



Juvenile Justice in Europe – Reform Developments in the Light of International Human Rights Standards

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1. Basic philosophies and principles of juvenile justice

- **Juvenile Justice emerged in the early 20th century because of the evidence...**
- **...that juveniles are in a difficult situation of transition which could be better overcome by educational support instead of punishment,**
- **...that juvenile delinquency and crime is of an episodic nature which regularly disappears upon integration into family and professional life in early adulthood.**



Basic philosophies and principles of juvenile justice (2)

- **Basic principles therefore are:**
- **minimum intervention (priority to diversion),**
- **education instead of punishment,**
- **restorative justice (conflicts between victim, offender and society can be solved outside the justice system),**
and
- **punishment, particularly deprivation of liberty, as a last resort.**



2. Typologies of juvenile justice systems

- **Welfare model**
- **Justice model**
- **Restorative justice (mediation, family conferencing etc.)**
- **Combinations of welfare and justice including minimum intervention and elements of restorative justice**
- **“Neo-correctionalist” orientations, see the typology of *Cavadino & Dignan* (2006, p. 199 ff.).**
- **Nowhere has one single model prevailed on its own. Even in welfare models human rights and legal guarantees have been or are to be implemented.**



Characteristics of the welfare model

- **Education instead of punishment as „Leitmotif“**
- **No *criminal* responsibility**
- **Reactions (sanctions) of the juvenile court or youth authorities on behalf of criminal as well as other (anti-social) behaviour which can be interpreted as a danger for the educational situation (e. g. truancy, running away from home etc.)**
- **Dominant role of the juvenile judge (not necessarily a legal professional) with great discretionary power**
- **Sanctions in principle are of an indeterminate nature.**
- **They end when the “resocialisation” of the juvenile has been successfully completed.**



Characteristics of the justice model

- **Punishment should be proportional to the offence.**
- **Educational needs do not justify disproportionate sanctions.**
- **Education is given priority, but punishment as „ultima ratio“ (last resort) is also possible.**
- **In juvenile court procedures the juvenile has the same procedural rights and safeguards (e. g. legal entitlement to a defence lawyer) as an adult.**
- **The juvenile court dispositions are restricted to criminal behaviour (excluding so-called status offences).**
- **Dominant role of lawyers (judge, juvenile prosecutor, defence lawyer), social workers etc. only offer advice in the phase of sentencing.**
- **Sanctions are of a determinate and proportional nature.**



Characteristics of the justice model (2)

- **Educational needs or other goals never justify that juveniles have fewer legal rights and safeguards than those provided to adult offenders**
- **See in this respect Rule 13 of the European Rules for Juveniles Subject to Sanctions and Measures (ERJSM) of 2008**



Characteristics of the restorative justice model

- **Emphasis on extra-judicial conflict resolution.**
- **Re-integration through measures that involve victim, offender and society (e. g. „re-integrative shaming“, see *J. Braithwaite*).**
- **Mediation, family group conferences and other “communitarian” approaches which strengthen the bonds to members of the local community.**
- **Criminal acts are not seen as a legal problem, but as a conflict which can be solved by the parties and their social environment.**
- **All sanctions aim at restoring the peace between victim and offender and in society in general.**



The minimum intervention model

- **Emphasis on extra-judicial reactions, particularly diversion (in order to avoid stigmatisation, „labelling“).**
- **Principle of “subsidiarity” of criminal sanctions compared to educational reactions:**
 - **„education instead of punishment“,**
 - **„community sanctions instead of deprivation of liberty“.**
- **Limitations of sanctions by the principle of proportionality.**
- **This model widely overlaps with the justice model (see e. g. Germany).**



The neo-correctionalist model

- **Punishment as a “just deserts”-approach**
- **Educational goals are not totally abandoned, but the emphasis on risk assessment implies secure facilities of welfare authorities as well as closed youth prisons for /very young) persistent or violent offenders**
- **Emphasis is given to the principle of responsibility (“responsibilisation”),**
- **not only concerning the young offender, but also his parents or those responsible for his education**
- **⇒ “parenting orders”**
- **Extending social control by “criminalizing other deviant behaviour by “Anti-Social-Behaviour-Orders” (ASBOs)₁₁**



The new „mix“ – a little bit of everything? or: convergence of juvenile justice systems and policies?

