



Alternatives To Custody For Young Offenders And The Influence Of Foster Care In European Juvenile Justice

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1. Introduction

The publication at hand has been realized within the framework of the project “Alternatives to Custody for Young Offenders – Developing Intensive and Remand Fostering Programmes” and was funded by the European Union under the specific programme “DAPHNE III” (JUST/2011-2012/DAP/AG/3054). The project is led by the British Association for Adoption and Fostering (BAAF) and conducted in partnership with the International Juvenile Justice Observatory (IJJO), an International Public Utility Foundation based in Brussels, Belgium, as well as further project partners.¹

The aim of the project is to develop and promote fostering programmes as an alternative to custody, in accordance with Art. 40 UNCRC. International and European standards point out that detention should be used as a last resort for juveniles and emphasize the role of diversion, restorative justice and alternatives to detention in the juvenile justice systems. Within the project, juvenile justice practices with a focus on alternatives to custodial measures in the European Union are explored and fostering practices examined. Hereby, the role of foster care as an alternative to deprivation of liberty is assessed. Furthermore, the project aims to produce a model of good practices, taking into account research and policies in the fields of welfare and justice systems in the European Union.

We were asked to find out whether and how foster care is used within the scope of juvenile justice systems in Europe. Our research is mainly based on 26 national reports written by researchers in the field of juvenile justice and/or child welfare who took part in the project as “national experts”. The country reports, which have been published separately, follow a specific guideline and cover information about the legal framework and main characteristics of the juvenile justice system, particularities in criminal proceedings, the type of reactions to juvenile delinquency and the sentencing practice in the countries. Further aspects of the reports were related to restorative justice measures provided for juveniles and the role they play in juvenile justice (sentencing) practice. Furthermore, the role of foster care within the juvenile justice is presented.

The information provided in this study is also based on experts’ answers on a “Survey on Alternatives to Custody for Young Offenders: Developing Intensive and Remand Fostering Programmes”, collected by the IJJO in collaboration with Eurochild. The questionnaire focused on the role of alternative foster care² in the juvenile justice system and how foster

1 The project started in January 2013 and is running for two years. Further partners of the project are Eurochild (Belgium), A National Voice (UK), Family Child Youth Association (Hungary), National Network for Children (Bulgaria), Social Activities and Practices Institute (Bulgaria) and Università del Salento, Department of Law (Italy). Associate agencies within the project are Royal Borough of Kensington and Chelsea (UK), Budapest Child Protection Agency (Hungary) and Sofia Municipality (Bulgaria).

2 Within the scope of the project, alternative family care included foster care by professional or non-related carers, foster care provided by family and friends, or other forms of family care that are clearly distinct from residential or institutional care.

care is used in the countries covered. The survey yielded responses from 25 countries, provided by academics and professionals in the field of juvenile justice.

The present publication aims to provide a picture of juvenile justice and foster care as an alternative to custody, as well as of manifestations of restorative justice for juveniles in 28 European countries.

The introductory chapter on juvenile justice in Europe by *Frieder Dünkel*, who is among the main representatives for comparative research on juvenile justice,³ aims to outline the main characteristics and trends in juvenile justice as well as the most influential international standards in this field.

The main part of the publication includes snapshots which are based on the 28 national reports referred to above. In the majority of cases the snapshots are summarized versions of the full country reports and aim to provide an overview of relevant aspects of juvenile and restorative justice as well as alternative foster care in the context of the juvenile justice system.⁴

Finally, an analysis on the implementation of foster care as an alternative to deprivation of liberty in the contributing countries is presented. This analysis aims to provide an overview of the (diverse) roles of foster care in juvenile justice, the current state of research and the central open questions.

We hope to arouse the reader`s interest in juvenile justice and the role of alternatives to detention (including foster care) in Europe.

3 E.g. *Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I.* (2011) (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd ed., Mönchengladbach: Forum Verlag Godesberg; *Junger-Tas, J. and Dünkel, F.* (2009) (eds.): *Reforming Juvenile Justice*. Dordrecht et al.: Springer.

4 In some cases, alongside with the country reports other reports on juvenile justice, as specified, were taken into consideration.

2. Juvenile Justice in Europe⁵

Frieder Dünkel

2.1. Introduction

European juvenile justice systems⁶ have been developed from the traditional ‘welfare’ and ‘justice’ models of youth justice. Especially in the last 25 years they 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-liberal⁷ 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 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.⁸ The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts.

5 The present article is a shorter version of papers by the author (see Dünkel 2013 and Dünkel 2015) that deal with the discussion on ‘new punitiveness’ (Pratt et al. 2005) in juvenile justice. In contrast to these articles, the present paper concentrates on the description of European juvenile justice legislation and practice.

6 A note on terminology: I have used the terms youth and youth justice as well as juvenile justice in this paper interchangeably. The term juvenile justice is in use in a number of international, European and national instruments, where it usually refers to persons under the age of 18 years. 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 as it is proposed by the European Rules for Juvenile Offenders Subject to Sanctions or Measures (Rec. (2008) 11), see Rule Nr. 17.

7 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.

8 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.

2.2. Contemporary trends in youth justice policy

Across Europe, policies based on the notions of subsidiarity and proportionality of state interventions against juvenile offenders have remained in force or emerged afresh in most, if not all, countries. Recently however, we have also witnessed developments that adopt a contrary approach in several European countries. These developments intensify youth justice interventions by raising maximum sentences for youth detention and by introducing additional forms of secure accommodation. 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 (Albrecht and 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; Dünkel et al. 2011). The causes of the more repressive or ‘neo-liberal’ approach in some countries are manifold. It is likely that the 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 are the primary focus of this chapter, have to be understood against the background of international and regional instruments that set standards for juvenile 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 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).

In the last few years a remarkable shift towards the educational ideal of juvenile justice can be observed in countries, such as England and Wales, and the Netherlands, which claimed to be driven by neo-liberal ideas in the 1990s and 2000s.

2.2.1 Responsibilisation and neo-liberalism

In *England and Wales*, and to some extent elsewhere, the concept of responsibilisation has become a pivotal category of youth justice.⁹ Responsibilisation is not just limited to young offenders, but also includes parents who are increasingly being held criminally

⁹ See critically, Crawford and Lewis 2007: 27, and Cavadino and Dignan 2006: 68 ff. with regards to the ‘managerial’ and the ‘getting tough’ approach.

responsible for the conduct of their children.¹⁰ Making parents more responsible may have a positive impact. There is empirical evidence that parental training, combined with child support at an early stage may have positive preventive effects. 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) instead of being 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 easily to rebut, its formal abolition in 1998 was indicative of a determination to hold even very young offenders responsible for their actions. The tendencies in English youth justice may be regarded as symptoms of neo-liberalism, characterised by four key terms: responsibility, restitution (reparation), restorative justice and (occasionally openly publicised) retribution. These '4 Rs' have replaced the '4 Ds' (diversion, decriminalization, deinstitutionalization and due process) that 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 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).

A number of authors have established that there are many reasons for the increase in neo-liberal tendencies (Garland 2001; 2001a; Roberts and Hough 2002; Tonry 2004; Pratt et al. 2005; Muncie 2008). These include the renewed emphasis on penal philosophies such as retribution and incapacitation, and 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 people 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*.

It should be emphasised, however, that most continental European countries have not

¹⁰ 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

regressed to the classical penal objectives and perceptions of the 18th and 19th 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 adopted in *Germany* in 1990, the *Netherlands* in 1995, *Spain* in 2000 and 2006, *Portugal* in 2001, *France* and *Northern Ireland* in 2002, *Lithuania* in 2001, the *Czech Republic* in 2003 and *Serbia* in 2006 are examples of this dual approach. The reforms in *Northern Ireland* in 2002 and *Belgium* in 2006 are of particular interest, as they strengthened restorative elements in youth justice, including the concept of family conferencing, and thus arguably contributed to responsabilisation without necessarily being ‘neo-liberal’ in their 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 change, as can be demonstrated by a German example. At the end of 2007 several violent crimes in subways (filmed by automatic cameras) led to a heated public debate about the need 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 made several xenophobic statements against young immigrant offenders. Within a few days almost a thousand 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).

2.2.2. Diversion, minimum intervention and community sanctions

Research on disposals that are made applicable to young offenders, has shown a clear expansion of the available means of diversion. However, this is often linked to educational measures or merely functions 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.

In most countries deprivation of liberty is generally used as a measure of last resort. In practice, the concept of ‘last resort’ varies across time and in cross-national comparison. *England* and *Wales*, for example, experienced sharp increases in the juvenile prison population from the 1990s to the mid-2000s, but the reduction of immediate custody by 45 per cent from 2007 to 2012 demonstrates a shift in the sentencing policy, as

demographic changes were only of minor importance concerning this reduction (Horsfield 2014). *Spain* and a few other countries showed an increase in the use of youth custody in previous years, but recent developments have reversed this trend. This is also true for Central and Eastern European countries. *Croatia*, the *Czech Republic*, *Hungary*, *Latvia*, *Romania* and *Slovenia*, and recently *Russia* have achieved higher levels of diversion and community sanctions and lower levels of custodial sanctions that remain characteristic of continental Western European and Scandinavian countries. However, *Lithuania* 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%, and in *Germany* about 70% of youth offending is dealt with in this way (Dünkel, Pruin and Grzywa 2011: 1,684 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. On the other hand, while Central and Eastern European countries do not allow for such prosecutorial discretion, a majority of youth offending is still dealt with out of court as offences that cause minimal damage are not treated as statutory criminal offences. *Italy* provides for a judicial pardon, which is similar to diversionary exemptions from punishment, but awarded by the youth court judge. Thus, a large variety of forms of non-intervention or minor (informal or formal) sanctions can be seen across Europe.

Constructive measures, such as social training courses (*Germany*) and 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 suggested by the Council of Europe's 2003 Recommendation on new ways of dealing with juvenile delinquency and the role of juvenile justice).

2.2.3. Restorative justice

One development that appears to be common to Central, Eastern and Western European countries is the application of restorative justice policies. Victim-offender-reconciliation, mediation, or sanctions that require reparation or apology to the victim have played an important role in all legislative reforms undertaken in the last 15 years. Pilot mediation projects were established in the 1990s in Central and Eastern European countries such as *Slovenia* and the *Czech Republic*.

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 ordering victim-offender-

reconciliation as an educational directive (*Wiedergutmachungsaufgabe*) (see §§ 10 and 15 of the Juvenile Justice Act). In 2006, family group conferences – originally introduced and applied in New Zealand – were introduced 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, youth justice reform in *Northern Ireland* had introduced youth conferences, which began running as pilot projects since 2003 and have since been expanded nationwide. In addition, *Northern Ireland*, made provisions for reparation orders: an idea that had been introduced in *England and Wales* in 1998 (O'Mahony and Campbell 2006; O'Mahony and Doak 2009; 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.¹¹ 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).

In *Italy* 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 preliminary investigations and the preliminary hearing when considering 'the extinction of a sentence because of the irrelevance of the offence' or in combination with the suspension of the procedure with supervision by the probation service (*Sospensione del processo e messa alla prova*).

In general, one can summarize that the idea of restorative justice has been successfully implemented all over Europe, but numbers remain moderate. Mediation, reparation and restitution orders quantitatively cover only a small part, regularly less than 10 per cent of all informal (juvenile prosecutor) and formal (juvenile court) reactions of the juvenile justice system (see Dünkler, Grzywa-Holten and Horsfield 2014).

2.2.4. 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,

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

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.

Youth justice policy in recent decades has demonstrated a tendency to strengthen the justice model by establishing or extending procedural safeguards, and providing welfare measures. This tendency also includes a strict emphasis on the principle of proportionality, thereby moving away from sentences and educational measures that are disproportionately harsh.

An emphasis on the justice model also denotes a clear differentiation of the kind of misbehaviour that is subject to juvenile justice interventions. Most European juvenile justice laws rely on criminal behaviour defined by the general criminal law, whereas other forms of problematic behaviour which could endanger the juvenile and his or her future development are dealt with by separate welfare or family laws. A unified welfare and justice approach (as in the classic welfare model) in Europe is only to be found in *Belgium, Scotland and Poland*.

Recently, other states have passed legislation related to certain misbehaviour (“anti-social” behaviour) which is addressed by civil law, but with a “hidden” form of criminalisation in case of civil law order violations (*Bulgaria, England and Wales, Ireland, Northern Ireland*). So, a violation of Anti-Social-Behaviour-Orders constitutes a criminal offence, and therefore a young person may be subject to criminal punishment even if he has only not followed some civil law obligation. By contrast, status offences such as truancy or running away from home in the continental European juvenile justice systems are dealt with in separate civil or welfare laws, and therefore cannot be ‘punished’ by youth courts (see in summary Pruin 2011: 1553 ff.).

On the other hand, restorative justice and minimum intervention policies, as well as ‘neo-liberal’ tendencies towards harsher sentences and ‘getting tough’ on youth crime are not necessarily based squarely on ‘justice’ or ‘welfare,’ and can be viewed as independent models of youth justice (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). Cavadino and Dignan (2006: 210 ff.) identify not only a ‘minimum intervention model’ (including diversion and community sanctions) and a ‘restorative justice model’ (including restorative/reparative reactions), but also a ‘neo-correctionalist model’, which, as mentioned previously, is particularly characteristic of trends and developments in *England and Wales* over the past 15 to 20 years.

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). The 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.

2.3. 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 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, drastic reform was required in the Central and Eastern European countries. The situation as it existed at the time was not uniform across the region but differed amongst groups of countries. One group 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. The other group comprised of *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 in numerous projects, including in the creation of law reform commissions and also in the adoption of reform legislation especially in *Estonia*, *Lithuania*, *Serbia*, *Slovenia* and the *Czech Republic*.

The development of an independent youth justice system has been a prominent feature of these reforms: as seen in the *Baltic States*, *Croatia*, the *Czech Republic*, *Romania*, *Russia*, *Serbia*, *Slovakia*, and *Turkey*. These countries have recognised the importance of procedural safeguards and entitlements that also take the special educational needs of young offenders into account. However, while *Russia* and *Romania* have succeeded in setting up their first model youth courts, independent youth courts in the Baltic States remain to be seen. It is also important to note that 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 have been reduced. However, it should 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 a sanction restricted to a small minority of cases 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 and the capability to act according this discernment) found in *German* and *Italian* law – has recently been adopted in *Estonia* (2002), the *Czech Republic* (2003) and *Slovakia* (for 14 year olds, see Pruin 2011: 1566 ff). This is an interesting development, as it reflects another instance where reforms in Central and Eastern European countries 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.

2.4. The scope of juvenile justice

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. However, 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.

2.4.1. Age of criminal responsibility

In spite of this common ‘European philosophy’ of juvenile justice mentioned above, the minimum ages of criminal responsibility differ vastly across the European continent. 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).

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
Austria		14	18/21	14-27
Belgium		18	16 ^b /18	Only welfare institutions
Belarus		14 ^c /16	14/16	14-21
Bulgaria		14	18	14-21
Croatia		14/16 ^a	18/21	14-21
Cyprus		14	16/18/21	14-21
Czech Republic		15	18/18 + (mitigated sentences)	15-19
Denmark ^{d*}		15	15/18/21	15-23
England/Wales		10/12/15 ^a	18	10/15-21
Estonia		14	18	14-21
Finland ^d		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		12 ^c /14	18	14-24
Ireland		10/12/16 ^a	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 ^c /16	18/21	14-21
Macedonia		14 ^c /16	14/16	14-21
Moldova		14 ^c /16	14/16	14-21
Montenegro		14/16 ^a	18/21	16-23
Netherlands		12	16/23	15-24
Northern Ireland		10	17/18/21	10-16/17-21
Norway ^d		15	18	15-21
Poland	13		15/17/18	13-18/15-21
Portugal	12 [`]		16/21	12/16-21
Romania		14/16	18/(20)	14-21
Russia		14 ^c /16	18/21	14-21
Scotland	8 ^e	12 ^e /16	16/21	16-21
Serbia		14/16 ^a	18/21	14-23
Slovakia		14/15	18/21	14-18
Slovenia		14/16 ^a	18/21	14-23
Spain		14	18	14-21
Sweden ^d		15	15/18/21	15-21 ^g
Switzerland		10/15 ^a	18 ^f	10/15-22
Turkey		12	15/18	12-18/21
Ukraine		14 ^c /16	18	14-22

* 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.

- 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).

While *England* and *Wales* can be criticized for their low age of criminal responsibility, 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 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). This graduated scale of criminal responsibility must be criticized as it contradicts the basic philosophy of juvenile justice, according to which sanctions must be decided in relation to individual development of maturity or other personality features rather than the seriousness of the offence (see also the criticism under Section 4.3).

Whether these notable differences can in fact be correlated to variations in sentencing, is not entirely apparent. Even within systems 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 make a regime more intensive do not only contribute to changes in practice, but may also be the result of 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; Dünkel in Dünkel et al. 2011).

2.4.2 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 its educational measures – to young adults between the ages of 18-20, 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 work 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 increasingly such difficulties continue to occur into their mid-twenties (Pruin 2007; Dünkel and Pruin 2011; 2012; Pruin and Dünkel 2014). 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; Loeber et al. 2012: 336 ff.; Dünkel and Geng 2013), which would justify a juvenile justice system up to the age of 21 or even 24. The Dutch government has recently extended the scope of juvenile justice until the age of 23 (see for the respective reform proposals 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 the 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. However, adult criminal courts can impose some of the measures otherwise reserved for juveniles (for example, in the former *Yugoslavia*, which introduced this possibility in 1960: Gensing 2011; 2014). The Yugoslavian experience is a good example of how substantive and procedural laws have been harmonized in order to prevent counterproductive effects of such provisions. There was therefore good reason in 1998 for *Croatia* and *Serbia*, former

Yugoslavian states, to transfer the jurisdiction of young adults to 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 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 for in the German criminal law for adults.

The Council of Europe has taken these new considerations about the prolongation of the transitional phase of young adults into account in its 2003 Recommendation on 'New ways of dealing with juvenile offenders and the role of juvenile justice' (Rec. (2003) 20) and in the 'European Rules for Juvenile Offenders Subject to Sanctions or Measures' (ERJOSSM) passed in 2008 (Rec. (2008) 11). Rule 11 of the 2003 Recommendation reads as follows: 'Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.'

In September 2004 the International Association of Penal Law (AIDP) held its World Congress in Beijing, China. The final Resolution of the Congress emphasizes 'that the state of adolescence can be prolonged into young adulthood (25 years) and that, as a consequence, legislation needs to be adapted for young adults in a similar way as it is done for minors.' The age of criminal majority should be set at 18 years, and the minimum age not lower than 14 years (see No. 2 of the Resolution). Under No. 6., the Resolution states: 'Concerning crimes committed by persons over 18 years of age, the applicability of the special provisions for minors may be extended up to the age of 25.'

Also, Rule 17 of ERJOSSM states that 'young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly'. The commentary to this rule states that 'it is an evidence-based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation' (Council of Europe 2009: 42).¹²

12. In this context, the formal status of international instruments like the Council of Europe's 2003 Recommendation or the ERJOSSM of 2008 should be clarified. Such recommendations, unless they are formally incorporated into national law, are not binding for national legislators; they are sometimes called 'soft laws'. However, the German Constitutional Court delivered an important decision in May 2006, emphasizing the persuasive force of such recommendations: 'It could be an indication that insufficient attention has been paid to the constitutional requirements of taking into account current knowledge and giving appropriate weight to the interests of the inmates if the requirements of international law or of international standards with human rights implications, such as the guidelines or recommendations adopted by the organs of the United Nations or the Council of Europe are not taken into account or if the legislation falls below these requirements.' (BVerfG Neue Juristische Wochenschrift 2006: 2093 ff., 2097; a similar statement can be found in a decision of the Swiss Federal Constitutional Court in 1992.)

This inclusion of young adults in juvenile justice legislation is being seen increasingly across Europe, and especially in the 2014 reform of the Dutch Juvenile Justice system that extended the scope of juvenile justice up to the age of 23.

2.5. Transfer to adult criminal courts or jurisdiction (waiver procedures)

While an extension of juvenile justice law to young adults may be seen as a way of imposing more appropriate sentences on immature young adults, 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 as young as age sixteen can be dealt with in the adult criminal justice system. Beyond that, in other countries, juvenile offenders can be transferred from youth court to adult court, where 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 2006: 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, such as Belgium, provide for the application of adult criminal law to juveniles aged 16 or 17 who commit serious offences including rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide. The reforms that took place in 2006 allowed for the jurisdiction of Extended Juvenile Courts to conduct such trials. Prior to this reform, juveniles were tried by adult courts.¹³ 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.

¹³ See *Christiaens et al.* in Dünkel et al. 2011. 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 in Dünkel et al. 2011). In *Ireland*, in exceptional cases like treason or crimes against the peace of nations, murder and manslaughter, juveniles are tried by the Central Criminal Court before a judge and jury.

In *France*, by contrast, less serious offences, instead 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 the 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 signifies – independently from the type of offence – from which age onwards 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 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.¹⁴ 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.¹⁵ 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.¹⁶

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). Furthermore, research shows that a lenient, minimum-interventionist juvenile justice system does not produce any more juvenile offenders than an active and punitive one (Smith 2005: 192 ff.).

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).¹⁷ 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 Dünkel 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).¹⁸ Therefore the UN Committee on the Rights of the Child recommends abolishing

14 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 Dünkel 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 (*Dünkel* in Dünkel et al. 2011: 587 ff; *Dünkel and Pruin* 2011; 2012).

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

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

17 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.

18 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 in England in 1993, a significant minority of the judges took the view that trying such young offenders in an adult court would inevitably violate their rights.

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).

2.6. Summary and Conclusion

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 compliance with the law (*Normverdeutlichung*). Mediation, victim-offender reconciliation or family group conferences are good examples of such diversionary strategies.¹⁹ 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 Poland²⁰ as 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, 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 2003 Recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasizes the development of new, and more constructive community sanctions 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, a trend that has been reversed in the last few years. A different reality emerges, however, when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare

19 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 with a recent U-turn to expand the scope of diversion again (see for England and Wales, where the restrictions of the “final-warning”-system were statutorily abolished in 2012, see Horsfield 2014).

20 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.

agencies and projects such as mediation schemes in many European countries. These continue to operate in a reasonably moderate way and thus 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).

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, 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 15.²¹
- A second step would be to build on 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. The recent reform of April 2014 in the Netherlands increasing the scope of juvenile justice up to the age of 23 may be seen as the forerunner in juvenile justice reform in this respect.
- Thirdly, the tendency towards trying juveniles as adults should be resisted. It is not only doctrinally dubious, as explained above, but also holds the risk of increasing the impact of the worst features of the adult criminal justice system on young offenders.
- In sum, youth justice policy as reflected in legislation and practice in the majority of European countries has successfully resisted a punitive turn. Therefore, there is some important evidence that the ideal of social inclusion and reintegration will be the Leitmotiv for juvenile justice reforms of the 21st century in Europe and other continents as well.

21 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.

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3. Country reports (snap shots)

Joanna Grzywa-Holten, Philip Horsfield, Andrea Păroşanu, Ineke Pruin

3.1. Austria²²

A. Juvenile Justice

General criminal law regulations concerning both adults and juveniles can be found in the Criminal Code 1974 (which came into force in 1975 (CC)) and in the Code of Criminal Procedure (CCP). Furthermore, legal matters regarding juveniles in conflict with the law are regulated in the Juvenile Court Act of 1988 (JCA). The JCA contains material and procedural regulations for juveniles and young persons, which modify the legal provisions governing the general criminal law.

In Austria, there is no specialised, separate juvenile jurisdiction. Therefore, the same court is responsible for criminal matters involving juveniles and adults. Nevertheless, judges and prosecutors involved in juvenile matters must have „suitable pedagogical skills and possess additional qualification in the field of psychology and social work” (see § 30 Austrian JCA).

During prosecution the court and the prosecutor are supported by the juvenile court support agency (Jugendgerichtshilfe). Its responsibilities include e.g. providing evaluations and psychological opinions and the organisation and coordination of victim-offender mediation. The juvenile court support agency can act independently from the court and prosecutor in particular cases.

The Guardianship Court and the Child Welfare Authorities have to be informed about the initiation and ending of any criminal proceeding against a juvenile – even if the juvenile is under the age of criminal responsibility (see § 33 JCA).

§ 1 of the Juvenile Court Act defines juveniles as persons between 14 and 18 years of age at the time of the offence. Children under 14 are not criminally responsible – such cases fall within the scope of the Youth Welfare Act and the welfare measures it contains. The JCA also contains regulations that concern 18 to 21 year-olds, i. e. ‘young adults’ (Heranwachsende).

The 2001 amendment to the JCA brought young adults within the remit of the JCA.

²² The snapshot is based on a report written by *Judith Ruderstaller*, Austria, on the results of the online consultation by *Judith Ruderstaller* from the NGO Helping Hands and also on *Bruckmüller/Pilgram/Stummvoll* (2011): Austria. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 41-98.

However, the benefits that result from this are mainly limited to the procedural regulations of the JCA, with the range of sanctions and rules for apportioning sentences remaining those of the Austrian Criminal Code.

Persons between 14 and 16 years of age constitute a special group of interest in the JCA. They are not liable to a penalty if they are incapable of discerning between right and wrong or if they are unable to act according to such discernment, or if they commit a misdemeanour without a serious degree of guilt and the circumstances of the case are such that would render further punishment pointless (see § 4 (2) 3 JCA).

Anti-social behaviour is not punishable under the JCA. Rather, it is responded to by the Child Welfare Authorities and by the Guardianship Court.

Court proceedings and procedural guarantees are legislated for in the Code of Criminal Procedure, which apply equally to all offenders regardless of age. The JCA, however, make provision for specific regulations for juveniles, such as, among others:

- A juvenile's right to be accompanied by a person of trust,
- In cases of prosecution on private accusation, the juvenile's prosecution by the victim-subsidiary prosecution - if it appears necessary for educational reasons or other justified interests of the victim (see § 44 JCA),
- In cases of crimes punishable by more than 1 year of imprisonment (3 years for adults) a juvenile needs to be represented by a lawyer,
- With few exceptions the trial cannot be conducted in the juvenile's absence (see § 32 (1)),
- In criminal proceedings against juveniles, the public can be excluded if it is in the juvenile's best interest (see § 42 JCA).

The Juvenile Court Act contains a wide range of legal and penal reactions to juvenile offending: diversion measures, conviction without punishment, conviction with a suspended sentence, fines, and imprisonment.

In juvenile (and young adult) cases, the public prosecutor and the court can divert the case at every stage of the process. For juveniles, diversion measures can be applied regardless of the offence committed and are also part of the law on drugs. In practice, though, diversion is predominantly used in cases of minor to intermediately severe offending by juveniles.

Diversion without intervention (§ 4 p. 2 and § 6 JCA, i.e. refraining from prosecution) can be applied in cases of particularly petty offending. At the same time the prosecutor and

the court decide that no further measures are required. The legal regulation of diversion without intervention includes a reference to §§ 190 and 191 CPA. In 2012, the prosecution refrained from further proceedings in about 60% of all juvenile cases (and 40% of young adult cases), 50% of which occurred in on the basis of § 4 p. 2 and § 6.²³

When it is not possible to simply drop the case, prosecutors can refrain from prosecution (§ 7 JCA Rücktritt von der Verfolgung) on the condition that the offender fulfils certain obligations (diversion with intervention), e. g. payment of a fine, community service, serving a probationary period under the supervision of the probation service linked to further obligations, or delivering restitution for offences through social work. Such diversion can only be applied to juveniles (and not to young adults) if the offence committed is punishable with imprisonment for no more than five years (the court can go beyond this limit); furthermore, the penal act must not have resulted in death. Diversions are used in 19% of all proceedings at the prosecutor and in 22% of all proceedings at courts concerning juveniles. The most relevant forms of diversion are “therapy instead of punishment in case of drug crimes” (38%), community service (27%) and victim-offender mediation (19%). Probation with or without additional requirements play a minor role in the practice of diversion in juvenile justice with 4% and 7% respectively. The same applies to the diversionary fine (6%).²⁴

In the cases of juvenile offenders, the Criminal Code provides courts with the authority to impose fines or imprisonment, however only as a last resort and if other measures appear insufficient (*ultima ratio*). The JCA contains certain provisions that modify how juveniles shall be sentenced. The maximum penalties (for both imprisonment and fines) must not exceed half of the statutory penalty. The maximum sentence for a minor is 10 years. The upper limit is 15 years with regard to the most serious offences and offenders who are 16 and older. There is no life imprisonment for juveniles.

(Partly) conditionally suspended sentences to imprisonment account for the largest share of all penalty measures issued against juveniles (50%) and young adults (44%). By contrast, in 2012, non-suspended imprisonment accounted for 8.5% and 13% respectively. The share of fines (conditional and unconditional) was at around 26% for juveniles and 38% for young adult offenders.²⁵

A juvenile sentenced to imprisonment will be placed in a youth prison (see § 55 JCA). In Austria there is only one youth prison, hence any male person and all female convicts are placed in separate departments in the adult’s prison.

Youth prison staff are required to have additional qualifications in the fields of pedagogy, psychology and psychiatry (see § 54 JCA). School education and/or professional education

23 See Bundesministerium für Justiz, Sicherheitsbericht 2012, p. 17.

24 See Bundesministerium für Justiz, Sicherheitsbericht 2012, pp. 20-23, 68.

25 Bundesministerium für Justiz, Sicherheitsbericht 2012, p. 83.

play a crucial role in the re-socialisation process in prison. Even before leaving the prison, social workers support juveniles in finding employment and housing.

B. Restorative approach within juvenile justice

Restorative justice plays a crucial role in the Austrian juvenile justice system. The prosecutor and the court often use diversionary measures with a restorative approach - community service and victim-offender mediation. Any other forms of diversion, such as probation or fines, can also include elements of restorative justice – such as delivering compensation for material and/or immaterial damages (see § 7 JCA and §§ 198-206 StPO).

In Austria, both victim-offender mediation and community service are organised and supervised by the NGO “Neustart”, which is also responsible for providing probation services, too. The responsible social worker reports to the prosecutor or court (who made the offer of/referral to diversion) about the success of the measure.

Community service (§ 201 StPO) also includes a restorative approach by obliging the accused to work in order to avoid formal criminal proceedings at court (in case the diversion was suggested by the prosecutor) or to avoid a conviction (when diversion was suggested by the judge).

Statistical data on the application of diversionary forms of restorative justice (community service, victim-offender mediation) imply that restorative forms of diversion are very important, but the use of victim-offender mediation has been in decline. Following an all-time high of 2,164 cases in the year 2000, the figure dropped to 1,511 cases by 2006.²⁶

Additionally, a model project on social-net conferencing is currently underway in Austria. Instead of closely involving the prosecution service, the juvenile’s social network (mostly family, partly friends), assisted by social workers, psychologists etc., seeks to resolve the problems on its own in a restorative fashion.

C. Foster care within the juvenile justice system

Foster care is not regulated in the JCA. The judge at a criminal court does not have the option to send a juvenile to alternative family care. The only solution (which is not used in practice) is the addition of certain constraints to an already-existing probationary period.

In Austria, the Guardianship Court and the Youth Welfare Office have a very broad

²⁶ Bundesministerium für Justiz: Sicherheitsbericht 2009, 2010, 2011, 2012.

spectrum of interventions into family life at their disposal, such as counselling or ordering children/parents to attend therapy, etc. If the family is unwilling to cooperate, the child can be taken to a foster family or other types of residential facilities for troubled youth.

Child welfare is regulated individually in each Austrian province, thus there are nine different laws in force. All provinces have a model of alternative family care, which includes foster care by any kind of relative or non-related (partly professional) carer. There are different regulations for adoption and for temporary foster families.

Temporary foster care by a foster family for children under 16 years requires the district's competent authority to approve it and name a specific foster family. This approval can only be given if placement in a foster family promises to facilitate the best social and personal development of the child. It has to be likely that there will be a relationship between foster child and foster parents comparable to a relationship between biological parents and children.

Foster parents for children with special needs (mental or physical disability, or other kinds of behavioural problems) have to have had special training (or other professional education) for dealing with such special needs. The foster parents are always subject to supervision from the moment it is planned that a foster child will be placed in their custody.

3.2 Belgium²⁷

A. Juvenile Justice

The legal framework of juvenile justice is based on the Youth Protection Act, which focuses on a welfare oriented model. The act was subject to significant and substantial reforms in 2006. While the welfare approach has remained the central pillar, the act was complemented by issues relating to sanctioning as well as a restorative approach.

As a federal state (divided into the Flemish, French and German-speaking communities), competencies concerning juvenile justice are divided. Up until recently, competencies for the nature and scope of responding to juvenile delinquency were located at the federal level, while the communities were responsible for the execution of educational measures as well as for youth care matters. Major legal reforms in 2014 have placed the competency for responding to juvenile delinquency in the hands of the communities, while judicial organization and procedural rules remain federal matters. Varying approaches to juvenile justice in the different communities might be the consequence.

Despite the formal separation of the juvenile justice system and the child welfare system, there are still deep links between the two models.

27 The snapshot is based on the country report written by *Sabien Hespel* and *Johan Put*, Belgium.

Specialized Youth Courts exist within Courts of First Instance, and have up to now been competent both in penal as well as in civil matters. As of 1 September 2014, specialized Family Courts for civil matters as well as Youth Courts for juvenile justice and child welfare cases operate. Youth Courts are made up of a single judge who is assisted by specialized social services. Special training for judges is mandatory (Art. 259 *sexies* Judicial Code), but it is rather minimalistic in its content. At the Court of Appeal, a special chamber concerning youth cases exists which is made up of three professional judges, including two judges which should be trained in juvenile matters (Art. 101 Judicial Code). Regarding public prosecutors, specialized departments in youth affairs have been established (Art. 151 and 143 Judicial Code). Moreover, specialized police units exist although the law does not require them.²⁸

The Youth Protection Act provides measures and sanctions for juveniles aged up to 18 years and targets criminal behavior. However, certain conditions allow for the transfer of juveniles aged 16 and older to the adult criminal system (Art. 57 *bis* Youth Protection Act). This is the case when youth measures have already been applied before, or when serious offences have been committed (these cases are transferred very rarely in practice, less than 1%²⁹), or in case of traffic offences. The law does not provide for a minimum age of criminal liability, but age limits exist when applying certain measures. Children under 12 years of age can only receive a reprimand, be subjected to a supervision order or to intensive educational guidance, whereas detention in closed facilities can be applied to juveniles aged 14 years and above.

