Training Course on Juvenile Justice for Officials from Albania

Sion Seminar 2006

Jean Zermatten (Ed.)

Working Report
1 - 2006
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This working report presents the various conferences of the Sion Seminar, held in Switzerland from April 24th to 28th 2006

Working Report
1 - 2006

Organised by
Institut International des Droits de l’Enfant (IDE)

In collaboration with
UNICEF ALBANIA
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INTRODUCTION

Mr Deputy Minister of Justice,
Dear Leon Shestani, Representative of UNICEF,
Distinguished Participants to this seminar,

Fifteen days ago, I had the pleasure to attend a workshop on Juvenile Justice in Tirana, where some of you were also present. It was very interesting to have this event in Albania and to have the opportunity to meet with a lot of people involved in the Juvenile JUSTICE SYSTEM because I could learn a lot on the legal situation of your country in the field and I noticed the determination of many people to change the situation, in particular concerning the systematical use of deprivation of liberty, and to implement alternatives to imprisonment.

But as I stayed only for three days, it was not possible to have a very deep and exhaustive knowledge of your system, or to be able to advise people on what to do, what to change, what to maintain, what to improve. Anyway, I think that every country has to think and decide by itself on the way it wants to reform (or not) its system, because it has to take into account its own culture, traditional judicial system, particularities and the will of the people. No State can give lessons to another one and say, OK we have the best system, so you can copy it and implement it in your country...

If you are in Sion, it’s not for the purpose of copying an ideal system. I will present you after this introduction, the system of Switzerland, which is one system, but not the ideal one; as many others, it has its limits and defaults. But you are here to think about Juvenile Justice, and that is important in the perspective of your country and the changes that you are working on with the proposition of amendment of the Criminal Code and the Criminal Procedure Code too. Our role as an Institute is to help you to have this reflection. So we will present you some lectures, on the principal problems a State has to face when in the phase of changing; but we will be more concrete with a programme of visits of institutions, all different, but all with some similarities: the common belief in rehabilitation, let me say better, in education. You will not see policemen or guardians, you will see specialized social workers acting inside the institutions and you will see closed institutions, semi-open ones, and very open facilities. And you will have the opportunity to ask all the questions, even if provocative, because people are used to it... And I hope you will learn a lot.

Distinguished Participants,

Actually, we have an important set of international instruments in the field of Juvenile Justice and I will have the pleasure to present you how the standards function, later. But one evidence that comes out of these Conventions, Rules, Guidelines and Minimum Standards: the international community intends to alleviate the harshness of traditional systems of Justice. These systems are characterised by the emphasis given on retribution / repression, and the principal manifestation of this harshness is the extensive application of deprivation of liberty either in prisons or in closed institutions.

We can ameliorate the conditions in prisons and jails; we can separate young offenders from adults, improve the quality of food, have a lot of channels on the TV programm... and keep imprisoned adolescents more busy. But it remains prisons and jails and a very harsh answer to offences which are sometimes very serious or serious, but the vast majority of these young
people commit offences that are relatively minors, or even petty. So the concern at the international level is to reform the systems and apply more social and pedagogical measures instead of deprivation of liberty. And for me, it’s clear that a majority of the juvenile need not to be detained, or only for very short periods of time.

Here intervenes the concept of diversion: diversion means to go out of the judicial proceedings and to find other methods to respond to juvenile delinquency. This concept is also derived from international standards. Diversion has many advantages:

- it reduces the intervention of the overcrowed courts
- it gives a possibility not to stigmatisate the young by the trial
- it permits to find social / educational answers
- it limits the use of deprivation of liberty (last resort)
- it spares money...

But it needs to be set in the legislative framework of the Juvenile system and to be clearly regulated, in order to avoid discretionary power, paternalism, favoritism or corruption. It must be in line with the procedural rights of the child, in particular the right not to agree with diversion and to ask for trial, or the right to appeal.

Furthermore, diversion needs to have other possibilities or other responses; it’s not possible only to divert. We must divert from something to another thing. If we want to divert the young offenders from the prison, we must have infrastructures and social answers ready to be able to tackle the problem. For example, if I want to avoid the imprisonment of the young B. for stealing a bike, I must give the judge the possibility to make something different (probation, Community service orders, fine...), not only to renounce to intervene. It’s possible to renounce and to forgive in certain exceptional circumstances, but in a majority of cases, a need for social answer exists, but without prison.

The possibilities offered by the Juvenile system are often called alternatives, because they are another way to deal (they altern) with juvenile delinquency. The two main alternatives proposed on the international level are:

- Community Service Order
- Mediation.

But other possibilities do exist, linked to the country, the culture, I think in particular of all “conferences” possibilities existing in countries where the community as a whole is in charge of solving the problem of the young who comes into conflict with the law, expressing social reprobation and trying to find a reintegrative solution for the accused not to be excluded by its behaviour.

All this movement is named “Restorative justice” and emphasizes the necessity for the offender to face his/her act and to be confronted to the victim (person) or the victim globally (the society/community), or both.

I think also important to mention that diversion, alternatives and restorative justice are a very innovative way of thinking; however, they cannot solve all the situations and if we agree on the necessity to alleviate the harshness of the juvenile system, and if we advocate for “softer” answers, we have to take into consideration the legitimate concerns of public security. In Europe, in this moment, we have a new trend in direction of more repressive measures (France, Spain, England) because of the fear of violence (see the “hot autumn” France 2005)
or justified by terrorism. Although it’s clear that violence is increasing, also in Switzerland although to a lesser extent, we must not forget the basic principles and believe only in deprivation of liberty as the solution to all problems. We known that this new situation is not the fact of the young generation, but finds explanations at another level: economical situation, poverty, unemployment, migrations, and changes in traditional values...

So a State has to make the **balance between protection and control**; and it’s not very easy, because you have, on the one hand, the pressure of the public, the media, and the victims who often ask for severe punishment; and on the other hand, you have the evidence:

- The child is a being in development (cognitive and psychosocial immaturity)
- Children’s needs are different from the needs of adults
- A young is a malleable being with high rehabilitation potential
- Delinquency is to be seen as a transition, not as a chronicity sign.

Finally, what I want to add is the following: you must not see the Juvenile Justice system only as a court, or a judge, or a prosecutor. And the JJS cannot be reduced to situations where a conflict with criminal law has arisen. It covers many spheres including delinquency prevention, law enforcement and adjudication and rehabilitation. Consequently, it is not a legal issue but also a **key area of social policy**.

**The JUVENILE JUSTICE SYSTEM is a very complex system** built and interconnected with others systems. It’s linked with

- Police
- Social services
- Medico-legal system
- Education system (schools)
- Institutions
- Prisons...

There are many players in the game and the difficulty is to find how to play together...

My last remark, before we start with the presentation is about change: legal reforms and creation of legal institutions are very important in the process of going from one system to another. The problem: all legal reforms take time; but all action can’t wait for these reforms to take place. In a certain sense, we have two possibilities:

- to examine precisely the legal system and see where it’s possible to use it with a new mentality or with very partial changes,
- to develop and implement pilot projects at local level, while in the meantime the total/partial amendments are achieved.

It’s a question of urgent needs, more than of strategy.

Sion, April 2006                  Jean Zermatten, Director
WELCOME SPEECH FOR THE REPRESENTATIVES FROM ALBANIA

Christophe DARBELLAY, President of the IDE

Honorable Deputy Minister of Justice, Mr. Vladimir Kristo,
M. Judge, Ilir Panda, Deputy Chairman of High Council of Justice,
M. Member of the Parliament, Sali Shehu,
Dear Mr Leon Shestani, Representative of UNICEF,
Distinguished participants,

On behalf of The Institute for the Rights of the Child, located here in this pretty city of Sion, I would like to take this opportunity to thank UNICEF for creating this event (or joint-venture) inviting a delegation of high level responsible of Albania in the field of Juvenile Justice to come here for “Best Practices and Visits” on the topic of Juvenile Justice. As many of you know, IDE has been involved in juvenile justice in many countries for the past six years and we have received many delegations from many countries. Today, we are provided with another country and opportunity to work with you and embark in the process of shaping a solid juvenile justice system that brings internationally recognized standards in the field to the Albanian reality and its aspiration to become a member of the European Union.

Juvenile Justice is very well equipped with international standards, since we have a lot of instruments dealing with the problems of the young coming in conflict with the law. Naturally, the principal instruments is the Convention on the Rights of the Child, to which Albania is a signatory, but we have also the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the new Guidelines on Justice for child victims and witnesses of crime. All this rules provide a comprehensive framework of juvenile justice. And from these rules, it’s possible to find out some core principles that can be summarised as:

- The necessity to protect the dignity and the well-being of the child and ensures that any reaction to juvenile offenders shall always be proportionate both to the circumstances and the offence;

- The promotion of the child’s re-integration and the child’s assuming a constructive role in society;

- The establishment of a minimum age below which children are presumed not to have the capacity to infringe the penal law;

- The development of alternatives to deprivation of liberty or institutional treatment or care (in particular in pre-trial detention) to prevent the negative effects of imprisonment and isolation;

- The necessity to deal with children, keeping them in their own community as far as possible. If detained in jail, they shall be in contact with their family;

- The control of strict conditions of imprisonment, such as separation from adults, education and possibilities to work or to be occupied, measures when they are released for appropriate help and support;
- The obligation to select and train qualified personnel available in all elements of the system (not only in the courts);

- The idea to tackle the problems before the young comes into conflict with the law: it means to emphasize the prevention, that requires efforts from society as a whole and not only from so called “specialists”. The role of the family and of the school system is of paramount importance.

The main problem facing States in the process of changing a law is to find its way, respecting its culture, its history and the political will of the citizens. But one problem is common to all States: how to avoid the destructive consequences of the uncritical use of deprivation of liberty? Many countries have the same problem. The answer is surely in looking at alternative measures to develop both public safety and responses to juvenile justice offenders that respect their rights and their best interests.

In concluding my intervention I would like to express the full commitment of our Institute to give you the best hospitality in our canton of Valais. As you know, the official part (lectures, visits, and workshops...) are important; the people coming to give you lectures or the institutions you will visit are very good ones and we have tried to shape a well-balanced programme. But beyond the academic part, I hope you will also find a convivial part, because, I do believe in the importance of persons and relationships. And the Valais is a wonderful place to make contact.

So ENJOY your stay in Sion, Valais, Switzerland!

Thank you for your attention and have a fruitful seminar.
THE SWISS LEGAL SYSTEM FOR YOUNG OFFENDERS
Jean ZERMATTEN, Director of IDE, former Juvenile Judge

The Swiss Juvenile Justice System

The presentation plan

1) The sources

2) Law of inspiration “welfare”

3) Distinction between juvenile delinquents and juvenile endangered

4) The ages of intervention and the conditions of place and some figures

5) The objectives

6) Catalogue of the measures and the penalties

Introduction

In Switzerland, we are now in a rather difficult situation, since the Parliament adopted on June 20th 03 the new Law on Juvenile offenders (Federal law on the penal condition of minors).

For the moment (actual law) we are always applying the the ancient rules, but we have to think “future”; and future is the new system, that will enter into force in 2005/6.

For this presentation, I will give you not all details, but give you basic informations on the choice of the swiss legislator, when he thinks about juvenile delinquency.

You have to understand that no national system is perfect and that every Country has to choose the best model for it, depending from the culture, the historical context, the religion and the practical possibilities too, to implement such a device.

What I will do, is to present you the principal questions a State has to ask, and the way Switzerland answers to this questions. It's not the perfection, and I will show also some criticism about the answers we give. The purpose of this presentation is to give you information first, and opportunity to think about.

And last remark. But a very important one, we can imagine the best model, the best system, the best theoretical context. But, the principal is to forge links. Because the judicial system is a legal frame and reference, but it can work alone. In this field, the collaboration with all the others services involved is determinant. I will say, first of all: the police; then the social services; third all others partners: educators (schools), doctors, psychologists, psychiatrists and so on. And it takes time to forge this links and to have success in collaboration. Because, it's not very simple, for the judicial system, to have partners…
1. Sources

For juvenile delinquents, in Switzerland, the material law is federal law, and the procedural law is cantonal. The organisation of the courts is also dictated by the Cantons.

The difficulties for a foreigner to understand the Swiss system lie in the fact that there are 26 different systems… are accordingly champions in comparative law…

But one can say that the system, even if different, works on a welfare-oriented model and that the different authorities apply not exactly the same rules, but rules which have the same spirit and focus on the same goals.

You will find the material law in the Swiss Penal Code (Art. 82 to 99 CPS).

However a project of a new law is before the Parliament and would enter into force in 2005 (probably). It's a specific law for young offenders, which comes out of the Penal Code to constitute a separate law (Loi fédérale régissant la condition pénale des mineurs),

2. Welfare inspiration

In the world, there are three models that inspire the juvenile court's systems:

- the Welfare Model
- the Justice Model
- the Restorative (Justice) Model.

Briefly, the Welfare Model puts the emphasis on the person of the young offender. The latter is seen more as victim than as an offender: victim of his family, of his history, of his environment, of his immaturity, of the hazard of care…. So, the justice does not have to punish him, but to look for the causes of his behaviour and to act on them. The principal answer to the offence is not a sanction, but a measure. The question of the responsibility isn't important. The model of the Model was the French legislation of 1945, still in function, but adapted several times since its entry into force.

The Justice Model, on the contrary, is based on the idea of a young offender responsible of his acts and who has chosen to “malpractice”. So he has to pay in the form of a retributive punishment. In the model the rights of the young are very developed, but not the possibilities of taking care. The question of guilty or not guilty is the central point of the trial. If this model goes until his last logic, it means the end of the specific courts for juveniles. This system is used principally in countries with a long tradition of common law.

The Restorative Justice Model goes from the idea to re-integrate the victim in the process and from the other idea of reparation. The young offender has to face his victim(s) and to do something in order to repair his fault. These two ideas are important and it's a fact that during a long time, the victims have been forgotten. With this model, the Mediation and the Service Community Orders appear and become more and more applied. There is no “only” Restorative Justice Model but we can mention that the Austrian law for juvenile (1988) is based on Mediation.
Switzerland has chosen a welfare-oriented system because
- we have given judges the mission first of all to look at the causes of the offence and to treat them in order to avoid recidivism,
- we have given priority to measures before penalties,
- we believe in the possibility of a young delinquent to modify his behaviour, to become better and to come out of delinquency,
- we think that the juvenile court system is very important in prevention.

But we have also elements from the Justice Model, with the possibilities of disciplinary punishments (fine, limited deprivation of liberty) and elements from the Restorative Justice Model with the introduction of Community Service Orders (since 1971) and mediation.

3. Juvenile in danger / Juvenile delinquents

In our country we have established a clear distinction between juveniles in danger and juvenile delinquents.

The juvenile in danger are all the young people in difficult circumstances they don't have acted against the law.

The juvenile delinquents are the young persons who are alleged to have committed an offence according to the Swiss penal code (or other federal laws).

For the first category, the competence to intervene belongs to the civil authorities (tutelary authorities). The system is very difficult to describe because of federalism. In certain cantons, the authority is centralised (Geneva) in some others, they are district authorities (Vaud) and others, like in the Valais, it's a municipal authority which will take judicial decision of protection, with the help of social services.

For the second category, the situation is easier to understand: it's the Juvenile court which will deal with the juvenile delinquents. As said before, is the systems are different, the spirit is the same and the methods of intervention are very similar.

4. The ages of intervention and the conditions of place and some figures

Conditions of age

In Switzerland, we have a very low age of intervention: 7 years. It was justified, at the moment of the adoption of the law (1942), by the necessity of taking care of the child who committed acts against the law; only measures could intervene. In the new law adopted before the federal Parliament, this age will raise to 10. It remains low, yet with the consideration of protection's measures.

