Training Course
On Juvenile Justice for
Officials from Turkey

Sion Seminar 2003

Jean Zermatten (Ed.)

Working Report
2 - 2003
Training Course
On Juvenile Justice for officials from Turkey

Sion Seminar 2003

Jean Zermatten (Ed.)

This working report presents the various conferences of the Sion Seminar, held in Switzerland from March 24th to 28th 2003.

Working Report
2 - 2003

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

In collaboration with
UNICEF ANKARA
1. Introduction 3

PART I
GENERAL POINTS
2. New tendencies and politics in Juvenile Justice, a challenge for the legislator
   Doctor Roland Miklau,
   Director General Ministry of Justice, Austria 9

3. Children special need. The vulnerable group
   Renate Winter,
   Justice at the special Court of Sierra Leone (SCSL) 15

PART II
THE WORLD OF JUSTICE AND LAW ENFORCEMENT
4. The traditional procedure in juvenile justice: Principles, guaranties, shortcomings
   Nesrin Lushta,
   Co-director of the Kosovo Law Institute, OSCE 21

5. The Swiss juvenile justice system
   Jean Zermatten,
   Director, IDE 26

6. Institutionalisation and alternatives
   Renate Winter,
   Justice at the special Court of Sierra Leone (SCSL) 37

7. The position of juveniles in the criminal-procedural law of the federation of Bosnia and Herzegovina- Harmonisation to the position of juveniles being in Conflict with law
   Hajrija Sijercic-Colic,
   LL.D. Docent, Law Faculty University of Sarajevo Bosnia and Herzegovina 44

8. The work of the juvenile court judge
   Jean Zermatten,
   Director, IDE 58
TABLE OF CONTENTS

PART III
THE TURKISH REALITY
9. Juvenile justice and treatment in Turkey
   Necati Nursal,
   Head of Department of Research, Education and foreign relations  63

10. Activity report for 2002 on Juvenile offenders in penal institutions
    Necati Nursal
    Head of Department of Research, Education and foreign relations  67

PART IV
CONCLUSIONS
11. Outcome report (recommendations)  90

12. Final Report  92
INTRODUCTION

When the State wants to legislate about juvenile justice, it must resolve three mains questions.

1. What model to favour?
2. For what age bracket?
3. What content to give for criminals provisions?

The answer to these questions will follow the system set up for the juvenile delinquency.

1. Models

In the world, there are three models that inspire the juvenile court's systems ¹:
   - the Welfare Model;
   - the Justice Model;
   - the Restorative (Justice) Model.

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

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

The Restorative Justice Model goes from the idea to re-integrate the victim in the process and from the other idea of reparation. The young offender has to face his victim(s) and to do something in order to repair his fault. These two ideas are important and it is a fact that during a long time, victims have been forgotten. With this model, the Mediation and the Service Community Orders appear and become more and more applied. There is no "only Restorative" Justice Model but we can mention that the Austrian law for juvenile (1988) is based on Mediation.

What choice for State that restore its law or that establish a specific law for minors?

¹See 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, Genève 1994.
2. For what age bracket?

To deal with this issue, two limits have to be laid down: First, the bottom limit of criminal intervention, second the limit age from which to admit a criminal intervention. Here, several variations exist in the age bracket from 7 at 16 years old. The question of the minimal age of intervention must not be confused with the criminal age of responsibility problem. Because, in countries with a protectionism model, the intervention under measures is not obligatory link at the criminal responsibility question. At present, this subject is largely debate nearby of Committee on the Rights of the Child.

There are less difficulties in resolving the superior intervention limit question. The majority of countries are lined up on the 18 years old limit. This limitation to matches with the limit of The Convention on the Rights of the Child (article 1, definition of child). However, there are exceptions where the age limit is lower (16 years old for example) or higher (21 years old).

3. What content?

When we have chosen a model and when we have determined for what age bracket, one more question must be settled : what content to give the law. Should it contain measures like in a protectionism model or rather punishment like in the justice model, moreover, should you mix these elements and introduce, also, the borrowed answers at the restorative justice notions?

Each country must do their choices with their needs, their history, their culture and with their juridical system. Thus, any national juridical system cannot be transposed to another country. If a system is adopted from another country, it should beforehand be adapted at juridical realities and general realities. At the moment, an important legislative work is being done around the world due to the adoption of the Convention, and also due to the reality that young offenders cannot be treated like or with even more severity than adults.

4. What help can we find for answer at these questions?

In our opinion, its in developed international instruments for juvenile justice that we must search for answers. In the field of children rights, the field of criminal justice for minors is the subject of most existing international treaty. But, curiously, its a field that concerns a minority of children. Probably however, the very peculiar situation of a minor of age facing State actors (and this latter’s judicial role as well as the questions at stakes, notably social response like deprivation of liberty or even capital punishment) have prompted this top priority interest.

In the field of the Juvenile Justice, there is some articulation between treaties. Also, we have searched through many documents, to bring a global response at young delinquency, but not partial answers. This articulation is important, because it does not exist in others domains of children rights. It is carried out on a logical mode; first,

---

2 See General Comment of the Committee on the Rights of the Child; The minimum age of criminal responsibility, (First Draft), MACR, December 20 2002.
general principles for the juvenile delinquency prevention; secondly, the question of the justice of minors administration and finally, young offenders’ fate when they are deprived of their liberty.

It is obvious that the first paper that we must consider is the Convention of United Nations on the Rights of the Child. This Convention contains two articles about juvenile justice. But, it is important not to forget that others instruments exist.

The Riyadh Guidelines

After The Convention, the first paper that is important is the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, December 1990). Adopted after the Convention, these Guidelines have done refer to them. Also, Guidelines considers the children position since 1989 like a whole human with rights. These Guidelines is not restricting value, except some points that appeared in The Convention and it find, in the Guidelines, a development or an explanation. Always in the Guidelines, the juvenile delinquency prevention has a positive development. Thus, this development is build like well-being promotion and social integration. These two points are necessary for children.

These Guidelines, despite of its importance, do not possed many directly rules about juvenile justice. But, chapter six talks about the legislation and the administration of the juvenile justice.

The Beijing rules

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice is the most important paper for the criminal procedure. These rules bring to State Guidelines for the Child Rights protection and respect of their needs when they are in systems for juvenile justice. These rules are not restricting. Nevertheless, they fill a gap. In fact, all anterior to papers these rules and established by United Nations () no link with juvenile justice (Je ne comprends pas). Thus, these rules are very important for our subject. The Convention, that adopted after these rules is inspired of principals dispositions of Beijing for give to them a restricting value. Many articles are important for criminal procedure or for judicial organizations. Finally, these rules are short and give the mean how juvenile justice must intervene with young in the three stages of instruction, judgment and implementation. This articles that follow, will be broach in next chapters for giving an international position; at this stage, we must quote, subjective, ten fondamental-principales in the Beijing rules.

1. The necessity of equitable humane treatment;
2. Finding alternatives other than judicial;
3. Minor speak must be taken into account;
4. The deprivation of liberty as last resort and as short as possible;
5. The deprivation of liberty as only answer for serious cases;
6. Exclusion of capital punishment and corporal punishment;
7. Institutionalization must stay a measure of exception;
8. Organs specialization of the juvenile justice;

---

3Idem. Livret II.
4Idem. Livret IV.
5Idem. Livret III.
9. The rehabilitation; purpose of the juvenile justice;
10. Release of the measure as soon as possible.

The Havane rules

The third paper is United Nations Rules for the Protection of Juveniles Deprived of their Liberty (December 1990)⁶. These rules talk about minors deprived of liberty, a taboo subject. These rules are the third mainstay in juvenile justice. Thus, the main purpose is protection and well-being of minors deprived of liberty. Most specifically, protection of all people under 18 years and deprived of their liberty (like detention, imprisonment, or institutionalization in a private/public establishment) by order of a judicial authority, from the harmful effects of privation of liberty. When the question of preventive detention will be presente, these principles of rules will surely intervene and will also inspire Switzerland’s legislator.

Besides, a particular place is reserves for the administrative detention before the judgment and thus, the respect of some rules for police custody or stays in the police station. In fact, it is in this field that several numbers of Child Rights infractions are committed around the world and probably also in Switzerland.

These three last instruments recommendations do not have restricting value for States. However, countries cannot ignore these instruments and they cannot infringe them, because these instruments are minimum principals. Thus, they are not isolate and they are inextricably interlinke. For these reasons, it is not a good thing to pass under silence these important rules and guidelines. Moreover, the role of The Convention is like a top of house under which we can find these instruments. Thus, the Convention brings them a restricting influence⁷.

The United Nations model law

The United Nations model law has been prepared by United nations Center for international crime prevention⁸. Sometimes called lex Winter. This law has been formulated with a basic 80 national laws, in order to help countries that have not yet a specific law on the juvenile justice but that are working on it or revising their legislation. This law proposes a model to help a country with several options to be compatible with a legislative country system.

This law takes support on the guidelines of The Convention and also on the international instruments presented in this document. The UN model law explains these instruments and shows their concrete importance. We can say that this law does not impose, but it gives inspiration. Solutions proposed are based on the respect of Child Rights and take into account the most advanced knowledge in this field.

The model of law proposes one specific chapter (ch. 3) on the organization of specialised instances for juveniles and also proposes a pattern of suitable procedure.

One more document to be mentioned is the recent Guide for international standard and good practice. Published like an formation manual practice for human rights, this

---

⁷VERSCHRAEGEN, B., Model Law on juvenile justice.
⁸Commentary to the Model Law on Juvenile Justice.
UN document is very important because it repeat a main subject but moreover, shows how to implement law and rules.

It would be relevant to quote the jurisprudence taking its origin in the European Convention on Human Rights, and returned by the Strasbourg Court: however, it cannot be contained in such a short introduction.

5. Wish

Although it is impossible for a country to bring a ready-made solution to another, international great standards have to be looked at. It is the wish expressed as introduction to this working-report. Participants to this juvenile justice seminar, organised by IDE, have taken the same step. The subject of this seminar was; “What justice for juveniles in Turkey?” This document ends with the participants’s recommendations and as you will see, they are strongly inspired by the great international rules.

Sion, September 2003

Jean Zermatten
PART I : GENERAL POINTS
NEW TENDENCIES AND POLITICS IN JUVENILE JUSTICE, A CHALLENGE FOR THE LEGISLATOR

Dr. Roland MIKLAU, Director General Ministry of Justice, Austria

Youth crime, the criminality of young people and a “crisis of youngsters” are not new phenomena. William Shakespeare let the old shepherd in “The winter’s tale” (written in 1611) say:
“I would, there were no age between ten and three-and-twenty, or that youth would sleep out the rest: for there is nothing in between but … wronging the ancentry, stealing, fighting.”
A very much older cuneiform inscription in Mesopotamia reads as follows:
“Our earth is degenerate in these latter days. Bribery and corruption are common. Children no longer obey their parents … The end of the world is evidently approaching.”
Concern about disorderly youth is redundant in history. Modern media talk about “horror kids” and a “generation of monsters”. Some politicians request youth curfews, demand to be though on crime and ask for more punitive sanctions. The fact that conduct of juveniles often mirrors general social developments and problems caused by adults is kept outside of the picture.
Indeed, young people commit more offences than adults. Criminologists think that this is a universal phenomenon. Minor and less serious offences are widely spread and very common among older youth, but at the same time often rather trivial: shoplifting, vandalism, drug consumption. Violence may be a problem as well (although e.g. in Germany, statisticly only 3 % of reported offences concern violent offences).
Such offences mainly occur during a transitional stage of personal development, proceeding from childhood to adulthood. We call this phenomenon “crisis of adolescence”. At this stage deviant social behaviour is “normal” to a certain degree.

It is often related to peer group relations, when group members act spontaneously together or want to impress each other with same courageous act.

Peer group influence was significant at all times. Such influence is probably greater in our times due to accelerated social and economic change which widens the gap between generations and leads to new forms of communication and spare-time activities and to increased mobility. Growing urbanization and broken or loose family ties imply increased risks and problematic situations.

Conduct of youngsters deemed disorderly, illegal or criminal by older people or by society at large, however, is in most instances expression of a transitional stage in the process of socialization and may indicate problems of adaptation and adjustment. Such activities and offences, in their majority, do not indicate the beginning of a criminal career. Often they reflect risky behaviour, readiness for experiments and trying out the limits, typical for young people.

In most cases, spontaneous remission of deviant behaviour can be observed in the course of coming to age. This is evident by crime statistics which show steep
increases of reported offences within the age groups 17 to 20. The peak of over-all criminality according to police

statistics is reached around the age of 20 - and is clearly decreasing thereafter. At the age of 35 the frequency of offences reported is only half compared to the age of 20! Most juveniles and adolescents refrain from offending and stop their deviant behaviour, even without formal reaction by police and justice authorities. Todays youth crime is therefore not tomorrows adult criminality, it is in most cases an episode in life. But concern about youth crime is a symbol for anxiety and fear of the future. What, if offenders get older?.

Contemporary criminological research (criminal incidence) has found out, however, that there are small groups of repeated and intensive offenders who are responsible for large parts of reported offences and commit many offences within a short period. Prof. Killias/Lausanne has undertaken an anonymous self-reporting survey among young Swiss males: he found out that 8 % of them are responsible for 75 % to 80 % of the offences conceded.

It would therefore be rewarding if we could identify these risk groups and if we could distinguish their activities from the normal transitional conduct of their peers! Preventive measures targeted at such problem groups and early intervention would be indicated and may be efficient. Unfortunately, endeavours to identify and to distinguish those multiple offenders from others in term of predictability have not been very successful up to now. The last decade has in many countries shown considerable increases in reported offences by juveniles and young adults (including my home country Austria; recently/since 2002/we also have an increase in juvenile prison population; the reasons are not clear yet. Migration and changes in police control strategies in the field of drugs may have contributed). In the UK the prison population of the age group 15 – 21 has doubled in recent years! One has to be cautious, however, in interpreting reporting statistics: Sensibility towards violence has grown in society in general, readiness to report violent incidences has grown too. The anonymity of modern urban life often leaves hardly any alternative but to call the police. It is mainly a call for help, not for punishment. Shoplifting and drug offences are typical “control offences”, statistics therefore are the result of control strategies and investigative habits more than anything else.

What about the reactions of the legal system to such developments?

Legal systems tend to individualize social problems. Criminal law, in particular, works on the assumption of individual, personal responsibility, necessarily so. Laws on juveniles may even reinforce such individualizing perspective. They may be reluctant in attributing full criminal responsibility to young people and moderate in applying sanctions. But identifying educational deficiencies and attempting to compensate them is just another form of individualization. However, it aims not only at individual treatment and personal development but also at social integration, socialization and training. So, the aims of work with individuals are related to society at large and to its problems.

There has been discussion some years ago whether it would be advisable or feasible to replace juvenile criminal law by juvenile welfare law altogether (e.g. in Germany under the headings justice model vs. welfare model), thereby separating legal measures from attributing responsibility and guilt for a specific act. The result
of that discussion seems to be that we cannot do without the categories of criminal law and that it may be counterproductive not to identify individual responsibility. Juvenile law, therefore, in its core remains penal law. Neoclassical ideas of criminal law probably contributed to that view, which, in addition, puts emphasis on procedural guarantees. Juveniles should have at least the same procedural guarantees as adults. So the framework of criminal law is also a barrier against arbitrary legal reactions to deviant behaviour where children and juveniles are at risk of becoming objects of “social engineering”. The children’s rights movement, symbolized by the U.N. Convention on the Rights of the Child (and by IDE) also contributed to such a view. Of course, the “justice model” and the “welfare model” overlap in practice, and often in the law too. Since 100 years juvenile judges have understood their task as a twofold one: not only criminal law sanctioning, but also family and welfare law measures – combined under the common heading education! That way, juvenile judges and youth courts have been pioneers in abandoning the old retributive and punitive model and in proceeding to more rational and humane legal policies aiming at prevention of crime – thereby looking more forward than backward towards the illegal act. And lets never forget that the response of the justice system to criminal behaviour of young people is only part of the picture, and not the most important one.

