,0	18,8	17,4	17,4	16,2

Quelle: Statistische Jahrbücher des Justizministeriums der Slowakischen Republik, Gruppe Justizinformatik und Statistik des JM SR, www.justice.gov.sk/kop/stat/07/ta10graf.htm.

7. Regionale Muster und Unterschiede bei der Strafzumessung junger Rechtsbrecher

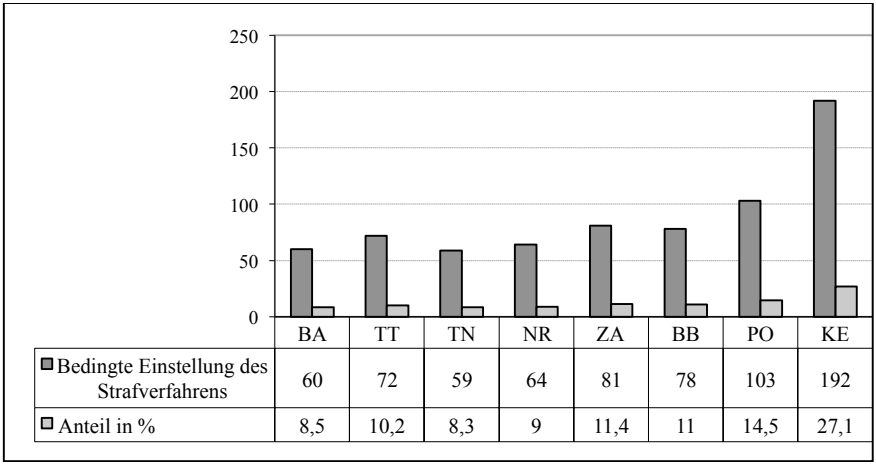
Auf Jugendkriminalität stößt man in allen Landesteilen der Slowakei. Dennoch bestehen offenbar bei der Begehung von Straftaten beträchtliche Unterschiede zwischen den einzelnen Regionen, Bezirken oder Städten. Statistischen Angaben zufolge gab es in den letzten Jahren die meisten Fälle in der slowakischen Hauptstadt Bratislava. Zur Gruppe der „Risikostädte" zählten auch Banská Bystrica, Košice und Žilina. Auch langfristig gesehen erwiesen sich größere Städte als Zentren mit einer hohen Kriminalitätsrate. Aus einem Bericht über die Sicherheitslage der Slowakei folgt, dass die Kriminalitätsrate in kleineren Orten wie Turčianske Teplice, Ilava, Skalica bzw. in Stará Ľubovňa am geringsten ist.[32]

Der ungleichmäßigen Verteilung der Jugendkriminalität entsprechen regionale Differenzen bei den in den einzelnen Bezirken verhängten Sanktionen bzw. bei der Anwendung der Diversionsmöglichkeiten. Als Beispiel können die regionalen Unterschiede bei der Ausnutzung der bedingten Einstellung des Strafverfahrens (siehe *Abbildung 6*) dienen. Diese Diversionsart kam im Jahre 2006 bei Jugendlichen in insgesamt 709 Fällen zum Einsatz. Die unterschiedliche Häufigkeit ihrer Anwendung in den Bezirken Košice und Prešov ist auf die insgesamt größere Zahl der strafverfolgten Jugendlichen zurückzuführen.

Gravierende regionale Unterschiede lassen sich bei der Anwendung des Täter-Opfer-Ausgleichs (TOA) aufzeigen. Dieser wurde am häufigsten im Bezirk Žilina genutzt, und zwar in bis zu 31 Fällen. Das stellt rund 42% der insgesamt abgeschlossenen TOA-Fälle (n = 74) dar. Zum Vergleich sind regionale Unterschiede in der Anwendung beim TOA zwischen den Bezirken Žilina und Košice zu nennen. Im Bezirk Košice, in dem es fast dreimal so viele strafverfolgte Jugendliche gibt, wurde der TOA in 20% der Jugendstrafsachen genutzt, also etwa halb so oft wie im Bezirk Žilina.

32 Diesbezüglich ist darauf zu verweisen, dass die einzelnen Städte (BA- Bratislava, TT- Trnava, TN- Trenčín, NR- Nitra, ZA- Žilina, BB- Banská Bystrica, PO- Prešov, KE- Košice) nicht zufällig ausgesucht wurden, denn ihre Auswahl ergibt sich aus der territorialen Gliederung der Slowakischen Republik in oben genannte selbständige Verwaltungsbezirke.

Abbildung 6: Bedingte Einstellung von Jugendstrafverfahren im Jahr 2006

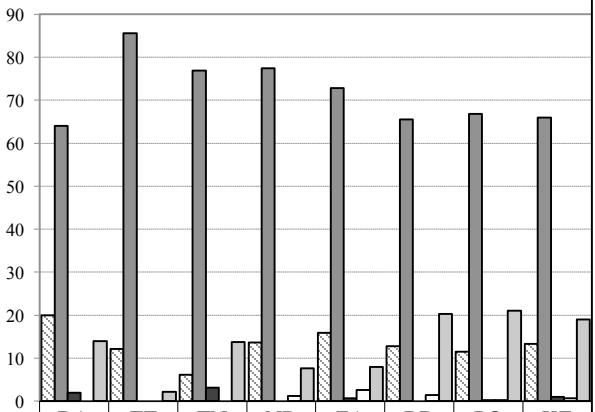


	BA	TT	TN	NR	ZA	BB	PO	KE
Bedingte Einstellung des Strafverfahrens	60	72	59	64	81	78	103	192
Anteil in %	8,5	10,2	8,3	9	11,4	11	14,5	27,1

Quelle: Statistisches Jahrbuch der Generalstaatsanwaltschaft der Slowakei.

Aus *Abbildung 7* ist ersichtlich, dass die unbedingte Freiheitsstrafe im Jahre 2006 am häufigsten im Bezirk Bratislava verhängt wurde. Das ist wenig überraschend, weil im Bezirk Bratislava der durchschnittliche Prozentsatz der Anwendung dieser Strafart in den letzten sechs Jahren am höchsten war. Der Bezirk Trnava war im Jahre 2006 die Region mit dem höchsten Anteil an verhängten bedingten Freiheitsstrafen. Betrachtet man einen längeren Zeitraum (2001-2006), stellt man allerdings fest, dass nicht der Bezirk Trnava, sondern der Bezirk Trenčín der Spitzenreiter bei der Verhängung dieser Strafart war.

Abbildung 7: Verurteilungen in Jugendstrafverfahren im Jahr 2006 – ausgewählte Sanktionen (in %)



	BA	TT	TN	NR	ZA	BB	PO	KE
Anteil der unbedingten Freiheitsstrafe	20	12,2	6,2	13,7	15,9	12,8	11,5	13,3
Anteil der bedingten Freiheitsstrafe	64	85,6	76,9	77,4	72,8	65,5	66,8	66
Anteil der Geldstrafen	2	0	3,1	0	0,7	0	0,3	1
Anteil anderer Sanktionen	0	0	0	1,2	2,6	1,4	0,3	0,7
Anteil der Absehen von der Veruteilung	14	2,2	13,8	7,7	8	20,3	21,1	19

Quelle: Statistische Jahrbücher des Justizministeriums der Slowakischen Republik Gruppe Justizinformatik und Statistik des JM SR, www.justice.gov.sk/kop/stat/07/ta10graf.htm.

8. Heranwachsende im Jugend- und Erwachsenenstrafrecht

Das slowakische Strafgesetz kennt die Altersgruppe der Heranwachsenden bzw. der „jungen erwachsenen Täter“ nicht. Jedoch existiert eine Kategorie der Personen, die dem Jugendalter gerade entwachsen sind, wörtlich „die dem Jugendalter nahe stehen“. Als solche werden in § 127 Abs. 2 slStGB ausdrücklich Personen bezeichnet, die das achtzehnte Lebensjahr vollendet, das einundzwanzigste jedoch noch nicht überschritten haben. Der Umstand der Begehung einer Straftat durch einen Täter, der dem Jugendalter gerade entwachsen ist, gilt als

Milderungsgrund im Sinne des § 36d StGB, der nur dann einem Täter zugute kommt, wenn sein Alter einen offensichtlichen Einfluss auf seine Verstandes- oder Willensreife bzw. Willensfähigkeit hatte. Im Übrigen sind auf diese Tätergruppe die allgemeinen Bestimmungen anzuwenden.

9. Überweisung von Jugendlichen an Erwachsenengerichte

Da es im slowakischen Strafrecht keine Sondergerichtsbarkeit gibt, in deren Rahmen spezialisierte Jugendgerichte eingerichtet wären, ist die Frage der Überweisung von Jugendlichen an Erwachsenengerichte nicht relevant.

10. Vorläufige Unterbringungen im Erziehungsheim und in der Untersuchungshaft

Zum Vollzug der Untersuchungshaft bei Jugendlichen gibt es im Gesetz einige Sonderbestimmungen. Die Haftgründe sind für Jugendliche und Erwachsene identisch, bei den Jugendlichen muss das Gericht bzw. die Staatsanwaltschaft jedoch gesondert prüfen, ob der Haftzweck nicht auf andere Weise erreicht werden kann.[33] Die Inhaftierung eines Jugendlichen stellt das subsidiäre Mittel dar, vorrangig sind Maßnahmen zur Unterbringung bei den Eltern, die Unterbringung im Internat, einer Berufsschule u. ä. Weitere Modifikationen gegenüber dem Erwachsenenrecht gibt es nicht. D. h., dass die Untersuchungshaft wie bei erwachsenen Tätern in Abhängigkeit von der Schwere der Straftat maximal ein Jahr, drei oder vier Jahre andauern kann.

Auch die Strafrechtsreform von 2005 brachte keine erheblichen Änderungen der rechtlichen Bestimmungen über die Untersuchungshaft bei Jugendlichen. Experten kritisieren, dass der Gesetzgeber im Rahmen der Reform die gesetzlichen Bedingungen, insbesondere die Haftgründe nicht überdacht hat. Dieses

33 Nach dem Gesetz kann der Haftzweck vor allem mit Hilfe folgender Alternativen aus der Strafprozessordnung erreicht werden: a) Garantie eines Vereins oder einer vertrauenswürdigen Person (etwa ein Elternteil, Lehrer, Erzieher usw.), der/die das Verhalten des Jugendlichen beeinflussen kann, b) schriftliches Versprechen des jugendlichen Beschuldigten, ein ordentliches Leben zu führen, insbesondere keine Straftaten zu begehen, und die ihm auferlegten Pflichten und Beschränkungen einzuhalten, c) Aufsicht durch einen Bewährungshelfer, mit dessen Hilfe der Jugendliche eine objektive Einstellung zur Tat gewinnt, sich seiner persönlichen Verantwortung bewusst wird, die Folgen seiner Tat akzeptiert und letztendlich sein strafbares Verhalten nicht fortsetzt, d) Hinterlegung einer Kaution. Im Rahmen eines Zivilgerichtsverfahrens kann der Minderjährige außerdem in einem Erziehungsheim untergebracht werden. Das Gericht kann dann eine Heimerziehung anordnen, wenn die Erziehung des Kindes ernsthaft gefährdet oder gestört ist, und wenn sonstige Erziehungsmaßnahmen nicht zur Besserung führen, oder wenn die Eltern aus sonstigen schwerwiegenden Gründen nicht in der Lage sind, für die Erziehung des Kindes zu sorgen.

Urteil wird durch die relativ hohe Zahl von in Untersuchungshaft befindlichen jugendlichen Beschuldigten bestätigt.

Der Anteil der Jugendlichen an der Gesamtzahl der im Untersuchungshaftvollzug untergebrachten Personen lag in den Jahren 1996-1999 zwischen 6,3% und 5%.[34]

Tabelle 9: Jährliche Anordnungen von Untersuchungshaft bei Jugendlichen (in abs. Zahlen)

	2000	2001	2002	2003	2004	2005	2006
Jugendliche in Untersuchungshaft im Laufe des Jahres	195	373	435	506	632	546	392

Quelle: Statistische Angaben der Generalprokuratur der Slowakischen Republik.

Tabelle 10: Strafverfolgte Jugendliche in Untersuchungshaft, jeweils zum Stichtag 31.12. (in abs. Zahlen)

	2000	2001	2002	2003	2004	2005	2006
Jungen	83	91	111	83	113	113	82
Mädchen	0	0	1	2	3	1	2
insgesamt	83	91	112	85	116	114	84

Quelle: Vollzugsdienst der Slowakischen Republik.

11./12. Jugendstrafvollzug und Heimerziehung

Im System der gegen jugendliche Straftäter verhängbaren Strafsanktionen stellt die unbedingte Freiheitsstrafe die eingriffsintensivste Maßnahme dar. Sie ist gegen einen Jugendlichen nur in Ausnahmefällen zu verhängen, wenn nach der Beurteilung der subjektiven und objektiven Umstände feststeht, dass die Verhängung einer anderen Strafe den strafgesetzlichen Zweck nicht erreichen kann (*ultima ratio*).

Nach dem Strafgesetz sind bei der Verhängung der unbedingten Freiheitsstrafe gegen Jugendliche die für Erwachsene geltenden Strafrahmen grundsätzlich zu halbieren. Jedoch darf die maximale Obergrenze des verringerten Strafrahmens 7 Jahre und die Untergrenze des verringerten Strafrahmens zwei Jahre

34 *Lobodáš* 2000, S. 128-143.

nicht überschreiten.[35] Dieses Grundprinzip gilt allerdings nicht, wenn ein Jugendlicher ein besonders schweres Verbrechen begeht, und wenn das Maß der Schwere der Schuld außerordentlich hoch ist. Dabei zählen eine besonders verwerfliche Art der Ausführung der Tat, ein besonders verwerflicher Beweggrund sowie schwere oder schwer wieder gutzumachende Folgen als erschwerende Umstände. Für einen solchen Fall sieht das Gesetz eine besondere Strafandrohung vor, und zwar eine Freiheitsstrafe von 7 bis zu 15 Jahren. Die lebenslange Freiheitsstrafe darf gegen einen Jugendlichen niemals verhängt werden.

Die Freiheitsstrafe Jugendlicher, die das achtzehnte Lebensjahr noch nicht vollendet haben, soll grundsätzlich getrennt von den verurteilten Erwachsenen in einer besonderen Jugendstrafanstalt vollzogen werden. Bei einem Jugendlichen, der in der Zeit der gerichtlichen Entscheidung das achtzehnte Lebensjahr vollendet hat, muss das Gericht darüber entscheiden, ob die Freiheitsstrafe in einer Jugend- oder Erwachsenenstrafanstalt vollzogen wird. Hat der Jugendliche während des Vollzugs der Freiheitsstrafe das achtzehnte Lebensjahr vollendet, so entscheidet das Gericht darüber, ob er den Strafrest in einer Jugendstrafanstalt verbüßt, oder ob er in eine Erwachsenenstrafanstalt mit der niedrigsten Bewachungsstufe überstellt wird.

In der Slowakischen Republik ist eine Jugendstrafanstalt für männliche Verurteilte in Martin und für weibliche Verurteilte in Nitra eingerichtet. In der Besserungsanstalt Martin wird die Freiheitsstrafe nicht nur an Jugendlichen, sondern auch an verurteilten Erwachsenen vollzogen, die in die niedrigste Bewachungsstufe mit Strafen unter fünf Jahren eingestuft sind, die in der Regel dem Jugendalter gerade entwachsen sind, und die wegen weniger schwerwiegenden Straftaten verurteilt wurden. Sie sind getrennt von den verurteilten Jugendlichen untergebracht. Das Gesetz, Blatt Nr. 475/2005 Z. z. enthält Bestimmungen über den Vollzug der Freiheitsstrafe.

Durch die Verordnung des Justizministeriums der Slowakischen Republik Blatt Nr. 664/2005 Z. z. über den Vollzug der Freiheitsstrafe und die Anstaltsordnung werden der Lebensalltag der im Vollzug der Freiheitsstrafe befindlichen Verurteilten geregelt sowie die Grundregeln für den Kontakt mit anderen Personen festgelegt.

Als Mittel der Erziehung/Behandlung inhaftierter Jugendlicher dienen Methoden der individuellen und speziellen Gruppenerziehung, Bildung und Beschäftigung. Der Alltag der Jugendlichen in der Anstalt ist klar geregelt.

Für jeden Verurteilten wird aufgrund einer psychologischen Untersuchung seiner Persönlichkeit und mit Hilfe der pädagogischen Diagnostik ein individuelles Resozialisierungsprogramm ausgearbeitet. Dieses Programm fasst alle Mittel der Erziehung, Heilbehandlung, Psychotherapie sowie sonstige Behand-

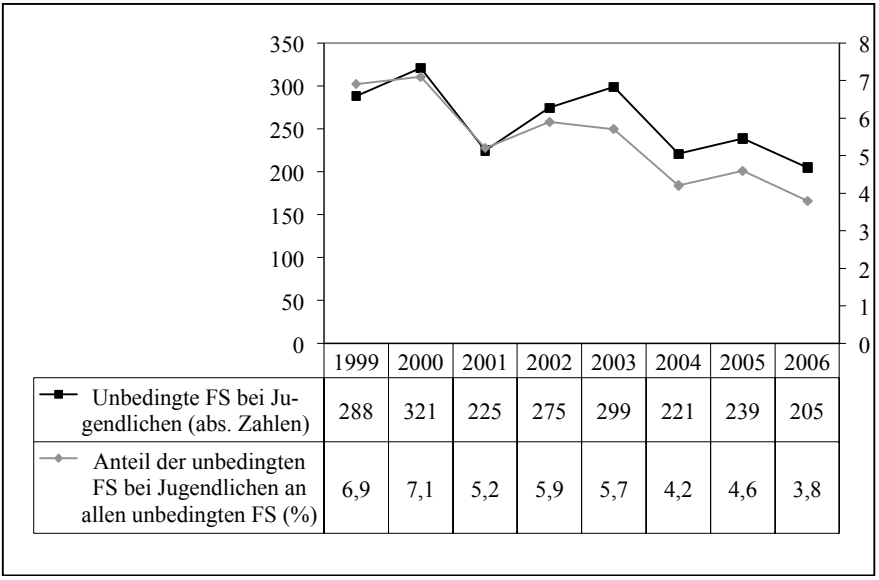
35 Nach dem bis zum 31.12.2005 geltenden Strafgesetz, Blatt Nr. 140/1961 Zb. betrug die maximale Obergrenze des verringerten Strafrahmens 5 Jahre und die Untergrenze des reduzierten Strafrahmens ein Jahr.

lungsmaßnahmen für den jeweiligen Jugendlichen zusammen. An seiner Erstellung beteiligen sich Fachleute der Anstalt, insbesondere Psychologen, Lehrer, Erzieher und Sozialarbeiter, die es darüber hinaus laufend überprüfen. Dieser Vollzugsplan und die positive Mitwirkung des Verurteilten bei seiner Erfüllung zählen zu den wichtigsten Voraussetzungen für die Wirksamkeit des Vollzugs der Jugendfreiheitsstrafe.

Um die erzieherische Einwirkung auf die Jugendlichen zu fördern, werden sie in zwei verschiedene Gruppen eingeteilt, da die Differenzierung eine der Grundmethoden der Resozialisierung darstellt. Der ersten Differenzierungsgruppe werden geistig reifere Jugendliche zugewiesen. In ihrem Rahmen werden zwei Untergruppen gebildet, bei denen danach unterschieden wird, ob die Prognose für die „Erziehbarkeit" günstig oder ungünstig ausfällt. Der zweiten Differenzierungsgruppe werden unterdurchschnittlich begabte und geistig behinderte Jugendliche zugewiesen. Auch hier spielt es eine Rolle, ob die Prognose für die „Erziehbarkeit" günstig oder ungünstig ausfällt. Nach dem derzeit gültigen Gesetz über den Vollzug der Freiheitsstrafe gehört ein sich im Vollzug befindender Verurteilter der Differenzierungsgruppe „A", „B" oder „C" an. In den jeweiligen Differenzierungsgruppen werden besondere Programme (sozial-psychologische Programme, Therapie-, Bildungs-, Arbeits- und Beziehungsprogramme) und besondere Kurse (sozial-psychologische Kurse, sozial-rechtliche Kurse, Umschulungen, Berufsbildung) angeboten.

Aus *Abbildung 8* ist ersichtlich, dass sowohl die absoluten Zahlen der gegen Jugendliche verhängten unbedingten Freiheitsstrafen als auch die Anteile der gegen Jugendliche verhängten Freiheitsstrafen an allen verhängten Freiheitsstrafen in den letzten Jahren gesunken sind. Die absoluten Zahlen der in Jugendstrafanstalten untergebrachten Jugendlichen sind seit 1995 um etwa ein Drittel gesunken und liegen seit dem Jahr 2000 bei um die 100 (vgl. *Tabelle 11*). Unter allen in Jugendstrafanstalten untergebrachten Jugendlichen stellen die Mädchen die absolute Minderheit dar (zwischen 0 und 4 Unterbringungen).

Abbildung 8: Unbedingte Freiheitsstrafe bei Jugendlichen



	1999	2000	2001	2002	2003	2004	2005	2006
Unbedingte FS bei Jugendlichen (abs. Zahlen)	288	321	225	275	299	221	239	205
Anteil der unbedingten FS bei Jugendlichen an allen unbedingten FS (%)	6,9	7,1	5,2	5,9	5,7	4,2	4,6	3,8

Quelle: Statistische Angaben des Justizministeriums der Slowakischen Republik.

Tabelle 11: Verurteilte Jugendliche in Jugendstrafanstalten, 1995-2006

	insgesamt	Jungen	Mädchen
1995	142	140	2
1996	172	168	4
1998	99	96	3
2000	92	92	0
2002	104	104	0
2004	89	87	2
2005	126	124	2
2006	94	92	2

Quelle: Jahrbuch des slowakischen Vollzugsdienstes für das Jahr 2006.

Anhand der statistischen Daten über die Dauer der Freiheitsstrafe kann festgestellt werden, dass seit 1998 (mit Ausnahme des Jahres 2002) am häufigsten

Freiheitsstrafen von bis zu zwei Jahren verhängt wurden. Seit 2005 werden ungefähr gleich viele Jugendliche zu Freiheitsstrafen von bis zu 6 Monaten, bis zu einem Jahr und bis zu zwei Jahren verurteilt. Im Jahre 2005 wurden am häufigsten Freiheitsstrafen von bis zu 6 Monaten ausgesprochen. Im darauf folgenden Jahr 2006 wurden am häufigsten Freiheitsstrafen von bis zu drei Jahren verhängt. Der Anteil der jugendlichen Strafgefangenen an der Gesamtzahl aller zu einer unbedingten Freiheitsstrafe verurteilten Straftäter lag in der Zeit von 2001 bis 2006 zwischen 5,2% und 3,8%. Aus den statistischen Daten des Vollzugsdienstes kann auch die Zusammensetzung der Jugendlichen nach der Schulbildung ermittelt werden. Am stärksten sind Jugendliche mit nicht abgeschlossener Ausbildung und mit abgeschlossener Grundschulbildung vertreten. Ein Teil der verurteilten Jugendlichen kann nicht schreiben und lesen.

Die Schutzerziehung findet in Sondererziehungsanstalten des Unterrichtsministeriums statt. Sie kann aber auch in professionellen Ersatzfamilien erfolgen.[36] Nur bei Jugendlichen, die geistig oder körperlich nicht gesund sind, erfolgt der Vollzug der Schutzerziehung in stationären Gesundheitseinrichtungen.

Der Vollzug der Schutzerziehung beginnt in einem Diagnosezentrum. Kinder unter 14 Jahren, bei denen Heimerziehung gerichtlich angeordnet wurde, und Personen unter 18 Jahren, die sich im Vollzug der Schutzerziehung befinden, werden in Einrichtungen für Erziehungshilfe untergebracht. Im Einklang mit dem Gesetz, Blatt Nr. 279/1993 Z. z. über Unterrichtseinrichtungen, gemäß dem Sozialhilfegesetz, Blatt Nr. 195/1998 Z. z. sowie im Sinne der Verordnung, Blatt Nr. 119/1980 Zb. über den Vollzug der Heimerziehung und der Schutzerziehung in den Unterrichtseinrichtungen wird Erziehungshilfe in Kinder- und Jugenderziehungsheimen gewährt. Es ist der Auftrag eines Kindererziehungsheimes, sozial und moralisch schwer gestörte Kinder zu erziehen, deren Erziehung in keiner anderen Einrichtung möglich erscheint. Im Jugenderziehungsheim wird zugleich die Berufsvorbereitung angeboten.

Bei den Jugenderziehungsheimen gibt es verschiedene Spezialisierungen (Heim mit einer erhöhten gesundheitlichen oder erzieherischen Fürsorge, mit einem Therapie-, Erziehungs- und Schutzbetrieb, Heim für Mütter mit Kindern). Das Netz von Erziehungseinrichtungen besteht aus 6 Kindererziehungsheimen, aus 6 Jugenderziehungsheimen für Jungen und aus drei Jugenderziehungsheimen für Mädchen.

36 Vgl. oben *Kapitel 3*.

Tabelle 12: Übersicht über angeordnete Heim- und Schutzerziehung

Jahr		2000	2001	2002	2003	2004	2005	2006
Heimerziehung		959	1.146	1.015	745	794	740	704
Schutz-Erziehung	gegen ein unmündiges Kind vom Zivilgericht	18	52	45	24	26	48	
	im Jugendstrafverfahren	7	6	9	11	6	8	

Quelle: Statistische Jahrbücher des Justizministeriums der Slowakischen Republik, Gruppe Justizinformatik und Statistik des JM SR.

13./14. Aktuelle Reformdebatten und Herausforderungen an das Jugendstrafrechtssystem, Zusammenfassung und Ausblick

Das seit dem 1.1.2006 gültige neue Strafgesetz, Blatt Nr. 300/2005 Z. z. brachte einige Änderungen im Bereich des Jugendstrafrechts mit sich. Im Einzelnen wurde unter anderem die Strafmündigkeitsgrenze gesenkt; der Sanktionskatalog für Jugendliche sowie die Möglichkeiten, von der Bestrafung abzusehen, wurden erweitert. Außerdem wurden Erziehungsmaßnahmen sowie besondere Regelungen zum Erlöschen der Strafbarkeit unter bestimmten Voraussetzungen eingeführt.

Somit wird heute einerseits bei weniger schweren Delikten das Konzept der wiedergutmachenden Justiz (*restorative justice*) mit Alternativstrafen und Diversionsmöglichkeiten verfolgt. Andererseits werden jedoch 14-jährige Kinder kriminalisiert und schwere Delikte sowie jugendliche Wiederholungstäter strenger behandelt. Die Zeit wird zeigen, wie sich diese Änderungen auf die Straf- und Sanktionspolitik gegenüber dieser Altersgruppe auswirken werden.

Obwohl sich das Jugendstrafverfahrensrecht im Zuge der Modifikationen nur unwesentlich geändert hat, berührte die Neukodifizierung der slowakischen Strafvorschriften, genauso wie bei den Erwachsenen, die Stellung des Jugendlichen im Strafverfahren wesentlich. So wurde zum Beispiel das kontradiktorische Prinzip im Strafverfahren deutlich gestärkt, und neue Diversionsarten wurden eingeführt. Es bleibt interessant, zu beobachten, wie sich die gesetzlichen Änderungen künftig auf die Praxis auswirken werden, bzw. ob es im Jugendstrafverfahren diesbezüglich spezifische Umsetzungsprobleme geben wird.

Obwohl seit der Gesetzesreform von 2005 relativ wenig Zeit verstrichen ist, wurden dennoch bereits einige legislative Mängel sowie Probleme mit der Anwendung der Vorschriften in der Praxis erkannt. Diese Mängel machen es erfor-

derlich, das Strafgesetz und die Strafprozessordnung in nächster Zukunft zum Teil zu novellieren. Ob man in diesem Zusammenhang auch das materielle und prozessuale Jugendstrafrecht zu optimieren versuchen wird, ist zurzeit schwer abschätzbar.

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Slovenia

Katja Filipčič

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

The Slovenian juvenile justice system developed under Austrian influence at the beginning of the 20th century, when Slovenia was part of the Austro–Hungarian Monarchy. In 1908, the Austrian Ministry of Justice decided that all cases of juvenile delinquency should be dealt with by a specialized judge at a general court. The first juvenile judge commenced work in Ljubljana in 1909. One can say that Austria and Germany played an important role, not just in the development of juvenile justice law, but also in the development of Slovenian criminal law.

Significant changes to criminal legislation were made in 1959, when an amendment to the law brought a relaxation of sanctions and the abolition of life imprisonment. Provisions concerning juvenile offenders were also amended, and the Slovenian system of dealing with juvenile offenders was established. The categorisation of juveniles as criminally responsible and irresponsible was abolished. Educational measures were seen as appropriate sanctions for juvenile offenders. In order to select an appropriate educational measure, the court had to establish a psychological profile of a juvenile and his/her attitude towards a criminal offence. The court could impose educational measures only on younger juveniles (aged 14 and 15 years) and beside these measures, a sanction of imprisonment on older juveniles (aged 16 to 18 years) if it was considered that the imposition of an educational measure in an individual case would not be appropriate. In addition, a special category of young adults (between 18 and 21 years) was introduced to the Criminal Code in the same year.

Slovenia adopted the new Criminal Code (CC) in 1995. The basic principles of the punishment of adult perpetrators reflect a clear shift towards a "just deserts" philosophy. However, this shift did not occur in the field of juvenile justice. In the section of the Criminal Code with the title "Educational Measures

and Penalties for Juveniles" many ideas of the treatment-oriented ideology remained unchanged.

Slovenian criminal legislation is underpinned by the view that a criminal offence committed by a juvenile is in most cases indicative of a personality disorder. Thus, the purpose of imposing a sanction for a criminal offence is to ensure the juvenile's education, re-education, and adequate personal development.[1] The measures used by the court must therefore substitute for what was missing in the past. Consequently, educational measures and penalties must provide not only help and protection, but also supervision, which the juvenile needs in order to be integrated or re-integrated into community life and society.

The Criminal Code has been amended twice since 1995: in 1999 and in 2004. Both amendments were aimed at making the response to crime tougher. The amendment of 1999 introduced a new maximum for imprisonment for adult offenders, namely 30 years instead of 20 years. This amendment was adopted through the pressure of major political parties advocating a "tough on crime" policy. Politicians won the battle (against the majority of 'experts'), by having the strong support of public opinion. The new concepts of punishment, introduced in the Criminal Code in 1995, contributed to more punitive policies. However the "get tough" aspect of this amendment has not been extended to juveniles, and the Slovenian system of dealing with juvenile offenders remains welfare oriented.

The new Criminal Code, which was adopted in 2008, did not change the above model, but it nevertheless announced a significant novelty. There is no special law in Slovenia dealing with juvenile offenders. Their treatment is regulated within a special part of the Criminal Code, the Criminal Procedure Code and the Enforcement of Criminal Sanctions Act. The new Criminal Code, on the other hand, stipulated that this sphere should be regulated within a special statute. Until such a statute has been adopted, however, provisions from the Criminal Code, which was in force until 2008, apply."

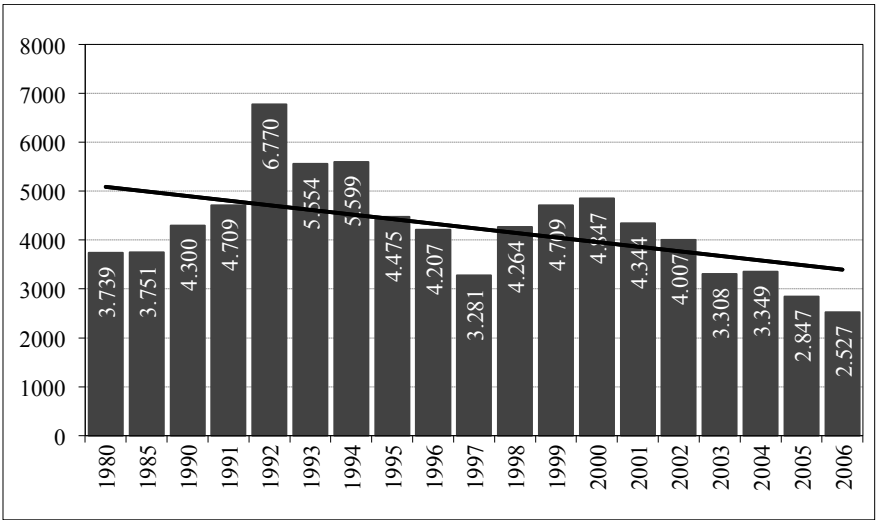
1 Art. 73 CC: "The purpose of educational measures and sentences imposed on juvenile offenders shall be to ensure their education, reform and proper personal development so as to provide custody, assistance, supervision, vocational education and support in helping them to develop a responsible personality."

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

2.1 Reported delinquency of juveniles

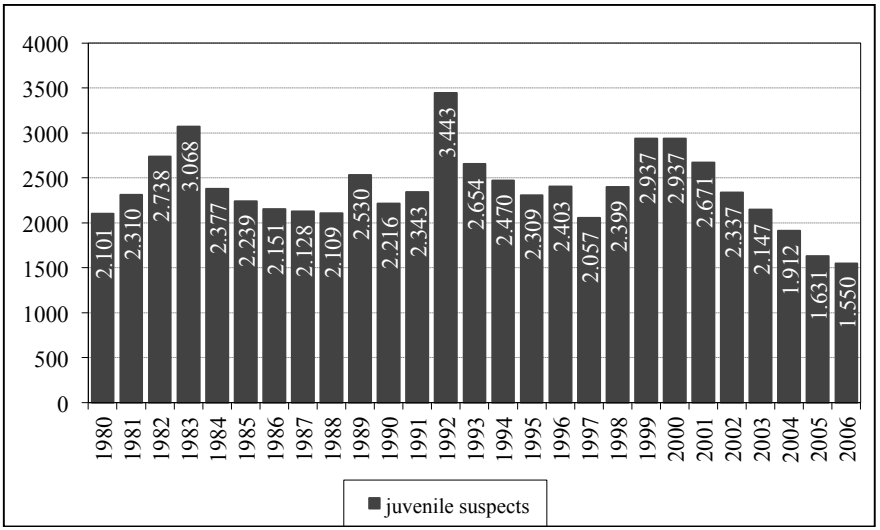
Over the last 25 years, Slovenia has not experienced increases in the volume of juvenile crime. Approximately four percent of juveniles aged 14 to 18 (who fall under court jurisdiction) are dealt with by the police each year and less than one percent receives an educational measure or is sentenced by the court. As *Figure 1* indicates, reports on juvenile crime (and juvenile offenders – see *Figure 2*) peaked at the beginning and the end of the 1990s. This reflects several factors: societal change as regards crime reporting behaviour, changes in data-collection methods, and improved cooperation between the police, schools and social agencies. Since 2000, however we have seen a decreasing trend in juvenile reported offences. On the other hand, the number of crimes committed by adult offenders has increased by about 100% in the last 10 years (see *Figure 3*).

Figure 1: Number of reported offences committed by juveniles



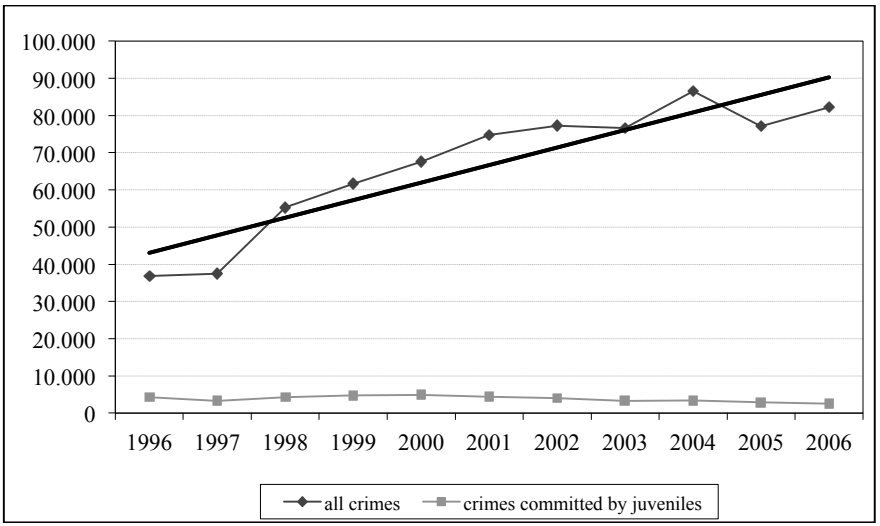
Source: Statistical Office of the Republic of Slovenia, 2007.

Figure 2: Number of juveniles reported to the police



Source: Statistical Office of the Republic of Slovenia, 2007.

Figure 3: Crime in Slovenia, police data



Source: Ministry for Internal Affairs of the Republic of Slovenia, 2007.

While the volume of juvenile offending has been relatively stable, the nature of offences committed by juveniles has changed in the past ten years (see *Table 1*). The number of violent offences has been stable (between 180 and 200 cases each year), although the proportion of this type of offending has increased overall (from 6.5% in 1997 to 7.5% in 2006). On the other hand, the proportion of property crimes has decreased by about eight percent.

Table 1: Offences committed by juveniles (police data)

Year	Total	Violent crimes[a]	Property crimes[b]	Drug related crimes[c]
1997	3,270	6.5%	79.5%	3.9%
1998	4,270	5.6%	80.5%	3.6%
1999	4,709	4.7%	82.0%	3.9%
2000	4,847	4.6%	82.2%	5.0%
2001	4,344	6.2%	77.2%	6.5%
2002	4,007	6.3%	78.0%	7.0%
2003	3,308	7.0%	72.9%	5.0%
2004	3,349	6.6%	74.4%	4.6%
2005	2,847	7.0%	73.5%	2.6%
2006	2,527	7.5%	72.5%	3.3%

Explanations:

a) Violent crimes: homicide, bodily harm, rape and other forms of sexual violence.

b) Property crimes: theft, robbery, burglary, fraud.

c) Drug related crimes: unlawful manufacture and trade of narcotic drugs (Art. 196 CC), rendering opportunity for consumption of drugs (Art. 197 CC). Possession of drugs for personal use is not a crime – it is a misdemeanour dealt with by the court in a special procedure. According to the Slovenian law misdemeanours are petty offences, such as traffic offences or graffiti, penalized under the Code of Misdemeanours with a fine. Some certain educational measures can also be imposed.

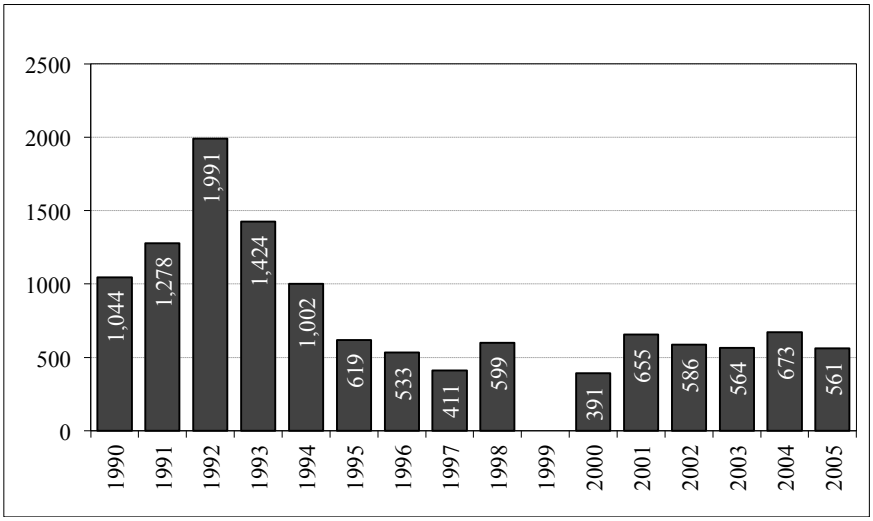
Source: Ministry for Internal Affairs of the Republic of Slovenia, 2007.

2.2 Reported delinquency of children

Slovenian courts only deal with those juveniles in a special criminal proceeding who have committed a criminal offence and who, regarding their mental maturity (formally determined by the age of 14), are considered to understand

the meaning of their conduct.[2] An offender under the age of 14 at the time the offence was committed may be dealt with only by the social welfare agencies (known as Social Work Centres), regardless of the seriousness of the offence and notwithstanding his/her actual level of maturity. Thus, the limitation is determined by chronological age, and the courts may not change that in individual cases. In the last 10 years the delinquency of children has been stable (see *Figure 4*).

Figure 4: Reported offences committed by children



Note: There are no data available for the year 1999.
Source: Ministry for Internal Affairs of the Republic of Slovenia, 2007.

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

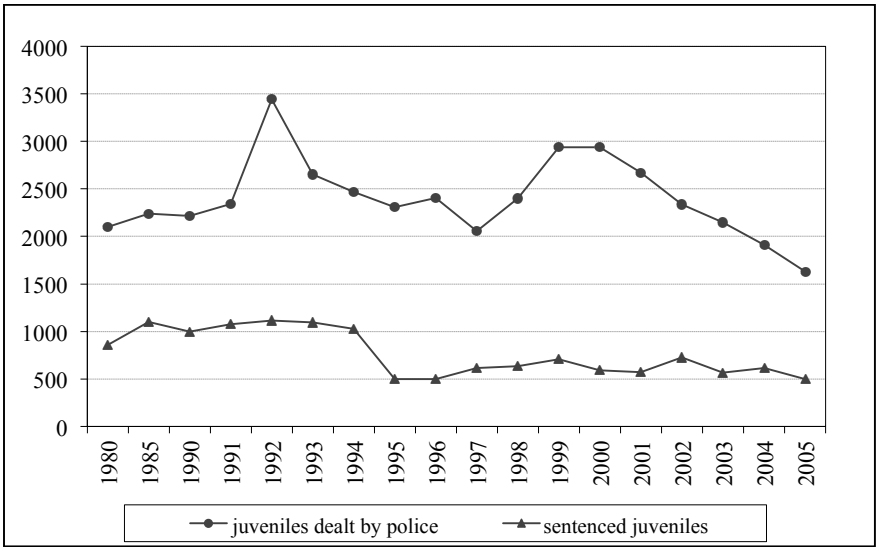
3.1 Diversion

Less than one third of all juveniles who are reported to the police are sentenced by the courts (see *Figure 5*). The reason lies in the fact that the prosecutor has the power to dismiss the case under any condition (the so-called expediency

2 Art. 71 CC: "Criminal sanctions shall not be applied against minors who were under the age of fourteen at the time a criminal offence was committed (children)."

principle)[3] or to refer the case to mediation or to another form of diversion (conditional diversion). A juvenile judge can also decide not to impose any educational measure or juvenile penalty because of the expediency principle or because a juvenile has reached 18 years of age during the procedure (in this case the dismissal is not automatic and some educational measures can be imposed).

Figure 5: Number of juveniles dealt with by the police and juveniles on whom an educational measure or a sentence was imposed



Source: Statistical Office of the Republic of Slovenia, 2006.

3.2 Educational measures

The Slovenian criminal legislation reflects the idea that a criminal offence committed by a juvenile is in most cases a manifestation of a personality disorder. Thus, the purpose of imposing a sanction is to ensure that the juvenile receives the necessary education and appropriate support for his/her personal development. Consequently, educational measures and juvenile penalties must

3 The state prosecutor has the discretionary power to decide not to bring a case before court because the juvenile does not need any judicial intervention despite the fact he or she committed an offence. This discretionary power of the state prosecutor is limited to less severe offences – for which imprisonment of up to three years or a fine is prescribed.

not only provide for assistance and protection, but also for the supervision that the juvenile needs in order to be rehabilitated or re-integrated into society (Art. 73 CC, see above at Fn. 1).

The chronological age of an offender is the fundamental criterion in the court's decision whether to impose an educational measure or a juvenile penalty. A penalty (a fine or juvenile imprisonment) may be imposed only on older juveniles (aged 16 or 17 at the time of the offence), and this only exceptionally. Upon the imposition of a juvenile penalty the court must explain why it did not impose an educational measure in each individual case.

The data (see *Table 2*) show that the courts imposed an educational measure in approximately 98% of all cases. With respect to the choice amongst the six educational measures (one has eleven different forms), it is necessary to emphasise that the seriousness of a criminal offence, which is of substantial importance for the determination of the sanction in adult cases, usually does not influence which educational measure is selected. The deciding factors are the needs of the juvenile for further education and re-education that the court perceives. The seriousness and the nature of a criminal offence are merely one of the criteria for selecting an educational measure and are taken into account by the court regarding only one particular educational measure – the committal to a re-educational institution. Their effect only becomes apparent if a juvenile is to be committed to a juvenile detention centre. The social services and educational institutions have to send a report to the juvenile judge every six months on the progress of a juvenile's treatment. Juvenile judges may end the execution of educational measures on the grounds of positive treatment results, or they may modify the imposed measure.

Courts have broad competencies concerning the choice of educational measures. It is primarily the juvenile's personality and not the seriousness of the criminal offence that will guide a judge in his or her decision. The following educational measures may be imposed on juveniles:

- a reprimand (Art. 77 CC);
- restrictions and prohibitions (11 different possibilities exist);[4]

4 Art. 77.2 CC: "The following instruction and prohibition may be issued by the court to a juvenile offender: (1) to make a personal apology to the injured party; (2) to reach a settlement with the injured party by means of payment, work or otherwise in order to recover the damages caused in the course of committing the offence; (3) regular school attendance; (4) to take up a form of vocational education or to take up a form of employment suitable to the offender's knowledge, skills and inclinations; (5) to live with a specified family or in a certain institution; (6) to perform community service or work for humanitarian organizations; (7) to submit oneself to treatment in an appropriate health institution; (8) to attend sessions of educational, vocational, psychological or other consultation; (9) to attend a social training course; (10) to pass an examination for obtaining a driving license; (11) under conditions applying to adult offenders, prohibition from operating a motor vehicle may be enforced.

- supervision by a social welfare agency (Art. 78 CC);[5]
- committal to an educational institution (Art. 79 CC);[6]
- committal to a re-educational institution (Art. 80 CC);[7]
- committal to an institution for physically or mentally handicapped youth (Art. 81 CC).

During its implementation, the imposed measure can be replaced with another measure by the implementation of which it is more probable that the purposes of the educational measures will be achieved (Art. 83 CC).

The data (see *Table 2*) show that the educational measures in an open environment (reprimand, instructions and prohibitions, supervision by a social welfare agency) account for more than 90% of all cases. Over the last 25 years, the number of juveniles sent to an educational institution has decreased considerably (in 1980, 14% of all sentenced juveniles were sent to an educational institution, in 2002 this fell to just four percent).

3.3 Juvenile imprisonment

Juvenile imprisonment is the most severe sanction, and may only be imposed if two formal conditions are fulfilled:

- the offender must be an older juvenile aged 16 or 17;
- the committed offence must be a serious one, for which a minimum sentence of five years or more may be imposed if committed by an adult.

Notwithstanding the prescribed sentences for adult offenders, the court can impose juvenile imprisonment for not less than six months and no more than five years. In the case of criminal offences punishable by 30 years imprisonment for adults (e. g. aggravated murder) the sentence of juvenile imprisonment can not exceed 10 years. In ordering a sentence to juvenile imprisonment, the court shall – apart from assessing all mitigating and aggravating circumstances – take into account the degree of maturity of the juvenile and the time necessary for his/her education, reformation and vocational training.

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5 The court orders supervision for an indefinite period of time ranging from a minimum of one year to a maximum of three years. The social agency must send the report about the improvement of the juvenile's behaviour to the juvenile judge every six months and the judge could order for the implementation of this measure to be stopped.

6 The offender could stay in the educational institution for not less than six months and for no longer than three years. This measure is ordered for an indefinite period of time and the juvenile judge subsequently orders its discontinuation.

7 Art. 80 CC: (2) In deciding whether to impose such a measure, the court shall in particular consider the nature and gravity of the crime as well as the perpetrator's criminal record. (3) The perpetrator shall stay in the re-educational institution for no less than one and no longer than three years. Such a measure shall be administered for an indefinite period of time and the court shall subsequently order its termination.

Beside the formal conditions for imposing juvenile prison sentences, the juvenile judge has to consider the purpose of imposing this sanction. This is the same as for educational measures – to ensure education, reform and proper personal development (Art. 73 CC).

3.4 The fine

Since 1995, the court has been able to impose a fine on a juvenile who (a) has been convicted of an offence punishable by up to five years imprisonment and (b) if the juvenile can pay the fine himself (because he or she has a job or a scholarship). A fine may be imposed in two forms: in daily amounts or in absolute amounts. In the case of default payment, a fine cannot be converted into imprisonment (as it can be in the sanctioning system for adults), but must be converted into a non-residential educational measure (a reprimand, instructions and prohibitions, or supervision by a social welfare agency).

4. Juvenile criminal procedure

4.1 General

In the Slovenian legal system there are no special courts for juveniles. Juvenile offenders are dealt with in the first instance by juvenile judges, followed by a panel for juvenile offenders at the District Court level. Panels for juvenile offenders at higher courts and at the Supreme Court are competent for deciding on legal remedies. Juvenile judges conduct a preliminary analysis of the case, which is the first phase of court proceedings against juveniles. In this phase, data and evidence are gathered. Furthermore, juvenile judges preside over panels that decide on the commission of a criminal offence and impose a sanction. These panels are constituted by one professional judge and two lay judges. The Code of Criminal Procedure (CCP) determines that lay judges are elected among professors, teachers, educators and other persons with experience in the education of juveniles. Thus, a juvenile judge never decides on the perpetration of a criminal act and on the sanction alone, but always together with two jurors. A panel decides the above-stated issues at '*in camera'* deliberation or at the main hearing (a fine, imprisonment and institutional measures may be imposed only at a hearing). A decision is reached by a vote of the panel members. Lay judges cooperate with a professional judge on equal terms in deciding on the liability of a juvenile and in selecting a sanction. The courts in second instance and the Supreme Court panels for juvenile offenders are composed of three (professional) judges.

In the 1990's Slovenia faced an interesting phenomenon: the specialization of judges was slowly diminishing because of the decreasing number of juveniles

dealt with by the courts. In the last 15 years juvenile judges have dealt with between 30% to 50% fewer juvenile cases than in the 1980's. This implied that juvenile judges did not have sufficient cases per year to justify a full time job and therefore they also had to judge adult offenders. The principles of dealing with adult and juvenile offenders are quite different. There is a danger that the punitive principles from the system of dealing with adult offenders would infiltrate the system of juvenile justice. On the other hand, in the 1990's the CCP provided prosecutors with a new active role and, as a consequence, they started to specialize in the field of juvenile justice. They were also given the possibility to use alternative ways of dealing with cases (refer a case for mediation or conditionally dismiss the case – see *Section 5* of this report).

4.2 The course of proceedings

Procedures against juveniles are a special, yet fundamental type of criminal procedure. The juvenile not only has all the rights that are guaranteed to adult offenders, but also some additional entitlements designed to diminish the possible detrimental effects of the procedure on a juvenile's development. The proceedings start with a preliminary phase that is only initiated upon the request of the state prosecutor (the victim cannot act *in lieu* of the prosecutor). The request is filed with the juvenile judge. The purpose of this phase of proceedings is to establish facts connected to a criminal offence and particularly to establish the circumstances necessary for the evaluation of the juvenile's maturity, an insight into his/her personality, and the circumstances in which he/she lives. The preliminary phase is thus similar to the investigation in ordinary proceedings against adults, with a key difference that the goal in adult cases is to investigate a criminal offence, while in juvenile cases the preliminary phase focuses on understanding the juvenile's personality. A further important distinction is that the preliminary phase may not be omitted, although this is possible under certain conditions in adult cases.

The juvenile is entitled to a defence counsel from the beginning of the preliminary phase. The obligatory defence (provided *ex officio*) starts at the same time if a juvenile has committed an offence for which imprisonment of more than three years is foreseen if committed by an adult.

The CCP prescribes certain steps that the juvenile judges must follow in order to establish the circumstances regarding the personality of a juvenile and the conditions in which he/she lives. In addition to the examination of a juvenile, the court must do the following:

- meet with the juvenile's parents, his/her guardian and other persons who can provide information regarding these circumstances. These persons have the obligation to testify with respect to the personality of a juvenile and the conditions in which he/she lives;

- request a report from a social welfare agency on these circumstances.

In order to determine the juvenile's state of health, degree of mental maturity and psychological characteristics, a juvenile judge may order him/her to be examined by experts such as a physician, psychologist or teacher.

When the juvenile judge has examined all the circumstances referring to the criminal offence and the juvenile's personality, he/she sends the files to the state prosecutor, who may decide to file charges. If this happens, the juvenile judge may refer the case to a mediation process or to a court panel for juvenile offenders, which subsequently decides upon the imposition of a sanction. When it finds that it would not be expedient (appropriate) to pronounce either a penalty (juvenile imprisonment or a fine) or an educational measure on a juvenile, the case is dismissed. The panel for juvenile offenders decides either at a panel's meeting or at a (main) hearing. At a panel's meeting – which is less formal – only non-residential measures can be pronounced; at a (main) hearing the panel can impose penalties, institutional (residential) or non-residential measures; a hearing is organized similarly to the main hearing in adult cases, the important difference being that the public is always excluded. The presence of the state prosecutor is obligatory and in the case of the offence for which imprisonment of more than three years is foreseen the presence of the defence counsel is also obligatory. The representative of the social agency as well as one of the parents, have to be invited to participate in the main hearing but their presence is non-obligatory.

4.3 Involvement of the social agencies

Social welfare agencies (known as Centres for Social Work) have played an important role in Slovenia since the end of the Second World War. In a country of two million inhabitants, there are 62 Centres for Social Work. They have been – and still are – well organized institutions for preventing different forms of social exclusion. This kind of social work agency, with its present organization and tasks, is part of the heritage of the welfare state.

As it often happens, these agencies have been overburdened with different tasks, and have thus concentrated on the problems that have seemed most urgent. Among other tasks, social welfare agencies deal with children up to 14 years of age in cases of any form of deviant behaviour they have shown, regardless of its legal classification. They also deal with juveniles from 14 to 18 years of age who have behaviour or personality difficulties but who have not committed any criminal or petty offences. These forms of behaviour include running away from home, absconding from school and alcoholism. According to the Marriage and Family Relation Act, these agencies have to take "any measure deemed necessary for educating and protecting the child, his patrimonial or other rights and benefits" (Art. 119). They have the right to use any non-institutional measure of help, advice, or control, and under special circumstances, they

can also place a child in an institution in cases of parental neglect or where a child exhibits personality or behavioural problems.

A great share of the social welfare agencies' workload involves juveniles who have committed criminal offences and petty offences, and who are dealt with by the court. Social welfare agencies cooperate in the pre-trial proceedings by providing the court with information on the juvenile's living conditions and personality. Social workers participate in the main hearing and can propose the educational measure they consider to be most appropriate to help the juvenile. During the entire criminal procedure the social welfare agency also has the right to be acquainted with the course of the proceedings, make motions, and call attention to the facts and evidence for correct adjudication (Art. 458 CCP).

According to the Criminal Code, educational measures are to be implemented either by educational institutions or by the social agencies. Almost half of all sentenced juveniles are placed under the supervision of social welfare agencies, and numerous instructions, imposed as an educational measure, have to be organized and carried out by these organizations. Social welfare agencies have to report to the court on the course of the implementation of educational measures at least once every six months. Beside these tasks, social welfare agencies also organize preventive programmes.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

5.1 General

The role of the state prosecutor changed dramatically in the late 1990s as the new competencies to dismiss a case were introduced. The state prosecutor may, with the consent of the accused and the injured party, decide to refer the case to one of two forms of alternative diversionary procedures: mediation, or the deferment of prosecution. The main criterion (but not the only one) for referring a case is the gravity of the offence. Until the last amendment to the CCP in 2004, there were no criteria on the basis of which it could be possible to distinguish between juvenile and adult cases when the court was dealing with criminal offences punishable by a fine or a prison term of up to three years. The amended CCP introduced the possibility of dealing with juveniles in alternative ways in all cases involving criminal offences punishable by up to five years imprisonment.[8] This change was introduced on the recommendation of prosecutors.

8 If the offender is an adult, this is also possible for all offences punishable with up to three years in prison, but only for some offences punishable with up to five years of imprisonment.

In 2002, the state prosecutor dismissed almost two thirds of all cases. The reason for these dismissals was the principle of expediency. Unconditional dismissals accounted for 29% (366 cases), mediation for 21% (256 cases) and the deferment of prosecution for 9% (115 cases) of all cases.

5.2 Mediation

The state prosecutor may refer the case to mediation. If the mediation process is successful, the charges will be dropped. Since 2001, the state prosecutor has been able to refer a case to mediation even after having filed the charges. Before deciding, the state prosecutor has to consider the type of offence, its nature, the circumstances in which it was committed, the offender's personality and his or her past conduct. The offender's acceptance of responsibility for the criminal act before the case is referred for mediation has never been a legal requirement for the prosecutor's decision. From the practical point of view however, it is highly unlikely that the prosecutor would refer a case to mediation where a defendant denies and refuses to accept responsibility, because such a case would have no real prospect for success.[9] In Slovenia there are no institutions or agencies that are specialized in mediation. A lay mediator supervises each case and this is quite a unique solution in Europe. There are currently about 190 specially trained mediators, a quarter of which are mediators in cases involving juvenile offenders. If mediation is successful (that is, the offender fulfils an agreement that had been met with the victim), the state prosecutor dismisses the criminal charge.

In 2002, the prosecutors referred seven percent of all cases to mediation. The rate of success of the negotiated arrangements was almost 70% (in the case of adult offenders the rate of successful mediation is lower, at about 50%).

5.3 Deferment of the prosecution (conditional dismissal)

The state prosecutor may drop a case if the suspected juvenile performs certain actions to remove the harmful consequences of the criminal offence, such as: (1) the repair of or compensation for any caused damage; (2) paying a contribution to a public fund, to a charity institution or to the compensation fund for victims of criminal offences;[10] (3) performing community service. If the suspect fulfils the obligation undertaken within six months, the criminal complaint is dismissed. In approximately 80% of these cases juveniles fulfil the obligations and the case is subsequently dismissed.

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9 *Bosnjak* 2004.

10 Arrangements for the establishment of such a fund have yet to be made. The possibility is therefore a theoretical one.

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

Table 2 reveals that fines and juvenile imprisonment are rarely used. After the adoption of the new Criminal Code in 1995, the following pattern of sanctions emerged:

- a decrease in the number of imposed reprimands, which, according to judges, were imposed as an emergency exit due to the lack of other adequate educational measures;
- a distinctive enforcement of a new educational measure (instructions and prohibitions), which accounts for one fifth of all imposed sanctions.

With the introduction of 'instructions and prohibitions' the social welfare agencies' supervision, often combined with some concrete instructions or prohibitions, has also increased.

Table 2: Juveniles on whom an educational measure or a sentence was imposed

Year	N	%						
		Reprimand	Disciplinary centre	Instructions and prohibitions	Supervision by a social assistance institution	Commitment to a juvenile institution	Juvenile Imprisonment	Fines
1980	856	36.4	9.2	---	39.5	13.8	1.1	---
1985	1,098	48.6	9.4	---	33.1	7.9	1.0	---
1990	997	58.3	6.5	---	28.8	6.1	0.3	---
1995	499	58.1	---	2.8	29.3	8.2	1.4	0.2
1996	500	53.4	---	9.6	29.8	5.6	0.6	1.0
1997	617	42.8	---	16.2	33.5	5.8	0.2	1.5
1998	636	35.2	---	15.4	39.5	7.9	0.1	1.9
1999	706	33.6	---	18.4	40.4	5.1	0.5	1.8
2000	591	29.5	---	22.7	40.8	4.6	1.5	0.8
2001	571	29.3	---	18.2	47.3	3.5	0.9	0.9
2002	728	29.8	---	14.6	49.9	4.0	0.8	1.0

Year	N	%						
		Reprimand	Disciplinary centre	Instructions and prohibitions	Supervision by a social assistance institution	Commitment to a juvenile institution	Juvenile Imprisonment	Fines
2003	568	30.1	---	13.4	48.4	6.7	0.7	0.7
2004	615	23.9	---	15.4	53.3	4.7	1.3	0.8
2005	498	20.3	---	17.7	52.8	6.8	1.6	0.6

Note: *Instructions and prohibitions* and *fines* were introduced by the Criminal Code in 1995.
Disciplinary centres were abolished by the Criminal Code in 1995.
Source: Statistical Office of the Republic of Slovenia, 2006.

7. Regional patterns and differences in sentencing young offenders

Slovenia has a population of only two million. With its 250,000 inhabitants, Ljubljana is the capital and the largest city in the country. Eleven district courts deal with juveniles. Because Slovenia is a small country there are no important or noteworthy regional differences in the amount or structure of juvenile criminality.

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

In 1959, the Slovenian criminal legislation introduced the category of "young adults". Young adults are persons who commit criminal offences as adults (aged 18 or more), but who are under 21 at the time of the trial. As a rule, these offenders are considered criminally responsible and sentenced as adults. Where the court finds that, taking into account the personality of the young adult and the circumstances in which the criminal offence was committed, the imposition of an educational measure would be more appropriate than a prison sentence, the court may impose certain educational measures on such a person. The court may order that a young adult be placed under the supervision of the social service agency or may impose any of the institutional (residential) educational meas-

ures. These educational measures are carried out until the perpetrator reaches twenty-three years of age (Art. 94 CC).

In practice, the imposition of educational measures on young adults is used only exceptionally (see *Table 3*). One of the important reasons for this is the fact that young adults are not dealt with by juvenile judges but by judges for adult offenders who can impose certain educational measures on them, but who are not bound by law to do so.

Table 3: Convicted young adults

Year	All convicted	Young adults (number/share)	Imposed educational measures
1980	11,040	1,163/10.5%	12
1981	10,918	1,729/15.8%	12
1982	11,673	1,793/15.3%	1
1983	12,297	1,986/16.1%	11
1984	13,782	2,232/16.2%	23
1985	13,528	2,288/16.9%	10
1986	13,102	2,075/15.8%	7
1987	12,002	1,880/15.7%	8
1988	11,986	1,754/14.6%	1
1989	12,718	1,802/14.2%	0
1990	9,842	1,575/16.0%	0
1991	8,278	1,347/16.3%	0
1992	7,618	1,285/16.9%	0
1993	6,871	1,257/18.3%	2
1994	6,289	1,103/17.5%	4
1995	3,462	629/18.2%	2
1996	3,942	718/18.2%	3
1997	4,975	952/19.2%	4
1998	5,729	1,036/18.1%	1
1999	5,783	1,181/20.4%	5
2000	6,304	1,342/21.3%	0

Source: Statistical Office of the Republic of Slovenia, 2001.

9. Transfer of juveniles to the adult court

The Slovenian criminal law does not allow the transfer of juveniles to adult courts, regardless of the seriousness of the committed offence.

10. Preliminary residential care and pre-trial detention

In proceedings against juveniles, during the preliminary phase the juvenile judge may order that a juvenile be sent to a diagnostic centre, be placed under the supervision of a social welfare agency, or with another family, if this is necessary to take the juvenile out of the environment in which he/she lives, or to provide him/her with assistance, protection, or accommodation. The measure ordered by the juvenile judge may last the entire duration of the proceedings, or the judge may end it at any time. This possibility is very rarely used. Any of the above-stated measures can be appealed to the panel for juvenile offenders at a higher court.

