Juvenile Justice and Child Protection Systems in Europe – How to promote community sanctions and develop “good practices”

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Geographical Position

Greifswald
I. Basic philosophies of juvenile justice: minimum intervention, education instead of punishment, restorative justice, punishment as a last resort.

II. General trends in reforming juvenile justice systems

III. Reform tendencies in a European comparative perspective

IV. The scope of juvenile justice and age limits

V. Trends in sentencing juvenile offenders – between a “punitive turn”, stable and milder juvenile crime control

VI. How to promote alternatives to imprisonment – German experiences and practice of the multi-agency approach

VII. “Good practices” in providing community sanctions in other European countries

VIII. Outlook
1. Basic philosophies

- Juveniles are in a difficult situation of transition which could be better overcome by educational support instead of punishment.

- Juvenile delinquency and crime is of an episodic nature which regularly disappears upon integration into family and professional life in early adulthood.
I. Basic philosophies and principles of juvenile justice

• Social control of juvenile delinquency and juvenile offenders has been developed in various forms:
  • Historically the classic welfare model prevailed,
  • In continental Europe rather the justice model has found acceptance
  • The recent convergent and common ideas imply welfare and justice
  • Education instead of punishment,
  • But also (proportionate) sanctioning or punishment.
  • Due process (legal guarantees in juvenile procedures) on the one hand, but
  • informal procedures (diversion, restorative justice) as well
I. Basic philosophies and principles of juvenile justice

2. Basic principles

- Education instead of punishment,
- minimum intervention (priority to diversion),
- restorative justice (conflicts between victim, offender and society can be solved outside the justice system), and
- punishment, particularly deprivation of liberty, as a last resort.
II. General trends in reforming juvenile justice systems

1. The 1960s and 1970s:
   • The debate was mainly influenced by the four D’s!
   • diversion,
   • decriminalization,
   • deinstitutionalization (particularly of status offenders),
   • due process

2. Late 1970s and 1980s (mainly Western Europe):
   • Developing new community sanctions: community service, educational training courses, mediation

3. Since 1990 (mainly Central and Eastern Europe):
   • Developing and implementing new community sanctions or reforming traditional sanctions (probation)
4. Since the mid 1980s and during the 1990s: The four R’s
   • restitution (reparation),
   • restorative justice, but also
   • responsibility/“responsibilisation” („no more excuses“, including the parents of the juvenile offender), and
   • retribution (e.g. from „community treatment“ to „community punishment“).

5. The neo-liberal orientation as the „Leitmotiv“ for the 21st century?
   • The clear answer is: no!
   • International standards and national developments maintain the educational ideal and subsidiarity of punishment
II. General trends in reforming juvenile justice systems

6. Successful strategies for developing and implementing new community sanctions:
   • Bottom-up reforms: first implementing model projects and later expanding nationwide
   • Then changing legislation according to successfully introduced community sanctions!
   • Examples: Germany, Finland, the Netherlands
   • Less promising: first changing the law and then developing the necessary infrastructure,
   • See e.g. Czech Republic, Russia, Spain
III. Reform tendencies in a European comparative perspective

1. The development in the 1980s was strongly influenced by the principle of „minimum intensive intervention“, 
   - *minimum intervention model*,
   - i. e. the as far as possible avoiding of criminal procedure, and particularly of being prosecuted (Diversion) and penal sanctions, particularly of 
   - *deprivation of liberty, which should be a measure of last resort („ultima ratio“).*

2. In the 1980s, but particularly in the 1990s, above all: 
   - Getting tough policy for example in England/Wales, Netherlands, France
III. Reform tendencies in a European comparative perspective

- The situation and reform trends of juvenile justice in Europe have been published in:
- 2nd revised ed., available since end of November 2011!
III. Reform tendencies in a European comparative perspective