- **The Council of Europe’s Recommendation 2003 (20) contains a mixture of welfare, justice, restorative justice, “minimum interventionist” and neo-liberal philosophies,**
- **a warehouse of juvenile justice policies?**
- **Dangers and advantages.**
- **Even if we recognise some common sense of a European philosophy of juvenile justice, this has not had a harmonising effect regarding the age of criminal responsibility (see also Dünkel 2003).**

3. The scope of juvenile justice: Age of criminal responsibility – comparative aspects

Country	Minimum age for educational measures of the family/youth court (juvenile welfare law)	Age of Criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth detention/ custody or similar forms of deprivation of liberty
Austria		14	18/21	14-27
Belgium		18	16**/18	Only welfare institutions
Belarus		14***/16	14/16	14-21
Bulgaria		14	18	14-21
Croatia		14/16*	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mit. sent.)	15-19
Denmark****		14	14/18/21	14-23

England/Wales		10/12/15*	18	10/15-21
Estonia		14	18	14-21
Finland****		15	15/18	15-21
France	10	13	18	13-18 + 6 m./23
Germany		14	18/21	14-24
Greece	8	13	18/21	13-21/25
Hungary		14	18	14-24
Ireland		10/12/16*	18	10/12/16- 18/21
Italy		14	18/21	14-21
Latvia		14	18	14-21
Lithuania		14***/16	18/21	14-21
Macedonia		14***/16	14/16	14-21
Moldova		14***/16	14/16	14-21
Montenegro		14/16*	18/21	14-23
Netherlands		12	16/18/21	12-21

Northern Ireland		10	17/18/21	10-16/17-21
Norway****		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12		16/21	12/16-21
Romania		14/16	18/(20)	16-21
Russia		14***/16	18/21	14-21
Scotland	8	16	16/21	16-21
Serbia		14/16*	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14***/16	18/21	14-23
Spain		14	18	14-21
Sweden****		15	15/18/21	15-25
Switzerland		10	18/25	10-22/17-25/30
Turkey		12	15/18	12-18/21
Ukraine		14***/16	18/21	14-21

* Criminal majority concerning juvenile detention (youth imprisonment etc.);

** Only for road offences and exceptionally for very serious offences; *** Only for serious offences;

**** Only mitigation of sentencing without separate juvenile justice legislation

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3.1 The case of (18-21 years old) young adults

- **In its Recommendation (2003) 20 the Council of Europe recommends to include also young adults into the juvenile justice system according to the personal development of the offender.**
- **The ERJOSSM go even further and propose that “young adults, where appropriate, may be regarded as juveniles, and dealt with accordingly” (No. 17 ERJOSSM).**
- **This principle is widely recognised in Europe as sociological, developmental-psychological and criminological evidence reveals that young adults very often are not yet fully mature and integrated to adult life.**
- **Therefore there are good reasons to generally treat young adults like juveniles (as is the practice in Germany).**



Young adult offenders in European countries

- **In general one can differentiate three models of legislation:**
- **Countries with special regulations within the juvenile law which make the educational measures applicable also for young adults (e.g. Germany)**
- **Countries with special regulations in the General Criminal Law mitigating the sentences imposed on young adults (e.g. the Scandinavian countries)**
- **Countries with no special rules for young adults at all: The almost unique cases of England and Wales, Bulgaria, Estonia, Latvia, Turkey and Spain!***
- *** Spain had introduced a rule similar to the German one in 2000, but abolished it before coming into force in 2006**



Countries with
special rules
for young adults
*in the general
criminal law
concerning
mitigating
sentences*