The juvenile judge may order pre-trial detention against a juvenile on account of the possibility of absconding or the danger of collusion. The Code of Criminal Procedure stresses that pre-trial detention is to be ordered only in exceptional cases. The juvenile may be detained on the basis of the juvenile judge's order for no longer than one month, while the panel for juvenile offenders (three judges) may, on the proposal of a state prosecutor, extend pre-trial detention for a period of two further months. Thus, pre-trial detention at the time of the preliminary phase (before filing a charge) may not last more than three months, even in cases in which the preliminary phase has not yet been completed when that period of time expires.[11] After filing a charge, only the panel for juvenile offenders may order pre-trial detention, and it must be determined every two months whether the reasons for the detention still exist. In this phase of the procedure, pre-trial detention may last no longer than two years, which is the same as in proceedings against adult defendants.

In examining the report of the Republic of Slovenia on the implementation of the Convention on the Rights of the Child in 1996, the UN Committee on the Rights of the Child exposed the duration of pre-trial detention in proceedings against juveniles as a field where children's rights are not sufficiently protected. The UN Committee recommended that the duration of pre-trial detention should be shortened. However, the statutorily determined duration of pre-trial detention after the prosecutor has filed a motion for a sentence or an educational measure has remained unchanged. One of the reasons for this is the fact that pre-trial

11 Pre-trial detention during the investigation in proceedings against adults may last no longer than three months, and in cases of severe criminal offences (prescribed sentence of over five years of imprisonment) no longer than six months.

detention is rarely ordered, and even when it is, it lasts only a few months, as all proceedings against juveniles must be completed in less than a year.

Table 4: Time spent in pre-trial detention (in %)

Year	up to 3 days	4-15 days	16-30 days	more than 1 month
1999	5.6	16.7	44.4	33.3
2000	9.1	13.6	9.1	68.2
2001	4.4	30.4	13.0	52.2
2002	15.4	15.4	15.4	53.8
2003	41.1	5.9	17.7	35.3
2004	15.4	23.0	23.1	38.5
2005	14.3	4.8	42.8	38.1

Source: Ministry of Justice of the Republic of Slovenia, 2007.

Any time spent in pre-trial detention is taken into account if the young offender is consequently sentenced to juvenile imprisonment. However, this time period is never taken into account if the juvenile panel imposes an institutional (residential) measure. In spite of the fact that the penalty of juvenile imprisonment can only be imposed on older juveniles, pre-trial detention can be used for both groups of juveniles - older (aged 16 and 17 years) and younger juveniles (aged 14 and 15 years).

Juveniles must be detained separately from adult prisoners. During detention, he or she must be provided with care, protection and all necessary assistance. Statistical data confirm the rarity of pre-trial detention being ordered. In 2004 for example, the police dealt with 1,912 juveniles, of whom only 13 were detained.[12] An amendment to the Code of Criminal Procedure in 1999 introduced alternatives to pre-trial detention which may also be imposed in proceedings against juveniles. These alternatives include: home detention; prohibition order with respect to certain locations or individuals; and reporting requirements (to the police station).

12 *Ministry of Justice*, Annual report 2001, Ljubljana 2002.

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

Slovenia has eight institutions for juveniles in need of care and support. They can be placed in an institution by the order of the social agency if, for example, parents cannot provide proper care for their child, if a child often runs away from home, or if he or she fails to attend school. Institutional placements can also be ordered by the court for committing a criminal offence. As can be seen in *Table 2*, the court rarely imposes the educational measure "commitment to a juvenile institution". Regardless of the reason for being sent to an institution, they are all dealt with in the same way. The criminal offence is viewed as a symptom of difficulties in a juvenile's personality, and behavioural troubles as other non-criminal personality or behaviour difficulties.

About 500 juveniles can be placed in these institutions and only 10% (or fewer) of them are juveniles who are there due to a court order. All institutions are organized as small communities (approximately six juveniles live in an apartment together with educators). In addition, there is one special institution for juvenile offenders exclusively – the juvenile re-educational institution with a capacity of 70 juveniles – who have committed serious offences and who need special help and supervision. The longest period for which a juvenile can be committed to such an institution is three years, regardless of whether it is an educational or a re-educational institution. After one year, the juvenile may be conditionally released, in which case the court may order the social services to supervise a young person during the parole period.

There is only one prison for juveniles in Slovenia. In fact, this is one organizational unit in a prison for adult offenders. Despite this, juveniles are separated from the adults and cannot be transferred to adult prisons. At the end of 2006, only four juveniles were in prison.

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

One of the first action-oriented research projects conducted by a group of researchers from the Institute of Criminology at the Faculty of Law in Ljubljana, was an experiment in a juvenile educational institution near Ljubljana carried out between 1967-1971.[13] The basic idea of the experiment was to prove that it was possible to treat juvenile offenders with much more permissiveness than existing methods. Group counselling was one of the methods introduced to prove the hypothesis, especially in terms of fostering more acceptable behaviour

13 See *Vodopivec* 1974.

patterns amongst both young offenders and institution personnel. The results after four years indicated that:

- The permissive approach to treatment allowed juveniles to behave more spontaneously. Whilst the number of escapes from the institution increased, the extent of crime committed during such escapes decreased and the majority of escaped juveniles returned without police intervention.
- Personal characteristics of the staff were more important than their formal education.
- Group counselling proved to be an efficient method of work in the institution.
- The social climate in the institution improved.[14]

Currently, the main characteristic of residential care is group counselling. All institutions for juveniles (educational institutions, re-educational institution, and juvenile prison) organise various educational programmes or try to integrate juveniles in educational programmes in the local schools of where the institution is situated.

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

At present, public debate is focused on the rising trend in adult criminality and the role of the police and courts. The general opinion is that imposed sanctions should be more severe – we are facing strong demands for a just-deserts approach to sentencing. The majority of politicians think that suspects have too many rights, and that this is the reason why the criminal procedure in its current form is not efficient enough. Judges are independent by law but their sentencing practice is strongly influenced by these public demands. As a result, in the last few years the imposed sanctions have tended to be longer.

These attitudes calling for greater punitiveness have so far not been heard in connection with juvenile offenders. The mass media in Slovenia do not pay too much attention to juvenile delinquency. However, during the past ten years, the media opened public debate on this topic with reporting on three (separate) cases involving violence. The first was the case of rape of a 12 year old girl in the late 1990s. The suspect was a 13 year old Roma boy, who denied any involvement. Because he was under the age of criminal responsibility, the court could not initiate any formal proceedings. According to Slovenian legislation those under 14 years of age at the time of committing an offence can only be dealt with by social welfare agencies, regardless of the seriousness of the offence committed. In this case, despite the absence of any firm evidence, the public, the media and

14 See *Petrovec/Meško* 2006, p. 356-364.

the police were all convinced of the boy's guilt – influenced by the strongly embedded stereotypes about Roma. As a result of this case, some demands for lowering the age for criminal responsibility (now 14 years of age) were made but never articulated in the amendments of the Criminal Code.

The second case was an incident in the late 1990s, where the police discovered that three juveniles had tortured and killed a number of cats, for fun. The story made it to the front pages of newspapers, and public opinion seemed to concur that juveniles were 'dangerous monsters' who deserved severe punishment. The juveniles were expelled from their school. The criminal proceedings took several years due to problems with the legality of evidence, during which time the media could not make comment because proceedings against juveniles are not public. After a few years the case seemed to be forgotten, and the media printed a short note that the state prosecutor dismissed the case after the juveniles had served their community service.

The third incident that gave rise to general concern about overly lenient sentencing policy occurred in the summer of 2003. The public were shocked when four juveniles and one adult tortured a man to death. The victim was a homeless man well known in the town where the murder was committed. People expressed their opinions as to what they would do to the juveniles, and called for stricter punishment than our system permits. The police organised a symposium on juvenile violence, but practically all participants agreed that the system of dealing with juvenile offenders did not need any changes and that it should remain educationally oriented.

Two reasons can be given for the fact that foreign experts on problems of juvenile crime as well as foreign examples have so far played a smaller role in Slovenia. First, juvenile crime has never been seen as a very serious problem and researchers in Slovenia have been well-informed about ways of dealing with this problem in Europe and North America since the end of the 1960s. They have tried to disseminate their information to practitioners and carried out research that has had an impact on the daily ways of dealing with juvenile offenders. Second, Slovenia has been able to avoid the very repressive ways of dealing with crime in general which was characteristic for other ex-socialist East-European countries. These attitudes are reflected in the ways of dealing with juveniles.

With the changing views in criminal policy in general, and with the law and order and just deserts attitudes having become stronger in Slovenia over the past decade, it has been felt that juvenile criminal law should no longer be part of the general criminal law. Rather, it should be dealt with by a special statute in a way similar to that of many European countries (e. g. Austria, Germany).[15] CC from 2008 accepted the idea of dealing with juvenile crime in a special statute – which so far has not been introduced. Until such a statute has been adopted, however, provisions from the Criminal Code from 1995 apply.

15 See *Šelih* 2000, p. 226-229.

14. Summary

The main tendency in dealing with juvenile offenders in the past 25 years has been oriented towards introducing new "alternative" measures and new possibilities for diverting a case from the judicial process. This orientation has certain important consequences:

- the power of the state prosecutor has increased (we are facing the danger of "net-widening" effects);
- diversion at the prosecution level is increasing;
- welfare agencies and other organisations dealing with juveniles are more involved in the juvenile justice system (some of them have the 'conflict role': to help and to control);
- personal responsibility of juvenile offenders is more emphasized (elements of a neo-liberal approach).

Despite these changes, the main characteristics of Slovenian juvenile justice are still the protection, help, education and re-education of juvenile offenders. Slovenia follows the "twin track" approach (adopted in many West-European countries); the majority of juvenile offenders are dealt with by non-judicial measures or are not dealt with at all, while the minority of those involved in more serious offending who need intensive help are handled by more formal and sometimes stricter forms of sanctioning. However, in the past twenty-five years imprisonment and committals to the educational institutions have only been used as a last resort, as opposed to many European countries that have changed their laws in a more punitive direction and where no strong public demands for introducing harsher penalties for juvenile delinquents have been made.

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Spain

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

1.1 History of the social control of juvenile delinquency

The control of juvenile delinquency is not a recent phenomenon. The first examples are to be found in Roman law. In Spain in the twelfth century the legal code known as the "*Partidas Alfonsinas*" established the principle of criminal liability for minors and specific legal solutions to prevent minors from prison sentences and to recommend sentencing for educational rather than punitive purposes. Nevertheless, it was not until 1899 that the first Juvenile Court in the world was established in Chicago.[1] Bearing in mind criminal theory, like any other, is strongly influenced by its social, cultural and economic context it is not surprising that the social control of young people at the time relied on the basic foundations and guidelines of positivism in the field of criminology which were also of importance in Spain. It was clearly reflected in the Juvenile Court that was set up in Bilbao on 8 May 1920.[2]

The traces of positivist and correctionalist ideology are clearly to be seen in the "*Ley de Bases*" law of 2 August 1918 and in the Articles of the Law dated 25 November of the same year. These would lead to the "*Texto Refundido de la Ley sobre Tribunales Tutelares de Menores*", a recast of the Law on Juvenile Courts of 11 June 1948 and the corresponding implementing rules. This law survived

1 *Giménez-Salinas* 1981, p. 15.

2 Barcelona Juvenile Court 1969. See *de la Cuesta* 1999, p. 102.

until 1992 and emphasized the non-repressive nature of Juvenile Courts, stating that they should teach, educate and reform in the interests of the minor's wellbeing. However, none of the guarantees of the criminal justice system were in place for minors.

In fact, the explanatory notes to the law, as amended on 6 February 1976, included a violation of the most basic legal principles of legal certainty; a legal vacuum, as the court did not make use of judges but rather of citizens "whose conduct was irreproachable"; a violation of procedural guarantees because of the lack of regulation; and a lack of strict legal application of sentencing rules.[3]

Although the tenuous legality of the Juvenile Courts was improved upon by some reforms, it was not until the 1978 Constitution was enacted that the underlying principles, rules of procedure and organisation of Juvenile Courts as per the 1948 law were taken to review. And it would have to wait until the Constitutional Law on the Power of the Judiciary was passed on 1 July 1985 for the first changes of any substance. The Law not only stipulated that there should be at least one Juvenile Court in each province (Article 96), but also that the Government should produce a Bill reforming legislation on juveniles within the year (first provision). However, no such bill was ever drafted.

Later, the plenary session of the Constitutional Court in ruling 36/1991 of 14 February declared Article 15 of the Law on Juvenile Courts, which sets out rules of procedure for such bodies, to be unconstitutional. The legal vacuum created by this declaration of unconstitutionality led to the Government submitting an emergency bill to parliament partially amending the Law. This led to Constitutional Law 4/1992 of 5 June. With the reform came an announcement that new legislation for minors would be brought in. Again, this never materialised.

Constitutional Law 4/1992 introduced the principle of the legal definition of crimes, limited the length of sentences, set jurisdiction over minors as being between the ages of 12 and 16 years (the age of criminal liability at the time) and brought the Public Prosecutions Service to centre stage. In addition to being responsible for upholding the rights of minors it was also to undertake the criminal investigation.[4] Under the old Penal Code and Law 4/1992, a minor under the age of 16 could not be charged. If they had committed a crime they

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3 Some studies on sentencing during these years showed that in many cases minors received tougher "punishments" than adults for conduct which was sometimes not even criminal in nature. Similarly, control over girls was much tighter than over boys. They were taken into custody far more frequently than boys despite the fact that much of the conduct being discouraged was related to morality of behaviour.

4 The constitutionality of Constitutional Law 4/1992, was the subject of an enquiry by the Plenary of the Constitutional Court in Ruling 60/1995, of 17 March, which dismissed the protest of unconstitutionality against it based on the potential attack on the independence of the judiciary in decisions that the juvenile judge might have to make during the preliminary investigation.

were referred to a Juvenile Court which could impose non-criminal sentences (Article 8.2.1).

Finally, the entry into force of the 1995 Penal Code brought about a radical change. Article 19 of the Criminal Code – approved in Constitutional Law 10/1995 of 23 February – stated that minors under 18 years of age would not be considered criminally liable under the Code but would be covered by the Law governing the criminal liability of minors. For its part, Article 69 established that young people between the ages of 18 and 21 might be covered by the provisions of the Law on Minors in certain cases and if the requirements set out therein were complied with.[5]

However, the new age limits did not come into force until the Law on criminal liability for minors was passed. This Law – Constitutional Law 5/2000 of 12 January – was brought in five years later and set the lower age limit at 14 and the upper limit at 18. In the Explanatory Memorandum, it states that Juvenile Criminal Law does not aim to intimidate the object of the rule, which implies that the legislators have opted for educational rather than repressive solutions. Similarly, Constitutional Law 5/2000 set out two age brackets, 14-16 and 16-18, indicating that not only is liability different according to the degree of development of the juvenile, but also that the response must be tailored to the offender's age.

So after a lengthy debate within the framework of criminological positivist theory, LO 5/2000 created a certain consensus around the idea that the two principles were not mutually exclusive. Nevertheless, there are those who claim today that juvenile law should not be a form of criminal law because, although it is surrounded by limits and guarantees, it is intrinsically repressive, which undermines its moral and political legitimacy. We must therefore ask ourselves whether it is necessary to apply it to children. Although these criticisms are not unfounded, they neglect the fact that juvenile criminal law does not apply to children under the age of 14 and, although the criminal justice system is not ideal, it does provide the best guarantees – let us remember the declaration of unconstitutionality in Article 15 of the old Law on Juvenile Courts. Juvenile criminal law was conceived as something different from adult criminal law, *sui generis*, and although formally it has been penal, in substance it was educational. It may therefore be said that it is the lesser evil amongst all available systems.

Nevertheless, once again the trend towards more repression is emerging as the latest reform (LO 8/2006) excluded the 18-21 age group from the juvenile justice system and therefore took the line of limiting the scope of juvenile legislation to minors between the ages of 14 and 18.[6]

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5 *Ornosa Fernández* 2005, p. 169.

6 See further *de la Cuesta/Blanco* 2007, p. 394.

1.2 New tendencies in the development of the juvenile justice system

In Spain, the idea of the Social Welfare State was born in the 1980s, at a time at which it was entering a period of crisis in Europe.[7] Up until then, closed off from the outside world by the dictatorship and more concerned with political change, policies for minors were largely forgotten. Even though in the 1970s the Juvenile Courts had lost their repressive rigour, they were as yet unable to offer a new model. The process of transformation in policies for minors and the juvenile justice system would not take place until the reform of the Law on Juvenile Courts and the enactment of Law 4/1992, which was the precursor of 5/2000.

However it should be borne in mind that the Law on Criminal Liability for Minors (*Ley de Responsabilidad Penal del Menor*) of 2000 which was, in principle, a good law, came 20 years too late.[8] Both the social structure of the country and young people as well as their behaviour no longer bore any relation to the legal situation. That is why the law is so difficult to apply today. To give just one example, Law 5/2000 targeted young people, who were relatively well-integrated, that is, born in the country and with certain social and family characteristics. At no time the situation of young immigrants, which is one of the major problems today, was considered.[9]

Yet, this mismatch between Law 5/2000 and contemporary Spanish society did not only apply at a practical level but also at a cultural and ideological one. Of course Spanish society does not exhibit the same social solidarity as it did 20 years ago. The *Ley General Penitenciaria* (General Law on Prisons), which was passed unanimously in the Senate, probably would not be passed in the current climate. The fact that the amendments that have been made to it and its implementing rules have always tended towards greater punishment and control is proof of this.

In this general ideological turnaround, four specific changes in the very concept of justice for minors can be discerned:

a) Greater distrust in the ideal of rehabilitation: In the mid-1980s the soaring crime rate, particularly in the United States and the United Kingdom, led to a questioning of the State's ability to control crime.[10]

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7 *Dünkel/Drenkhahn* 2003; *Dünkel* 2001; *Dünkel* 1996.

8 Consejo General del Poder Judicial 2000. See also *Nieto García* 2005; *Vázquez González* 2003, p. 297.

9 The situation in Spain today is certainly not comparable with that of other European countries (for example France), but the Spanish law is designed for young Spaniards who are familiar with the Spanish education system and not for young immigrants who are unable to benefit from existing educational facilities.

10 *Garland* 2005.

The idea that "nothing works" helped to spread the perception that the resocialisation model had failed, without considering that this failure was due to insufficient funds being devoted to rehabilitation to carry out the programmes.

b) The appearance of a new policy on crime: for juvenile law at the time there was a feeling that the so-called educational model had gone too far.[11] The culture of "fear of crime" spread without there necessarily being a real increase in crime rates. The image of the young person as inspiring "pity, compassion or tolerance" and needing help was to disappear, leading to growing demand for justice to be more repressive and efficient. There are, of course, other factors to be considered, such as the emergence of drug culture and unemployment, which had a major impact on young people[12] and, in recent years, the increasing numbers of immigrant minors who, without identity papers, unaccompanied and unable to stay in institutions for minors, tend to spread alarm in society and a creeping sense of impunity.

c) The victim: For a long time it was said, quite rightly, that the victim was the "Cinderella" of the criminal trial. As it was felt that the State already represented the victim, the victim was not directly involved in the criminal justice process. It was also in the seventies that the "discovery of the victim" occurred, that is to say, the need to return the victim to centre stage was claimed. On this issue, we should point to the work of *Antonio Beristain*. In books such as *Protagonismo de las víctimas de hoy y mañana* (The Key Role of the Victim, Now and in the Future) maintained that Victimology was a necessary tool for humanising criminal law. According to *Beristain*, the new *victimological* paradigm, which began to gain popularity in Spain after the First International Symposium on Victimology in 1973, deems it necessary to replace the fundamental principle underlying the democratic trial system *in dubio pro reo* with that of *in dubio pro victima.*[13]

d) The United States' populist punitive approach: The politicization of crime and its control has completely transformed the debate on crime in the US. They appear to have opted for a clear justification of their penal institutions. Old ideas, rather than accept that prison is a necessary evil[14] which should not be overused, have been replaced

11 *Giménez-Salinas i Colomer* 1999, p. 27.

12 *Rechea Alberola/Fernández Molina* 2001, p. 345.

13 *Beristain* 2004, p. 278; *Ríos* 2005. See also *de la Cuesta* 2001a, p. 175.

14 In this context, see writings on theory by: *García Valdés, de la Cuesta, Múñoz Conde, Quintero Olivares and Díaz Ripollés*.

with a view of prison as a sort of "magical solution" which at least puts the problem "on hold" for the time being. In Spain, figures on the rising prison population are worrying, although no less so than the rise in the perception of impunity towards punishment.

All of these ideas have gradually penetrated the Spanish psyche and have affected the juvenile justice system which, though calling itself essentially educational, has begun to introduce reforms that appear to be moving in the opposite direction.

1.3 Age groups

The law is unclear about the age at which a young person is responsible. As a result, from the age of 12, a child has the right to be heard in his/her parents' separation proceedings; at 14 he/she can be tried in a Juvenile Court if he/she has committed a crime; and at 16 he/she can get married if he/she has been legally emancipated. There is therefore no single criterion that determines the age at which a minor ceases to be a child in the eyes of the law.

The old Penal Code established that 16 was the absolute limit for penal responsibility. 16 year old minors that had committed a penal infringement were not considered responsible. They were sent to the juvenile court judges who were competent to impose non penal measures.

Nowadays the situation has changed. First of all, the limits have been raised and the jurisdiction of juveniles is only in charge of deeds and behaviours of people aged between 14 and 18 years.

Furthermore, the limit of the age of 18 cannot be considered as an absolute limit of penal responsibility because in the new system minors of 18 years can also be declared responsible if they commit one of the infractions categorized by the penal legislation. Minors under 14 years of age are not criminally responsible (Article 4).[15]

Thus, being a minor merely hinders the application of the Penal Code for adults, but not the declaration of penal responsibility. However, this declaration is only possible when the general rules for an exclusion of being charged because of a justification or excuse do not apply.

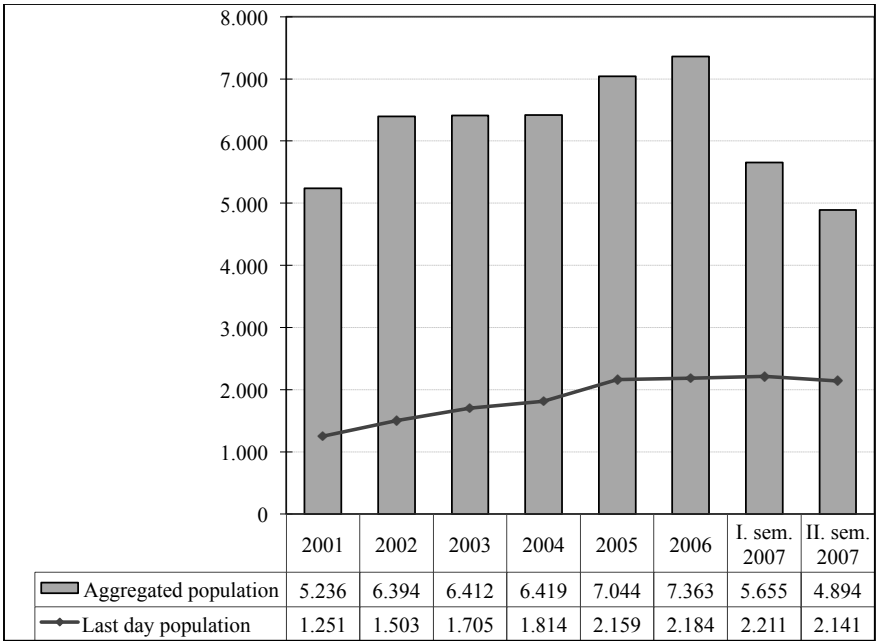
The LO 5/2000 established the possibility of extending this jurisdiction to young adults aged between 18 and 21 years (Article 4) under certain conditions. However, this precept never came into effect because of the successive reforms that postponed its application. Finally, the LO 8/2006 cancelled this possibility.

15 *Vázquez González/Serrano Tárraga* 2007, p. 333.

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

Throughout this report we shall be presenting some statistics drawn up by the Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya. These graphs and tables, which cover the period 2000 to 2007, cover the Autonomous Community of Catalonia which, like other autonomous regions in Spain, has exclusive jurisdiction in terms of juvenile justice and child protection. Catalonia is an Autonomous Community with a population of seven and a half million – Spain has a population of 44 million – and its own juvenile justice enforcement system. Although these graphs are not absolutely representative for all the Autonomous Communities, we have included them nonetheless because they are the most exhaustive source of information on this subject in Spain. In some cases we will offer more global information about the situation of juvenile justice in all of Spain.

Figure 1: Juveniles (14-18) in the juvenile justice system in Catalonia

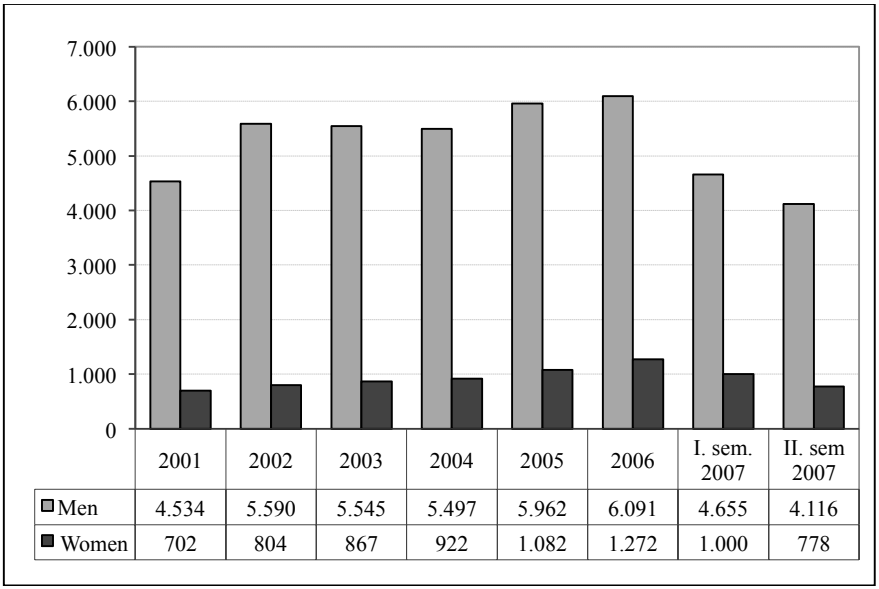


	2001	2002	2003	2004	2005	2006	I. sem. 2007	II. sem. 2007
Aggregated population	5.236	6.394	6.412	6.419	7.044	7.363	5.655	4.894
Last day population	1.251	1.503	1.705	1.814	2.159	2.184	2.211	2.141

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2007.

Figure 1 shows the number of minors who were dealt with by the juvenile justice system during these years. It does not show the juveniles who were sent to a detention institution, but rather those upon whom a juvenile justice measure was imposed. However, in *Table 5* below we shall see that the proportion of measures of detention was almost 14% of the total in 2005. This number is relatively low compared to the other Spanish Autonomous Communities. For instance, in Basque Country internment accounts for 20% of all issued measures, and in Valencia the figure is 35%. There are several reasons that explain this difference, but the most frequent is that there are no alternative measures to internment. The increase that is indicated in *Figure 1* is very important. However, we must consider that up until 2001 the age of criminal responsibility was 16, so part of the increase in 2002 is due to the inclusion of 14 and 15 years old juveniles.

Figure 2: Juveniles (14-18) in the juvenile justice system in Catalonia, by gender



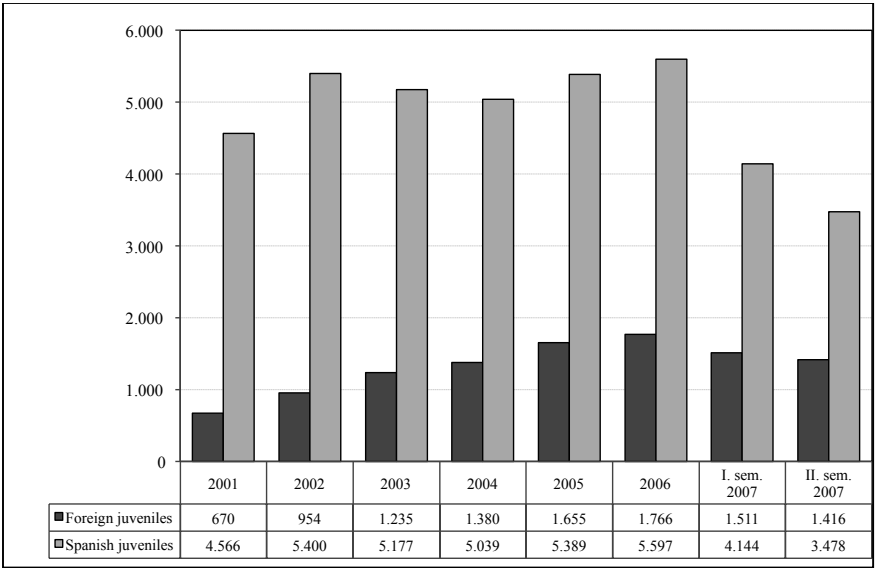
	2001	2002	2003	2004	2005	2006	I. sem. 2007	II. sem 2007
Men	4.534	5.590	5.545	5.497	5.962	6.091	4.655	4.116
Women	702	804	867	922	1.082	1.272	1.000	778

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2007.

With regard to gender, we find the classical distribution: a greater proportion of male offenders. However, young women in the juvenile justice system with a

proportion of 15% are overrepresented compared to the 7% of women who are 18 years and older in the adult justice system.[16]

Figure 3: Juveniles (14-18) in the juvenile justice system in Catalonia, by nationality



	2001	2002	2003	2004	2005	2006	I. sem. 2007	II. sem. 2007
Foreign juveniles	670	954	1.235	1.380	1.655	1.766	1.511	1.416
Spanish juveniles	4.566	5.400	5.177	5.039	5.389	5.597	4.144	3.478

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2007.

With regard to nationality, there has been a dramatic increase in the share of foreigners among all young persons dealt with through the juvenile justice system, rising from 9% in 2000 to 23% in 2006. However we must consider that the overall foreign population has seen an increase in Catalonia from 2.4% in 1998 to 9.1% in 2006, which somewhat puts the changes depicted in the graph above into perspective.

For the whole of Spain, the overall situation in the year 2006 can be presented as follows:

16 *Giménez-Salinas i Colomer* 1997, p. 267.

Table 1: Juveniles (14-18) in the juvenile justice system in Spain in 2006, by gender and age

Age	Total	Men	Women
Total	22,353	19,750	2,603
14	2,177	1,872	305
15	4,693	4,028	665
16	6,772	6,001	771
17	8,711	7,849	862

Source: National Institute of Statistics 2006.

In this table it can be seen that the most usual age of committing an offence among juveniles is 16 to 17 years. In Spain the proportion of women is 11.6%, which is slightly lower than the proportion in Catalonia.

Table 2: Offences committed by juveniles in Spain in 2006

Total	Abs.	%
	22,353	**100**
Homicide	48	0.2
Injuries	3,013	13.5
Against freedom	290	1.3
Against sexual freedom	205	0.9
Petty theft	2,468	11.0
Robbery	6,934	31.0
Robbery of vehicles	1,552	6.9
Fraud	60	0.3
Damages	1,053	4.7
Against public health	338	1.5
Against traffic safety	201	0.9
Counterfeiting	41	0.2
Obstruction of justice/resisting police	660	3.0
Other	3,128	14.0
More than one offence	2,245	10.0
Not recorded	112	0.5

Source: National Institute of Statistics 2006.

Regarding the types of youth offending we can see that the crimes against property have the highest percentage among all offence types. The number of homicides – which includes criminal negligence – is quite low because we are talking about a population of 44 million people, of whom only 2.5% are aged 16-18 years.[17]

3. The sanctions system

As far as the specific design of the measures is concerned, the new Law 5/2000 has broadened the scope of the sanctions by introducing new forms of detention, withdrawal of the minor's licence to drive a moped or a motorised vehicle, community service and walk-in services, as well as restricting the application of prison sentences. Article 7 sets out a list of measures according to the degree to which they restrict a minor's rights.

The first group of measures relates to detention (internment measures).[18] These include sentences to a closed prison, a low-security detention centre and an open prison (internment in open regime).[19] As the explanatory memorandum states, these measures reflect the greater threat posed by the minor and aim to offer appropriate educational conditions so that the minors can change the characteristics or deficiencies that are seen to have caused their antisocial behaviour. According to Article 9.3, the general maximum limit of these sentences is two years. This is divided into two periods (detention and probation), the content and length of which should be established by the judge, with assistance from the so-called technical team (*equipo técnico*).

However, Article 10 considers special cases. Thus, in extremely serious circumstances, which always involve repeat offenders, the measures can imply between one and 6 years of imprisonment, with no possibility of suspension or introduction of alternative measures before the first year of the sentence has been served, followed by a period of up to five years of probation with educational assistance (Article 10,1 II). Recently, a distinction has also been made in terms of age. Thus, over 16-year-olds, who have committed a serious offence or a less serious but violent offence, or who have posed a serious threat to the life or physical well-being of others, may receive sentences of up to 6 years (9.4), while those between 14 and 15 years of age, who have committed similar crimes cannot be given sentences exceeding three years.

It should, however, be pointed out that, in spite of the fact that LO 5/2000 intended to restrict the application of prison sentences, LO 7/2000 of 22

17 For a comparison see *Dünkel* 2006.

18 *Ortiz* 2005.

19 In Spain internment measures are served in a young offender's institution, not in a prison. However in the translation we have used both words.

December, which was motivated by the escalation of terrorist activities, introduced the concept of preventive detention, which not only lacks any educational purpose, but which had also never before been included in the juvenile justice system. Thus, LO 7/2000 introduced a special sentencing system for very serious offences and for terrorist acts, and was recently revised in 2006. As far as serious crimes are concerned, generally those which the Penal Code punishes with 15 or more years in prison (murder, homicide, rape, sexual assault) when committed by an adult, persons aged over 16 may be given a one to eight year closed prison sentence, followed by an additional period of up to five years of probation. In these cases, the sentence cannot be suspended, modified or substituted for any other measures until half of the prison term has been served. If these crimes have been committed by minors younger than 16, the closed prison sentence can range from one to five years, followed by a period of up to three years of probation (Article 10.2). As far as terrorism is concerned, the judge can impose a sentence of preventive detention of between 4 to 15 years, which will be implemented once the prison term has been served (Article 10.3).

All these criteria should also equally be applied if the minor is convicted of more than one offence. In the case of multiple offences, if one or more fits the descriptions mentioned above (very serious offences or terrorism), the maximum limit for a prison sentence in a closed prison can reach up to 6 years for under 16-years-olds and up to ten years for minors between 16 and 18 years of age (Article 11).

The general limits for sentences are defined in Articles 8 and 9.1. The first of these two Articles establishes the principles of prosecution, which prevent the judge from imposing a sentence that is more serious than the one proposed by the public prosecutor or stipulated in the Penal Code for an adult, who has committed the same offence (Article 8). The second Article establishes that a single offence deserves only a caution, a restraining order or withdrawal of the licence to hunt, bear arms, or drive a vehicle, a maximum of 6 months probation or fifty hours of community service.

As has already been stated, other modes of detention include detention in a low-security or open prison or in a therapeutic clinic ("therapeutic treatment" in *Table 4*), and involve spending weekends in an open centre or at home ("internment combined with supervised release" in *Table 4*), with attendance at a centre during the day being considered more lenient ("attending a day institution" in *Table 4*). This measure, which is a combined measure, was already included in law 4/92 under the title "brief detention period of one to three weekends".[20] It has rarely been applied, and is questioned by the judiciary due to its negligible educational value.

20 *Aguirre Zamorano* 2001, p. 81; *de la Cuesta* 2004, p. 169; *de la Cuesta/Blanco Cordero* 2007, p. 410; *Vázquez González/Serrano Tárraga* 2007, p. 439.

The second group of measures consists of low-security measures, in order of greater or lesser rigour, according to the extent to which they limit the minor's rights. This group includes probation, which was already included in law 4/92. The so called Child Protection Officer [Delegado de Asistencia al Menor] was created to achieve the aims of the law. The main task of such officers was to make sure the terms of probation were met.[21] The officer's role, however, was not so much to monitor the minor as to provide educational support, as he was conceived as a bridge between the minor, his family and his social environment. It is true that probation now plays an important role in practice.[22] According to *Pio Aguirre*, it is called the "best sentence in the juvenile justice system" as it avoids uprooting the minor from his family and social surroundings.

Although the main objective of the measure involves the minor, intervention in the family and social environment of the minor is also necessary and, for this purpose, it is sometimes convenient to use teams and services in the neighbourhood. In all of these, although probation may be implemented by a team comprising a number of people (teachers, psychologists, social workers, etc) it is convenient for the case to be nominally assigned to only one of these professionals. In this way, one physical person is in charge of monitoring the minor and reporting to the judge on him by means of regular reports.[23]

Another important measure is community service ("social contribution" and "socio-educational tasks" in *Table 4*), which has also been incorporated into the general Penal Code. Not only is the minor's consent necessary but, in addition to this, community service should not interfere with his/her school or work schedule, it should take place at a location close to his/her home and, if possible, be directly or indirectly related to the crime committed. In line with these guidelines it would therefore be recommended, for example, for minors who have driven under the influence of alcohol to work in hospitals and for those who have vandalised property to rebuild schools, churches, and so on.

The third group of sentences is entirely different. They do not need monitoring and include measures such as a caution or withdrawal of a driving licence or the right to obtain one.

As far as the choice of appropriate measures is concerned, LO 5/2000 established a model which has been widely welcomed by the judicial system. It allows a greater degree of flexibility than in adult trials and the juvenile court judge can pay particular attention to the information provided to him/her by the technical team, concerning the age of the minor and his/her personal, family and social situation. In addition to this, information provided by the public services responsible for child protection and reform is also taken into account. It should

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21 *De la Cuesta/Giménez-Salinas i Colomer* 1997, p. 549.

22 *Giménez-Salinas i Colomer* 1988, p. 173.

23 *Aguirre Zamorano* 2001, p. 81; *San Martín Larrinoa* 2005; *García Pérez* 2005.

be pointed out that, apart from the exceptions mentioned above (very serious crimes and terrorism), attention is primarily paid to special prevention criteria, although, in general, redress and prevention continue to play a fundamental role. It is also possible to include more than one measure in a juvenile court judgement if that is in the interests of the minor.

José Luis de la Cuesta estimates that the new Constitutional Law has not ceased to be concerned by the sentences imposed by juvenile court judges. It is a fact that the Law does not create a full catalogue or a gradual list of measures. It does nonetheless propose a flexible framework for sentencing, taking into account not only the deeds committed by the minor, but their personality, situation and needs, as well as their social and family environment.

The measures imposed are generally educational and are basically characterised by the fact that a prison sentence is only used when there are no other appropriate solutions available, and only when the minor has committed a serious offence or has re-offended. Another characteristic of the new law is a two-year limit on a sentence, excluding additional reprimands and weekends. In any case, as has already been indicated above, the principle of flexibility can be clearly seen in the fact that the measures can be applied simultaneously or that other measures can be introduced throughout the term of the sentence.[24]

4. Juvenile criminal procedure[25]

The procedural regulations established by LO 5/2000 pursue the course set by LO 4/1992, although the new law is much more specific (Articles 16-42). One of the main aims of this legislation is to fully guarantee the fundamental right to a fair trial that is recognised for adults (presumption of innocence, the right to counsel, the right to appeal) and which had not existed when the Juvenile Courts were established in 1948. Many of the features of the new trial procedure, which we will examine later on in more detail, have precisely this aim in mind.

The main feature of the new trial procedure is that all of the bodies involved need to be specialised (the judge, the public prosecutor, the lawyer and the technical team (*equipo técnico*).

In principle, a specialised magistrate should preside over the trial, namely the juvenile court judge from the area where the offences were committed (Article 2.3). It would certainly have been better to give preference to the area where the minor lived because, as *López Caballero* points out, the body charged with adopting the most appropriate measures should be close to where the young person was brought up, so that it can take the family environment into account,

24 *Aguirre Zamorano* 1996, p. 191.

25 This subject is well discussed in *Ornosa Fernández* 2005, p. 246. See also *Sánchez* 2000.

as well as the social and cultural aspects of the minor's everyday life. However, if offences have been committed in a number of locations, the young person's place of residence is taken into consideration when selecting the competent judge (Article 20.3).

As has been suggested at various points throughout this article, the escalation of terrorist activities during the last decade has become the catalyst for important changes to criminal law, which has also affected legislation pertaining to minors. Thus, LO 7/2000, which was adopted before LO 5/2000 came into force, stipulated that terrorism trials would fall under the jurisdiction of the central juvenile court judge of the National Criminal Court, Madrid (Article 2.4). LO 8/2006 has reinforced this approach.

In any case, and in line with the ideas examined above, Article 25 of LO 5/2000, which excluded the victim from being a leading player in the trial, was reversed by Article 25 of LO 15/2003. This Article allowed the victim to make specific accusations during the trial, to put forward evidence except any related to the minor's mental state or background, or to play a part in determining the measures resulting from the trial. On the other hand, the new wording of Article 4, introduced in LO 8/2006, acknowledges the fundamental rights of the victim, namely the right to assistance, participation in the proceedings with names given and the right to be informed of events and the main decisions taken concerning the minor, etc.

Another significant characteristic of a Juvenile Court is the adherence to the adversary principle (Article 8), which prohibits the juvenile court judge from ordering a sentence that excessively restricts the rights of the minor, or the duration of which is longer than requested by the public prosecutor or the prosecuting party. It is also worth noting that the decision-making process is lax and that decisions can be reviewed or suspended at any point. There is also a tendency to opt for a "diversion" programme or alternative measures, and an insistence on the principle of speedy procedures, which follows the principle of minimum intervention and which in turn, although the Penal Code governs everything, is largely ignored.

As far as the trial itself if concerned, it should be stressed that this is made up of a declaratory and an executive procedure. The declaratory procedure is then divided into two stages, namely that of an investigation or a preliminary inquiry, and the proceedings or the hearing. Between these two stages there is also an intermediate phase. The case is presented before a judge who, if the parties do not reach an agreement (Article 32), decides whether the case should be passed on to a court hearing (Article 33), having read the case files and listened to the lawyer representing the minor.

The court's investigation takes place under the direction of the Public Prosecutor's Office, in order to guarantee the principle of judicial independence. Of course, the significance and complex role played by the public prosecutor is one of the main features of the whole trial procedure. Indeed it is not the juvenile court

judge that is the competent body in charge of the proceedings (Article 16) or which closes them once the investigation has been completed (Article 30.1), but rather the Public Prosecution Service. Moreover, the public prosecutor leads the investigation, manages the inquiry of the judicial police and decides on the practical methods used in all investigative activities requested by the lawyer representing the minor or the affected party. However, only the judge can adopt a decision to restrict the basic rights of the minor (Articles 23.3 and 26.3).

Once the juvenile court judge has allowed a hearing, he/she is the one who presides over the proceedings. He/she will do this with more freedom than in adult criminal proceedings, and without the presence of gowns, a dock or restrictions relating to public exposure. The evidence will be presented during this stage, as will the proposals of the parties and the technical team and a statement made by the minor. Once the hearing is over, the judge is obliged to publish the verdict within five days (Article 38), setting out the contents, the duration and the objectives of the sentence (Article 39.2) in a manner that is reasoned and comprehensible to the minor. It should be pointed out, however, that the decision of the judge, whether the verdict be guilty or not guilty, is not described as a verdict but a "judgement" (*resolución*), and can be appealed at the Provincial Court within five days (in terrorist cases, the appeal can also take place at the National Criminal Court).

The sentence can be appealed before the Provincial Audience (in cases of terrorism, before the National Audience) within five days. An appeal to the Supreme Court is possible with regards to pure questions of interpreting the law in order to maintain or establish a common doctrine. The right to appeal concerning any disciplinary decision is regulated by Article 60.7.

The executive procedure, the details of which will be examined in the following sections, is governed by Articles 43-60. The main characteristic of the new system is the coordination with the social services responsible for child protection in the Autonomous Communities, which are also considered to be responsible for applying the measures that the justice system issues.

As has been mentioned, the Spanish juvenile system violated the right to a fair trial in certain ways. The legislator thought that the best way of guaranteeing the respect of procedural rights was to demand that all the bodies involved in the process be specialised. This in turn should be guaranteed by the various competent government authorities, which are obliged to organise training courses. Even so, the provision of these courses is not the only relevant criterion when it comes to assessing specialisation. There are other criteria, such as experience of professional work with children or publications and scientific research on the subject.

The fourth Final Provision of LO 5/2000 requires juvenile court judges to be specialised, and delegates responsibility for organising specialised courses to the

College of Judges.[26] This requirement is reinforced in LO 9/2000 by Article 329.3, which regulates the appointment of staff. This same provision requires the Ministry of Justice to set up specialised juvenile departments throughout the Public Prosecution Service. As early as January 1995, the Public Prosecutor's Office in the Supreme Court established a public prosecutor specialising in juvenile matters in order to ensure coordination and unity in terms of the criteria applied in the various Public Prosecutor's Offices in the juvenile justice system. In order to become aware of the significance of all these reforms, it is enough to remember the extremely important role that the public prosecutor plays at all stages of any criminal proceedings involving minors. Finally, the abovementioned provision requires lawyers and legal experts to be specialised, and delegates the responsibility for providing suitable courses to the General Council of the Spanish Bar. Meanwhile, the third Final Provision of LO 5/2000 stipulates the need for the judiciary police to reinforce the specialised groups dealing with minors, whose activities are defined more specifically in Royal Decree 1774/2004. In any case, these groups always answer to the public prosecutor (Articles 2 and 3), since their main objective is to provide him/her with the necessary support.

One of the main features of LO 5/2000 is that it permits and requires staff to take part in the trial, who are not part of the justice system, as in the case of the various members of the technical team or the social services representatives responsible for child protection and juvenile reform programmes. A number of Articles regulate the different modes of participation: in the hearing (Articles 35, 41 and 42.7), in relation to the adoption of precautionary measures (Article 28.1 and 2), in the choice and modification of the measures (Article 13), in terms of the enforcement of the sentence (Articles 43-60) and in the decision to suspend the enforcement of the sentence (Article 40).[27] However, before LO 5/2000 came into force, LO 9/2000 removed the initial content of the third Final Provision, which required the appointment of forensic psychologists, educators and social workers who are specialised in juvenile cases. Without necessarily having to appoint specialised staff, the public prosecutor can suggest that representatives from public and private institutions become involved in the trial, as they can provide important information at the time of selecting the measures that are most in line with the overriding interests of the minor in question (Article 30.3).[28]

26 In 1995 these requirements already featured in law LOPJ.

27 *De la Cuesta* 2001b, p. 225.

28 See also *Vázquez González/Serrano Tárraga* 2007, p. 333 and p. 349.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency: Principle of opportunity and mediation

The Law on Minors embodies the principles of restorative justice. That is why it recommends, wherever possible, conciliation with the victim or, where that fails, a compromise based on the principle of redress. This approach, which is in line with the overriding interests of the minor and the principle of minimum intervention, does not only offer various ways to avoid formal trials but also affects the way of executing sentences. Thus, so called "diversion" programmes or extrajudicial solutions are chosen by applying the principle of opportunity.[29]

In this way, if the crimes committed are minor offences or petty crimes not involving violence or intimidation, and if there is no evidence of the defendant having reoffended, the public prosecutor could decide not to reopen proceedings (Article 18), or to close an already existing case (Article 19) moving on to settlement (Articles 32.1 and 36) and passing on all information to the competent authorities responsible for issues relating to child protection.[30] This happens in nearly 40% of the cases. The technical team can also suggest the dismissal of the case (Article 19.1) if it considers this to be in the interest of the minor and if the minor's experiences are thought to have constituted sufficient punishment (Article 27.4).

Clearly, the principle of opportunity is to be found in what has been called a criminal law "sui generis". However, all these solutions do not go far enough towards rehabilitating the minor. Indeed, if an out-of-court settlement is possible, then it is best to avoid the criminal justice system from the outset.

The technical team, comprising at least one psychologist, a social worker and an educator, does not only assist in informing the public prosecutor and the judge about the minor's psychological, educational, family and social condition, but also plays the role of mediator between the minor and the victim (Article 19.3 LO 5/2005, Article 4.1 II of Royal Decree RD 1774/2004). The mediation work of the technical team consists of exploring the possibilities for reconciliation or redress. There is an initial meeting with the minor to see whether he/she acknowledges his/her responsibility and promises to redress the damage done in the manner proposed by the technical team. There is then a second meeting with the victims, which explores whether they would be prepared to take part in the mediation or redress process, and then a final meeting, either in the presence or

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29 *Rössner* 1999, p. 305; *Giménez-Salinas i Colomer* 1999b, p. 15; 1999c, p. 31; 1999d, p. 69; 1999e, p. 115.

30 *Giménez-Salinas i Colomer* 2003, p. 5; 2004a, p. 479; 1999, p 15; *López Barja de Quiroga* 1999, p. 109. See also *Vázquez González/Serrano Tárraga* 2007, p. 365; *Rössner* 1998, p 308.

absence of both parties, which is aimed at revising the specific aspects pertaining to the issue of redress or the conciliation agreement. Another important role of the technical team is to keep the public prosecutor informed of undertakings reached, as well as the extent to which they have been implemented or reasons for their possible failure (Article 27.3 LO 5/2000).

If conciliation measures or redress are not viable options, the technical team may suggest the alternative of community service to the minor, which could be as valuable as conciliation or redress if the public prosecutor asks the judge to dismiss the case.

Even once the sentence has been issued, a range of possibilities remain. It can be suspended for two years (Article 40) or modified. Alternative measures (Articles 15 and 41) can be proposed and the involvement of the court can even end. Thus, conciliation or redress could lead to the suspension of a sentence if the judge deems that their sum total and the sentence period served have been punishment enough.

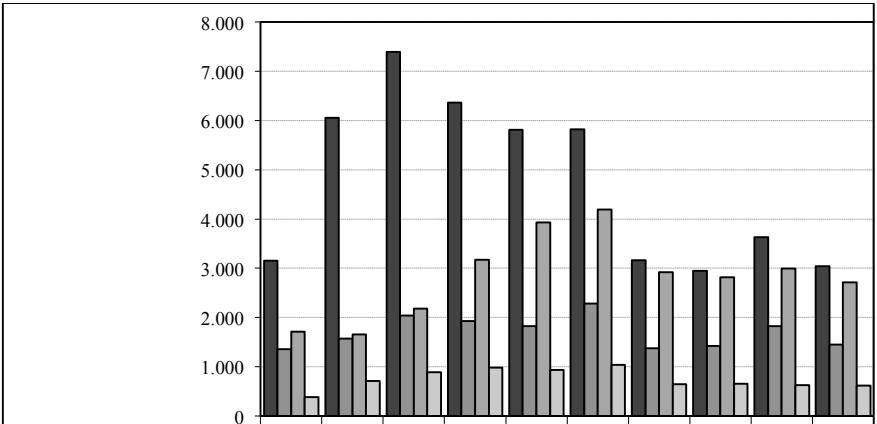
In spite of the important role played by the technical team in the entire trial, only the public prosecutor can close the proceedings and suggest to the judge that the case be dismissed if the technical team submits positive reports. It should be pointed out that LO 5/2000 does not sufficiently regulate the mediation process, as it only passes the file on to reconciliation or redress (Article 19), bearing in mind the important role that this plays in the proceedings.

There has been considerable debate as to whether the importance ascribed to the participation of the victim in these cases supposes a privatisation of conflict resolution and whether the application of the principle of opportunity is more risky than it is beneficial. However, Article 19 of LO 5/2000 mitigates these dangers by requiring the intervention of different bodies and defines both the procedure relating to conciliation or redress and the elements which should be borne in mind in order to understand them. It thus seems that, with the right control measures in place, it is not only a successful and brave gamble but, in addition to this, seems commendable even in terms of adult criminal justice.[31]

The practice of diversion with regards to acquittals, warnings etc. is contained in *Table 3* in *Section 6* below. A special form of diversion has been developed by introducing mediation programmes. Numbers of cases of mediation and their outcome are described by the following *Figures 4-6*.

31 Proposal for reform of the justice system based on the White Paper on Justice and the proposals put forward by the court administrative authorities. Adopted in an extraordinary plenary sitting on the 18th and 19th of July, 2000. See also *Peters/Robert* 2003, p. 162; *Peters* 1999; *Peters/Aertsen* 1995, p. 136; *Dünkel* 1990, p. 136.

Figure 4: Informal orders and measures against juvenile offenders in Catalonia



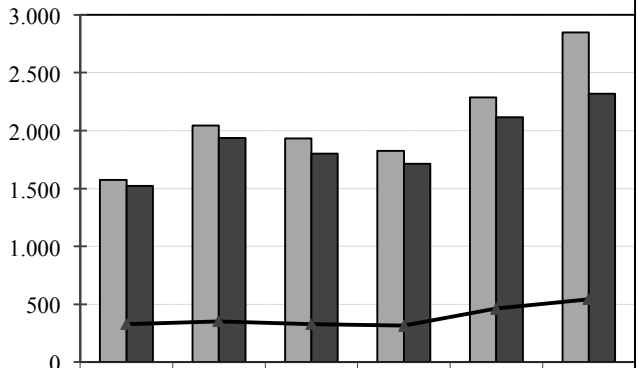
	2000	2001	2002	2003	2004	2005	I. sem 2006	II. sem 2006	I. sem. 2007	II. sem. 2007
Technical assistance	3.150	6.055	7.394	6.367	5.812	5.825	3.167	2.946	3.634	3.045
Mediation	1.359	1.574	2.042	1.931	1.824	2.285	1.377	1.421	1.823	1.448
Non internment measures	1.713	1.658	2.182	3.172	3.931	4.195	2.919	2.817	2.998	2.713
Internment in CE	383	710	889	979	940	1.038	649	654	626	615

In %*	2000	2001	2002	2003	2004	2005	I. sem. 2006	II. sem. 2006	I. sem. 2007	II. sem. 2007
Technical assistance	58.1	81.3	95.4	83.7	71.7	43.7	39.0	37.6	40.0	38.9
Mediation	25.1	21.1	26.4	25.4	22.5	17.1	17.0	18.1	20.1	18.5
Non-internment measures	31.6	22.3	28.2	41.7	48.5	31.4	36.0	35.9	33.0	35.0
Internm. in CE	7.1	9.5	11.5	12.9	11.6	7.8	8.00	8.3	6.9	7.7

* Percentages add up to more than 100% because in some cases several programmes overlap.

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2006.

Figure 5: Mediation programmes in the juvenile justice system in Catalonia

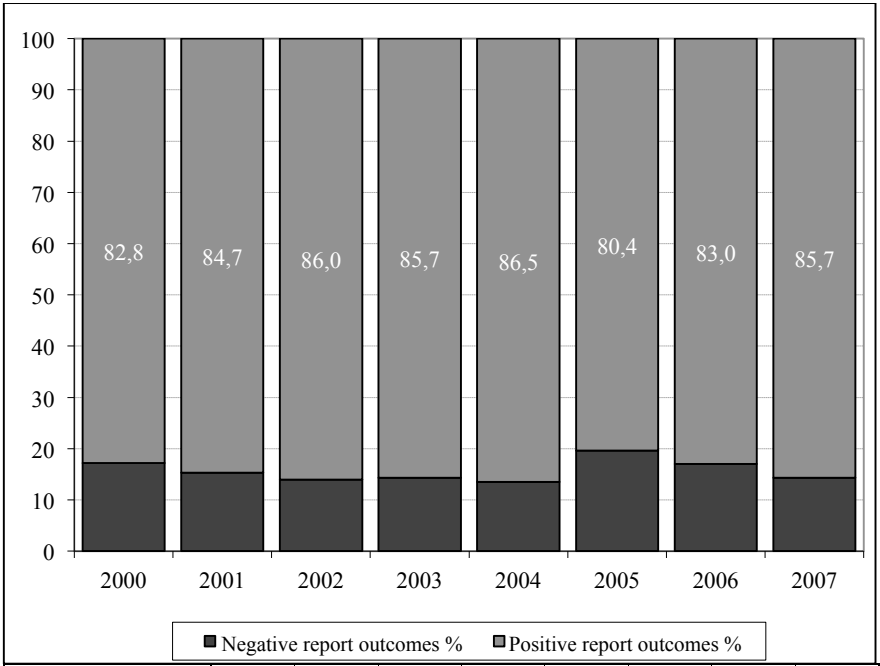


	2001	2002	2003	2004	2005	2006
Annual programmes	1.574	2.042	1.931	1.824	2.286	2.847
Annual number of people attended	1.521	1.934	1.800	1.715	2.116	2.319
People in mediation 31.12.	326	352	329	315	461	543

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2006. The number of annual programmes is higher than the annual number of people attending them because one person can be on more than one programme. According to a report of the Consejo General del Poder Judicial (CGPJ), mediation is hardly ever applied in the rest of the Autonomous Communities of Spain.

The following *Figure 6* shows that the number of mediation programmes has increased. We also see that its level of success – where a settlement between victim and offender is achieved – is very high (85%).

Figure 6: Mediation programmes concluded and their outcomes in Catalonia



	2000	2001	2002	2003	2004	2005	2006	2007
Mediation concluded	**1,122**	**1,232**	**1,676**	**1,560**	**1,478**	**1,801**	**1,917**	**2,299**
Positive report outcomes %	82.8	84.7	86.0	85.7	86.5	80.4	83.0	85.7
Negative report outcomes %	17.2	15.3	14.0	14.3	13.5	19.6	17.0	14.3

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2007.

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

Concerning the application of court dispositions, most data presented relate to the Autonomous Community of Catalonia for the years between 2001 and 2005. In 2005, in 45% of all cases the court or public prosecutor decided for acquittals, warnings or stay of proceedings (see *Table 3*). In 41% of all cases community

sanctions were applied. Under these, probation is the most important sanction (about half of all community sanctions, see *Table 3*). From particular interest is furthermore the imposition of community service: In 2005 community service was imposed in 12% of all court dispositions in Catalonia.

In 14% of all cases the court decided for custodial sanctions in 2005 in Catalonia (see *Table 4* under *Section 11 below*). The numbers rose considerably (from 7% in 2001). In the rest of *Spain*, the proportion of custodial sanctions is much higher (27% in 2006 for the whole of *Spain* with many differences between the Autonomous Communities. More than half of the young prisoners are placed in an open regime (see *Table 5* under *Section 11 below*).

Table 3: Informal and formal decisions in Catalonia

	2001		2002		2003		2004		2005	
	N	%	N	%	N	%	N	%	N	%
Acquittal, warning or stay of proceedings	2,708	66.1	3,788	52.5	3,839	48.1	3,328	43.4	3,553	45.4
Measures of internment	273	6.7	749	10.4	894	11.2	908	11.9	1,09	13.9
Measures in open regime (non-intern-ment)	1,117	27.3*	2,682	37.2	3,242	40.7	3,426	44.7	3,183	40.7
Thereof:										
Attending a day institu-tion	---	0.0*	3	0.04	8	0.1	25	0.3	30	0.4
Foster care	---	0.0	---	00	2	0.03	8	1.1	4	0.05
Probation	660	16.1	1,451	20.1	1,613	20.2	1,705	22.3	1,573	20.1
Probation with directives	21	0.5	94	1.3	119	1.5	148	1.9	152	1.9
Weekend internment (open inst.)	8	0.2	97	1.3	89	1.1	170	2.2	205	2.6
Weekend in residence	2	0.1	67	0.9	118	1.5	53	0.7	92	1.2
Socio-educa-tional tasks	3	0.1	75	1.0	126	1.6	213	2.8	167	2.1

	2001		2002		2003		2004		2005	
	N	%	N	%	N	%	N	%	N	%
Social contribution or community work	401	9.8	853	11.8	1,116	14.0	1,061	13.9	935	12.0
Therapeutic treatment	22	0.5	42	0.6	51	0.6	43	0.6	25	0.3
Total	**4,098**	**100**	**7,219**	**100**	**7,975**	**100**	**7,662**	**100**	**7,821**	**100**

* The percentages in the first line ("measures in open regime") are related to 100% of the total of the measures imposed (see *Table 3*). The rest of the lines are the kinds of "measures in open regime" and its percentages add up to the percentage written in the first line.

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2006.

7. Regional patterns and differences in sentencing young offenders

Spain is a country composed of 17 Autonomous Regions (Comunidades Autónomas) that possess a high level of self government. Thus, there are some fields that are in the scope of the State, fields that are in the scope of the Autonomous Regions and fields shared by both kinds of powers. Although the Judiciary is a field exclusively reserved to the State, the execution of judiciary or assistance measures for minors (previously termed "protection and tutelage of minors", *protección y tutela de menores*) is a field that falls within the scope of the Autonomous Regions.

The Autonomous Region of Catalonia will be the first to have all the powers relating to the protection and tutelage of minors transferred to it. These powers currently already include aspects of the execution of judicial measures as well as educational and assistance measures.

Thus, Article 9.28 of the Statute of Autonomy of Catalonia, observing the penal and penitentiary legislation, will produce a new model of juvenile justice that will involve great change in the execution of measures. From 1985 onwards, the transfer of those ambits will be extended to the rest of the Autonomous Regions of Spain.

We can distinguish three groups of Autonomous Regions with regards to their respective Statutes of Autonomy concerning the subject of the Protection of Minors.

The Autonomous Regions that form the first group (La Rioja, Cantabria, Asturias, Murcia, Aragón, Castilla la Mancha, Extremadura, Madrid, Castilla-y-León and Galicia) make no specific mention of the subject of the Public

Institutions of Protection and Tutelage of Minors. They use the general terms of assistance, welfare and social services. Therefore the ambit of Protection and Tutelage of Minors is included into the global policy of assistance and social welfare. The Autonomous Regions that form the second group (Comunidad Valenciana or Castilla La Mancha) deal with this subject using a broad and generic approach, mixed with other concepts. Finally, the third group of Autonomous Regions (Catalonia, Andalucía and País Vasco) treat this subject with a more specific approach, using the term of Public Institutions for the Protection and Tutelage of Minors.

Nowadays, twenty years later, the different Autonomous Regions have created different models for the execution of the judicial measures. For instance, while in Catalonia the measure of internment is the last resort, in Valencia and Andalucía this measure is used much more frequently. Moreover, the mediation model has been remarkably developed in Pais Vasco and Catalonia, while its development has been very uneven in the rest of the Autonomous Regions.

The decentralization of competences has allowed the development of different policies in the different Autonomous Regions. Some of them have a model that is unified with the welfare services, while others have chosen more specialized services. Recent years have seen a remarkable increase in the application of supervised release programmes (*libertad vigilada*) replacing the previously extensive and widespread use of reprimands (*amonestación*).

8. Young adults

To be above the age of 18 does not end the implementation of an imposed measure or sentence. Rather, the implementation of a sanction continues until it has been successfully completed or until the temporal limit imposed by the judge has been served. However, prison sentences imposed on people aged 21 (or which are in the process of being executed when they reach that age) will be served in penitentiary institutions for adults. The same rule will be applied if a juvenile reaches the age of 18 while in a closed institution and his/her behaviour is not in line with the rules of this institution, or if before the beginning the enforcement he/she has fully or partially served one condemnation of imprisonment or a measure of internment executed in a penitentiary establishment (Article 14).

Under the old Penal Code and Law 4/1992, a minor under the age of 16 could not be charged. If they had committed a crime they were referred to a Juvenile Court which, as we have seen, could impose non-criminal sentences (Article 8.2.1). However, the entry into force of the 1995 Penal Code brought about a radical change. Article 19 ruled that those under the age of 18 could not be dealt with under the Penal Code for adults. This new criterion for bringing minors

to trial from which they had been completely exempt before was understood by *Octavio García Pérez* as being one of "reduced criminal liability".[32]

The possibility was also given to extend the scope of Constitutional Law 5/2000 to young adults aged between 18 and 21. The requirements for this to happen are set out in Article 4 and are: a) that an offence or a minor crime has been committed without violence or intimidation, nor serious risk to the lives or safety of other persons, b) that it is not a repeat offence, and c) that personal circumstances or a degree of immaturity exist that deem resorting to the Law on Criminal Liability for Minors more advisable. In the opinion of *Octavio García Pérez*, the focus should have been exclusively on the minor's personal circumstances or the degree of maturity, as is the case in German juvenile law (§ 105 German JGG), since the seriousness of the offence and its repeat nature do not help in determining whether or not the young adult is different from a minor.

