

# Juvenile Justice Systems in Europe – Reform developments between justice, welfare and ‘new punitiveness’<sup>1</sup>

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**Abstract.** This article evaluates youth justice policies and practice in Europe from a comparative perspective. The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts. Attention is also paid to the traditional ‘welfare’ and ‘justice’ models of youth justice and how they have become intertwined in modern European practice. Against this background of a range of old and newly prominent ideas combined with somewhat fractured models, one can identify a number of reform strategies. Despite obvious and undeniable national particularities, there is a recognisable degree of convergence among the systems in Western, Central and Eastern Europe. Even if reform developments in juvenile justice legislation do not confirm a ‘punitive turn’ it would be possible that sentencing practices in some or many countries follow the ‘getting tough’-approach in order to fulfill public demands on reacting towards juvenile delinquency by more severe sanctioning.

**Key Words:** Juvenile justice, juvenile delinquency, comparative perspective, youth justice models, age of criminal responsibility, young adults, restorative justice.

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- 1 The present paper is an extended and updated version of the plenary presentation of the author at the ESC-conference in Vilnius 2011. The title of the paper is inspired by the discussion on ‘new punitiveness’ (Pratt et al. 2005) and so-called neo-liberal orientations which can be observed in some European and in particular Anglo-Saxon jurisdictions (see amongst others Tonry 2004) in contrary to Scandinavian countries that are characterized under the label of ‘penal exceptionalism’, see Pratt 2008; 2008a. The present paper will show that not only Scandinavian countries, but a lot of others, and in particular juvenile justice systems succeeded in ‘resisting punitiveness in Europe’ (Snacken and Dumortiers 2012).

## 1. INTRODUCTION

In the last 20 years, youth justice<sup>2</sup> systems in Europe have undergone considerable changes, particularly in the former socialist countries of Central and Eastern Europe. However, differing and sometimes contradictory youth justice policies have also emerged in Western Europe. So-called neo-liberal<sup>3</sup> tendencies can be seen particularly in *England and Wales*, and also in *France* and the *Netherlands* (Cavadino and Dignan 2006: 215 ff; 2007: 284 ff; Goldson 2002: 392 ff; Tonry 2004; Muncie and Goldson 2006; Bailleau and Cartuyvels 2007; Muncie 2008; Cimamonti, di Marino and Zappalà 2010). In other countries, such as *Germany* and *Switzerland*, a moderate system of minimum intervention with priority given to diversion and of educational measures has been retained (Dünkel et al. 2011). In many countries, elements of restorative justice have been implemented.

This chapter evaluates youth justice policies and practice in Europe from a comparative perspective.<sup>4</sup> The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts. Attention is also paid to the traditional 'welfare' and 'justice' models of youth justice and how they have become intertwined in modern European practice. The claim that a 'new punitiveness' is the prevailing strategy is questioned

- 2 A note on terminology: Where possible, I have used the terms, youth and youth justice, in this paper. The term, juvenile, is also still in use in a number of international, European and national instruments, where it usually refers to persons under the age of 18 years. I have used it in this way too. However, the Convention on the Rights of the Child uses the term, 'child' to refer to anyone under the age of 18 years. I have not followed this usage of 'child', as it is not always appropriate in this context. Finally, I use the term, young adults, to refer to persons at the age of 18 until 21 who are treated as youths or juveniles.
- 3 The meaning of the term 'neo-liberal', which derives from the concept of Garland's 'culture of control' contains different concepts and aspects that cannot be simply characterized by more repressive sanctions or sentencing: see Crawford and Lewis 2007: 30 ff. These include the criminalization of anti-social behaviour (ASBO's), increased use of youth custody, managerialism and the reduction of risk by social exclusion rather than by integrating vulnerable offender groups through specific programmes.
- 4 The comparison is based largely on a survey of 34 countries conducted by the Criminology Department at the University of Greifswald: Dünkel et al. 2011. The project was funded by the European Union (AGIS-programme) and by the Ministry of Education of the Federal State of Mecklenburg-Western Pomerania in Germany.

and attention is drawn to the practice of many youth justice systems, which seem to be fairly resistant to neo-liberal policies. Sonja Snacken (2012: 247 ff) has recently sought to explain why continental European countries in general have succeeded in resisting 'penal populism'. In the conclusion this reasoning is applied to youth justice systems in particular.<sup>5</sup>

## 2. CONTEMPORARY TRENDS IN YOUTH JUSTICE POLICY

Across Europe, policies based on the notions of the subsidiarity and proportionality of state interventions against youth offenders are remaining in force or emerging afresh in most, if not all, countries. Recently however, in several European countries, we have also witnessed developments that adopt a contrary approach. These developments intensify youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation. The youth justice reforms in the *Netherlands* in 1995 and in some respects in *France* in 1996, 2002 and 2007 should be mentioned in this context, as should the reforms in *England and Wales* in 1994 and 1998 (Kilchling 2002; Cavadino and Dignan 2007: 284 ff.; 2006: 215 ff.; Junger-Tas and Decker 2006; Bailleau and Cartuyvels 2007; Junger-Tas and Dünkel 2009). The causes of the more repressive or 'neo-liberal' approach in some countries are manifold. It is likely that the new punitive trend in the USA, with its emphasis on retribution and deterrence, was not without considerable impact in some European countries, particularly in *England and Wales*.

These developments at the national level, which is the primary focus of this chapter, have to be understood against the background of international and regional instruments that set standards for youth justice. Most important in this regard is the 1989 UN Convention on the Rights of the Child, a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the 'best interests of the child' – 'child' defined for the purpose of this Convention as a person under the age of 18 years – and to provide education, support and integration into society for such children. These ideas are developed further

5 See also Snacken 2010 and the contributions in Snacken and Dumortiers 2012.

in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and at the European level in the recommendations of the Council of Europe, in particular the 2003 Recommendation regarding new ways of dealing with juvenile offending (Rec [2003]20) and the 2008 Rules for juvenile offenders subject to sanctions or measures (Rec [2008]11; Dünkel 2009; Dünkel et al. 2011: 1861 ff).

### *2.1. Responsibilisation and neo-liberalism*

In *England and Wales*, and to some extent elsewhere, the concept of responsabilisation has become a pivotal category of youth justice.<sup>6</sup> Responsibilisation is not limited to young offenders but increasingly parents are held criminally responsible for the conduct of their children.<sup>7</sup> Making parents more responsible may have a positive impact. There is empirical evidence that parental training, combined with child support at an early stage, has positive preventive effects (Lösel et al. 2007). However, it is not necessary to criminalise parents. Ideally, parental training should be offered by welfare agencies (as is the case in *Germany* and the Scandinavian countries) and not be enforced by penal sanctions (Junger-Tas and Dünkel 2009: 225 f).

A positive aspect of making young offenders take responsibility for their actions is that it has contributed to the expansion of victim-offender-reconciliation (*Täter-Opfer-Ausgleich*), mediation and reparation. In the English context, however, it is more problematic as it has been accompanied by the abolition of the previously rebuttable presumption that 10- to 14- year olds may lack criminal capacity. Although in practice the presumption had been relatively easy to rebut, its formal abolition in 1998 was an indication of determination to hold even very young offenders responsible for their actions. The tendencies in English youth justice may be regarded as symptomatic of a neo-liberal orientation, which can be characterised by the key terms of responsibility, restitution (reparation), restorative justice and (occasionally openly publicised) retribution. These so-called '4 Rs' have replaced the '4 Ds' (diversion, decriminalization, deinstitutionalization and due process) that

6 See critically, Crawford and Lewis 2007: 27, and Cavadino and Dignan 2006: 68 ff with regards to the 'managerial' and the 'getting tough' approach.

7 See, for example, the so-called parenting order in England and Wales or similar measures in Belgium, Bulgaria, France, Greece, Ireland or Scotland: Pruin 2011: 1559 ff.

shaped the debates of the 1960s and 1970s (Dünkel 2008). The retributive character of the new discourse is exemplified by the requirement that community interventions should be 'tough' and 'credible'. For example, the 'community treatment' of the 1960s was replaced by 'community punishment' in the 1980s and 1990s. Cavadino and Dignan attribute these changes to the so-called 'neo-correctionalist model' that has come to dominate official English penology (Cavadino and Dignan 2006: 210 ff; Bailleau and Cartuyvels 2007; Muncie 2008)

There are many reasons for the increase in neo-liberal tendencies, as defined by Garland and other authors (Garland 2001; 2001a; Roberts and Hough 2002; Tonry 2004; Pratt et al. 2005; Muncie 2008). Some are to be found in the renewed emphasis on penal philosophies such as retribution and incapacitation, and in related sentencing policies that demonise youth violence, often by means of indeterminate sentences. There are also underlying socio-economic reasons. More repressive policies have gained importance in countries that face particular problems with young migrants or members of ethnic minorities and that have problems integrating young persons into the labour market, particularly where a growing number of them live in segregated and declining city areas. They often have no real possibility of escaping life as members of the 'underclass', a phenomenon that undermines 'society's stability and social cohesion and create mechanisms of social exclusion' (Junger-Tas 2006: 522 ff, 524). They are at risk of being marginalised and eventually criminalized. In this context recidivist offending is of major concern. Therefore many of the more punitive changes to the law are restricted to recidivist offenders in *England and Wales, France, and Slovakia* for example.