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



Countries with *no
special rules for
young adults*

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



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

- **In contrary to the USA in Europe so-called waiver procedures in Europe are provided only exceptionally.**
- **The transfer of 16-17-year-old juveniles in very serious cases is possible in Belgium and in the Netherlands, and in Poland at the age of 15, in England/Wales all juvenile offenders (10-17) can be transferred to courts for adults resp. the Crown Court in very serious (murder) cases.**
- **All other 20 countries with special youth courts or committees do not allow such transfers.**
- **The reason may be that juvenile court dispositions in England/Wales and the Netherlands (maximum youth penalty: 2 years) are more restricted than e. g. in Germany (max. pen. = 10 y.)**



4. General trends in reforming juvenile justice systems

- **The 1960s and 1970s:**
- **The debate was mainly influenced by the four D's!**
- **diversion,**
- **decriminalization,**
- **deinstitutionalization** (particularly of status offenders),
- **due process**
- **Late 1970s and 1980s:**
- **Developing new community sanctions: community service, educational training courses, mediation**



General trends in reforming juvenile justice systems (2)

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



General trends in reforming juvenile justice systems (3)

- **Since the mid 1980s and during the 1990s:**
- **The four R's:**
- **responsibility/“responsibilisation” („no more excuses“, including the parents of the juvenile offender),**
- **restitution (reparation),**
- **restorative justice,**
- **retribution (e.g. from „community treatment“ to „community punishment“),**
- **The neo-liberal orientation as the „*Leitmotif*“ for the 21st century?**



What have been the guidelines of recent juvenile justice reforms?

- **World wide:**
- **The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (so-called Beijing-Rules) of 1985**
- **The Convention on the Rights of the Child of 1989**
- **The United Nations Guidelines for the Prevention of Juvenile Delinquency (so-called Riyadh-Guidelines) of 1990**
- **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990**
- **Model Law on Juvenile Justice**



Guidelines of recent juvenile justice reforms (2)

- **Europe:**
- **Earlier Recommendations of the Council of Europe emphasising education, reintegration, minimum intervention, priority of alternatives to pre-trial detention and youth imprisonment (see Rec (87) 20, (88) 6).**
- **which are in line with the new CoE Recommendation (20) of 2003.**
- **Particularly Middle and Eastern European countries:**
- **Leaving the former soviet approach, establishing youth courts and developing a more moderate sanctions system and practice (often influenced by Austrian and German law), problems of implementation.**



Reform tendencies in a European comparative perspective

- The development in the 1980s was strongly influenced by the principle of „minimum intensive intervention“,
- *minimum intervention model*,
- i. e. the as far as possible avoiding of criminal procedure, and particularly of being prosecuted (Diversion) und penal sanctions, particularly of
- *deprivation of liberty, which should be a measure of last resort („ultima ratio“).*
- In the 1980s, but particularly in the 1990s, above all :
- Getting tough policy for example in England/Wales, Netherlands, France:



Reform tendencies in a European comparative perspective

- **England/Wales: „no more excuses“** („responsibilisation“, „getting tough on crime and on the causes of crime“) and the Criminal Justice and Public Disorder Act of 1998;
- **For example: community sanctions shall be „tough“ and „credible“.**
- **from „community treatment“ in the 1960ies to „community punishment“ („neo-correctionalist model“, see Cavadino/Dignan 2005).**
- **The neo-correctionalist model as „Leitmotiv“ of the 21st century?**



5. Reform trends in selected countries

- **Belgium 2006: maintaining the welfare approach**
- **Denmark 1998/2001: new stricter alternatives and combined sanctions**
- **Greece 2003: Diversion and mediation/community sanctions**
- **Northern Ireland 2000/2002: family group conferencesconferencing**
- **France 2002-2007: more speedy trials and serious punishments of recidivists**
- **Switzerland 2007: moderate increase of youth penalties, but maintaining the orientation at education and welfare as priority to youth detention**