The law does not provide any special treatment for young adult offenders. Youth measures are, however, applicable to young adults up to the age of 20, if the offence was committed while they were younger than 18 but the court trial is convened after their 18th birthday.

The Youth Protection Act targets criminal behavior. Young people who behave anti-socially can either be sanctioned under the Act concerning Municipal Administrative Sanctions, which provides special dispositions for juveniles, or may be subjected to the youth welfare system.

In terms of juvenile justice proceedings, differences exist vis-à-vis the procedure applied to adults. Provisional measures are applied by the Youth Court, which supervises the investigation into the personality and circumstances of juveniles. This Youth Court is responsible for trial proceedings and furthermore supervises the execution of measures. This has also been criticized as not being in accordance with the right to an impartial

28 Vanduk, C., Dumortier, E., Elaierts, C. (2008): Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice. In: Junger-Tas, J., Decker, S. H. (eds.), International Handbook of Juvenile Justice. New York, Springer, pp. 187-224.

29 NICC (2012): Onderzoek naar de beslissingen van jeugdrechters/jeugdrechtbanken in MOF-zaken, research report, p. 46.

judge and the presumption of innocence.³⁰ Mandatory assistance by a defense counsel is safeguarded for juveniles. A special Youth Chamber at the Court of Appeal decides on appeals against Youth Court decisions.

The legal reform in 2006 limited the range of diversionary measures at the prosecution level. Consequently, measures such as community service or educational training can no longer be imposed. Since the reform, prosecutors have been able to apply measures such as a warning, reminding the offender of his/her legal obligations and mediation.

The public prosecutor can demand that the judge order provisional measures (Art. 50 and 52 Youth protection Act), which are: supervision by the social services (which can be combined with community service), placement in a private welfare institution or with a 'trustworthy' person (foster care family) or placement in an open or secure public institution. Should juveniles remain within their families, certain conditions such as school attendance, participation in an educational programme, house arrest or other measures can be ordered.

Juvenile justice measures aim towards the social rehabilitation of the young person. In addition to the previously mentioned measures, the youth court can order one of the following final measures (art. 37 Youth Protection Act):

- Reprimand
- Intensive educational guidance
- Participation in a so-called 'positive achievement', e.g. activities, working stays on a farm
- Up to 150 hours of Community Service as a stand-alone measure.

Furthermore, besides the obligations which are also applicable at the pre-court level, remunerated work/'paid labour' as a means of repairing the damage caused can be ordered with the juvenile's agreement. When imposing a measure, the judge has to prioritize non-residential measures over residential measures – placement in a closed institution remains the last resort. With the exception of Community Service, the law provides no maximum durations for the different measures. Every ordered measure has to be revised yearly, and the court has the possibility to withdraw, change or extend the measure taking into account the personality and circumstances of the young offender. Usually, measures end when the juvenile turns 18, but they can be prolonged until the young person has turned 20 under certain conditions.

As a liberty depriving measure, the youth court can order placement in a closed public institution. It has to be considered the last resort, and since 2006, the requirements for its

³⁰ *Decock, G., Put, J.* (eds.) (2012): *Jeugdsanctierecht gewikt en gewogen. Toetsing van beleid en praktijk aan de principes van het jeugdsanctierecht*, Gent, Larcier, p. 43-48; *Hespel, S. Put, J.* (2014): *JEUGDSANCTIERECHT VOORGESTELD. NAAR EEN CONSTRUCTIEF JEUGDSANCTIERECHT*, GENT, LARCIER, PP. 29-31.

application as provided in the Youth Protection Act have been rather strict. Placement in a closed section of a public institution (as a final measure) is applicable to juveniles aged 14 and older, and to 12 to 14 year olds in very exceptional cases (if they are considered ‘exceptionally dangerous’). At the pre-court level, this measure can be imposed for up to six months (two consecutive periods of three months). Thereafter, the court has to revise the measure every month and justify its decision. Where placement is ordered as a final measure, the law does not provide for a minimum or maximum length. The youth court sets the initial duration, which can only be extended when the juvenile shows continuous misbehaviour or dangerous behaviour. The measure has to be revised every six months.

In 2006, placement in a closed psychiatric ward was introduced as another liberty depriving measure, which is however not in force yet (to be implemented in early 2016).

A further liberty depriving - provisional - measure is imprisonment in a federal detention centre, which can be ordered only for male juveniles aged 14 and older in cases of serious offences. The legal requirements are very strict, the measure can only be ordered in exceptional circumstances, and only if placement in a community institution is not possible.

Furthermore, juveniles aged 12 and above can be placed in a (half-)open section of a community institution, in which the daily regime is less regulated. Regarding the length of the measure, the same provisions apply as those relating to placement in a closed institution.

Juvenile offenders can also be placed in an open regime within the (public) detention centres. Juveniles serving pre-trial detention and convicted young persons are not held separately within the institutions.

Belgian data regarding diversionary and sentencing practices is incomplete. Research indicates that, at the prosecution level, the charges are dropped in about 70% of cases and about one quarter of the cases are referred to the court.³¹ A self-report study of the National Institute of Criminalistics and Criminology (NICC) regarding youth court decisions in the Flemish Community in 2011 showed that the majority of measures were non-residential in nature. At the trial stage, 76% of Youth Court decisions were ambulant measures and in 33% of the decisions conditions were imposed (community service, participation in educational programme, school attendance, house arrest, etc.). Placement in a community institution accounted for 14% of court decisions, of which 60% were placements in a closed institution. 12% of the decisions included placement in a private institution.³²

31 *Detry, I., Goedseels, E., Vanneste, C. (2010): Les chiffres des parquets de la jeunesse au grand jour*“, in F. Gazan, C. De Craim and E. Traets (eds.), *Jeugd delinquentie op zoek naar passende antwoorden*, Antwerpen/Apeldoorn, Maklu, pp. 41–65.

32 See NICC (2012): *Onderzoek naar de beslissingen van jeugdrechters/jeugdrechtbanken in MOF-zaken*, research report, p. 181.

B. Restorative approach within juvenile justice

Restorative practices including mediation and conferencing as well as reparation became a priority with the reform of the Youth Protection Act in 2006. The legal provisions are based on mediation practices in place since 1994 and on experiences with conferencing that were first carried out experimentally in 2000 and later integrated into mediation services.

At the pre-court level, in every case in which there is an identified victim prosecutors have to consider whether mediation is suitable and a referral to mediation should be made (Art. 45 quater Youth Protection Act). In case the prosecutor decides not to refer to mediation, the reasons must explicitly be stated. It is possible, however, to refer a case to mediation and also to the Youth Court simultaneously. After mediation has been conducted, it is still possible to continue prosecution.

At the Youth Court level, restorative offers are prioritized over other measures (Art. 37 Youth Protection Act). Judges can propose mediation or conferencing to juveniles at every stage of the proceedings. Even if cases are referred to mediation or mediation is successfully completed, judges may nonetheless order further measures.

Mediation and conferencing are based on the voluntary participation of victim and offender, none of the parties can be obliged to participate. After successful completion, mediation services send the resulting mediation/conferencing agreement to the prosecutor or Youth Court, which in turn has to approve it. Mediation services are responsible for supervision and inform the prosecutor or Youth Court whether the agreement has been fulfilled. The Youth Protection Act states that the fulfilled agreement must be taken into account by prosecutors and Youth Courts. The prosecutor can decide whether to dismiss the proceedings, the Youth Court takes the agreement into account when making its decision. If a decision has already been made, the court may impose less severe measures after re-opening proceedings. The fact that no agreement was reached cannot be considered as a disadvantage for the juvenile in the course of further proceedings.

The main forms of restorative justice are mediation and conferencing. Conferencing is used for more serious offences and includes a broader circle of participants (such as relatives, friends and supporters of the parties, a police officer). A further manifestation of restorative practice, emerging from the reform in 2006, is the written project. The written project has to be considered by the youth court before it imposes other, non-restorative measures. The written project allows the young offender to offer an action, e.g. an apology, treatment or reparation of the damage, without prior communication with the victim. In practice, however, it is almost never applied.³³

Regarding mediation in practice, implementation varies across the regions and districts.

³³ *Ferwerda, H., van Leiden, I.* (2012): *De schade hersteld? Een onderzoek naar herstellbemiddeling bij jeugdige delinquenten in Vlaanderen*, Bureau Beke, Arnhem, pp. 48-49.

Data concerning the Flemish Community shows that, following the reform in 2006, the number of referrals to mediation was on the rise. Since 2008, case numbers have been decreasing, but numbers at the prosecution level were decreasing as well. The majority of referrals were made by prosecutors (96%) and few by the Youth Courts (3%).³⁴ However, not all referred cases resulted in a mediation process actually being carried out, for example when the parties do not wish to participate or for other reasons. 42% of all mediation offers made resulted in mediation actually being initiated, of which 30% resulted in a successful agreement.³⁵ Most often mediation was applied in cases of theft, vandalism and arson, as well as assault or battery. Agreements resulted mainly in financial compensation, apology, further conversation, promises or activities of the young offender.

Mediation and conferencing services are organized differently in the French and Flemish Communities. Mediation services within the Flemish Community are private services available in every legal district that are also in charge of delivering other services (e.g. community service, educational programs) as well. The services are subsidized by the Flemish government, which thus covers the costs of mediation.

C. Foster care within the juvenile justice system

Foster care is a measure within both the juvenile justice system and the general youth welfare system, depending on the prosecutor's decision how to classify a case.

Foster care within the juvenile justice system can be imposed by the youth court either as a provisional or a final measure for juveniles aged 12 and above. Younger children are placed in foster care according to the child welfare system. Foster care is included in the measure of placement in a private institution or with a 'trustworthy' private individual with the aim of housing, treatment or education. The measure is applicable for all offences, but the Youth Court has to first consider non-residential, ambulant and restorative measures before imposing placement in a foster family.

Foster care as a juvenile justice measure does not play an important role in practice. According to research carried out by the NICC, in the Flemish Community foster care accounted for less than one percent of provisional measures (and no final measures).³⁶ In the French Community, foster care as a provisional measure accounted for one percent of all provisional measures and less than one percent of all final measures.³⁷ Reasons for the rare use of foster care may be found in the lack of places in private residential care, as in

34 *Ferwerda, H., van Leiden, I.* (2012): *De schade hersteld? Een onderzoek naar herstelbemiddeling bij jeugdige delinquenten in Vlaanderen*, Bureau Beke, Arnhem, p. 44.

35 *Ferwerda, H., van Leiden, I.* (2012): *De schade hersteld? Een onderzoek naar herstelbemiddeling bij jeugdige delinquenten in Vlaanderen*, Bureau Beke, Arnhem, p. 51.

36 NICC (2012): *Onderzoek naar de beslissingen van jeugdrechters/jeugdrechtbanken in MOF-zaken*, research report, p. 50.

37 NICC (2012): *Onderzoek naar de beslissingen van jeugdrechters/jeugdrechtbanken in MOF-zaken*, research report, p. 56.

recent years demand has exceeded availability. Furthermore, foster care is considered to be more suitable for child welfare issues rather than for the juvenile justice system.

Within the child welfare system, foster care can be ordered if a minor is in a ‘worrying situation’. Since March 2014, this measure is prioritized over placements in public or private residential institutions.

Foster care is a temporary measure, the duration of which is determined by the Youth Court. The measure ends when the juvenile turns 18 (where the young person agrees, it can be prolonged until he/she turns 21).

Regarding the organization of foster care, in the Flemish Community there is one (private) foster care service in every province. Foster carers are volunteers who are trained by foster care services. They are paid a daily allowance to cover the expenses for the foster child. In terms of the legal framework, the Integral Youth Care Degree, the Foster Care Degree and the Decree concerning the Legal position of Minors in Integral Youth Care provide for the organization and regulation of foster care as well the rights of children in foster care in relation to care providers.

3.3 Bulgaria³⁸

A. Juvenile Justice

The legal framework of juvenile justice in Bulgaria can be found in the criminal law, comprising the Criminal Code, the Criminal Procedure Code and the Execution of Punishments Act. Furthermore, the Juvenile Delinquency Act and the Child Protection Act include legal provisions concerning children and juveniles. The Juvenile Delinquency Act sets out measures to respond to anti-social behavior. The measures are applied by “local commissions on juvenile delinquency”, multi-agency panels composed of representatives from education, health care, social welfare, police, psychologists, physicians, lawyers, NGOs, etc. The act also provides measures for children who have committed criminal offences but are not held criminally responsible. However, the act has been criticized as it contains provisions that are contradictory and not in line with other national laws and international instruments. Regarding children at risk, the Child Protection Act comprises protection measures for vulnerable young persons.

The Criminal Code provides sanctions for young offenders and refers to the age of criminal liability. Children under the age of 14 are not criminally liable. In the event that they

38 The snap shot is based on the desk top analysis written by *Nelli Petrova-Dimirova* and *Nadya Styokova*, as well as the country report of *Kanev, K., Furtunova, D., Roussinova, P. and Bekirska, Y.* (2011): Bulgaria. In: *Düinkel, F.; Grzywa, J.; Horsfield, P., Pruin, I.* (eds.): *Juvenile justice systems in Europe.* (2nd edn.) Mönchengladbach, Forum Verlag Godesberg, pp. 131-185.

commit socially dangerous acts, they can be subject to educational measures applied by the aforementioned local commissions. Juveniles aged 14 to 18 years are criminally liable, whereby the legislator envisages reduced criminal liability for juveniles of this age group. They have to be able to understand the nature and meaning of the criminal act to be held criminal liable (discernment).

Diversory measures can be applied at the pre-trial and the trial stage. Where the juvenile commits an offence which does not present a serious danger to the public, the prosecutors can waive prosecution or decide not to initiate it. The prosecutor then refers the case to a local commission in order to apply an educational measure under the Juvenile Delinquency Act. In addition, the court may decide not to try the juvenile offender, and itself apply an educational measure provided by the Juvenile Delinquency Act. Furthermore, in cases of a legally provided prison sentence of less than one year, the court shall instead apply a correctional measure under the Juvenile Delinquency Act.

The Criminal Code sets out a system with reduced sanctions for juveniles. Applicable sanctions are imprisonment, probation, public reprimand and deprivation of the right to practice a certain profession or activity. Probation is only applicable to juveniles 16 years and older, and may be combined with certain measures, e. g. participation in a professional qualification course. Sanctions for juveniles are mitigated in terms of length and severity, or replaced by milder sanctions. The age group of 14 and 15 year olds benefits from a stronger degree of mitigation than juveniles aged 16 and 17 years.

Imprisonment can be imposed for a maximum duration of ten years for juveniles between 14 and 16 years of age, and 12 years for juveniles aged between 16 and 18 years. Furthermore, the Criminal Code states that imprisonment can be replaced by a correctional measure as set out in the Juvenile Delinquency Act. These also comprise placement in a correctional boarding school, which is of a liberty depriving nature. In cases of petty hooliganism, juveniles below the age of 16 years can receive administrative penalties under the Decree for Petty Hooliganism. These sanctions include detention for up to 15 days in Interior Ministry units, or a fine.

In criminal proceedings involving juveniles, legal defence is mandatory. As further provided by the Criminal Procedure Code, investigative bodies shall be trained appropriately in investigation when dealing with youth cases. A pedagogue or psychologist shall participate in interrogations with accused juveniles. A juvenile court is composed of one professional judge and two lay assessors who need to have an educational background. Where the offence envisages a penalty of more than 15 years imprisonment, the court is composed of two professional judges and three lay assessors.

Imprisonment has to be served in correctional establishments for juveniles and should be used as a measure of last resort. Upon the consent of the prosecutor, young adults can be accommodated in these facilities up until they turn 21, if it serves their educational or vocational training. In 2011, 99 juveniles and 339 young adults were sentenced to deprivation of liberty, and 664 juveniles and 651 young adults were sentenced to probation

(National Institute on Statistics). In the same year, 30% of all convicted were young people aged between 14 and 24.

B. Restorative approach within juvenile justice

There are certain elements of restorative justice, when educational measures are applied by the Local Commissions under the Juvenile Delinquency Act, e.g. an apology to the victim, reparation of the damage caused and community service. However, the measures are imposed by the commissions and cannot be regarded as fully restorative. Victim-offender mediation is not being used for young offenders. Only for adult offenders does it represent an option to engage in a restorative process.

C. Foster care within the juvenile justice system

Under the Child Protection Act, foster care can be applied as a measure of protection for vulnerable children in a family environment, involving close friends or relatives or a foster family. Bulgarian legislation does not provide the possibility to apply foster care as an alternative to measures of deprivation of liberty.

3.4. Croatia³⁹

A. Juvenile Justice

While the Criminal Code and the Criminal Procedure Act provide general statutory provisions that are applicable to all offenders in Croatia, the Juvenile Court Act (JCA)⁴⁰ is a special law for cases of juvenile offending. The JCA contains specific statutory provisions of substantive criminal law regarding juveniles, rules on juvenile courts and juvenile criminal procedure, special provisions on the enforcement of sanctions applicable to young offenders as well as rules on the protection of children and minors in criminal law.

Criminal cases involving juveniles fall within the jurisdiction of the so-called juvenile court (see Art. 35 JCA). Judges for juveniles as well as public prosecutors appearing before these courts (public prosecutors for juveniles) are required to have a strong inclination towards the needs of youth, their upbringing and education, and shall have basic knowledge of criminology, social pedagogy and social welfare for young persons (Art. 38 of the JCA).

³⁹ The snap shot is an abbreviated version of the country report written by *Aleksandar Marsavelski*, Croatia.

⁴⁰ Juvenile Courts Act (*Zakon o sudovima za mladež*), “Narodne novine” (*Official Gazette*) No. 84/11, 143/12, 148/13.

The JCA applies to only two categories of criminal cases: when a juvenile is a perpetrator of a crime, and when a child is a victim of a serious crime. The JCA is not used to regulate or respond to anti-social behaviour.

According to Art. 7(1) of the Criminal Code, children can only be held criminally liable once they have turned 14. Therefore, the juvenile justice system does not apply to children who are younger than 14. Informal sanctions can be applied only by the parents and by persons to whom the children are entrusted (e. g. social care services) so as to bring their behaviour back in line (e. g. by means of verbal warnings, reductions in of pocket money etc.).

The JCA distinguishes between two age groups – juveniles (minors) aged 14 to 18 years, and young adults aged 18 to 21. The difference is of practical importance, as young adults can be subjected to more severe sanctions than minors.

The most relevant procedural principles for minors are the following: principle of purposefulness (principle of prosecutorial discretion/principle of opportunity), principle of informality and flexibility, principle of confidentiality (the public is excluded from trials against minors and judgment is not delivered publicly), principle of urgency and prohibition of trials. However, the overriding principle is always the regulation contained in Art 3 CRC: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The purpose of procedures against juveniles is closely related to the purpose of sanctioning minors: rehabilitation and resocialisation through education, protection from re-offending and the facilitation of a juvenile offender’s social reintegration.

An integrated approach to treating juvenile delinquents can be achieved by applying pedagogical measures even before the implementation of criminal sanctions, i. e. during the criminal procedure and continuing after conviction.

The JCA provides public prosecutors with wide discretion when it comes to making decisions on the dismissal of charges against juvenile offenders and making use of diversion programmes. Art. 72 JCA in particular enables diversion in criminal proceedings against juveniles by regulating the state attorney’s power to conditionally drop charges and to refrain from prosecution. The charges shall be dropped if the defendant fulfils the conditions imposed by the state attorney. These conditions are: delivering an apology to the victim; compensating the damage caused by the offence; participation in extrajudicial mediation; participation in humanitarian, community or environmental work; undergoing addiction treatment; undergoing youth psychosocial treatment; completing a driver’s education programme; other obligations that are suitable to the type and nature of the offence and in accordance with juvenile’s personal and family settings (see Art. 72(1) JCA).

Sanctions that can be imposed on minors for the committed offences are: correctional

measures, imprisonment, and security measures.

Art. 6(1) of the JCA defines the purpose of correctional measures as providing protection, care, assistance and surveillance and - by providing education for the perpetrator - to encourage the development of his/her personality and strengthen his/her personal responsibility so as to prevent offending. The correctional measures include: court reprimand, special obligations, intensified care and supervision, intensified care and supervision with a daily stay in a correctional institution, referral to a disciplinary centre, referral to a correctional institution, referral to a reformatory, and referral to a special correctional institution (Art. 7(1) of the JCA).

In Croatia, juvenile imprisonment is reserved for severe offences (prescribed punishment of 3 years of imprisonment or more) and can be imposed for the maximum of 10 years. The sentence of juvenile imprisonment is served in a penal institution for minors or in special divisions of penal institutions for adult convicts. Professionals providing treatment services in these special institutions or divisions are required to have knowledge of pedagogy and psychology.

Security measures merely serve preventive purposes and are based on the perceived danger presented by the perpetrator. The Criminal Code includes the following list of security measures: mandatory psychiatric treatment, mandatory addiction treatment, mandatory psychosocial treatment, prohibition from holding an office or engaging in an activity, prohibition from driving a motor vehicle, prohibition from approaching a certain person, removal from a shared household, prohibition from accessing the internet, and protective supervision after having served a full prison term.

In 2012 the state attorney's office dealt with 3,113 reported criminal offences committed by minors (14-18), in 75% (2,341 cases) further formal proceedings were not initiated; 1,871 offenders (60%) were discharged for reasons of purposefulness. In the remaining 25% of cases, the state attorney's office filed a suit. The courts imposed a total of 626 criminal sanctions on minors: 11 sentences to juvenile imprisonment, 38 suspended juvenile imprisonment sentences and 577 correctional measures (consisting of 215 warnings, 270 measures of increased supervision and 92 correctional institution measures). In addition, the courts imposed 38 security measures to prevent minors from reoffending.

Regarding young adults (age 18 – 21) the Croatian state attorney's office reported that in 2012 they decided upon 3,435 reports of crimes committed by young adults, out of which a decision not to initiate proceedings for reasons of purposefulness was made in 921 cases (26.8%), and some form of diversionary programme was applied.

In the same year the state attorney's office indicted 1,825 young adults (53%). The courts convicted 1,695 young adults and imposed the following sentences: 189 sentences to imprisonment, 78 suspended prison sentences, 33 fines, 1,208 suspended fines, 10 court reprimands and 179 sanctions for minors.

B. Restorative approach within juvenile justice

Victim-offender mediation started being promoted in Croatia in 2001 with the initiation of the project “Alternative Interventions for Juvenile Offenders – Extrajudicial Settlements”. The project was undertaken in a joint cooperation of the Ministry of Health and Social Welfare, the State Attorney’s Office and the Faculty of Education and Rehabilitation Sciences (University of Zagreb) and resulted in 24 professionals being educated and certified by Austrian mediators and educators from the association “Neustart”. In the course of this project, Croatia has developed its own victim-offender mediation model in juvenile justice, which is gaining more and more attention in Croatian literature and in practice.⁴¹

Nevertheless, statutory provisions regulating restorative justice in juvenile criminal matters are still very poor. According to Art. 71 and 72 of the JCA public prosecutors can rely on reasons of purposefulness in deciding to drop the charges against juvenile offenders and to make referrals to diversion programmes. The charges can be dropped if the defendant fulfils the conditions ordered by the state attorney and one of these conditions is “participation in extrajudicial mediation” (Art. 72(1)(c) of the JCA). Art. 72(1)(a)-(b) of the JCA prescribes two further possible conditions that are relevant for restorative justice in the juvenile justice system: apology to the victim, and compensation of the damage caused by the defendant. The mentioned provisions represent the sole legal basis for the restorative justice approach in dealing with juvenile crime.

Three offices for extrajudicial settlements in three major Croatian cities (Zagreb, Split and Osijek) play a major role in victim-offender mediation processes. In 2005, the Government published a strategy to establish 21 such offices in Croatia. Mediators in these centres are individuals who have been trained and educated to be mediators, however they are not employed as mediators.

The victim-offender mediation procedure consists of five phases. In the first phase, the police normally informs the state attorney’s office that a juvenile has committed a crime and the case is passed on to a state attorney for juveniles. In the second phase, if certain relevant criteria are met, the state attorney for juveniles decides to apply the principle of purposefulness pursuant to Art. 71-72 of the JCA and conditions the dismissal of charges on successful participation in extrajudicial mediation and settlement. In the third phase, the case is brought before a competent mediator in one of the offices for extrajudicial settlements. In the next phase, the mediator reports to the state attorney for juveniles about the results of the mediation process. Based on this report, in the last phase, the state attorney for juveniles decides to dismiss the case or to institute criminal proceedings. Finally, victim-offender mediation is considered to be successful if it meets the following criteria: the juvenile offender accepts responsibility for the offence; victim and offender give their consent to participate in the mediation process; an agreement is reached and

⁴¹ The Croatian model was designed based on the Austrian model (Aussergerichtlicher Tatausgleich), and is also similar to the German model (Täter-Opfer-Ausgleich).

signed by both parties; fulfilment of the agreement by both parties; report on the success of the mediation is submitted to the public prosecutor for juveniles; the public prosecutor decides not to institute criminal proceedings.

Each year in Croatia there are approximately between 3,000 to 3,500 reported criminal offences committed by minors and only around 150 juveniles (5%) are brought to victim-offender mediation. For the restorative models of victim-offender mediation to have more potential, further offices for extrajudicial settlements need to be established. Various studies have demonstrated successful results and significant benefits of the Croatian model.

C. Foster care within the juvenile justice system

Foster care in Croatia cannot be imposed as an alternative to custody or pre-trial/police detention, since it is not considered to be directly linked to the Croatian juvenile justice system.

Alternative family care is provided under the provisions of the Social Care Act and the Foster Care Act. One can distinguish two types of alternative family care: (1) accommodation service (temporary accommodation in social care provider's home), and (2) family-based foster care (accommodation in an unrelated family's home). Both measures are generally designed for children without parents, neglected or abused children, children showing anti-social behaviour and in other cases when such accommodation would be in the child's best interest. Generally, accommodation service in a social care provider's home is applied to children waiting to be placed in a foster family. According to Art. 8 of the Foster Care Act, there are four types of family-based foster care: (1) traditional (generally for children without adequate care), (2) specialized (for children with special needs), (3) urgent (for children in a crisis situation), and (4) occasional (for children that will be placed in a foster-family permanently and for children that need to be prepared for family life after a period spent in an institution). Foster carers, children and young people in foster care and their families are provided with various forms of support and supervision.

Accommodation in a social care institution according to Art. 65(1) of the JCA can be one alternative for pre-trial detention. This measure can last until the termination of criminal proceedings, but the court needs to review its stability *ex officio* every two months. In 2012, 30 minors were temporarily accommodated in a social care institution pre-trial, and an additional 22 during criminal proceedings.

The above-mentioned correctional measures also include various ways of placing the minor in specialised social centres and institutions, such as a correctional institution with intensified care and supervision, referral to a disciplinary centre, referral to a correctional

institution, referral to a reformatory, and referral to a special correctional institution. These institutions offer a wide range of professional assistance and support for minors. They are, however, above all correctional and reformatory in nature.

3.5 Cyprus⁴²

A. Juvenile justice

Juvenile justice in Cyprus is based on different laws relating to juvenile criminal offending, children's welfare and juvenile criminal procedure. The most important legal basis concerning juvenile justice is the Juvenile Offenders Law, Cap. 157. Dating back to 1946 and having been amended only once since then, due to a lack of reform some provisions are not applied any more. Based on the British legal system, the legal system in Cyprus is characterized as a common law jurisdiction.

The Juvenile Offenders Law defines children as persons under 14 and young persons as 14 and 15 year-olds. Persons older than 16 years receive the same treatment as adults. Children under 14 years are not criminally liable.

The Juvenile Offenders Law provides for the establishment of the Juvenile Court, a specialized court to try children and young persons, in case they are not charged together with adults. The Juvenile Court comprises members of the District Court, holding sessions in a separate room or building from the District Court, or at different times than court sessions of the District Court. In practice, there is no separate building for the Juvenile Court, thus sessions are held in the District Court building.

In a court session, only members of the District Court, the parties, parents or guardians, lawyers and those persons directly linked to the case can participate. The media are only allowed to attend court hearings if authorized via a special court order, but even then their reporting may not reveal personal data that can lead to the juvenile being identified. Social Welfare Services are furthermore involved and they deliver socio-economic reports on the juveniles to the courts.

District Courts have competence in criminal and civil matters. In criminal matters, competence relates to offences for which the law provides the penalty of imprisonment up to five years, and with consent of the Attorney General, also offences with a higher sentencing range.

Furthermore, juveniles under 14 who have committed anti-social behaviour (e.g. begging, homeless children wandering, etc.) can be brought before the Juvenile Court and can be subjected to welfare measures according to the Children's Law.

42 The snapshot is based on the country report written by *Antonios St. Stylianou*, Cyprus.

Cyprus police has established an Office for the Handling of Juvenile Delinquency in 2007, aiming to cooperate with other relevant stakeholders. The Office organizes seminars in order to provide training to police staff to efficiently handle juvenile cases. It is also involved in youth cases and advises on the further treatment of young offenders.

During criminal proceedings, juveniles are subject to the same principles and rights as are applicable to adults, including the right to be defended by a lawyer. A committee including the District Welfare Officer and the Chief Police of the District give recommendations to the General Attorney concerning further processing, e.g. prosecution or other action to be taken.

Regarding reactions to juvenile delinquency, the court may dismiss the case or may order non-custodial or custodial sanctions. Imprisonment is considered a sanction of last resort and non-custodial sanctions are prioritized.

According to the Probation of Offenders Law (Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996), probation as a non-custodial alternative can be ordered for a period between one and three years. Welfare services are responsible for supervising the young offenders. A probation order can be combined with community service, also applicable to juveniles with their consent. The length of community service as part of probation is between one and three years.

Furthermore, probation orders may contain the conditions of vocational or other educational training courses, upon consent of the convicted juvenile.

The court may suspend the penalty of imprisonment under the Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law of 1972, if the sentence of imprisonment does not exceed three years. The offender shall not commit another offence within three years.

According to the Children's Law, Cap. 352, children and juveniles in need of care and protection can be subjected to adequate measures, such as placement in reform schools, placement in the care of a person, such as a relative, supervision by a welfare or probation officer. In doing so, the juvenile court cooperates with the relevant welfare services.

The juvenile court can also order that young offenders be placed in a reform school, in an institution such as approved residences for juvenile offenders or in the care of a fit person, according to the Juvenile Offenders Law. Placement shall last until the juvenile turns 16, or can be ordered for a shorter period. Placement is also possible beyond a juvenile's 16th birthday years, unless contact with younger persons is not desirable or if there is a lack of places in the reform school.

Furthermore, the juvenile court may order the supervision of the young offender by a probation officer or another suitable person for a specified period. Removal of children in need of care and young offenders from their living environment needs to be carefully

assessed and should only be applied if a milder measure or sanction is not possible.

Juveniles who are aged 16 and older can be placed in a detention centre, as the Juvenile Offenders Law provides (Art. 18).

Furthermore, a fine or the restoration of damage can be imposed on juvenile offenders. When a juvenile is charged with an offence for which the law provides a fine, damage compensation or costs, the court may also order the parents or guardian of the juvenile to pay the fine or costs.

Regarding custodial sanctions, juveniles are sent either to a detention centre in prison or to police custody. Detention of juveniles (14 and 15 year olds) is very rare, as it is only applicable if a non-custodial sanction is not adequate.

In practice, reform schools have not operated since 1986 and no custodial facilities for young persons have been established. In Cyprus there is only one prison, comprising closed and open regimes as well as a centre of guidance and out-of-prison employment. Young offenders are placed separately from adults in the prison. They are offered schooling and vocational training, inside or outside the prison or by correspondence courses. Furthermore, psychological and psychiatric support is available for offenders in need.

According to Statistical Service Cyprus, the absolute number of young offenders was 341 in 2008, 281 in 2009 and to 481 in 2010. As Police Statistics show, the number of convicted juveniles for minor offences was 233 in 2010, higher than in previous years. The number of juveniles convicted of serious offences has remained virtually the same since 1990 with only a few exceptions. Regarding sentencing practices of the courts, in 2010 the vast majority of juveniles (194 out of 263) were placed under guardianship. A smaller share was sentenced to social work (29), to a fine (20), suspended imprisonment (13), bail (2) and/or other sentences(5).

B. Restorative approach within juvenile justice

In Cyprus, victim-offender mediation has hitherto not been provided by the law, and there are no other fully restorative measures. A bill on mediation in penal matters has been proposed.

The legal system in Cyprus allows for victim compensation. Furthermore, welfare services are also responsible for counselling young offenders, offering them support. As sentencing practice shows, juveniles most often receive probation orders as alternatives to imprisonment and are supervised by probation officers, emphasizing rehabilitation and social reintegration.

C. Foster care within the juvenile justice system

Within the juvenile justice system, foster care is not provided as a measure to be imposed on young offenders. Foster care is a measure within the welfare system, handled by the Social Welfare Services. Children at risk can be placed in a foster family (on payment) or in a child protection institution. At the same time, the child's family is offered access to social work services.

Furthermore, child day care services are provided either in foster families or institutions, organized by the Social Welfare Services. Public or private day care centres and child-minders are operating under the auspices of the Social Welfare Services.

These services are furthermore competent in preparing adoptions of children and juveniles under the Adoption Law, such as delivering reports to the court.

As mentioned above, under *A. Juvenile Justice*, children and juveniles below the age of 16 in need of protection can be placed in a reform school or under the care of a fit person. The Chief Welfare Officer is in charge of the care of children at risk.

As provided by Art. 15 of the Juvenile Offenders Law, the court can order placement of young offenders aged below 16 in a reform school, an institution or into the care of a fit person, see above. Parents can be ordered to contribute partly or entirely to the maintenance of the juvenile, if they are able to do so.

3.6 Czech Republic⁴³

A. Juvenile Justice

Special legislation dealing with juveniles, the Juvenile Justice Act (JJA), came into force on the 1st of January 2004. The act regulates the conditions for the criminal responsibility of juveniles as stated by the Czech Republic's Penal Code, court remedies enforced for such illegal activities, procedures and decision-making processes, and the implementation in practice of these legal decisions.

The Czech juvenile justice system caters for offenders between 15 and 18 years of age (Art. 1 Juvenile Justice Act). The aim of this Act is to influence, in a preventative manner, children who are younger than 15 as well as under-age persons so that they do not (re-) offend in the future and so that they are integrated into society in a manner in keeping with their abilities and mental development.

⁴³ The snap shot is based on the report written by *Dagmar Doubravova* from Rubikon Centrum, Czech Republic.