It should be emphasised, however, that, in the case of most continental European countries, there is no evidence of a regression to the classical penal objectives and perceptions of the 18<sup>th</sup> and 19<sup>th</sup> centuries. Overall, there is continued adherence to the prior principle of education or special prevention, even though 'justice' elements have also been reinforced. The tension between education and punishment remains evident. The reform laws that were adopted in *Germany* in 1990, in the *Netherlands* in 1995, in *Spain* in 2000 and 2006, in *Portugal* in 2001, in *France and Northern Ireland* in 2002, as well as in *Lithuania* in 2001, the *Czech Republic* in 2003 or in *Serbia* in 2006 are examples of this dual approach. The reforms in *Northern Ireland* and in *Belgium* in 2007

are of particular interest, as they strengthened restorative elements in youth justice, including so-called family conferencing, and thus arguably contribute to responsabilisation in this way without necessarily being 'neo-liberal' in fundamental orientation (Christiaens, Dumortier and Nuytiens in Dünkel et al. 2011; O'Mahony and Campbell 2006; Doak and O'Mahony 2011).

It must be recognized, however, that, even in countries with a moderate and stable youth justice practice, the rhetoric in political debates is sometimes dominated by penal populism with distinctly neo-liberal undertones. Nevertheless, this does not necessarily result in a change, as can be demonstrated by a German example. At the end of 2007 several violent crimes in subways (which were filmed by automatic cameras) led to a heated public debate about the necessity to increase the sanctions provided by the Juvenile Justice Act. The leader of the Christian Democratic Party (CDU) of the federal state of Hesse, Roland Koch, made this a core element of his electoral campaign by proposing the use of boot camps and other more severe punishments for juvenile violent offenders. He also used the fact that the offenders had immigrant backgrounds for xenophobic statements. Within a few days almost 1000 criminal justice practitioners and academics signed a resolution against such penal populism and in January 2008 the CDU lost the elections. Since then penal populism has not been made a major issue in electoral campaigns again. The CDU had gone too far. Muncie (2008: 109) refers to this debate in Germany and interprets it as an indicator for increased punitiveness. Yet, youth justice practice in *Germany* has remained stable and sentencing levels relatively moderate (Heinz 2009; 2010).

## 2.2. *Diversion, minimum intervention and community sanctions*

If one regards the developments in the disposals that are applicable to young offenders, there has been a clear expansion of the available means of diversion. However, these are often linked to educational measures or merely function to validate norms by means of a warning (Dünkel, Pruin and Grzywa 2011). Sometimes, however, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

Everywhere it is proclaimed that deprivation of liberty should be a measure of last resort. In practice the level of what is meant by 'last resort' varies across time and in cross-national comparison. *England* and *Wales*, for

example, experienced sharp increases of the juvenile prison population in the 1990s, but the reduction of immediate custody by 35 per cent from 1999 to 2009 contradicts the assumption that the adoption of a more punitive rhetoric necessarily leads to a continued growth in these numbers. *Spain* and a few other countries have also shown increases in the use of youth custody in recent years, but in general recent developments go in the other direction. This is particularly true for Central and Eastern European countries. In some of these countries, such as *Croatia*, the *Czech Republic*, *Hungary*, *Latvia*, *Romania* and *Slovenia*, the high level of diversion and community sanctions and the low level of custodial sanctions characteristic of continental Western European and Scandinavian countries have been achieved, whereas others, such as *Lithuania*, *Russia* and *Slovakia*, still use deprivation of liberty more often, albeit not as frequently as in Soviet times.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in *Belgium* about 80%, *Germany* about 70% (Dünkel, Pruin and Grzywa 2011: 1684 ff). In some countries, such as *Croatia*, *France*, the *Netherlands*, *Serbia* and *Slovenia*, this is a direct consequence of the long recognised principle of allowing the prosecution and even the police a wide degree of discretion – the so-called expediency principle. Exceptions, where such discretion is not allowed, can be found in some Central and Eastern European countries, but in these cases one should note that, for example, property offences that cause only minor damage are not always treated as statutory criminal offences. *Italy*, to take a further example, provides for a judicial pardon which is similar to diversionary exemptions from punishment, but awarded by the youth court judge. So, there is a large variety of forms of non-intervention or of imposing only minor (informal or formal) sanctions.

Constructive measures, such as social training courses (*Germany*) and so-called labour and learning sanctions or projects (*The Netherlands*), have also been successfully implemented as part of a strategy of diversion. Many countries explicitly follow the ideal of education (*Portugal*), while at the same time emphasising prevention of re-offending, that is, special prevention (as is done by the Council of Europe's 2003 Recommendation on new ways of dealing with juvenile delinquency and the role of juvenile justice).

### 2.3. Restorative justice

One development that appears to be common to Central, Eastern and Western European countries is the application of elements of restorative justice policies to young offenders. Victim-offender-reconciliation, mediation, or sanctions that require reparation or apology to the victim have played a particular role in all legislative reforms of the last 15 years. Pilot mediation projects were established in the 1990s in Central and Eastern European countries such as *Slovenia* (since 1997) and the *Czech Republic*. They are predominantly linked to informal disposals (diversion).

In some countries, legislation provides for elements of restorative justice to be used as independent sanctions by youth courts. In *England* and *Wales*, for example, this is done by means of reparation or restitution orders, and in *Germany* by means of so-called *Wiedergutmachungsaufgabe*, that is victim-offender-reconciliation as an educational directive (see §§ 10 and 15 of the Juvenile Justice Act). Family group conferences – originally introduced and applied in New Zealand – form part of the law reform of 2007 in *Belgium*. These conferences are forms of mediation that take into account and seek to activate the social family networks of both the offender and the victim. Even before the Belgian reform project, the youth justice reform in *Northern Ireland* had introduced youth conferences, which have been running as pilot projects since 2003. In addition the Northern Irish reform, made provision for reparation orders: an idea that had been introduced in *England* and *Wales* in 1998 (O'Mahony and Campbell 2006; Doak and O'Mahony 2011).

Whether these restorative elements actually influence sentencing practice or are merely a 'fig-leaf' seeking to disguise a more repressive youth justice system can only be determined by taking into account the different backgrounds and traditions in each country. Victim-offender-reconciliation has attained great quantitative significance in the sanctioning practices of both the *Austrian* and the *German* youth courts.<sup>8</sup> If one also takes community service into account as a restorative sanction in the broader sense, the proportion of all juvenile and young adult offenders who are dealt with by such – ideally educational – constructive alternatives increases to more than one third (Heinz 2012).

8 Roughly 8% of all sanctions imposed on juveniles, see Dünkel in Dünkel et al. 2011: 587; for Austria see Bruckmüller 2006.



In *Italy* the procedural rules for youth justice introduced in 1988 have led to a move away from a purely rehabilitative and punitive perspective to a new conception of penal procedure. Restorative justice measures have gained much more attention and victim-offender mediation can be applied at different stages of the procedure: during the preliminary investigations and the preliminary hearing when considering ‘the extinction of a sentence because of the irrelevance of the offence’ or in combination combined with the suspension of the procedure with supervision by the probation service (*Sospensione del processo e messa alla prova*).

#### 2.4. Youth justice models

If one compares youth justice systems from a perspective of classifying them according to typologies, the ‘classical’ orientations of both the justice and the welfare models can still be differentiated (Doob and Tonry 2004: 1 ff; Pruin 2011). However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems, for instance within *German* and other continental European youth justice legislation.

There is a clear tendency in youth justice policy in recent decades to strengthen the justice model by establishing or extending procedural safeguards, also to what may be regarded as welfare measures. This tendency includes a stricter emphasis on the principle of proportionality in the sense of avoiding both sentences and educational measures that are disproportionately harsh.

Other orientations that are not necessarily based squarely on ‘justice’ or ‘welfare’ are significant too. Restorative justice has already been mentioned. Minimum intervention, too, plays a part but so also do the ‘neo-liberal’ tendencies towards harsher sentences and ‘getting tough’ on youth crime (Albrecht and Kilchling 2002; Tonry and Doob 2004; Jensen and Jepsen 2006; Junger-Tas and Decker 2006; Bailleau and Cartuyvels 2007; Ciappi 2007; Patané 2007; Cimamonti, Di Marino and Zappalà 2010; Pruin 2011). Tendencies towards minimum intervention, that is the prioritisation of informal procedures (diversion), including offender-victim-reconciliation and other reparative strategies, can also be viewed as independent models of youth justice: a ‘minimum intervention model’ (Cavadino and Dignan 2006: 199 ff, 205 ff). Cavadino and Dignan (2006: 210 ff) identify not only

a 'minimum intervention model' (priority of diversion and community sanctions) and a 'restorative justice model' (priority of restorative/reparative reactions), but also a 'neo-correctionalist model', which, as mentioned previously, is particularly characteristic of contemporary trends and developments in *England* and *Wales*.

Here, too, there are no clear boundaries, for the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies, but also minimum intervention (as is especially the case in *Germany*, see Dünkel 2006; 2011), restorative justice and elements of neo-correctionalism (for example, increased 'responsibilisation' of the offenders and their parents, tougher penalties for recidivists and secure accommodation for children). Rather, differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European juvenile justice is moving towards mixed systems that combine welfare and justice elements, which are further shaped by the trends mentioned above.

### 3. REFORM STRATEGIES

Against this background of a range of old and newly prominent ideas combined with somewhat fractured models, one can identify a number of reform strategies.

In many Western European countries such strategies seem to have been relatively well-planned. In *Austria*, *Germany* and the *Netherlands*, the community sanctions and restorative justice elements that were introduced by the reforms in 1988, 1990 and 1995 respectively were systematically and extensively piloted. Nationwide implementation of the reform programmes was dependent on prior empirical verification of the projects' practicability and acceptance. The process of testing and generating acceptance – especially among judges and the prosecution service – takes time. Continuous supplementary and further training is required, which is difficult to guarantee in times of social change, as has been the case in Central and Eastern Europe. Yet, reform of youth justice through practice (as developed in *Germany* in the 1980s) appears preferable to a reform 'from above', which often fails to provide the appropriate infrastructure.

As a result of major political changes at the end of the 1980s, more drastic reform was required in the countries of Central and Eastern Europe.