The degree of maturity is certainly a very difficult feature to establish precisely and, in the process, attention should not be focussed exclusively on psychological factors, but also on social ones. German law on juvenile crime places the degree of maturity of the young adult below the fact that, in terms of his or her moral and intellectual development at the time when the crime was committed, they are still comparable to a minor. Authors such as *Eisenberg* consider that the crime and the circumstances attending to it contribute important information. Therefore, sexual attacks, drug addiction and group crime are signs of immaturity.

Here the 1954 "Marburg Guidelines" are important. Approved in Marburg at the Congress of the German Association of Juvenile Psychiatry, they state that criteria and benchmarks for deciding the degree of maturity are, amongst others, a realistic outlook on life, independence from parents, independence from peers, a serious attitude towards work, external appearance, realistic coping with daily life, the age of friends, the capacity to form relationships, the inclusion of love and sex and a state of mind which is consistent and predictable.

There is however no consensus on these criteria – so much so that it has been claimed that, were the criteria to be applied with the slightest rigour, many adults would be subject to juvenile law. Whilst waiting for greater consensus, the reports of the technical team are crucial and may be viewed as an expert opinion. Nevertheless, the conclusions of these reports are not binding for the investigating judge who has other factors to take into consideration (see *Section 8* of the German report in this volume).

However, under provision – the new age limit did not come into force until the Law on criminal liability of minors had been passed. This Law – Constitutional Law 5/2000 of 12 January – was brought in five years later and set the lower age limit at 14 and the upper limit at 18. In the Explanatory Memorandum, it states that juvenile criminal law does not aim to intimidate the

32 *García Pérez* 2000, p. 50; *Rössner* 1999, p. 320.

object of the rule, which implies that the legislators have opted for educational rather than repressive solutions. Similarly, Constitutional Law 5/2000 set out two age brackets, 14-16 and 16-18, indicating that not only is liability different according to the degree of development of the juvenile, but also that the response must be tailored to the young offender's age. However, as stated above, the LO 8/2006 of 14 December abolished the possibility for young adult offenders to be sentenced to juvenile sanctions.

9. Transfer of juveniles to the adult court

Spanish law does not provide the possibility to transfer juveniles under the age of 18 to adult courts. However, the recent Law 6/2008 introduced an important change through its Article 14, which states that in cases of closed internment measures, if a juvenile turns 18 before having served the measure, the juvenile court judge, after having consulted the Attorney General, the lawyer of the juvenile, the technical team and the public entity of juvenile protection, can order in a motivated court order that the sentence be executed in a correctional facility according to the general regime as planned in the General Organic Penitentiary Law if the conduct of the inmate does not correspond to the aims proposed in the sentence.

However, when closed internment measures are imposed on a person older than 21 years, or are imposed but not completed before that age, the juvenile court judge, after having consulted the Attorney General, the lawyer of the juvenile, the technical team and the public entity of juvenile protection, will order its execution in a correctional facility according to the general regime unless, exceptionally, he/she considers that the offender should remain in the original centre.

In short, this implies that in the field of internment enforcement, the possibility has been introduced for juveniles who have turned 18 to serve measures in ordinary correctional facilities. As a result, although juveniles cannot be judged as adults, once they have reached 18 years of age, they can be transferred to the ordinary penitentiary regime.

10. Preliminary residential care and pre-trial detention

The enforcement of detention measures and temporary custody should take place in special establishments where the minor receives individual protection and assistance at every stage (Article 17 LO 5/2000, Article 3 of Royal Decree 1774/2004). In addition to this, the police should immediately inform the public prosecutor and the minor's legal representative (who are the consular authorities if the minor is not legally resident in Spain) of the fact that he/she has been detained as well as the location of the detention centre. Within 24 hours of the minor's detention, the police should either release him/her or hand him/her over

to the public prosecutor. The juvenile should then be released within 48 hours or handed over to the competent juvenile court judge so that he/she may initiate proceedings and adopt the appropriate precautionary measures.

In contrast to the old juvenile court system, under LO 5/2000 minors in custody enjoy all the rights that adults do: the right to be immediately informed in a comprehensible manner of the charges brought against him/her; the right to a fair trial; the right to *habeas corpus* (Article 17.6); to be presumed innocent; and the right to private counsel with his/her lawyer before and after having made a statement (17.2 II). In the interests of the minor, he/she always gives his statement in the presence of his/her parents and his/her legal representative, teachers, guardians or, if these cannot be present, a representative of the Public Prosecution Service who is not examining the case (Article 17.2).

Once the police have placed the minor in the hands of the competent juvenile court judge, he/she will adopt the most appropriate precautionary measures which may range from banning all contact with the victim or with other specified people, to putting the defendant on probation, or even placing him/her in custody. In any case, the decision should primarily aim to minimise the risk of absconding or of a violation of the victim's legal rights (Article 28.1).

The juvenile court judge will only opt for a custodial preliminary measure if the minor has re-offended, if the offence is serious and has caused a certain degree of social concern, or if there is an increased risk of justice not being carried out. Always adhering to the principle of minimum intervention and the overriding interests of the minor, the technical team and the bodies responsible for child protection and reform should assist the judge in terms of the suitability of the preliminary measure proposed (Article 28.1 and 2). If the minor cannot be charged due to psychological or other problems, the precautionary measures stipulated in the Civil Code apply, and if the court proceedings are not interrupted, an order to obtain therapy may be part of a preliminary measure (Article 29).

LO 5/2000 stipulated that the minor could be held in custody for up to a month. Once that time had passed, the sentence was to be lifted or reviewed. The most recent reform (LO 8/2006) has increased this maximum period to six months, which can be extended by another three months if the judge justifies it and if this takes place at the request of the public prosecutor (Article 28.3). In any case, if a sentence is handed down at the end of a trial, temporary custody is to be deducted from the court's sentence.[33]

33 *De la Cuesta/Blanco Cordero* 2007, p. 406. See also *Vázquez González/Serrano Tárraga* 2007, p. 373.

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

Nearly all the Autonomous Communities have had all the powers relating to the protection of minors transferred to them. This also affects the enforcement of measures, which may be implemented by both the competent public authorities in these communities and private, non-profit bodies which the community in question decides to contract (Article 45). Even so, sentences handed down for terrorist crimes are always served in centres belonging to the National Criminal Court, regardless of whether the centres were set up by either the Government or by one of the Autonomous Communities (Article 54.1). In any case, the competent juvenile court judge should always carry out a judicial control of enforcement. In addition to this, Article 46 establishes the figure of an intermediary between those enforcing the sentence on the one hand, and the juvenile court judge, the public prosecutor and the minor's legal representative on the other.

As in the case of the appointment of the competent juvenile court judge, the principle of proximity, which in juvenile criminal law is subordinate to the principle of minimum intervention, is subject to greater monitoring than in the case of adults. However, the judge may opt to ignore this principle if he/she considers that doing so may benefit the minor.

The basic aim of detention is social reintegration rather than punishment (Article 55). That is why every effort is made to minimise the negative effects that all detention may cause for both the minor and his/her family. This is the aim of articles such as Article 55.2, which stipulates that life in the detention centre should resemble life outside as far as possible; Article 56, guaranteeing inmates all rights not immediately affected by the sentence; Article 58, which states that the minor has a right to intelligible information regarding his rights and duties as well as the right to file petitions and complaints; or Articles 37 to 39, which stipulate the right to compulsory education and assistance.

Article 7.2 distinguishes between two types of detention measures. The first, defined as effective detention, should take place in centres different to adult penitentiary establishments and in no way comparable to them (Article 54.1). The second measure is defined as probation.

Article 30 of Royal Decree 1774/2004 describes the internal regulations in prison. Articles 45 to 52 of this Decree regulate the system of permits and leave, both ordinary and extraordinary, and Articles 40 to 44 describe the various possible forms of communication with the outside world: visits, conjugal visits, telephone calls and receipt of letters and packages.

Article 59 of LO 5/2000, extended in Articles 54 and 55 of RD 1554/2000, defines the regulations governing security and probation measures. Articles 60 to 64, developed in Articles 59 to 85 in this Royal Decree, define the criteria for the imposition and enforcement of disciplinary sanctions which, according to

their seriousness (very serious, serious and minor) can result in the refusal of leave permits or in separation from the group.[34]

The following tables and figures show the distribution of different internment measures. It is important to stress that in 2006, 14% of all outcomes were internment measures, 40% were sentences to "open regime" (non-internment measures) and 45% were acquittals, warnings or involved a stay of proceedings (see already *Table 3* above).

Table 4: Juveniles (14-18) deprived of their liberty in Catalonia

	2001		2002		2003		2004		2005	
	N	%	N	%	N	%	N	%	N	%
Internment measures	273	6.7*	749	10.4	894	11.2	908	11.9	1,085	13.9
Internment: open regime	---	0.0*	20	0.3	13	0.2	12	0.2	6	0.1
Internment: semi-open regime	5	0.1	263	3.6	367	4.6	392	5.1	482	6.2
Internment: closed regime	9	0.2	359	5.0	355	4.5	357	4.7	400	5.1
Internment: in institution	236	5.8	4	0.1	18	0.2	4	0.1	7	0.1
Internment: at the weekend	17	0.4	67	0.9	118	1.5	114	1.5	162	2.1
Therapeutic internment	6	0.2	36	0.5	23	0.3	29	0.4	28	0.4

* The percentages in the first line ("internment measures") are related to 100% of all imposed measures of each given year (see *Table 3*). The rest of the lines are the kinds of *internment measures*, and the percentages add up to the percentage written in the first line.

In the whole of Spain the situation can be described as follows:

34 *Lastra de Inés* 2005; *Ortiz* 2005; *Urra Portillo* 2005; *de la Cuesta/Blanco Cordero* 2007, p. 414; *Vázquez González/Serrano Tárraga* 2007, p. 373. See also the Juvenile Law of Catalonia of 31 December, 27/2001.

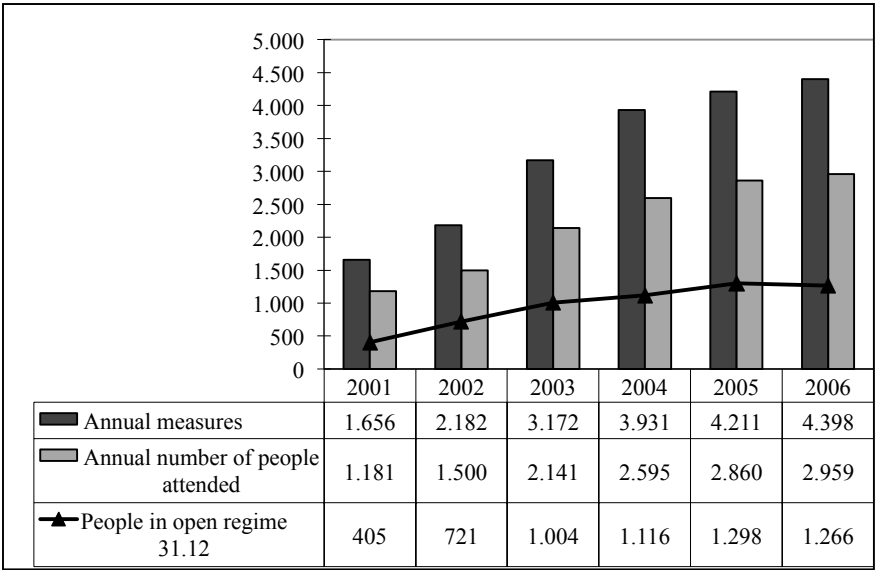
Table 5: Juveniles (14-18) sentenced to internment measures in Spain in 2006 and distribution on different forms of internment (in %)

All internment measures	27 (of all imposed measures)
Internment: open regime	8
Internment: semi-open regime	55
Internment: closed regime	31
Therapeutic internment	6

Source: *Velasco Garcia* 2007.

As can be taken from *Table 5*, the proportion of internment measures is much lower in Catalonia (14%, see *Table 3* above) than in the whole of Spain (27%). However, there are noticeable differences between the different Autonomous Communities. For instance, in Valencia the rate of internment was 25%, in Andalusia the figure was 33%, while in Basque Country and Catalonia they were 20% and 13% respectively.

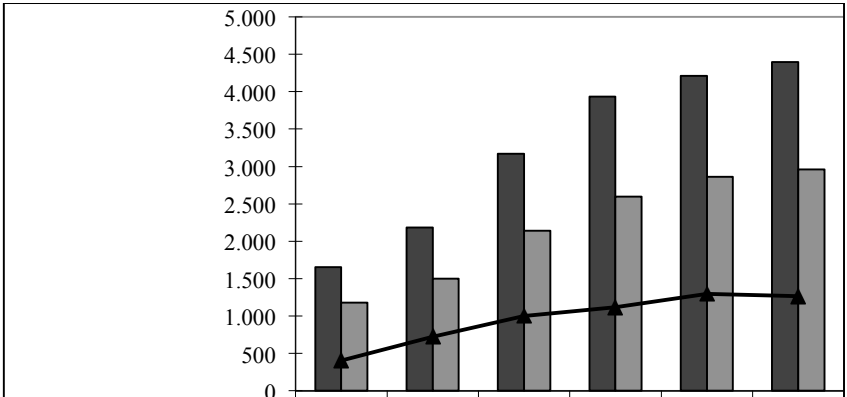
Figure 7: Juvenile population in open regime in Catalonia



	2001	2002	2003	2004	2005	2006
Annual measures	1.656	2.182	3.172	3.931	4.211	4.398
Annual number of people attended	1.181	1.500	2.141	2.595	2.860	2.959
People in open regime 31.12	405	721	1.004	1.116	1.298	1.266

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2006.

Figure 8: Population of juveniles in educational institutions in Catalonia



	2001	2002	2003	2004	2005	2006
Annual measures	1.656	2.182	3.172	3.931	4.211	4.398
Annual number of people attended	1.181	1.500	2.141	2.595	2.860	2.959
People in open regime 31.12	405	721	1.004	1.116	1.298	1.266

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2006.

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

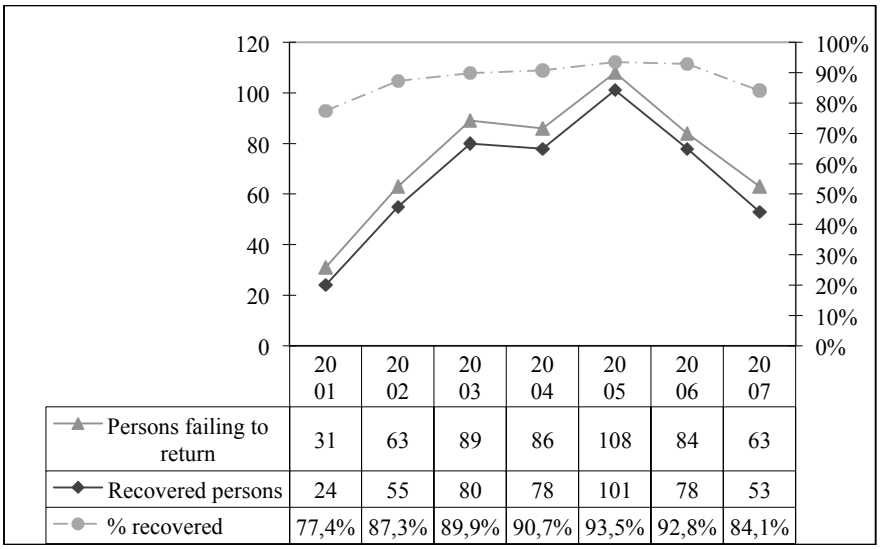
The current juvenile justice system is not merely punitive but is also imbued with educational elements. The declaration of penal responsibility is just a first step in an intervention that is geared towards the re-education and resocialization of juvenile offenders. The main differences from the adult system lie in the ambit of the consequences: penal responsibility, formally declared, is not followed by a punitive intervention but by a pragmatic response that is not punitive but that is rather materially educational.

Thus, Article 55 establishes that resocialization is the fundamental principle of the treatment in the centres for juveniles. Article 55.2 demands that life in the centre be organized in a similar way to that outside. 55.2 also tries to reduce the negative and detrimental effects that imprisonment can have on a juvenile or his/her family through the promotion of familiar contacts and social relations

and the participation and collaboration of public or private entities in the process of a juvenile's social integration.

Furthermore, in juvenile justice the principle of proximity is much more important than in the penitentiary legislation for adults: juveniles must be confined in institutions close to their normal place of residence. However juveniles who belong to gangs or organizations cannot serve their sentences in the same centre (Article 46.3).

Figure 9: Persons absconding from leaves, weekend permits and special measures, and persons recovered in Catalonia



	2001	2002	2003	2004	2005	2006	2007
Persons failing to return	31	63	89	86	108	84	63
Recovered persons	24	55	80	78	101	78	53
% recovered	77,4%	87,3%	89,9%	90,7%	93,5%	92,8%	84,1%

Source: Directorate General for Juvenile Justice of the Department of Justice in the Generalitat de Catalunya, 2000-2007.

Figure 9 shows the percentage of youth that do not return after a leave of absence. Despite the level of abusing leaves of absence and other similar measures having increased from 2001 to 2005, there has been an important reduction in the last three years.

13. Challenges for the juvenile justice system

Traditional forms of delinquency are still predominant in our country. Indeed, the majority of crimes can still be framed in this kind of delinquency: social, family and school problems, misery and poverty, unemployment culture, drugs,

etc. However, beside these situations, new problems are emerging. Neither society nor its laws seem prepared to respond to them adequately.[35] New criminal behaviour amongst juveniles can be grouped into 6 basic categories:

a) Violence associated with ideological protest movements:
In order to fully understand new forms of violence in all their complexity, a far more sophisticated social and legal theory is required than the outdated, exclusively punitive responses to crime. In any generation there comes a time when "values are redefined",[36] as some philosophers call it. In other words, this is the process according to which the moral fibre of society is reassessed and reformulated. The redefinition currently being carried out by our youth is perhaps one of the fastest in its history. To understand the true significance of certain new forms of delinquency, it is absolutely necessary to understand the significance and implications of this process.

b) Lifestyle-related violence amongst the young:
This type of movement does not always go hand in hand with criminal behaviour. It is possible that a fight may break out after a bout of drinking, but this should not lead us to tar all young people who go out drinking with the same brush. Faced with this new type of behaviour it becomes necessary to distinguish between traditional forms of delinquency and those classed as "contemporary". To respond to these phenomena with "more prison" or "tougher measures" is irresponsible given that perhaps this type of behaviour is in itself an attempt by the youth of today to "redefine" inherited values.

c) Bullying.
Bullying is becoming increasingly common. Initially it happened in schools but has now spread to other settings. Experts confirm that this behaviour is not new. On the contrary, it appears to have always existed. What is worrying is the unprecedented degree of violence which it now involves.

d) Violence in the family: "the tyrant".
"The emperor syndrome", a term coined by *Vicente Garrido*,[37] refers to children or minors with serious personality or psychological disorders that tyrannise their parents and particularly their mothers, to the extent of threatening or hitting them. The true extent of the problem is difficult to determine, as most cases remain in the family. Unlike

35 *Vázquez González* 2003, p. 46 and p. 169; *Vázquez González/Serrano Tárraga* 2007, p. 37; *Garrido et al.* 2006, p. 142 and 712; *García España/Pérez Jiménez* 2004; *Giménez-Salinas i Colomer* 2004, p. 481; *Giménez-Salinas i Colomer et al.* 1999, p. 115.

36 *Román/Palazzi* 2005, p. 169.

37 *Garrido Genovés* 2005.

gender violence, it is rare for a mother to report her child and be separated from it. Nonetheless, the figures for Spain indicate that one or two million people are affected.

e) Unaccompanied foreign minors
Unlike countries with an established tradition of migration, in Spain the arrival of unaccompanied foreign minors is a recent phenomenon. It began to be perceived as a problem around 1997 because of its scale and the conflict that it provoked. In truth, in many cases foreign minors are associated with delinquency. The abovementioned study indicates that about 40% of these are involved in such behaviour, which is certainly a high percentage. Most have already come into contact with social services for the protection of minors and later on with the juvenile justice system. A far higher percentage of foreign minors are jailed or held in detention than is the case with other juvenile delinquents, so much so that they currently account for 41.2% of all minor detainees.[38]

f) The appearance of juvenile gangs originating from South America, particularly from the "maras" born in the 1980s in Salvador and Guatemala. Indeed, Latin-Kings and other juvenile gangs are inspired by these "maras" that have no relation to traditional juvenile gangs. Its relation with the world of drug trafficking is especially concerning.

There is demand in some sectors of the population for stiffer sentencing of minors against these new forms of delinquency. A law (LO 5/2000) on criminal responsibility for minors was passed in 2000 which does not follow this trend. However, it was too late to solve the inherent vices in previous legislation and change the paradigm. Of course the general trend in western nations towards tougher sentencing, the need for quick results, the lack of confidence with the ensuing lack of resources and the ideological turnaround with the legal consequences detailed above, have prevented the completion of that plan. Below we shall analyse recent developments in the legal status of underage offenders.

Undoubtedly, new juvenile justice will have to face these problems in the future. The fact is that our societies have gradually abandoned the criterion of a greater tolerance towards juveniles and have imposed tougher attitudes. Beside this, some basic principles have been distorted in practice. For instance, juvenile trials are often longer than adult trials, and there are great differences when it comes to applying a measure to a Spanish juvenile or a foreign juvenile.

We must recover, or preserve, the essential core of juvenile justice, that is to say, to take into account that juveniles are persons in a process of formation and socialization who are still learning values and norms of behaviour. Consequently, any intervention must try to promote these aspects while respecting individual rights and guarantees.

38 *Giménez-Salinas i Colomer* 2004, p. 479; *García España* 2001; *Capdevila Ferrer* 2003.

However we cannot forget that juveniles are responsible of their deeds. For that reason, they must assume the damages that they cause to individual victims or to society. Certainly, the future of juvenile justice also demands that the rights of victims be assured in this jurisdiction.

14. Summary and outlook

As stated above in *Section 1.2* of this paper the emergence of a culture of "fear of crime", the "discovery of the victim" and the United States' populist punitive approach have gradually penetrated the Spanish psyche and have promoted the current distrust in the ideal of rehabilitation. For that reason, the Spanish juvenile justice system, though calling itself essentially educational, has begun to introduce reforms that appear to move in the opposite direction. However, in today's modern world it is essential to call on education as the only way of making society more cohesive.

A meaningful fact of the Spanish situation is that the Law 5/2000 on the penal responsibility of juveniles, which was received positively by professionals and academics, has suffered four modifications in 6 years, all of which pointed in the same direction: an intensification of the sanctions for juveniles. Paradoxically, there has not been a significant increase in juvenile offending. This highlights that these modifications reflect broader social alarm in some sections of society, or the birth of a more retributive society. Moreover, as scientific research shows, good practices are not always the most popular and adequate responses. In some aspects, they can give rise to a jurisdiction that is excessively slow and bureaucratic.

Juvenile judges frequently state a feeling of being the last part of a social service. However, juvenile justice professionals are usually very well trained and motivated, which explains the good results that this jurisdiction normally achieves.

A further problem in Spain is that, although substantive and procedural law are unique, each Autonomous Community has the competence for the enforcement. For instance, the share of internment measures – considered the harder measures – among all imposed outcomes varies from 13% to 30% among the Autonomous Communities. On the other hand, mediation – considered the softer measure – can reach shares of up to 30% in some Autonomous Communities, while having never been applied in others. These differences – that are not proportional to the seriousness of crime rates in each Autonomous Community – make it very difficult to make a global evaluation for the entire country.

Finally, we should remark that in Spain, juvenile justice still occupies an important space that is worth preserving. Juvenile justice should be the body that promotes change in juvenile penal justice. Unfortunately, this has happened only very infrequently.

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Sweden

Rita Haverkamp

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

Since the post-war period, criminal justice policy against juvenile crime in Sweden has been characterized by treatment measures that are mainly executed by the youth care system.[1] This youth welfare approach is a special expression of the treatment ideal in the 20th century which strongly influenced the introduction of the Criminal Code in 1965 ("*Brottsbalken*") and the Prison Act in 1974 (*Lag om kriminalvård i anstalt*).[2] At the end of the 1960s, the treatment ideal began to come under fire, partly because of its focus on the individual and personal circumstances and the subsequent imposition of indeterminate treatment measures. Criticism was directed at how this approach neglected the harm caused by the offence, that the duration of measures was unpredictable and that the lack of proportionality between the offence and its consequences resulted in injustice and inhumanity.[3] Moreover, empirical research revealed the inefficiency of institutional treatment. A shift occurred in the 1980s towards a more offence-orientated criminal law approach (so-called "neo-classicism"). Based on this change, the indefinite sanction "youth prison" was abolished in 1980.[4] In the

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1 The author would like to thank *Hanns von Hofer* for his valuable preliminary work on this chapter. An overview of the historical development of the Swedish juvenile justice system is offered by *Sarnecki/Estrada* 2006, p. 474-476. Other overviews about the Swedish Juvenile Justice system: *Dignan* 2006; *von Hofer* 2003; *Haverkamp* 2002; *Jansson* 2004.

2 With regards to the treatment ideal, the law is called "Act on Institutional Criminal Care".

3 Critics came from Finland and Norway as well (e. g. *Christie* 1960).

4 The long lasting debate was initiated by a report in 1977 (SOU 1977:83 Tillsynsdom).

same year, the new Social Services Act[5] and the Act with Special Provisions on the Care of Young People[6] came into force: the latter act implied coercive care measures which should comply with the purpose of the Social Services Act. That meant youth welfare was characterized by voluntary commitment and mutual understanding. In the late 1980s, calls for a tightening of the interventions for juvenile offenders could be observed. The sentencing reform (1989) stands for a shift from the treatment approach to neo-classical thinking and its requirements for predictability and proportionality. Since then, the crucial starting point for imposing a sanction has been the seriousness of the offence. Concerning juvenile offenders, the idea that juveniles need care and treatment has lost its overwhelming pivotal importance as a sentencing principle. Several revisions during the last decades have narrowed the discretional power of the Social Services and strengthened the punitive aspects of criminal justice policy. Although offence-orientated thinking gained in importance, treatment still is one driving force underlying the new special sanctions for juveniles.

There are several long-lasting central principles which have not been substantially jolted despite two major legal reforms in 1999 and 2007. These principals help to understand the basis of the Swedish juvenile justice system:

1. The system of interventions and State responses to juvenile offending is characterized by a blend of treatment and punishment. Despite the clear shift away from the ideal of treatment towards an increased emphasis on offence-severity in the 1980s, both the legislature and practice appear to be cleaving to the ideal of treatment.
2. Public Prosecution Services, courts and the Social Services all have a considerable scope of administrative discretion, and detailed legal provisions are poorly developed.
3. Deprivation of liberty is the last resort and limited to exceptional cases.
4. Out-of-court interventions are given priority, and in this the Public Prosecution Services and the Social Services play a decisive role.
5. Measures and interventions shall be voluntary, and are thus not all coercive.

Sweden has no independent legal provisions which are specific to juvenile offenders – nor are there any groupings in criminal policy or criminal justice that call for such an approach. Rather, the provisions that apply to adults are also applicable to young offenders, albeit moderated through special provisions that are of particular relevance for persons aged 15-17 at the time of the offence.[7]

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5 *Socialtjänstlag* (1980:620), replaced in 2001.

6 *Lag* (1980:621) *med särskilda bestämmelser om vård av unga*, replaced in 1990.

7 Due to the fact that we cannot use Swedish legal terminology in this report, we must kindly ask the reader to interpret the terms applied here as colloquial, and not as "termini technici" of legal systems based in the English language. Especially the term

The age of criminal responsibility is 15 and has been since 1905. Children below that age are within the responsibility of the Social Services. The penal system contains special conditions for the sanctioning of young offenders aged 15 to 20 years. Specific youth sanctions are "Closed Youth Care", "Youth Care" and "Youth Service". The "Referral for Special Care" to the Social Services is a particular sanction in the Criminal Code which vests the main responsibility for the young offender in the Social Services and which was subject of important reforms in 1999 and 2007. The "Act on Special Provisions for Young Lawbreakers"[8] provides a series of regulations for the juvenile criminal procedure. A dismissal of proceedings is possible on the basis of care measures according to the Social Services Act and the Act with Special Provisions on the Care of Young People.

There appears to be the overall notion that little differentiation should be made between minor and adult offenders. In practice, this is exhibited for example in the fact that the possibilities for the Public Prosecution Service for desisting from arraigning young offenders and referring them directly to the Social Services for the subsequent issuance of further measures or interventions were limited through recent reforms (see in detail BRÅ 2000a and below).

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

Despite the well-known shortcomings of official crime statistics,[9] the following description of crime trends will consider data of the most accessible sources, but will also present findings from self-report studies on Swedish 9th grade pupils.

"juvenile" needs to be understood as all persons aged 15 to 20 years, which is not analogous to the age bracket covered by this term in other countries. This paper covers legislation up to June 2009.

8 "Lag (1964:167) med särskilda bestämmelser om unga lagöverträdare".

9 See for example *Sarnecki/Estrada* 2006, p. 477.

Table 1: Young persons suspected of offences, by age at the time of offence

Year	Age			
	15-17	**18-20**	**21-24**	**Total**
1980	14,371	12,778	13,677	89,867
1985	13,389	13,185	12,686	93,057
1990	14,954	12,207	14,637	100,845
1995	15,876	9,903	10,152	94,258
2000	11,473	9,484	9,809	86,657
2005	14,345	11,080	12,429	106,659
2006	15,385	11,269	12,191	109,702
2007	16,822	11,400	12,551	112,304
2008	17,711	12,575	13,556	119,244

Source: Kriminalstatistik 2008, Table 3.1.

The number of young suspects in the age group between 18 and 24 years has remained relatively stable since 1980. By contrast, the youngest age group (15 to 17) has witnessed a remarkable increase in the last decade and reached its all-time high in 2008. Whereas the figures of young suspects were at their lowest level at the beginning of the 21st century, we can observe an upward trend since the middle of the new decade.[10] The figure for the age group of 15 to 20 years old increased by 7 percent. The highest rise could be observed for the age group of 18 to 20 year-olds (10 percent). It is well-known that juveniles are usually overrepresented in criminal statistics. According to the present data, 25 percent of all suspects belong to the age group of 15 to 20 year-old juveniles, whereas young persons under 21 years only amount to 10 percent of the Swedish population. If we relate the proportion of suspects to 100,000 inhabitants of the same age group, we discover a relatively constant curve in the age group of the 15 to 20 year-olds between 1998 and 2008. In contrast, in all other age groups the proportion of suspected persons increased.

The most common offence among juveniles (15-20) is theft. In 2008, 36 % of all juveniles were suspected of having committed this offence.[11] In 2008,

10 These findings are also valid for adults. Suspects of the age group of over 30 year-olds increased by 5 percent in comparison to 2007, see Kriminalstatistik 2008, p. 115 f.

11 Kriminalstatistik 2008, p. 116.

types of offences with a relatively high proportion of juvenile suspects were robbery (usually with juveniles under the age of 18 as victims), graffiti (especially in public transport), burglary (in schools), perjury, false accusation and theft of mopeds.

Table 2: Juveniles 15-20 year-olds suspected of offences, by type of offence and in relation to all suspects of offences of this type in %

	2000		2005		2008	
	N	%	N	%	N	%
Property offences	13,241	28	11,688	29	14,846	32
Violent offences	6,579	27	4,968	26	8,539	29
Traffic offences	4,470	16	3,800	16	5,377	17
Drug offences	3,925	21	2,242	19	5,218	22
All offences	19,530	27	16,434	28	30,286	26

Source: Kriminalstatistik 2000, 2005, 2008, Tables 3.1.and 3.3.

Table 3: Young persons suspected of offences, by sex and age (at the time of the offence), 2008

Age	Females		Males	Both Sexes
	N	percent of both sexes	N	N
15	1,837	27	4,943	6,780
16	1,531	27	4,105	5,636
17	1,508	29	3,778	5,286
18	958	22	3,420	4,378
19	795	19	3,305	4,100
20	751	18	3,315	4,066
21-24	2,327	17	11,202	13,529
Total	24,306	20	94,386	119,244

Source: Kriminalstatistik 2008, Table 3.4.

The majority of all suspected persons are male. Whereas usually every fifth suspect in all age groups is female, the proportion is the highest in the age group of 15 to 17 year-olds and amounts to 28 percent.[12] In comparison to 2007, the number of male suspects increased by 7% in 2008, the figure for females experienced a 9% increase. The greatest increase can be observed for the 18 to 20 year-olds (+13% compared to 2007) and 21 to 24 year-olds (+12%). The proportions both of suspected men and suspected women increased in the past decade. Furthermore, the share of male and female suspects has grown in relation to the development of the overall Swedish population. From 1998 to 2008, the number of male and female suspects per 100,000 grew by 28% and 39% respectively.

Since the mid 1990s, systematic studies have analysed self-reported delinquency among all Swedish pupils aged 15 and 16. The findings from 1995 to 2005 show that many juveniles committed an offence over the course of one year.[13] The most common offences are minor thefts (at school or from shops). Although male and female juveniles commit the same types of crime, offences by young men are more frequently serious and/or violent. In general, it is relatively unusual for juveniles to be involved in serious crimes (e. g. car theft, violent offences) or drug offences. There are no remarkable differences between males and females concerning reported drug use. The results indicate that juveniles with a high-risk lifestyle and high levels of individual risk factors are prone to commit a large number of offences. The frequency with which criminal damage and thefts are reported has decreased, while violent and drug related offending have remained unchanged.[14] One explanation for this decline might be a less tolerant attitude of young people towards delinquency. Furthermore, it is argued that juveniles are more achievement-orientated in school because of growing societal requirements and pressures. Another reason could be based on different leisure time activities among juveniles. Especially male juveniles tend to prefer indoor, computer-related activities corresponding with reduced opportunities to commit outdoor offences like theft. Maybe the decrease is a result of crime prevention measures and effective policing strategies.

Looking now at the offending behaviour of young people as well as the responses that this behaviour triggers from the justice system, one can firstly conclude that over the last 30 years, the number of 15 to 20 year old juveniles who have been prosecuted has witnessed a sharp decrease.[15]

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12 Kriminalstatistik 2008, p. 117.

13 BRÅ Report 2007:8, p. 22 f.

14 BRÅ 2006.

15 A decrease for juveniles aged 15 to 17 in the period from 1995 to 2004 is furthermore indicated by *Haverkamp* 2007.

Table 4: Sentenced juveniles, 15 to 20 years-old per 100,000 of the total juvenile population

	1980	1985	1990	1995	2000	2005	2006
Violent offences	293	238	277	526	418	375	428
Property offences	1,771	1,880	1,784	2,040	1,283	1,128	1,102
Drugs offences	159	82	74	97	257	344	358
Traffic offences	1,684	1,208	1,309	593	499	493	494
Other offences	1,606	1,291	1,317	1,406	1,147	1,037	1,085
All offences	**5,513**	**4,699**	**4,761**	**4,662**	**3,604**	**3,377**	**3,469**

Source: Kriminalstatistik 2006.

This overall reduction can primarily be attributed to drops in property, traffic and "other" offences, while the development of violent and drug related crime has shown developments in the opposite direction. However, according to criminological analyses the perceived increase in offences resulting in personal injury (bodily harm, assault, battery etc.) can primarily be attributed to changes in prosecution practices against younger juveniles rather than an increase in their propensity to violence.[16]

Declines in the intensity with which young offenders are criminally prosecuted shall no doubt result in reductions in the overall extent of registered offending in the younger age cohorts.[17] A study on the registered criminal activity of the 1960 birth cohort brought to light that 37 percent of males and 10 percent of females had been criminally prosecuted at least once between their 16th and 38th birthdays.[18] These results are indicative of a high degree of control in Sweden, at least regarding young men. The law enforcement authorities showed a (not entirely surprising) concentration on everyday offences that entail disturbances of the peace and public order. More than four out of five main offences were shown to have been (in this order) theft, severe traffic offences, drug related offending, assault, criminal damage, disturbances of the peace, fraud and violence against the authority of the State.

16 See in more detail *von Hofer* 2000; *Estrada* 2001; *Sarnecki* 2006; *Haverkamp* 2007.

17 See *von Hofer* 2004.

18 BRÅ 2000b.

Comparisons of the self-reported delinquency of two birth cohorts that had grown up in a central Swedish city in the early 1970s and the mid-1990s respectively indicated that juveniles from the latter cohort had offended with the same frequency, or even slightly less, regarding both property and violent offences. At the same time, the small group of offenders that showed the greatest frequency of delinquency appears to have increased in offending severity and intensity.[19]

Crime policy debate is dominated by the crucial question of whether juvenile delinquency is increasing or decreasing.[20] To sum up, we can state that from 1995 to 2005, official statistics have shown a declining trend in the number of suspects aged between 15 and 17. The presented ten-year series of self-report surveys (1995-2005) largely supports this picture. Even the rise of 15 to 20 year-old juveniles suspected of offences at the end of the decade confirms this finding, due to the relatively constant level in this age group with regards to their proportion of suspects per 100,000 inhabitants from 1998 to 2008.

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

The criminal justice system for juveniles is characterized by its emphasis on diversion. The police and the prosecutors can choose between various reactions to youth offending. Furthermore, the courts have a wide range of sanctions in order to respond to the criminal behaviour of juveniles. Basically, the Swedish justice system follows the legality principle[21] which means that the police are obliged to intervene in case of any criminal offence.

3.1 The police and the prosecutor

However, the police can under certain conditions (in minor cases) refrain from prosecution if cautioning the young offender seems to be a satisfactory reaction.[22] The "Act on Special Provisions for Young Lawbreakers" allows the police to direct juveniles aged 15 to 17 to repair the damage caused by their offences (see § 13). In practice, this order is of no importance.

19 See for example *Sarnecki* 2006, p. 189 with further references.

20 BRÅ Report 2007: 8, p. 23; *Estrada* 2001.

21 Sec. 20 § 1 Criminal Code.

22 § 9 II Police Act, see *Sarnecki* 2006, p. 194; for more details see *Sarnecki/Estrada* 2006, p. 487 f.

During the preliminary investigation, the public prosecutor has wide competences to refrain from charging 15 to 17 year-old persons.[23] She or he can dismiss the case, which means no further action by the criminal authorities shall follow, but the crime will be recorded in the register of convicted persons in less serious cases.[24] A "waiver of prosecution" (i. e. a dismissal of the case) requires that the juvenile admits his guilt and that care measures are deemed appropriate. The possibilities to dismiss the case are much broader than for adults: if the offence is of a serious nature, the prosecutor can nevertheless dismiss the case, albeit often combined with a referral to the Social Services, followed by the subsequent imposition of adequate measures.[25] If the juvenile is suspected of having re-offended, a waiver of prosecution is usually not granted. Also, a "summary sanction order" can be issued by the prosecutor for juveniles below the age of 18 if only a fine is to be expected were the case to be prosecuted.[26] In adult cases the prosecutor may also apply a summary sanction order in case a conditional sentence is expected, but this possibility should not be used in cases of 15 to 17 year-old suspects.[27]

The measure of mediation is provided for all age-groups.[28] Even though this intervention is not defined as a "sanction" as such, it is to a certain degree part of the criminal justice framework. From 2003 up to the end of 2007, the National Council for Crime Prevention supported the development of mediation by allocating grants for mediation projects. Since 2008, municipalities have been in charge of ensuring that victim-offender mediation[29] can be applied when a young offender under the age of 21 has committed a crime. This reform aims to help the provision of mediation all over Sweden. To strengthen the status and role of victim-offender mediation, the prosecutor may make the dismissal of the case dependent on victim-offender mediation.[30] It is of major importance that juveniles take part in this procedure voluntarily. If mediation is an option, the time limit for the decision about the charge can be exceeded.[31]

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23 § 16-22 Act on Special Provisions for Young Lawbreakers.

24 *Sarnecki* 2006, p. 195.

25 See *Sarnecki* 2006, p. 196-197 and *Sarnecki/Estrada* 2006 p. 489 ff. for more details.

26 § 15 Act on Special Provisions for Young Lawbreakers.

27 Sec. 48 § 4 II Criminal Procedure Code.

28 Fact Sheet 2006, p. 3

29 Provisions in the Mediation Act (Lag om medling med anledning till brott).

30 § 17 II Act on Special Provisions for Young Lawbreakers.

31 § 4 No. 1 Act on Special Provisions for Young Lawbreakers.

3.2 The courts

The courts can impose a range of different sanctions and measures on juvenile offenders. The Criminal Code provides the following sanctions: fines, imprisonment, supervision, conditional sentence and referral to special care in particular cases (psychiatric care). Special juvenile sanctions are furthermore: closed youth care and referral for special care for juveniles in combination with "youth care" and "youth service". Sentences are mitigated for juveniles below the age of 21.[32] The minimum term for imprisonment is 14 days; the maximum term is 10 years. Life imprisonment cannot be imposed on juveniles or young adults. In the case of very serious offences (specified by the law) and if the law provides life imprisonment for adults, the maximum term can go up to 14 years.

3.2.1 Suspended sentences: supervision and conditional sentence

While sanctions like fines and imprisonment do not require further explanation, some particularities about suspended sentences shall be presented here:

Supervision (*skyddstillsyn*) implies that the offender is placed on probation for a period of three years.[33] More specifically, the first year is spent under direct supervision by the Probation Service which is responsible for both adults and juveniles. At the same time, the court can issue additional obligations or requirements concerning employment, education and training, the offender's place of residence, medical treatment and the compensation of damages. Combining supervision with a fine, a short stint in prison, community service or contract care (*kontraktsvård*) is also permissible, with the latter two options requiring the offender's consent. "*Kontraktsvård*" is particularly applied in cases of alcohol and drug addiction. Supervision in general is only very rarely ordered in cases involving 15 to 17 year-old offenders (see *Table 8* below), but it was the third most frequently imposed sentence for 18 to 20 year-olds in 2008.

While 15 to 17 year-old offenders only rarely receive conditional sentences, they were the second most frequently imposed intervention for 18 to 20 year-olds in 2008. Practically speaking, a conditional sentence (*villkorlig dom*) is a court warning that brings with it a two year period of unsupervised probation.[34] The law also prescribes that conditional sentences shall regularly be supplemented with a fine. In contrast to this, Swedish law bears no provisions for the conditional suspension of prison sentences on probation. However, since recently, conditional sentences in combination with community service can be

32 Sec. 29 § 7 Criminal Code.

33 Sec. 28 Criminal Code.

34 Sec. 27 Criminal Code.

ordered as alternatives to prison sentences. In such cases, the court has to state how long the prison sentence would have been had it been imposed.

Since the general sentencing reform of 1989[35] the court has had to explicitly examine whether or not a less severe sanction would be applicable and appropriate before it can impose a prison sentence or a sentence to youth imprisonment. In choosing a sanction, the severity of the offence has primacy over the offender's need for treatment, and this also applies to young offenders. Still, special sentencing rules apply to this age group that allow their sentences to fall below the legally prescribed range of punishment.

According to Swedish doctrine, supervision is to be viewed as a severe punishment, while conditional sentences are less severe interventions. At the same time, both are deemed more severe than fines, while being less intrusive than deprivation of liberty. In practice, conditional sentences are especially frequently applied in cases of one-time offenders and offenders who pose only a small risk of re-offending.

3.2.2 Closed youth care

Closed youth care as a sanction implies that a person aged 15 to 17 (at the time of the offence) is sentenced to a period of deprivation of liberty lasting between 14 days and four years. The length of the sanction is determined by the nature of the crime and not by the need for treatment. Provisions concerning conditional release are not applicable to juvenile offenders.

Closed youth care was introduced in 1999, and the intention behind the revision lay (among other issues) in meeting the requirements and obligations stemming from international conventions (Convention on the Rights of the Child [CRC], Art. 37), namely that children (persons under the age of 18) have to be detained separately from adults. Since Sweden had abolished juvenile prisons in 1980, the few juveniles who were sentenced to prison were held in special departments of general (adult) prisons.

However, the introduction of closed youth care does not replace imprisonment for juveniles absolutely: very rarely juveniles are still sent to prison, because this is seen as the only appropriate reaction to very severe cases.

3.2.3 Referral to the Social Services for the issuance of treatment measures

In combination with the introduction of closed institutional youth care, provisions governing referrals to the Social Services were reformed both in 1999 and in 2007. Instead of imposing ordinary criminal law sanctions (like for

35 See *Victor* 1990; *Jareborg* 1994.

instance fines, imprisonment, conditional sentences or supervision) the courts have long been able to refer juveniles to the Social Services (as an independent sanction) who would then impose measures in accordance with their scope of legal discretion. These measures are firstly derived from the Social Services Act (RGBl. 2001, Nr. 453). They require the prior approval and consent of the juvenile. On the other hand, there are also compulsory measures that are regulated in the Act on Special Provisions for the Care of Young People (RGBl. 1990, Nr. 52). Prior to the reforms of 1999 and 2007, the courts generally had no control over what the Social Services did once a young person had been referred to them. Now, where the Social Services wish to impose an intervention stemming from Law 1990, Nr. 52, they are obliged to present a concrete care plan to the court, which is to be attached to the ruling. Should the Services, however, intend to impose a measure from the Social Services Act, then the agreements that the Services have come to with the juvenile (the so called youth contract) are to be incorporated in the written justification to the judgement.

The purpose of such individual measures shall be to counter the juvenile's negative personal development (= the ideal of treatment). At the same time, the court has to be convinced that the proposed measures are sufficiently incisive regarding the shamefulness of the offence and the offender's criminal record (= ideal of punishment).

The aim of the 2007 juvenile justice reforms was to create a system of State responses to juvenile offending that is more clearly geared towards the prevention of recidivism as well as a reduction in the use of fines and prison sentences. In doing so, these responses are to be comprehensible for the juvenile while also being pedagogically valuable. Simultaneously, the (legal) principles of predictability, proportionality and consistency are to be satisfied. It is almost predictable that these objectives are likely to come into conflict with each other.[36]

The Public Prosecution Services are now responsible for coordinating collaboration between the judiciary and the Social Services in issues of juvenile justice at the local level. Likewise, a central coordinating body has been founded at the national level, the composition of which includes representatives of the Public Prosecution Service, the police, the Social Services, the Swedish Association of Cities and Towns and the National Advisory Committee for the Prevention of Crime.

More specifically, referrals for special youth care consist of two sanctions: youth service and youth care.[37]

Youth Service had originally been introduced in 1999 as a special measure, and has since been converted to a standalone sanction (as of 1 January 2007). This sanction entails the performance of unpaid community service for between

36 See SoS 2006, p. 4

37 Sec. 32 Criminal Code.

20 and 150 hours (which is performed under local direction and administration), combined with an order to participate in a special programme (for example so-called structured conversations). The kind of work to be served need not necessarily be "in the community", and rather can be performed for charitable organizations, the only real limits on its content being that it shall not be of a commercial nature. The Social Services are responsible for drafting a corresponding service plan. Youth service is particularly attractive for 15 to 17 year-olds for whom there is no clear or special need for treatment. In accordance with international law, the juvenile must agree to the imposition of this sanction. Youth service can also be imposed on 18 to 20 year-olds in exceptional cases.

Youth Care is to be applied where a juvenile exhibits a special need that requires attention in order to counter a negative social development. The reformed provisions on youth care can be viewed as a limitation in comparison to the previous legal regulations on this sanction. There must be a clear and present risk of re-offending, however to a degree of certainty that in practice cannot be definitely substantiated in each individual case. In order to determine whether this precondition has been met, it is the task of the Social Services to refer to an extensive evaluation of the young person's living and life circumstances. In doing so, the "best interest of the juvenile" is of pivotal importance. Should the proposed measures be of a voluntary nature, the Services and the juvenile in question are to draft a so-called "Youth Contract" that stipulates the specifically intended measures and which is to be attached to the court's ruling. If the measures are non-voluntary, the Social Services are obliged to draw up a "care plan" that is then attached to the ruling of the court.

The court can order that a referral for special youth care be combined with one of the following additional measures:

- Day-fines of between 30 and 200 day-rates.
- An injunction that the offender personally contribute to the alleviation of the damage caused in cases involving material damage/damage to property (yet only if the victim agrees to this).

The Public Prosecution Service can apply for the court to abrogate a referral and to subsequently issue a different sanction should the juvenile breach the met arrangements or the contents of his/her treatment plan considerably. However, in cases of breach, issuing the offender with a warning by the prosecutor[38] should take precedence over the imposition of new sanctions. The Prosecution Service can also request the imposition of a different sanction where the intended measures cannot be materialized, or can only be put into practice in a significantly different form.

38 § 30b Act on Special Provisions for Young Lawbreakers.

Schematically, the current system of Referral to the Social Services for Special Youth Care that has been in place since 2007 can be summarized as follows.[39]

Table 5: Referral to the Social Services for Special Youth Care

Name of the measure	Community sanction or closed care	Measure entails
Youth Service (20-150 hours)	community	Unpaid community service
	community	Special Measures (i. e. "structured conversations")
Youth Care	community	Special programmes (i. e. group conversation)
	community	Family support
	community	Drug testing
	community	Therapy
	community	Counselling etc.
	community	Foster family
	closed	Special youth home/institution
Committal to a particularly qualified contact person Victim-Offender-Mediation		

Committal to a "particularly qualified" contact person should be understood as a preventive measure for juveniles who are in need of special care and support in order to counter criminal behaviour, drug and alcohol abuse or other detrimental behaviour. Guidelines that regulate the necessary qualifications of such contact persons are issued by the Supreme Social Service Authority (*socialstyrelsen*). Actually the committal to contact persons lies in the responsibility of the local Social Services, and it only occurs either upon the request of the juvenile in question or with his/her consent. The legal attribute of "special qualification" has been in place since 2007.

Victim-offender mediation (VOM, "medling") currently plays only a very marginal role in Sweden (see *Section 3.1* above).

39 *SoS* 2006.

4. Juvenile criminal procedure

The Public Prosecution Services dispose of special juvenile prosecutors.[40] If the juvenile has offended for a second time, the public prosecutor or the police officer who was responsible during the first proceeding shall assume the case. In every phase of the process the law demands that the proceedings be accelerated as much as possible: for offenders under the age of 18 there are legal deadlines of acceleration that were further tightened in the 2007 reforms. For offences for which the law prescribes a punishment of imprisonment, charges have to be brought within six weeks, and the trial has to commence no more than two weeks later. Exceptions will be allowed if the young suspect participates in victim-offender mediation, or if particular circumstances argue for a lengthening of investigations. The legal guardians have to be informed. Before the public prosecutor brings a charge against a juvenile, he/she has to obtain advisory expertise from the competent local Social Service. In this advice the Social Service shall propose suitable measures or sanctions for the juvenile. Furthermore, it shall contain information about the juvenile's personal development. During the proceeding (of the Social Services as well as in court proceedings) juveniles are provided by law with a legal defence counsel (apart from exceptional cases).

In the courts there are no special chambers that are competent for cases involving young offenders. Since 2001 it has no longer been legally prescribed that judges and lay judges who sit in juvenile cases have to be specially qualified in youth matters.[41] They are, however, usually given the respective consideration in the courts' schedule of responsibilities.

The public can be excluded from the trial in cases involving 15 to 20 year-old suspects, in order to protect juveniles from "obvious disadvantages" that they would face should the trial not be held in camera. If a juvenile is accused, a hearing shall be held, even if only a fine is expected.[42] The general provisions on legal remedies also apply to young offenders.

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

As already mentioned above, the concept of "diversion" is of particular relevance in the Swedish juvenile justice system as regards the "waiver of

40 See Act on Special Provisions for Young Lawbreakers.

41 A project in South Sweden intends to educate judges about the needs of young offenders in order to avoid convictions being based on the wrong reasons, see *Wallqvist* 2009.

42 § 27 III Act on Special Provisions for Young Lawbreakers.

prosecution" by the Public Prosecution Services and the referrals to the Social Services during the preliminary investigations.

Table 6: Waiver of prosecution by the Public Prosecution Services

Year	Age				
	15-17	**18-20**	**21-24**	**25+**	**Total**
1980	7,435	2,184	2,273	7,722	**19,614**
1985	7,542	2,465	2,263	10,879	**23,149**
1990	7,159	1,389	1,451	7,460	**17,459**
1995	5,267	953	929	6,941	**14,090**
2000	3,046	1,268	1,999	13,811	**20,124**
2005	2,604	1,144	1,749	10,753	**16,250**
2006	4,039	1,274	1,857	11,006	**18,176**
2007	5,369	1,554	2,351	12,065	**21,339**
2008	5,769	1,960	2,723	13,521	**23,973**

Source: Rättsstatistisk årsbok 1981, 1986, 1991, Tab. 3.4.6., 3.4.8 a; Kriminalstatistik 1995, 2000, 2005-2008, Criminal Statistics – Official Statistics of Sweden, 3.7., 4.6., 4.7.

In the 1980s and again in recent years, prosecution was waived quite frequently (see *Table 6* above). Regarding the age groups, since the turn of the century there has been an increase in the figures for adults aged over 24 years and an overall decrease in the number of juveniles aged 15 to 17 years. This decline was most considerable from 1990 to 2005, and was supposedly influenced by inter alia a reform in the year 1995 which eliminated the possibility of a waiver in cases of recidivism.[43] Since then, the Public Prosecution Service has been more restricted in its possibilities for desisting from arraigning young offenders and referring them directly to the Social Services for the subsequent issuance of further measures or interventions.[44] Nevertheless, diversionary decisions by the public prosecutors have an impact: in 2008, 5,769 of 15,175 (38%) cases involving 15 to 17 year-olds were waived by the public prosecutor.[45] This fact indicates that youth criminality seems to be

43 See *Haverkamp* 2007, p. 171.

44 BRÅ 2000a.

45 See also *Haverkamp* 2007, p. 171; 2002, p. 356 and *Table 6* above.

affected by less serious crime, having in mind the preconditions for such a waiver (see *Section 3* above).

The upward trend in the waiving of prosecution in 2007 and 2008 may be based on the introduction of a new electronic case system in 2007. It is possible that the change in system effected a different handling of information or a more effective handling of cases.[46]

Table 7: Summary sanction orders issued by the Public Prosecution Services

Year	Age				
	15-17	**18-20**	**21-24**	**25+**	**Total**
1980	11,235	12,771	13,586	56,592	94,544
1985	6,651	11,051	11,135	49,063	77,900
1990	6,384	9,568	12,528	51,321	79,801
1995	6,883	4,720	5,924	42,041	59,568
2000	4,218	4,036	4,431	30,392	43,077
2005	4,964	4,222	4,488	25,813	39,487
2006	4,216	4,350	4,584	27,704	40,854
2007	3,805	4,589	4,797	28,221	41,412
2008	3,433	4,545	4,769	28,314	41,061

Source: Rättsstatistisk årsbok 1981, 1986, 1991, Tab. 3.4.6., 3.4.8 a; Kriminalstatistik 1980, 1990, 1995, 2000, 2005-2008, Criminal Statistics – Official Statistics of Sweden, 3.7., 4.6., 4.7.

In practice, the summary sanction order (see *Section 3.1* above) is an important measure for the prosecutor to deal with youth crime, though its impact has substantially declined in all age groups since 1985. Nevertheless, in 2008, 23 percent of all cases against 15 to 17 year-olds ended in a fine issued by the prosecutor. This figure emphasizes the remarkable relevance of issuing fines during the preliminary stage.

Finally, it deserves attention that, in practice, the public prosecutor plays a prominent role in cases of youth criminality: in the year 2008, the Public Prosecution Service made the final decision in 61 percent of cases involving 15 to 17 year-olds, and in 48 percent of cases involving persons aged 18 to 20.

46 Kriminalstatistik 2008, Criminal Statistics – Official Statistics of Sweden, p. 150.

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

Whenever age is mentioned in the following figures, it refers to the age of the perpetrator at the time of sentencing, not the time of the offence. Persons who offended repeatedly in the time-period under examination are counted multiple times (*gross principle*). Where an offender has been sentenced simultaneously to several sanctions for several offences, only the most severe offence and the most severe sanction are counted (*net principle*).

Table 8: Criminal Law sanctions in Sweden, 2008

	Age				
	15-17	**18-20**	**21-24**	**24+**	**Total**
Imprisonment	---	721	1,996	11,552	14,269
Closed youth care	77	16	---	---	93
Psychiatric care	2	20	49	227	298
Supervision	51	1,236	1,054	4,469	6,810
with imprisonment	2	80	26	64	172
with contract care	1	74	183	923	1,181
with community service	5	344	230	627	1,206
Conditional sentence	38	1,575	1,756	7,681	11,050
with community service	---	692	834	2,993	4,519
Referral to Special Youth Care	3,989	556	---	---	4,545
Youth care	1,441	197	---	---	1,638
Youth service	2,548	359	---	---	2,907
Fines	1,773	2,663	3,570	22,223	30,229
Other sanctions	33	353	399	1,375	2,160
Total	5,963	7,140	8,824	47,527	69,454

Source: Kriminalstatistik 2008, Criminal Statistics – Official Statistics of Sweden, Tab. 4.7.

What is most notable when looking at how young people are sentenced in Sweden is that fines are the most frequently imposed sanction for the 18-20 age

group.[47] Various forms of non-custodial interventions occupy the second spot when investigating the frequency to which different sentencing options are applied in practice. The special youth sanctions "youth service" and "youth care" have an enormous impact for sentencing 15 to 17 year-olds, accounting for 67 percent of all imposed sanctions in this age group. The suspended sentences – supervision and conditional sentence – only play a marginal role, which is based on the high relevance of the above mentioned special youth sanctions. Deprivation of liberty is only very rarely applied to young offenders below the age of 21 years.

Table 9: Imprisonment and closed youth care for offenders below the age of 21, imprisonment for all age groups

	15-17		18-20		Total imprison-ment
	Imprison-ment	Closed youth care	Imprison-ment	Closed youth care	
1980	27	---	1,170	---	14,010
1985	20	---	946	---	13,959
1990	42	---	952	---	15,527
1995	35	---	760	---	14,704
2000	1	94	707	21	12,265
2005	6	98	838	32	15,335
2006	9	71	851	28	14,598
2007	4	72	721	17	13,973
2008	---	77	721	16	14,269

Source: Rättsstatistisk årsbok 1981, 1986, 1991, Tab. 3.4.6., 3.4.8 a; Kriminalstatistik 1980, 1990, 1995, 2000, 2005-2008, Criminal Statistics – Official Statistics of Sweden, Tab. 3.7., 4.6., 4.7.

Regarding the development in the imposition of custodial sanctions against juveniles it can be stressed that the application of liberty depriving sanctions reached its all-time low during the 1980s, after a long period of steady decline that began in the late 1960s. Since the beginning of the 1990s there has been a renewed increase in the number of young persons receiving custodial sentences that gained momentum from 1999 to 2004 (at least regarding 15 to 17 year-old juveniles). One possible reason for this trend is the above mentioned

47 If the summary sanction order issued by the prosecutor were considered, fines would be the most frequently imposed measures for juveniles of all age groups.

(re)introduction of so-called "closed youth care" and its application in practice. Before the reforms of 1999, the average annual number of 15 to 17 year-old juveniles in prison had fluctuated between 4 and 11 persons, with an average duration of stay of about 5½ months. The 1999 reform had one unexpected effect: there had apparently been a congestion – wrongly assessed or not perceived by the Ministry of Justice – of needing to imprison the youngest offenders after all. In the first year following the reforms, 69 juveniles were sentenced to juvenile imprisonment, and the figure rose to 145 by 2004. This period of sharp increase was followed by a subsequent drop in the number of such sentences. In 2006, the daily average number of (predominantly male) young persons serving (juvenile) prison sentences was 64, with an average sentence length of 9 months. Apparently, the reforms of 1999 had resulted in an intensification of sentencing.[48]

One aim of the 2007 juvenile justice reforms was a curtailment of the application of fines and liberty-depriving sanctions. Future analysis will be able to determine whether or not this aim has been achieved. Furthermore there are no data available yet on the influence of the changes in the provisions for direct referrals to the Social Services.

Table 10: Referral to Social Services (since 2007: for Special Youth Care)

Year	15-17		18-20		Total
	Youth care	Youth service	Youth care	Youth service	
1980	727	---	202	---	929
1985	451	---	150	---	601
1990	1,081	---	161	---	1,242
1995	2,162	---	174	---	2,336
2000	1,802	392	176	41	2,411
2005	2,103	521	212	71	2,907
2006	2,190	585	218	96	3,809
2007	1,559	2,226	187	262	4,234
2008	1,441	2,548	197	359	4,545

Source: Rättsstatistisk årsbok 1981, 1986, 1991, Tab. 3.4.6., 3.4.8 a; Kriminalstatistik 1980, 1990, 1995, 2000, 2005-2008, Criminal Statistics – Official Statistics of Sweden, Tab. 3.7., 4.6., 4.7.

48 See BRÅ-SOS-SIS 2002.

Table 10 shows a steady increase in the number of court ordered referrals to the Social Services for special youth care. Since 1990 the number has more than tripled, which is probably partly due to the fact that in 1995 the possibilities for the public prosecutor to dismiss the proceeding were limited (see *Section 5* above). The main argument for the reform in 2007 was that – despite several changes to details of the provision – referral to Social Services had been proven ineffective. In contrast to this, the court statistics make no indication of any decline in the practical application of this sanctioning option, which can at least partially be attributed to the fact that – as already mentioned above – the Public Prosecution Service has to more frequently bring a charge against juveniles before the courts. The reform in 2007 caused a striking rise of the former measure and the current sanction "youth service". Nowadays, youth service is the most frequently imposed sanction and in this sense the most successful introduced juvenile sentence.

7. Regional patterns and differences in sentencing young offenders

There is no information available on regional differences or variations in the sentencing practice of the courts.

8. Young adults (18-20 years old) and the juvenile (or adult) criminal justice system – Legal aspects and sentencing practices

As mentioned several times before in this report, many regulations for young offenders are applicable to all young people under the age of 21. In the field of criminal procedure, the majority of rules is prescribed for juveniles by the Act on Special Provisions for Young Lawbreakers concerning preliminary investigation, expert opinion, summary sanction order, waiver of prosecution and legal defence counsel (see *Sections 3* and *4* above). There are special provisions for young suspects under the age of 21 during the trial. An experienced judge should lead the trial[49] and the public can be excluded.[50] The principle of accelerated proceedings is explicitly valid for young adults during the proceedings.[51] Generally, the court's judgement has to be verbally promulgated at the trial.[52]

49 § 25 Act on Special Provisions for Young Lawbreakers.

50 § 27 I, II Act on Special Provisions for Young Lawbreakers.

51 § 29 Act on Special Provisions for Young Lawbreakers.

52 § 30 Act on Special Provisions for Young Lawbreakers.

"Youth" itself is an important mitigating factor for juveniles and young adults (see *Section 3.2* above).[53] Imprisonment is restricted to 14 years for young offenders below the age of 21.[54] While extraordinary reasons are required in order to sentence a juvenile to imprisonment (which should take the form of closed youth care), special reasons are necessary to imprison young adults.[55] Furthermore, imprisonment can only be applied on young adults when the seriousness of the offence ("penal value") or other circumstances make deprivation of liberty unavoidable (*ultima ratio*).[56] The explicit reference to penal value exemplifies the growing influence of neo-classical thinking in practice. Although neo-classical tendencies can be found within the recent reforms in 2007, treatment-oriented thinking still dominates the enforcement of sanctions.[57] While no differences are made between juveniles and young adults within the sanction "youth care", the sanction "youth service" is mainly provided for juveniles and should only be applied to young adults in case of special circumstances.[58] The sanction "closed youth care" is prescribed for juveniles in order to avoid a placement in prison.[59] Therefore, young adults should not be convicted to closed youth care.