The judiciary in juvenile matters and matters of assessing criminal offences committed by children under the age of fifteen is based in youth courts. The judges, prosecutors, law enforcement authorities and officials of the Probation and Mediation Service who work with young criminals must have experience in and special training for dealing with said youths.

The Juvenile Justice Act provides specific procedural rules for juveniles. In general, the procedural rules for adults apply, including due process guarantees such as the presumption of innocence etc. The procedural rules are adapted to the characteristics of young people at several points and in several different ways.

According to the Juvenile Justice Act, young offenders must have a defence counsel from the moment charges are laid against them except in certain exceptional cases of urgency. Minors must have a defence counsel even if such representation has been expressly rejected by them.

The special need to protect the privacy and integrity of juveniles warrants prioritization of confidentiality of information relating to their guilt over the constitutionally protected principle of public criminal proceedings. Publishing information in the media or otherwise about the trial that could lead to the identification of a juvenile is prohibited. Likewise, it is forbidden to publish any text or illustrations relating to the identity of the juvenile.

The first responses available for juvenile offenders are the so-called “diversions from prosecution”. These diversions can be regulated both in preliminary hearings and in the court proceeding itself. They are rooted in the principles of restorative justice, where their use in a widest possible measure meets the interests of the damaged parties, the focus of AJJ. With diversions from prosecution, it is important that victims are actively involved in the resolution of the criminal case and that they give their consent to the chosen solution to the case, a vital prerequisite for a case to be eligible for diversion. The results of possible mediation activities that would lead to the settlement of a situation can be used, whilst at the same time addressing the life circumstances of the juvenile. These can be combined with an appropriate educational measure. Where diversions are concerned, possibilities include the institution of a settlement, conditionally stopping prosecution, adjourning criminal prosecution, or stopping the criminal prosecution altogether.⁴⁴

The different forms of diversion can only be applied in appropriate cases and have to fulfil the conditions stipulated by law. They can be used on the condition that the facts of the case are proven to the extent that suspicion of the offence committed appears to be completely substantiated, and that the accused person is ready to assume responsibility for the offence and to alleviate its consequences and causes. At the same time, such a solution to the case has to be deemed sufficient with respect to the offender and the circumstances of the offence committed.

44 *Kratochvíl, V. a kol. (2012): Trestní právo hmotné: Obecná část. (Criminal Law: General Section.)* 2nd edn. Praha: C.H. Beck.

The maximum limit of pre-trial detention is four months for less serious offences. In the proceedings before the court, such detention can be extended by a further two months, so that the maximum permissible period of detention is six months. The maximum period of detention in pre-trial for particularly serious offences is one year, extendable by a further six months during the proceedings before the court. Thus, the total maximum permissible period of detention is eighteen months in particularly grave cases.

The Act regulating the Judiciary for Juveniles (AJJ) enumerates the types of measures that can be ordered against juvenile perpetrators. No other measures can be applied against them. These include:

- Educational measures,
- Protective measures, and
- Penal measures.

These three types combine into an interlinked system within which the legislation provides an order of importance, according to which more severe penal sanctions shall only be applied where other measures have failed or are deemed most likely to be inefficient.

Educational measures are designed to provide and foster direction in the lives of young offenders. They include: supervision by a probation officer, probation programmes, educational duties, educational limitations and “reprimand with warning”. These educational measures can be ordered during the whole of the criminal proceedings, or combined with a separate measure. Protective measures (protective therapy, protective detention, confiscation of an object or other possession, and protective education) are a specific form of protection by society from the danger of repeat offending. They can also be applied to juveniles who are not criminally responsible. Only the courts, both criminal and civil, can order them.⁴⁵

Penal measures, within the system of measures as defined by the AJJ, represent the strictest sanctions, and include: publicly useful work or community service, financial measures, confiscation of an object or other property of value, banning an activity, expulsion, a ban on attending sports, cultural or other social events, house arrest, suspended prison sentences. The last, and at the same time the harshest response to youth offending, is an unconditional prison sentence. Prison sentences ordered against juveniles are shortened by half compared to those against adult perpetrators, but the upper limit should not exceed five years and the minimum is one year. There are certain exceptions that allow a maximum sentence of between five and ten years, namely: when a juvenile has committed an offence for which the Penal Code, in its special section, allows

45 Černíková, V. (2002): Prekriminalita dětí a kriminalita mladistvých, kterým byla uložena ochranná opatření. (Precriminal children and juvenile criminals who have been placed in protective custody.), 1st edn. Praha: Policejní akademie ČR.

for exceptional punishment and the danger the act represents to the public warrants such an extended sentence. Life sentences are not available for juvenile perpetrators.

In cases involving juvenile offenders, probation can be applied separately as an independent institution in the form of an educational measure, or it can be ordered alongside other protective and penal measures, possibly already during diversion. The elements of probation cannot be combined with protective education, protective detention, unconditional imprisonment and institutional protective therapy.

When supervision is ordered, the period for which the offender will be supervised (the probation period) is set in the order. In this framework, not fulfilling the conditions attached to the supervision can result in consequences. Supervision can be ordered in the following cases: conditional discharge of criminal prosecution; financial measures with a conditional delay of implementation; criminal orders to carry out publicly useful work; suspensions of ordering penal measures; suspended sentences; and house arrest.

B. Restorative approach within juvenile justice

One of the most important principles of the Juvenile Court Act is the consistent application of a restorative approach, which aims primarily to rehabilitate offenders as functioning and contributing members of society. This implies the use of measures that serve to prevent reoffending, that take the offender's individual personality into account and that consider the personal circumstances of the minor that need to be corrected in order to facilitate the healthy development of young offenders in the future.

The restorative approach is also codified in Act No. 257/2000 Coll. regarding the Probation and Mediation Service. According to the law, the activities of the probation and mediation service, inter alia, shall seek to create conditions for a decision to be made on the suspension of criminal proceedings or for the approval of settlement, especially negotiation and conclusion of an agreement between the accused and the victim, a damages or settlement agreement, or for other conditions such as procedural penalties or non-custodial sentences. The Probation and Mediation Service also helps to eliminate the consequences of the crime for victim and others affected by the crime.

The objective of the PMS in preliminary proceedings is to enhance the educational treatment of the juvenile offender so that cases of minor misconduct can be diverted, and in cases where it is no longer a minor offence implement measures that will strengthen the educational impact and minimize the risk of further offending. PMS activities should also aim to remedy the damage and restore damaged relations.

In order to ensure a long-term effect, the restorative approach includes probation officers specializing in youth work who negotiate with the accused/convicted juveniles for further opportunities for cooperation in the field of mediation activities and taking steps towards

establishing contact with the victim (if the case is suitable for mediation).

The restorative measures play a role in the juvenile justice and sentencing practices and are actively used.

The individual PMS centres have multidisciplinary teams that meet regularly. They are called “teams for youth”. They consist of the workers from the PMS mentioned above (“youth specialists”) as well as prosecutors, judges, youth, curators and staff from agencies serving the social-legal protection of children, representatives of the Czech police, municipal police, or representatives of other relevant institutions. They work together on forms of interaction, organizational issues and mainly deal with individually accused juveniles’ casework. A youth team influences the activity of the PMS centre and the region.

In the Czech Republic different providers, mainly from non-governmental organizations, offer programs for juvenile probation.

C. Foster care within the juvenile justice system

In convicted minors and young adults’ cases, court ordered protective care is in fact often used. When it comes to protective care ordered by a court as a conviction of a juvenile or minor, training is ensured for a period specified by the court in special institutions for juveniles. However, for various reasons children often cannot return to their original families after their stint in residential care. In these cases, the child seeks the regional office for court approval for foster care.

Before ordering institutional care, the court shall consider whether the child’s upbringing allows for foster family care or family care in a facility for children in need of immediate assistance, which takes precedence over constitutional education.

First, it is important that the original family was able to ensure a suitable upbringing and care for the child, according to their developmental needs. If the court deems that the child, despite exhibiting delinquent behaviour, could continue to remain in his/her family of origin, it determines the necessary level of support and controls to ensure a good education. These include measures such as supervision by a probation officer, a probation program, educational responsibilities, educational limitations, a warning, protective treatment, protective education, confiscation of property, community service, house arrest, a travel ban on sports, cultural and other social events, financial measures, financial measures with conditional suspension of execution, forfeiture or other asset disqualifications, deportation, imprisonment conditionally suspended for a probationary period of surveillance, imprisonment without probation. In the case of children under the age of 15 years, the court may impose guardian supervision by a probation officer, placement in a therapeutic, psychological, or other educational program in an educational care centre: an example of protective care.

3.7. Denmark⁴⁶

A. Juvenile justice

In Denmark, an independent Juvenile Justice system or a specific Juvenile Justice Law do not exist. Young offenders are generally subject to the same laws and proceedings as applied to adults. Juveniles are dealt with in ordinary courts that are competent for both civil and criminal matters. However, specific sentencing options are available for juveniles (e. g. diversion to the welfare authorities). Reactions to juvenile delinquency emphasize an educational approach and take the needs of juveniles into consideration. Penal sanctions that can be imposed on juveniles are provided by the criminal law, electronic curfew has its legislative basis in the Code on the Execution of Penalties, and social welfare interventions are based in the Law on Social Services. The procedural law includes provisions on criminal procedure, charges and custody (pre-trial detention).

The age of criminal responsibility is 15 years, as stipulated by § 15 criminal law (straffeloven, lovbekendtgørelse nr 1028 22/08/2013).

Juveniles

Concerning criminal proceedings, there are some specific provisions for young offenders. During the investigation, if a juvenile has committed an offence for which the law prescribes imprisonment, the police shall invite the social authorities for the questioning of the juvenile.

Regarding the rules on criminal procedure (§ 768a subsection 2), it is provided that young people below the age of 18 can be detained (pre-trial detention) for a maximum period of four months in case the maximum penalty for the offence is below six years, and for a maximum period of 8 months in case the penalty for the offence is six years or more.

Solitary confinement for juveniles during custody shall not exceed four weeks, except when a juvenile is suspected to have committed a crime against the state. The Danish Supreme Court decided that the use of solitary confinement is not in disaccord with international and European documents, but should be applied very reluctantly.

Juveniles are expected to be transferred from regular custody to an alternative institution, e. g. the closed juvenile institution, which is run by the social services.

Social services are responsible for preparing a report on the personal situation of the young offender to assist the court in finding the most appropriate response to the juvenile's criminal behaviour. Where the court orders a non-custodial sentence, the juvenile is supervised and supported by social services.

46 The snap shot is based on the country report written by *Anette Storgaard*, Denmark.

Regarding the use of sanctions for juveniles, the same sanctions as for adults – except for life imprisonment – can be applied. The sanctions are provided in §§ 31-67 Criminal Law.

According to § 31 Criminal Law, the main penalties include a fine and imprisonment. Imprisonment can be either unsuspended or suspended, and in the latter case can be combined with a Community Service Order. Unsuspended prison sentences of up to five months can be converted into “home execution” with an electronic curfew.

As for informal ways of reacting to juvenile delinquency and non-liberty depriving sanctions, withdrawal of charges, fines and suspended sentences are significant, especially for first time offenders.

Where the juvenile has committed a very minor crime, the prosecutor can withdraw the charge (§ 722, subsections 2 and 3 procedural law) and apply certain conditions (see below), which have to be agreed to by the judge.

A special condition for such a withdrawal of charges is the so-called Youth Contract. As well as the juvenile it also involves the parents and social authorities in the setting-up of a contract which includes the condition of not re-offending for a specified time. The contract also subjects the juvenile to certain obligations, e.g. participation in a social training programme or other activities. The Youth Contract was introduced in 1998 in order to lower recidivism and accelerate criminal proceedings. Evaluations of the Youth Contract have shown that these aims have not been met as intended. A study on recidivism revealed that recidivism after a Youth Contract was similar to recidivism after an ordinary withdrawal of charges.⁴⁷

Fines are applied to juveniles only very rarely. A suspended sentence to imprisonment is considered a rather severe penalty for juvenile offenders. It can be further combined with community service, which is organized by the probation service. The number of hours to be served lies between 30 and 300 hours and is decided by the court.

When charges are withdrawn or suspended sentences are imposed, juveniles often have to fulfill certain conditions (on school attendance, work, leisure-time activities etc.).

Electronic curfew (§ 78 a-f Code of Execution of Penalties) is a measure applicable when an unsuspended prison sentence of no more than five months has been ordered. The young offender has to wear an electronic tag around his or her ankle for the same period as the sentence that has been converted. This measure is ordered by the Department of Prison and Probation after the court has imposed the unsuspended sentence.

Regarding liberty depriving sanctions, they can be served in an (open or closed) prison, a secure or open social institution, or in a so-called “pension” administered by the

47 <http://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningsrapporter/2003/ungdomskontraktordningen.pdf>.

Department of Corrections, as there are no dedicated youth prisons in Denmark.

Juveniles are normally transferred to a closed juvenile institution run by Social Services. Otherwise, they are placed either in the closed prison for young men up to 29 years (including women of all ages) or in a special youth unit in an open prison. The decision for an open or a closed facility is based on the length of imprisonment and the type of offence in question. There is one closed prison and one special unit for juvenile and young adult offenders in the country.

The Youth Sanction (§ 74a Criminal Law) was introduced in 2001 to provide a new reaction to serious offending. It provides an alternative to prison sentences of between one and 12 months (in certain cases up to 18 months). The Youth Sanction is divided into three phases with a total duration of two years. The juvenile is first placed in a so-called closed juvenile institution, followed by a second phase in an open residential institution, both of which are administered by the social welfare system. Placements in these institutions shall not exceed one and a half years in total. The third and final phase, the aftercare phase, shall last for at least six months, depending on the length of the institutional phases. The Youth Sanction has been the subject of discussions concerning the principle of proportionality. It has been estimated by researchers that, if a prison sentence had been imposed for the offence, in many cases it would have been significantly shorter than two years.

Children

Children under 15 years are not criminally liable and are subject to the social welfare system. In cases where a child has committed an offence, during the interrogation by police the child's parents and social welfare services are informed in order that they be present. Children may be detained, if necessary, for the investigation of the case, in an office or similar premises, but shall never be placed in custody. The maximum duration of police arrest is 24 hours.

Deviant children can be subjected to social welfare interventions, such as arranging a mentor for the child, or providing support or training for the family. If these measures are deemed to be insufficient or inappropriate for responding to the child's behaviour, removal from the family can be an option.

Children may be placed in the same closed institutions where juveniles in custody and juveniles sentenced to either Youth Sanction or to imprisonment (but transferred to institutions) are placed, in the same open residential institutions where juveniles sentenced to Youth Sanctions are transferred to, in "rented rooms" (which are rooms in private houses which private owners rent out to individual persons, to students for example) or in a foster family.

A special commission in the municipality is responsible for deciding on the removal of a child from the original family. Thus, there is no legal decision on the duration of the

removal from home and no other legal control by judges apart from a judge attached to the municipal commission.

Juvenile crime and punishment

Data on juvenile crime and punishment are available from the state institution “Statistics Denmark”. The following data are based on “Crime 2012”, published in 2013 by Statistics Denmark. Regarding sentencing practice, in 2002, 2,700 sentences were passed on juveniles aged 15-19 (per 100,000 of the age group) for offences according to the criminal law. In 2012 the number of sentences decreased to 2,100 per 100,000 of the age group. In 2002, 978 juveniles aged 15-19 received a prison sentence per 100,000 of the age group, compared with 851/100.000 in 2012.

In 2012 juveniles accounted for 4% of all convictions in 2012, and only 2% (N=301) of all sentences to unsuspended deprivation of liberty (imprisonment and Youth Sanction) were imposed on juveniles aged 15-19 years. The Youth Sanction was ordered in 67 cases, predominantly in cases of rape, serious assault and robbery.

In 2012, there were 369 decisions to withdraw charges in juveniles’ cases, out of a total of 3,826 (9%).

B. Restorative approach within juvenile justice

The legal framework is provided by the Law on Victim-Offender Mediation (lov om Konfliktråd, nr 467 12/06/2009), and applies to both juveniles and adults. The Danish victim-offender mediation program (Konfliktråd) is provided complementarily to the formal criminal justice procedure and does not replace formal proceedings. Even after successful mediation, the offender will be sentenced. § 4 of the law sets out that victim-offender mediation (VOM) does not replace punishment or other formal legal responses to offending. However, this aspect was widely discussed by the members of the committee responsible for drafting the law.

Victim-offender mediation (VOM) has been carried out at experimental level since the late 1980s and gained importance throughout the 1990s. In 2010, the law on victim-offender mediation entered into force and a nationwide police-run VOM programme was established. This program was based on two experimental projects starting in 1994, which have been evaluated positively in terms of qualitative aspects.

Upon assessing a case, the local VOM-coordinator – who is selected by the police but is him/herself not a police officer – is legally obliged to offer mediation to the parties in suitable cases. A precondition is that the offender makes a confession (at least concerning the objective circumstances, or “facts”, of the crime) and that there is an individual

identifiable victim. Emphasis is laid on voluntary participation of the parties. Mediation involves the victim, offender and a mediator but no further participants. In Denmark, mediation is considered to be focused predominantly on the victim.

C. Foster care within the juvenile justice system

Foster care does not play a role in the criminal juvenile justice system. It is rather an option in the child protection system for children in need of care.

In case a child has committed a crime or has exhibited anti-social behavior, the child may sometimes be placed in a professional foster care family (a family where one or both parents are full time “foster-parents” and professionally skilled) or it may be placed in a closed juvenile institution. Moreover, juveniles sentenced to imprisonment and diverted from prison are accommodated in (social) institutions and pensions, and not in foster homes.

There is ongoing discussion that the involvement of social services in the enforcement of sanctions (e.g. social institutions) may create inequality and confusion due to different approaches in the fields of social welfare and criminal justice, which would also be a topic of discussion with private foster care.

There is also an ongoing discussion about the minimum age of criminal liability. In the Autumn 2014 the leaders of four political parties proposed to lower the age to 12 years. According to recent opinion polls the four political parties have a majority in the population. Time will tell what this debate leads to.

3.8. England⁴⁸

A. Juvenile Justice

As a common law country England does not have a special juvenile criminal code. Instead, several Acts of Parliament establish a specific juvenile justice system for juvenile offenders between 10 and 18. There is a special Youth Court which is responsible for trying the normal juvenile justice cases with the exception of the most serious cases which are dealt with by the Crown Court. The three “magistrates” who preside over the Youth Courts are ordinary lay judges and have to be specially qualified for dealing with juvenile cases. There are furthermore special Youth Offending Teams, municipality-based multi-agency

48 The snapshot is based on a project-report written by *Christos Christophides*, England, and on *Dignan, J.* (2011): England/Wales. In: *Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I.* (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 357-398.

teams which are responsible for co-ordinating and providing youth justice services within their area.

The age of criminal responsibility is 10. Young people under the age of 18 cannot be sentenced to adult prisons, but custodial sanctions are available from the age of 15 onwards and in exceptional cases for offenders aged 12 or older. In cases of grave crimes, children from the age of ten can be sentenced to long-term detention (up to life imprisonment) by the Crown Court.

The police have the possibility to divert a juvenile justice case and in practice, police diversion play a major role for minor offences. The police can caution a juvenile offender. Cautions replaced the old system of reprimands and warnings in 2012. Police cautions are possible for first time and repeat offenders.

If it comes to a court procedure the court has a wide variety of options. In case of less serious offending the court can conditionally discharge the case or issue a compensation order, a reparation order or a referral order. It can also fine the offender or defer sentencing.

The reparation order requires young offenders to make reparation either to the victim of the offence or to the community. The referral order requires the young offender to attend one or more so-called youth offender panel meetings that are convened by the local youth offending team. Together with that panel the offender works out a contract of behaviour for between three and twelve months (the period is predetermined by the court). The consequence of not agreeing a contract is that the offender will be sent back to court for sentencing.

In cases of more serious or repeat offending the youth court can choose from a wide range of “requirements” in the context of a “youth rehabilitation order”. The Youth Court can for example order the juvenile to attend a special programme or an Attendance Centre during his leisure time. It can prohibit special activities, can order mental health treatment or a stay in a specific residence (for 16 and 17 years old offenders only). It can also order the juvenile offender to be subject of supervision or surveillance or to undergo drug treatment. 16 and 17 year-old offenders can also be sentenced to unpaid work. All court orders must be commensurate to the seriousness of the offence.

In cases of serious offending, both the Youth Court and the Crown Court can issue a Detention and Training Order which results in a stay in a young offenders’ institution or at a secure training centre (STC). The Crown Court can sentence children from the age of ten to long-term detention (up to life imprisonment) for grave offences. Murder carries a mandatory life sentence. As an alternative to a (usually short) custodial sanction the Court can issue an “intensive fostering requirement”.

B. Restorative approach within juvenile justice

Both the reparation and the referral order contribute to a restorative justice approach. In case of a referral order the youth offender panel may invite the victim and the parents of the offender. The purpose of such a meeting is to provide a forum in which the offence can be discussed with the victim and to set up a “contract” that inter alia regulates how damages can be repaired.

C. Foster care and alternative care within the juvenile justice system

In general, in the United Kingdom the following different types of foster care are available in the youth protection system:

- Emergency - where children need somewhere safe to stay for a few nights.
- Short-term - where carers look after children for a few weeks or months, while plans are made for the child’s future.
- Short-breaks - where disabled children or children with special needs or behavioural difficulties enjoy a short stay on a pre-planned, regular basis with a new family, and their parents or usual foster carers have a short break for themselves.
- Remand fostering - where young people in England or Wales are “remanded” by the court to the care of a specially trained foster carer. (Scotland does not use remand fostering as young people tend to attend a children’s hearing rather than go to court. However, the children’s hearing might send a young person to a ‘secure unit’ and there are now some schemes in Scotland looking at developing fostering as an alternative to secure accommodation).
- Long-term and permanent - not all children who cannot return to their own families want to be adopted, especially older children or those who continue to have regular contact with relatives. These children live with long-term foster carers until they reach adulthood and are ready to live independently.
- “Family and friends” or “kinship” fostering - where children who are looked after by a local authority are cared for by people they already know, a ‘connected person’. This can be very beneficial for children, and is called “family and friends” or “kinship” fostering. If they are not looked after by the local authority, children can live with their aunts, uncles, brothers, sisters or grandparents without outside involvement.
- Foster to adopt – Temporary approval to foster a child is given to prospective adopters, so that they can look after a child on whom there is a plan for adoption, whilst care and placement order proceedings are completed in court.

- Private fostering - where the parents make an arrangement for the child to stay with someone else who is not a close relative and has no parental responsibilities, and the child stays with that person (the private foster carer) for more than 27 days. Although, this is a private arrangement, there are special rules about how the child is looked after. The local authority must be told about the arrangements and visit to check on the child's welfare.

Children involved in the criminal justice system may be provided with a foster care placement whilst they are on remand (remand fostering), as part of a Supervision Order or Youth Rehabilitation Order (intensive fostering) or post-custody (for example, while on license from a Detention and Training order).

Up until the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act, 2012, remand fostering was an essential element of Youth Offending Teams' remand management strategies, with foster-carers providing placements for children and young people awaiting trial by Crown Courts or sentencing by Youth Courts. Remand foster care provides foster placements for children and young people, aged 10-16, who are remanded to local authority accommodation, or those aged 17 bailed to reside as directed by magistrates, whilst awaiting trial or sentence for alleged criminal behaviour. Placements tend to be short term, lasting on average only seven or eight weeks. Some placements may last considerably longer (in some instances six months or more), particularly if the young person is being tried in the crown court or alongside an adult. Foster carers try to be influential for the child or young person during that time, and to have a lasting impact on their offending behaviour, attitudes, education and/or employment and family relationships. Placements for juvenile offenders on remand are often part of a local authority's general foster care pool, although some authorities and youth offending teams have arrangements for specialist foster care schemes working specifically with children on remand; these schemes may be managed by Youth Offending Teams, Local Authority Children's Services, Independent Fostering Agencies or charitable organisations.

Intensive fostering was announced as part of the Anti-social Behaviour Act 2003. It made provision to include foster care as a requirement of a Supervision Order. It is intended to be a specialised, highly-intensive response for a serious and persistent young offender facing custody, whose home environment is directly contributing to their offending behaviour, and where fostering would provide a clear benefit to that young person. Intensive fostering is now one of the requirements that can be added to a Youth Rehabilitation Order which was introduced by the Criminal Justice and Immigration Act 2008. Under the Act, the threshold for a Youth Rehabilitation Order (YRO) with Intensive Fostering provisions is that the offence/s must require being sent to prison, and it is so serious that if a YRO with Intensive Fostering was not available, then a sentence of custody would be appropriate. In addition, for under 15-year-olds the young person must be a persistent offender. A Youth Rehabilitation Order with an Intensive Fostering requirement must be for a minimum of six months. Intensive fostering is intended to be an alternative to

custody for children aged 12–18, and is a highly structured foster care programme based on a the ‘Multidimensional Treatment Foster Care (MTFC) programme developed by the Oregon Social Learning Centre in the USA.

Post-custody fostering may be provided for young people who are completing the second half of a Detention and Training Order, which is served in the community under supervision. Such foster care placements may be provided as part of a local authority’s general foster care pool, although some authorities and Youth Offending Teams have arrangements for specialist foster care schemes working specifically with children on release from custody; these schemes may be managed by youth offending services, children’s services or independent fostering agencies.

3.9. Estonia⁴⁹

A. Juvenile Justice

Following the re-independence of the country in 1991, an arduous legislative process was launched in Estonia to establish new legal regulations. In the field of criminal law, this process entailed the introduction of a new Penal Code, which has been in force since 2002.

Legal provisions regarding juveniles can be found in the Code of Criminal Procedure (CCP) and the Penal Code (PC) that apply to offenders of all ages, i. e. both adults and juveniles. An alternative system of sanctions for minors is provided in the Juvenile Sanctions Act (JSA) of 1998.⁵⁰ Moreover, in recent years Estonia has developed and introduced diversionary measures into criminal proceedings and established means of releasing offenders from punishment or substituting sentences of imprisonment. The majority of juvenile offenders, whenever possible, are dealt with by such means, in order to provide them with better restorative or reintegrative opportunities.

The minimum age of criminal responsibility is 14 years. According to § 2 JSA, a minor is a person between 7 and 18 years of age. The JSA applies to minors who, while aged under

49 The snapshot is based on the country report written by *Jaano Räsä*, Estonia, and on the national report by *Ginter, J., Sootak, J.* (2011): Estonia. In: *Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I.* (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd ed., Mönchengladbach: Forum Verlag Godesberg, pp. 399-421, as well as on the legal text of the Estonian PC, CCP and JSA. See <http://www.legislationline.org/documents/section/criminal-codes>, 13.08.2014.

50 The translation of the Estonian Code of Criminal Procedure uses the term “minor” to refer to all persons under the age of 18.

14, commit an unlawful act relating to the necessary elements of a criminal offence⁵¹ or of a misdemeanour and to minors who, when between 14 and 18 years of age, commit a criminal offence or misdemeanour prescribed by the Penal Code or another act. However, the prosecution or court or another body conducting extra-judicial proceedings can find that the person can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code, and terminate criminal or misdemeanour proceedings with respect to him or her. In addition, according to § 1, the Juvenile Sanctions Act also applies to minors who do not fulfil the obligation of the Estonian Education Act to properly attend school, and those minors who consume alcoholic beverages and narcotic or psychotropic substances.

There are no juvenile courts in Estonia. However, there are criminal judges who specialise in juvenile matters and deal with cases of minor offenders in nearly every local court.

Estonian Law also provides for juvenile prosecutors and youth probation officers who hold special qualifications to handle all cases of young people between 14 and 21 years of age. Furthermore, there are specialised units in the Estonian Police who tackle juvenile matters.

As mentioned above, the prosecutor in a criminal procedure is given a wide range of decision-making discretion in juvenile as well as adult matters. Regarding juveniles, the prosecutor can refuse to initiate criminal proceedings or can terminate the proceedings if the unlawful act has been committed by a minor incapable of guilt on the grounds of his or her age or a criminal offence has been committed by a minor aged 14 to 17, but the prosecutor considers it possible that he or she can be influenced without imposing punishment or a sanction prescribed in § 87 of the Penal Code. In such cases the prosecutor refers the relevant documentation and materials to the responsible local JC which, in turn, within the scope of their competences, can impose necessary sanctions on the offender. Furthermore, the prosecutor is entitled to terminate criminal proceedings if there is a lack of public interest in proceedings, in cases of negligible guilt, in the case of a lack of proportionality of punishment and on the basis of conciliation.

According to the provisions included in the JSA, the Juvenile Committee is entitled to apply the following sanctions: a warning; sanctions regarding the organisation of study; a referral to a psychologist, addiction specialist, social worker or other respective specialist for consultation; conciliation; an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home; community service; surety; participation in youth or social programmes or rehabilitation service or medical treatment programmes. As described in § 6 JSA, the most severe of the sanctions include placement in a School for Students with Special Needs (corresponding secure units for children), to

⁵¹ A criminal offence is an offence which is provided for in the Penal Code and for which the principal punishment prescribed is a pecuniary punishment or imprisonment. A misdemeanour is an offence which is provided for in the Penal Code or another Act and for which the principal punishment prescribed is a fine or detention (§3 of PC).

which young people are referred by juvenile committees after a court ruling.

Where the prosecutor decides to charge a minor aged 14 to 17 with a criminal offence, the court can convict the minor and exempt him or her from punishment as per § 87 of the Penal Code. The court is furthermore entitled to release the person from punishment and apply the following sanctions: admonition; subjection to supervision of conduct according to the provisions of § 75 of the PC; placement in a youth home or a boarding school, placement in a school for pupils who need special treatment based on their behavioural issues.⁵²

In Estonia, a court may subject a person younger than 18 years to up to 1 year of conduct supervision. Acting on a report prepared by a probation officer, the court may extend the period of conduct supervision by up to 1 year or, in exceptional cases, until the offender turns 18.

Young persons aged younger than 18 can be placed in a youth home, a boarding school or a school for pupils with behavioural issues who need special treatment, for up to 2 years. The period of stay in a youth home, boarding school or the above-mentioned institution can be extended by the court by up to 1 year or, in exceptional circumstances, until the end of the academic year.

All principal and supplementary punishments of the Estonian Criminal Code can also be applied if a minor has been prosecuted and the court has sentenced him or her to be punished for an offence. Since Estonia does not have a separate penal law for minors, the Penal Code also applies to them. The Penal Code provides that criminal offences are punishable with pecuniary punishments and imprisonment, while misdemeanours can result in a fine or detention.

Prison sentences of up to 2 years can be substituted with community service if the offender consents to such a substitution. 1 day of imprisonment corresponds to 2 hours of community service.

An Estonian court may also suspend the sentence on probation. In such cases, if the offender intentionally re-offends or fails to meet the imposed supervisory requirements and obligations included in § 75 within a period of probation specified by the court, the sentence shall be enforced either entirely or in part.

Imprisonment is a very severe punishment measure for minors in Estonia. In recent years the annual number of imprisonment cases among 14-17 year olds has not exceeded 20 remands and 20 convictions.

⁵² These institutions are the same as SSSNs provided for by the Juvenile Sanctions Act.

B. Restorative approach within juvenile justice

In the last decade one could observe Estonia's inclination towards the restorative approach in implementing justice. The first legal regulation including the possibility of restorative justice was the Juvenile Sanctions Act. It provided a possibility for juveniles to participate in mediation as part of the decision of the Juvenile Committee. Principally, in every case referred to the JC, there is a possibility of applying a 'conciliation' (or 'mediation') measure.

A further important step in implementing elements of restorative justice was the introduction of the possibility to substitute imprisonment with community service in the new Penal Code (2002). In Estonia, community service does not include any compulsory restorative element. However, if applicable, the courts and probation services seek to apply community service in a restorative fashion, i. e. in terms of the kind of work performed (for whom) and the manner in which it is performed.

Regulations on mediation were introduced into the Penal Code in 2007. Pursuant to those, prosecutors and judges can refer a case for mediation. If mediation is considered successful, the criminal investigation can be terminated (according to the principle of opportunity) and there is no entry on the perpetrator's criminal record.

In cases in which mediation/conciliation with the victim does not bring the criminal proceedings to an end, it shall be taken into account in sentencing as a mitigating circumstance.⁵³

C. Foster care within the juvenile justice system

In general, foster care cannot be treated as a legal alternative to remand or custody, and it is therefore not relevant to the Estonian juvenile justice system.

The only legalised way of imposing foster care in Estonian juvenile justice is provided for in § 87 of the Penal Code, which states that the criminal court can release a minor from punishment and order him/her to be placed in a youth home. It is important to mention, however, that the provision has never been put into practice.

At the time of enacting the law, it was predicted that youth homes (for persons aged 18-24) or foster homes would participate in the process.

Foster care does however play a role in the welfare system. In most cases, when a child is taken away from his or her biological family, it is done on the basis of a court's decision. The main reasons for placing a child in a foster home are when the biological parents are

⁵³ See *Ginter, J.* (2014): Estonia. In *Dünkel, F., Grzywa-Holten, J., Horsfield, P.* (eds.): *Restorative Justice and Mediation in Penal Matters in Europe* (currently in print).

incapable or unwilling to bring up their child in a decent and adequate way. The majority of such children remain in the state-run orphanages, while some of them are placed with foster-families. Specific placements are made via the services under the Ministry of Social Affairs, which also provides the necessary funding. In the majority of cases foster care lasts until a young person's 18th birthday or until he/she has graduated from a higher school.

Foster families are remunerated by the state on a monthly basis. Additionally, prior to becoming a foster family, they are required to undergo specialised training and are continuously supervised and assisted for the entire duration of the foster care placement.

The Estonian Ministry of Social Affairs plans to implement a new concept for the Reform of Alternative Care by the end of 2015. The concept envisages a section on foster programmes which includes the use of fostering as an alternative measure in juvenile justice.

Currently, the Ministry of Social Affairs is taking over the lead role in the area of juvenile matters, too. Within the newly created, state-run child welfare and protection system (that will come into force in 2016) the functions of contemporary Juvenile Committees will be merged therein as well. Moreover, instead of today's reformatory schools, future placements will be made to small rehabilitation centres. The Nordic welfare model for youths in trouble is going to be much more strongly reflected in the Estonian system.

3.10 Finland⁵⁴

A. Juvenile Justice

In Finland, there is no separate juvenile justice system, but young people are nonetheless dealt with differently from adults. The treatment of juveniles is based either on the adult criminal justice system, with specific regulations concerning young people, or on the child welfare system. The Criminal Code states that criminal liability starts with the age of 15 years. Children under the age of 15 years are subject to the child welfare system. Being civilly responsible, though, they can be ordered to compensate damages for instance. There is also the possibility to participate in mediation together with the parents.