The situation as it existed at the time was not uniform across the region but differed amongst groups of countries. One group was comprised of the Soviet republics, *Bulgaria*, *Romania* and to some degree the *German Democratic Republic* (East Germany) and *Czechoslovakia*. These countries had developed a more punitively oriented youth justice policy and practice. On the other hand, there were *Hungary*, *Poland* and *Yugoslavia*, which had rather moderate youth justice policies with many educational elements.

Across Central and Eastern Europe developments since the early 1990s have been characterised by a clear increase in the levels of officially recorded youth crime. The need for youth justice reform, a widely accepted notion in all of these countries, stemmed from the need to replace old (often Soviet or Soviet-influenced) law with (Western) European standards as contained in the principles of the Council of Europe and the United Nations. This process has, however, produced somewhat different trends in criminal policy.

Since the early 1990s, there has been a dynamic reform movement both in law and in practice. It is exemplified not only in numerous projects but also in the appointment of law reform commissions for and, in many cases, in the adoption of reform legislation in, for example, *Estonia*, *Lithuania*, *Serbia*, *Slovenia* and the *Czech Republic*.

On the one hand, the development of an independent youth justice system is a prominent feature of these reforms: see, for example, developments in the *Baltic States*, *Croatia*, the *Czech Republic*, *Romania*, *Russia*, *Serbia* and *Slovakia*, as well as in *Turkey*. In this connection the importance of procedural safeguards and entitlements that also take the special educational needs of young offenders into account has been recognised. However, in the *Baltic States* there are as yet no independent youth courts. In *Russia* the first model youth courts are up and running in Rostov on the Don and in a few other cities (Shchedrin in Dünkkel et al. 2011).<sup>9</sup> Such a project has also been established in *Romania* in Brasov (Păroşanu in Dünkkel et al. 2011). However,

9 Recently (2011) the Russian parliament (Duma) has rejected a proposal to introduce a separate youth court system on a nationwide base. Opponents including the Russian Church had warned of a state instrument of arbitrary prosecution and unwarranted interference in the realm of family. Supporters hoped to see a child-friendly institution that reduces juvenile delinquency and child homelessness and makes parents more responsible for their offspring. Finally the influence of the Orthodox Church was of major importance for denying juvenile justice reforms.

in general, the required infrastructure for the introduction of modern, social-pedagogical approaches to youth justice and welfare is widely lacking.

In order to deter recidivists and violent young offenders in particular, some of this new legislation not only involves new community sanctions and possibilities of diversion, but also retains tough custodial sentences. The absence of appropriate infrastructure and of widespread acceptance of community sanctions still results in frequent prison sentences. However, developments in *Russia*, for example, show that a return to past sanctioning patterns, where roughly 50% of all young offenders were sentenced to imprisonment has not occurred. Instead, forms of probation are now quantitatively more common, and more frequently used than sentences of imprisonment.

What is becoming clear in all Central and Eastern European countries is that the principle of imprisonment as a last resort (*ultima ratio*) is being taken more seriously and the number of custodial sanctions reduced. However, it has to be noted that youth imprisonment or similar sanctions in the ex-Yugoslavian republics and to a lesser extent also in *Hungary* and *Poland* had already been the exception during the period before the political changes at the beginning of the 1990s.

Regarding community sanctions, the difficulties of establishing the necessary infrastructure are clear. Initially, the greatest problem in this respect was the lack of qualified social workers and teachers. This has remained a problem, as to a great extent the appropriate training courses have not yet been fully introduced and developed (Dünkel, Pruin and Grzywa 2011). Again one has to differentiate as there are exceptions: *Poland* has a long tradition in social work. Also in the former *Yugoslavia* social workers were trained, following the introduction of 'strict supervision' as a special sanction in 1960.

The concept of 'conditional' criminal responsibility (related to the ability of discernment) as long expressed in *German* and *Italian* law – has recently been adopted in *Estonia* (2002), the *Czech Republic* (2003) or *Slovakia* (for 14 year olds, see Pruin 2011: 1566 ff). This is another interesting development, for it reflects a tendency for reforms in the countries of Central and Eastern Europe to have been influenced by Austrian and German youth justice law as well as by international standards. Despite obvious and undeniable national particularities, there is a recognisable degree of convergence among the systems in Western, Central and Eastern Europe.

#### 4. UNRESOLVED ISSUES

Although on the basis of comparative research one may speak, albeit cautiously, of an emerging European philosophy of juvenile justice, which includes elements of education and rehabilitation (apparent in, for example, the recommendations of the Council of Europe), the consideration of victims through mediation and restoration, and the observance of legal procedural safeguards, there are some issues on which such a development is not as clear. In this regard we consider the age of criminal responsibility and its corollary, the age at which offenders cease to be regarded as juveniles and are treated as adults. The latter issue also raises the question of whether there should be some mechanism for the converse, namely, allowing juveniles to be tried in adult courts.

##### *4.1. Age of criminal responsibility*

There is no indication of a harmonisation of the age of criminal responsibility in Europe. Indeed, the 2008 European rules for juvenile offenders subject to sanctions or measures recommend no particular age, specifying only that some age should be specified by law and that it 'shall not be too low' (Rule 4).

The minimum age of criminal responsibility in Europe varies between 10 (*England and Wales, Northern Ireland, and Switzerland*), 12 (*Netherlands, Scotland, and Turkey*), 13 (*France*), 14 (*Austria, Germany, Italy, Spain* and numerous Central and Eastern European countries), 15 (*Greece* and the *Scandinavian* countries) and even 16 (for specific offences in *Russia* and other Eastern European countries) or 18 (*Belgium*). After the recent reforms in Central and Eastern Europe, the most common age of criminal responsibility is 14 (see Table 1).

The ages of criminal responsibility have to be defined further: Whereas we can talk of a really low age of criminal responsibility, for example in *England* and *Wales*, in many countries only educational sanctions imposed by the family and youth courts are applicable at an earlier age (for example, *France* and *Greece*). Also in *Switzerland* the youth court judge can only impose educational measures on 10 to 14 year olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are restricted to

TABLE 1: Comparison of the age of criminal responsibility and age ranges for youth imprisonment

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 imprisonment/ custody or similar forms of deprivation of liberty
1	2	3	4	5
Austria		14	18/21	14-27
Belgium		18	16 <sup>b</sup> /18	Only welfare institutions
Belarus		14 <sup>c</sup> /16	14/16	14-21
Bulgaria		14	18	14-21
Croatia		14/16 <sup>a</sup>	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mitigated sentences)	15-19
Denmark <sup>d10</sup>		15	15/18/21	15-23
England/Wales		10/12/15 <sup>a</sup>	18	10/15-21
Estonia		14	18	14-21
Finland <sup>d</sup>		15	15/18	15-21
France	10	13	18	13-18 + 6 m./23
Germany		14	18/21	14-24
Greece	8	15	18/21	15-21/25
Hungary		14	18	14-24
Ireland		10/12/16 <sup>a</sup>	18	10/12/16-18/21
Italy		14	18/21	14-21
Kosovo		14	18/21	16-23
Latvia		14	18	14-21
Lithuania		14 <sup>c</sup> /16	18/21	14-21
Macedonia		14 <sup>c</sup> /16	14/16	14-21
Moldova		14 <sup>c</sup> /16	14/16	14-21
Montenegro		14/16 <sup>a</sup>	18/21	16-23
Netherlands		12	16/18/21	12-21

10 The age was lowered to 14 in *Denmark* in January 2010. Subsequently however, a new government has been elected and Denmark has reverted to the Scandinavian consensus and raised the age of criminal responsibility to 15 again.

1	2	3	4	5
Northern Ireland		10	17/18/21	10-16/17-21
Norway <sup>d</sup>		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12 <sup>`</sup>		16/21	12/16-21
Romania		14/16	18/(20)	14-21
Russia		14 <sup>c</sup> /16	18/21	14-21
Scotland	8 <sup>e</sup>	12 <sup>e</sup> /16	16/21	16-21
Serbia		14/16 <sup>a</sup>	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14/16 <sup>a</sup>	18/21	14-23
Spain		14	18	14-21
Sweden <sup>d</sup>		15	15/18/21	15-21 <sup>g</sup>
Switzerland		10/15 <sup>a</sup>	18 <sup>f</sup>	10/15-22
Turkey		12	15/18	12-18/21
Ukraine		14 <sup>c</sup> /16	18	14-22

a Criminal responsibility resulting in juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice).

b Only for traffic offences and exceptionally for very serious offences.

c Only for serious offences.

d Only mitigation of sentencing without separate youth justice legislation.

e The age of criminal prosecution is 12, but for children from 8 up to the age of 16 the children's hearings system applies, thus preventing more formal criminal procedures.

f Article 61 of the Swiss Criminal Code for adults provides for a special form of detention, a prison sentence for 18-25 years old young adult offenders who are placed in separate institutions for young adults, where they can stay there until they reach the age of 30.

g Youth custody. There are also special departments for young offenders in the general prison system (for young adults until about 25 years of age).

those aged at least 15. The same is the case in the ex-Yugoslavian republics of *Croatia*, *Kosovo*, *Serbia* and *Slovenia* for 14 and 15 year old offenders. Further still, some countries, such as *Lithuania* and *Russia*, employ a graduated scale of criminal responsibility, according to which only more serious and grave offences can be prosecuted from the age of 14, while the general minimum age of criminal responsibility lies at 16 (for a summary, see also Pruin 2011). Such a graduation of the age of criminal responsibility must be criticized as it is contrary to the basic philosophy of juvenile justice that sanctions rather

should refer to the individual development of maturity or other personality concepts than to the seriousness of the offence (see also the criticism under 4.3).