Examples of recent reforms

- **Belgium 2006:**
- **The welfare approach of the 1965 law has been maintained by the reform act of 2006.**
- **Elements of restorative justice have been implemented.**
- **The age of criminal responsibility remains 18, exceptionally for very serious cases a transfer to adult criminal courts is possible for 16 years old juveniles.**
- **New sanctions of the Youth Protection Act are:**
- **Reparation (taking responsibility, but not in the sense of „guilt“ as a concept of criminal law)**
- **Community service, educational training measures, mediation, family group conferences are given priority.**



Denmark

- **1998: Introduction of the so-called *youth contract sentence*.**
- **The juvenile accepts the obligation to certain duties such as to participate at educational, general training, school or vocational training measures etc.; the prosecutor dismisses the case (= diversion)**
- **2001: Introduction of a specific *youth sentence* (to be imposed by the court)**
- **Three phases: secure accommodation (closed units), open facilities, aftercare after release**
- **Length of the total sentence: 2 years, of them: a maximum of 18 months in phase 1 + 2, a maximum of 12 months in phase 1**
- **This means a harshening of sentencing as before 2001 courts used to apply very short prison sentences in cases of juveniles**



6. The Recommendation of the Council of Europe on “*New ways of dealing with juvenile delinquency and the role of juvenile justice*” (1)

- **Principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be**
- **to prevent offending and re-offending;**
- **to (re)socialise and re-integrate offenders and**
- **to address the needs and interests of the victims (No. 1).**
- **The juvenile justice system should be seen as one component in a broader community-based strategy for preventing juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs (No. 2).**



The CoE Recommendation (2003) 20 (2)

- **Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending (No. 3).**
- **More appropriate and effective measures to prevent offending and re-offending by young members of ethnic minorities, groups of juveniles, young women, and those under the age of criminal responsibility also need to be developed (No. 4).**
- **Interventions with juvenile offenders should be based as much as possible on scientific evidence on what works with whom and under which circumstances (No. 5).**



New Responses (1)

- **Expansion of the range of suitable alternatives to formal prosecution should continue (No. 7, respecting the principle of proportionality and the best interests of the juvenile).**
- **To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures.**
- **... They should also involve the offender's parents ... (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim (No. 8).**



New Responses (2)

- **Parents ... should be encouraged to become aware of and accept their responsibilities in relation to the offending behaviour of young children. ... They should be required, where appropriate, to attend counselling or parent training courses ... (No. 10).**
- **Culpability should better reflect the age and maturity of the offender, and be more in step with the offender's stage of development, with criminal measures being progressively applied as individual responsibility increases (No. 9).**
- **Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions ...**



New Responses (3)

- **The Recommendation focuses on the problem of pre-trial detention: priority of alternatives, risk assessment and a maximum period of 6 months (No. 16-18).**
- **For juveniles deprived of their liberty:**
- **a phased approach to reintegration should be adopted, using periods of leave, open institutions, early release on licence and resettlement units.**
- **Resources should be invested in rehabilitation measures after release and this should, in all cases, be planned and carried out in close co-operation with outside agencies.**



Key words of the CoE Recommendation (2003) 20

- **Prevention and (re-)integration**
- **evidence based interventions**
- **priority of diversion and alternative sanctions**
- **„flexibilisation“ of age limits (⇒ young adults)**
- **preparation of release and aftercare**
- **good implementation**
- **partnerships of agencies**
- **monitoring and evaluation**
- **dissemination of „good practices“**



7. The “European Rules for Juvenile Offenders Subject to Sanctions and Measures”, 2008

- In 2006 the Council for Penological Cooperation of the Council of Europe set up an expert group to draft a Recommendation for juveniles under community sanctions and measures as well as for juveniles deprived of their liberty, as the new European Prison Rules (EPR) and the Recommendation (92) 16 on community sanctions and measures do not cover juveniles.**
- The Recommendation (2003) 20 on “New ways of dealing with juvenile delinquency and the role of juvenile justice” explicitly urges to adopt such Rules.**



European Rules for Juvenile Offenders Subject to Sanctions and Measures (2)