Young persons aged between 15 and 17 years are criminally liable and dealt with under the Young Offenders Act, which provides special treatment in comparison to adults. The law provides for mitigation of punishment, for a broader range of measures that can be waived for diversion and states that 15 to 17 year olds cannot be sentenced to unconditional imprisonment (only in cases where there are weighty reasons).

Regarding the age group of 18 to 20 year olds, there are only a few provisions that apply specifically to them. Offenders below the age of 21 are released on parole earlier than adults.

54 The snapshot is based on the country report written by *Tapio Lappi-Seppälä*, Finland.

Furthermore, the law provides for the possibility to place young adults and juveniles under supervision when sentenced to conditional imprisonment.

Regarding juvenile criminal procedure, there are specific provisions for young people. The key actors are the police, prosecutor, mediation office, Probation Service, social and child welfare services and the courts, all of whom work together within the juvenile criminal proceedings.

At the police level, there are no specialized units in youth matters, but in some areas special arrangements with regard to juveniles exist. When interrogating young people, trained police officers in juvenile matters are in charge of conducting the hearings. In case juveniles are suspected of having committed an offence, the police have to inform the child welfare authorities. Police can also refer cases to mediation.

At the prosecution level diversion, including non-prosecution and mediation, has to be considered by prosecutors in juvenile cases. Prosecutors have to request a personal investigation report for all young people under the age of 21, suspected of having committed an offence for which the expected sentence is more severe than a fine. Either social welfare services or the probation service prepare the report according to local resources. Besides personal information on the young offender, the report includes proposals on further sentencing and suitability for community service and eligibility for a JPO (Juvenile Punishment Orders).

In Finland, there are no specific juvenile courts, as ordinary (local) courts are competent in youth matters, but specific procedural rules come into play. Juvenile cases have to be brought within two weeks of the summons to the main court hearing (Chapter 5, section 13 Criminal Procedure Act). As well as mandatory legal defence (which is free of charge) in juveniles' cases, custodial parents and child welfare officials have to be asked to attend the trial.

Juvenile cases at local courts are dealt with by one professional and three lay judges, more complex cases by two professional judges and four lay judges and simple cases (if a fine will be imposed) by one professional judge.

The following sanctions can be imposed on juveniles: fines, conditional imprisonment, community service and unconditional imprisonment, as well as supervision linked with a conditional sentence and JPO specifically for young people. In terms of diversion, either non-prosecution or waiver of punishment in the courts (discharge) is possible.⁵⁵

⁵⁵ See for more details on the sanctions system *Lappi-Seppälä, T. (2001): Sentencing and Punishment in Finland: The Decline of the Repressive Ideal. In: Tonry, M., Frase, R. (Eds.): Punishment and Penal Systems in Western Countries. New York: Oxford University Press, pp. 92-150; Lappi-Seppälä, T. (2011): Finland. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (Eds.): Juvenile Justice Systems in Europe: Current Situation and Reform Developments. 2nd ed., Mönchengladbach: Forum Verlag Godesberg, pp. 423-482; Lappi-Seppälä, T. (2012): Nordic Youth Justice: Juvenile Sanctions in Four Nordic Countries. In: Tonry, M., Lappi-Seppälä, T. (Eds.): Crime and Justice: A Review of Research. Chicago: University of Chicago Press.*

Non-prosecution

Regarding non-prosecution, prosecutors can waive prosecution in cases in which the offence is considered to be of a petty nature or the offender is a juvenile under the age of 18 and the expected sanction is a fine or imprisonment for up to six months. In the latter case, the offence is considered to have been committed out of imprudence or thoughtlessness (Chapter 1, section 7 Criminal Procedure Act).

Furthermore, the law stipulates that prosecution can be waived in cases of reconciliation, victim-offender mediation or other reparative actions by the offender (Chapter 1, section 8 Criminal Procedure Act).

In practice, about 20% of all court measures refer to diversion (non-prosecution) of the case.

Fines

Regarding *finer*, day-fine units, ranging between one and 120, can be applied to the young offender. Hereby, the seriousness of the offence and the financial situation of the offender are taken into account. They can be ordered through a summary process by the prosecutor, which in practice is most often the case, or in an ordinary court process. Fines represent the highest proportion of all penalties concerning all age groups. Regarding young persons aged 15 to 17, 75% of all court decisions are fines, and among 18 to 20 year-olds, the share is 61%. It must be noted that the majority of offences for which a fine was ordered include minor offences such as traffic offences and also possession of alcohol. For traffic offences, usually day fines are applied.

Conditional imprisonment

The law stipulates that conditional imprisonment can generally be ordered in cases of imprisonment penalties of up to two years, taking into account the harm caused as well as the culpability and prior convictions of the offender. Regarding juveniles aged 15 to 17, the law specifically states that conditional penalties of imprisonment shall be prioritized over unconditional sentences. Unconditional sentences are the exception and can only be imposed in case of very serious offences (e.g. homicide, aggravated robbery).

The law further specifies that young people below the age of 21 can be placed under supervision when conditionally sentenced. This applies very often in practice, as about half of juveniles under 18 years are subjected to such supervision. Young offenders below the age of 20 years may be placed under community supervision. Being placed under supervision, young offenders regularly meet with a supervisor, or may participate (in some cases) in group activities. Either the probation service or voluntary private supervisors are responsible for supervision. In practice, conditional imprisonment accounts for about 17% of the court decisions for the age group of 15 to 17 year olds, and for 24% among 18 to 20 year olds.

Community Service

20 to 200 hours of community service can be ordered, usually to be performed on two days per week. Unconditional prison sentences of up to two months are eligible to be commuted to community service. Therefore, this sanction is very rarely applied to juveniles in practice.

Juvenile Punishment Orders

A Juvenile Punishment Order (JPO) can be imposed when a fine would not be a sufficient sanction and the penalty of unconditional imprisonment would be too severe – the sanction is thus similar to conditional imprisonment in terms of how it comes into play.

The measure includes work programmes, supervision and activities aiming at promoting social adjustment, responsibility and social relations of the young offender. The probation service is responsible for compiling the details of the sanction. However, in practice the JPO plays a marginal role, being applied in only 20-30 cases per annum. The reason for this is that very often, juveniles who would fit this sanction are already subjected to child welfare measures.

Imprisonment

Imprisonment can only be imposed on young persons aged under 18 in exceptional cases. The length of the penalty of imprisonment ranges from 14 days to 12 years. Life imprisonment cannot be imposed on juveniles. Over recent decades, the prison population, including juvenile prisoners, has been decreasing. The share of imprisonment among all sentences applied to juveniles represents about 1%. There are no juvenile prisons - young persons serve sentence in (ordinary) prisons specialized in programmes for young persons.

B. Restorative approach within juvenile justice

Victim-offender mediation is the restorative practice most often applied in Finland. Following an experimental phase in the 1980s, mediation expanded nationwide during the 1990s and has been available throughout the country since 2006. In 2006, the Mediation Act came into effect (ensuring equal access to mediation).

Mediation can be applied to all persons/age groups, especially juveniles. Where young people below the age of 18 years participate in mediation, their parent or guardian must agree to it. They can also participate in the mediation itself if the juvenile so desires. In the case of juveniles below the age of 15, the parents are entitled to attend the mediation process.

There is no restriction on eligible offences, but general guidelines of the Mediation Act stipulate “more suitable” and “less suitable” offences. Hereby, criteria such as the nature and way in which the offence was committed as well as the relationship between the parties should be taken into consideration. Cases where the victim is younger than 18 years and in special need of protection are excluded. Domestic violence cases are suitable under certain conditions (e.g. no repeated violence).

Mediation is based on the voluntary participation of the parties. It is ensured that the parties may withdraw their consent to participation at every stage of the mediation process.

Mediation can be conducted before or at every level of the criminal proceedings. Usually, the police or the prosecutor refers cases to mediation services.

Where mediation has been successful, the effects on the criminal proceedings depend on the type as well as the gravity of the offence. Regarding complainant’s offences, the police will terminate the investigation or the prosecutor will drop the prosecution.

Otherwise, in non-complainant offences, the prosecutor has the discretion to decide whether to continue with prosecution or not. Should criminal proceedings continue, the court has the possibility to refrain from imposing sanctions or to mitigate the sentence.

In terms of organization, the Ministry of Social and Welfare Affairs is in charge of the organization and supervision of mediation. The Advisory Board on Mediation in Criminal Cases (under the Ministry of Social Welfare and Health) is responsible for assessing developments in mediation, proposing future developments and promoting inter-institutional cooperation.

Mediation is a non-chargeable service that is financed by public funds and delivered by mediation offices. Mediators are volunteers and must have undergone special training. In practice, many mediators work in the municipal social services and offer mediation as well as their main profession.

Statistics on mediation show that in 2012, there were 8.472 referrals to mediation which involved 11.908 offences.⁵⁶ The overwhelming majority of cases are referred by the police (82%), with only a smaller share coming from prosecutors (14%).

Most offences are less serious forms of assault and battery (56%) or minor property offences (26%). Regarding juveniles, more than one third of offences suitable for mediation are diverted.

In terms of age groups, 41% of cases included young adults below the age of 21, 17% of cases involved 15 to 17 year olds and 12% of cases were made up by children aged younger than 15.

Mediation agreements included apologies, financial compensation, withdrawal from claims,

⁵⁶ See National Institute of Health and Welfare.

promises not to repeat the behaviour, compensation through work, etc. Various pieces of research on the experiences of the parties to mediation have shown quite positive results overall.⁵⁷

C. Foster care within the juvenile justice system

Foster care does not play a role within the juvenile justice system, but is a measure provided by the child welfare system. Foster care cannot be imposed as an alternative to detention, or as part of diversion. Where juveniles undergo child welfare measures, usually more intensive penal measures will not be applied as they are not considered to improve the juvenile's situation. Child welfare and criminal juvenile justice are linked and complement each other.

As a child welfare intervention, foster care orders can be imposed if a child/juvenile is endangered and open care measures are not sufficient. Foster care has to serve the best interests of the child. This measure can be ordered on a voluntary (if the parents and/or the child agree) or an involuntary basis (involuntary care is ordered if the previously mentioned conditions apply). Foster care can be ordered in cases where children show delinquent behaviour, such as repeatedly committing minor offences. However, criminal offending is not considered to be a direct indicator of children being at risk.

The child welfare board orders voluntary foster care, whereas involuntary care is imposed by the administrative court on request of the leading social worker. The basis for such decisions is a multi-professional assessment including experts from the fields of education, social work, psychology and medicine.

Regarding the types of placement, children can be placed with relatives, other families, professional (private) family-homes, (special) children's homes, juveniles homes and reformatory schools. In practice, most children are placed in families and private family homes.

State reformatory schools are specialized institutions. In principle, they are open schools but apply certain restrictions on the freedom of movement of the children and juveniles placed there. They serve as schools and aim to encourage children and juveniles' to complete their school curriculum. In practice, most of the ca. 300 children in the six reformatory schools in Finland are there on a voluntary basis. Each child/juvenile has a separate room.

⁵⁷ See especially *Iivari, J. (2010): Oikeutta oikeuden varjossa. Rikossovittelun täytäntöönpanon arviointitutkimus. Terveiden ja hyvinvoinnin laitos, Helsinki.* See also *Grönfors, M. (1989): Mediation – Experiment in Finland.* In: Albrecht, P.-E., Backes, O. (Eds.): *Crime Prevention and Intervention.* Berlin – New York; Järvinen, p. 1993: *Rikosten sovittelu Suomessa. Oikeuspoliittisen tutkimuslaitoksen julkaisuja 116/1993.* Helsinki and *Iivari, J. (2000): Victim-offender mediation in Finland.* In: *The European Forum on Victim-Offender Mediation and Restorative Justice (Ed.): Victim-Offender Mediation in Europe. Making Restorative Justice Work.* Leuven: Leuven University Press.

In more serious cases, intensive specific care, which is the most intensive measure of control under the Child Welfare Act, can be imposed on young people. It will be applied in cases where there is a serious risk for the health of the child or other people's health with substance abuse, where there has been serious and repeated offending and other protection measures are insufficient. Children and juveniles are placed in (closed) special units of intensive specific care, which are established separately in the reformatory schools or in one communal children's home. Intensive specific care means that there can be restrictions on movement and contact to the outside, there are more staff and daily activities (including school, group and individual discussions and leisure activities) are very structured. Intensive specific care can be ordered for a maximum 15 days and can be prolonged exceptionally for 60 days if there are weighty reasons.

3.11 France⁵⁸

A. Juvenile Justice

The legal framework of juvenile justice dates back to a law of 1945, which has been amended and modified several times since its enactment.⁵⁹ The law prioritizes the use of educational measures over penal sanctions and provides for reduced criminal liability of juveniles. It makes provisions for specialized magistrates in juvenile matters as well as other professionals in the field of juvenile justice. Furthermore, the law stipulates specific procedural provisions that are applicable to minors. In 2002, a significant modification of the law provided for further specific regulations, for instance the establishment of closed education centres, the attendance of parents of suspected juveniles at all hearings and the use of educational sanctions for juveniles from the age of 10. Another legal modification in 2007 provided for even further diversification and individualization of the measures applicable for juveniles. A new reform of the juvenile justice legal framework is underway in order to ensure the effectiveness of juvenile proceedings, to improve legibility and to facilitate more appropriate responses to juvenile delinquency. The reform is expected to be implemented in 2015.

Furthermore, the general Criminal Code stipulates the use of probation and supervision measures and sanctions in cases of juvenile offenders.

Regarding criminal liability, the law sets forth different age groups that differ in terms of whether educational measures, sanctions and penalties can be applied to them. Juveniles under the age of 10 can only receive educational measures from the juvenile judge or juvenile court. Juveniles aged between 10 and 13 can be subjected to educational measures and sanctions from the juvenile court. Young persons aged between 13 and 18 can receive

58 The snapshot is based on the country report written by *Sébastien Marchand*, France.

59 Prior, the law of 22 July 1922 had introduced special youth courts and regulated the role of youth judges.

educational measures, sanctions and penalties.

In principle, the sentences that juveniles receive are half of what the law provides for adults, except in cases in which the circumstances or personality of the juvenile justify a different response, or the offence concerns a person's life or physical or mental integrity and is a repeat offence.

Juveniles are tried in Juvenile Courts, which are situated within the ordinary courts of first instance. More than 150 Juvenile Courts have been established nationwide. They have civil competence for children in danger and criminal competence in cases of criminal offending. Proceedings are run either by a single judge, by a Juvenile Court comprising a juvenile judge and two lay magistrates, or by a Juvenile Court of Assizes composed of three professional judges (including two juvenile judges) and 9 citizens representing the people's jury.

Juvenile prosecutors, who are assistant prosecutors in charge of juvenile matters, decide whether cases are to be prosecuted or not. Where prosecution is decided upon, the juvenile is to be referred to the juvenile judge or examining magistrate at the investigatory level. Once a charge has been filed, the prosecutor can order sanctions or pre-sentencing reparation measures. Public prosecutors are also responsible for ensuring that decisions are enforced.

Juvenile judges deal with young offenders as well as children and juveniles in danger. Juvenile judges are responsible for both the investigation and the trial of the case. When juveniles are accused of having committed minor offences, the trial is held in an office by a single judge (office hearings). Juvenile judges are also responsible for the supervision of young persons under probation as well as for monitoring juveniles in detention facilities.

The role of the Juvenile Examining Magistrate is to investigate the case. Cases are referred by the prosecutor's office.

The Juvenile Court tries serious offences (5th grade misdemeanours and offences) committed by juveniles under the age of 16. Cases of young persons over 16 years are dealt with by the Juvenile Courts of Assizes. Court sessions are not open to the public. Besides the juvenile and his/her lawyer, a youth worker responsible for monitoring the measure, the public prosecutor, the court clerk, the victim and potentially the victim's lawyer participate in the court session. The juvenile judge is assisted by two lay judges who are involved in child welfare matters.

Further actors also play a role in juvenile criminal proceedings, such as the educational services delivering reports on the juvenile's personality and personal situation to the judge. They can be responsible for carrying out decisions of the judge that relate to reparation measures, pre-trial supervision, placement in a foster family, etc.

The Special Juvenile Board at the Court of Appeal deals with appeals of decisions made by

the Juvenile Judge, Juvenile Court or Police Court in cases concerning juveniles.

Judges of Liberties and Detention make juvenile remand and probation decisions. Prior to placing a juvenile on remand, a hearing involving the public prosecutor, the juvenile and his/her lawyer has to take place.

The Judicial Juvenile Protection Services (PJJ) are responsible for investigation prior to the judge's decision as well as for the execution of measures and sanctions applied to juveniles. These services can be either of a public or private nature.

Furthermore, voluntary sector associations, comprising more than 1,200 institutions and services, can be responsible for enforcing court decisions upon official authorisation.

During criminal proceedings, young offenders are defended by lawyers, some of them specialised in juvenile matters.

The Department of Juvenile Judicial Protection within the Ministry of Justice and Liberties is responsible for juvenile justice related issues, such as inter-institutional cooperation, the compilation of standards, providing training and enforcing Juvenile Court decisions in foster homes and open regime facilities. The department also contributes to the drafting of legislation concerning juveniles.

At pre-trial level, three investigative measures can be ordered: collecting socio-educational information, delivering a welfare report as well as educational investigation and guidance measures. The juvenile judge decides on the measure and the public sector services for juvenile judicial protection carries it out.

Regarding educational measures, they are given priority over penal sanctions. The measure of educational action in open custody is designed for juveniles at risk. It implies the delivery of educational assistance and aims to have juveniles remain in their living environment whenever possible.

Probation can be ordered either as a provisional measure during trial or as a final measure.

During protective custody, educational measures can be applied and make monitoring of the juvenile possible. This measure takes into consideration the juvenile's overall situation.

The educational measure "redressing" is of a restorative nature and allows for activities in support of the victim or community.

Educational remand is a measure of protection, surveillance, assistance and education that implies taking a juvenile out of his/her family/living conditions.

The Criminal Code provides for probation and supervision measures, which are also applicable to juveniles. Hereby, educational services provide support for and assistance

with fulfilling the probation and supervision conditions.

Judicial supervision is a provisional measure that can be ordered by the court during trial in cases of persons who are likely to attract a penalty of imprisonment. The measure restricts certain rights of the young offenders and obliges them to fulfil certain obligations imposed by the court. There are differences in how judicial supervision is implemented depending on whether a juvenile is younger or older than 16. Juveniles who are younger than 16 years of age are placed in a closed educational centre. Furthermore, the judicial obligations they are subjected to are more lenient. The measure is reviewed at least every six months as well as 15 days before it ends, and a report is delivered to the judge.

The suspended prison sentence under probation is applied according to the same legal provisions as are applicable to adults. When on probation, young offenders have to fulfil certain conditions and are subject to supervision measures (e.g. placement in a closed educational centre). Moreover, support measures can be applied to them.

Community service can be imposed on juveniles aged between 16 and 18 years who have committed an offence for which the law provides the penalty of imprisonment. Community service requires that the offender works for between 40 and 210 hours within a period not exceeding one year. Community service can be ordered as a primary penalty or as part of a suspended sentence with the attached requirement to complete community service.

Citizenship courses, introduced in 2004 as a criminal sanction, are applicable to juveniles aged 13 to 18. They can be imposed either as alternative measure to criminal prosecution or as an alternative sentence to imprisonment or probation. Citizenship courses aim to promote civil and criminal responsibility of the offender and to emphasize social values. The juvenile judicial protection services are responsible for implementing the sanction, the duration of which shall not exceed one month. Juveniles shall participate in no more than six hours of training per day, taking into account his/her age and personality.

Alternative measures to prosecution for juveniles include a warning or guidance from a health service provider (e.g. in case of narcotic users), targeting first time offenders. Criminal redress measures involve the parents of the juvenile and aim to rehabilitate the victim or to benefit the community. Furthermore, criminal mediation is possible in certain types of conflicts (everyday disputes such as neighbourhood conflicts, petty theft, or family disputes).

The state prosecutor can also impose a settlement through which the offender is obliged to fulfil certain obligations, e. g. damage compensation to the victim, community service. It is applicable to offences for which the law provides the penalty of imprisonment of up to five years.

Another alternative to prosecution is a citizenship training course, see above.

Parental responsibility courses focus on the parents of juveniles whose behaviour is

deemed to be criminal in order to enhance parental cooperation.

Usually, alternative measures are implemented by prosecutor's deputies, who are volunteer trained citizens.

In terms of liberty-depriving measures and sanctions, there are different categories of facilities in which young offenders can be placed.

Juveniles who are placed in the context of educational measures may serve their measures in educational homes, immediate placement centres or "reinforced educational centres" (the latter providing particularly intensive educational support). Juveniles in immediate placement centres are brought there without prior warning and are strictly supervised. The length of stay is limited to three months, and can be exceptionally renewed once. In reinforced educational centres juveniles are placed in small groups and are continuously assisted in their daily activities. Sessions and activities are organized within the centres, and placements last for no longer than six months.

Furthermore, juveniles aged 13 to 18 years can be held in closed educational centres for a maximum of six months, with the possibility of one renewal. This does not imply that they are held inside with force, but if they fail to fulfil the conditions they have been subjected to, they have to serve imprisonment.

Specific prisons for young offenders aged from 13 to 18 opened in 2007, of which there are currently 7. They have a capacity of 60 juveniles per detention centre. Furthermore, juveniles serve their prison sentences in specific sections of the remand centres, which in the future will be replaced by prisons for young offenders.

B. Restorative approach within juvenile justice

Mediation and redress measures as well as – to a certain extent – community service include a restorative approach.

Mediation can only be applied at the pre-trial stage. In principle, a wide range of offences (minor or serious) is eligible for mediation, such as theft, family conflicts, assault, vandalism, etc. The educational measure of redress is another restorative measure, bringing together victim and offender (see above).

Regarding community service (see above), an opinion poll from 2006 showed that the vast majority were "completely in favour" (61.4%) or "largely in favour" (33%) of this measure. In practice, it is very rarely applied (1.6% of all sentences and 2.8% of primary penalties), due to difficulties with its practical implementation.

Voluntary participation of offenders aged 16 to 25 in civic services for the community as

part of the so-called adjustment penalty is also possible and based on cooperation between the civic services and prison reintegration and probation services.

Furthermore, meetings between victims and offenders in prisons are carried out at an experimental level at the Poissy centre, inspired by the Canadian and Belgian experience. Hereby, victims and offenders do not know each other, but have experienced or committed the same type of offence. This model is used if the actual victim and offender do not want to or cannot meet.

C. Foster care within the juvenile justice system

Foster care can be applied in cases of offenders aged 13 to 18 years. They can be placed within a family, a social residence (young worker's home), a rural residence (farmer's home) or into individual housing (pre-autonomous studio). Juvenile judicial protection services work in cooperation with the host family.

Placement in a host family (foster family or rural residence) aims to provide juveniles at risk with a structured lifestyle in a positive environment. Host family members receive 36 € per day (or 1.080 € for 30 days) to cover the related costs. Regarding host family selection criteria, communication and negotiation skills, motivation and commitment to the family are important. Host families are involved in a network in order to exchange information and experiences with professionals and other host families, for training purposes. Host families cooperate with an educational team, which provides support in relation to schooling, health and further relevant issues.

3.12 Germany⁶⁰

A. Juvenile Justice

In Germany, since 1923 juvenile offending has fallen within the scope of the “Juvenile Justice Act” (JJA), which introduced specialised Juvenile Justice Courts and other specialised parties to the proceedings, special procedural rules and special sanctions and measures. The Juvenile Justice Act – including several amendments – has since then been applicable if a young person commits an offence described by the general penal law (Strafgesetzbuch, StGB). One year earlier (1922), Germany had introduced a special Juvenile Welfare Act for children in need of care, which was modernised in 1990 and has since then been called Children's and Youth Welfare Act. Hence, since the 1920s Germany has been following a “dualistic” approach: Children in need of care are subject to the Child Welfare System which offers help and protection, juvenile offenders are subject

60 The snapshot is based on the country report written by *Ineke Pruin* and *Andrea Păroşanu*, Germany.

to the Juvenile Justice System which also aims to react in the “best interest of the child” and to support rather than to punish. If a juvenile (or young adult) commits a crime, the Juvenile Justice System reacts with procedural rules and settings which have their roots in the criminal justice system, respect due process guarantees but are often linked to the youth welfare system. Compatible with this general approach, the Juvenile Justice Act is only applicable in cases where a young person commits an offence described by the general penal law.

The German juvenile justice system provides for specialised Juvenile Courts as well for juvenile prosecutors (see § 37 JJA). **§ 38 JJA** requires that a special Youth Courts Assistance Service be provided by the youth welfare offices working in conjunction with the youth assistance associations. Representatives of the Youth Court Assistance Service highlight the supervisory, social and care-related aspects in proceedings before the Youth Courts.

The Juvenile Justice Act is applicable to all persons who commit an offence between their 14th and their 21st birthday. A transfer of juveniles to the criminal court for adults (waiver) is not possible. “Young adults” aged 18 to 20 are always tried by the Juvenile Courts. The competent Juvenile Court decides according to § 105 JJA if the sanctions and measures of the Juvenile Justice Act or the sanctions and measures of the Criminal Code are to be applied in the individual case.

The Juvenile Justice Act furthermore provides specific procedural rules for juveniles and young adults. In general, the procedural rules for adults apply, including due process guarantees such as the presumption of innocence etc. However, the procedural rules are adapted to the characteristics of young people at several points and in several different ways (e.g. special possibilities to divert the juvenile offender before a case goes to court).

If a young person commits an offence, the police start the investigation of the case and refer the offence to the public prosecutor. German law does not allow for police diversion like the British form of cautioning or warnings. The possibilities to divert a case lie in the hands of the public prosecutor or the judge as legal professionals.

In a juvenile justice case (including young adults if according to § 105 JJA juvenile law is to be applied), the public prosecutor and the court have broad possibilities to divert at every stage of the process. Juvenile and young adult offenders can be unconditionally discharged on grounds of the petty nature of the crime committed (see § 45 (1)) or because of other social and/or educational interventions that have taken place (see § 45 (2) JJA). Efforts to make reparation to the victim or to participate in victim-offender reconciliation (mediation) are explicitly put on a par with such educational measures (“diversion with education”). There are also options for conditional discharges under the condition of a minor sanction being issued, such as a warning, community service (usually between 10 and 40 hours), mediation, participation in a training course for traffic offenders or certain obligations like reparation/restitution, an apology to the victim or a fine. Once the young offender has fulfilled these obligations, the case will be dismissed.

If the offender is found guilty and the case is not discharged for any reason, the court imposes a formal sanction. Whereas adult criminal law provides prison sentences (including suspended prison sentences) and fines, the Juvenile Justice Act bears a lot of alternatives to these “classical” criminal sanctions. All formal sanctions of the Juvenile Court are structured according to the principle of minimum intervention (see §§ 5 and 17 (2) JJA): Firstly the JJA provides “educational measures”. Educational measures can be special directives imposed by the Juvenile Court concerning the everyday life of the offenders in order to educate and to prevent dangerous situations, for example the judge can forbid contact with certain persons and prohibit going to certain places (see § 10 JJA). If the offence and the social development of the offender convince the court that the offender “must be made acutely aware that he must assume responsibility for the wrong he has done” (§ 13 JJA), the Juvenile Court can impose “disciplinary measures”. Disciplinary measures can imply a reprimand. The judge can furthermore require the youth to repair the damage, to apologize personally to the victim, to perform certain tasks or to pay a sum of money to a charitable organisation. If other disciplinary measures are not proportional, the Juvenile Court can send the juvenile to a special juvenile detention centre (“Jugendarrest”) for one or two weekends or for up to four weeks.

The last resort in sentencing juvenile offenders is youth imprisonment. Youth imprisonment can only be imposed by the Juvenile Court if educational or disciplinary measures appear to be inappropriate. Youth imprisonment is executed in separate juvenile prisons. They differ from the prison system for adults in many aspects, e.g. a much wider range of educational and vocational training or much better levels of staffing on the one hand, but more frequent imposition of disciplinary measures, rarer granting of home visits or of transfers to open prisons on the other. The minimum length of juvenile imprisonment is six months. The maximum limit is set at five years for 14-17 year-old juveniles, and in cases of very serious offences for which adults could be punished with more than ten years of imprisonment, the maximum length of youth imprisonment is ten years. In the case of 18-20 year old young adults sentenced according to the JJA, the maximum length is ten years, and in cases of murder that are assessed by the court as being especially serious (e.g. very cruel, more than one victim etc.) the maximum length is 15 years.

The practice of juvenile justice reflects the legislative goals of the JJA: diversion according to §§ 45, 47 JJA plays a very important role in practice. Diversion is the most likely response to juvenile or young adult offending and the diversion rate over the past years has been between 68% and 70%. Most of the diverted cases are diverted according to § 45 (1) JJA (diversion by the prosecutor without intervention). If it comes to a formal sanction after a court procedure, in 2010 the most likely sanction was a disciplinary measure (70.5% of all juvenile justice court sanctions). Among those sanctions, ambulant disciplinary measures play a major role, while short term detention accounted for less than 20% of all imposed disciplinary measures in recent years, followed by educational measures (19.2%) and youth imprisonment with a ratio of 10.3%. About 70% of youth prison sentences are suspended and combined with the supervision of a probation officer. Thus, in practice youth imprisonment is used as a last resort. Another question is whether it is imposed for the shortest possible period. Analysis has shown that the average length of youth prison

sentences has risen slightly. Still, the proportion of long prison sentences of more than five years has remained very low (less than 1% of all youth prison sentences), the vast majority of youth prison sentences are shorter than two years.

B. Restorative approach within juvenile justice

In Germany, the main form of restorative justice applied to young persons is victim-offender mediation, which can theoretically be applied at all stages of a juvenile justice process.

Regarding the legal framework, victim-offender mediation has been provided by the Juvenile Justice Act since 1990 both as a diversionary and as an educational/disciplinary measure (see section 2 above). Hereby, the legislator offers a wide approach and underlines that a serious attempt by the offender to reconcile with the injured person is to be considered sufficient. Within the diversion scheme, mediation can be applied by juvenile public prosecutors or judges (§§ 45 (2), 47 (1) no. 2 JJA,). Alongside the possibility of applying mediation during diversion, mediation can be ordered by the court as part of an educational measure (§ 10 (1) no. 7 JJA). The law provides that “the judge may instruct the juvenile to attempt to achieve a settlement with the injured person (victim-offender mediation)”. Furthermore, mediation might be taken into account when applying the disciplinary measure of restitution (§ 15 (1) no. 1 JJA). During the probationary period or early release the measures might also come into play in order to exercise a supervisory influence on the conduct of the young person (§ 23 (1), 88 (6) JJA). Both the educational and disciplinary measures are considered critical as the court order to achieve a mediation agreement is not in full accordance with the principle of voluntariness as one of the main bases of a mediation procedure. In principle, there is no restriction on eligible offences. Usually, minor or medium severity offences are considered applicable and petty offences are excluded.

Although the legal framework for victim-offender mediation and its organisational infrastructure are favorable, the implementation in practice remains unsatisfactory. Statistical data on the use of mediation is only available from very few sources and there are no complete statistics on victim-offender mediation in Germany. Therefore, it is only possible to provide some estimates. It seems that most cases of victim-offender-mediation with juvenile offenders involve assault. The majority of all cases including young persons and adults were initiated during preliminary proceedings and most often mediation seems to be initiated by public prosecutors in order to divert the case.

Mediation is carried out either by public or private organisations and there are no costs for the parties involved in mediation. Public facilities include youth welfare agencies or youth court assistance services, as well as social services (probation services) and court assistance services for adults.

Besides victim-offender mediation, family conferencing (*Gemeinschaftskonferenzen*) has been carried out at a pilot level in Northern Germany since 2006. Recently, a pilot project aiming to introduce peacemaking circles in Europe has been initiated but so far it is unforeseeable whether these initiatives will be expanded nationwide.

C. Foster care within the juvenile justice system

In Germany, foster care is provided in the youth welfare system by the Children and Youth Welfare Act (SGB VIII) if a young person's wellbeing is at risk. Given this precondition, if assistance is needed in order to safeguard and promote the development of the child or juvenile, parents or legal guardians are entitled to supervisory assistance (§ 27 (1) SGB VIII). Supervisory assistance includes placement in a foster family (§ 33 SGB VIII). Hereby, the age and developmental stage as well as the emotional attachment of the young person and possibilities to improve the conditions in the family of origin have to be taken into account. Principally, foster carers are family members or non-related carers or professionals. In general, foster care (as all other measures of supervisory assistance provided by the youth welfare system) is applicable only where parents agree. The civil (family) court only applies placement in foster care while depriving the parents of their care in cases in which the wellbeing of the child is in serious jeopardy, in accordance with the principle of proportionality (§§ 1666, 1666a Civil Code), as a last resort. If a child or juvenile asks for protection or where there is serious and immediate danger for the wellbeing of the child, the local youth welfare agency has to remove the child from its home environment to live temporarily in a family employed by Social Services (§ 42 SGB VIII).

Foster care does not play a role in the juvenile justice system. Young offenders can be ordered to receive some forms of supervisory assistance by the Juvenile Criminal Court. In theory, an influence of foster care would be possible at different levels of the criminal procedure, but in practice other forms of alternative care are favoured over foster care in juvenile justice cases.

At the pre-trial level, according to §§ 71,72 JJA family care could theoretically be a possibility to avoid pre-trial detention: § 72 JJA says that pre-trial detention is to be avoided whenever possible (last resort). It may only be imposed and enforced if its purpose cannot be achieved via a preliminary supervision order or by other measures. According to § 71 JJA, such a preliminary supervision order could theoretically end in (temporary) family care. The juvenile and his parents would have to agree to the measure. But in practice residential homes are used to avoid pre-trial detention in appropriate cases. It can be seen as a German tendency to favour residential care over foster care due to the better public control over the latter institutions.

According to § 10 JJA the Court can impose an "educational measure", and according to § 10 (1) no. 2 JJA the judge may instruct the juvenile to live with a family or in residential

care. Most juvenile justice scholars state that the parents of the juvenile offender in general have to agree with such an instruction and the local welfare agency has to agree and to pay for the costs. Statistics do not show in how many cases § 10 (1) no. 2 JJA is applied in practice, but special analyses have shown that the Juvenile Courts do not use this alternative. The deletion of this provision has been called for (see Eisenberg 2013 § 10 para 17).