9. Transfer of juveniles to the courts for adults

This is not relevant for Sweden as there is no separate juvenile court system as such (see *Section 1* above).

10. Preliminary residential care and pre-trial detention

15 to 17 year-olds can only be sent to pre-trial detention under very exceptional and restrictive circumstances.[60] During the examinations for arrest, the prosecutor is obliged to contact the social welfare board which is likely to place 15 to 17 year-old suspects in mandatory care (due to the seriousness of the crime or the risk that new offences will be committed).[61] The social welfare board and

53 Sec. 29 § 7 I Criminal Code.

54 Sec. 29 § 7 II Criminal Code.

55 Sec. 30 § 5 I Criminal Code.

56 Sec. 30 § 5 II Criminal Code introduced by the reform in 2007.

57 See Section 3 about the influence of neoclassical thinking on this sanction.

58 Sec. 32 § 2 II Criminal Code.

59 Sec. 32 § 5 I Criminal Code.

60 § 23 Act on Special Provision for Young Lawbreakers, see also SOU 2004:122, p. 541 f.

61 *Nelson* 1992, p. 116.

the prosecutor agree on a less incisive measure in the majority of cases. The alternative to pre-trial detention would be for the Social Services to place juveniles of this age group under supervision or to preliminarily allocate them to a youth home in accordance with § 6 of the Act on Special Provisions for the Care of Young People (RGBl. 1990, No. 52).

Table 11: Average number of juveniles under the age of 18 in pre-trial detention and preliminary residential care

	2002	2003	2004	2005	2006	2007	2008
Pre-trial detention	9	10	15	12	11	10	3
Preliminary residential care	0	0	0	0	0	0	0

Source: KOS – Kriminalvård och Statistik 2006, Tab. 5.5.

On 1 October 2007 a total of 10 under-18 year-olds were in pre-trial detention facilities, which allows the conclusion that the provisions on pre-trial detention are in fact being handled restrictively in practice. What is striking is that preliminary residential care as envisaged by the Act on Special Provisions for the Care of Young People is of no practical significance.

Pre-trial detention should also be avoided for young suspects aged between 18 and 20 years. Though there is no specific regulation in the Act on Special Provisions for Young Lawbreakers, the Procedure Code restricts the application of pre-trial detention for young adults. If the youthfulness of the suspect bears a special risk of serious harm for him/her, pre-trial detention may only be ordered in case supervision outside an institution is deemed insufficient.[62] Preliminary residential care is also an alternative for young adults under the age of 21 years because § 6 of the Act on Special Provisions for the Care of Young People also covers this age group. On average, one young adult was in preliminary residential care in 2002, 2003 and 2006. This alternative seems to be used only in very exceptional cases.[63]

In 2007 a special unit for juveniles and young adults was set up in a pre-trial detention institution for young people in Stockholm (Kronobergshäktet).[64] The capacity for detention was expanded by nine cells to a total of 27. The treatment programme was enhanced by the employment of a teacher and a training

62 Sec. 24 § 4 Criminal Procedure Code.

63 KOS – Kriminalvård och Statistik 2006, Tab. 5.4.

64 Imprisonment and pre-trial detention are executed in completely separated institutions; see the article at www.dn.se/sthlm/haktet-far-fler-celler-for-unga-1.710517.

supervisor. Since the 1990s more youths under the age of 21 have been held in detention. This tendency is probably not related to more severe offending, but rather to a more restrictive course in the judicial system due to the penal reforms of the last decades.

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

As already mentioned above, there are two different forms of deprivation of liberty for young offenders in Sweden: imprisonment and closed youth care, each with its own specific provisions. The Prison and Probation Service is responsible for the execution of imprisonment, whereas the National Board of Institutional Care is in charge of the secure institutional treatment of juveniles convicted to closed youth care. The Social Services in the municipalities have the overall responsibility for young people placed in residential care.[65] The enforcement of closed youth care is insofar independent from the prison regime. One important difference between the two sanctions is that release on parole is not possible within closed youth care.

Table 12: Basic facts about closed youth care

	2006	2007	2008
Number of institutions	6	6	7
Number of places	78	68	68
Average number of young inmates	67	71	62
Average number (boys)	82	76	73
Average number (girls)	2	5	3
Average age (both sexes)	17.7	17.6	17.5
Average age (boys)	17.7	17.6	17.5
Average age (girls)	16.9	17.8	19.3
Average length of the sentence in months (both sexes)	9.2	10.3	8.5
Average length of the sentence in months (boys)	9.2	10.0	8.7

65 See www.stat-inst.se/zino.aspx?articleID=92.

	2006	2007	2008
Average length of the sentence in months (girls)	9.0	15.6	1.0*
Releases (boys)	89	86	83
Releases (girls)	2	2	4

Source: SiS Årsredovisning 2008, p. 20. * The number reported there is to be concerned, but the report cited says so. In any case one has to consider the small absolute number of girls.

The average age of less than 18 years indicates that the sanction is mainly applied to juveniles, as intended by the legislator. While the number of places for closed youth care were sufficient in 2006 and 2008, significant overcrowding can be observed for 2007. As expected, boys are overrepresented in comparison to their proportion of inhabitants. The length of the placement is on average well below one year.

Table 13: New inmates in prisons and in Closed Youth Care (Abs.)

New inmates			
Year	**Imprisonment**	**Closed youth care**	
	15-17 year-olds	**15-20 year-olds**	**15-17 year-olds**
1995	41	---	---
1998	21	---	---
2002	0	86	56
2003	4	97	48
2004	9	123	64
2005	10	104	62
2006	7	84	51
2007	5	81	51
2008	1	76	data not available

Source: www.kriminalvarden.se/sv/Statistik/Ungdomar/Statistik-over-ungdomar-i-fangelse/; SiS Årliga Statistik 2002-2007, SiS Årsredovisning 2008.

Again, the comparison between juvenile inmates in prison and institutional care shows the intensification of sentencing against this age group. In 1998, before

the introduction of closed youth care in 1999, only 21 juveniles were imprisoned. Nevertheless, it can be stated that the number of juvenile prisoners decreased remarkably, even in 2004 and 2005. Closed youth care replaced prison sentences against juveniles to a large extent – as intended by the legislator.

As can be seen in *Table 8*, in 2008 imprisonment for juveniles was used in less than 1% of all cases. Accordingly, the imprisonment of juveniles can be seen as an absolute exception. For young adults, in the same year imprisonment was used in 8.2% of all sentences. Thus it appears that the international postulation of using imprisonment as a last resort is well observed in Sweden. For juveniles as well as for adults the imprisonment rates (with all the cautions that have to be observed while using this term) are comparatively (still) very low.[66]

In 2006, closed educational care accounted for less than 0.6% of all sanctions. So it can be emphasized that deprivation of liberty is a rarely used response to youth crime in Sweden.

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

Due to the fact that Sweden (since 1980, see above) no longer disposes of separate youth prisons, offenders who are sentenced to closed institutional youth care serve their sanctions in youth homes outside the prison system.

The enforcement of closed youth care should avoid the harm and other negative consequences for the convicted juvenile which might arise from a stay in prison.[67] The ideal of treatment is emphasized during the execution of closed youth care and is expressed by the integration into the regular procedures of the National Board for Institutional Care. The advantage for the juvenile is the possibility to benefit from different types of treatment and to be placed closer to home.[68]

The initial phase of the sentence is always served in a secure reception unit in which the staff members investigate the offender's individual treatment needs. The National Board on Institutional Care decides about a treatment plan and suitable placement in cooperation with the Social Services. The placement in a secure treatment unit is intended for young convicts with long sentences and in need of special treatment or for juveniles who are assessed to be dangerous. Less secure units accommodate young offenders with shorter sentences and are selected with regard to the individual needs of the offender as well as his/her regular place of residence. The progress of treatment is carefully watched and

66 See in detail *von Hofer* 2004a; *Cavadino/Dignan* 2006, p. 154.

67 See www.stat-inst.se/zino.aspx?articleID=92.

68 Seven closed youth care homes *Johannisberg*, *Klarälvsgården*, *Sundbo*, *Bärby*, *Fagared*, *Råby*, *Vemyra*.

assessed every two months. A positive outcome leads to the placement in more open institutions.[69] Each offender lives in a single room.

Within the institutions, different forms of treatment are available for the young offenders. The background is that every young person has the right to education, rehabilitative programmes and meaningful leisure time activities – for example social skills training, education, cooperation with parents, cognitive behavioural methods, and individual or group methods.[70] Special emphasis is also placed on the treatment of the issues of drug and alcohol abuse, criminality and relationship and school problems. Short term programmes, including mediation, shall help the young offender to reflect upon his/her offending behaviour and to find a way back into society.

To guarantee intense and individualized treatment for the young offenders, the offender-staff-ratio is quite high.[71] A university degree is the required minimum level of education for work that concerns treatment and care in the homes. The Social Services invest in the development of their personnel's skills, and use independent researchers to develop and evaluate the methods of treatment. These relatively high standards lead to high expenses: in the year 2008 the daily net cost was nearly 745 Euro.[72]

In recent years, strong efforts were made to improve the safety and the security within the youth homes as well as to prevent escapes of young inmates.

Table 14: Escapes from closed youth care

	2004	2005	2006	2007	2008
Escape from a youth home	15	20	13	4	3
Escape from guarded leave	6	7	9	2	2
Escape from unguarded leave	11	10	9	5	3
Thereof return same day	10	8	14	3	3
Total	32	37	31	11	8

Source: SiS Årsredovisning 2008, Table 10.

69 See www.stat-inst.se/zino.aspx?articleID=93.

70 See www.stat-inst.se/zino.aspx?articleID=93.

71 The ratio is approximately three times that of prisons (approximately three staff members per juvenile in care), see *Sarnecki* 2006, p. 199.

72 SiS Årsredovisning 2008, Tab. 31.

According to the remarkable decline in the numbers of escapes in 2007 and 2008, these efforts seem to have been quite successful. In 2008, conferences concentrating on security and training in risk and need assessment were carried out.[73] The staff participated in courses on "Structured Assessment of Violence Risk in Youth (SAVRY)", "Youth Level of Service/Case Management Inventory (YLS/CMI)" and "Estimate of Risk of Adolescent Sexual Offence Recidivism (ERASOR)". In most institutions, the staff was trained in suicide-prevention and in handling risk situations based on the programme "No Power No Loss" of the National Board of Institutional Care. Routines and systems for daily observations and shift changeover were improved.

Special effort is given to the period before the young offenders are released into "normal life". This transitional period requires a structure in order to facilitate the juvenile's integration into the community and ought to be planned in close cooperation with the Social Services. The Social Services cover the cost and support the juvenile to find accommodation if he/she cannot return to his/her family (e. g. family home). The National Board on Institutional Care and the Social Services work together in different areas during the enforcement of closed youth care. Cooperation is needed in the case of initial and subsequent placement in homes for young people, leave of absence, movement to a more open form of treatment within the National Board of Institutional Care, the transitional period and after-care.

In case the juvenile or young adult is sentenced to imprisonment, special conditions have to be considered. Juveniles and young adults shall, in accordance with international recommendations and conventions, be separated from (older) adults to avoid detrimental effects on their re-socialisation. Placement in open units shall be prioritized. If placement in an open institution is not possible for security reasons, juveniles and young adults shall be placed in other institutions that offer specific treatment for young people. The Prison and Probation Service has set up special youth units for young adults in five prisons[74] and more places in common units in other prisons.[75] The staff receive special training and the youth units are smaller than common units for older prisoners. Work and treatment in a youth unit are especially tailored to the needs of young offenders. Treatment involves motivational talks, and for violent offenders anti-aggression-trainings (ART = Aggression Replacement Training).[76] Motivational interviews (BSF = Beteende, Samtal Förändring) is a schedule for treatment orientated dialogue (Motivational Interviewing MI) with five semi-structured

73 SiS Årsredovisning 2008, p. 22.

74 Luleå, Täby, Kristianstad, Hällby and Borås.

75 See www.kriminalvarden.se/sv/Statistik/Ungdomar.

76 See www.kriminalvarden.se/sv/Fangelse/Unga-i-fangelse/; ART is also applied in youth homes for the enforcement of closed youth care.

meetings.[77] The programme intends to enhance motivation and the probability to change the offender's lifestyle. The motivational talks prepare the offender to participate in a long-term programme focusing on crime or abuse. At present, the prison system is piloting a special version of ART and is planning mentorship for young prisoners who need help to cope with abuse. Enforcement-planning in cases of young offenders involves different institutions (Social Service, Probation Service), parents and relatives to a greater extent than is the case with older prisoners.

One form of imprisonment (for all prisoners, including juveniles and young adults) should be given particular mention: intensive supervision with electronic monitoring implies that the convicted person can serve his/her prison sentence of up to six months at home.[78] The offender is not allowed to leave his/her home if this is not explicitly scheduled within an individualised plan which takes work or educational obligations etc. into account and is embedded into a pedagogic concept. Compliance checks of this "house arrest" or "home curfew" are operated with the aid of electronics.[79] The Probation Service carries out home visits combined with other checks (e. g. alcohol tests).[80]

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

At the end of June 2009, the Government decided on the compilation of an expertise about the sanctions system for adults, young adults and juveniles.[81] The report shall be delivered at the end of May 2012. Crucial questions are how the criminal justice system should deal with young adults aged 18 to 20 years and whether or not this age group should be treated as adults.

The Conservative Party is a keen advocate of abandoning the legal provision of the Criminal Code which allows the court to transfer offenders aged 15 to 20 years to the Social Services. A Government Commission had previously made a similar proposal in 1993, albeit based on different motivations. Sentencing reforms in the past decades have weakened the relevance of individual prevention. The emphasis lies on the proportionality of the offence and the resulting penalty, equal treatment, consistency and predictability. As a result, the

77 See www.kvv.se/sv/Fangelse/Arbete-klientutbildning-och-behandling/Beteende-Samtal-Forandring/.

78 See www.kriminalvarden.se/ar/English/Non-custodial-care-/Intensive-supervision-/.

79 The offender wears a "tag" worn around the ankle.

80 *Haverkamp* 2007, p. 177.

81 See Kommittédirektiv Dir. 2009:60 En översyn av påföljdssystemet, www.regeringen.se/-content/1/c6/12/90/11/ae37a526.pdf

focal point for sentencing is the offence and its severity. Also, the victim's needs have gained importance. This development is far from having reached its climax and the process of change shall continue. Nevertheless, the principle of proportionality does not rule out individual circumstances in sentencing, which still play a major role with regard to young offenders. The idea that juveniles have a particular need for help and for support in preventing recidivism still results in milder sentencing and special youth sentences. However, offence-orientated thinking calls for interventions which are early, clear and qualified to prevent reoffending.

In this sense, the purpose of fines against juveniles under the age of 18 is questionable because the effect is foiled when parents, relatives or other persons cover their payment. In these cases, the reaction to crime bears no clear consequences for the juvenile. Therefore, the actual practice should be reviewed taking the special circumstances of juveniles into consideration, with the ultimate goal of determining whether or not the use of fines in cases of young people should be abandoned or restricted.

The planned government expertise will give particular attention to the privileges in sentencing for young adults between the ages of 18 to 20, making reference to provisions in other countries where young adults are treated like adults in the criminal law as well as to the UN Convention on the Rights of the Child.[82] In practice, most young adults receive adult sentences in Sweden (see *Table 8* above). However, the restrictive application of youth sentences might be an argument for maintaining the sanction system with regard to young adults, who are still developing personally and lack experience.

Although the sanctions system for young offenders was revised in 2007, the Government aims for further reforms because the provisions for sentencing seem to be complicated and to have principal deficiencies. According to this perspective this applies to the sentence "closed youth care". Correspondingly, there seems to be a need to deprive persons of their liberty for longer in order to cope with serious crime and to offer better possibilities for control and support during the aftercare period.

Moreover, the expertise should evaluate the effects of the 2007 reform, especially whether the objectives particularly of "closed youth care", "youth care" and "youth service" have been achieved. This overview should take into account the apparent interest in early, clear and preventive interventions against young offenders. The experts should comment on sentencing for juveniles, implications and implementation of the sanctions as well as treatment and

82 See *Dünkel/Pruin* in this volume, who, however, show that most European countries introduced special provisions for young adults and that this idea is increasingly gaining importance, particularly in view of the Council of Europe's recommendations Rec. (2003) 20 and Rec. (2008) 11 and *Dünkel/Grzywa/Pruin/Selih* in the volume.

reactions in case of recidivism. Moreover, new and suitable reactions for young offenders should be considered.

14. Summary and outlook

From an ideological perspective, public rhetoric has witnessed an extensive shift away from the ideal of treatment over the past decades. Rather, the central aims of criminal law and the application and enforcement thereof are now habitually referred to as "giving young people a cue" and the need to "clearly set boundaries." At the same time, however, both the legislator and practice are abiding by the treatment-ideal, which shall become apparent from the reforms that have occurred in recent years. When interpreted benevolently, one can argue that the public rhetoric ties in with the Scandinavian tradition of positive general prevention. Less graciously, however, it can also be viewed as yet another (and by no means novel) attempt at wanting to resolve social problems (mainly) through means of criminal law and justice. Such thinking is most likely backed by the erroneous perception that juvenile crime – especially violent offending – has been on the increase, a notion that has become "common knowledge" in Sweden since the end of the 1980s. As can be taken from Swedish research and analysis, the typical public stance towards youthfulness is one of "young people as trouble", a perception which stands in stark contrast to the first half of the 20th century, where youth was frequently viewed as a positive beacon of hope.

The offending behaviour of young offenders does not appear to have witnessed any significant changes over the last 30 years (see *Granath* 2007, p. 174). Above all, no general increases in crime have been substantiated, which is in sharp contrast to what is depicted in the media and by politicians who predominantly assume significant increases in the incidence of juvenile delinquency (possibly influenced by temporary occurrences of rocker-crime, xenophobic right-wing violence or violence in connection with football matches). Public debate on control is characterized by the tougher course against young people, and criminal law is attributed an important role in this regard. A recent example for this trend is the discussion about the abolition of privileges for young adults. The argument in favour of equal treatment with adults refers to the wording of the Convention of the Rights of the Child, but fades out other UN-documents and especially the Council of Europe's Recommendations which suggest including young adults into the scope of youth criminal law.[83] In contrast, the daily practice of criminal prosecution however appears to have undergone a process of partial decriminalisation: since the mid 1970s the number of prosecuted 15 to 20 year-olds has decreased by almost half. Quite

83 Rec (2008) 11 (European Rules of Juvenile Offenders Subject to Sanctions or Measures) and Rec (2003) 20 concerning New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice.

possibly, juvenile justice in Sweden has witnessed the phenomenon that has been indentified internationally as "bifurcation". On the one hand, sentencing has seen certain intensifications for certain groups (for example the introduction of closed institutional youth care); on the other hand Sweden has experienced first manifestations of initiatives like victim-offender mediation. In practice, the ideal of treatment is still of great significance.

Recently published research by the National Advisory Committee for the Prevention of Crime (BRÅ) shows that – in contrast to other countries like for instance Canada and the USA – there has been a lack of scientific research on the effects that community treatment measures and other programmes have on young offenders (BRÅ, 2008). BRÅ rightly indicates in this context that in Sweden, in most cases the number of respective relevant juveniles is simply too small to merit them being the subject of scientific evaluations.

When viewed with the eyes of outsiders, what is remarkable about the Swedish juvenile justice system is its "non-juridical" character. This state of affairs could well have to do with the fact that the Swedish judicial and legal culture is only minimally affected by judicial doctrines. Accordingly, the Swedish style of law – and this also applies to compulsive law – is not rarely characterized by its indeterminacy and limited frames of regulation. In Sweden, a country that has internally and externally been at (and in) peace for nearly two centuries, primacy is accorded more to the political rather than to the judicial. In practical everyday life, legal argumentations typically take a back row seat and clear the stage in favour (or at the expense) of practical solutions and compromises, that are not seldom resolved at the official, governmental and organisational level. In this "culture of negotiation" trust often takes precedence over control, and such traits can also be identified within juvenile justice. On the one hand, this leaves much room for flexibility and change, yet on the other it also brings with it a certain degree of unpredictability and legal insecurity.

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Switzerland

Dieter Hebeisen

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

In Switzerland, as is also the case in various other countries in Europe, juvenile criminal law as an independent special criminal law does not have a long tradition.[1] The issue was first individually touched on in the preliminary draft of the Criminal Code (*Strafgesetzbuch,* CC) of 1916 in Section 4 titled "Treatment of Children, Juveniles and Persons of the Age of Transition" (*Behandlung der Kinder, der Jugendlichen und der Personen im Übergangsalter*). However, the Code did not come into effect until 1942. The difficulties that arose in creating a uniform juvenile justice system for all of Switzerland could especially be attributed to two key reasons: firstly, Switzerland did not become a federal nation until 1848, prior to which the country had had a very long tradition of sovereign Cantons that needed to be overcome. Secondly, also in the previous century defining the decisive criteria for juveniles proved to be difficult. Terms such as "moral and mental maturity" were meant to circumvent the dilemma of criminal responsibility – and with this the issue of criminal culpability – but at the same time gave rise to new challenges in interpreting what the terms exactly imply – a dilemma that has persisted until today.

Before the Criminal Code came into effect in 1942, juvenile criminal law had been regulated cantonally. Influences from other countries led to very different embodiments in different Cantons. Especially urban Cantons and those in the French speaking regions of Switzerland[2] passed new provisions, however

1 For a comprehensive compilation see *Aebersold* 2007, p. 66-87.

2 Zurich, Bern, Fribourg, Basel-Stadt, Appenzell AR, Thurgau, St. Gallen, Vaud, Neuchâtel and Geneva.

without any agreement on a minimum age at which young people should fall within the ambit of criminal law. Differences also lay in the fact that less severe perpetrations were to be judged according to juvenile law, while more serious offences were to be reacted to in accordance with the principles of adult penal law. Nonetheless, there were still approaches that were clearly in favour of placing primary emphasis on the welfare of children and juveniles. For example, the Canton of Bern stated the following maxim in its 1930 law on the administration of juvenile justice: "In choosing measures or penalties the welfare of the fallible child or juvenile is decisive; the aim is education and care."

In its submission to the Federal Justice Department and to the members of the Commission of the National Council on 1 November 1932, the "Swiss Association of the Functionaries of Juvenile Justice Administration"[3] – founded on 20 October 1931 – made the following recommendations: the age of criminal responsibility should be fixed at 15 years; one should abstain from short term detention (*Arreststrafe*); youth prisons are deemed necessary; short term prison sentences should be dismissed as a matter of principle; probationary supervision (*Schutzaufsicht*) as a stand-alone sanction should be imposable for periods between six months and three years; up to the age of 20 the treatment of offenders should depend on the age at the time of the offence; short absolute periods of limitation of prosecution (*Verjährungsfristen*) should be introduced for juveniles.

The implementation of the Criminal Code in 1942 introduced offender based criminal law – and thus the principle of education – at the federal level. The provisions for children (6-14 years old)[4] as well as for juveniles (15-18 years old) emanated from legal monism. This implies that either a measure or – when need was lacking – a penalty was to be imposed. The following educational measures were available: "reformatories", "reliable, trustworthy families for education" or "the leaving of the child or juvenile with its own family for supervised education." These measures could be carried out until a child reached the age of 20 or a juvenile turned 22. In exceptional cases, the duration of a measure could be set at 10 years. In cases in which the need for such a measure was in doubt, the decision was suspended. Where a penalty was issued, children could receive a reprimand (*Verweis*) or school detention (*Schularrest*) while

3 Objective in accordance with Article 1 of the statute: "The purpose of the association lies in the advancement of juvenile criminal law and the juvenile criminal process, the improvement of the application of the law as well as of the institutions that are responsible for it. The association is concerned with issues of juvenile crime." Today the association carries the name "Swiss Association for the Administration of Juvenile Justice" (Schweizerische Vereinigung für Jugendstrafrechtspflege (SVJ)).

4 The low age limit of 6 years could be attributed to the fact that at this point in time the child protection measures emanating from civil law could not yet be sufficiently implemented.

juveniles could receive a reprimand, a fine or imprisonment for no longer than one year. This form of juvenile criminal law was highly problematic for the Cantons. There was a lack of experienced agencies and particularly of institutions. The already existing reformatories were orientated towards discipline and thus lacked staff that was trained in education and pedagogy. The so-called "home campaign" (*Heimkampagne*) at the end of the 1960s jolted agencies and homes and brought about major positive changes. However, for many years the campaign could not dispel the prejudices that had existed against the institutions – institutions that in the meantime were being run much more professionally.

In 1971-1974 the juvenile justice system was partially revised albeit without being a revolutionary reorganisation of the system. Monism was softened insofar as the measure of "educative assistance" (*Erziehungshilfe*) could be conjoined with imprisonment for no more than 14 days or with a monetary fine. Furthermore, recidivists could also receive a penalty in addition to an already imposed measure.[5] The reforms lay not only in linguistic adjustments (for instance "educational homes" instead of "reformatories", "difficult" instead of "morally spoiled") but more importantly in key changes to the system of reacting to offending by young people. Firstly, so-called "orders to perform work" (*Arbeitsleistung*) were introduced as an additional form of penalty, which soon emerged as being the most valuable sanction from an educational and pedagogical perspective. Second, "educational support" was transformed from an entirely supervisory sanction into State support and control of a juvenile. Thirdly, qualified commitment to a home was limited to persons who were no older than 25 years of age. As a fourth point of interest, additional opportunities for waiving the imposition of measures or penalties were introduced: when appropriate measures had already been implemented; if the offender showed sincere and genuine remorse; or when a certain period of time had elapsed since the offence had been committed[6]. Finally, the homes were categorized into different, more specific types of institutions: educational children's homes (*Erziehungsheim*), therapeutic homes, homes for juvenile re-education (*Anstalt für Nacherziehung*) and vocational training institutions (*Arbeitserziehungs-anstalt*). Even though the Federal Council of Switzerland repeatedly renewed the time limit within which these specialist institutions were to be opened, certain types were in fact never established.[7] Consequently, this regulation did not prove to be a success.

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5 This is an apocryphal monistic breakthrough, because the punishment for a new offence was not enunciated in the same proceedings as the measure was.

6 Three months for children, one year for juveniles.

7 The following were never put into practice: a therapeutic home for male juveniles and a vocational training institution for female juveniles.

Following more than twenty years of preparatory work, the completely revised Juvenile Criminal Code (*Jugendstrafgesetz,* JCC) came into effect on 1 January 2007. The most central amendments include:

- Increased minimum age of criminal responsibility from 7 to 10 years; the juvenile justice system is thus applicable in cases of 10 to under-18 year olds.
- Proceedings against so-called transitional offenders[8] (*Übergangstäter*) remain at the Juvenile Court, so long as proceedings are already pending;
- Introduction of a dualistic system of educational measures and penalties;[9]
- Expansion of grounds for waiving punishment;[10]
- Introduction of the mediation procedure;
- The system of educational measures (*Massnahmenrecht*) is harmonized with civil law standards.
- Protective placement measure *Unterbringung*[11] only differentiated into allocation to closed or open institutions;
- Discontinuation of conditional release from a protective measure;
- All measures cease once an offender turns 22;
- Nullification of a measure on grounds of futileness;
- Deprivation of liberty possible for up to four years under very limited circumstances;
- Openness of proceedings to the public very limited and restricted;
- Extended rights to defence.

Particularities and details of the resulting new system of juvenile justice are more closely elaborated in the following sections.

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

For a number of years now (since roughly 1998), both in the eyes of the media and in the subjective perception of the public, juvenile delinquency – especially

8 Transitional offenders are persons who have committed criminal offences both before and after having turned 18, and whose consequent proceedings have been initiated and not yet completed before reaching the age of majority.

9 So called dualistic-vicarious system; where a juvenile is in need of a measure, the most appropriate measure is supplemented with a penalty if he or she committed the offence culpably.

10 For a list of grounds for waiving punishment, see *Section 3* below.

11 The differentiation between "educational homes" and "special institutions" has been abandoned.

offending by foreigners and violent crimes – has been strongly increasing. The following presentation aims to exemplify that these statements need to be examined in more detail in order to be able to draw conclusions that are as appropriate and accurate as possible. This chapter also briefly touches on the reasons why the perception of increased levels of violence has become manifest.

Statistical material has been gathered since 1934. However, data collection has only been systematic and had comparable foundations since 1984. The following comments therefore only refer to data from the last twenty years.[12] Additional consideration should also be given to the fact that the sentencing figures were drawn from different sources and were collected differently. These numerical data needed to be processed and harmonized in order to generate a consistent time series from the figures from each individual year. For methodological reasons not all disposals were included in the data, but rather only those sentences for felonies and misdemeanours (*Vergehen*) by young people aged 15 to 18 years.[13] Common, frequently committed offences (*Massendelikte*) such as for instance minor property offences, basic assault, basic drug consumption or breaches of traffic laws are therefore *not* included in the statistics, even though these offence categories constitute by far the largest proportion of the law enforcement agencies' caseloads. There are a number of factors that bar us from interpreting the statistics solely on the basis of absolute figures: the factors that influence the scope and coverage of statistics include the discovery of offences, reporting behaviour of victims and aggrieved parties, staff resources of the police as well as the priorities they have set in combating offending, and the practice of law enforcement agencies regarding the dismissal of cases by the prosecutor or judge. Correct interpretation of the data detached from absolute figures allows several crucial statements to be made. Conviction rates – convictions according to the Criminal Code per 100,000 of the population – for adults have been on the decrease (the 2004 figure lay approximately 20% below that for 1934), and figures for young adults in 2004 exceeded those of the early 1980s for the first time. In recent years only the juvenile conviction rates have shown clearly elevated figures. This finding allows the conclusion that delinquent behaviour by juveniles is predominantly typical for the phase of personal development and increasing maturity, and should thus be deemed episodic. Furthermore, offending by young people is by all means the definite starting point of increased offending in adulthood.

The ratio between male and female offenders has remained virtually unchanged, with more than 80% of all juvenile offending still being committed

12 Federal Statistical Office (www.bfs.admin.ch) on the development of juvenile crime and juvenile sentencing from 1946 to 2004.

13 Felonies are criminal offences that are punishable with more than three years imprisonment; misdemeanours are criminal offences for which a fine or up to three years imprisonment can be imposed.

by males. Presumably a number of different factors are decisive for this rather one-sided ratio, an elaboration of which would, however, go beyond the scope of this publication.[14] Anyhow, notice should be drawn to the fact that this phenomenon is not limited to juvenile offending, but is also similarly present when investigating adult crime.

When making comparisons between the share of convictions of Swiss juveniles and of foreign juveniles, it needs to be stated in advance that no statistical data on offender nationality are available for the period from 1981 to 1998. Up to 1980, the foreign juveniles' conviction rates were on a constant yet slight increase and were only marginally higher than the figures for Swiss juveniles – from about 750 (foreigner) and 500 (Swiss) per 100,000 in 1956, to about 1,300 and 1,000 per 100,000 respectively in 1980. Comparing these figures to the conviction rates for 1999 to 2005 shows that the previously predominantly parallel trends of both Swiss and foreign young offenders had diverged. While the 1999 conviction rate of foreign young offenders was double that of 1980, the figures for Swiss youngsters from the same years hardly differed. Moreover, for 1999 to 2005 the conviction rates of foreign juveniles grew at a significantly higher rate than was the case with the rates for Swiss juveniles. For instance in 2004, foreign juveniles had a conviction rate of 4,141/100,000, while the Swiss figure lay much lower at "only" 1,255/100,000. Examining the recorded absolute figures (now including registered contraventions and under-15 year olds) rather than rates per 100,000 generates the following statistical picture for the period from 1990 to 2006:

14 A recapitulatory discussion can be found in: *Storz* 1996.

Table 1: Juvenile criminal convictions, by gender, age and nationality

Year	Total	Male	Female	Under 15 years	15 years and over	Swiss	Foreign with residence	Asylum seekers	Foreign without residence
1990	6,803*	5,798	1,005	2,154	4,659	---	---	---	---
	---*	85.2	14.8	31.7	68.3	---	---	---	---
1995	7,983	6,739	1,244	2,726	5,257	---	---	---	---
		84.4	15.6	34.1	65.9	---	---	---	---
2000	11,555	9,395	2,160	2,893	8,662	7,074	3,719	281	481
	---	81.3	18.7	25.0	75.0	61.2	32.2	2.4	4.2
2001	12,767	10,471	2,296	2,888	9,879	8,133	3,919	254	460
		82.5	17.5	22.6	77.4	63.7	30.7	2.0	3.6
2002	13,728	11,206	2,522	2,919	10,809	8,461	4,249	520	495
	---	81.6	18.4	21.3	78.7	61.6	31.0	3.8	3.6
2003	13,539	11,110	2,429	2,768	10,771	8,316	4,158	661	403
	---	82.1	19.9	20.4	79.6	61.4	30.7	4.9	3.0
2004	14,343	11,633	2,710	2,965	11,378	8,764	4,378	837	363
	---	81.1	18.9	20.7	79.3	61.1	30.6	5.8	2.5
2005	14,106	11,189	2,917	3,170	10,936	8,851	4,224	619	402
	---	79.3	20.7	22.5	77.5	62.8	29.9	4.4	2.9
2006	14,045	11,160	2,885	3,303	10,742	9,006	4,474	432	328
	---	79.6	20.4	23.5	76.5	64.1	30.5	3.1	2.3

* First line: absolute numbers; second line: percentages.
Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

These statistical data can now be interpreted either absolutely or relatively. Interpretation from an absolute perspective shows that registered offences have been on the increase both for Swiss nationals as well as for foreign juveniles, with roughly equal percentage increases. Relative interpretation – as presented above – indicates that convictions of young foreign offenders increased at a much greater rate if they are put into relation with their respective share in the overall population.

There is no statistical evidence to verify the widespread opinion that offenders are becoming younger and younger. As *Table 1* above shows, the share of under-15 year olds among convicted young offenders has been relatively stable since 2001 (between 20.4% and 23.5%) while being clearly below the figures from 1990 and 1995 (31.7% and 34.1% respectively). *Table 2* shows that the absolute numbers of juvenile convictions – shown in percentages in comparison to adult offenders – are not subject to major fluctuations. However, sentencing rates per 100,000 of the population are by far more significant since the data in *Table 2* do not take demographic developments into account.

Table 2: Convictions of adults, young adults and juveniles according to the Criminal Code

Year	Total	Adults		Young adults		Juveniles	
		N	%	N	%	N	%
1984	24,698	20,779	84.1	7,398	30.0	3,919	15.9
1989	23,798	20,563	86.4	6,650	27.9	3,235	13.6
1994	23,606	20,470	86.7	5,546	23.5	3,136	13.3
1999	24,544	21,144	86.1	5,715	23.3	3,400	13.9
2004	32,942	28,050	85.1	8,032	24.4	4,892	14.9

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

Table 3 shows the number of convictions for violations of the Criminal Code, Drug Laws (*Betäubungsmittelgesetz,* BetmG) and Traffic Laws (*Strassenverkehrsgesetz*, SVG). In the case of the latter one needs to take into consideration that a large number of traffic violations are not statistically recorded because they are merely contraventions.

Table 3: Convictions of juveniles according to the Criminal Code, Drug Laws and Traffic Laws

Year	Total	Criminal Code		Drug Laws		Traffic Laws	
		N	%	N	%	N	%
1984	5,620	3,919	69.7	550	9.8	940	16.7
1989	4,901	3,235	66.0	614	12.5	747	15.2
1994	4,947	3,136	63.4	756	15.3	987	19.9
1999	5,258	3,400	64.7	803	15.3	636	12.1
2004	7,584	4,892	64.5	1,485	19.6	796	10.5

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteils-statistik*, JUSUS).

While the percentage share of convictions for breaches of the CC has remained stable, convictions for drugs offences have been increasing, parallel to a steady decline in the share of convictions for breaches of traffic laws. The absolute numbers on the other hand show a great degree of fluctuation which could well be attributed to police staff resources and to changes in the police practice of whether or not to press charges. Political influence and great regional variations cannot be ignored. One thus needs to be cautious when making any general interpretations of the figures at hand. Cantonal statistics – which also incorporate traffic law contraventions – clearly show that road traffic delinquency by far accounts for the largest share of all charged criminal offences in all regions of the country. There are noticeable differences in how the individual Cantons respond to violations of drugs laws. Once charged, juveniles are often referred to a counselling centre and proceedings are closed. The Federal Statistical Office (*Bundesamt für Statistik*, FSO) is, however, not informed of such decisions, with the consequence that the FSO figures do not in fact accurately reflect the actual situation. Another point of relevance is the fact that when the perpetrator of a crime is not known, the charge is made before adult courts. While it is not possible to exactly determine how many of these cases involved juvenile suspects, a number of research studies can at least give some form of indication of the extent of juvenile involvement.[15]

Claims that juvenile violence has increased are not particular to Switzerland. In many European countries this trend has been increasingly exploited not only

15 E.g. *Killias/Villetaz/Rabasa* 1994, or for a compiled summary see *Aebersold* 2007, p. 10.

by the media, but more and more at the political level. To begin with, *Table 4* shows statistical data for 2005:

Table 4: Convictions of juveniles for violent offences in 2005

Minor criminal suspects for violent crimes according to police statistics	2,987
Juvenile criminal convictions for violent crimes (corresponds to only 16% of all criminal convictions)	2,268
Male	86.8%
Female	13.2%
Under 15 years old	22.1%
15 years and older	77.9%
Nationality	
Swiss	46.1%
Foreigner with residence in Switzerland	50.6%
Asylum seekers	2.8%
Foreigners without residence	0.5%

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

The above figures allow us to draw the following conclusions: the police recorded statistics reflect all charges that are brought against young suspects. These do not, however, always result in a conviction. Furthermore, multiple charges can be dealt with within one procedure – two factors that help to explain the different figures in the police recorded statistics on the one hand (2,987 cases) and the Juvenile Sentencing Statistics on the other (2,268).[16] Some violent crimes (for example assault, threats) require the victim to explicitly request the offender to be punished (so called *Antragsdelikte*). However, fear of reprisals not seldom results in victims refraining from filing charges. Female juveniles are significantly less frequently convicted of violent crimes. Yet there have been noticeable quantitative and qualitative increases. The fact that under-

16 The differences cannot be attributed solely to the fact that reported offences are often dealt with by dismissals or acquittals – the use of mediation procedures in some Cantons also needs to be considered. The relations also need to be borne in mind: in 2005, offences with violent elements accounted for only 16% of all criminal sentences. 0.2% of the 945,000 juveniles aged between 7 and 18 committed such an offence.

15 year olds account for 20% of all young persons who are convicted for violent offences is alarming, and the rising trend is ongoing. In the year 2005, 53.9% of young people who were convicted for having committed violent offences were foreigners, a figure that contains much potential for heated political debate.

In order to assure that the delicate issue of "youth violence" is discussed factually it is essential to explore the causes of violent behaviour.[17] The following factors shall be briefly outlined: depictions of violence in films (cinema, TV, video), and particularly in the internet and in computer games present juveniles with a distorted view of reality. Violence is glorified as a means of asserting and enforcing one's own interests. Such media presentations result in young people positively identifying themselves with the thugs, while victims are attributed the role of cowards or failures. In this period of material consumption and concomitant inner isolation, juveniles who lack social competence and 'soft skills' often – sometimes randomly – associate with mobile and unsupervised groups (drugs, alcohol, right wing groups, anti-fascist groups, hooligans etc.) that can provide a breeding ground for (in particular violent) offending. Young people who cannot finish school education for disciplinary reasons, who do not enter vocational training or who discontinue such training after a short period of time, are also at risk. The abundance of free time is frequently filled with delinquent behaviour, either out of boredom or frustration. The responsibility to educate young people is no longer sufficiently administered. Juveniles with difficult migration backgrounds and the additional burden of language barriers normally have difficulties in fitting into a foreign culture. Integration projects, like for example the one in the city of Basel, engage juveniles early and can contribute to preventing social waywardness. At the same time, young people must be required to appreciate that integration is not a one-sided process. He or she has to assimilate and conform to the rules and customs of the new country, and cannot continuously rely on the conventions of his or her country of origin (for example where there are differing interpretations of "what is violent").

Willingness to engage in violent behaviour has also risen among juveniles in recent years. However, it cannot be confirmed that the quantitative increase in youth violence has been to a concerning extent (as is the message stemming from the media and political discourse), while on the other hand the qualitative increase should not be simply trivialized. Unprovoked assault, sometimes never-ending and with highly dangerous appliances, the tantalisation of defenceless victims and the random selection of victims should find no acceptance. The available statistical data are insufficient to allow us to draw any differentiated conclusions on the issue of "youth violence". Wide and diverse dark-figure

17 See the comprehensive report from the Federal Department of Justice and Police (FDJP) of 11 April 2008. See: www.bj.admin.ch/bj/de/home/themen/kriminalitaet/jugend-gewal.html) and the statement by the SVJ on the draft from 29 August 2007 (www.julex.ch).

research could deliver more factual foundations and at the same time divert discussion and debate away from excessive speculations.

3. The sanctions system: Kinds of informal (diversion) and formal (court sentences) sanctions

The term diversion, as it is known for instance in Germany and Austria, is not known within the Swiss juvenile justice system. However, this does not imply that every case ends before court.

Firstly, proceedings can already be closed at their very beginning, in cases where security measures are deemed unnecessary, or civil law authorities have already ordered appropriate measures and in both cases the preconditions for waiving the imposition of a penalty have been met. Since 1 January 2007 the following grounds for exempting from punishment (*Strafbefreiungsgründe*) have been in place:

- Punishment would endanger the objectives of a previously ordered protective measure, or of a protective measure that is to be ordered in the given case.
- The juvenile's degree of guilt and the consequences of the offence are marginal.
- The juvenile has recompensed the damages caused as far as possible through own efforts, or has undertaken a special endeavour in order to balance his or her wrongdoing, the only applicable punishment would be a reprimand, and prosecution is only of marginal interest to the victim and the general public.
- The juvenile is so heavily affected by the direct, proximate conesquences of the offence that punishment would be inappropriate.
- The juvenile has already been sufficiently punished for the offence by his/her parents, another legal guardian or a third party.
- A comparatively long period of time has passed since the offence was committed, the juvenile has behaved well and the victim's and public interest in prosecuting the offence are marginal.

One cannot rule out that there can be disagreement between courts, juveniles and particularly defence counsels as to whether or not the consequences of the offence or public and victim interest in prosecution are "marginal", whether the reparative efforts made by the offender are "special", whether the punishments administered by the parents or other parties are "sufficient" or the period of time that has passed since the offence is "comparatively long". Despite these linguistic inaccuracies and ambiguities the grounds for desistance retain a certain degree of importance and meaning, for they nonetheless allow for the implementation of the central idea of Swiss juvenile justice – influencing juveniles through special prevention – without formal court proceedings. Setting a deadline for

young offenders within which they have to recompense the damages caused is a sensible approach especially in cases of criminal damage. Seizing this opportunity would logically result in the closure of criminal proceedings.

Prosecution can also be discontinued by the investigating agency if an agreement has been reached between the victim and the offender though mediation (*Mediationsverfahren*). Such a mediative procedure my only be conducted under certain preconditions: where protective measures are deemed unnecessary or have already been ordered by the civil law authorities; where there are no grounds for desisting from punishment; when the circumstances of the offence have been essentially clarified; when the offence in question is not punishable with unconditional imprisonment; when all parties and their legal representatives agree to such a procedure. Mediative procedures are always implemented by a suitable and eligible organisation or person. Although not so required by the legislator, these persons should not belong to law enforcement agencies for reasons of impartiality. Cantonal procedural laws regulate the modalities of the mediation procedure, especially concerning impartiality, concept developments, and issues of duration and costs.

The Swiss juvenile justice system provides two forms of sanctions when juvenile criminal proceedings are held and a young offender is consequently convicted: protective measures (*Schutzmassnahmen*) and penalties (*Strafen*). While protective measures are imposed regardless of an offender's guiltiness, the imposition of penalties requires guilt as a prerequisite. Where an offence has been committed culpably, every protective measure is to be supplemented with the imposition of a penalty. The legislator defines culpability as that the juvenile must be able to appreciate the wrongfulness of his or her behaviour and to behave according to this appreciation. This definition implies "maturity of responsibility" – as it is explicitly known in the German *Jugendgerichtsgesetz* – rather than criminal responsibility, which is of pivotal importance in adult sentencing. Young people aged between 10 and 14 years in particular cannot act culpably in this sense, as has already been unambiguously substantiated in developmental psychology. Depending on the committed crime, however, they can understand their wrongdoing and act accordingly. If this is the case, appropriate penalties that are adjusted to suit both age and level of offender maturity can also be imposed on the younger juvenile offenders (mostly orders to perform personal efforts (*persönliche Leistungen*)).

During criminal proceedings, the inquest into the young person's personality (*Persönlichkeitsabklärung*) can reveal that a juvenile is in need of special educational care and support or requires therapeutic treatment. In such cases, the protective measure that the circumstances deem most appropriate is to be imposed, regardless of whether or not the offence was committed culpably *(mens rea)*. The young offender's personality is the decisive factor in determining which measure to impose, rather than the offence itself. The choice of intervention thus depends on the offender's pedagogical, psychological,

therapeutic or medical needs. Regard must always be paid to proportionality. The latter, though, refers not to the offence itself, but rather to the imminent threat of continued worsening of the young person's personal development should the agency not intervene. Finally, the principle of subsidiarity requires that the most lenient measure – meaning the measure that least restricts the offender's freedom – must be ordered, so long as it is appropriate. However, a stricter or harsher measure has to be imposed should it be clear from the outset that a milder measure would not suffice. A protective measure is waived when a juvenile is in need of a measure but is not able to be subjected to it.

The measures are terminologically adapted to civil law[18] and are graduated by the legislator according to increasing intensity of interference in parental responsibility and the young person's freedom:

Type of protective measure	**Implications**
Supervision (*Aufsicht*)	To be ordered when there are good prospects that the legal guardians or foster parents of a juvenile can meet the precautions needed to guarantee that the juvenile receives adequate educational care and support or therapeutic treatment. Simultaneously, the court specifies a person or agency that is to be granted insight and information.
Personal Care and Supervision (*Persönliche Betreuung)*	The court specifies an individual natural person as a helper whose authority is regulated in great detail. This helper has the task of aiding the education and upbringing of a juvenile through counselling and supporting his/her legal guardians, and by providing the young person with personal guidance and supervision. The helper may be granted certain competences regarding the juvenile's education, treatment and training, in which case the corresponding rights of the parents are limited accordingly.

18 This terminological alignment to civil law was deliberate because emphasis is to be placed on the fact that the protective measures – in terms of their content and implications – are largely commensurate to the analogous provisions of child protection (Art. 307ff ZGB).

Out-patient treatment (*Ambulante Behandlung)*	This measure is imposed either on its own or in connection with another measure, and is applicable when a juvenile is suffering from mental health problems, is impaired in the development of his/her personality, or is suffering from an addiction.
Placement in open residential care (*Offene Unterbringung)*	Where the necessary education or treatment cannot be warranted by other means, the court orders the young person to be placed with a private individual or in an educational or therapeutic institution.
Placement in a closed institution (*Geschlossene Unterbringung*)	Placement in secure accommodation after prior expert appraisal is eligible when the protection of the juvenile, successful treatment of his/her mental disorder or the protection of third parties from further offending by the juvenile cannot be ascertained by any other means.

Supervision and personal care and supervision cannot be ordered if the juvenile is kept in tutelage, and both measures may only be imposed with the consent of the juvenile if he/she has reached the age of majority at the time of sentencing. All pedagogical and therapeutic measures may last no longer than when the subjected young person reaches the age of 22. The federal legislator prescribes that each year all imposed measures have to be reviewed by the responsible enforcing authority. Measures are to be annulled when it is deemed that they have achieved their goal, or when it is clear that they are no longer effective.

The Swiss juvenile justice system provides the following penalties:

Penalty	**Implications**
Reprimand	Formal deprecation of the offence by a judge
Performance of personal efforts (*persönliche Leistung*)	Can be an order to perform work (*Arbeitsleistung*) for the benefit of: social institutions; tasks that lay in the public interest; persons in need of support and assistance; the damaged party (with their consent). On the other hand, the measure can also be an obligation of the young person to participate in courses (for example drugs-counselling, traffic lessons, violence prevention programmes etc.). Duration of measure: < 15 year olds: 10 days; > 15 year olds (for felonies or misdemeanours): 3 months (only 10 days for contraventions)
Monetary Fine (*Geldbuße*)	Maximum Fr. 2,000; the fine has to take the juvenile's personal circumstances into consideration.
Imprisonment (*Freiheitsentzug*)	Only possible for felonies or misdemeanours, predominantly limited to one year. Can be for up to four years if the juvenile is older than 16 at the time of the offence and has committed one of the following felonies: intentional homicide, voluntary manslaughter, murder, aggravated robbery, aggravated hostage-taking, aggravated indecent assault, aggravated rape, arson, serious assault, aggravated false imprisonment and abduction.

The order of personal efforts, fines and imprisonment can be imposed both conditionally and semi-conditionally (see *Section 6* below). Although the law no longer makes any terminological differentiation between children and juveniles, fines and imprisonment can only be imposed on young persons who were older than 15 at the time of the offence.

4. Juvenile criminal procedure

Procedural law in Switzerland is regulated by each Canton individually. There is therefore no uniformly organised system for the administration of juvenile justice. Some Cantons apply the so called Juvenile Court Model[19] (*Jugendgerichtsmodell)*, an approach in which investigation, judgement and execution are all within the sphere of action of one single authority. Other Cantons rely on a modified Juvenile Court Model *(Jugendanwaltsmodell)*, where the competent authority, the *Jugendanwalt*, is responsible for the investigation and the execution. Yet his/her competence for a judicial judgement is limited to cases that do not involve sentences to the protective placement measure or to imprisonment for longer than three months. A further criterion of cantonal variations that applies to both of these models is whether or not there is a Juvenile Prosecution Service *(Jugendstaatsanwaltschaft)*.[20] There are Cantons that place the responsibility of execution with a guardianship authority.[21] One region even employs the *Jugendanwaltsmodell* without having an additional Juvenile Court and without a Juvenile Prosecution Service. This presentation of the different approaches to juvenile criminal procedure is by no means exclusive. The plethora of systems is not easy to survey and therefore not all Swiss juvenile criminal justice agencies are even aware of the full range of these systems in much detail.[22] A political decision on the introduction of a Federal Code of Procedure for juvenile criminal proceedings is currently in progress (see *Section 13* below).

Despite this plethora of local agencies, authorities and competences there are still several central commonalities. For instance, many Juvenile Courts and juvenile prosecutors' offices have their own social service that – unlike in many other European countries – is not independent from the judicial authorities, but rather is incorporated therein. The social service is endowed with the responsibility of investigating and examining the juveniles' personality and social environment, while also being entrusted the task of executing the ordered measures. However, an extensive inquest into the young person's personality is only conducted when the juvenile is found to be in definite need of intervention – so when the police file a charge – which can already provide an indication of the young person having greater difficulties in coping with everyday life – or the first questioning by the Juvenile Court or the Juvenile Prosecution Service

19 The Cantons Bern, Fribourg, Geneva, Jura, Ticino, Vaud, Valais.

20 With Juvenile Prosecution Service for instance the Cantons of Bern, Zurich; no Juvenile Prosecution Service for example Basel, Aargau, Valais.

21 Canton of Basel-Stadt.

22 Further information on the organisation of authorities in the individual Cantons are available online at www.julex.ch ; also see a summary in *Aebersold* 2007, p. 222-224.

indicate such a need. Thorough clarification by the social service is meant to provide the adjudging authority with a basis on which to decide whether a juvenile should be subjected to an educational or therapeutic measure because of developmental aberrations or his/her need for treatment. How quickly such a personality clarification is requested varies greatly from region to region and not least depends on the staffing capacities of the relevant agencies. Although measures are generally ordered regardless of the perpetrated offence, personality inquests are normally not conducted in cases of minor delicts or misdemeanours that are predominantly dealt with by the Juvenile Courts/ juvenile attorneys in writing or in abbreviated, oral (summary) procedures. When a protective measure is imposed, the social service assumes the supervision and control of the juvenile, and in the case of stationary measures, the service supports the relevant residential institutions in their educational and therapeutic efforts. When supervising personal supervision measures the social service is granted competences and responsibilities that usually lie with the parents, which is thus a limitation of parents' rights. Juvenile Courts and Juvenile Prosecution Services can abstain from investigating the young offender's personal situation and pass the case on to the civil law authorities, for example when child protection measures are also necessary for an offender's non-criminal siblings. The prosecuting agency can then close the case by imposing a penalty or by desisting from punishing the young person because appropriate measures have already been ordered under civil law, the success of which should not be jeopardized by an additional penalty.

Throughout the preliminary proceedings and sentencing, the juvenile or his/her legal guardians are legally entitled to appoint a defence counsel. The legislator stringently requires that the young offender has legal representation when the severity of the offence requires it; the juvenile and his/her legal guardians are clearly unable to defend themselves; the young person has spent more than 24 hours in pre-trial custody or provisional accommodation is ordered. The rights to defence[23] – that were extended on 1 January 2007 and have since then been effective for all of Switzerland – are fundamentally correct. Compared to legislation for adults, obligatory defence is much more broadly defined and elaborated which points to the obligation of the welfare state to accord special protection to juveniles. One factor that is problematic in this context is that the parents and even the young offender him/herself can be made to cover some or even all of the legal defence costs so long as they are financially capable of doing so. There is the risk that the Cantons – due to prevailing resource shortages over the years – set the income threshold above which costs have to be covered at a relatively low level so that costs can be

23 Naturally, rights to defence had already existed previously. These were only extended (necessary for precautionary placement) and harmonized (defence already after 24 hours of pre-trial detention).

covered in more cases. It is also questionable whether a defence counsel is really necessary in cases of precautionary placements that are amicably agreed. Here it would suffice to only prescribe obligatory defence in those instances in which placements are contested, so that the execution of measures that depend on parental cooperation are not unnecessarily burdened by financial claims.

As already stated above, only few Cantons have a Juvenile Prosecution Service. Also, the service's responsibilities and tasks are not always the same. Generally, the Juvenile Prosecution Service monitors the preliminary proceedings and is a party to the trial, appeal procedures and procedures of execution. There are differences nonetheless. For example in Zurich, arraignment before the Juvenile Court is made by the Juvenile Prosecution Service,[24] while in Bern the service has to approve the juvenile judges' so called referral application to the Juvenile Court, without being obliged to appear personally before the adjudging court. Juvenile prosecutors are legally educated and should be experienced in working with youngsters. The same professional requirements apply to juvenile judges and juvenile attorneys, even though there are no clear guidelines on what actually constitutes the ability to deal and work with young people. No Cantons require juvenile judges or juvenile attorneys to have had both legal and pedagogical vocational training. As desirable as this may be, such requirements would so greatly narrow the field of eligible persons that filling all staff vacancies would become nearly impossible. Therefore, it is more crucial for juvenile judges, juvenile attorneys and juvenile prosecutors to show a willingness to quickly acquire the necessary basics of pedagogy so that they can satisfy the peculiarities of juvenile criminal procedure. Proper legal practice and procedure are a matter of course, but they alone are not enough to comprehend juvenile justice as special criminal justice and thus to reach youth-friendly, specially preventive verdicts.

The federal legislator has stipulated several essential procedural principles in the JCC, one of which is the principle of acceleration (or "principle of speedy trial", *Beschleunigungsgebot*). This regulation applies regardless of the rules of procedure of the individual Cantons. The correct assumption that state responses to criminal behaviour should be swift greatly contributes to the fact that 90% of all proceedings are completed within three months of the respective offences being committed. Cases that require an extensive inquest into the personality and social environment of a juvenile naturally take longer. But here, too, the procedure is not "adjourned" because throughout the inquest attention is already being devoted to the young offender. Another important procedural principle is the involvement of the juveniles' legal guardians – most commonly their parents. They are personally heard in the preliminary procedure, can independently contest decisions and are important contact persons for the enforcement authorities and

24 Analogous to those modified Juvenile Courts (*Jugendanwaltschaften*) which do not dispose of a separate Juvenile Prosecution Service.

especially the institutions involved in the enforcement of measures. Another central principle of juvenile criminal procedure is that all proceedings must be two-tiered. Every ruling is reviewed by a second instance (Cantonal- or High Court) as a means of countering possible arbitrariness. Together with the already mentioned defence rights, each code of juvenile criminal procedure stipulates that petty offending be dealt with in written form, while more incisive sanctions require a court ruling. Juvenile criminal proceedings are categorically closed to the public. However, they can be opened up in cases of increased public interest, or if the respective juvenile so wishes and there are no higher-ranking significant interests or reasons to decline such a request. A case is seen as being of sufficient public interest particularly when the preliminary proceedings have already attracted extensive media attention. Reserved public admittance is indeed appropriate because the juvenile's personality is the pivotal issue, and is the subject of debate when determining whether or not there is a need for interventive measures.

Regarding rights of appeal, the federal legislator merely stipulates that the juvenile and his/her legal representation can make a motion to the next highest level of jurisdiction if a verdict or ruling infringes the young person's rights of self determination, especially his or her rights of freedom. This narrow federal provision puts pressure on the Cantons. Rights of appeal at the cantonal level are granted in a number of – non exclusive – cases: against declined motions for release from custody; against precautionary protective measures or in-patient supervision; against all rulings of the juvenile judge, juvenile prosecutor or the Juvenile Courts; against the refusal to grant conditional release from prison; against most rulings regarding the enforcement of protective measures. Thus the requirements of the ECHR have been implemented.

A brief comment on the role of the victim: federal legislation prescribes in the Victim Support Act that where a case is dismissed (the proceedings are not brought before the court) the victim can demand a judicial review. Moreover, the Cantons can make arrangements for victims to file "civil actions" (Adhäsionsverfahren) in criminal proceedings. The position of these private claimants is limited to the respective civil-law issues. "Civil actions" are not common to all Cantons. Where claims cannot be decided on in the juvenile criminal proceedings the victims have to assert them before the adult Civil Court. Civil actions shall be introduced in all of Switzerland once the Federal Code of Juvenile Criminal Procedure comes into effect (scheduled for 1 January 2011).

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

Swiss juvenile justice is characterised by the principle of special prevention. Article 2 JCC – as a purpose clause – states that protection and education are central to the application of juvenile criminal law, and that special attention be paid to the juvenile's family and living circumstances as well as his/her personal development. The term "protection" does not imply the prevention of and protection from state prosecution. Protection rather refers to correcting developmental aberrations and assisting the development of the juvenile's health, personality and professional or vocational prospects through reactions by the State. The penalties – that are mild in comparison to other European countries – are appropriate for this, because state intervention is meant to disclose to the young person that his/her behaviour is unacceptable by the standards of societal, binding norms and that a reaction to this behaviour is necessary. The crucial element here lies more in the reaction itself rather than in the sanction that is actually imposed. On this account, proceedings that are closed due to grounds for desistance can still have an educational effect and prevent a young person from re-offending. This effect is even more pronounced with successful mediation procedures. The term "education" clarifies the direction of Juvenile Court interventions – regardless of whether a protective measure or a penalty is imposed.

As already stated in *Section 3* above, the Swiss juvenile justice system does not know the term diversion as such. Desisting from the imposition of penalties or measures – either where stipulated grounds for desistance are met, or where the appropriate measure has already been ordered by civil law authorities – leads to the same aspired goals as a formal diversionary procedure would. According to the system that was in place up until 31 December 2006, in the last 12 years between 9.7% (1997) and 6.7% (2000) of all cases registered in the Federal Statistics were concluded by means of "postponement of the decision"[25] (*Aufschub des Entscheides*) or "non-imposition of penalties or measures"[26] (*Absehen von*

25 Postponement: no penalty or measure was imposed, and the juvenile had to stand the test in a probationary period. Successfully completing probation meant that no further action was to follow. However, failing to adhere to probationary obligations would result in the imposition of a measure or a penalty that would come into effect as soon as the breach of probation occurred, not after the full period of imposed probation had passed.

26 Non-imposition: the adjudging authority could optionally desist from imposing measures or penalties: if an appropriate measure had already been imposed or the juvenile had already been punished; if the juvenile had exerted sincere remorse; or if a certain period of time had passed since the offence (three months for children under 15; one year for juveniles aged 15 to 18).

Strafen oder Massnahmen). Yet in the last ten years – as depicted in *Table 5* – the degree of fluctuation has been nearly insignificant.

Table 5: Suspension and exemption

Year	N	%	Year	N	%
1995	623	7.8	**2001**	873	6.9
1996	706	7.9	**2002**	928	6.8
1997	910	9.7	**2003**	1,085	8.1
1998	906	8.9	**2004**	1,162	8.2
1999	865	7.1	**2005**	1,253	8.9
2000	773	6.7	**2006**	1,057	7.6

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteils-statistik*, JUSUS).

Since 1 January 2007 the Swiss juvenile justice system has no longer known suspension and exemption as such. Instead, the catalogue of grounds for desisting from punishment has been extended, the consideration of which became mandatory under the new legislation. The statistical effects that this change will have are difficult to estimate. It cannot be ruled out that there could be very little change in the figures in comparison to the old legislation. The data shall not be easy to compare, because as we know the legal reforms effected a change from a monistic to a dualistic system.[27] While the old system only allowed measures, penalties, suspension or desistance to be imposed alternatively, the new provisions allow for the adjudging body to abstain from punishment – due either to the presence of grounds for a waiver or due to a lack of guilt – but to impose a protective measure at the same time.

No data are yet available for the mediation procedures that were only introduced on 1 January 2007. Whether or not this procedure will prevail at the federal level cannot yet be estimated, and shall depend on whether or not the responsible law enforcement agencies sufficiently propose this alternative to the respective parties, whether the mediation schemes show results within an expedient amount of time, and whether or not the question of costs[28] can be

27 In the year 2007, reasons for waiving punishment were successfully applied in 751 cases. This figure however reveals very little, because in 2007 many cases were still dealt with under the monistic system (lex mitior).

28 Cantonal Codes of Procedure stipulate that the state need not cover the (full) costs of these procedures.

resolved satisfactorily. The French speaking Cantons in particular have already adopted mediation schemes in the past. The Federal Statistics, however, do not individually list this form of disposal, so that there are no reliable data for the mediation procedures that were carried out up to the end of 2006. They have, however, been counted in the statistics since 1 January 2007.

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

There are – and rightly so – no obliging guidelines that fix which sanction should be imposed in response to which offence. Swiss juvenile justice is education-oriented and places central emphasis on the offender's personality. Therefore, by imposing the most appropriate and eligible sanction each offender is influenced and dealt with as individually and subjectively as possible. Serious offending generally indicates aberrations in the development of a young person's personality and thus requires more incisive, far-reaching measures. Protective placement measures – measures that can imply an intervention into a person's personal freedom for several years – can, however, be applicable where the crimes committed are less severe, so long as the offender's personality shows great developmental deficits that can only be influenced or impacted on in a closed, stationary setting. The decisive factor in determining an appropriate sanction is not the committed offence, but rather a juvenile's developmental aberrations, which are however often mirrored in the crimes that he or she has perpetrated.