- **As to deprivation of liberty the task was to draft standards for all forms like:**
- **youth custody (juveniles sentenced to youth custody or “imprisonment”, serving their sentence regularly in institutions of the prison administration)**
- **pre-trial detention and other forms of preliminary deprivation of liberty**
- **detention in welfare facilities**
- **juveniles in psychiatric hospitals.**



European Rules for Juvenile Offenders Subject to Sanctions and Measures (3)

- **The drafting has been done by the Council for Penological Cooperation (PC-CP) with its 9 members, which works under the authority of the European Committee for Crime Problems (CDPC)**
- **The PC-CP is chaired by:**
- ***Sonja Snacken* (Belgium)**
- **The three scientific experts who assisted the PC-CP in its work were:**
- ***Andrea Baechtold*, Bern/Switzerland**
- ***Frieder Dünkel*, Greifswald/Germany**
- ***Dirk van Zyl Smit*, Nottingham/England.**



European Rules for Juvenile Offenders Subject to Sanctions and Measures (4)

- **The work has been finished in May 2008.**
- **The Rules have been approved at the beginning of June 2008 at the CDPC and adopted by the Committee of Ministers on 5th of November 2008 as Rec(2008)11.**



Structure and contents of the Rules

- 1. Basic Principles, scope and definitions (Rules 1-22)**
- 2. Community Sanctions and Measures (Rules 23-48)**
- 3. Deprivation of Liberty (Rules 49-119)**
- 4. Legal advice and assistance (Rule 120)**
- 5. Complaints procedures. Inspection and monitoring (Rules 121-126)**
- 6. Staff (Rules 127-134)**
- 7. Evaluation, research, work with the media and the public(Rules 135-141)**
- 8. Updating the Rules (Rule 142)**



„Basic Principles“

- The Recommendation contains the following Basic Principles:
 1. *Juveniles who are the subject of intervention by the state as a result of criminal activities shall be treated with respect for their human rights.*
 2. *The sanctions or measures that may be imposed on juveniles as well as the manner of their implementation shall be specified by law and based on the principles of social integration and education and on the prevention of re-offending.*



„Basic Principles“ (2)

- 3. Sanctions and measures shall be imposed by a court or if imposed by another legally recognised authority they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.*



„Basic Principles“ (3)

4. *The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.*
5. *The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.*



„Basic Principles“ (4)

6. *In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.*
7. *Sanctions or measures shall not humiliate or degrade the juveniles subject to them.*



„Basic Principles“ (5)

8. *Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.*
9. *Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).*



„Basic Principles“ (6)

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.

11. Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).



„Basic Principles“ (7)

12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures.

Under no circumstances shall juveniles have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.



„Basic Principles“ (8)

14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where it is appropriate to do so.



„Basic Principles“ (9)

15. Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure an holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).

16. In the application of sanctions and measures the identity of juveniles and confidential information about them and their families shall not be made public or conveyed to anyone who is not authorised by law to receive it.



„Basic Principles“ (10)

- 17. Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.*
- 18. All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.*



„Basic Principles“ (11)

- 19. Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.*
- 20. The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.*



ERJOSSM: Recommendations for Community Sanctions and Measures

- **Principles:**
- *A wide range of community sanctions and measures at all stages of the process (Rule 23.1) and*
- *adjusted to the different stages of development of juvenile offenders, shall be provided.*
- *Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offence committed by the juvenile*

Contents and legal safeguards

- **Limits: no humiliating or meaningless community sanctions**
- **Only determinate sanctions (see Basic Principle No. 3)!**
- **Non-compliance shall not lead automatically to deprivation of liberty. Where possible, modified or new community sanctions shall replace the previous ones (Rule 30.1).**
- **Failure to comply shall not automatically constitute an offence (Rule 30.2).**
- **Where a revocation or modification of a community sanction is being considered, due account shall be taken of the extent to which the juvenile has already fulfilled the requirements of the initial sanction (Rule 48.4).**
- **Quality management and evaluation**



ERJOSSM: Rules for deprivation of liberty

- „General part“ (Principles):
- *Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent in it (Rule 49.1).*
- All forms of deprivation of liberty
- Pre-trial and other preliminary detention.
- Psychiatric detention
- Welfare institution
- Youth imprisonment