Whether these notable differences can in fact be correlated to variations in sentencing, is not entirely apparent. For within a system based solely on education, under certain circumstances the possibility of being accommodated as a last resort in a home or in residential care (particularly in the form of closed or secure centres as in *England and Wales* and *France*) can be just as intensive and of an equal or even longer duration than a sentence of juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs considerably from the language used in the reform debates (Doob and Tonry 2004: 16 ff). Legal changes that formally make the regime more intensive are sometimes the result of changes in practice, and sometimes they contribute to changes in practice. The effect of these changes varies too. Despite the dramatization of events by the mass media that sometimes lead to changes in the law, there is often, in *Germany* for instance, a remarkable continuity and a degree of stability in youth justice practice (Dünkel 2006; 2011).

#### 4.2. *Young adults*

There are also interesting developments in the upper age limits of criminal responsibility (the maximum age to which juvenile criminal law or juvenile sanctions can be applied). The central issue in this regard is the extension of the applicability of juvenile criminal law – or at least of its specifically educational measures – to 18 to 20 year old young adults, as occurred in *Germany* as early as in 1953 (see also the recent reforms in *Austria*, *Croatia*, *Lithuania* and the *Netherlands*; Pruin 2007; Dünkel and Pruin 2011; 2012).

This tendency is rooted in a criminological understanding of the transitional phases of personal and social development from adolescence to adulthood and a recognition that such transitions are taking longer. Over the last 50 years, the phases of education and of integration into working- and family life (the establishment of one's 'own family') have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and in-



creasingly such difficulties continue to occur into their mid-twenties (Pruin 2007; Dünkel and Pruin 2011; 2012). Furthermore, new neuro-scientific evidence indicates that maturity and psycho-social abilities are fully developed only in the third decade of life (Weijers and Grisso 2009: 63 ff; Bonnie, Chemers, and Schuck 2012 (chapters 4 and 5); Loeber et al. 2012: 336 ff), which would justify a juvenile justice system up to the age of 21 or even 24. The Dutch government is recently working on a proposal to extend the scope of juvenile justice in this way (see Loeber et al. 2012: 368 ff, 394 ff.)

An increasing number of states have statutory provisions for imposing educational and other sanctions of the youth justice law on young adults. Historically however, such laws have not always had the same impact in practice. While in *Germany* the laws applicable to juveniles are applied in more than 90% of the cases concerning young adults who commit serious crimes (overall average: more than 60%; see Dünkel in Dünkel et al. 2011), in most other countries this has remained an exception. One reason is that in *Germany* the jurisdiction of the juvenile court has been extended to young adults, whereas in other countries the criminal court for adults is responsible for this age group but can impose some of the measures otherwise reserved for juveniles (for example, in the former *Yugoslavia*, which introduced this possibility in 1960: Gensing 2011). The Yugoslavian experience is a good example of how substantive and procedural laws have to be harmonised in order to prevent counterproductive effects of such provisions. There was therefore a good reason in 1998 for *Croatia*, a former Yugoslavian state, to transfer the jurisdiction on young adults to the juvenile courts. *Austria* took the same step in 2001.

In other instances keeping young adults fully in the adult framework does not mean that they cannot be treated very much like juveniles in practice. In the *Netherlands*, for example, the general criminal law provides for a plethora of alternative sanctions, which can be seen as educational or rehabilitative (for example, community service) and which are not provided in the German criminal law for adults.

#### 4.3. *Transfer to adult criminal courts or jurisdiction (waiver procedures)*

While raising the upper limit of the definition of juvenile may be seen as a way of imposing more appropriate sentences on immature young adults and extending the scope of youth justice, there is also an opposite trend, most

prominent in the USA (Stump 2003; Bishop 2009) but also found in many European countries (Pruin 2011), of referring children for trial in adult courts. Such referrals have a distinctively punitive purpose.

In some European countries, such as *Scotland* and *Portugal*, juvenile offenders from the age of 16 onwards can be dealt with in the adult criminal justice system. Beyond that, in other countries, juvenile offenders can be transferred from the youth court to the adult court, where so-called waiver or transfer laws provide for the application of adult criminal law to certain offences (Stump 2003; Bishop 2009; Weijers et al. 2009; Beaulieu 1994: 329 ff; Goldson and Muncie 2006a: 91 ff; Keiser 2008). This is in fact a qualified limitation of the scope of juvenile justice (Hazel 2008: 35) and a lowering of the minimum age for the full application of adult criminal law.

Some countries provide for the application of adult criminal law for serious offences, for example, in *Belgium* for rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide by juveniles aged 16 or older. Since the law reform of 2006, before which juveniles had been tried by adult courts, so-called Extended Juvenile Courts have had the competence to conduct such trials.<sup>11</sup> In the *Netherlands*, the youth court remains competent as well, but the general criminal law can be applied to 16 and 17 year-old juveniles. In 1995 the requirements were relaxed. The seriousness of the criminal offence, the personality of the young offender, or the circumstances under which the offence is committed can lead to the application of adult criminal law. The law provides the judge with a great deal of discretion. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law. In *England* and *Wales*, juveniles, even at the age of 10, can be transferred to the adult criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adult offenders carry a maximum term of imprisonment of more than 14 years). The Crown Court has to apply slightly different rules for the protection of juveniles in this case. The number of juvenile offenders who are sent to the Crown Court has fluctuated over the last 25 years without any indication of a clear cut trend in either direction.

11 See Christiaens et al. in Dünkel et al. 2011; Put 2007. Besides this possibility for waivers, traffic offences are always judged by (adult) police courts.

In *Serbia* and in *Northern Ireland*, transfers are limited to juveniles who have been charged with homicide or who are co-accused with adult offenders. In the latter case, there is an interesting alternative as well: the juvenile has to be referred back to the youth court for sentencing following a finding of guilt (O'Mahony 2011). In *Ireland*, in exceptional cases like treason or crimes against the peace of nations, but also for murder or manslaughter, juveniles are tried by the Central Criminal Court before a judge and jury.

In *France*, in contrast, less serious offences, rather classed as misdemeanours, are brought before an adult court: since 1945 in cases of misdemeanours (*contraventions des quatre premières classes*) juvenile offenders are judged by the Police Court which can issue reprimands or fines. Since 2002, the competences of the Police Court have been conferred on a specific 'proximity judge', who is neither a lawyer nor a youth justice specialist, but has the competence to 'punish' juveniles up to a certain level (Castaignède and Pignoux in Dünkel et al. 2011).

In *Scotland* there are no waivers or transfer laws, but the same effect can be achieved in another way. In most severe cases the juvenile offender will not be transferred to the children's hearings system. Formally, this is not a transfer to the adult criminal court, because the criminal court has original competence to try all cases, even if in practice the vast majority is transferred to the children's hearings system. However, *Scotland* shares the idea that in very serious cases the offenders should not be dealt by the juvenile criminal system but in the adult criminal system.

Countries, like those in *Scandinavia* that do not have specialised juvenile jurisdictions, thus (naturally) do not have provision for transfers either. It should be emphasized though, that, in general, in the Scandinavian countries the same regulations apply in cases of 'aggravated' as well as 'normal' offences.

The application of adult law to juveniles through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it (Stump 2003). Whereas normally the application of (juvenile) law depends on the age of the offender, transfer laws or waivers rely on the type or seriousness of the committed offence. The justification for special treatment of juvenile offenders (as an inherent principle of youth justice) is challenged by such provisions (Keiser 2008: 38). The fundamental idea is to react differently to offences that are committed by offenders up to a certain age, based on their level of maturity or on their ability of discernment. Waivers or transfer laws

question this idea for serious offences. On the one hand, the maximum age of criminal responsibility should signify – independently from the type of offence – from which age a young person is deemed ‘mature enough’ to receive (adult) criminal punishment. On the other hand, however, the introduction of ‘transfer laws’ makes exactly those offenders fully responsible who often lack the (social) maturity to abstain from crime or even to fully differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be regarded as not fully mature when charged with a ‘normal’ offence, but fully criminally responsible for a serious offence. As Weijers and Grisso (2009: 67) have put it: ‘An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits.’ A systematic approach would treat all offences equally.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juvenile offenders.<sup>12</sup> Additionally, they claim that waivers are needed as a ‘safety valve’ (Weijers et al. 2009) for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases.<sup>13</sup> However, so far criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.<sup>14</sup>

The second argument misses the point as well: Does adult criminal law provide adequate or suitable options for reacting to severe criminality? How do we measure effectiveness? If we look at recidivism rates, then long prison sentences – the typical reaction by adult criminal law to serious offending – are relatively ineffective in preventing further crimes (Killias and Villettaz 2007: 213). Research results furthermore show that a lenient, minimum-interventionist juvenile justice system does not produce more juvenile offenders than an active and punitive one (Smith 2005: 192 ff).

12 In *Belgium*, the possibility of waivers is officially based on the need to compensate the high age of criminal responsibility, which is set at 18 years (Christiaens et al. in Dünkler et al. 2011). In Germany the same arguments are used to fight for the application of adult criminal law to young adults, that is those of from 18 to 20 years of age (Dünkler in Dünkler et al. 2011: 587 ff; Dünkler and Pruin 2011; 2012).

13 These arguments do ultimately show fear of, and intolerance towards, juveniles’ misconduct (Hartjen 2008: 9).

14 Bishop (2009: 97 ff) emphasizes that the negative effects of transfer laws are found among those who receive community sanctions as well.

In practice, transfers may be of declining significance in Europe. In the *Netherlands* the number of transfers to the adult court has been reduced considerably: Whereas in 1995 16% of all cases were dealt with by the adult criminal court, it was only 1.2% in 2004 (Weijers et al. 2009: 110).<sup>15</sup> In *Belgium* the use of transfers is very limited as well: transfer decisions amount to 3% of all judgments (Weijers et al. 2009: 118 with references to regional differences). In *Ireland*, adult criminal courts are competent in less than 5% of all cases against juveniles. In *Poland*, from 1999 to 2004 the number of cases transferred to public prosecutors swung between 242 and 309, which is 0.2-0.3% of all cases tried by the courts (Stańdo-Kawecka in Dünkkel et al. 2011).