The revisions of the law made no fundamental changes to the penalties or measures. The following tables show which sanctions have been imposed. In advance, two remarks need to be made: the statistical data are based on the old legislation. The new names of the sanctions have therefore been added in brackets. Secondly, according to Swiss law, both educational measures and penalties are always deemed rulings by the juvenile justice authorities, regardless of whether they were imposed through formal court proceedings (with a trial) or by means of a quick, considerably less formal procedure. Such summary penalty orders – that have different denotations from Canton to Canton (*Strafmandat*, *Strafbefehl*, *Erziehungsverfügung*, *Urteil ohne Hauptverhandlung* etc.) – are equated to legally binding sentences that are passed in formal judicial proceedings so long as they are not forced before court due to an appeal.

Table 6: Educational measures of over 15 year olds for felonies and misdemeanours*

Year	Total	Educational support (supervision, personal supervision and support)		Placement with a family (Placement with a private individual)		Educational homes (Placement in an educational or treatment institution)		Special treatment ("out-patient" treatment)	
		N	%	N	%	N	%	N	%
1984	546	226	41.4	50	9.2	214	39.2	55	10.1
1985	485	209	43.1	13	2.7	192	39.6	61	12.6
1986	476	234	49.2	24	5.0	183	38.4	35	7.4
1987	517	212	41.0	24	4.6	219	42.4	66	12.8
1988	408	190	46.6	31	7.6	152	37.3	42	10.3
1989	423	211	49.9	21	5.0	153	36.2	48	11.3
1990	385	188	48.8	7	1.8	151	39.2	39	10.1
1991	461	211	45.8	26	5.6	173	37.5	51	11.1
1992	397	181	45.6	26	6.5	141	35.5	51	12.8
1993	518	238	45.9	9	1.7	207	40.0	64	12.4
1994	483	225	46.6	9	1.9	185	38.3	67	13.9
1995	455	207	45.5	8	1.8	196	43.1	44	9.7
1996	469	243	51.8	12	2.6	178	38.0	36	7.7
1997	504	238	47.2	8	1.6	211	41.9	47	9.3
1998	466	247	53.0	12	2.6	168	36.1	39	8.4
1999	306	175	57.2	7	2.3	98	32.0	26	8.5
2000	380	217	57.1	13	3.4	102	26.8	48	12.6

Year	Total	Educational support (supervision, personal supervision and support)		Placement with a family (Placement with a private individual)		Educational homes (Placement in an educational or treatment institution)		Special treatment ("out-patient" treatment)	
		N	%	N	%	N	%	N	%
2001	395	198	50.1	11	2.8	126	31.9	60	15.2
2002	410	211	51.5	11	2.7	113	27.6	75	18.3
2003	461	244	52.9	18	3.9	140	30.4	59	12.8
2004	471	270	57.3	14	3.0	129	27.4	58	12.3

* The Federal Statistical Office is currently adapting the data to be in line with the amendments of 1 January 2007 (which set the minimum age of criminal responsibility to 10 years). This endeavour is estimated to be completed in 2010, and the data shall subsequently be published. At the time of writing, the data from 2005 to 2007 cannot be used due to issues of comparability.

Source: Federal Statistical Office. Juvenile Sentencing Statistics (Jugendstrafurteilsstatistik, JUSUS).

These figures allow the following conclusions (in doing so one needs to consider a certain degree of blurring because at the end of the year it can be totally coincidental whether or not a case is concluded within that year or at the beginning of the new year): it is not surprising that *placements in families* are on the decrease. On the one hand, there are fewer and fewer families that are capable of accommodating difficult juveniles, while contemporary family structures on the other are less appropriate for providing a young person with the necessary intensive care, supervision and support in an entirely private setting. It does still occur that juveniles are placed within (predominantly farming) families. However, this almost exclusively occurs via private professional, educational offers that act as arbitrators for the juvenile justice agencies for placements while simultaneously assuming the role of supporting those families. Therefore, in recent years the legal title that is stated in the ruling was mostly just "placement" rather than "placement with a family". The use of ambulatory measures has increased in comparison to closed measures. This development can be attributed to improved possibilities in the community sphere[29] on the one hand, and to the Cantons' financial shortages on the other that force the juvenile justice authorities to attempt to have an influence on juveniles by applying the significantly cheaper non-stationary measures for longer periods.

29 The use of community measures has seen strong increases especially in cities and agglomerations.

Table 7: Penalties against over 15-year olds for felonies and misdemeanours

Year	Total	Reprimand		Work performance orders (performance of personal efforts)		Imprisonment				Fines			
		N	%	N	%	N (Total)	%	Conditional		N (Total)	%	Conditional	
								N	%			N	%
1984	6,259	1,406	22.5	1,169	18.7	1,057	16.9	871	13.9	2,630	42.0	743	11.9
1985	5,248	1,153	22.0	1,049	20.0	984	18.8	814	15.5	2,056	39.2	649	12.4
1986	5,470	1,182	21.6	1,080	21.6	985	18.0	839	15.3	2,147	39.3	808	14.8
1987	5,218	843	16.2	1,410	27.0	856	16.4	695	13.3	2,138	41.0	633	12.1
1988	4,833	768	15.9	1,275	26.4	747	15.5	609	12.6	2,043	42.3	705	14.6
1989	4,415	764	17.3	1,315	29.8	590	13.4	481	10.9	1,751	39.7	483	10.9
1990	3,998	714	17.9	1,314	32.9	495	12.4	383	9.6	1,475	36.9	416	10.4
1991	4,409	850	19.3	1,499	34.0	525	11.9	422	9.6	1,535	34.8	444	10.1
1992	4,559	821	18.0	1,569	34.4	677	14.8	564	12.4	1,696	37.0	370	8.1
1993	4,458	787	17.7	1,713	38.4	614	13.8	520	11.7	1,344	30.1	341	7.1
1994	4,644	1,006	21.7	1,601	34.5	689	14.8	583	12.6	1,355	29.2	266	5.7
1995	4,518	1,026	22.7	1,735	38.4	650	14.4	534	11.8	1,107	24.5	239	5.3
1996	5,218	1,244	23.8	1,830	35.1	749	14.4	611	11.7	1,395	26.7	306	5.9
1997	5,423	1,305	24.1	1,861	34.3	834	15.4	637	11.7	1,423	26.2	315	5.8
1998	5,855	1,092	18.7	2,025	34.6	1,080	18.4	781	13.3	1,658	28.3	479	8.2
1999	4,598	881	19.2	1,663	36.2	946	20.6	645	14.0	1,150	25.0	314	6.8
2000	4,007	829	20.7	1,381	34.5	711	17.7	509	12.7	1,122	28.0	276	6.9

Year	Total	Reprimand		Work performance orders (performance of personal efforts)		Imprisonment				Fines			
		N	%	N	%	N (Total)	%	Conditional		N (Total)	%	Conditional	
								N	%			N	%
2001	5,284	1,161	22.0	1,719	32.5	803	15.2	696	11.5	1,626	30.8	362	6.9
2002	5,871	1,259	21.4	1,780	30.3	1,104	18.8	831	14.2	1,779	30.3	422	7.2
2003	6,225	1,272	20.4	2,083	33.5	1,154	18.5	865	13.9	1,783	28.6	406	6.5
2004	6,642	1,269	19.1	2,382	35.9	1,276	19.2	973	14.6	1,775	26.7	437	6.6

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

A look at the past twenty years shows that the average shares of fines and orders for the performance of work (*Arbeitsleistung*) are identical with 32.2%, while the figures for reprimands (20.5%) and imprisonment (16.6%) are considerably lower.

Table 8: Average shares for the years 1985 to 2004, in %

	1985-1994	1995-2004	1985-2004
Reprimand	19.9	21.2	20.5
Monetary Fine	36.9	27.5	32.2
Performance of Work (today: performance of personal efforts)	29.9	34.5	32.2
Imprisonment	16.1	17.2	16.6

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteils-statistik*, JUSUS).

The clear increase in the share of imposed orders to work by about 5% can probably be attributed to the fact that this form of penalty has been increasingly recognized as the most educationally and pedagogically valuable intervention. Furthermore, sensible means for implementing this penalty have been increasingly available. An order to perform work is a means of providing a temporally limited yet sensible daily routine and structure especially for school leavers without an apprenticeship training position or unemployed school leavers. Consequently, fines as a form of penalty have been on the decrease. Monetary penalties are only sensible if the offenders can cover them themselves. Reprimands and sentences to imprisonment have quite steady average rates.

One can also derive from Table 7 that on average 85% of all penalties according to Swiss juvenile justice legislation are reprimands, work-performance (in terms of personal efforts or community service) or fines – sanctions that would clearly constitute a diversionary approach in other European countries. If one takes this into account there are barely any differences in the ratio of divertive procedures and court proceedings when comparing Switzerland to other European countries. Whether the reaction to delinquent behaviour is called diversion or a court procedure plays a subordinated role, so long as the effect for the affected person remains the same. Reprimand, obligations to perform work and fines do not result in a criminal record. The juvenile thus has no record of previous convictions.

On average, 85% of all suspended[30] and 78% of all unconditional custodial sentences are for a period of a few days up to one month**.** The actual reprehensive element often already lies in the period that juveniles spend in pre-trial detention while investigations and preparations are underway. Any time spent in pre-trial custody has to be deducted from the length of any custodial sentence. Therefore, short custodial sentences only rarely require actual implementation. The institutions that are intended to accommodate young offenders with short prison sentences are commonly occupied by juveniles who require a closed setting during the clarification of whether or not they are in need of a measure. As a consequence, the legislator's demand that custodial sentences be served in an institution in which each juvenile is pedagogically attended to according to his/her personality on the one hand, and in particular prepared for social reintegration after release on the other, can only be met in the minority of cases.[31] Three possibilities slightly compensate this disadvantage: juveniles are conditionally released from custody as long as they have served half of their sentence, or a minimum of 14 days. Sentences up to one month can be served day by day, and terms up to one year can be enforced as a form of 'semi-imprisonment' *(Halbgefangenschaft*). These measures are meant to assist in ensuring that young people are not torn from their school education or their vocational training situation.

Only time will tell how often semi-conditional orders to personal efforts**,** fines and imprisonment – which have been options since 1 January 2007 – are actually imposed in practice.

7. Regional patterns and differences in sentencing young offenders

The differing size of the Cantons that are responsible for the administration of juvenile justice alone already has the effect of regional differences in sentencing. Smaller, less populated Cantons are unable to provide the same differentiated structures that are available in larger Cantons, because their total caseload per year only allows for the employment of one juvenile prosecutor as a secondary appointment. In some Cantons, the financial situation and the small workload also rule out the introduction of a social service that is affiliated with the Juvenile Prosecution Service. In larger Cantons, on the other hand, central guidelines and specifications as well as the possibility of looking to more experienced colleagues when sentencing facilitate more uniform and consistent outcomes in practice.

30 Suspended sentences – suspension while on probation – are applicable for prison sentences of up to 30 months.

31 Numerous prisons provide special departments for juveniles so that they do not come into contact with adult pre-trial detainees.

But an individual margin of discretion remains that usually depends on the respective judge. This discretion is legitimate due to the judges' autonomy and impartiality, and by all means satisfies the offender-based approach of Swiss juvenile justice. So it can occur that a juvenile who has committed a certain offence would be sentenced to perform personal efforts in one Canton, while in another the criminal act could be punished with a (conditional) custodial sentence. This is especially relevant in that only the latter case would in fact result in a criminal record.[32]

Since 1999, the statistics of the Federal Statistics Office have been more elaborate. In addition to the previously collected data, the statistics also include under-15 year olds as well as some lighter transgressions. *Table 9* shows the figures for the individual regions from 2001 to 2005.

Table 9: Juvenile convictions by region*

Region/Year	2001	2002	2003	2004	2005
Total	12,767	13,728	13,539	14,343	14,106
Lake Geneva Region	2,006	1,955	2,007	2,157	2,568
Midland Switzerland	2,982	3,793	3,828	3,666	3,500
North-western Switzerland	2,100	2,072	1,887	2,021	1,840
Zurich	2,353	2,452	2,563	2,876	2,915
Eastern Switzerland	1,702	1,741	1,626	1,941	1,654
Central Switzerland	1,215	1,260	1,215	1,217	1,224
Ticino	409	455	413	465	405

* Lake Geneva Region: Geneva, Valais, Vaud; Midland Switzerland: Bern, Fribourg, Jura, Neuchâtel, Solothurn; North-Western Switzerland: Aargau, Basel-Land, Basel-Stadt; Eastern Switzerland: Appenzell Inner-Rhoden, Appenzell Ausser-Rhoden, Glarus, Grisons, St. Gallen, Schaffhausen, Thurgau; Central Switzerland: Lucerne, Nidwalden, Obwalden, Schwyz, Uri, Zug. A table with the number of verdicts for each Canton can be obtained from the Federal Statistical Office.

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

Although the data for individual regions are subject to quite substantial fluctuations (for example: comparing 2001 and 2005 data, the Canton Geneva has shown a 60% increase, while Canton Uri saw a 57% decrease in this period), they do not allow the identification of any clear trends or tendencies. As already

32 Under Swiss law, only "placement in a closed institution" and imprisonment are registered in criminal records.

elaborated earlier, these data are partially dependent on factors that cannot be influenced, like for instance staff resources (police and law enforcement agencies), the completion of cases within a certain period of time (with blurring around the turn of the year), or focussing on certain issues during prosecution etc.

In the period of 1999 to 2005, unconditional custodial sentences accounted for 2.1% of all sentences against juveniles on average, 73.9% of which were for terms under one month (rising trend), and 5.5% for longer than six months (relatively stagnant). What is remarkable is that that the Cantons of Westschweiz and Solothurn have much higher shares than virtually all other Cantons. For instance, 8.1% of all sentences in the Canton Geneva were unconditional custodial sentences, while the figure was only 1.2% in the Canton Zurich. A number of Cantons have imposed few to absolutely no unconditional prison sentences in the last few years.

It is interesting to compare the data on imposed measures and custodial sentences in selected Cantons.[33]

Table 10: Measures, conditional and unconditional imprisonment 2001-2005*

	2001				2003				2005			
Canton	**Sentences total**	**Measures**	**Cond. Impr.**	**Uncon. Impr.**	**Sentences total**	**Measures**	**Cond. Impr.**	**Uncon. Impr.**	**Sentences total**	**Measures**	**Cond. Impr.**	**Uncon. Impr.**
BL	413	12	1	0	447	6	1	1	401	11	1	0
SO	420	13	39	17	596	41	80	40	526	16	47	42
FR	486	25	20	15	428	19	29	30	529	30	32	30
ZH	2,353	79	68	22	2,563	75	100	19	2,915	82	155	33
AI	16	1	0	0	41	0	2	0	21	0	2	0

* BL = Basel-Land, SO = Solothurn, FR = Fribourg, ZH = Zurich, AI = Appenzell-Inner-Rhoden.

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

33 In this comparison, three Cantons with similar and medium sized populations Basel-Land (267,000 inhabitants), Solothurn (248,300) and Fribourg (257,600) were chosen, as well as the most and the least populated Cantons (Zurich, 1,283,300; Appenzell Inner-Rhoden, 15,400).

It is easily comprehensible that a lightly populated Canton like for instance Appenzell Inner-Rhoden (15,400 inhabitants) – with 25.4 sentences per year on average – rarely orders an educational measure or a custodial sentence. In contrast, it is all the more surprising that from 1999-2002 and in 2005 the Canton Basel-Land (the tenth largest Swiss Canton with a population of 267,000) had no sentences to unconditional imprisonment. In 2003 one such sanction was imposed (for a term of less than one month), and in 2004 there were two unconditional custodial sentences (one under one month, one for longer than six months). Other Cantons with similar populations had significantly higher figures, for example Fribourg and Solothurn, with averages of 24 and 35 sentences to unconditional imprisonment per year. The reverse assumption that Cantons with few unconditional custodial sentences impose more sentences to conditional imprisonment does not apply. From 2001 to 2005, of the 414 annually imposed sentences on average in the Canton Basel-Land only 1.4 were conditional custodial sentences (0.3% of all rulings), while the figures for Fribourg and Solothurn are 27.4 (5.8%) and 56.8 (9.8%) respectively.

Table 11: Average figures 2001-2005 and average per 100,000 of the population

	Sent.	Ms.	%	cCS.	%	uCS.	%	Sent.	Ms.	cCS.	uCS.
BL	414	9.0	2.1	1.4	0.3	0.6	0.1	155.0	3.8	0.5	0.2
SO	575	22.4	3.9	56.8	9.8	35.0	6.1	231.5	9.0	22.8	14.1
FR	467	19.8	4.2	27.4	5.8	24.2	5.2	181.3	7.7	10.6	9.4
ZH	2,632	83.6	3.2	117.6	4.5	22.4	0.8	205.1	6.5	9.2	1.7
AI	25	0.4	1.6	1.4	5.6	0.2	0.8	162.3	2.6	9.1	1.3

Note: Sent.: Sentences Ms.: Measures cCS: conditional custodial sentence uCS: unconditional custodial sentences

Source: Federal Statistical Office. Juvenile Sentencing Statistics (Jugendstrafurteilsstatistik, JUSUS).

Relating the figures to per 100,000 population does not provide any significant shifts in the data of the Cantons described above (BL: 0.5 cCS, 0.2 uCS; SO: 22.8 cCS, 14.1 uCS; FR: 10.6 cCS; 9.4 uCS). The differences in the data cannot be accounted for only by taking factors such as degrees of urbanization, proximity to urban centres or geographical circumstances into consideration. Rather, the figures are evidently also attributable to the sentencing authorities' personal attitudes towards certain types of offences.

In Switzerland, in the last seven years an average of 4.2% of all sentences were to an educational measure. In this regard, the regional differences per 100,000 of the population are considerably less than is the case with penalties.[34]

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

As already stated above, the juvenile justice authorities in Switzerland are responsible for juveniles who are between 10 and 18 years old. In principle, young adults (between 18 and 25 years) are judged by an adult court in accordance with the general regulations of the Criminal Code. The CC does contain a special provision for the age group though: under certain circumstances young adults can be committed to a pedagogical institution that is specifically intended to accommodate and treat this age group. However, use of this provision is very exceptional. As a rule, young adults are punished in the same way as adult offenders, with day rate fines (maximum 360 day rates of no more than Fr. 3,000 per day, dependent on the offender's income and legal estate) or custodial sentences. A young adult offender's age is taken into consideration in sentencing. Both of these penalties can be imposed conditionally. Prison sentences can be conditional when their term does not exceed two years.

In accordance with Article 61 CC a measure for young adults can only be issued under the following preconditions: at the time of perpetration the offender must not be older than 25; he/she has to exhibit a disturbance in the development of his/her personality; the committed offence must be connected to this disturbance and it has to be foreseeable that the measure will prevent further offending.

Switzerland has three institutions for young adults: the institutions for enforcing measures in Kalchrain in the Canton of Thurgau (55 places), Uitikon in the Canton of Zurich (48 places) and Arxhof in Basel-Land (46 places). However, these institutions are limited to young adult men – there is no respective institution for women as of yet. The duration of the measure is limited to four years, and may not exceed six years where a young adult is recommitted to prison for breaching the conditions of his/her probation. The measure is to be voided no later than the offender's 30th birthday.

The aim of the measure is to convey the skills of leading a responsible and crime free life to the offender. First and foremost this aim can be achieved by the person – who is in need of a measure – attempting to attain vocational training, working on his/her personality deficits and thus changing his/her social

34 Mean values for imposed measures for the last five years, calculated to 100,000 of the population: BL 3.8; SO 9.0; FR 7.7; ZH 6.5 und AI 2.6.

behaviour, learning to appreciate universal rules of social interaction, and learning to cope with everyday life without addictive substances. In practice, however, a number of difficulties arise, that shall only be briefly outlined here. The prerequired disturbance in the personal development has to be considerable. This loose term leaves much room for discretion. While a considerable disruption can be very reliably substantiated through psychiatric-psychological expert opinions, proving a connection between an errant personality development and the perpetrated offence is by far not as easy. In contrast to the old monistic system (that was in force until 31 December 2006) the new dualistic-vicarious system provides that the court first decides on a penalty which is then suspended for the benefit of a protective measure. It cannot be ruled out that in future the courts shall also order this measure in cases of severe "immediate cause" offences because the previously ordered yet suspended custodial sentence can be implemented without a new warrant should the measure prove to have been unsuccessful. However, it needs to be considered that persons who are reluctant to completing an imposed measure will have quickly calculated whether the duration of the measure or the term to be served in prison is shorter. If the prison sentence – after deducting any time served in pre-trial detention and taking into account the prospects of early conditional release after having served two thirds of the sentence – is shorter than the protective measure, it would not be entirely unlikely for the respective offender to go to great lengths to effect the measure's termination. This would be intolerable for the institutions that enforce measures because this unwillingness to complete a protective measure could be exhibited though assaults against institution-staff, severe criminal damages and continuous attempts to escape etc., which in turn would have a negative announcement effect on other inmates.

According to juvenile justice legislation (Article 16, Para. 3 JCC) juveniles aged 17 and above can be committed to an institution for young adults. These institutions therefore cater both for juveniles – upon order of the juvenile justice authorities – and young adults, who are sentenced by the adult jurisdiction. Yet the requirements and conditions have different legal bases. Juveniles can be in the institution for a maximum of five years (until he or she has turned 22), while the limit for young adults is four years. The latter are then conditionally released on probation. Re-offending can result in them being remitted to the institution. When juveniles are discharged, however, the protective measure is definitively completed without any period of probation. The differing modalities of implementation are not always easy for the institutions to handle in practice, because the residents of the institution speak among each other and cannot comprehend these variations in the duration of their stays.

The legislator prescribes that all juveniles and young adults in these institutions be provided the opportunity to partake in professional or vocational training. The institutions for young adults offer up to 20 different technical vocational training courses. For easily traceable reasons not all professions that

can be learned outside the institutions can be offered. This circumstance can lead to difficulties in particular for young adults who were already in vocational training prior to their commitment to the institution, and who cannot continue this training. Yet this problem only rarely arises in practice because the majority of young persons have not yet been involved in organized employment, not to mention vocational training. Internal professional training is therefore to be seen as an opportunity, even if the personally desired vocational direction is not available.

The statistical data does not differentiate as to whether a juvenile is admitted to an institution for young adults or to an educational institution. Their representation in the former is therefore not precisely and reliably traceable in the statistics. Nonetheless, we can make the following statements: in all of Switzerland only a select few juveniles are sent to young adult institutions each year. The number of young adults sent to such institutions by adult courts over the last 20 years is pictured in *Table 12*:

Table 12: Confinement of young adults in specialised pedagogical institutions

Year	N	Year	N
1984	99	**1995**	58
1985	61	**1996**	52
1986	54	**1997**	45
1987	61	**1998**	44
1988	69	**1999**	37
1989	79	**2000**	26
1990	38	**2001**	33
1991	56	**2002**	29
1992	55	**2003**	27
1993	80	**2004**	33
1994	72	**2005**	44

Source: Federal Statistical Office. Juvenile Sentencing Statistics (*Jugendstrafurteilsstatistik*, JUSUS).

Over the past 22 years, an average of 52 young adults was sent to the respective institutions each year. The statistical picture becomes more interesting if the investigated period is divided into two sub periods. Doing so shows

that from 1984 to 1994, 65 young adults were admitted each year on average, with 1990 standing out with a comparatively low figure. This average was 42% lower for the period 1995 to 2005 with only 38 young adults being sent to young adult pedagogical institutions. The central cause for such a considerable change in practice within this 22 year period could be the fact that the adult courts have been increasingly (and too) reluctant in imposing this measure, presumably in part because of an unawareness as to which prospects and perspectives this form of sanction offers young offenders. The numbers have been rising for the past three years, yet without being any reliable indication for a long-term practice trend.

Contrary to provisions in other European countries, in Switzerland young adult offenders (18 to 25 years old) categorically cannot be transferred to stand trial in Juvenile Courts. The Swiss legislator clearly and unambiguously draws the line at the age of majority. Furthermore, in the course of the independence of the Juvenile Criminal Code and the amendments to the provisions of the Criminal Code on 1 January 2007 there was no serious debate on whether or not the applicability of juvenile justice provisions should be taken into consideration in cases of offences that are 'typically juvenile' (*Jugendtypisch*). From a developmental-psychological perspective, such an extension of applicability would seem by all means expedient, taking into consideration the widely accepted fact that the developmental maturity of young people is becoming more and more frequently delayed to beyond the age of 20. The educational, pedagogical measures under juvenile law could provide an individualized, more effective response particularly to minor offences (for instance basic theft), but also more severe and serious criminal behaviour that can be predominantly attributed to an offender personality that is underdeveloped considering its age. Where juveniles (under 18) and young adults (predominantly those who only exceed the age of 18 by a few months) commit an offence in complicity their personalities often depict no differences in terms of their stage of individual personal development. While juveniles are most usually sentenced to pedagogical and therapeutic measures, their young adult accomplices can face several years of imprisonment in an adult penal institution. The fact that the penalties imposed on young adults can be supplemented by a protective measure in accordance with Article 61 CC does little to alleviate this.

Swiss criminal law provides for only one exception, in cases of so called 'transitional offenders'. Where a juvenile offends both before and after he/she has turned 18, the provisions of Article 3 JCC apply. The law states that only the penalties of the Criminal Code are applicable, also for the offences that were perpetrated prior to turning 18. When determining a cumulative sentence, the share that is attributable to the offences that were committed as a juvenile may not be greater than if the offence had been adjudged on its own. Where an offender is in need of a measure, the choice of intervention from either the JCC or the CC has to be the most appropriate for the given circumstances. This

means that in sentencing, the court's decision shall only be geared towards the offender's personality, and it is imperative that the chosen measure is the most promising for assisting the positive development of the offender. The assessment of the offender's personality and prospects for the development thereof are thus decisively important.

Where criminal proceedings are instituted against a juvenile before crimes committed after having turned 18 are detected, formally the procedural provisions of the JCC apply for all offences - both those perpetrated before his/her 18th birthday, and those committed as an adult. In such cases all offences are judged by the Juvenile Court. This amendment has only been in force since 1 January 2007 so that there has been little experience with it in practice to date. This provision does not, however, represent a general transfer of young adults to the jurisdiction of the Juvenile Court, but is rather a matter of competence. The Juvenile Court by no means applies juvenile criminal law for all perpetrated offences, but rather is bound to proceed as described above. At best the young adult can expect that the juvenile judge has advanced experience with protective measures and shall thus more frequently impose one of the measures provided for in juvenile justice legislation. Conversely, these cases can under no circumstances be transferred to the adult courts, and nor can those that involve the judgement of offences that were committed exclusively before the age of majority has been reached. There is therefore no possibility to choose.

9. Transfer of juveniles to adult courts

Contrary to provisions in other European countries, different levels of jurisdiction are responsible where juveniles and adults commit offences in complicity. The juvenile's offences are investigated and adjudged by the authorities of juvenile criminal law, while the adult accomplice has to face the adult criminal justice system. Thus, juveniles cannot be transferred to adult courts. This generally implies that the young offender is sentenced much more swiftly than his or her adult counterpart – usually a difference of several months. This state of affairs causes no problems in uncontended cases. However, if the case is highly contended, the Juvenile Court's decision may predetermine or prejudice the adult criminal proceedings, or differing verdicts could be reached, which is highly problematic. The involvement of different jurisdictions becomes especially objectionable and displeasing where the suspects are merely a few weeks or months apart in age. Moreover, the general public is often uncertain as to why the perpetrator of a capital crime who is only just under 18 years of age should benefit from all of the advantages of the juvenile justice system (secured protective measures, imprisonment for up to four years with prospects of early release after two years), while his/her adult accomplice faces several years in prison. This discrepancy is slackened slightly by the possibility of imposing a measure of placement in an institution for young adults.

10. Preliminary residential care and pre-trial detention

According to Swiss juvenile criminal law, all protective measures[35] can be imposed preliminarily. This is a particularly important provision in the case of residential placement measures which imply a substantial interference in the young person's personal freedom as well as in the entire family system. The legislator has therefore – and rightly so – already introduced fundamental regulations in substantive law and thus precluded that the issue be administered diversely in the different cantonal procedural codes. There is the pivotal binding provision that legal defence be appointed mandatorily where a juvenile is preliminarily placed in a stationary setting. The intention behind this regulation is to provide a young defendant with increased protection, which is particularly necessary in cases in which an investigating authority confines a young person without having thoroughly clarified his/her current personal situation and circumstances. This latter setting can arise where parents, schools etc. urge the juvenile justice authorities to remove the juvenile – whose behaviour they already view as unacceptable – from his/her surroundings and environment as expeditiously as possible. However, should a short yet thorough inquest into the suspect's personality and circumstances indicate a serious danger either to the juvenile or to his/her social environment that cannot be counteracted with appropriate open, non secured measures, then precautionary placement in residential care is an adequate response. This enables an increasing risk to be effectively responded to with appropriate means. The early, precautionary imposition of a stationary measure that is most likely to be ordered at the sentencing stage allows for the swift initiation of pedagogical or therapeutic procedures that can be of crucial relevance for the young person's further development (for instance in cases of drug, alcohol or prescription drug addiction, a high propensity for violence, or being diagnosed socially dysfunctional).

Statistical data for precautionary measures are not available at the national level.[36] Developments in recent years however have clearly shown that the preliminary imposition of closed, secured measures has been increasing.[37] There are three predominant reasons for this: firstly, due to the required personality assessments, to staffing issues of the investigating bodies and to formal guidelines juvenile criminal proceedings cannot always be swiftly advanced to the sentencing stage within a few weeks, even though an urgent need for intervention has already become evident early on. Secondly, swift intervention

35 Supervision, personal care and supervision, out-patient treatment and placements.

36 The data have been collected by the Federal Statistical Office but could not be published due to a lack of possibilities to verify the figures. However, most cantonal statistical offices provide data on precautionary measures.

37 The share of stationary measures that are ordered preliminarily lies at between 80 and 95%.

can effect a clear break from the offender's previous moral conduct which in turn can result in a less intrusive, cheaper, non-stationary measure being deemed appropriate when sentencing actually comes around. Thirdly, precautionary measures can help to clarify whether or not a juvenile who is need of a measure is in fact able and compatible to undergo it. There is little point in ordering a young offender's placement in an institution if this cannot in fact be executed in practice.

The precautionary imposition of stationary measures also helps to avoid young persons spending long periods in pre-trial detention as is unambiguously required by the legislator. Holding juveniles on remand is a means of last resort (*ultima ratio*) in Swiss juvenile justice legislation. Pre-trial detention must be for as short a period as possible and is to be substituted with a precautionary placement in (mostly secured) residential care when there is no further threat of him/her evading trial or re-offending, and where a need for pedagogical or therapeutic care is foreseeable. Keeping spells of pre-trial detention to a minimum becomes complicated when the suspect is in need of treatment but at the same time is highly socially dysfunctional or exhibits a severe propensity of violence so that no institution in Switzerland is willing to take him/her in. Since institutions in Switzerland are not obliged to take offenders in, in cases in which juveniles simply cannot be released due to the threat that they pose to their immediate environment or to third parties, pre-trial detention can last for several months. Such cases are rare, but they do occur. The situation becomes even graver when the above mentioned circumstances are supplemented by a serious mental disorder. Institutions that cater for such constellations are practically non-existent in Switzerland, which presents the investigating authorities with challenges that are very difficult to manage.

The Swiss legislator stipulates that juvenile remand prisoners are to be accommodated in special institutions or departments, separately from adults, and are to be treated, supervised and cared for appropriately. These specifications fulfil the demands from numerous human rights declarations – especially those regulations that are "self executing" (ECHR, UN-CRC). In practice, the strict separation of juveniles and adults not seldom leads to young people being in single cells all on their own, which amounts to objectionable solitary confinement. Pre-trial detention is meant to be carried out in pedagogical institutions. Yet these are normally fully occupied by juveniles who have been sentenced to protective measures, so that young remand prisoners are accommodated in adult remand institutions (yet not together with adult suspects). The provisions emanating from the CPT-Standards[38] – for instance the demand for a prison regime that is tailored to the age-specific particularities of youth, the call for mixed-gender staffing, or the demand for specially trained personnel – are first and foremost

38 Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

targeted at the persons who are politically in charge.[39] Although some prisons have specially trained personnel that can perform pedagogical or psychological tasks, at the national level there is still much need for action. This shortcoming is somewhat alleviated by the fact that most periods spent on remand are very short, very often not exceeding several days. These circumstances give consideration both to the State's requirement to uncover predominantly severe offences as well as to the juvenile's right not to suffer any impairment from being detained.

The number of remands to custody in all of Switzerland have been recorded, but could not be published because the figures lack proper verification (as is also the case with data on precautionary measures, see above). These numbers have been systematically recorded by the Federal Statistical Office since 1 January 2007. The Canton-specific figures show a great deal of variance, but at the same time there is evidence that the juvenile justice authorities are very reluctant to remand young suspects to custody. Emphasis is rather placed on ordering preliminary residential placements. When pre-trial detention appears to be inevitable, the investigating authorities are urged to devote their efforts and concentration to the respective case so that the juvenile can be released from custody as swiftly as possible (principle of proportionality) – a requirement that is adhered to in all of Switzerland.

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

There is a great variety of – predominantly open – custodial institutions in Switzerland.[40] These institutions are relatively small, each usually catering for about 20-60 juveniles. The roughly 150 establishments that are approved by the Federal Justice Bureau offer high levels of quality and have the legal position of trusts, unincorporated associations or unions. What all of these institutions have in common is that they are run solely in adherence to pedagogical principles. Since the principle of special prevention is central to and pivotal in the Swiss juvenile justice approach, there are – contrary to the situation in other European countries – no separate penal establishments, but only educational residential homes (*Massnahmevollzugseinrichtungen*). The legislator only differentiates between open and closed institutions, and all adhere to the same guidelines and principles, regardless of whether they are boarding schools (*Schulheim*), a

39 For a short, comprehensive summary see *Aebersold* 2007, pp. 237-243; see also Infobulletin 1/2007, Bundesamt für Justiz, Sektion Straf- und Massnahmenvollzug, "Jugendliche in Haft".

40 A complete directory of the state approved establishments can be found on the website of the Federal Justice Bureau: www.bj.admin.ch.

vocational training institution or an institution for young adults. Stays in a therapeutic living community or on ships for drug addiction issues fall under the protective placement measure. A young person may only be placed in a *closed* establishment when it is deemed necessary for protecting the juvenile or third parties, or for treating mental disorders. Doing so frees such closed surroundings from a possibly punitive character, even though juveniles often have that impression not least at the beginning their sentence. Additionally, placements in closed institutions require a prior medical or psychological assessment. The requirements for placing juveniles in closed settings are thus very strict, and thus may only be ordered when the aim of the measure cannot be met by less intrusive means. The requirements can be deemed as being fulfilled if a juvenile persistently absconds from the requisite education or treatment or if he/she poses an unreasonable risk of offending, which is clearly the case for offences constituting public danger (*Gemeingefahren*).

The JCC stipulates the fundamental principles for the enforcement of stationary placements, while cantonal law determines the responsible authorities as well as the specific modalities of enforcement. In most Cantons, the responsible authorities are the investigating *Jugendanwaltschaften* or juvenile judges.[41] The enforcing authority chooses the institution and is responsible for warranting that measures are implemented in a due and proper form. It is also authorized to issue instructions where necessary, an authority that is only rarely exercised in practice due to the professional functioning of the institutions. Assessments are conducted regularly, roughly every six months, in the course of which the goals that the juvenile shall be set to achieve throughout the enforcement of the measure are determined. Where possible, this determination should involve not only the juvenile, but also his/her legal guardians, the institutions and the responsible enforcing authority. This arrangement emphasizes the systematic approach of making the parents responsible when their children are placed away from home. The legislator requires that parents be able to exercise their right to personal communication with their children. This legal requirement is a matter of course that the approved institutions by no means openly challenge. Yet the picture is rather different in practice: when young offenders are removed from the home environment parents distance themselves from their responsibility, and need to be repeatedly reminded that their child also – and especially – requires their support in this difficult phase of life. Contact to their offspring may only be restricted when it is not in line with their parental duties, for instance clearly undermining the institution's efforts, showing no interest in their children, or inciting substance abuse or escape

41 Exceptions in Basel-Stadt (Department of Child and Youth Welfare within the Guardianship Agency), Glarus (Youth Welfare Department), Grisons (Justice- and Police Department), Nidwalden (Office for the Enforcement of Penalties and Measures), Schwyz (Justice Department), see a summary under www.julex.ch.

attempts. Restrictions or total refusals of a parent's entitlement to personal contact are only rarely ordered. In most cases the entitlement is transferred to other important significant others such as grandparents or godparents (which under certain circumstances can further enhance tensions within the family).

The institutions establish the pedagogical principles that underlie their practice, the range of available vocational training courses, and their responses to drug or alcohol abuse, refusals or escapes in their institutional programmes (see *Section 12* below). Furthermore, the respective house regulations define the available disciplinary punishments, interventions that are only necessary when a juvenile's misconduct cannot be appropriately responded to by pedagogical means. In this regard detention is of interest, which is – unlike in Germany for example – not an independent type of penalty. Detention lasts for no longer than seven days and has to provide for rights of appeal. The legislator wants to avoid that isolation compounds any negative tendencies that the juvenile exhibits – for example a pre-existing high propensity to violence. The maximum duration of one week is generally sufficient to make it clear to the juvenile that his/her behaviour is not acceptable and that some serious rethinking needs to be done. Longer disciplinary stints have barely any greater effect and would be contrary to the pedagogical approach. A juvenile has to be transferred to another establishment if his/her behaviour becomes unsustainable for the institution. Should no appropriate institution be available at the time of the transfer, only the competent judicial authority (*Jugendstrafbehörde*) can take the young person into protective custody[42] through a stand-alone procedure. Placement in protective custody is not a disciplinary measure provided for in the procedural rules or programmes of institutions, but is rather a security measure that is required so that the enforcement of the interrupted protective measure can even be continued.

In Switzerland there are only few institutions with closed departments, with a total capacity of less than 100 places.[43] The limited number of places is always taken and the waiting-lists are long. The juvenile justice authorities are thus frequently forced to find alternatives that are often not in line with the aspired and required form of enforcement. Persons who have been sentenced under juvenile criminal law cannot be transferred to institutions for adults, not even if they have since reached the age of majority, committed severe crimes as

42 Protective custody can only be ordered if the continuation of the measure can no longer be assured. The juvenile is questioned on the issue and a formal ruling is issued that can be appealed. The authority is required to attend to the continuation of the enforcement of the measure without delay.

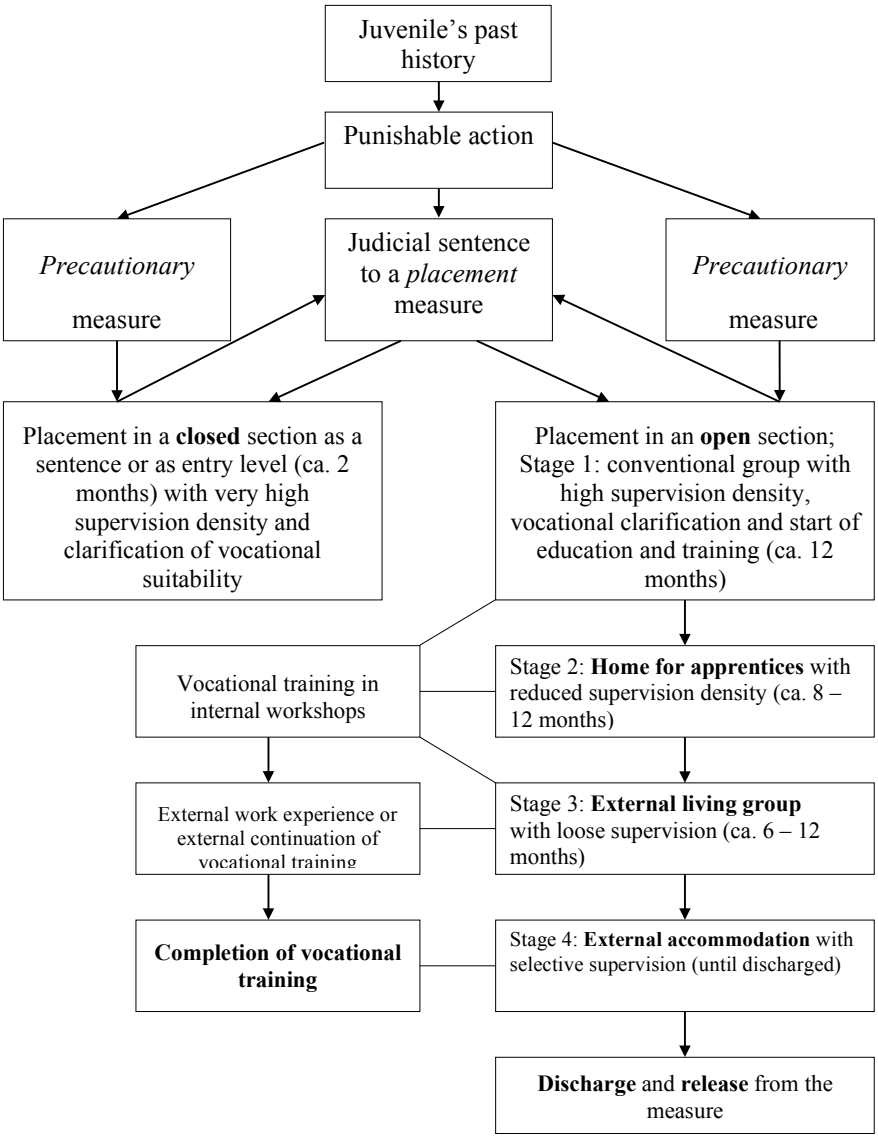
43 For male juveniles for example in Aarburg (Canton of Aargau), Kalchrain (Thurgau), Platanenhof (St. Gallen), Prêles (Bern), Richigen (Bern), Uitikon (Zurich) and Pramont (Valais, for French speaking juveniles), for female juveniles in Altstätten (St. Gallen) and Münsingen (Bern).

juveniles or if they have to be transferred from an institution due to unsustainable and unbearable behaviour. The Swiss legislator strictly adheres to the separation of juvenile and adult offenders – even where the age of majority has been reached since sentence was passed – and in doing so makes all the more clearer that the offender's personality – and thus his/her need for education and treatment – is paramount in juvenile justice issues. The only apparent exception is the possibility to transfer juveniles to young adult institutions if they are 17 or older (see *Section 8* above). Yet this is not really any exception at all because protective measures imposed on young adults are also geared towards the offenders' personality and are therefore aimed at special prevention. Penalties, on the other hand, are imposed on young adults in accordance with the offence-based approach of the CC.

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

The concepts and programmes of the residential institutions in Switzerland do not differ greatly. Upon completing a measure in an establishment, the juveniles are supposed to be able to – as far as possible – live independently and free of offending in wider society and assume full responsibility for their own behaviour. In this, the central issues lie in vocational training and changes in the juvenile's behaviour via confrontational pedagogy. The following diagram shows the phases that a young person generally goes through while serving a measure in secured accommodation.

Figure 1: Stages of the implementation of a placement measure:



As can be taken from the chart above, a young offender can be placed in a closed department as an entry level to the measure he/she has to serve, which aims to serve the purpose of allowing the juvenile to become familiar with how

his/her measure shall be enforced. The high degree of supervision allows escapes and criminal behaviour to be widely prevented. Vocational suitability assessments and psychological inquests are possible, and there is the aim of arousing willingness in the young person to give serious thought to the behaviour that led him/her into the institution, and to accordingly develop alternative attitudes. At the same time, a first educational plan is drafted. The interned juveniles work in the secured training workshop under supervision and guidance during the day. The juveniles advance to the next stage once the targets and aims of this stage of enforcement have been met.

In the second phase – in a conventional group in the open department – the offender's personality is strengthened and stabilized, and his/her personal responsibility towards the other residents of the unit is fostered. Vocational training is undergone within the internal workshops of the institution. Alternative forms of leisure time activities are available which replace the previous consumption-oriented, passive behaviour. In this phase the network of relations is gradually expanded to include the environment outside of the institution. Pedagogical support and supervision remain dense.

After being transferred to the home for apprentices – which is located on the same premises as, yet separated from the conventional groups – the emphasis is shifted to advancing a juvenile's independence in responsibly and appropriately overcoming problems in the fields of work, education, leisure time and operational tasks. Pedagogical supervision and support are deliberately reduced so that the juvenile has to assume more self-responsibility. From a vocational perspective, he/she is usually in the middle of training by this point.

Some institutions have an external living group (*Aussenwohngruppe*) in which the juvenile is prepared for release. The living group is located close-by and is clearly separated from the other departments. Supervision and support are organized more loosely and the young person is increasingly conferred tasks that he/she must be able to tackle independently when released.

During the stage of external accommodation (*Wohnexternat*) – predominantly in rented lodgings in neighbouring villages – it is intended that juveniles work in the private sector so that they can become accustomed to the routine of employment in the open market. They are responsible for managing their own finances, households and all personal issues themselves. Vocational training is completed at the latest in this phase of the measure and the juvenile has to organize employment and his/her own accommodation. Once the aims of this phase have been met the young person is released from the institution and the measure is annulled.

The programmes and concepts of the institutions dictate the minimum periods that each phase lasts for. These time spans can be extended should the individual development of the juvenile require it. Remissions to previous stages are also possible, which would for instance be the case if a young person in an external living group (*Aussenwohngruppe*) has difficulties coming to grips with

independence-requirements and as a consequence fails to appear for work or returns to his/her habits of substance abuse.

In order to permit extensive supervision, guidance and support, the institutions not only employ pedagogical staff members and skilled employees for the vocational training programmes, but also therapists and psychologists. Medical and especially psychiatric services are provided by external specialists.

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

In Switzerland, the political movement towards a uniform Code of Juvenile Criminal Procedure is currently underway – a movement that constitutes major changes to procedural law because up until now juvenile criminal procedure has been in the hands of the individual Cantons. The draft envisages the Juvenile Court System, but in response to the propositions from the Federal Council also allows the modified Juvenile Court System (*Jugendanwaltsmodell*).[44] The offender-based system of substantive juvenile criminal law is geared towards special prevention and thus requires procedural regulations that allow for a swift administration of justice while being comprehendible to the juveniles who are affected by it. Of course this does not imply a curtailment of young people's rights to a point where proceedings appear haphazard or arbitrary. At every stage of the proceedings young suspects are rightly to be guaranteed the respective rights to appeal rulings and decisions, and where there is great interference in a juvenile's personal rights he/she is to be bestowed the absolute right to defence. This combination of the principle of education and minimum "rule of law" guarantees is a great challenge not only for the legislator, but also and particularly for legal practitioners, for the primacy of either can be justified on the same grounds as the other. Choosing a healthy mix of education and due process is the only fit approach, i. e. focussing exclusively on a young person's welfare and implying a combination of uncomplicated procedural stages with stages that formally take the guarantees and safeguards of international standards – for instance the ECHR or UN-CRC – into account. Swiss substantive law considers the individuality of young people and provides for a system of offender-based sanctions that particularly bears the particularities of this age group in mind. Therefore, the fundamental principle of special prevention as well as the tailoring of sanctions to individual offenders should not be quashed through formal processes. It is often contended – primarily by academics – that the law enforcement agencies are in a very powerful position. Yet this view already loses ground if one considers that the endeavours of the Juvenile Court

44 The Cantons may thus retain their previously applied models which in turn partially annuls the standardisation of procedural law.

are clearly moderated by the obligation for the juvenile to take an active part in the enforcement of his/her sanction. Juveniles have no problem undermining educational or treatment-oriented interventions and consequently confronting the law enforcement agencies with unsolvable tasks. The courts deliberate extensively on which sanction is necessary, appropriate and also enforceable in practice. Regardless of who is the judging authority, it is only decisive that they master the foundations and principles of juvenile criminal law. For this is the only warranty for ensuring that the very thorough and accurate assessment of the offender's personality is responded to by imposing the most appropriate sanction. As a matter of course, the principle of official prosecution, of discretionary diversion (principle of opportunity), the accusation principle, the principle of speedy trials (Beschleunigungsgrundsatz), the specific principles of evidence in the inquisitorial procedure model (*Unmittelbarkeits- und Ermittlungsgrundsatz*) as well as the right to a fair hearing, defence and appeal procedures all pertain to a fair trial in juvenile criminal proceedings, regardless of whether or not the investigating, adjudging and enforcing authorities are completely separate, partially separate or one and the same. The confederate Code of Juvenile Criminal Procedure is scheduled to come into force on 1 January 2011.

Shortages in state funding have presented the juvenile justice system with a major challenge in recent years. Although it is imperative that the autonomy of the courts is guaranteed, at the political level there are attempts to influence the jurisdiction by steering funds. Stationary measures are expensive[45] and encumbering for the federal, cantonal and local budgets. The high costs are justified by the density of supervision and support,[46] the diversity of available vocational training courses,[47] the need for therapeutic programmes in pedagogical-educational institutions,[48] structural requirements[49] and labour costs.[50] The fact that the high costs need to be justified before the funding bodies – ultimately the tax

45 Stationary measures cost between 150 and 500 Euro per day.

46 In the majority of the state-approved residential institutions, the number of supervisory and support staff is equal to or greater than the number of interned juveniles.

47 A variety of professions – which accordingly require the respective specialists and premises – need to be offered in the institutions in order to cover the different skills of the juveniles. Some institutions offer school.

48 The increasing number of mentally conspicuous and/or dysfunctional juveniles cannot be treated with pedagogical means alone. The institutions therefore have conciliar psychiatrists.

49 The juveniles are accommodated in small groups of 6 – 8 persons. Regarding structural buildings, the institutions are dependent on federal regulations and cantonal guidelines.

50 From a European comparative perspective, the wage level in Switzerland is higher. These costs are part of the daily expenses of the institutions which have to be covered by the authorities which have sentenced the juvenile.

payers – has sadly not yet fully reached all institutions. Most professional enforcement institutions have recognized that their overall concepts need to include principles of quality requirements that not only cover the pedagogical sphere, but also fields of training, longer-term organisation and planning, qualitative requirements of staff members, as well as responsibilities and structural issues. The Federation has means of controlling and steering funding by making the allocation of resources dependent on the fulfilment of certain requirements. The task of planning, however, lies in the hands of the Cantons, which makes an ideal coordination difficult to ensure. Devising precise and binding guidelines would be a sensible approach[51] so that the already good quality of and coordination within the institutions could be improved even further. The emergence of a market of privately run establishments that are not approved by the Federal Justice Bureau is not least attributable to the shortages in financial resources and the resulting search for less expensive alternatives. These commercially run establishments may be attractive from a financial perspective, yet the quality that they offer is by far inferior. The excess in demand that has persisted for a number of years enables these institutions to survive economically. However, establishments that have no confirmation that they provide the necessary level of quality cannot cater for the purpose and aims of Swiss juvenile criminal law.

The debate on the advantages and disadvantages of open, semi-closed and closed forms of education and treatment should be discussed more factually and thus less controversially. A system that clearly and rightly prioritizes such measures has to accommodate all of these options. They need to be viewed as reciprocal supplements for each other and do not rule each other out. The same applies to the question of enforcing measures in closed settings. For juveniles who repeatedly attempt to abscond, who are a danger to themselves or to others, or who consistently refuse to be influenced by open measures, they are the only possibility to even initiate any form of educational or therapeutic intervention. Closed settings are without doubt a substantial intrusion into a young person's personal freedom. However, such a limitation is justified when it is necessary in order to protect either the general public or the juvenile him/herself. Young offenders are thus not simply "locked up". Rather, in many cases placement in a closed setting is what makes pedagogical or therapeutic work even possible.

Finally, notice should be taken of the fact that in Switzerland there are next to no institutions that cater specifically and appropriately for young offenders with severe mental disorders. There is much need for action in this context, given the fact that one can assume that the number of young persons requiring such treatment is unlikely to decrease in the near future. The law enforcement agencies are still forced to resort to less appropriate establishments – for instance psychiatric clinics for adults that lack the necessary know-how for dealing with

51 The Professional Association for Social- and Specialist Pedagogy has devised quality standards, see: www.integras.ch.

the particularities of young people – or find no solution at all. The former is far from ideal, the latter is almost dangerous – both for the juvenile as well as for the general public. A respective (most probably closed) institution[52] that can fully and continuously cover these pedagogical and psychiatric needs desperately needs to be planned and put into practice quickly.

14. Summary and outlook

For some time now Switzerland has had a qualitatively superior, offender based system of juvenile criminal law that gives precedence to pedagogical and therapeutic measures and treatment. In doing so, it does justice to the particularities of delinquent youths and their personality deficits / disorders. The principle of special prevention is thus established by law. Unfortunately – as has also been the case in other European countries – political debate has become increasingly controversial in recent years. The political leftists feel that the current Juvenile Criminal Code and especially the penal provisions in drug and immigration legislation go too far, while the political right is demanding tougher penalties, especially in the form of more frequently imprisoning juvenile offenders for more serious crimes and the swift expulsion of delinquent foreigners. Both stances are wrong and clearly dismissible. Such unsophisticated views do very little to support young offenders, nor do they make any real contribution to resolving the actual problems at hand, problems that ought to be factually analysed rather than being blown up out of proportion or simply negated. The juvenile justice authorities need to be provided with effective and implementable instruments to react both to the small share of juveniles who commit serious offences, who are highly dysfunctional or who exhibit an unacceptably high propensity to violence on the one hand, and to juveniles who "only" commit less severe offences without exhibiting major personal difficulties or peculiarities on the other. The principles of juvenile justice can only be implemented if the wide range of sanctions and measures is retained in future so that the adjudging authorities remain able to tailor their interventions to each individual offender. This is the only way in which the positive personal and vocational development of young offenders can be accomplished. The pedagogical and therapeutic measures that Swiss juvenile criminal law provides for can rectify a juvenile's wrong or undesirable development. Furthermore, the sanctioning system – that is rather benignant in comparison to other European systems – has to be viewed with the pedagogical approach in mind. Considerably harsher penalties, especially the previously mentioned notion of long prison sentences, clearly fall short of this objective. The same applies when formal responses to juvenile

52 One institution each in Deutschschweiz and Romandie with separate departments for males and females, providing 20 places each (10 each for males and females) would probably suffice.

offending are too lenient or non-existent, because this would deny the offender the delimitation of what is acceptable behaviour. Policy makers are required to retain this system that has been established for many years already, and in doing so to make their contribution to ensuring the positive development of juvenile offenders. Law enforcement agencies and the enforcing institutions shall continue to meet the (rightly) high requirements as professionally as they have done so far.

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Turkey

Füsun Sokullu-Akinci

Preliminary Remarks

Turkey is a republic. The system of government in Turkey is a parliamentary democracy. The country covers a geographical area of 814,578 square kilometres and has a population of 70,586,256 (on 31 December 2007). 70.5% of the population live in urban areas.[1]

Turkey, since the end of the 19th Century, began to adopt the European laws. For example the Royal Ottoman Criminal Code of 1856 is a translation of the 1810 *Code Napoleon*. After the establishment of the Turkish Republic in 1923, Ataturk wanted a complete change in the legal system and many legal codes had to be made in a short period of time. So the method of adopting the best legal codes in Europe seemed to be the best approach. All the prominent codes of Europe were examined by experts, and the Swiss Civil Code and the Italian Penal Code (*Codice Zanardelli* of 1889) were adopted in 1926, the German Civil and Penal Procedure Codes were adopted in 1929 and thus principal codes of Turkey were established.

The child population of Turkey is 24,799,424.[2]

- 0-4 years 5,793,906
- 5-9 years 6,436,827
- 10-14 years 6,411,658
- 15-19 years 6,157,033

According to the statistics, about one and a half million children work either in the streets or work under inconvenient and unfavourable conditions, with low wages and poor treatment. 42,000 children live in the streets. About 132,000

1 See www.tuik.gov.tr, (accessed 5 October 2008).

2 See www.tuik.gov.tr, (accessed 5 October 2008).

children work in the agricultural sector as forced labour. 7,000 children become victims of sexual harassment and rape every year.[3] It is obvious that children who have to work for their living are deprived of the opportunity to go to school. In fact, the schooling ratio of the children eligible for obligatory education is 97%.[4] The majority of children not in education are girls.

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

In the Criminal Code of 1926, criminal responsibility of minors was stipulated in a special section, titled "diminished" or "reduced capacity". These provisions were not at all satisfactory. Minors were divided into three age groups: 0-11, 11-15 and 15-18. Persons aged up to 11 had no criminal responsibility. Until 1979 no special organisations and courts for children and juveniles existed. In 1979 a special law called "the Law on the Establishment of the Children's Courts and Related Procedural Rules" was enacted. This law encompassed only children up to 11 years of age and young juveniles aged 11-15. Older juveniles of 15-18 were tried in adult courts.[5] This was considered as an improvement in juvenile criminal justice, because until then juveniles had had no procedural safeguards. On 20 November 1989 the General Assembly of the UN passed the United Nations Convention on the Rights of the Child. Turkey made reservation upon signature[6] and confirmed upon ratification.[7]

In 1992 exclusionary rules and the right to a defence counsel were introduced into the Turkish Criminal Procedure system, including obligatory defence counsel for minors.

Although the UN Convention on the Rights of the Child was ratified by Turkey in 1994, for many years Turkey had failed to harmonize the provisions of the Law on the Establishment of the Children's Courts and Related Procedural Rules. This law considered only those under 15 as children, whereas Article 1 of the UN Convention states that, "a child means every human being below the age of eighteen years". In several national symposiums I underlined

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3 See www.tuik.gov.tr, accessed 5 October, 2008.

4 The obligatory schooling period is called "elementary education", lasts for eight years and covers children between 7 and 15.

5 The age groups in the present article have to be read as follows: 11-15 means aged 11 to 14; 15-18 means aged 15 to 17. Full majority is reached with the 18th birthday.

6 Signed on 14 September 1990 and ratified on 12 December 1994.

7 The Republic of Turkey reserves the right to interpret and apply the provisions of Articles 17, 29 and 30 of the United Nations Convention on the Rights of the Child according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.

this fact, but it was not until 2003 that this law was amended so as to comply with the definition of the convention and to include all children under 18.

On 3 July 2005 the new Child Protection Law was passed. The statement of reasons points out that according to the international instruments, trying and punishing juveniles like adults does not protect them from crime and other risks, but rather makes them more vulnerable. Juveniles should have special provisions, courts and other institutions as it is stipulated in the UN Convention. In fact, in 2005 the main codes concerning criminal law were all changed in Turkey, such as the Criminal Code, the Code of Criminal Procedure and the Code on the Execution of Punishments and Security Measures, all of which also have provisions concerning juveniles. So the old law concerning children had to be abolished, and a new law was made in accordance with all of these codes that also takes into consideration the international instruments that Turkey had signed. The 2005 law on juveniles is called the Child Protection Law.

The main principles guiding the new Child Protection Law are:

- Procedures applied to children must be based on the general principles of law as well as human rights, due process, fair trial and the child must be especially protected.
- Prison sentences and other custodial measures should be applied as a last resort (*ultima ratio*). If juveniles are kept in an institution, they must be separated from adults.
- The child's wellbeing and benefits must be taken into consideration. The child must be treated according to his/her age and educated so as to develop his/her personality and social responsibilities.
- The child and his/her family must be included in the criminal proceedings by informing them, with special care being taken as not to be discriminatory.
- The privacy of the child is very important and his/her identity must be kept confidential.

Considering that a part of juvenile criminality stems from the conditions that the juveniles are living in, juveniles are not stigmatized as "delinquent" in this law, but they are considered as "juveniles dragged into criminality". Some child delinquency is a result of the puberty problems that the juveniles go through. So this law aims to protect children and juveniles who are in need of special protection or who are "dragged into delinquency", secure their rights, sanity and welfare on the one side while aiming at the security and justice of the community on the other. The statement of reasons for this law stresses that the child's welfare has priority and that the juveniles should be protected against all kinds of social risks including criminality. This law attributes great importance to protective and supportive precautions.

In juvenile justice, the conditions under which the child lives are as important as the act he/she has committed. A decision aiming at the child's welfare cannot be achieved without taking into consideration the child's particular

characteristics, personal traits and the environment he/she is living in. So according to this law, a detailed social inquiry report has to be made and the law indicates in detail who should make the inquiry and what it should include.

This law aims to protect children from criminality with a justice mechanism especially sensitive to all kinds of risks that endanger their development. This is why the law authorizes the children's courts also to deal with cases of neglect and abuse victimization.

Besides this detailed law the Criminal Code also has provisions concerning children. In Article 31, children are classified into three age groups: 0-12, 12-15, 15-18 (see *Table 1*).

1. The child under the age of 12 does not have the requisite criminal capacity. No criminal investigation can be performed for this group of children but special protective measures may be applied.
2. Young juveniles between 12 and 15:

a. If they do not have the capacity to perceive the legal meaning and the results of the action committed or to orient themselves properly, they have no criminal capacity. Only special protective measures for children under 12 may be applied to them.

b. If they have the above mentioned capacity they have a diminished responsibility. Their prison sentence is half the amount the law prescribes, but for each offence it cannot exceed 7 years.

3. Older juveniles between 15 and 18 also have only a diminished responsibility. One third of their prison sentence is deducted, but for each offence, it cannot exceed 12 years. Protective and security measures are not applied to this age group.

In the following sections the terminology is used as follows: children are those under 12, who are not criminally responsible. The category of juveniles comprises the younger ones aged 12-15 and the older ones aged 15-18. Young adults are those between 18 and 21. They are not considered as a special age group in the Criminal Code or the Child Protection Law, but they are mentioned in the Code on the Execution of Punishments and Security Measures.

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

Due to the fact that most of the major codes were totally changed in 2005, the statistics supplied by the Ministry of Justice unfortunately are not very significant (see *Tables 2* and *3*). There are also police and gendarmerie statistics which may give us some insight. Although these statistics do not classify children in terms of their age, they cover all children, including very young ones. Generally very young children may be lost and found or used as street vendors or beggars by their families or organised crime gangs. Sometimes children are lost and

never found. They are said to be abducted by the organised mafia. The statistics also contain numbers of children who escaped from home, who were found as victims of crimes, as drug addicts, working in the streets etc. In *Table 1* those charged for offences and those charged for other reasons are shown.

Table 1 shows that the numbers of juveniles and children registered by the security units (police and gendarmerie) increased from 39,447 cases in 2001 to 75,334 cases in 2005 (+91%). There is a similar trend of increase in juvenile delinquency (children charged for an offence) from 26,182 cases in 2001 to 44,499 cases in 2005. The number of boys increased by 69% (from 24,080 to 40,574) and of girls by 87% (from 2,102 to 3,925).

The increase is less in the gendarmerie statistics than in the police statistics. This indicates two major differences: in Turkey, gendarmerie functions in the rural areas and the police in the urban areas. There are two reasons for this:

a) In the rural areas there is high informal social control.
b) The urbanization rate is very high in Turkey, especially after 2003 due to economic conditions and the fact that Turkish society is becoming more industrial.

So as the people migrate from rural to urban areas and at the same time agricultural lands are converted to industrial plants through green field projects, the society also becomes an urban, industrial society. This is evident especially in the numbers concerning the children who run away from their homes. In the urban police areas this is increasing, because the families seem to lose control over their children as they move to metropolitan areas.

Children caught for begging,[8] although not very high in numbers, are increasing because of the economic situation in Turkey. In general the Turkish economy seems to be developing, but the differences between the strata in society are growing, too. The rich are becoming richer and the poor poorer, and the scene is set for gangs and organized criminals who use children as beggars. Especially the street children who have run away from their families easily fall into their hands.