In case of a suspended youth prison sentence or after early release from youth prison, the competent juvenile judge can impose educational measures according to § 10 JJA as well (§ 23 JJA) and could theoretically instruct the juvenile to live with a family. But again, in practice this alternative is not used.

Therefore foster care remains purely an institution of the Youth Welfare Law and plays no role in Juvenile Justice.

Other forms of alternative care are used in prison sentences: The Youth Prison Laws of the *Laender* partly provide regulations which allow the introduction of an alternative to the youth prison sentence via the implementation of special institutions. Those institutions allow for the fulfilment of the prison sentence in a rather open environment - comparable to a closed day and night-time institution. Usually those projects draw closer attention to the peer group and in general to contact with other people. Daily routines are in general quite strict and try to help the offender to find a place in society. The available evaluation results for alternative care projects show no benefits in terms of recidivism. However, positive effects have been measured with respect to the formal qualifications and the occupational outlook as well as to special occupational soft skills of the project participants.

3.13 Greece⁶¹

A. Juvenile Justice

Juvenile justice in Greece underwent substantial reforms in 2003 (Law no. 3189/2003) and in 2010 (Law no. 3860/2010 and Law no. 3904/2010) and has thus witnessed greater harmonization with European and international standards. Provisions relating to juveniles are included in the general criminal law. Juvenile justice is based on a mix of the welfare model and the justice model. Juvenile welfare law provisions can be applied to juveniles aged 7 to 18 years. Several measures can also be imposed on young offenders.

The Penal Code provides that persons between 8 and 18 years are defined as minors. Regarding criminal liability, the law provides that juveniles aged 8 to 13 are not criminally

61 The snapshot is based on the country report written by *Efthyhia Katsigaraki* and *Evdoxia Fasoula*, Greece, as well as *Pitsela, A.* (2011): Greece. In: *Düinkel, F., Grzywa, J., Horsfield, P., Pruin, I.* (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd ed., Mönchengladbach: Forum Verlag Godesberg, pp. 623-670.

liable. They can, however, be subjected to educational or therapeutic measures.

Concerning juveniles aged between 13 and 18 years, the law provides “relative criminal liability”. If the court considers that a juvenile is criminally liable, and educational measures would not be sufficient, it can sentence a juvenile to detention in a young offender’s institution. Juveniles who are not criminally liable can only receive educational and therapeutic measures. There are no special provisions regarding young adults – they can merely receive a mitigation of sentence at the discretion of the general court.

Children below the age of 8 who commit an offence fall under the responsibility of the welfare services, whereas juveniles aged 8 to 18 years are dealt with by the Juvenile Court. Only the Juvenile Court is competent to order educational or therapeutic measures. The Juvenile Court is made up of a single (juvenile court) judge sitting in a Provincial Court, which is a court of first instance. Juvenile judges and public prosecutors linked to the Juvenile Courts are specialized in juvenile matters, including in child psychology.

At a Provincial Court, a Juvenile Court of Appeal has also been established, which is composed of three professional judges, one of whom shall be a juvenile court judge. Another Juvenile Court exists at every Higher Provincial Court, which also comprises three professional judges, including one juvenile court judge.

A Juvenile Probation Service is established at each Provincial Court. Juvenile Probation Officers are graduates from social sciences, psychology, law or criminology. They are responsible at the pre-trial stage for elaborating a social report on the personal and family situation of the juvenile and recommending adequate interventions. At the post-trial stage, Juvenile Probation Officers are in charge of the application of non-custodial reactions, especially the supervision of the implementation of educational measures such as probationary supervision.

Juveniles are granted the same procedural rights as adults. Legal defence is mandatory when juveniles have committed criminal offences (Art. 340 Code of Penal Procedure).

According to the Penal Code (Art. 122), the following educational measures are provided:

- Reprimand,
- Probationary supervision/placement under the intensive supervision of Juvenile Probation Services or another institution,
- Placement under the supervision of the parents or a guardian,
- Placement under the supervision of a foster family,
- Victim-offender mediation,

- Compensation to the victim or removal or alleviation of the consequences of the offence (reparation),
- Community service,
- Participation in social, psychological or educational programmes organised by public, municipal or private services,
- Participation in road safety training programmes,
- Attendance of professional or other training programmes,
- Placement in a special educational institution.

The maximum length of the measures has to be established by the Juvenile Court, but the measures end when the juvenile turns 18. Prolongation up to the offender's 21st birthday is possible if the court considers it necessary on educational grounds.

In relation to community service, the consent of the juvenile or his/her parents is not necessary. Implementation in practice was recently facilitated by a Ministerial Decision which provided information on the types of civil, local and non-profit organizations for which offenders can work. Inter-institutional cooperation between judicial authorities, juvenile probation officers and the community organizations ensures successful implementation and supervision. Juvenile probation officers deliver monthly reports to the public prosecutor and the Directorate of Prevention of Juvenile Delinquency and Correctional Treatment of Minors (Ministry of Justice) to inform them about the measures they have been assigned to.

Where juveniles need special treatment, the court can impose therapeutic measures. These include attending an open or day-care therapeutic programme or placement in a therapeutic or another closed institution. An interdisciplinary expert team including a psychiatrist, psychologist and a social worker is involved in the decision-making process. Furthermore, placement under the supervision of the parents, guardians or a foster family, or under that of the Juvenile Probation Services are possible therapeutic measures (Art. 123 Penal Code).

In terms of diversion, the public prosecutor may decide to refrain from prosecution (Art. 45 Code of Penal procedure) if the juvenile has committed a petty offence or a misdemeanor. If considered necessary, diversionary educational measures (see above) can be imposed on the juvenile. The public prosecutor can also order payment of up to 1,000 Euro to a non-profit organization.

Regarding liberty depriving measures, the educational measure of placement in a special

educational detention institution for juveniles (see above) can be ordered. Furthermore, juvenile law provides for the sanction of detention in a young offenders' institution as a measure of last resort (Art. 127 Penal Code). Since the reform in 2010, detention as a penal sanction can only be imposed on young offenders aged 15 and above in case of serious offences (violent offences, crimes against life or physical integrity, etc.).

The duration of detention in a young offenders' institution ranges from six months to ten years. If the legally provided sentence is imprisonment for ten years or more, young offenders can be detained for between five and twenty years.

Regarding sentencing practice, in the judicial years from 2009 to 2013 the absolute number of cases brought before the Juvenile Court with a single judge decreased significantly (from 17,493 in 2010 to 8,212 in 2013).⁶² This might, inter alia, be the result of wider diversionary practices and fewer juveniles being formally arrested for minor offences. Cases brought before the Juvenile Court comprising three judges were on the rise in the same period, which might indicate an increase in arrests for more serious offences.

Cases tried by the Juvenile Court composed of a single judge mostly involved road traffic offences, theft, possession of drugs for personal use, physical injury and property damage. The most common categories of offences brought before the Juvenile Court comprising three judges were similar to those mentioned above, such as road traffic related offences, theft, drug-related offences, physical injury, etc.

In the judicial year 2012/2013, most young offenders received non-custodial measures. The sanctions included reprimands, placements under the supervision of a parent/foster carer or Juvenile Probation Officer, probationary supervision with additional conditions, compulsory participation in psychological support programmes, traffic training programmes, restorative justice measures as well as placement in penitentiary institutions and young offenders' institutions. Custodial sentences have decreased in recent years. In terms of recidivism, 29% of young offenders brought before the single judge-Juvenile Court and 42% of those brought before the three-member Juvenile Court have offended before.

B. Restorative approach within juvenile justice

In Greece, victim-offender mediation is provided as a (diversionary) educational measure. The use of mediation refers to offences which are prosecuted upon prior complaint by the victim. Furthermore, the public prosecutor can decide to suspend prosecution in case of minor offences and order victim-offender mediation (see above). Mediation can also be applied by the juvenile court judge as an educational measure instead of another measure,

⁶² Statistical data are provided by the Directorate of Prevention of Juvenile Delinquency and Correctional Treatment of Minors, Ministry of Justice Greece.

such as community service or probationary supervision.

In terms of organization, mediation is carried out by the juvenile probation officer. However, in practice most of the probation officers are not specially trained in mediation and therefore urge the Ministry of Justice to organize special training courses on victim-offender mediation. Furthermore, probation services have a high caseload and lack human resources.

C. Foster care within the juvenile justice system

Foster care can be applied to young offenders as a diversionary measure or an educational measure (placement under supervision of a foster family, Art. 122 Penal Code). It can also be applied as a therapeutic measure (Art. 123 Penal Code), see above. Foster care was introduced in juvenile law with the reform in 2003.

When being placed under foster care, the juvenile remains in his/her own family, which brings difficulties for effective supervision. In practice, however, foster care does not feature significantly and is very rarely used.

Foster carers do not receive financial allowances for their work and to cover expenses for the juvenile. They are provided with basic training on foster care, but no further specialized training regarding the supervision of young offenders, which would be helpful. Moreover, there is a need for increased awareness-raising among the public to provide in-depth information on foster care.

3.14 Hungary⁶³

A. Juvenile Justice

In Hungary no specific juvenile justice law exists. The Criminal Code and the Criminal Procedure Act contain special rules for juvenile offenders. The age of criminal responsibility is 14 in general and 12 in cases of serious offending in which the child is able to understand the consequences of his/her acts (acted with discernment). The scope of juvenile justice ends on one's 18th birthday. The prosecutor and the court have to be specialized if the alleged offence was committed by a juvenile. In juvenile cases, one of the two lay judges must be a teacher. Probation officers prepare a social inquiry report on the living conditions and social environment of juvenile offenders. The court must take this report into consideration, so that the personality and the social surroundings of the juvenile are taken into account when it comes to determining the appropriate sanction or measure.

It is possible for the prosecutor to divert the case if the offence is punishable by imprisonment for no more than five years. The dismissal of the case can be conditional and combined with the payment of alimonies or participation in special treatments or trainings. In practice, diversion does not play such a significant role as in other European countries and the majority of the cases are brought before the court. The court can impose several sanctions or measures in cases of juvenile offenders: reprimands, probation, obligations to undergo medical or drug treatment, confiscation, supervision by a probation officer and education in a reformatory institution (if the successful education of a juvenile requires his/her placement in an institution) are measures that can be applied by the court. Criminal sanctions are imprisonment (ranging from 1 month to 15 years), community service (only against juveniles aged 16 or more) and fines. According to the law, the aim of sanctions or measures is primarily to support the adequate development of the juvenile in order to ensure that he or she can become a useful member in society. In practice, fines and community service are rarely used. A comparatively large share of all convictions result in prison sentences (in 2007 27.2% of all convicted juveniles), but the vast majority of these prison sentences are suspended.

Pre-trial detention for juveniles older than 14 can be executed in a juvenile correctional facility or a penal institution. In practice, around one third of juvenile offenders spend their pre-trial detention in prisons. Children between 12 and 14 years of age can only be placed in correction facilities pre-trial. According to the Criminal Code, remanding children in custody is used only as a measure of last resort and for the shortest appropriate period of time.

63 The snapshot is based on the desk top analysis written by *Maria Herczog* and *Eva Flora Varga* from the Family Child Youth Association, and the country report by *Váradi-Csema, E.* (2011): Hungary. In: Dünkel, F.; Grzywa, J.; Horsfield, P. and Pruin, I.: *Juvenile justice systems in Europe*. 2nd edn. Mönchengladbach, Forum Verlag Godesberg, pp. 671-720.

Imprisonment is executed in “special” prisons for juvenile offenders. Education in a reformatory institution can last for up to 4 years (for children aged 12-20). If the young person is on probation or on suspended imprisonment, she/he is supervised by a probation officer. On a voluntary basis the young offender is entitled to aftercare up to 24 years of age and to victim-offender mediation with the help of Probation Services.

The Hungarian petty offences law allows for juveniles to be sent to juvenile detention for up to 30 days in cases of misdemeanours, and for up to 45 in aggravated cases. The Hungarian ombudsman has complained about the possibility of detaining minors for petty offences in several of his reports, pointing out that deprivation of liberty should be a last resort.

B. Restorative approach within juvenile justice

A case can be transferred to a mediation institution if the offence is punishable with a maximum of five years of imprisonment. The use of mediation is possible in cases of proceedings initiated for crimes against the person, property, or traffic offences.

Although recent statistical data show an increase in the use of mediation, the actual absolute number of cases that end up in mediation schemes has been and remains low (in 2011 mediation was used in 370 of 582 cases involving juveniles). There are regional differences in the use of mediation among the different counties in Hungary.

C. Foster care within the juvenile justice system

Foster care plays a role in the youth welfare system as a measure of last resort. In cases of juvenile criminal offending, the laws do not foresee foster care or community-based care as an alternative to custody: juvenile offenders cannot be placed with foster parents as a direct consequence of their offences.

3.15 Ireland⁶⁴

A. Juvenile Justice

The legal framework for juvenile justice is mainly provided by the Children Act 2001, amended by the Criminal Justice Act 2006. The Children Act provides for police diversion, the prosecution of children over 12 years and sets community-based sanctions and detention measures. The law further specifies the operation of the Children Court and refers to children's and juveniles' rights within the criminal justice system. The Children Act also includes a welfare-based approach when addressing juvenile offending.

In terms of specialization, the Children Act states that judges have to undergo specific training or education in youth matters. At the prosecutor's level, there is no specialized division in youth matters.

Furthermore, the *An Garda Siochana* (police) include "Juvenile Liaison Officers" (JLO) who are trained in the field of mediation and responsible for the Garda Diversion Programme under the Children Act. Moreover, the police are specialized in case management for the co-ordination of charges before the Children Court.

Within the Probation Service, the division "Young Person's Probation" (YPP) is a specialized service and responsible for dealing with young persons between 12 and 18 years held in detention or brought before the court. The YPP delivers reports on the young persons to the courts, takes referrals and advises on community sanctions.

The Children Act focuses on criminal behaviour, although since 2006 the law has also included a few provisions referring to anti-social behaviour such as "good behaviour contracts" and "behaviour orders". However, these are not important in practice and have been used very rarely so far.

Persons under the age of 18 years are defined by the Children Act as children (Section 3 of the Act). Children under the age of 12 are not criminally liable, except in the case of serious offences (e.g. murder, manslaughter, rape, aggravated sexual assault) concerning children aged 10 or 11 years. Furthermore, the law stipulates that where children under the age of 14 years are charged, the Director of Public Prosecutions needs to agree with further proceedings.

Concerning the specific procedural rules for young persons, juveniles under 18 years are tried by the Children Court, as regulated by the Children Act. The Children Court is a District Court that follows specific procedures when dealing with juvenile offenders. The majority of young offenders are tried by the Children Court. Only in case of serious offences (e.g. murder, manslaughter, rape, sexual assault), juveniles are tried by the

64 The snapshot is based on the country report written by *Ursula Kilkelly*, Ireland.

Circuit or Central Criminal Courts.

Trials shall be held at a separate time or in a separate place from ordinary courts, and persons attending a trial shall not come into contact with persons attending another court. Furthermore, the Practice Direction by the President of the District Court of 2014 ensures that the circle of participants in court hearings shall include only those directly involved in proceedings. Young offenders' family members shall be allowed to participate in the proceedings. In keeping with the young person's needs the Direction also ensures that wigs, gowns and formal police uniforms shall not be worn in the Children Court.

In case young persons are tried at the Circuit or Central Criminal Courts, the same provisions as those applicable to adults are implemented.

Young persons have the right to be legally represented by a lawyer. Where legal defence is financially unaffordable, the service is free of charge for young people.

Regarding the sanctioning system, the Children Act provides for non-custodial and custodial community-based reactions.

Diversion is possible before or after a young person is charged with an offence. First, the Garda (police) Diversion Programme aims to divert young people from further criminal or anti-social behaviour (Section 19(1) Children Act). In order to apply the diversion programme, young people aged between 10 and 18 must accept responsibility for their behaviour, must agree to be cautioned and, if applicable, to be supervised by a Juvenile Liaison Officer. Furthermore, the Director of the Garda Diversion Programme decides on admission to the programme by also assessing the public interest (Section 24 Children Act). As provided by the Diversion Programme, young persons receive either an informal caution or a formal caution. In the latter case they will be supervised by a Juvenile Liaison Officer (JLO) for the period of 12 months. In exceptional cases, juveniles receiving a formal caution can be placed under supervision for only six months. Under supervision, juveniles may be required to present themselves to the JLO or another police officer, or to participate in certain activities.

Furthermore, the Garda Diversion Programme provides for family conferencing (Section 29 Children Act), see below *B. "Restorative approach"*.

In carrying out the diversion activities, the police work in partnership with the Probation Service, youth service organisations and local communities.

The court also has the possibility to divert cases, if the child accepts responsibility for his/her criminal behaviour and the child and the parent or family members agree to participate in a family conference and to formulate an action plan (Section 78 Children Act). The Probation service is responsible for organising the family conference and the outcome will be reported to the court. The court approves or amends the action plan and instructs the young person to fulfil the plan under the supervision of the probation officer.

In case no agreement is reached at the family conference, the court may also elaborate an action plan on behalf of the child, or continue the proceedings.

As well as diversion, the court can impose non-custodial or custodial measures (Part 9 Children Act). Detention should be taken as a measure of last resort.

Regarding non-custodial measures, the law enables fines, parental orders and community sanctions to be set.

When imposing a fine, the Children Court has to consider the young person's ability to pay. A fine should not exceed half of the amount imposed on adult offenders.

The court may further issue certain orders concerning the parents or guardians, such as a parental supervision order (Sections 111-114 Children Act). Hereby, parents are required to participate in certain activities, such as substance abuse treatment, parenting skill courses, or to pay compensation.

The Children Act also provides for community sanctions (Sections 115-141 Children Act). These include a day centre order for a maximum period of 90 days under probation supervision, where young people participate in certain activities or receive instructions.

Furthermore, the Children Court can issue various probation orders. The probation (training or activities programme) order includes participation by the young offender in activities or training programmes. Under the probation (intensive supervision) order the young person is placed under the intensive supervision of the Probation Officer for a maximum of 180 days.

Moreover, young persons upon whom a probation (residential supervision) order is imposed are placed under supervision in a hostel residence run by the Probation and Welfare Service for a period of no more than one year.

The court can further impose a suitable person (care and supervision) order, where a suitable person, e.g. a relative, takes care of the young person for a period not exceeding two years. The parent or guardian has to give his/her consent to the order and the Probation and Welfare Service has to inform the court prior to decision-making whether this option is available.

The mentor (family support) order implies that a mentor, e.g. a relative, provides a child and its family with advice and support for a period of up to two years in order to prevent further offending.

Young persons under a restriction on movement order are required to stay at a certain residence for a determined time or not to frequent certain places for a determined time. The maximum duration is in the first case six months and in the second case 12 months.

A dual order includes either supervision by the probation officer for a determined time or attendance at a day centre for up to 90 days and restriction on movement for a maximum of six months.

Regarding custodial sanctions, the Children Court can impose a detention order on young offenders to be detained in a Children Detention School (Section 142 Children Act). The law stipulates that deprivation of liberty shall not be longer than the term of custody to be imposed on adult offenders for a similar offence. It clearly sets out that detention should be a measure of last resort for a young person. Regarding children under 16 years, the court can only impose detention if a place in the Children Detention School is available (Section 143 Children Act).

Furthermore, the court can make a detention and supervision order (Section 151 Children Act). Hereby, the young person should spend half of the time in the Children Detention School and the other half in the community under the supervision of a Probation Officer.

Nationwide, three Children Detention Schools exist on a single campus in North County Dublin. In the past, young persons aged 16 and 17 years have been detained in a young offender's institution (for young persons up to 21 years). Due to extending the places in Children Detention Schools, by the end of 2014 all young persons below 18 years will be placed there. The schools aim to educate juveniles and to promote their reintegration and rehabilitation.

Regarding diversionary and sentencing practice, the majority of young persons are subject to the Garda Diversion Programme, in which 123 JLO's are currently working. Out of 12,246 young people referred to the programme in 2012, 80% were admitted. 51% received an informal caution, and 15% a formal caution.⁶⁵

In 2012, court orders were imposed on 3,452 young offenders, relating to 5,769 offences.⁶⁶ Almost half of the offences (N=2,815) were struck out or taken into consideration with other offences. 675 offences were dismissed or dismissed under the Probation of Offenders Act. The court imposed fines with regard to 684 offences, peace bonds with regard to 114 offences, probation with respect to 636 offences and community service orders with respect to 26 offences. Detention orders were given in respect of 264 offences, and suspended or part-suspended detention orders were imposed with respect to 155 offences. 152 offences were returned to a higher court for trial.

65 In 5% of the cases the decision was pending and in a further 5% no further action should be taken by the Garda (police). For the data see An Garda Síochána, Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme 2012. Dublin: Garda Office for Children and Youth Affairs, 2012, p. 5. Available at: www.justice.ie.

66 Courts Service, Courts Service Annual Report 2012 (Dublin: Courts Service, 2013), p. 38. Available at www.courts.ie.

B. Restorative approach within juvenile justice

In Ireland, restorative measures within the juvenile justice system are linked to the Garda Diversion Programme. Furthermore, a limited approach can be found in the court-referred family conference arranged by the Probation Service.⁶⁷

Under the Garda Diversion Programme, juveniles under the age of 18 can be diverted by a (formal or informal) caution, or a family conference. As enabled by the Children Act, the victim may be present at a formal caution or a family conference (Section 26 and 29 Children Act), providing for restorative elements within the juvenile justice system. The Juvenile Liaison Officer (JLO), trained in mediation and facilitation skills, is responsible for the meetings between victim and offender.

Possible outcomes of the meeting during the restorative cautioning may be an apology, compensation or certain activities by the offender. In 2012, a total of 1,036 restorative cautions took place, representing an increase from less than 400 referrals in 2011.

The family conference involves family members, other actors supporting the child and the facilitator, and may also include mediation between victim and offender. The child's criminal behaviour, and opportunities for family members and supporters to prevent the child from future criminal behaviour are at the centre of discussion, as well as the victim's perspective insofar as he or she is participating. An action plan for the child will be put together, which may include an apology, reparation to the victim, school attendance, participation in certain activities etc.

Furthermore, section 78 of the Children Act provides for court-referred family conferences, organized by the Probation Service, see above A. "*Juvenile Justice*". The young person has to accept responsibility for his/her behaviour and an action plan for the juvenile will be elaborated. The family conference is conducted similarly to the conference under the Garda Diversion Programme. The use of Probation Service led conferences is rather low, with only 15 family conferences having been held in 2012.⁶⁸ In general, the restorative measures do not play an important role in practice, which indicates that restorative potential has not yet been fully tapped or explored.

C. Foster care within the juvenile justice system

Foster care is not used as an alternative measure to child deprivation of liberty in Ireland. It plays a role within the child protection system for juveniles in need of care and support.

⁶⁷ For a full review of restorative justice in Ireland see National Commission on Restorative Justice, Final Report, June 2009. Available at www.justice.ie.

⁶⁸ The Probation Service Annual Report 2012, p. 36.

Within the juvenile justice system, the Children Act provides for a range of community-based measures, some of them involving the young person's relatives. The aim is to take care of the juvenile (a suitable person [care and supervision] order) or to support the juvenile and his/her family in its efforts to prevent his or her further criminal behaviour (a mentor (family support) order), see above A. "Juvenile Justice". However, these community-based measures do not represent an alternative to detention.

Currently, the establishment of a fostering scheme in order to support compliance of juveniles with bail conditions, among other potential fields of application, is being discussed.

3.16 Italy⁶⁹

A. Juvenile Justice

The legal framework for juvenile justice is based on the Penal Code and the Code of Criminal Procedure (1930). Juvenile Courts were first established in 1934 and are competent in civil, criminal and administrative matters. Since a reform in 1956, the Juvenile Court has comprised two professional and two lay judges (one of each gender).

A major reform in 1988 (Presidential Decree no. 448/88) provided a new juvenile criminal justice procedure, which emphasised the rights and needs of juveniles. The reform allowed for more diversification in responding to juvenile delinquency.

According to the Criminal Code (Art. 97), juveniles under the age of 14 are not criminally liable. Juveniles aged 14 to 17 years are criminally liable if they are capable of understanding the seriousness of the offence (Art. 98). The court has to assess the ability of young offenders to understand and act in each case.

Regarding the organization of juvenile justice, the Department of Juvenile Justice within the Ministry of Justice is responsible for guiding and coordinating all actions in the field of juvenile justice. It also coordinates the local Juvenile Justice Services. The department is divided into 12 Centres for Juvenile Justice. The Juvenile Justice Centres are in charge of programming, monitoring and controlling the Juvenile Services at regional level. These include the Social Service Offices for Minors, the First Reception Centres, the Youth Detention Centres and the Educational Communities.

The Social Service Offices for Minors assist young offenders at every stage in the criminal proceedings and implement educational programmes, community sanctions or alternative

69 The snapshot is based on the country report written by *Bortone, F., D'Elia, F., Messner, C., on Padovani, A., Brutto, S. and Ciappi, S.* (2011): Italy. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 765-801, and on the questionnaire response by the *Don Calabria Institute*.

measures. The service provides information on the young offender and his/her situation and contributes to the decisions of the Juvenile Court.

Juveniles are placed in the First Reception Centres after arrest by the police or for preventive detention until the hearing before a judge in order to provide them with support by social workers outside of prisons. The service team prepares a first report on the psycho-social situation of the juvenile, which is then forwarded to the relevant judicial authority.

Juveniles serving custodial measures (pre-trial detention and imprisonment) are placed in one of the 17 Youth Detention Centres across the country. The centres include four female sections and they have open and closed areas. The centres accommodate young people up to 21 years of age. The facilities provide for school education, vocational training, cultural, recreational and other activities. About 1,500 young people are accommodated each year in the Youth Detention Centres in Italy.

Regarding the Educational Communities, they are responsible for the enforcement of criminal law measures and ensure the juvenile's social reintegration. Educational Communities support all measures except for detention. They prepare and implement individualized educational programmes for young offenders. The Educational Communities are usually operate in cooperation with non-profit private organisations.

Juveniles can receive the same sanctions that are applicable to adults, including non-liberty depriving and liberty depriving measures.

Community sanctions, introduced in 1981, can be applied if the custodial sentence imposed by the judge does not exceed one year. Community work as one of the options is rarely used, but other alternative measures to imprisonment such as probation, home detention or semi-detention are often applied. Furthermore, early release (the sentence is reduced by 45 days for every six months served) can be applied for convicted persons who have actively participated in treatment activities.

Probation is possible for juveniles who have received a prison sentence of less than three years or who still have to serve three years in prison. Social Services supervise and control the activities of the young offender and support the social reintegration of the juvenile.

Home detention can be applied to young offenders who are sentenced to no more than four years of imprisonment. Home detention can be served in the family, a private residence or in a place of public care and assistance.

Semi-custody offers the young offender the possibility to spend a part of the day outside the detention centre and to participate in educational, vocational or other activities relevant for social reintegration. Semi-custody is possible for convicted juveniles who have already served half of their sentence or more.

Diversion is possible in cases in which the seriousness of the offence is deemed insufficient

to warrant formal proceedings. In such cases, victim-offender mediation can be applied (see below). Furthermore, a judicial pardon and pre-trial probation can be applied at the preliminary hearing.

The judicial pardon can be applied once on offenders in cases where the assumed penalty will not exceed two years. The court takes into consideration the seriousness of the offence and the criminal responsibility of the offender. The measure will be removed from his or her criminal record when the person has turned 21.

Pre-trial probation (suspension of proceedings with probation) can be applied at the preliminary hearing or during the trial. The probationary period can last for up to three years. In practice, pre-trial probation is widely applied by the courts.

Finally, detention shall only be imposed as a measure of last resort.

In practice, the number of juveniles in prisons decreased slightly from 508 in 2012 to 486 in 2013. The majority (58.7%) were charged with crimes against property, 11.7% for drug-related offences and 11.7% for offences against the person. More than 2,000 juveniles are placed in Educational Communities. About 1,200 juveniles were accommodated in 2012 in Youth Detention Centres, where a decreasing trend in absolute numbers could be observed over the last decade. In addition, the number of young offenders in First Reception Centres decreased. Within a period of 14 years, the number of juveniles almost decreased by half, totalling about 2,200 juveniles in 2012.

The majority of juveniles receive community measures supervised by the Social Service Offices for Minors. More than 20,000 juveniles were referred to these services in 2012.

B. Restorative approach within juvenile justice

In Italy, victim-offender mediation is predominantly applied to juvenile offenders and became increasingly prominent during the 2000s. Mediation can take place at every stage of criminal proceedings, upon referral by the judge or public prosecutor. During the preliminary investigations, public prosecutors and judges have to assess juveniles' personal situation, the importance of the offence and relevant measures (Art. 9 Presidential Decree no. 488/88). During the preliminary hearing, mediation is possible where a case is dismissed on the grounds of insufficient seriousness of the offence (Art. 27 Presidential Decree no. 488/88) or during pre-trial probation (Art. 28 Presidential Decree no. 488/88). Furthermore, mediation may take place during the execution of alternative sanctions and enforcement of sentences. Restorative practice is based on the agreement of both victim and offender.

C. Foster care within the juvenile justice system

In Italy, foster care is not provided as an alternative measure within the juvenile justice system. Foster care can be applied as a welfare measure for minors in need of care and protection, as regulated by Law 184/1983 and the Civil Code. They can be placed with another family, a single parent, a family-type community or as a last option a care institution.

Regarding other forms of alternatives to detention, home detention has to be mentioned. Juveniles can either remain with their families or be accommodated in a private residence under surveillance of their parent or another person with whom the juvenile is staying.

3.17 Latvia⁷⁰

A. Juvenile Justice

There is no separate juvenile justice act in Latvia as such. All specific provisions concerning young offenders can be found in other legal acts, most importantly in the Criminal Code and Criminal Procedure Code and the Law on the Application of Compulsory Corrective Measures to Children, but also in the Law on Procedures for Keeping Persons in Custody, the Law on the Procedures for Holding Detained Persons and in the Code on the Execution of Sentences. The Latvian model of juvenile justice can be described as applying a “justice” approach while incorporating certain elements of a “welfare” approach.

In Latvia, the age of criminal responsibility is 14. Minors who commit an offence prior to reaching that age cannot be held criminally liable. The responsible police officer is required to make a decision whether to send all case materials to the court, so that compulsory correctional measures can be applied. Once a person has turned 18, the rules and regulations for adults apply. The exception to this is when a person is serving a custodial sentence, in which case the status of a juvenile may be retained up to the age of 21 in order for the person to complete his or her education.

The entire investigation process is supervised by a prosecutor. If the State Police have reason to suspect that a minor has committed a criminal offence, security measures can be applied and criminal proceedings can be initiated. Once the pre-trial investigation has been completed the police refer all case materials to the prosecutor. The role of the prosecutor is not limited to organising, managing and conducting pre-trial investigations and initiating and conducting the prosecution. Additionally, s/he has powers to apply certain sanctions and measures. S/he may e. g. refrain from initiating formal criminal

70 The snap shot is an abbreviated version of the report written by *Ilona Kronberga*, Latvia, and based also on *Judins, A.* (2011): Latvia. In: Dünkkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 833-870.

proceedings and conditionally release minors from criminal liability. Such a decision can be made in less serious cases and only if the minor has not previously been punished for an intentional offence. Furthermore, the prosecutor can drop the case and apply corrective measures provided in the Law on the Application of Compulsory Corrective Measures to Children.

If none of the above-mentioned options are applicable, the prosecutor may transfer all case materials to the court for trial. The court can also dismiss criminal proceedings without any intervention if there are grounds to do so or dismiss the proceedings and apply corrective measures. Pursuant to the Law on the Application of Compulsory Corrective Measures to Children, the court can: issue a warning; impose a duty to apologise to the victim(s) if the latter agree(s) to such a confrontation; place a young person under the surveillance and supervision of parents or other authorities; order the offender to work so as to alleviate the harm caused by the offence; oblige an offender to reimburse the material harm that has been caused; order the offender to perform unpaid work for a total of 10 to 40 hours.

A young person can be placed in an educational institution for social correction for 12 to 36 months, however for no longer than until he or she turns 18. Sending a minor to a correctional educational establishment basically implies a deprivation of liberty. Such a measure can be implemented via a decision by the investigatory judge or court before the final judgement has come into effect. It is applied when the suspected or accused minor cannot be placed in detention, but there are insufficient grounds to believe that s/he will meet the procedural obligations and refrain from reoffending without the use of deprivation of liberty.

Along with the aforementioned compulsory corrective measures (CCMs), a minor may also be obliged to undergo specialised treatment for alcohol addiction, narcotic, psychotropic or other toxic substance abuse etc. Such treatment cannot be enforced without the prior consent of the minor or his or her parents.

For cases in which the above-mentioned circumstances are not met, the punishments foreseen in the Criminal Code can be ordered against minors according to the seriousness of the offence. It should be borne in mind, though, that adults and minors are not subject to the same legal rules regarding sentencing and the execution of punishment. For minors, prison sentences are limited to 10 years for an individual (particularly severe) offence, and 15 years when sentenced for multiple offences.

In addition to the above, the court has the right to impose a conditional sentence without subsequently imposing a punishment, or to exempt juveniles from punishment and apply compulsory corrective measures. Minors who are conditionally released prior to the completion of their sentence are subjected to the supervision of the state probation service. Fines can only be imposed on minors who earn their own income, and shall not be less than one or more than fifty times the amount of the minimum monthly wage prescribed by the Republic of Latvia. A minor offender's criminal record is nullified once s/he has served the sentence.

B. Restorative approach within juvenile justice

The Restorative Justice approach in Latvia is of a short-lived nature. There is no overall systemic development of Restorative Justice. One can find only a few provisions that have been introduced as a result of projects conducted by individual institutions or by non-governmental organisations, often on their own initiative.

The Latvian State Probation Service can arrange a settlement between the offender and the victim as follows: before the initiation of criminal proceedings (a); at all stages of criminal proceedings (b); after the court's adjudication (c); after an injunction of a public prosecutor regarding a penalty has come into effect (d); after a decision to terminate criminal proceedings and to conditionally release the offender from criminal liability has come into effect (e); if the judge decides to impose compulsory corrective measures (f). The above settlement between the offender and the victim can be conducted only if the offender admits to the crime and agrees with the facts of the case, and both parties agree to voluntarily participate in the settlement process. If one of the parties is a minor or is incapacitated, a lawful representative or representative from the Orphans' Court can participate in the settlement process. Furthermore, the provision allows other persons to be present to support the parties. Should settlement be achieved in a case where a minor is involved, the minor can be released from criminal liability and the fact of settlement can be taken into account in any subsequent sentencing of the case. Moreover, it is crucial to note that, since 2013, a provision on the purposes of punishment and criminal proceedings has been included in the Latvian Criminal Code, which states that the goal is not only to punish the offender but also to restore justice.