We have a category named “children” (7-15) and another category named “adolescents” (15-18). The new law will abolish this distinction and have only the juveniles (10-18)
Now the situation of ages is:

- **O-7 years old**: absolute irresponsibility; if offences: civil authorities
- **7-15 years old**: limited responsibility: no fine and deprivation of liberty possible
- **15-18 years old**: relative responsibility (fine and deprivation of liberty possible)
- **18 years old**: majority (civil, civic and penal)
- **18-25 years old**: young adults: the competence belongs to the common courts (adult courts, full responsibility but watered-down intervention)

**Conditions of place**

- **Inquiries**: place where the act is committed
- **Judgment**: place where the young lives
- **Foreigner**: rules can change. It depends if the young offender lives in Switzerland, stays on holidays (a lot of tourists) or is a migrant (with legal or illegal status)

**Statistics**

Number of minors **condemned** in Switzerland

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<tr>
<th>Year</th>
<th>Condemnations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>6'803</td>
</tr>
<tr>
<td>1991</td>
<td>7’278</td>
</tr>
<tr>
<td>1992</td>
<td>7’357</td>
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<td>1993</td>
<td>7’930</td>
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<td>1994</td>
<td>8’243</td>
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<td>1995</td>
<td>7’983</td>
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<td>1996</td>
<td>8’900</td>
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<td>1997</td>
<td>9’364</td>
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<td>10‘131</td>
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<tr>
<td>1999</td>
<td>12’238</td>
</tr>
<tr>
<td>2000</td>
<td>11’314</td>
</tr>
<tr>
<td>2001</td>
<td>12’319</td>
</tr>
<tr>
<td>2002</td>
<td>12’854</td>
</tr>
<tr>
<td>2003*</td>
<td>13’483</td>
</tr>
<tr>
<td>2004</td>
<td>14’163</td>
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Number of minors **denounced** in the French speaking part of Switzerland

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<tr>
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<th>VD</th>
<th>GE</th>
<th>FR</th>
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<th>JU</th>
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<tr>
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<td>*</td>
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<td>963</td>
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<tr>
<td>1994</td>
<td>928</td>
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<td>201</td>
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<td>2003</td>
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<td>320</td>
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<tr>
<td>2004</td>
<td>1'374</td>
<td>3'995</td>
<td>1'974</td>
<td>1'948</td>
<td>1'122</td>
<td>469</td>
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<tr>
<td>2005</td>
<td>1'371</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

**Changes in the Type of Offenses Committed**

- **a) Property offenses**
  - 1990: 4'410 convicted juveniles, or 64.8 %
  - 1997: 5'785 convicted juveniles, or 61.0 %
  - 2000: 5'052 convicted juveniles, or 44.7 %
  - 2003: 5'908 convicted juveniles, or 43.8 %

- **b) Offenses against the physical integrity**
  - 1990: 181 convicted juveniles, or 2.5 %
  - 1997: 653 convicted juveniles, or 7.0 %
  - 2000: 798 convicted juveniles, or 7.1 %
  - 2003: 1'729 convicted juveniles, or 12.8 %

- **c) Drugs-related offenses**
  - 1990: 767 convicted juveniles, or 11.0 %
  - 1997: 1'609 convicted juveniles, or 17.2 %
  - 2000: 4'461 convicted juveniles, or 39.0 %
  - 2003: 5'935 convicted juveniles, or 44.1 %
5. The objectives of the law

Main objectives are:
– Educational
– Curative/care
– Preventive

Secondary objectives are:
– social integration
– protection

These objectives are cumulative. In most of the procedures towards children and teenagers, these objectives should be applied simultaneously. Thus, it would be wrong to achieve these objectives in an independent way.

Then, it is necessary to remind that the juvenile justice distinguishes itself from the common criminal law and that is especially in the three main objectives of the juvenile justice that lie the differences from the adult law. As it is known, this last one focused especially on bringing a retributive and repressive answer to a delinquent behaviour, in order to dissuade the author but also every potential author to commit the same act; this deterrence is based on deprivation of liberty. The juvenile justice is based on different principles: the minor, author of offences, is not necessarily guilty of the committed act; he may be a victim of his family, his environment, his age, his immaturity, of the absence of care... His act brings thus another significance and certainly a different meaning. Considering this object, the punishment does not have to be taken into account in the first place. The understanding and the meaning of the act and the socio-educational intervention are the privileged means of answer, before penalties.

The main objectives

5.1. The educational objective

Juvenile justice aims to raise awareness. The committed act violates a legal standard, one of the values that society intends to protect. The law thus has to serve the education by making the juvenile aware of this fact and of the existence of limits. Education = reminder of limit.

The issue is:

a) showing the minor that his act violates the law because objective and subjective conditions are realized. Announcing him the rule and at the same moment the significance of this rule and its reason for being.

b) Showing the minor the consequences of this act for society or for third parties. This is very important in case of offences with victims, even more important in case of offences without victim endangered (road traffic) or the offences against himself (consumption of drugs).

c) The possible results of the act: the necessities for a legal response and the redemption, but also to show that such action leads to such a social answer.
How do you raise awareness? By a single instrument, not specific: the speech. The magistrate in the situation has to explain, to convince, make to understand, to demonstrate. Of course, he inevitably has to get in direct and personal contact with the minor. We understand better so, why hearings are essential in all the procedure of judicial intervention against minors.

5.2. The curative objective

The offence does not have to be treated for itself, but for its meaning. So, it is essential, as soon as the first contact with the minor is established, not to be limited to the facts’ establishment, but to try to see what the facts really mean. It is thus a very important task for the specialized magistrate to look at the causes of a behaviour and not to act on appearances. This important and determining task leads to split the preliminary investigation’s operations into two parts. The inquiry on the facts and the inquiry ad personam. This division of the preliminary investigation’s tasks is not required by law.

The juvenile judge must not have to react against a behaviour, but has to interpret an action or a series of actions by replacing them in the story of the author, the family context and the perspective of a possible future. At the end of this inquiry ad personam, the judge takes a decision. Curative: this adjective contents the notion of care.

How can the judge take care of (look after)? What kind of means does the law have? By qualified educational measures, either ambulatory, or institutional.

5.3. The preventive objective

We thus speak here about special prevention which is a prevention based on a social answer which takes into account not global considerations, but the author’s characteristic data in order that he will not commit an offence again.

What kind of means has the juvenile judge at his disposal to reach the preventive objective?

− On the one hand, measures which also aim at preventing the minor from repeating an offence.
− On the other hand, punishments called “disciplinary” to discourage minors to repeat their delinquent acts. It is thus up to the judge, in the range of the foreseen penalties, to choose the one which will be the best adapted to the author’s individual situation and which may keep him away from beginning again.

The secondary objectives

5.4. The social integration’s objective

The purpose is to allow the restoration of the communication’s links and to allow the minor to find his place (again) or to improve his position. This important work is viewed through the young delinquents’ socialization.
5.5. The protective objective

It is, at first, a welfare objective. The child-author is a victim: victim of his family or a member of his family, victim of the environment to whom he was confided, victim of abuse of power, victim of rules’ absence, and victim of abuses… So the act becomes a signal of alarm.

The juvenile justice offers then either the possibility of a direct action, by removing the child of the negative environment thanks to a foster care or institutional care; it also has the possibility of an indirect action, by notifying the authorities’ protection and by requesting from them the useful measures. Often, both modes of interventions, direct towards the minor and indirect towards the environment, take place simultaneously.

It may be then a protective objective towards society. It gets closer then to the common criminal law which insures the peaceful coexistence by forbidding behaviours which endanger the values necessary for this common life. It aims at protecting society from a certain number of attacks coming from young persons, which could put in danger certain values accepted by the majority of citizens and considered as essential in the social contract’s pursuit. The means at disposal are then all measures and penalties at disposal of the judge, with, in the extreme cases, the necessity of using deprivation of liberty, even to the measure of care in closed environment.

6. Catalogue of measures and punishments

Before, the enumeration of the different possibilities to respond to offences committed by minors in Switzerland, it is necessary to precise the characteristics of the measures and of the punishments.

6.1 Characteristics of the measures

- System said monistic: measure or punishment. In Switzerland, we have chosen the monistic system: we can’t deal with both measures and punishments; we have to answer the question “does this minor need help?” If so, we must treat and pronounce a measure, which excludes the possibility of sanction.
- So we have the subsidiary principle of the Priority of the measure.
- The measure has to be accepted: it’s a very important point, because an imposed measure has very few chance of success. We use a lot of time (and patience…) to discuss the possible treatment and to convince minors and parents to enter in the process of help and protection.
- The term of the measure is not fixed: this is sometimes a problem, because young people like to know till when the measure will be in force.
- The measure can be changed, in order to have every time an adequation between the needs of the children and the measure. We may change from an ambulatory measure to a residential measure and vice versa.
- Swiss speciality: postponement of the sanction, that is to say the suspension of the decision during a certain period of time, when the judge is not sure of the necessity of protection. The length of the suspension is fixed and the situation is followed by a social worker.

Catalogue of the measures: see Appendix I
6.2. Characteristics of the punishments

- Subsidiary with regard to the measures; monistic system. As we saw it before, we have, in the field of punishments, the application a contrario of the principle of priority of measure i.e the subsidiarity of punishment. Only in the case where the judge is able to decide that the young offender does not need to be treated, he is allowed to punish him.

- Educational contents: the Swiss law demands that the punishment aim to an educational response: this requirement is difficult to satisfy, in the case of deprivation of liberty, even if the law indicates that detention above one month have to be executed in institutions. It’s sometimes not realistic. In the field of Community Services Orders, the educational aim can be fulfilled; and this kind of answer has a important success in our country.

- The term is fixed: if measures are undetermined, the term of the sanction is known. It’s fundamental for the respect of the rights of the young offenders.

- The question of deprivation of liberty is an issue in Switzerland too. We have taken the option of short detention, since the maximum is one year. But in the project, this maximum will be raised to 4 years, for very serious crimes (murders, rapes…). The conditions for the execution (place, personal…) of the deprivation of liberty are very determinant in the concept not only to neutralize somebody, but to prepare him to a re-integration.

- Swiss speciality: the judicial forgiveness. The art 88 and 98 CPS give the opportunity to the judge not to sanction offences under certain conditions. It’s a sort of general principle of opportunity. In the juvenile justice, to possibility of having such a decision (or no-decision) respects the spirit of “primum non nocere” (first of all, don’t do to the minors wrong). In many occasions, the intervention of the police and the appearance before the judge are enough; it’s not necessary to punish the child who has learnt of lot in the preliminary phase of the intervention. Trial would appear as redundant.

Catalogue of punishments, see Appendix II.

Appendix I: Measures
Appendix II: Punishments
Appendix I: Measures

Educational measures

- Probation (educational assistance)
- Foster care
- Institutional care

Welfare institutions (with school)
Welfare institutions (with work or activities)
Welfare institutions with psychological help
Rehabilitation centre

Medical treatment

- Outpatient treatment
- Still treatment

Postponement of sanction

Appendix II: Punishment/penalties

Punishment

- Reprimand
- Community Service Orders
- Fine
- Deprivation of liberty

Deprivation of liberty

- Suspended
- Without respite

Reprimand

- Probation
- Control time
- Supervision orders

Forgiveness
CHILDRen IN SPeciAL neEd. ThE VuLNEraBLe gRoUp.
Daniel STOECKLIN, Senior Adviser, IDE and University of Fribourg

Many children “in conflict with the law” can also be seen as children “in special need”. Actually, most of the time children who adopt a behaviour that may entail them becoming labelled “in conflict with the law” have received no or little attention when they were “in special need”. In other words, if one doesn’t take care of children in special need one will have to deal with children in conflict with the law.

Children in special need are those to which UNICEF refers as “children in especially difficult circumstances”, and they include children traumatized by war, or natural disasters, and those living and working without parents (“street children”). There are also numerous children confronted to extreme poverty, severe malnutrition, forced prostitution, labor exploitation, or domestic violence. All these groups of vulnerable children are facing huge suffering which entails the highest risks to physical and mental health, among which the “Post-Traumatic Street Disorder” Syndrome (PTSD).

The Convention on the Rights of the Child has several articles that specifically address the problems and give recommendations for groups of children in particularly difficult situations1. These articles are the following:

Art. 19: Protection from abuse and neglect
Art. 20: Protection of children without families
Art. 22: Refugee children
Art. 23: Handicapped children
Art. 30: Children of minorities or indigenous groups
Art. 32: Child labour
Art. 33: Drug abuse
Art. 34: Sexual exploitation
Art. 35: Sale, trafficking and abduction
Art. 36: All other forms of exploitation
Art. 38: Armed conflicts
Art. 39: Rehabilitative care

The present paper concentrates on one specific category of children in a particular situation, the case of “children in street situations”, because this group is concerned with almost all the above mentioned articles of the CRC.

It must be stressed that, because of the conditions they have to face in their place of origin (be it a slum, armed conflict, sale, trafficking and abduction, etc.), these children are first of all vulnerable victims of adverse circumstances, and not just “delinquents”. If in order to survive, street children resort to deviant behaviour (like stealing, taking and/or dealing drugs), one must not forget that these children are first of all victims of harsh conditions and quite often abusive adults.

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1. The Problematic of Children in Street Situations (CSS)

The phenomenon of “street children” has economical, social and political causes that are differently combined according to the contexts. Nevertheless, with globalisation a tendency is that the structures of economic power have become transnational, challenging the role of the State (including in its responsibility towards the CRC), and overall competition is pressurising growing numbers of families in and at the boarders of the informal sector. Besides, massive urbanisation provokes overwhelming problems regarding social life, education, sanitation and housing, and slums are expanding without sufficient facilities.

For the children who have to resort to street life a typical familial scenario is under- or unemployment, or poor work conditions, mostly aggravated by alcohol and drugs, with children involved in diverse survival strategies, both legal and illegal ones, where they can be both leaders and victims. When the community is laminated by the fight for survival, any break-up of the family is critically affecting the status of the mother. There are numerous examples around the world, where the woman is forced to find protection with another man, who most often reacts to his own frustration of having no job with a violent behaviour. Many “street children” are children who have been rejected by a step-father or a step-mother.

While adolescents tend to “abandon” their family when they are mistreated, the situation of girls is far more critical, since gender issues prevent them from developing the same kind of autonomy generally allowed for boys. As a consequence, the risk of being driven to the underworld of physical and sexual exploitation is higher with girls than with boys. For the children, the alternative to a forced contribution to familial income and/or to abuse is to make a living on their own in the streets.

Poverty cannot alone explain life on the street: not all poor children go to live on the street. Causes associated to poverty and leading to street life are family break-up, domestic violence, but also weak knowledge of one’s rights, and weak access to the public space (political representation). Having no voice, slum children are mostly only considered once they have become street children, a public and visible issue, depicted as a public nuisance. This is how children in special need end up with the label “in conflict with the law”.

While the “deviant behaviour” of poor children and their families is punished straightforward, the economic, social and political factors behind them are most of the time left unaddressed. The phenomenon of “street children” is however closely linked with a crisis of social integration and vulnerability is in direct relation with marginalization and exclusion from access to basic rights. Therefore, one may see social integration as the main contributor to reduce the vulnerability of children. The question of a child’s vulnerability cannot be divorced from the question of distribution of power and good governance within societies that are engaged in a process of economic globalisation with ever growing disparities.

At the lower ends, ever more children are in distress and exploited by mafias and gangs, including grown-up former “street kids” whose choice has been joblessness or integration in the adult criminal underworld. There are also cases of children physically eliminated by vigilante or deaths squads that are hired to “clean up the streets”… Others operations of confinement are organised by the police, especially before international events for the sake of the country’s image and reputation.

Social and economic reasons force children to swing between domestic violence in the slums and public violence in the street. These children move between these two worlds. It is
therefore very difficult to draw up reliable statistics, as these children are highly mobile. They are not always on the street, they may also be in prison or institution, back with their families for some time, attending activities in some project, or even moving from one city to another... This is why it is very difficult to give an exact figure for children in street situations. People talk of the same children using different categories – “children of the street”, “on the street”, “homeless”, “abandoned”, “in conflict with the law”, “in especially difficult circumstances”, etc. These often overlapping categories cannot be compared or unified, so it is impossible to give exact figures regarding “street children”.

But the real problem is not the difficulty to count “street children”, it is the label “street child” itself! We prefer to use the expression “Children in Street Situations” (CSS), since the problem is not the children but the situations they have to face. The diversity of situations is actually important. In the countries where I have been working, the different street situations were influenced by some main macrosocial factors, like: post-conflict situation, bonded labor, police repression, prostitution, drug trafficking, forced begging, unregistered births and child-trafficking.

Calling all these children “street children” is like ignoring the huge differences between situations like war, domestic violence, or prostitution, and the “street children” is therefore discriminatory generalisation, pointing at some kind of parental failure. It is like saying that their mother is the street, a space associated to negative images of danger, dirt and vice, which is close to discrimination against a group of children which is actually condemned by Art. 2 (point 2) of the CRC: “State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.

In order to put an end to this discrimination and the associated violence these children have to face, it is essential to assess the children’s quality of life by encouraging them to express their own opinion, because this helps identifying the children’s different situations and act accordingly. Listening to the children is a prerequisite to understand the social dynamics affecting them and consequently empower these actors to improve their own realities. It requires that we also cast light on those who are in contact with these children, because they are part of the problem.

When they speak of these children, people usually analyse the situation using their own values, positions and interests. For some, such children are bandits, for others victims. Some exaggerate statistics, and this may increase the feeling of insecurity, which they will use to justify “cleaning-up” the streets. Others underestimate the problem or simply censure the topic. Therefore, the “street child” doesn’t exist: it is a social construction (made of different points of view on the situation, with a specific point of view becoming predominant). This process of labelling “street children” is in fact part of the “difficult circumstances” these children have to face.
2. Situations of vulnerability

Street life is a question of the quality of the existing interactions between the children and the people surrounding them, both in and outside the street. This approach, looking at interactions between people more than at the socially constructed “categories” of people, is essential to address the issue of vulnerability. In fact, all children are vulnerable, so the question looks rather like the following: how do we define and deal with a child’s vulnerability. It is probably better to speak not of a particular “vulnerable group”, but rather of “situations of vulnerability”. The concept of “situations of vulnerability” puts emphasis on the social factors that may enhance or on the contrary hinder a child’s exposition to difficult circumstances.

So the question is rather the following: among the push factors or “difficult circumstances” which ones lead children to survive in the streets? The combine of difficult circumstances that are conducive to street life are concerned with the following major issues: legal status (identity papers), economic power, relationships (family situation; social network), social norms and cultural values (Socialization), discrimination (Gender, Ethnicity).