Table 2 shows the numbers of convicted young (11-15) and older juveniles (15-18) and of young adults (18-21 years) for the years 2004-2007. The new Criminal Code of 2005 decriminalised a lot of typical juvenile delinquency and therefore the numbers dropped already in 2005. From 2005 to 2007 the numbers of convicted and detained juveniles and young adults remained rather stable. The proportion of female young offenders was about 3% for all juvenile and young adult age groups. It is interesting to see that many more juveniles are sent to pre-trial detention than have been finally convicted. For example in 2007, 856 minors and young adults were finally convicted, but 6,212 spent time in pre-trial detention during the same year. This is a ratio of 7 : 1 and indicates that the large majority of juveniles and young adults coming into contact with the police and

8 In Turkey begging is classified as a misdemeanour and not as a crime.

prosecutors are just detained, but never sentenced to a prison term. Furthermore, pre-trial detention apparently is extensively used on older juveniles and young adults, whereas younger juveniles are sent to pre-trial detention only in a few exceptional cases (see *Table 2*). Nevertheless also here the proportion of younger juveniles finally sentenced is only less than 5% of all younger juveniles that have experienced detention during trial.

Looking at the different crimes for which juveniles and young adults were sentenced in 2005-2007, it becomes clear that theft, robbery and intentional homicide (and to a lesser extent sexual offences) are the major groups of juvenile and young adult offenders (see *Table 3*). All other offences play only a marginal role. The proportion of young female offenders finally convicted in 2004 was 8% and it has dropped to less than 2% since 2005. The proportion of female pre-trial detainees was similar (see *Table 2*).

Table 1: Juveniles registered by the security units (Police and gendarmerie)

Registered by:	2001		2002		2003		2004		2005	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Gendarmerie	1,893	352	2,732	655	3,016	1,012	4,158	1,625	6,064	2,883
Of them: for criminal offences	1,544	130	2,133	220	2,008	182	2,457	271	2,908	384
%	81.6	36.9	78.1	33.6	66.6	18.0	59.1	16.7	48,0	13.3
Police	31,550	5,652	40,274	8,403	47,198	9,353	54,399	10,738	55,075	11,312
Of them: for criminal offences	22,536	1,972	27,452	2,811	32,420	3,491	38,673	3,924	37,666	3,541
%	71.4	34.9	68.2	33.5	68.7	37.3	71.1	36.5	68.4	31.3
Total registered	33,443	6,004	43,006	9,058	50,214	10,365	58,557	12,363	61,139	14,195
Of them: for criminal offences	24,080	2,102	29,585	3,031	34,428	3,673	41,130	4,195	40,574	3,925
%	72.0	35.0	68.8	33.5	68.6	35.4	70.2	33.9	66.4	27.7

Source: Turkish Ministry of Interior, own calculations.

Table 2: Convicted juveniles and young adults and pre-trial detainees according to age groups[9]

Final convictions								
Age Group	**2004**		**2005**		**2006**		**2007**	
Males	**N**	**%**	**N**	**%**	**N**	**%**	**N**	**%**
11-15 y.	38	1.8	12	1.3	2	0.2	6	0.7
15-18 y.	95	4.2	59	6.4	72	8.8	84	9.8
18-21 y.	2,131	94.1	856	92.3	749	91.0	766	89.5
Total	2,264	100	927	100	823	100	856	100
Females	**N**	**%**	**N**	**%**	**N**	**%**	**N**	**%**
11-15 y.	2	1.9	0	0	0	0	0	0
15-18 y.	9	8.6	0	0	0	0	0	0
18-21 y.	94	89.5	18	100	15	100	18	100
Total	105	100	18	100	15	100	18	100
Detention during the trial								
	2004		**2005**		**2006**		**2007**	
Males	**N**	**%**	**N**	**%**	**N**	**%**	**N**	**%**
11-15 y.	523	9.7	155	3.8	122	2.1	136	2.2
15-18 y.	1,144	21.3	1,225	30.1	1,613	28.0	1,979	31.9
18-21 y.	3,714	69.0	2,686	66.1	4,018	69.8	4,097	65.9
Total	5,381	100	4,066	100	5,753	100	6,212	100
Females	**N**	**%**	**N**	**%**	**N**	**%**	**N**	**%**
11-15 y.	6	2.6	6	5.6	3	2.0	5	2.2
15-18 y.	25	10.7	20	18.7	56	37.1	53	22.9
18-21 y.	202	86.7	81	75.7	92	60.9	173	74.9
Total	233	100	107	100	151	100	231	100

Source: Turkish Ministry of Justice; own calculations.

9 In 2005 new major codes came into effect in Turkey: the Criminal Code, the Criminal Procedure Code, the Code on the Execution of Punishments and Security Measures, the Child Protection Law etc. As a result, the ratio of final convictions to pending cases at the Court of Appeal have changed. It means that the Court of Appeal has reversed more decisions than the previous years due to the fact that some of the acts have been decriminalized. The fact that the detention figures did not change in the same period implies that the judges of the lower courts were unable to grasp the changes that occurred after 2005. The conviction and detention rates for girls are much lower than for boys. This is probably due to the fact that girls are obliged to lead a more conservative way of life and there is a considerably higher level of social control over them.

Table 3: Sentenced juveniles (under 18) and young adults (18-21) according to crimes (final convictions, males)

Crime	Juveniles				Young adults			
	2005		2007		2005		2007	
	N	%	N	%	N	%	N	%
Human trafficking	0	0.0	0	0.0	6	0.7	7	0.9
Homicide	14	20.9	20	20.4	189	23.3	176	23.2
Negligent killing	0	0.0	0	0.0	10	1.2	9	1.2
Traffic accident	0	0.0	0	0.0	3	0.4	2	0.3
Injury	2	3.0	1	1.0	33	4.1	39	5.2
Sexual offence	10	14.9	9	9.2	70	8.6	81	10.7
Theft	17	25.4	11	11.2	164	20.2	177	23.4
Robbery	10	14.9	22	0.0	128	15.8	116	15.3
Drug offences	0	0.0	0	0.0	29	3.6	41	5.4
Other violations of the PC	0	0.0	0	0.0	16	2.0	9	1.2
Other Laws*	14	20.9	35	35.7	162	20.0	101	13.3
Total	**67	100	**98	100	**810	100	**758	100

* Military Law, Cheque Law, Terrorism Act etc.

** Total numbers were computed by summing up the different crimes; they differ from *Table 2*; reasons for that are unknown.

Source: Ministry of Justice, Ankara.

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

The sanctions in the Criminal Code are prison sentences and fines. Penalties for juveniles are mitigated as follows:

For young juveniles (12-15 years old), if the offence would normally be punished by an aggravated life sentence, the prison sentence is lowered to 9-12 years, if it would be punished by a life sentence, it is reduced to 7-9 years. Other prison sentences are half the amount the law prescribes, but for each offence it cannot exceed 7 years.

For older juveniles (15-18 years old), if the offence would normally be punished with an aggravated life sentence, it is reduced to 14-20 years of imprisonment; if it would be punished by a life sentence it is reduced to 9-12 years of imprisonment. All other prison sentences are reduced by one third, but for each offence the prison sentence cannot exceed 12 years.

As to the execution of prison sentences, there are provisions for children's "education centres"[10] and closed institutions in the Code on the Execution of Punishments and Security Precautions:

3.1 Educational and supportive measures

The Child Protection Law contains no penalties and sanctions for children.[11] It has protective and supportive measures instead. These measures give priority to keeping the child in his/her family environment and provide counselling, education, care, health and shelter (Article 5). These measures are to be interpreted as measures specific to children who are dragged into crime and who are not criminally liable (Article 11).

Counselling is guidance for the people who are responsible for the care of the child, on how to appropriately rear and educate the child and solve the problems faced during the child's development.

Education is either to regularly attend a school as a day or boarding student, or attend a vocational training course or to work for a master or in a public or private work place (see *Sections 11* and *12* below).

Care comprises the settling of the child in a public or private care centre or with a protective family if the child's family fails to provide appropriate and proper care.

Health precaution aims at the healing and protection of a child's physical and psychological health, and consists of temporary or permanent care, and rehabilitation or treatment for those who are addicted to addictive substances.

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10 For obvious reasons, the Code avoids calling these places "prisons".

11 Sanctions are in the Turkish Criminal Code, Article 31.

Shelter means providing shelter for homeless families with children and also for pregnant women whose lives are in danger. In case these sheltered people request it, their address is confidential.

The Social Services and Child Protection Directory is responsible for taking necessary measures immediately with regard to incidents referred to it and will place children under the care of governmental or private organizations (Article 10).

If it is found that the child is not in danger or the danger may be removed just by supplying support to the guardian, the custodian or the person in charge of care or supervision of the child, the child is handed over to these persons. The precautions defined above may also be combined.

There is also a bylaw for the application and procedures of the Child Protection Law. There are detailed articles on how the protective measures are to be applied by judicial, administrative, law enforcement and other authorities, how urgent protective measures are to be taken, served, changed, renewed, or ended (Articles 6-11, 18). Each protective measure is also defined and explained, and their application (as well as the authorities responsible for such an application) is regulated in detail (see Articles 12-17).

Besides the measures in the Child Protection Law, in the Turkish Criminal Code, instead of "short-term" prison sentences there are measures that can be applied to everyone including children (Article 50). In the Turkish Law, prison sentences under one year are "short term" prison sentences (Article 49/2).

In Article 50, the law states that all "short term" prison sentences may be converted to alternative sentences and measures. The term "may be" means that the judge decides to convert if he/she considers this change to be more appropriate for the convicted person. But he/she may decide to keep it as it is. On the other hand, Paragraph 3 of the same Article has a special provision for juveniles, the elderly and for those who are convicted to prison sentences shorter than 30 days. If these persons have not previously been condemned to a prison sentence, their short-term prison sentence must be converted to one of the measures enumerated in this article. There are two differences between these persons and regular short-term prison convicts. First, the conversion is not obligatory for the regular prison convicts; it is in the judge's discretionary power. The judge – by taking into consideration the offender's personality, his/her social and economical situation, and whether he/she showed signs of remorse during the trial and the characteristics of the crime – may convert the prison sentence to the specific measures and alternatives. On the other hand the judge is obliged to convert to such measures if the convict is a child, elderly or if his/her punishment is under 30 days in duration. Second, the short-term prison sentences of regular offenders may be converted to one or more alternative measures, whereas for juveniles and the elderly only one of the measures may be applied.

Short-term prison sentences may be converted to the following alternatives:

a) Judicial fine.
b) Restitution of the damages to the victim or the public by restitutio in rem, returning of the outcomes of the crime or by compensation.
c) To attend for at least two years, an educational institution – which may also provide accommodation – for the acquisition of a profession or craft.
d) Prohibiting the convict from going to certain places or certain activities for a period of between one half to twice the convicted sentence.
e) In cases where the crime is committed by abusing the rights and authorities that a license or a certificate provides, those documents are confiscated for between one half and twice the term of the sentence. In cases where the duty to show care and attention that a profession requires is not observed, the convicted person can be banned from performing this profession or trade for the same period.
f) To work for public good for a period between one half to twice the convicted sentence (community service). This must be consensual. The reason is that, according to the Turkish constitution, drudgery (forced labour) is forbidden.

The long-term sentences for crimes committed in negligence and recklessness may be converted to judicial fines, too.

The court may decide to execute the sentence totally or partially, if the convict does not obey the conditions of the alternative sanctions and measures within 30 days of the notification or disobeys them after execution has begun. On the other hand, if the alternative sentence or the measure is not executed due to reasons for which the convict cannot be blamed, the court which imposed the sentence may change it to an alternative sanction.

4. Juvenile criminal procedure

4.1 Directory of Social Services and Child Protection

If a child is in need of protection, the judicial, administrative, law enforcement, health and education authorities, local authorities, public authorities, NGOs and whoever somehow becomes aware of the child's need for protection, have the obligation to report this to the provincial or district social services offices. The child or the person responsible for the child can apply to the Directory of Social Services for its protection. Social services are obliged to consider news in the media as a report and do not wait for another official instigation to start the procedure to protect the child. To be able to trace children who are in need of protection and who do not receive any help, they maintain close contact with all the related bodies.

If the child is referred to the Social Services and Child Protection Institution, the latter performs the necessary formalities immediately and, according to the applicant's needs and the urgency of the matter, either applies one of the services of the institution or directs the child to another relevant institution. If a decision must be reached concerning a protective or supportive precaution, a written request supported by a detailed social examination report[12] must be prepared and presented to the judge.

4.2 Investigation

The investigation of delinquent juveniles is made only by the public prosecutor at the Juvenile Bureau. A social worker may be present during the child's interrogation (questioning) or other procedures. If necessary, the public prosecutor may ask the juvenile judge to impose protective or supportive measures on the child.

If the child is in custody, he/she must be kept in the juveniles' department. If there is no juveniles' section of the police at that particular police department, juveniles are kept separate from adults. Young juveniles under 15 cannot be arrested[13] for acts that require a prison sentence of less than five years (upper limit). However, there is a new protection measure for suspects of all ages: Judicial Control. This was introduced into the Turkish Code of Criminal Procedure in 2005, so that being the most severe protective measure, arrest will not be applied very often. In fact, Article 109 of the Code of Criminal Procedure states that when grounds for pre trial detention are present and the upper limit of the prison sentence that the act requires is under three years, the accused may be put under one or more restrictions at the same time, instead of being arrested:

1. not to be able to travel abroad,
2. to show up regularly at places specified by the judge,
3. to obey the persons and authorities appointed by the judge and to comply with the education and control measures,
4. not to drive any kind of vehicle,

12 The report must include the following information: the child's developmental stages since he/she was born; physical, mental, emotional, social and ethical development; the family's social, economic and cultural situation; the relationship between family members; school, work and past-time environment; legal situation and situations that require the intervention of judicial (agencies) authorities, a) his/her behaviour as determined by the specialists during the examination, b) reasons that caused their criminality, maladjustment or being in need of help. Especially a proposal for the kind of measure to be applied, and for how long, whether there is a need for special and/or psychiatric treatment.

13 In Turkey, to be "arrested" implies "being placed in arrest", or in "pre-trial detention". Therefore, stating that a person under 15 years of age "cannot be arrested" means that he/she cannot be placed in pre-trial detention.

5. to accept examination and treatment in or outside a hospital for any kind of addiction, especially for narcotics, stimulant drugs and volatile substances,
6. not to carry any weapons, or to hand them over to the authorities.

The Child Protection Law indicates that either the measures in the Code of Criminal Procedure or in the Child Protection Law (Article 20) may be applied to juveniles who are dragged into delinquency. The measures in the Child Protection Law are:

1. not to leave a specified environment,
2. not to visit certain spaces or to only go to designated places,
3. not to have any contact with particular persons.

An arrest order is issued if no result is obtained from the measures and precautions mentioned above.

During their transfer from one place to another, no chains, handcuffs or other devices may be used on juveniles. However, in absolutely necessary situations, the law enforcement officers may take the precautions necessary to prevent a child's escape or harm that he/she may cause to other people's or his/her own lives or physical integrity.

According to the previous formulation of Article 19 of the Child Protection Law, during the investigation period, after the public prosecutor has collected the evidence and if the upper limit of the prison sentence in the Code for the alleged crime is under two years, the public prosecutor might postpone the commencement of the public prosecution for up to five years. The upper limit for juveniles under 15 is three years. If the child does not commit a crime within this period, it would be decided that there is no reason for a public case. If the child is convicted for an intentional crime he/she has committed within this period, a public case will be filed for the previously postponed case.

Conditions for such a postponement are (Article 19):

1. The child must not have any previous convictions for an intentional crime.
2. The postponement will have a deterrent effect on the child.
3. The postponement will be more beneficial both for the child and for wider society.
4. The damage caused by the crime to the victim or society is totally repaired, either by restoration or compensation. This last condition will not be required if the child's or his/her family's economic means are not sufficient.

The postponement of the case has to be approved by the juvenile judge.

On 12 December 2006, Article 19 was amended and the present article is a very short and simple one stating that "if the conditions in the Criminal Procedure Code exist, the prosecution may be postponed. The postponement period is three years for juveniles". In fact, on the same date Article 171 concerning the postponement of the prosecution, which was only a few lines long, was reformu-

lated as a detailed article. So postponement is possible for everyone and the above mentioned conditions, previously in the Child Protection Law, are valid for juveniles and adults as well. The only difference is that the postponement period is five years for adults and three years for all juveniles under 18.[14]

The hearing is the most major element of the prosecution period of the criminal procedure. Those who may be present during the hearing are: the child, his/her parents, guardian, custodian or the family that cared for the child, or if the child is cared for in an institution, the institution's representative. The judge may also ask the social worker to be present when the child is questioned or during other elements of the proceedings. If the benefit of the child so necessitates, he/she may be exempted from the hearings.

This provision is not sufficient to protect the juveniles' privacy. In the abolished law, the related article expressly stated that "juveniles' hearings are performed in closed sessions, even the pronouncement of a sentence is made in a closed session". The general rule in Turkey is that the hearings are public. This provision is expressly stated both in the Turkish Constitution (Article 141) and in the Code of Criminal Procedure (Article 182). The court has to pass an injunction for a closed session. In fact, the same article in the Constitution states that there have to be special provisions for juveniles. The present Child Protection Law does not have any provision concerning closed sessions. So for every case there has to be an injunction for a closed session and this is not very practical. A general rule as was provided for in the abolished Code would be more appropriate for the purpose.

4.3 Staff (employees) and courts involved in juvenile justice

4.3.1 Judges and courts

The Child Protection Law established two types of Juvenile Courts: Ordinary Juvenile Courts and the Juvenile Criminal Court for Major (Aggravated) Cases.

Ordinary Juvenile Courts are composed of one judge. There is normally one Juvenile Court in each province and more can be established if necessary. A public prosecutor is not present during the hearings at the Juvenile Courts (Article 25). The public prosecutors of the area may appeal against their decisions.

At the Juvenile Criminal Court for Major Cases there is a presiding judge and two further members.

Juvenile Courts have the authority to decide on any measures for the juveniles as regulated in the law.

The judges and the public prosecutors of the Juvenile Courts are law graduates. They are appointed like all other judges within the judiciary. Judges

14 Since these provisions are considerably new, we have no statistics concerning postponement.

to be appointed to the Juvenile Courts have the same upbringing, education and qualifications as all the other judges and furthermore: they must be specialized in juvenile law, educated in child psychology and social services.[15] Priority is given to judges who had been in the same position previously.

Until the law reform of 22 July 2010 juveniles who participated in illegal demonstrations or who were involved in terrorist organizations were judged by special courts according to the Law on Demonstrations, Law on Fight with Terrorism and the Code of Criminal Procedure. The reform now exempts them from the jurisdiction of special courts and establishes the competence of the Juvenile Court.

4.3.2 Public prosecutors and Juvenile Bureaux

A "Juvenile Bureau" is established at each attorney general's office and a sufficient number of public prosecutors who are specialized in juvenile law, educated in child psychology and social services are appointed to this office. Such a bureau is responsible for carrying out the investigation and take necessary measures and precautions without delay. It works together with public or private organizations and NGOs, for obtaining shelter, education, help or work or support for juveniles who need to be protected, who are victims of crime or who have been dragged into crime, or those who show difficulties in adaptation. The bureau may also refer these juveniles to suitable institutions.

In urgent cases these duties may be performed by public prosecutors not appointed to the Juvenile Bureau.

4.3.3 Juvenile police

Police work concerning juveniles is carried out by special juvenile units of the police. But any child may come to the law enforcement offices (police and gendarmerie) for different reasons, for example not only juvenile offenders but also those who have been victimized or who are lost or have run away from home (see *Table 1*).

When the juvenile unit of the police start the procedure involving a juvenile, it informs the child's parents or the person who is responsible for the care of the child, the bar association, the Directory of Social Services and Child Protection; if the child is residing in an official institution, the deputy of the institution is informed. Relatives of the child who are suspected of abusing him/her or of instigating him/her to offend are not informed. While the child is kept with the police, it is seen to that one of his/her relatives stays with him/her.

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15 In the abolished law, it was "preferable" for them to have children of their own, and to be above 30 years of age.

If the police see that the child needs urgent protection and that waiting for the necessary procedures will have negative effects on the child, the child unit takes the necessary precautions so as to obtain his/her security and delivers him/her to the Directory of Social Services and Child Protection as soon as possible.

4.3.4 Social workers

Social workers are defined in the Child Protection Law as professionals who have graduated from institutions that provide education in psychological consulting and guidance, psychology and social services (Article 3e).

The Ministry of Justice is responsible for appointing a sufficient number of university graduates to courts as social workers. Those who have had post graduate education in juveniles' and family problems, juvenile law and the prevention of juvenile delinquency are preferred. Their salary is 50% higher than their counterparts who work in the Directory of Social Services and Child Protection.

If needed, special experts additional to the present social workers may be appointed.

The duties of the social worker are (Article 34): To carry out enquiries immediately on the juvenile to whom they have been assigned, to submit the reports they prepare to the authorities who assigned them, to be present with the juvenile during interrogation or cross-examination, and to carry out the other duties given to him/her by the courts and juvenile judges under this law. Everyone has to supply the social workers with the information that they request.

4.3.5 Education and training of the staff

During their training, subjects such as juvenile law, social service, child development and child psychology are taught to the judges, public prosecutors, social workers, and probation officers. Those who are appointed to the courts receive in-service training so that they improve and develop themselves so as to be more specialized in juvenile justice matters.

As to the juvenile office of law enforcement, they also receive training in their own departments on topics such as juvenile law, child development and psychology, social services or the prevention of child delinquency.

4.4 Defence counsels

The fact that the Child Protection Law does not have any provisions on defence counsels is a major deficiency. On the other hand the Law states in Article 42 that in cases where no provisions are set forth in this Law, the related provisions

of the Turkish Code of Criminal Procedure apply. This Code contains detailed provisions on defence counsels. Adult suspects and defendants are free to have one or more defence counsels. If they want legal counsel but do not have the means to do so, an attorney is appointed. If the suspect or defendant (accused) is a child, an attorney is appointed without his/her request (CCP Article 150/2). There are current debates as to the fee to be given to the attorney (see below under *Section 14*).

5. The sentencing practice – Part I: Informal ways of dealing with juvenile delinquency

Apart from the postponement of the commencement of public prosecution (as explained under *Section 4* above), postponement of punishment is also possible in the Turkish law. These provisions are in Article 51 of the Turkish Criminal Code. Anyone's punishment may be postponed if he/she is convicted to a prison sentence of less than two years, has no prior conviction for an intentional crime, shows signs of regret and remorse, and the judge is of the opinion that he/she will not commit crimes in the future. For juveniles the maximum term of prison sentence is three years (for details see *Section 6* below).

In the Turkish law reconciliation is possible for juvenile offenders. Reconciliation between the victim and the offender was first rendered for a very limited number of minor offences defined in the Turkish Criminal Code of 2005. It was only possible for offences where the investigation and prosecution took place after the victim had filed a private complaint and both parties agreed on reconciliation. In the Turkish system, the initiation of legal prosecution by filing a private complaint by the victim is only possible for a select few minor crimes. Considering that reconciliation is a very important form of restorative justice, I had criticized this provision, as the scope of application was very limited.[16]

Reconciliation is now regulated in more detail in Article 253 of the Code of Criminal Procedure. This is quite a detailed article that has broadened the boundaries of reconciliation.[17] Since Article 42 of the Child Protection Law states that in cases for which no provisions are set forth in the Child Protection

16 See *Sokullu-Akinci* 2005, p. 7.

17 Article 253 reads as folows: "For the below cited crimes reconciliation is provided: Crimes where the investigation and prosecution is dependent on the complaint of the victim and crimes in the Criminal Code, in which the investigation and prosecution is not dependent on the complaint of the victim such as intentional assault and battery, unintentional assault and battery, violation of the immunity of domicile, abduction and detaining children by the parent who does not have the guardianship of the child or by other relatives, disclosure of information and documents which are commercial secrets, banking secrets or customer's secrets."

Law, provisions of the Criminal Procedure Law shall be applied, this article is also applicable to juveniles.

On the other hand, the Child Protection Law, passed soon after the Turkish Criminal Code, broadened the limits of reconciliation concerning juveniles and included all negligent offences, without taking into consideration the amount of the punishment. Article 24 reads as follows:

"(1) Reconciliation with regard to juveniles dragged into crime shall be applicable for crimes where the investigation and prosecution are dependent on a complaint or which are committed intentionally and if the penalty is imprisonment not exceeding two years or a judicial fine, or for negligent offences.

(2) For juveniles who have not yet reached the age of fifteen on the date of committing the crime, the lower limit for penalty of imprisonment provided for in paragraph one shall be three years."

This provision was amended on December 12, 2006 and reads:

"Provisions of the Criminal Procedure Code concerning reconciliation are applied for juveniles dragged into crime".

This provision has received severe criticism from some Turkish academics. For example *Öztürk* claims that making reconciliation possible for juveniles is totally against the main principles of the Child Protection Law.[18] The main aim of this law should be to integrate juveniles into society, whereas reconciliation does not have such a purpose. *Öztürk* also stresses the problems in cases of sexual offences (Article 104 CC), which are prosecuted after a complaint and thus could be subject to reconciliation. The same is true for sexual assault (Article 101/1) and sexual harassment (Article 105), crimes which are also prosecuted upon complaint.[19] However, one has to consider the fact that the general rule concerning reconciliation in Article 253 (3) CCP clearly states that crimes that are committed against sexual integrity cannot be subject to reconciliation.

Besides reconciliation, some other institutions of the Turkish system may be considered as being forms of diversion, because they in one way or another divert the child away from the criminal law: postponement of the public case, postponing the announcement of the verdict, or even postponing the execution of the sentence may be considered as forms of diversion. All of these institutions and mechanisms will be explained below.

In the present Turkish Criminal Code cautioning, reprimands or final warnings do not exist. In the abolished Criminal Code of 1926, persons sentenced to very short prison terms were not imprisoned but rather were released following judicial admonition, which was a public reprimand administered by a judge, addressed to the particular conduct of the convict and considering the

18 *Öztürk* 2007, p. 1114.

19 *Öztürk* 2007, p. 1114 f.

manner and form in which his/her crime had been committed. It was made by explaining "the moral aspect of the provision of the law that was violated and the consequences of the act" (Article 26). In fact this was in a way a scolding of the offender which made him/her understand what the real meaning of committing a crime is, and thus advised him/her to be more careful in future. If the convict did not appear in court despite invitation or if he/she failed to accept the admonition respectfully, the full sentence would be thoroughly executed. Besides protective and supportive measures, such a final warning or cautioning just for juveniles would be quite in harmony with the aims of contemporary Turkish juvenile justice. We hear that in practice judges still use this method informally but not as an alternative to sentencing.

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

There are no statistical data available that give information about the application of sentences or educational measures by the Juvenile Courts. Therefore only some information about the legal provisions in this context can be given.

Upon the request of the child's parents or guardian or the person responsible to look after him/her, the Directory of Social Services and Child Protection or the public prosecutor, the juvenile judge ex officio may decide on one or more protective and supportive measures. Both how the decision is made and the social examination are explained above under *Section 3*. The judge, besides these measures, may also decide to place the child under supervision.

Taking into consideration the development of the child, the judge may decide to change or terminate a protective and supportive measure. In cases of emergency this decision may be made by the local judge where the child is at that particular time. However, the judge who made the original decision will be notified.

The application of the measures that the Juvenile Court has decided on is to be examined every three months at the latest by the deciding judge. On the other hand, the judge or the court – *ex officio* or upon the request of the supervision officers, the child's parents, guardians, caretakers or supervisors, the representatives of the institution, the person applying the measure or the public prosecutor – may examine the outcomes of the measure and may either cancel, extend or change it.

Besides deciding on protective and supportive measures, the court also has the authority to decide on custody, guardianship and personal contacts etc.[20] according to the provisions of the Turkish Civil Code of 2001. For example, Article 346 of the Turkish Civil Code states that if the parents cannot find a

20 These are Civil Law terms: everyone under 18 is under the guardianship of his/her parents or in the custody of some suitable adult instead of the parents.

solution to the child's problem, the judge is to decide on appropriate measures. If the physical and mental development of the child are in danger or the child is psychologically deserted, the judge may decide to take the child away from the parents and settle him/her with a family or an institution. If the presence of the child in his/her own family is so damaging to the family's peace and tranquillity that endurance cannot be expected from them, and if there is no other alternative, the judge may come to the same decision (Article 347). Thus the judge may decide to take the child away from the guardianship of the parents and put him/her under the custody of a suitable adult who may or may not be a relative. The judge, taking into consideration the needs and required benefits of the child, will arrange personal contacts such as a visiting schedule.

The Law on the Protection of the Family also contains provisions concerning family violence where the child may be the offender or the victim. There are other provisions concerning protective measures for juveniles, in the General Health Protection Law, Municipality Law, Labour Law and the Vocational Training Law for example.

6.1 Urgent protection

In some cases the child has to be placed under urgent protection and if such a situation occurs, the child will be placed under care and supervision by the Directory of Social Services and Child Protection. The Directory shall apply to the juvenile judge within a maximum five days for an urgent protection ruling. The judge will then decide within a further three days. If he/she thinks it is necessary, the judge may also decide on keeping the child's location confidential.

The maximum period for urgent protection is 30 days. Within this period, the Directory carries out a social inquiry on the child. As a result of this inquiry, the Directory may reach one of two decisions: if the Directory comes to the conclusion that the child does not require a measure, it informs the judge about this and also, if need be, about the services that it may provide for the child. The judge decides whether to deliver the child to his/her family or whether other measures are to be taken. If the Directory decides that the child is in need of a protective or supportive measure, it shall file a relevant request with the judge.

The execution of these measures will stop automatically when the child turns 18. However, with the consent of the young adult, the judge, may decide to continue the measure for a certain period, if it is for the good of the young adult and so that he/she may continue his/her training and education.

6.2 Postponement of the announcement of the verdict

On the other hand, besides announcing the verdict and starting the execution of the measure it is possible to postpone the announcement of the verdict. If the penalty determined after the trial procedures is imprisonment for a maximum of three years or a fine, the court may decide to postpone the announcement of the sentence.

Conditions to postpone the announcement of the sentence (verdict) (Article 23) are:

- The juvenile must have no prior convictions for an intentional crime.
- The court must be convinced that the juvenile will not commit further crimes.
- Due to the personal characteristics of the juvenile and his/her attitude and behaviour during the trial, the court must conclude that it is not necessary to sentence the juvenile to a penalty.
- Complete rectification of the damages incurred by the victim or the public due to the delinquency, via exact return, restoring to original state or through compensation.

In case of failure to determine the damage incurred by the public due to the committed crime, the amount of money to be appreciated by the court must be deposited to the cashier of the Ministry of Finance as a lump sum. However, this condition may not be sought if the economic means of the child or his/her family are not favourable.

6.3 Results of the postponement of the announcement of the sentence

In case of a decision to postpone the announcement of the sentence, the juvenile will be subjected to a measure of supervised probation for a period of five years. The judge may decide that he continues attending an educational institution, be refused access to certain places, obliged to attend certain institutions or to fulfil another obligation which will be controlled by the court within the probation period. During probation, the statute of limitation (prescription period) is put on hold.

Should the juvenile fail to fulfil the condition of compensating the damages, the court may decide to postpone the announcement of the sentence and impose one of the following obligations on the accused for the probation period:

a) Full indemnification of the damage incurred by the victim or the public due to the offence committed via payment in monthly instalments.
b) In case of failure to determine the damage incurred by the public due to the committed offence, depositing with the finance cashiers the amount to be appreciated by the Court in monthly instalments.

6.4 At the end of the probation period

a) In case the juvenile is not sentenced to imprisonment due to an intentional crime he/she has committed within the probation period and in case the behaviour of the juvenile is in concordance with the imposed obligations, the court shall decide to abate the case.
b) In case the juvenile is convicted for an intentional crime requiring imprisonment that he/she has committed during the probationary period or in case the juvenile acts in violation of the imposed obligations, the court shall announce the verdict that it had put off. However, taking into consideration the circumstances regarding the fulfilment of the obligations, the court may reduce the penalty by up to 50%.

The decision to postpone the announcement of the verdict may be appealed. This decision shall be registered in a special system. These records can only be used for the purpose stated in the article concerning the postponement of punishment (Article 23) and in connection with an investigation or prosecution, by the public prosecutor, the judge or by the court upon demand.

This detailed provision of the Child Protection Law was recently (6 December 2006) amended with a very short article stating that the announcement of the verdict for a child is subject to the conditions in the Code of Civil Procedure (Article 231/5), but the probation period is three years for juveniles. On the same date some changes were made in the Turkish Code of Criminal Procedure and added the concept of postponing the verdict for offenders of all ages.

The Child Protection Law was the pioneer for this institution and then with an amendment to the CCP, it was made applicable for everyone, juveniles became subject to the general rules with the exception that the probation period for juveniles is now three years, whereas it is five years for adults. The positive aspect of this new formulation is that the probation period had previously been five years for juveniles, whereas now it is only three years. The negative aspect is that, previously, postponement had been possible for punishments of up to three years. The new rule has reduced this to two years[21] for all age groups with no exception being made for juveniles. Consequently it is a change for the worse for juveniles.

6.5 Postponement of the execution of the sentence

The judge may announce the verdict but may postpone the execution of the sentence. This is possible for convicts of all age groups: adults, young adults and juveniles. One exception can be seen in Article 13 of the Law for Combating

21 Initially, this had been set to one year. An amendment act raised it to two years on 23 January 2008.

Terrorism, which states that prison sentences for crimes of terrorism cannot be postponed except for juveniles under the age of 15.

Otherwise, this form of postponement can be applied to anyone who is condemned to imprisonment of less than two years, who has no prior convictions to prison sentences exceeding three months, and who shows signs of remorse. For juveniles, postponement is possible if the prison sentence is no longer than three years rather than two. Juveniles may be ordered to attend an educational institution during this period, so that he/she may acquire a profession or learn a skill or craft. This institution may be a place which may also provide residential care for the child.

6.6 Conditional release

Conditional release is possible for convicts of all age groups, and the same conditions apply across the board. These conditions are stated in Article 107 of the Code on the Execution of Punishments and Security Measures (2005). The first condition for release is that the convict must have shown good behaviour during the execution of the punishment. There are detailed provisions for the term of execution: for example those convicted to aggravated life sentence must have served 30 years, life sentence convicts must have served 24 years, and other prisoners must have served two thirds of their prison sentence. For convicts under the age of 15, every day served is calculated as two days (Article 107/5), which results in the possibility of being released after having served one third of the sentence.

Art. 107/4 had restricted conditional release for persons sentenced for organized crimes. An amendment in 2010 exempted juveniles from this provision.

During the release period, which is called “the period of supervision”, the convict shall not offend and shall obey the obligations determined by the judge. During the period of supervision, the judge may appoint an expert for the released convict so that he/she is advised on leading a decent life, keeps away from bad habits and refrains from further criminal activity. The expert is to be in contact with the authorities of the education institution or the employers of the released convict, and prepares reports on the released convict’s behaviour and the development in his/her sense of responsibility, which are handed to the judge every three months. Taking into consideration the personality of the convict and his/her success in adapting to society, the judge can refrain from determining any obligations for the convict.

There are only some special provisions for juvenile offenders: for example, they continue their education while they are under supervision and can visit an education institution which also provides shelter (Article 107/8).

7. Regional patterns and differences in sentencing young offenders

The laws are theoretically applied uniformly across all of Turkey. According to the principle of equality in the Turkish Constitution (Article 10), everyone is treated equally regardless of language, race, colour, sex, political orientation, philosophy, religion or any other differences. Certainly there are regional differences concerning customs. For example in the Southeast, homicides committed for honour (so-called "honour killings") are not rare.[22]

Turkey is a unitary state and has a centralised criminal justice system. Unlike federal countries which have decentralised criminal justice systems, the judges should decide uniformly nationwide in applying the Criminal Codes, and such uniformity and consistency are to be obtained through the Court of Cassation in Ankara, which is a Central High Appellate Court responsible for reviewing all judicial decisions. On the other hand, Turkish judges are appointed to different parts of the country by a central autonomous body (General Council of Judges and Public Prosecutors) in Ankara (the capital) and are shuffled every three or four years. A judge is reappointed at least six times, starting in the highly remote regions and finally ending up in large metropolises. A judge will therefore have worked in all parts of Turkey. Generally the region a judge functions in is not his/her place of origin and thus regional differences (not least from the perspective of custom) would not greatly influence a judge's decisions.

On the other hand, in the rural areas there is a high level of informal social control. As a result of this, minor crimes or misdemeanours are not reported, or law enforcement officers, instead of directing deviant juveniles into the judicial process, hand them over to their families. As can be seen in *Table 1* above, registered crime in the rural areas is much lower than in urban areas (the ratio is about 1:15).

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

Child Protection Law and the Turkish Criminal Code do not take this group of people into consideration at all. In other words, there are no special provisions and thus young adults have full criminal responsibility and are treated as adults in the criminal procedure. There is no tendency to apply sanctions of the juvenile justice system to young adults. Nevertheless court statistics provide information about the numbers of sentenced young adults (see *Tables 2* and *3*).

In some countries, as in Turkey, young adult prisoners are kept separate from adult prisoners until they reach the age of 21 years. In others the age up to

22 See *Sokullu-Akinci* 2007, p. 81.

which such separation is practised is even higher. This is done so as to give priority to their educational and developmental needs. In fact, the Law on the Execution of Punishments and Protective Measures has an article on prisons for young adults. Article 12 states that the execution of the punishments of young adults is based on the principle of education and training. If there are no special facilities for young adults, they shall be kept at different wards until they are 21. This is done to keep them away from older convicts and to prevent the adverse influence of older and more sophisticated offenders.

Young adults who are sentenced to an aggravated prison sentence for committing serious (organized) crimes such as crimes against humanity, intentional homicide, trafficking or producing narcotics, some of the crimes against the security of the State, crimes against the constitutional system or who display dangerous behaviour, have to be kept under special surveillance must be kept in maximum security sections of the facility. In fact there are two kinds of prisons for young adults:

8.1 Closed institutions for young adults

These are closed institutions for young adults aged between 18 and 21. The system is based on education and training. The facility has physical barriers for preventing escapes and disposes of internal and external security officers.

8.2 Open institutions for young adults

Open prisons have no obstacles for escape or guards for outer protection of the institution. Only the internal prison officers are responsible for observation and control. First-time convicts and convicts who are convicted to a prison sentence of less than two years may be sent directly to open prisons. The primary aim of the treatment in these institutions is to improve the inmates, to teach them a profession and to enable them to work. There are special open prisons for young adults. They are organized to train, educate and rehabilitate them so that while they work they acquire a profession.

9. Transfer of juveniles to the adult court

Turkish law does not provide for the transfer of juveniles to adult courts, bar for one specific exception. Article 17 of the Child Protection Law deals with crimes committed in complicity. In fact in Turkey many crimes committed by juveniles are committed conjointly with adults. Children and juveniles are often used for trafficking narcotics, robbery, burglary, honour crimes and blood feuds, because it is common knowledge that children under 12 are not punished and those above that age are treated as having only diminished criminal responsibility. To

be able to prevent this, the Turkish Criminal Code of 2005 has special provisions for complicity and for instigating children and juveniles to commit crimes. The specific provision states that making someone else commit a crime makes the instigator the main conspirator in the offence and thus he/she is punished with full responsibility for the crime. Using persons with no criminal liability in committing the crime aggravates the punishment by one third to half.

Article 17 of the Child Protection Law states that when children or juveniles commit crimes in complicity with adults, the investigation and the prosecution will be carried out separately. During this process, necessary measures will be applied to the children. Nevertheless, if considered necessary, the court may delay the child's trial until the finalization of the case concerning the adult conspirators in the General Court.

If it is necessary to carry out the trial in conjunction (together), the general court may decide at any stage of the trial to consolidate the two trials, on the condition that such consolidation is considered appropriate by both the Juvenile Court and the General Court. In this case, the joint cases shall be administered at the General Court.

This regulation is to be criticised. Juveniles must be tried at Juvenile Courts; therefore it is not suitable to carry out the trial of juveniles who committed acts in conjunction with adults before adult courts.

10. Preliminary residential care and pre-trial detention

Protective and supportive preliminary measures may be applied to juveniles during the phase of interrogation. These measures are police custody, arrest (pre-trial detention) and judicial control.

10.1 Police custody

According to the Universal Declaration of Human Rights (Article 5) and the U. N. Convention on the Rights of the Child (Article 37b), "no child shall be deprived of his or her liberty unlawfully or arbitrarily."

In general, police custody is a protective measure applied directly by the law enforcement officers in cases when a public prosecutor is not present and there is urgency for the safety of the investigation, and when it is difficult to obtain a judge's arrest warrant and such a delay will cause irreparable harm to the investigation. For the children, the police officer cannot act without the authorisation of the Juvenile Public Prosecutor in charge. In case such a Juvenile Public Prosecutor is not available, an ordinary public prosecutor can also authorize the juvenile police officer to perform his/her custodial duties.

As a rule, police custody cannot last longer than 24 hours. The suspect has to be taken to the judge as soon as possible and not later than after 24 hours

(Article 90 CPP). Reasons and the procedure for police detention differ according to the age groups:

Children of up to 12 years cannot be detained for judicial purposes and crime detection (Detention Regulation Article 19/1). As they cannot be accused they can only be detained for determining their identity or for administrative purposes. After determining their identity they must be brought before the judge.

Younger juveniles aged 12 to 15 years can only be detained *in flagrante delicto* (Article 90/1 CCP). But since these juveniles cannot be placed in pre-trial detention (so-called "arrest", see below) for crimes that would be punished with less than five years of imprisonment, they regularly cannot be detained other than for establishing their identity. Older juveniles of 15-18 years can be arrested and detained like adults.

According to Article 16 of the Child Protection Law, juveniles in police custody shall be kept in special units of the law enforcement authorities' premises. For obvious reasons, special attention is attributed to keeping these juveniles away from the older age groups.

The transfer of juveniles in police custody or pre-trial detention has special rules: chains, handcuffs and similar means cannot be utilized on younger juveniles. However, if necessary the law enforcement authorities may take the necessary precautions and measures so as to stop the child from escaping or to prevent dangers that may arise with regard to the life and physical integrity of the child or other people.

10.2 Pre-trial detention

According to the Turkish Constitution, pre-trial detention may be ordered on the basis of a judge's warrant. The Code of Criminal Procedure (Article 100) clearly states that pre-trial detention is a protective measure to be applied only as a last resort. The conditions of remand custody are stated in the same provision. On the other hand, the Child Protection Law in Article 21 prohibits the use of pre-trial detention in cases of younger juveniles (except for very serious crimes): thus a warrant cannot be issued for a child under 15 who commits an act that requires imprisonment of less than five years.

10.3 Judicial control

Judicial control is a new institution in the Turkish Criminal Procedure, accepted to eliminate the harmful effects of arrest. Article 109 of the Code of Criminal Procedure regulates judicial control. It comprises one or more obligations, such as not being allowed to leave the country, referring periodically to places specified by the judge, obeying the judges' orders and the orders of the authorities and offices the judge designates, and following the educational,

vocational training, protective and control precautions, not to be allowed to drive vehicles and hand over his/her driving licence to the authorities, to accept receiving treatment for addiction to alcohol, narcotic, stimulating, evaporating (volatile) substances, not to bear arms etc.

In addition, Article 20 of the Child Protection Law states that during the investigation and the prosecution phases, the court may opt for one or several of the measures listed in the article as judicial control measures besides those in Article 109 of the Code of Criminal Procedure. These are:

- Not leaving specified environmental boundaries. This may be a specific street, neighbourhood or district.
- Not to have access to specified places, or to only be allowed to go to designated places.
- Not to have any contact with specified persons or organizations.

However, in case these measures are not successful (or it is estimated that these measures will not be successful) or should these measures be violated, the court may resort to pre-trial detention. However, the rule in Article 21 remains valid in this case, too, so that arrest is not applicable for juveniles under the age of 15 whose offences are punishable with less than five years imprisonment.

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

Statistical data covering many aspects of juveniles in pre-trial detention and in juvenile institutions are not available. Consequently, only some selective data can be presented here. Statistics from the Ministry of Justice show that in 1997, 637 (32%) convicted juveniles were in prisons and a further 1,353 were in pre-trial detention (68%). The proportion of female juveniles was 2.5% in prisons (n = 16) and 2.1% in pre-trial detention (n = 28). Male sentenced juveniles were mainly sentenced for burglary (34.5%), intentional homicide (24.5%), rape (17.7%) and robbery (17.4%). The distribution in pre-trail detention is very similar.

In February 2007, 2,523 juveniles were in incarceration. 90 (3.6%) were finally sentenced, 2,173 (86.1%) were untried pre-trial detainees and 260 (10.3%) were sentenced, but awaiting a decision of the Appeal Court. It is almost incomprehensible that the proportion of juvenile remand prisoners is as high as these figures indicate. Looking at the group of young adult (18-21 years old) prisoners, the proportion of finally convicted prisoners was 12.5% (784 out of 6,276), the figure for untried remand prisoners was 67.2%, and 20.3% were remand prisoners waiting for a decision from the Appeal Court.

Looking more closely at the length of sentences of the finally convicted juvenile prisoners (all males), 8.8% were serving terms of up to one year, 4.4% were to be in prison for between one and two years, and 36.7% had received 2 to 5 years prison sentences. One third were serving a prison sentence of 5 to 10

years, and the remaining 16.7% had prison terms of 10 years or more (see *Table 4*). So the average length of prison sentences (compared to other countries) is very long.

Surprisingly the average length of sentences being served by male young adults was lower: 29.6% were short term prison sentences of up to one year (almost half of them only up to 3 months), 11.2% were 1 to 2 year terms, 24.9% were 2 to 5 years, 13.2% were 5 to 10 years and 21.0% were serving a sentence of more than 10 years (see *Table 4*). However, this could be an indicator for a practice which sends juveniles to prison only as a last resort and in cases of very serious crimes, which would be in accordance with national and international rules. Young adults are sentenced to imprisonment for less serious offences and therefore also serve shorter sentences.

Table 4: Length of imprisonment of sentenced juveniles and young adults (February 2007)

Length of sentence	Males				Females			
	Juveniles		Young adults		Juveniles		Young adults	
	N	%	N	%	N	%	N	%
up to 3 months	4	4.4	98	12.8	0	---	0	---
3-6 months	2	2.2	64	8.4	0	---	1	(5.6)
6-12 months	2	2.2	65	8.5	0	---	4	(22.2)
1-2 years	4	4.4	86	11.2	0	---	1	(5.6)
2-3 years	14	15.6	90	11.7	0	---	1	(5.6)
3-5 years	19	21.1	101	13.2	0	---	2	(11.1)
5-10 years	30	33.3	101	13.2	0	---	2	(11.1)
10-15 years	10	11.1	73	9.5	0	---	2	(11.1)
15-20 years	2	2.2	44	5.7	0	---	2	(11.1)
20-25 years	2	2.2	20	2.6	0	---	1	(5.6)
25 years and more	1	1.1	19	2.5	0	---	0	0.0
Life imprisonment	0	0.0	5	0.7	0	---	2	(11.1)
Total	90	100	766	100	0	---	18	100

Source: Ministry of Justice, Department of Prisons.

11.1 Juvenile educational centres

There are three juvenile educational centres: in Ankara, Elazig and Izmir, which in 2007 contained between 33 and 50 detainees. So they are rather small units.

Children under 12 are not responsible for the crimes they commit,[23] but security measures that are cited in the Child Protection Law may be applied to them. There are also two groups of minors who have diminished responsibility: those between 12 and 15 and between 15 and 18. As a rule they are not sent to closed prisons. They serve their sentences in juvenile educational centres, which are facilities where the juveniles are educated, taught a profession and integrated into society. There are no barriers so as to prevent them from fleeing. Security of the institution is secured solely by the internal security officers.

Juveniles who are following an educational or vocational training programme outside or within the institution may be allowed to stay there until they reach the age of 21, so that they can finish their education or training. The educational level of detained juveniles and young adults is very low. According to statistics covering February 2007, 57% of convicted male young adults and 29% of juveniles had reached only primary school level, and only 15% and 33% reached high school level respectively. Similarly another statistic shows that the professional level is also rather poor: the majority of the juvenile detainees are either unemployed or from the lower working class.

11.2 Closed (maximum security) institutions for juveniles

Juveniles are transferred to closed (maximum security) institutions either because of disciplinary[24] or other reasons or because there is an arrest order for them. These institutions are also basically institutions of education and training. Principles of education and training are to be strictly obeyed.

The juveniles should be kept in separate institutions. If this is not possible, they may be kept in closed prisons with a special department for juveniles. If there is no special department, the girls are to be taken to women's prisons.[25]

Juveniles between 12 and 18 are kept in different wards according to their sexes.[26]

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23 The acts they perform are in fact not even crimes because mens rea, the moral element of the crime, does not exist.

24 Disciplinary precautions are regulated in Article 45 and disciplinary punishments are provided in Article 46 of the Law on the Execution of Punishments and Security Measures. These aim to prevent the juvenile from behaving in an undisciplined way and should not aim at punishing him/her.

25 There are many examples of exploitation of juveniles by older inmates in different ways, so they should be kept in special places.

According to the data on juvenile prisons or prison departments (see *Table 5*), there are five such institutions which accommodate pre-trial as well as sentenced juveniles. In July 2007, each juvenile prison accommodated at least 100 and up to about 500 (Maltepe) juveniles. Only the Incesu juvenile prison is a small institution with 32 inmates at that time. Again the statistics demonstrate that the overwhelming majority of juveniles are incarcerated only for awaiting trial or final conviction (82%, see *Table 5*).

26 In my opinion this segregation should not be absolute and the juveniles of different sexes should socialize and do some of the activities together, under the control of prison officers.

Table 5: Distribution of juveniles in juvenile prisons (Education centres) on 31 July 2008

Institution	Type of institution	Pre-trial detention		Convicted by the court of first instance (Remand)		Convicted by the Court of Appeal (Final convicted)		Total (N = 100%)
		N	%	N	%	N	%	N
Ankara juvenile prison	Juvenile education centre	0	0.0	0	0.0	43	100	43
Elazig juvenile prison	Juvenile education centre	0	0.0	0	0.0	33	100	33
Izmir juvenile prison	Juvenile education centre	0	0.0	0	0.0	50	100	50
Ankara juvenile prison	Closed prison for juveniles	60	56.6	33	31.1	13	12.3	106
Bergama juvenile prison	Closed prison for juveniles	108	57.8	64	34.2	15	8.0	187
Dıyarbakir juvenile prison	Closed prison for juveniles	104	85.2	17	13.9	1	0.8	122
Maltepe juvenile prison	Closed prison for juveniles	484	94.2	9	1.8	21	4.1	514
Incesu juvenile prison	Closed prison for juveniles	11	34.4	20	62.5	1	3.1	32
Total		**767**	**68.7**	**143**	**13.2**	**177**	**16.3**	**1,087**

Source: Ministry of Justice, Department of Prisons.

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

Juveniles are encouraged to follow the programmes that enable them to complete their education while they are in residential care or youth prisons. School examinations, university preparation courses and university entrance examinations are held in the prison facilities. Some law students are brought to the university campus under the supervision of gendarmerie to take their final exams. Quite a lot of juveniles participated in basic reading and writing courses in 2004 and 2005 (1,472 and 2,227 respectively) and about half of them graduated from these courses. 840 and 1,114 took part in primary school courses and 430 (2004) and 629 (2005) graduated from these. About the same numbers of secondary school participants were indicated in the statistics of the Ministry of Justice (more than 2,000 and 2,500), but only 195 and 303 graduated respectively. High school and technical high school courses were taken by about 1,200 and 1,500 detainees, yet again only a small proportion (144 and 162 respectively) graduated. Nevertheless it is remarkable that 237 and 208 juvenile prisoners succeeded in the university entrance examination and 109 and 143 even took university examinations after being matriculated.

The juvenile educational centres are run by the Ministry of Justice under the General Directory of Prisons and Jails. The Child Education, Supervision and Rehabilitation Section in coordination with UNICEF developed programmes for juveniles in juvenile educational centres and closed institutions for juveniles. These programmes are:

Anger management and control programme

This programme is applied by psychologists of the Psycho-Social Service to juveniles who have difficulties with controlling their anger. Sessions take place once a week, and last as long as is necessary for the juvenile.

"I am here"

This programme is intended for introverted and schizoid juveniles. It is offered in order to develop self respect and to enable the juvenile to acquire the ability of self expression. Sessions take place once a week and last as long as is necessary for the juvenile.

Short group therapies

This programme is applied by the Psycho-Social Service workers to all the juveniles in the facility, three times a week. The aim of this programme is to develop the juveniles' abilities concerning how to behave and speak in a group. The Psycho-Social Service staff members prepare programmes that will interest juveniles and work with them periodically. These therapies are applied to the juveniles as long as they are in the institution.

Family education programme

This programme is provided by the Psycho-Social Service workers for the families of the juveniles who are in the institution. It is voluntary and aims to enable the families to better understand the juveniles and to develop their own skills to communicate with their children. They are informed about the juveniles' puberty problems, and how the family should confront such problems with a positive attitude. The family is also informed about the help a juvenile can receive if he/she is accused of having committed a crime.

The psychologists and social workers and other Psycho-Social Service staff members themselves are intensively trained on these programmes before applying them.

Vocational training

Work of juvenile prisoners is organised under the sole aim of vocational training. Young prisoners who are being educated in classical schools cannot work in ateliers and work places during the academic year. Juveniles who are kept in educational centres may also work at work places outside the facility and while they work, no supervision or protection is provided by the facility's authorities.

One incongruity in the Turkish system has to be pointed out: a positive aspect of the Law on the Execution of Punishments is that it has special provisions for young adults,[27] but no provisions exist for young adults in other relevant codes such as for example the Criminal Code.

27 Article 12; see above under *Section 8*.

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

The Child Protection Law is a new law, passed in 2005, but in the same year several other major laws were reformed as well: the Criminal Code, the Code of Criminal Procedure, the Law on the Execution of Punishments and Security Measures are a few of them. Only a few months later, for obvious reasons, amendments were made to all these new laws. Still many amendments are being made and many more are needed.

Juveniles are either convicted to mitigated punishments or to protective or supportive measures. In other words, if a juvenile is able to understand the meaning of his/her actions, he/she may in consequence receive a reduced sentence. No educational measures are applied to him/her. This is severely criticised by the academia because we think that while his/her punishment is executed, the juvenile may profit greatly from one or more protective and supportive measures, too, such as counselling and education.

On the other hand, protective and supportive measures are provided by the Child Protection Law, but the sanctions for not obeying these measures are not shown in the law.

Juveniles aged under 15 cannot be placed in pre-trial detention for crimes for which the upper limit of the sentence indicated in the law is less than five years (see Article 21). So if the conditions of judicial control are present, the juvenile judge should decide on judicial control (Article 20). Should a juvenile fail to abide by these measures, he/she can be placed in pre-trial detention if he/she is above 15 or if the prescribed punishment for the suspected crime is above five years. Although it is undesirable to "arrest" juveniles at all, if the juvenile has an environment of criminality, it will be to his/her benefit to keep him/her away from this criminogenic environment. On the other hand, if he/she is under 15, the type of judicial control measure may be altered. For example he/she might be obliged to undergo treatment (CCP, Article 109/3e).

The concept of young adults is regulated in the Law on the Execution of Punishments and Safety Measures. Unfortunately, it is not regulated in the Criminal Code or in the Child Protection Law.

Juveniles can sometimes unknowingly enter the scope of the criminal justice system. Classical criminal law sanctions harm juveniles and alienate them from society. Alternative sanctions can be applied to them.[28] In fact, reconciliation is regulated in the Code of Criminal Procedure (Article 253), and the Child Protection Law (Article 24) makes reference to the CCP. Nevertheless, there should be a special provision that is appropriate for juveniles. In fact, examples of diversion exist in comparative law. If a juvenile commits a crime and he/she

28 *Keiser* 1996, p. 1059, in *Yenisey* 2007.

is being tried, the judge may decide to deal with him/her outside the area of criminal sanctions. Having signed and ratified the United Nations Convention on the Rights of the Child and the United Nations Guidelines for the Prevention of Juvenile Delinquency – the so-called Riyadh Guidelines – Turkey is obliged to have such institutions. For example, reconciliation – if properly regulated – may be good for the juvenile by teaching him/her to assume responsibility for the damage caused to the victim. Postponing the public case, the announcement of the verdict or even the execution of the sentence may be considered as means of diversion.

Juvenile police have a long past in Turkey, but there is an imbalance in the duties of the police concerning child victims on the one hand and juveniles who are dragged into criminality on the other. The police have full responsibility for child victims, but work under the public prosecutor when it comes to offending juveniles. This may be appropriate in terms of the rights of the child, but the police should be given the authority to act independently from the public prosecutor in exceptional and specified situations.[29]

One and the same juvenile judge should be given the authority to follow up and trace one juvenile, so that the judge knows every particular characteristic of him/her. In this case the judge will maintain harmony between the different organs involved and will decide what is in the best interest for that juvenile.

The Child Protection Law was the pioneer in postponing the announcement of the verdict and when this institution became a provision of the CCP, it became applicable to everyone and juveniles became subject to the general rules of the CCP with the exception that the probation period for juveniles is now three years (instead of five years for adults). The positive aspect of this new formulation is that the probation period before had been five years for juveniles. The negative aspect is that, previously, postponing had been possible for punishments of up to three years. Now this limit has been reduced to two years, since no exception is made for juveniles, which is without question a change for the worse.

The fact that it is obligatory to appoint a defence counsel for juveniles is a highly positive aspect of the Code of Criminal Procedure. This provision also existed in the abolished Code of 1992. The Regional Bar Associations have always been keen to support appointed defence counsels. Especially young idealist attorneys are working on a nearly voluntary basis, because they receive very low fees which only cover the transportation expenses. The juvenile police have always considered these attorneys as an encumbrance to the system and a waste of time. A surprise attack was launched very recently by the Turkish Bar Association: they directed a written query to the Ministry of Justice on whether it would not be proper and appropriate to pay a fee to the attorney if she/he is

29 See *Yenisey* 2007, p. 54.

present when the juvenile is questioned about his identity. The Ministry turned this down.

14. Summary and outlook

The new Child Protection Law and the basic codes concerning Criminal Law have all been in force since 2005. Some novelties such as postponing prosecution and postponing the announcement of the verdict were entered into the Turkish system with the Child Protection Law. One year later the same institutions were inserted into the Turkish Code of Criminal Procedure. At the same time the detailed provisions in the Child Protection Law were abolished and the Code of Criminal Procedure is now applied to both adults and juveniles. So I may say that previously the Code of Criminal Procedure had been inadequate in terms of the above cited institutions, and the amendments are to be considered as progress. Yet unfortunately, the same cannot be said for juveniles, as the provisions concerning the above cited institutions, in being added to the Turkish CCP, cost the juveniles some of their privileges.

At present, provisions concerning juveniles are in the Turkish Criminal Code, Turkish Code of Criminal Procedure and Child Protection Law. Maybe these provisions should be consolidated under one law. For example, protective and security measures for juveniles are in the Child Protection Law, criminal sanctions are to be found in the Criminal Code, and reconciliation, postponing the announcement of the verdict and postponing the commencement of a public suit are located in the Code of Criminal Procedure. The fact that the hearing of the accused who is under 18 shall be conducted in closed sessions and the verdict shall be announced in a closed session are in the Code of Criminal Procedure (Article 185, and not in the Child Protection Law) is rather inadequate. Having all these provisions scattered in different codes is criticized by some scholars, and the general opinion is that provisions considering juveniles should all be collected in one law, because the present situation sometimes causes confusion.

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Ukraine

Maryna Zaikina

Summary

Since August 1991 Ukraine has been an independent state with a democratic constitution in the centre of Eastern Europe. Its population today (2008) is 46.4 million. The new constitution of Ukraine was adopted in 1996. Both, Ukrainian criminal law and the special provisions for juvenile offenders came into force on 1 September 2001. The new Criminal Code of Ukraine (CC) for the first time contains a separate *Chapter 15* with specific regulations concerning criminal liability and the punishment of minors.

The age of criminal liability is 16 years. Persons shall be criminally liable at the age of 14 in case of committing serious and especially serious offences. A person who at the time of offending has reached the age of 18 shall not be subject to the provisions of the general criminal law. There are no specific regulations concerning young adult offenders.

Compulsory educational measures or punitive measures may be applied to juvenile offenders. Such *educational measures* are (Art. 105 para. 2 CC):

- warning;
- restriction of leisure time and special requirements of the minor's conduct;
- placing the minor under supervision of his/her parents or other caregivers;
- obliging the minor to compensate any pecuniary damages;
- placing the minor in a special educational-correctional institution.

So-called *Punitive measures* are (Art. 98 CC):

- fine;
- community service;
- correctional labour;
- arrest (short term detention for 15 to 45 days);
- imprisonment for a determinate term (maximum 15 years).

Compulsory educational measures are legally given priority over punitive measures. Such educational measures shall also be applied to persons who commit "socially dangerous acts" from the age of 11 years onwards and before they have reached the age of criminal liability of 16 (or 14) years.
Arrest (short term detention) or deprivation of liberty may be replaced by one or two years of probation (Art 104 CC). There is the possibility for a conditional release from imprisonment (Art 107 CC) for juveniles after they have served one third (in cases of less serious offences), half, or two thirds (in cases of very serious offences) of their sentence.

In Ukraine there are neither Juvenile Courts nor specialised juvenile judges yet. Criminal cases of juvenile offenders are dealt with by the general Criminal Courts. There are also no special juvenile prosecutors. However, social protection and crime prevention are under the obligation of agencies, offices and special institutions for juveniles. The criminal police in child affairs are one of the listed institutions that have a vast number of tasks like for instance inquiry, preventive work involving children at risk, the clear-up (solving) of criminal cases, etc.

The Ukrainian Criminal Procedure Code (CPC) is based on the USSR CPC of 1960. In August 1971, amendments concerning the procedure concerning juvenile delinquency were adopted in the CPC. There are some particular regulations in the CPC that are relevant for juvenile procedure: court hearings are public in the case of juveniles who have reached the age of 16 (Art. 20 CPC). Legal representatives (Art. 441 CPC) and an attorney (Art. 45 CPC) are obliged to be present at the trial. Compulsory educational measures shall be given priority over punitive measures in cases involving non-severe offences (Art. 447 CPC). There is also the possibility of applying preventive measures, but pre-trial detention should be the absolute exception (Art. 149, 436 CPC). During the trial, social or court educators should be appointed (Art. 445 CPC). There is also the possibility to hear the legal representatives as witnesses (Art. 441, 442).

Pre-trial detention of juveniles is regulated by the Pre-Trial Detention Act (PTDA) of 1993. Pre-trial detention is a preventive measure. A juvenile may be detained in particular cases if he/she is suspected of a serious crime for which the law provides a prison sentence. Police detention, i. e. temporary placement in an institution of the Ministry of Interior, may not last longer than 72 hours. Remand custody is executed under the responsibility of the prison

administration (Ministry of Justice, Art. 4 PTDA, Art. 155, 434 CPC). Juveniles are to be kept in large cells with other juveniles, and separately from adults. In exceptional cases these juveniles may be placed separately from other juveniles. The minimum space in remand custody must be at least 2.5 m² per person. Parents may visit their children once a month for one to four hours. The defence lawyer is allowed to visit his/her client without limitation.

The Execution of Punishments Act of 2004 (EPA) governs both the execution of alternative measures and of imprisonment. The EPA contains a separate 21st chapter relating to imprisonment in educational colonies for juveniles. The mentioned chapter contains only a few Articles (para. 143-149) which govern the imprisonment of juveniles. However, they include significant particularities. So, more educative measures and more contacts with the outside world (visits etc.) are provided for juveniles in comparison to their adult counterparts. Juveniles have regular possibilities to participate in cultural or sporting events outside the educational colony while being escorted by workers of the colony. The juveniles also have the possibility to meet their parents outside of the colony (long-term visits of a maximum of eight hours). The juveniles can search for and take up a job outside of the institution some time before their release. Inmates who turn 18 while in the colony may stay there until they are 22 years old, with the purpose of attaining further education. The floor space of the prison accommodation (dormitory) is usually about 80 to 85 m² with approximately 15 to 20 beds. Infringements of house rules can result in a maximum punishment of five days isolation in a solitary cell.