As of now, restorative justice approaches in Latvia can be carried out by the Latvian State Probation Service, which is responsible for cooperation with other law enforcement agencies involved in criminal proceedings. It needs to be noted, however, that the State Probation Service is not required to be involved in the settlement, i.e. the offender and the victim can settle without a mediator. The mentioned parties are entitled to meet, agree on the conditions of their agreement and submit the outcome to the court.

C. Foster care within the juvenile justice system

Foster care cannot be used as a legal alternative to remand or custody, and thus it is not relevant to the Latvian juvenile justice system.

In Latvia, the concept of foster families is regulated by the Civil Code, the Law on the Protection of the Rights of the Child and the Law on Orphans' Courts. A child can be placed in a foster home if one of the following situations arises: the child's biological parents are unable to provide sufficient care; if a parent abuses a child's rights; if the parent has given his or her consent for the child to be adopted; or if a parent has used violence against the child, or if there is good reason to suspect that the child has been or is a victim of domestic

violence at the hands of his or her parents.

Decisions on placing children in foster families are made by the Orphan's Court, which is responsible for the following decisions: assessing the suitability of a family or person for performing the duties of a foster family (a); granting the status of a foster family (b); placing a child within a foster family or terminating such placements (c).

Furthermore, the Orphan's Court is responsible for deciding on the establishment of guardianship over a child and the appointment of a guardian if: the parents of the child are deceased (a); the child's parents no longer hold custody rights over the child (b); the parents of the child have been reported missing (c); due to illness the parents of the child are not able to provide sufficient care for and supervision of the child (d); both parents of the child are minors (e); there are substantial disagreements in the relationship between the child and parents (f) or other cases have occurred. Guardianship can be arranged by the Orphan's Court for a specific period of time. It can then be decided whether to place the child in a foster family or in an institution of long-term social care and social rehabilitation at a later date.

3.18 Lithuania⁷¹

A. Juvenile Justice

There is no special juvenile justice act in Lithuania. All specific provisions concerning young offenders can be found in other legal acts, above all in the Criminal Code and Criminal Procedure Code, but also in the Code of Administrative Offences (henceforth CAO), the Law on Minimum and Average Care of the Child (LMACC) and the Law on Fundamentals of Protection of the Rights of the Child (LFPRC).

A wide-ranging reform of juvenile justice was initiated at the end of the 1990s. It resulted in a juvenile justice system that was put into practice by adopting the National Programme of Juvenile Justice for 2004-2008 and the subsequent Juvenile Justice Programme for 2009-2013.⁷² The central aims of the programme were: to develop targeted, long-term and comprehensive conditions for the juvenile justice system, to identify and implement more differentiated measures for juveniles who are in different risk groups and to improve the quality of social and re-socialization services.⁷³

71 The snap shot is an abbreviated version of the country report written by *Eglė Kavoliūnaitė-Ragauskienė*, Lithuania, and is based also on *Sakalauskas, G.* (2011): Lithuania. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 871-909.

72 Resolution No 1070 of the Government of Lithuania of 2 September 2009 On the Approval of Juvenile Justice Programme for 2009-2013. Official Gazette, 2009, No 110-4664.

73 Information from the EUCPN website. Access via internet: <http://www.eucpn.org/policies/.results.asp?category=7&country=15>.

The Criminal Code of Lithuania that came into force on 1 May 2003 provides for two age limits – 14 and 16 years of age. Although Art.13, para.1 of the Code embeds a general rule that persons are liable under the Code only after they have reached 16 years of age, the Code actually also establishes penal liability of 14 year old juveniles for all the most serious crimes as well as for all property offences that juveniles are traditionally most often charged with.

Juvenile justice encompasses both administrative and criminal offences, as well as other anti-social behaviour. It includes material criminal and administrative justice, procedure (including the enforcement of penal, administrative and other sanctions), the application of other social and educative instruments for persons under the age of criminal or administrative liability, and the prevention of deviant behaviour.

In Lithuania, there are no special authorities that are responsible for reacting to juvenile offending as such. All criminal cases involving juveniles are tried before the general courts, and the investigation and pre-trial procedures are in the hands of the regular police and prosecutors. However, certain additional persons participate in the juvenile criminal procedure – most notably child rights protection officers or psychologists. However, no special authorities or officers participate in administrative juvenile procedures.

The Criminal Code and the Criminal Procedure Code provide several possibilities for cases to be dropped.

An offender who has committed a misdemeanour, a negligent crime or a minor or less serious premeditated crime can be released from criminal liability if he/she has admitted to the offence, has voluntarily alleviated, repaired or compensated the damage that the offence has caused or has made arrangements to do so or has reconciled with the victim (or a representative of a legal person or a state institution that suffered harm from the offence), and there are grounds to believe that he/she will not reoffend in the future.

The Criminal Code provides two further routes via which an offender can be released from liability and thus not be formally prosecuted any further. The court can, by reasoned order, release from criminal liability a person who has committed either a misdemeanour or a crime through negligence if he/she is a first-time-offender. Additionally, at least two of the mitigating factors stated in § 59 Abs. 1 CC have to be fulfilled, and there must be no aggravating factors (stated in § 60 Sec. 1 CC). The second possibility is that someone close to the offender provides a surety (§ 40 CC).

The Criminal Code provides a further diversionary route that is reserved especially for juveniles (“Releasing juveniles from criminal liability”, § 93 CC). § 93 CC can be applied if a first-time juvenile offender has committed a misdemeanour, a crime through negligence or a minor or intermediately severe crime with intent and he or she: has apologized to the damaged party and at least partially repaired the damage caused monetarily or through work; admits to having committed the act in question; shows sincere remorse for the act. It is also applicable if his/her criminal liability is diminished, or other factors give reason

to believe that he/she shall live in accordance with the criminal law and not re-offend (§ 93 Sec. 1 CC). In such cases, educational measures can come into play.

The Law on Minimum and Average Care of the Child provides measures that can be ordered against children and juveniles up to the age of 17 who exhibit “deviant” behaviour, including placement in an educational institution. In exceptional cases, children under the age of 14 can be placed in an educational institution (socialization centre) – thus no lower age limit has been fixed. The other measures that can also be applied in this context include the obligation to visit a specialist (for instance for treatment), the obligation to attend a children’s day centre, the obligation to continue education at a different school or the obligation to be at home at a specified time.

In terms of sanctions that can be issued against juvenile offenders, the Criminal Code differentiates between “educational measures” and “penalties” (or “punishment”).

Rather strict criteria for the application of educational measures (instead of punishment) have been established in the Criminal Code. They can be ordered in the context of the discontinuation of proceedings or exemption from punishment in cases in which a misdemeanour⁷⁴ or a crime⁷⁵ has been committed (§ 82 Sec. 1 CC).

The Criminal Code states that a minor may be subject only to the following penalties: 1) community service; 2) a fine; 3) restriction of liberty; 4) arrest; and 5) fixed-term imprisonment. The number of hours of community service that a minor can be ordered to work is limited to 240. Fines can only be imposed if the minor is already employed or owns property. The duration of “arrest” (short-term youth detention) ranges from five up to forty-five days (§ 90 Sec. 4 CC).

§ 91 Sec. 3 of the CC provides that the court can sentence a minor to a determinate prison sentence when there are grounds to believe that other penalties would be insufficient for altering the minor’s criminal dispositions, or where the minor has committed a serious or grave crime. For minors, the minimum sentence provided by law for adult offenders is to be halved. Finally, the maximum custodial sentence that a minor can receive is capped at ten years (§ 90 Sec. 5 CC).

Minors who turn 18 while they are residing in the juvenile correctional facility and who wish to remain there in order to continue working towards their rehabilitation and reintegration can be allowed to do so until they have served their full sentence or until they turn 21, whichever occurs sooner. In Lithuania there is only one such institution – in Kaunas.

74 Misdemeanours are offences for which the Criminal Code does not provide the punishment of imprisonment (“non-imprisonable” offences).

75 Minor crimes are offences for which the Criminal Code envisages a maximum sentence of three years in prison. Less serious crimes are offences for which the Criminal Code allows a maximum prison sentence of six years (§ 11 CC).

According to the data provided by the National Court Administration, in 2012, arrest (short-term juvenile detention) or imprisonment were ordered against 318 juveniles, while other penalties, penalty suspensions and release from a penalty were imposed in 632 cases, and restorative sanctions were used in 749 cases. In 2011, arrest or imprisonment were imposed on 418 juveniles (in 2010 – 336, in 2009 – 700, 2008 – 601); other penalties, suspension of a penalty or release from a penalty were imposed on 632 minors (in 2010 – 691, 2009 – 773, 2008 – 875); restorative sanctions came into play in 628 juvenile cases (in 2010 – 664, in 2009 – 700, in 2008 – 601).⁷⁶

B. Restorative approach within juvenile justice

In Lithuania, restorative justice has not yet been introduced in an elaborate fashion. Recently, a number of research studies have been carried out that seek to identify the most appropriate model of restorative justice, emphasizing the necessity to take into account the Recommendations of the Council of Europe Committee of Ministers No R (87) 20 On Social Reactions to Juvenile Delinquency. However, restorative justice in Lithuania is still at the level of theoretical considerations.

Currently, there is one provision in the Criminal Code which theoretically could be considered as a manifestation of restorative justice or a restorative measure. As has already been mentioned above, one of the possibilities to be released from criminal liability is when offender and victim have reconciled. Article 38 of the Criminal Code states that a person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability when: 1) he has confessed to the criminal act, and 2) has voluntarily compensated for or alleviated the damage suffered by a natural or legal person or agreed to compensate for or alleviate said damage, and 3) reconciles with the victim (or a representative of a legal person or a state institution that suffered harm from the offence), and 4) there are grounds for believing that he/she will not commit new criminal acts. As can be seen, making use of this possibility is subject to rather strict conditions. However, researchers have stated that reconciliation under this Article is more a formality than a real form of mediation.

Furthermore, there have been (and are) some rather confined attempts to implement restorative practices in different fields of criminal justice, usually in the form of individual (local) projects financed by various non-governmental sources.

⁷⁶ Based on the information from Statistics Lithuania and the National Court Administration. Cited from: Sakalauskas, G. Nepilnamečių baudžiamosios atsakomybės ypatumų prasmė. Teisės problemos, 2013, No 3(81), p. 22.

C. Foster care within the juvenile justice system

In general, in Lithuania, there are three types of alternative family care setting: family guardianship, social family guardianship and institutional care. One form of institutional care for children exhibiting antisocial behaviour is “care provided in socialization centres”. Children can be placed in such institutions via two routes: 1) upon the imposition of an educational measure under the Criminal Code; 2) as an intermediate care measure in accordance with the LMACC.

Among the educational measures provided for minors in the Criminal Code there is the possibility to place a minor in a special reformatory facility. The duration of such placements is fixed at between six months and three years, but shall not last beyond the offender’s 18th birthday. The court determines the length of the measure in each individual case, taking into consideration the personality of the minor, the repetitive character of his criminal conduct, the type of sanctions or measures he/she has previously been subjected to, and other circumstances of the case.

Children can also be placed away from home via intermediate childcare measures: 1) when an act has been committed that fulfils the elements of a criminal act or criminal offence but the perpetrator has not reached the legal age of responsibility set forth in the Criminal Code; 2) where he/she has, within a period of one year, committed three or more acts with the elements of an administrative offence but has not reached the age of administrative responsibility set forth in the CAO; 3) where he/she has been subjected to “minimum measures of childcare” but no positive results have been achieved.

Intermediate care measures may be imposed for a period of up to one year, but no longer than the moment when the person reaches 18 years of age.

Care within a child socialisation centre may be imposed only in cases where a child has been released from criminal liability or a penalty or where a child may not be held liable due to his/her age. Where a child is subject to sentencing, only a penalty may be imposed and there is no possibility of imposing reformatory sanctions.

Minors who are taken into arrest (short-term youth detention) or sentenced to imprisonment are placed in the correctional facility in the city of Kaunas. In Lithuania, there are no other alternatives to custody.

3.19 Luxembourg⁷⁷

A. Juvenile Justice

Provisions concerning juvenile justice are included in the Law on Youth Protection of 1992 (Loi Protection de la Jeunesse, henceforth PdJ), which has its legislative roots in an act on child and youth protection from 1939. This unitary law refers to offending and anti-social behaviour of young persons below 18 years of age. The law emphasizes the protection of children and juveniles and includes provisions for both juvenile offenders and victims. It includes no sanctions for young offenders. The need for a special juvenile justice act has been the topic of discussions. Currently, a reform is under way in order to harmonize the existing law with international standards.

Since 2008, a child and family welfare law has been in force that regulates welfare-related issues. Within the scope of this law, a national youth office was established with responsibilities for children and young people up to the age of 27. The national youth office was intended to reduce, inter alia, the high number of judicial placements of young persons in Luxembourg.

Young offenders aged older than 16 years are eligible to be sanctioned under the general adult Criminal Code, or can be placed in secure residential care up to the age of 21 or 25 years (Art. 3,4 PdJ) if they have committed a crime (assaults and homicide). Placement is also possible for young persons with mental or physical deficiencies or who exhibit anti-social behaviour (Art. 5 PdJ). In practice, juveniles are usually not dealt with under the adult Criminal Code.⁷⁸

Measures according to the Law on Youth Protection can be taken in case of anti-social behaviour (e. g. school non-attendance, gambling, prostitution, vagrancy), criminal offending and in cases where the young person's health, development or education is at risk (Art. 7 PdJ).

The Youth Tribunal is competent in applying measures to both young offenders and young persons in need of protection. Currently, two regional Youth Courts have been established and five youth judges operate in Luxembourg.

A service of social workers (service central d'assistance social), which is connected to the General Prosecutor and the police, provides a report on the situation of the juvenile to the Youth Tribunal upon request of the prosecutor or judge (Art. 23 PdJ). This report also includes recommendations for suitable measures and sanctions for the juvenile.

⁷⁷ The snap shot is based on the country report written by *Ulla Peters*, Luxembourg.

⁷⁸ This is nearly never done according to professional records; see also *Peters, U.* (2013): Geschlossene Unterbringung in Luxemburg (residential care with deprivation of liberty). In: Schmit, Ch., Lellinger D., Peters, U. (Eds.): *Minors deprived of liberty, Luxembourg: ANCES.* pp. 262-275, and a recent report of the Ombudsman (2012) on the state-run socio-educational centres (Les centres socio-éducatifs de l'Etat), available at: www.celpl.lu/doc/doc_accueil_119.pdf.

Art. 1 of the Law on Youth Protection provides the following measures (concerning safeguarding, education and protection):

- Reprimand and/or placement under supervision of an adult
- Placement under supervision of a social worker
- Placement under supervision of a trustworthy person or in an appropriate place or institution in Luxembourg or in another country with the aim of living, treatment, education, schooling and/or vocational training.

For the purpose of keeping the juvenile in his/her own environment, the court can impose the following conditions: regular school attendance, fulfil a humanitarian or educational activity, or placement in a centre for educational orientation or for mental health. Furthermore, additional educational support for the juvenile may be granted.

The law does not differentiate the length of the various measures. In principle, the measures last until the juvenile turns 18 (which has also been criticized), and can be extended up to the age of 21 or even 25 years. Extension is mainly ordered if the juvenile has committed an offence which is punishable by imprisonment.

Regarding informal responses to juvenile delinquency, the Law on Youth Protection does not provide for diversion from trial. However, mediation as an alternative measure is possible for first-time offenders in particular (see below).

Liberty-depriving measures are implemented in the secured state-run institutions (centres socio-éducatifs de l'état), situated in Schrassig and Dreiborn. In these facilities, young people who have committed offences, who have shown anti-social behaviour and who are in need of protection are all placed together without differentiation.

The educational institutions are subject to their own legal regulation which includes regulation of punishment and secure detention in special units. Furthermore, there are special separated sections for young offenders in the adult prison. A newly established detention unit (unité de sécurité) will be functioning after the respective legal framework has been enacted. On 1.10.2013, there were 96 juveniles in the state-run detention homes.⁷⁹

The implementation of liberty-depriving measures (imprisonment and secure detention) has received criticism from human rights and children's rights organisations and bodies, e.g. the Ombudsman, the Human Rights Consultative Body and the Committee on the Rights of the Child. A report by the Ombudsman in 2012 refers critically to the legal situation and the rights of children and young people. It points out the need to bring the Youth Protection Act into line with international standards, relating inter alia to

79 CSEE internal report to the ONE 2013.

procedural rights and the duration of imprisonment.⁸⁰ Reports by the national association of educational and social communities in Luxembourg (Association nationale des communautés éducatives et sociales du Luxembourg, ANCES)⁸¹ and the UN-Committee on the rights of the child⁸² stated a need for improvement regarding placement, treatment and sentencing of juveniles in order to align with international standards for children deprived of their liberty.

B. Restorative approach within juvenile justice

Mediation is possible at the pre-trial stage for juveniles and is mainly proposed for first-time offenders (médiation réparatrice). Regarding adults, pre-trial mediation is provided by the Code on Taking Evidence on Crimes (Code d'instruction criminelle), Art. 24 (5).

At the end of the 1990s, a mediation centre was established and mediation services have since been available.⁸³ In 2012, only 4.7% of all cases handled by the centre for mediation were referred by the Youth Tribunal.⁸⁴

The mediation service is free of charge and the mediators are paid by the Ministry of Justice.

C. Foster care within the juvenile justice system

Foster care is provided in the field of child protection by the Law on Child and Family Welfare. Judges seem to prefer to apply foster care in cases of younger children rather than in the context of juvenile justice. It remains unclear how, whether and to what extent placements in foster care are linked to juvenile delinquency and anti-social behaviour, as there is no separate juvenile justice law. Juvenile justice and child protection are interlinked and youth justice is part of the youth protection system.

Foster care has not been of major importance so far in Luxembourg, as the focus tends

80 Ombudsman (2012). Les centres socio-éducatifs de l'Etat, available at: http://www.celpl.lu/doc/doc_accueil_119.pdf.

81 Luxembourg, ANCES, available at: http://www.ances.lu/index.php?option=com_content&view=category&layout=blog&id=48; report responding to the authorities' 3rd and 4th periodic report to the UN-Committee on the rights of the child (UN-CRC).

82 UN-CRC, 2013, concluding observations on the combined third and fourth periodic reports of Luxembourg, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), CRC/C/LUX/CO/3-4, available at: http://www.ances.lu/attachments/article/163/CRC_C_LUX_CO_3-4%20CRC%20concluding%20observations%20Luxembourg.pdf.

83 http://www.mediation.lu/mediation_tribunal.htm.

84 http://www.mediation.lu/CM_activites_2012.pdf.

to be on placements in residential care. In 2013, about 422 children (voluntary, with consent of the parents, and judicial) were in foster care (day and night placements).⁸⁵ In recent years, an increasing number of young people placed in professional foster settings (intensive individualized care), mainly outside the country, could be observed.

Training sessions for foster carers are organized by four agencies in Luxembourg (Interaction, SOS-Kinderdorf, Croix Rouge and ARCUS). These agencies are also responsible for the selection processes and support of children and parents.

As alternative measures to detention the Law on Youth Protection (Art. 1) provides placement under supervision of a trustworthy person or the possibility to remain at home under certain conditions (see above).

3.20 Malta⁸⁶

A. Juvenile Justice

In 1980, the Children and Young Persons (Care Order) Act came into effect, aiming to promote children's welfare. Also in 1980, the Juvenile Court Act came into force, stipulating specific rights for juvenile offenders under the age of 16. The Criminal Code and the Probation Act provide for the actions to be imposed on young offenders. Furthermore, Act No. 3, 2014 sets out the age of criminal liability of young people.

There are several terms provided by law relating to young people. The Children and Young Persons Act refers to children and youths as persons under the age of 16 years, whereas the Civil Code defines a minor as a person who has not yet reached the age of 18. However, there is no special law that covers juveniles only. The Juvenile Court Act (chapter 287) states that: (3) All the provisions of the Criminal Code and of any other Cap. 9. law applicable to the Court of Magistrates shall, subject to the provisions of this Act, apply to the Juvenile Court. Furthermore, there is no minimum or maximum length of imprisonment for juveniles. Also, notwithstanding the provisions of article 3, and of sub articles (1) and (2), the Juvenile Court is not competent to hear charges against, or other proceedings relating to, a child or young person who is charged jointly with any other person who is not a child or young person.

The age of criminal liability was recently raised from nine to 14 years, after lobbying by the Commissioner for Children with support from professionals and academics (Act No. 3, 2014 as cited in Justice Services⁸⁷). This law stipulates that juveniles below the

85 ONE statistics 2013.

86 The snap shot is based on the country report written by *Joseph Giordmaina*, Malta.

87 Justice Services 2014: Act No. III of 2014: An ACT to further amend the Criminal Code (Cap.9). In <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25940&l=1> (Accessed on 23.02.2014).

age of 16 are not held criminally liable for an offence committed without mischievous discretion. For juveniles aged between 14 and 16 years who have committed an offence with mischievous discretion, and for juveniles aged 16 to 18 who have committed an offence, the law stipulates that punishment has to be diminished (mitigated) by one or two degrees. Effectively, this means that the punishment is reduced in its severity. This could be bail, probation, a shorter sentence, or community service instead of incarceration.

The Maltese Juvenile Court, established in 1980, tries children and young persons. It is a less formal court, situated separately from other law courts in Valletta. Court sessions are not open to the public. Cases are tried by a professional judge together with two lay assistants, one of them female. The Juvenile Court as a Court of Criminal Judicature deals with juveniles below the age of 16 who have committed an offence. Young people older than 16 are heard with other offenders in the (adult) law courts. Unlike in other courts, at the Juvenile Court the public prosecutor, who is a high ranking police officer, does not wear his/her uniform. Juveniles are entitled to the right to be defended by a lawyer, which is not mandatory.

The Juvenile Court works in cooperation with police, the Commissioner for Children, the Education Department and the Department of Probation and Parole in certain cases. At court hearings involving juveniles, a social worker from the Department of Education as well as a probation officer from the Department of Probation and Parole are in attendance. The social worker provides the court with information on the educational background and school attendance of juveniles. The probation officer is involved in order to give advice on supervision orders.⁸⁸

The Juvenile Court always reduces punishment by one or two degrees when sentencing.

Regarding diversion, the National Youth Policy⁸⁹ promotes the use of diversionary measures in cases pertaining to young people.

There are, however, only a few possibilities for diverting young offenders. The Maltese Code of Police Laws (Chapter 10) provides diversion for young persons below the age of 17 who have consumed alcohol. If it is their first offence they can receive a warning and may be required to participate in an educational programme addressing substance abuse.

In principle, juveniles receive the same sanctions as adults. However, the sentences juveniles receive are mitigated compared to adult offenders. Detention is considered a measure of last resort. Non-liberty depriving measures are provided by the Criminal Code and the Probation Act.

88 *Damato, J.* (2013): Restorative justice for the juvenile justice system in Malta. Masters in Mediation. Unpublished Dissertation, University of Malta.

89 National Youth Policy 2010, http://cdn02.abakushost.com/agenzijazghazagh/downloads/0662_001.pdf (Accessed on 22.03.2014).

A fine (Art. 7 Criminal Code) can be imposed for criminal offences (*multa*) or for contraventions (*ammenda*). If the fine is not paid, it will be converted into imprisonment.

The Criminal Code further provides for a reprimand (Art. 15) or a special or general interdiction of certain rights (Art. 10). The interdiction may be imposed for a determined period or for life. The special interdiction refers to employment, exercising a particular profession, a public office, etc., the general interdiction to holding any public office, employment, etc.

The Probation Act states that a person convicted of an offence that is punishable by a fine or imprisonment for up to seven years can be conditionally discharged by the court (Art. 22). The court sets the condition that the offender shall not commit further offences within a period of three years.

Another option the court can apply as an alternative to imprisonment is the probation order (Art. 7 Probation Act), which aims to facilitate the social reintegration of offenders. The offender can be placed under the supervision of a probation officer for a period of one to three years. The probation order can be used if the offender is convicted of an offence for which the law provides a penalty of imprisonment not exceeding seven years (and in exceptional cases not exceeding ten years).

Furthermore, the court can suspend sentences in cases of penalties of up to two years' imprisonment. If the offender commits an offence during the suspension period of one to four years, the penalty will be enforced. Furthermore, the suspended sentence cannot be ordered if the offender is already serving the penalty of imprisonment, the offender is a recidivist or the offence has been committed during the period of probation or conditional discharge (Art. 28A Criminal Code). If a penalty of imprisonment of more than six months is suspended, the offender may be placed under the supervision of a probation officer for a determined period. The supervision order may include certain conditions provided by the Probation Act.

Regarding offenders aged 16 years and older, the court may give a Community Service Order (CSO, Art. 11 Probation Act). This community-based sentence ranges from 40 to 480 hours in volume and implies unremunerated work and/or training to which the offender has to agree.

A combination order may be imposed on offenders, requiring them to be supervised by a probation officer and to perform between 40 and 100 hours of community service (Art. 18 Probation Act).

Imprisonment must only be imposed as a last resort. All persons sentenced to imprisonment serve their sentence in the Corradino Correctional Facility. A special facility called YOURS (Young Offenders Unit Rehabilitation Services) allows for the treatment of young offenders (up to the age of 21), offering the services of a social worker, psychologist and psychiatrist. It has recently been separated from the main compound of the Corradino Correctional

Facility in order to better respond to the needs of young persons.

Besides the detention facility, young offenders at risk may be placed in certain other institutions.

Children and young persons with mental health problems are admitted to the Young Person's Unit next to a hospital in Attard. A multidisciplinary team offers adequate care and education. The duration of the placement depends on the needs of the young offender. In practice, a report of a special Task Force revealed that some of the juveniles were placed in adult wards within the hospital.⁹⁰

Another residential service, the Conservatorio Vincenzo Bugeja (CVB), aims at providing alternative care for girls aged between 11 and 18 years. The facility provides two residential units – “Programme Fejda”, and Jean Antide Home. “Programme Fejda” offers a therapeutic programme for girls with behavioural problems, promoting social and personal skills. Besides voluntary placement, girls may be referred to the residence through a care order or through a court order which provides a care plan. The length of the placement is adjusted to the juvenile's need for care. “Programme Fejda” employs a multi-disciplinary approach.

Further residential homes, often run by the church, provide for the care of children and young persons. Research has shown that residential settings for juveniles often lack space.⁹¹

Under the supervision order (see above) young offenders can be referred to a residential drug addiction programme. Residential drug treatment programmes are run by a specialized national agency, the church or a non-profit organization. In principle, these residential services focus on the needs of adults, thus there is a lack of specialized services for juvenile drug offenders.

In addition to residential settings, non-residential services play a role within the juvenile justice system, e.g. when offenders are required to receive assistance and support from certain professionals, agencies or departments. The court may order a young offender to submit to drug abuse treatment as part of a probation order, which can be in a non-residential setting. The treatment programmes may be delivered by local drug agencies and organisations, including adult and young offenders. In practice, a considerable share of offenders under the management of Probation Service is convicted of drug-related offences.

90 OCC (Office for the Commissioner of Children) 2012: Interim recommendations by the Task Force regarding minors. In http://www.tfal.org.mt/MediaCenter/PDFs/1_Interim%2orecommendations%20-%20Task%20Force%2oregarding%20Minors.pdf (Accessed on 24.01.2014); *Farrugia, A.* (2006): Current services and residential care. In: Commissioner for Children (Ed.): A fair deal: A study on children and young people with very challenging behaviour, Office for the Commissioner for Children: Malta.

91 *Farrugia, A.* (2011): Children of the state: A case study of residential care provision for children in Malta. See http://www.academia.edu/2652042/Children_of_the_State._-A_Case_Study_of_Residential_Care_Provision_for_Children_in_Malta (Accessed on 23.01.2014).

There is further cooperation of courts and probation services with mental health services, social work services (the Children, Young Persons and Support Services) and education services.

In practice, the number of juveniles younger than 16 who are sentenced to imprisonment is very low. In 2009 and 2010, a total of 10 juveniles were sentenced to imprisonment. In 2011 the number decreased by half to just five. Furthermore, the number of young persons under the age of 18 and young adults given a prison sentence is very low. In 2014, two young persons under 18 years and 25 young adults (18 to 21 years) were sentenced to imprisonment.⁹²

In 2013 a total of 48 juveniles received community-based sanctions with supervision. In the same year, the share of juvenile cases among all cases assigned to community based sanctions with supervision was 10.3%, whereas in 2010 the share was almost twice as high (19.4%).⁹³

B. Restorative approach within juvenile justice

In 2012, the Restorative Justice Act came into effect in Malta. In preparation for the act, a White Paper on Restorative Justice was published by the Directorate for Policy and Development within the Ministry of Justice and Home Affairs. A task force was in charge of a public consultation process and delivering a report to the Minister of Justice and Home Affairs.

The Restorative Justice Act aimed to provide restorative justice measures at every stage of the justice proceedings. It introduced new provisions on parole and victim support as well as the possibility of victim-offender mediation.

In terms of parole and victim support, a Parole Unit has been set up as part of the Department of Probation and Parole, the Offender Assessment Board and the Parole Board. Offenders sentenced to imprisonment for one year or more are eligible for parole. There are a few exceptions, such as life imprisonment, offenders convicted of terrorism-related offences, detainees under the Immigration Act, etc.

Concerning offenders sentenced to imprisonment for one to two years, parole is possible after having served one third of the sentence. Offenders given a prison sentence of two to seven years are eligible for parole after having served 50% of the term of imprisonment. For those sentenced to seven years or more, parole is possible after 58% of the prison term has been served (Art. 10-11 Restorative Justice Act).

92 Prison data of 20.03.2014, Department of Correctional Services.

93 Department of Probation and Parole.

For juveniles who have committed an offence while aged under 16, the court may set an earlier term for parole eligibility. It is up to the final decision of the Parole Board whether a person can be released on parole. Parolees will be placed under the supervision of a parole officer and certain conditions can be imposed. The parole officer, besides supervising and guiding the parolee, can put together a plan that aims to support the offender in fulfilling the parole conditions while helping the offender comprehend the harm he/she has caused to the victim and society. Furthermore, the parole officer may offer support in finding employment.

Recommendations regarding the conditions to be imposed by the Parole Board can be made by the victim, the parole officer, the Offender Assessment Board, the police and other organisations. Involving victims provides for a more restorative approach in the field of parole, thus strengthening the rights of victims to contribute to the decision-making process and to be more actively involved.

A fully restorative approach within the law can be seen in the provisions regarding victim-offender mediation (Art. 29-43 Restorative Justice Act). The law provides the establishment of a Victim-Offender Mediation Committee, which is in charge of determining suitability and eligibility of victims, offenders and cases for mediation. The nature of the offence, including the level of harm, is hereby taken into consideration. The Committee further supervises mediators and receives reports on the mediation processes. At every stage of the criminal proceedings the court can refer cases to the Committee which decides whether the case can be referred to mediation. Also, the prosecutor, defence lawyer or probation officer may take the initiative and request the court to refer the case to the Committee. At the post-sentencing stage, the Offender Assessment Board or/and Parole Board may refer the case to the Committee. However, although the mediation board has been set up, the mediation sessions are not up and running as yet.

The law emphasizes the voluntary participation of victims and offenders. Furthermore, the offender has to assume accountability for the offence. Agreements may include damage compensation, non-pecuniary compensation, community service, rehabilitation programmes, apologies, etc.

The Probation Services, the Victim Support Unit, The Corradino Corrective Facility, the courts and Mediation Services are responsible for delivering restorative justice. The costs of restorative measures are covered by the State.

In practice, due to the only recent enactment of the Restorative Justice Law, there is still no impact of restorative measures on juvenile offenders. In future, the practical implementation of restorative justice will hopefully witness an expansion.

C. Foster care within the juvenile justice system

Foster care is not provided as an alternative to detention in Malta. Foster care within the welfare system is provided, but in practice there is a lack of families that are willing to care for children and juveniles. Costs paid to foster parents are very low (about 70 Euro per week for a young person).

Moreover, other alternatives to custody are not regulated by the law.

3.21 The Netherlands⁹⁴

A. Juvenile Justice

Legal provisions concerning juveniles are included in the Code of Criminal Procedure (henceforth CCP) and the Criminal Code (CC).⁹⁵ In 1905, the justice provisions for juveniles were reformed and a penal Children's Act came into effect alongside a Children Act on child protection (i. e. introducing special provisions in the Dutch Civil Code) and a Children Act on the administration of youth care services. It has to be pointed out that the juvenile justice system and the child protection system are closely connected in the Netherlands.⁹⁶ The 1905 penal children's act introduced special procedural and penal provisions, including sentences designed for juveniles, to the Code of Criminal Procedure and to the Criminal Code.

The penal Children's Act further emphasized the educational character of the juvenile justice system, in such a way that it will enhance the development and reintegration of juvenile offenders.

Furthermore, the 2001 Youth Custodial Institutions Act sets out legal provisions concerning juveniles in youth custody, and several lower regulations and policy instruments regulate the enforcement of sentences, the use of diversion, etc.

A diversion programme at the police level (HALT programme, see below) was introduced in the 1980s, followed by alternative measures to deprivation of liberty in 1995, when juvenile justice provisions were revised as part of a reform process of the Dutch criminal justice system.

The law stipulates that juveniles aged 12 to 18 years (at the time of committing the offence)

⁹⁴ The snapshot is based on the country report written by *Ton Liefwaard* and *Maryse Hazelzet*, The Netherlands.

⁹⁵ The juvenile justice system dates as far back as 1905. The function of the juvenile judge was introduced in 1922.

⁹⁶ Policy Directive 'Effective Settlement Juvenile Justice Case (Aanwijzing effectieve afdoening strafzaken jeugdigen)', Government Gazette 2011/10941, introduction.

are held criminally liable. Juveniles below the age of 12 years cannot be prosecuted (Art. 486 CCP), but may nonetheless be subjected to certain investigative or coercive measures. Juveniles under 18 years of age are considered minors, as provided by the Dutch Civil Code (Art. 1:233). The maximum degree of criminal liability corresponds with the civil law definition of minority.

