Training Course
On Juvenile Justice for
Officials from Moldova

Sion Seminar 2003

Jean Zermatten (Ed.)

Working Report
1 - 2004
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officials from Moldova

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This working report presents the various conferences of the Sion Seminar, held in Switzerland from October 6th to 10th 2003

Working Report
1 - 2004

Organised by
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In collaboration with
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INTRODUCTION

Do we need a specialized judicial body for young offenders, with its own rules and sanctions (punishments and sentences) or can we simply be satisfied to apply a criminal justice system for adults to young people in conflict with the law? This would apply to the great principles of responsibility, proportionality and retribution, but would be satisfied to reduce the burden of the punishment, while cutting the maximum sentence in two, according to the principle "10 for adults, 5 for minors"?

It is a fundamental question at a time of historical development of criminal law for minors (and the right to protection) where a certain number of countries raise questions when they revisit their legislation for young offenders, or when other States have the ambition to legislate the matter. And it is quite surprising to note that it is the country that invented juvenile justice itself, the United States, that leads the charge against justice for minors, while proposing the famous formula "Nothing works" and while repeating the official response regarding crimes committed by minors to a primary security reflex based on the deprivation of liberty. Looking back on the despized return of the institutional movement developed in the 18th century in countries of Western culture (let us remember Mettray colony in France for example) and found its a pogee at the International Association of Penitentiary Sciences Congress (Stockholm 1887), whose conclusions were roughly as follows (loose translation): "a young offender should not be punished, but must be educated so as to be able to become useful to society, rather than to attack his values."

It is a given that complete and total confidence in a right with paternalistic goals would breed criticisms based on a concept of law more concerned by individual guarantees and one that is more justifiable; nevertheless, the total drift towards a purely retributif justice for minors, and forgetful of specifics of childhood and adolescence and particular needs for this statute, leaves us thinking. We continue to believe that the pure and simple abolition of specific justice for minors is a cut and dry loss for children, families, the respect of the rights of children to be treated, not as miniature adults, but as children as a whole, i.e. beings under development who appear by a delinquency of transition (ubiquitous), which is only seldom the expression of an objective perversity or a criminal pathology.

Perhaps juvenile justice lacked transparency by not showing enough of the objectives it was pursuing or the methods it was using? Perhaps it also lacked instruments to measure its effects, which caused doubts about its effectiveness. There is certainly also a resistance, even reservations, regarding measures that are said to be educational, in particular those connected forms of the deprivation of liberty that are decided for the good of children, but whose successes can be doubtful. Not to mention the situations where minors were deceived while they were entrusted to professionals, who benefitted from these situations by committing seriously damaging actions against young offenders, actions that were often sexual.

We thus weaved a sheaf of criticisms, and a great number of them are founded. However, one should not forget that justice for minors invented the principle of individualization, which seeks to initially treat each offender for who he is, and not for what he has done.
- Juvenile justice had the idea to seek the causes of the behaviour, rather than to treat the symptoms;
- Juvenile justice placed the child once again at the center of concentric circles, including families, school, work, peers, and society, while trying to restore the relations between this child and these various circles;
- Juvenile justice imagined solutions like probation, educational assistance, therapeutic care, institutional responsibility;
- Juvenile justice continues to light the way for criminal law, in its restorative approach through mediation and work of general interest;
- Juvenile justice has conveyed its doubts regarding the effects of the deprivation of liberty, in particular the difficulties of insertion of teenagers who have been detainees;
- Juvenile justice caused a whole reflexion on alternatives and de-legislating society;
- Juvenile justice inaugurated interdisciplinary work and inserted in the court disciplines other than law;
- Juvenile justice continues to believe in the possibility of change in the delinquent and does not have a positivist vision of the young offender for whom, we can do nothing…

We could continue on enumerating the contributions of the justice for minors, yet we suspect that it would not bring more to the debate. What we are trying to say, is that juvenile justice is a human justice, respectful of the needs of children and their rights, and which does not establish itself on simple punishment, or even on the deprivation of liberty. That is not to say that punishment does not exist and that the loss of liberty is, in itself, bad; no, what this means is that the fact of assuming one’s actions, as a child or a teenager, is an important step, that should be considered with great precaution and it is necessary to understand and grasp it with the nuances required by the particular psychological state of children and teenagers. That also means that the deprivation of liberty should be neither the first, nor the single response of justice towards a young offender: it can be a threat; yet it must remain the exception. Because, first and foremost it is necessary to understand the act and its reasons to really be able to allow the young offender to face the consequences of his actions and to find the answers adapted to his own situation.

It is thus necessary to maintain a justice particular to minors, or it should be set up in the countries where it does not exist. But it is then necessary to equip it with the instruments which are useful for its credibility and to entrust it to people who can be trained with this practical and difficult, yet fascinating exercise. It must allow the young offender to become a full member of society; and not a marginal, rejected or revolted being.

It is also necessary that juvenile justice agree to make efforts in two directions:

1. by complying with known clear rules of organization and procedure; international law developed important standards in this field, with the UN Standard Minimum Rules for the administration of Juvenile Justice (Beijing Rules, 1985), then with articles 37 and 40 of the United Nations Convention on the Rights of the Child (20.11.1989), with United Nations Guidelines for the Administration of Juvenile Delinquency (Riyadh Rules, 1990) and with the UN Rules for the protection of Juveniles deprived of their Liberty (Havana Rules, 1990). It is thus an important corpus of rules, recommendations and injunctions which
must inspire the legislators, when they promulgate laws and the magistrates, when they apply the law;

2. while taking as a starting point the movement of restorative justice which reintroduced, the victim in the proceedings and which seeks to make the offender aware of the magnitude of his action, in the goal to lead him to repair his mistake and the injury caused. This idea does not constitute, in our opinion, a revolution of justice, that is known as a welfare justice, but an adaptation towards the educational needs to make the offender aware of the consequences of his behavior. This idea of repair and confrontation with the victim through mediation, intended to obtain an agreement between the parties with the help of a symbolic repair system, partial or complete, for purposes to be able to put an end to the proceedings, either during the instruction, or even at the moment of judgement. One can also grant value to the element of restorative justice to Community service order, the goal of this benefit being to find a form of sanction which responds, at the same time to the educational idea (active participation in courses) or to the rehabilitation into society (work of general interest).

And here we find ourselves at a turning point in the evolution of justice for minors. The Committee on the rights of the child, who examines the reports of all the countries on the situation of juvenile justice (among others), often had the occasion to point the finger at this or that State for its system that is marginally in agreement with the rights of the child. It especially repeated on several occasions the great principles which were to govern juvenile justice adapted to the needs of those under the age of 18: it especially expressed its attachment to a special system, detached from the legal system for adults, as well as its confidence in the alternative answer and the need to respect minimal procedural guarantees. The Committee strongly affirmed that the deprivation of liberty was only to be the last resort, and not the single response towards the offences of young people. In my opinion, it is without question, the assertion of clear principles; but it is especially the judgment of the attempts carried out here and there to gradually absorb courts for minors, by "ordinary" justice, i.e. the justice applied to adults, while making one believe that "nothing works"

I believe that juvenile justice is effective, and it "does work", in so far as

1. one gives it the means with people and training; not only of the judges, but also of the social workers, the psychologists, the lawyers, the teachers, the doctors…; alone, the law can do nothing,

2. one allows the measures ordered by justice to be applied, this means that it exists alongside judicial bodies, instruments used for investigation, ambulatory responsibilities, institutions and educational concepts,

3. one makes it possible for the victim to take part in the proceedings, in its own place, even if it is a folding seat, but present at the proceedings, to underline the fundamental educational need for the child: that to take responsibility and assume his actions,

4. one gives confidence to a justice which favours the treatment of causes, rather than superficial intervention, i.e. which seeks a modification of reality and not a superficial social regulation.
These few principles are those which underlay the training course given to the official representatives from Moldavia, during the 2003 IDE course. It is these principles, recognized and promulgated, by the international community which we try to repeat throughout our training.

In fact it is the few principles that enable us to answer unequivically the original question: yes, we need a specialized judicial bodies for young delinquents.

Sion, November 2003

Jean Zermatten, Director
WELCOME SPEECH FOR THE REPRESENTATIVES FROM MOLDOVA
Dr. Bernard COMBY, President of the IDE

Mr Representative from UNICEF,
Mrs and Mr Representatives from Moldova,
Mrs Director of the course,
Mrs and Mr Professors,

As President of the International Institute for the Rights of the Child and as President of the Institut Universitaire Kurt Bösch, I have the pleasure to welcome you in our institute for this important course on juvenile justice.

You have chosen to come to Sion, in Valais, Switzerland, in a part of this country which will ensure you hospitality, the charm of its landscapes and the useful quietness for a deep work and for a reflection on the future of juvenile justice in your country.

It is good sometimes to get out of one’s ordinary framework, to confront other realities, to discover new experiences in order to feed one’s own thinking and get rid of one’s habits. This is essential and oxygenates the mind.

We are very honoured to have you among us. Be sure that the whole IDE team will do its best to facilitate your task and to offer you the ideal conditions for a personal and team work. The IUKB headquarters will be your home for one week and we hope that you will feel at home, even if some few disturbances may appear due to the enlargement work.

Mrs. and Mr. Participants,

The Beijing Rules on the administration on Juvenile Justice, promulgated as early as 1985, and recapitulated by the Convention on the Rights of the Child to ensure them a binding effect, has established a fundamental principle:

“Minors in conflict with the law should benefit of a fair and human treatment. More precisely, Juvenile Justice should pursue two objectives: search the promotion of the minor’s welfare and ensure that the reaction of authorities should be proportionate to the nature of the crime or the delinquent.”

I think that your training course will try the whole week along, to enlighten and illustrate this principle. It will try as well to examine how it could be applied in the day to day reality. As magistrates, lawyers, policemen, social workers or in charge of protection services, you are often confronted to various requests, which do not always aim at the same objectives. The stress of urgent situations imposes you short deadlines for making a decision and the human tragedy in all its aspects will deliver you cases, and often terrible ones.

1 Beijing Rules, edited by DEI, Geneva 1995, vol 4, p. 2
The difficulty is precisely to avoid being limited to cases and to see behind the submitted situation related to children, and to see them not only as small persons but human beings who need you, State protection and public intervention. Your intervention should take into account not only the mistake but above all the individual needs of each of these children. At the IDE, we are convinced that if general rules could be defined for a right penal intervention, quick and respectful of children’s rights, there is no absolute rule and that each situation should be examined in itself and answers should be adapted to individual needs.

You know better than I do, that families are most of the time the central issue in children’s education. When there are no families, children left to themselves take liberties, often excessive, which endanger them and breach the law. And when there are families, with rigid principles and not enough latitude left to children, there are revolts sometimes spectacular and violent or sickly withdrawal.

You need to look for a balance in intervention and your guide should always stays the best interests of the child. It is the message that you are going to receive here in Sion. This means that we are not going to satisfy ourselves in teaching or reminding you nice principles. We are going to organise practical visits which will allow you to see concrete realisations and to confront theory to practice.

Mrs. and Mr. Professors,
Dear Ms. Winter, Director of the course,

I would like to express my deep gratitude for having accepted to play an important role in this training by offering your knowledge and your abilities to this course. We all have known each other for a long time and we know how your experience is precious to juvenile justice. It is a great chance for the IDE to rely on you in such important training courses. We are indebted to you and we thank you for your faithful involvement with us.

To everybody I would like to wish you a very constructive seminar, convivial moments in Valais and a very fruitful week. The goal is that you go back home strengthened by new knowledge. We strongly wish that you could see in exercising juvenile justice, not only an exercise of State power but a chance offered to young offenders to know a new start, thanks to your impulsion, under your protection and with your help.

Aren’t children the most precious gift in the world? This is why we need imperatively to protect these treasures of mankind and offer them new reasons to believe and to hope in future.
SPECIFICITIES OF THE INTERVENTION OF A JUVENILE JUDGE

Jean ZERMATTEN, President of the Youth Court of the Valais/Switzerland,
Director of IDE

Before speaking of the role of the juvenile judge, it's necessary to precise what the goals of the juvenile justice are:

- Educational: to raise awareness in order the young offender realizes what it act means
- Curative: to take care of the young offender, to "treat him"
- Preventive: to avoid the repartition of the offences, to prevent the recidivism

Secondary objectives are:

- social integration: to facilitate the integration (family, school, work, sports…)
- protection: against the environnement; to protect the cosiciety, if necessary.

These objectives are cumulative. In most of the procedures towards children and teenagers, these objectives should be applies 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 lives the differences from the adult law. As it is known, this last one focused especially on bringing a retributive or 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 inevitably (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 primilary taken into account. The understanding and the meaning of the act and the socio-educational intervention are the privileged means of answer, before penalty.

1. The individualization

The common criminal law is based on the examination of the offence; if the offence plays a role in juvenile justice as the pretext to the judicial intervention, on the other hand this offence, once admitted, vanishes in front of the minor's personal situation. Hence the importance of the bio-psycho-social inquiry; hence also the individual answer for every person at the risk of a feeling of injustice (offences committed in band, for example). For each: a personal made-dress, by avoiding the ready-made solutions of the common criminal law. It allows especially to treat causes rather than symptoms. Intelligent justice, which shapes social intervention very well.
2. **The inquiry on the facts/inquiry ad personam**

The juvenile court judge to whom a special act has been denounced goes into two procedure stages:

- **The inquiry on the facts:** to establish if the minor has really committed the act which blamed him. He takes this step generally with the Criminal Investigation Department of the Police (possibly the juvenile delinquency division) acting under his direction for all the operations having a judicial character. During this inquiry, he is entitled to take measures of constraint (pre-trial detention, sequester, home search, ...). This stage is generally fast.

- **The bio-psycho-social inquiry:** said also inquiry on the person or ad personam, which is the speciality of the judge’s work. We want to know about the situation of the minor in order to understand why he has acted and to know if his act has a particular meaning. During this inquiry, the judge may act on his own or refer to specialists (doctors, psychiatrists, educators, social workers), expertises, psychological exams, social inquiry, ... this stage lasting generally much more than the first one and involving many persons.

3. **The judgments’ execution**

In the Swiss system, the juvenile judge manages or directs also the execution of the decisions he has taken; here, there no intervention of the administration (penitentiary services and so on).

The child and the teenager are, by definition, “human being to become” and everybody knows the fast modifications in the behaviour, the attitudes and the expression’s means of young people. It is thus not possible in a law which wants to be curative, educational and preventive, to base the intervention on an unique, simple and definitive answer which would be a judgment and which could not undergo the lightest change. On the contrary, it is necessary to be able to bring an answer full of nuances, clear and understandable, naturally, but necessarily adapted, flexible and modifiable. Hence the role entrusted to the judge to follow the situation’s evolution and to be able, to modify at any time, the measures, to adapt them to the needs of the minor he is in charge.

4. **The medical model**

Here we can say that the judge acts as a doctor

1) Intervention/announcement, notification  
2) Offence/disease  
3) Search for causes  
4) Judgment/diagnostic  
5) Measure/treatment  
6) Execution/ follow-up  
7) Success-failure/recovery-pejoration

5. **The interdisciplinary work**

The juvenile court judge, in all the operations, is helped on one hand by his judicial collaborators and on the other hand by various specialists of the public or private services.
whom he relies. These last ones are called the auxiliaries or in certain countries “technicals”.

In the stage of inquiry ad personam, the judge will need the social services employee, the psychologist, the paediatrician, the social workers specialists in drug addiction for example, the psychiatrist,…Then, the judge is going to summarize the obtained informations. Most of the time, he will organize meetings between all the intervening parties either in a court or in a following service, or even in an institution. This moment is important because it allows to confront the various points of view, by the complementary opinions and advices of each expert.

But, the decision belongs to the judge; it is his responsibility and his duty.

In the stage when the measures start or are to be modified, interdisciplinary work is essential because the judge will need social workers, educational teams, institutions. The intervention is thus marked not only by the law, but also by all the human sciences which concern closely or by for the child: social sciences, pedo-psychiatry, pedagogy, psychology, education....

6. The central role of the juvenile court judge

By dividing the intervention in stages and speaking about interdisciplinary work, we have just seen that any request comes from the judge and that any proposition, analysis, expertises, goes back to the judge; this last one appears at every significant moment of the procedure and decides on any operations that they are linked to the offence or to the taking care. There is nothing which is made, without his agreement and without an explicit determination of his part. He is the cornerstone of all this judicial intervention’s system. To use a significant image, it is him who hold reins and who leads the harness.

This position is important :
- as a guarantor of the respect of the rights of the child/young offender at every stage of the procedure ;
- but also as the personal role that the judge has to play with the minors.

MY judge.

7. The negotiated justice

By opposition to the common justice which can be qualified of "imposed justice". It means simply that the court’s decision does not fall from heaven, neither in time, nor in its contents. Generally, in the stage of the inquiry ad personam, the recommended solution was explained, was discussed; sometimes even several solutions have been proposed, before the choice stops on the one. Then, the solution even have been tested, tried, modified (temporary or provisional measures). The beneficiary thus knows what is expected for him and the judgment is just the confirmation of all the previous work, made with the auxiliaries of the justice certainly, but also with the main interested persons. It is on the support of the beneficiary that will depend the efficiency of the ordered measure.

The negotiation does not want to say “smaller common denominator”; it is not a compulsory consensus.
The negotiated justice has limits which are imposed on one hand by objective reports made in the inquiry on the facts and in the inquiry ad personam, and on the other hand by the real need of the society protection. The support is envisaged every time it is possible—and that is often—but, it is not the end in itself.

8. A justice of the reality

The common criminal justice dictates the law and represses. The juvenile justice even if it also says the right, exceeds this first function, in order to aim an immediate modification if possible but at least in the medium term of the minor’s situation by going back to the causes of the offence and by acting on these. It thus tries to act on the reality. The child has to know the limits imposed by the law and knows that every offence leads to a social reaction. But later, it is necessary to find the answer which really develops the personal data of the author. The juvenile justice foresees a whole range of possibilities (measures and punishments) which have as characteristics to raise the awareness and to develop things. But this catalogue or responses, so detailed it is, may offer the conditions of the change only if it is accompanied, on the in the field, by services and necessary institutions and only if these bodies (organizations) are endowed with the necessary qualified personnel.

9. The rate of the intervention

The first intervention’s rate has to be imperative. Indeed, it has to have a link of immediacy between the committed act and the social reaction. Indeed, the child must be able to understand (that the intervention is connected to his act. The time which passes by is not neutral; it favours neglect, and more the young person is left away from any intervention, more he has the impression to win impunity. Thus, to be able to avoid the law. More even: if the intervention is fast and follows for a short period the act, the author will feel “author” and the intervention will be accepted; on the other hand, if the intervention starts only a few months after the act’s commission, the child will feel “victim” and the intervention will be perceived as inequitable or inappropriate.
CHILDREN IN DIFFICULT CIRCUMSTANCES AND THE CRC
NEW PRINCIPLES

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

- Right to rehabilitation of children who have suffered various forms of cruelty and exploitation
- Obligation of governments to take measures to abolish traditional practices harmful to children’s health
- Parents (or others responsible for the child) should provide guidance to the child in exercising his or her rights in accordance with the child’s “evolving capacities”

Art. 19

Protection from abuse and neglect

- Physical or mental violence
- Injury or abuse
- Neglect or negligent treatment
- Maltreatment or exploitation (sexual abuse)

Recommended:

PROTECTIVE MEASURES

- Establishment of social programs (support for children and caretakers)
- Other forms of prevention (community programs)
- Identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment (judicial involvement)

Art. 20

Protection of children without families

- Children deprived temporarily or permanently of family environment
- Children removed in their best interest from family environment

Recommended:

ALTERNATIVE CARE

- Foster placement (host families)
- Kafalah (Islamic law)
- Adoption
- Placement in suitable institutions
Art. 22

**Refugee children**

(Children seeking refugee status or considered as refugee unaccompanied or accompanied) shall get

- appropriate protection in accordance with the CRC and all other international humanitarian instruments
- humanitarian assistance

**Recommended**

- cooperation with UN Organizations, IGO’s, NGOs
- Assist the child reunification
- Trace the parents/families protection as for children deprived of family environment (art. 20)

Art. 23

**Handicapped children**

(Mentally or physically disabled children)

- ensure to enjoy a full and decent life in dignity - education
- promote self-reliance - training
- facilitate active participation in the community - health care services
- ensure special care - rehabilitation services
- free of charge for: - preparation for employment
- recreation opportunities

**Recommended**

- Exchange of information (preventive health care, medical, psychological and functional treatment)
- Dissemination of methods of rehabilitation, education and vocational services
Art. 30

Children of minorities or indigenous groups

- ethnic
- religious minorities
- linguistic
- indigenous origin

have the right to

- enjoy their own culture
- to profess and practice their own religion
- to use their own language

Art. 32

Child labour

Protection from:

- economic exploitation
- performing hazardous work
- performing work interfering with the child’s education
- performing work harmful to health, physical, mental, spiritual, moral, social development

Recommended

- To take into consideration CRC and other international instruments (ILO Conventions 138,182)
- Provide for a minimum age for admission to employment
- Provide for appropriate regulation of hours and conditions of employment
- Provide for appropriate penalties for those not respecting this article

Art. 33

Drug abuse

Protection of

- Illicit use of narcotic drugs and psychotropic substances
- Prevention of use of children in illicit production and trafficking of such substances
Problems:

- Law must allow for treatment instead of punishment
- Organized Crime, especially if members of government are involved
- Corruption, especially of law enforcement
- Justice: Catching few and not “big fishes” and using deterrence by punishing
- Consumer: awareness raising but without inciting curiosity

The Question of Drugs

- Children Taking drugs
  - Prevention
  - Treatment

- Children producing drugs: Only possibility for job, drugs as salary

- Children transporting drugs: often family enterprise, drugs as salary

- Children selling drugs ("Carriers", "Bunkers"): to meet their needs, no legal possibility for treatment

Art. 34

Sexual exploitation

- Prevent inducement of a child to engage in any unlawful sexual activity
- Prevent exploitative use of children in prostitution or other unlawful sexual practices (paedophilia)
- Prevent exploitative use of children in pornographic performances and materials
Recommended:
Consideration of all national, bilateral and multinational measures (Optional Protocol II)

Art. 35

Sale, trafficking and abduction

Prevent
- sale of children for any purpose, in any
- traffic in children form

by taking all appropriate national, bilateral and multilateral measures

Art. 36

All other forms of exploitation

Protection against all forms of exploitation prejudicial to any aspects of the child’s welfare
(Street Children)

Art. 38

In respecting all relevant rules of international humanitarian law applicable
(Optional Protocol I)

- Ensure that people under 15 years do not take a direct part in hostilities
- refrain from recruiting any person under 15 years into the armed forces
- giving priority in recruiting persons between 15 years and 18 years to those who are oldest
- protect all children who are affected by an armed conflict accordance with § international humanitarian law

Art. 39

- promote physical and psychological recovery
- promote social reintegration
in all environment which fosters health, self-respect and dignity for a child victim of:
  - any form of neglect, exploitation, abuse
  - torture, cruel, inhuman or degrading treatment or punishment
  - armed conflicts
RESILIENCE AND RESTORATIVE JUSTICE

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

“CASITA” : The building of resilience

Attic

Other experience to be discovered

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>Current System</th>
<th>Restorative Justice</th>
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<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>
</tr>
<tr>
<td>Punishment is effective threat of punishment deters crime</td>
<td>Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships</td>
</tr>
<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>
</tr>
<tr>
<td>Emphasis on adversarial relationship</td>
<td>Emphasis on dialogue and negotiation</td>
</tr>
<tr>
<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>
</table>

SOURCE: Adapted from Zehr (1990)
**Principle of proportionality**

**Action**
- Appropriate to circumstances
- Appropriate to child
- Appropriate to facts
- Appropriate to goals

---

**Offence**

- **police**

**Prosecutor**

- **Decision for mediation**
- **Demand for a penalty**

**Judge**

- **Court session**

**Mediation**

- **Offender**
- **Victim**
  - Compensation
  - Emotional level
  - Material level

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

**Mediation succeeded**
- File is closed

**Mediation not succeeded**
- Continuing court session
THE PREVENTION OF SERIOUS AND PERSISTENT JUVENILE CRIME
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Introduction

If one considers juvenile crime trends since World War II, several more or less distinctive periods will emerge. Starting in the sixties, when the economic boom created more prosperity in western European countries, juvenile delinquency shows a steep and continuing increase till about the 1980's. Between 1980 and 1994 juvenile crime roughly stabilized, while since then the crime volume has been again slowly increasing. However, it is not so much the volume as the nature of delinquency that has changed in the 1990’s. First, there is an increase in violent offence such as assault and robbery with violence. Although some of this is an artefact due to more reporting to- and more recording by the police, as well as more formal control of young people, victimization surveys and self-report surveys also show some increase in violent behaviour. Second, there is a growing involvement of girls in delinquency as well as in violence, although this is generally limited to assault. The more serious and instrumental violence still is essentially a boys activity. Third, there is a strong overrepresentation of some ethnic groups in the crime statistics. Moroccan boys and boys from the Antilleans commit more muggings and crimes of robbery than do other groups and tend to use violence in committing these offences (Kaufman and Verbraeck, 1986; de Haan, 1993).