One of the main targets of educational colonies is the resocialization of inmates. The resocialization process consists of an individualized programme of social-psychological work, which includes the following measures: support in searching for a job, full secondary education, the development of positive and socially useful capacities. General compulsory school education and vocational training are provided in the colonies. Inmates have recently been provided with the opportunity to participate in extramural higher education measures or to work outside in so called 'work release programmes'. Inside the colonies juveniles may rest, spend their free time according to their own liking, and take part (participate) in the cultural life. Inmates actively participate in concerts, sporting events and other festive events organized by the representatives of the Local Government. A major role in the rehabilitation efforts is also played by religious communities. In some model centres specific emphasis is given to preparing inmates for release and social reintegration.

The period between 1991 and 2007 saw a decrease in the number of committed crimes (*Table 1*) and the number of offenders punished by deprivation of liberty (*Table 5*). This represents a positive influence of the reform laws that have already come into force. However, the decrease in the population from 51.6 million (1991) to 46.7 million (2006) (*Table 2*) should be taken into consideration. Notwithstanding, the number of juvenile offenders

between 15 and 17 years registered by the police decreased from 1.235 to 976 per 100.000 (*Tables 1 and 3*). However, the increasing number of serious offences, especially serious offences, and drug-trafficking is still a source of deep concern (*Table 3*).

The European Convention on Children's Rights – ratified in Ukraine in 1991 – places great demands upon Ukrainian juvenile policy and jurisdiction, including the need to create Juvenile Courts. This has recently become an urgent question in Ukraine. Currently, in some regions of Ukraine model courts for juvenile offenders are being used. The introduction of probation in Ukrainian criminal law is closely connected with the introduction of Juvenile Courts. The introduction of probation is being discussed within the framework of several legislative projects at present. One of them is, for example, mediation in criminal cases. The draft laws "Law on mediation" and "Law on introducing changes to the Ukrainian CC and CPC concerning mediation" have the following purposes: humanization of criminal liability; broadening of the range of alternative sanctions; humanization of sentence enforcement, particularly in colonies for juveniles, where in the past many violations of human rights could be observed; and bringing the national legislation into accordance with the requirements of the EU and the Council of Europe. The reform of the State Inspection Service for the Execution of Criminal Sanctions should also be mentioned here. This inspection service takes successive measures to improve the execution of those sentences that are not connected with deprivation of liberty. It will be necessary to include the future probation service in this system of inspection.

Ongoing penal reform in Ukraine is a very important step towards a better prevention of juvenile delinquency and towards the reform of the sanctions system for juvenile offenders. The legislator has introduced a wider range of alternative sanctions, particularly for juveniles, which should serve the purpose of their education and resozialisation. The administration of an independent juvenile justice system is receiving more importance and attention by Ukrainian criminal policy. The establishment of Juvenile Courts, the central element of juvenile penal administration of justice, has not been implemented yet (with the exception of some model projects). Since Ukraine has undertaken obligations by ratifying the European Convention on Children's Rights in 1991, it is not a question of "whether" these obligations are to be fulfilled, but rather the question of "how" and "when".

Vorbemerkungen

Die Ukraine ist ein Staat in Osteuropa. Das Territorium erstreckt sich vom Norden bis zum Süden über 893 km und vom Westen bis zum Osten über 1.316 km. Das Land grenzt an Russland im Nordosten (2.063 km), Weißrussland im Norden (975 km), an Polen (542,5 km), die Slowakei (98 km) und Ungarn (135 km) im Westen, an Rumänien (608 km) und Moldawien (1.194 km) im Südwesten sowie im Süden an das Schwarze Meer und das Asowsche Meer, wo sich auch die Häfen der Ukraine befinden. Aufgrund dieser Vielzahl angrenzender Nachbarstaaten verwundert der Einfluss verschiedener Kulturen auf die gesellschaftliche und staatliche Entwicklung des Landes (historisch und auch aktuell) nicht.

Nach dem Zerfall der Sowjetunion proklamierte das ukrainische Parlament am 24. August 1991 die Ukraine als unabhängigen und demokratischen Staat. Am 28. Juni 1996 wurde die ukrainische Verfassung verabschiedet. In der Ukraine besteht ein parlamentarisch-präsidiales Regierungssystem mit der klassischen Gewaltenteilung zwischen gesetzgebender, vollziehender und rechtsprechender Gewalt. Die Ukraine ist ein Zentralstaat, der sich in die Autonome Republik Krim und 24 Regionen (*oblast*) gliedert. Die Hauptstadt der Ukraine ist Kiew (*Київ*). Kiew und Sewastopol sind Städte mit besonderem Status.

Die Bevölkerung der Ukraine umfasst ca. 47 Millionen Einwohner.[1] Die Bevölkerungsdichte beträgt durchschnittlich 85 Einwohner je km², wobei die regionale Verteilung sehr verschieden ist. So weist etwa die Donezk-Region mit 196 Einwohnern je km² die höchste Dichte auf.

1. Historische Entwicklung und Überblick über die gegenwärtige Gesetzgebung zum Jugendstrafrecht

In den ersten Gesetzgebungswerken fanden sich im Großen und Ganzen keine Vorschriften über Besonderheiten der strafrechtlichen Verantwortung junger Menschen.[2] Die geschichtliche Entwicklung der Gesetzgebung zur strafrechtlichen Verantwortlichkeit beginnt in der Ukraine mit dem frühen Recht des russischen Gebiets in der Zeit vor der Zarenherrschaft, dem sog. Rus' (im 17 Jh.), und war später durch das Großfürstentum Litauen, das Russische Imperium und die Ukrainische Sowjetische Sozialistische Republik (im Rahmen der UdSSR) geprägt. Das Strafmündigkeitsalter veränderte sich in den folgenden Jahren bzw.

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1 Entsprechend den Angaben des Staatskomitee für Statistik in der Ukraine, abrufbar unter: http://ukrstat.gov.ua/control/uk/localfiles/display/operativ/operativ2007/ds/nas_rik/nas_u/nas_rik_u.html; Statistische Information siehe auch unter: http://www.unicef-irc.org/databases/transmonee/2008/Country_profiles.xls.

2 Vgl. *Burdin* 2004, S. 6 ff.

Jahrzehnten und die gegenüber jungen Menschen anzuwendenden Maßnahmen waren unterschiedlich ausgestaltet.

Im zaristischen Russland waren nach der Strafrechtsverordnung des Jahres 1903 Kinder im Alter bis zu 10 Jahren nur dann zu bestrafen, wenn festgestellt werden konnte, dass das Kind einsichtsfähig war und sein Verhalten entsprechend dieser Einsichtsfähigkeit kontrollieren konnte. Für Minderjährige im Alter zwischen 10 und 14 Jahren waren mehr Milderungen vorgesehen als für 14- bis 17-Jährige. Für 17- bis 21-Jährige gab es kaum noch Milderungen, im Vergleich zu Erwachsenen waren sie aber noch als solche zu bewerten.[3]

Das erste ukrainische Strafgesetzbuch (im Folgenden: ukrStGB) wurde im August des Jahres 1922 im Zuge der Eingliederung als Sowjetrepublik verabschiedet, ein weiteres im Juni 1927. Diese beiden Strafgesetze waren im Grunde ähnlich.[4]

Am 31.10.1924 wurden Strafgesetzgebungsgrundsätze der UdSSR und der Unionsrepubliken verabschiedet, die im Vergleich zur ukrainischen Strafgesetzgebung nur allgemeine Vorschriften der Strafverantwortung der Minderjährigen festgesetzt hatten. Deren Alter wurde nicht numerisch bestimmt, vielmehr wurden sie in „*Kinder im jungen Alter*“ und „*nicht Volljährige*“ unterteilt.[5]

Eine weitere Entwicklungsstufe war die Grundsatzstrafgesetzgebung der UdSSR und der Unionsrepubliken, die am 25. Dezember 1958 verabschiedet wurde. Entsprechend dieser Gesetzgebung wurde in der Ukraine im Jahr 1960 ein ukrainisches Strafgesetzbuch verabschiedet, das bis zum Jahr 2001 galt. In diesem ukrStGB vom 28. Dezember 1960 gab es zwar keinen gesonderten Abschnitt zur Regelung des abweichenden Verhaltens junger Menschen, allerdings waren Erziehungsmaßnahmen immer schon vorrangig heranzuziehen.[6]

Ein neues ukrStGB (*Кримінальний Кодекс України*) wurde am 5. April 2001 verabschiedet. Dies trat am 1. September 2001 in Kraft und löste damit das ukrStGB a. F. aus dem Jahr 1960 ab. Ein separates System einschlägiger Regelungen, das die staatliche Reaktion bzw. strafrechtliche Prinzipien zur Ahndung abweichenden Verhaltens Jugendlicher regeln würde, etwa ein eigenständiges Jugendgerichtsgesetz, gibt es im ukrainischen Recht nicht. Es wurden jedoch mit

3 Vgl. *Pergataia* 2001, S. 8 ff.

4 So war z. B. in beiden Werken folgende Fassung ähnlich: Gegenüber Personen bis zum 14. Lebensjahr waren nicht Strafen, sondern vielmehr pädagogische oder medizinische Maßnahmen anzuwenden; gegenüber Minderjährigen im Alter zwischen 14 und 16 Jahren waren die für Erwachsene vorgesehenen Strafen zu halbieren, gegenüber 16- bis 18-Jährigen entsprach die Strafe zwei Dritteln der für Erwachsene vorgesehenen Strafe. Gegenüber diesen Minderjährigen durfte keine Höchststrafe angewendet werden, vgl. *Burdin* 2004, S. 16 f.

5 Vgl. *Burdin* 2004, S. 17 f.

6 Vgl. *Burdin* 2004, S. 21.

der Neuverkündung des StGB besondere Normen für die Behandlung 16-(14-) bis 18-jähriger Straftäter im Rahmen der allgemeinen Strafgesetze vorgesehen. Das neue ukrStGB enthält damit erstmals in der Geschichte der ukrainischen Strafgesetzgebung einen selbständigen 15. Abschnitt zur Regelung der Besonderheiten des Jugendstrafrechts.

Die Idee eines selbständigen Abschnitts für die Regelung der Straftaten junger Menschen wurde zwar bereits in der Grundsatzstrafgesetzgebung der UdSSR und der Unionsrepubliken im Jahr 1991 vorgeschlagen, trat wegen des Zerfalls der UdSSR jedoch nicht wie geplant am 1. Juli 1992 in Kraft.[7]

2. Entwicklung der registrierten Kinder-, Jugend- und Heranwachsendenkriminalität – Überblick

Das derzeit zur Auswertung verfügbare statistische Material wurde durch das Staatskomitee für Statistik in der Ukraine erarbeitet. Bei der Auswertung der vorliegenden statistischen Erhebungen der Jugendkriminalität für die Jahre 1991-2007 (*Tabelle 3*), also in der Periode seit der Unabhängigkeitserklärung der Ukraine, ist ein allgemeiner Rückgang der registrierten Jugendkriminalität zu erkennen. Über den gesamten dargestellten Zeitraum 1991-2007 hat sich die Zahl der registrierten Tatverdächtigen um fast 10.000 bzw. -31,1% verringert.

In den ersten fünf Jahren seit der Unabhängigkeit (1991-1996) war die Jugendkriminalität extrem hoch und stieg, auch pro 100.000 der Altersgruppe 15- bis 17-Jährigen[8], erheblich an (*Tabelle 1*). Im Jahr 1996 erreichte die Zahl der polizeilich registrierten Jugendstraftäter mit 41.811 einen Höchstwert. Dies bedeutet im Vergleich zum Jahr 1991 einen Anstieg um 51,9%. Ab dem Jahr 1996 ist dann ein weitgehend kontinuierlicher Rückgang der registrierten Jugendkriminalität zu beobachten. So wurden etwa im Jahr 2000 37.239 und im Jahr 2003 33.943 Jugendstraftäter registriert. Im Vergleich zum Jahr 1996 ist die Zahl der registrierten Jugendstraftäter im Jahr 2003 damit um 18,8% gesunken. Dieser rückläufige Trend beschleunigt sich ab dem Jahr 2003. So sank die Zahl der Jugendstraftäter weiter und erreichte im Jahr 2007 die Gesamtzahl von 18.963. Sie lag damit um 44,1% unter der Zahl von 2003. Auch pro 100.000 der Altersgruppe ist ein Rückgang von 1.897 auf 931 zu verzeichnen (*Tabelle 1*).

Der Anstieg der Jugendkriminalität in den ersten 5 Jahren der Unabhängkeit der Ukraine lässt sich vor allem mit dem Zerfall der UdSSR und damit des ganzen politischen Systems in allen Republiken erklären. Die finanzielle Krise (rasche Inflation, Einführung von Papier-Kupons zusätzlich zu dem wertlosen Geld etc.) brachte eine steigende Kriminalität bei Erwachsenen und auch bei vielen

7 Vgl. *Burdin* 2004, S. 21.

8 Zum Zeitpunkt der Recherche waren keine Ergebnisse zur Altersgruppe der 14-Jährigen verfügbar.

Jugendlichen mit sich. Letztere blieben zudem weitgehend ohne elterliche Aufsicht sich selbst überlassen.

Der spätere Rückgang der Jugendkriminalität in absoluten Zahlen sowie pro 100.000 der Altersgruppe könnte durch die allgemein gesunkene Anzahl der Kinder (0-17 Jahre) erklärt werden. Der Anteil an Kindern im Alter zwischen 0-17 Jahren betrug 25,6% der Gesamtbevölkerung. Im Jahr 2006[9] lag dieser nur noch bei 18,8%. In dieser Zeit ging auch die Gesamtbevölkerungszahl von 51,6 Mio. im Jahre 1991 auf 46,4 Mio. im Jahre 2007 zurück. Der Bevölkerungsanteil der Jugendlichen (15-17 Jahre) blieb dagegen im Laufe der Jahre konstant bei ca. 4,3% (*Tabelle 2*).

Bei einzelnen Straftaten, z. B. bei vorsätzlichen Tötungen und schweren Körperverletzungen, ist die Entwicklung entgegen dem Trend verlaufen. Die Zahl der vollendeten vorsätzlichen Tötungen sowie der Versuche (sie werden als besonders schwere Tatqualifiziert)[10] ist bis 2000 von 134 auf 259 Fälle gestiegen, sank dann jedoch bis 2007 absolut gesehen auf 143 Fälle und damit nahezu auf den Ausgangswert von 1991. Der Anteil der Tötungsdelikte an der Gesamtkriminalität Jugendlicher ist mit jeweils zwischen 0,4% und 0,9% unverändert sehr gering.

Die vorsätzliche schwere Körperverletzung (besonders schwere Tat) ist im Jahr 1997 mit 340 Fällen im Vergleich zu 1991 mit 197 Fällen um 72,6% gestiegen. Seit 1997 geht die Zahl langsam und schwankend zurück, bis zum Jahr 2007 um 20,5% (270). Trotzdem bleibt für diese Tat im Vergleich zu den Anfangsjahren seit der Unabhängigkeitserklärung ein Anstieg um 37% zu verzeichnen.

Die Zahl der Vergewaltigungen (schwere Tat) sank mit geringen Schwankungen von 1991 (425) bis 2007 (117) insgesamt um 72,7%.

Die größte Zahl der registrierten Straftaten entfällt Jahr für Jahr auf Diebstahlsdelikte.[11] Im Jahr 1991 wurden 67,1% aller registrierten Tatverdächtigen wegen Diebstahls verdächtigt. Bis 2000 blieb dieser Anteil trotz kleiner

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9 Vgl. dazu UNICEF Country profiles - 2008 unter: http://www.unicef-irc.org/databases/transmonee/2008/Country_profiles.xls.

10 Die Verbrechensqualifikation wird im ukrStGB gem. § 12 unterschieden: Straftaten nicht großer Schwere sind Straftaten nicht großer Gemeingefahr, für die Freiheitsstrafe nicht länger als 2 Jahre oder eine andere mildere Bestrafung vorgesehen ist; Straftaten der mittleren Schwere liegen zwischen nicht großer und großer Schwere. Für diese Taten ist eine Freiheitsstrafe nicht länger als 5 Jahre vorgesehen (z. B. fahrlässige Tötung § 119, vorsätzliche Tötung im Zustand der Schuldunfähigkeit § 116); Schwere Straftaten sind Taten, für die ein Freiheitsentzug von nicht länger als 10 Jahre vorgesehen ist (z. B. Vergewaltigung, Raubüberfall); Besonders schwere Straftaten sind Straftaten für die das Gesetz eine Freiheitsstrafe von mehr als 10 Jahren und lebenslange Freiheitsstrafe vorsieht (z. B. vorsätzliche Tötung, Spionage).

11 Diebstahl (*крадіжка*) – heimlicher Diebstahl fremden Vermögens, § 185.

Schwankungen eher stabil. Ab dem Jahr 2000 beobachtet man jedoch sowohl eine kontinuierliche Abnahme des Anteils der Diebstahlsdelikte an der Gesamtzahl der registrierten Straftaten, die von Jugendlichen begangen wurden, als auch die Abnahme der absoluten Zahlen des Diebstahls insgesamt. Der deutliche Rückgang der Diebstahlsdelikte in den letzten vier Jahren (2004-2007) um ca. 62% könnte folgendermaßen erklärt werden. § 51 des Ordnungswidrigkeitsgesetzes vom 07.12.1984 wurde mit Gesetz zur Änderung von Vorschriften des Ordnungswidrigkeitsgesetzes, Nr. 2635-IV vom 02.06.2005 neu gefasst. Die Vorschrift lautet nun: „Für die *„geringfügige"* Entwendung eines fremden Vermögens im Wege des Diebstahls, Betrugs oder der Unterschlagung ist eine administrative (nach dem Ordnungswidrigkeitsgesetz) und nicht strafrechtliche (ukrStGB) Verantwortlichkeit vorgesehen. Eine „geringfügige" Entwendung liegt vor, wenn der Wert der weggenommenen Sache nicht die Höhe des dreifachen des einheitlichen *steuerfreien Mindesteinkommens*,[12] entspricht, überschreitet. So beträgt für das Jahr 2008 dieser Grundbetrag 257,50 Grivna (ca. 37€). Der dreifache Grundbetrag beträgt demzufolge 772,50 Grivna (ca. 110€). Es ist davon auszugehen, dass ein Großteil der einfachen Diebstahlsdelikte mit ihrer jetzigen Einordnung als Ordnungswidrigkeit aus der Statistik der verdächtigen Straftäter herausfällt. Gleichzeitig aber steigt die Zahl der Raubdelikte,[13] Raubüberfälle[14] sowie auch die Zahl der Diebstähle von Fahrzeugen.

Beim Delikt des sog. Rowdytums[15] ist ab dem Jahr 1996 ein Rückgang in absoluten Zahlen zu beobachten. Obwohl es seit 2004 leicht prozentual stieg. Es

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12 *Ein steuerfreies Mindesteinkommen* (*неоподатковуваний мінімум доходів громадян*) beträgt in der Ukraine seit dem Jahre 1996 bleibt 17 Griwna (ca. 1,70€) (§ 22 Abs. 22.5 ukrEStG). In der Ordnungswidrigkeits- und Strafgesetzgebung im Teil der Verbrechensqualifikation oder eines Delikts wird allerdings die Summe eines steuerfreien Mindesteinkommens auf der Höhe einer *sozialen Steuerbegünstigung* (*податкова соціальна пільга*) nach § 6 Abs. 6.1.1 ukrEStG festgelegt. Dies beträgt 50% des Mindestlohnes des jeweiligen Anfanges des Kalenderjahres.

13 Raub *(Грабіж)* – offene Diebstahl/Raub fremden Vermögens, vorsätzliche rechtswidrige offene Inbesitznahme von Privateigentum, Staatsvermögen oder Kollektivvermögen, § 186.

14 Raubüberfall *(розбій)* – vorsätzlicher rechtswidriger Angriff mit der Absicht einer rechtswidrigen Inbesitznahme des Fremdgutes. Der Angriff ist mit lebens- oder gesundheitsgefährdender Gewalt oder Drohung mit solcher Gewalt verbunden, § 187.

15 Rowdytum *(хуліганство)* – grober Verstoß gegen die öffentliche Ordnung aus Motiven offensichtlicher Respektlosigkeit gegenüber der Gesellschaft, „begleitet von besonderer Grobheit oder außergewöhnlichem Zynismus", § 296. Unter *grober Verstoß gegen die öffentliche Ordnung* sind Handlungen zu verstehen, die persönlichen bzw. allgemeinen Interessen wesentlichen Schaden zugefügt haben oder als „böswillige Verletzung der öffentlichen Sittlichkeit" anzusehen sind. Unter *Respektlosigkeit gegenüber der Gesellschaft ist* respektloses Verhalten des Handelnden gegenüber der öffentlichen Ordnung, das Ignorieren von einfachen Verhaltensregeln zu verstehen. Unter *besonderer Grobheit*

ist anzumerken, dass die prozentualen Anteile nur leicht schwanken und nahezu gleich bleiben. Konkrete Untersuchungen zu dieser Entwicklung sind nicht verfügbar.

Die Zahl der Drogendelikte steigt demgegenüber weiter an. Der Anstieg bei Drogendelikten wird häufig auf den Zerfall der UdSSR zurückgeführt. Die Öffnung der Grenzen bzw. des „Eisernen Vorhanges", Korruption sowie der soziale Umbruch erleichtern Transport und Import von Drogen. So ist auch Prof. *Ždanov*[16] der Auffassung, dass der Wunsch, aus der vermeintlich aussichtslosen Lebenssituation zu fliehen, viele Jugendliche zum Drogenkonsum treibt.[17] Daneben ist auch die Produktion von Drogen auf dem Gebiet der ehemaligen Sowjetunion angestiegen, insbesondere in Republiken, deren Regierungen ihr Gebiet nicht vollständig zu beherrschen vermögen (bspw. Tadschikistan und Kasachstan). Politik und Öffentlichkeit widmen der Drogenproblematik nach Jahren des Desinteresses mehr Aufmerksamkeit. So wurden seit 1995 umfassende Gesetze/ Rechtsvorschriften zur Bekämpfung von illegalen Drogen und Drogensucht beschlossen. Der Handel mit Drogen und deren Vorprodukten ist strafbewehrt. Das neue Strafgesetzbuch von 2001 enthält nun einen separaten XIII. Abschnitt zur Regelung von Drogendelikten.

Zu dem allgemeinen Rückgang von Straftaten in absoluten Zahlen ist kein konkretes Material verfügbar. Neben einer zum Teil greifenden neuen Herangehensweise der Behörden an die Jugendkriminalität ist jedoch nach Ansicht der Verfasserin zu beachten, dass in dem Beobachtungszeitraum von 1991 bis 2007 die Bevölkerung der Ukraine von ca. 52 Millionen auf ca. 47 Millionen, somit um beinahe 10%, zurückgegangen ist. Nach den Beobachtungen in anderen postkommunistischen Staaten ist davon auszugehen, dass auch in der Ukraine die Geburtenraten deutlich zurückgegangen sind, weshalb sich der Zerfall der Sowjetunion 16 Jahre später bereits in der verringerten Zahl der Jugendlichen, unserer Beobachtungsgruppe, widerspiegelt. Es hat sich damit auch die Zahl möglicher Täter verringert.

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sind dauernd beharrliche und gewaltsame Aktionen zu verstehen. Unter *außergewöhnlichem Zynismus* wird bspw. die Äußerung von Unverschämtheit, Spott/Misshandlung von kranken, älteren Personen etc. verstanden.

16 *Ždanov V. G.* ist Professor am humanitär-ökologischen Institut in Sibirien und Präsident der internationalen Assoziation „Psychoanalyse".

17 *Ždanov, V. G.* „Alkoholischer und narkotischer Terror gegen Russland". Abrufbar unter: http://www.samohin.ru/video/zhdanov/zhdanov-alcohol-terror.html.

Tabelle 1: Anzahl der registrierten Tatverdächtigen pro 100.000 der Jugendlichen im Alter zwischen 15 und 17 Jahren

Jahr	Gesamtzahl der polizeilich registrierten 14- bis 17-Jährigen	Bevölkerung (15-17 Jahre)	Zahl der Tatverdächtigen pro 100.000*
1991	27.519	2.227.500	1.235
1993	36.336	2.220.600	1.636
1995	39.282	2.176.300	1.804
1996	41.811	2.203.000	1.897
1997	40.051	2.198.600	1.821
1998	39.076	2.214.500	1.764
1999	37.027	2.283.000	1.621
2000	37.239	2.362.000	1.576
2001	36.218	2.396.700	1.511
2002	32.335	2.357.100	1.371
2003	33.943	2.273.500	1.492
2004	30.950	2.256.700	1.371
2005	26.470	2.139.200	1.237
2006	19.888	2.037.300	976

* Die Tatverdächtigenbelastungszahlen wurden für die Altersgruppe der 15- bis 17-Jährigen berechnet; die Bevölkerungsgruppe der 14-Jährigen wurde bzw. wird in der Bevölkerungsstatistik nicht gesondert ausgewiesen.

Quelle: Angaben des Staatskomitees für Statistik in der Ukraine und Angaben von UNICEF.

Tabelle 2: Demographische Entwicklung

Jahr	Gesamtbe-völkerung (Mio.)	Bevölkerungsanteil der Kinder gesamt (0-17 Jahre) sowie in % zu Gesamtbevölkerung	Bevökerungsanteil der Jugendlichen ges. (15-17 Jahre) sowie in % zu Gesamtbevölkerung
1991	51.690	13.257.000	2.227.500
		25,6%	4,3%
1996	51.079	12.449.000	2.203.000
		24,4%	4,3%
1998	50.245	11.839.000	2.214.500
		23,6%	4,3%
2000	49.456	11.143.000	2.362.000
		22,5%	4,7%
2003	47.787	9.843.000	2.273.500
		20,6%	4,7%
2006	46.749	8.802.000	2.037.300
		18,8%	4,3%

Quelle: Angaben des Staatskomitees für Statistik in der Ukraine und Angaben von UNICEF.

Tabelle 3: Polizeilich registrierte Jugendliche nach der Deliktsstruktur

Jahr	Gesamtzahl der registrierten Tatverdächtigen	Vorsätzliche Tötung und Versuch	Vorsätzliche schwere Körperverletzung	Vergewaltigung und Versuch	Diebstahl	Raub	Raubüberfall	Diebstahl von Fahrzeugen	Rowdytum	Drogendelikte
1991	27.519	134 (0,5)[a]	197 (0,7)	425 (1,5)	18.479 (67,1)	2.129 (7,7)	478 (1,7)	---[b]	1.683 (6,1)	---
1992	33 585 +22,0%[c]	143 (0,4)	208 (0,6)	385 (1,1)	23.884 (71,1)	2.852 (8,5)	641 (1,9)	---	1.659 (4,9)	---
1993	36.336 +8,2%	159 (0,4)	245 (0,7)	339 (0,9)	25.923 (71,3)	3.046 (8,4)	789 (2,2)	---	1.802 (4,9)	---
1994	38.493 +5,9%	178 (0,5)	229 (0,6)	308 (0,8)	27.737 (72,0)	2.990 (7,8)	807 (2,1)	---	2.002 (5,2)	---
1995	39.282 +2,0%	191 (0,5)	258 (0,7)	359 (0,9)	28.053 (71,4)	2.835 (7,2)	775 (2,0)	---	2.356 (6,0)	---
1996	41.811[d] +6,4%	232 (0,5)	285 (0,7)	282 (0,7)	27.479 (65,7)	2.845 (6,8)	804 (1,9)	801 (1,9)	2.472 (5,9)	---
1997	40.051 -4,2%	232 (0,6)	340 (0,8)	222 (0,5)	26.231 (65,5)	2.549 (6,4)	802 (2,0)	790 (2,0)	2.426 (6,1)	---
1998	39.076 -2,4%	251 (0,6)	298 (0,8)	213 (0,5)	25.839 (66,1)	2.476 (6,3)	832 (2,1)	710 (1,8)	2.272 (5,8)	---
1999	37.027 -5,2%	240 (0,6)	313 (0,8)	165 (0,4)	24.841 (67,0)	2.276 (6,1)	793 (2,1)	574 (1,5)	1.983 (5,3)	---

Jahr	Gesamtzahl der registrierten Tatverdächtigen	Vorsätzliche Tötung und Versuch	Vorsätzliche schwere Körperverletzung	Vergewaltigung und Versuch	Diebstahl	Raub	Raubüberfall	Diebstahl von Fahrzeugen	Rowdytum	Drogendelikte
2000	37.239 +0,6%	259 (0,7)	307 (0,8)	142 (0,4)	25.759 (69,2)	2.311 (6,2)	841 (2,3)	390 (1,0)	1.738 (4,7)	---
2001	36.218 -2,7%	257 (0,7)	321 (0,9)	127 (0,3)	24.828 (68,5)	2.308 (6,4)	933 (2,6)	873 (2,4)	1.493 (4,1)	1.003 (2,8)
2002	32.335 -10,7%	213 (0,7)	294 (0,9)	109 (0,3)	21.457 (66,4)	2.383 (7,4)	785 (2,4)	1.054 (3,3)	1.389 (4,3)	1.068 (3,3)
2003	33.943 +5,0%	195 (0,6)	296 (0,9)	135 (0,4)	22.161 (65,3)	2.782 (8,2)	768 (2,3)	1.007 (3,0)	1.491 (4,4)	1.319 (3,9)
2004	30.950 -8.8%	210 (0,7)	295 (0,9)	89 (0,3)	19.861 (64,2)	3.086 (10,0)	844 (2,7)	970 (3,1)	1.282 (4,1)	1.424 (4,6)
2005	26.470 -14,5%	182 (0,7)	269 (1,0)	120 (0,4)	14.771 (55,8)	3.504 (13,2)	840 (3,2)	893 (3,4)	1.141 (4,3)	1.539 (5,8)
2006	19.888 -24,9%	178 (0,9)	246 (1,2)	105 (0,5)	8.357 (42,0)	3.603 (18,1)	850 (4,3)	749 (3,8)	1.058 (5,3)	1.578 (7,9)
2007	18.963 -4,6%	143 (0,7)	270 (1,4)	116 (0,6)	7.518 (39,6)	3.297 (17,4)	805 (4,2)	942 (5,0)	1.090 (5,7)	1.516 (8,0)

a Bei den in Klammern gesetzten Werten handelt es sich um Prozentwerte.
b „-“ – die Information wurde nicht getrennt angegeben, oder es gab keine entsprechende Regelungen im ukrStGB vom 1961.
c „+ %“ „- %“ prozentuale Entwicklung zu dem vorigen Jahr.
d 123 = Höchstwert in der jeweiligen Spalte.
Quelle: Angaben des Staatskomitees für Statistik in der Ukraine.

3. Das Sanktionensystem: Formen informeller (Diversion) und formeller (gerichtliche Verurteilung) Sanktionen

3.1 Überblick

Ziel des im Allgemeinen Teil des ukrStGBs separat geregelten 15. Abschnitts (§§ 97-108) zur Regelung des abweichenden Verhaltens junger Menschen ist es, die Verantwortlichkeit für Verfehlungen von Jugendlichen und Erwachsenen abzugrenzen, um differenziert nach den festgestellten Gründen der Verfehlung auf den Jugendlichen eingehen zu können, gegebenenfalls mit spezifischen Sanktionsmitteln. Einige Normen der strafrechtlichen Verantwortlichkeit und der Bestrafung Jugendlicher sind auch in anderen Abschnitten des Allgemeinen Teils des ukrStGB zu finden.

So wird z. B. das Alter, ab dem die strafrechtliche Verantwortung eintritt, in § 22 ukrStGB geregelt, der im 4. Abschnitt („Die der strafrechtlichen Verantwortung unterliegende Person" – Subjekt des Verbrechens) enthalten ist. Weiterhin regelt § 22 die Strafmündigkeit Jugendlicher differenziert in der Weise, dass die Strafmündigkeit je nach Art des Delikts in unterschiedlichen Altersstufen eintritt. So tritt gem. § 22 Abs. 1 ukrStGB die strafrechtliche Verantwortlichkeit wegen einer beliebigen Straftat ab der Vollendung des 16. Lebensjahres ein. Im Alter von 14 bis 16 Jahren kann der Jugendliche aber dann zur Verantwortung gezogen werden, wenn er eine Straftat begeht, die im § 22 Abs. 2 geregelt ist. Dies sind z. B. Tötung, vorsätzliche schwere oder mittelschwere Körperverletzung, Vergewaltigung, Erpressung, Geiselnahme, Banditentum, Sabotage, Diebstahl, Raub, Raubüberfall, Rowdytum u. a.

Die §§ 61, 64 ukrStGB (10. Abschnitt – Strafarten) regeln die Nichtanwendung einiger Strafarten gegenüber Jugendlichen. So regelt § 61 Abs. 3 die Nichtanwendung der Freiheitsbeschränkung[18] (nicht der Freiheitsstrafe!).[19] § 64 Abs. 2 bestimmt, dass die lebenslange Freiheitsstrafe gegenüber Jugendlichen ausgeschlossen ist. Weiterhin sieht § 66 Abs. 1 Nr. 3 (11. Abschnitt – Strafverhängung) eine allgemeine Strafmilderung bei Straftaten Jugendlicher vor.

Im 15. Abschnitt des Allgemeinen Teils sind einige Besonderheiten vorgesehen. So sind dort die „Befreiung der Jugendlichen von einer strafrechtlichen Verantwortung", das Strafensystem gegenüber Jugendlichen, die Strafverhängung, die „Befreiung Jugendlicher von der Verbüßung der Strafe" (vorzeitige

18 Freiheitsbeschränkung (*обмеження волі*) ist gemäß § 61 Abs. 1 ukrStGB die Unterbringung der Person in einer offenen Strafvollzugsanstalt ohne Isolierung von der Gesellschaft, aber unter bestimmten Aufsichtsbedingungen.

19 Freiheitsstrafe (*позбавлення волі*) ist gemäß § 63 Abs. 1 ukrStGB die Unterbringung des Verurteilten in einer Strafvollzugsanstalt für eine bestimmte Dauer.

Entlassung) und die Tilgung einer Strafe geregelt. Eine Besonderheit der Reaktion auf Verfehlungen Jugendlicher ist vor allem die Anwendung von sog. *Zwangserziehungsmaßnahmen*.

3.2 Formelle und informelle Sanktionen

Der gesetzliche Aufbau des Sanktionensystems für Jugendliche entspricht strukturell demjenige für Erwachsene, nämlich von den milden hin zu schweren Strafen. Die Strafvollstreckung und der Strafvollzug sind für Jugendliche und Erwachsene im ukrainischen Strafvollstreckungsgesetzbuch (ukrStVollstrGB) (*Кримінально-Виконавчий Кодекс України*) geregelt.

Das ukrainische Sanktionensystem gegenüber Jugendlichen ist generell zweigeteilt in Zwangserziehungsmaßnahmen und Strafen.

Es ist vorweg anzumerken, dass in dem jetzigen nationalen Straf- und Strafprozessrecht Formen einer *restorative justice* für Jugendliche noch nicht explizit vorgesehen sind. Es gibt also keine direkten gesetzlichen Anwendungsregeln für Methoden der Mediation als Alternative zum Gerichtsverfahren. Gleichwohl können in den §§ 45, 46 ukrStGB Anknüpfungspunkte gesehen werden. Diese Normen eröffnen Anwendungsmöglichkeiten für die Mediation in einem strafrechtlichen Verfahren. So regelt § 45 etwa die Reue des Täters und § 46 kennt den Ausgleich zwischen Täter und Opfer. In Anwendung der vorstehenden Normen könnte dann gem. § 47 in einem Fall, in dem ein Jugendlicher eine Tat von geringer oder mittlerer Schwere begangen hat, das Gericht § 45 ukrStGB anwenden. Damit könnte der Jugendliche in diesen Fällen in die „Obhut eines Unternehmenskollektivs oder einer anderen Institution“ übergeben werden. Diese Regelungen sind noch deutlich vom sowjetischen Recht geprägt.

Grundsätzlich sind im ukrainischen Jugendstrafrecht Strafen und sog. Zwangserziehungsmaßnahmen als selbstständige Rechtsinstitute zu unterscheiden. Zwangserziehungsmaßnahmen sind im Gegensatz zu Strafen nicht mit einer strafrechtlichen Verantwortung verbunden. Die Verhängung einer Zwangserziehungsmaßnahme bewirkt keine Vorstrafe,[20] während aus der Verhängung einer Strafe eine Vorstrafe resultiert.

3.2.1 Zwangserziehungsmaßnahmen

Das ukrStGB sieht *Zwangserziehungsmaßnahmen* als Erziehungsmittel[21] vor. Der 15. Abschnitt beginnt in § 97 Abs. 1 ukrStGB mit der Befreiung von der strafrechtlichen Verantwortlichkeit im Falle einer Anordnung von Zwangserziehungsmaßnahmen. Allerdings ist dies auf Fälle beschränkt, in de-

20 Fällt das Gericht ein Urteil ohne jedoch eine Strafe zu verhängen, so gilt die Person als nicht vorbestraft.

nen Jugendliche als Ersttäter eine Tat geringer Schwere oder ein Fahrlässigkeitsdelikt der mittleren Schwere[22] begehen und eine Besserung ohne Anwendung einer Strafe erreicht werden kann.

Eine weitere Möglichkeit der Befreiung eines Jugendlichen von einer Strafe bei Anordnung von Zwangserziehungsmaßnahmen sieht § 105 Abs. 1 ukrStGB lediglich im Fall von Taten geringer oder mittlerer Schwere bei einem Geständnis und einem nachfolgenden tadellosen Verhalten des straffälligen Jugendlichen vor.

Die Zwangserziehungsmaßnahmen aus § 105 Abs.2 ukrStGB können auch auf eine Person angewendet werden, die noch nicht strafmündig ist,[23] die aber eine „gesellschaftsgefährdende Handlung" begangen hat (§ 97 Abs.2 ukrStGB). Dies ist jede Tat die unter die Merkmale einer Straftat i. S. d. Besonderen Teils des ukrStGB fällt.

Zu den Zwangserziehungsmaßnahmen gehören:

1) die Verwarnung (Ermahnung);[24]
2) die Einschränkung der Freizeit und verhaltensbezogene Weisungen;[25]
3) die Unterstellung unter elterliche Aufsicht oder eines Vormunds oder unter pädagogische Aufsicht bzw. die Aufsicht eines Arbeitskollektivs u. a.,[26]

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21 Zwangserziehungsmaßnahmen gelten ihrer Rechtsnatur nach als Erziehungs- und „Überzeugungsmittel" zur Vorbeugung vor neuen Straftaten oder gesellschaftsgefährdende Handlungen vgl. *Strel'cov* 2010, § 97 Nr. 2). Zwangserziehungsmaßnahmen sind gegenüber Jugendlichen, die zum ersten Mal eine Tat von „geringer oder mittlerer Schwere" begangen haben und auch gegenüber Personen, die noch nicht das Strafmündigkeitsalter erreicht haben (§§ 97 Abs. 1 und 2, 105 Abs. 1 ukrStGB), anzuwenden.

22 Letzteres wurde zum 15.04.2008 durch das Gesetz Nr. 270-17 ergänzt.

23 Eine in diesem Sinn noch nicht strafmündige Person ist ein Minderjähriger im Alter zwischen 11 bis unter 14 Jahren, siehe *Malyarenko/Alenìn* 2010, § 432 Nr. 1 und § 6 Abs. 1, Nr. 5 und § 7^3, Nr. 1 und 9.

24 Die Verwarnung (§ 105 Abs. 2 Nr. 1 ukrStGB) besteht in der Erläuterung der Konsequenzen, die im Fall der nochmaligen Begehung der Tat eintreten werden.

25 Die Liste der verhaltensbezogenen Weisungen eines Minderjährigen wurde erst im Jahr 2006 konkretisiert, z. B. die Einschränkung des Aufenthaltes außerhalb der elterlichen Wohnung zu bestimmten Tageszeiten; das Verbot bestimmte Plätze zu besuchen; das Verbot den Ort des Wohnsitzes zu verlassen, die Weisung eine Ausbildung fortzusetzen; die Teilnahme an einer Therapie gegen Alkohol- oder Suchtmittelmissbrauch etc.

26 Die Übergabe an die Eltern oder den Vormund ist nur dann zulässig, wenn sie dem Minderjährigen eine vernünftige Unterstützung geben, ihn kontrollieren und auch eine effektive erzieherische Einwirkung gewährleisten können.

4) die Auflage einer Schadenswiedergutmachungsspflicht für einen mindestens 15-jährigen Jugendlichen, der über eigenes Vermögen verfügt oder einen eigenen Verdienst hat;
5) die Einweisung des Jugendlichen in eine spezielle Erziehungsanstalt für Kinder und Jugendliche bis zu seiner *Besserung*, aber nicht länger als drei Jahre.[27]

§ 97 Abs. 3 ukrStGB bestimmt, dass die Zwangserziehungsmaßnahmen nach § 105 Abs. 2 ukrStGB aufgehoben werden, wenn der Jugendliche ihnen nicht nachkommt. Er wird dann der strafrechtlichen Verantwortlichkeit unterworfen und das Gericht verfährt nach §§ 98 ff. ukrStGB.

3.2.2 Strafen[28]

In § 98 Abs. 1 (15. Abschnitt) ukrStGB sind folgende Hauptstrafarten[29] für Jugendliche aufgezählt:

1) Geldstrafe (§ 98 Abs. 1 Nr. 1);
2) Gemeinnützige Arbeit (§ 98 Abs. 1 Nr. 2);
3) Besserungsarbeiten (§ 98 Abs. 1 Nr. 3);
4) Jugendarrest (§ 98 Abs. 1 Nr. 4);
5) Zeitlich bestimmte Freiheitsstrafe (§ 98 Abs. 1 Nr. 5).

Jede Strafart wird weiter im ukrStGB in einzelnen Paragrafen und Absätzen geregelt. So wird die Geldstrafe in § 99 ukrStGB,[30] die gemeinnützige Arbeit in § 100 Abs. 1 ukrStGB[31] und die Besserungsarbeit in § 100 Abs. 2, 3 ukrStGB,[32]

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27 Die Unterbringung ist nur als „ultima ratio" vorgesehen, wenn andere erzieherische Maßnahmen aussichtslos erscheinen.

28 Gem. § 50 Abs. 1 ukrStGB ist die Strafe „eine Zwangsmaßnahme, die im Namen des Staates nach dem Urteil des Gerichts verhängt wird und die darin besteht, die Rechte und die Freiheit des Straffälligen zu beschränken".

29 Diese Hauptstrafarten sind aus § 51 Abs. 1 Nr. 1, 4, 5, 8, 11 des ukrStGB übernommen worden, in dem die insgesamt zwölf Strafarten gegenüber straffälligen Erwachsenen aufgeführt sind. Die Höchststrafen sind gegenüber straffälligen Jugendlichen wesentlich herabgesetzt.

30 Die Geldstrafe (§ 99) kann nur gegenüber einem Jugendlichen verhängt werden, der eigenes Einkommen oder eigene Mittel oder Vermögen hat. Die Geldstrafe kann in Höhe des bis zu 500-fachen des steuerfreien Mindesteinkommens entspricht, festgesetzt werden. Dieser Betrag beträgt derzeit (2008) 17 Grivna (ca. 2,50 €).

31 Gemeinnützige Arbeit *(громадські роботи)* kann gegen Jugendliche erst nach Vollendung des 16. Lebensjahrs in Höhe von 30 bis 120 Stunden verhängt werden. Die Dauer darf zwei Stunden täglich nicht überschreiten. Die Arbeit darf den Verurteilten nicht

der Jugendarrest in § 101 ukrStGB[33] und der zeitig bestimmte Freiheitsentzug in § 102 ukrStGB[34] geregelt.

Bei der Urteilsverkündung und der Strafverhängung gegenüber einem straffälligen Jugendlichen muss das Gericht nicht nur die allgemeinen Vorschriften zur Strafzumessung der §§ 65-67 ukrStGB (*Strafverhängung*) berücksichtigen, sondern auch besonders gem. § 103 Abs. 1 die spezifischen Lebensbedingungen und die Erziehung des Jugendlichen, den Einfluss von Erwachsenen, seinen Entwicklungsstand und andere Besonderheiten seiner Persönlichkeit.[35]

Im § 98 Abs. 2 ist als Nebenstrafe neben den Hauptstrafen des Abs. 1 der Entzug des Rechts, eine bestimmte Arbeit oder bestimmte Tätigkeit auszuüben, vorgesehen.

Die Verhängung der Hauptstrafen der gemeinnützigen Arbeit, von Besserungsarbeiten und auch des Arrests sind erst gegenüber mindestens 16-Jährigen möglich.

3.3 Weitere Regelungen des 15. Abschnittes des ukrStGB

Weiterhin regelt der 15. Abschnitt in § 104 ukrStGB die Strafaussetzung zur Bewährung, in § 106 ukrStGB die Befreiung von der strafrechtlichen Verantwortlichkeit und der Verbüßung der Strafe im Zusammenhang mit der Verjäh-

überfordern und muss in gemeinnützigen Tätigkeiten bestehen. Sie wird während der Freizeit absolviert, § 100 Abs. 1 ukrStGB.

32 Besserungsarbeiten *(виправні роботи)* dürfen bei Verurteilten nach Vollendung des 16. Lebensjahrs für eine Zeit von zwei Monaten bis zu einem Jahr verhängt werden. Der Jugendliche muss 5-10% seines im Rahmen eines Arbeitsverhältnisses erlangten Verdienstes an den Staat abführen, § 100 Abs. 2, 3 ukrStGB.

33 In der Ukraine ist gem. §§ 98 Abs. 1 Nr. 4, 101 ukrStGB der Jugendarrest als Form des kurzfristigen Freiheitsentzuges auf Zeit von 15 bis 45 Tagen vorgesehen. § 101 sieht Arrestanstalten mit einer strengen Isolierung von der Öffentlichkeit vor (gem. § 15 StVollstrG). Der Arrest kann nur bei mindestens 16-jährigen Jugendlichen angeordnet werden. In den Arrestanstalten sollen besonders geschulte Spezialisten die Jugendlichen betreuen.

34 Die Freiheitsstrafe ist nach dem Jugendarrest die schärfste Reaktion, die für jugendliche Straffällige besteht. Sie kann für 6 Monate bis zu 10 Jahre verhängt werden und nur bei besonders schweren Straftaten ist das Höchstmaß auf 15 Jahre erhöht. Gem. § 102 Abs. 2 ukrStGB kann der Freiheitsentzug nicht gegenüber einem Jugendlichen angeordnet werden, der zum ersten Mal eine Tat geringer Schwere begeht. Die Freiheitsstrafe wird in einer Erziehungsjugendkolonie gem. § 19 der ukrStVollstrGB verbüßt, siehe dazu Verordnung Nr. 7 des Plenums des Obersten Gerichts in der Ukraine, vom 24.10.2003, Ziffer 27.

35 Siehe dazu Verordnung Nr. 7 des Plenums des Obersten Gerichts in der Ukraine, vom 24.10.2003, Ziffer 2.

rung, in § 107 ukrStGB die bedingt-vorzeitige Strafrestaussetzung und in § 108 ukrStGB die Straftilgung.

Wenn ein Gericht, im Fall des § 104 („Befreiung von der Verbüßung der Strafe mit der Erprobung") zu der Überzeugung kommt, dass eine Besserungsmöglichkeit eines Jugendlichen ohne eine Verbüßung der Strafe besteht, kann es eine Entscheidung treffen, die eine „Befreiung von einer Strafe mit der Erprobung" ermöglicht (§ 104 Abs. 1 i. V. m. §§ 75-78). Dies ist aber nur in Fällen möglich, in denen ein Jugendlicher zu einem Jugendarrest[36] oder einer Freiheitsstrafe verurteilt wird (§ 104 Abs. 2). Dieses Rechtsinstitut ist vergleichbar mit der Aussetzung der Freiheitsstrafe zur Bewährung (siehe dazu *Kapitel 13*). Die Erprobungszeit für die Jugendlichen wird vom Gericht auf ein Jahr bis zu zwei Jahre[37] festgesetzt (§ 104 Abs. 3).[38] Wenn ein Jugendlicher innerhalb der festgesetzten Erprobungsfrist keine neue Tat begeht und alle ihm auferlegten Pflichten erledigt[39], erlässt das Gericht dem verurteilten Jugendlichen nach dem Ablauf der Bewährungszeit die Strafe („Befreiung von der weiteren Verbüßung der Strafe", vgl. § 75 Abs. 2 ukrStGB). Die Nichterfüllung auferlegter Pflichten oder der wiederholte Verstoß gegen Weisungen („Verwaltungsrechtsverletzungen") führt zur Beendigung der Erprobung und Verbüßung der Freiheitsstrafe, „wenn der Verurteilte damit zeigt", dass er sich nicht bessern will (§ 78 Abs. 2 ukrStGB). Gem. § 106 Abs. 1 i. V. m. §§ 49, 80 wird ein Jugendlicher „von der strafrechtlichen Verantwortung und der Strafe befreit", wenn Verjährung eingetreten ist. Die gesetzlich vorgesehene Verjährungsfrist[40] ist abhängig von der Schwere der begangenen Tat geregelt und die Fristen sind im Vergleich zu Erwachsenen verkürzt.

Gem. § 107 kann ein Jugendlicher bedingt vorzeitig entlassen werden. Gründe für eine vorzeitige Entlassung sind:[41]

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36 Der Jugendarrest wurde zum 15.04.2008 durch das Gesetz Nr. 270-17 ergänzt.

37 Für die Erwachsenen gilt eine Frist von einem bis zu drei Jahren gem. § 75 Abs. 3 ukrStGB.

38 Siehe auch Verordnung Nr. 7 des Plenums des Obersten Gerichts in der Ukraine, vom 24.10.2003, Ziffer 9.

39 Pflichten, die das Gericht dem Jugendlichen auferlegen kann (§ 76) sind: eine Entschuldigung beim Opfer; die Mitteilung einer Änderung des Wohnsitzes, Ausbildungs- oder Arbeitsplatzes an die Strafvollzugsbehörde; die regelmäßige Meldung bei der Strafvollzugsbehörde, das Verbot der Ausreise aus der Ukraine zur Verlegung des ständigen Wohnsitzes ohne die Erlaubnis der Strafvollstreckungsinspektion.

40 Die Verjährungsfrist beträgt gem. § 106 Abs. 2 ukrStGB zwei Jahre für die Begehung einer Strafat „nicht großer Schwere"; sie beträgt 5 Jahre für Begehung einer Straftat „mittlerer Schwere"; sie beträgt sieben Jahre bei Begehung einer „schweren" Straftat und zehn Jahre bei Begehung einer „besonders schweren" Straftat (Vgl. Fn. 10 - Verbrechensqualifikation).

41 Vgl. *Strel'cov* 2010, § 107 Nr. 2.

1) seine positive Entwicklung, die durch sein Verhalten festgestellt wird (gewissenhaftes Verhalten bei der Ausbildung, Arbeit u. a);
2) Anerkennung durch das Gericht, dass die vollständige Verbüßung der Strafe im Rahmen des Freiheitsentzugs (aus spezialpräventiven Gründen) nicht notwendig erscheint und
3) die faktische Verbüßung eines Teils der Strafe, der im Gesetz bestimmt ist.

Eine vorzeitige bedingte Entlassung eines Jugendlichen kann nur nach der für die faktische Verbüßung bestimmten Frist festgesetzt werden.[42]

Sollte ein Jugendlicher während der Zeit seiner Reststrafe eine neue Tat begehen, so wird das Gericht gem. § 107 Abs. 5 i. V. m. §§ 71, 72 ukrStGB die neu festgesetzte Strafe mit seiner Reststrafe vollständig oder teilweise ergänzen. Dabei darf die Gesamtdauer aller Strafen das im Allgemeinen Teil des ukrStGB bestimmte Höchstmaß der vorgesehenen Strafart nicht überschreiten. Beim Zusammentreffen mehrer Straftaten und Urteile wird aus den eröffneten Strafrahmen die härtere Strafe verhängt.

Im Gegensatz zu Erwachsenen kann bei Jugendlichen eine Reststrafe nicht durch eine mildere Strafe ersetzt werden (§ 107 Abs. 4).[43]

Die Vorstrafe eines Jugendlichen kann getilgt oder gelöscht werden (§ 108). *Straftilgung* (*погашення судимості*) bedeutet die automatische Löschung ohne Gerichtsentscheidung der Vorstrafe nach der Verbüßung einer Strafe nach Ablauf einer durch das Gesetz bestimmten Frist (§ 108)[44] oder bei nicht freiheitsentziehenden Sanktionen nach Beendigung der Vollstreckung. In dieser Weise

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42 Verbüßung von nicht weniger als einem Drittel der Strafe bei geringen oder mittleren Straftaten, nicht weniger als der Hälfte bei vorsätzlichen schweren Taten oder fahrlässig besonders schweren Delikten und nicht weniger als zwei Dritteln bei vorsätzlichen besonders schweren Taten.

43 Bei Erwachsenen kann eine Reststrafe durch eine mildere Strafe unter folgenden Bedingungen ersetzt werden: der Veurteilte sollte wegen einer „nicht großen“ oder lediglch mittelschweren Straftat verurteilt sein; es muss faktische Verbüßung des im ukrStGB vorgesehenen Teils der Strafe vorliegen und er muss ernsthafte Ansätze zu einer Besserung zeigen (gutes Benehmen, Gewissenhaftigkeit bezüglich der ihm auferlegten Pflichten, etc.). Die mildere Strafe wird im Rahmen der zeitlich im Allgemeinen Teil des ukrStGB festgelegten Grenzen bestimmt, vgl. *Strel'cov* 2010, § 82 Nr. 2, siehe auch Verordnung Nr. 2 des Plenums des Obersten Gerichts in der Ukraine, vom 26.04.2002, Ziffer 4.

44 Die Fristen gem. § 108 Abs. 2 ukrStGB sind: ein Jahr bei einer Verurteilung zu einer Freiheitsstrafe wegen einer geringen oder mittelschweren Straftat, 3 Jahre bei einer Verurteilung zu einer Freiheitsstrafe wegen einer schweren Straftat und 5 Jahre bei einer Verurteilung zu einer Freiheitsstrafe wegen einer besonders schweren Straftat. Hauptbedingung einer Straftilgung ist, keine neuen Straftaten während der vom Gesetz bestimmten Zeitspannen zu begehen.

„getilgte“ Strafen können bei einer späteren Verurteilung nicht berücksichtigt werden.

Die Strafaufhebung (*зняття судимості*) durch das Gericht ist von der Straftilgung zu unterscheiden. Die Strafaufhebung bedeutet die Zurücknahme (*анулювання*) von Rechtsfolgen, die mit einer Vorstrafe verbunden sind, und zwar vor Ablauf der Straftilgung aufgrund gesetzlicher Fristen. Die Strafe kann nach der Entlassung aufgrund eines von der Besserungsanstalt gestellten Antrags durch Gerichtsbeschluss „aufgehoben“ werden, wenn die „Besserung und Umerziehung“ des Jugendlichen vor Ablauf der gesetzlichen (Löschungs-) Frist erkennbar ist. Die Strafaufhebung ist ein Recht und keine Pflicht eines Gerichts.

4. Jugendgerichtsbarkeit und Jugendverfahren

4.1 Gerichtsbarkeit und zuständige Ämter, Organe, Institutionen

Nach § 2 des ukrGerichtsverfassungsgesetzes (*Закон України „Про судоустрій”*) sind Gerichte für die Rechtsprechung unter Bindung an die Verfassung und die Gesetze zuständig. Jugendgerichte sind nach diesem Gesetz nicht vorgesehen. Es gibt deshalb keine spezialisierten Jugendgerichte. Die Strafsachen in Jugendstrafverfahren werden von den allgemeinen Gerichten, regelmäßig auf Ebene der Bezirksgerichte im Einzelrichterverfahren, verhandelt.[45]

Es sind auch keine Jugendstaatsanwälte nach der ukrainischen Gesetzgebung vorgesehen. § 5 des ukrainischen Staatsanwaltschaftsgesetzes (*Закон України „Про прокуратуру”*) regelt die Aufgaben des Staatsanwaltes, wonach dieser gem. Abs. 1 Nr. 3 die Interessen der Bürger und des Staates im Gericht vertritt.

Der „soziale Schutz“[46] und die Verbrechensvorbeugung[47] bzgl. unter 18-jährigen Personen obliegt Ämtern und Behörden in Kinderangelegenheiten und

45 Die rechtliche und soziale Basis der nationalen geltenden Gesetzgebung gegenüber Jugendlichen stammt noch aus früheren Zeiten. Folgende Ereignisse hatten Einfluss auf die Entwicklung des Jugendkriminalrechts: Die Beseitigung der noch vorrevolutionären Jugendgerichte im Jahr 1918; in den Jahren 1918-1920 wurde eine (gesellschaftliche) Kommission für Jugendsachen zur Verhandlung von Jugendstrafsachen der Minderjährigen bestimmt; später wurde ihre Tätigkeit eingestellt und die Strafsachen gegenüber Jugendlichen direkt der Kompetenz der allgemeinen Strafgerichte zugewiesen. In der Ukraine gibt es keine Schöffen/Laienrichter im Strafverfahren.

46 Komplex der sozialökonomischen und rechtlichen Maßnahmen bezüglich des Rechts der Kinder auf Leben, Entwicklung, Erziehung, Bildung, medizinische Betreuung und materielle Hilfe gem. § 1 AmtBehInsGB.

47 Tätigkeit der Behörden, die auf Klärung und Beseitigung von Ursachen und Bedingungen der Delikte von Kindern gerichtet ist, vgl. § 3 AmtBehInsGB.

anderen Sonderinstitutionen für Kinder (im Folgenden: Ämter in Kinderangelegenheiten). Die Rechtsgrundlagen der Tätigkeit der erwähnten Ämter sind im Gesetz „Ämter und Behörden in Kinderangelegenheiten und Sonderinstitutionen für Kinder“[48] (*Закон України „Про органи і служби у справах дітей та спеціальні установи для дітей”*) vom 24.01.1995 festgelegt (nachfolgend als AmtBehInsGB zitiert). Gem. § 1 des AmtBehInsGB gibt es folgende Ämter:

1) Sonderbeauftragte des zentralen Verwaltungsorgans für Familie und Kinder, Beauftragte, auch das beauftragte Organ in der Autonomen Republik Krim, Kinderämter auf dem Territorium der Ukraine (im Folgenden: Ämter in Kinderangelegenheiten) § 4;
2) Kriminalmiliz in Kinderangelegenheiten § 5;
3) Aufnahme- und Einweisungsanstalten (*приймальники-розподільники*), die dem Innenministerium zugeordnet sind, § 7;[49]
4) allgemeinbildende Schulen und Berufsschulen der sozialen Rehabilitation, vgl. § 8;
5) Zentren der sozialmedizinischen Rehabilitation für Kinder § 9;[50]
6) spezielle Erziehungsanstalten der Strafvollzugsverwaltung § 10;
7) Obdach/Zufluchtsort für Kinder, vgl. § 11;[51]
8) Zentren der sozial-psychischen Rehabilitation, vgl. § 11-1;[52]
9) Einrichtungen der sozialen Rehabilitation gem. § 11-2;[53]
10) und andere Verwaltungsorgane, Gemeindebehörden, Unternehmen, einzelne Bürger usw.

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48 Gem. Änderungsgesetz Nr. 609-16 vom 07.02.2007) zu dem genannten Gesetz wurde die vorherige Bezeichnung „Jugendliche“ durch die Bezeichnung „Kinder“ ersetzt. In den Paragraphen 6 (Gerichte) und 10 (Spezielle Erziehungsanstalten der Strafvollzugsverwaltung) blieb die Bezeichnung unverändert. Diese Änderung betraf nur die Bezeichnung der Behörde, ihre Zuständigkeiten blieben unverändert.

49 Hier werden Kinder im Alter von 11 bis 18 Jahre, die ein Delikt bzw. gesellschaftsgefährdende Handlungen begangen haben oder nach denen gefahndet wird, für maximal 30 Tage untergebracht.

50 Behandlung von drogen- und/oder alkoholabhängigen Kindern. Die Dauer der Behandlung beträgt maximal zwei Jahre.

51 Hier werden Kinder im Alter von 3 bis 18 Jahre untergebracht, die in schwierige Lebenssituationen geraten sind. Die Frage ihres weiteren Aufenthalts muss von Angestellten innerhalb einer Stunde gelöst werden. Die Gesamtaufenthaltsdauer darf 90 Tage nicht überschreiten.

52 Unterbringung von Kindern im Alter von 3 bis 18 Jahren. Die maximale Aufenthaltsdauer beträgt 12 Monate.

53 Unterbringung von Kindern im Alter von 3 bis 18 Jahren. Die Aufenthaltsdauer bestimmt das Kinderamt.

Als weitere Besonderheiten der erwähnten Ämter in Kinderangelegenheiten sind folgende Aspekte zu nennen:

Eine der Hauptaufgaben der Ämter ist die Erarbeitung und Verwirklichung der Maßnahmen zum Schutz der Rechte von Kindern und Jugendlichen in Angelegenheiten des Kindeswohls und im Strafverfahren. Die Ämter in Kinderangelegenheiten haben in besonderen Fällen das Recht, die Interessen der Jugendlichen vor Gerichten zu vertreten, vgl. § 442 ukrStPO.

Die Kriminalmiliz in Kinderangelegenheiten ist dem ukrainischen Innenministerium zugeordnet. Aufgabe der Kriminalmiliz ist die Kriminalprävention im Hinblick auf Jugendliche. Die Pflichten und Rechte der Kriminalmiliz sind im AmtBehInsGB sowie in der Verordnung des ukrainischen Ministerkabinets vom 8.07.1995: „Gründung der Kriminalmiliz in Kinderangelegenheiten" geregelt. Darunter finden sich gem. § 5 AmtBehInsGB und Punkt 3 und 4 der Verordnung „Gründung der Kriminalmiliz in Kinderangelegenheiten" folgende Aufgaben:

1) Ermittlung, Einstellung und Aufklärung von Straftaten, die von Kindern bzw. Jugendlichen begangen werden;
2) Bearbeitung von Eingaben und Mitteilungen von Rechtsverletzungen durch Kinder in Rahmen ihrer Kompetenzen;
3) Feststellung von Ursachen und Bedingungen der begangenen Delikte;
4) Feststellung von erwachsenen Personen, die an tatbestandsmäßigen Delikten der Kinder beteiligt sind;
5) Feststellung der Eltern bzw. der sie vertretenden Personen, die sich ihrer Erziehungspflicht entziehen oder dazu nicht in der Lage sind;
6) Durchführung der Vorbereitung eines Verfahrens bei von Jugendlichen begangenen Straftaten;
7) Durchführung von Ermittlungen in dem durch die Strafprozessordnung geregelten Rahmen;
8) Durchführung der Sozialbetreuung von Jugendlichen, die eine Freiheitsstrafe auf bestimmte Zeit verbüßt haben;
9) Besuch unter 18-jährigen Straffälliger an ihrem Wohnort, Studienort oder Arbeitsort, um Gespräche mit Jugendlichen oder mit ihren Erziehungsberechtigten zu führen;
10) Prävention weiterer durch Jugendliche verursachter Verbrechen;
11) Führung eines Registers von unter 18-jährigen Rechtsbrechern, darunter auch Entlassene von Erziehungsanstalten und weitere Aufgaben.