However, the relationship between what is often seen as a major “difficult circumstance” (poverty, family violence) and street life is not automatic. The child choosing to leave his/her family is less vulnerable than the child who stays and continues suffering with almost no defense strategy. If it was only poverty which would push children into street life, there would be several hundreds of millions of “street children”, and this is by far the case. In fact, it takes multiple factors for a child to become a “street child”, and there are not only “push-factors” but also “pull-factors”, the ones who attract children in the street (motivation, identity, games, sense of freedom, etc.).

Attention should be paid to the active role that children are playing when they are “making sense” of what is happening to them. The CRC recommendations and measures to be taken regarding children living under especially difficult circumstances can only be better translated into practice if one considers the child as a “social actor”. The child is not just a passive recipient neither of violence nor of protective measures. The child is actively defending him/herself, with more or less efficient strategies.

Vulnerability in this perspective could be viewed as situations in which the actor is victim of harm with no remaining possibilities to defend him/herself. These possibilities include institutional structures (family, education, law, etc.) and personal skills (cognitive competences). In this perspective, situations of vulnerability are to be found where weak personal skills do not have any chance to resist the adverse effects of weak institutional structures. The case of children in street situation clearly shows that while some children are strongly victimized by others and by adults, some children have on the contrary developed strong competences and developed complex strategies in order to overcome adverse and quite painful situations.

The situation must therefore be addressed considering the negative and positive elements (among which the child’s own competences). Whether a child’s capacities are used for the good or for the bad must not be the sole consideration: we have to consider children’s levels of capacities in a prospective way. This requires is acknowledging and accompanying them in (re)directing their capacities in the right direction. A youngster who is able to lead a group in the street could also be able to play a major role in the making-up of a film, or a theatre
representation where children’s rights would be addressed, for instance. This “re-direction” or “transposition” of capacities depends above all on the quality of intervention.

With this perspective of interactions between people, emphasising the relationship between a personal situation and the social environment, one gains insight in the notion of vulnerability. In this sense, vulnerability is the result of situations in which the actor is victim of harm with no remaining possibilities to defend him/herself, either because of weak personal skills, or because of weak institutional structures, or both at the same time. The nature of the balance between personal and institutional capacities informs far more on the intervention required than solely the “deeds” observed, or often “attributed” to a certain category, like “street children”. This perspective is believed to be closer to the consideration for the child as a subject of rights (CRC) and also more constructive and practical for concrete implementation of the CRC. A certain number of recommendations can be drawn from this.

3. Recommendations

Preventative and promotional options have to be stronger, because, with the decrease of the public sector in a globalized economy the problem is likely to worsen. Inadequate educational policies – direct and indirect costs of schooling, lack of vocational training – and an exceedingly rigid juvenile justice system are conducive to massive institutionalisation of children in conflict with the law, with legal texts that are frequently not fully implemented.

Street life is made of different major social, political and economic factors that combine, where the child’s active role is just a part of the situation. It is therefore not in line with the CRC to concentrate only on the latter when the child has committed an offence and is labelled as “in conflict with the law”. One must consider the dynamics of deviance with children in street situation: in the beginning, the child commits petty crimes just to survive, then, as he is already branded a “criminal”, he takes on the role of a true delinquent and ends up specialising in this career.

This mechanism of “secondary deviance” (reinforcing deviant behaviour as a result of the initial social reaction) is documented in numerous studies of sociology and criminology, and explains why confinement may have the adverse effect of pushing children to take back to the street… On the opposite, it is promotion of children’s rights which may help giving them other opportunities to make a living than the ones offered by street life.

Corresponding to the articles of the CRC, a new attitude towards “children in street situations” requires considering the child as a “social actor”. In other words, as a subject of right, the child who lives in a street situation has the same right as any child to be listened to. This must not only be with regard to offering a response to his needs, but also with a more positive consideration for the competences he has already acquired (even in the street…), because these capacities may also be transformed in positive competences that are part of the solution, provided they are first acknowledged and then accompanied in the right direction.

The strengthening of social integrative structures (family, school, work, leisure activities, sports, associations, etc.) could in this way also benefit from the children’s own input, as they would in this way also be actors of social integration and not just passive recipients of direct and/or redistributive social investments and corrective measures.
RESILIENCE AND RESTORATIVE JUSTICE

Renate WINTER, International Judge at the Special Court of Sierra Leone (SCSL)

It took many centuries until the juvenile justice system had separated from the overall justice system, acknowledging differences in behaviour and needs between adults and children facing the penal law. It still took from the beginning of the 20th century until now to find, discuss and check strategies and tools to come to terms with this special group of children of special vulnerability.

It was first the welfare system, addressing these needs, the judge taking the role of a father knowing best what to do with a person without responsibility, taking into consideration his/her interests, but denying him/her basic procedural rights. It was then the retributive system to continue, trying to solve a violation of the law by punishment, counting on deterrence and forced education, while at the other hand granting due process.

Neither of the two systems were implemented ever in a radical way, completely excluding the other (at least in theory), but none could solve the underlying problems of children, those that caused the infringement of the law in the first place, as the interconnection between the three parties involved, the victim, the offender and the community, where both of them have to live, was not taken into consideration, nor was the capacity of a child addressed, enabling him/her to “pull himself/herself out” of a threatening situation. Thus almost no mechanisms did work to prevent re-offending. (Deterrence did not, as children most of the time- adults as well, by the way- will not think about long term consequences in a difficult, threatening situation).

Resilience and restorative justice now try to fill the gap.

Studies have shown that identical twins, having similar genetic material, similar upbringing, similar environment, still can develop differently, one of them apparently having the capacity to resist traumatisms and to develop healthily, focusing on a positive future, the other one lacking this capacity. The first one is resilient to destabilizing situations, the other one is not. How comes that the first one has found this/her way to oppose negative influences, strongly fighting his/her way for a solution to imminent problems, finding a positive way of overcoming bad situations while the second one has given in, going for the apparent easy solution, infringing the law? Wherefrom did the first one take his/her inner strength?

The answer the studies found was so simple that first nobody believed it, even if everybody would confirm according to experiences in the own childhood. The answer was “love and interest in a child”. All twins of the first category, the non-offending one, had contacts to one person caring for them. “One person plus” as was formulated. This person made the difference, enabling the child to develop mechanisms to positively cope with difficult situations through assisting the child in finding out about his/her proper talents, gifts, and skills.

Academics used these findings to develop the theory of “resilience”, put in practice first by poor countries that had only very limited financial means to invest in a functioning justice system.

People of Brazil developed the “Casita”, the little house, to show how to assist a child involved in a difficult situation to overcome problems and not to fall into the trap of
offending for easy money (easily lost afterwards...). The important message the “Casita” brings us consists in denying that “justice” is the first answer to a child with problems. The justice system forms the “roof” of the little house, not the entrance door. The entrance door is the acceptance of the individual child, full acceptance! (Not of course the acceptance of offending behaviour!). When the ground is led, the elementary material needs are satisfied, one should search to find out about the informal network, every single person disposes of. Is there somebody in the family, among friends, neighbours, who would care for the child, assist, collaborate? If so, the child would be helped to discover some meaning and coherence in his/her life, to overcome the feeling of utter senselessness. When this first step is done, it is important to find out about capabilities, skills of the child and to assist in strengthening these capacities to prevent that the child, having had a lot of negative experiences in life, comes to the conclusion that he/she is good for nothing. No child is good for nothing, but knowing to be good for something helps to develop self-esteem, a precondition to be able to say “no”, if a person with influence wants the child to do something harmful, to infringe the law, to assist in a crime. Only if all these steps have been taken and no solution has been found, it is up to the juvenile justice system to react and to provide an adequate response.

In many cases the system of restorative justice can provide such adequate response. Restorative justice is not so much interested in the fact that somebody has violated the law. Restorative justice is concerned that a person, a relation has been violated and therefore wants to make the offender feel responsible for the damage he/she has caused, rather than declare him/her guilty. Thus punishment is not a primary issue, restoration and reintegration are the goals. As a consequence (and an essential precondition) the offender is not the main focus of the restorative justice system. As an offence always has a reason and as an offence always causes damage, to restore peace in the community means to bring victim and offender together, to establish a relation between them, by making the offender aware of the effects of the real damages for the victim, to give the victim the opportunity to articulate these effects (and to psychologically get to terms with them) and to provide the opportunity as well to the offender to make good as much as possible what has been done wrong.

Punishment is not the issue. Alternatives to punishment are sought! A juvenile justice system that takes into consideration the capacity to resilience of a child as well as alternatives to punishment such as mediation, community service, probation with the assistance of a probation officer to positively live through probation time and to restore instead of, during and after trial, has proven to be a very successful mechanism to assist the positive development of children initially in conflict with the law and to prevent recidivism, as the children were finally ready to understand their own problems as well as the problems they caused to others and to accept responsibility for it. Now, to understand, to accept responsibility and to repair have shown to be the best possible safeguards against recidivism.

It is thus no wonder that the majority of countries with modern juvenile justice legislation have incorporated resilience mechanisms and alternatives to punishment into their systems. Evaluation of their experiences proved them right. Pilot projects in countries adapting their system to international standards will prove again the conflict resolution capacity of this new (and in reality so ancient) system.
“CASITA”: The building of resilience

Attic

First floor

Self-esteem  Abilities skills  Humour

Ground floor

Capacity to discover sense, meaning and coherence

Informal social networks: first the family, but also friends, neighbours…

Foundations

Profound acceptance of the person (not behaviour)

Ground

elementary material needs
## Assumptions

<table>
<thead>
<tr>
<th><strong>Current System</strong></th>
<th><strong>Restorative Justice</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime is an act against the state, a violation of the law, an abstract idea</td>
<td>Crime is an act against another person and the community</td>
</tr>
<tr>
<td>The criminal justice system controls crime</td>
<td>Crime control lies primarily in the community</td>
</tr>
<tr>
<td>Offender accountability defined as taking punishment</td>
<td>Accountability defined as assuming responsibility and taking action to repair harm</td>
</tr>
<tr>
<td>Crime is an individual act with individual responsibility</td>
<td>Crime has both individual and social dimensions of responsibility</td>
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<tr>
<td>Punishment is effective threat of punishment deters crime, punishment changes behaviour</td>
<td>Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships</td>
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<tr>
<td>Victims are peripheral to process</td>
<td>Victims are central to the process of resolving a crime</td>
</tr>
<tr>
<td>The offender is defined by deficits</td>
<td>The offender is defined by capacity to make reparation</td>
</tr>
<tr>
<td>Focus in establishing blame or guilt, on the past (did he/she do it?)</td>
<td>Focus in problem solving, on liabilities/obligations, on the future (what should be done?)</td>
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<tr>
<td>Emphasis on adversarial relationship</td>
<td>Emphasis on dialogue and negotiation</td>
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<td>Imposition of pain to punish and deter/prevent</td>
<td>Restitution as a means of restoring both parties; goal of reconciliation/restoration</td>
</tr>
<tr>
<td>Community on sideline, represented abstractly by state</td>
<td>Community as facilitator in restorative process</td>
</tr>
</tbody>
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SOURCE: Adapted from Zehr (1990)
Principle of proportionality

Action

- Appropriate to circumstances
- Appropriate to child
- Appropriate to facts
- Appropriate to goals

Offence

Police

Prosecutor

Closure of the file without Reaction

Decision for mediation

Demand for a penalty

Judge

Mediation

Court session

Offender

- Compensation
- Emotional level
- Material level

Written contract/report to the mandatory (prosecutor/judge)

Mediation succeeded
- file is closed

Mediation not succeeded
- continuing court session

Victim
THE ROLE OF THE SOCIAL SERVICE

Christian NANCHEN, Director of the Children’s Protection Office, Sion

Introduction

Collaboration between the Juvenile Court and the Cantonal Children’s Protection Office

By adopting on May 11th 2000 the Law in favour of Youth (hereafter Lje), the Valais cantonal Parliament wished to modify the philosophy of child care in situations necessitating State intervention. Until this law was adopted, the traditional conception of children's rights in the Valais had indeed revolved around the concepts of protection and care to provide to the child. Thanks to the entry into force of the Convention on the Rights of the Child, a third, more positive principle appeared: participation. This principle is explicitly stated in the new Valais Law provisions. Thus, the new Law has meant to favour better social inclusion of youth. In its conception, it progresses from the general – promoting youth – to the particular – minor protection, special provisions, etc… This Law emphasizes the general principles that must guide any State action in the field, notably:

1) That responsibility of providing care, maintain and education to the child is foremost the parents' responsibility.
2) That any decision in compliance with the law must be taken in respect to the best interests of the child, as well as to the subsidiarity principle.
3) That the child has the right to freely express his/her opinions on any issue regarding him/her, according to age and maturity.

Any intervention must respect the subsidiarity and proportionality principles. Therefore, any decision taken in virtue of the present Law must intend to maintain the child in his/her family environment; every measure must be adapted to the pursued goal. Parents are invited to participate as actively as possible to the implementation of the provisions aiming at putting an end to situations compromising the security or development of a child, and preventing them to recur.

The Juvenile Court and the Cantonal Children’s Protection Office, created at the adoption of the Lje, are very often required to collaborate with each other. As a matter of fact, about 100 cases are tackled yearly by the Children’s Protection Office by mandate of the Juvenile Court. During such mandates, the Office's collaborators carry out various functions like:

- Drafting social evaluations to inform the judiciary authorities on the child's living conditions, notably about the socio-emotional support he/she receives.
- Educational assistance follow-up: counselling the youth and supporting his/her family system, when the Juvenile Judge has ordered such a measure for the youth, and give regular feed-back on the evolution to the judiciary authorities.
- Follow-up of institutionalization, one of the measures available to the Judge when situations crave that the youth be extracted temporarily form his family environment. The Office can be appointed to find an institution able to care for the youth. In such cases it will be in charge of informing the Judge on the evolution of the measures and on future prospects.
- This joint two-partner work has a key-word: collaboration. It is indeed not to be considered that the measures ordered by the Court have any results if those two bodies do not work in a respectful and interactive mindset. The purpose is to avoid that the youth, by his/her behaviour, find himself/herself again in conflict with the provisions of the Swiss Criminal Code. However, the Juvenile Judge is sole master of the procedure, and last resort decisions rated necessary for the youth are his/her competence.

- The Office can also be required to carry out expert reports by mandate of the Juvenile Judge. Reports are drafted by the specialized units: educational counselling, school psychology and psychiatry, in order to determine whether the youth directed to the Juvenile Court suffers psychological troubles, and to assess whether therapeutic measures should be ordered among the pronounced measures. About 40 mandates are appointed yearly to these specializes units. An important evolution in future years in this respect will be the increased recourse to psychologists and paedo-psychiatrists due to the implementation of the new Young Offender Law.

- We wish to emphasize the importance for Courts to be granted access to offices and specialized staff in child and youth protection. In our view, it is essential that these various specialists be gathered in a common service in order to avoid the dissipation of forces and competences.

**Presentation of a psychological evaluation and of a therapy following the judgement of a minor, in the context of a European Master’s in Child Rights**

**Psychological evaluation**

We present our psychological evaluation under this heading, indicating to the Judge:

- Our response to his request for a psychological evaluation of younx X
- Made to us on date Y.

And in order to carry out this evaluation, we need to:

- have x interviews with the parents and the juvenile
- have x interviews with the parents alone
- have x interviews with the juvenile alone
- and sometimes, x interviews with others (teachers, an apprentice-master, the family doctor).

**Reason for the request**

We remind the Judge of:

- the offences committed by the child or adolescent
- his/her present situation (in which school-year, or which degree of formal education)
- weather he/she has been placed in an institution
- …
Intellectual assessment

Intellectual Quotient test:

The results obtained provide a quotient:
- Verbal
- Performance
- Total.

Emotional evaluation

To arrive at this we use:
- various psychological tests: Rorschach, Thematic Aperception, Test …
- free-structured conversations, directed towards problems that are specific and significant to the child or adolescent
- questionnaires that give us a personality profile: anxious, depressive, aggressive type…

Perspective

At this stage of the evaluation, we are able to perceive:
- how the child or adolescent has experienced events since the court appearance
- his/her feelings of guilt concerning the acts committed
- his/her present emotional state regarding all this
- and the probability, or not, of recidivism.

Conclusions and Suggestions

Under this heading, we summarise the essential aspects of the evaluation, attempting a synthesis of the whole, and at the same time drawing attention to pertinent elements that have emerged during the process of evaluation. Based on this conclusion, we generally offer suggestions to the Judge. The latter may be very varied in nature.

Here are some examples:
- need for therapy for the child or adolescent
- importance of follow-up, not only for the child, but for the whole family
- placing the child in an institution
- education assistance for the parents
- …

After the Judgement: “special measures”

We usually work on:
- a building or consolidation of self-esteem for the child/adolescent,
- a word space
- an apprenticeship in emotional management
- individuation in all relationships
- an opportunity for the juvenile to take some distance from the family problem.
Family history of the child or adolescent

- Number of children in the family, rank, how do the siblings get on among themselves?
- History of the family, of the parents, their relationship as a couple (Close? Divorced? In conflict?...).
- General emotional climate of the household (tensions, type of communication ...).
- Problems specific to the family (illness of a parent, depression in the family ...).