Even if waivers and transfer laws are of little significance in practice in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juvenile offenders. Additional safeguards in adult courts are unable to compensate for them (Keiser 2008: 38).<sup>16</sup> Therefore the UN Committee on the Rights of the Child recommends abolishing all provisions that allow offenders under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years (Committee on the Rights of the Child 2007: paras. 34, 36, 37 and 38; Doak 2009: 23).

## 5. REFORM TRENDS IN JUVENILE JUSTICE IN INDIVIDUAL COUNTRIES

The following survey on national reform trends follows the theoretical distinction between reforms focussing on the four major sometimes contradictory orientations such as:

- 15 This has to do with the range of youth custody sentences: until 1995 youth courts in the Netherlands had the competence to impose youth prison sentences of up to six months only. The reform law extended it to two years in the case of 16 and 17 year old juveniles. Therefore juvenile judges only rarely have to transfer a case in order to arrive at a 'proportionate' sentence: Pruin 2011: 1571.
- 16 The European Court for Human Rights has not found that such trials in adult courts necessarily violate the European Convention of Human Rights, but in *T. and V. v. The United Kingdom* ((2000) 30 E.H.R.R. 121), the case concerning the ten year-old murderers of James Bulger, a significant minority of the judges took the view that trying such young offenders in an adult court would inevitably violate their rights.

- Procedural reform issues, particularly strengthening legal safeguards, principles of due process and sentencing reforms (e. g. introducing new – not necessarily more intrusive – community sanctions),
- Reforms oriented towards the principle of minimum intervention, particularly expanding diversion strategies,
- Reforms oriented towards implementing restorative justice elements such as mediation or family group conferencing, and finally
- Reforms oriented towards ‘neo-liberal’ strategies of more severe punishment, intensifying social control, also by civil measures (ASBO’s, parenting orders etc.) (see Dünkel, Grzywa, Pruin and Šelih in Dünkel et al. 2011: 1851 ff) .

*Austrian* juvenile law experienced a major reform in 1988 by expanding the possibilities for diversion and restorative justice, such as victim-offender-mediation and other constructive educational measures. Deprivation of liberty was becoming a measure of last resort. Since 2001 the application of juvenile procedural regulations was extended to young adults.

*Belgium* held to its classical welfare approach and expanded the restorative justice approach by mediation and family group conferences. Strengthening the principle of proportionality and procedural safeguards were strengthened and detention in closed welfare institutions further limited. On the other hand, in serious cases the transfer of 16 and 17-year-olds to adult courts opens the pathway to the general justice system and possibly more repressive sanctions.

*Bulgaria* passed a major law reform in 1996, which on the one hand emphasised due process guarantees and the principle of proportionality concerning placements in correctional institutions, on the other hand incorporated neo-liberal tendencies towards crime control by anti-social behaviour orders. A second reform law of 2004 further strengthened procedural safeguards and placed decisions of deprivation of liberty in the hands of judges. New alternative sanctions such as probation were introduced. Prison sentences were mitigated considerably, particularly for juveniles under the age of 16. At the same time anti-social behaviour orders were extended and parenting orders introduced.

*Croatia* in 1998 implemented a comprehensive juvenile justice legislation emphasising due process standards on the one hand and diversion and

educational measures including mediation on the other. The reform was influenced by the Austrian and German law reforms. Later reforms in 2002 and 2006 brought a tougher sentencing approach, but only for young adults (18 to 20 years of age).

In *Cyprus* in 1996 the scope of educational sanctions was expanded, in 2006 the age of criminal responsibility was raised from 10 to 14.

In 2003 comprehensive juvenile justice legislation was passed in the *Czech Republic* that enlarged the diversionary reactions and educational sanctions including mediation. In 2009 the educational approach was kept, only one more repressive sanction (preventive detention) for very serious and dangerous offenders was introduced. Against strong political demands the age of criminal responsibility was not lowered to 14, but kept at 15.

In *Denmark* no separate juvenile justice system exists and juveniles are sentenced by the general courts. Nevertheless special dispositions for juveniles exist and have been expanded by the reforms in 1998 and 2001. The so-called youth contract can be characterised as a form of conditional discharge, which tries to 'responsibilise' young offenders. The so-called youth sanction with a custodial part and a part served in the community could be seen as a strengthening of sentencing as it might replace former shorter sentences. On the other hand it can be seen as a clearer structured and rehabilitation oriented sanction.

*England* and *Wales* are often characterised as the prototype of 'neo-liberal' reforms by introducing stiffer sanctions and lowering the age of criminal responsibility from 14 to 10 by the reform laws of 1994 and 1998. Closed welfare and justice institutions were introduced also for 10 to 14-years-olds, anti-social behaviour orders widened the scope of juvenile social control, and the notion of community sanctions changed towards the 'getting tough'-approach ('credible' and tough alternatives). The sentencing practice more than in other countries relied on custodial sanctions. On the other hand, establishing the multi-agency-approach and the so-called Youth Offending Teams should not be seen primarily as 'neo-liberal' or 'repressive' way of dealing with young offenders. Much of it is in line with the classic idea of education or in modern words 'preventing reoffending'. Also the emphasis given to reparation orders or to mediation may not necessarily be seen as 'neo-liberal'. A recalibration in policy and practice has been in demand in the

academic sphere for some time, and has recently been highlighted by the 2010 Policy Paper of the Police Foundation ('Time for a fresh start'). The title of the volume edited by David Smith in 2010 ('A New Response to Youth Crime') also stands for such a rethinking of criminal and penal policy (albeit for the time being only in academia).<sup>17</sup> But even the rather limited and tentatively evidence-based proposals up to now have not resulted in major legislative initiatives by the new government.

In 2001 *Estonia* raised the age of criminal responsibility from 13 to 14. In 2002, major juvenile justice legislation followed, expanding diversion and community sanctions and including restorative justice elements (reparation, mediation). In the same year an amendment to the Code of Criminal Procedure determined that judges have to decide about the placement of a minor in a 'school for students who need special treatment' due to behavioural problems. The juvenile committee has to provide a substantiated application in written form.

*Finland* – as the other Scandinavian countries – has no separate juvenile courts system. Nevertheless some peculiarities exist in the general framework of the Criminal Code. Already in 1989 the imposition of custodial sentences was further restricted to exceptional cases and in 1997 special emphasis was given to conditional sentences with supervision (the so-called juvenile punishment order). The general criminal policy in Finland has resulted in one of the lowest prison populations in the world (comparable to the other Scandinavian countries, see Lappi-Seppälä 2007). The general trends in juvenile crime policy are in the same line with the minimum intervention model. A particularity of the Finnish system is that the focus of social control concerning children (10-14) and juveniles (15-17) is on the child welfare system, which also deals with delinquents who in other countries are dealt with by the criminal justice system. Interestingly the welfare system has experienced similar liberal reforms as the justice system by reducing

17 See the Report of the *Independent Commission on Youth Crime and Antisocial Behaviour* 2010; Smith 2010. Goldson (2011: 3 ff) criticized the Commission not going far enough, as it – for example – did not question the low age of criminal responsibility and in general the youth justice apparatus and concepts of responsabilisation. Furthermore, 'the limited coverage of children's human rights within the Commission is noteworthy' (Goldson 2011: 23, footnote 8).



involuntary placements to closed welfare institutions considerably. The reform of the Child Welfare Act in 2006 strengthened the legal guarantees for those taken into public care, particularly in welfare institutions.

Some of the reform movements of the last years in *France* may be characterised by the 'getting-tough-' or 'neo-liberal'-approach. The possibility not to mitigate sentences for 16 and 17 years old recidivist offenders or the acceleration of criminal procedures under the declared aim to establish immediate punishments may be seen in this direction. However, the reforms of 2002, 2004, 2007 and 2008 kept the general educational approach of the Ordinance of 1945 and also improved the system of supervision in the community (protection judiciaire). Since 2002 educational (welfare) measures can also be imposed on 10- to under 12-years-old offenders. As far as the new closed welfare institutions (since 2002) and the juvenile prisons (since 2007) are concerned, their strong rehabilitative approach has to be recognised. These institutions are of high quality and much better equipped than most of their counterparts in other countries.

*Germany* passed a major juvenile law reform in 1990. The possibilities of diversion were expanded, new 'alternatives', which had been developed by the practice in the nineteen eighties, were implemented into the law: mediation, social training courses, community service and special care and supervision by social workers. Alternatives to pre-trial detention were expanded, including legal representation for juveniles detained. A few reforms can be characterised as orientation to more intensive sentencing: in 2006 the possibilities of a joint procedure by the victim were introduced in the JJA, but to a lesser extent than in the general criminal procedure against adults. In 2008 preventive detention after having served a juvenile prison sentence of at least 7 years was introduced,<sup>18</sup> a more symbolic law reform as probably no cases will arise. In the same year the principle regulation of § 2 JJA clearly formulated the aim of

<sup>18</sup> The German Federal Constitutional Court in its decision of 4 May 2011 (2 BvR 2365/09) judged all forms of indeterminate preventive detention that could be imposed after having served a determinate prison sentence as being a violation of the Constitution and therefore the legislator until May 2013 will have to introduce new regulations for preventive detention, which make their application an absolute exception (*extrema ultima ratio*) and which in their execution are clearly distinct from regular prison sentences. Preventive detention must be rehabilitative in its nature.

juvenile justice by strictly prioritising the prevention of reoffending and the reintegration of juvenile and young adult offenders into society.