At any rate, there is need for a special set of legal provisions for juveniles – be it technically a Juvenile Justice Law or, at least, a special part of general criminal law. It should include provisions not only in substantive criminal law but also special procedural safeguards, eventually regulations for youth prisons, and at least a link to welfare and family law measures.

The legislator should, in such a special law or special part, provide for fixed age limits: for criminal responsibility and for the application of the regulations and measures, designed for juveniles - a lower and a upper limit. The legal age of penal responsibility is still very different in different countries – beginning with 7 years in Ireland and Switzerland (the latter is going to raise it soon) and ending with 16 years in Spain and Portugal. Nevertheless, most legal systems nowadays provide for a criminal threshold between 13 and 15, most frequently 14 years. There is a need for legal certainty in this respect, although we bear in mind that formal differences are probably greater than differences of what happens in practice. It is a general phenomenon, I think, that legal systems often reach similar results under different legal headings and frameworks.

An even more debated question refers to the upper limit for the application of special provisions of juvenile law. On one hand, there is wide agreement on such a limit to be fixed at 18 years, which is at the same time the common age of civil law majority today. But civil majority and full criminal responsibility under the law for adults are not the same thing – contrary to what some politicians think. Therefore, there is – on the other hand – a discussion about applying special penal provisions under juvenile law to adolescents or young adults, referring to the age groups of 18 to 21 and 21 to 24/25. The fact that there is the statistical peak of reported criminality just within that age group, is used as an argument on both sides of the debate.

The legislator should equip practitioners with orientation and guidelines in that field. That does not necessarily mean that one and the same set of rules and measures
should be applied from 14 to 24 in the same way. There could be different stages or steps, depending on the kind of measure and the age and development of the youngster concerned.

Custodial measures should certainly be avoided as much as possible. There is general agreement in this respect because the disadvantages and damages involved in custody and imprisonment widely outweigh the possible advantages. Custodial orders of any kind should therefore be an exception and a measure of very last resort. Children below 16 should not be taken into custody of a penal nature at all, I believe.

Taking into account that imprisonment should be avoided as much as possible and that fines are not considered very educational in nature (also because young people still do not have a lot of money) the two main criminal sanctions – fines and prison sentences – are not desirable or practicable reactions to youth behaviour. Therefore, the search for appropriate non-custodial sanctions and measures, the search for alternatives, is the most important task to be solved by the legislator in cooperation with judges, prosecutors, youth workers and psychosocial practitioners. It is desirable and indeed necessary, to have a broad range of reactions at hand in dealing with juveniles. And let’s not forget: The first possibility of action - which may be appropriately chosen – is the possibility of doing nothing.

Believe me: it is a prejudice of criminal lawyers that there always has to be a formal reaction or sanction. We criminal lawyers tend to forget a few things: first, we have to look at the reaction of society as a whole vis-à-vis offences, the reactions of parents, neighbours, teachers, the reaction of victims, of the police and so on. The fact of being caught in the act, of being apprehended and being questioned by a policeman may be a reaction in its own place, of sufficient preventive effect: Prevention through proceedings has to be acknowledged.

Social reactions and consequences have to be taken into account, and in addition: possible civil and administrative consequences such as the obligation to compensate or certain disqualifications, legal or factual. Of course, such reactions and consequences are not always sufficient, esp. when it comes to serious offences or to repeated criminal behaviour. But we should always ask ourselves: Is there really a need for an additional, formal penal sanction – or not? Only then we put into practice the well known theoretical requirement of criminal law constituting the ultima ratio or the last resort, as well as the principle of proportionality. Certainly, refraining from sanctioning is not a recipe for everything and everybody, but some legal systems have made considerable steps in this respect. If I look at my country’s statistics on juvenile justice reactions, I find: out of every 5 offences, reported or otherwise becoming known to the police, 2 do not find any formal reaction, 2 others are dealt with by alternative means of diversion (mainly by the prosecution) and only 1 out of 5 is formally adjudicated in court.

Opening up the spectrum of alternatives and constructive measures is a core task of juvenile justice. In this respect there is also the criticism, that such measures tend to widen the net of social control (tightening the strings of control) rather than replacing traditional sanctions. It has to be acknowledged that such a risk exists; the term “constructive” indicates that it is a benefit for the offender. But looked upon from an overall (“historical”) perspective and in statistical terms, such “net-widening effect” remained relatively insignificant in comparison with reductions in criminal
judgements (alongside with rising numbers of reported offences) and reductions in imprisonment rates. So the desired “alternative” effect certainly prevailed in most cases, where alternatives were introduced by the legislator or (as sometimes) by practitioners.

Now, what alternatives am I talking about? Well, in legal systems where the principle of discretionary prosecution (opportunity principle) prevails, prosecutors were able to discontinue proceedings, e.g. based on the formula of “lacking public interest”, either unconditionally or they could require the fulfillment of certain conditions by the defendant, such as agreement to supervision by a probation officer, attendance of specific courses or training centres, as well as alcohol- and drug treatment. A number of psychosocial and treatment programmes started that way. In other systems, based on the legality principle of mandatory prosecution, such creativity required legislative action. This was done e.g. in the field of drug offences which were deemed “victimless crimes” because harm done to the author himself overrides other considerations. Where active cooperation and positive achievements are expected and required from the defendant, his or her consent alone is not enough: The young offender cannot remain passive, otherwise he risks negative consequences for not being cooperative and not taking over responsibility for his or her positive development – in a specific sense found appropriate by the decision maker (prosecutor, social worker). This may amount to a “no choice” – situation where free consent is hardly possible. On the other hand, the example of drug addiction shows that completely free consent may in some cases not be sufficient to achieve results. Moderate pressure and clear requests may be necessary to find a way out of a state of mental and physical dependence. The justice system can provide the “kick-off” necessary for a personal turn-around – to find a way out of a miserable situation. The requirements of society or of the health system are transformed into legal conditions that way. But in a free and open society it is essential to keep the necessary balance. Compulsory treatment in the narrow sense of the word is extremely problematic, it should be avoided. Young people should not become objects of forced measures even if there are good and objective reasons for requiring them.

During the past decades new alternatives have been developed: such as community service, or cognitive behavioural training in certain fields (e.g. anti-aggression training). More recently, the victims have increasingly been brought into play. Criminal justice systems as a whole have become more victim-oriented and the interests and expectations of victims have found attention. Juvenile justice was one of the areas where this development was most significant. In particular, forms of victim-offender mediation have been developed and were proven to be very successful and widely accepted – by the parties concerned and by the public at large. A professional mediator (usually a social worker) contacts the victim and the offender, brings both sides together and finally helps to negotiate an agreement (comprising material compensation, other compensating activities and/or an apology). The importance of a formal apology by the offender should not be underestimated. It means satisfaction for the victim and may be difficult (even hard work) for the offender. What is most important: the solution of the conflict is not so much an achievement of the system, but of the two or more parties personally involved. They both actively participate in the proceedings which are as such often more important than the formal result. Ideally, mediation proceedings should not be part of criminal procedure, but taking place out of court – although initiated by the criminal justice system and assisted by a
professional mediator. Victim-offender-mediation follows the idea that the author should take responsibility for his behaviour – not in a legal sense, but personally and psychologically. Mediation involves the chance of the criminal justice system to solve conflicts in a constructive way, not by giving a negative or stigmatizing answer to wrongdoing, which is the traditional way of “black paedagogics” as well as criminal justice.

It is remarkable how successful the idea of mediation has been in recent years in an increasing number of jurisdiction. Mediation is positively received not only by the participants involved, but also by their social environment, by the media and by public opinion. Its positive effects are acknowledged by criminal science and criminology from different theoretical perspectives. It is used primarily in cases of inter-personal conflicts, but not necessarily limited to them. The only real problem may be financing, if it is conducted professional. But ordinary criminal proceedings are not free of charge either, not to refer to expensive sanctions such as imprisonment or treatment. Victim-offender-mediation has become the paradigm for a whole new movement in criminal justice, known under the term “restorative justice” – victim-oriented proceedings and measures have grown into something like a specific model of justice, which resembles to some extent older forms of justice prevailing in pre-industrial and within indigenous societies. Restorative justice right now is the most promising field of criminal policy and law reform. In Europe, an association for victim-offender-mediation and restorative justice has been established (based at the University of Leuven/Belgium); the Council of Europe has adopted a detailed recommendation on mediation in criminal matters; the U.N. are dealing with the subject in the framework of the Commission on Crime Prevention and Criminal Justice. Juvenile justice may in many countries be the field most suitable for a model or for a legislative project.

Altogether, the range of suitable alternatives to prosecution and to formal adjudication (summarized by the term “diversion”) should continue to be developed, in particular by providing for socially constructive measures. That is important and indispensable – but, of course, it does not solve all our problems. Classical sanctions such as fines and conditional prison sentences will continue to be used and to be needed. Imprisonment and other forms of custody can be reduced but not totally abolished. They should be used with utmost reluctance and care – only in cases where virtually no alternative is deemed to have sufficient preventive effects. Most legal systems reduce the range and the applicability of prison sentences for juveniles – either by cutting down the upper limits (maxima) of imprisonment provided for in the penal code for single offences, or by providing for a general (global) maximum. Justice systems vary considerably also in this respect: there are systems which provide for a very low limit (1 year in Switzerland and in the Netherlands; Switzerland is going to raise the maximum to 4 years), in other jurisdictions much higher limits (10 or even 15 years) are provided for.

Imprisonment of young people always implies a signal of helplessness on the part of the justice system – it should be seen as a defeat of the authorities and by society at large. But it is a defeat which we cannot always avoid.
CHILDREN SPECIAL NEED. THE VULNERABLE GROUP.
Renate WINTER, Justice at the Special Court of Sierra Leone (SCSL)

Three basic models of reacting to juvenile crime
The multitude of concrete programmes basically can be reduced to three underlying models:

1. The retributive model (punishment)
   - Main function of sanction = inflicting harm on the offender in the most possible objective way.
   - Merits = rationality; clear procedures; against arbitrary and excessive sanctions; proportionality (channeling revenge)
   - Problems = effectiveness; view on youngster

2. The rehabilitation model (protection)
   - Main function of sanction = helping the offender to conform
   - Merits = individualisation
   - Problems = assumption on delinquent behavior; legal principles; view on younger

Beyond retribution and rehabilitation, the juvenile sanction system now is in search of a more fundamental alternative. From now on, the intervention must serve three types of interest:

1. the victim
2. the offender
3. the community

This leads us to the third model:

3. The restorative justice model
   - Main function of sanction = obligation to making good
   - Concrete methods = mediation, community service
   - Merits = realistic; promising effects; cost-effectiveness
   - Problems = legal framework

4. Conclusion
   - Primary objective is restoring as much as possible
   - Rehabilitation is an added value
   - Co-operation is a leading principle

At present, most countries have a mixt model (“pedagogical sanctioning”), which now is confronted with a twofold fundamental criticism:

   a) Ambiguity:
      - Incompatible principles
      - Punitive dominance neo-retributivism (“just deserts”)
b) Absence of the victim:
- Need of compensation/repartition
- Socio-psychological needs (information, participation)
- Restoration must be integrated

**Assumptions**

<table>
<thead>
<tr>
<th>Current System</th>
<th>Restorative Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime is an act against the state, a violation of the law, an abstract idea</td>
<td>Crime is an act against another person and the community</td>
</tr>
<tr>
<td>The criminal justice system controls crime</td>
<td>Crime control lies primarily in the community</td>
</tr>
<tr>
<td>Offender accountability defined as taking punishment</td>
<td>Accountability defined as assuming responsibility and taking action to repair harm</td>
</tr>
<tr>
<td>Crime is an individual act with individual responsibility</td>
<td>Crime has both individual and social dimensions of responsibility</td>
</tr>
<tr>
<td>Punishment is effective</td>
<td>Punishment alone is not effective in changing behavior and is disruptive to</td>
</tr>
<tr>
<td>a) threat of punishment deters crime</td>
<td>community harmony and good relationships</td>
</tr>
<tr>
<td>b) punishment changes behavior</td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td></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 repartition</td>
</tr>
<tr>
<td>Focus in establishing blame or guilt, on the pas (did he/she do it?)</td>
<td>Focus in problem solving, on liabilities/obligations, on the future (what should be</td>
</tr>
<tr>
<td></td>
<td>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
An action is proportionate, if it is
- suitable
- necessary and
- appropriate

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

Alternative measures
- Resolve conflicts
- Establish peace
- Question the exclusive right of the state for punishment
- Are embedded in the traditions of the state

Before trial:
- Instead of procedure → diversion

During trial:
- Instead of condemnation

After trial:
- Instead of sanction

1. Diversion from the formal juvenile justice system:
   - Mediation
   - Reparation financially
   - Through work
   - Caution

2. Diversion from custody:
   - Probation and suspended or conditional imprisonment with supervision
   - Community service
   - Youth contracts
   - Group homes
   - Group counselling
   - Wilderness training
   - Conditional sentence without supervision
   - Penal warnings
   - Fine compensat. payment
   - Compensation personal reparation
   - Reconciliation
   - Confiscation
Course of Procedure for Alternatives

Offence

Report to police

Prosecutor

Suspension
Alternatives (By social services mediator)
Court Allocation by judge

Report for social services (Mediator) to persecutor or judge
Children Deprived of Their Liberty (CRC)

Article 37 (b): Arrest, detention or imprisonment of a child shall be used in conformity with the law only as a measure of last resort and for the shortest appropriate period of time.

1. Primary consideration: The best interests of the child (Article 3)
2. Is imprisonment the measure of last resort?
3. How long needs a juvenile to be deprived of this or her liberty? What is the shortest appropriate period of time?

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Apply to all young persons deprived of their liberty – held in any form of detention, with or without charge, including imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority.
PART II : THE WORLD OF JUSTICE AND LAW ENFORCEMENT
THE TRADITIONAL PROCEDURE IN JUVENILE JUSTICE: PRINCIPLES, GUARANTIES, SHORTCOMINGS

Nesrin LUSHTA, Co-director of the Kosovo Law Institute, OSCE

Juvenile Judicial System in 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 Resolution 1999/24, the applicable law in Kosovo is: the regulation promulgated by the SRSG and subsidiary instruments issued thereunder 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 center; 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 addicts, bar to public appearance, confiscation of property), may be imposed on juvenile under specific conditions.

It is obvious that the rule is “education rather than 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 first 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 though 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.

**Defense in accordance to the law**

According to the Law on Criminal procedure a juvenile may have a defense counsel from the outset of the preparatory proceeding, but must have defense 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 defense counsel. If the juvenile himself or his legal representative do not engage defense 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 defense counsel from the very first examination. However, it was no provision about the situation when a juvenile wants to have a defense 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 an 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 may 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 sought 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 still 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), defense 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 shall 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.
THE SWISS JUVENILE JUSTICE SYSTEM
Jean ZERMATTEN, Director, IDE

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

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

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

You will find the material law in the Swiss Penal Code (Art. 82 to 99 CPS). This text is attached (see appendix I).

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

2. Welfare Inspiration
In the world, there are three models that inspire thee juvenile court's systems:
- the Welfare Model,
- the Justice Model,
- the Restorative (Justice) Model.