Evaluation of the child’s or adolescents interpersonal relationships

- Relationship with the father
- Relationship with the mother
- Relationship with each sibling individually
- Relationships with friends
- Relationships with peers
- Relationship with teacher, educator, employer...

Social evaluation report of the children’s protection office

1. MANDATE
2. IDENTITY OF THE MEMBERS OF THE FAMILY
3. CONTACTS-PROCEDURES
4. OTHER SPEAKERS
5. PERSONAL SITUATION OF THE PARENTS
   5.1 History of the couple
   5.2 Mister
   5.3 Madam
6. PERSONAL SITUATION OF THE CHILDREN
   6.1 Child 1
7. HEARING OF THE CHILD(REN)
8. RELATIONS PARENTS – CHILDREN
   8.1 Personal realations of the child with his parents
   8.2 Collaboration between the parents
9. SYNTHESIS
10. PROPOSALS
THE WORK OF A JUVENILE JUDGE. THE IMPORTANCE OF COLLABORATION

Silvia TORRICELLI, a. Youth Court President, Lawyer, Lugano

According to the purpose of our legal system, a good collaboration with other persons or authorities involved in youth matters is of course fundamental for a juvenile judge to do his work well.

As you have already seen on Monday with Mr. Zermatten, the Swiss legal system for young offenders is special if compared to other legal systems, since it is much based on protection and education and is in some way different from other systems.

In fact, according to our legal system, the minor takes the main part in the proceeding, not the crime he has committed, therefore the sanctions have the unique purpose to prevent the personal recidivism and promote the social reintegration of the offender.

The collaboration with the police

The first condition for a juvenile judge to intervene is, of course, that a minor has broken the law; he has committed a crime or delict.
In crime I mean an act or an omission that under penal law constitutes an offence, according to the principle of no punishment without law.

Once the penal procedure has begun because the minor is suspected of having committed a crime, it is the police that, under direction and in collaboration and with the judge, does all the necessary things to acquire evidence against the minor: for example examine witnesses, do searches and confiscations, as well as examine at first the young offender.

In Switzerland only few Cantons have Police Corps specialised for minors, the so-called Minors Squads, therefore the policemen whom the juvenile judge delegates the investigations are the same who act in adult matters.

For this reason constant collaboration with the police is very important in order to respect from the beginning of the proceeding the educational purposes of our legal system.

Very often the first contact of a young offender with the police is also his first contact with the State in the sense of Authority. So what the police may consider a routine could be a crucial experience for the young offender.

I therefore think it’s not exaggerate to affirm that for the young offender the image of the Authority itself could also depend on the impression that the single policeman transmits him, in addition of course with the impression transmitted by his family and the school.

The collaboration between the police and the judge must then be constant and, parallel to the specific training, is then also important to promote privileged personal contacts between judge, police and the court’s social workers in order to coordinate strategies and to exchange know-how.
There is in fact a big difference between handling with an adult and a minor, especially by the examination of the offender.

And with “big difference” I don’t mean about the way a policemen has to write the record of examination, but the way he has to run the examination. This because there is a big difference between a 10 years old child and a 25 year old, but also between a 10 year old child and a youngster of 17 years.

The younger the minor is, the more one has to apply easy and comprehensible words so that the child under prosecution can understand what’s going on, be able to understand the questions and then be able to answer correctly and defend itself.

In fact, the personality of the minor depends a lot on his psychological development, his education, his social and cultural environment, and always more the policeman must be prepared to confront those situations.

Without forgetting that the policeman must also handle like a psychologist in order to understand the personality of the young offender, the environment where the crime was committed, the motive of the crime etc.

This collaboration with the police is then very important since crimes committed by minors, often very heavy ones, have increased in a preoccupant way. The causes of this increase are varied, between them the immigration phenomenon of the last 20 years, since many specific crimes are committed by specific ethnical groups. Other crimes are committed as an expression of juvenile uneasiness, as well as an expression of abuse of alcohol and drugs.

Furthermore, entrusts specialist in investigation activities, who are as well specialists in juvenile matters, can also be useful to plan general prevention and security actions.

**The collaboration on collecting informations concerning the young offender**

During the investigation or when the investigation is closed, the Swiss judge himself has to conduct a special investigation, this time not concerning the facts but concerning the offender himself.

This since, according to our legal system, the punishment or the educational measure must not only be decided by the judge on the basis of the importance of the crime committed by the young offender, but also decided on the basis of the needs of the minor and on his capacity and will to be reintegrated into society.

Before finding his verdict, the judge has then also to understand the reasons why the minor has committed the crime in order to intervene on them, by adopting the more suitable educational measure or punishment.

The sanction has in fact, besides the purpose to punish the minor for what he has done, also and principally, the purpose to fit the needs of the minor in order to avoid, through his complete reintegration, that the minor will break the law again.

According to the Swiss legal system the sanction has then to be individualized and its main purpose is the individual prevention by reintegration.

The reasons why the young offender has committed a crime are then to be searched as example in his social or family environment, uneasiness, cultural reasons, lack of education, lack of job-training, unemployment, in alcohol or drug abuse, social alienation, mental weakness or in further reasons that could have lead the minor to commit a crime.
The investigation then also concerns the personal, social and family conditions and eventually his physical and mental status.

But how can the judge then detect the needs of the young offender?

It’s called “Personality Investigation” and for executing it, the judge orders a formal investigation to experts in juvenile matters as to social workers, juvenile psychologists or psychiatrics, and so on, depending on the situation and the single case.

Usually the Youth Court itself disposes of an own special service composed of social workers with specific training that collect the requested information about the young offender, in cooperation with other youth services.

If necessary the judge can also order that the offender is placed in specialised structures for a while (usually three months) where specialists observe the minor, his mental health, his behaviour, his skills etc.

This kind of investigation is very important and according to our legal system could have the same value and importance than any other crime investigation act, for instance, the same value as a search, confiscation, and drug test.

Of course, the personality investigation is not formally ordered in every single case, there are many cases (the majority) where it is enough to take informal information about the minor and its living environment, but a formal investigation is always ordered when the judge considers that specific information about the young offender can be useful for his final judgement.

So the collaboration between the judge, his own social service and other persons directly involved with the offender is very very important in order to collect all the necessary and complete information about the offender.

The very first source of important and useful information about the young offender should be his family; I mean his parents and other people living together with him. Information about their way of life, educational principles, family rules etc.

But I said that this “should” be an important source since in practice it often happens that the family of the young offender doesn’t collaborate with the judge or his social service on providing important and useful information.

Actually, many parents are diffident on speaking about themselves and their family and find this kind of investigation an illegitimate intrusion on their private circle.

Many of them are also ashamed on referring about their own weaknesses or uneasiness specially, for instance, if they abuse alcohol, drugs or pills, or if they suffer any medical problems such as depression, desease etc., circumstances that anyway could impede an equilibrate growth of a child. Some parents also have the attitude to protect and defend the offender, justifying his behaviour, blemishing the behaviour of the police, Youth Court etc.

And of course only in very rare situations parents will admit they use violence, verbal or physical, against their kids for resolving conflicts or for having home rules respected.
And we all know, violence at home is a very big problem because it is statistics shown that many of young offenders that commit violent crimes against persons or property have themselves been prior victims of violence or abuses, especially committed by parents or relatives.

Therefore, since it is often difficult to collect information in the family circle, and anyway the information coming from the family usually is not complete, is also necessary to collect it elsewhere.

Important is then to have a good collaboration on sharing information with all other persons or authorities who are also concerned with the young offender.

For instance the school attended by the young offender can give a lot of information about his personality and behaviour as well as social workers who already followed the family, civil judge in case of separation or divorce, the employer if the young offender is already on job training, etc.

When needed the judge also requests the collaboration to psycho-socio health professionals by ordering expertises.

All the information requested by the judge is then collected in reports, and the case is then ready for judgement.

**The importance of Collaboration after the judgement**

As presented to you on Monday by Mr. Zermatten, our legal system foresee several kinds of punishments and educational measures.

**The punishments** are:

The **reprimand**, used in case of light offences and in case of first infringement of the law. The minor is formally admonished, by written or orally by the Judge. In case of new violation of the law, he will be punished more seriously. With the reprimand the judge can also prescribe a probation period and/or behaviour rules that the offender must follow.

The **fine** (up to about US$ 1’500), usually used in cases of small use of drugs or in cases of traffic offence. The condition for the fine is that the minor has already reached 15 years and is at work, since the fine has to be paid by himself by his income and not by his parents.

**Work service**, used in many cases (also when the minor doesn’t have an income) and very efficient in all those cases where the minors has damaged things or other’s properties, in case of thefts, etc.

The minor has to serve the number of work days decided by the judge in favour of community bodies or agencies, usually in hospitals, in elderly homes or by community administration services.

The work days can be split up in individual days of service: if the minor goes to school or works, he will do his community service during weekends or holidays.
**Imprisonment**: up to 4 years.
The institutions for detention have to provide educational and working programmes so that the minor can have an education and learn a profession during his staying in jail.
Furthermore he is also assisted by specialists if he has some personal or psychological problems.

Up to a sentence of 1 year of imprisonment, the judge can agree that the minor can expiate his penalty in semi detention, if he goes to school or has a job and his personal conditions let suppose that he will not commit other crimes. During the day he will then go out to attend or go to work and he will spend his free time in prison, evenings, weekend etc.

The penalty of imprisonment up to 30 months can also be suspended if the judge assumes that a suspended sentence is enough to prevent the minor from committing further crimes.

**The Educational/protective measures**

Can be combined with the punishments and the judge order them when, in base of the information he has about the minor, his family and environment, considers that the minor also needs an educational support as well if he needs to be followed by youth specialists.

*Minor’s watch*: the judge appoints a person or a youth service that monitors and watches the minor in his development and behaviour and reports the judge regularly about it.

*External support*: when the measure of minor’s watch appears not sufficient, the judge appoints a person, normally a trained social worker specialist in young criminal matters, who has to support the parents in their upbringing duties and assists and help the minor in his development, education, job-training and behaviour.
The judge can also confer the appointed person powers usually exerted by the parents of the minor, concerning education, health treatments, job-training and administration of minor’s income, limiting in that way the parents in their decisional autonomy.
The appointed person has to report regularly the judge about his work.

*Placement*: in the cases where the judge assume that the development of the minor is in danger if he remains in his family and social environment because the reasons of committing crimes have origins in his living conditions, the judge places the minors in small family communities or institutes.
The type of placement depends of the individual needs and personal problems of the minor. He can then be placed in a small family community, in an open institute or in a closed one.
To place a minor in a closed institute however it is necessary an expert’s report which indicates the necessity of this kind of placement and usually the minor placed in this kind of institutes is socially dangerous, drug or alcoholic addict or has mental diseases, and inside of the institute he will be followed by experts, and will follow rehabilitation programmes.

Also for what concerns the execution of the judgement the collaboration is very important for the judge because, according to our legal system, the judge is also competent for observe the execution and has to control that the judgement is executed in the right way.

For executing the punishments usually a collaboration is needed in case of a judgement concerning a work service, with the board or authority who will be charged on organising the days of work service the offender is committed to. For the judge it is in fact very important to
know not only if the work days were all done, but also the way they were done, if the offender behaved himself correctly, did well his duties, showed respect etc.

Also the judge, when he thinks that - to prevent problems - some aspects regarding the personality of the young offender must be shared with the board or authority charged on organise the work days, informs them about, as well as requests them a final execution report.

Also when the offender is reprimanded and the judge impose him a period of probation and/or some behavioural norm the judge would need a collaboration and in those cases usually collaborate with the family of the offender at the purpose to watch that what was ordered in the sentence is respected.

Of course, a good collaboration is also very important with the institutions where the young offender must expiate the penalty of imprisonment.

More important for the judge is therefore the collaboration in the execution of educational/protective measures.

In fact if the circumstances or personal needs of the offender change during the execution of any measure ordered, the judge can change it with another and more suitable one. And the same can be requested by the parents of the offender or by the offender himself.

Furthermore, the judge must of course also decide when to end the educational measure, because the purpose of the measure is reached or the measure is no more effective.

Therefore the judge has to observe and be in contact regularly with the persons charged of the minor’s watch, and the external support, but especially in case of placement in an institution. He has then to collaborate in exchanging information with the reference persons – educators, psychologists and other persons - charged in following and assisting the young offender in his staying.

The purpose of collaboration is of course to always be informed on what’s going on and to intervene at any time if needed, then also for changing a measure with another more suitable.

**The collaboration between penal and civil authority**

As we have seen, the juvenile judge can order educational or protective measures when a young offender is under penal proceeding.

But what happens when the penal proceeding is dismissed but the minor needs anyway a measure of protection or when the juvenile judge finds out the measure the young offender needs is not of his competence but is competence of the civil authority?

Our legal System forsees that both – civil and penal authorities – have to collaborate together in finding out which would be the best and most coherent measure to order, in consideration of the interests and needs of the minor.

So for instance, when the juvenile judge thinks the young offender needs measures not of his competence, informs the civil authority about the case and ask him to intervene by ordering a civil one, that could be for instance an educational stand, a custody or an institutional placement.

The juvenile judge can also propose the civil authority to appoint a tutor to the young offender to represent him instead of his parents.
In case he considers that the parents of the young offender are not able to carry out their educational and parental duties in an adequate way, the juvenile judge can also ask the civil authority to order some measures of protection also in favor of the brothers and sisters of the young offender, even if they haven’t committed any infringement of the law.

Furthermore, when the juvenile judge considers that civil measures ordered before the penal proceedings are still necessary, he asks the civil authority to maintain them.
The same happens when the civil authority renounces to order itself a measure of protection, and asks the juvenile judge to intervene at its place.
Therefore, besides the constant collaboration between them, both authorities also have to communicate each other their decision, in order to be always informed about their steps and assure a coherent proceeding.

Last but not least, a good collaboration and cooperation is of course also needed with the family of the young offender and all other persons who can be useful to stand the family of the young offender in all those cases where is found that parents also need a support to face and cope with their specific problems in a more realistic and effectively way.

Because any educational measure wouldn’t ever be completely efficient if the usual environment of the young offender won’t also change.

As you can see, the work of the juvenile judge must always be interdisciplinary in order to choose the appropriate form of intervention.
In fact an inappropriate intervention can lead to contradictory messages to the young offender and can generate problems in his future reintegration.

Therefore a good collaboration and cooperation is a priority and the wisdom of the judge can be enhanced by the knowledge gained from consultation, collaboration and cooperation with all those persons acting in favour of the young offender.

Without forgetting that a good collaboration, cooperation and exchanging know-how with persons generally involved in juvenile matter is also very important for general prevention.
INTERNATIONAL INSTRUMENTS IN JUVENILE JUSTICE
Jean ZERMATTEN, Director of IDE, former Juvenile Judge

PLAN
1. Part I: the texts
   • Three main United Nations texts
   • … and the CRC
   • ECOSOC works
   • Guidelines Child victims and witnesses
2. Part II: the principles
   Five main principles and their implication

The three main United Nations Texts

Riyadh Guidelines (1990)
• Prevention of Juvenile Delinquency in a positive way, i.e. upgrading the overall well-being, and socialization.
• Tackling the problem in a comprehensive way, and not merely through expounding negative or partial situations.
• Prevention cannot be limited to the justice area and must include all fields relative to childhood and adolescence.
• Force of the sentence: prevention is everybody’s business and not only a few specialists.
• Input of community services: school role, implication of local associations, collaboration with sport, leisure and media bodies.
Purpose: Helping youth to make relevant choices.

UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing) (1)
• Provide States with guidelines for elaborating specialized systems of justice for minors.
• The Rules predate the CRC, but are incorporated in it (art. 37 and 40) = binding power through the CRC.
• 10 fundamental principles.

UN Standard Minimum Rules for the Administration of Juvenile Justice (2)
1. Fair and humane treatment;
2. Capital penalty and corporal punishment abolished;
3. Deprivation of liberty for extremely serious cases;
4. Detention = last resort, for the minimum period;
5. Objective: rehabilitation;
6. Taking the minor’s opinion into consideration;
7. Institutionalisation: last resort;
8. Specialized training for all law enforcement officials;
9. Use of diversion;
10. Consider the issue of release as soon as possible;

United Nations Rules for the Protection of Juveniles deprived of their Liberty (1)
• Definition: any person under the age of 18, under deprivation of liberty, i.e. any form of detention or imprisonment or the placement in a public or private custodial setting as a result of the penal law.
• The Rules are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for children’s rights.
• Special emphasis is given to pretrial detention.
### United Nations Rules for the Protection of Juveniles deprived of their Liberty (2)

**Principles**

1. Deprivation of liberty: last resort and for the minimum period;
2. Minors cannot be deprived of their liberty without objective judicial grounds;
3. The establishment of small open facilities must be encouraged;
4. Juveniles deprived of their liberty should be prepared for release (educational programmes);
5. Contacts with families must be maintained;
6. Separation from the adults;
7. The facilities management personnel must be trained.