This explosive growth is related to fundamental changes in western society (Junger-Tas, 1990). The first of these changes is of a demographic nature. The post-war baby boom meant that a profusion of adolescents entered their criminally most active years in the 1960s and the 1970s. The stabilization and even reduction in some forms of delinquency in the 1980’s is probably related to the decline of the birth rate in the 1970’s resulting in a reduction of the youth population by some 25%. Since the 1990’s the youth population is growing again.

Even more important, though, is the increase in prosperity. A great number of consumer and luxury goods -bicycles, motorcycles, cars, household appliances and electronic equipment-, were suddenly available to ever greater groups of people. Many of these goods, such as cameras, car radios, tape- and video recorders, were easy to steal or damage. At the same time supervision and control on these goods in shops, department stores and (semi)public places has been greatly reduced. For example a study on retail business in the United States has shown that between 1958 and 1972 business activities have considerably grown, but shop personnel has declined by almost 15% (Cohen and Felson, 1979; Felson, 1995).

Furthermore, the number of one- and two-person households has increased and official data indicate that one-person households are twice as often burglarized than households with more persons. Moreover, according to the Dutch victim survey, adolescents and young adults are more often victims of crime than married persons. In addition, the number of dual-earners and the percentage of women employed have greatly increased in our country. More and more homes are vacant during the day and as a consequence burglary is one of the offences which have increased most.
Finally, we should mention the *reduced supervision and control of young people* should be mentioned. Young people's lives have become less restricted and more emancipated. They are more mobile and can easily escape from parent supervision. In this respect it should be observed that risky, delinquent behaviour is rather attractive for young people who, by definition, are still to some extent outside of society and do not have much to lose. For the majority of them such behaviour may be viewed as being a largely temporary, but exciting, risky and status-enhancing pastime.

In this paper I will look at the role of the family in relation to delinquency. First I will consider some of the changes in the family in the 20th century and the impact these changes have had on the way families function. More in particular, I will consider the family’s socializing role with respect to the social and norm conforming behaviour of their children. Second, I will review the empirical evidence on the role of the family in causing delinquent and deviant behaviour. Finally, I will present some reflections on ways we could take to reduce juvenile delinquency.

1. **Family change in the 20th century**

This section will be devoted to the question how changes in living conditions in western society led to changes in the family as well as in the conception of what family life, children and young people should be.

1.1 **Socio-economic change**

The pre-modern family was essentially an independent production unit and a place of socialization of the young under the absolute authority of the father. The father not only taught a trade to his sons and supervised them while at work, he also transmitted social and cultural norms to his children. A network of social controls based on kinship and community ties maintained the traditional organization of the working class family. However, the industrial revolution meant the disintegration of this family structure. Analyzing its effects on the cotton industry in Lancaster Smelser (1959) showed how industrial change produced a process of structural differentiation within the family. The increase in the scale of factories made it impossible for families to work together as a production unit. This led to a greater differentiation in economic roles, where the role of the father no longer implied training and authority over his children. In addition, despite the prevailing ideology of independence, freedom, self-reliance and industry, families were incapable of preserving the welfare of their children. Legislation was then put in place to ensure that welfare and protect women and children. The family, as a production unit and as the main socializing unit providing job-training, education and the transfer of religious, moral and cultural values then came to an end.

Church affiliated associations as well as the state performed essential functions that earlier belonged to the family, creating a formal education system, organizing assistance to the poor and the sick and subsidized housing. All this meant the start of a slow decline of the father’s absolute power over his children.

The pace of change vastly increased after World War II. Technological change modified working conditions: large sections of the working class moved into white collar jobs. Increased educational opportunities produced more social mobility and improved incomes. Women in particular took advantage of the increase in state civil service and other service jobs. In addition to better clothing and better nutrition, the average family...
was able to buy expensive consumer goods and to spend more money on leisure and holidays. Paid vacations became a mass phenomenon only after World War II (Stearns, 1975). The construction of the welfare state was based on a typical European coalition of Social-democrats and Christian-democrats. The welfare state meant unprecedented security from risks and reached all groups in society, but most of all the working class and the middle class. One of its weaknesses, however, is its dependence on full employment and economic growth. Since about the end of the 1970’s both are wanting, causing major difficulties in its functioning.

Again in western society the economy and the labor market have undergone profound changes. Manufacturing industries are more and more replaced by service industries. The demand for unskilled workers has substantially decreased and there is a trend towards a more flexible organization of labor. This requires from workers more collaboration, more consultation, frequent adaptation to changes in the organization, more communication and language skills. These changes have been accompanied by a general displacement of lower-skilled workers by higher skilled ones, which is one of the causes of persistent unemployment among certain social groups including ethnic minorities. For example, in the US the recession of the late 1970’s led to massive lay-offs of industrial workers, a reduction of the availability of low-skilled jobs and the development of a service industry requiring qualities that most of the factory workers did not possess. As a consequence the segregated black areas changed into the American ‘poverty-ghetto’, characterized by degradation, drugs dealing and crime (Massey and Denton, 1993). Similar processes are taking place in Europe and so-called ‘concentration areas’ do develop, which may also become persistent ghetto-like neighborhoods.

The consequence of these changes for family life is that marriage and the family as social institutions have become less important. Although most people continue to prefer to live together the emphasis has shifted from a stable and lasting union towards a union based on the personal need fulfillment of each individual member.

1.2 Demographic change

One of the most important changes in family structure is what had been called the ‘demographic transition’, that is the transition from the old demographic pattern to the one we now know. This change is related to both industrialization and urbanization although there is discussion on what would be the causal order: did the industrial revolution and the process of urbanization cause demographic change or did a declining mortality stimulate a decline in fertility, which in turn affected the economy?

The first fundamental demographic variable to change is mortality, followed by a change in nuptiality. Till the end of the 19th century many persons did not marry. For example, round 1900 one sixth to one fifth of women aged 45 to 49 were not married. In the 20th century the frequency of marriage increased and after World War II marriage became a universal institution (Roussel, 1975; van der Woude, 1985). In addition, more people at ever younger ages got married.

This pattern came to an end at about the end of the 1960’s. The age at first marriage in the Netherlands has increased from 22.9 years among women in the 1960’s (SCP, 1994) to 29.7 years in 1995, the average age for men being two years later (van Praag and Niphuis-Nell, 1997). Moreover, a growing number of young people form households without being married, although most of them will eventually marry when they get the first child. This
does not mean that young people object to marriage and family. A study on norms and values in Europe (Kerkhofs and Dobbelaere, 1992) found that 81% of the respondents considered the family as extremely important, ranking it higher than employment, friends and leisure. However, contrary to the situation before the industrial revolution, where families were part of the wider social structure of the local community, now each family lives in its own separate world. Marriage essentially depends on the relationship between two individuals. Due to the character of that relationship —its monogamic nature, the high expectations of the partners in terms of need fulfillment— it has become an unstable and fragile relationship. Although marriage and the family continue to fulfill very important functions for the individual, the institution had become under growing pressure and is very vulnerable to disruption. Estimates are that in the Netherlands among those born between 1945 and 1970, one marriage in three will end in divorce, while in countries such as Sweden, England and the United States this would be about 40%. Divorce rates have increased in all EU member states, but particularly so in the western ones.

One of the consequences of the increase in divorce rates is the growing number of one parent families. The proportion of one parent families in Holland is 13% of all families, and 10% of families with children under age 18 (van Praag and Niphuis-Nell, 1997). Women and children tend to suffer economically from divorce. One parent families are among the first victims of an economic recession. For example at the end of the 1980’s in the UK more than 1.5 million children were living in one parent families, their weekly income being less than half of that in families with both parents. In 1995 the average income in the Netherlands of a one parent family was about fl.36,000 compared to fl.55,000 for a two parent family.

Finally there has been a significant decline in fertility, starting at about 1875. This was an unprecedented phenomenon in history and it happened in the whole of Europe, changing fundamentally the position of women, children and the family. I think that the technical, economic and social changes in Europe had farreaching consequences for people’s attitudes towards fertility and sex. The persistent reduction of the birthrate has been made possible by the gradually generalized use of contraceptives. Its use is part of the modern rational attitudes and practices, whereby man wants to control such an important aspect of his life rather than to leave it to chance.

1.3 Cultural change

Marriage and family continue to have important functions by fulfilling personal needs of emotional security and affection. Children, depending no longer on fate, are greatly valorised and the object of considerable emotional investment. This increased their power position not only towards parents, but also with respect to all adults in a position of authority. This change in the power balance is at the root of the ‘emancipation’ of youth (Lee, 1982). The child has acquired positive rights, such as the right to education, to join a sports club, to travel and to have sex. The central value is personal growth and the only criterion is the child’s competence. Parental authority is further weakened, parents and children being involved in an on-going negotiating process regarding each other’s roles, duties and rights (de Swaan, 1979). This is why some have defined our society as a ‘permissive’ society where parents are incapable of transmitting social values and norms. It is true that informal social control on young people has considerably declined. In 1990 we did a study of a random sample of the Dutch adult population, asking questions on several aspects of leisure and social control, at the time they were aged 17 (Junger-Tas & Terlouw, 1991). We found that the generations aged 17 before the 1960’s spent more
Saturdays at home, they did go out in their own neighbourhood or city, when going out they came home around midnight and they often helped their parents with household chores. The younger generations go out practically every weekend, never with any adults but always with their peers, they come home long after midnight and some 30% after two in the morning. Mobility has increased substantially: one third of the youngest generation spends Saturday night in another city rather than their home town, where of course nobody knows them. In fact young people escape more and more from the control of parents and other adults. They spend a lot of time with peers in places where nobody keeps an eye on them. This is one of the profound changes in the relationship between young people and the adult world, which has occurred in the 20th century.

It is useful for the purpose of pursuing a practical policy to make a somewhat artificial distinction between opportunistic and persistent delinquent behaviour. The largest group of juvenile delinquents consists of opportunistic offenders: they commit essentially offences with a high nuisance value, such as vandalism, shoplifting, petty theft and fighting. This type of behaviour is heavily dependent on a 'good opportunity' and characterizes young people aged 14-18. When the responsibilities of adulthood appear such behaviour is quickly abandoned. Prevention policies that reduce opportunities to commit crime through environmental design, technical measures and greater supervision and control have been shown to be effective in this respect. Together with more formal interventions, such as diversion, mediation and alternative sanctions, this appears to be an effective response to such crime. In general we need not to be too much concerned about these youthful groups of impulse offenders, because most of them —with a little help of the community and the authorities— will not persist in criminal behaviour.

There is however, a very small group of serious and persistent offenders. These young people start committing delinquent acts at an early age, the delinquency becomes gradually more serious, re-offending is considerable and criminal behaviour continues well into adulthood. If persistent delinquency is defined by being known to the criminal justice system for five or more offences, the size of this group is estimated at 6% to 7% of the juvenile population (Wolfgang et al., 1972; Tracy, Wolfgang and Figlio, 1990; Farrington and West, 1990), but they commit more than half of all offences.

Where this group of young offenders is concerned our interventions are not very successful. We try to treat them in young offender institutions but the level of re-offending remains extremely high. Truly effective treatment programs are rare. Moreover, even when treatment effects can be shown they are quickly lost as soon as the young people return to their criminogenic environment. There is substantial evidence for the lack of treatment efficacy in earlier (Clarke and Cornish, 1975; Lipton et al., 1975) and in later research (Lipsey, 1992; Lipsey and Wilson, 1993; MacKenzie, 1991; MacKenzie and Souryal, 1992). There are a number of reasons that might explain the lack of success in treating these young offenders. One important reason is of course our still imperfect knowledge about what are effective treatment methods. Many treatment interventions are rather based on 'common sense' notions and good intentions than on proven efficacy, although it should be observed that there apparently have been some improvements (Andrews and Bonta, 1990a; Andrews et al., 1990b; Lösel, 1993).

Another reason is that the treatment covers a relatively short period in their life, after which they return to the 'usual' activities in their neighbourhood.
However, by far the most significant reason seems to be the fact that the intervention comes at such a late stage, when the boys reach the peak of their criminal activities. By that time there has been a long history of behaviour problems, truancy, fighting and delinquency. Crime has become a rewarding 'way of life' -at least for the time being-.

This does not mean that all interventions are useless. But research has shown that influencing the behaviour of young children is far more effective than trying to do this with adolescents. Young children are more malleable, while people as they grow older become more tenacious and resistant to change (Olweus, 1979; Huesmann et al., 1984; Eron, 1990; Gottfredson and Hirschi, 1990). This is not to say that after a specific age change is impossible (Sampson and Laub, 1993): behavioural change is possible at all ages but my conjecture is that such change in adolescents and adults is more immediately determined by what they perceive as their own interest.

Now if policymakers would want to address the problem of preventing serious and persistent criminal involvement of juveniles, a number of preliminary questions would have to be answered. First, does there exist some basic understanding and consensus about the fundamental causes of criminal behaviour? Second, is it possible to predict persistent delinquency with some degree of certainty? Third, if the answer to these questions is positive, are there programs available that can effectively address the conditions that are related to persistent delinquency and that demonstrate positive outcomes in terms of later criminal involvement? And if so, how does one solve the ethical aspects related to interventions in the lives of families? These are the problems I will discuss in this paper.

2. Causes of serious delinquent behaviour

It is clear that there are a number of interacting causal factors, which are linked in specific ways to constitute a probability model. In fact one might call it a risk model which predicts later criminal behaviour in terms of greater or lesser degrees of probability. In order to structure the different causal elements I have distinguished factors related to the behaviour of the child, to the family, to the family's environment and to the interrelationships between the different factors.

2.1 Risk factors in the child

Developmental psychologists have demonstrated the stability of temperamental factors such as social introversion and extroversion, assertiveness, impulsiveness, person-orientation, IQ and ADHD (Attention Deficit/Hyperactivity Disorder, some of which are wholly or partly innate. Children differ in the responses they arouse in their parents and in fact they make a very active contribution to the child-raising process. For example, children with behavioural problems are difficult to socialize. Some parents simply give up trying, thereby fostering aggressive and anti-social behaviour. Some basic biological factors, such as age and gender, are related to criminal behaviour: boys commit considerably more offences than girls and as we know criminal behaviour reaches a peak in adolescence and then falls with increasing age.

Research has shown that aggressive behaviour and anti-social tendencies are very stable characteristics and have a great influence on later behaviour (Olweus, 1979; Huesmann, 1984; Loeber, 1991). They may lead to behaviour problems in the family but also to learning difficulties and problem behaviour at school (Barnum, 1987). In longitudinal research in England it was found that children who showed persistent delinquent behaviour
were defined by their schoolteacher as troublesome and lying before the age of ten. They had a low IQ and performed poorly at school. They were impulsive and hyperactive and unpopular with their schoolmates. At the age of 14 they were more aggressive than other pupils and at the age of 18 they differed from their age group in a large number of factors: they drank more, were more often drunk and aggressive, they smoked and gambled more, used drugs more frequently and were more often convicted of a road traffic offence (Farrington and West, 1990). They also were more often involved in road accidents a finding that has been confirmed in Dutch research. Junger et al. (1995) found a great number of factors that were equally related to delinquency and to being involved in a road accident.

Although there is general agreement that hereditary factors have only a weak link with delinquency (Rutter and Giller, 1983; Loeber and Stouthamer-Loeber, 1986), anti-social behaviour is a cause of children being rejected at school as well as of school failure. That failure makes them easily attracted to and influenced by deviant friends (Patterson, 1994), although it is important to bear in mind that half of the children with behavioural problems in their youth will simply 'grow out of them' as they approach adulthood and will never become involved in criminal behaviour. However, what research shows is that such children are at greater risk of developing such behaviour. Whether or not this happens depends on a number of other conditions. Unfavourable conditions in this respect are: children who display problem behaviour in several environments, for example both at school and within the family; children with frequent and severe problem behaviour from an early age on; children who show a varied pattern of problem behaviour, such as various forms of theft and aggression; and children who are not only hyperactive but have also difficulty in concentrating (Loeber, 1987, 1991).

We may conclude this section by stating that there are a number of factors in the behaviour of the child itself which can increase the risk of subsequent deviant and/or delinquent behaviour. This means that there might be a degree of 'early propensity for criminality'. However, it should be borne in mind that these factors do not automatically and necessarily give rise to later criminality. Whether this happens depends on the interaction between child factors and environmental factors, which could be called the 'interactive continuity'.

In this respect the family plays a central role. Other important causes of continuity in criminal behaviour are structural disadvantage and ever-declining opportunities of social integration, which result from penal interventions and labelling. Examples of this type of 'cumulative continuity' are the reduced chances of ex-inmates in the labour-, housing-, and marriage market (Sampson and Laub, 1993; Buikhuisen, 1969; Kroese and Staring, 1993).

2.2 Parents and Family

Children need parents but parents also need children. In fact children constitute in most cases a personal fulfilment of adult life. Indeed most parents enjoy their children, want to raise them properly and wish them to become happy and successful adults. However, parents fulfil that task also for the benefit of the community, for if they are successful socializers the risk that their child develops a criminal career is considerably smaller than if this is not the case. This places a great responsibility upon the parent's shoulders. Some have defined the socializing task as follows: first, parents should care sufficiently about their children to invest in their upbringing; second, they should continuously guide and monitor the child's behaviour; third, it is essential that they recognize deviant and delin-
quent behaviour; and fourth, they should punish the child if he shows unacceptable and/or
delinquent behaviour, using in a consistent way appropriate, non-violent and effective
disciplining methods (Hirschi, 1994; Patterson, 1994).

There are a number of structural family risk factors.

One such factor is teenage motherhood, in particular because teenage mothers usually have
little education, have a low income, are welfare dependent, live in criminogenic
neighbourhood, and more often than not have to raise their child without the support of
another adult (Morash and Rucker, 1989). In the United Kingdom these children are more
commonly victims of physical neglect and the mothers show little maternal care, inadequa-
tive supervision and inconsistent discipline (West and Farrington, 1973). Later delinquent
behaviour appears not so much to be related to biological factors but rather to the absence
of a father, lack of supervision and guidance by the mother and problems at school.

Little evidence has been found for the thesis that mother's employment is a criminogenic
factor. In fact no harmful effects on the children have been found, provided the mother has
arranged for adequate care and supervision during her absence (Glueck and Glueck, 1950;

A structural factor which has given rise to much research is the broken home as a result of
divorce or desertion. This is an important point in view of the fact that many children have
experienced divorce or will do so in the future. If such disruption of the family were to
have serious consequences in terms of the children's behaviour, the future would look
bleak indeed. Part of the problem seems to be due to the increasing number of one-parent,
generally mother-headed, families. The hypothesis is that such families are seriously
handicapped in their child-raising task. As the possible link between a broken home and
delinquency has been the subject of long-standing research this allows us to draw some
conclusions on this matter.

First, comparisons between families with two biological parents, families with one parent
and families with one step-parent show that children in families with a step-parent display
more problems as well as delinquent behaviour than children from either of the other
groups (Johnson, 1986; Hirschi, 1969; Morash and Rucker, 1989). This suggests that it is
not so much the family's structure but its quality that could be of decisive importance.

Second, there is a clear -although weak- link between the broken family and delinquency
(Nye, 1958; Wilkinson, 1980; Rankin, 1983). A survey of the research carried out in the
past sixty years shows a difference in delinquent involvement between children from
complete and incomplete families of 13% to 15% (Wells and Rankin, 1991). The delin-
quency relates mainly to what in my country is termed 'problem behaviour', that is difficult
behaviour at home, poor school achievement, truancy, running away from home and using
drugs. The relationship with serious criminal behaviour is not strong (Wells and Rankin,
1991; Rutenfrans and Terlouw, 1994). Most delinquent behaviour occurs in two-parent
families where the parents are continually fighting, in particular when they use violence.
This is also true for one-parent families where the mother feels little affection for her
children. There is little delinquency in harmonious, complete families or in one-parent
families with a warm and affectionate mother (McCord, 1982). It is worth mentioning that
the effect of the break up of the family on the children's behaviour has not changed since
the first studies were conducted sixty years ago. It appears to be constant over time.
In fact qualitative factors are of considerably more importance than the structure of the family, in particular the control of children and the relationship between parents and children.