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

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

The Restorative Justice Model goes from the idea to re-integrate the victim in the process and from the other idea of reparation. The young offender has to face his
victim(s) and to do something in order to repair his fault. These two ideas are important and it's a fact that during a long time, the victims have been forgotten. With this model, the Mediation and the Service Community Orders appear and become more and more applied. There is no "only" Restorative Justice Model but we can mention that the Austrian law for juvenile (1988) is based on Mediation.

Switzerland has chosen a welfare-oriented system because
- we have given judges the mission first of all to look at the causes of the offence and to treat them in order to avoid recidive,
- we have given priority to measures before penalties,
- we believe in the possibility of a young delinquent to modify his behaviour, to become better and to come out of delinquency,
- we think that the juvenile court system is very important in prevention.

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

3. Juvenile in danger / Juvenile delinquents

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

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

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

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

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

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

Conditions of age

In Switzerland, we have a very low age of intervention: 7 years. It was justified, at the moment of the adoption of the law (1942), by the necessity of taking care of the child who committed acts against the law; only measures could intervene. In the project of modification currently discussed before the federal Parliament, this age will raise to 10. It remains low, yet with the consideration of protection's measures
We have a category named "children" (7-15) and an other category named "adolescents" (15-18). The new law will abolish this distinction and have only the juveniles (10-18)

Now the situation is :

O-7 years old          : absolute irresponsibility ; if offences : civil authorities
7-14 years old        : limited responsibility : no fine and deprivation of liberty possible
15-18 years old       : relative responsibility (fine and deprivation of liberty possible)
18 years old          : **majority** (civil, civic and penal)
18-25 years old       : young adults : the competence belongs to the common courts (adult courts
                        full responsibility but watered-down intervention

**Conditions of place**

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

**Statistics**

Number of minors **condemned** in Switzerland

• 1990  6'803
• 1991  7'278
• 1992  7'357
• 1993  7'930
• 1994  8'243
• 1995  7'983
• 1996  8'900
• 1997  9'364
• 1998  10'131
• 1999  12'238
• 2000  11'314
• 2001  12'319
Statistics

Number of minors **denounced** in Valais

To note the numbers of minors **denounced** here (and not condemned) ; the difference in terminology is important to make aware that the duty of the juvenile judge in most of cases is to conciliate, to value the necessity of intervention and to find other means of responding to the offence that the automatic punishment. On the number of young people denounced, not more than a third is punished

- 1990 829
- 1991 884
- 1992 904
- 1993 874
- 1994 928
- 1995 1'016
- 1996 1'026
- 1997 1'072
- 1998 1'097
- 1999 1'273
- 2000 1'387
- 2001 1'360
5. **The objectives of the law**

Main objectives are:

- Educational
- Curative/care
- Preventive

Secondary objectives are:

- social integration
- protection

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

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

5.1. The educational objective

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

The issue is:

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

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

c) The possible results of the act: the necessities for a legal response and the redemption, but also to show that such action leads to such a social answer.

How do you raise awareness? By a single instrument, not specific: the **speech**. The magistrate in the situation has to explain, to convince, make to understand, to demonstrate. Of course, he inevitably has to get in direct and personal contact with the minor. We understand better so, why hearings are essential in all the procedure of **judicial intervention against minors**.

5.2. The curative objective

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

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

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

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

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

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

**The secondary objectives**

5.4. **The social integration’s objective**

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

5.5. **The protective objective**

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

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

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

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

6.1. **Characteristics of the measures**

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

Catalogue of the measures: see appendix I

6.2. **Characteristics of the punishments**

- Subsidiary with regard to the measures; monistic system. As we saw it before, we have, in the field of punishments, the application a contrario of the principle of priority of measure i.e the subsidiarity of punishment. Only in the case where the judge is able to decide that the young offender does not need to be treated, he is allowed to punish him.
- Educational contents: the Swiss law demands that the punishment aim to an educational response: this requirement is difficult to satisfy, in the case of deprivation of liberty, even if the law indicates that detention above one month have to be executed in institutions. It's sometimes not realistic. In the field of Community Services Orders, the educational aim can be fulfilled, and this kind of answer has a important success in our country.
- The term is fixed: if measures are undetermined, the term of the sanction is known. Its' fundamental for the respect of the rights of the young offenders.
- The question of deprivation of liberty is an issue in Switzerland too. We have taken the option of short detention, since the maximum is one year. But in the project, this maximum will be raised to 4 years, for very serious crimes (murders, rapes, …) The conditions for the execution (place, personal…) of the deprivation of liberty are very determinant in the concept not only to neutralize somebody, but to prepare him to a re-integration.
Swiss speciality: the judicial forgiveness. The art 88 and 98 CPS give the opportunity to the judge not to sanction offences under certain conditions. It's a sort of general principle of opportunity. In the juvenile justice, to possibility of having such a decision (or no-decision) respects the spirit of "primum non nocere" (first of all, don't do to the minors wrong). In many occasions, the intervention of the police and the appearance before the judge are enough; it's not necessary to punish the child who has learnt of lot in the preliminary phase of the intervention. Trial would appear as redundant.
Measures

Educational measures

- Education assistance (help)
- Foster care
- Institutional care

- Welfare institutions with school
- Welfare institutions with work or activities
- Therapy Centre
- Rehabilitation centre

Special treatment

- Outpatient treatment
- Still treatment

Postponement of sanction
Punishment

- Reprimand
- Community Service Orders
- Fine
- Deprivation of liberty
  - Suspended
  - Without respite
  - Probation
  - Period time of test
  - Supervision orders

Forgiveness
INSTITUTIONALISATION AND ALTERNATIVES
Renate WINTER, Justice at the Special Court of Sierra Leone (SCSL)

Children in difficult Circumstances and the CRC new principles
- 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 families 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 a 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, NGO’s
- Assist the child
- Trace the parents/families: reunification
  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
- Promote self-reliance
- Facilitate active participation in the community
- Ensure special care
- Free of charge for: -education
- training
- health care services
- rehabilitation services
- 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
Act 30

Children of minorities or indigenous groups

- Ethnic
- Religious
- 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 labor

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
- Children producing drugs
- Children transporting drugs
- Children selling drugs

**prevention**

**treatment**

- : only possibility for job, drugs as salary
- : often family enterprise drugs as salary
- : to meet their needs no legal possibility for treatment

Art 34
Sexual exploitation

Protection of sexual exploitation (sexual abuse)

- Prevent inducement of a child to engage in any unlawful sexual activity
- Prevent exploitative use of children in prostitution or other unlawful sexual practices (pedophilia)
- Prevent exploitative use of children in pornographic performances and materials

**Recommended:**

Consideration of all national, bilateral and multinational measures (Optional Protocol 2)

Art 35
Sale, trafficking and abduction

Prevent

- sale of children
- traffic in children

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.1)

- ensure persons 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 in accordance with international humanitarian law

Art 39
Rehabilitative care

- Promote physical and psychological recovery
- Promote social reintegration in an environment which fosters health, selfrespect and dignity for a child, victim of;
- Any form of neglect, exploitation, abuse
- Torture, cruel, inhuman or degrading treatment or punishment
- Armed conflicts
“CASITA” : THE BUILDING OF RESILIENCE

Attic

Ground floor

First floor

Foundations

Ground

Other experience to be discovered

Self-esteem  Abilities skills  humour

Capacity to discover sense, meaning and coherence

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

Profound acceptance of the person (not behaviour)

elementary material needs
United Nations Guidelines for the Prevention of Juvenile Delinquency, the so-called “Riyadh Guidelines”

- Set standards for the prevention of juvenile delinquency
- Cover the pre-conflict stage, i.e., before juveniles come into conflict with the law
- Focus on avoiding conflict with the law
- Limit official intervention
- Calls for abolishment of status affences.

The Guidelines call for
- A “child-centered” orientation and
- Child developmental perspective to delinquency prevention

Special attention is accorded to children “at social risk”

Children are fully protected only when every adult in the community sees it as part of his or her role to act to safeguard children from maltreatment, abuse and exploitation.

Planning crime prevention requires the establishment of clear and, where possible, measurable, objectives at the national and local levels.

The community should be involved at all stages and in all aspects.

1. Prevention Policies:

Policies to reduce inequalities and achieve greater social justice are of critical importance to crime prevention.

There is also a need to change attitudes-at-work in which law enforcement and other professionals can play a major role.

Primary Prevention of delinquency involves Policies and Proposals designed to prevent the conditions that give rise to delinquency.

Secondary Prevention involves efforts to Identify those persons “At Risk” in order to provide for programmes aimed at reducing the likelihood of offending.

Rehabilitation involves Programmes geared to reducing re-offending of so-called “delinquent”
1. Introductory Comments

In Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina in the post-war period of transformation of social, political, economic and legal system and extreme decrease of the living standard and increase of those unemployed, including the increase of some particular forms of criminal operations carried out by adults, the problems of juvenile delinquency and juvenile justice have been extremely expressed on one end, while on the other, they are neglected. Therefore, in Bosnia and Herzegovina as well as in other countries in transition, attention is primarily directed to organized crime, corruption, money laundering, violent crime and other incidences resulting from serious social and economic changes. Consequently, it can be stated that the criminal activities committed by adults “push” juvenile delinquency aside. This is a serious social problem as it is forgotten that by preventing juvenile delinquency, the criminal activities in general are prevented.

In the Federation of Bosnia and Herzegovina, the position of juveniles being in conflict with law is regulated by separate and specific legal norms within the framework of substantive, procedural and executive criminal laws. What does “separate and specific legal norms” mean? It means the following: the valid criminal (substantive and procedural) law and the law on execution of criminal sanctions include the norms related to juvenile delinquents which differ from those related to adult perpetrators of criminal offences. They determine the position of juvenile perpetrators in the criminal justice and the criminal procedure, preferring the measures of assistance, re-education and social integration of juveniles. They emphasize the separation of juveniles from adult perpetrators of criminal offences on the occasion of execution of the institutional measures, in order to prevent the negative influence of major delinquents. However, it should be emphasized that the specific provisions of the substantive, procedural and executive criminal laws on juveniles are related to their different age, both at the time when the criminal offence was committed and the time of trial against the juvenile, that is the execution of the pronounced criminal sanction. Therefore, within the system of criminal justice in the Federation of Bosnia and Herzegovina, juvenile delinquents are treated separately from major perpetrators of criminal offences.9

In the following considerations, the valid criminal-procedural solutions in the Federation of Bosnia and Herzegovina related to juveniles, including the conclusions on the relations of the local procedural law with the international standards on

---

9 This normative approach differs from the one in some other European countries. Namely, other modern legislation systems have special laws on juvenile delinquents. These laws include the norms of the substantive criminal law, criminal procedural law, law on execution of criminal sanctions, or norms on special juvenile courts.
protection of human rights and liberties and the rights of children and minors in particular, will be presented. The purpose of this approach is to stimulate the consideration and actions which lead to better implementation of the valid procedural norms.

2. The position of minors under the Law on Criminal Proceedings in the Federation of Bosnia and Herzegovina

There are worked out and adjusted rules of the specific criminal proceedings related to juveniles committing the criminal offences. The general provisions of Article 433 of the Law on Criminal Proceedings are binding in terms of the implementation of the rules referred to in Section XXVII of this Law, while the remaining legal regulations shall apply unless they are opposite to the provisions related to the procedures against juveniles. The aberration from the criminal proceedings related to major perpetrators of criminal offence have been applied because of personality of a juvenile delinquent. In other words, this separate group of the procedural rules should ensure such a procedure where the rights of a juvenile, subject of the procedure, are protected, the negative consequences of the procedure for the juvenile’s personality removed and the targeted assistance and (re)education of juvenile achieved. The second important comment is that this specific procedure against juveniles applies the international standards related to the position of juvenile perpetrators of criminal offences where the intention of protection of the procedural guarantees and human rights and those of juveniles in particular is emphasized.11 Namely, on the basis of the universal and regional international documents, a conclusion may be reached that all human rights except for those which they, being minors, cannot exercise, are applied to children and juveniles. Also, according to the literature, children and youth are those for whom, due to their immaturity, special rights which can enable them to enjoy the basic human rights and liberties, should be secured. The situation is identical in the area of rights and liberties of juveniles in conflict with law: on one hand, the international documents related to this area take over the procedural guarantees being guaranteed in the procedures related to adults thus emphasizing their value and applicability to juveniles and, on the other hand, they take care of immaturity of children and juveniles and, accordingly, provide guidelines for the implementation of both preventive and repressive measures against them.

In order for the legal provisions referred to in Section XXVII of the Law on Criminal Proceedings to become applicable, it is necessary that, at the time of commitment of criminal offence, the person be a juvenile (to have 14 years but still to be under the

---

10 The Law on Criminal Proceedings was publicised in the “Official Gazette of FBiH”, No. 43/98 and 23/99. In the further text, the word Law or abbreviation CPL will be used.
age of 18 years) and that, at the time of trial, the person be under the age of 21 years (Article 433 paragraph 1 of CPL). This specific procedure cannot be conducted against a minor (child) who was, at the time of commitment of criminal offence, under the age of 14 years as, a juvenile younger that age is not criminally responsible and the criminal sanctions cannot apply against them (Article 434 of CPL). In case that a child committed a criminal offence, the responsible prosecutor shall reject the police report or charge related to the committed offence (the procedure shall not be initiated), and establish a contact with the responsible social welfare authority. With the aim of protecting and providing a child with assistance, the social welfare authority shall collect data on the child’s personality and living conditions, and take adequate measures to remove the sources of unacceptable and unadapted behaviour of the child (treatment of education and re-education). We shall take the opportunity to also mention a young major who, at the time of commitment of criminal act had 18 years but was under the age of 21 years at the time of trial (Article 98 paragraph 1 of CL of FBiH). If it is determined in the regular criminal proceedings against this person and prior to the main hearing that an educational measure can be taken into account (in terms of substantive provisions) than, in the proceedings, the provisions related to juveniles shall apply. In addition, in case that a juvenile was involved in the commitment of a criminal offence jointly with persons of age, the procedure against him/her shall be separated and applied under the rules related to specific procedure (Article 438 of CPL). Merger of the procedure against a juvenile delinquent and the procedure against a major perpetrator of criminal offence and the conduct of a uniform procedure under the general procedural provisions shall be only allowed under the condition that this is necessary for the overall resolution of the case. Therefore, the merger of the procedure should only be exceptional, that is it should only apply in case of especially justifiable reasons. In the merged criminal procedures against a juvenile and a major person, the provisions referred to in the regular criminal proceedings shall apply. Still, in relation to a juvenile perpetrator, certain specific procedural provisions shall apply: specially isolated provisions which are always applicable to juveniles should prevent the juvenile from being put in a position more difficult than the position in which the juvenile would be if the procedure against him/her were not merged with the criminal proceedings conducted against a major perpetrator of criminal offence.12

The conduct of the procedure against a juvenile is not only the seeking for answers to the following questions: was a criminal offence committed, who did it and whether criminal sanctions can apply to the perpetrators. The procedure against a juvenile is primarily aimed at seeking for the most appropriate measure to enable his/her positive social integration. Consequently, the procedure against juveniles is conducted by a juvenile judge who will specially determine the juvenile’s age, circumstances required for the assessment of his/her mental development, analyse the environment in which the juvenile lives and the circumstances thereof, and also determine other circumstances related to his personality (Article 453 of CPL). The Juvenile Board comprising a juvenile judge and two side judges (Article 444 of CPL)

12 For example, the following provisions may be stated: the provisions on the right to have a defender from the beginning of the preparation procedure and regardless of the seriousness of criminal offence, exclusion of the public and banning the public presentation of the procedure and the issued verdict, provisions on the rights and obligations of the guardianship body, exemption from the duty to testify, need that the Court and other authorities involved in the procedure act urgently, and similar. U. Sijercić-Čolić, H et al: Comment on the Law on Criminal Proceedings. Sarajevo, 1999, pp. 561. – 563.
shall issue a decision on pronouncement of a criminal sanction (educational measure or juvenile prison). A juvenile judge is identified on the basis of a work schedule in the Court and is only involved in the procedures against juvenile delinquents. The side judges are selected among professors, teachers, care-givers and other persons experienced in raising minors. The court practice anonymously supports the approach according to which the qualification structure of the Juvenile Board is a crucial element of the composition of the Board. Consequently, it is believed that the Juvenile Board is not properly composed if a person whose occupation is not referred to the aforementioned ones, that is the person is not experienced in the education of minors, is involved in its work.