3. Reform trends in selected countries
   - **Belgium** 2006:
     - Maintaining the welfare approach of the law from 1965.
     - Emphasis on mediation and restorative justice.
   - **Bulgaria** 1996/2004: Better legal safeguards, extending alternative sanctions, but also criminalizing anti-social behaviour
   - **Croatia** 1998/2002/2006: Legal safeguards, emphasis on alternative sanctions including mediation
   - **Czech Republic** 2003: emphasis on diversion and alternative sanctions
Danmark
- 1998: Introduction of the so-called *youth contract sentence*. (= diversion)
- 2001: Introduction of a specific *youth sentence* (2 years, to be imposed by the court)

Estonia
- 2001: Raising the age of criminal responsibility from 13 to 14
- 2002: Major law reform increasing the possibilities for diversion (referrals to so-called Juvenile Committees), alternatives to custody including restorative justice elements (reparation, mediation)
III. Reform tendencies in a European comparative perspective

- **England/Wales**

  - „No more excuses“ („responsibilisation“, „getting tough on crime and on the causes of crime“) and the Criminal Justice and Public Disorder Act of 1998;
  
  - For example: community sanctions shall be „tough“ and „credible“.

  - from „community treatment“ in the 1960ies to „community punishment“ („neo-correctionalist model“, see Cavadino/Dignan 2006).

  - But 2010: the new government gives signs for a U-turn towards restorative justice, family group conferences and more lenient punishments, particularly by reducing juvenile imprisonment (see also D. Smith et al. (2010): A New Response to Youth Crime; Police Foundation et al. “Time for a fresh start”)
III. Reform tendencies in a European comparative perspective

- **France 2002-2007**: more speedy trials and serious punishments for 16- and 17-years-old recidivists, but also improvements as to community sanctions (*protection judiciaire*); new closed welfare institutions and juvenile prisons with a very strong rehabilitative (educational) approach
- **Germany 1990/2008**: Major reform 1990 emphasising minimum intervention (diversion, mediation) and alternative sanctions; 2008: educational ideal as guiding principle laid down in § 2 of the law (*JGG*)
- **Greece 2003/2010**: Expanding diversion and mediation and alternative (community) court dispositions; raising the age of criminal responsibility from 13 to 15
III. Reform tendencies in a European comparative perspective

- **Lithuania** 2003/2007: Priority to diversion and educational measures incl. mediation, but also increased supervision of juveniles
- **Northern Ireland** 2001: Family group conferencing
- **Russia** 1996/1999/2001: Expanding the range of community sanctions, diversion and mediation
- **Scotland** 1995/2004/2010: In general maintaining the welfare approach (children’s hearings), diversion, educational measures, but also more severe sanctions (incl. ASBO’s); 2010: raising the age for criminal prosecution from 8 to 12
- **Serbia** 2005: Diversion, restorative justice elements and strong educational orientation
## 1. General overview

<table>
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<tr>
<th>Country</th>
<th>Minimum age for educational measures of the family/youth court (juvenile welfare law)</th>
<th>Age of Criminal responsibility (juvenile criminal law)</th>
<th>Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)</th>
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* Criminal majority concerning juvenile detention (youth imprisonment etc.);
** Only for road offences and exceptionally for very serious offences; *** Only for serious offences;
**** Only mitigation of sentencing without separate juvenile justice legislation
2. The case of (18-21 years old) young adults

• In its Recommendation (2003) 20 the Council of Europe recommends to include also young adults into the juvenile justice system according to the personal development of the offender. Even further going: Rec (2008) 11, No. 17:

• Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions ...

• This principle is widely recognised in Europe as sociological, developmental-psychological and criminological evidence reveals that young adults very often are not yet fully mature and integrated to adult life.

• Advantages of including young adults: the wide scope of more constructive and “educational” community sanctions can be used (instead of the more serious sentencing provisions according to the General Penal Law)
Countries with special rules for young adults in the general criminal law concerning mitigating sentences

- Austria, Bosnia, Czech Rep., Denmark, England/W., Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Scotland, Serbia, Slovakia, Sweden, Switzerland.