Gemäß § 442 ukrStPO können die Vertreter der Kriminalmiliz zum Gerichtsverfahren geladen werden. Deren Teilnahme ist zweckdienlich für die Klärung der Ursachen und der Bedingungen der Tatbegehung. Ferner sollen sie sich zu notwendigen erzieherischen Maßnahmen äußern. Die Vertreter der Kriminalmiliz können als Zeugen verhört werden. Sie sind keine Verfahrensbeteiligten.

Zu erwähnen ist, dass gemäß § 6 Abs. 1 Nr. 1 und Abs. 2 AmtBehInsGB, § 442 ukrStPO Gerichtsfälle, unter anderem in Strafsachen, von einem sonderbeauftragten Richter unter Mitwirkung/Teilnahme von Vertretern der Ämter in Kinderangelegenheitenoder der Kriminalmiliz durchgeführt werden sollen. Das AmtBehInsGB (§ 6), i. V. m. der Verordnung „Gerichtserzieher" vom 15.11.95 (*Положення „Про судових вихователів"*) sieht im Übrigen die Gründung eines „Gerichtserzieherinstituts" bei Gerichten vor, das mit der Kontrolle bzw. Begleitung der Urteilsvollstreckung gegenüber Jugendlichen betraut werden soll. Allerdings existiert leider faktisch weder dieses Gerichtserzieherinstitut noch gibt es sonderbeauftragte Richter.

4.2 Verfahren in Jugendsachen

In der Ukraine gibt es keine eigenständige „Jugend-"Strafprozessordnung, die das Verfahren bei straffälligem Verhalten Jugendlicher regelt. Es gilt die alte Strafprozessordnung (*Кримінально-процесуальний кодекс України*),[54] die bereits am 28.12.1960 verabschiedet wurde (mit zahlreichen Änderungen). Die ukrStPO enthält genau wie das ukrStGB einen separat geregelten 8. Abschnitt *Verfahren bei Verbrechen Jugendlicher*, der am 30.08.1971 ergänzt wurde.

Dieser Abschnitt enthält im 36. Kapitel (§§ 432-449) Besonderheiten des Verfahrens gegenüber Jugendlichen. Ähnlich wie im ukrStGB hat die Prozessordnung einige Normen bzgl. Jugendlicher auch in anderen Abschnitten bzw. Kapiteln geregelt.

Die ukrStPO sieht folgende wesentliche Verfahrensgrundsätze und Besonderheiten für Verfahren gegen Jugendliche vor:

Die Öffentlichkeit ist in Jugendstrafverfahren bei unter 16-Jährigen (§ 20 Abs. 2 ukrStPO) grundsätzlich per Gerichtsbeschluß auszuschließen.

Für die gesetzlichen Vertreter – Eltern, Vormund oder Pfleger, die als Zeugen angehört werden können, wenn das Gericht es für notwendig hält – besteht Anwesenheitspflicht. In Ausnahmefällen, wenn die Beteiligung von gesetzlichen Vertretern den Interessen der Jugendlichen widerspricht, kann das Gericht die Beteiligung beschränken oder vollständig ausschließen. Das Gericht lässt ggf. einen anderen Erziehungsberechtigten zu (§ 441).

Die Anwesenheit eines Verteidigers ist obligatorisch (§ 45 Abs. 1 Nr. 1 ukrStPO). Eine Verhandlung ohne Rechtsbeistand ist somit nicht zulässig. Als Verteidiger können Rechtsanwälte zugelassen werden, aber auch andere Spezialisten der Rechtswissenschaften, die berechtigt sind, persönlich bzw. im Auftrag einer juristischen Person Rechtshilfe zu leisten. Als Verteidiger können ferner auch nahe Verwandte, der Vormund oder ein Pfleger des Jugendlichen

54 Derzeit findet zur Neuerarbeitung und Neuverkündung der Strafprozessordnung eine intensive Reformdebatte in der Ukraine statt.

auftreten (§ 44 ukrStPO), jedoch nur gemeinsam mit einem Rechtsanwalt bzw. anderen dafür geeignetem Spezialisten.

Ergänzend aufzuklären sind die persönlichen Umstände, wie das Alter, der gesundheitliche Zustand, die allgemeine Entwicklung, die Lebens- und Erziehungsbedingungen, sonstige Verhältnisse und Umstände, die eine negative Wirkung auf das Kind haben könnten. Weiterhin ist zu klären, ob es erwachsene Anstifter und andere Personen gibt, die das Kind zur Begehung von Straftaten verleitet haben (§ 433 Abs. 1 ukrStPO).

Im Fall der Begehung einer Straftat zusammen mit einem Erwachsenen wird eine separate Akte für den Erwachsenen angelegt und das Verfahren abgetrennt (§ 439 StPO). Wenn keine Möglichkeit der Verfahrenstrennung besteht, sind die Maßnahmen zum Schutz des Jugendlichen vor negativen Einflüssen des erwachsenen Beschuldigten zu ergreifen.

Die Anordnung von Zwangserziehungsmaßnahmen hat vorrangig vor einer Strafe zu erfolgen (§ 447 ukrStGB).

Vertreter der Unternehmen (z. B. des Arbeitsplatzes des Jugendlichen) bzw. anderer Institutionen (Schule, Berufsschule, Hochschule, etc.) können am Gerichtsverfahren teilnehmen (§ 443 ukrStGB).

Die Beteiligung von Pädagogen bzw. von einem Arzt, von den Eltern oder von anderen gesetzlichen Vertretern bei der Vernehmung eines Jugendlichen, solange er das 16. Lebensjahr nicht vollendet hat, oder im Fall seiner geistigen Behinderung (§ 438 ukrStGB) ist vorzusehen bzw. zu gewährleisten.

Die ukrStPO sieht verschiedene Maßnahmen der vorläufigen Verfahrenssicherung vor. In § 149 sind bspw. die Meldepflicht und die Bürgschaft einer gesellschaftlichen Einrichtung oder eines Arbeitskollektivs geregelt. Weiterhin findet sich hier die Kaution, die vorläufige Inhaftierung etc. In § 436 sind zwei zusätzliche Arten von Maßnahmen aufgeführt, die nur gegenüber einem Jugendlichen angewendet werden können, nämlich die Übergabe eines Jugendlichen unter die Aufsicht seiner gesetzlichen Vertreter (Eltern, Vormund, Pfleger) oder die Übergabe unter die Aufsicht der sog. Kinderverwaltung, in der die Jugendlichen erzogen werden (z. B. Schulen der sozialen Rehabilitation und andere) (§ 436 ukrStGB).

Die Festnahme eines Jugendlichen und seine Inhaftnahme als Maßnahme der vorläufigen Verfahrenssicherung (d. h. bei Wiederholungsgefahr) sind nur in Ausnahmefällen zulässig, nämlich im Fall der konkreten Erwartung der Begehung einer schweren Straftat (§ 434 ukrStPO).

Ein jugendlicher Angeklagter kann nur über seinen gesetzlichen Vertreter vor den Untersuchungsführer, Staatsanwalt oder das Gericht geladen werden (§ 437 ukrStGB).

Für den Fall, dass keine Freiheitsstrafe verhängt werden muss, hat das Gericht zu entscheiden, ob dem Jugendlichen ein Sozial- oder Gerichtserzieher beigeordnet wird. Die Hauptaufgabe des Letzteren besteht darin, den gesetzli-

chen Vertretern Hilfestellung im Hinblick auf ein straffreies Leben des Jugendlichen und die Einhaltung der festgesetzten Regeln zu leisten.[55]

Gesetzliche Vertreter (§ 441 ukrStPO), Vertreter der Ämter und der Kriminalmiliz in Kinderangelegenheiten (§ 442 ukrStPO), Vertreter der Unternehmen, Stiftungen und andere Institutionen können in Ausnahmefällen auch als Zeugen angehört werden (§ 442 Abs. 4 ukrStPO).[56]

Gegen einen Gerichtsbeschluss oder einen Beschluss zur Anordnung bzw. Nichtanwendung von Zwangserziehungsmaßnahmen, die von Lokalgerichten ausgesprochen sind, kann immer ein Rechtsmittel zu einer höheren gerichtlichen Instanz eingelegt werden. Das Recht zur Einlegung eines Rechtsmittels steht dem gesetzlichen Vertreter bzw. Verteidiger eines Jugendlichen oder dem Jugendlichen selbst zu.

5. Strafzumessungspraxis – Teil I: Informelle Reaktionen

Nach Angaben des ukrainischen Parlaments (für 2003 bis 2006)[57] ergeben sich für die Anzahl von Jugendlichen, deren Strafverfahren eingestellt und bei denen Zwangserziehungsmaßnahmen verhängt wurden, folgende Werte: 2003 – 4.600; 2004 – 3.600; 2005 – 3.800; 2006 – 2.700.

Weitere, insbesondere differenziertere Daten sind bisher leider nicht verfügbar.

55 Vgl. *Malyarenko/Alenin* 2010, § 445 Nr. 4 und 5; vgl. auch die Verordnung über Gerichtserzieher vom 15.11.1995.

56 Siehe auch Verordnung Nr. 5 des Plenums des Obersten Gerichts in der Ukarine, vom 16.04.2004, Ziffer 5.

57 Gerichtsstatistik, Internet Seite des Obersten Gerichtshofs der Ukraine http://www.scourt.gov.ua/.

6. Strafzumessungspraxis – Teil II: Jugendgerichtliche Sanktionen und Anwendungspraxis seit 1980

Das neue ukrStGB führte neben den Freiheitsstrafen eine Reihe alternativer Strafarten[58] ein, beispielsweise gemeinnützige Arbeit und Besserungsarbeit. Das Gesetz sieht auch eine Möglichkeit zur „Befreiung straffälliger Personen von der Strafverbüßung unter der Bedingung ihrer Erprobung“ (§ 104) vor, d. h. der Strafaussetzung zur Bewährung (s. *Kapitel 3*). Da es in der Ukraine immer noch keine eigenständige Jugendgerichtsbarkeit gibt, werden Jugendliche jedoch oft mit der gleichen Härte wie Erwachsene bestraft. Es waren allerdings keine Statistiken zur gerichtlichen Urteilspraxis zugänglich.

Nach den Daten der Strafvollstreckungsinspektion (für 2002 bis 2007, siehe *Tabelle 4*), welche als Behörde für die Vollstreckung der Alternativen zu nicht freiheitsentziehenden Strafen zuständig ist, kann festgestellt werden, dass offenbar eine große Anzahl von Jugendlichen durch das Gericht zu einer Freiheitsstrafe mit Bewährung gem. § 104 verurteilt wird. Gemeinnützige und Besserungsarbeiten gem. § 100 werden dagegen selten verhängt. Die Anwendung von Zwangserziehungsmaßnahmen wird leider in den vorliegenden Statistiken nicht ausgewiesen.

58 Durch das Gesetz vom 15.04.2008 Nr. 270-17 zur Änderung des ukrStGB und ukrStPO hat der Gesetzgeber die Anwendung von alternativen Maßnahmen mehr als verdoppelt. So enthalten jetzt mehr als 30 Normen alternative Strafen.

Tabelle 4: Anzahl der Jugendlichen gegenüber denen alternative Strafen vollstreckt wurden, 2002-2007
Zahl der stichtagsbezogenen Probanden

Jahr		**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Gesamte Zahl der Verurteilten zu alternativen Strafen		6.547	8.143	11.474	8.087	7.591	4.985
Strafarten	eine Strafe und Entzug des Rechts eine bestimmte Arbeit oder Tätigkeit auszuüben (§ 98 Abs.2)	0	0	4	0	1	0
	Gemeinnützige Arbeit (§ 100 Abs. 1)	12	33	54	32	37	13
	Besserungsarbeiten (§ 100 Abs. 2)	9	5	10	4	3	0
	Freiheitsstrafe zur Bewährung (§ 104)	6.378	8.087	11.402	8.050	7.549	4.972
	Bedingte Verurteilung (§ 45 ukrStGB vom Jahr 1960)*	69	13	3	1	1	0
	Verurteilte mit dem Aufschub der Vollstreckung der Strafe (§ 461 ukrStGB vom Jahr 1960)*	79	5	1	0	0	0

* Strafen, die noch vor dem Inkrafttreten des neuen Strafgesetzbuches verhängt wurden. Sog. Übergangstäter, die ihre Strafen vollständig erbracht haben. Nach dem neuen ukrStGB sind solche Strafen nicht vorgesehen.

Quelle: Angaben des Strafvollzugsdepartments in der Ukraine (nach Angaben der Strafvollstreckungsinspektion).

7. Regionale Muster und Unterschiede bei der Strafzumessung junger Rechtsbrecher

Es gibt keine statistischen Angaben bzw. empirischen Untersuchungen zur Sanktionspraxis im regionalen Vergleich.

8. Heranwachsende (18-21-Jährige) im Jugend- oder Erwachsenenstrafrecht – Rechtliche Regelungen und Strafzumessungspraxis

Im ukrainischen Strafrechtssystem gibt es weder ein eigenständiges Strafrecht für Heranwachsende noch eine Sonderstellung für sie. Die Heranwachsenden, so genannte „junge Erwachsene", werden nach dem ukrStGB ab der Vollendung des 18. Lebensjahres stets wie Erwachsene behandelt. Die einzige Anknüpfung an das Alter der jungen Erwachsenen findet sich im ukrainischen Strafrechtssystem im Strafvollstreckungsgesetzbuch. So regelt § 148 Abs. 1 die Möglichkeit der Verlängerung des Aufenthaltes im Jugendgefängnis für junge Straffällige, die 18 Jahre, aber noch nicht 22 Jahre alt geworden sind (vgl. hierzu *Kapitel 11*).

9. Überweisung von Jugendlichen an Erwachsenengerichte

Wie bereits im Kapitel 4. erwähnt, gibt es in der Ukraine keine Jugendgerichte. Die Strafsachen im Jugendverfahren werden in den allgemeinen Gerichten bearbeitet. Die zuständigen allgemeinen Gerichte sind mit Verfahren überlastet. Die jungen Menschen werden oft mit der gleichen Härte wie Erwachsene bestraft. Dem gebotenen Unterschied in der Behandlung von jungen und erwachsenen Straffälligen wird oft wenig Aufmerksamkeit gewidmet. Die unterschiedlichen Gründe der begangenen Verfehlungen von Jugendlichen und Erwachsenen werden oft nicht ausreichend berücksichtigt. Die psychologischen Besonderheiten eines Jugendlichen und Möglichkeiten der Wiedereingliederung durch erzieherische Maßnahmen werden in der Urteilsfindung oft nicht berücksichtigt.

Die Frage der Einführung der Jugendgerichtsbarkeit in der Ukraine ist allerdings in den letzten Jahren aktuell geworden. Es werden in einigen Bezirken gesonderte Jugendgerichte (*ювенальна юстиція* vom Englischen „juvenile justice")[59] als Model erprobt und im Falle guter Erfahrungen sicherlich flächendeckend durchgesetzt. Hervorzuheben ist, dass für Länder wie die Ukraine, die

59 Juvenalnaja Justizija ist eine Gesamtheit von rechtlichen Mechanismen, sozialmedizinischen, psychologisch-pädagogischen, rehabilitierenden und anderen Prozeduren und Programmen, die zum Schutz der Rechte, Freiheit und gesetzlichen Interessen der Jugendlichen zusammengefasst sind.

das „Übereinkommen über die Rechte der Kinder“[60] unterzeichnet haben, die Gründung dieser Gerichte verpflichtend ist.

10. Vorläufige Unterbringungen im Erziehungsheim und in der Untersuchungshaft

Die *Untersuchungshaft* ist eine Vorbeugungsmaßnahme gegen den Beschuldigten, Angeklagten oder Verdächtigten im Falle des Verdachts der Begehung eines Verbrechens, für welches nur eine freiheitsentziehende Strafe verhängt werden kann, oder gegen einen Verurteilten, gegen den das Urteil noch nicht rechtskräftig ist. Die Untersuchungshaft ist in der Ukraine im Untersuchungshaftgesetz von 1993 geregelt (*Закон „Про попереднє ув'язнення“*, weiter ukrUHG).[61]

Das Ziel der Unterbringung in der Untersuchungshaft ist die Verhinderung der Vereitelung der Ermittlungen, des gerichtlichen Verfahrens und der Urteilsfindung durch die inhaftierte Person, wie auch die Sicherstellung der Wahrheitsfeststellung in einer Strafsache oder die Vorbeugung weiterer schwerer Straftaten und schließlich auch einer Sicherung der Urteilsvollstreckung (§ 2).

Untersuchungshaftanstalten für die Unterbringung straffälliger Personen heißen in der Ukraine Untersuchungsisolator (*слідчий ізолятор*) (nachfolgend: Untersuchungshaftanstalt), die von der staatlichen Strafvollzugsverwaltung geführt werden. In Einzelfällen können Jugendliche bei der Notwendigkeit einer Untersuchungshandlung in einem Isolator der zeitweiligen Haft[62] des Ministeriums für innere Angelegenheiten (*ізолятор тимчасового тримання*) untergebracht werden. In der genannten Anstalt dürfen Personen nicht länger als 72 Stunden festgehalten werden, in Ausnahmefällen nicht länger als 10 Tage. Danach sind sie unmittelbar in eine Untersuchungshaftanstalt zu verlegen (§ 4 ukrUHG).

Hauptzweck dieser Regelung ist die Isolierung der in Haft genommenen Personen (§ 7 ukrUHG). Sie werden in Einzel- oder Großraumzellen untergebracht (§ 8 ukrUGH). Die Unterbringung in Einzelzellen erfolgt im Ausnahmefall.[63] Die Jugendlichen werden separat von Erwachsenen untergebracht. Der Gesetzgeber ordnet an, dass in einer Zelle, in der sich Jugendliche befinden,

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60 In der Ukraine wurde die Kinderrechtskonvention durch Beschluss des ukrainischen Parlaments (Verhovna Rada der Ukrainischen SSR) BP No. 789–XII vom 27.02.1991 ratifiziert.

61 Untersuchungshaftgesetz Nr. 3352-12 vom 30. 06.1993 mit Änderungen.

62 Im Jahr 2005 gab es in der Ukraine 501 Isolatoren der zeitweiligen Haft, d. h. Polizeihafteinrichtungen.

63 Mit dem Zweck der Erhaltung eines Untersuchungsgeheimnisses oder Schutz der Inhaftierten vor möglichen Angriffen auf ihr Leben oder die Vorbeugung der Verübung neuer Straftaten usw., vgl. § 8.

maximal zwei Erwachsene untergebracht werden können, die als Ersttäter wegen „nicht großer oder mittlerer Straftaten“ verfolgt werden. Ersttäter werden von anderen Straftätern getrennt untergebracht. Ebenso werden Personen, die wegen schwerer oder besonders schwerer Straftaten verfolgt werden, getrennt von anderen untergebracht.

Die in Haft genommenen Jugendlichen haben das Recht auf täglich zwei Stunden Bewegung im Freien (§ 9 ukrUHG). Bei guter Führung kann die Dauer des Spazierens um eine Stunde verlängert werden (§ 14 ukrUHG). Weiterhin haben sie das Recht auf Empfang von Paketen und Geldüberweisungen. Die Jugendlichen dürfen Nahrungsmittel, Artikel des täglichen Bedarfs sowie unbeschränkt Zeitschriften und Bücher über ein Handelsnetz auf Bestellung in Höhe des Betrages eines Minimalexistenzminimums kaufen, das zur Zeit (2008) 515 grivna (ca. 70€) beträgt. Bei vorbildlichem Benehmen kann der Betrag um 25% erhöht werden. Die Untersuchungshäftlinge haben das Recht auf achtstündigen Nachtschlaf. Währenddessen darf der Jugendliche außer in unaufschiebbaren Fällen nicht für Untersuchungshandlungen in Anspruch genommen werden. Junge Bürger im Alter von 14 bis 35 Jahren haben das Recht auf psychologisch-pädagogische Hilfe durch Spezialisten des Zentrums für Soziale Dienste für Familie, Kinder und junge Menschen.

Die Fläche im Haftraum darf pro inhaftierte Person 2,5 Quadratmeter nicht unterschreiten (§ 11 ukrUHG). Die Inhaftierten werden kostenlos verpflegt, allerdings wird im Gesetz nicht angegeben, wie häufig am Tag. Sie erhalten auch einen individuellen Schlafplatz, Bettwäsche und anderes. Die inhaftierten Personen werden medizinisch versorgt (§ 11 ukrUHG). Mit der schriftlichen Genehmigung des Untersuchungsführers kann einmal im Monat ein Besuch der Eltern von einer Stunde bis zu 4 Stunden Dauer durchgeführt werden (§ 12 ukrUHG). Der Besuch wird durch die Verwaltung der Untersuchungshaftanstalt kontrolliert. Bei Verstößen kann der Besuch vorzeitig abgebrochen werden (§ 12 ukrUHG). Ein Verteidiger kann den Inhaftierten ohne Einschränkung auch unter vier Augen besuchen.

Jugendliche, die böswillig gegen die Ordnung der Untersuchungshaftanstalt verstoßen, können für 5 Tage in einer Arrestzelle untergebracht werden. Die entsprechende Zeit beträgt für Erwachsene 10 Tage.

Gegenüber Jugendlichen ist es verboten, physische oder andere Maßnahmen auszuüben oder Zwangsjacken anzuwenden. Gegen Erwachsene können derartige Handlungen, abgesehen von Erwachsenen im Rentenalter, angewendet werden (§ 18 ukrUHG). Im Fall der Flucht aus der Haft darf gegenüber Jugendlichen nicht die Schusswaffe angewendet werden.

Das Untersuchungshaftgesetz regelt auch die Hausordnung, das Entlassungsverfahren, die Bedingungen der Arbeit und den Arbeitslohn der inhaftierten Personen sowie die medizinische Versorgung, den Briefwechsel und anderes.

Nach den derzeit zugänglichen Daten waren in 32 Untersuchungshaftanstalten der Strafvollzugsverwaltung der Ukraine die nachfolgende Zahl von Jugendlichen inhaftiert: Zum 1.1.2002 waren 2.105 Jugendliche, zum 1.1.2005 1.992, zum 1.1.2006 zwischen 1.220 und 1.400 (verschiedene Angaben) und zum 1.1.2007 1.220 Jugendliche inhaftiert.

Der Gesetzgeber hat zwar Normen für die Untersuchungshaft und ihre Gestaltung geschaffen, die Verhältnisse der Inhaftierung sind allerdings in der Wirklichkeit noch weit entfernt von den vorgegebenen Standards. In manchen Anstalten überschreitet die Anzahl der Inhaftierten sowohl Erwachsener als auch Jugendlicher wesentlich die Anzahl der Haftplätze. Die Gebäude sind alt[64] und renovierungsbedürftig. Die medizinische Versorgung ist schlecht, was zum Teil zu schweren Erkrankungen der Inhaftierten beiträgt. Ebenso ist die Lebensmittelversorgung qualitativ ungenügend. Misshandlungen durch die Anstaltsverwaltung werden immer wieder berichtet. Die festgelegte Höchstdauer der Inhaftierung in den Polizeihaftanstalten des Ministeriums für innere Angelegenheiten (maximal 10 Tage) wird häufig wesentlich überschritten. Damit wird gegen das Gesetz verstoßen. Die Normen des Untersuchungshaftgesetzes geben den Jugendlichen faktisch keine wirksame Möglichkeit ihre Rechte zu vertreten und fördern nicht die ihrem international anerkannten Rechtsstatus entsprechende Behandlung (vgl. die sog. Kinderrechtskonvention der Vereinten Nationen, ratifiziert von der Ukraine am 27.09.1991).

11. Heimerziehung und Jugendstrafvollzug – Rechtliche Aspekte und Umfang junger Täter in freiheitsentziehenden Sanktionen

Das neue ukr. Strafvollstreckungsgesetzbuch (ukrStVollstrGB), das im Jahr 2003 verabschiedet wurde und am 1.1.2004 in Kraft trat, regelt die Strafvollzugsordnung und Strafvollstreckungsordnung sowohl für Jugendliche als auch für Erwachsene. Gem. § 1 ukrStVollstrGB, ist das Ziel des ukrStVollstrGB der Schutz der Interessen der Person, der Gesellschaft und des Staates durch Schaffung von Bedingungen für die Besserung und Resozialisierung von Verurteilten, Vorbeugung der Begehung neuer Straftaten sowohl bei Verurteilten als auch bei anderen Personen, und die Vorbeugung von Qualen und unmenschlicher Behandlung gegenüber Verurteilten, gegen die eine Strafe vollstreckt bzw. vollzogen wird.

In der Ukraine tragen die Strafvollstreckungsinspektion und das Strafvollzugsdepartment die Verantwortung für die Verbüßung von Strafen, auch von

64 Nach den Angaben der Strafvollzugsverwaltung in der Ukraine vom 25.12.2007 http://www.kmu.gov.ua/punish/control/uk/publish/article;jsessionid=117EE3F72460F960CB5EDCDE38D184AD?art_id=58528&cat_id=46416.

Jugendlichen. Die Strafvollstreckungsinspektion vollzieht die nicht freiheitsentziehenden Strafen, wie gemeinnützige Arbeiten und Besserungsarbeiten, den Entzug des Rechts, eine bestimmte Arbeit oder bestimmte Tätigkeit auszuüben und übernimmt die Kontrolle von Verurteilten, die von der „Verbüßung der Strafe befreit" wurden. Das Strafvollzugsdepartment vollzieht die freiheitsentziehenden Strafen.

Die zu Freiheitsentzug verurteilten Jugendlichen verbüßen ihre Strafe auf bestimmte Zeit in einer Erziehungskolonie (*виховна колонія*).

In der Ukraine gibt es zehn Erziehungskolonien: neun davon sind für männliche straffällige Jugendliche, eine für weibliche vorgesehen. Eine elfte Kolonie wurde im Herbst 2007 geschlossen.

Die Entwicklung der Deliktsstruktur bei Insassen des Jugendstrafvollzugs seit der Unabhängigkeit der Ukraine (ab 28.06.1991) zeigt wesentliche Veränderungen auf, die sowohl beruhigen als auch beunruhigen (*Tabellen 5-8*).

Die gesamte deliktsspezifische Entwicklung Jugendlicher, die zu unbedingten Freiheitsstrafen verurteilt wurden, ist in der Zeit seit der Unabhängigkeit faktisch fast um die Hälfte gesunken (*Tabelle 5*). Im Jahr 1991 verbüßten noch 3.439 Jugendliche ihre Freiheitsstrafe in den Erziehungskolonien, am Ende des Jahres 2007 waren dies 1.902, was einen Rückgang um 45,3% (1.577) im Vergleich zu 1991 bedeutet. Eine wesentliche Rolle hierbei hatte auch das Inkrafttreten des neuen ukrainischen Strafgesetzes im Jahr 2001, das die Anwendung von milderen Strafen gegenüber Jugendlichen vorsieht (siehe hierzu *Kapitel 3*). Beim Vergleich der Zahlen von 1991-1999, der Zeit vor dem Inkrafttreten (1991-1999) des neuen StGB, ist nur ein geringer Rückgang zu verzeichnen. So verbüßten im Jahr 1999 3.326 Jugendliche ihre Freiheitsstrafe, damit nur 4,4% weniger als im Jahr 1991. Der Vergleich der Zahlen nach dem Inkrafttreten des neuen StGB (2001-2007) zeigt eine wesentliche Senkung. So verbüßten im Jahr 2007 29,2% weniger Jugendliche als im Jahr 2001 eine Freiheitsstrafe.

Der Rückgang der Anzahl von Jugendlichen in den Erziehungskolonien (*Tabelle 5*) bedeutet aber nicht eine Senkung der Gewalt unter jungen Menschen. So ist die Gesamtzahl der wegen vorsätzlicher Tötung inhaftierten Jugendlichen im Zeitraum von 1991 bis 2007 um 68,8% gestiegen (vgl. *Tabelle 5*). Die Zahl der Jugendlichen, die eine Freiheitsstrafe für vorsätzliche schwere Körperverletzungen verbüßten, ist dagegen um 19,1% gesunken.

Bei anderen Straftaten stellt sich die Situation noch positiver dar. Die Zahl der Freiheitsentziehungen wegen Vergewaltigungen ist wesentlich gesunken, von 1991 bis zum Jahr 2007 um 89,4%. Rowdytum sank um 81%, Diebstahl um 53%. Separate Angaben zu Drogendelikten waren leider nicht vorhanden.

Die demografische Situation der Jugendlichen unter Freiheitsentzug wird in *Tabelle 6* nach ihrem Alter dargestellt. In den Jahren von 1991 bis 2007 sind im Durchschnitt 40,3% der verurteilten Jugendlichen zwischen 17 und 18 Jahre alt. Die Jugendlichen im Alter von 16 bis 17 und älter als 18 machen ca. jeweils 24,6% aus. Der Anteil der Jugendlichen im Alter von 14 bis 16 liegt bei 10,2%.

In der *Tabelle 7* ist die Häufigkeit der Verurteilungen zur Verbüßung einer Freiheitsstrafe auch für den Zeitraum von 1991 bis 2007 dargestellt. So verbüßen im Durchschnitt 97,8% der Jugendlichen zum ersten Mal eine Strafe, darunter 20,3% Jugendliche, die davor eine bedingte Vorstrafe hatten, während 19,6% einen Aufschub der Strafe gewährt bekommen hatten. 2,2% der Jugendlichen verbüßten mehr als ein Mal eine Freiheitsstrafe.

In der *Tabelle 8* sind die Ausbildungs- und Arbeitsverhältnisse der verurteilten Jugendlichen in Erziehungskolonien vor der aktuellen Inhaftierung dargestellt. So waren im gesamten Zeitraum 1991-2007 45% der Jugendlichen vor der Verurteilung zur Freiheitsstrafe nicht in der Schule bzw. hatten nicht gearbeitet. 41,3% der Jugendlichen waren in einer allgemein bildenden Schule bzw. anderen Bildungsanstalten. 14,6% der Jugendlichen arbeiteten vor der Verhängung der Freiheitsstrafe in Betrieben.

Am 1.1.2007 verbüßten in den Erziehungskolonien insgesamt 2.215 Jugendliche ihre Strafen, darunter 574 früher Jugendliche, die schon das Alter von 18 Jahren erreicht haben, und 120 Mädchen. Die Zahl der Inhaftierten ist im Jahr 2007 um 483 (18%) im Vergleich zum Jahr 2006 gesunken. Am 1.1.2005 waren insgesamt 3.236 Jugendliche inhaftiert (*Tabelle 5*). Im Laufe des Jahres 2006 kamen in die Erziehungskolonien 1.851 verurteilte Jugendliche (d. h. 752 Personen bzw. 29% weniger als im 2005), und 2.334 wurden entlassen. Von den Entlassenen waren 1.197 (51%) Personen entlassen, darunter 1.062 bedingt vorzeitig, drei Personen wurden begnadigt.[65]

Insgesamt wird ein erheblicher Rückgang der Belegungszahlen im Jugendstrafvollzug, beginnend schon 1996 (n = 3.913), aber insbesondere nach der Reform des ukrStGB von 2001 erkennbar. 2007 betrug die Gesamtbelegung nur noch 1.902 und lag damit um 52,4% unter der Zahl von 1997. Über die Ursachen dieser Entwicklung gibt es bislang keine empirischen Untersuchungen, jedoch deuten die Zahlen in *Tabelle 5* darauf hin, dass sowohl die neue Gesetzgebung wie auch die „Orange-Revolution" von 2004 eine Auswirkung im Sinne einer milderen Sanktionspraxis gegenüber Jugendlichen hatte.

Die Altersstruktur der Jugendstrafvollzugsinsassen stellt sich wie folgt dar: 6% der Verurteilten waren am 1.1.2007 14 bis unter 16 Jahre, 21,3% 16 Jahre, 40,5% 17 Jahre alt und der Rest (32,2%) älter als 18 Jahre (dazu *Tabelle 6*).

Im ukrStVollstrGB sind Verfahren und Besonderheiten der Strafvollstreckung und des Strafvollzugs von Jugendlichen in einem separaten 21. Kapitel (§§ 143-149) im 3. Abschnitt „Vollzug der Freiheitsstrafe" geregelt. Die geltenden Rechtsvorschriften regeln den Bereich des Jugendstrafvollzugs ziemlich knapp und sehen nur wenige Besonderheiten vor. Unter anderem ist für Jugendliche eine reichere Palette von Fördermaßnahmen (*заохочення*) und Kontakten mit der Außenwelt vorgesehen als für Erwachsene. Die Jugendlichen haben bei guter Führung die Möglichkeit zur Teilnahme an kulturellen oder sportlichen

65 Vgl. *Янчук* 2006, S. 37.

Veranstaltungen außerhalb des Bereichs der Erziehungskolonie in Begleitung von Mitarbeitern. Ihnen kann auch das Treffen mit ihren Eltern oder Verwandten außerhalb der Kolonie gestattet werden. Die Dauer des anstaltsexternen Aufenthalts darf 8 Stunden nicht überschreiten. Die Jugendlichen können kurz vor der Freilassung außerhalb der Kolonie eine Arbeit aufnehmen. Essen, Kleidung und Schuhe werden ihnen generell auf Kosten der Kolonie gestellt.[66] Zum Zweck der weiteren Erziehung und des Abschlusses einer Ausbildungsmaßnahme verbleiben auch inzwischen Volljährige bis zur Vollendung des 22. Lebensjahrs in der Erziehungskolonie. Die Altersgrenze wurde vom Gesetzgeber des neuen ukrStVollstrGB von 21 auf 22 Jahre erhöht. Für sie werden weiter die für Jugendliche bestimmten Normen angewendet.

Für einen Verstoß gegen die Hausordnung können gegenüber Jugendlichen verschiedene durch Gesetz bestimmte Disziplinarmaßnahmen verhängt werden. Die härteste Maßnahme ist die Unterbringung in einer Isolationszelle für die Dauer von bis zu 10 Tagen. Ob die Jugendlichen zur Ausbildung oder zur Arbeit die Einrichtung verlassen dürfen, entscheidet die Verwaltung der Kolonie.

Die Größe der für einen Verurteilten zur Verfügung stehenden Fläche darf 4 m² nicht unterschreiten (§ 115). Einzelzellen sind im Gesetz nicht vorgesehen. Die Zellen haben meist eine Größe von ca. 80-85 Quadratmetern und ungefähr 15 bis 20 Betten.[67]

In den Erziehungskolonien werden aus Vertretern von Staatsorganen, Gemeinden und gesellschaftlichen Einrichtungen sog. „Treuhandräte“ (*піклувальна рада*) gebildet. Es ist ihre Aufgabe, bei der Organisation der erzieherischen Prozesse in der Erziehungskolonie, bei der Lösung von Fragen des sozialen Schutzes der Insassen sowie der Arbeitsbeschaffung und der Eingliederung der Insassen, die vor ihrer Freilassung stehen, mitzuwirken. Mit dem Ziel der Verbesserung der erzieherischen Einwirkung auf die Gefangenen und der Hilfeleistung für die Kolonieverwaltung können auch Elternbeiräte aus den Vätern der Gefangenen gebildet werden.

66 Vgl. *Букалов* 2007a, S. 29; Vgl. *Янчук* 2006, S. 37.

67 So z. B. in der Erziehungskolonie Perevalsk in der Luganskер Region.

Tabelle 5: Deliktsstruktur der verurteilten Jugendlichen in Erziehungskolonien

Jahr	Gesamtzahl der zur Freiheitsstrafe verurteilten Jugendlichen (männl. und weibl.)	Delikte							
		Vorsätzliche Tötung	Vorsätzliche schwere Körperverletzung	Vergewaltigung	Raub	Raubüberfall	Diebstahl	Rowdytum	Andere Straftaten
1991	3.479	93 (2,7)[a]	110 (3,2)	764 (22,0)	395 (11,4)	303 (8,7)	1.480 (42,5)	214 (6,2)	120 (3,4)
1992	2.777	97 (3,5)	61 (2,2)	611 (22,0)	299 (10,8)	230 (8,3)	1.016 (36,6)	215 (7,7)	248 (8,9)
1993	3.140	94 (3,0)	91 (2,9)	467 (14,9)	356 (11,3)	345 (11,0)	1.358 (43,2)	193 (6,1)	206 (6,6)
1994	3.275	85 (2,6)	87 (2,6)	242 (7,4)	509 (15,6)	406 (12,4)	1.526 (46,6)	191 (5,8)	229 (7,0)
1995	3.902	91 (2,3)	81 (2,0)	266 (6,8)	521 (13,3)	454 (11,6)	1.988 (51,0)	196 (5,0)	305 (7,8)
1996	3.913	120 (3,0)	92 (2,3)	241 (6,2)	507 (13,0)	545 (13,9)	1.985 (50,7)	251 (6,4)	172 (4,4)
1997	3.903	133 (3,4)	115 (2,9)	218 (5,6)	533 (13,7)	501 (12,8)	1.977 (50,6)	255 (6,5)	171 (4,3)

Jahr	Gesamtzahl der zur Freiheitsstrafe verurteilten Jugendlichen (männl. und weibl.)	Delikte							
		Vorsätzliche Tötung	Vorsätzliche schwere Körperverletzung	Vergewaltigung	Raub	Raubüberfall	Diebstahl	Rowdytum	Andere Straftaten
1998	3.392	139 (4,0)	132 (3,9)	152 (4,5)	433 (12,8)	416 (12,3)	1.771 (52,2)	237 (6,9)	112 (3,3)
1999	3.326	151 (4,5)	109 (3,3)	140 (4,2)	404 (12,1)	435 (13,1)	1.673 (50,3)	233 (7,0)	181 (5,4)
Entwicklung in % 1991-1999	-4,4	+62,4	-0,9	-81,7	+2,3	+43,5	+13,0	+8,9	+50,8
2001	2.687	176 (6,5)	85 (3,2)	87 (3,2)	323 (12)	353 (13,1)	1.404 (52,2)	130 (48,0)	134 (4,9)
2002	2.889	171 (5,9)	86 (3,0)	83 (2,9)	359 (12,4)	355 (12,3)	1.629 (56,4)	89 (3,1)	117 (4,0)
2003	2.882	136 (4,7)	98 (3,4)	82 (2,8)	413 (14,3)	362 (12,6)	1.529 (53,0)	68 (2,4)	194 (6,7)
2004	3.236	150 (4,6)	103 (3,2)	78 (2,4)	492 (15,2)	308 (9,5)	1.940 (60,0)	69 (2,1)	190 (5,9)

Jahr	Gesamtzahl der zur Freiheitsstrafe verurteilten Jugendlichen (männl. und weibl.)	Delikte							
		Vorsätzliche Tötung	Vorsätzliche schwere Körperverletzung	Vergewaltigung	Raub	Raubüberfall	Diebstahl	Rowdytum	Andere Straftaten
2005	2.698	149 (5,5)	103 (3,8)	67 (2,5)	462 (17,1)	292 (10,8)	1.419 (52,6)	41 (1,5)	165 (6,1)
2006	2.215	145 (6,5)	110 (5,0)	79 (3,6)	448 (20,2)	292 (13,2)	971 (43,8)	26 (1,2)	144 (6,5)
2007	1.902	157 (8,2)	89 (4,7)	81 (4,7)	397 (20,1)	280 (14,7)	693 (36,4)	40 (2,1)	165 (8,7)
Entwicklung in % 2001-2007	-29,2	-10,8	+4,7	-6,9	+22,9	-20,7	-50,6	-69,2	+23,1
Entwicklung in % 1991-2007	-45,3	+68,8	-19,1	-89,4	+0,5	-7,6	-53,2	-82,7	+37,5

a Bei den in Klammern gesetzten Werten handelt es sich um Prozentwerte.
Quelle: Angaben des Strafvollzugsdepartments in der Ukraine.

Tabelle 6: Altersstruktur der verurteilten Jugendlichen in Erziehungskolonien

Jahr	Gesamtzahl der verurteilten Jugendlichen	Altersgruppen							
		Alter von 14 bis 16	%	Alter von 16 bis 17	%	Alter von 17 bis 18	%	Älter als 18 Jahre	%
1991	3.479	328	9,4	766	22,0	1.212	34,9	1.173	33,7
1992	2.777	144	5,2	437	15,7	989	35,6	1.207	43,5
1993	3.140	285	9,1	572	18,2	1.203	38,3	1.080	34,4
1994	3.275	397	12,1	829	25,3	1.273	38,9	776	23,7
1995	3.902	335	8,6	1.031	26,4	1.749	44,8	787	20,2
1996	3.913	530	13,5	904	23,1	1.618	41,4	861	22,0
1997	3.903	528	13,5	919	23,5	1.555	39,8	901	23,0
1998	3.392	395	11,6	779	22,9	1.436	42,3	782	23,0
1999	3.326	312	9,4	743	22,3	1.430	43,0	841	25,3
Durchschnitt 1991-1999			10,3		22,1		39,9		27,6
2001	2.687	360	13,3	762	28,3	1.052	39,1	513	19,0
2002	2.889	354	12,3	821	28,4	1.205	41,7	509	17,6
2003	2.882	326	11,3	839	29,1	1.268	44,0	449	15,6
2004	3.236	370	11,4	897	27,7	1.279	39,5	617	19,1

Jahr	Gesamtzahl der verurteilten Jugendlichen	Altersgruppen							
		Alter von 14 bis 16	%	Alter von 16 bis 17	%	Alter von 17 bis 18	%	Älter als 18 Jahre	%
2005	2.698	230	8,5	862	31,9	1.085	40,2	521	19,3
2006	2.215	167	7,5	593	26,8	919	41,5	536	24,2
2007	1.902	115	6,0	405	21,3	770	40,5	612	32,2
Durchschnitt 2001-2007			10,0		27,6		40,9		21,0
Durchschnitt 1991-2007			10,2		24,6		40,3		24,7

Quelle: Angaben des Strafvollzugsdepartments in der Ukraine.

Tabelle 7: Vorstrafenbelastung der Insassen von Erziehungskolonien

Jahr	Gesamtzahl der verurteilten Jugendlichen	Verbüßung der Freiheitsstrafe							
		Zum ersten Mal	%	Unter Jugendlichen die zum ersten Mal die Freiheitsstrafe verbüßen				Mehrmals verurteilt	%
				Bedingte Vorstrafe	%	Hatten Aufschub der Strafe	%		
1991	3.479	3.427	98,5	97	2,8	943	27,1	52	1,5
1992	2.777	2.725	98,1	179	6,4	806	29,0	52	1,9
1993	3.140	3.072	97,8	73	2,3	700	22,3	68	2,2
1994	3.275	3.228	98,6	173	5,3	744	22,7	47	1,4
1995	3.902	3.829	98,1	182	4,7	801	20,5	73	1,9
1996	3.913	3.847	98,3	108	2,8	671	17,1	66	1,7
1997	3.903	3.840	98,3	243	6,2	771	19,7	63	1,6
1998	3.392	3.310	97,5	227	6,6	696	20,5	82	2,4
1999	3.326	3.229	97,1	314	9,4	693	20,8	97	2,9
Durchschnitt 1991-1999			98,1		5,2		22,2		1,9
2001	2.687	2.613	97,2	450	16,7	689	25,6	74	2,7

Jahr	Gesamtzahl der verurteilten Jugendlichen	Verbüßung der Freiheitsstrafe							
		Zum ersten Mal	%	Unter Jugendlichen die zum ersten Mal die Freiheitsstrafe verbüßen				Mehrmals verurteilt	%
				Bedingte Vorstrafe	%	Hatten Aufschub der Strafe	%		
2002	2.889	2.793	96,7	811	29,0	561	20,1	96	3,3
2003	2.882	2.805	97,3	1.017	36,3	520	18,5	77	2,7
2004	3.236	3.157	97,6	1.643	52,0	159	5,0	111	3,4
2005	2.698	2.667	98,9	1.405	52,7	439	16,5	31	1,1
2006	2.215	2.158	97,4	961	44,5	305	14,1	57	2,6
2007	1.902	1.868	98,2	881	47,2	266	14,2	34	1,8
Durchschnitt 2001-2007			97,6		39,8		16,3		2,5
Durchschnitt 1991-2007			97,8		20,3		19,6		2,2

Quelle: Angaben des Strafvollzugsdepartments in der Ukraine.

Tabelle 8: Ausbildungs- und Arbeitsverhältnisse der verurteilten Jugendlichen in Erziehungskolonien vor der aktuellen Inhaftierung

Jahr	Gesamtzahl der verurteilten Jugendlichen	Vor der Verurteilung					
		Studierten in allgemeinbildenden Schulen und anderen Bildungsanstalten	%	Arbeiteten in Betrieben und anderen Unternehmen	%	Haben nicht studiert und nicht gearbeitet	%
1991	3.479	1.154	33,2	1.046	30,1	1.279	36,8
1992	2.777	840	30,2	855	30,8	1.082	39,0
1993	3.140	800	25,5	917	29,2	1.422	45,3
1994	3.275	935	28,5	590	18,0	1.748	53,4
1995	3.902	1.164	29,8	591	15,1	2.115	54,2
1996	3.913	1.090	27,9	1.515	38,7	2.235	57,1
1997	3.903	1.218	31,2	393	10,0	2.294	58,7
1998	3.392	1.159	34,1	220	6,4	1.934	57,0
1999	3.326	1.295	38,9	196	5,9	1.770	53,2
Durchschnitt 1991-1999			31,0		20,5		50,5

Jahr	Gesamtzahl der verurteilten Jugendlichen	Vor der Verurteilung					
		Studierten in allgemeinbildenden Schulen und anderen Bildungsanstalten	%	Arbeiteten in Betrieben und anderen Unternehmen	%	Haben nicht studiert und nicht gearbeitet	%
2001	2.687	1.324	49,3	202	7,5	1.111	41,3
2002	2.889	1.367	47,3	119	4,1	1.367	47,3
2003	2.882	1.486	51,6	128	4,4	1.245	43,2
2004	3.236	1.843	57,0	142	4,4	1.250	38,6
2005	2.698	1.360	50,4	308	11,4	995	36,9
2006	2.215	1.249	56,4	247	11,2	750	33,9
2007	1.902	1.306	68,7	94	4,9	448	23,6
Durchschnitt 2001-2007			54,4		6,8		37,8
Durchschnitt 1991-2007			41,3		14,6		45,0

Quelle: Angaben des Strafvollzugsdepartments in der Ukraine.

12. Heimerziehung und Jugendstrafvollzug – Entwicklung von Behandlungs- und Ausbildungsprogrammen sowie erzieherische Maßnahmen in der Praxis

Die Resozialisierung der verurteilten Jugendlichen erfordert sowohl würdige Bedingungen für die Unterbringung in den Anstalten als auch die Verbesserung der Gesundheit, der geistigen und körperlichen Entwicklung, der Bildung und Erziehung, der Förderung für ein verantwortungsbewusstes straffreies Leben und die Entwicklung von festen Kontakten mit der Außenwelt.

Der Prozess der Resozialisierung der Verurteilten besteht aus einem individuellen Programm sozial-psychologischer Arbeit. Das Programm sieht verschiedene Maßnahmen vor, wie: Unterstützung bei der Berufsfindung, volle allgemeine Mittelschulbildung, Entwicklung von positiven und sozial-nützlichen Fähigkeiten.

Dieses Programm wird von Psychologen und Pädagogen unter Mitwirkung des Verurteilten und unter Berücksichtigung der individuellen Besonderheiten und der Strafdauer zusammengestellt.

In den Erziehungskolonien existieren allgemein bildende Schulen und Berufsschulen. Zu Beginn des zweiten Halbjahres des Studienjahres 2006/2007 wurden in den allgemein bildenden Schulen 2.018 verurteilte Jugendliche ausgebildet. 114 ausgerüstete Klassenzimmer standen zur Verfügung. Die Jugendlichen werden hier von 157 Lehrern versorgt.

Das System der Berufsausbildung von Jugendlichen in den Erziehungskolonien ist auf die Lehrausbildung ausgerichtet. Es werden solche Fachgebiete angeboten, die auf dem Arbeitsmarkt aktuell nachgefragt sind. Jeder verurteilte Jugendliche hat die Möglichkeit, einen Beruf zu erlernen, der ihm die Möglichkeit bietet, nach der Entlassung leichter Arbeit zu finden und damit die Voraussetzung für ein selbstständiges Leben nach der Entlassung zu schaffen. Im Laufe des Jahres 2006 haben an den Berufsschulen der Erziehungskolonien 2.244 verurteilte Jugendliche ihre Ausbildung gemacht. 1.965 Verurteilte haben einen Beruf erlernt und haben auch die Abschlusszeugnisse erhalten. Heute stehen 23 lizenzierte Berufsschulen zur Verfügung. Der Berufsausbildungsprozess wird von 38 Lehrern und 92 Handwerksmeistern unterstützt.[68]

Den Gefangenen steht auch die Möglichkeit offen, an einigen Hochschulen (Fernstudium) zu studieren.[69] Die Jugendlichen erhalten die Aufgaben durch die Erziehungskolonieverwaltung und am Ende des Studienjahres legen sie die Prüfungen bei den Hochschullehrern ab, die dafür in die Kolonie kommen. Zu Be-

68 Vgl. *Янчук* 2006, S. 37 ff.

69 Die Auswahl an Fächern ist nicht groß. Die Insassen in Perewalsk, Lugansker Region, haben nur drei Fächer (Kraftfahrzeugwesen, Sozialarbeit und Sport) zur Auswahl.

ginn des Jahres 2007 haben 13 Verurteilte an Hochschulen ein Fernstudium durchgeführt.

Für die Jugendlichen werden auch Gelegenheiten zur Erholung, nützlichen Gestaltung ihrer Freizeit und Teilnahme am kulturellen Gesellschaftsleben geschaffen. So wurden in den Kolonien im Jahr 2006 insgesamt 212 Arbeitskreise mit „sozial-nützlicher Ausrichtung" organisiert, wie z. B.: angewandte Kunst (*прикладне мистецтво*), „Laienkunst" (Theater, Musik etc.), sportliche Arbeitskreise und andere.

Auch Vertreter von Territorialgemeinden organisieren Konzerte, Sportwettbewerbe und andere Festveranstaltungen. Jährlich wird in den Erziehungskolonien ein Festival der Laienkunst, der „Rote Schneeball", organisiert, an dem die Insassen aktiv teilnehmen.

In den Erziehungskolonien wurde ein Modellzentrum zur Vorbereitung von Insassen für die Entlassung geschaffen und auch eine Abteilung der sozialen Eingliederung. Sechs Monate vor der Freilassung werden die Jugendliche in solche Abteilungen für spezielle Wiedereingliederungsmaßnahmen verlegt. Sie nehmen an lernpsychologisch orientierten Trainingskursen teil. Hauptaufgabe dieser Methoden ist die Einführung einer Reihe aktiv belehrend-praktischer Maßnahmen, die auf die Verbesserung von sozialen Kompetenzen der Jugendlichen gerichtet sind. Auch die Vertretung der eigenen Rechte, die Kenntnis und die Entwicklung von Gewohnheiten zur Lösung von lebenssituativen Fragen, konfliktvermeidendem Verhalten und ein bewusstes Gesundheitsverhalten sind Inhalt dieser Maßnahmen.

Außerdem können sich die Jugendlichen außerhalb der Kolonie eine Arbeit beschaffen und sich mit Verwandten treffen. Zu Beginn des Jahres 2007 waren in solchen Abteilungen 124 Jugendliche untergebracht. 35 Jugendliche hatten Arbeitsplätze außerhalb der Kolonie.

Eine große Rolle bei der Wiedereingliederung von Jugendlichen aus den Kolonien spielen gesellschaftliche Einrichtungen[70] und Religionsgemeinschaften. Sie sorgen für die Verbesserung der rechtlichen Sicherheit der Jugendlichen, ihre kulturelle Erziehung und geistige Bildung. Die Formen der Zusammenarbeit sind unterschiedlich und reichen von einmaliger Zusammenarbeit und Unterstützung bis zu auf Dauer angelegten Projekten. In diese Zusammenarbeit sind ungefähr 227 gesellschaftliche und religiöse Einrichtungen einbezogen. Im Jahr 2007 wurden zusammen mit diesen Einrichtungen 121 Maßnahmen mit Erziehungs- und sozial-psychologischem Charakter unternommen. Auch 36 Auftritte von Künstlerkollektiven und 11 sportliche Veranstaltungen wurden durchgeführt.

Wie bereits erwähnt wurde, ist im Rahmen der Zwangserziehungsmaßnahmen auch die Einweisung in spezielle Erziehungsanstalten vorgesehen. Hierhin

70 So z. B. Wohltätigkeitsstiftung „Pidlitok" in der Lugansker Region http://gifted-child.org.ua.

werden Jugendliche im Alter von 11 bis 18 Jahren eingewiesen. Diese Erziehungsanstalten sind: 1) allgemeinbildende Schulen der „sozialen Rehabilitierung“, in denen Kinder im Alter von 11 bis 14 Jahren unterzubringen sind, und 2) Berufsschulen der „sozialen Rehabilitierung“, in denen Kinder im Alter ab 14 Jahre unterzubringen sind. Diese Anstalten unterstehen dem Bildungsministerium. 2007 zählten 11 Schulen und 3 Berufsschulen dazu.[71]

In diese Erziehungsanstalten sind die Jugendlichen bis zu ihrer Besserung einzuweisen, aber nicht länger als 3 Jahre. Die Aufgabe dieser Anstalten ist die Bereitstellung von eingliederungsfördernden Ausbildungs- und Erziehungsmaßnahmen, die Verbesserung des allgemeinen Bildungsniveaus sowie eine der individuellen Neigung entsprechende Berufsausbildung. In den Erziehungsanstalten muss eine personelle Ausstattung vorgesehen werden, die die ständige pädagogischer Betreuung und Aufsicht gewährleistet.

13. Aktuelle Reformdebatten und Herausforderungen an das Jugendstrafrechtssystem

Im Rahmen der aktuellen rechtlichen Reformen kann mit Blick auf die Besonderheiten der strafrechtlichen Verantwortung und Bestrafung von Jugendlichen in der Ukraine festgestellt werden, dass in den letzten Jahren wesentliche Veränderungen im Strafrecht zu verzeichnen sind. Auf der rechtlichen Ebene wurde eine Entwicklung von Strafmaßnahmen hin zu Wiedereingliederungs- und Resozialisierungsmaßnahmen geschaffen.

Heute haben das ukrainische Strafgesetzbuch und die Strafprozessordnung spezielle Abschnitte (dazu s. *Kapitel 3* und *Kapitel 4*), die die Besonderheiten der strafrechtlichen Verantwortung und der Bestrafung von Jugendlichen regeln bzw. bestimmen. Das neue ukrStGB sieht eine breitere Palette bei der Anwendung von Strafen vor, die nicht mit Freiheitsentzug verbunden sind, und auch die Anwendung von sog. Zwangserziehungsmaßnahmen. Insgesamt lässt sich eine wesentlich mildere Sanktionierung von Jugendlichen im Vergleich zu Erwachsenen feststellen.

Im Rahmen der Einführung eines Modellprojekts einer Jugendgerichtsbarkeit in der Ukraine wurde im Jahr 2005 eine Konzeption erarbeitet, die sich derzeit zur Erörterung im Parlament (*Verhovna Rada*) befindet. In diesem Projekt werden die Hauptstrukturen einer Jugendkriminalrechtspflege bestimmt. Diese Strukturen werden durch staatliche Institutionen ausgefüllt. Die Tätigkeit dieser Institutionen bildet die Basis des Systems des Jugendstrafrechts, bspw. durch Jugendgerichte, Staatsanwälte (Jugendstaatsanwälte), Rechtsanwälte (mit Spezialisierung), Kriminalpolizei „in Kindersachen“, Sozialvertreter, Bewährungshelfer und die Mitarbeiter des Strafvollzugssystems.

71 Vgl. hierzu Kommentar zum ukrStGB § 105 S. 234.

In der Ukraine gibt es noch keine Rechtsvorschriften für eine Institution der Bewährungshilfe. Dennoch ist die Frage der Einführung dieses Instituts in das ukrainische Strafrecht eng mit der Frage der Einführung der Jugendgerichtsbarkeit verbunden. Indes gibt es einige Argumente dafür, dass die heute geltende strafrechtliche Gesetzgebung faktisch schon die Regelung der Bewährungshilfe als Möglichkeit enthält.[72] So wird in § 104 i. V. m. §§ 75-78 ukrStGB die Analogie einer Bewährungshilfe gesehen. In diesen Normen ist die Strafrestaussetzung geregelt. Diese wird dann angewendet, wenn das Gericht zu der Auffassung gelangt, dass eine Besserung des straffälligen Jugendlichen ohne Verbüßung der Strafe eintreten wird. So bestimmt das Gericht die Probezeit, legt dem Straffälligen bestimmte Pflichten und Weisungen auf und überträgt auf bestimmte Staatsinstitutionen die Aufgabe, das Verhalten des Jugendlichen und die Weisungen zu kontrollieren (s. *Kapitel 3*).

In Anbetracht dieser Entwicklungen, kann man sagen, dass die Einführung der Bewährungshilfe in das ukrainsiche Strafrecht bereits teilweise erfolgt ist. Bislang unzulänglich geregelt ist das „Stadium der Vorbereitung eines Verfahrens". Es besteht darin, dass Bewährungshelfer Ermittlungen zu den sozialen Hintergründen und der Persönlichkeit des Jugendlichen anstellen und das gerichtliche Verfahren gründlich vorarbeiten. Es sind auch Empfehlungen hinsichtlich der geeigneten Sanktion herauszuarbeiten und an das Gericht weiterzureichen. Die Institution der Bewährungshilfe selbst mit entsprechenden hauptamtlichen Bewährungshelfern muss allerdings noch geschaffen werden.[73]

Heute wird die Frage über die Schaffung der Bewährungshilfe in der Ukraine im Rahmen mehrerer Gesetzgebungsvorhaben diskutiert, und zwar:

1) Konzeption der Jugendgerichtsbarkeit in der Ukraine, Erarbeitung durch eine Arbeitsgruppe bestehend aus: Mitgliedern des Obersten Gerichtshofs, Justizministeriums, der Generalstaatsanwaltschaft; der gesamtukrainischen Stiftung „Schutz der Rechte der Kinder" und des ukrainischen Zentrums „Porazuminnja" mit Unterstützung der UNICEF sowie Vertretern der Kanadischen Vertretung/Agentur für internationale Entwicklung im Jahr 2005;
2) Im Gesetzentwurf „Bewährungshilfedienst in der Ukraine", der im Rahmen des Projekts „Ausarbeitung der gesetzlichen Grundlagen für die Gründung des Bewährungshilfedienstes als Bestandteil der Präventionsbemühungen im Rahmen der Jugendgerichtsbarkeit (von der Nichtregierungsorganisation in Charkiv „Jugend/Nachwuchs für Demokratie") erarbeitet wurde. Das Projekt wird mit Hilfe der UNICEF Vetretung in der Ukraine durchgeführt;

72 Vgl. *Beca/Ovčarova* 2007, S. 54.

73 Die Gesetzentwürfe zur Erschaffung der Bewährungshilfe sehen als eine Struktureinheit des Strafvollzugsdepartments den Umbau der bestehenden Strafvollstreckungsinspektion in ein Bewährungshilfesinstitut vor.

3) Im Gesetzentwurf „Bewährungshilfedienst in der Ukraine“ in der Fassung der Strafvollzugsverwaltung. Der Gesetzentwurf liegt momentan (2008) zur Prüfung beim Justizministerium;
4) Im Gesetzentwurf für ein gesamtstaatliches Programm „Nationaler Plan der Verwirklichung der UNO-Konvention für Kinderrechte“ für eine Zeitperiode bis 2016“, erarbeitet im Jahr 2006;
5) Im Gesetzentwurf „Vornahme der Änderungen zu einigen ukrainischen Gesetzen (bezüglich Einführung der Bewährungshilfe)“, vom ukr. Volksabgeordneten *Feldman O. B*., erarbeitet im Jahr 2006;

Die Einführung der Mediation im strafrechtlichen Verfahren in der Ukraine ist ebenfalls geplant. Die Anwendung der Mediation im strafrechtlichen Verfahren, vor allem bei Beteiligung straffälliger Jugendlicher, wird im Rahmen der Durchführung der Gerichtsreform vermehrt diskutiert. Es laufen zurzeit versuchsweise einige Projekte zur Anwendung der Mediation in der Ukraine.[74] Das Justizministerium hat folgende Projekte erarbeitet: „Mediationsgesetz (Vermittlung)“ und „Vornahme der Änderungen in dem ukrStGB und der ukrStPO bezüglich der Mediation (Vermittlung)“.[75] Die genannten Gesetzentwürfe wurden mit folgenden Absichten erarbeitet: Humanisierung der strafrechtlichen Verantwortung; Verbreiterung des Spektrums der Anwendung von alternativen Strafen; Humanisierung der Verbüßung der Strafe; Besserung der Mängel, die zur Verletzung der Menschenrechte im Strafrecht führen und auch die Heranführung der nationalen Gesetzgebung an die Forderungen der EU und des Europarats.[76] Diese Forderungen sehen die Einführung konkreter Mechanismen zur Versöhnung der Parteien in der ukrainischen Rechtsprechung vor, unter anderem im Strafverfahren. Vorgeschlagen wird die Anwendung der Mediation gegenüber Personen, die eine Strafe geringer Schwere verwirkt hätten, die vorsätzlich gehandelt haben, deren Tat aber einer mittleren Schwere zuzuordnen ist, oder bei fahrlässiger Schuld eine schwere oder besonders schwere Tat begingen.

14. Zusammenfassung und Ausblick

Die Ukraine hat mit ihrer Reform des Strafrechts einen bedeutenden Schritt im Umgang mit der Jugendkriminalität und zur Reform des Jugendkriminalrechts gemacht. Seit 2001 gelten neue Regelungen zum Strafrecht Jugendlicher (siehe *Kapitel 3*). Wie in dem Bericht dargestellt wurde, hat der Gesetzgeber alternative Strafen für Jugendliche eingeführt, die der Umerziehung und Resozialisie-

74 So z. B. in der Dergachevsk Region, in Charkiv, in Bila Zerkva – Kiewer Region.

75 Die genannten Gesetzentwürfe sind auf folgenden Internetseiten abrufbar: Justizministerium-www.minjust.gov.ua , und ukr. Parlament http://portal.rada.gov.ua/rada/control/en/index.

76 Vgl. *Segedìn* 2007, S. 6 ff.; vgl. *Mikitin* 2007, S. 33 ff.

rung der straffälligen Jugendlichen dienen sollen. Nach den derzeit zugänglichen Statistiken sinkt die Zahl der Jugendlichen, die zu Freiheitsstrafen verurteilt werden bzw. derer, die eine solche Strafe in den Erziehungskolonien verbüßen, deutlich im Vergleich zur Zeit vor der Reform (siehe *Kapitel 11*). Daher werden offenbar immer mehr die gesetzlichen Regelungen auch in der Wirklichkeit durch die Richter angewendet. Dies gilt insbesondere für die Erprobung, da Zwangserziehungsmaßnahmen bisher nicht in ausreichender Zahl verhängt werden.

Die Zahlen der insgesamt verübten Straftaten in den Jahren 1991-2007 (*Tabelle 3*) gehen zurück, weshalb allgemein auch eine positive Auswirkung der neuen Gesetze auf diese Entwicklung gesehen wird.

Die erst in Ansätzen entwickelte Jugendgerichtsbarkeit erlangt immer mehr Bedeutung und Aufmerksamkeit in der ukrainischen Strafgesetzgebung und in Modellprojekten. Die Einrichtung von selbständigen Jugendgerichten – dem Zentralelement der Jugendkriminalrechtspflege – ist noch nicht umgesetzt (außer in einigen Modellprojekten). Aufgrund der übernommenen Verpflichtung aus der Kinderrechts-Konvention der UNO ist diese Einrichtung aber nicht mehr eine Frage des „Ob“, sondern nur des „Wie“ und „Wann“.

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