These are not the only specific characteristics of the procedure against juveniles. The procedures related to juveniles also include other solutions intended for protection of juveniles.

In the procedure against juveniles, the need that the Courts and other state authorities (exp. Prosecutor’s Office, organs of the Ministry of the Interior, guardianship organs) act urgently is particularly emphasised (Article 443 of CPL). The authorities and the institutions whose opinion, information or certain data on juvenile are requested (exp. institutions for expertise, institutes, and similar) are also obliged to act urgently. For the stated reason, juvenile judges are obliged, on a monthly basis, to advise the Court President of the cases which have not been completed and the reasons thereof. The President is obliged to take measures to accelerate the procedure (Article 461 of CPL).

For example, the right to defense through a defender is unrestrictedly stated and consequently, the defense through a defender is obligatory in relation to all criminal offences, that is from the very beginning of the procedure against a juvenile. In case that a juvenile or someone of the authorised persons does not engage a defender, a juvenile judge shall assign a defender in the line of duty. Only a lawyer may be a juvenile’s defender (Article 436 of CPL). The stated legal provisions indicate that the right to have a defender is stated as obligatory expert defense without limitations.

The procedure against a juvenile is conducted without the public. The Juvenile Board may allow that persons dealing with protection and education of juveniles or the fight against juvenile delinquency be present at the main hearing. Also, the main hearing may be attended by the juvenile’s parents, that is guardian and representatives of the guardianship body. The stand on principles is such that the process of a criminal procedure against juvenile and the pronounced court decision may not be publicised through the media. Also, video or audio recording is not allowed during a procedure against juvenile. Only a valid court decision without data on which basis a juvenile could be identified, may be publicised (Articles 442, 463 and 464 of CPL).

Legal basis on which a juvenile may be remanded in custody is established far-narrower that in the case of holding a major perpetrator in custody (Article 456 of CPL). In this relation, the following are the reasons for detention: possible escape, collusion and recidivism. A juvenile judge and the Juvenile Board issue a decision on remanding in custody. During the preparation process, the remanding in custody may last no longer than three months (under the juvenile judge’s decision, the detention may last no longer than a month, while under the Juvenile Board’s
decision, it may last two months more). The control of detention determined by the juvenile judge must be carried out on a ten days basis. The duration of detention is not limited in the procedure before the Juvenile Board. As for the control of detention at this stage of the procedure against a juvenile, it is necessary that the control be carried out on a monthly basis. A juvenile shall be remanded in custody separately from persons of age. Exceptionally, a juvenile may be remanded in custody together with a person of age in case of longer isolation and in case that there is the possibility for the juvenile to be placed in a room with a person of age who would not exert bad influence on him/her (Article 457 of CPL)

The Law on Criminal Proceedings prescribes special measures for protection of and assistance for juvenile that is his/her temporary removal from the environment in which he/she lives and temporary placement into a reception centre, educational or similar institution. For the described objectives to be achieved, a juvenile may be placed under the supervision of a guardianship authority or other family (Articles 455 and 465 of CPL)

A criminal procedure against juvenile shall be initiated for all criminal offences, only at the request of the responsible prosecutor (Article 448 of CPL). This provision is aimed at protection of juvenile. Therefore, a procedure against a minor shall only be initiated at the prosecutor’s request as criminal offences committed by juveniles are only prosecuted in the line of duty. Consequently, in the procedure against a juvenile, a private or subsidiary judge cannot prosecute him/her. It is also needed to point at the implementation of the principle of expediency. Namely, the responsible prosecutor is authorised to estimate the purpose-serving quality of the initiation of the criminal proceedings against a juvenile, in two cases: 1. if a juvenile committed a criminal offence for which fine, as the main sanction, is prescribed or imprisonment to up to three years if he/she believes that it will serve the purpose, bearing in mind the nature of the committed criminal offence, circumstances under which the offence was committed, previous life of the juvenile and his/her personality, and 2. in case that the execution of the sentence to juvenile prison or educational measure is in the process against a juvenile if, bearing in mind the seriousness of the criminal offence as well as sanction that is, educational measure being in the process, the initiation of the procedure would not be expedient (Article 449 of CPL). The implementation of this principle is the result of the previously described purpose of the procedure against a juvenile delinquent. Taking the aforementioned into account, it should be bore in mind that the responsible prosecutor is obliged, prior to submission of the request for initiation of the procedure against a juvenile, to consider the possibility and justifiability of the pronouncement of educational recommendations for criminal offences for which a sentence to up to three years imprisonment or fine is prescribed as the main sanction.

Parents, and other persons responsible for taking care of juvenile shall be advised of the initiation and conduct of the procedure against him/her (Article 441 of CPL). These provisions are important as they enable these persons to timely prepare for

---

13 For the reasons for such an attitude, refer to Sijerčić-Čolić, H. et al: Comments on the Law on Criminal Proceedings, Sarajevo, 1999, pp. 582. - 583.

14 For more comprehensive educational recommendations as alternative forms of reactions on juvenile crime, please refer to the following presentations.
taking special measures and activities (exp. engagement of defender or provision of such care of the juvenile to enable him/her to meet his/her obligations towards the Court).

The Juvenile Board shall be obliged to select the most convenient educational measure for the juvenile. A juvenile judge shall be obliged to monitor the execution of that measure and react in accordance with the process of its execution. The management of the Institution where the pronounced educational recommendations are to be applied shall be obliged, on a six month basis, to provide the Court which pronounced the measure with the report on the juvenile’s behaviour. As for the educational measures which are not of the institutional nature, a juvenile judge, through the organs of social welfare, may obtain the reports on execution of other educational measures. The monitoring of the execution or implementation of a certain educational measure is a consequence of the nature of the educational measures and their being pronounced for a relatively undetermined period of time and, after some time, it is necessary to estimate the success of its implementation and, if possible, replace or cease the educational measure. Therefore, it is possible that the Court cease the execution of an educational measure (if the purpose is achieved) or to replace it with another educational measure.¹⁵

3. Educational recommendations as the alternative forms of reaction on juvenile crime

The previously described basis for the implementation of specific provisions of the substantive and procedural criminal law on juveniles have been focused on the weakening of stigmatisation of juvenile delinquents and encouragement of their positive social integration. This is consistent with the purpose of the criminal sanctions which are pronounced against juveniles.

The foreseen model of the position of juveniles in the criminal procedural law in the Federation of Bosnia and Herzegovina is also characterised with other specific characteristics which contribute to protection, care, assistance and supervision over juvenile delinquents. The educational recommendations are in question.¹⁶

In general, the educational recommendations come along with the modern crime-related policy efforts according to which, while reacting on juvenile criminal activities, advantage should be given to extra-judicial forms of intervention, and the pronouncement of the criminal sanctions should be kept in cases where re-education of juveniles cannot be realised through other methods or where the seriousness of the criminal offence requires that. Therefore, the essence of the educational recommendations lays in avoidance of stigmatisation of juveniles due to commitment of a minor or petty criminal offence, prevention from negative effect of the implementation of the criminal procedure on the juvenile’s personality and his future, and the respect of the attitude according to which deviation which incurred in adolescence reaches its culmination in the major years. Also, these alternative measures contribute to disburdening of the criminal justice authorities and the courts

¹⁶ Currently, only the criminal legislation of the Federation of Bosnia and Herzegovina anticipates the educational recommendations; therefore, we cannot find them in the criminal legislation of Republika Srpska and the Brčko District.
in particular, that is their engagement in complex and severe forms of criminal offences committed by juveniles.

There is no doubt that the educational recommendations are the “replacement” for the initiation and the conduct of the criminal procedures and that they are applied out of the formal court procedure. The nature of these recommendations is such that, as a rule, they enable the state authorities to use them as the short-term forms of influence on juveniles and to apply them on juveniles who are at large.\(^{17}\) I wish to emphasise that the educational recommendations have a common “roof” aim which can be described in the following way: to seek for the best possible and meaningful response of society to juvenile crime; better and meaningful in a way to remarkably meet the needs of those involved in a criminal offence (a victim in particular) and, simultaneously, to exert a social – integrative influence on juvenile perpetrator of criminal offence, including the injured party.\(^{18}\) Compared to this objective, the elements of certain legal provisions are nothing but a further concretisation of introduction of certain acting and its purpose. To put it more concretely: according to the valid regulations, the purpose of the educational recommendations is avoidance of the initiation of a criminal procedure against juvenile related to some minor criminal offences, and the influence on juveniles not to commit the criminal offences. These examples of the purpose of the educational recommendations particularly confirm and demonstrate the following: firstly, they confirm the attitudes on the need that the reaction of society on juvenile criminal offences differs from the reaction of that very society on the criminal offences committed by adults, as well as that children and youth (being bio-psychologically and sociologically less developed beings) require the approach and treatment which should be specifically individualised, coloured with assistance, guiding, educative and encouraging;\(^{19}\) secondly, it demonstrates that early prevention of juvenile delinquency is the future of a preventive and efficient policy for juvenile crime and crime in general.

The educational recommendations have some more common features and they also differ.

The Criminal Law of the Federation of Bosnia and Herzegovina enables the pronouncement of the educational recommendations for criminal offences in relation to which fine or a sentence to up to three years imprisonment has been prescribed, including the criminal offences prosecuted under the private charges (Article 73 paragraph 1). Further on, they can apply on juveniles who are willing to co-operate or accept such a form of social reaction on deviation in their behaviour. The conditions for the implementation of the educational recommendations are as follows: admission of a criminal offence by the juvenile and his/her willingness to have reconciliation with the injured party.

The list of the educational recommendations include nine of them and they have various directions. On the occasion of selecting a certain educational recommendation, interests of both juvenile and the injured party should be taken into


account and also that the pronounced educational recommendation does not question the issue of the juvenile’s regular schooling and his work.

The number and variety of the educational recommendations make their presentation necessary. First, two educational recommendations should be emphasised (personal apology to the injured party and compensation to the injured party for the damage) which are claimed as communication (direct or indirect) between a juvenile perpetrator and a victim of the criminal offence. On the basis of the findings obtained in the comparable - legal solutions and practical examples, the intention is, within these activities, to attempt to resolve the conflict by establishing the agreements on which occasion, mediation or process of exchange of information between the parties in conflict has a crucial role. During the process, the comprehension of the problem, getting the parties to know each other and the understanding of the alternative decisions related to the existing conflict are changed to the extent that it is possible to achieve a solution to please both parties and after which, other possibilities for the discussions will not be requested. On this occasion, the learning process should also be emphasised in both a juvenile and a victim of a criminal offence. Namely, on the occasion of meeting the victim (once again), the juvenile would directly see and experience the consequences of his/her offence, while the victim would have the opportunity to express their feelings which, after the commitment of the offence, acquire certain qualitative and quantitative characteristics.\textsuperscript{20}

Another group of the educational recommendations includes the work for a charity or local community. These educational recommendations can be stated as the standard alternative measures which are nowadays pronounced against juveniles. The implementation of these educational measures is also possible in a case where a victim of a criminal offence remained unknown, that is where an individually injured person is in question. Thanks to these educational recommendations, a juvenile perpetrator of criminal offence is integrated in both wider and closer social community.

Within the framework of its described basic commitment, the law-issuer also anticipated a range of other educational recommendations being, generally speaking, manifested through upbringing-educational, work – therapeutic and therapeutic-treatment components, specially emphasising and concretising the following: - the idea of upbringing and education of juveniles through their obligation to regularly attend school and training on the traffic regulations, - the need of acceptance of employment adequate to juvenile’s knowledge and skills, and – undergoing healing and medical treatment in an adequate health institution (exp. curing of a habit to consume alcohol or drugs), as well as acceptance to visit and become involved in the work of the upbringing, educational, psychological and other Counseling Centres.

And, finally, it should be specially emphasised that, within the framework of the educational recommendations, it is possible to select a measure which includes the placement of a juvenile into another family or institution and apply it to a juvenile.

As the good organisation is required for the successful implementation and development of the described programme of the educational recommendations, the

\textsuperscript{20} Op. Quot. in note. 12, p. 25, 28 and similar.
valid regulations prescribe the mechanisms for their proper understanding and implementation.

Therefore, it is anticipated that, under the scheme established in advance, the educational recommendations are pronounced by a responsible prosecutor and a juvenile judge. Consequently, prior to the issuance of a decision on submission of a request for the initiation of the criminal procedure against a juvenile and related to a criminal offence, the responsible prosecutor may consider the possibility and justifiability of the pronouncement of an educational measure consistent with the substantive criminal law. The same procedure is applied by a juvenile judge on the occasion of issuing a decision on whether to agree with the request for the initiation of the procedure for these minor criminal offences or not. Then, the selection and implementation of the educational recommendations is carried out in co-operation with parents or guardians of a juvenile, and the social welfare authorities. It can be expected that, in the more complex situations, the successful implementation of the selected educational recommendation will not only depend on a juvenile but on the capability and organisation of those involved in the programme of realisation of the pronounced educational recommendation too.21

In addition to the stated, it is also needed that attention be paid to the time period needed for the educational recommendations. The valid regulations anticipate a uniform general period of time of one year. Bearing in mind that certain educational recommendations have been sufficiently restricted in terms of time (duration), hour schedule and duration of an educational recommendation must be determined in away that, among other things, they do not threaten the juvenile’s regular schooling or his work.

It is characteristic for all educational recommendations that, during the execution process, they can be cancelled or replaced with another educational recommendation. As for the cancellation of an educational recommendation, it means that: the purpose for which it has been pronounced is met or the positive results cannot be achieved (exp. due to the lack of participation of a juvenile) which, under the legal conditions, opens the possibility of the initiation of a criminal procedure. One educational recommendation will be replaced by another when the aim of the pronounced educational recommendation is not met, that is when it can be expected that the aim will be better met though the implementation of another educational recommendation.

Within the framework of these considerations, it is particularly important to state a fact that the violation of the principles of protection of juveniles’ right and liberties may be manifested during the process of selection and implementation of a certain educational recommendation. For this reason, it is not allowed that, in its manifestation forms, the educational recommendation be more severe than that is prescribed within its legal framework. Accordingly, regardless of severe differences between the educational recommendations as the alternative measures and the educational measures as criminal sanctions, it should always be insisted on the

21 Please refer to the provisions of Article 73 paragraph 2 of the Criminal Law of the Federation of Bosnia and Herzegovina, as well as Articles 450 and 452 paragraph 1 of the Law on Criminal Proceedings.
improvement and strengthening of protection of the rights and liberties of juvenile delinquents.

The implementation of the educational recommendations against a juvenile perpetrator of a criminal offence means the alternative to criminal prosecution and criminal procedure. A model to be developed through the educational recommendations re-direct a juvenile perpetrator of (a minor) criminal offence towards other, extra-judicial forms of conflict resolution. For the reasons of principles, this model is stated as the one opposite to the discussions on the conflict within the framework of the institutions of the criminal-procedural law, and seeks for the establishment of the disturbed legal order through the extra-judicial forms of acting.