The *Greek* law reform of 2003 (similar to the German reform of 1990) clearly intended the introduction of diversion, mediation and other new community sanctions, to expand due process rules and to further limit juvenile imprisonment as a measure of last resort. Indeterminate sanctions and measures were abolished. In 2010 the age of criminal responsibility was raised from 13 to 15.

*Hungary* has special regulations for juveniles in the general Criminal Code. In 1995 a law reform emphasised the reintegration into society (special prevention) as the aim of juvenile justice. Procedural safeguards were strengthened and juvenile imprisonment restricted as a measure of last resort. In 2000 the general Mediation Act emphasised restorative justice elements (mediation), which were expanded by the reform of the Criminal Procedure Act in 2007 (extended possibilities of diversion and mediation). In 2011 the scope for the use of mediation and restorative proceedings was again expanded. Since 2009 several reforms in general criminal law intensified the sentencing for adults. However, juveniles and young adults were exempted from these policy changes. On the other hand, according to a law reform of 2010, certain administrative and minor offences can result in short-term detention of up to 90 days. This also applies to juveniles. The new conservative government is currently discussing a lowering of the age of criminal responsibility, but a decision has not yet been reached.

After almost a hundred years since the introduction of the juvenile justice legislation *Ireland* introduced a major law reform in 2001, giving strong priority to restorative justice (mediation, family group conferences), diversion and community sanctions. Imprisonment for under 18-years-old offenders was abolished. The age of criminal responsibility was raised from 7 to 12, but in 2006 lowered again to 10, but only for very serious cases such as murder. Anti-social behaviour orders were also introduced in 2006, but also wide discretion for diversion in this area.

The last major reform in *Italy* was the general amendment of the Criminal Procedure Act in 1988 (DPR No. 488/88, with some specific rules for the juvenile criminal procedure by another Legislative Decree (of 28 July 1989, No. 272), opening the floor for diversion and alternative sanctions including

mediation. The new juvenile and adult criminal procedure signified a shift from an inquisitorial to an accusatory model. In 1998, a general reform also affected juvenile offenders: a prognostic assessment in prisons or detention is no longer necessary, i. e. prison sentences below three years may be suspended immediately.

*Latvia* in 1998 passed the Law on the Protection of the Rights of the Child. The orientation on procedural safeguards and the primary aim of reintegration of juvenile offenders is well expressed by the title of the law. In 2002 two further reform laws strengthened the idea of diversion and of expanding the scope of community sanctions such as reparation and community service orders.

In *Lithuania* the major reform of the Criminal Code in 2003 included the expansion of educational measures and community sanctions for juvenile offenders. Diversion, mediation and community service became an issue of the reform movement, but emphasis was also given to procedural safeguards and to further restrictions for deprivation of liberty. Another reform law in 2007 emphasised educational measures for and supervision of young offenders.

The reform of 1995 in the *Netherlands* brought a mixture of extended alternative sanctions including diversionary measures on the one hand and of a more serious punishment for 16 and 17-year-olds in serious cases on the other by either being transferred to adult courts or sentenced for up to two years of juvenile imprisonment (before, the maximum was 6 months). In 2001 alternatives to pre-trial detention were abolished and the 2005 reform with stricter and tougher application of community sanctions can also be characterized as a ‘neo-liberal’ orientation.

The Children (*Northern Ireland*) Order of 1995 brought a separation of welfare and justice procedures and thus an orientation to the justice model by strengthening procedural safeguards and due process regulations for juvenile offenders. At the same time diversion and the range for community sanctions were expanded. A reform of 1996 strengthened the ideas of educational measures for juveniles. In 2001 the statutory base for youth conferencing (family group conferencing) was created, thus shifting juvenile justice to the restorative justice model. 17-year-old juveniles were included into the juvenile justice system.

*Poland* already in 1982 had its major law reform on juvenile justice. The emphasis was laid on a unique justice and welfare model concerning 13 to 17-year-olds. However, in cases of very serious crimes juveniles aged 15 and above may be sentenced according to the general criminal law. The juvenile law gives strict priority to educational measures and restricts deprivation of liberty. Due process regulations are of more importance in procedures concerning juvenile offenders (in contrast to juveniles prosecuted for phenomena of ‘demoralisation’), particularly when detention in a correctional institution is to be considered. Mediation and victim-offender reconciliation is emphasised by the Mediation Act of 2000.

In *Portugal*, major juvenile justice law reforms in the year 1999 aimed to extinguish the worst consequences of the pure welfare model which prevailed since 1925. The educative approach should be maintained, due process guarantees be introduced, but not the penal consequences for a criminal offence. Accordingly, since 2001 Portugal follows an educational approach for juvenile offenders between 12 and 15 years of age. The juvenile is deemed responsible for his actions, but not in a penal way. The court may – after a procedure which follows similar rules as a criminal procedure for adults – apply compulsory educational measures, but no criminal sanctions. 16- to 21-year-old offenders are fully criminally responsible, but special mitigating regulations and alternatives have been introduced, in 2007 house arrest (including electronic monitoring) was added as a special alternative for this age group.

In 1992 a reform of the Criminal Code in *Romania* introduced educational measures for juvenile offenders, but also provided for harsher punishment. The reform of 1996 was in line with the educational approach by expanding community sanctions. The Law on the Protection and the Promotion of the Rights of the Child from 2004 strengthened the procedural safeguards and the stronger justice orientation in line with international standards. Mediation became a major issue after the Law on Mediation of 2006 and a further law reform in 2009 (which came to effect in 2011).

The general reform of the Penal Code in *Russia* in 1996 brought special educational measures for juveniles, including diversionary and community based sanctions (e. g. community service). Procedural safeguards were strengthened by the Basic Principles for Juvenile Offenders passed in 1999, but

also diversionary measures were expanded. In 2001 mediation and reparation became a major issue of juvenile law reform.

In 1995 in *Scotland* statutory regulations of the Children's Hearing System dealing with 8 to 15-year-olds were introduced. The focus is on restorative justice elements including mediation and reparation. In 2004 anti-social-behaviour and parenting orders were introduced, but the practice seems to be more reluctant than in England and Wales. In 2010 the age of criminal prosecution was raised from 8 to 12, the competence of the Children's Hearing System remained unchanged.

*Serbia* in 2006 established independent and separate juvenile justice legislation. It is strongly oriented at international standards with regards to the principles of education, minimum intervention and of proportionality. Diversion and restorative justice elements are especially emphasised.

The *Slovakian* reform of 2005 on the one hand is in line with the European justice and welfare orientation by expanding the range of community sanctions, on the other hand more repressive tendencies can clearly be identified. Sentences for recidivist and violent offenders were increased and the age of criminal responsibility was lowered from 15 to 14, however 14-year-olds are only responsible if they dispose of the discernment concerning the wrongdoing of their behaviour.

*Slovenia* got a major law reform in the context of amendments in the Penal Code in 1995. By that diversion was prioritised and mediation, reparation and community service were introduced. Also procedural safeguards have been strengthened. Interestingly the general law reforms in 1999, 2004 and 2008 which were increasing the penalties of the general Criminal Code for adults (inter alia 'three-strikes'-legislation) left out the juveniles.

*Spain* created a justice oriented juvenile law for the age group from 12 to 15 years of age in 1992. In 1995 legislation was amended and the age group of 14 to 17-year-olds was subject of the Penal Code legislation. The focus was on diversion and restorative justice elements (mediation, reparation). The same orientation to modern juvenile justice principles is to be seen in the separate Juvenile Justice Act of 2000. In 2006, however, some tightening of the law can be identified, too. Young adults who should have been subject to educational measures were excluded again before the specific rule of 2000 came into force.

*Sweden* traditionally relies on a welfare orientation by transferring juvenile offenders (aged 15 to 17) regularly to the welfare authorities. Punishments according to the general Criminal Code and particularly imprisonment have become an *extrema ultima ratio* for 15 to 17 year old juveniles (see also Dünkler and Stańdo-Kawecka 2011). In 1999 the transfer to Social Welfare Authorities was expanded as a kind of diversion. Closed youth care institutions were established as an alternative to youth imprisonment. In practice this meant a net-widening, as instead of the expected approximately 10, more than 100 juveniles were found in these institutions. With regards to the principle of proportionality and specific human rights standards (principle of certainty, i. e. determinacy of the sanction to be expected, and of proportionality) have been implemented by extending the court's control over the welfare services in 2007. The reform law of 2007 aimed at reducing fines for young offenders by introducing special juvenile sanctions, the so-called youth service and the youth care. Youth service contains unpaid work (20-150 hours) plus attendance in programme work or education. Youth care can mean different forms of treatment organised by the welfare authorities.

The *Swiss* reform of introducing a separate Juvenile Justice Act in 2007 is in line with the international standards of emphasising education, diversion and a variety of community sanctions including mediation and reparation. Procedural safeguards as well as the principles of minimum intervention and proportionality are emphasised. Youth imprisonment is the *extrema ultima ratio*; instead, detention in mostly open welfare homes is prioritised. Although the maximum youth prison sentence has been increased to 4 years (for at least 16-year-olds) the Swiss juvenile justice system can be characterised as a moderate educational and justice approach.

*Turkey* in 1992 passed a reform of the Criminal Procedure Act strengthening some procedural safeguards for juveniles (e. g. obligatory defence counsels). In 2003 the Children's Courts Act (1979) was amended and expanded the scope of juvenile justice from 12 to 15- to 12 to 18-year-old juvenile offenders. The Child Protection Law of 2005 expanded diversionary procedures (referrals to the welfare agencies) and the range of community sanctions (e. g. reparation, community service).