Inadequate supervision of children is one of the strongest predictors of criminality (Hirschi, 1969; West and Farrington, 1973; Rutter and Giller, 1983; Riley and Shaw, 1985; Junger-Tas, 1988). Poor parental child-rearing method, in terms of supervision and discipline, and criminality of parents or siblings are significantly related to delinquent behaviour (Farrington, 1986). In this regard it is interesting to note that, according to a Home Office survey, children whose parents provide little structure and discipline feel that their parents do not care enough about them (Riley and Shaw, 1985). However, delinquent young people do not easily accept their parent’s control (Junger-Tas, 1977). Such juveniles often have a bad relationship with their father, which suggests that good parent-child relationships are an important pre-condition for effective supervision.

Another risk factor is inconsistent discipline, often accompanied by severe and violent disciplining methods, such as bad language, threats, blows and kicks. Criminality or heavy drinking of the father have an adverse effect on child-raising methods: such fathers use more often violence and inconsistent discipline than other fathers. Mother's alcohol abuse and irregular work pattern particularly affects the supervision of her children (Laub and Sampson, 1988). Research has shown that both too little control and extreme control and discipline are related to higher rates of delinquent behaviour. Punishing children too often, too severely and too forcefully, using violence even appears to foster delinquent behaviour (Wells and Rankin, 1988). In this connection it should be remembered that violence in the family differs from other violence in three respects. It usually occurs within relationships that are of a lasting nature, between parents or between parents and child. In contrast to violence between strangers, the violence is often repeated, with one of the parties being weak and vulnerable compared to the assailant. Lastly, the violence takes place in private and is therefore invisible and difficult to detect (Reiss et al., 1993). Where children are concerned, boys are more often physically maltreated, while girls are more often victim of sexual abuse (Strauss et al., 1980). Abuse and neglect are strongly related to income: the lower the income the greater the risk to the children (Sedlak, 1991). Physical abuse has not only medical consequences but gives also rise to a greater risk of suicide (or attempted suicide) and depression. Parents who suffer from depression tend more often to maltreat their children. Violence in the family is often passed on from one generation to the other (Straus, 1980). Moreover, people who were abused or neglected as children run later a much higher risk of being arrested for a crime of violence than people who did not have this experience (Widom, 1989).

Apart from the control aspects, the quality of the relationship between parent and child is of great significance. Strong negative feelings by the child towards its parents are related with criminal behaviour. The most important elements in this respect are: acceptance, respect and faith in the child; good communication between parents and child about thoughts, feelings and problems; the absence of conflict, both between parents and between parents and children. It is interesting to note that none of these factors are related to family structure. However, they are all associated with the development of pro-social behaviour in the child (Cernkovich and Giordano, 1987). In this regard internal family dynamics appear to be more important than family structure in the production of norm-conform behaviour.
A survey of all family studies carried out up until the 1980s led to a classification into four models of 'families at risk' (Loeber and Stouthamer-Loeber, 1986; Loeber, 1987). In the neglecting family parents devote little time to their children and do hardly supervise them. Such parents do not check where their children are, who they are associating with and what they are doing. In the conflict family there are constant rows between parents and between parents and children, often accompanied by violence. Verbal and physical disciplining methods are ineffective. The child is frequently rejected by his parents and in turn withdraws from them. The child learns that conflicts can only be resolved by violent means. The deviant family tolerates or secretly encourages delinquent behaviour, such as fighting, handling of stolen goods, theft, either openly or surreptitiously. In this case the parents are criminal and aggressive and the children risk developing serious criminal behaviour, including violent crime. In the disintegrated family marital conflicts, both before and after the divorce, are related with considerable child-raising problems and with inconsistent discipline.

2.3 The family environment

As we all know crime rates are higher in an urban environment than in rural areas. Other problems, such as behavioural-, emotional and psychological problems, also occur more frequently in big cities than in the country (Rutter, 1980). The reason is not that criminal or problematic people disproportionately migrate to cities, because when young people leave the city their criminal involvement decreases (Osborn, 1980). Studies have shown that families in big cities are more often affected by serious problems, such as unemployment, poor housing, psychiatric disorders, marital difficulties, alcoholism and criminality (Rutter, 1980).

Neighbourhoods are important in this respect. An area which is dilapidated, where many of the houses are boarded up and drug dealing goes on openly, where vandalism is the order of the day and rubbish and dirty needles lie around everywhere, is not a suitable environment for children to grow up. Such areas cause fear among residents, reduce social control and invite crime. It is in these areas that many unemployed and poor families live, among which many of different ethnic origin. Young people hang around and form groups or gangs. School drop-out, unemployment and boredom easily lead to a collective search for leisure opportunities as well as for the commission of offences. Among the structural background factors that are associated with delinquent behaviour of children are: poor and overcrowded housing, the break up of the family, welfare dependence, poverty, ethnic origin, high resident mobility, irregular employment, alcoholism or drug abuse of (one or both) parents, criminality of (one or both) parents (Laub and Sampson, 1988; Farrington, 1973).

The quality of the school - its instruction and education - is also important. Poor school achievement, a low level of ambition, a dislike of school, repeating classes and truancy have been shown to be linked with criminal behaviour (Hirschi, 1969; Junger-Tas, 1977; Sampson and Laub, 1993).

Finally, the peer group has a great influence on the behaviour of young people. The relation-ship between having delinquent friends and a person's own criminal behaviour is exceptionally strong and, of course, much of this behaviour is group behaviour. It is not self-evident that young people are drawn into delinquent peer groups by chance. There are indications that young people who have a poor relationship with their parents and are school failures tend to join a delinquent peer group through a process of self-selection:
juveniles in a marginalized social position seek out similar youths, because they feel at ease with their equals (Junger-Tas, 1977; Sampson and Laub, 1993).

3. Crime and other adverse outcomes

It is useful to be aware that a number of socio-demographic and socio-economic factors that are related to criminal behaviour are also associated with physical illness, mental disturbance and all kinds of accidents. For example boys commit more offences than girls, and have more accidents as well because they tend to take more risks. Another factor is ethnicity: children from ethnic minority groups are more likely to be victims of a road accident and mortality among young minority children is higher than among children of the population of origin (Junger, 1990; Cummings et al., 1994). Although it is not entirely clear why this is so the higher mortality rates may be due to their poor social-economic situation and the lack of parental supervision. Low income and a low level of education are related to fatal accidents by fire, road accidents, and accidents in the home, drowning and burns. The same is true when the parents -the mother in particular- have an alcohol problem (Rivera, 1995). In addition, delinquents take great risks on the road and are more often victim of road and other accidents (Gottfredson and Hirschi, 1990; Junger et al., 1995; Yoshikawa, 1994). Mortality among delinquents is also higher. This is partly due to the fact that they are more prone to alcohol and drug abuse than non-delinquents (Stattin and Romelsjö, 1995).

Child factors, such as a difficult temperament, behavioural problems and concentration difficulties also present a greater risk of accidents and injuries, although it is not a very strong link. The link is stronger for adolescents who have discipline problems at school, frequently drink alcohol and use soft drugs (Rivera, 1995).

Family factors which are good predictors of criminality also predict psychological and psychiatric disorders. Among these are low socio-economic status, a large family, criminality of the father, marital conflict, family violence, psychiatric disorder of the mother and intervention by Child Care authorities. Children who grow up in a family with one of these risk factors run no greater risk of developing a disorder than other children, but children in families with two risk factors run four times as high such a risk. That risk is multiplied with each additional risk factor (Rutter, 1979). Delinquents are more frequently admitted to hospital than non-delinquents for illnesses, injuries and accidents (Farrington, 1995). They also have more mental disorders, such as schizophrenia and depression, and are at greater risk of committing suicide (Fergusson and Lysenky, 1995). Dutch research among young adult inmates revealed affective disorders, anxiety disorders and schizophrenia among a third of them and addiction problems among two thirds (Bulten et al., 1992). Two thirds of a group of 73 young people brought before the public prosecutor and referred for a social and medical report were found to have a psychiatric disorder (Doreleijers, 1995).

Even if children from such risk families do not later become involved in a life of crime they often lead miserable lives. A London longitudinal study found that among a group of working class boys some of the men for whom a criminal career had been predicted had not developed such a lifestyle by the age of 32 (the so-called false positives). But they were social failures in terms of employment, housing, having a partner or children, alcohol consumption and mental health. Most of them led a solitary and marginal existence (Farrington, 1988).
4. A global causal picture

Of course all of the mentioned refractors do not carry equal weight and we cannot just add them up. Some of them are of greater significance than others and some facilitate others. Moreover, some of them are related to delinquency in an indirect rather than any direct way (Sampson and Laub, 1993).

Considering the available evidence so far, it seems useful to bring some structure to the underlying causes of criminal behaviour and to place them in a global model (see figure 1).

For example one might ask whether structural background factors are more important than internal family factors, or whether risk factors within the child are more decisive than the parent's upbringing (the 'nurture or nature' discussion). The answers to these questions are of particular importance if one wants to design effective preventive interventions.

First, evidence shows that family factors are the most powerful predictors of later criminal behaviour. These are the degree of supervision, the degree and nature of discipline and the emotional bond between the parents and the child. Second, research suggests that structural background factors do not have a direct relationship with criminality, but operate via family processes (Sampson and Laub, 1993). These factors facilitate or hinder the proper functioning of the family. If there are social and financial problems, stressful living conditions and little support in bringing up the children then it is difficult for parents to fulfil their role in a satisfactory way. This is all the more true when there is only one parent. Similarly, unemployment or mother's employment, a large family, ethnic minority status, alcohol abuse and parental criminality affect the ability of parents to raise their children so that they will become pro-social adults. Furthermore these factors also have a strong impact on school achievement due to the fact that the parents are unable to support their children, to check their homework, or to teach them the importance of school and education.

Finally, a deficient upbringing does not only lead to school failure but also to the children associating with a delinquent peer group. For all these reasons socialization and family processes are of crucial significance in bringing about criminal behaviour.

However, as mentioned before child factors should not be discarded because some children are considerably more difficult than others. The main factors in this respect are impulsive and disruptive behaviour, being resistant to discipline and early aggressive and/or anti-social behaviour. They have indeed a powerful and independent effect on later criminality, which is why some have called them the best predictors of delinquency (White et al., 1990). However, given the fact that there is a continuous interaction between child factors and parent factors it would be very difficult, if not impossible, to disentangle both types of factors. For example a very troublesome, moody and difficult child might arouse impatience and harsh disciplining methods in parents. Therefore it is not surprising that a relationship has been found between children's disruptive behaviour and inconsistent and harsh discipline of parents. On the other hand there are findings showing that increased supervision by the mother -regardless of all other factors- leads to a reduction in delinquent behaviour (Sampson and Laub, 1993). In other words parental factors seem to be more important determinants of pro-social or delinquent behaviour than child factors (Loeber and Dishion, 1983). This is why preventive measures which target only the child would
seem insufficient. The role of the family is so crucial that it will have to be included if lasting results are to be achieved.

5. Prediction and Prevention

How easy is it to predict criminal behaviour and how certain can we be that those predictions will prove true if nothing is done? Is this a sufficient basis for social intervention? These questions are of crucial importance if judicial authorities want to contribute to a preventive family and youth policy. Traditionally judicial authorities do not intervene unless there are serious problems, and then they do so either by a civil child protection measure or -for those over 12 years of age- through juvenile penal law. Preventive intervention, although it does presuppose the presence of serious (behaviour) problems in the family and at school, which constitute a risk of subsequent delinquency, does not presume the presence of the delinquent behaviour itself. Therefore, there needs to be compelling reasons for the judicial authorities to be associated with a preventive policy of this kind. One of those reasons might be the fact that serious youth criminality is reasonably predictable. Another reason might be that in this regard early intervention achieves better results than later intervention.

The essential question is therefore, how accurate are predictions of future delinquent behaviour? One of the major problems with respect to the prediction of criminality is the question of what exactly we want to predict. If we define delinquency by self-report data, the base-rate -that is the number of young people defined as delinquents- will be very high. But if the definition refers only to boys who are known to judicial authorities for at least five serious offences, the base rate will be rather low. A definitional choice has to be made in terms of the number of known offences or the number of convictions that define 'serious and chronic' delinquency. According to that definition offending is a relatively rare event. For example, only 6% of a group of boys from inner London became systematic offenders. Although 70% of this group were defined as 'very troublesome' at the age of 8-10, only 19% of these turned into repeated offenders (Farrington, 1987). In other words there is considerable over prediction, leading to a large number of 'false positives' -young people for whom criminal behaviour was predicted but who did not develop such behaviour-, and also under prediction, leading to 'false negatives' -young people for whom criminality was not predicted but who did develop criminal behaviour-. One of the first prediction instruments came from the Glueck's study (1950). Their prediction table was based on five family variables: discipline of the boy by the father, supervision by the mother, affection for the boy of the father and of the mother, and family cohesiveness. Although the prediction instrument was later heavily criticised, mainly on methodological grounds, it is of some interest to observe that the screening variables have been confirmed in later research as fundamental for the prediction of criminality.

Prediction research is faced with a number of problems. Most research has been retrospective in nature, i.e. predictive factors are looked for when the criminality is already known. Furthermore, very often selective samples have been used, such as children referred to a clinic for behaviour problems, first offenders or boys identified because of their delinquent behaviour. Another problem is that some of the predictive factors have been found to be more important at an early age than they are later on, while others, such as a lack of parental supervision, become more important with age (Farrington, 1987; Loeber and Stouthamer-Loeber, 1986).
Better predictions are achieved using prospective longitudinal research. Although research shows a large degree of continuity in a person's behaviour, many children undergo a sort of 'maturation process', as a result of which earlier predictions based on risk factors do not materialise. However, this 'drop-out phenomenon' is not spread evenly among young people. Children who manifest problem behaviour at an early age, in more than one setting (for example at home and at school), and children with more than one form of problem behaviour are at greater risk of developing delinquent behaviour than children who are difficult only at home, whose problem behaviour appears at a somewhat later age or shows less variation (Loeber, 1987). The accumulation of risk factors is therefore crucial to accurate prediction. An interesting finding in longitudinal research is also that if circumstances change radically, behaviour also changes (Sampson and Laub, 1993). A related question is at what age we should predict. Of course, prediction at a later age has a stronger predictive accuracy than predictions at an early age. For example the best predictor for persistent offending is the number of previous convictions. However, once this stage is reached there is very little to achieve in terms of preventing criminal behaviour. Different meta-analyses conducted in the United-States have shown that early intervention programs with young children have considerably more effects than treatment programs of delinquent adolescents (Tremblay and Craig, 1995). Therefore, it would seem to me that what we first and foremost need is accurate prediction methods for young children.

Predictions of criminal behaviour are generally based on statistical probability calculations and can therefore never be perfect. This means that overzealous prevention policies, under which individual children and families are selected only on the basis of the statistical risk of subsequent delinquent behaviour, would be arbitrary and stigmatizing. According to Leblanc (1997), this type of predictions should lead to primary prevention policies, which are universal programs such as Head Start, which has the ambition to address all poor and deprived families in the United States, or more cost effective programs which address all children and families in specific cities and neighbourhoods.

The selection of predictors should be based on multiple informants and multiple settings. It is not sufficient to rely on only one data-source, such as the parents or the child. Data obtained from more than one source, such as parents, teachers, children and their peer group are considerably more reliable (Patterson, 1994).

If the objective is to screen potential chronic and serious offenders on an individual basis, one would need additional information, such as clinical data provided by social and health services, or by child care authorities. These may lead to more targeted preventive interventions, which leads to the ethical question of voluntary or compulsory participation in prevention programs, a question I will turn to in a later section.

All in all there is a large consensus about the different variable domains, the information sources and the accumulation of risk factors, that are most important in prediction, but there is still a lot of work to be done to devise screening instruments for policy makers and practitioners (Leblanc, 1997). The use of specific screening instruments will of course also depend on the population examined, the precise criterion variable, and the objectives of the screening and the policy implications of the screening's results.
6. Early prevention for families and children

It is clear that any crime prevention policy which targets families and children will need to take a broad approach. It will not suffice to tackle only one element of the causal chain, because the causal factors mentioned in this paper are interrelated in complex ways. Many prevention programs here and abroad have not been set up with the specific objective of crime prevention. Most of them have the aim of improving the educational achievements of specific groups of children. Other prevention projects are addressed to parents and attempt to make them more effective child-raisers. A third group of programs attempt to improve dysfunctional behaviour in children. Only a small number of programs have the specific purpose of reducing and preventing anti-social, aggressive and delinquent behaviour in children. A number of meta-analyses of treatment programs have been carried out in the U.S. Table 2 presents some results of meta-analyses of treatment programs aimed at improving adaptive behaviour of parents and children (Tremblay and Craig, 1995). These analyses show that early interventions with young children have considerably more effect than treatment of juvenile delinquents. The different projects may be distinguished by target group -parents or children-, by intervention type -parent training or (pre)school projects-, and hybrid forms which involve both parents and children. The goals of the projects vary from the prevention of delinquency to the prevention of factors that are closely related to subsequent criminality, such as cognitive deficiencies, behavioural problems and inadequate parenting (Tremblay and Craig, 1995).

It is important to point out that many of the experimental programs, either in the United States or in my own country, have a number of shortcomings. The treatment was frequently administered to small target groups (from less than a hundred to a few hundred experimental subjects), the allocation of children to experimental or control group was not always based on random allocation, the population was sometimes heterogeneous, the implementation of the program did not always follow the design, a number of studies were plagued by the problem of attrition, that is some of the experimental subjects got 'lost' over the years, and the test measurements were not always reliable (Tremblay and Craig. 1995). Moreover, as far as Dutch programs are concerned, thorough evaluation is rare. Usually people content themselves with interviewing some key figures -who often have a stake in the program-, or simply renounce all effect evaluation, merely pointing out the problems associated with measuring treatment effects.

In fact all this makes the similarity of the results achieved by these programs all the more striking. This fact alone should give us confidence in the value of this type of approach. The following results appear in a great number of effect studies.

- Parent training schemes have an impact on problem behaviour and anti-social behaviour in the children of the parents concerned;

- A significant effect of guidance and treatment of young teenage mothers is that the incidence of physical abuse and neglect is considerably less among them than among comparable families who have not been treated;

- Cognitive skills and social competence programs affect children's learning and behavioural problems. The improvement of problem behaviour in turn affects learning ability and as a consequence delinquent behaviour;
- in general, the effectiveness of intervention programs increases as the age of the target group falls, from adolescents to toddlers (Tremblay and Craig, 1995);

- Early intervention programs which target more than one risk factor have cumulative effects (Yoshikawa, 1994). The best example is the Perry Pre-school project where pre-school training of infant children was combined with weekly contacts with parents, in order to improve their caretaking skills. The study showed long term effects on delinquent behaviour as well as on a broad range of social and economic factors during adolescence and in adulthood;

- some treatment programs of adolescents have also been shown to be effective, on the condition that they directly address the young people's acute problems at school and at home and provide additional incentives to motivate them to participate. More research is needed in this area;

- Preventive intervention programs have significant benefits other than the mere reduction of criminal behaviour: the education level rises, labour participation increases, incomes are higher, welfare dependence is reduced, and physical and mental health and general well-being increase;

- In order to achieve long-term effects, preventive intervention projects must be of relatively long duration. Most researchers claim a treatment period of at least two years.

In conclusion it seems clear that administrative and judicial authorities should take a great interest in prevention policies that target children and their families. Such a policy would have three important goals.

The first goal is to realize that, just as situational crime prevention has become an integral part of national and local policies, whether it is in questions of town planning, social housing or public transport, crime prevention should also become a permanent part of any youth policy. Youth welfare should not be exclusively concerned with improving health, reducing learning disabilities and increasing recreational options. It is also important to prevent a sizable minority of young people, both of native and immigrant origin, from drifting gradually in a life of crime. The prevention of juvenile delinquency should be integrated into all national, provincial, urban and neighbourhood planning as a natural concern and responsibility.

The second goal is to ensure that prevention programs which target children should also target their parents, because it is not only cognitive skills and social competence that need to be developed, but also the necessary caretaking skills of parents. Guidance and monitoring, supervision and control are essential elements of effective socialization that is socialization which prepares the child for effective participation in social institutions, such as school and society as a whole. Appropriate parent training has a positive impact on these skills.

The third goal is to complement programs that support families and promote school achievement are most effective by an environment which creates the conditions for happy family life and good parenting. Considerable efforts have to be made by both state and
local government to support parents and families in their upbringing tasks. Crèches, nurseries and pre-school centres should be available for working mothers as a matter of course. Schools should open their buildings for after-school activities, such as sports, music, and theatre, so that children would not have to hang around on the streets till their parents come home. In the evening the schools should be open for adult activities, including courses and parent training. Experiments in this field in middle-class schools have been quite successful, but in deprived neighbourhoods there is a pressing need for funding such arrangements by local government. In addition more attention should be paid to the difficulties of migrant families and their children: special programs for these children -cognitive and social competence training- and their parents -language courses and parent training- should be available free of charge. Moreover, the state as well as local government must create unskilled and lower skilled jobs for young people who cannot pursue a higher education. There is still a need for such jobs, for example in the service sector, the security sector and in the health and welfare service. Also of importance are good housing policies. Finally, a promising initiative in a number of Dutch municipalities is the emergence of local networks based on cooperation between local government, health and social services, the police and judicial authorities, with the explicit aim to reduce family violence and juvenile delinquency.

7. Early intervention: for whom?

A policy of early preventive interventions regarding children and families is faced with an ethical dilemma. Most of the studies in this field do not discuss this dilemma, but of course, in experimental programs it is easy to ignore this question. However, if one wants to develop preventive policy there is no escape and one has to deal with it. The dilemma is based on the question whether one is justified to intervene in the lives of people on the basis of predictions that have statistical validity on an aggregated level but much less so on an individual level. More precisely the question is on what scientific and moral grounds we can offer training programs to groups and to individual families at risk on a voluntary basis and to what extent would we be justified to make participation in these programs compulsive.

In this regard there are a number of considerations in order.