Countries with special rules for young adults providing the application of juvenile law sanctions

- Austria, Bosnia, Croatia, Czech Rep., Finland*, Germany, Lithuania, Netherlands, Russia, Scotland, Serbia, Slovakia, Slovenia, Sweden*

* no special juvenile law, but transfer to welfare boards etc.; Finland and Sweden therefore can be classified as countries with both forms of special regulations

Countries with no special rules for young adults

- Bulgaria, Estonia, Latvia, Spain, Turkey
IV. The scope of juvenile justice and age limits

3. Excluding young offenders from the juvenile court jurisdiction: transfer to adult courts

- In contrary to the USA in Europe so-called waiver procedures in Europe are provided only exceptionally.

- The transfer of 16 and 17 year-old juveniles in very serious cases is possible in Belgium and in the Netherlands, and in Poland at the age of 15, in England/Wales all juvenile offenders (10-17) can be transferred to the Crown Court in very serious (murder) cases.

- All other 20 countries with special youth courts or committees do not allow such transfers.

- The reason may be that juvenile court dispositions in England/Wales and the Netherlands (maximum youth penalty: 2 years) are more restricted than e. g. in Germany (max. pen. = 10 y.)
V. Trends in sentencing juvenile offenders – between the “punitive turn”, stable and milder juvenile crime control

- Eastern European countries:
- Mitigating the traditionally very repressive sentencing practice of former socialist times by increasing the use of diversion and court based community sanctions, but often the continental western style of custody as an extreme last resort is not yet achieved (e.g. Lithuania, Russia and Slovakia in contrast to Croatia, the Czech Republic, Hungary or Romania).
- Problems of implementing “new” community sanctions such as mediation and other new alternatives because of a lack of infrastructure
Western European countries:

The „new complexity“ (Habermas)

Getting tough in England/Wales (“no more excuses”, but recently turnaround? 2001-09: -35% immediate custody),

In parts in France, the Netherlands and Spain

Stable moderate sentencing in Austria, Germany, Scotland, Switzerland and many others,

with increased diversion rates particularly in Austria, Belgium and Germany

Prioritising alternative sanctions and reducing the population in (secure) detention (Finland, Latvia, Northern Ireland, Sweden)

However: it is sometimes unclear how many juveniles are detained in welfare institutions instead of custodial settings (Sweden)
VI. How to promote alternatives to imprisonment – The German experiences and practice of the multi-agency approach

- A separate juvenile justice system can only function if there is an infrastructure for the educational dispositions.
- In Germany, such a structure has been implemented by a two track system of welfare and justice laws, the Child and Youth Welfare Act (CYWA, Kinder- und Jugendhilfegesetz) and the Juvenile Justice Act (JJA, Jugendgerichtsgesetz, both reformed in 1990).
- These laws demand the implementation of a network of private, state welfare and justice agencies.
- But first: a look on the German juvenile court system:
The German juvenile court system

Higher Regional Court (Oberlandesgericht, OLG)

District/Regional Court (Landgericht, LG)

Local Court (Amtsgericht, AG)

High Court Chamber

Instance for revision

Youth Court Chamber

First instance

Appeal court

Youth judge

Youth court

Professional judge

Lay judge

No further appeal!

Either appeal or revision

§§ 55 (2), 109 (2) JJA

§§ 121, 122 (1) GVG

§§ 33, 41 JJA
Basic philosophy of the German Juvenile Justice Act

- Priority of diversion (minimum intervention)
- Priority of mediation and restorative justice
- Priority of educational community sanctions
- Youth imprisonment (as short as possible within the range of 6 months up to 5, exceptionally 10 years) as a last resort („ultima ratio“).
- No transfer of juveniles to adult courts, even in most serious cases.
- The jurisdiction of the juvenile court includes 14-17-year old juveniles as well as 18-20-years old young adults! (see Dünkel 2003; 2005)
Basic philosophy of the German Child and Youth Welfare Act (CYWA)

- Children (under 14 years), juveniles (14-17) and young adults (18-20) have the right to support and education and to being protected in their personal development by the child and youth welfare agencies (Sect. 1 of the Child and Youth Welfare Act).
- The youth services are established at the local community level,
- priority is given to private non-profit organisations (Sect. 4 II CYWA),
- which must be accredited by the regional (federal state level) youth welfare departments of the ministries of social affairs (Landesjugendämter).
Centre for the Prevention of Youth Crime (ed.)