However, there are two exceptions regarding the maximum age of criminal liability. First, adult criminal law provisions can be applied to juveniles aged 16 or 17 if they are charged with a serious offence or the court assesses that, due to the personality of the offender or the circumstances of the case, the application of adult criminal law is necessary (Art. 77b CC). These juveniles are nevertheless tried within the juvenile justice system. In practice, however, transfer to the adult criminal justice system is rarely used and has decreased in recent years.

Secondly, young adults aged 18 to 23⁹⁷ can be included in the juvenile justice system, while however being tried by the general criminal court. Hereby, the court can apply juvenile justice provisions if there are reasons in the personality of the offender or the circumstances of the offence. In practice, the courts very rarely make use of this possibility.⁹⁸

Regarding procedural safeguards, besides the provisions applicable to adults, juveniles are entitled to certain additional safeguards. These encompass the right to legal or other appropriate assistance during police interrogations, the right to a court-appointed lawyer free of charge (Art. 489 CCP), the right to be tried under exclusion of the public and before a youth court, the right for parents to be present during the trial, etc. Moreover, the Child Care and Protection Board provides a report on the personal circumstances of the juvenile (Art. 495b (1) CCP) to the court. The law further regulates that pre-trial detention should be used as a last resort for juveniles and that its suspension must be considered (Art. 493 CCP).

The most important authorities within the juvenile justice system are the police, the public prosecutor, the youth court, the Youth Care Agency (youth probation services) and the Child Care and Protection Board.

The Child Care and Protection Board is responsible for assessing the personality and the background of the offender and to provide advice during criminal proceedings. The Board is also involved in the enforcement of diversionary measures and sentences, alongside with the youth probation services. Youth probation services supervise suspended pre-trial measures or (suspended) sentences, e.g. community service orders, suspended custodial or non-custodial measures.

97 On 1 April 2014, the age limit for young adults was raised from 21 to 23 years.

98 From 2002-2008, in 25 cases (representing 0.2% of all court cases concerning the age group of 18 to 21 year olds) juvenile justice provisions were applied, Parliamentary Documents II 2012/13, 33 498, no. 3, p. 18.

The police have certain discretionary powers in their dealing with young offenders. They can issue a warning, which also addresses the parents and may include damage compensation. Furthermore, the police can divert young persons to the HALT programme (Art. 77e CC) for a maximum duration of 20 hours. Juveniles, and their parents in case of under 16-year-olds, have to give their consent to the programme. The programme covers first-time offenders and is generally offered only once. The HALT programme is applicable in cases of minor offences, e.g. thefts of a maximum value of 150 €, vandalism not exceeding 900 € in damages per offender or 4,500 € in total. In the HALT programme, young offenders participate in education-oriented programmes and crime prevention projects, which also have a focus on community service, compensation and the delivery of apologies to victims. Where the programme is successfully completed, the case will not be prosecuted. In the year 2012, 17,606 juveniles were referred to the programme.⁹⁹ 16,153 of the 18,083 HALT-projects were completed successfully.¹⁰⁰

Finally, the police may file a report to the public prosecutor (Art. 74c CC). The report is discussed at a meeting involving relevant stakeholders that aims to find the most appropriate solution for the young person. Hereby, the juvenile specialist of the police, the youth prosecutor and youth secretary of the public prosecution, the Child Care and Protection Board and the youth probation services engage in dialogue. The outcome of this meeting as well as the recommendations of the Child Care and Protection Board will be taken into consideration by the public prosecutor.

Public prosecutors can waive prosecution (e.g. in case of petty offences or if child protection measures are more suitable) or divert a juvenile case. Diversion is possible via conditional dismissal (or transaction, Art. 77f and 74 CC) in cases of offences for which the law envisages a prison sentence of up to six years. In doing so, the public prosecutor can set conditions to be fulfilled, such as payment of a fine, community service or a learning project (maximum 40 hours within three months), or complying with instructions from the youth probation services.¹⁰¹

At the court level, juveniles are tried either by a single juvenile judge or a youth court, which operates with three professional judges. At least one of the professional judges must be a juvenile judge (Art. 495 CCP).

The youth court can impose youth sentences or penal measures.

Youth sentences (Art. 77g ff CC) can be imposed either separately or in combination. Youth imprisonment, community service, learning projects and fines are the main forms of youth penalties.

99 Halt 2012, Jaarbericht Nederland 2012, p. 2. See www.halt.nl.

100 The higher number of projects is due to a number of projects from 2011 that still had to be completed; Halt 2012, p. 3.

101 *De Jonge, G., Van der Linden, A.P.* (2013): *Handboek Jeugd & Strafrecht*, Deventer: Kluwer, pp. 102-104.

The youth court can order youth imprisonment in serious cases. The maximum duration of detention is 12 months if the juvenile is under the age of 16, and 24 months if the juvenile is aged 16 or 17. Youth imprisonment has to be served in a youth custodial institution.¹⁰² These institutions are run either privately (not for profit) or by the State and are used for both pre-trial detention and custodial sentences (youth imprisonment or custodial treatment order). The maximum capacity of all institutions is about 650 places for juveniles. In practice, in the year 2012, 1,869 juveniles were detained in youth custodial institutions, of whom the vast majority (N=1,581) were in pre-trial detention. A total of 231 juveniles were sentenced to youth imprisonment by the court.¹⁰³

The maximum number of hours that can be required of an offender in the context of community service or learning projects is 240 (Art. 77m CC). In certain, serious offence cases, the community service order has to be imposed with the additional order of a custodial sentence.¹⁰⁴ Youth probation services are responsible for the execution of the measures. In 2012, the Child Care and Protection Board coordinated 14,462 community service orders.¹⁰⁵

Furthermore, the youth court can impose a fine ranging from 3 € to 4,050 €. If a juvenile cannot pay the fine, alternative detention or community service can be imposed.

Beside youth sentences, the court can order penal measures that focus primarily on education and special prevention (Art. 77h par. 4 CC). The most severe sentence is the custodial treatment order, which provides for deprivation of liberty for three to seven years (during the last year, compulsory after-care will be provided). This order can be imposed in cases of serious offences (crimes for which pre-trial detention can be applied), where the safety of society requires it and the measure is in the interest of the most favourable development of the juvenile. In practice, the number of custodial treatment orders made has decreased over the past decade.¹⁰⁶ Research has shown that this penalty is not effective and is associated with problematic, questionable outcomes (e.g. a high risk of recidivism).¹⁰⁷

The other penal measure which the youth court can impose is the non-custodial treatment order or behavioural order (Art. 77w CC). It aims to provide the juvenile with structure

102 Art. 8 of the Youth Custodial Institutions Act (YCIA). For more on this see e.g. *Liefaard, T.* (2008): *Deprivation of Liberty of Children in Light of International Human Rights Law and Standard*, Amsterdam: Intersentia.

103 See further *Afman, T., Valstar, H.* (2013): *JJI in getal 2008-2012*, Den Haag: DJI.

104 This provision has been in force since 1 April 2014.

105 See Raad voor de Kinderbescherming 2012 Jaarbericht 2012: Kinderen bescherm je, www.kinderbescherming.nl.

106 In 2011, the custodial treatment order was imposed on 115 juveniles, see *Van Rosmalen M.M. et al* (eds.) (2012): *Criminaliteit en rechtspleging*, Den Haag: WODC, table 6.22.

107 See *De Jonge, G., Van der Linden, A.P.* (2013): *Handboek Jeugd & Strafrecht*, Deventer: Kluwer, p. 141; *Kempes, M.* (2012): *Overzicht van onderzoek naar PIJ-maatregel tussen 2006-2011*, Den Haag: WODC, p. 77.

and education and to foster his/her social reintegration.¹⁰⁸ It can only be imposed by the youth court, if the severity of the crime or the frequency of the (previously) committed crimes requires it, and if the measure is in the interest of the juvenile's development. The youth court determines the programme that the juvenile has to comply with, as well as the period of time in which it is to be fulfilled (six to 12 months with the possibility of prolongation by a further six or 12 months). In practice, the non-custodial treatment order does not play an important role.¹⁰⁹

B. Restorative approach within juvenile justice

Since the 1990s, restorative practices such as victim-offender mediation and family group conferencing have been implemented.

Since 2006, one form of victim-offender mediation, called victim-offender conversation, has been established nationwide in order to allow for a dialogue to be established between victim and offender. The conversation is facilitated by a professional mediator who structures the meeting. Either victim or offender can initiate the conversation.

Family group conferencing (Eigen Kracht conferences) is used to deal with the consequences of a crime, but also in the field of child protection and youth care as well as in schools.¹¹⁰ There is no (clear) legal basis for victim-offender conversations and family group conferencing. In practice, victim-offender mediation and family group conferences are not often used within the criminal justice system at the youth court level.¹¹¹

As provided by law, the police, encouraged by the public prosecutor, have to inform victim and offender about restorative justice possibilities (Art. 51h (1) CCP). Police can refer juveniles to the HALT-programme (see above), where an apology to the victim might be one outcome.

Public prosecutors have to foster mediation and can consider the outcome of mediation in the proceedings.

In principle, the youth court can make mediation a condition to suspend pre-trial detention or youth imprisonment, or consider it a part of a non-custodial or custodial treatment

108 *De Jonge, G., Van der Linden, A.P.* (2013): *Handboek Jeugd & Strafrecht*, Deventer: Kluwer, p. 142.

109 In 2012, the non-custodial treatment order was imposed in 84 cases, see UNICEF/Defence for Children International 2013, *Jaarbericht Kinderrechten 2013*, Leiden/Den Haag, p. 26.

110 *Van Pagée, R., Van Lieshout, J., Wolthuis, A.* (2012): Most things look better when arranged in a circle; Family group conferencing empowers societal developments in The Netherlands. In: Zinsstag, E., Vanfraechem, I. (Eds.): *Conferencing and Restorative Justice; International practices and perspectives*, Oxford: Oxford University Press, p. 217.

111 See e.g. *Wolthuis, A.* (2011): *Herstelrecht, een kinderrecht; voorstellen voor integratie van herstel in het hart van het jeugdstrafrecht*, Den Haag: Boom Lemma, p. 363.

order.¹¹² Judges and public prosecutors take the outcome of mediation into account in their decision-making (Art. 51h (2) CCP).

Various pilot projects are underway in order to assess the potential of restorative practices. In 2012, five pilot projects on restorative mediation were established in order to widen the role of the victim and promote the implementation of restorative projects in the (juvenile) criminal justice system.¹¹³ If the outcomes are deemed to be positive, this form of mediation should be implemented on a nationwide basis.

The pilot project “mediation besides criminal law” was introduced at several District Courts in The Netherlands, aiming to apply mediation at an initial level of the juvenile justice system (e.g. immediately after police detention). The objective of the project was to achieve 400 mediation referrals, 100 of which were to be juvenile cases.

A part of the pilots are funded by the national government, whereas the majority of initiatives receive local funding. The Eigen Kracht family group conferences are often funded by communities, provinces or individuals.¹¹⁴ Another initiative, Slachtoffer in Beeld, who apply nationwide victim-offender mediations, receive funding to a large extent from the Ministry of Security and Justice as well as from local communities.¹¹⁵

C. Foster care within the juvenile justice system

The Multidimensional Treatment Foster Care (MTFC) is a programme provided in the juvenile justice system that can also be used in the child protection system. Within the juvenile system, the programme can in principle be applied as a part of the non-custodial treatment order, as an alternative measure for pre-trial detention, for youth imprisonment, to the custodial treatment order, as a learning project or as a condition for suspended custodial treatment. In practice, the MTFC programme as an alternative care measure does not play an important role and is only imposed as part of the non-custodial treatment order.

Juveniles aged 12 to 18 years with severe anti-social behavioural problems and a high

¹¹² *Wolthuis* 2011, *op. cit.*, p. 307.

¹¹³ Available online at <http://www.rijksoverheid.nl/nieuws/2013/11/13/staatssecretaris-teeven-opent-pilots-herstelbemiddeling.html>.

¹¹⁴ Eigen Kracht, available online at <http://www.eigen-kracht.nl/nl/inhoud/hoeveel-kost-het-en-wie-betaalt>.

¹¹⁵ See *Wolthuis, A.* (2011): *Herstelrecht, een kinderrecht; voorstellen voor integratie van herstel in het hart van het jeugdstrafrecht*, Den Haag: Boom Lemma, p. 283. See also <http://www.slachtofferhulp.nl/Over-Ons/Jaarverslag-2012>.

recidivism risk can be placed under the alternative care programme.¹¹⁶ The youth court determines the specific duration of the programme, ranging from 6 to 12 months with the possibility of extension to one year (Art. 77w CC). The Salvation Army is in charge of the enforcement of the programme. As well as a structured daily family life, juveniles undergo cognitive behavioural therapy. Furthermore, the families of the juveniles receive training in (re-)education.¹¹⁷ The MTFC programme aims to foster positive behaviour, social abilities, the capacity to solve problems as well as to promote the building of social relationships.¹¹⁸

Research has shown that in 2011 the MTFC programme was only applied 11 times, as part of the non-custodial treatment order, which is far from its full implementation potential.¹¹⁹ The programme tends to be rather bureaucratic and expensive, as has been demonstrated in practice.

Furthermore, foster care programmes may be used when diverting young offenders to the child care system, e.g. as an alternative for closed youth care. In this context, MTFC is very rarely applied in practice, but other foster care programmes play a more important role within the child protection and youth care system. The 2005 Youth Care Act provides for the legal framework for the enforcement of foster care.

Besides diversion, juveniles can be referred directly to the child protection system, if their personal situation needs more attention and they have committed less serious offences. The assessment is made by the police and public prosecutor, who inform the Child Care and Protection Board and the Youth Care Agency.

Moreover, the public prosecutor can offer a conditional dismissal (transaction), requiring the juvenile to follow the instructions of the Youth Care Agency that can include foster care.

As a new possibility at the court level, the combination trial has been introduced. It provides for the opportunity to combine juvenile justice with child protection measures (e.g. alternative care, family supervision). There is currently still very little information available about combination trial practices, and up to now it is not known whether this type of trial has ever resulted in foster care.

Besides foster care as an alternative measure, youth courts can conditionally suspend pre-trial detention. It can set special conditions, such as (intensive) supervision by

116 Leger des Heils 2012: Jeugdzorg and Reclassering, Impact van multidimensional Treatment Foster Care, p. 6. Available online at http://www.forca.nu/Portals/ForCA/Finaal%20rapport_Impact%20van%20MTFC.pdf. Furthermore, the juveniles must have an IQ of 80 or more.

117 See *Foolen, N., Ince, D., de Baat, M. (2012): Wat werkt bij gedragsproblemen en gedragsstoornissen?, NJi 2012, p. 12.* Available online at http://www.nji.nl/nl/WatWerkt_Gedrag.pdf.

118 Available online at [http://www.nji.nl/nl/Kennis/Databanken/Multidimensional-Treatment-Foster-Care-\(MTFC\)](http://www.nji.nl/nl/Kennis/Databanken/Multidimensional-Treatment-Foster-Care-(MTFC)).

119 Leger des Heils 2012, p. 11.

youth probation services, certain restrictions such as a curfew, compulsory education, instructions to participate in programmes, trainings, etc. Furthermore, pre-trial detention may be executed in the form of “night detention”, requiring juveniles to stay at a remand home during evenings, nights and weekends and to participate in school, vocational courses or work during the day. Another type of pre-trial detention is “home detention”, where juveniles have to stay inside their house, and which is often applied by certain courts in the Netherlands. Electronic monitoring as a form of pre-trial detention at home will probably play a more important role for juveniles in the future.

Furthermore, under similar conditions as mentioned above, the youth court may conditionally suspend sentences to youth imprisonment or custodial treatment orders. Restoration or fulfilled damage compensation are further special conditions to be applied.

3.22 Poland¹²⁰

A. Juvenile Justice

The emergence of a distinct juvenile justice system in Poland dates back to the 1920s and 1930s, the period following the country’s independence in 1918, prior to which the country’s territory had been divided between Austria, Prussia and Russia for over 120 years.

The Polish juvenile justice system is regulated in the Juvenile Act¹²¹ (hereinafter: JA). It was enforced in 1982 and has been amended several times since then. The amendments, however, have not altered the basic assumptions of the juvenile justice system created in the 1980s. The Polish approach to tackling juvenile offending can be described as a paternalistic, welfare-oriented one.

The JA contains specific statutory provisions of substantive criminal law referring to juveniles, as well as rules on juvenile courts and the procedure in juvenile cases.

The following groups are subject to the JA: juveniles aged 13 to under-17 years who have committed “punishable acts”¹²²; juveniles under the age of 18 years who are “demoralised”;¹²³

120 The snap shot is an abbreviated version of the report written by *Barbara Stańdo-Kawecka, Poland*.

121 Ustawa o postępowaniu w sprawach nieletnich, Dz.U. 1982, Nr. 35, poz. 228.

122 “Punishable acts” are acts prohibited by the Criminal Code as “offences” and by the Code on Fiscal Offences as “fiscal offences”, as well as certain “petty crimes” (contraventions) prohibited by the Code on Petty Crimes.

123 The JA does not define the term ‘demoralization’. The Act only enumerates some examples of behaviour or circumstances which are treated as signs of ‘demoralization’: violation of the principles of community life, commission of a prohibited act, truancy, use of alcohol or drugs, running away from home, prostitution as well as association with criminal groups. There is no minimum age limit for juveniles showing signs of ‘demoralization’.

and persons older than 18 who are already serving certain educational and correctional measures that were ordered prior to turning 18, however for no longer than up until their 21st birthday (Article 1 JA)¹²⁴

In Poland, the family court has jurisdiction over juvenile matters. The legislator established family courts as special departments of district courts in 1982. According to Article 12 of the current Law on the Organisation of Courts, district courts comprise both civil and criminal departments. Sections for family and juvenile cases could be introduced within district courts, yet since 2012 it has not been mandatory. The term ‘family court’ can still be found in the JA, however in practice (since 2012) the tasks of family courts have been carried out not only by separate sections/departments responsible for family and juvenile cases, but also by civil departments of district courts in which no such separate family/juvenile department has been established. Consequently, civil departments of regional courts deal with appeals of decisions rendered by courts in the first instance in juvenile proceedings due to ‘demoralisation’ or ‘punishable acts’.

In general, all rules and regulations for proceedings in juvenile cases can be found in the JA and in the Code of Civil Procedure. However, there are also exceptions to when the provisions of the Code of Criminal Procedure apply, e.g. in matters regarding the collection and preservation of evidence by the police or the appointment and functions of a defence lawyer.

In Poland, the family judge is given a very dominant role in the entire procedure. Polish juvenile proceedings used to resemble the inquisitorial model, where the judge is responsible for both gathering the evidence and for sentencing. This issue was appealed before the European Court of Human Rights (*Adamkiewicz v. Poland*) and Poland lost the case. Following the recommendations of the European Court of Human Rights an amended law on juveniles was introduced. The amendment was enforced on 02 January 2014 and renounced the division of juvenile proceedings into preparatory and court (adjudicating) stages. In addition to the above, further procedural rights for juveniles were enhanced in the reforms of 2013/14: the family court has to instruct the juvenile about his or her right to refuse to give statements or explanations, juveniles have the right to defence, including the right to choose a defence lawyer or to be assisted by an ex officio defence lawyer during court proceedings.

Even though the modifications from 2013/14 imposed a crucial change to the proceedings of juvenile cases in Poland, they did not change the dominant position of the family court. Other authorities, such as the prosecutor, the police etc. continue to play a secondary role in juvenile cases.

In Poland, the family court has broad discretion to discontinue the proceedings. If there is no evidence that the juvenile committed a ‘punishable act’ or demonstrated signs of

124 According to the Criminal Code, the age of criminal responsibility is 17 (15 years for the most severe crimes).

‘demoralisation’, the family court shall discontinue the proceedings (article 21 § 2 of the JA). It may also at any time unconditionally discontinue the juvenile case on the principle of opportunity (unlike the criminal process in adult cases which is based on the principle of legality), if, in the opinion of the court, the application of educational or correctional measures serves no purpose, in particular when such measures had been previously imposed on the respective juvenile. Moreover, the family court has the right to refer the case to a mediation programme or to the school attended by the juvenile or a social organisation to which he or she belongs, if the court considers that the educational measures provided there are sufficient.¹²⁵

The court is furthermore entitled to impose temporary, provisional measures, which are similar to educational and medical measures applied in juvenile cases after their adjudication. It can be done at any time during the proceedings. As a general rule, the legislator opted for prioritising temporary measures that do not require a change in the juvenile’s place of residence (such as placement of a juvenile under supervision of a probation officer, a person of trust or an organisation). Only where such measures are insufficient may the family court refer the juvenile temporarily to a professional foster family or a youth educational centre and/or impose provisional medical measures. Another temporary measure is placement in a youth detention centre. These centres are the equivalent of pre-trial detention in adult cases and subordinated to the Ministry of Justice. A juvenile delinquent is placed in a youth detention centre if it occurs (during the proceedings) that it is favourable for him or her to do so and if there is justified fear that the juvenile may escape or tamper with evidence. Generally, in Poland, juveniles cannot be detained in remand prisons for adults suspected of committing offences.¹²⁶

There are a large number of educational, medical and correctional measures to be found in the Polish catalogue of sanctions that can be imposed on juveniles. The JA stipulates that all educational and medical measures may be applied both to juveniles who have committed ‘punishable acts’ whilst between 13 and 16 years of age and to juveniles less than 18 years of age displaying signs of ‘demoralisation’, i.e. problematic behaviour. Correctional measures may be applied only to juveniles aged 13 to 16 who have committed ‘punishable acts’ prohibited by the criminal law as offences or fiscal offences.

Furthermore, the catalogue of educational measures contains: a reprimand, supervision by parents, a guardian, a youth or other social organization, a workplace, a person of trust or a probation officer, as well as applying “special conditions”, such as: compensation for the damage, apology to the victim, fulfilment of unpaid work for the benefit of the victim or local community, taking up school education or a job, participating in educational or therapeutic training, avoiding specific locations, refraining from the use of alcohol and other intoxicants, a ban on driving, forfeiture of objects gained through the commission of

125 See Articles 3a and 32j of the JA.

126 For more information on temporary measures see *Stańdo-Kawecka, B.* (2013): Juvenile delinquency and Juvenile Justice in Poland, in: Sözüer, A. (ed.), 3rd International Crime and Punishment Film Festival. Juvenile Justice. Academic Papers, Istanbul, pp. 299-316.

a punishable act, placing a juvenile in a youth probation centre in which he or she spends a couple of hours daily, placing a juvenile in a professional foster family, placing a juvenile in a suitable institution or organisation providing education, therapy or vocational training, placing a juvenile in a residential youth educational centre.

With regard to medical measures, one needs to keep in mind that they may be applied only to juveniles suffering from mental deficiency, mental illness, and mental disorders or from alcohol and drug addiction. Such measures require placing the juvenile in a psychiatric hospital, other suitable health care institutions, a social welfare institution or a suitable youth educational centre. Both medical and educational measures can be imposed on juveniles adjudicated due to signs of ‘demoralization’ or who have committed ‘punishable acts’. Moreover, both categories of measures are applied for an indeterminate period of time. They generally end when a juvenile turns 18, but in certain circumstances they may be extended to his or her 21st birthday. If it is advisable for educational reasons, the competent family court may change, revise or repeal the measures at any time.

Correctional institutions are supervised by the Ministry of Justice. However, they do not belong to the prison system. A juvenile can be placed in such an institution if he or she has been ordered to undergo correctional measures; the placement may be suspended or unsuspended and is applied for an indeterminate period of time (similar to other kinds of measures). A delinquent referred to a correctional institution shall stay there for no longer than up to his or her 21st birthday. However, s/he may be granted early conditional release.

Since the enforcement of the JA in 1982 the number of juveniles adjudicated in cases related to ‘demoralisation’ has increased fivefold - from 3,072 in 1984 to 15,670 in 2011. Simultaneously, the number of juvenile offenders, i.e. perpetrators of ‘punishable acts’, adjudicated by family courts has grown at a much slower rate - from 9,260 in 1984 to 22,807 in 2011.¹²⁷

Only educational or medical measures can be imposed on a juvenile in proceedings as a response to signs of ‘demoralisation’. In the years 1984-2011 the following measures were applied most frequently: supervision by a probation officer or parents, reprimands and “special conditions”. Educational measures depriving juveniles of their liberty, i. e. placement in a youth educational centre or youth socio-therapeutic centre,¹²⁸ have recently been applied in about 6% of cases of ‘demoralisation’. Likewise, the family court also most

127 Statistical data used in this report come from the Statistical Yearbook of the Republic of Poland (Rocznik Statystyczny Rzeczypospolitej Polskiej; before 1990: Rocznik Statystyczny) that has been published by the Central Statistical Office of Poland (Główny Urząd Statystyczny). Statistical data on enforceable court decisions given in juvenile cases have been used consistently in this report. Data on family court decisions given in the first instance differ significantly from data on enforceable court decisions, which is difficult to explain without empirical research as has been stressed by *Czarnecka-Działuk, B., Wójcik, D.* (2011): *Regowanie na czyny karalne i demoralizację nieletnich – koncepcje teoretyczne, statystyki i opinie sędziów rodzinnych*, in: Siemaszko, A. (ed.), *Stosowanie prawa. Księga jubileuszowa z okazji XX-lecia Instytutu Wymiaru Sprawiedliwości*, Warsaw: Wolters Kluwer, p. 873.

128 The possibility to place a juvenile in a youth socio-therapeutic centre was abandoned in 2011.

frequently applies educational measures, such as supervision by a probation officer or parents, reprimand or applying “special conditions”, in cases of “punishable acts”.

There has been a steady decline in the use of correctional measures and family courts have been applying them less and less frequently. In 1984 placements in correctional institutions (whether suspended or unsuspended) occurred in about one in five juveniles cases due to punishable acts; in 2011 they were used in only 3% of such juvenile cases.

B. Restorative approach within juvenile justice

Initial interest in the restorative justice approach could be observed in Poland in the early 1990s. As a result, legal regulations concerning victim-offender mediation in juvenile cases were introduced in 2000 (in the form of an amendment to the 1982 JA). A year later (2001), ordinance on mediation in juvenile cases was issued by the Polish Minister of Justice, who was acting based on the authorization provided in the amended JA. In reality, the only kind of restorative justice measures applied in juvenile proceedings is victim-offender mediation. The family court - on the initiative or with the consent of both the juvenile and the victim - may at any stage of the proceedings transfer the case to mediation by an institution or a trustworthy person. The JA stipulates that mediation is voluntary and requires informed consent of the juvenile perpetrator as well as the victim. The family court is informed about the results of the mediation, which are consequently taken into account when a decision on the case is being made. Furthermore, it has the right to drop the proceedings unconditionally at an early stage if mediation is considered successful. Nevertheless, the conditional discontinuation of the proceedings is excluded in juvenile cases. Positive results of mediation (and in particular the successful fulfilment by the juvenile of the obligations arising from the mediation agreement), may also be considered by the family court when reaching a decision on the most appropriate measure to be imposed on the juvenile.

In order to ensure confidentiality and impartiality, mediations in Poland are handled out-of-court. Employees of an institution dealing with administration of justice cannot be mediators. The Polish Centre for Mediation, other institutions and some universities provide specialised trainings and courses for mediators. The cost of mediation in juvenile cases is covered by the state.¹²⁹

Although many efforts have been made to promote the ideas of restorative justice in Poland, the number of victim-offender mediation cases carried out within both the juvenile as well as adult criminal justice system has been very limited. In the years 2004 to 2011, family courts adjudicated about 23-28 thousand juveniles per year as a result of ‘punishable acts’. The number of mediations in juvenile cases in the years 2004-2012 oscillated between 254 and 366. The ratio of juvenile offenders taking part in mediation

129 See Article 32 § 1 of the 1982 JA.

as compared to the number of juvenile perpetrators of ‘punishable acts’¹³⁰ adjudicated by family courts amounted to 1-1.5%.¹³¹

C. Foster care within the juvenile justice system

In general, the foster care system provides substitute family and institutional care for children in need of care within the child welfare system.

First efforts to develop different forms of assistance to the family (including counselling for parents) were made in Poland in the 1960s. In the years to follow, researchers and practitioners emphasized the need to create a substitute for family care and replace institutional care with foster families (*rodziny zastępcze*) and family foster homes (*rodzinne domy dziecka*).¹³² The Polish Ministry of Education formulated basic assumptions of a comprehensive reform of foster care system in the 1990s and as a result thereof the reform was introduced in 1999. It aimed to: develop social work with natural families in local communities, reduce both the number and size of children care institutions, increase the number of unrelated foster families, including specialized foster families able to provide care to children in need of special support, and increase the number of children returning from foster families as well as care institutions to their natural families.¹³³

At the present time, foster care is regulated in Poland by the 2011 Act on Family Support and Foster Care. The purpose of the Act is to improve methods of working with natural families who experience problems in fulfilling their care and educative functions. Furthermore, it defines family forms of substitute child care, such as foster families and family foster homes. Another objective articulated in the Act is a reduction of both the number of children in institutional care as well as the size of such institutions in Poland.

As a rule, foster family care may be provided in a foster family (*rodzina zastępcza*) or a family foster home (*rodzinny dom dziecka*). Foster families are divided into: related foster families (comprising close relatives of the child), non-professional foster families, and professional foster families.

130 Doctrine of the juvenile law emphasizes that juvenile cases may only be referred to mediation if they are connected with the commission of an act prohibited by the criminal law as an offence, because only in such cases there be a personalized injured person. In fact, in juvenile cases involving signs of ‘demoralization’ (such as truancy, using alcohol or drugs, or running away from home) mediation is not possible as there is no victim, see *Bieńkowska, E. (2011): Mediacja w sprawach nieletnich*, Warszawa: Ministry of Justice, available online: <http://ms.gov.pl> (accessed on 29.01.2014).

131 Source: Ministry of Justice (2013): *Postępowania w sprawach nieletnich (rodzinnych) w sądach powszechnych zakończone w wyniku postępowania mediacyjnego w latach 2004-2012*, available online: <http://ms.gov.pl/pl/dzialalnosc/mediacje>.

132 *Kozdrowicz, E. (1988): System opieki nad dzieckiem opuszczonym (1945 – 1988)*. In: Kolankiewicz, M. (ed.), *Rodzinne i instytucjonalne formy opieki*. Warszawa: Wydawnictwa Szkolne i Pedagogiczne, pp. 9-56.

133 *Raław-Markowska, M., Rymsza, M. (2005): Zreformowany system pomocy dziecku i rodzinie w Polsce*, Warszawa: Instytut Spraw Publicznych, *Analizy i Opinie* Nr 41, available online: <http://www.isp.org.pl/files/1479801350685107001122296591.pdf> (accessed on 29.01.2014).

Professional foster families include emergency foster families and specialized foster families. Emergency foster families (*rodzina zastępcza zawodowa pełniąca funkcję pogotowia opiekuńczego*) provide substitute care for children until such a the time that their situation settles, usually for no longer than four months. Specialized foster families (*rodzina zastępcza zawodowa specjalistyczna*) provide care for disabled children, under-aged mothers with children as well as juveniles in the meaning of the 1982 Juvenile Act. A family foster home (*rodzinny dom dziecka*) can host, at the same time, no more than 8 children, however, exceptions to the rule are possible in cases where there are siblings who require a placement.¹³⁴ The above-mentioned foster homes for children provide care in an environment similar to a family home.

Pursuant to Article 35 § 1 of the Act on Family Support and Foster Care, guardianship courts are responsible for decisions on placements of children in institutional or family foster care in Poland.¹³⁵ The decision to refer the child to foster care is made if, in the opinion of the court, the child's welfare is endangered. Such a decision is made regardless of whether the child's natural parents consent to it. In exceptional circumstances, and if there is an urgent need to do so, a child can be temporarily placed in a foster family or a family foster home without the prior decision of the guardianship court and at the request of parents or with their consent. Such temporary placement in an emergency foster family without a preceding court decision is also possible in the event of an immediate need to provide care for the child.¹³⁶

Statistical data of the Ministry of Labour and Social Policy in 2012 show that there were 25,836 related foster families (composed of close relatives), 12,162 unrelated non-professional foster families and 1,843 professional foster families in Poland. The number of children who were residing in these families on 31 December 2012 amounted to 33,769 in related foster families, 16,383 in unrelated non-professional foster families and 6,454 in professional foster families.¹³⁷

In recent years the number of children placed in foster families has been much higher than the number of children in care institutions.

Finally, provisions of the 1982 JA allow for a juvenile who has committed a 'punishable act' or shown 'signs of demoralisation' to be placed in a professional foster family. This provision, however, has not been used in practice.

134 See Article 61 of the 2011 Act on Family Support and Foster Care.

135 See Article 35 § 1 of the 2011 Act on Family Support and Foster Care.

136 See Article 35 § 2 of the 2011 Act on Family Support and Foster Care.

137 Ministry of Labour and Social Policy 2013, data available online.

3.23 Portugal¹³⁸

A. Juvenile Justice

The juvenile justice system in Portugal can be situated between the welfare and the punitive model, aiming to educate and socialise young offenders. It has its original basis in the welfare model and stems from 1911. Since then it has provided for separate justice systems for juveniles and adults and provides a specific law regarding juvenile justice.

Since 1999, the juvenile justice system has been subject to reforms that sought to incorporate international standards into the legal basis. This resulted in the instating of new laws in the fields of child protection and juvenile justice, namely the “Law on the Promotion and Protection of Children and Juveniles in Danger” (*Lei de Promoção e Protecção de Crianças e Jovens em Perigo*, Law n.º 149/99, hereinafter LPJCP) and the “Educational Guardianship Law” (*Lei Tutelar Educativa*, Law n.º 166/99, hereinafter LTE), that both came into effect in 2001. The LPJCP covers children in need of protection, including children in conflict with the law, while the LTE provides for educational responses for young offenders (between 12 and 16 years). Within the scope of the new law (LTE), only criminal offences are included, whereas status offences are no longer incorporated.

The laws use the terms “child” and “youth” as replacements for the previously used term “minors” that was thus abandoned. Under the LPJCP, a child or a young person is a person below the age of 18 years, in line with the Convention of the Rights of the Child. The LPJCP furthermore extends the definition to cover persons aged 18 to 21 years in cases where the person asks for the continuation of interventions that have been initiated prior to turning 18.

The LTE includes the terms “young person” and “youth”, and refers specifically to a person between 12 and 16 years who has committed offences as “juvenile” or “young offender”. The legally provided age of liability thus ranges from the minimum age of 12 years to the maximum limit of 16 years.