I the light of the aforementioned, the avoidance of the damaging consequences of the criminal procedure is anticipated in relation to criminal offences for which fine or imprisonment to up to three years term have been prescribed. This means that, prior to issuance of the decision on submission of the request for initiation of a criminal procedure against a juvenile and related to the stated criminal offences, the responsible prosecutor must consider the possibility and justifiability of the pronouncement of the educational recommendations. A juvenile judge shall act in the same way prior to issuance of a decision on whether to agree with the request related to the initiation of the criminal procedure for these minor criminal offences. If the responsible prosecutor decides to pronounce any of the educational recommendations, such a decision will mean that the procedure against a juvenile delinquent will not be initiated.

The previously stated recommendations indicate that the educational recommendations include the required participation, social integration and voluntariness, of a juvenile delinquent in particular. In other words, they include those crime – related policy values which are marked as post-modern/participation options and which reflect the introduction of new, socially integrative sanctions in the fight against crime.22

4. Final considerations on relationships between the national procedural law and the international standards on protection of the right and liberties of juvenile perpetrators of criminal offences

Being permanently familiar with the development of the international standards on protection of the basic rights and liberties of children and juveniles and, in this relation, “catching up with” the innovations in the fight against crime, is particularly recognised in the solutions related to specific provisions on placing the juvenile perpetrators of criminal offences into procedure. In relation to this, special attention is paid to the following issues: to what population (in terms of age) the specific provisions of the procedural criminal justice are related and what are the special rights of juvenile perpetrators of criminal offences.

The described normative model of the position of juvenile delinquents in the criminal procedural law of the Federation of Bosnia and Herzegovina is considered from the aspect of the international standards on protection of the rights of children and juveniles.

22 Op. Quot. in note 14, Pges 12, 14 and similar.
Namely, according to the Constitution of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina, certain international documents of the United Nations and the Council of Europe have been accepted. These international legal documents became the instruments for protection of human rights and liberties in Bosnia and Herzegovina also. They have the legal power of the Constitutional provisions, priority over the national laws and are directly implemented in Bosnia and Herzegovina. In other words, the establishment of a special attitude towards juvenile delinquents consistent with the international standards on protection of the juveniles’ rights being expressed in the principle on protection of “the best interest of the child and juvenile” is emphasised. Therefore, this principle has been adopted as the basic principle in relation to treatment of juvenile delinquents.

While analysing the national procedural norms and subsuming them under the international law on the rights and liberties of juvenile delinquents, a conclusion may be reached that the Law on Criminal Proceedings in the Federation of Bosnia and Herzegovina is equipped with the modern tools as it keeps pace with the new findings on juvenile delinquency and social reaction on juvenile crime. The anticipated model of the position of juveniles in the criminal procedural justice is characterised with certain specific characteristics which contribute to the weakening of stigmatisation of juveniles and stimulate their positive social integration. That model also reflects the seeking for the alternatives to classical criminal-justice and criminal-procedural measures while reacting on juvenile delinquency. Thirdly, this model tends to remove the undesired and damaging consequences of the implementation of the criminal sanctions against a juvenile delinquent. Special attention should be paid to those legal solutions which enable the implementation of the educational recommendations against juvenile perpetrators of minor criminal offences. Therefore, the decisions which come along with the modern crime-related policy efforts to, while responding to criminal behaviour of juveniles, give preference to extra-judicial forms of intervention and that the pronouncement of criminal sanctions be kept in cases where re-education of a juvenile cannot be otherwise achieved, or where it is required due to the seriousness of the committed criminal offence, are in question. Therefore, the educational recommendations are alternative to criminal prosecution and criminal procedure and they are applied out of the formal criminal procedure. A model being developed through the educational recommendations re-directs a juvenile perpetrator of a minor criminal offence towards other extra-judicial forms of the conflict resolution. As such, they tend to give preference to (re) education of juvenile delinquents in the family or wider social settlement, and serve for protection of higher and more significant values and interests of both society and children, that is juveniles.

23 A list of these international documents is presented in the note 4.

24 The principle “the best interest of the child” was also foreseen in the documents prior to the Convention on the Rights of the Child. However, the Convention made this principle be the basic principle related to the treatment of juvenile delinquents. Please refer to Article 3 paragraph 1 of the Convention on the Rights of the Child.

25 This process is better developed in the Federation of Bosnia and Herzegovina than in Republika Srpska and the Brčko District as (in 1998) the Federation of Bosnia and Herzegovina carried out a remarkable reform of criminal justice (substantive, procedural and executive) system and adopted the international standards on protection of the basic human rights and liberties, as well as the standards on the special rights of children and juveniles.
In my opinion, in the Federation of Bosnia and Herzegovina, the position of juveniles in conflict with law is regulated in accordance with the international documents where protection of this group of perpetrators of criminal offences is stated. It should be emphasised that this is the estimate of legally prescribed rights (in both quantitative and qualitative sense) of juveniles. In this relation, the issue of respect and realisation of these rights in practice is raised. Weaknesses present in practice have negative influence on protection of the rights and interests of juvenile perpetrators of criminal offences and consequently the assessment of possibilities of a juvenile delinquent to exercise his/her rights secured in the international documents. Consideration on these causes and their consequences contribute to weakening of all positive aspects of the legal solutions. It should not be specially explained as to how this situation affects (re)education, protection and guiding of juveniles.

Appendix I

A special presentation of proposals and suggestions for prevention of juvenile delinquency, being a form of socially unacceptable behaviour of youth, from incurring\textsuperscript{26}

- opening of the Counselling Centres for children and the youth;
- opening of the Counselling Centres for parents;
- establishment of shelters for children and the youth;
- Social Worker in primary and secondary schools;
- training for policemen, teachers and employees in the Centres for Social Work;
- intensified co-operation with the Police and Centres for Social Work;
- training for parents and the youth through the media;
- training for the journalists in relation to importance of the presentation of juvenile delinquency in a way consistent with the principle “of the best interest of the child”, without stigmatisation;
- support to alternative procedures related to minor criminal offences;
- education of the youth;
- guiding of young people following completion of their education, and creation of the possibilities for their employment;
- through primary and secondary-school education, young people should be advised of the negative incidences and acceptance of positive social values;
- within the Centres for Social Work, establishment of hobby groups for young people;
- banning the coffee bars and other facilities where alcohol is served from being opened in the vicinity of primary and secondary schools;
- taxpayers to be encouraged to open the Youth Clubs and sports grounds or to otherwise enable the youth to spend their free time in a good and organised way;
- increased activity of society in raising the family standard;
- establishment of autonomous, specialised Youth Courts;

\textsuperscript{26} «Young people in conflict with the law in the light of topical problems related to juvenile criminal justice in BiH». OSF B&H and Unicef, 2002.
• the existing legal regulations related to children and the youth being the victims of criminal offences (family violence, sexual abuse, exploitation, neglect, etc.) to be stipulated and stated precisely.
Appendix II

I. Juveniles as Perpetrators of Criminal Offences

1. In wider terms, juvenile delinquency covers the full range of various forms of behaviour of juveniles; from behaviour manifested in a form of violation of certain social rules to the one related to criminal offences. In narrower terms, juvenile delinquency includes the violations of social rules which are determined as criminal offences in the Criminal Law and which are committed by juvenile offenders aged from 14 to 18 years. The juveniles’ behaviour which includes the elements of a criminal offence (or juvenile delinquency in a limited sense) attracts special attention of a modern society. Among other things, the reason for this is the willingness that a very complex action be taken in relation to this extremely undesirable incidence.

The juvenile delinquency is a serious social problem in our country too. The disturbing information on the increased juvenile delinquency in Bosnia and Herzegovina as well as the information on other forms of socially unacceptable behaviour of children and minors such as running away from home and school, begging, violent behaviour, prostitution, alcoholism or drug addiction, indicate that. The incidence of socially unacceptable behaviour of children and minors is the result of certain social contradictions which affect the development of both children and young persons.

2. The results of the research works and collected data on the extent of juvenile delinquency within the criminal activities in total and its trends, generally indicate the increase of not only the violent crime committed by juveniles and recidivism thereof, but also the increased criminal activities of juveniles in total. Unfortunately, the increase which is evident in our country (as well as other countries) is not followed by the precise and official records of certain State authorities. There is no full processing of statistical data on the crime trends (including the juvenile ones), for several reasons: political division of Bosnia and Herzegovina (in geographic terms), disunited services which are responsible for the monitoring and recording of juvenile delinquency; consequently, every service collects and records its own data on the juvenile perpetrators of criminal offences (Police, Prosecutor’s Offices, Courts, Centres for Social Work). However, certain conclusions may be reached on the extent, dynamics and structure of juvenile delinquency within the territory of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. Namely, regardless of the stated difficulties and compared to the period before 1992 in particular (or prior to war in Bosnia and Herzegovina), it is possible to observe a disturbing information on increasing juvenile delinquency in Bosnia and Herzegovina. Compared to the pre-war period, the upward trend of juvenile delinquency in the Federation of Bosnia and Herzegovina is marked with very high figures.

3. As for the type and seriousness of criminal offences, property-related criminal offences were in question in most cases18 while, to a small extent, criminal offences against life and body (exp. homicides or attempted homicides committed by juveniles or grievous bodily harms), traffic criminal
offences, criminal offences against public order, or criminal offences against personal dignity or moral (exp. rape) were also committed.

3. Criminal offences and those related to property in particular are committed in groups (3 to 4 juveniles). However, a considerable number of criminal offences were committed by only one perpetrator. In certain cases, criminal offences were planned by older persons who also organise the groups to commit them. On the occasion of committing criminal offences, juveniles are frequently unscrupulous. In most cases also, the repeated recidivists are in question.
THE WORK OF THE JUVENILE COURT JUDGE
Jean ZERMATTEN, Director, 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 reprition of the offences, to prevent the recidivsm

Secondary objectives are:
- social integration: to facilitate the integration (family, school, work, sports...)
- protection: against the environment; to protect the society, 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 behavior, 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 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 Departement 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 contraint (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 behavior, 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”.

60
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 markednot only by the law, but also by all the humain 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.

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 negociation 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 ist 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 catalog or responses, so detailed it is, may offer the conditions of the change only if it is accompanied, on 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 favors 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 inapropriate.
PART III : THE TURKISH REALITY
# JUVENILE JUSTICE AND TREATMENT

Necati NURSAL, Judge Head of Department of Education and foreign relations

## JUVENILE INSTITUTIONS IN TURKEY

(1 JANUARY 2001)

<table>
<thead>
<tr>
<th>Name of Institution</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ankara Juvenile Reformatory</td>
<td>100 person</td>
</tr>
<tr>
<td>İzmir Juvenile Reformatory</td>
<td>250 person</td>
</tr>
<tr>
<td>Elazığ Juvenile Reformatory</td>
<td>250 person</td>
</tr>
<tr>
<td>Elmadağ Closed Juvenile Institution</td>
<td>60 person</td>
</tr>
<tr>
<td>Bakırköy Closed Juvenile Institution</td>
<td>480 person</td>
</tr>
<tr>
<td>Other Detention Centers</td>
<td>1500 person</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>2640 person</strong></td>
</tr>
</tbody>
</table>


Breakdown of Remand and Convicted Children According to Their Legal Status

(1 JANUARY 2001)

<table>
<thead>
<tr>
<th>Crime</th>
<th>Convicted</th>
<th>Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Homicide</td>
<td>40</td>
<td>4</td>
</tr>
<tr>
<td>Drug</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Assault</td>
<td>11</td>
<td>60</td>
</tr>
<tr>
<td>Sexual crimes</td>
<td>21</td>
<td>33</td>
</tr>
<tr>
<td>Rape</td>
<td>44</td>
<td>116</td>
</tr>
<tr>
<td>Theft</td>
<td>65</td>
<td>608</td>
</tr>
<tr>
<td>Burglary</td>
<td>55</td>
<td>150</td>
</tr>
<tr>
<td>Terror</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>255</td>
<td>6</td>
</tr>
</tbody>
</table>

Breakdown of the Remand and Convicted Children By Their Educational Status

(1 JANUARY 2001)

<table>
<thead>
<tr>
<th>Educational Status</th>
<th>Convicted</th>
<th>Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Primary</td>
<td>239</td>
<td>6</td>
</tr>
<tr>
<td>High School</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>249</td>
<td>6</td>
</tr>
</tbody>
</table>
### Breakdown of the Remand and Convicted Children By Their Educational Status

(1 JANUARY 2001)

<table>
<thead>
<tr>
<th>Educational Status</th>
<th>Convicted Male</th>
<th>Convicted Female</th>
<th>Remand Male</th>
<th>Remand Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>239</td>
<td>6</td>
<td>1192</td>
<td>30</td>
<td>1467</td>
</tr>
<tr>
<td>High School</td>
<td>10</td>
<td>17</td>
<td>2</td>
<td></td>
<td>29</td>
</tr>
<tr>
<td>TOTAL</td>
<td>249</td>
<td>6</td>
<td>1209</td>
<td>32</td>
<td>1496</td>
</tr>
</tbody>
</table>

### Breakdown of the Remand and Convicted Children By Their Age

(1 JANUARY 2001)

<table>
<thead>
<tr>
<th>Age</th>
<th>Convicted</th>
<th>Remand</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>12-16</td>
<td>20</td>
<td></td>
<td>124</td>
</tr>
<tr>
<td>16-18</td>
<td>235</td>
<td>6</td>
<td>1186</td>
</tr>
<tr>
<td>TOTAL</td>
<td>255</td>
<td>6</td>
<td>1310</td>
</tr>
</tbody>
</table>
## Breakdown of the Remand and Convicted Children By Their Age
(1 January 2001)

<table>
<thead>
<tr>
<th>Age</th>
<th>Convicted</th>
<th>Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>12-16</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>16-18</td>
<td>235</td>
<td>6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>255</td>
<td>6</td>
</tr>
</tbody>
</table>
ACTIVITY REPORT FOR 2002 ON JUVENILE OFFENDERS IN PENAL INSTITUTIONS

Necati NURSAL, Judge Head of Department of Education and foreign relation

ACTIVITIES RELATING TO JUVENILES ARE UNDER THE SUPERVISION OF THE GENERAL DIRECTORATE OF PRISONS AND DETENTION HOUSES

I. INTRODUCTION

There is no doubt that “human being” is the most important element in the society that consists of many elements. “Child” who is regarded as a social unit in modern societies constitutes the origin of the human element. The future of any society depends on the bringing up of children in a sound manner in terms of the child’s physical, spiritual, moral and intellectual state. This issue which also includes the development and welfare of the society is related to the rules that regulate the child’s situation in the society and to the manner in which these rules are applied.

Child is a social entity that should be protected at all places, at all ages and at all economic levels. Children occupy the first place in the ordering of humanitarian duties. Because, they are the weakest group in expressing and claiming the rights granted to them by responsible adults. Furthermore, their achievement of these rights depends on the willingness demonstrated and efforts made by adults in accepting and fulfilling their duties in this respect.

Child development is a dynamic process that involves continuity. In this process, inadequacies that may arise from the child himself/herself coupled with difficulties created by the environment such as rapid urbanisation and industrialisation, migration and economic crises, confusion created by changing values and moral rules, inadequate training, lack of attachment and love etc. may direct the child to exhibit offensive behaviour.

It is known that what underlies beneath any behaviour exhibited by children which constitutes an offence is generally the relations between the child and the adult world which the child finds difficult to adequately adapt to. Therefore, it is not rational and humanitarian to isolate behaviours of this nature exhibited by children with lack of adequate self-esteem from negative environmental conditions surrounding the child and the critical development periods and to consider the child simply as an offender.

Every human being has more or less an inclination that causes him/her to go beyond social norms. There is no one who has not committed any minor offence that is deemed unimportant although categorised as delinquency.

Research conducted on the intellectual and emotional development of personality showed that children in conflict with the law do not have biological and psychological characteristics specific to themselves. Any act committed by these children should be regarded as an indicator of their need for special interest and support and not as an indication that they are worse than other peers of theirs.