First, it might be stated with reasonable certitude that it is possible to identify groups of families presenting so many risk factors that their children run a considerable risk of developing a criminal and marginal life. This is the determining factor which entitles the community to undertake specific preventive action.

Second, it would be incorrect to claim that the responsibility for this situation lies wholly and exclusively with the families themselves. Therefore, as mentioned above, special efforts on the level of the state and local government are paramount to improve the conditions for adequate family life. It is only when the authorities recognize their own responsibilities and act upon them by taking adequate measures that they are justified to require compulsive participation in training programs.

Third, given the fact that the predictive validity of the risk factors that have been found in prospective research is not perfect and thus cannot be stretched too far, it seems reasonable to state that compulsive participation in training programs for individual families and children should take place only exceptionally and in very specific cases.
If all these conditions are met a three track approach could be considered. The first track would consist of a general preventive approach in deprived neighbourhoods. Together with measures taken by local government this would be a universal approach addressed to the resident families. The offer of cognitive stimulation programs to children aged 4-8 and of parent training can be made through the school and by home visitors. By working through the school all children are reached. In addition social competence programs, such as the 'Good Behaviour Game' can also be presented in school. Another advantage is that in this way it is easier to reach parents. Experience of school principals in this respect has learned that most parents are sensible to the argument of 'improving the chances for their children for a better future'. Moreover, parent training programs have been designed which join positive interactions among trainer and parents and effective didactic methods. Once parents attend they usually like the program. Offering a modest financial incentive might help increasing attendance of some (ethnic minority) groups. Such a general approach can be extended to secondary schools in an effort to prevent school drop-out and improve social functioning of pupils.

The second track is concerned with families where there are indications of serious problems or where these problems threaten to arise. Here a more outreaching approach would seem to be in order. It should be emphasized that in this case statistical predictions are not sufficient and clinical evidence would be needed (Leblanc, 1997). For example, teachers may signal children with excessive aggressive and anti-social behaviour or they have reason to suspect child abuse. The health services in my country are developing diagnostic instruments for measuring the physical and psycho-social health of all young children which come routinely to their attention. Based on the outcomes of such examination the city of Rotterdam is planning to offer special assistance and parent programs to families at risk. This city also conducts anonymous youth surveys in all municipal (primary and secondary) schools in order to detect serious problems. The results are presented to the schools which are invited to consider taking special preventive measures. Although in some of these cases identification of individual families and children at risk has taken place, participation in preventive programs remains voluntary. However, there is a fair amount of persistent efforts to convince parents to participate.

The third track is compulsory treatment. When families are known to the authorities for incidents of child abuse, alcohol- and drug abuse; when young teenage mothers are living on their own with social benefits but without a social network; when there is serious anti-social behaviour of the child; when there is the threat of a supervision order or the child might be taken in care, preventive intervention is the only realistic alternative.

The fact that authorities are usually not too keen on taking official -and thus stigmatizing- measures would seem to justify a certain amount of pressure on families to participate in preventive programs. In some cases this could take the form of a conditional child care measure or some kind of diversion.

An effective preventive policy is a long-term investment. Even if we achieve some successes in the short-term, we cannot expect immediate improvements in the safety and the living conditions of inner city neighbourhoods. However, we should not allow that inner city areas deteriorate to the point where alcoholism, drug abuse, drug dealing and crime become endemic. This would mean that we would accept that some population groups end up in totally marginal and dead-end situation. In such areas violence and crime would be at a very high level and the local community would be permanently threatened by sudden
outbreaks of serious violence and rioting. To prevent this to happen is the main challenge of our time.

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HOW TO RUN A TRAINING INSTITUTE

Nesrin LUSHTA, Training Director of formation Centre judges of Kosovo

Information about the Kosovo Judicial Institute (KJI)

Kosovo Judicial Institute (KJI) is a section of OSCE Mission in Kosovo, within its department of Human Rights and Role of Law in the division of Role of Law.

It was established as a Judicial Training Section of this department and started presenting its Continuous Legal Education Programme in August 1999. This section was renamed the Kosovo Judicial Institute in February 2000 and the inauguration its new premises was in March 2001.

The Report of the Secretary General of the United nations of the 12th of June 1999 on the implementation of Resolution 1244 of the Security Council, establishes the responsibility of the OSCE for institution building, as Pillar III of United Nations Mission in Kosovo, and one provision of the same report further establishes the responsibility of OSCE in capacity building, specifically in the areas of justice, police and public administration.

The OSCE as the UNMIK pillar responsible for institution building, has also the significant role in training of judiciary as it is also stated in the Provisional Constitutional Framework for Kosovo, enacted by the Special Representative of the Secretary General (SRSG).

In this regard, the KJI has the important role because its only mandate is to provide legal education for judges and prosecutors currently working in Kosovo.

The KJI is providing the Continuous Legal Education Programme for Kosovo magistrates.

The KJI started its activities by organising symposia on human rights standards and criminal law for all members of judiciary from September through December 1999, during the Emergency Judicial System. Subsequently, assessments on training needs and priorities for the Kosovo judiciary allowed to the KJI to focus its training on specific legal subjects of concern.

Yearly programme of the KJI activities is always prepared after having consultations with the contact persons in each five regions of Kosovo, contacts with members of judiciary, regular meetings with Role of Law officers who work throughout the regions, taking in consideration reports of the Legal System Monitoring Sections of the OSCE, reports from UNMIK Department of Justice, Department of Judicial Administration, evaluations of training and proposals of the trainees. Therefore, after focusing on criminal law and human rights standards, we are focusing in many other topics, including civil law, minor offences etc. In September, a specific project for the Commercial law judges started.

For newly appointed judges and prosecutors, both national and international, we provided induction courses on criminal law, civil law, procedure laws, international humans rights standards, ethics and professional behaviour of judges and prosecutors, intending to refresh and update their professional knowledge.
The format of training has been composed of classic seminars, information sessions, workshops, open discussions and round table discussions.

Topics were different, but basically the applicable law in Kosovo, including new legislation.

Apart of training in Kosovo, the KJI is regularly organising study abroad, which is a part of CLEP. We have a study visits aiming to make possible to the members of Kosovo judiciary to observe examples of other working systems and to foster and promote discussions about the problems of judicial systems in other European countries. Therefore, they are visiting Ministries of justice, Courts, Prosecutors offices, Associations of judges and prosecutors. Duration of internships is longer, because judges and prosecutors are staying in one court, observing the work of the judge or the prosecutor and trying to assist them.

All the participants are, afterwards, shearing their experience with local magistrates, in RTD organised by the KJI.

KJI is a development of the institution building mandate of the OSCE Mission in Kosovo. An UNMIK Regulation has been drafted to make KJI an independent institution within the overall governmental structure. KJI expects this to be signed into law in 2003 and at that time KJI will be handed over from the OSCE to activate its full mandate to became the Scholl of Magistrates for Kosovo. This will include three more mandates: training for the future judges and prosecutors, training of lay judges and training for promotion.

How to run the Institute

- **Qualified staff members**
  Two co-directors compose the KJI management. The person who is dealing with the preparing the projects and education activities is the programme co-ordinator. Judicial trainers are giving their input for the programme and preparing all the training events. These are the most important professional staff members. They have to have the university degree in law and experience in working within or with the judiciary. Several years of working experience are required. This is necessary knowing the nature of their tasks but at the same time an obstacle, since people experienced in the judiciary are not qualified to work as a trainer or a manager of the Institute. They need to be trained. Members of judiciary, as a potential candidates to work in these positions are old (aged about 45 and more) and not interested to change their work.

- **Communication with judiciary, partner institutions, other stakeholders**
  Communication with the judiciary is more then important. First of all, permanent communication is required in order to realise where the difficulties are and in which area the training is needed. In this regard, the KJI is not facing problems, since the judicial trainers use to be members of judiciary and they know exactly were the problems are. The KJI has its own “Contact persons”. They are presidents of the District Courts in all the regions and they are the “bridge” between the KJI and Judiciary. We are organising regular meetings with them.
Contact with the Role of Law officers (OSCE staff member working in all the regions of Kosovo) is also good organised. The KJI is having meetings with them on weekly bases. Having contacts and knowledge of the work of Legal System Monitoring Section is also required since this section is monitoring the work of courts and public prosecutors offices and preparing reports twice a year.

Many other organisations in Kosovo are giving training programs. Their participants are different categories of people but they are also providing some training for the members of judiciary. Monthly meetings with them are enabling the KJI to have a sufficient information on their projects in order to avoid duplication of training activities and also to be updated on the specific topics in which the legal community in Kosovo needs to be trained.

- High quality of education programmes
  This is in the very close relation with below mentioned.

- Good co-operation with other training centres
  In fact, this is to be improved. The KJI is having contacts with the training institutions dealing with the education of the judiciary on ad hoc bases. There is some attendance in the conferences organised in some European countries that are inviting such institutions. These conferences are very useful since the KJI staff members have the opportunity to be informed about their work and development, to search their web site etc.

- Financial matters
  The KJI is a section within the OSCE. The OSCE founds it and there were some grants and voluntary contributions from other organisations. The KJI Co-Directors, the KJI Financial Manager and the Section in the OSCE did the financial management. That work was pretty sensitive. Since in the future the Kosovo Consolidated Budget will found the KJI, the level of salaries and all the expenditures might be at the lower level. Therefore, a good financial management both with good education programs can be a good guarantee for the possible voluntary grants to the KJI.
INTERNATIONAL DEVELOPMENTS IN YOUTH JUSTICE,  
A NEW RECOMMENDATION FROM THE COUNCIL OF EUROPE  

Dr. Willie MCCARNEY, President of the IAYFCM, North-Ireland  

On 24th September 2003 the Committee of Ministers of the Council of Europe adopted a recommendation on new ways of dealing with juvenile delinquency (Recommendation Rec(2003)20). This recommendation replaces Recommendation No. R (87) 20 which was adopted in 1987.

The Committee of Ministers believed that a re-appraisal of our response to juvenile crime was necessary because of significant changes in the lives of young people since 1987, together with developments in juvenile justice policy and practice, advances in scientific research and the accession of new member states from Central and Eastern Europe.

a) The changing lives of young people  
Since the 1980s, changes in the lives of young people have increased the risk of their involvement in violent and criminal behaviour. This seems particularly the case in the rapidly changing societies in many Central and Eastern European countries. The most important changes are:
- the rise in child poverty and income inequality, especially in Central and Eastern Europe  
- the greater incidence of divorce and family breakdown and the impact this has on parenting  
- the growth in experimentation, at an increasingly young age, with psychoactive substances, including alcohol  
- the decline of the youth labour market and the rise in unemployment among young adults, particularly young men and those with low skill levels  
- the increasing concentration of social and economic problems and related crime and violence in specific areas, often inner cities or housing estates on the periphery of urban conglomerations  
- the mass migration of ethnic minorities into and within Europe and  
- the increased risk of psycho-social disorders among young people, especially young men.

b) The changing nature of crime and delinquency  
There is a widespread belief amongst the public at large, not based on scientific evidence, that there has been a dramatic increase in youth offending. There is a general perception that offences involving violence are increasing, that offenders are starting to offend earlier and that a small number of offenders are responsible for the majority of offences.

Traditional sources of informal social control, particularly schools, families and the workplace, no longer have the impact they once had. There is concern that the juvenile justice system is slow, ineffective and over-burdened. Delays are commonplace, public confidence is low and re-offending rates are high. At the same time, the expectations placed on the criminal justice system have increased.
These developments seem to have led, at least in a few member states, to a more repressive approach, which is reflected in higher rates of custody for juveniles and a shift from a welfare (needs-led) model to a justice (punishment or ‘just deserts’) model.

c) Advances in Scientific research:
At the same time, research tells us more about the causes of crime and also that some interventions can work with some young offenders some of the time. Experiments with alternative approaches to dealing with juvenile offenders, such as restorative justice and intensive, community-based support and supervision, suggest that there are ways of supplementing the more traditional approaches which could improve our response to juvenile crime and violence.

d) The accession of new member states:
The Council of Europe has almost doubled in size over the last decade and now has 45 member states. The new member states all come from Central and Eastern Europe. They are confronted with similar problems as Western European countries, but also have to deal with specific problems related to their own domestic situation. Resources are much more limited. Some new member states are struggling to implement existing international standards. For them the most pressing issues are the provision of adequate capacity and the quality of such provision.

An Expert Committee
An Expert Committee, drawn from 22 member states as well as from 3 observing parties (Canada, the International Association of Youth and Family Judges and Magistrates (IAYFJM) and the Permanent European Conference on Probation and Aftercare (CEP)) was invited to address these problems and to bring forward a new recommendation.

The Committee upheld the following Principles laid down in R (87) 20
- The youth justice system should avoid repressive approaches and focus on education and reintegration;
- Depriving children of their liberty should only be used as a last resort and, as far as possible, interventions should be carried out in the child’s home environment.
- Children should at least receive the same level of procedural safeguards as adults;
- The youth justice system is only part of the overall response to youth crime.

The Committee identified a number of key principles
- The response to youth offending should be swift, early and consistent
- The responsibility for offending behaviour be widened to include the young offender’s parent(s)
- As far as possible and where appropriate, interventions with young offenders should include reparation to victims and/or to their communities
- Interventions should directly address offending behaviour and
- Interventions should be informed, as far as possible, by scientific evidence on effectiveness
Recommendation Rec(2003)20 calls for
- A multi-agency approach to dealing with young offenders
- A continued search for alternatives to custody
- The recognition of victim’s interests
- The use of evidence-based interventions
- The desire to involve parents
- The need to produce race impact statements alongside policy plans

A more strategic approach
Juvenile justice in Europe has no common vision or philosophy. Some countries have ‘welfare’ based models focusing on the needs of the juvenile, others have ‘justice’ models emphasising retribution and public protection.
In practice, juvenile justice systems should meet both the welfare needs of the young offender and the protective and retributive needs of society. This, however, undermines public confidence in the capacity of the system and its practitioners to effectively deal with juvenile crime. There is a need for a common, public vision and purpose, constructed around three principles that reflect the best interests of young offenders, their victims and the public:
1. prevention of offending;
2. reintegration of the offender;
3. reparation to compensate for wrongdoing.

Working together
Juvenile crime cannot be tackled by the juvenile justice system alone. Using the law as the only tool for tackling crime limits society’s capacity to control and prevent criminal behaviour. Studies on the causes of crime confirm families, schools, local neighbourhoods and peer groups as key influences on delinquent behaviour. They all have important roles to play in its prevention.

Target groups
Recommendation Rec(2003)20 addresses several target groups. Young persistent and serious offenders, in particular, are responsible for a large amount of crime and have a disproportionate impact on their families and local communities. They often have multiple needs and inter-connected problems (drug misuse, truancy from school or problems at home). These need to be tackled together by a juvenile justice system that includes local agencies that can address wider contextual factors to reduce the risk of offending and re-offending.
There is also special concern about drug-related offending and the increasing prevalence of drug and alcohol misuse amongst children and young people. Recommendation Rec(2003)20 supports specific measures developed in some countries for treating drug and alcohol misuse and dealing with related crime, such as diverting problem drug users from prosecution under the condition that they agree to undertake treatment and accept testing that they remain drug free.

The Expert Committee expressed concern at the disproportionate representation of offenders from minority ethnic communities at each stage of the criminal justice system, from arrest through to custody. This may be partly explained by higher offending rates, which in turn may be due to higher exposure to poverty and social exclusion, but may also reflect discrimination.
Other target groups addressed are young people who offend in groups, young female offenders and young children under the age of criminal responsibility.

**Effectively intervening**

Petty and first time offenders should continue to be diverted from formal prosecution.

New ways of effectively dealing with serious and persistent offenders are emerging and there is now scope for cautious optimism.

Very little is known about the effectiveness of interventions designed specifically for young women, ethnic minorities and migrants. This needs to be addressed.

**Race impact statements**

To reduce the risk of discrimination the expert committee believes that it may help if public authorities are required to monitor the impact of justice reforms and practices on equality. They can do this by preparing a statement setting out how the needs of ethnic minorities have been taken into consideration and what procedures and safeguards have been put in place to ensure that the new reform does not inadvertently discriminate against them.

**New responses**


1. Expanding the range of suitable alternatives to formal prosecution should continue to be developed. They must adhere to the principle of proportionality, reflect the best interests of the juvenile and apply only in cases where responsibility is freely accepted.

2. To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of new, more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender’s parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.

3. Culpability should reflect better the age and maturity of the offender, be more in step with the offender’s stage of development, with criminal measures being progressively applied as individual responsibility increases.

4. Parents (or legal guardians) should be encouraged to take greater responsibility for the offending behaviour of younger children. They should attend court proceedings (unless this is considered counter-productive) and, where possible, they should be offered help, support and guidance. They should be required, where appropriate, to attend counselling or parent training courses, ensure their child attends school and assist official agencies in carrying out community sanctions and measures.

5. Reflecting the extended transition to adulthood, young adults under the age of 21 should be adjudicated and sentenced as juveniles and be subject to the same
interventions, unless deemed by the court to be as mature and responsible for their actions as a full adult.

6. To facilitate their entry into the labour market, young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, other than in exceptional circumstances.

7. Instruments for assessing the risk of future re-offending should be developed in order that the nature, intensity and duration of interventions can be closely matched to the risk of re-offending, as well as the needs of the offender, always bearing in mind the principle of proportionality. Where appropriate, relevant agencies should be encouraged to share information, but always in accordance with the requirements of data protection legislation.

8. Time limits for each stage of criminal proceedings should be set to reduce delays and ensure the swiftest possible response to juvenile offending. In all cases, measures to speed up justice and improve effectiveness should be balanced with the requirements of due process.

9. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed in a manner that ensures their full understanding of their rights and safeguards. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian. They should also have the right to access a medical doctor. They should not be detained in police custody for longer than 48 hours in total and for younger offenders every effort should be made to reduce this time further.

10. When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months up to trial commencement. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.

11. Where possible, alternatives to remand in custody for juvenile suspects should be used, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remands should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures.

12. In considering whether to prevent further offending by remanding a juvenile suspect in custody, courts should undertake a full risk assessment based on comprehensive and reliable information on the young person’s personal and social circumstances.

13. Preparation for the release of juveniles deprived of their liberty should begin on the first day of their sentence. A full needs and risk assessment should inform a reintegration plan, which fully prepares offenders for release by addressing in a co-ordinated manner their education, employment, income, health, housing, supervision and family and community-related needs.

14. A phased approach to reintegration should be adopted, using periods of leave, open institutions, early release on licence and resettlement units. Resources should be invested in the provision of reintegration post-release that, in all cases, should be planned and carried out with the close co-operation of outside agencies.
European Rules for Minors

It is important to note that Recommendation Rec(2003)20 presents a set of standards for policies, legislation and practices in the field of juvenile justice, but does not contain any provisions on the treatment of juveniles in prison or subject to community sanctions and measures. Therefore, the Recommendation Rec(2003)20 highlights the need to develop separate and distinctive European Rules for juveniles deprived of their liberty or subject to community sanctions and measures.

Implementation, Rights and Safeguards, Monitoring, Evaluations and Information Dissemination

Recommendation Rec(2003)20 finishes with a number of paragraphs on implementation, rights and safeguards, and monitoring, evaluation and dissemination.

DEVELOPMENTS IN YOUTH JUSTICE IN NORTHERN IRELAND

The Age of Criminal Responsibility

The Age of Criminal Responsibility in Northern Ireland is 10. Children under the age of ten years cannot commit a criminal offence. Charges against children are normally heard in the Youth Court — a court of summary jurisdiction.

The age of criminal majority in Northern Ireland is 17 years, i.e. a child who has past his/her seventeenth birthday and who commits an offence will be brought before the adult court. Once the Justice (NI) Act 2002 comes into effect (in September 2004) the age of criminal majority will be 18.

The Gatekeepers of the System.

The police are the main gatekeepers in the criminal justice process. They have considerable discretion in how they deal with offenders. When the police are made aware that a young person has committed an offence we say that that young person “has come to the attention of the police”. Only a minority of children who “come to the attention of the police” eventually appear in court.

When a child (10-17) “comes to the attention of the police” the police may decide to:

a) take no further action; (21%)

b) issue an informal warning and advice where the juvenile is warned about the consequences of his/her behaviour and given advice about staying out of trouble. No official record of such warning and advice may be cited in court at a later date, but the police may keep a note of such warnings for their own records; (59%)

c) administer a formal caution (15%) which is officially recorded and may be cited in a court at a later date. The formal caution is usually administered by a senior officer in the presence of the juvenile and his or her parents. A number of preconditions have to be met before a formal caution may be given.
Training Course on Juvenile Justice

- First, there has to be sufficient evidence in accordance with standards for deciding to prosecute. It is not sufficient to simply have a prima facie case, rather, there has to be a realistic prospect of conviction.
- Second the juvenile must admit guilt in relation to the offence for which they are being cautioned and
- Third, the offender and his or her parents must give informed consent to the caution.

About 70% of young people who are cautioned do not re-offend. The police have recently introduced “Cautioning Plus” with a view to improving that figure even further. Cautioning Plus is based on a Family Group Conference approach. Participation is entirely voluntary. Early results are very promising.

d) The police may decide to prosecute (5%). This decision is taken where the members of the liaison scheme decide that a caution or less formal method of dealing with the juvenile is inappropriate. Such a decision may be taken, for example, where the offence is particularly serious and/or the juvenile has previous convictions.

Remands
There is always a presumption of bail. In order to justify remanding the child in custody, the offence with which s/he is charged must be of a violent or sexual nature, one which in the case of an adult is punishable with imprisonment for a term of 14 years or more; or one which was alleged to have been committed while he was on bail, and which, in the case of an adult similarly charged, would render him on conviction liable to imprisonment. In addition to meeting these criteria, the court must also consider that remanding the child in custody is necessary to protect the public from serious harm from him.
Remands in custody are normally to a Juvenile Justice Centre but where the child is over 15 and the court believes there is a serious danger to himself or to others he may be remanded to a Young Offenders Centre.
Children remanded in custody must be brought back before the court once per week – unless by agreement.

Community Disposals
The community disposals open to the court are:
- Absolute Discharge;
- Conditional Discharge;
- Fines and Recognisances
- Compensation Order;
- Probation Order (with or without conditions);
Community Service Order: under the Criminal Justice Order 1996, Art 13.1, offenders who have reached the age of 16 can be given a community service order. The minimum order is for 40 hours and the maximum is 240 hours.
Attendance Centre Order: minimum 12 hours — maximum 24 hours.
Custodial Disposals
Juvenile Justice Centre Orders
Young Offenders Centre Orders
Detained During the Pleasure of the Secretary of State

**Juvenile Justice Centre Order**

Where a child is found guilty of an offence punishable in the case of an adult with imprisonment the court has the power to send the child to a Juvenile Justice Centre for a period of detention followed by a period of supervision.