Prevention of Youth Crime in Germany: Educational Strategies
Trends, Experiences and Approaches

Published 2004
download from:
http://cgi.djt.de/bibs/Bd8_prevention.pdf
Co-operation of welfare and justice agencies

- Germany has developed an effective system of private and state welfare as well as of justice institutions in the field of juvenile crime prevention and of juvenile justice.
- The agencies organised on the basis of the CYWA are:
  - The community youth welfare departments (Jugendämter) and the youth services in youth court proceedings (Jugendgerichtshilfe, JGH) which have a double task:
    - They fulfil purely welfare oriented tasks (family aid, protection of children in need of care according to the CYWA)
    - They support the juvenile-prosecutor and court by delivering personal and family background information for the trial and they are partly responsible for the execution of educational measures (mediation, social training etc.)
Co-operation of welfare and justice agencies (2)

• The youth services in youth court proceedings (JGH) are also responsible for avoiding unnecessary pre-trial detention.

• Therefore they participate in the proceedings as early as possible and are immediately informed if a juvenile is arrested (in pre-trial detention, see Sect. 72a JJA).

• The personnel of the JGH are social workers or social pedagogues with at least three years of university education (Fachhochschulen für Sozialarbeit).
Co-operation of welfare and justice agencies (3)

• The personnel of private institutions in most cases have the same professional education, sometimes they also have teachers, psychologists and social workers with special training, e. g. as mediators at their disposal).

• There are special courses for further professional specialisation, e. g. as a mediator, provided by the Federal probation service.

• In order to understand the different tasks and co-operation of welfare and justice agencies one should have a look at the German youth sanctioning system of the JJA:
Sanctions of the German juvenile justice system (Jugendgerichtsgesetz, JGG)

- **diversion** (informal sanctions, dismissal of the case; possibly in combination with directives etc., §§ 45, 47 JGG)
- **formal (court) sanctions**

69% education measures
- **§ 5 I JGG, § 9 JGG**

31% formal (court) sanctions
- **disciplinary measures**
  - **§ 5 II JGG, § 13 JGG**
  - **caution**
    - **§ 14 JGG**

- **youth imprisonment**
  - **§ 5 II JGG, 17 JGG**
  - **suspended sentence**, § 21 JGG
  - **§ 27 JGG: probation**
  - **§ 57 JGG: preliminary probation sentence**
  - **unconditional**

- **principle of „subsidiarity“** (§ 5 II JGG): disciplinary measures and youth imprisonment only if educational sanctions are not sufficient

- **court directives**
  - **§ 10 JGG**
  - **whereabouts**
  - **traineeship/working pl.**
  - **community service**
  - **supervisory directive**
  - **social training course**
  - **victim-offender mediation**
  - **traffic instruction**
  - **other directives**

- **measures of the Juvenile Welfare Act**
  - **§ 11 JGG, §GB VIII**

- **conditions**
  - **§ 15 JGG**
  - **reparation**
    - **apology**
  - **community service**
  - **fine**
  - long-term det. (-4 w.)
  - **combination of discipl. m. and educational m.**
    - **§ 81 JGG**
  - leisure-time detention
  - short-term detention

33
Youth court service, JGH:
- Delivering personal and family background information
- Involved in the supervision and execution of educational measures
- Mediation
- Taking steps to avoid pre-trial detention

(Youth) probation service
- Supervision and support of young offenders with suspended sentences or early release from youth prison.
- Execution of educational measures
- Mediation

Residential care
(private welfare institutions)

Local youth welfare department

Non-profit organisations
- Execution of educational measures
- Mediation
- Alternatives to pre-trial detention
- Preparation of release from prisons
- Aftercare (voluntary participation of the client)

Local and regional youth justice (local and district courts)

Juvenile prosecutor

Youth court

Local communities

Pre-trial detention

Social services within youth prisons

Youth prisons

Local communities

Residential care
(private welfare institutions)
Sanctioning practice of juvenile justice in Germany