In *Ukraine* the reform of the general Penal Code in 2001 established special educational sanctions for 14- to 17-year-old juvenile offenders,

including diversion, reparation and community service orders. The reforms in Ukraine – as in the other Central and Eastern European countries – were inspired by the new membership in the Council of Europe and the ambition to meet the requirements of the international juvenile justice standards such as the recommendations of the Council of Europe and the United Nations.

Altogether the present international comparison shows that in the majority of countries there has in fact not been a reversal from the precept of education and the prevailing aim of preventing reoffending. Also, countries which moved towards the ‘getting tough’-approach keep their general orientation of dealing with juveniles (and young adults) differently compared to adults. Reforms aiming at more severe sentencing of young offenders are regularly restricted to certain recidivist or violent offenders (e. g. England and Wales, France, the Netherlands, Romania or Slovakia).

It also can be deemed as internationally accepted that less intensive interventions, including diversion (if need be in connection with victim-offender-reconciliation, reparation and other socially constructive interventions), better assist the integration of the ‘normal’ juvenile delinquent (characterized by the episodic nature of his offending) than intensive (repressive) interventions, especially imprisonment (see Dünkel and Pruin 2009 and Dünkel, Pruin and Grzywa 2011).

On the other hand education is not unlimited. Restrictions of educational criminal law through sentencing that is proportional to the offence are necessary, especially concerning custodial sentences. There is no justification to extend custodial sentences because of ‘educational needs’ leading to disproportional interventions.

## 6. DEVELOPMENTS OF SENTENCING YOUNG OFFENDERS

Even if reform developments in juvenile justice legislation do not confirm a ‘punitive turn’ it would be possible that sentencing practices in some or many countries follow the ‘getting tough’-approach in order to fulfill public demands on reacting towards juvenile delinquency by more severe sanctioning. In order to evaluate this hypothesis we can observe a general

lack of reliable comparative and longitudinal data.<sup>19</sup> In many countries data on sentencing practices are not complete, comparable or even accessible, in particular to informal reactions (diversion etc.). If data on diversion are not clear, sentencing statistics of the courts are hardly interpretable. Therefore we had to abstain from a comprehensive cross-national comparison between the 34 countries involved in the study. To evaluate the hypothesis of an increasing 'punitiveness' it may be sufficient to evaluate national data in a longitudinal perspective in order to examine the changes in time. Reliable and interpretable data must consider the delinquency structure and qualitative changes in juvenile crime. Often such data were not presented in the national reports in the present study. The decrease of youth imprisonment may be related to diminished youth violence and not necessarily to a milder sentencing practice. The following presentation therefore may only give some indication in favour or disfavour to the hypothesis of a 'new punitiveness' (see in more detail Dünkel, Pruin and Grzywa 2011: 1684 ff).<sup>20</sup>

In *Bulgaria* since the reform laws of 1996 and 2004 less custodial sanctions are imposed, whereas victim-offender-agreements increased considerably (more than 40% of all court dispositions). About one fourth of juvenile delinquents are formally sentenced, almost half of them to deprivation of liberty (before the law reforms almost 90% of court dispositions were custodial sanctions).

In *Croatia* in the 1980s the proportion of juveniles sentenced to imprisonment was about three times higher (16-22 per cent) than today. As in other countries deprivation of liberty in a closed setting has therefore become the absolute exception, and accounts for only about 2-3 per cent of all informal and formal sanctions imposed on juveniles.

In *Denmark* the sentencing practice has not changed significantly after the introduction of the so-called youth sentence in 2002. Still less than 10 juveniles are in prison departments on a given day.

19 See for Germany Heinz 2009; 2011; in more detail to the many methodological problems and the problems of measuring 'punitiveness' with regards to sentencing see Heinz 2011a: 437 ff.

20 Even insofar there were data gaps, as in some countries longitudinal data were not presented (e. g for Belgium, Latvia, Portugal or Turkey). The data on the sentencing practice in various European countries derive from the national reports in the above mentioned research (Dünkel et al. 2011).



In the *Czech Republic* the proportion of custodial sentences decreased from 14 per cent in 1995 to 7 per cent in 2006. The number of youth prisoners correspondingly decreased from 300 to 100.<sup>21</sup>

*England* and *Wales* showed a strongly increasing rate of the juvenile prison population during the 1990s. The more punitive sentencing practice also included the imposition of longer sentences and a decline of diversion rates. However, the situation has changed considerably: 1999-2009 detention in a young offender institution declined by 35 percent.<sup>22</sup> It is paradoxically under the new conservative government that a shift from 'neo-liberal' sentencing is discussed and that the government wants to restrict immediate custody (mainly because of budgetary restrictions).<sup>23</sup>

In *Estonia* since the reform of 2002 the proportion of diversionary measures (transfer to so-called youth committees) has tripled and is now more than 80%. Although statistical data are not always clear, the number of custodial sanctions has considerably declined.

In *Finland* the imposition of prison sentences has declined over the years. While in 1980 3.5% of all cases dealt with by the courts resulted in imprisonment, it was only 0.8% in the year 2006. This implies that Finland is taking the postulation to apply imprisonment as a last resort very seriously. As a reason Lappi-Sepällä sees reforms that he signifies as 'humane neo-classicism' (see Lappi-Sepällä in Dünkel et al. 2011). Law reforms in Finland stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing, the principles of proportionality and predictability have become the central values. The population seems to agree with these objectives and has not voiced any demands for harsher punishments, not even in cases of serious offending. The most frequently used sanction in Finland is a fine, which is quite exceptional compared to the legal situation and practice

21 See Dünkel, Pruin and Grzywa 2011: 1687 f.

22 See Ministry of Justice (Ed), Sentencing Statistics 2009 (incl. Supplementary Tables, Table 2e), own calculations.

23 In the academic area such a shift is demanded since longtime, but it culminated in the Policy-Paper of the Police Foundation ('Time for a fresh start') and the publication edited by David Smith in 2010 ('A New Response to Youth Crime'). It remains open if – after the riots in many cities in 2011 – the government holds this line to emphasize prevention instead of increased punishment and social exclusion.

in other European countries.<sup>24</sup> Fines account for 74 per cent of court sentences issued against 15 to 17 year-old juveniles. The second most relevant sanction in Finland is conditional imprisonment, accounting for over 17 per cent of all interventions in 2005. Overall, one can conclude that Finland follows a strategy of minimum intervention, and that there have been no indications that practice has become or is becoming harsher or more severe.

The *French* criminal prosecution system is traditionally based on the principle of expediency. The prosecutor has the discretion whether or not to prosecute. In 2006, almost 60 per cent of cases were dismissed. The proportion of unconditional prison sentences among all sentences increased from 8% in 1980 to almost 14% in 2003, but subsequently dropped again to 10% in 2006, which is close to the figures of the early 1980s. It has to be considered as well that the social control within the area of community sanctions has been increased by enforced forms of supervision (*protection judiciaire*), which includes electronic monitoring in some cases. However, these changes quantitatively are difficult to measure.

In *Germany* in the 1980s a major movement towards diversion and new educational alternative sanctions occurred. Diversion rates increased considerably from slightly more than 40% in the early 1980s to 70% in 2008. Although a considerable number of violent and more serious offenders entered the juvenile justice system in the beginning of the 1990s an amazing stability of the sanctioning practice remains characteristic. Unconditional juvenile imprisonment accounts for only 2-3% of all informally (prosecutors and youth courts) or formally (youth courts after a trial) sanctioned juveniles and young adults aged 14-20. However, another 5 per cent of the juveniles and young adults experience the disciplinary measure of short term detention of up to four weeks (*Jugendarrest*). The sentencing practice in the Eastern Federal States 20 years after the reunification has adjusted to the 'Western' style. Altogether the sentencing practice is oriented to the minimum intervention model (including some restorative elements, mediation and community service orders).

In some aspects *Greek* sentencing practice is different from the countries that have been dealt with so far. Informal (diversionary) sanctions like the

24 Fines cannot be issued against juveniles in *Belgium, Bulgaria, Croatia, Italy, Poland, Scotland, Serbia* and *Spain*, see Dünkel, Pruin and Grzywa 2011: 1671 ff, 1681 ff.

absolute discharge, which has only been available since 2003, are only rarely applied. With regard to formal sentencing, educational measures play a pivotal role, with approximately 75% of all cases resulting in the imposition of an educational measure. More specifically, the most common of these measures is the reprimand, accounting for more than 50% of all court dispositions. It is remarkable that imprisonment is the second most commonly ordered sentence in Greece. More than 20% of all dispositions are sentences to imprisonment. Around 70% of prison sentences are less than one month and 90% are less than 6 months in duration. This means that short prison sentences are clearly predominant. What is more, they are executed only very rarely because they are often suspended (similar to probation). Fines are almost never issued against juveniles in Greece. The sentencing data make no indication of an intensification or toughening-up of Greek practice. Greece, on the other hand, does not seem to follow any strategies of non-intervention. Obviously the Greek system emphasises warning offenders through formal proceedings and sanctions that are in fact not very invasive on second glance.

Despite poor statistical evidence it becomes clear that, with the reform of the Children Act of 2001 in *Ireland*, the use of custodial sentences has diminished and the scope of restorative and other educational measures has been broadened. In conformity with this policy, the numbers of juveniles detained in reformatory and industrial schools on 30 June of each year show an overall downward trend from 159 in 1978 to 41 in 2005.

In *Hungary* the proportion of diversion in the sense of an unconditional discharge (mostly combined with a reprimand) has increased from 16% in 1980 to 34% in 2007. Other forms of diversion are the postponement of an indictment and the referral to mediation schemes. The result of this orientation to informal reactions is that the proportion of indictments decreased from almost 84% to 58%. The court sentencing practice, too, shows a clear tendency towards less severe punishments. The proportion of (suspended and unconditional) juvenile prison sentences dropped from 34% in 1980 to 27% in 2007. At the same time the proportion of suspended sentences increased from 47% to 74%. In other words only 6.3% of all convicted juveniles received an unconditional prison sentence in 2007 (the corresponding figure for 1980 was 18%).<sup>25</sup> Altogether Hungary has made great progress towards meeting

25 Own calculations from Table 3 of the report of Váradi-Csema in Dünkel et al. 2011: 696 f.

the international standards that emphasise minimum intervention and community sanctions and measures.