- A holistic text, with basic principles related to Juvenile Justice:
- Non-discrimination (art. 2)
- Best interests of the child (art.3)
- The child’s view (art.12)
- 3 articles: 37, 40 and 39

### Article 37

| a) Prohibition of torture and cruel, inhuman or degrading treatment. No capital punishment nor life sentence without possibility of release for minors; |
| b) No arbitrary or unlawful deprivation of liberty. The arrest, detention or imprisonment of a child shall be in conformity with the law and used only as a measure of last resort, and for the shortest appropriate period of time; |
| c) Every child deprived of liberty shall be treated with humanity. Separation form adults and right to maintain contact with his or her family; |
| d) Children deprived of liberty: right to prompt access to legal assistance and right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent, and impartial authority, and to a prompt decision on any such action. |

### Article 40

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

### Article 39

Reintegration principle
State Parties take all appropriate measures to promote physical and psychological reintegration of a child victim of: any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment…
### Guidelines for Action on Children in the Criminal Justice System, ECOSOC, Vienna 1997
- Resume all precedent texts (CRC, Beijing, Riyadh et The Havana)
- Emphasize the importance of specialized bodies, specific procedures and a broad range of adapted responses
- Emphasize mediation and restorative justice
- Reduce recourse to institutionalization
- Special attention to vulnerable groups
- Including victim and witness children
- Institution monitoring
- Necessity of international collaboration
- Training support by UN agencies

### Guidelines on Justice for Child Victims and Witnesses of Crime (ECOSOC 2005)
Rights recognized by the Guidelines (part B. art. 1 to 10)
- The right to be treated with dignity and compassion;
- The right to be protected against discrimination;
- The right to be informed;
- The right to express views and concerns and to be heard;
- The right to effective assistance;
- The right to privacy;
- The right to be protected from justice process hardship;
- The right to safety;
- The right to reparation;
- The right to special preventive measures.

### THE FIVE MAIN PRINCIPLES
1. The child is different = specific treatment
2. Public safety or individual interests?
3. Objectives of this specific penal law
4. Specific and numerous responses
5. The child is entitled to procedural rights

### 1. The child is different = specific treatment
- The child is a being in development (cognitive and psychosocial immaturity)
- Needs different from the needs of adults
- A malleable being with high rehabilitation potential
- Delinquency as a transition, not as a chronicity sign

### 2. Public safety or individual interests?
- Increasing youth offence worries States, especially violent expressions
- A relevant question: must minors be isolated and neutralized or rather educated?
- General prevention or specific prevention?
- Best interests of the child = individualization of sentencing
### 3. The objectives of this specific law

- The retributive objective leaves way to the rehabilitation/reintegration objective
- Summing up is also possible in education
- With an idea of the need for reparation…
- And an idea of socialization
- To bring about individual and social protection

### 4. Responses are specific and multifold

- Those objectives cannot be reached only by deprivation of liberty (prison or institution)
- In most cases, removal from home is not necessary
- Juvenile delinquency is many-sided and calls for "tailor-made" responses
- The root causes must be looked for and addressed
- The young must become aware of the consequences of his/her deed (third party or society)

### 5. The child is entitled to procedural rights

- Recognizing the delinquent child, as a person = recognizing procedure guarantees
- They are rooted in the CRC and UN standards
- This builds up the idea of a child taking part in decisions affecting him
- This must not suggest: more rights = more responsibility = more punishment!
Principe 5
Consequences
States must set up a Justice system granting the following minima:
- Age of criminal responsibility **not too low** (art. 40 al 3 CRC and 4 BR)
- Criminal coming of age **not under 18 years** (art. 2 CRC)
- No retroactive juvenile justice (art. 40 al 1 CRC)
- Presumption of innocence
- The right to be heard in direct (art. 12 CD)
- The right to be informed of the charges (art. 40 al.3 b)

Principe 5
Consequences (2)
- Appropriate legal assistance, not necessarily lawyer, (art. 40 al 2 b vii CRC)
- The principle of **promptness** (art. 37 d CRC)
- The **involvement of parents** (art. 5 18 CRC)
- The **ban on torture** or other treatments to obtain confession of the crime (art. 37 a CRC)
- The possibility to have **witnesses examined** (art. 40 al 2 b iv CRC)
- The right to lodge an **appeal**
- Free assistance of an **interpreter**
- Respect for **privacy** (art.16 CRC)

CONCLUSION
Juvenile Justice rules thus demand a specialized Justice. Or rather a **Juvenile Justice SYSTEM**, which implies:
- trained,
- knowing how to work together,
- providing comprehensive care,
- emphasizing care and not sanction.
# POLICE AND JUVENILE COURT
Robert Steiner, Chief of Investigation, Police of the Valais

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<td>• Contact with the victim (medical examination, safeguarding of the prints and traces) – preparation of his hearing (relating person, psychologist, specialist LAVI, etc.)</td>
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<td>• Preliminary police investigation - enquiries</td>
<td>• Hearing of the victim in accordance with the LAVI (law on the victim assistance) regulation (video or audio recording etc) - immediate taking in charge or the follow-up of the victim</td>
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<td>• Inquiry into the environment of the offender and the victim</td>
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<td>• Hearing of people being able to provide informations</td>
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<td></td>
<td>• Offences against the sexual integrity</td>
</tr>
<tr>
<td></td>
<td>• Ill-treatment</td>
</tr>
<tr>
<td></td>
<td>• Offences against the life (homicide, threat, body lesions etc.)</td>
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</table>
The Juveniles

Mission that falls into the competences of the court police, according to the swiss penal code and the task distribution between gendarmerie and investigation police.

Typology of the juvenile

- From 0 to 7 years: Early childhood
- From 7 to 12 years: Children
- From 13 to 15 years: Pre-juveniles
- From 15 to 18 years: Juveniles

Children and juveniles in front of the law

- From 0 to 7 years: no punishable (82 CPS)
- From 7 to 15 years: child, punishable (82 CPS)
- From 15 to 18 years: juvenile, punishable (89 CPS)

Principles

- Knowledge of the rules governing the intervention by the minors children and juveniles
- Professional attitude of the police officer
- To take account of the environment
- General informations
- Research of the truth

Interpellation of a juvenile

- Proportional measurements
- Security (personal search)
- Handcuffs if necessary
- Inventory
- Information of the holder of the parental authority
Convening

- Written convening (eventually oral agreement with the parents)
- Addressed to the parents of the minor
- Exceptionally by phone:
  - in a case of emergency
  - through the parents

Intervention and interpellation in an educational circle

- In civil only
- In accordance with the direction
- No intervention at school without information of the direction and always in accordance with the juvenile judge

Attitude of the police officer in front of the parents

- To put oneself at their place
- Objectivity
- To make less dramatic or sometimes to dramatize
- Not to judge educational deficiencies
- Not to be opposed in case of differences
- To contribute to a solving of the problem (advice)

Attitude of the police officer in front of the juvenile

- Exemplary behaviour
- Appropriated and adapted language
- No critics against the parents
- Resistance to the provocations
- No conditioning

House search

- Agreement of the parents
- Refusal of the parents:
  - search warrant
- Only in front of:
  - a parent or relative
  - a legal representative
  - a person in charge of the institution

House search

- Inventory signed by the juvenile and one of the parents (representative)
- To mention on the hearing record the origin of the objects
Hearing

- In accordance with the code of criminal procedure and the juvenile judge
- According to the case, in presence of the parents or the legal representative
- The juvenile’s signature
- No countersignature of one of the parents

Hearing of a child of less than 10 years old

- LAVI regulation (law on the victim assistance)
- If one of the parents is present, to mention it in the record

Environment

The why is as important as the how

- Situation of the family
- The reasons of the offence
- Relationship
- Hobbies
- Etc.
Turning over to the parents

- The juvenile is obligatory to be turned over to his parents or the person in charge (school).
- The juvenile (more than 15 years) is allowed to return home by himself (with the parents’ agreement).

Information of the parents

- Explanation given by the juvenile himself.
- Reading of the hearing record.
- Details given by the police officer.

Apprentices - Students

- The apprentice-trainer has not to be informed about the intervention and the reason of it.
- Theoretically no interpellation of an apprentice on his work place.

Principles, methods and aspects of the investigation

- Concept of the investigation.
- General valuation.
- Investigation.
- Situation of the proofs.
- Situation of the proofs.
- Situation of the investigation.
- Situation of the facts.

Principles, methods and aspects of the investigation

- General elaboration.
- Situation of the intervention.
- Equipment resources.
- Media.
- Public.
Principles, methods and aspects of the investigation

- Situation of the facts
- Victims
- Spots
- Procedure
- Means
- Hour

Principles, methods and aspects of the investigation

- Situation of search
- But
- People
- Hour
- Value of the goods
- Objects
- Place / site

Principles, methods and aspects of the investigation

- Situation of the proofs
- Expected traces
- Fictitious and misleading traces
- Confusion
- Damaged witnesses
- Traces at disposal
- Value of the proof

Principles, methods and aspects of the investigation

- Immediate measures
- Controlling
- Measures parallel to the investigation
- Measures of the investigation
- Concept of the investigation

Aspects of the various methods of the criminal tactic

- Analyse / Synthesis
- Observation
- Inspection
- Questioning
- Comparison
- Hypothesis
- Forecast
- Experimentation
- Reconstruction
- Mathematical methods
- Logical methods
THE QUESTION OF AGES IN JUVENILE JUSTICE
Karl HANSON, Senior Lecturer and Researcher, Children’s Rights Unit, IUKB

Introduction: Children of all ages

There is no clear consensus on from what age onwards children are considered competent to buy a specific product or to participate in a particular activity. A debate with Charlton Heston, who was then president of the National Rifle Association of America (NRA), transmitted on American television in May 1999, perfectly illustrates the current confusion. In the month before the television debate, two teenage students had killed twelve fellow students and a teacher, and wounded twenty-four others, before committing suicide. This shooting, that became known as the Columbine High School massacre, provoked intense debate regarding gun control laws and the availability of firearms in the United States. During the television debate, there was discussion on young people’s competence and ages for procuring a shot gun (a “six-shooter”). The moderator referred to the argument to raise the current age limit in certain States from 16 to 18 by referring to legislation that prohibits the selling of beer (a “six-pack”) to young people under 21. Old enough to kill, but too young for a beer? Charlton Heston subtly replied that young people under 18 are considered competent to serve the American army in conflict zones. Old enough to die for the country, but too young for a gun?

This American debate on the setting of age limitations for carrying guns and drinking beer refers to inconsistencies we encounter on the setting of ages also with regard to criminal justice. In addition, the example shows how discussions on age limitations and competence not only deal with children’s evolving capacities and competence or with children’s rights and interests, but also and even predominantly deal with social and ideological preferences. Or, as Martha Minow has put it: “…the inconsistent legal treatment of children stems in some measure from societal neglect of children. The needs and interests of children, difficult enough to address when highlighted, are too often submerged below other societal interests. The dominance of these other interests helps to explain the inconsistent treatment of children”.

Inconsistencies in age limitations for children indeed seem endless. For example:

- Participation in elections – in most countries the voting age is 18, with exceptions such as in Brazil, Nicaragua, Cuba and Bosnia Herzegovina that have set 16 as voting age;
- Child labour laws use various age limitations depending on the type of work; international labour law legislation for instance sets minimum ages for work at 12/13 for light work, at 14/15 for child labour and at 18 for hazardous work;
- In civil law, disparities within and among countries exist, for instance setting the age to consent for adoption at 15, the age of civil majority at 18; minimum ages to get married can vary between 12, 15 or 18 and the right to be heard in custody cases can start at age 7 or even younger.

This paper offers some general reflections and ideas on age limitations (sections 1 and 2) and applies them in particular to the juvenile justice context (sections 3 and 4).

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1. Children’s rights and the difference dilemma

Traditionally, children’s rights literature distinguishes between two approaches, that of “child liberation” and that of “child welfare”. Child liberationists take as a starting point the claims to autonomy of children and emphasise the importance of their rights to self-determination. From the point of view of the welfare of children, child welfarists point to the importance of taking care of children and predominantly emphasise the child’s right to protection. However, this dichotomy often leads to an ideological debate of truths, or develops into a war of position with two camps, the “advocates” and the “critics” of rights to self-determination and of rights to protection. In order to transcend this diametrical opposition between defenders of the rights to freedom and the rights to protection, different authors seek to find a balance between both approaches. They do not consider the protection of children as the antithesis of advocating their right to self-determination or vice versa. “Protecting children and protecting their rights are therefore not necessarily oppositional but can be complementary objectives.”

The right to freedom and self-determination as well as the right to protection and care should both therefore be recognised. With respect to young children, who first need protection and care, rights to protection should be emphasised. As children grow older, their rights to self-determination become more important, and their rights to protection may less immediately lead to a restriction of their rights to freedom. A gradual acquisition of rights is defended to give shape to the complementarity between freedom and protection. The division of children’s rights into two categories, i.e. rights to self-determination and rights to protection can, in abstracto, generate an overview of children’s rights. However, this division is inadequate as it is oversimplified. The positions on children’s rights referred to in often complex concrete situations can seldom be reduced to rights “to protect children”, “to respect their autonomy” or “to gradually find a balance between both”. Discussions on children’s rights occur in different social sectors and within different social contexts, and can seldom be described by merely using these simple categories.

An alternative conceptualisation of rights that seems to leave more room to cover the complexity of the discussion on children’s rights is the distinction between the “equal rights” and “special rights” of children. Rodham, for example, distinguishes two general approaches of claims for children’s rights: the extension of adult rights to children and the search for legally enforceable recognition of children’s special needs and interests. She illustrates the demand for the extension of adult rights to children by referring to the proposals to extend all the rights of adult criminal defendants to accused juvenile delinquents. However, it is not her intention to simply equalise adults and children. In some cases, the rights of adults can be applied to children in the same way as for adults, whereas in other cases, they must be adjusted to the needs and situations of children. The second approach of children’s rights, which seeks to legally enforce children’s special needs and interests, “begins with the belief that even if all adult rights were granted to children and were strictly enforced, this would not guarantee that certain critical needs unique to children would be met”. Consequently, children have additional, special rights on the basis of their individuality. In this respect it is significant that the notion of children’s rights comprises a double claim, i.e. the claim for the recognition of general (adult) rights for children, as well as the claim for the recognition of

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6 Ibidem, pp. 495-496.
the special rights of children. According to this approach, children have a right to “equal rights” as well as to “special rights”. The two claims, however, do not always coexist smoothly. The discussions on children’s rights may, in accordance with the discussion in the feminist theory of law, also be explained by using the difference dilemma:

- Should children (or those who defend them), on the one hand, choose a treatment similar to the treatment of adults, with the risk that this equal treatment is not adjusted to children, but follows the same pattern as the treatment of adults?
- Or should they, on the other hand, defend special treatment, on the basis of their particularity while running the risk that this special (and different) treatment may lead to new forms of discrimination?

As for all dilemmas, no definite solution exists. In one case, children should be granted special rights, whereas in another case it may be important to defend children’s equal rights. In other words, rather than making general abstractions to resolve the difference dilemma, an assessment of concrete contexts dealing with children's equal rights or special rights is always required.

Several authors, including de Langen and Verhellen, explicitly situate the debate on the recognition of children’s rights, and the discussion between the general human rights of children as well as their special or preferential human rights, within the framework of human rights. They refer for example to the comprehensiveness of the Convention on the Rights of the Child (CRC), which indeed recognises general human rights as well as a number of special rights of children. This enables negotiations about the different (sometimes opposite) claims within the same common framework. This common framework, i.e. human rights, offers inter alia the possibility to accurately indicate the differences or similarities between the points of view. The discussion then no longer deals with the choice between some rights of children and others, but with the mutual contribution and the interrelation of children's general and special rights. When and how far should children's special rather than general rights be recognised? Which rights should be given priority, and to what extent, if there is a conflict between both? In what cases, to what extent and on the basis of which criteria can childrens’preferential rights extend or otherwise restrict their general human rights? Special rights should in this respect enable the recognition of the individuality of children and the defence of children’s interests, whereas equal rights – to a greater or a lesser extent adjusted to the situation of children – emphasise the equality of children and adults.

In a time of proliferation of human rights claims, human rights offer a strategic point of departure for a number of interest groups, including those fighting for the emancipation of children, to formulate their claims in the form of human rights claims. Likewise authors and organisations that were at first rather sceptical about the idea of a separate human rights treaty for children now seem to be convinced of the strategic possibilities offered by the CRC to promote the emancipation of children. They formulate their claims within the existing framework of human rights, using the CRC as well as the provisions in general human rights treaties. The growing consensus on the strategic importance of the recognition of children’s

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rights as human rights does not however solve the possible contrasts between the different approaches towards children’s rights. Nevertheless, the different dimensions of human rights (including the positive legal aspects as well as the way in which social movements are using human rights) offer a broad and diversified framework enabling a balanced approach of the scientific question of the emancipatory significance of children’s rights.

2. The age criterion and the differentiation between adults and children

Two often overlapping criteria play an important role for deciding which differences and resemblances are important to differentiate between adults and children, namely age and competence. The question of ages can be addressed as follows.

2.1. Discussions on age

Children are different from adults, but also different from one-another. A clear-cut criterion to base this distinction on, is fixing a legal age. However, the ways ages have been fixed in law has encountered some strong criticisms, including arbitrariness, unreliability, preference for another criterion (e.g. competence) and inconsistency.\(^{10}\) We will briefly address these critiques.