Even though child delinquency which generally points to a lack of social adaptation is not of a nature that should be deeply worried about, it is an issue that should be attributed great importance in that it is a sign of the child’s lack of adaptation and of a risk of becoming increasingly dangerous. It is possible to re-train a child whatever offence she/he might have committed. There is no relation whatsoever between the qualitative and quantitative nature of
Training course on Juvenile Justice

the offence committed and the child’s ability to be re-trained. Children are open to changes and orientations more than adults. Those who have acquaintance with children, have a thorough knowledge of their development stages and are experienced may easily orientate them.

The most important factor that should be taken into consideration in the education process is the characteristics of the development period any individual is in. Childhood is a period in which the guidance of others is needed in terms of education. Adulthood expresses a process where this need is no longer felt. For this reason, implementations targeted at children in institutions require an entirely different set of rules and treatment from implementations relating to adults.

The most effective method for the protection of both children and the society is to make up the deficiencies of children arising as a result of educational and social neglect and to ensure that they are integrated into the society as responsible individuals by channelling their unflagging energy that may become destructive to positive directions.

In line with this approach, this General Directorate is currently “reorganising” the services provided to children under its supervision in light of international instruments and primarily the Convention on the Rights of Children and scientific developments.

The basic goal of reorganisation activities is to transform the misfortune suffered by children by being in institutions to an opportunity to be raised as productive and responsible individuals and to take the place they deserve in the society. In order to attain this goal, all facilities and services directed at children should be of such a nature so as to ensure that:

a. they are equipped with the knowledge and sources to meet their own basic humanitarian needs and develop the potential they have,

b. the damage done to their psychological, social and physical integrity by the event that resulted in the restriction of their liberty is identified and undone,

c. they undergo a social, cultural, vocational, psychological, medical and physical treatment as required by their age, gender and personality which will be aimed at their reintegration with the society, will develop their esteem, trust and other feelings and will reinforce their respect to the rights and freedoms of others,

d. they are brought up to be physically, intellectually, morally and emotionally healthy individuals who are aware of the importance of leading a life by working and practicing a profession and of assuming a constructive role in the society and who have learned to live without causing any damage to others,

e. they strengthen their relations with their family and the society,

f. they acquire an understanding, habit, attitude, behaviour and skills that will enable them to adapt in a sound manner to social life that undergoes a continuous change and development,

g. they are integrated into the society by approximating life in institutions to social life and seizing every opportunity to maintain relations with the society.

II. THE PRESENT SITUATION

The treatment* and after release care activities directed at remand and convicted juveniles in the 12-15 and 16-18 age group who are placed in institutions, are the responsibility of the Education Department, Juvenile Probation, Training ad Rehabilitation Affairs Division attached to the General Directorate.
1. TREATMENT ACTIVITIES CARRIED OUT FOR REMAND CHILDREN

Children in the 12-15 age group who stand trial according to the provisions of Law No. 2253 on the Establishment, Duties and Trial Procedures of Juvenile Courts, and children in the 16-18 age group who are brought to trial pursuant to Article 55 of the Turkish Criminal Code No. 765 are placed in juvenile sections of prisons and detention houses specific to adults if a judgement is rendered on their detention. A detention house was put into operation in Istanbul, Bakırköy in 1997 and another in Ankara, Elmadag in 1998.

Institutions sheltering remand juveniles are closed institutions, while the internal security of which is provided by correctional officers attached to the ministry of justice, external security of which is provided by the gendarmerie attached to ministry of interior and leaving the detention house premises is subject to the supervision of the gendarmerie.

In-house training activities may be summarised as follows;

1. Primary Literacy and Secondary Training Courses,
2. Preparation and Support Courses for Formal and Informal Education,
3. Open Primary Education School and Open High School Examinations,
4. University Entrance Examinations,
5. Vocational Training Courses,
6. Social, Cultural and Sports Activities,
7. Library and Associated Activities,
8. Psycho-Social Service Activities.

Commissions set up by respective schools administer examinations in institutions for remand juveniles who are students and whose situation is deemed appropriate in order to enable them to attend to an upper class.

*Treatment, in general terms as accepted by most member states of the Council of Europe includes all compulsory measures required to be taken to ensure that remand and convicted individuals enjoy or regain good physical and mental health, and all activities that encourage and improve their integration with the society and their leading a life without feeling guilty and being aware of their social responsibilities.

Examinations for entrance to distance education, secondary education, universities etc. are conducted in institutions by commissions set up by agencies such as the Ministry of National Education, Centre for Student Selection and Placement etc. Children placed in institutions where no examination centre exists are transferred to the closest examination centre. The travel expenses of children to and from between the institution and the examination centre are paid by the Social Aid and Solidarity Foundation.

Services to be provided to children sheltered in juvenile sections of closed prisons and detention houses specific to adults encountered with some problem. Children generally spend their time participating in certain sports activities, watching television, attending Primary and Secondary Literacy Courses as part of basic training programs and preparing for Open Primary Education and Open High School examinations.

It is desired that primarily children benefit from the treatment activities implemented in institutions and efforts are made to prevent children from coming in contact with adults either during these activities or during their daily lives.
2. TREATMENT ACTIVITIES CARRIED OUT FOR CONVICTED CHILDREN

Children in the 12 – 18 age group on whom a punishment depriving liberty is imposed further to a trial and whose punishment has become final are placed according to the geographical closeness of their place of residence in one of the reformatories located in Ankara, Elazığ and İzmir.

Girls in the 12 – 18 age group on whom a punishment restricting liberty is imposed are placed in the Reformatory in İzmir where there is a special section allocated to girls.

Treatment activities carried out in closed institutions are also implemented in reformatories. Furthermore, children in reformatories which are open institutions may benefit from all education – training activities in the same way as their peers.

Juveniles placed in reformatories whose age and other particulars are appropriate may attend institutions of primary, secondary and higher education; participate in social and sports activities that take place in their respective schools; take, in connection with their education, foreign language, computer, vocational courses and courses given to prepare students for university examinations; take an examination conducted outside the institution to enter distance education institutions and universities etc.; and attend social activities such as plays, concerts and sports events under the supervision of the institution’s educators.

The workshops in the Juvenile Reformatory in Ankara were closed down in 1995 within the framework of reorganisation of treatment activities. According to the new implementation initiated in this institution, children older than 15 years of age for whom it is impossible to attend formal education, are orientated to an appropriate occupation taking into consideration their wishes, abilities as well as the availability of vocational training centres and employment opportunities in the place where they will reside following their release. These juveniles may then attend vocational training centres attached to the Ministry of National Education under Apprenticeship and Vocational Training Law No. 3308.

Students who are employed within the framework of the vocational training program receive a certain portion of their monthly wages to be used for their personal expenses and the remaining amount is deposited in a bank and kept in a safe custody account to be delivered to children on their release.

This activity relating to vocational training is being gradually implemented in the Juvenile Reformatories in İzmir and Elazığ. Children working in the workshops of these two institutions receive an annual lump sum fee calculated at the profit rate determined by the Ministry.

Substantial improvements have been made in reorganisation activities taking into account the implementations in the Juvenile Reformatory in Ankara which is a pilot institution. This institution has been identified by the International Centre for Prison Studies as one of the best examples among similar institutions in other countries and has been the subject of a TV documentary produced by BBC, England the Discovery Channel, USA and the Swedish Tv.

3 AFTER RELEASE CARE ACTIVITIES

One of the main goals of treatment activities carried out in institutions is to ensure the child’s integration into the society. Detention in an institution necessitates a post-release activity that will facilitate the child’s adaptation to the ordinary world.

There is no exclusive legislation in Turkey relating to after release care and assistance activities. There are various instruments such as regulations and circulars or relevant
provisions provided in different legislation. However, since 1986, General Directorate has been implementing a project with the assistance and support of official, private and voluntary entities and organisations.

Assistance and guidance is provided under after release care and assistance activities to children who return to live with their families, so that they may resolve the problems they encounter at school, in the society and work life.

Children and youth who have nowhere to go after release or whose returning home to live with their family is considered to be inappropriate due to causes such as enmity etc. or who have no opportunity to continue with their education while staying with their family are placed in student homes and continue with their formal and informal education. Works are in progress to put into operation the second student home in 2002.

One of the most important problems faced in after release care activities is the failure to maintain the confidentiality of “Records of Convictions” especially for children in the 16-18 age group. This problem places a barrier for children and youth in issues that are of great importance for their future such as finding employment, benefiting from credit and hostel facilities in higher education, attending certain education institutions, being called up to military service as a supplementary officer.

III. REORGANISATION ACTIVITIES

1. LEGISLATIVE ACTIVITIES

One of the problems encountered in services directed at children under the supervision of the General Directorate is the lack of a separate juvenile legislation except Law numbered 2253 which dealing more with the procedure and measures applied to juvenile. Turkish Penal Code contains a number of provisions applied to juvenile as well as other law, by law and regulations.

Being aware of this deficiency, the Ministry continues to work towards enacting a separate legislation for children within the framework of the Convention on the Rights of the Child and other international instruments relating to the subject such as United Nations (Havana) Rules for the Protection of Children Deprived of their Liberty, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and an understanding of the requirements of modern education.

The Law No. 4675 on Supervisory Judges that entered into force on 16 may 2001 ensures that objections and complaints relating to services and practices in institutions are overseen by an independent judicial organ.

Law No. 4681 on Monitoring Boards for Penal Institutions and Detention Houses that took effect on 21 June 2001 provides that institutions be inspected at regular intervals by boards that qualify as civil society organisations and that reports drawn up further to these inspections be delivered to the Turkish Grand National Assembly and to executive organs such as Ministries or Directorates General for necessary action to be taken, thereby opening the institutions to the inspection of the society.

The “Draft Law on the Organisation and Duties of the General Directorate of Penal Institutions and Detention Houses” on which relevant authorities are currently working provides that;

* a Child and Youth Services Department be established to provide services to children in the 12-18 age group and youth in the 19-21 age group, under a single management,
* Observations and Measures Centres be established to make up the deficiencies in infrastructure at the trial stage,

* these type of institutions be given contemporary names that are not stigmatising such as training houses, observation houses instead of prisons and detention houses

* education services be inspected by the Ministry of National Education and health services by the Ministry of Health in order to make institutional services more effective.

Works on the “Draft Law on the Execution of Punishments and Measures” are currently in progress.

Those sections of the “Preliminary Draft of the Turkish Criminal Code” which are related to children give weight to precautions and envisage that a punishment be administered only in the event that all measures prove to be ineffective, and that the interests and education of the child be taken into account. The draft in question also includes provisions on the implementation of alternative models such as observation and precaution centres, conciliation institution etc.

Furthermore, works have commenced on a comprehensive regulation with a view to standardise the services provided to children who are under the supervision of this General Directorate and to bring the services in line with the provisions contained in international rules, recommendations and similar documents relating to this subject. The “Draft Regulation on the Operation and Management of Institutions Sheltering Children Under the Supervision of the General Directorate of Prisons and Detention Houses and the Treatment of Children” has been submitted for consideration to receive suggestions and criticism from institutions, organisations and persons who are specialised in theoretical and practical aspects of the subject. The studies are planned to be completed by 23 April 2002.

An additional Article is being prepared to be included in Law No. 2253 on Establishment and Trial Procedures of Juvenile Courts with a view to provide funds to the General Directorate to be used exclusively for services directed at children, in order to implement the new regulations introduced by legislation activities.

The “Law on Training Centres for Personnel Employed in Criminal Execution Institutions and Detention Houses” prepared with a view to establish the basic rules applicable to pre-service and in-service training to be provided to all personnel employed in institutions attached to the General Directorate, to ensure that such training is of a scientific nature and to establish the necessary training institutions is currently on the agenda of the Turkish Grand National Assembly.

The training of personnel serving children will be addressed by a separate unit when this law enters into force. Training is currently provided to personnel by the Staff Training Centre of Penal Institutions established in Ankara and put into service on 17 July 2000.

2. IMPROVEMENT OF THE PHYSICAL CONDITIONS OF INSTITUTIONS

A Improving the Physical Conditions of Existing Institutions and Transforming those that are Suitable to Juvenile Institutions

One of the major problems that should be resolved within the framework of reorganisation activities is the adult institutions also accommodating remand children. In this context, Elmadağ Juvenile Detention House which was put into service in 1988 and is one of the pilot institutions in the reorganisation of treatment programs was renovated in 2000 with contributions from a private organisation and necessary arrangements
Training course on Juvenile Justice

were made in education – training, social – cultural activities and in the premises used by children with a view to improve the physical conditions.

The second stage of works to be performed in 2002 in connection with the physical conditions of the institution in question includes the inclusion in the institution’s land of the area owned by the institution which remained outside the surrounding wall, the transformation of the existing building to a training unit, and additions to the premises such as living units composed of personal rooms for children, indoors sports hall and outdoors sports field, open meeting rooms for visits etc.

Convicted – remand women accommodated in the Women and Juvenile Detention House in Bakırköy will be transferred to another institution, existing buildings will be demolished and a modern detention house that will meet the educational needs of children will be constructed on the land giving due consideration to children’s age and the characteristics of the development period that they are in.

Another problem encountered with respect to physical conditions arises from accommodating children in the same institution together with adults in separate units. In order to solve this problem in the short term, plans are made to transform the district prison which is closest to the centre to a juvenile institution in provinces where the number of children in institutions is high. To this end, preparation works are under way to transform the Penitentiaries in İzmir, Torbalı and Adana, Karatay to a regional juvenile detention house. The architectural projects have been completed for both institutions and the construction works will commence in 2003.

In provinces where an appropriate district prison does not exist, plans are made to transform the facilities owned by institutions and organisations such as the private sector, local administrations etc. which are not used to juvenile detention houses.

Works are also in progress to improve the physical conditions of reformatories. In this context, repairs were made in the Juvenile Reformatories in Ankara and İzmir to transform the wards into rooms for six.

The Juvenile Reformatory in Elazığ, the architectural project of which has been completed will be repaired in 2002.

B Establishing Separate Institutions for Children

Repair and renovation works done and new arrangements made in juvenile institutions take as a model the standards and conditions of juvenile institutions in other countries which serve as a good model. The architectural projects of institutions include, to the extent possible, facilities such as administrative and entrance building, registration and reception unit, meeting rooms for visitors and lawyers, medical unit, academic and vocational training, training units for leisure time activities, individual sleeping spaces, social activity halls to spend time in the evenings, dining hall, small living units with sections to meet daily needs such as cleaning etc. for 16 or 20 persons, indoors and outdoors sports areas and outdoors promenade areas and a multi-purpose hall for plays, concerts and similar activities.

One of the major deficiencies in infrastructure is the deficiency of institutions for children for whom measures are envisaged to be taken further to trial. For this reason, another project planned to be carried out involves the establishment of “Measure Centres”.

Because Measure judgements are rendered with a view to protect children from being forced to commit an offence without including them in the criminal justice system, services directed at children about whom measures will be taken should be addressed with an inter-sectoral approach.
The preliminary works of the “Free Training Village – Child and Adolescent Development Centre Project” drawn up with the initiative of a voluntary organisation with a view to establish centres where precautionary judgements will be implemented have been completed and the Project is currently at the stage of drawing up a protocol. A protocol will be drawn up under the project in 2002 to establish the rules and procedures of cooperation between the Ministry of Justice, Ministry of National Education, Ministry of Health, Ministry of Labour and Social Security, the voluntary organisation leading the project and other sectors concerned, where the General Directorate of Social Services and Child Protection Agency will act as the coordinator.