A Juvenile Justice Centre Order will be for a period of six months unless the court specifies in the order a longer period not exceeding two years (the reasons for imposing a longer period must be given in open court). 50% of the Order will be served in custody; 50% served in the community.

Custody should be restricted to those who have committed a serious offence or who belong to the very small minority who pose a serious danger to the public.

**Post Custody Fostering**

Where a child has completed his/her period in custody (50% of the Order) but, for whatever reason, cannot return home, the child may be placed with foster carers.

**Young Offenders Centre Order**

Under the Treatment of Offenders Act, 1968, serious and persistent offenders who have reached the age of 16 may be sent to the Young Offenders Centre for a period not exceeding 4 years. Sentences are normally at the lower end: 6 to 12 months. This is a specialist facility for children over 16 and young adults up to the age of 21.

**Detained During The Pleasure Of The Secretary Of State**

Where a child is convicted on indictment of any offence punishable in the case of an adult with imprisonment for life the court will sentence him to be ‘Detained During The Pleasure Of The Secretary Of State’.

Where

a) a child is convicted on indictment of any offence punishable in the case of an adult with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law and

b) the court is of the opinion that none of the other methods in which the case may be dealt with is suitable

the court may sentence the child to be detained for such period as may be specified in the sentence.

**New developments in Northern Ireland**

A number of new developments have been introduced by the Justice (Northern Ireland) Act 2002.
Youth Justice Agency
A new Youth Justice Agency has been set up to develop a range of Diversionary Schemes. The aim is to reduce the reliance on custody and to provide the court with realistic community-based sentencing options.

Reparation Order
The Reparation Order is a low-level response to 1st time offending. It is suitable for relatively minor offences. The Order is for a maximum of 24 hours over a period of no more than 6 months. Before making a reparation order, a court must obtain and consider a written report by a probation officer, social worker or another person approved by the Secretary of State. This report should indicate the type of requirements that it might be appropriate to impose on the offender and the attitude of the victim to these proposals. The requirements should, as far as possible, try and avoid any potential conflict or interference with, for example, the child’s religious beliefs, school or work. Above all, a court must only make a reparation order with the child’s consent. Otherwise, the whole point of reparation would be lost.

Community Responsibility Order
Community Service Orders, which can extend up to 240 hours, are only available for young people aged 16 and over. Community Responsibility Orders are for children below this age and that it should be limited to a maximum of 40 hours duration. The Order is delivered in two parts, Part 1 instruction and Part 2 activity. In the first part of the order the child will receive “relevant instruction in citizenship”. Subject to the needs of the young person, this might include programmes to address offending behaviour, victim awareness and healthy lifestyle. The second part of the order requires the young person to carry out practical reparative activities suited to their age and capabilities, and may involve some direct reparation to the victim if the victim agrees.

Attendance Centre Order
This Order is similar to a Community Responsibility Order but runs for a shorter period: 12 - 24 hours attendance. It takes place after school; there is an emphasis on constructive activity; addressing offending behaviour; family involvement; victim awareness and healthy lifestyle.

Diversionary Youth Conferences
A Diversionary Youth Conference may be ordered where the child admits the offence. The Director may order no further action if the offence is not serious; ask for a Youth Conference Plan; institute proceedings if the offence is serious.

Court Ordered Youth Conference
A court must refer the case of a child who has been found guilty of an offence by or before a court to a youth-conference coordinator for him to convene a conference (except in the case of Grave Crimes). The court must consider any recommendation before dealing with the child for the offence.

The Youth Conference Plan must be completed within 12 months. The child may be required to: Apologise; make reparation; make a payment to cover cost of replacement or repair; submit himself to the supervision of an adult; perform unpaid work or service (if aged 16 or over); participate in activities e.g. assisting with the rehabilitation of drug
abusers; submit himself to restriction on his movements or conduct; submit himself to treatment for a mental condition or dependency

**Bail Support**

All too often, a child ends up remanded in custody simply because the infrastructure required to maintain him or her within their own family or community does not exist. The Youth Justice Agency has appointed a Bail Support worker to work with the Courts and the Juvenile Justice Centres to identify those children who, with a package of support for themselves and their family, could be released on bail rather than remanded in custody. The support package could include any number of elements, for example an education provision, support for parents or carers through family conferencing, individual and group work programmes and addressing offending. In the main, delivery of bail support packages will be through a network of Community Service partnerships. The Youth Advocate will also assist the young person in a practical way e.g. in keeping bail conditions, appearing in court on due date etc.

**Remand Fostering**

One of the main barriers to releasing a child on bail is the lack of suitable accommodation. In many cases following an offending incident, the parent, carer or residential home will refuse to take the child back. To try and prevent these children being admitted to custody simply because there is no alternative, a Remand Fostering scheme is being piloted. It will provide a small number of community based accommodation placements, supported by a dedicated worker (a Youth Advocate), for children as an alternative to a remand in custody or as a support during the community supervision component of a Juvenile Justice Centre Order.

**New Developments in Custody**

When the relevant sections in Part 4 and Schedule 12 of the Justice (NI) Act 2002 are commenced it will no longer be lawful to detain children aged 10 to 13 in a Juvenile Justice Centre other than those found guilty of grave offences and if the Secretary of State determines that they should be so detained. These children will be accommodated in the care system. Custody Care Orders replicate the existing Juvenile Justice Centre order in terms of structure and duration. Sentences from 6 months (minimum and standard sentence) to 2 years can be imposed, with half of the sentence spent in secure care accommodation and the other half under supervision in the community. The number of children in this age group who require custody is very small. In the whole of 2001 and 2002 only one such child was given a Juvenile Justice Centre Order.

**Custody provision for 17-year-olds**

The Justice (NI) Act 2002 brings 17-year-olds within the jurisdiction of the Youth Court. When this part of the Act is implemented (September 2004) the age of criminal majority will be raised to 18 – in line with the Convention on the Rights of the Child. The law provides that all 17 year olds should be accommodated in Young Offenders Centre (apart from a few very clearly defined exceptions).
THE IMPORTANCE OF SCHOOL AND FAMILY
Corinne DETTMeyer, Family Judge, The Netherlands

Prevention of criminal behaviour has been made one of the top issues of the EU in Amsterdam 1997. Prevention of juvenile criminal behaviour is considered to have priority. Criminal behaviour of juveniles as well as against juveniles. Therefore protection of juveniles as well as repression of criminal behaviour are both of equal importance.

A child has from approximately the age of 10, three environments: the home, the school and the peer group or leisure time. When there are problems in 2 out of the 3 environments we generally consider the child to be in danger of growing up in an antisocial manner and we will endeavour to change the circumstances, either voluntary or if necessary by court order.

Family

Parents are the first responsible for the education and upbringing of their children. Society needs to stimulate and facilitate this responsibility. The family should offer safety, nourishment, mentally as well as physically. Most families are well capable of offering these basic necessities. Most parents are well equipped to monitor the behaviour of their children and curb deviant behaviour. Nevertheless it is a fact that not all families are able to provide their children with the necessary tools to become well-balanced members of the society. For example illiterate parents will have a difficult task in educating their children, much more so than educated parents. Parents who do not speak the language of the country they bring up their children in will have a hard time coaching their children through school. Generally speaking it is the parents responsibility, but also a responsibility of the community.

Convention of the rights of the child puts a responsibility on the government to secure the rights of the child to a safe upbringing, healthcare and education. Parents who have a problem in providing these basic needs will be offered help by social services. In most cases this help is accepted, but where help is needed and not accepted help will be forced by court order.

Some examples of youth assistance are:

- Video hometraining, a program that helps parents to find positive feedback instead of a spiral of negativism.
- Schooling for mothers specially for immigrants
- Baby and toddler medical care also to give parents a feeling of support, a feeling that they are not alone.
- Family group conference, (a method imported from New Zealand
- Communities that care, a program that seeks to discern risk factors on a small, neighbourhood, level
An important lesson for all of us that deal with these problems is that we have to share our experiences and learn from each other.

One of the risk factors is an excessive amount of violence within the family. Some of the programs of preventing or repressing violence within the family are:

- Safe houses for battered women and children
- School programs with information about violence, to teach children that violent behaviour is not normal behaviour.
- Creating possibilities of confidentially reporting child abuse.

Early discovery of problem children or families is essential and should be a target in prevention of later juvenile delinquency.

**Schools and education**

- Schools should be a safe place for children
- School social workers must be able to detect problematic behaviour or possible child abuse and should cooperate with social services
- Unauthorised absence should always lead to reactions
- Schooling should lead to work
- School drop out programs help to get children back to school

**Risk factors within the child**

- Attention deficit hyperactivity disorder
- Depression
- Low intelligence coupled with too high expectations
- Psychiatric problems

**Group behaviourism and peer pressure**

- It is important to define youth gangs and substitute criminal behaviour with positive behaviour (the Glenn Mills approach)
- Take care that there are adequate possibilities for juveniles to sustain from criminal behaviour, enough schooling, enough work and enough places for leisure time.

Once juveniles have committed a crime there should be an adequate reaction, not too lenient and not too severe and adapted to the seriousness of the crime and the circumstances of the defendant. It is important that school, social services prosecutor and judge co-ordinate their actions. For instance if the prosecutor decides that the juvenile will not be held in custody but will get the opportunity to go back to school and the school decides to expel the juvenile because of his criminal behaviour, the opposite of what one wants will happen: the juvenile is back on the street with nothing to do and is likely to commit another crime. Also social services can do a background/family survey to detect risk factors.

The variety of possible reactions to criminal behaviour helps judges and magistrates to administer penalties that suit the juvenile and will lead to special prevention. Examples of possible reactions:
Training Course on Juvenile Justice

- Diversion, for instance instead of going to court, amending the wrongdoings either financially or by work or even by expressing remorse towards the victim. This could be done in case of a first offender or in case of a slight infraction.

- A suspended sentence with very strict conditions; for instance going to school, going straight home after school, having conferences with a psychologist, all under surveillance of a social worker.

- Different sorts of training’s, like anti-aggression training, sexual behaviour training, equip training. In short all sorts of training and schooling that will help prevent future criminal behaviour and will extend the social competence of the juvenile.

- Night detention centre’s. In daytime the juvenile will go to school or work and all the other hours he will be detained. This possibility will enable the juvenile to stick to his school but will also teach him the consequences of his criminal behaviour.

- Detention, which in some cases will be inevitable. But the detention time should be used to enhance the possibilities of the juvenile to lead a life without crime. That is to say detention institutions should have the means to teach the juvenile a trade and to equip him with the social amenities to keep him out of crime. Some of these juveniles will rob a bank but have no idea how to open a bank account! Also juveniles and adults should not be in the same prison/detention centre.

- It is advisable to have an institution of probation officers to help juveniles who come out of prison to star living a crime free life and not to fall back on bad habits.

- If necessary a court protection order could follow after criminal proceedings to help and advice parents with the upbringing of their children specifically to prevent further criminal behaviour and in case parents and juvenile do not follow the instructions placement in a children’s home could follow.

- When there are special psychological, psychiatric or emotional causes that have led to the criminal behaviour of the juvenile, and if the crimes are serious and recidivism would endanger the community, the juvenile could, instead of being put in youth prison, be placed in a special (closed) treatment centre.
JUVENILE JUDICIAL SYSTEM IN KOSOVO

Nesrin LUSHTA, Training Director of formation Centre judges of Kosovo

Kosovo is a province in the central Balkans that lies within the area of former Federal Republic of Yugoslavia (FRY). It is under the jurisdiction of United Nations Interim Administration, since June 1999. The United Nations Security Council has adopted Resolution 1244, establishing a transitional civil administration, the United Nations Interim Administration in Kosovo (UNMIK). The Special Representative of the Secretary General (SRSG) has the mandate to promulgate regulations which have the force of a law. According to Regulation 1999/24, the applicable law in Kosovo is: the regulation promulgated by the SRSG and subsidiary instruments issued there under and the law in force on 22 March 1989. According to this regulation (1.3.), in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards as reflected in particular in: The Universal Declaration on Human Rights, The European Convention for Protection of Human Rights and Fundamental Freedoms (ECHR), The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, The Convention on the Elimination of all Forms of Discrimination Against the Women, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and The International Convention on the Rights of the Child.


The work in codification and changing/amending the law is ongoing.

Age

According to our provisions, age bellow which the juvenile has not criminal responsibility is 14. He is considering “child” due to our terminology.

There is a categorization of juveniles who at the time of commission of criminal act have been at the age between 14 - 16 (junior juveniles) and at the age 16 – 18 (senior juveniles).

Criminal sanctions cannot be applied to a juvenile who at the time of the commission of a criminal act was aged under 14 (a child) and if the criminal procedure was established, it shall be dismissed.

If at the time of the trial the juvenile is still under the age of 18, all educational measure can be applied.

But, a punishment of imprisonment can be sentenced only to a juvenile who at the time of the commission of the criminal act has been senior juvenile and if other legal conditions are fulfilled (if he committed a criminal act for which a punishment more severe then five years of imprisonment has been prescribed and if it will be warranted to apply an educational measure because of the grave consequences of the act committed and the high degree of a criminal responsibility).
If the juvenile offender, at the time of the trial is an adult, there are again specific rules.

An adult who is aged 21 or over, cannot be tried for a criminal act he committed as a junior juvenile. If an adult is not aged 21 or over at the time of the trial, he may be tried only for criminal act for which a punishment of imprisonment for a term exceeding five years has been prescribed. The court may impose on such a person only an appropriate institutional measure. (In such a situation a court may decide to dismiss the criminal proceedings).

There are also provisions that may be applied to the person who at the time of commission of a criminal act were at the age 18 – 21 (young adult). The court may impose an appropriate measure of intensive supervision or an institutional measure on a offender who has committed a criminal act as an adult, if given his personality and circumstances in which he committed the act, it may be expected that the purpose which would be attained by sentencing him to imprisonment will be attained by the educational measure. These measures may last only until the offender is aged 23.

**Territorial jurisdiction of a court**

As a rule, the court with jurisdiction over a minor’s permanent place of residence shall have competent territorial jurisdiction for proceeding against him, but if the minor does not have a place of permanent residence or it is not known, than court which shall have competent territorial jurisdiction shall be the court which has jurisdiction over his temporary place of residence. A proceeding may be conducted before the court of the minor’s temporary place of residence though he has a permanent place of residence or before the court of the place where the crime was committed if is obvious that the proceeding will be conducted more easily before that court.

**Characteristics and types of measures. Education rather then punishment**

Criminal sanctions against the juvenile are:

- juvenile custody
- educational measures
- security measures

It was already explained in which conditions this sanction might be sentenced. It may not be shorter than 1 year or longer than 10 years and shell be measured in full years or half years.

Educational measures are:

- disciplinary measures (reprimand and sending to the disciplinary center for minors)
- measures of intensive supervision (intensive supervision by parent or tutor; intensive supervision in another family; intensive supervision by tutelage organ)
- institutional measures (sending in educational institution; sending in educational-correction centre; sending to a special institution)

All mentioned measures, except the institutional measures, are of the open character. Their duration is not fixed in the law, but only minimum and maximum. It is up the court to decide in this regard. The court may also change its decision and give another measure if the sentenced one is not successful. If from the time when the decision which pronounced measure of intensive supervision or institutional measure become powerful, passed more
then two years and the execution did not commenced, court will decide again about the need of execution.

Security measures (as for example: mandatory medical treatment of alcoholics and drug addict, bar to public appearance, confiscation of property), may be imposed on juvenile under specific conditions.

It is obvious that the rule is “education rather then punishment” and the punishment is never obligatory according to the law.

**Juvenile judges, special composition of the juvenile panel**

In regular courts (except in the Supreme Court) there are juvenile judges dealing with juvenile cases. Juvenile judge conducts the preparatory procedure (investigation) and is president of a juvenile panel. A juvenile judge and two lay judges compose this panel, in fist level courts. Lay judges are chosen among secondary and elementary school teachers, child guidance counselors and other persons who have experience in bringing up minor. Each has one vote.

**To the juvenile offender are applying all the principles of the Law on Criminal Procedure with some specifics for the benefit of the juvenile and his best interest**

Principle of *legality* in criminal proceeding, according to article 18 of Law on Criminal Procedure means “The public prosecutor must undertake criminal prosecution if there is evidence that the crime which is prosecuted ex officio, has been committed”.

There are two exceptions in juvenile cases:

- for crimes carrying punishment of imprisonment less than 3 years or a fine, the public prosecutor may decide not to sue for institution of criminal proceedings even trough there is evidence that the juvenile committed the crime, if he feels that it would not be expedient to conduct the proceeding against the juvenile in view of the nature of the crime and circumstances under which is committed, the juvenile’s previous life and his personal characteristics,

- when the punishment or juvenile measure is being executed, the public prosecutor may decide not to sue for institution of a criminal proceeding for another crime of a juvenile if in view of the severity of that crime and the punishment or juvenile measure being executed, there would be no point to conduct the proceeding and pronounce punishment for that crime.

**Defence in accordance to the law**

According to the Law on Criminal procedure a juvenile may have a defence counsel from the outset of the preparatory proceeding, but must have defence counsel from this moment if the proceeding is being conducted for a crime carrying a prison sentence exceeding 5 years and for other crimes, if the juvenile judge deems that the juvenile needs defence counsel. If the juvenile himself or his legal representative do not engage defence counsel, the juvenile judge will appoint him. Apart of this if the accused – juvenile is mute, deaf or incapable of effectively defending himself, he must have a defence counsel from the very first examination. However, it was no provision about the situation when a juvenile wants to have a defence counsel but there are no legal condition mentioned here and has no possibility to pay him, but the provision that the juvenile judge will judge if this is
necessary. This is applying both with the provision of the article 40 of CRCH that the juvenile has the right to have legal assistance if it is considered as a best interest of the juvenile

**Personality, mental development and the environment of a juvenile offender**

Court dealing with juvenile cases is obliged to gather all information about the personality, mental development and the environment in which he is living.

In preparatory procedure (pretrial procedure) the juvenile’s parents, guardian and other persons who might supply the necessary information shall be questioned in order to determine those circumstances. The report shall be requested also from the juvenile welfare authority, if a juvenile measure has been taken toward the juvenile. The juvenile judge shall obtain information on his personality and may request that information to be gathered by some professional (social worker, specialist in defective delinquency etc.) and my also commission the juvenile welfare authority to obtain that information.

No one may be relieved of a duty to testify concerning those circumstances and they are a base to decide about the criminal sanction to be sentenced to the juvenile offender.

**Urgent procedure**

The criminal procedure against the juvenile is very urgent.

I will cite some articles of the Law on Criminal Procedure in this regard.

Article 462: Authorities participating in the proceeding against the juvenile and other agencies and institutions from whom information, reports or opinion are sough must proceed with the greatest urgency so that proceeding is completed as soon as possible.

Article 479: The juvenile judge shall report monthly to the president of the court on the juvenile cases which are stil pending and the reasons why proceedings have not been completed for the individual cases. The president of the court shall take steps as needed to speed up the proceedings.

Article 484: The juvenile judge must set the trial or session of panel within 8 days from the date of receipt of the public prosecutor’s recommendation or petition…The trial shall be adjourned or recessed only in exceptional case…The juvenile judge must prepare the verdict or decision in writing within 3 days of its announcement.

Article 474.2:Custody may not last longer than 1 month on the basis of the decision of the juvenile judge. The juvenile panel of the same court may extend custody by an additional 2 months at the maximum, for good cause.

**Trial is not public**

In order to protect the juvenile, according to the applicable law, the trial is not public. This is again an exception, because in adult cases trial is public and this is one of very important principles of the Law on Criminal Procedure.

In juvenile cases, apart of the members of the panel, parties, the damage party (victim, or his representative), defence counsel, parents, representative of social welfare authority, nobody is allowed to be present. The panel may allow the trial to be attended by person professionally concerned with the welfare and upbringing of minors or with combating
juvenile delinquency, as well as scholars and scientists. Neither the course of proceeding nor the decision rendered in that proceeding may be made public without permission of the court. In that case, it is forbidden to give the name of juvenile and other information, which might serve as the basis for identifying the juvenile.

Types of decisions
The court may issue three types of decision:
- to pronounce the juvenile guilty and sentence the imprisonment,
- to pronounce the educational measure,
- to dismiss proceedings.

Proceedings will be dismissed not only in case there were no evidences that he committed the crime, or other similar situations, but also in case the court find that is not expedient to pronounce either a punishment or educational measure.

Juvenile as a victim or a witness
A juvenile can be a victim. According to our terminology he is “an injured party”. Private complain on his behalf shall be filed by his legal representative (parent, tutor) and he is authorized to make all statements and take all steps which injured party is authorized to take under the Law on Criminal Procedure.

But the juvenile, in the capacity of a victim or victim/witness, shall give the statement about the event, on his own and his legal representative can not do anything in this regard. Therefore, in order to protect the juvenile, there are many provisions.

First of all, as a witness will be summoned the person if it is likely that he may give information on the crime, the perpetrator and on other important circumstances. It is no age limit for that. Therefore, even a very young person can be summoned as a witness. (It is wrong to consider that the 3-4 years old child can be considered as a witness in all cases. He may be able to give very exact information, but it is wrong to insist on that).

In the Law it is stated that caution shall be taken in interrogating a minor, especially if he has been injured by a crime, so the interrogation not have a harmful effect on his mental state. If necessary, the minor shall be interrogated with the help of a teacher or other professional person.

The panel may decide to exclude the public during questioning the person under age of 14 and if a minor is attending the trial as a witness or injured party, he shell be removed from the courtroom as soon as his presence becomes unnecessary.