- **Arbitrariness**: whatever age limit is considered unjust, because ages are arbitrary dividing points and age limitations nothing but a ‘birthday lottery’. Archard considers the price of arbitrariness acceptable if there is a connection between the dividing point and the reason why the distinction is made. Only if reaching a certain age in no way relates to competence then this division is unjust.\(^{11}\)

- **Unreliability**: the critique that any age is arbitrary must be separated from the critique that a particular age is unreliable. This critique generally holds that age cannot be related to competence. For example, some kids are at 14 more competent to work than others who even at 17 are totally unfit to take up responsibility in the labour market. Consequently, setting the minimum age for employment at 15 is not reliable. Most discussions on age deal with the question what minimum age should correspond with what kind of activity. It is not about setting age limits for carrying guns as such, but about whether 16 (or 18) is the right age for allowing a person to carry guns. The comment that ages are unreliable then deals with finding the right competence and the right age corresponding to that level of competence.

- **Preference for another criterion**: age limitations are also criticised because there would be other criteria, most notably competence, that assign certain rights to certain categories of persons. Not reaching a particular age, but the degree of maturity or competence should be used to differentiate children and adults. However, testing the competence level of a person is not easy to bring about, as it is generally expensive and time consuming and can even lead to abuse of power of the interviewer over the person that is tested. Furthermore, competence tests lack the predictability of the age criterion: if age is the dividing point, then people can know on beforehand what will be the possible consequences of their acts.

- **Inconsistency**: as already shown in the introduction, many inconsistencies exist on the age at which a person gains various rights. For example, many argue that minimum ages in the criminal justice sphere must be consistent with ages in the civil rights sphere.

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\(^{11}\) Ibidem, pp. 61.
2.2. Modulating ages

A possible answer to critiques of arbitrariness and unreliability of current legal age limitations is to modulate ages according to context. Depending on the rights that are at stake, it could for instance be possible to reach agreement over a different age. In this respect, Rodham proposes a modulated approach: “Age may be a valid criterion for determining the distribution of legal benefits and burdens, but before it is used its application should be subjected to a test of rationality. Assessing the rationality of age classifications could be expedited by legislative abolition of the general status of minority and adoption of an area-by-area approach”. In practice, an area-by-area approach seems widely accepted, for example with regard to minimum ages for employment. In international law ages are differentiated related to the kind of work that is carried out, and different minimum ages are set for light work, for child labour and for hazardous work.

Modulating ages offers the advantage of taking into account different areas for which ages differentiations apply. In this sense, an area-by-area approach nuances the critique that age limitations are inconsistent. Reality is varied, and it can be appropriate to apply different ages for different social spheres or to draw lines differently for different legal procedures. The suggestion to sufficiently take into account the context for which an age limitation applies can even be invoked as an argument to be not too consistent… Hence, the difficulty will lie in finding a right balance between the need for a certain degree of consistency with the need for a sufficiently contextualised area-by-area-approach.

3. Ages in juvenile justice

3.1. A separate juvenile justice system

Historically, there has not always been a separate system for dealing with juvenile offenders. There are also variations depending on the country for setting the age of penal majority. Therefore, an important question is: Should child offenders be treated in a different way and within a different justice system compared to adult offenders? Whilst we admit that there are great differences between men and women, and that these differences also amount to male and female delinquency, we did not establish different criminal justice systems for men and women (even if there are separate prisons for men and women). Another example concerns differences between white-collar crime and street delinquency. We never thought of instituting separate justice systems for dealing with rich thieves and poor thieves…

From the normative side, the CRC clearly urges States to set the age of penal majority at 18, and to design a separate juvenile justice system for all children:
CRC, Article 40, 3:
“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”

3.2. Dimensions in juvenile justice

We can analytically make a distinction between several dimensions in any given justice system. Within each dimension, questions rise of how to differentiate between adults and children concerning the definition of offences, criminal responsibility, criminal procedure, the imposition of sanctions (sentencing) and the execution of sanctions.

- **Definition of offences**: Is there a same set of definitions of what constitutes an offence? Can children and adults be prosecuted for the same offences such as theft, robbery, murder or fraud? In principle, the same criminal code applies for children and adults. One notable exception are status-offences, that is conduct not considered an offence or not penalized if committed by an adult, but considered an offence and penalized if committed by a young person (for example: truancy and vagrancy). Here definitions of offences are different for adults and children: only children can be prosecuted, but not adults. Status offences are contrary to international legal standards that refute differentiation on the basis of age for the definition of offences.13

But what about acts that constitute an offence only if committed by adults, and not if committed by children (acts we suggest to phrase as ‘reversed status-offences’)? Are there acts that are not considered an offence if committed by children, but that are if committed by adults? Although few examples exist, one might think of lese majesty or forgery. Another example is the introduction of age differences regarding sexual majority and consent for sexual intercourse.

- **Criminal responsibility**: In criminal law, for an act to constitute an offence, two conditions must be fulfilled, a material and a moral. The first condition refers to the material facts of the offence: did the person commit the act for which he is prosecuted? Has he actually stolen the jewels, did he actually fire the gun? The second condition refers to the offender’s state of mind (*mens rea*). Was he acting out of his own free will and not forced to commit the act? And did the person know that he ought not to do what he has done? Or was his brain temporarily damaged or was he all too young to understand that what he did was wrong? At what age young people should be considered criminal responsible? Is it at 18, the age of civil majority that is also recognised in the CRC as the age where childhood ends and adulthood starts? Or is the minimum age for criminal responsibility to be set lower, at 16, 14, 12 or even as young as seven? Remark that the debate on children’s criminal responsibility is unclear and often mistakenly amalgamates between ages for penal majority and criminal responsibility.

- **Criminal procedure**: Are the same criminal judges competent to judge both young and adult offenders or is there a specialist court system such as a specialist (unique) juvenile judge? Also, do the same procedures apply in adult and child criminal procedures, including all due process principles?

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13 See, a./o.: United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990, No 56: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”
- **Imposition of sanctions (sentencing):** What are sanctions for juveniles compared to sanctions imposed on adults? Does their young age gives juveniles a right to a special reduction, for example only paying “half the price”, as was the case in the nineteenth century French or Belgian Criminal Code? Are some sanctions more adapted for children than for adults?

- **Execution of sanctions:** Are children in case of deprivation of liberty always to be separated from adults, as prescribed by international law? Or are exceptions possible? For instance, CRC, Article 37 c) on deprivation of liberty that states that: “(...) every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”

In what circumstances the exception *not* to separate children from adults might be considered more respectful for the child’s best interests than to separate children from adults?

The distinction between these dimensions makes it possible, for example, to differentiate between children and adults for one dimension (e.g. sanctions) but not for another (e.g. definition of offences). In the same vein, recognising children’s criminal responsibility, as part of the recognition of children as fully-fledged persons, does not per se implies that children should be imposed the same penal sanctions as adults. In other words, considering criminal responsibility as only one out of several dimensions of a criminal justice system makes possible to consider children’s criminal responsibility independently from juvenile criminal procedures or sanctions.

### 4. Seven questions on ages in juvenile justice

By way of conclusion, I propose a series of specific questions on ages in juvenile justice which should be taken into account when designing, setting up or changing juvenile justice systems:

1. Is age an appropriate criterion to distinguish juvenile and adult offenders? Or do we also need competence?

2. And what are “proper” ages to differentiate in criminal law?

3. How to balance the need to be consistent with the demand for an area-by-area approach? In other words, how consistent a juvenile justice system is to be:
   - Consistency within the national juvenile justice system: do we need the same ages for the five different dimensions? Or should we adopt an area-by-area-approach, and differentiate ages according to the different dimensions?
   - Consistency with other social aspects of children’s lives: do ages in the criminal sphere have to be consistent with ages in other contexts, or is an area-by-area approach to be preferred? Should minimum ages in the criminal justice sphere for instance be consistent with minimum ages in the civil rights sphere?
   - Consistency in comparison with other national systems and with international law on juvenile justice: in how far international law can accept age variations in juvenile justice depending on, e.g., national legal systems or socio-economic conditions?
4. Who is to set the ages?

5. What disciplinary knowledge do we need?
   - Developmental psychology
   - Statistics
   - Sociology
   - …

6. Do we see the age limitations as all-or-nothing cut-off points, or is there room for flexibility within the age systems?

7. How much room is there for children and young people to also give their opinions on ages in juvenile justice? How can children be involved in discussions on ages in juvenile justice?

Bibliography


Introduction

Dear Friends, dear Participants, it is almost ten years now, since the judiciary and the government of Albania started to develop special interest in the juvenile justice system, acknowledging the needs of its very young population. Many representatives of all professions working with vulnerable children are committed since then to upgrade knowledge, means, tools and possibilities for national and international collaboration, to strengthen training and to bring legislation and practice in line with international standards. Much has been done; much more is needed to achieve this noble goal. It is a great honour and pleasure for me to be part of this important seminar in beautiful Valais, in the Institute of Child rights with its great reputation for conducting international seminars and training sessions. In my capacity as director of the course, I wish you all success possible to profit to a maximum of this opportunity to collect information, discuss and share it and to finally forming a multidisciplinary core group working together for a modern and efficient juvenile justice system in the best interest of the children of your country and thus for the future of Albania.

Justice Renate Winter

1. Request

Albania is now in a phase of reform of its Juvenile Justice system, currently by pervasive recourse to deprivation of liberty and institutionalization. Albania has a project of amendment of the Criminal Code and of the Procedure Criminal Code.

In collaboration with the European Union, UNICEF supports this reform and has been organising various activities about Juvenile Justice in Albania. In particular, a seminar dedicated to alternatives took place on April 11th to 12th in Tirana. It was organised jointly by Terre des Hommes; Mrs Renate Winter and Mr Jean Zermatten took part in it as experts.

At the end of 2005, UNICEF – Albania requested the International Institute for the Rights of the Child (IDE) to set up a training session for the people involved in the ongoing reform. The training module was meant in continuity with the work undertaken in the country, in order to serve the interests of investigating the key issues faced by Albania: specialised Justice for minors is still in an embryonic state, and organised on a Justice Model.

Following IDE’s acceptance to act the part requested by UNICEF, an official delegates group from Albania, obtained the high level government authorizations and came to Switzerland from April 23rd to 29th. The delegation was made up of 15 persons: 13 representatives chosen by government and non-government bodies, the UNICEF Representative and the interpreter.
2. Objectives

The objectives of this training course were:

- Facilitating the meeting of the stakeholders of the Albanian justice system reform, outside their usual context,
- rising awareness among participants on the necessity of a specialized Justice,
- pointing out to them the relevant existing international instruments in this field,
- bringing them to reflect on the possible reforms of the Albanian system,
- showing instruments (institutions and infrastructures) feasible in Albania,
- explaining that other responses exist part from deprivation of liberty, in particular the alternatives, as the Mediation or the Community Service Order,
- issuing recommendations useful for Albania,
- ensuring a seminar follow-up, in a form to be decided later.

3. Development of the Seminar

The Seminar was a 5-day module (April 24th to 28th), each day covering a specific theme. The method of work was the confrontation theory/practice, through plenary lectures, workshop sessions and visits (4 institutions (including 7 different centers visited). The speakers came from the academic as well as practical field.

Participants were introduced to the IDE website (www.childrights.org), and took a walk on the Children’s Rights Didactic Path. Those two broader aspects of the issue of children’s rights were an important input.

A convivial dinner was organised as well. Such moments are indeed important, giving the opportunity for better acquaintance and closer links. At the participants’request, evenings were free.

The working language was English. The translations were made by an interpreter recruited by UNICEF.

4. Participants

The list of participants is visible in Appendix II.

The delegation Head was Mr Vladimir KRISTO, Deputy Minister of Justice,

Mr Leon SHESTANI was UNICEF-Albania representative.

Training sessions, visits and transfers were supervised by IDE staff.
5. Speakers

Direction of the course was insured by Mrs Judge Renate Winter, UN Judge for the International Criminal Court and Special Court for Sierra Leone, International Consultant.

List of speakers:
Dr. Karl Hanson, Project Manager, Master in Children’s Rights IUKB, International Consultant Sion and Geneva, Switzerland,
M. Michel Lachat, Youth Court President, Member of the Board of IDE, Member of the Board of AIMJF, Teach at Fribourg University Fribourg, Switzerland,
M. Xavier Lavanchy, Juvenile Judge, Sion, Switzerland,
M. Christian Nanchen, Chief of Children’s Protection Office, Lawyer, Switzerland,
Ms. Paola Riva Gapany, LLM in Human Rights, IDE, Sion, Switzerland,
M. Robert Steiner, Chief of the Judiciary Police, Sion, Switzerland,
Dr. Daniel Stoecklin IDE and Fribourg University, Sion and Lausanne, Switzerland,
Mrs Silvia Toricelli, Youth Court President, Lugano, Switzerland,
M. Jean Zermatten, Director of IDE and Member of the UN Committee on the Rights of the Child, Switzerland.

6. Programme

The training programme was very intense, and the number of plenary presentations was probably ambitious. Being a starting training Seminar, it seemed necessary to provide substantial theoretical elements.

Lectures were presented with the support of varied technical devices (overhead-projector, Powerpoint presentations) increasing their interest. Technical facilities were unanimously appreciated.

Participation as a whole was exemplary, and debates animated.

The working method has been interdisciplinary throughout the course, this aspect being favoured by an adequate blend of professions represented among speakers and participants. In itself, the issue tackled is indeed interdisciplinary.

Informal events were of paramount importance, be it between Albania officials and “foreigners” or amongst Albanian officials. It ranges among the benefits of such meetings. They could accordingly get acquainted with each other, but also with the work of other delegates. These contacts initiated in Sion will hopefully be maintained in the home country.

Apart from an official dinner the first evening, there was no official event.

Visits of institutions concerned: St Raphaël (3 different Centers), Pramont (in the Canton of Valais) and Valmont (Lausanne) and the Foyer St. Etienne (Fribourg). In every of them, the welcome was warm. No institution could provide information in English, although regrettable, this is perfectly understandable.
Transports and trips were provided by Dubuis enterprise. To avoid transfers, lunches were taken on the spot. The high-quality food was praised. Meals were catered by Mr Salamin, Le Plaza manager. Participants could help themselves to a buffet in a room with tables and chairs. The formula is well suited for a one-week session.

7. Recommendations

Albanian participants issued a list of recommendations, spoken out by group rapporteurs Mrs Tefta Zaka and Mr Sokol Berberi. The list was then redrafted to avoid repetitions and finalized by the two rapporteurs.

Recommendations were issued on April 28th in two workshops, on the basis of written suggestions.

They were formally approved in plenary meeting during the course’s closing session.

The recommendations can be found in Appendix I.

8. Follow-up

It is obviously up to everyone to implement the training’s matter in his/her work, Ministry, University, organisation. To make collaborators benefit from it. Possibly to organise a training.

As far as IDE is concerned, the follow-up will take two forms:

- first the publication of a working report on the works carried out during the week in Sion; a special section will be devoted to the mention of Swiss basic legal texts in the field of penal law and protection law. Participants have shown a deep interest in the Swiss model, in spite of the understanding and implementing obstacles due to federalism;
- considering the timeliness to set up a more practical training session in Albania. UNICEF would be ready to facilitate the setting up of such a training, essentially for judges and procurators, in Tirana. The main speakers will be available for a second training, focussed more on good practice, if requested.

9. Financial aspects

The Seminar’s costs were entirely supported by UNICEF.
Concluding remarks of the Course Director Mrs. Renate Winter

Dear friends,

As we now come to the end of our seminar, I would like to take this opportunity to evaluate what we have done and what we have achieved. We have experienced a quite intense week I suppose, with a comprehensive programme, allowing at the one hand side to have a closer look into international standards and good practices and to observe the functioning of a coherent system of protection for children in conflict with the law at the other hand side. The morning sessions were devoted to get and share information on how countries try to solve their problems in the field of juvenile justice and to discuss the needs of Albania in this regard.

It was important from the very beginning that the experience of all participants, representing the different professions involved in working with vulnerable children, contributed to defining special problems and to discuss them with international experts, representing as well these different professions.

The “Swiss way” to tackle problems with children in difficult circumstances and their families and to find solutions for them and with them was shown in the afternoon sessions through visits to all types of institutions and through information sharing with their managing staff.

All this newly received information resulted finally in recommendations for the future development of the juvenile justice system in Albania, elaborated by the participants in workshops under the guidance of international experts, once again discussed and adopted in the last plenary session.

Considering this really dense programme and the outcome of it, information sharing, new insight, definition of the future agenda for all professions in the field, I think I can conclude that we met our mutual expectations. I would like to congratulate the participants for these achievements and express my hope for further fruitful collaboration for the establishment of this important agenda.

Allow me at the end to draw my very personal conclusion as well: As I have mentioned at the beginning of this seminar, I hoped very much that at the end of this week of common work and discussion of the special problems and needs of all respective professions involved, a core group of professionals would emerge, a strong group, determined to collaborate in the future to achieve what they have defined as their common goal: an efficient, affordable juvenile justice system in the best interest of the children of Albania in line with international standards. I do have the very strong impression that this, my personal aim and a tradition of the IDE seminars, has been reached. I am very, very happy about it and wish all of you endurance to overcome obstacles and a lot of success! Let’s keep to what we have concluded: WE NEVER GIVE UP!