- *Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and programmes to foster their health, self-respect and sense of responsibility and to develop attitudes and skills that will assist their reintegration into society.*
- *As juveniles deprived of their liberty are highly vulnerable, the authorities shall ensure that the physical and mental integrity and well-being are protected.*
- *Particular attention shall be paid to the needs of juveniles who have experienced physical, mental or sexual abuse.*



Recommendations for juveniles deprived of their liberty

- **Particular issues**
- **„Institutional structure“:**
- **Small living units**
- **Accommodation:**
- **Single cells during nights**
- **Placement near their homes or places of social reintegration**



Specific issues

- **Educational interventions**
- *These programmes shall be designed to meet the needs of juveniles in accordance with their age, gender, social background, stage of development and type of offence committed.*



„*Regime activities*“ (individual plan and meaningful activities)

- *Educational and training programmes shall form a key part of the regime for juveniles deprived of their liberty and all juveniles shall be actively encouraged to participate in them.*
- *Juveniles who have not completed their schooling or vocational training shall be enabled and, if their guilt has been determined, may be compelled to do so.*
- *Schooling and vocational training shall normally be given priority over work and other activities.*



„Regime activities“ (2)

- *Institutions shall provide the educational and training programmes that meet the needs of the juveniles detained in them.*
- *The institution shall provide meaningful activities also on week-ends and holidays (Rule 80.2)*



„Regime activities“ (3)

- *Educational and training programmes include:*
- *schooling;*
- *vocational training;*
- *work and occupational therapy;*
- *social skills and competence training;*
- *aggression-management;*
- *drug therapy, alcohol therapy;*
- *individual and group therapy;*
- *physical education;*



„Regime activities“ (4)

- *sports;*
- *fine arts education;*
- *tertiary or further education;*
- *debt regulation;*
- *programmes of restorative justice and making reparation for the offence;*
- *creative leisure time activities and hobbies;*
- *activities outside the institution in the community, day leave and other form of leave; and*
- *preparation for release and aftercare.*



Differentiated interventions

- **The above mentioned interventions shall endeavour to meet the individual needs of juveniles in accordance with their**
- **age,**
- **gender,**
- **social and cultural background,**
- **stage of development**
- **and type of offence and**
- **shall be consistent with proven professional standards based on research findings and best practices in the field (Rule 76.2).**



Activities

- *The institution shall provide meaningful activities also on week-ends (Rule 80.2)*
- *All juveniles deprived of their liberty shall be allowed to exercise regularly for at least 2 hours every day, of which at least one hour shall be in the open air (Rule 81)*
- *The institution shall provide sufficient work for juveniles which is stimulating and of educational value (Rule 82.1)*



Contacts with the outside world

- **Visits (there shall be provided a minimum exceeding the numbers for adults)**
- **Prison leaves:**
- *As part of the normal regime juveniles shall be allowed regular periods of leave, either escorted or alone. ... (Rule 86.1)*
- *If regular periods of leave are not practicable provisions shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile (Rule 86.2).*



Preparation for release

- *Steps shall be taken to ensure a gradual return of the juvenile to life in free society (Rule 101.1)*
- *Such steps should include additional leave, and partial or conditional release combined with effective social support (Rule 101.2)*
- *From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community ... (Rule 102.2)*



Preparation for release (2)

- **Juveniles shall be enabled to continue their education and training.**
- *Representatives of such services and agencies shall be given access to juveniles in institutions to assist them with preparation for release (Rule 102.2).*
- *These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release (Rule 102.3).*



Disciplinary punishment (Rules 94.1-95.7)

- **Disciplinary procedures as mechanisms of last resort**
- **Restorative conflict resolution and educational interactions with the aim of norm validation shall be given priority ...**
- **As the EPR, the ERJOSSM claim for a concrete catalogue of acts and omissions that constitute a disciplinary offence.**
- **General descriptions such as “violations of the rules of the institution” are not acceptable.**
- **There must also be a clear enumeration of the types and duration of punishment that may be imposed for a specific offending behaviour.**



Use of force, physical restraint and weapons

- **Force and measures of restraint only as a last resort.**
- **Staff in institutions in which juveniles are deprived of their liberty shall not be allowed to carry weapons unless an operational emergency so requires. The carrying and use of lethal weapons in welfare and mental health institutions is prohibited (Rule 92).**



ERJOSSM – soft law or to what extend binding?