Sometimes the juvenile who has to give a testimony in a main trial is threatened, frustrated, afraid to tell the truth in the presence of the accused person. Therefore, it is a provision that allowed the panel to remove temporally the accused from the courtroom during his testimony.
REPUBLIC OF MOLDOVA
Sophie MORIN, Masters in International Relations, Canada

Source: Texas University Library (http://www.lib.utexas.edu/maps/)
Training Course on Juvenile Justice

General data

- **Country name**: Republic of Moldova
- **Government**: Republic
- **President**: Vladimir Voronin
- **Prime Minister**: Vasile Tarlev
- **Capital city**: Chisinau (pop. 735 000)
- **Area**: 33 700 sq km
- **Population**: 4 460 000
- **People**: Moldavian-Romanian 64.5%, Ukrainian 13.8%, Russian 13%, Gagauz 3.5%, Belarusian 3%, Jewish 1.5%, Bulgarian 2%
- **Language**: Moldovan (virtually the same as Romanian), Russian, Gagauzi
- **Life expectancy at birth (years) (1998)**: 67
- **Percentage of the population attending school**: 71%
- **Adult education rate**: 96.4%
- **Schooling second degree (1996), (gross rate)**: 80.5%
- **Schooling third degree (1996)**: 26.1%
- **Maternal mortality parameter (per 100,000 live-born infants) (1998)**: 36.3
- **Infant mortality parameter (per 1,000 live-born infants) (1998)**: 17.8
- **Parameter of mortality of children up to 5 years of age (per 1,000 live-born infants) (1998)**: 23.5
- **Religion**: Eastern Orthodox 98.5%, Jewish 1.5%

Economic data

- **GDP (U.S.$) (1999) (million)**: 8721
- **GDP per capita (U.S.$) (1997)**: 545
- **IGP/inhabitant (ppp) (1997)**: 2207
- **Annual growth (1989-99)**: -11.4%
- **Annual growth (2000)**: 1.9%
- **Inflation (2000)**: 31.3%
- **Unemployment rate (national definition, non-harmonized) (2000)**: 1.8%
- **Public spending of Education (1996)**: 10.6%
- **Foreign debt (2000) (million $)**: 1421
- **Major industries**: agriculture, viniculture, food processing
- **Major trading partners**: Russia, Kazakhstan, Ukraine, Romania, Germany
- **Currency**: Molodovian leu
Geography

Moldova, the second-smallest of the former Soviet Republics (after Armenia), is however one of the most populated. Bordered by Romania on the west and Ukraine on the North, South and East, Moldova has two significant geographical features: the Prut and the Dniestr rivers. The landscape is mostly flat steppe, hills and a few forested areas. Moldova's climate is often classified as similar to Western Europe's.

Culture

Moldova shares the cultural background of Russia, Romania and Turkey, resulting in a very rich and intricated cultural life. Moldova is thus a turntable between two civilizations: Slaves (Russians, Ukrainians, Poles, Bulgarians, etc...) and Romans (Romanians, Moldavians). The major population group are the Moldavians (64%) and their religion is Russian Orthodox. The official language, Moldovan, is phonetically identical to Romanian, but for historical and ideological reasons, it is named Romanian in Romania and Moldovan in Moldova. Moldova is full member of the Francophonie since 1997.

Minorities that are most important are Ukrainians (13.8%) and Russians (13%). These communities are very strong in the country, on the one hand making up 26.8% of the population, and the other hand, being a privileged social class, present especially in the capital, Chisinau and the city of Tiraspol in Transdniestrian region. These two communities live in the Transdniestrian region that is self-proclaimed independent. Small minorities are the Gagauz (3.5%), the Bulgarians (2%) and the Jewish (1.5%). Gagauzes live in the autonomous republic of Gagauzia, in southern Moldova. In this territory, Gagauzes are the majority with 78.7% of the local population.

Historical and political facts

Moldova's very rich history dates back to ancient times. We will however limit our survey to World War II and after. Between 1941-1944, the area was reoccupied by Romanian forces. During this time, thousands of Bessarabian Jews were deported to Auschwitz. In 1944, the Romanians were forced to relinquish their hold on the area, and the Soviet authorities once again took control. The most important consequence of the Soviet rule over Moldova was the deportation of over 25 000 ethnic Moldavians to Siberia and Kazakhstan.

Other consequences have been the closing of Jewish synagogues, the outlawing of religious ceremonies and the imposition of the Cyrillic script on the Latin-based Romanian alphabet. During Gorbachev’s opening policy in the mid-1980s, the nationalist Moldovan Popular Front was born. Several years of reform and consultation ensued. In 1989, the Latin alphabet was reintroduced as the official written language. Finally, in 1991, Moldova declared its independence with its first democratically elected president, Mircea Snegur.

Independence was not trouble free: Slavic minorities in Transdniestrian claimed their cultural and social ties with Russia; and the Transdniestrian authorities seceded from the Republic and reiterated their loyalty to Russia. On the other hand, the Turkish-Gagauz minority feared a possible reunification with Romania, and consequently, Russians and Ukrainians...
minorities in Transdniestr and Gagauze minority in Gagauz self-proclaimed their
independence. In 1995, the Moldova Parliament recognized an autonomous status for
Gagauze. The Moldovan Republic of Transdniestr has so far stayed a self-proclaimed
State, enjoying no recognition by the international community.
Last but not least, the country has been struck by the profound economic crisis after the

Convention on the Rights of the Child

The Government of Moldova has ratified The Convention of the Right of the Child on
In this chapter, we will deal with: “Consideration of reports submitted by states parties
under article 44 of the Convention; the Initial reports of States parties due in 1995,
Republic of Moldova” (CRC/C/28/Add.19); “List of issues to be taken up in connection
with the consideration of the second periodic report of Moldova” (CRC/C/Q/MOL/1);
“Compte rendu analytique de la 824e séance: Republic of Moldova” (CRC/C/SR.824).

1 Consideration of reports submitted by states parties under article 44 of the
collection, Initial reports of States parties due in 1995, Republic of Moldova
(CRC/C/28/Add.19)

In this initial report (This complete initial report was due in 1995. It has been deposited in
February 2001 by Republic of Moldova), the Republic of Moldova mentions many issues to
concern the establishment of mechanisms and key factors for the implementation of a
system of promotion and respect of human rights. This work is based on international legal
instruments. As it is mentioned in the initial report:

19 Constitutional provisions regarding human rights and liberties are
interpreted and applied in conformity with the Universal Declaration of
Human Rights, with other pacts and treaties to which the Republic of
Moldova is a party. (art. 4, sect. 1)

21 In summary, the main provisions contained in the Constitution are:
political pluralism, separation of and collaboration among the legislative,
executive and judicial powers, and the right of all citizens to protection
and to develop and express their ethnic, cultural, linguistic and religious
identity. Constitutional law is the one that has the task of determining the
way of applying international treaties in the domestic legal system.

22 Taking into account the importance of respecting fundamental rights and
liberties and human rights, the legislator emphasized the supremacy of
international law and of human rights and, in article 8 of the Constitution,
the Republic of Moldova pledges itself to respect the Charter of the
United Nations and international treaties to which it is a party.

23 the principle of the priority of international documents was recognized
also by the Supreme Court of Justice, which, after studying the practice of
applying these constitutional provisions, adopted Decision No. 2 on 30
Constitutional Provisions”, in accordance with which, “in cases when
domestic legislation runs counter to international documents, provisions
of the international document to which the Republic of Moldova is a party, will be applied”.

24 Following the constitutional provisions, most of the legislative documents of the Republic of Moldova stipulate the supremacy of international law: the Civil Code, the Civil Procedure Code, the Criminal Code, the Criminal Procedure Code, the Marriage and Family Code, etc.

25 A special role is given in this field to the Constitutional Court, which, on notification, examines the constitutionality of international treaties to which Moldova is a party. In this context, it should be mentioned that the Constitutional Court applies the provisions of article 4, section 2 of the Constitution, which stipulates: “If there are contradictions between pacts and treaties to which the Republic of Moldova is a party and its domestic laws regarding fundamental human rights, international regulations will have priority.”

The report mentions as well, in its paragraph 49, that Moldova has created, in accordance with article 39 of the Law on Ombudsmen, an Expert Council. This Council is composed of specialists in the field of the human rights. Essentially, the Council makes recommendations about the legislation in the field of human rights, especially to harmonize it with international legal instruments ratified by Republic of Moldova. Thus, the Council has paid attention to the protection and respect of child rights and their promotion through the country.

The report also mentions national programs in favour of children and serious measures implementing international legal instruments.

The initial report deposited by the Republic of Moldova, also mentions in its part III (GENERAL MEASURES FOR THE IMPLEMENTATION OF THE CONVENTION) the adjusting of the national legal framework by some normative texts:

Law No. 338-XII on Child Rights, of 12 December 1994;


Decisions of the Government of the Republic of Moldova:

No. 571, of 2 September 1992, approving a programme of measures with a view to improving the situation of women, and mother and child protection;

No. 749, of 29 November 1993, on the Committee for Adoption of the Republic of Moldova;

No. 764, of 8 December 1993, approving a programme for organizing the International Year of the Family in the Republic of Moldova;

No. 62, of 3 February 1994, on adoption of children by foreign citizens;

No. 679, of 6 October 1995, approving a State programme concerning the assurance of children’s rights;
No. 456, of 15 May 1997, on additional social protection measures for families with many children;

No. 42, of 25 January 1999, modifying Government Decision No. 198 of April 1993;

No. 395, of 21 April 2000, approving the programme of activity for the Year of the Child.

According to the report, other normative texts are presently under study.

As for measures to create an institutional framework allowing the implementation of the legislation and the improvement of the situation of the child in the country, they are:

(i) The Committee for the Adoption of the Republic of Moldova was constituted in 1993;

(ii) The Sector for Family, Woman and Child Protection was created in 1997, within the State Chancery;

(iii) The Direction for Family Policy and Equal Opportunities was created within the Ministry of Labour, Social Protection and the Family, in 1998;

(iv) The National Council for Child Rights Protection - an inter-ministerial body authorized to coordinate and monitor activities and policies carried out in the interest of the child, was constituted in 1998; also, such councils were also instituted at a local level;

(v) Child protection sections were created in the counties, in 1999

The National Council for Child Rights Protection, has been created by decision No.106 of the Government of the Republic of Moldova. Purposes of the Council are to ensure respect for the Convention on the Rights of the Child and also the implementation of the provisions of the Law of the country on Child Rights. The Council is headed by the Vice-Prime Minister in charge of social problems. This Council includes representatives of central and local public administration authorities. The basic responsibilities of the National Council are:

To ensure integral respect of the provisions of the Convention on the Rights of the Child in the Republic of Moldova;

To elaborate governmental policies with a view to the implementation of children’s rights at the national level;

To consolidate social cohesion in the field of child rights protection.

The Council contributes to the accomplishment of State policy for child protection by:

Drafting strategies, programmes and normative documents, with a view to updating the legislative framework and harmonizing it with the international legislative framework, including the Convention on Rights of the Child;
Publicity at the national level for child protection priority and education of the population in the spirit of respect for child rights.

The Council collaborates with different ministries and departments and also international organizations and non-governmental organizations (UNICEF, UNDP, the World Bank, the European Trust and Save the Children). According to the initial report, these organizations bring a vital support with their programmes through the country. Moreover, several councils for children rights protection were created in the country regions. These Councils ensure respect for children rights. At the National level, several mechanisms are foreseen for the implementation of the Convention. The reform of the Moldova system leans on the following principles:

- Non-discrimination principle, which allows any child whose development, security of physical or moral integrity are endangered to benefit from the protection measures provided by law;
- Decentralization of decision-making and of responsibilities in this field to the local public administration level;
- Favouring family-type alternatives for the residential protection of children in difficulty.

The national strategy will have the following purposes:

- Reform and development of the legal framework;
- Reform of the administrative-organizational framework;
- Development of a social assistance system, focused on the family and the child;
- Development of special programmes oriented towards priority problems.

The part that follows is a complete extract of “consideration of reports submitted by states parties under article 44 of the convention” for the Committee on the rights of the child, at the United Nations. This part is limited to Juvenile Justice, subject of the seminar.

**Children in conflict with the law; sentence application for under-age persons; treatment of children deprived of their liberty**

Article 25 of the Constitution of the Republic of Moldova guarantees individual freedom and safety.

Guarantee of freedom is a rule of the criminal process. Any individual being under criminal investigation or on trial, will be treated with respect for his or her human dignity.

Article 10 of the Criminal Code of the Republic of Moldova establishes criminal liability for persons who, at the moment of committing the offence, had reached the age of 16.

Persons between 14 and 16 who committed an offence are criminally liable only for: murder, intentional physical harm that leads to damage to health, rape, hold-ups, robbery, theft, exceptionally large embezzlement of private property, serious or exceptionally serious hooliganism, premeditated destruction or deterioration of private property,
embezzlement of narcotic substances, weapons, ammunition or explosives, and intentional commission of acts that can cause a train derailment.

Article 23 (2) of the Criminal Code provides that a jail sentence for a person who, at the time when the offence was committed, had not reached the age of 18 cannot exceed 10 years. In the case where a juvenile between 16 and 18 committed a crime punishable by a life sentence, the jail term cannot exceed 15 years.

Article 60 of the Criminal Code stipulates that if the court considers that correction of a person under 18 who committed an offence that does not present a serious danger for society is possible without application of a criminal punishment, a series of educational measures can be imposed on such a person, such as: the obligation to apologize publicly, or in another way set by the court, to the damaged person; a reprimand or severe reprimand or warning; the obligation for the juvenile who has reached the age of 15 to pay damages, if the juvenile has his own income, and if damages do not exceed a minimum salary; entrusting the juvenile to his parents or their substitutes for strict supervision; entrusting the juvenile for supervision to a work collective, to a non-governmental organization, with its consent, or to some citizens, at their request; or internment of the juvenile in a special education institution or in a medical-educational institution.

According to article 25 of the Constitution of the Republic of Moldova, “individual freedom and security are inviolable” (para. 1);

“Searching, detaining or arresting a person are allowed only in cases, and by the procedure, provided for by law.” (para. 2); “The period of detention in custody cannot exceed 24 hours” (para. 3);

“Arrest will be carried out only on the basis of a warrant for a maximum period of 30 days. The term of detention can be prolonged to a maximum 6 months, and, in exceptional cases, with the approval of Parliament, to 12 months” (para. 4);

“The person detained in custody or arrested shall be informed without delay of the reasons for his detention or arrest and the charges against him. The reasons for his detention or arrest and the charges shall be presented only in the presence of a defence attorney, selected by the defendant or assigned ex officio” (para. 5);

“If the reasons for detention in custody or arrest have ceased to exist, the person concerned must be released without delay” (para. 5).

Article 73 (3) of the Criminal Procedure Code indicates that, for juveniles, a personal guarantee or an NGO guarantee or supervision by parents, trustees or guardians can be used as preventive measures and, for juveniles interned in educational institutions, supervision by the administration of that institution. Measures of preventive detention can be applied for juveniles only in exceptional cases, if the seriousness of the offence imposes it.

For juvenile defendants, who, on the date when the offence was committed had not reached the age of 16, the term of detention can be prolonged only to four months. For juvenile defendants who, on the date when the offence was committed had not reached the age of 18, the term of detention can be prolonged only to six months (art. 79 (3)).
According to article 21 of the Constitution, any person accused of an offence is presumed innocent until his guilt is legally proved, in a fair trial in which all the guarantees for his defence were assured.

Legal assistance for the juvenile defendant or accused is compulsory (article 44 of the Criminal Code).

Presumption of innocence, an important principle of the criminal trial, requires that proper attention be paid to the respect of fundamental rights and freedoms, and that limitations of these rights, imposed after criminal investigation, not be abusive or excessive.

In hearing witnesses aged under 14, and, when the court finds it necessary, also in hearing witnesses between the age of 14 and 16, a teacher will be called upon. If necessary, the parents, trustees or guardians of the under-age witnesses are called upon. After having been heard, a witness who has reached the age of 16 leaves the courtroom, except in cases where the court considers that the presence of that witness is necessary (articles 170 and 173 of the Civil Procedure Code; articles 132 and 139 of the Criminal Procedure Code).

We need to mention that, nowadays, the negative influence of economic factors, has led to a dramatic decrease in the level of welfare, and to an aggravation of poverty, which has become a mass phenomenon. An unfavourable family climate forces children to abandon their home and to live in the street, under the influence of delinquents. Lack of money has made some parents use their children for abusive activities, classified as offences (prostitution, theft, begging).

Of the population aged under 18, 23 per cent are aged between 0 and 4 and 77 per cent are between 5 and 18; over 52 per cent are females and 48 per cent males; about 54 per cent live in rural localities and 46 per cent in urban localities. More than one third of these children come from poor families and constitute the basis of “the risk group”. Their situation depends on their parents’ income, which, under the circumstances of a prolonged economic crisis, is getting worse and worse. Most of the offences are against property (77 per cent). Cases of serious body injury have increased by 88 per cent and blackmail offences have multiplied three times.

In 1990, 1,595 juveniles were made criminally liable, of whom: 8 for first degree murder and 1,241 for theft of private property. In 1998, 1,582 juveniles were made criminally liable, of whom: 6 for first degree murder and 1,348 for theft of private property. In 1999, 1,531 juveniles were made criminally liable, of whom: 5 for first degree murder, 12 for intentionally causing bodily injuries, 17 for rape, 57 for hooliganism, 64 for drug consumption and 1,291 for theft.

The juvenile sanctioning system comprises two forms of limiting the freedom of juveniles:

- An educative measure of interning them in a re-education centre;
- A jail sentence.

Internment in a re-education centre can be pronounced on juveniles until they reach the age of 18. It can be prolonged for no more than two years, if this is considered necessary for the accomplishment of the educational purpose. There are two re-education centres in the Republic of Moldova.
Chapter 14 of the Code on Execution of Criminal Law Sanctions provides for the application of a jail sentence to juveniles. Thus, according to article 106 of this Code, juveniles sentenced to imprisonment will serve in re-education colonies.

Article 116 of the Code sets forth the organization of the education and training process. For the purpose of the correction of the convicted juvenile and for his preparation for work, a unique education and training process is organized in the re-education colonies, oriented to educating the juvenile convict in the spirit of respect for the law, conscience and morality and for the improvement of his general culture and professional training level. Educational work is carried out, depending on individual particularities, on the convict’s personality, on the degree of his social-pedagogic neglect and on his life experience.

In re-education colonies the education of convicts who have not finished their studies is carried out, depending on the possibilities. General and professional education is carried out on the basis of the curricula of general education schools and professional education is carried out on the basis of the programme of professional workshops in schools. Training in productive tasks for a convict does not exceed 10 hours. Technical input for the education-training and production process is provided by subdivisions of the Ministry of Justice. Methodological guidance and control over the education-training process is assured by the Ministry of Education and Science.

A convict who has reached the age of 18 and who is not reformed, can be transferred from a re-education colony to a penitentiary to complete his sentence. A convict who has reached the age of 20 is transferred to a correction colony or a penitentiary, depending on the danger of his offence and on his behaviour, to complete his sentence. Transfer of the convict is decided by the court, on the basis of an approach made by the head of the colony.

In re-education colonies, a convict, whose behaviour has started to improve, can be transferred three months before the end of his sentence from detention conditions to re-socialization conditions, in order to be prepared for his release. In such cases, he lives in social rehabilitation territory outside the colony, without guards, but under surveillance. A convict in re-socialization conditions can be recommended in the manner established by law, for early release on probation or for the cancellation of the unexecuted part of the sentence.

The detention period can be reduced through release on probation. Thus, if at least one year has passed since the date of internment in a re-education centre and the juvenile has given convincing proof of rehabilitation, release on probation can be ordered before he reaches the age of majority. Juveniles convicted to a jail sentence, when they reach the age of 18, if they have completed a part of the sentence, and strongly prove they have corrected themselves, can be released on probation. For persons who have reached the age of 18, the conditions for release on probation are the same as for adults.
There is a Re-education Colony through Work for Boys in Lipcan Town. According to data provided by the Department of Penitentiary Institutions of the Ministry of Justice, the situation with regard to the number of juveniles interned in the colony is the following:

<table>
<thead>
<tr>
<th>Date</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 January 1993</td>
<td>253</td>
</tr>
<tr>
<td>1 January 1994</td>
<td>269</td>
</tr>
<tr>
<td>1 January 1995</td>
<td>231</td>
</tr>
<tr>
<td>1 January 1996</td>
<td>226</td>
</tr>
<tr>
<td>1 January 1997</td>
<td>183</td>
</tr>
<tr>
<td>1 January 1998</td>
<td>151</td>
</tr>
<tr>
<td>1 January 1999</td>
<td>148</td>
</tr>
<tr>
<td>1 January 2000</td>
<td>65</td>
</tr>
<tr>
<td>1 June 2000</td>
<td>76 (of whom 23 had attained the age of majority)</td>
</tr>
</tbody>
</table>

In 1999, by a Decree of the President of the Republic of Moldova, a considerable number of juvenile convicts were amnestied. The statistics for juvenile convicts as of 1 June 2000 was as follows:

By offence committed:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>16</td>
</tr>
<tr>
<td>Slight bodily injury</td>
<td>1</td>
</tr>
<tr>
<td>Rape</td>
<td>14</td>
</tr>
<tr>
<td>Theft</td>
<td>17</td>
</tr>
<tr>
<td>Robbery</td>
<td>19</td>
</tr>
<tr>
<td>Theft in exceptionally high proportions</td>
<td>4</td>
</tr>
<tr>
<td>Drug consumption and storage</td>
<td>1</td>
</tr>
<tr>
<td>Other offences</td>
<td>4</td>
</tr>
</tbody>
</table>

By length of jail sentence:

<table>
<thead>
<tr>
<th>Length</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 years</td>
<td>16 juveniles</td>
</tr>
<tr>
<td>5 years</td>
<td>15 juveniles</td>
</tr>
<tr>
<td>10 years</td>
<td>43 juveniles</td>
</tr>
<tr>
<td>15 years</td>
<td>2 juveniles</td>
</tr>
</tbody>
</table>

By education level:

<table>
<thead>
<tr>
<th>Level</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Without studies</td>
<td>1</td>
</tr>
<tr>
<td>Medium incomplete studies</td>
<td>16</td>
</tr>
<tr>
<td>Medium studies</td>
<td>59</td>
</tr>
</tbody>
</table>

By criminal record:

<table>
<thead>
<tr>
<th>Record</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 With criminal record</td>
<td>47</td>
</tr>
<tr>
<td>59 Without criminal record</td>
<td>12</td>
</tr>
</tbody>
</table>

In the Re-education Colony, there is a normal school for the completion of medium studies, as well as a technical school for obtaining a qualification in a handicraft. Juvenile convicts are provided with a sports complex, a cinema, a concert room and a library. The
administration of the Colony organizes sports competitions, concerts, meetings with missionaries of religious confessions and an annual gathering with their parents. Parents have no restrictions on seeing their children.