- The sanctioning practice in Germany can be characterised by a (in the last decades stable) mild and rational approach with respect to the principles of minimum intervention, mediation and education.
- There has been a considerable increase in the use of diversion and educational measures,
- a decrease in short term imprisonment (up to 4 weeks, Jugendarrest) and even in youth imprisonment.
- This policy - with good reason - has been maintained even under the pressure of media fuelled debates on getting tough on youth crime.
Diversion rates (dismissals by the prosecutor or judge) in the German juvenile justice system, 1981-2010

§ 45 I, II JGG = diversion by prosecutor without obligations (simple warning)
§ 45 III JGG = diversion combined with (minor) educational measures imposed by the court
§ 47 JGG = diversion by the court

Formal sanctions by the court after a court hearing
Diversion and juvenile court sentences for juvenile (14-18) and young adult (18-21) offenders in Germany, 1981-2010

- Diversion by prosecutor
- Judge
- Sanctions of the juvenile court (%)
  - § 27 JGG
  - Educative measures (directives, obligations)
  - Short term detention
  - Susp. sentence
  - Uncond. prison sent.

2%
Diversion rates in comparison of the German federal states, 2010

90%

61%
Is diversion an effective youth justice strategy? Recidivism after non-intervention vs. punishment

- There is empirical evidence that diversion „works“.
- The recidivism rates are lower or at least not higher than after formal court procedures and convictions.
- The following German data of *Heinz & Storz* (1992) are quite impressive:
Rates of formal and informal sanctions after a first sanction for larceny and a risk period of 3 years (juveniles, cohort 1961)

Informal and formal sanctions for reoffending according to the kind of the 1st sanction

Decisions after reoffending:
- informal only (diversion): 7.9% informal, 4.2% formal
- reconviction without imprisonment: 16.6% informal, 25.0% formal
- imprisonment: 2.9% informal, 7.2% formal
- total reconviction rate: 19.5% informal, 32.2% formal
- total: 27.4% informal, 36.4% formal
Diversion rates and recidivism in comparison of the federal states in West-Germany (simple theft, first time offenders, birth cohort 1961)

What works with diversion? (2)

• The German results are confirmed by British empirical research demonstrating that reconviction rates of offenders with a conditional discharge had lower reconviction rates (39%) than those sentenced to fines (43%), probation (55%) or community service (48%, see Moxon 1998, p. 91).

• Looking at the costs and the impact of different sentences and interventions it is evident that informal warnings and cautions are the less expensive measures.

• They are classified by Moxon (1998, p. 97) by “low re-offending for first offenders”.
What works with diversion? (3)

• „Caution plus“, i.e. a combination with restorative justice schemes as pure restorative justice are more expensive, but „promising in terms of re-offending“.

• There has to be, however, some cautiousness in interpreting the comparison of different sanctions and interventions because there is always a degree of selection bias which is not always seriously controlled.

• In general we may conclude, that the theoretical assumptions of diversion as an effective strategy can be confirmed by some empirical evidence, although further research into “what works, with whom, under which circumstances” is also needed in this context.
VII. “Good practices” in providing community sanctions in other European countries

- Welfare oriented countries:
- Belgium, Poland, Scotland (children's hearings)
- The case of Scandinavian countries
- Continental European approach of combining justice and welfare:
  - Austria, France, Germany, Greece, Netherlands
  - Central and Eastern European countries developing a welfare oriented infrastructure within the justice system
Diversion

Austria:

• „Diversion with intervention“ (introduced in 1988):
  • contributed to reduce the number of convictions in times of increasing registered juvenile delinquents,
  • shows that juveniles in most cases respond positively to the offer of diversion by the prosecutor and generally accept and fulfil the given conditions,
  • low reconviction rates of juvenile delinquents further confirm the positive outcome of diversion as an example of “good practice” in Austria.
Austria (statistical data from 2009)

Legal response to juvenile and young adult delinquency

- Discharge
- Total conviction
- Total diversion with intervention
  - Diversion without social intervention:
    - Suspension of charge: non-intervention § 6 JGG
    - Dismissal: grounds for immunity § 4 (2) JGG
    - Dismissal § 191 StPO (bagatelle)
    - Dismissal § 190 StPO etc.
### Austria: Reconviction rates after diversionary measures