Although statistical data are rarely available and not always validated it seems to be evident that the *Italian* criminal justice system can still be characterized by its specific leniency and moderate sentencing practice which results in amazingly low incarceration rates particularly for juvenile offenders (see in general Nelken 2009). Populist rhetoric which from time to time emerges in the political debates (Berlusconi and others) doesn't change this picture. The reform law of 1988 has led to an expansion of judicial diversionary measures (*perdono giudiziare*).

*Latvia* had a rather stable sentencing practice in the 1990s, but with the introduction of community service in 1999 and further community sanctions such as mediation in 2005 the youth prison population has been reduced from 438 in 2000 to 149 on 1st January 2010 (-66%).

In *Lithuania* the law reform of 2003 has not yet had too much impact. Still about 30 per cent of sentenced juveniles receive custodial sanctions. However, this proportion is much lower than in Soviet times.

In the *Netherlands* since the mid-1980s a getting tough approach has emerged insofar that diversion without any intervention has been reduced. The law reform of 1995 has introduced longer custodial sanctions (up to one or two years instead of up to 6 months), which had some impact on the sentencing practice. The proportion of dismissals or of diversionary transfers to projects is somehow unclear. Therefore the relatively large proportion of about 30 per cent custodial sanctions on the court level is difficult to interpret.

In *Northern Ireland* much emphasis is given to the police diversion schemes that are successful 'in managing to keep the number of young people prosecuted through the courts to a minimum' (O'Mahony in Dünkel et al. 2011: 971). The numbers of juveniles sentenced by the courts decreased from 1,254 in 1987 to 722 in 2004, the proportion of custodial sanctions decreased from 21 to 10 per cent of all court dispositions. The major law reform of 2001 has had further impact on sentencing. Youth conferencing (introduced 2004) became the major alternative sanction, which further reduced custody.

In *Poland* as well since 1990 the proportion of custodial sanctions has been reduced to a very low level of about 2 per cent of all measures issued by the family court.

In *Romania*, diversion is used extensively. Whereas in 1995 only 28 per cent of the cases involving minors were diverted, the percentage rose to 53 per cent by 1999 and reached 81 per cent in 2007. Concerning the court dispositions, prison sentences are applied relatively often. In 1996 almost half convicted minors were given prison sentences. In the following years the number of minors sentenced to prison dropped and accounted for roughly one quarter of all sentences in 2006. In 2002 a probation service was created, which contributed to an increase of probation sentences.

A trend to use alternative sanctions is visible in *Russia*, too. In Soviet times 30-50% of convictions comprised custodial sanctions. Until 2005 the proportion decreased to 'only' 24 per cent, which still reflects a rather severe punishment practice (all the more that diversion with about 25 per cent still plays a marginal role).

The development in *Scotland* can be seen in contrast to England and Wales. Custodial sanctions for 16- to 21-year-old offenders decreased between 1990 and 2006, and also the younger age group below 16 profited from alternative sanctions.

*Serbia* has extended diversion by the reform of 2005, however, exact statistical data are lacking. Nevertheless a reduction of custodial sentences was observable already before the law reform.

Interestingly the sentencing practice in *Slovakia* has not changed very much, although the official crime policy emphasised more severe punishment of juvenile offenders.

*Slovenia* belongs to the countries with an absolute moderate sentencing practice. Since 1980 the proportion of custodial sentence further decreased.

Longitudinal data about *Spain* have not been available. However, there are indicators for a tougher sentencing practice in Catalonia with an increased proportion of custodial sentences in the 2000s.

In contrast *Sweden* has kept its policy to avoid imprisonment for 15-17-year-old juveniles and 18-20-year-old young adults and use it only as a very last resort. Law reforms led to a less extensive diversion practice. The result is not more severe punishment, but an increase of transfers to the Social Welfare Boards (2008: two thirds of all criminal cases).

In *Switzerland*, too, custodial sentences remain the absolute exception. Interestingly the few youth prison sentences – if ever applied – are very short

(almost 80 per cent below one month). The figures demonstrate that the Swiss sentencing practice is not punitive at all.

Data on the sentencing practice in *Ukraine* are not easily accessible and incomplete. An indicator for a change in the sentencing practice of courts may be seen in the reduction of inmates in so-called youth colonies (youth prisons) since 2000. During the 1990s the number was around 3,300-3,900 per day, until 2007 it declined to about 1,900.

## 7. CONCLUSIONS

Juvenile justice systems in Europe have developed in various forms and with different orientations. Looking at sanctions and measures the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve the compliance with the norm violated by the juvenile offender (*Normverdeutlichung*). Mediation, victim-offender reconciliation or family group conferences are good examples of such diversionary strategies.<sup>26</sup> On the other hand, from an international comparative perspective, systems based solely on child and youth welfare are on the retreat. This is not so evident in Europe where more or less 'pure' welfare orientated approaches exist only in *Belgium* and *Poland*<sup>27</sup> than in, for instance, Latin American countries, which traditionally were oriented to the classic welfare approach (Tiffer-Sotomayor 2000; Tiffer Sotomayor, Llobet Rodríguez and Dünkel 2002; Gutbrodt 2010).

Across Europe elements of restorative justice have been implemented, both in countries which to some extent adopt neo-liberal or neo-correctional approaches and in those with a relatively strong welfare orientation. In addition, educational and other measures, which try to improve the social competences of young offenders, such as social training courses and cognitive-behavioural training and therapy, have been developed more widely. These developments are in line with international juvenile justice standards. The

26 However, diversion in the sense of non-intervention has been restricted, particularly for recidivist offenders, in some countries such as *England* and *Wales*, France and the Netherlands.

27 The *Scottish* practice to send juvenile offenders up to the age of 16 to the children's hearings system could also be characterised as a welfare approach.

2003 recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasizes the development of new, more constructive community sanctions also for recidivist and other problematic offender groups. This maintains the traditional idea of juvenile justice as a purely special 'educational' system of intervention designed to prevent the individual from re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been hailed as desirable across Europe, it cannot be denied that in some countries 'neo-liberal' orientations have influenced juvenile justice policy and, to a varying extent, also practice (see Muncie 2008 with further references). The widening of the scope for youth detention in *England and Wales*, *France* and the *Netherlands* may be interpreted as a 'punitive turn'. And indeed the youth prison population in these countries did increase considerably in the 1990s. Muncie (2008: 110) refers to public debates and statements of academics also in other (including Scandinavian) countries and comes to the conclusion that such commentaries clearly suggest that not only in the USA and England and Wales but throughout much of Western Europe, punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support.

This conclusion reflects only a facet of the full reality. A different reality emerges, however, when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare agencies and projects such as mediation schemes. These continue to operate in a reasonably moderate way and thus to resist penal populism. Deprivation of liberty remains the truly last resort in *Scandinavia* and indeed most other regions and countries (von Hofer 2004; Storgaard 2004; Haverkamp 2007). This differentiated picture of a 'new complexity' (Habermas 1985) is the main message of the research presented by the major comparative study on juvenile justice legislation and sentencing practice in Europe (Dünkel et al. 2011) on which this chapter is largely based (see in detail Dünkel, Pruin and Grzywa 2011; Dünkel, Grzywa, Pruin and Šelih 2011).

Sonja Snacken has sought to explain why many European countries have resisted penal populism and punitiveness (Snacken 2010; 2012; Snacken and Durmontiers 2012). She has emphasized that European states

are constitutional democracies strongly oriented towards the welfare state, democracy and human rights. These fundamental orientations, which can be found most clearly in many continental Western European states, and particularly in Scandinavian states (Lappi-Seppälä 2007; 2010), serve as 'protective factors' against penal populism (see also Pratt 2008; 2008a).

It is undoubtedly true that penal populism does not halt at the gates of youth justice (Pratt et al. 2005; Ciappi 2007; see also Garland 2001; 2001a; Roberts and Hough 2002; Tonry 2004; Muncie 2008). Generally speaking however, the same factors that have allowed such punitiveness to be resisted in many European countries apply even more strongly to youth justice. Moreover, juvenile offending is different from that of adults. Its episodic nature allows for more tolerance and moderate reactions.

The relative invulnerability of youth justice to punitive tendencies is reinforced by the strong framework of international and European human rights standards that apply to it, courtesy of the 1989 UN Convention on the Rights of the Child and the other instruments mentioned above. More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand.

Clearly more needs to be done and this chapter has highlighted three areas in which policies are still unresolved, also at the international and European level.

- One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15.<sup>28</sup>
- A second step would be to build on the interesting initiatives to increase the maximum age at which young offenders can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and to divert them from a career of adult crime.
- Thirdly, the opposite tendency towards trying juveniles as adults should be resisted. It is not only doctrinally dubious, as explained above, but holds the risk of increasing directly the impact of the worst features of the adult criminal justice system on young offenders.

28 See Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, *Memorandum following visits to the United Kingdom* (5-8 February and 31 March-2 April 2008) CommDH(2008)27 Strasbourg, 17 October 2008.



In sum, youth justice policy as reflected in legislation and practice in the majority of European countries has successfully resisted a punitive turn. While there is more work to be done in the areas where policy is not yet clear, it is realistic to hope that neo-liberal approaches will be moderated, even in *England and Wales, France* or the *Netherlands* where they are rhetorically most prominent, and that the ideal of social inclusion and reintegration will be the *Leitmotiv* for juvenile justice reforms of the 21<sup>st</sup> century.

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