The living conditions of juveniles in the Colony are much better than those in the penitentiaries for adults. In accordance with a government decision, norms have been set for food supply to juveniles in detention. They are provided with three meals a day. The reception of parcels destined to them is not restricted. Juveniles are provided with clothes by the institution and are also allowed to wear clothes brought by their family. The administration of the Colony distributes among the juveniles humanitarian aid offered by national and international charity organizations.

The Colony also has at its disposal agricultural land, where juveniles capable of work are trained in cultivating agricultural products.

Female juveniles are detained in the normal regime section within the Penitentiary for Adult Women of Rusca village. The number of female juvenile detainees was as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 January 1993</td>
<td>9</td>
</tr>
<tr>
<td>1 January 1994</td>
<td>14</td>
</tr>
<tr>
<td>1 January 1995</td>
<td>9</td>
</tr>
<tr>
<td>1 January 1996</td>
<td>12</td>
</tr>
<tr>
<td>1 January 1997</td>
<td>5</td>
</tr>
<tr>
<td>1 January 1998</td>
<td>8</td>
</tr>
<tr>
<td>1 January 1999</td>
<td>5</td>
</tr>
<tr>
<td>1 January 2000</td>
<td>5</td>
</tr>
<tr>
<td>1 June 2000</td>
<td>5</td>
</tr>
</tbody>
</table>

Female juvenile detainees also learn some handicrafts (mainly tailoring) and have the same access to humanitarian aid, as well as to meetings with their parents. But they do not have the possibility of continuing their education.

2 **List of issues to be taken up in connection with the consideration of the second periodic report of Moldova” (CRC/C/Q/MOL/1)**

By way of this list, the Committee is demanding more data and statistics from Moldova about different child protection issues, as well as more information about regions of the State Party. The Committee wants to receive additional and an updated information. At point 8 of the document, the Committee wants more information about:

a) minors, who have allegedly committed a crime, reported to the police;
b) minors who have been sentenced and type of punishment or sanctions;
c) detention facilities for juvenile delinquents and their capacity;
d) minors detained in these facilities and minors detained in adult facilities;
e) minors kept in pre-trail detention and the average length of their detention;
f) reported cases of abuse and maltreatment of children occurred during their arrest and detention.
Further down in the same paper, the Committee brings up questions about the rights of the child that will be treated in the future meeting between the Committee and the State Party. One of these questions concerns Juvenile Justice:

9. With respect to the system of administration of justice, issues regarding the establishment of a juvenile system, the situation of re-education colonies, female juveniles detained in same prisons as adults and with no possibility of continuing education, and the conformity of legislation and practice in the area of juvenile justice with international juvenile justice standards.

3 Compte rendu analytique de la 824e séance: Republic of Moldova (CRC/C/SR.824)

Finally, we must also talk about the “Compte rendu analytique de la 824e séance. In this paper there are some interventions about juvenile justice (French only):

34. M. CITARELLA, constatant avec préoccupation que les jeunes délinquants sont de plus en plus nombreux et ne reçoivent pas toujours un traitement adéquat (lenteur des procédures, détention avec des adultes), demande s'il est prévu d'instaurer un véritable système de justice pour mineurs.

37. Le PRÉSIDENT, en sa qualité d'expert, demande des renseignements complémentaires sur les commissions chargées des mineurs établies aux niveaux des provinces et des districts.

39. Mme APOSTOL (République de Moldova) constate que l'absence d'instance judiciaire spécialisée dans les affaires de mineurs, dont la création est pourtant préconisée par la loi, est effectivement regrettable et qu'il serait souhaitable que le Gouvernement pallie ce manque dans les plus brefs délais. Les jeunes gens, hommes ou femmes, sont détenus dans les mêmes centres que les adultes mais dans des quartiers séparés. Les enfants condamnés à une peine d'emprisonnement peuvent la purger en colonie de rééducation. Les garçons peuvent poursuivre leurs études dans ces structures mais les filles doivent se contenter d'une formation technique ou professionnelle car la seule colonie de femmes du pays est trop éloignée d'un établissement d'enseignement général.

43. Mme TARUS (République de Moldova) dit que les commissions chargées des affaires de mineurs, qui ont été rétablies en 2000, ont pour mission de prendre en charge des adolescents délinquants afin de prévenir toute récidive de leur part. Constituées de directeurs d'établissements scolaires et de représentants des autorités sanitaires et sociales au niveau local, ces commissions collaborent avec des spécialistes de l'enfance au sein de chaque commissariat ainsi qu'avec les professeurs et la famille des adolescents concernés. C'est notamment elle qui décidera si le mineur doit être déféré à la justice ou doit être placé sous la responsabilité d'organes de protection sociale. C'est enfin elle qui se chargera du suivi de la prise en charge de l'enfant par l'instance jugée compétente.
References

Compte rendu analytique de la 824e séance: Republic of Moldova. 06/01/2003. CRC/C/SR.824. (Summary Record), examen des rapports des Etats parties, rapport initial de la République de Moldavie (http://www.unhchr.ch/french/hchr_un_fr.htm).


Etat du Monde 2003

Lonely Planet, (http://www.lonelyplanet.com)
THE SWISS FEDERAL STATUTE ON
JUVENILE CRIMINAL LAW
Jean ZERMATTEN, President of the Youth Court of the Valais/Switzerland,
Director of IDE

Introduction

After a long gestation period lasting almost 20 years the new juvenile criminal law was
born following a vote held at the Federal Assembly (the Swiss Parliament) on 20 June
2003 in which the first draft law on juvenile justice was adopted. The process had begun
back in 1985 when Professor Martin Stettler of the University of Geneva first proposed a
new draft law. This was submitted to a committee of experts who worked on it from 1986
until 1993. The draft law then went through the consultation procedure, was sent back to
the Federal administration for slight revision and was then submitted to the National
Council which presented it to Parliament in 1998. It may seem surprising that a text for
which the main parties concerned (juvenile courts, youth welfare services) as well as by
the major political parties had reached an agreement in principle would have such a
laborious delivery. And all the more so in that the parliamentary debate not brought about
much change to the text.

The law was expected to come into force on the first of January 2006. Such a long time-
frame seems rather surprising but the reason is that the Cantons, which retain sovereign
authority not only regarding judiciary procedure and organization but also concerning
institutional facilities had requested extra time before the new law was implemented.

It should be recalled that the current legal code had been adopted in 1937 and entered into
force in 1942. It had undergone a “face-lift” in 1971 but it needed to be revisited and
updated. The law needed to be adapted to the change in the pattern of juvenile delinquency
that had taken place since 1990-1995, and the significant statistical changes that had
ensued. In general it can be said that the new law did not trigger a revolution, and that it
had picked up many of the provisions enshrined in the existing legal regime, whilst
modernizing and adapting them to current realities.

In the following presentation I would like to show you above all how the pattern of
juvenile crime has changed in Switzerland and then briefly highlight the innovative
elements of the text.

1. Juvenile Crime Trends in Switzerland

1.1 General Comments

Generally speaking, the situation in Switzerland is characterized by:
• A sharp rise in the number of minors charged and convicted in juvenile court,
• A shift from “adult” delinquency towards juvenile delinquency,
• A change in the type of offenses committed by minors,
• A drop in the age at which offenses are committed.
1.2 A Rise in the Number of Reported Offenses

Federal statistics on juvenile delinquency have been recorded in a generalized fashion since 1986 and systematically recorded since the “Jusus” system was introduced by the Swiss Federal Statistical Office in 1999. Grosso modo, it can be affirmed that the number of convicted minors remained much the same until 1990, that it rose slightly between 1990 and 1995 and that since 1995 the number has risen sharply.

The following table clearly illustrates this rise between 1990 and 2001. It covers the number of minors convicted in Switzerland.

<table>
<thead>
<tr>
<th>Year</th>
<th>Convictions</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>
</tr>
<tr>
<td>1993</td>
<td>7'930</td>
</tr>
<tr>
<td>1994</td>
<td>8'243</td>
</tr>
<tr>
<td>1995</td>
<td>7'983</td>
</tr>
<tr>
<td>1996</td>
<td>8'900</td>
</tr>
<tr>
<td>1997</td>
<td>9'364</td>
</tr>
<tr>
<td>1998</td>
<td>10'131</td>
</tr>
<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>
</tbody>
</table>

2 Statistics on criminal convictions of minors in 1999 (Jusus), Swiss Federal Statistical Office, Bern, April 2001
3 Statistics on criminal convictions for minors in Switzerland (« Condamnations pénales des mineurs en Suisse »), Swiss Federal Statistical Office, Bern and Neuchatel
There has been a sharp rise in Switzerland in the number of convicted minors.

The following table shows the number of minors reported to have committed an offense in the French-speaking cantons. This figure mirrors the change in the actual work-load of juvenile courts, since a certain number of the charges will not lead to convictions and therefore will not be included in the table below as they may lead to a non-suit, refusal to take action, dismissal, acquittal, withdrawal of a complaint, a conciliation arrangement, or withdrawal of the judge.

The breakdown per canton is given in the following table:

**The number of minors reported as offenders in French-speaking Switzerland**

<table>
<thead>
<tr>
<th>Year</th>
<th>VS</th>
<th>VD</th>
<th>GE</th>
<th>FR</th>
<th>NE</th>
<th>JU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>829</td>
<td>*</td>
<td>1'009</td>
<td>1'257</td>
<td>963</td>
<td>238</td>
</tr>
<tr>
<td>1991</td>
<td>884</td>
<td>1'921</td>
<td>1'623</td>
<td>1'340</td>
<td>768</td>
<td>216</td>
</tr>
<tr>
<td>1992</td>
<td>904</td>
<td>1'706</td>
<td>982</td>
<td>1'188</td>
<td>808</td>
<td>201</td>
</tr>
<tr>
<td>1993</td>
<td>874</td>
<td>2'498</td>
<td>998</td>
<td>1'067</td>
<td>679</td>
<td>207</td>
</tr>
<tr>
<td>1994</td>
<td>928</td>
<td>2'591</td>
<td>1'154</td>
<td>1'154</td>
<td>797</td>
<td>201</td>
</tr>
<tr>
<td>1995</td>
<td>1'016</td>
<td>2'812</td>
<td>1'213</td>
<td>1'061</td>
<td>827</td>
<td>276</td>
</tr>
<tr>
<td>1996</td>
<td>1'026</td>
<td>2'648</td>
<td>1'317</td>
<td>1'140</td>
<td>783</td>
<td>237</td>
</tr>
<tr>
<td>1997</td>
<td>1'072</td>
<td>2'781</td>
<td>1'428</td>
<td>1'196</td>
<td>878</td>
<td>286</td>
</tr>
<tr>
<td>1998</td>
<td>1'097</td>
<td>2'950</td>
<td>1'360</td>
<td>1'421</td>
<td>854</td>
<td>303</td>
</tr>
<tr>
<td>1999</td>
<td>1'273</td>
<td>2'903</td>
<td>1'319</td>
<td>1'665</td>
<td>990</td>
<td>329</td>
</tr>
<tr>
<td>2000</td>
<td>1'387</td>
<td>3'232</td>
<td>1'630</td>
<td>1'494</td>
<td>1'038</td>
<td>472</td>
</tr>
<tr>
<td>2001</td>
<td>1'360</td>
<td>3'495</td>
<td>1'778</td>
<td>1'626</td>
<td>1'200</td>
<td>420</td>
</tr>
<tr>
<td>2002</td>
<td>1'399</td>
<td>4'184</td>
<td>*</td>
<td>1'830</td>
<td>1'203</td>
<td>279</td>
</tr>
</tbody>
</table>

*no figures available*

---

4 Statistics provided by the child welfare authorities for French-speaking Switzerland
It should be noted that in the case of Geneva the figures comprise adolescents only; children (under the age of 15) have been omitted from the table.

With just a cursory glance at these figures it becomes very clear that there has been a sharp rise in the number of juveniles charged with offenses by the juvenile criminal authorities in French-speaking Switzerland. With a more detailed examination we realize that in certain cantons the numbers have almost doubled.

1.3 A Shift from “Adult” Delinquency towards Juvenile Delinquency

For quite a long time most offenses were committed by adults, with an over-representation of young adults (18-25 years old). Now however, although the majority of those brought before the law enforcement authorities are adults, the numbers of juveniles subjected to criminal proceedings is becoming proportionately higher.

Thus, from approximately 15% of all recorded offenses being committed by minors the figures have risen almost one third 5, peaking at 44% as seen for the canton of Fribourg in 2001 6

1.4 Changes in the Type of Offenses Committed

It is interesting to note that there has been a change in the type of offense committed. The following table 7 indicates this change:

<table>
<thead>
<tr>
<th></th>
<th>Property offenses</th>
<th>Offenses against the physical integrity of the person</th>
<th>Road traffic offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990 :</td>
<td>4'410 convicted juveniles, or 64.8 %</td>
<td>181 convicted juveniles, or 2.5 %</td>
<td>2'479 convicted juveniles, or 36.4 %</td>
</tr>
<tr>
<td>1995 :</td>
<td>5'083 convicted juveniles, or 63.7 %</td>
<td>417 convicted juveniles, or 5.1 %</td>
<td>3'322 convicted juveniles, or 41.6 %</td>
</tr>
<tr>
<td>1997 :</td>
<td>5'785 convicted juveniles, or 61.0 %</td>
<td>653 convicted juveniles, or 7.0 %</td>
<td>3'393 convicted juveniles, or 36.2 %</td>
</tr>
<tr>
<td>2000 :</td>
<td>5'052 convicted juveniles, or 44.7 %</td>
<td>798 convicted juveniles, or 7.1 %</td>
<td>1'189 convicted juveniles, or 10.5 %</td>
</tr>
<tr>
<td>2002 ------</td>
<td>5'401 convicted juveniles, or 42.0 %</td>
<td>945 convicted juveniles, or 7.4 %</td>
<td>1'569 convicted juveniles, or 12.2 %</td>
</tr>
</tbody>
</table>

5 2001 statistics from the Cantonal police of Valais, Sion, February 2002 p 27
6 2001 statistics from the Cantonal police of Fribourg
7 Cf footnote 18 below
d) drugs-related offenses

<table>
<thead>
<tr>
<th>Year</th>
<th>Convicted Juveniles</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>767</td>
<td>11.0%</td>
</tr>
<tr>
<td>1995</td>
<td>1,322</td>
<td>16.6%</td>
</tr>
<tr>
<td>1997</td>
<td>1,609</td>
<td>17.2%</td>
</tr>
<tr>
<td>2000</td>
<td>4,461</td>
<td>39.0%</td>
</tr>
<tr>
<td>2002</td>
<td>5,173</td>
<td>40.2%</td>
</tr>
</tbody>
</table>

We also note a rather sharp change in the type of offense committed: property offenses, representing 2/3 juvenile offenses in 1990, has significantly dropped; road traffic offenses have plummeted. On the other hand offenses against the physical integrity of the person have shot up threefold and narcotics offenses fourfold. This clearly underscores that there are fewer cases of property offenses yet more attacks on the highest value of all (that of respect for life) and more acts of self-destruction. The trivialization of consumption of cannabis products partly explains the spectacular increase in the number of narcotics offenders.

1.5 Increasingly Young Offenders

The fourth characteristic of the new data on juvenile delinquency is that offenders are committing their offenses at an increasingly young age. This holds true throughout the Western world. In Switzerland juvenile courts have found themselves in the throes of this trend.

This situation poses additional difficulties since the age of these young offenders often corresponds to a delicate period following the state of latency that precedes adolescence. This is compounded by the educational status of the young delinquents who at times are no longer accepted at normal educational institutions, and have been expelled from them more or less overriding the requirement of compulsory education. The lack of appropriate structures to deal with this type of situation has created enormous difficulties.

A delicate piece of the institutional puzzle needs to be fit in its place: the offenders’ young age precludes strict penalties; and the behavior of these very young people often exceeds what their families, classes, traditional educational institutions can bear. The conundrum is exacerbated further by the need to ensure minimal school attendance.

2. Presentation of the New Law

2.1 A Law Outside of the Swiss Criminal Code

There is no specific law in Switzerland at the present time concerning juvenile offenders; provisions that apply to young offenders are an integral part of the Swiss Criminal Code and are enshrined in articles 82 to 99 of the code. Until the new juvenile criminal law enters into force the provisions applying to juvenile offenders will thus remain in the Swiss criminal code\footnote{Articles 82 to 99, Swiss Criminal Code}, and be the same as apply to adults. Nevertheless the Swiss parliament’s intention with the new legislation is to move away from this text and enact a distinct law that applies to juveniles exclusively. This is the new Swiss Federal Statute on Criminal Juvenile Law (CJL) (abbreviation in French: DPMIn).
This is above all a symbolic gesture giving young offenders their own law so as to
differentiate clearly between the way adult and juvenile offenders are treated. This
endeavor to separate the two requires a provision indicating which rules of the Swiss
Criminal Code also apply to juveniles, since most of the general rules contained in it
continue to be applicable to juveniles (cf. art. 1 para 2 in CJL/DPMin).

2.2 A Law with an Educational Perspective

Historically, juvenile justice has been kept separate from adult criminal law and its system
of retribution in order to highlight the concept of individualized care and attention which
focuses on the problems underpinning the commission of offenses so as to avoid
recidivism/repeat offenses wherever possible. During the past century throughout the
Western world lawmakers have enacted increasingly complex laws which have placed
such emphasis on the idea of the underlying causes of crime that the judicial systems have
swung back and forth between an interventionist approach aiming to correct and cure
known as the “welfare model” and a more procedural and punitive approach linked to the
so-called “justice model”. 9 This trend was quite apparent in the Anglo-Saxon countries
where at the end of the 20th century there was a shift to increasingly stringent responses
which gave priority to a deprivation of liberty10.

In the aftermath of the Convention of the Rights of the Child11 the major international texts
such as the Beijing Rules12, the Riyadh Guidelines13, and the Havana Rules14,
or the draft law proposed to states by the United Nations Vienna office in charge of crime
prevention on juvenile justice to serve as a model for national legislators do not reveal a
choice for one model over another, but repeatedly accentuate the need for clear procedural
guarantees for young people in conflict with the law ( with the leitmotiv that the juvenile
must not be subject to worse treatment than an adult) and on the fact that any deprivation
of liberty (pre- and post-trial detention and custody ) should be adopted as a last resort.
Emphasis is placed on developing alternative measures and out-of-court procedures16.

Swiss lawmakers have not allowed themselves to be swept up by the current trend to favor
security as the highest value, thus requiring dissuasive penalties for young delinquents but
have clearly articulated their endorsement of the protection principles. This is proclaimed
unequivocally in article 2 of the CJL (principles). This means that the Swiss legislators
have underscored, in this new type of protective law:

- The need to consider the personal and family circumstances of the child (cf. art 9
  CJL);
- The need to provide for protective measures (art. 12-15 CJL)
- The need to give these measures priority over punishment (art 32 CJL)

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9 ZERMATTEN J., Face à l’évolution des droits de l'enfant, quel système judiciaire: système de protection
ou système de justice?, in Revue internationale de criminologie et de police technique, n° 2, Geneva, 1994
10 Namely in several states in the USA and in England
11 Convention of the Rights of the Child, 20 November 1989
13 United Nations Guidelines for the Prevention of Juvenile Delinquency
(The Riyadh Guidelines)
15 Draft law on juvenile justice (United Nations – Vienna), September 1997
16 Namely art. 37 and 40, Convention on the Rights of the Child
2.3 A Law with Elements of Restorative Justice

The way youth offenders are treated has evolved and it has been affirmed that there is now a third model \(^{17}\), that of restorative justice which includes the victim in the process and tries to raise awareness in offenders of the impact of their wrongdoing so they can repair the harm and make amends. This does not in our view in fact constitute a third model but is an approach that can be included within the protection system as well as in the system of justice.

The Swiss lawmaker has picked up on this idea of restitution and confrontation with the victim through the introduction of mediation, in articles 8 and 21 para. 3 (CJL). The confrontation between offender and victim follows a procedure used in mediation. the stakeholders reach agreement on symbolic reparation, be it partial or total, so as to complete the mediation during the preparatory inquiry or at the time sentence is passed.

The concept of community service order as seen in article 23 CJL reflects elements of restorative justice, the idea being to find a way of repairing harm that has an educational grounding (active participation in classes) or reintegrating the society in which the law was broken thanks to a symbolic reparation (community work).

2.4 A Law with Punitive Elements

Although the main concern of the new CJL is to provide protection, it is undeniably more stringent than the current law in that it provides for two forms of deprivation of liberty that are significantly harsher:

- **Qualified deprivation of liberty** for up to four years for juveniles above the age of 16 who have committed grave offenses and who pose a danger to society.
- **Institutionalization in closed establishments** to prevent self-harm or safeguard the public from serious harm (art 25 para. 2 CJL).

The aforementioned affirmation of the stringency of the new law must be nuanced, however, by the fact that this will depend on the conditions under which the sanctions are implemented. These conditions should be more akin to protective measures than deprivations of liberty in the traditional sense of the term. Institutionalization of a juvenile in a closed establishment must be decided on the basis of objective criteria following medical and psychological examination by an expert.

2.5 Minimal Age of Criminal Responsibility

At the present time juvenile courts in Switzerland are processing child offenders aged 7 to 15 and youth offenders between 15 and 18 years old. The new CJL will only apply to children as of the age of 10, thus raising the threshold for the minimal age for criminal responsibility from 7 to 10 years. This decision has given rise to much discussion, with some holding the view that the ages of 12, 14 or 16 would be better suited. It should be noted that the current threshold is amongst the lowest in the world (with that of Scotland and the Republic of Myanmar) and that arguments in favor of such a young age for criminal responsibility (namely the myth of early detection) disappeared with the mushrooming of youth social welfare services. In the end it was the emergence of serious

\(^{17}\) D'AMOURS O., *100 ans de justice juvénile*, IDE (Institute of the Child's Rights), 2002, p. 106-115
crimes committed by very young children and the continual drop in the age of young offenders that prompted the choice for the minimal age for criminal responsibility to be set as of the age of 10. (art 3 CJL)

The ceiling for criminal responsibility under juvenile justice remains at 18 years of age as is the case in most countries in the world.

The relatively artificial distinction made between children and young people falls and a sole category remains, that of juveniles. The age limit of 15 years remains for qualified community service orders (art 23 para. 3 CJL), for fines (art 24 CJL) and for the deprivation of liberty (art 25 para. 1 CJL), and 16 years for qualified deprivation of liberty (art 25 para. 2 CJL).