The first model of the project in question is planned to be materialised in a vacant facility of the General Directorate of Social Services and Child Protection Agency in Ankara. The services to be provided under the project aim to break down the prejudice that the society has against these children, to raise awareness among the society on their responsibilities, to render relevant persons and organisations effective in this field, to provide support to children and youth so that they may take control of their lives by becoming aware of their inherent resources, to afford them an opportunity to become creative and productive, to train leaders among young persons who may work with youth in their respective regions, to expand the project and to render it sustainable.

3. PERSONNEL PROBLEMS AND IN-SERVICE TRAINING

The importance of the training of personnel serving children in the institutions is recognised and it is acknowledged that the existing in-service training programs are not simply sufficient. Therefore, activities are being carried out to develop a new in-service training model for the personnel in question.

These studies are carried out in cooperation with and with support from UNICEF Representative in Turkey, experts from the Council of Europe, The British Council UK, Training Department of this Ministry, Universities and other relevant institutions and organisations.

In-service training seminars were held under this study for the administrative staff and treatment and supervision personnel at the Juvenile Detention House in Bakırköy in November 1998; for the administrative staff and treatment personnel at Ankara Juvenile Reformatory and Elmadağ Juvenile Detention House in September 1999; for administrators, trainers and experts employed at the Juvenile Reformatories in Ankara, Elazığ and İzmir and at Juvenile Detention Houses in Istanbul – Bakırköy and Ankara – Elmadağ, in the institutions with a dense child population, as well as for volunteers contributing to these activities and members of the Legal Consultants Commission, in May – June 2001. The topics brought up for discussion at these seminars include in general, Development [child development and training, characteristics of and problems during the adolescence period etc.], Juvenile Delinquency [causes of juvenile and youth delinquency, factors forcing to commit an offence etc.], Psycho-Social Services [social service activities directed at children in institutions, psychological support services provided to children in institutions etc.], Rights of the Child [introduction of international instruments, life and child rights in the institution in line with the principles laid down in these instruments, rights and responsibilities of children in institutions, administration of institutions where children are detained etc.], Management [modern management, organisation and organisational problems, communication in management, management and stress etc.], Communication Skills [interpersonal communication processes, time structuring in communication, barriers to communication, communication strategies, use of acceptance messages, effective listening and expressing of oneself etc.], Intervention in Crises [identifying crisis, preparations for crisis intervention etc.]. Seminars are conducted using training methods that require effective and active participation of participants.
A new project that has been introduced in personnel training is being carried out in cooperation with the Scout Federation of Turkey. The project is considered to be an appropriate training model for children and supervision officials, which project has been initiated with a view to adapt to our institutions the “Scouting and Scout Master Training” activities that has been carried out by the Federation since 1912 taking the special conditions and adaptation to the environment as an opportunity and adhering to the principle that such training may be provided and developed in any environment where there are children and youth. Scout Mastership Training was provided under the project in February 2002 to a group of 40 guards selected from among those employed in juvenile institutions.

The supervision personnel who succeed in the training in question will carry out scout training activities for children in their respective institutions in consultation with experts employed in scout organisations attached to the Federation. Should the project produce a positive result, the activities in question will be expanded as an alternative training model for children and supervision personnel serving children, within the framework of a protocol to be drawn up with the Federation.

Similarly, in-service training seminars are planned to be organised this year for the personnel employed in five juvenile institutions, with the collaboration and contributions of UNICEF, Turkey.

4. REORGANISATION OF TREATMENT PROGRAMS

The Juvenile Reformatory in Ankara and the Juvenile Detention House in Elmadağ have been identified as pilot open and closed institutions respectively in the reorganisation of treatment programs. The programs implemented in these institutions will, after making up the deficiencies and correcting the imperfections, be expanded to other institutions taking into account regional and institutional differences.

As isolating children completely from the society and expecting them to adapt to the society on their return to ordinary life would not be a realistic approach, care is taken to ensure that;

- children establish sound relations with the society, by opening closed institutions accommodating remand children to public and private institutions and civil society organisations, subject to certain conditions;
- convicted children placed in reformatories are trained within the society by allowing them to benefit from education – training opportunities offered outside the institution;
- training – education activities carried out in institutions are planned in such a manner that they continue after the release of children.

A. Legal Consultants Project

Legal consultancy has been identified as one of the subjects which children under the supervision of the General Directorate need to be informed about. A “Legal Consultants Commission” attached to the Bar Association in Ankara was established in order to resolve this problem.

Offering advice to children in the Juvenile Reformatory in Ankara and Juvenile Detention House in Elmadağ during their stay in the institution and after their release, within the framework of the Protocol signed with the Bar Association of Ankara in September 2000, the Commission visits the institutions on a regular basis to hold individual and group meetings with children and helps them to resolve their legal problems.
It is contemplated to initiate a similar activity this year between the Bar Association of Istanbul and the Juvenile Detention House in Bakırköy. These activities will, after making up the deficiencies and correcting the imperfections identified during implementation, be expanded nationwide and primarily into the provinces where there are juvenile institutions.

B. Monthly Monitoring and Annual Evaluation Forms

The updating of the forms used to monitor treatment activities have been completed. Monthly Monitoring Forms which are currently used on a pilot scale will make it possible to monitor individually the treatment programs implemented for children and to offer orientation as necessary and in a timely manner. The forms will take their final form and be used in all institutions after the identification of deficiencies and imperfections during the pilot study, taking into account criticisms and suggestions put forward by institutions.

Annual Evaluation Forms that are currently being prepared in line with the above mentioned forms will make it possible to control the accuracy of information contained in monthly forms and to obtain sound statistical information about children.

Furthermore, the Data Processing Department of the Ministry launched a National Judicial Network Project in September 2000 with a view to connect the central and provincial organisations, to speed up judicial proceedings, to ensure the integration of court-houses, and to establish judicial and judgement support systems. This project which is currently pilot tested will, when finally carried out, make it possible to monitor and evaluate daily in computer medium the services provided by institutions.

C. Formal and Informal Education Activities

The indefiniteness of the period during which remand children will remain in the institution and their having no opportunity to benefit from education – training facilities outside the institution create problems in education programs. For this reason, the treatment activities directed at children are planned to be organised as short- and long-term programs.

Having had limited educational opportunities before being placed in the institution, these children do not have enough basic education. Therefore, there is a need to offer supporting courses continuously. However, difficulties are experienced in providing teachers for supporting courses.

A protocol has been drawn up with the relevant General Directorates of the Ministry of National Education to resolve the problems encountered in providing an adequate number of teachers for education – training activities as well as other problems. After the preparation of the text of the communiqué that will include the details of implementation, a short-term seminar will be held with the participation of principals of schools attached to the General Directorates taking part in this activity and a group composed of personnel employed in institutions. The protocol and the communiqué will take their final form in line with the opinions, suggestions and criticisms to be identified during the seminar, and will then be implemented in 2002.

As it is known that children learn better and any knowledge acquired lasts longer in an education system enriched with audio-visual materials, a three-party protocol is currently being prepared to establish Training Units enriched with audio-visual materials and supported by computers, televisions and VCDs at the Juvenile Detention House in Elmadag which will be appropriate for the development levels and abilities of children, where technical consultancy and technical support will be provided by a foundation that has demonstrated its expertise in providing such training opportunities to children with the training materials and “Training Unit” models they have prepared, and financial
contributions will be made by a private organisation which has always assisted us in our activities.

Educational activities aimed at developing mental capacity and analytical thinking, intellectual plays, creative drama, programs directed at developing creative thinking that are enriched with plays, education - training ‘support programs’, computer literacy, activities directed at developing computer skills in Internet and multimedia and social activities such as chess and photography club etc will be carried out at training units. All activities will be carried out under the responsibility of voluntary teachers to be employed in the institution by the foundation. After the signing of the protocol, technical equipment will be provided to training units and in-service training of teachers to be employed will be completed before the units are made available to children in 2002.

Distance Primary Education Schools and Distance Education High Schools are of great importance particularly for children in closed institutions to continue with their education. Activities relating to these schools are being carried out within the framework of the protocol signed with the Ministry of National Education.

The current protocol drawn up with the Ministry of National Education, General Directorate of Apprenticeship and Non-Formal Training to ensure that children who can not benefit from formal education due to their age or other reasons receive a qualified vocational training and enjoy their rights under the apprenticeship law will be revised and updated in 2002 with the participation of the Ministry of Labour and Social Security.

D. Psycho-Social Service Program

One of the issues on which particular emphasis is placed in reorganisation activities is the preparation of a separate Psycho-Social Service Program for children. To this end, a commission will be set up to work on this issue after the completion of the translation of sample programs requested from member countries of the Council of Europe by UNICEF, Turkey.

All records kept by institutions and measurement – evaluation materials used will be reorganised within the framework of the Commission’s activities.

Contacts have been made under this activity with the General Directorate of Special Education, Guidance and Counselling Services and Universities to receive support from the experts in the Guidance and Counselling Centres attached to the Ministry of National Education and from trainee students attending the relevant departments of Universities in order to resolve the problem caused by the inadequate number of personnel in institutions.
E. Cooperation with International Organisations and Inter-Sectoral Cooperation

Activities such as covering up the deficiency in the number of personnel, developing alternative education and service models, supporting in-house and post-release activities, ensuring continuity in activities are being carried out in cooperation with institutions and organisations outside the Ministry of Justice.

Activities such as legal regulations targeted at Children in Need of Special Protection Measures including children in conflict with the law, establishing a data bank and information network, training and capacity building directed at personnel, preparing treatment packages for children and developing alternative service models will be carried out within the framework of the Government of Turkey - NICEF Program of Cooperation, 2001 – 2005 Country Program.

The “Project for the Improvement of the Juvenile Criminal – Justice System in Turkey” has been drawn up under this activity and funds have been provided by the European Commission. Activities such as improving the legal infrastructure of the juvenile criminal – justice system in accordance with international instruments and primarily the Convention on the Rights of the Child; raising the capacity of all personnel included in the system such as public prosecutors, judges, institution staff, members of forensic medicine, members of bar associations and representatives of civil society organisations; establishing new service models such as alternative institutions, conciliation and developing treatment models are currently being carried out within the framework of the Project.

Ensuring transfer of knowledge on international good practices is one of the things needed most within the framework of reorganisation activities carried out by the General Directorate. To this end, a two days’ seminar conducted on 12 – 13 February 2002 with the support of the Council of Europe and with the participation of foreign experts to discuss issues such as alternative measures and institutions, psycho-social service programs, operation of institutions, cooperation with relevant sectors and after release follow-up, within the framework of services provided to children.

Similarly, a visit made to this end, at the end of February, to the juvenile institutions in England in collaboration with the British Council.

F. Board of Advisers

A Board of Advisers is planned to be established with the participation of lecturers employed in relevant departments of universities who are familiar with implementations, with a view to provide a scientific basis for reorganisation activities. The Board shall hold a meeting each month to evaluate the activities carried out in that month and shall put forward suggestions concerning the studies to be made in the month to follow.

IV. GENERAL ACTIVITIES CONCERNING CHILDREN DEPRIVED OF THEIR LIBERTY

1. MANUALS

A “Manual for Children Brought up to Security Units, Public Prosecutors’ Offices and Courts on Suspicion of Committing an Offence” was prepared as part of the first stage activities of the commission set up with the participation of representatives from the General Directorate of Prisons And Detention Houses, General Directorate of Social Services and Child Protection Agency, General Directorate of Public Security, General Commandership of
Gendarmerie, Courts, Bar Associations, Child Development and Turkish Language Departments of Universities, in order to prepare manuals to provide information to children who are deprived of their liberty on the treatment they will undergo in security units and in institutions they are placed, the legislation applicable to them and their rights and responsibilities. The manuals prepared in four different versions for children who have not completed eleven years of age, those in the 12 – 15, and 16 – 18 age groups and children in the 12 – 18 age group over whom State Security Courts have jurisdiction (those accused or sentenced for organise terror or mafia crimes) will be made available to children in 2002 after the completion of illustrations contained in the book.

The commission will continue with its works under this activity, in order to prepare similar manuals for remand and convicted children and officials serving children such as police, gendarmerie, lawyers and institution staff as well as for their families.

2. **STANDARDISATION OF STATISTICS ON JUVENILE DELINQUENCY**

Due to the inadequacy of statistical data, it is difficult to obtain accurate information about the number of children inclined to commit an offence. Statistics on this issue reveal a small portion of the whole. This coupled with the figures which have not been brought to light makes it impossible to identify the current situation relating to juvenile delinquency.

With a view to cover up the deficiency in information about the subject and to standardise the information gathered, forms have been prepared for children who come or are brought up to security units and are currently being used in 27 provinces representing 50% of the country, as part of the first stage activities of the commission carried out with the participation of the Ministries of Justice and Interior and relevant organisations, where responsibility is assumed by SIS and SPO acts as the coordinating agency.

The Judicial Statistics Branch of SIS has been approached to ensure that the commission continues with its activities in order to extend throughout the country the statistical data entitled “Statistics About Children Who Come or are Brought Up to Security Units” that has been published by SIS since 1997, and to prepare the formats in connection with children coming to prosecution offices, courts and institutions.

Upon the completion of commission’s activities, data to be gathered by SIS will be evaluated and published in a book annually and this activity will be included in the “Child Information Network” project carried out in cooperation with UNICEF and SIS.

3. **SYMPOSIUMS ON JUVENILE DELINQUENCY**

The First National Child and Crime Symposium was held in 2001 to discuss the topic entitled “Causes and Prevention of Juvenile Delinquency” with the cooperation of this General Directorate, a foundation that continuously provides support to the activities of the former and Ankara University, with a view to ensure that persons and organisations working on child rights and juvenile delinquency are acquainted with each other and exchange information and experiences. The papers presented at the Symposium will be published in a book by UNICEF, Turkey.

The Second National Child and Crime Symposium held on 10 – 12 April 2002 to discuss the topic entitled “Pre-Trial and Trial Process”.

The series of symposiums will continue and will address issues such as institutional treatment, after release care and assistance.
4. ESTABLISHMENT OF SEPARATE JUVENILE POLICE

A new and separate specially educated police organization have been established to deal with juvenile crime. The juvenile police have been organised separately from adult police in 84 cities. The police is not only dealing with juvenile delinquency but also serving for street children and other children under difficult circumstances. Only in Istanbul 8 juvenile protection centre were established. The police also implementing a “foster family” project by the project, volunteer families provided for the street children.

V. CONCLUSION

Humanity has an obligation to offer children the best of whatever it has in hand. Obligations do not necessarily have a basis in the field of human relations. However, it has a justification supported by the common approval of universal conscience. Everyone involved in human rights and particularly in forming social behaviour patterns towards children should bear in mind that this action has a conscientious goal. The conscientious measurement of human civilisation and progress is taken by the extent to which individuals and the society fulfil their obligations towards children and the extent to which these obligations are recognised as a right and reflected on law and justice.

Obligations have a hierarchy too which is determined by the extent of the weakness of individuals and individual groups in expressing and claiming their own rights and by the urgency of their requirements. Children occupy the first place in this hierarchy of human obligations. Because, they are the weakest group in expressing and asserting the rights granted to them by responsible adults. Furthermore, their ability to exercise the right to survival and development which is a fundamental human right depends to a great extent on the willingness and ability of adults to assume and discharge their duties in this respect.

Social development may be materialised by developing methods to use economic resources in the most useful way in terms of human development. Priority is given to children and youth in such development. Because the proper upbringing of children and youth who will be the adult citizens of tomorrow’s world is a prerequisite for the development of humanity in the future.

The basic element that will carry societies to the future and sustain their existence is undoubtedly children. Countries which are well aware of this fact are making efforts, by utilising all resources, to protect children and youth from all adversities they may face, to raise and to prepare them to the future in the best manner.