<table>
<thead>
<tr>
<th>Victim-offender mediation</th>
<th>All cases</th>
<th>Completed cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>no reconviction</td>
<td>reconviction</td>
</tr>
<tr>
<td>Victim-offender mediation</td>
<td>63%</td>
<td>37%</td>
</tr>
<tr>
<td>Community service</td>
<td>65%</td>
<td>35%</td>
</tr>
<tr>
<td>All convictions (WVS)</td>
<td>42%</td>
<td>58%</td>
</tr>
</tbody>
</table>
“Good practices” – examples

• Mediation and restorative justice: Austria, England and Wales, Germany, Latvia, Ireland, Poland, Serbia, Spain, Turkey.

• Family Conferencing:

• Northern Ireland, Belgium
• Introduction of community service in 1999,
• Introduction of “compulsory educational measures” (e.g. warning; victim-offender-mediation etc.) in 2005
• Consequence: Reduction of juveniles in prison (absolute numbers on January 1st each year):
“Good practices” – examples

- **Multidisciplinary approach:**
  - Germany, England/Wales, Greece, Romania, Russia

- **Specific training for judges/prosecutors:**
  - Germany, Portugal (compulsory!), Serbia, Romania
Examples

- **England/Wales**: Youth Offending Teams on a local level (representatives from the police, probation service, social services, health, education, drugs and alcohol misuse services and housing authorities)
- **Germany**: „Häuser des Jugendrechts“: Different juvenile justice actors (juvenile prosecutor, youth welfare services, youth probation service and private juvenile justice agencies) work together in one house
- **Greece**: Interdisciplinary JJ-council (since 2010) advises JJ actors
- **Romania**: New interdisciplinary teams support the courts in case of JJ
- **Russia**: New cooperation between JJ and youth welfare
“Good practices” – examples

- Resettlement strategies (aftercare services, mentoring):
  - Czech Republic, Denmark, Germany, Slovakia
Examples

- **Denmark**: Mentoring programme by the probation service: mentors support a juvenile offenders (aged 15 to 25) at least 10 hours a month. Evaluation results (small sample): positive developments of the juveniles and influence of the mentor.

- **Czech Republic**: Copied the mentor programme from Denmark.

- **Germany**: Programme „BASIS” as an example to integrate young prisoners (16 to 25) into the labour marked. Success rate: 73%.

- **Slovakia**: Similar project, funding ended after a period of two years.
Examples for other innovative strategies:

- **Spain:**
  “Regional plans for juvenile justice”, e.g. Catalunya: community programmes for 60% of all juvenile offenders, 30% reconciliation or VOM, 10% deprivation of liberty.

- **Turkey:**
  Decriminalisation of “children throwing stones” in conflict areas: Special severe terrorist laws are not applicable any more.
VIII. Outlook

- Juvenile justice policy has come under pressure due to the developments in juvenile crime and changes in public attitudes to juvenile crime in the 1990s.

- A system of criminal justice geared towards special prevention and education is dragged into a conflict of justification and supportive argumentation in the light of violent offenders, especially under the conditions of a partly media-fuelled debate about the need for tougher punishments.

- However, the developments of juvenile crime in Europe, and also in Eastern European countries, are by no means grounds for a U-turn in juvenile criminal justice.
VIII. Outlook

• The recommendations of the Council of Europe regarding new ways of dealing with juvenile offending and for juveniles subject to sanctions or measures offer a helpful orientation for an independent juvenile justice system.

• Furthermore, they correspond to a far-reaching European and global consensus for the preservation of a rational juvenile justice and social policy which, even in difficult times, emphasises the principle aim of integrating young offenders, and not their marginalisation and social exclusion.
VIII. Outlook

- This goal is supported by constructive measures such as mediation, restorative justice and educational support to improve social skills and a multi-agency approach of co-operation of private and state welfare organisations as it predominately emerged in the last 25 years as a kind of European common sense of juvenile justice reforms.

- There is good hope and a realistic chance that neo-liberal approaches will disappear and the ideal of social inclusion and reintegration will be the Leitmotiv for juvenile justice reforms of the 21st century.
References


Thank you for your attention!

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