2.6 Protective Measures

Swiss legislation has tried to harmonize protective measures enshrined in the Swiss Civil Code with those adopted by the criminal judge. That is why measures qualified in the new law as “protective” - whereas they are “educational” in positive law- are treated similarly to measures under the Swiss Civil Code.

It should be noted that today there is great variety in the types of correctional facilities for juveniles but this system -which does not stem from an objective analysis of needs but from a rather discriminatory definition of the attitude or character of the institutionalized juveniles - now disappears in favor of the broader heading “institutionalization“. Now pride of place will be given to needs analysis, monitoring of the juveniles and potential modification of measures through transfer to another institution.

Naturally the idea of institutionalization in closed establishments merits attention, as provided in article 15 para. 2 CJL as mentioned above. The innovative nature of this type of institutionalization will pose certain problems regarding the availability of appropriate establishments, namely in relation to the mental health problems of the young delinquents since such establishments are sadly, at the present time, sadly lacking.

Concerning remaining issues, in the new provisions we find the same ambulatory and institutional measures that exist at the present time and that criminal juvenile law uses abundantly and will continue to use.

It should be noted, nonetheless, that Swiss lawmakers have responded to an oft-made request by those dealing with juveniles at risk or juvenile offenders, regarding the exchange of information and collaboration, so as to avoid unnecessary duplication. Article 20 of the CJL will impose comprehensive collaboration between civil authorities and juvenile criminal authorities and will resolve a certain number of situations where these authorities should not only exchange information but will be called upon to make the corresponding decisions.

18 Articles 91, 93 bis 93 Swiss Criminal Code
2.7 Penalties

The new law has taken up sanctions from positive law such as reprimands, fines and work duty, and rejuvenated them. The CJL has above all underscored community service order as

- A means of making amends to oneself or to society
- A genuine alternative to short periods of deprivation of liberty.

Article 23, para. 2 CJL offers the possibility of fulfilling this service by following a course and not only by doing work. This is reminiscent of other mandatory measures imposed by juvenile courts in Switzerland, regarding road safety courses, health education or sessions for juvenile sexual abusers (the experience of Famille Solidaire, for example19), etc.

But para. 3 of the same article also provides for the imposition of community work duty for juveniles who were over the age of 15 at the time of the offense and/or a three-month qualified community service order, allowing the judge to assign fixed residence during the work period. This is new and shows the clear will of the legislator to highlight “reparative” and “alternative” aspects, rather than favoring a return to the traditional form of deprivation of liberty. If we set this provision alongside art 24 para. of the CJL and with art 26 of the CJL we see that the juvenile who has been sentenced to a fine or deprivation of liberty for up to a three-month period can request these sentences to be converted into a community service order. That means that in the future community service order is expected to hold a pivotal role in the sentencing of juveniles. It should be recalled that most offenses committed by juveniles are generally relatively minor and that art. 23 CJL should provide a useful settlement framework for them.

The same does not hold true for qualified deprivation of liberty, which should remain the exception. The conditions set by art. 25 para. 2 CJL are quite strict:

- The offender must have reached the age of 16 at the time of the offense and
- The offender must have committed an offense punishable under adult law by at least three years of deprivation of liberty (at the present time: murder, manslaughter, aggravated burglary, the taking of hostages, sexual duress, rape, arson), or
- The offender must have committed an offense provided for in articles 122 of Swiss Criminal Code (SCC) serious bodily harm, 140, number 3 SCC aggravated robbery or 184 SCC (deprivation of personal liberty, aggravated abduction and forcible confinement) and shown a particular lack of scruples, especially if the offender’s motives, action or intention has revealed a highly blameworthy state of mind.

We thus understand that this punishment can only be applied to exceptional circumstances that are not the common fare of the justice system. The fact of the matter is that such situations, however, do exist, and it is a sign of change in the new law that an adapted form of punishment has been found which lacks the excessive paternalism that at times it had formerly been criticized for. It certainly represents the price to be paid for the public to accept a “tailor-made” law for

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19 Activity Report 2001 of Association Familles Solidaires, Pl. Be-Air 2, 1003, Lausanne
young offenders. Not providing for stringent punishment for more serious offenses would be tantamount to a rejection of a comprehensive, remedial and educational form of justice.

The conditions set for implementation of this punishment under article 27 (CJL) (the requirement to have appropriate facilities and to foster integration and training goals) show clearly that we do not seek to have prisons for young people but rather appropriate facilities where the educational, training and integration goals the CJL has set will be attained.

2.8 The Principle of Dualism (Optional)

Current law applies the principle of legal monism, a theory that holds that he who provides treatment cannot mete out punishment at the same time, hence the second principle that punishment should be in proportion to the crime. Thus, at the present time, insofar as a juvenile needs special care, punishment is excluded (except for a minor exception\(^{20}\)). This leads to somewhat indefensible situations, namely when juveniles commit offenses in groups and where very different responses are possible for the different offenders, not because of the offenses committed but because of vastly different educational needs.

Whereas the idea that the punishment should fit the crime appears fair (treat first, punish later), this does not rule out punishment for wrongful conduct. The idea is to confront the juvenile with his/her wrongful conduct and possibly with the victim as well, so as to make amends. This is necessary from an educational point of view (gaining awareness, accepting accountability, learning appropriate social behavior) and does not rule out provision of treatment at the same time. It is thus to meet this dual need to treat root causes and punish wrongful behavior that CJL has introduced the possibility of combining protective and punitive measures. This principle of dualism is seen in article 11 (CJL).

Yet this dualism is optional, not compulsory, in the sense that the judge is not obliged to punish a person who has been sentenced by him to a protective measure and that the judge must waive punishment, when the conditions of article 21 (exemption from punishment) of the CJL have been met. Furthermore, under article 32 CJL (combining protective measures with those providing for a deprivation of liberty) the lawmaker has clearly shown his preference for protective measures in situations where, upon enforcement of protective measures a clash arises with measures calling for deprivation of liberty.

2.9 Rules of Procedure in Substantive Law

So as to harmonize certain basic rules of procedure, the Swiss legislator has incorporated rules of procedure into substantive law. It is true that criminal rules of procedure concerning juveniles in different Swiss cantons greatly differ from each other or at times do not exist at all. In the view of the European Court of Human Rights and major international instruments on juvenile law, it is no longer possible to ignore rules of procedure. That is why CJL addresses the following procedural points:

1) article 6 CJL Pre-trial detention
2) article 39, para. 2 CJL In Camera Proceedings
3) article 39, para. 3 CJL Personal Appearance of the Parties

\(^{20}\) Art 95 ch 1 para. 2 Swiss Criminal Code
4) article 40 CJL Rights of Defence
5) article 41 CJL Right to Appeal

These rules are important as they address the specificity of the intervention of juvenile criminal law in regards to young delinquents and extremely delicate situations where, far too often, cantonal codes are conspicuously silent or imprecise. The incorporation of this basic corpus of rules of procedure into substantive law is thus to be welcomed even if in terms of a legal rationale this is rather unorthodox. Nonetheless the existence of these basic rules clearly strengthen the juvenile’s position during his trial, protect him against the arbitrary notion of doing something “for the child’s own good”, so often used as a pretext, while they safeguard the specific objectives of judicial intervention by averting excessive formalism of certain procedures.

The Swiss cantons therefore will have to enact legislation to bring these rules of procedure into force and implement them. In the event such rules already exist, the cantons will have to either add to or amend their provisions on procedure. Later the unified code on juvenile criminal law, expected in 2007/2008 will apply.

2.10 Implementation Issues

In the new law implementation issues have not been sidestepped nor has the buck been passed to the cantons, far from it. Key principles have been articulated both for protective measures (art 16 to 20 CJL) and for penalties (art. 27 to 31 CJL).

Notwithstanding, the major question that arises at this stage of the innovation process is whether the appropriate facilities as provided under CJL, -namely, closed establishments, establishments for pre- and post- trial detention- and planned mediation bodies or community service orders will be made available to juvenile authorities. It is true that article 48 CJL obliges the cantons to provide for the necessary establishments under articles 15 and 27 CJL within the next ten years. Nonetheless previous examples can lead us to believe that this will remain a dead letter.

Therefore preparatory work must be done for the new law. In our view, above all, an effort must be made by the cantons to reach inter-cantonal agreements. Given the nature and the degree of the demands made by these establishments both in terms of care given as in terms of the number and training of staff, it seems highly unrealistic to assume that each canton will be endowed with each type of institution.

Lastly, it is essential that all services working in the domain of child welfare, be it the civil or criminal authorities, administrative or private services, will be informed of the content of this new law and will be able to carry out its work in a concerted fashion. In this domain as far as possible the different areas of competence of the different stakeholders must be harnessed and unnecessary overlapping avoided. Work with young people and their families should remain based on quality contacts and personal relationships and should strive for minimal adherence to contemplated measures. For that to happen all parties must necessarily collaboration.

Conclusion

The new juvenile criminal law had a long gestation period but it appears particularly well adapted to new types of delinquency in Switzerland.
It is not a revolutionary law, but one that maintains its trust in a protective system, yet still includes elements of restorative justice and tightens its line concerning delinquents who commit grave offenses.

It is also a law that is in keeping with international standards and which hopes to see minimal rules of procedure imposed throughout Switzerland. In this regard, it can be said that it is a law that respects children’s rights, and does not adopt a paternalistic stance in regards to the young offender but remains objectively well-intentioned, offering basic procedural guarantees to juveniles and yet desires to treat root causes rather than punish symptoms.

Traduit du français par Mme Lisa Godin-Roger, Traductrice-interprète, ETI, Université de Genève, Suisse
1. Request
The Moldovan leaders take a particularly attention about the situation of juvenile justice in their country. They have already organised a first theoretical approach of main international principals that govern a modern juvenile justice. Ms. Renate Winter, regular colleague at the IDE had leaded an introduction seminar in Moldova (Chisinau) in 2002.

After that, UNICEF-Moldova to take up again. Some participants have made requests for deeping the question in the Moldovan context. In fact, in the country, juvenile justice is still at its embryonic state, despite of existence of legal dispositions, that bring a good application of specialised right.

Thus, UNICEF-Moldova proposed to send an official Moldovan delegation for a course about good practice in juvenile justice. This course has obtained high level government authorization. It was at Sion/IDE from 6th to 10th October 2003.

The Moldovan delegation was composed by 14 participants. They have been chosen by governmental and non-governmental. The representant of UNICEF and two interpreters.

2. Purposes
Purposes of this course were:
Permit the meeting, outside context, of juvenile justice Moldovan actors;
Participant’s consciousness-raising about the importance of having specific justice;
Pay attention about minimal rules that exist, in this field;
Think about possible reform of Moldovan system;
Show realistic instruments for Moldovan (alternatives);
Make useful recommendations for Moldovan;
Show many patterns of judicial system and how they operate;
Insist about essentially collaboration and partnership between actors;
See realizations in Suisse romande (Valais, Vaud, Fribourg), for bringing some ideas at participants.

3. Events
The seminar took place during five days (October 6-10), with a specific subject for each day. The working method was practical/theory confrontation by plenary presentations, workshops and visits (four institutions visited, one with four specifically different methods of assuming responsibility). Participants came from the academic field and the practice field.

Collaboration aspect between services has been privileged with social services, juvenile court and police.
A touristic visit (Fribourg) has been organised. Moreover, many informal moments, notably the valaisanne evening have permitted to create exchanges between participants. These moments stay important because they make links between participants and speakers. Participants wanted free evening, but each evening in the hotel, a meeting point was available to carry on discussion. This way has been appreciated. For more commodity, midday meals have been taken at the Institute.

The working language was English, but several participants talked Moldovan. Two Moldovan interpreters made the translation. During visits, the translation was French to English and after to Moldovan. With good knowledge in French an interpreter made a translation and with goodwill of all, this issue wasn’t an obstacle.

Ms. Sophie Morin, Canadian who works at IDE, has accompanied participants during the seminar and she has facilitated all steps necessary for kind of this activity.

4. Participants
See appendix 2 for the list of participants.

The chief of delegation was Mr Vasile Rusu, General Procurators.

Participants came from of Ministry of Justice (2), Ministry of Interior (2), Ministry of national Education (2), Social Services (2) and Work Ministry, Office of General Procurators (3), Parliament (1), and University (1).

Mrs Victoria IFODI, Vice-Minister of Justice, announced as participant, has cancelled her participation in last moment.

Professions represented was: Judges (2), procurators (2), policeman (1), social workers (2), teachers (2), representatives of ministry of official services whose academic background is unknown (4), jail director (1).

Mr Radu DANII represented UNICEF-Moldova, Protection and rights of the child department.

Two interns of IDE have participated at this course (Ms Morin from Canada and Ms Khin Khin Oo from Myanmar).

5. Speakers
The direction of the course was assured by Ms Renate Winter, Judge in United Nations International Court in Sierra Leone.

Speakers:
Ms. Nesrin Lushta, Judge, Training Director of formation Center judges of Kosovo;
Professor Josine Junger-Tas, criminology teacher, Lausanne and The Hague;
Ms. Corinne Dettmeier, Magistrate, Family Judge, Rotterdam;
Dr Willie McCarnay, Magistrate, President of AIMJF;
Captain Robert Steiner, Policeman, Sion;
Mr Jean-Pierre Heiniger, consultant and old director of institution, Mex, Suisse
Mr Christian Nanchen, Chief of office of the Valais child protection, Sion
Mr Jean Zermatten, Juvenile Judge, Director of IDE. Mr. Zermatten has also assumed the direction of the part of the seminar. Several members of the Moldovan delegation have presented papers about different subjects.

IDE has presented its action at Moldovan delegation. Moreover, participants have been sensibilised for using the Web site of IDE. Almost all great international papers about rights of the child and juvenile justice are in this site. Several models about foreign legislation cant be find there. Thus, this information can help Moldovan legislation, if need it.

6. Program

The programme has been very intensive, the question is to consider whether the number of plenary session was not excessive. Being a first consciousness-raising step, however, this seminar must provide a substantial theoretical background.

The lectures were supported by various technical devices (overhead projectors, PPS, videotapes, slide-shows), making the plenary sessions particularly interesting. IUKB facilities were unanimously appreciated.

Workshops moderation was in charge of two identical teams, which facilitated contacts. However, the participants were not allowed to change group, and some of them could not attend the most interesting session for them. Generally, participation was exemplary and debates very lively.

Interdisciplinary work was favoured by a variety of professional backgrounds among the speakers as among the participants. Moreover, the theme dealt with is basically interdisciplinary.

Informal encounters have also been very important, be it between Moldovan officials and “foreigners” or among Moldovan officials. This is not the least benefit of this type of meeting. What must be stressed in this respect is that many among the participants had never met before, and not either worked together. They could accordingly not only get acquainted, but find out about the others work. We hope that these links established in Sion will be kept on in the home country.

There were no official events apart from the first evening’s official dinner.

Visits of institutions counted : St Rapahaël, Pramont, Time Out (Fribourg) and Valmont (Lausanne). In every of them, the welcome was warm. The theoretical survey during the Pramont visit was however deficient. An explanation could be that none of these institutions has information in English available for visitors which being understandable in the current state of affairs, was nevertheless unfortunate.

Transportation was provided by a specialized company (Theytaz): it made things easier, without creating planning difficulties for the IUKB caretaker Joël Fournier. Moreover, the fares applied were competitive.

Mr. Salamin (Plazza) was in charge meals. Participants could enjoy a daily buffet (rooms 15 and 16) served in a room provided with tables and chairs. The food was varied and plentiful. Prices were correct.
We will be a serious advantage with a future campus directly at IUKB for next seminars.

7. **Recommendations**

Moldovan participants have presented a list of several recommendations.

These recommendations are joined in appendix I.

8. **Follow-up**

It is up to every participant to implement the Seminar’s teaching at work in the concerned Ministry, Faculty or organisation. To provide it to any interested collaborator or even teach it further.

For Moldova it is wish for create a specialize justice, intended to minor offenders.

IDE foresees a two fold follow-up:

- first of all the publishing of a working report on the works of the Sion week.
- the possible setting up of a training seminar dedicated more precisely to practice in Moldova if UNICEF seems ready to be a facilitator of such an meeting either in Moldova. This session’s main speakers are available to run a second training, focused more precisely on good practices. The disponibility for receiving a second course at Sion is also open.

Appendix I : list of participants
Appendix II : list of recommendations
Final Recommendations elaborated by the members of the Official Delegation of the Republic of Moldova to the High Level Training Course on Juvenile Justice organised by the International Institute for Children’s Rights (Institut International des Droits de L’Enfant – IDE) in Sion, Switzerland (05.10 – 10.10.2003)

I. Prevention of the phenomenon of children in conflict with the law

The multidisciplinary approach to the phenomenon of children with behavioural problems. The involvement of all the relevant social elements – the family, school, society.

1. Establishment of a specialised central body for the protection of children’s rights with local subordinate structures to ensure observation of children’s rights on the entire territory of the country as stipulated in the international and national normative acts. Establishment of local structure for child protection.

2. Development of social assistance services for the family and children in difficult circumstances and development in schools of counselling (mediation) services for children with difficult behaviour. Maintaining permanent contact with the family at risk of difficult behaviour.

3. Amendment of the existing legal framework by providing its content with additional measures to increase parent’s accountability.

4. Development of the alternative services system for child protection (Placement centres, Foster families, etc.) Establishment of temporary placement and supervision centres at raional (municipal) level for children at risk of behavioural deviations.

5. Promotion of the integration into the school curricula of “Life Skills Bases Education” as additional means for pupils’ information and modelling of non-deviational behaviour.

6. Revision of the “Street Law” curriculum and introduction in its content of knowledge referring to restorative justice and alternatives to detention.

7. Raising awareness of the public regarding the phenomenon of juvenile delinquency by providing information on the issue and involving all the involved factors (governmental and non-governmental organisations).

8. Promotion and development of community programmes focused on children’s needs and more active involvement of NGO-s in the resolution of the problems children face in the community.

9. Training of human resources from different domains (jurists, social assistants, psychologists and pedagogues) in juvenile justice issues.
10. Creation and development of community centres for children and young people in order to provide some leisure activities and reduce their opportunities of committing offences.

11. Promotion and development of community programmes for the re-socialisation of children returning from detention. Prevention of repeated offence by creating jobs and employment of young people.

12. Excluding labelling of children in conflict with the law by changing the public opinion regarding their situation and taking adequate measures for the social reintegration and recovery of children in the justice system.

II. Juvenile Justice System

*Development of staff specialised in children’s rights in all the component structures of the justice system (police, prosecutor’s office, courts, lawyers, penitentiaries)*

1. Police and detention system
   - Initial and in-service training of inspectors for minors and staff working in penitentiaries in order to develop a friendly approach to children in conflict with the law.
   - Creation of adequate detention conditions for retained, arrested or convicted children (hygiene, space etc.) that correspond to the existing standards and requirements and meet these children’s specific needs.
   - Introducing the position of a psychologist in all penitentiaries. Revision of initial and on-going training curricula for psychologists by emphasising the importance of the issue of children in conflict with the law. Development and adequate equipment of laboratories for psychologists’ training.
   - Ensuring access to education of children in detention. Promotion and development of vocational programmes for these children.

2. Prosecutor’s Office
   - In-service training in children’s rights of qualified personnel.
   - Ensuring a continuous collaboration between the prosecuting bodies, police and social services.
   - Introducing a specialised section responsible for prosecution regarding minors in the law on prosecutor’s office.

3. Courts:
   - Specialisation of courts as follows: level I – specialised judges, level II and III – specialised panels, as a first step in the process of creating in the future of specialised courts for children and young people.
   - Making concrete the competence of the judges in relation with social protection bodies, collaboration with them in the examination of the cases of children in conflict with the law and continuous follow up on the situation of these children.

4. Lawyers
- In-service training of lawyers including a distinct component dedicated to children’s rights.
- Creation of additional funds for the remuneration of lawyers from the office (*pro bono* lawyers) providing assistance to children in conflict with the law in order to ensure qualitative defence services.
- Creation of a contractual system for the services of *pro bono* lawyers in order to stimulate and organise the lawyers’ activity, including for the cases of minors.

5. Alternatives
- Promotion of the concept of juvenile justice and alternative measures to detention applicable to children in conflict with the law.
- Adoption of special laws regulating any alternative measure (mediation, probation, community work) and creation of subsequent legislation (norms, methodologies, regulations) on the organisation and function of alternative services.
- Training of staff specialised in providing alternative services (probation officers, mediators etc.).
## List of Participants at the Sion Training on Juvenile Justice  
(06-10 October 2003)

<table>
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<tr>
<th>#</th>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>1</td>
<td>Ms. Maria Postoico</td>
<td>Parliament, Chairperson of Legal Commission</td>
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<td>2</td>
<td>Ms. Antonina Comerzan</td>
<td>Government, Director of the Secretariat of the National Council for Child Rights Protection</td>
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<td>3</td>
<td>Ms. Domnica Ginu</td>
<td>Government, Manager of the Secretariat of the National Council for Child Rights Protection</td>
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<td>4</td>
<td>Mr. Andrei Vicol</td>
<td>Ministry of Justice, Deputy Director General of the Department of Penitentiary Institutions</td>
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<td>5</td>
<td>Mr. Vladimir Botnari</td>
<td>Ministry of Internal Affairs, Head of Public Order Department</td>
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<td>6</td>
<td>Mr. Eduard Maican</td>
<td>Deputy Minister of Internal Affairs</td>
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<td>7</td>
<td>Ms. Anghelina Apostol</td>
<td>Deputy Minister of Labor</td>
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<td>8</td>
<td>Ms. Agnesia Eftodi</td>
<td>Ministry of Education, General Director of Educational Management Department</td>
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<td>9</td>
<td>Ms. Valeria Sterbet</td>
<td>Chairperson of the Supreme Court of Justice</td>
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<td>10</td>
<td>Ms. Raisa Botezatu</td>
<td>Judge at the Supreme Court of Justice</td>
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<td>11</td>
<td>Mr. Vasile Rusu</td>
<td>General Prosecutor</td>
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<td>12</td>
<td>Mr. Eugen Rusu</td>
<td>General Prosecutor’s Office, Head of Minors and Combating Trafficking Department</td>
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<td>13</td>
<td>Igor Dolea</td>
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<td>14</td>
<td>Mr. Radu Danii</td>
<td>Assistant Project Officer, Child Rights, UNICEF Moldova</td>
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<td>15</td>
<td>Mr. Sergiu Buftecac</td>
<td>Interpreter</td>
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<td>16</td>
<td>Mr. Valeriu Rotaru</td>
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