- **To what extend are those Recommendations binding the national legislation?**
- **Soft law without any binding function?**
- **They are recognised as a rule for the interpretation of national law.**
- **They also are considered in the jurisprudence of the European Court of Human Rights.**
- **In a few countries their impact goes even further, see the decision of the German Federal Constitutional Court of 31 May 2006:**



- ***“It could be an indication that insufficient attention has been paid to the constitutional requirements of taking into account current knowledge and giving appropriate weight to the interests of the inmates if the requirements of international law or of international standards with human rights implications, such as the guidelines or recommendations adopted by the organs of the United Nations or the Council of Europe are not taken into account or if the legislation falls below these requirements”*** (see German Federal Constitutional Court, Bundesverfassungsgericht, NJW 2006: 2093, 2097 with reference to a similar decision of the Swiss Supreme Court).



Should Europe harmonize juvenile justice systems?

- **It will be difficult, as the differences e. g. between the Scottish children's hearings system and the (in some aspects) more punitive English system are considerable.**
- **The same is true for the age limits in comparison of countries like Germany (14-21) and England/Wales (10-18).**
- **But all of these systems have some important common elements:**
- **All reflect the view that youths should be dealt with differently from adults and that youthfulness mitigates the punishments that youths should receive and last but not least that youths should be kept separate from adult offenders (particularly when sent to detention in justice or welfare institutions).**



13. Outlook

- **Juvenile justice policy has come under pressure due to the developments in juvenile crime and changes in public attitudes to juvenile crime in the 1990s.**
- **A system of criminal justice geared towards special prevention and education is dragged into a conflict of justification and supportive argumentation in the light of violent, possibly xenophobic and right-wing offenders, especially under the conditions of a partly media-fuelled debate about the need for tougher punishments.**
- **However, the developments of juvenile crime in Europe, and also in Eastern European countries, are by no means grounds for a U-turn in juvenile criminal justice.**



Outlook (2)

- **Juvenile crime remains predominantly of an episodic and petty nature.**
- **On the other hand, it cannot be denied that a small number of no more than 5% of registered male juveniles (especially those who come into contact with the police very early, and who are burdened by phenomena of disintegration) can slip into persistent criminal careers.**
- **However, in regard of these young people a moderate, community based juvenile justice policy in many cases is both sufficient and more efficient than an orientation towards repressive sanctions, especially the imposition of long-term deprivation of liberty.**



Outlook (3)

- **Abandoning the idea of education or – in less dramatic terms – of special prevention/reintegration as the “*Leitmotif*” of juvenile justice policy would result in an unjustified intensification of sanctioning and would threaten the autonomy of juvenile justice from adult criminal justice as a whole.**
- **Juvenile justice should be and remain more than merely alleviated adult criminal justice.**
- **The recommendations of the European Council regarding new ways of dealing with juvenile offending and for juveniles subject to sanctions and measures offer a helpful orientation for an independent juvenile justice system.**



Outlook (4)

- **Furthermore, they correspond to a far-reaching European and global consensus for the preservation of a rational juvenile justice and social policy which, even in difficult times, emphasises the principle aim of integrating young offenders, and not their marginalisation and social exclusion.**
- **This goal is supported by constructive measures such as mediation, restorative justice and educational support to improve social skills and a multi-agency approach of co-operation of private and state welfare organisations.**
- **Juvenile crime policy should not be driven by individual, exceptional cases, but by “normal” juvenile delinquency.**
- **As the German *Franz von Liszt* stated in the early 20th century:**
- **The best crime policy is a good social policy!**



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Thank you for your attention!

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