Appendix I: Recommendations
Appendix II: Participants list
Appendix III: Law in favour of Youth
APPENDIX I


Recommendations Workshop 1

Prevention and its stakeholders
Facilitator: Renate Winter
Rapporteur: Sokol Berberi

Primary area
Community – Police

- **Legislative measures**
  - Amend Criminal procedure Law aiming at envisaging clear rules to oblige police to contact SW, lawyer and family during questioning, investigation, and other procedural action.

- **Institutional measures**
  - To establish structure of the social service serving juvenile justice.
  - Establishment of special police structure for minors at regional level, as required by existing strategy for children.
  - Formulation of lists of lawyers, Social Workers, and psychologists at the disposal of the police and the judiciary (in 12 Prefecture commissariats and courts of first degree).

Community – Police

- **Capacity building**
  - Training for police in two levels: academy of police and training of special appointed police to deal with the juveniles.
  - Training curricula preparation.
  - Joint training session with lawyers and prosecutors.
  - Special programes for training.

- **Infrastructure**
  - Appropriate infrastructure for the treatment of juvenile in police stations (rehabilitation to be child friendly).
- **Awareness**
  - Campaign targeting policy maker for the implementation of existing legislation and children strategy.
  - Awareness campaign to target children and the school to change perception on role of police as service to the community and the protection role.
  - Partnership with existing campaign on community policing by bringing the child prospective.

**Secondary prevention area**

**Children with problems – Social service/social workers**

- **Legislative measures**
  - Amendment of the criminal law aiming at ensuring clearly the obligation of the judge to review and consider the opinion of Social Worker and psychologists in court procedure and decision. Concretely, one way to achieve this aim could be to stipulate that the court decision are void if does not consider the opinion provided by SW/psychologists.
  - Law on SW need to be adapted to stipulate changes for i) the engagement of SW in the process and ii) the obligation to establish SW section on juvenile justice in the state social service.

**Social workers**

- **Institutional measures**
  - Institutional cooperation (MOU) between MoJ, MoI, MoSA to determine the mandate of social workers and the mandate for the exchange of information and related issues.
  - MoU with BAR association for the provision of list of lawyers on JJ.
  - State Social Service should have a sector for the juvenile justice; develop job description, licensing criteria and regulations.

- **Capacity building**
  - Training of social workers and development of special curricula.
  - Organization of mixed trainings.

**Third prevention area**

**Conflict with the law - Judiciary**

- **Legislative measures**
  - Rules and regulations concerning the role, mandate and supervision of Social Workers for the implementation of alternatives to detention.
  - Definition of the role of the social worker in the process of rehabilitation and reintegration.
• Institutional measures
  - Establishment of an institution for implementation of educational measures: Small; very limited residential for the semi closed cases; center for vocational training; education component; personnel - social workers not police; training of personnel.
  - Establishment of a network of professionals and institutions for the implementation of alternatives to detention.

Recommendations Workshop 2

Juvenile justice and its stakeholders
Facilitator: Silvia Torriceli
Rapporteur: Tefta Zaka

Legislation
  • Establishment of the special section for minors composed by judges dealing with i) penal issues for minors and ii) judges for minors and family.
  • Improvement of the law on the judiciary for the career of judges (need to stipulate separate careers for juvenile judges from other areas. In small districts it is the chairman of the court to decide that judges can do other cases in courts.
  • Special sections for minors at the prosecutors’office.
  • Improvement of the training curricula and training of judges, prosecutors, and the judiciary police, (MS and abroad) especially on the interview and investigation techniques. There is an imperative to review minors as author and as a victim.

Education institution
  • Improvement of the legal frame work to include status of closed, semi-open and open institutions
  • Development of measures for different age groups: under 14, 14-18, and 18-21; different programms according to the measures
  • Improvement of legal framework for alternatives, especially on implementation of existing legislation
  • Expansion of alternatives
  • Inclusion of victim in the penal process

SW psychologists
  • Study/plan development for the use os social worker, psychologist in the penal procedure, as well as legal assistance
  • Training of psychologists and social workers
  • Legal criteria for psychologists and social workers to work on the juvenile justice system
# APPENDIX II

**List of Participants at the Sion Training on Juvenile Justice**  
(24-28 April 2006)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>1 Vladimir Kristo</td>
<td>Deputy minister of justice</td>
</tr>
<tr>
<td>2 Ilir Panda</td>
<td>Judge, deputy chairman of high council justice</td>
</tr>
<tr>
<td>3 Sali Shehu</td>
<td>Member of parliament, legal affairs parliamentary committee</td>
</tr>
<tr>
<td>4 Sokol Berberi</td>
<td>Lawyer, external legal advisor of the president</td>
</tr>
<tr>
<td>5 Saimir Shehri</td>
<td>Director of prisons</td>
</tr>
<tr>
<td>6 Arjana Fullani</td>
<td>Magistrate school director</td>
</tr>
<tr>
<td>7 Anila Nepravishta</td>
<td>Ombudsperson</td>
</tr>
<tr>
<td>8 Pirro Lazi</td>
<td>Director of police academy</td>
</tr>
<tr>
<td>9 Arben Ristani</td>
<td>Lawyer, bar association</td>
</tr>
<tr>
<td>10 Alma Gjurgjaj</td>
<td>Ministry of interior, minors department</td>
</tr>
<tr>
<td>11 Eriketa Korini</td>
<td>Ministry of justice, minors department</td>
</tr>
<tr>
<td>12 Elona Haska</td>
<td>Ministry of justice, minors department</td>
</tr>
<tr>
<td>13 Leon Shestani</td>
<td>UNICEF, project officer, social services</td>
</tr>
<tr>
<td>14 Tefta Zaka</td>
<td>Lawyer and collaborator of UNICEF</td>
</tr>
<tr>
<td>15 Engjellushe Shqarri</td>
<td>Translator</td>
</tr>
</tbody>
</table>
APPENDIX III

Loi en faveur de la Jeunesse (Law in favour of Youth)

du 11 mai 2000

Le Grand Conseil du canton du Valais,

vu les articles 11 et 67 de la Constitution fédérale; 
vu l'article 18 de la Constitution cantonale; 
vu la Convention des Nations Unies relative aux droits de l'enfant du 20 novembre 1989; 
vu les dispositions en la matière du Code civil suisse et du Code pénal suisse; 
vu la loi fédérale concernant l'encouragement des activités de jeunesse extra-scolaires du 6 octobre 1989; 
vu l'ordonnance fédérale réglant le placement d'enfants du 19 octobre 1977; 
vu les articles 35 et 39 de la loi sur l'organisation des Conseils et les rapports entre les pouvoirs du 28 mars 1996; 
sur proposition du Conseil d'Etat,

ordonne:

Chapitre 1: Principes généraux

Article premier Champ d'application
1 La présente loi s'applique aux enfants et aux jeunes domiciliés ou séjournant dans le canton.
2 Par enfant, il faut entendre tout être humain âgé de moins de 18 ans.
3 Par jeune, il faut entendre tout être humain âgé de moins de 25 ans.

Art. 2 Principes
1 La responsabilité de pourvoir aux soins, à l'entretien et à l'éducation de l'enfant incombe en premier lieu à ses parents.
2 Toute décision prise en vertu de la présente loi doit l'être dans l'intérêt supérieur de l'enfant, dans le respect des droits fondamentaux de toutes les personnes concernées et du principe de subsidiarité.
3 L'enfant a le droit d'exprimer librement son opinion sur toute question le concernant; son avis est pris en considération en tenant compte de son âge et de son degré de maturité.

Art. 3 Buts
La loi poursuit les buts suivants:

a) la promotion de conditions favorisant un développement harmonieux des enfants et des jeunes; 
b) le soutien aux projets intéressant la jeunesse et/ou conçus par elle; 
c) le soutien aux différents organismes de jeunesse ou s'occupant de la jeunesse, notamment les associations socio-culturelles et sportives et les associations de parents; 
d) la prévention des situations et des facteurs mettant en danger les enfants et les jeunes ainsi que la promotion de comportements responsables pour la santé; 
e) la protection des enfants menacés, vivant à l'intérieur et hors du milieu familial; 
f) l'offre de prestations spécialisées à l'intention notamment des enfants, des parents et des enseignants.

Art. 4 Principe d'égalité
Toute désignation de personne, de statut, de fonction ou de profession utilisée dans la présente loi s'applique indifféremment aux femmes et aux hommes.
Art. 5 Organisation
1  Le Conseil d'État exerce la haute surveillance sur l'organisation et le fonctionnement des institutions publiques chargées d'appliquer la présente loi.
2  Il peut confier par voie d'ordonnance les différentes tâches relevant du service public à un service compétent ou à d'autres organismes publics, voire privés.
3  Le Département compétent (ci-après Département) désigné par ordonnance exerce toutes les tâches relevant de la présente loi qui ne sont pas attribuées expressément à une autre autorité.

Chapitre 2: Promotion

Art. 6 Attributions du Conseil d'État
Le Conseil d'État, en collaboration avec les autres collectivités publiques et les organisations privées, prend les mesures utiles afin de conduire une politique de la jeunesse respectueuse des besoins de celle-ci.

Art. 7 Promotion de la jeunesse
Par promotion de la jeunesse, il faut entendre:

a) l'identification des besoins des jeunes, la définition d'objectifs clairs et la mise en place de moyens susceptibles de promouvoir une politique de la jeunesse;
b) l'encouragement des activités extra-scolaires, en veillant à favoriser la responsabilité, la socialisation, l'autonomie et le bien-être;
c) la promotion du dialogue entre la jeunesse et les collectivités publiques.

Art. 8 Commission des jeunes
1  Il est institué une Commission des jeunes.
2  Elle a pour but de permettre aux jeunes de faire valoir leurs aspirations et leurs préoccupations, ainsi que de proposer et/ou de s'engager dans certaines réalisations.
3  Elle est composée d'au moins sept membres issus des milieux concernés, nommés par le Conseil d'État pour une période de deux ans, renouvelable.
4  Le Conseil d'État précise par voie de règlement la composition, les attributions et le fonctionnement de cette commission.

Art. 9 Commission pour la promotion et la protection de la jeunesse
1  Il est institué une Commission pour la promotion et la protection de la jeunesse.
2  Celle-ci prend connaissance, notamment par le canal de la Commission des jeunes, des aspirations, des préoccupations ainsi que des problèmes des jeunes du canton.
3  Elle étudie les questions générales relatives à l'aide aux enfants; elle assure la liaison entre services publics et institutions privées ou semi-privées s'occupant de ces domaines.
4  Elle est composée d'au moins neuf membres issus des milieux concernés, nommés par le Conseil d'État pour une période de quatre ans. Un représentant de la Commission des jeunes en fait partie de droit.
5  Le Conseil d'État précise par voie de règlement la composition, les attributions et le fonctionnement de cette commission.

Chapitre 3: Soutien

Art. 10 Attributions du Département
Le Département prend les mesures utiles afin de promouvoir et soutenir les activités des différents organismes de jeunesse ou s'occupant de la jeunesse. A cet effet, il dispose d'une enveloppe budgétaire spécifique.

Art. 11 Soutien aux organismes
1  Par soutien aux organismes, il faut entendre:

a) la promotion des activités des différents organismes de jeunesse ou s'occupant de la jeunesse;
b) l'encouragement de la coordination entre ces différents organismes;
c) une aide, notamment financière, à certains projets.

2  Le Conseil d'État précise par voie d'ordonnance les critères d'octroi et d'utilisation des montants alloués.
Art. 12 Délégué à la jeunesse
1 Le Département exerce les tâches énumérées à l'article 10; leur exécution est confiée à un délégué à la jeunesse.
2 Le délégué est chargé de mettre en œuvre une politique de la jeunesse dans les domaines de la promotion, du soutien, de la prévention, notamment en stimulant les différents organismes de jeunesse ou s'occupant de la jeunesse ainsi qu'en encourageant leur coordination et en soutenant leurs projets.

Art. 13 Coordination
1 Le Département prend les mesures utiles afin d'assurer une collaboration efficace entre les différents organismes et autorités œuvrant pour la jeunesse, notamment:

a) les autorités administratives communales et cantonales;
b) les autorités scolaires et le corps enseignant;
c) les associations d'aide à l'enfance;
d) les organisations de jeunesse;
e) les associations socio-culturelles et sportives et les associations de parents;
f) les offices d'orientation scolaire et professionnelle;
g) les centres médico-sociaux régionaux;
h) les autorités tutélaires et les tuteurs généraux;
i) les autorités judiciaires;
j) les professionnels de la santé;
k) les autres services spécialisés privés ou publics.

2 Le Département veille au respect du principe de subsidiarité; à cet effet, il peut faire appel à des organismes privés.
3 Demeurent réservées les dispositions spéciales du droit fédéral et cantonal.

Chapitre 4: Prévention

Art. 14 Attributions du Département
1 Le Département arrête et encourage:

a) les mesures et programmes de prévention susceptibles de renforcer la capacité des enfants et des jeunes à faire face à des situations critiques;
b) les mesures propres à identifier et à réduire les facteurs de mise en danger des enfants et des jeunes dans leur développement physique ou psychique;
c) les mesures et programmes de sensibilisation et/ou de formation à l'intention des personnes s'occupant d'enfants ou de jeunes.

2 Il soutient les programmes de prévention des diverses formes de violence, du tabagisme, de l'alcoolisme et d'autres toxicomanies, en particulier les mesures d'aide et de soutien à l'intention des enfants.
3 Il collabore avec les différents organismes de jeunesse ou s'occupant de la jeunesse, les commissions et les structures désignées ou reconnues par l'Etat sur un plan fédéral, cantonal ou régional.
4 Il officie en qualité d'organe de surveillance dans les domaines précités à l'exception de ceux réglés par la loi sur la santé.

Art. 15 Information
Le Département informe la population sur les organismes privés et publics qui disposent de ressources dans le domaine du développement de l'enfance et qui fournissent des mesures d'aide aux enfants ayant des besoins particuliers.
Chapitre 5: Protection

Art. 16 Attributions du Département
1 Lorsque la santé, le développement physique, psychique ou social d'un enfant sont menacés, le Département prend dans les meilleurs délais les mesures nécessaires de protection, si possible en collaboration avec les parents.
2 Ces mesures visent à prévenir, atténuer, éliminer le danger qui menace l'enfant.
3 Elles sont adoptées soit d'entente avec les parents, soit dans le cadre de l'exécution d'une décision de l'autorité judiciaire ou tutélaire compétente.
4 L'exécution de ces différentes tâches est confiée à un office compétent.

Art. 17 Evaluation et planification
1 Le Département prend les mesures utiles dans le but d'évaluer, de coordonner et de contrôler les différents besoins dans le domaine de la protection des enfants.
2 A cet effet, il planifie les différentes mesures à prendre et peut, le cas échéant, mener des recherches sur des questions particulières.

Section 1: Mesures de protection infanto-juvénile

Art. 18 Mission de l'office compétent
L'office compétent exerce sa mission par:

a) des activités de prévention;
b) des mesures de protection infanto-juvéniles;
c) des évaluations;
d) des expertises;
e) la surveillance des placements;
f) des conseils aux parents, aux enfants et aux jeunes et, le cas échéant, aux représentants légaux.

Art. 19 Collaboration avec les autorités tutélaires
1 L'office compétent collabore avec les autorités tutélaires et peut être appelé à:

a) examiner les conditions d'existence d'un enfant et procéder à une évaluation sociale;
b) saisir les autorités tutélaires des cas nécessitant leur intervention;
c) procéder à l'audition de l'enfant.
2 Demeurent réservées les dispositions spéciales de droit fédéral et cantonal.

Art. 20 Collaboration avec les autorités judiciaires
L'office compétent collabore avec les tribunaux dans l'application des dispositions relatives aux enfants et peut être appelé à:

a) collaborer avec le Tribunal des mineurs dans l'application des dispositions pénales (art. 82 à 99 CPS);
b) évaluer dans le cadre de procédure de mesures protectrices de l'union conjugale, séparation de corps ou divorce, les capacités éducatives des parents et faire des propositions relatives à l'attribution de l'autorité parentale, à la garde et au maintien des relations personnelles;
c) procéder à l'audition de l'enfant dans le cadre de procédures judiciaires.

Art. 21 Surveillance et curatelle éducative
1 L'office compétent peut être amené, dans la mesure de ses disponibilités, à exécuter les mesures ordonnées par l'autorité judiciaire ou tutélaire, respectivement des mandats de surveillance éducative (art. 307 al. 3 CCS) et de curatelle éducative (art. 308 al. 1 CCS).
2 L'office compétent désigne à cet effet l'un de ses collaborateurs.