In fact, the conscientious measurement of human civilisation and progress is taken by the extent to which individuals and the society fulfil their obligations towards children and the extent to which these obligations are recognised as a right and reflected on law and justice.
REMAND JUVENILES

<table>
<thead>
<tr>
<th>Juvenile Detention Houses</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bakırköy</td>
<td>10</td>
<td>349</td>
<td>359</td>
</tr>
<tr>
<td>Elmadağ</td>
<td>64</td>
<td></td>
<td>64</td>
</tr>
<tr>
<td>Juvenile Sections of Adult Institutions</td>
<td>36</td>
<td>1235</td>
<td>1271</td>
</tr>
<tr>
<td>TOTAL</td>
<td>46</td>
<td>1648</td>
<td>1694</td>
</tr>
</tbody>
</table>

*January 2002*
## CONVICTED JUVENILES

<table>
<thead>
<tr>
<th></th>
<th>Female</th>
<th>Male</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reformatories</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ankara Reformatory</td>
<td></td>
<td>72</td>
<td>72</td>
</tr>
<tr>
<td>Elazığ Reformatory</td>
<td></td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>İzmir Reformatory</td>
<td>8</td>
<td>56</td>
<td>64</td>
</tr>
<tr>
<td><strong>Juvenile Detention Houses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bakırköy</td>
<td></td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Elmadağ</td>
<td></td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Juvenile Sections of Adult Institutions</strong></td>
<td>3</td>
<td>133</td>
<td>136</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>11</td>
<td>341</td>
<td>352</td>
</tr>
</tbody>
</table>

*January 2002*
**JUVENILES BY GROUP OF AGE * **

<table>
<thead>
<tr>
<th></th>
<th>Female</th>
<th>Male</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12-15</td>
<td>16-18</td>
<td></td>
</tr>
<tr>
<td>Ages</td>
<td>12-15</td>
<td>16-18</td>
<td></td>
</tr>
<tr>
<td>Ages</td>
<td>Ages</td>
<td>Ages</td>
<td>Ages</td>
</tr>
<tr>
<td>Remand</td>
<td>7</td>
<td>39</td>
<td>161</td>
</tr>
<tr>
<td>Convicted</td>
<td></td>
<td></td>
<td>1487</td>
</tr>
<tr>
<td>TOTAL</td>
<td>7</td>
<td>50</td>
<td>176</td>
</tr>
</tbody>
</table>

---

* Female 12-15 Ages
* Female 16-18 Ages
* Male 12-15 Ages
* Male 16-18 Ages
* Male 19-21 Ages**

* January 2002
** [The juveniles whose attitude and behaviour are developing in a positive manner can stay in the reformatories until the ages of 21 in order to complete their education.]
### JUVENILES BY SEX

<table>
<thead>
<tr>
<th></th>
<th>Convicted</th>
<th>Remand</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>11</td>
<td>46</td>
<td>57</td>
</tr>
<tr>
<td>Male</td>
<td>341</td>
<td>1648</td>
<td>1989</td>
</tr>
<tr>
<td>TOTAL</td>
<td>352</td>
<td>1694</td>
<td>2046</td>
</tr>
</tbody>
</table>

* January 2002
JUVENILES BY THE TYPE OF CRIME*  

<table>
<thead>
<tr>
<th></th>
<th>FEMALE</th>
<th></th>
<th>MALE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Remand</td>
<td>Convicted</td>
<td>Remand</td>
<td>Convicted</td>
</tr>
<tr>
<td>Against People</td>
<td>20</td>
<td>11</td>
<td>409</td>
<td>146</td>
</tr>
<tr>
<td>Against Property</td>
<td>15</td>
<td>3</td>
<td>606</td>
<td>154</td>
</tr>
<tr>
<td>Sexual Crimes</td>
<td>1</td>
<td>177</td>
<td>95</td>
<td>60</td>
</tr>
<tr>
<td>Terrorism</td>
<td>6</td>
<td>2</td>
<td>28</td>
<td>7</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>428</td>
<td>58</td>
<td></td>
</tr>
</tbody>
</table>

* January 2002
### Educational Status at the Time of Imprisonment*

<table>
<thead>
<tr>
<th>Educational Level</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>[1] Illiterate</td>
<td>11</td>
<td>156</td>
<td>167</td>
</tr>
<tr>
<td>[2] Literate</td>
<td>7</td>
<td>198</td>
<td>205</td>
</tr>
<tr>
<td>[3] Primary School Drop Out</td>
<td>71</td>
<td>71</td>
<td>142</td>
</tr>
<tr>
<td>[4] Primary School Graduate</td>
<td>26</td>
<td>1045</td>
<td>1071</td>
</tr>
<tr>
<td>[6] Junior High School Graduate</td>
<td>4</td>
<td>288</td>
<td>292</td>
</tr>
<tr>
<td>[8] High School Graduate</td>
<td>4</td>
<td>50</td>
<td>54</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>57</td>
<td>1989</td>
<td>2046</td>
</tr>
</tbody>
</table>

* January 2002
### NUMBER OF INSTITUTIONS

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed Institutions for Adults</td>
<td>492</td>
</tr>
<tr>
<td>Open Institutions for Adults</td>
<td>36</td>
</tr>
<tr>
<td>Reformatories</td>
<td>3</td>
</tr>
<tr>
<td>Juvenile Detention Centers</td>
<td>1</td>
</tr>
<tr>
<td>Woman &amp; Juvenile Detention Center</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>533</strong></td>
</tr>
</tbody>
</table>
### NUMBER OF PERSONNEL

<table>
<thead>
<tr>
<th>Position</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>893</td>
</tr>
<tr>
<td>Doctor</td>
<td>171</td>
</tr>
<tr>
<td>Dentist</td>
<td>51</td>
</tr>
<tr>
<td>Psychologist</td>
<td>42</td>
</tr>
<tr>
<td>Social Worker</td>
<td>44</td>
</tr>
<tr>
<td>Teacher</td>
<td>144</td>
</tr>
<tr>
<td>Guardian</td>
<td>17.982</td>
</tr>
<tr>
<td>Chief Guardian</td>
<td>3.199</td>
</tr>
<tr>
<td>Other Staff</td>
<td>3.046</td>
</tr>
</tbody>
</table>
PART IV : CONCLUSIONS
OUTCOME REPORT ON SION MEETING

1. A Law on the Rights of the Child should be enacted in a holistic approach in order to realise child rights.

2. Legal and administrative regulations should be made to protect children against offences and similar social risks; institutions should be established to implement these regulations and measures taken so that these institutions operate effectively.

3. Policies should be formulated and services provided to prevent juvenile delinquency. Amendments should be made from this perspective in legislation relating to the institutions responsible for the care, supervision, protection and education of the child. For example, in this context, punishment by being temporarily left out of formal education should be deleted from the disciplinary legislation of national education.

4. Civil society should be involved in the care, supervision and protection of children and in the provision of related services; and legislation on SHÇEK (Social Services and Child Protection Agency) should be amended to allow NGOs to provide services in this field.

5. An authority should be appointed at provincial administration level and entrusted with the task of coordinating the services provided in the society to assure the development and protection of children.

6. In the event of the child’s being in conflict with the law, the justice system should aim to secure the rights of and to provide education to the child. Punishment should be considered as a last resort when the child’s problem can not be solved by any other way and only when this would be beneficial to the child’s education. Any measure or punishment that restricts the freedom of a child who is in conflict with the law should definitely be the last resort.

7. When determining the measures to be taken with respect to any child, the rule should be to carry out measures in such a manner so as to remove any obstacles to the development of the child’s personality.

8. Criminal justice system should be considered as a last resort in the solution of the child’s problems. In order to attain this, alternatives other than prosecution should be provided and interrogating authorities should be allowed to exercise discretion to apply remedies other than prosecution. (eg. deferment of public prosecution, conciliation, etc)

9. Trials involving children should be conducted in institutions specific to children. Discrimination on the basis of age and offence committed should be eliminated and the establishment of juvenile courts should be completed in an expeditious manner. Cases that make an exception to the rule of being tried before a child-specific authority should be revised
in order to give priority to the interests of the child. In this context, any action consolidated in the event of the child’s committing an offence together with adults should be brought before a juvenile court.

10. Juvenile courts should be composed of a single judge, and action should be taken to ensure that children are tried at those courts located at the place where they live.

11. Measures should be taken to ensure that the principles of human rights law are respected in any decision relating to the personal rights and freedoms of the child. The right to fair trial should be guaranteed in any action involving children.

12. The judges of juvenile courts should have a duty to monitor the outcomes of any judgement passed on the child and to inspect the institutions where children are placed.

13. A comparative examination of laws needs to be made, an evaluation of implementation should be made in its place and there should be ongoing cooperation between international organisations, NGOs and the administration.
FINAL REPORT

1. Request

Following the first seminar in Istanbul (14-18.6.2000), where Ms. Winter and Mr. Zermatten have presented the main international principles that govern juvenile justice, it has had several requests of some participants that wanted to broach more deeply a problematic that exists in Turkey. In fact, juvenile justice is still at its embryonic state and especially unequally developed in the various regions. Thus, you find only 6 juvenile courts for 70 millions inhabitants (in Switzerland you have 26 juvenile courts for 7 millions inhabitants). This situation brings many problems and the juridical instances have no choice but the one of punitive actions.

After this event, Ms Winter has made two visits to Turkey. These visits were a wish of UNICEF-Ankara (2001-2002) for sustainable action. Thus, UNICEF-Ankara proposed to send an official Turkey delegation for a sensibilization cause for juvenile justice. Initially, this course was foreseen in 2002 (autumn), but due to elections in Turkey, it has been postponed to March 2003. This course has obtained high level governement authorization.

2. Purposes

Purposes of this course were :
- Permit the meeting, outside context, of juvenile justice Turkish actors;
- Participants’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 Turkey system;
- Show realistic instruments for Turkey (institutions);
- Explain that there are other possible answers that deprivation of liberty, notably alternatives like mediation;
- Make useful recommandations for Turkey
- Assure a Seminar follow-up, under a form to be determined.

3. Events

The seminar took place during five days (March 24-28), with a specific subject for each day. The working method was practical/theory confrontation by plenary presentations, workshops and visits (three institutions visited). Participants came from the academic field and the practice field.

A cultural visit about the subject (exhibition; «Trop de peine, femmes en prison ») and a convivial dinner have been organized. These moments are important for participants cohesion.

Participants wanted free evenings, 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 meals were turned down by a small number of participants.
The working language was English, but several participants talked only Turkish. Two Turkish interpreter made the translation.

4. Participants

See appendix 1 for the list of participants.

The chief of delegation was M. Hüseyin Boyrazoglu (Deputy Secretary of State) Ministry of Justice.

Participants came from Ministry of Justice (12), Ministry of the Interior (3), Ministry of national Education (2), Social Services and Work Ministry (2), Istanbul Government, (2) Istanbul Bar (1), Universities (3) and the Child Foundation (NGO).

Professions represented was: judges (5), procurators (2), policemen (3), social workers (3), teachers (3), representatives of Ministry or official Services whose academic background is unknown (5), jail directors (2).

Mme Siyma Barkin represented UNICEF-Ankara, Protection and Education Service.

Two interns of IDE have participated at this course (Ms Padilla from Colombia and Ms Theingi from Myanmar).

5. Speakers

The direction of the course was assured by Ms Renate Winter, judge in United Nations International courts in Kosovo and Sierra Leone.

Speakers :
- Ms Nesrin Lushta, judge, Training Director of formation Center judges of Kosovo;
- Mr. Roland Miklau,(Vice-minister), Ministry of Justice, Vienna ;
- Professor Feridun Yenisey, Bahcesehir University, Law Faculty (private) Istanbul
- Mr. Jean-Pierre Heiniger, consultant and (former Director) Institution, Mex, Switzerland.
- Mr. Christian Nanchen, (head of office of the Valais child protection), Sion
- Mr. Jean Zermatten, (Juvenile Judge), Director of IDE.

Unfortunately, two slated collegues could not join the training:
- Ms Prof Hajrija Siercic Colic, Sarajevo University, sick;
- Mr. William Irvine, Directror of Law Department UN MIK, due to Iraq events.

Several members of the Turkish delegation have presented papers about different subjects.
6. Programme

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 Turkish officials and “foreigners” or among Turkish 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. On Friday March 28th, the most prominent members of the Turkish delegation were the guests of the UN Turkish diplomatic mission in Geneva. Visits of institutions counted: St Rapahæl, Pramont, and the Fontanelle (girls section) in Vérossaz. 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 regrettable. 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.

7. Recommendations

Turkish participants presented a list of eleven recommendations through Prof Yenisey. They were drafted after a first proposition issued on Thursday 27th in the evening, discussed until 02:00 a.m. by the delegates and finally approved during the March 28th plenary session. These recommendations are joined in Annex II.

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. IDE foresees a two-fold follow-up:
first of all the publishing of a working report on the works of the Sion week; a special section will deal with Swiss legislative basis in the field (positive and future law). Participants were showed a deep interest for the Swiss model, even if federalism has proved awkward to understand (and apply) sometimes.

- the possible setting up of a training Seminar dedicated more precisely to practice in Turkey. UNICEF seems ready to be a facilitator of such a meeting either in Istanbul or in Ankara. This session’s main speakers are available to run a second training, focused more precisely on good practices.

Sion, March 28th 2003
IDE/JZ

Annex I : list of participants
Annex II : list of recommandations
SION STUDY VISIT ON UPGRAADING
THE JUVENILE JUSTICE SYSTEM IN TURKEY.
PARTICIPANT LIST

MINISTRY OF JUSTICE

1. Deputy Undersecretary (Delegation Head)
   BOYRAZOĞLU
   Hüseyin

2. Director General of Law
   Mehmet TUCUK

3. Training Centre for the pre-service training of judiciary
   Fatma ÇAMLİBEL

4. Prisons General Directorate, Department Head
   Necati NURSAL

5. Prisons General Directorate, Training Department Judge
   Kasım İLİMOĞLU

6. Training Centre of the Ministry, Judge
   Orhan YALMANCI

7. Planning Coordination Unit, Judge
   Sadettin YAMAN

8. Laws GD, Judge
   BALO
   Yusuf Solmaz

9. Istanbul 2. Child Court Judge
   Sevin ÇELİK

10. Istanbul 2. Child Court Prosecutor
    Tahsin EROĞLU

11. Prison General Directorate Child Section
    Aygül NALBANT

12. Ankara 1. Child Court Social Worker
    Necati YEŞER

BAROLAR

13. Istanbul Bar Child Rights Centre
    Seda AKÇO

LABOUR AND SOCIAL WELFARE MINISTRY

14. Deputy Undersecretary
    Yılmaž BABÜR

15. Social Services and Child Protection Agency
    Zeynep NEFES

MINISTRY OF INTERIOR

Security General Directorate
16. Public Law Section Head Mutlu ÇELIK
17. Child Police Section Murat GÜLLER
18. Gendarmerie Metin COSKUN

MINISTRY OF NATIONAL EDUCATION
19. Counselling and Special Education Dep. Director General Ali Haydar SILDIROGLU

İSTANBUL GOVERNORATE
20. Deputy Governor Mehmet SEYMAN
21. National Education Provincial Director Ülkü BEŞKARDEŞ

UNIVERSITIES
22. Bahçeşehir University Law Department YENİSEY Prof. Dr. Feridun
23. Marmara University Law Department ZAFER Yrd. Doç. Hamide
24. İstanbul University Law Department GÜLAN Doç. Dr. Aydınl

NGOS
25. Child Foundation Mustafa Ruhi ŞİRİN

UNICEF TURKEY
26. Education and Protection Section Şiyma BARKIN

TRANSLATORS
27. İşıl DEMIRKAN
28. Belkıs DISBUDAK