Art. 22 Mandat de garde
1 Lorsque l'autorité judiciaire ou tutélaire retire la garde d'un enfant (art. 310 CCS), l'office compétent peut être chargé d'un mandat de garde.
2 Il désigne alors l'un de ses collaborateurs et pourvoit au placement de l'enfant dans une famille ou une institution spécialisée.
Art. 23 Clause d'urgence
1 S'il y a péril en la demeure, l'office compétent peut placer d'urgence l'enfant ou s'opposer à son déplacement. Il sollicite alors dans un délai de cinq jours l'intervention de l'autorité tutélaire.
2 Dans ces cas, l'accord du ou des détenteurs de l'autorité parentale n'est pas requis.

Art. 24 Curatelle de représentation
1 L'autorité judiciaire ou tutélaire peut, en cas d'urgence ou pour des missions ponctuelles, charger l'office compétent de représenter l'enfant par le biais d'une curatelle de représentation, lorsque les représentants légaux sont empêchés, ou en cas de conflits d'intérêt.
2 L'office compétent désigne à cet effet l'un de ses collaborateurs.

Art. 25 Délégation
1 L'office compétent peut déléguer les mesures prévues aux articles 21 et 24 à un service privé ou public, notamment à un organisme offrant des prestations éducatives en milieu ouvert ou à un tiers avec le concours de l'autorité tutélaire.
2 L'autorisation de fournir des prestations éducatives en milieu ouvert dans un cadre privé est donnée par le Conseil d'Etat qui en fixe les conditions par voie d'ordonnance.
3 L'office compétent collabore étroitement avec le service ou le tiers qui assume cette délégation.

Art. 26 Autres tâches de l'office compétent
1 Il intervient lors de changements de nom concernant les enfants.
2 Il veille, lors de naissances hors mariage, à ce que les mesures nécessaires soient prises; il est tenu informé par le service compétent lorsqu'une telle naissance se produit.
3 Il peut être chargé d'autres tâches particulières lorsque l'intérêt d'un enfant l'exige.

Art. 27 Organisation
L'office compétent est constitué de centres de consultation régionaux. Leur organisation est réglée par le Conseil d'Etat.

Section 2: Placements

Art. 28 Compétence
Le Département est compétent pour délivrer les autorisations et exercer la surveillance concernant le placement d'enfants, conformément à la législation fédérale y relative.

Art. 29 Formation
1 Le Département prend les mesures utiles afin d'encourager et d'améliorer la formation de base et la formation continue du personnel des différentes institutions soumises à autorisation, conformément à la législation fédérale y relative.
2 De plus, il veille à ce que les institutions susmentionnées disposent de personnel qualifié.

a) Enfants placés à la journée

Art. 30 Attributions du Département
1 Le Département est chargé d'autoriser et de surveiller les institutions accueillant des enfants à la journée, conformément à la législation fédérale y relative.
2 Il est chargé d'activités de soutien et de conseil auprès de ces structures.
3 Il conseille les communes ou les groupements de communes dans la mise en place de ces structures.

Art. 31 Autorisation et surveillance
Une ordonnance du Conseil d'Etat règle les questions touchant à l'autorisation et à la surveillance du placement d'enfants en structures d'accueil et en milieu familial à la journée.
Art. 32 Rôle des communes
1 Il appartient aux communes, ou aux groupements de communes, de prendre les mesures utiles afin que l'offre privée ou publique réponde au besoin de places d'accueil extra-familial pour les enfants, de la naissance jusqu'à la fin de la scolarité primaire.
2 Les communes sont chargées d'évaluer les besoins pour de telles structures, d'informer les usagers sur l'offre et sur les modalités d'utilisation de celles-ci et de coordonner l'affectation de l'ensemble des ressources dans ce domaine. Elles peuvent déléguer ces tâches aux centres médico-sociaux.
3 Les communes veillent à garantir un accès équitable à un réseau d'accueil à la journée, différencié et à la portée des usagers.

Art. 33 Participation du canton
1 Le canton participe au financement des réseaux d'accueil qu'il a dûment autorisés, sur la base d'un contrat de prestations correspondant au 30 pour cent des salaires et du matériel éducatif reconnus.
2 Les associations de parents d'accueil à la journée sont considérées comme un réseau d'accueil.
3 Une ordonnance du Conseil d'Etat fixe les conditions et les modalités de la participation cantonale.

b) Placement avec hébergement chez des parents nourriciers

Art. 34 Autorisation et surveillance
1 Tout placement avec hébergement auprès de parents nourriciers d'un enfant qui n'a pas 15 ans révolus ou qui fréquente l'école obligatoire est soumis à autorisation et surveillance du Département lorsque ce placement a lieu pour une durée indéterminée ou supérieure à trois mois.
2 Les conditions d'octroi de l'autorisation, la surveillance des enfants placés ainsi que le contrôle de ces placements sont précisés par une ordonnance du Conseil d'Etat.

Art. 35 Dispense d'autorisation
1 Toute personne qui accueille un petit-fils ou une petite-fille, un frère ou une sœur, un neveu ou une nièce, un beau-fils ou une belle-fille est dispensée de l'annoncer et n'est pas soumise à surveillance.
2 Toutefois, le placement peut être interdit s'il se révélait préjudiciable aux intérêts de l'enfant.

Art. 36 Frais de placement
1 Les frais de placement correspondant aux frais d'hébergement ainsi qu'au budget personnel sont supportés en premier lieu par les parents, subsidiairement par les corporations responsables selon les dispositions cantonales réglant l'intégration et l'aide sociale.
2 Le Conseil d'Etat édicte une ordonnance concernant la répartition des frais de placement d'un enfant auprès de parents nourriciers.

c) Adoption

Art. 37 Autorisation et surveillance
1 Le Département informe et soutient les personnes qui souhaitent adopter un enfant.
2 Il effectue l'enquête (art. 27 LACCS) et exerce la surveillance sur le placement d'enfants en vue de leur adoption future.
3 Il délivre l'autorisation d'exercer l'activité d'intermédiaire en vue de l'adoption; il assume l'autorité de surveillance cantonale.

Art. 38 Autorité centrale compétente
Le Département remplit la fonction d'autorité centrale cantonale conformément à la Convention de La Haye du 29 mai 1993.
d) Colonies, camps de vacances, homes et internats ne dispensant pas de prestations éducatives spécialisées

Art. 39 Colonies et camps de vacances
1 L'exploitation ou la mise en location d'établissements hébergeant des enfants durant les vacances scolaires ou pour de courtes périodes est soumise à l'autorisation et à la surveillance du Département. Celui-ci peut déléguer la surveillance ainsi que le renouvellement de l'autorisation aux communes.
2 L'organisation de camps de vacances peut être soumise à la surveillance du Département.
3 Le Département établit un registre des établissements autorisés contenant les informations utiles. Celui-ci est mis à jour une fois par an.

Art. 40 Homes d'enfants et internats
Les internats et homes, accueillant des enfants à moyen et long terme mais ne dispensant pas de prestations éducatives spécialisées, sont soumis à l'autorisation et à la surveillance du Département.

Art. 41 Autorisation
1 Le Conseil d’État régule par voie d’ordonnance l’autorisation et la surveillance de ces types d'hébergement ainsi que l'organisation de camps de vacances.
2 Demeurent réservées les dispositions de la législation sur les constructions et celles de la police du feu.

Art. 42 Dispense d'autorisation
Sont dispensées de requérir l'autorisation officielle les institutions cantonales, communales ou privées d'utilité publique soumises à une surveillance spéciale par la législation scolaire, sanitaire ou sociale.

e) Placements institutionnels

Art. 43 Institutions d'éducation spécialisée
1 Les institutions d'éducation spécialisée sont soumises à l'autorisation et à la surveillance du Département, conformément à la législation fédérale y relative.
2 Toute nouvelle autorisation d'exploiter un tel établissement ne peut être octroyée que lorsqu'un besoin réel est avéré, notamment au regard de la planification cantonale.
3 Les conditions d'octroi de l'autorisation d'exploitation ainsi que le contrôle de ces établissements sont réglés par une ordonnance du Conseil d'Etat.

Art. 44 Institutions scolaires spéciales
Les institutions scolaires spéciales reconnues par l'Office fédéral des assurances sociales sont soumises à l'autorisation prévue par la législation y relative.

Art. 45 Placement
1 Tout placement effectué dans un des établissements mentionnés à l'article 42 doit être préalablement autorisé par le Département; les placements ordonnés par les autorités judiciaires demeurent réservés.
2 Les conditions de l'autorisation de placement ainsi que le mode de surveillance des enfants placés sont réglés par une ordonnance du Conseil d'Etat.

Art. 46 Frais de placement
1 Les frais de placement correspondant au prix de pension ainsi qu'au budget personnel sont supportés en premier lieu par les parents, subsidiairement par les corporations responsables, selon les dispositions cantonales réglant l'intégration et l'aide sociale.
2 Les coûts de placement dans une institution reconnue hors canton - après déduction du prix de pension et du budget personnel, supportés en premier lieu par les parents, subsidiairement par les corporations responsables, selon les dispositions cantonales réglant l'intégration et l'aide sociale - sont pris en charge un tiers par le canton et deux tiers par les communes.
3 La contribution des communes est fixée au prorata de leur population.
Article 47: Mode de financement et répartition des frais de placement
1. Le Département encourage, planifie, coordonne et soutient financièrement les activités des institutions d'éducation spécialisée, conformément aux dispositions fédérales y relatives.
2. Les modalités de participation du canton aux frais d'exploitation et de construction ainsi que la répartition des frais de placement d'un enfant auprès d'une institution d'éducation spécialisée sont réglementées par une ordonnance du Conseil d'Etat.

Chapitre 6: Prestations spécialisées

Article 48: Attributions du Département
1. Lorsque le développement psychosocial d'un enfant est perturbé ou en danger de l'être, le Département offre des prestations spécialisées ambulatoires sous forme de conseil éducatif, de psychologie scolaire ou de psychiatrie pour enfants et adolescents.
2. Lorsque le développement précoce d'un enfant est entravé par un handicap ou susceptible de l'être, le Département offre des prestations d'éducation précoce spécialisée.
3. Les prestations spécialisées s'adressent à l'enfant et/ou à son entourage, en collaboration étroite avec les parents.
4. Relèvent plus spécifiquement du service public les tâches à visée préventive, celles qui exigent les compétences d'une équipe pluridisciplinaire ou celles qui ne sont pas couvertes par une assurance sociale.
5. Les prestations spécialisées offertes par les professionnels de la santé sont soumises aux dispositions de la loi sur la santé, en particulier celles qui traitent des relations entre le patient et les professionnels de la santé ainsi que celles relatives aux droits et devoirs de ces derniers.
6. Les sanctions pénales prévues dans la loi sur la santé sont expressément réservées.

Section 1: Conseil éducatif, psychologie scolaire et psychiatrie pour enfants et adolescents

Article 49: Mission de l'office compétent
1. L'office compétent exerce des activités de conseil éducatif, de psychologie scolaire et de psychiatrie pour enfants et adolescents.
2. Sa mission est d'effectuer de la prévention, des traitements, des examens ainsi que des expertises.
3. Il peut fournir des prestations au-delà de la majorité légale lorsque les jeunes sont encore en formation.
4. Il offre également des prestations:
   a) aux parents et à leurs associations;
   b) aux autorités scolaires et aux enseignants, tant au niveau communal que cantonal;
   c) aux professionnels de la santé;
   d) aux autorités judiciaires et tutélaires;
   e) aux associations, aux institutions, aux services spécialisés privés ou publics.

Article 50: Organisation
1. L'Office compétent est constitué de centres régionaux et d'une unité de psychiatrie pour enfants et adolescents.
2. La psychiatrie hospitalière pour enfants et adolescents relève du département en charge de la santé, en collaboration avec le département chargé de l'application de la présente loi.
3. L'organisation de l'office compétent est réglée par le Conseil d'État.

Section 2: Éducation précoce spécialisée

Article 51: Mission de l'office compétent
1. L'office compétent offre des prestations d'éducation précoce spécialisée.
2. Ces interventions ont lieu en principe à domicile, en faveur d'enfants dont le développement est entravé par un handicap ou qui risque de l'être.
3. Ces mesures s'appliquent dès la naissance et jusqu'à l'entrée dans une structure scolaire appropriée. Elles comprennent également le conseil et le soutien aux parents ainsi qu'aux personnes qui encadrent ces enfants.
Art. 52 Organisation
Le Conseil d'Etat définit par voie d'ordonnance l'organisation de l'éducation précoce spécialisée dans le canton, notamment en fixant les conditions de sa pratique privée et de sa rétribution dans les cas qui ne sont pas couverts par une assurance sociale.

Chapitre 7: Dispositions diverses

Art. 53 Droit d'aviser
Toute personne a le droit d'aviser l'autorité tutélaire ou le Département, lorsqu'elle constate une situation de mise en danger d'un enfant.

Art. 54 Devoir de signalement
1 Toute personne qui, dans le cadre de l'exercice d'une profession, d'une charge ou d'une fonction en relation avec des enfants, qu'elle soit exercée à titre principal, accessoire ou auxiliaire, a connaissance d'une situation de mise en danger du développement d'un enfant, et qui ne peut y remédier par son action, doit aviser son supérieur ou, à défaut, l'autorité tutérale.
2 En cas d'avis au supérieur, ce dernier est tenu d'agir dans les meilleurs délais, notamment pour faire cesser la situation de mise en danger, pour prendre toutes mesures utiles à l'intérêt de l'enfant et pour sauvegarder les preuves.
3 Les infractions poursuivies d'office doivent être dénoncées au juge d'instruction pénale. S'il y a doute sur l'opportunité de la démarche, il est possible de consulter le Département.
4 La personne avisante est informée de la suite donnée de manière appropriée.
5 Demeurent réservées les dispositions spéciales de droit fédéral et cantonal.

Art. 55 Droit d'informer
1 Dans le cadre de l'exercice de sa profession, de sa charge ou de sa fonction en relation avec des enfants, qu'elle soit exercée à titre principal, accessoire ou auxiliaire, toute personne peut fournir les renseignements utiles aux autorités ou aux services compétents lorsque l'intérêt de l'enfant le justifie et après avoir obtenu l'autorisation des ou du parent(s) détenteur(s) de l'autorité parentale.
2 Si l'intérêt de l'enfant est gravement menacé, il est possible de passer outre cette autorisation.

Art. 56 Médiation
1 Toute personne qui estime que les droits qui lui sont reconnus par la présente loi n'ont pas été respectés peut s'adresser à un médiateur désigné par le Conseil d'Etat. Celui-ci entend les personnes et tente de les concilier.
2 L'indépendance du médiateur doit être garantie.
3 Le Conseil d'Etat précise par voie de règlement le rôle du médiateur.

Art. 57 Commission pour la protection des enfants à l'égard des représentations cinématographiques et autres supports médiatiques
1 Il est institué une Commission pour la protection des mineurs à l'égard des représentations cinématographiques et autres supports médiatiques lorsqu'ils sont proposés dans un lieu public. Cette commission aura pour mandat, notamment:

   a) la réglementation de la diffusion des représentations cinématographiques et autres supports médiatiques lorsque ceux-ci sont de nature à perturber leur sensibilité ou leur jugement, soit en raison de leur caractère violent ou pornographique, soit parce qu'ils font l'apologie de comportements dégradants, contraires à la dignité humaine;
   b) la réglementation de l'âge d'admission des enfants aux représentations cinématographiques et autres supports médiatiques;
   c) la coordination des décisions avec d'autres cantons suisses.

2 Le Conseil d'Etat précise par voie de règlement les attributions et le fonctionnement de la Commission ainsi que les modalités de contrôle.
Art. 58 Concours des autorités
1 Le service compétent, dans le cadre de l'exécution de ses tâches et lorsque les intérêts d'un enfant sont menacés, peut avoir recours aux autorités de police.
2 Les services administratifs cantonaux et communaux, les autorités scolaires ainsi que les collaborateurs des institutions privées et semi-privées s'occupant d'enfants, sont également tenus de lui prêter leur concours.

Art. 59 Pénalités
1 Les contraventions à la présente loi et à ses dispositions d'application sont passibles d'une amende allant de 50 francs à 10 000 francs.
2 Les sanctions sont prononcées par le Département compétent. La procédure applicable est celle régissant les prononcés pénaux administratifs.
3 Demeurent réservées les dispositions de l'article 48, chiffre 5, de la présente loi.

Art. 60 Emoluments

Chapitre 8: Dispositions finales

Art. 61 Dispositions transitoires
Les procédures en cours lors de l'entrée en vigueur de la présente loi sont poursuivies selon le nouveau droit.

Art. 62 Dispositions d'exécution
Le Conseil d'Etat édicte toutes dispositions utiles en vue de l'application uniforme de la présente loi.

Art. 63 Abrogation et modification de lois
Toutes dispositions contraires à la présente loi sont abrogées, notamment:

a) la loi sur la protection des mineurs du 14 mai 1971;
b) la loi fixant la contribution de l'Etat aux frais de placement des mineurs et l'aide financière aux établissements spécialisés pour enfants et adolescents du 8 février 1973.

Art. 64 Votation populaire et entrée en vigueur
1 La présente loi est soumise au référendum facultatif.
2 Le Conseil d'Etat fixe la date de son entrée en vigueur.1

Le président du Grand Conseil: Yves-Gérard Rebord
Les secrétaires: Madeleine Mayor, Hans-Peter Constantin

1 Entrée en vigueur le 1er juin 2001.