There are the following three age groups regarding responses to child and youth offending: 1) children below the age of 12 years, 2) juveniles between 12 and 16 years, and 3) young adults between 16 and 21 years of age. The first two categories fall within the scope of juvenile justice, whereas young adults are subjected to the adult criminal justice system.

To children and juveniles under the age of 16 who have committed an offence qualified by the penal law as a crime, only the LPJCP or the LTE are applicable, depending on their personal situation and background. The laws distinguish between children “in danger” and in need of protection, and young offenders requiring a specific educational measure. A young person aged 12 or above might be subject to measures provided by both laws

138 The snapshot is based on the country report written by *Maria João Leote de Carvalho*, Portugal.

which can be combined, taking into account the specific (social and educational) needs of the juvenile as well as the nature of the offence, keeping in mind that often the needs are interrelated (Rodrigues & Fonseca, 2010).

Young persons aged 16 to 21 years who have committed an offence fall under the adult criminal law, but are subjected to a Special Penal Regime. In principle, from age 16 onwards, young persons can be sentenced to imprisonment in the same detention facilities as adults.¹³⁹ Specific provisions refer to the mitigation of sentence and alternative measures to imprisonment, such as for instance corrective measures in determined cases. These measures include f. ex. warnings, certain obligations, fines and imprisonment in a specific detention centre (however, these detention centres have not been established yet and therefore the measure cannot be applied in practice). Since 2007, the law has also provided for house arrest (or “home detention”), which includes electronic monitoring, to be applicable to young adult offenders.

Juveniles aged 12 to 16 years can only be subjected to the educational measures provided by the Educational Guardianship Law (LTE), regardless of the gravity of the offence committed.

The educational measures are graded according to their intensity and are divided into non-liberty depriving and liberty depriving measures (Art. 4 LTE). Non-liberty depriving measures encompass an admonition, a restriction of the right to drive or obtain a driver’s permit for vehicles (one month to one year), and reparation to the victim. Furthermore, juveniles can be ordered to render economic compensation, taking into consideration the ability of the juvenile to pay, or to perform community service for up to 60 hours within up to three months. The youth court may further impose prevention-oriented rules of conduct and obligations such as participation in programmes and activities, for a maximum period of two years. These obligations may include training, school, activities in associations, counselling in psycho-pedagogical institutions, medical, psychological, psychiatric treatment, etc. Treatment programmes shall only be undertaken with the consent of the juvenile, which is mandatory for juveniles older than 14 years. Young persons may further be required to participate in intensive training programmes specifically adapted to juveniles for a period not exceeding six months, which can be prolonged in exceptional cases. Participation in training programmes may include placement with a responsible person or in an open institution, but this is ordered only rarely. Another educational measure the youth court can impose is educational supervision, which includes an individual educational project determined by the court that is supervised by the services of the General Directorate of Reintegration and Prison’s Services under the Ministry of Justice. The educational project can be ordered to last between three months and two years and includes a combination of measures and educational actions.

The law provides for the following liberty-depriving measures (Art. 17 and 145 ff. LTE):

¹³⁹ According to the official judicial statistics, based on the last seven years, 16 to 18 year olds on average account for less than 1% of the total prison population.

pre-trial detention; custody in a forensic context for psychological assessment; detention upon apprehension in “flagrant offence” (being caught red-handed, so to speak); the detention measure; detention in custody at the weekends (for the duration, the below). Detention has to be used as a last resort.

Regarding children younger than 12 who have committed an offence, the court and the local Children and Youth Protection Commissions can only apply protective measures according to the Law on the Promotion and Protection of Children and Juveniles in Danger (LPCJP). Juvenile offenders aged between 12 and 16 years who are “in danger” can also be subject to protective measures, which can be applied instead of or in combination with educational measures. Protective measures under this law are furthermore applicable to all children and juveniles in danger under the age of 18, and may be extended in certain cases until the person turns 21.

The educational measures provided by the LTE aim towards the education of the young offender and prevention of re-offending. Basic principles within the juvenile justice system include the priority of non-institutional over institutional measures and the determinate duration of educational measures, etc.

The procedure in juvenile cases is a special one, but also shares similar rules to those that are to be adhered to in adult proceedings.

Juvenile proceedings are divided into two stages – the investigation by the public prosecution services, and the trial stage. Public prosecutors play a central investigative role and conduct interrogations. The role of the police is to identify the young person and refer him/her to the public prosecutor for questioning. There are no specialised police in youth matters. The General Directorate of Reintegration and Prison’s Services is responsible for delivering a social report on the young offender to the judicial authorities. In cases where custodial measures may be imposed, the report has to be based on a psychological assessment of the offender. Furthermore, the General Directorate of Reintegration and Prison’s Services assists public prosecutors and courts in juvenile proceedings.

The parents or legal guardians of the young person can be involved at every stage of the juvenile proceedings and also during the execution of the judicial measures. Psychiatric or psychological experts can also provide assistance if the application of an educational measure needs to be assessed. A trial can be either an informal and short session, or a formal and more complex one, depending on the gravity of the case. In principle, a formal audience involving juveniles is held in public, but the judge may limit or exclude the public in certain cases, for instance if it would otherwise negatively affect the juvenile psychologically. However, the final ruling of the court shall be pronounced publicly in any case.

A specialised judge in juvenile matters is responsible for ordering non-liberty depriving educational measures, whereas liberty depriving measures are imposed by a panel of three judges, composed of one professional and two lay (socially specialised) judges (Art. 30).

Mandatory legal assistance is required during the whole criminal proceedings (Art. 46), as introduced in the context of the Children and Youth Justice Reform. Young persons are guaranteed the right to contact the judge, public prosecutor or defence lawyer at any time during the proceedings.

From 1925 to 2012, an independent state juvenile justice service was in place. Due to financial cuts resulting from the economic crisis this service has ceased to exist independently and has instead been integrated into other state entities. The budgetary cuts had a negative impact on the work of justice services and NGOs and thus on youth justice providers.

Diversion from court trial is possible if, for the offence in question, the penal law provides the punishment of imprisonment for no more than five years. In such cases, the public prosecutor may suspend proceedings and impose a juvenile offender's conduct plan (Art. 84), which may involve restorative actions. Furthermore, in cases of young persons "in danger" who have committed minor offences, diversion is possible and protection measures may be applied by the local Children and Youth Protection Commissions.

Specialised family and youth courts are responsible for ordering measures under the LTE. The number of these courts has been rising in the recent past, now totalling 23, one in each county capital. As a result of the judicial network Reform that came into effect in the 1st of September 2014 (Decree Law n.º 49/2014) the whole country is now covered with family and youth specialised jurisdiction.

The General Directorate of Reintegration and Prison's Services is responsible for the enforcement of non-liberty depriving as well as liberty depriving educational measures.

In addition, the independent Commission for the Supervision of the Educational Centres, composed of representatives of the Parliament, Government, Superior Council of the Judiciary, Superior Council of the Public Prosecution and non-governmental children's organisations, ensure that the centres are properly monitored.

Educational centres are facilities where custodial measures for juveniles are executed. They provide for open, semi-open and closed regimes, depending on the gravity of the offence and the offender's needs. Custodial measures with a length of three months to two years are served in the open or semi-open regimes. The closed regime is applicable for custodial measures with a length of between six months and two (exceptionally three) years and only for juveniles aged 14 and older.

The pre-trial detention of juveniles aged 14 and above can be executed in a closed, open or half-open regime, while persons aged under 14 can only be placed in the open or half-open regimes. Pre-trial detention can be ordered for juveniles aged 12-16 years in cases of more serious offences and only if other preventive measures are deemed insufficient. The law provides a maximum duration of three months, which can be extended for another three months only exceptionally.

In practice, most cases are diverted. From 2001 to 2008, only 14% of (LTE) cases investigated at the pre-trial level were subsequently referred to the court level (Castro, 2011). Data on the execution of measures reveal an increased diversification of educational measures as alternatives to liberty depriving measures. Regarding non-liberty depriving measures, the use of community service and obligations has been increasing in recent years. Together with educational supervision, these measures accounted for 72.3% of all educational interventions managed by the General Directorate of Reintegration and Prison's Services in 2012. Liberty depriving sanctions represented a smaller share (18.2% of all measures). Currently, there are six educational centres that include one open, 10 semi-open and 4 closed units for boys (a total of 15 units) and 2 units for girls that include all regimes. In recent years, the number of custodial institutions as well as the number of staff has been reduced, which has resulted in overcrowded facilities. Since 2001, most institutional measures (63-75%) have been served in the half-open regime. The majority of juveniles in educational centres have been convicted for property offences, followed by offences against the person, though it should be noted that the latter have been on the rise recently.

B. Restorative approach within juvenile justice

The Educational Guardianship Law (LTE) also provides for some educational measures characterised by a (partly) restorative approach. These include reparation to the victim (apologies or activities related to the damage in benefit of the victim), economic compensation or community service (activities for non-profit organisations).

Mediation is mainly used within the context of the justice system (diversion) in order to determine the appropriate educational measure and cannot be considered as a fully restorative measure. The main objective is to prepare and implement the plan of conduct for the young offender and to suspend the procedure. Hereby, the juvenile, his/her parents or legal guardians may be assisted by mediation services. The plan of conduct may include engagement of the young person in restorative actions (Castela et al., 2005). Furthermore, the victim, and also the judge, public prosecutor, defence lawyer and community agency representatives may participate in mediation. Mediators are trained staff of the General Directorate of Social Reintegration.

Following pilots of mediation for juveniles in the 2000s, the Office for Alternative Dispute Resolution, in cooperation with the General Directorate of Social Reintegration, envisaged in 2010 the creation of a Juvenile Mediation System, which has however still not been completed. The economic and financial crisis have led to yet further financial and staffing cuts which have also affected local justice services.

There currently are no complete statistical data on the use of mediation in Portugal. Data from 2002 show that mediation accounted for 5% of the total activities carried out by the Institute of Social Reinsertion in the field of juvenile jurisdiction (Castela et al., 2005,

Marques & Lazaro, 2006). The will of victims to participate in mediation was rather low, with only 28% of victims agreeing to participate. About 80% of cases were carried out at the investigative level of the procedure, 17% as mediation intervention at the initial stage of court inquiry and 3% during the trial stage.

The evaluation report on the implementation of the LTE by the permanent Observatory on Portuguese Justice stressed the importance of resurgence of mediation in juvenile justice and of widening its field of application (Santos et al., 2010). The use of restorative justice is rather limited and it has not been effectively implemented in practice.

C. Foster care within the juvenile justice system

The Educational Guardianship Law (LTE) does not provide foster care for young offenders. The use of foster care is only possible under the Law on the Promotion and Protection of Children and Juveniles in Danger (LPCJP) as a measure of protection for children and juveniles “in danger”. The transitory, temporary nature of this measure (in that it is envisaged that the child shall return to his/her own family) is explicitly emphasised. As mentioned above, under *A. Juvenile Justice*, protection and educational measures may be combined in order to protect young persons in danger and provide educational interventions. Therefore, foster care may be applied to young offenders within the juvenile justice system but as a result of an intervention of the protection system. There are no statistical data about the use of these interventions in practice so far.

Regarding foster care in general, it is predominantly characterised by long-term placements in residential welfare institutions. These facilities operate an open regime - there are no closed welfare institutions which could serve as alternatives to detention. According to statistical data, 94-95% of all placements made in the last three years were to residential institutions.

Foster care can be provided by individuals or families with no relationship to the child or young person. Foster carers, who are selected by a social agency, have to carry out their work as a primary or secondary profession, and are granted the right to receive benefits from social services. They have to be between 25 and 65 years old and must have completed compulsory school education. Furthermore, foster carers have to undergo initial and advanced training courses that the social services are obliged to offer. Prior to placements, families are prepared for foster care under close supervision by the competent social agency.

In general, foster care plays a marginal role in Portugal, and social policies do not promote the use of foster care. Foster care as an alternative to liberty-depriving measures for juveniles is not granted much attention or thought. There has only been little research on foster care and there is a lack of official statistics that could give insight into its use in practice.

Another challenge for the extension of fostering programs can be seen in the impact of the austerity measures in the country, leading to cuts in public spending and higher rates of poverty in society. Families have been affected by these developments, which might also have led to decreased devotion to foster care.

3.24 Romania¹⁴⁰

A. Juvenile Justice

In Romania, an independent juvenile justice system has not been established. Provisions relating to young offenders are included in the Criminal Code (hereinafter CC) and Code of Criminal Procedure (hereinafter CCP). Regulations on reactions to juvenile delinquency and youth courts were introduced in 1936, and were amended and modified several times later. In 2014, a wide reform in criminal law led to the enactment of a new Criminal Code and a new Code of Criminal Procedure, incorporating some new aspects into juvenile justice.¹⁴¹ The new Criminal Code substantially modified the system of measures that is applicable to young offenders and abrogated penalties (fines and imprisonment) for juveniles. The Criminal Code provides reactions only for criminal offending and not for anti-social behavior.

According to the Criminal Code (Art. 113 CC), different categories of criminal liability are stipulated. The legislator hereby includes the notion of discernment. Children below the age of 14 years are not criminally liable. Juveniles aged 14 and 15 years are criminally liable if they have committed an offence with discernment. The age group of 16 and 17 year-olds is generally criminally liable. Young persons under the age of 18 are referred to as minors (*minori*) in criminal law. For young adults (18 to under 21 year-olds), the law does not provide specific regulations.

Children and juveniles who have committed an offence and who are not criminally liable can only receive protection measures according to the Law on the Protection and Promotion of the Rights of The Child.

At the court level, specialised panels or sections on minors and family related matters are in operation (or shall be established), as provided by the Law on Judicial Organisation. The specialisation of judges shall be taken into account when setting up the special panels or sections.¹⁴² The sections or panels are established at the Local Courts, County Courts and Courts of Appeal and deal with both civil and penal matters. Furthermore, specialised

140 The snap shot is based on the country report written by *Andrea Păroşanu*, Germany/Romania.

141 New Criminal Code (Law no. 286/2009) and new Code of Criminal Procedure (Law no. 135/2010), in force since 01.02.2014.

142 In recent years, especially in the context of EU-accession, the specialization of judges and public prosecutors in juvenile matters has been of importance and training sessions have been held regularly.

Juvenile and Family County Courts may be established according to the law. In penal matters, they are competent for more serious offences. To date, only one Juvenile and Family Court has been established, in the city of Braşov.

Juveniles are entitled to the same procedural safeguards as adults. Moreover, legal defence is mandatory in juvenile cases (Art. 90 a) CCP). In criminal proceedings involving juveniles, the Probation Service plays an important role. It submits an evaluation report on the situation of the juvenile to the public prosecutor upon request and/or to the court. The report to the court may include suggestions from the Probation Service on which court reactions might be most adequate in the given case. Sessions involving juveniles are held separately from those with adults and are not open to the public.

The law makes for provision for diversionary measures. A recent amendment (Art. 318 CCP) has granted public prosecutors discretion to refrain from further prosecution if the offence committed is punishable with a fine or up to seven years' imprisonment and there is no public interest in prosecution.¹⁴³ The public prosecutor can condition this decision on the fulfilment of one or several obligations, such as: 1) alleviating the consequences of the offence or making reparation for the damage caused by the offence, 2) delivering a public apology to the victim, 3) community service for 30 to 60 days and 4) attending a counselling programme delivered or supervised by the Probation Service.

The public prosecutor or judge can also divert the young offender if the parties have reconciled or reached a mediated agreement.

The reformed sanctioning system provides only educational measures, as penalties have been abrogated.¹⁴⁴ Educational measures are divided into non-liberty depriving and liberty depriving measures (Art. 115 CC). However, one of these liberty depriving measures is of a custodial nature. The legislator has stipulated that non-liberty depriving measures shall be given priority.

143 Regarding the public interest in prosecution, the prosecutor takes into account aspects related to the personality of the young offender, his/her behaviour prior to offending, the gravity of the offence, the circumstances and the consequences of the offence as well as attempts to reduce or eliminate the consequences of the offence.

144 The previous Criminal Code provided the following educational measures for juveniles: reprimand, placement under supervision, placement in an educational or in a medical-educational centre. Penalties were divided into fines and sentences of imprisonment.

The following non-liberty depriving measures are provided by the new Criminal Code:

- Civic training course (Art. 117 CC)
- Supervision (Art. 118 CC)
- Weekend curfew (Art. 119 CC)
- Daily assistance (Art. 120 CC)

The civic training course aims at fostering offender responsibility and preventing re-offending through a training programme. The maximum length of this measure is four months. Placement under supervision aims at ensuring that juveniles attend their school or vocational programme. The measure can be ordered for a period of two to six months. Weekend curfew can be imposed for four to twelve weeks. Young offenders subjected to the measure of “daily assistance” follow a specific programme with scheduled daily activities. The programme lasts for three to six months. The measures are coordinated by the Probation Service. The Probation Service cooperates with state-run or private, non-governmental organisations in putting the measures into practice.

Additionally, the educational measures can be combined with specific obligations (Art. 121 CC), such as attending a school or vocational programme, not to frequent certain places or events, etc.

If a juvenile has committed another offence previously and has been subjected to an educational measure for that offence, or if a juvenile has committed an offence for which the law provides a sentence of imprisonment of at least seven years or life imprisonment, the court will impose a liberty depriving educational measure.

Liberty depriving measures are divided into:

- placement in an education centre for (centru educativ, Art. 124 CC), and
- placement in a youth detention centre (centru de detenție, Art. 125 CC).

While placed in an educational centre –placements last for one to three years – juveniles are enrolled in school or vocational programmes as well as social reintegration programmes. Juveniles can also perform activities outside the centre.

The most severe educational measure is placement in a closed youth detention centre.

Young offenders have to attend intensive social reintegration programmes as well as school or vocational courses. The length of the measure is between two and five years. In case the juvenile has committed an offence for which the law provides a prison term of at least 20 years of life imprisonment, the length of the measure for juveniles is between five and 15 years.

The court can substitute placement in an educational or youth detention centre with the measure of daily assistance or can order a juvenile's release once s/he has turned 18. This is possible if the juvenile has made considerable progress in terms of social reintegration, and at least half of the duration of the measure has been served. The court applies one or several obligations as mentioned above.

Furthermore, the law provides for transfer to adult prisons under certain conditions, regulated by Art. 126 in the new Criminal Code. The young person must be 18 years old or older and his/her behaviour has to have a negative impact on the reintegration process of other juveniles in the centre.

Regarding sentencing practice, diversion has played an increasingly important role in recent years. The number of cases discharged by the public prosecutors has been on the rise since the 1990s. The share of discharged cases doubled from 1991 to 2012 (62%). Most cases are diverted because of a low level of gravity of the case.¹⁴⁵

In terms of court sentencing, court practice has become less punitive since the early 2000's. From 1994 to 2001, prison sentences were imposed in almost half of the sentences applied (between 44% and 48%). In the following years the share decreased, reaching "only" 26% in 2012. At the same time, the share of conditionally suspended sentences has increased, from 34% in 2003 to 47% in 2012. Also, the share of conditionally suspended sentences under supervision has increased in recent years, accounting for 14% in 2012. Educational measures, however, are less frequently applied by the courts, their share decreasing to 11% of all court sentences in 2012.¹⁴⁶

B. Restorative approach within juvenile justice

A restorative measure that was legally implemented in 2006 is victim-offender mediation.¹⁴⁷ Prior to the enactment of the Law on Mediation, the practice of mediation was piloted by a few non-governmental organisations. For example, in the period from 2002 to 2004, two restorative justice programmes for juvenile and young adult offenders were carried out at an experimental level in two Romanian cities. The projects aimed at promoting and

145 Source: Ministry of Public, Prosecutor's Office attached to the High Court of Cassation and Justice.

146 Source: Romanian Statistical Yearbook 1993-2013, National Institute of Statistics, Bucharest.

147 Law no. 192/2006 on Mediation and the Profession of the Mediator, published in the Official Gazette 441 of 22.05.2006, further amended and modified.

implementing restorative justice principles. They provided victim-offender mediation as well as counselling programmes with a restorative approach. The programmes were evaluated and have shown encouraging results.¹⁴⁸

The (general) Law on Mediation is applicable to both adults and juveniles and provides specific regulations for mediation in penal matters in a separate chapter (Art. 67-70). Victim-offender mediation can be carried out at all levels of the criminal proceedings with regard to penal as well as to civil aspects (e.g. compensation).

With regard to the penal aspects, mediation is restricted to offences where criminal action is initiated upon prior complaint of the injured person, or reconciliation of the parties removes criminal liability. The offences include inter alia bodily harm, battery and other forms of violence, seduction, rape, breaking and entering, theft, deceit, property damage and mischief. Regarding all offences, mediation can always take place to settle civil claims. The law emphasises the principle of voluntariness and provides that justice officials have to inform the parties about the opportunity and advantages of mediation and work towards mediation. The law expressly states that the procedural rights for criminal proceedings for juveniles are also safeguarded in the mediation procedure.

In case mediation was conducted prior to the initiation of criminal proceedings and resulted in a mediation agreement, the injured person cannot file a charge for the same offence. If mediation takes place after the start of criminal proceedings, the process may be suspended for up to three months during the preliminary proceedings or during trial. If mediation is not successful, the proceedings will be resumed.

The new Code of Criminal Procedure introduced that the public prosecutor can decide not to prosecute if there is no public interest in prosecution and the offence is punishable by a fine or imprisonment of up to seven years (Art. 318 CCP). When assessing the public interest in prosecution, the public prosecutor also takes into account any efforts by the offender to alleviate the consequences of the offence or to repair the harm caused. The prosecutor can also impose an obligation on the offender to repair the harm or to alleviate the damage caused, or to make an apology to the victim. Prosecutors can give offenders up to nine months to fulfil the obligations they have ordered or that stem from a mediated agreement.

The Mediation Council is responsible for organising mediation and the mediator's activity. Training standards have been developed in recent years in order to ensure the quality of the profession. Mediators have to be authorised by the Mediation Council in order to offer mediation. In terms of organisation, mediation services can be delivered by mediation organisations, offices, individual mediators or non-governmental organisations. The

148 Two evaluation studies were conducted by researchers of the Institute of Sociology at the Romanian Academy, see *Rădulescu, S.M., Banciu, D.* (2004): *Studiu evaluativ asupra programului experimental de justiție restaurativă din România*. In: *Evaluarea sistemului de justiție restaurativă din România*. Bucharest: Oscar Print, and *Rădulescu, S.M., Banciu, D., Dâmboeanu, C., Balica, E.* (2004): *Evaluarea proiectului de justiție restaurativă derulat în București și Craiova*. Unpublished.

parties have to pay for mediation services themselves, an issue which is to be viewed critically in terms of expanding the use of mediation in practice, especially in juvenile cases.

C. Foster care within the juvenile justice system

In Romania, foster care is provided in the field of child protection. It is not provided by criminal law as an alternative measure to detention.

Foster care can be an option for juveniles who have committed an offence but are not criminally liable. Thus, criminal law provisions are not applicable to them. This is the case for children below the age of 14 who are never criminally liable. In addition, foster care can be ordered for young offenders who are 14 and 15 years old but who did not act with discernment when they committed the offence.

Consequently, child protection measures can be applied for these children and juveniles. The legal base for these measures is provided by the Law on the Protection and Promotion of the Rights of the Child (Law no. 272/2004). The special protection measures that can be applied in the case of children and juveniles who have offended but who are not criminally liable include placement in foster care. Foster care can be provided by a family or individual person or by a maternal assistant who is a professional foster carer. These professional foster carers have to participate in a specific training course on child protection and are subsequently certified.

In practice, foster care does not play an important role, but with the decline of children living in residential institutions, the number of children living in family-type care has increased.

In addition to family based protection measures, which are prioritised, juveniles who are not criminally liable may be placed in residential care.

Another possibility besides foster care is placement in a family-type house, which provides so-called social apartments to accommodate juveniles (who are not considered criminally liable) in smaller units.

3.25 Slovakia¹⁴⁹

A. Juvenile Justice

Slovakia does not have specific criminal laws dedicated to juveniles. Instead, the Criminal Code contains special regulations for young offenders. Likewise, specific provisions relating to criminal proceedings involving juvenile offenders are included in the Code of Criminal Procedure. These regulations are contained in special sections of these codes, and apply only when a juvenile has breached rules of the criminal law.

The age of criminal liability in Slovakia is 14 (for cases of sexual abuse it is set at 15). The criminal law distinguishes between several age categories that enjoy a special position and privileges with respect to the sentences they can attract (mitigating circumstances). A child is a person under the age of 18; a juvenile is a person aged between 14 and 18. The level of intellectual and moral maturity of persons between 14 and 15 years of age must (and, of persons between 15 and 18 years of age, may) be examined/assessed by two experts from the field of psychiatry or youth psychology. Punishment is to be mitigated for young adults aged 18-20, contrary to adults aged 21 and above. Young adults also receive special treatment during imprisonment, in that they can stay in juvenile prisons or juvenile departments of the prison system in order to finish their schooling or vocational training and to be released subsequently.

In Slovakia, responsibility for conducting the preliminary proceedings and for making indictment decisions lies in the hands of the public prosecution service. The prosecution service is assisted by the police during the investigation. Slovakia does not have a separate juvenile courts system. In general, adult courts are responsible for deciding on in cases of juvenile offending. Penal matters involving juveniles are dealt with by the Lower District Courts. However, there is discussion about opening the floor to some specialisation within these courts.

The provisions concerning the purpose of sanctions and educational measures reflect the principle of a special approach with respect to imposing sanctions, protective and educational measures and to making decisions in criminal cases involving juvenile offenders. They also reflect the necessity of devoting special care and attention to youth in the interest of society as a whole.

The sentence, protective measure or educational measure imposed must reflect the juvenile offender's personality as such, his/her age, intellectual and moral maturity and state of health, as well as his/her personal, social and family situation. Furthermore, it must be proportionate to the nature and gravity of the offence. The judge is responsible for gathering and factoring this information into the decision-making process.

149 The snap shot is an abbreviated version of the country report written by *Miroslava Vráblová*, Slovakia.

Since 1961 the sanctioning system has provided different forms of diversion that were expanded in 1994 and 2005. One form of diversion, reconciliation, is combined with mediation, but until now has been used only rarely in practice. The most extensively used diversionary pathway is a conditional discharge for offences which are punishable by up to five years of imprisonment. In 2005 a new form of diversion was introduced: a kind of guilty plea called the “Contract of guilt” which (with the consent of the accused, furthermore, in case of juvenile offenders, with the consent of his/her legal representatives) can also include minor sanctions, particularly the compensation of the victim.

The Criminal Code defines the sentences that may be imposed on juvenile offenders: community work, pecuniary penalty, forfeiture, prohibition of a certain activity, prohibition of participation in public events, expulsion and imprisonment. The central principle guiding the sentencing of juvenile offenders is the educational purpose of punishment. The Criminal Code favours the imposition of non-custodial sentences over imprisonment. In the structure of sanctions imposed on juvenile offenders, the sentence of imprisonment is the criminal sanction of last resort (*ultima ratio*). The list of sentences is exhaustive and therefore may not be extended.

The court sanctioning system comprises a variety of educational measures and penalties such as community service orders (40-150 hours), fines, suspended sentences (up to two years) and suspended sentences with supervision (up to three years) and final unconditional imprisonment (maximum 15 years). The minimum and maximum sentences for juveniles are reduced by half compared to adults (the minimum must not be longer than two years, the maximum no longer than seven years). There are special mitigating circumstances for juveniles described by law, but there are also increased penalties for recidivist (“persistent”) offenders, and preventive detention as a security measure upon serving a prison sentence also seems to be possible in cases of juveniles, although the law is not entirely clear in this regard. A sentence of life imprisonment may never be imposed on a juvenile offender.

“Contract of guilt” (Agreement of Guilt and Sentence) is an agreement between the attorney-general (prosecution) and the accused (defense). In certain cases the victim and other injured persons can also take part in order to express their consent or disagreement. The purpose of Plea Bargaining is to come to an agreement on guilt and sentencing, as well as the agreement of compensation and making reparation for damages and other harms. The Agreement of Guilt and Sentence is a result of negotiation of a “reasonable and acceptable sentence” between the attorney-general and the accused (called Plea Bargaining).

Educational measures are a specific type of sanction applicable only to juvenile offenders. The Slovak Criminal Code distinguishes between these types of educational measures: educational duties and restrictions, and admonition with a warning. They may be imposed only with the consent of their addressee. As for their preventive effect, educational measures are very useful, because they allow the prosecutor or the judge to exert a positive influence on a juvenile offender so as to prevent him/her from a life of crime by separating him/her

from his/her criminogenic environment or by ensuring supervision over his behaviour.

As for protective measures, the Criminal Code contains special provisions on protective measures regulating protective custody which may be imposed only on juvenile offenders. Other protective measures regulated in the General Part of the Criminal Code, such as protective treatment, detention and confiscation of things, are intended both for juvenile and adult offenders. The Criminal Code explicitly prohibits imposing protective supervision on juvenile offenders.

B. Restorative approach within juvenile justice

Mediation is a recent addition to the criminal justice system in the Slovak Republic. Mediation is a form of formal arbitration or mitigation proceedings outside the criminal procedure. It is an alternative to the criminal procedure, which creates an opportunity for imposing alternative sentences, practicing diversion or substituting protective custody with less intrusive protective measures. However, several concepts of restorative justice (or restorative practices) have never been implemented in the Slovak Republic, namely restorative/family group conferencing, restorative police cautioning, community reparation boards and sentencing circles.

Mediation in the Slovak law is an informal model for universal reconciliation of social conflicts connected with the criminal offence in general and reconciliation in order to find an informal solution of the criminal case outside of formal trial proceedings. The Probation and Mediation Officers Act No. 550/2003 Coll. was enacted and came into force on 01 January 2004. Probation and mediation officers were introduced as a new institution that seeks to resolve as many criminal cases as possible outside the formal criminal proceedings and criminal judiciary.

Therefore, there are three possible results of mediation proceedings in criminal cases: conclusion of a “criminal reconciliation agreement within mediation proceedings” (100% agreement on all issues), a “compensation of damages agreement” (agreement on issues of damages) and a “Record of Mediation Proceedings” (when one or both parties disagree with the proposed agreement regarding all fundamental issues).

C. Foster care within the juvenile justice system

Foster care cannot be imposed as an alternative to custody or pre-trial/police detention. According to Slovak criminal law, custody may be replaced by: the guarantee of an interested association or a trustworthy person; the accused entering into a recognizance; subjecting the juvenile to the supervision of a probation and mediation officer; bound by the conditions stipulated in Sections 80 to 82 of the Code of Criminal Procedure. There

are no further special possibilities in place that can serve as alternatives to pre-trial/police detention for young offenders.

Alternative family care is used in Slovakia to protect and support the welfare of children and young people who cannot be adequately parented in their own families. This issue is a subject of Slovak Family Law. Family law deals with three types of relationships: relationships between spouses; relationships between parents and children based on filiations; and finally relationships based on various forms of surrogate custody.

A child may be given taken into surrogate personal custody of a natural person who permanently resides in Slovakia, has full legal capacity and whose health, personality, moral characteristics and way of life guarantee that surrogate personal custody will be in the child's best interest. The child's relatives are preferred when choosing eligible persons for surrogate personal custody. Persons who have surrogate personal custody over a child have the duty to provide that child with personal care. They, however, do not have the duty to provide or cover the maintenance costs arising from having a child in surrogate personal custody. Instead, the persons who have the duty of maintenance towards the child provide maintenance to the person in whose surrogate personal custody the child is residing.

Institutional care is used only if the child cannot be placed in surrogate personal custody or foster care. Here, too, the persons who have the duty to cover/provide maintenance costs for the child pay said maintenance to the institution in which the child is placed.

3.26 Slovenia¹⁵⁰

A. Juvenile Justice

The Criminal Code was first passed in 1995 and was last amended in 2012. The Criminal Code from 1995 included the section "Educational Measures and Penalties for Juveniles". A 2008 amendment affected the abolition of the section concerning juveniles, the reason being that the politicians at the time had decided that a new specific law on juveniles should be prepared. However, Slovenia still does not have a special juvenile law, so that judges continue to apply the articles regarding juvenile offenders from the Criminal Code.

Slovenian criminal law distinguishes between different age groups that in turn are eligible to attract different responses to their offending. Younger juveniles are aged 14 to 16, and can only be issued with educational measures. Older juveniles aged 16 and 17 are by priority subjected to educational measures, but can be sentenced to court penalties (fine

¹⁵⁰ The snap shot is an abbreviated version of the country report written by *Danijela Mrhar Prelič*, *Slovenia and based also on Filipčič, K. (2011): Slovenia. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): Juvenile Justice Systems in Europe: Current Situation and Reform Developments. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, pp. 1289-1312.*

or imprisonment) instead in exceptional cases.

The term “young adults” can also be found in the Slovenian criminal legislation. Young adults are persons who commit criminal offences as adults, aged 18 or more, but who are under 21 at the time of trial. The court can impose educational measures on young adults instead of imprisonment if it assesses that doing so would be much more appropriate, taking into account the personality of the young adult and the circumstances in which the criminal offence was committed.

In Slovenia, there are no special courts for juvenile offenders as such. Instead, juvenile cases are dealt with by juvenile judges in the preliminary phase, and then by a panel for juvenile offenders at the District Court level for trial and sentence. The first phase of court proceedings against juveniles involves the preliminary analysis of the case by a juvenile judge in which the data and evidence are gathered. The panels for juvenile offenders in turn include one professional judge and two lay judges. The legislation¹⁵¹ determines that lay judges are elected among professors, teachers, educators and other persons with experience in the education of juveniles. The professional juvenile judge presides over the panel, and all decide together on the offender’s guilt and the sanction to be imposed.

The prosecutor has the power to dismiss the case on the principle of expediency or to refer the case to mediation or to another form of diversion (conditional diversion). Likewise, the juvenile judge can also decide to refrain from imposing an educational measure or juvenile penalty on the basis of the expediency principle. The State Prosecutor can conditionally defer prosecution. Such diversion is possible in all cases involving criminal offences punishable by up to five years of imprisonment (if the offender is an adult, this is only possible for all offences punishable with up to three years in prison, and only some offences punishable with up to five years of imprisonment). Deferment of the prosecution – conditional dismissal is used when it would be inappropriate for the offender to pass without some form of intervention, but where punishment is not absolutely necessary. The state prosecutor may drop a case if the suspected juvenile performs certain actions to remove the harmful consequences of the criminal offence:

- repairing or compensating any caused damage;
- paying a contribution to a public fund, to a charity institution or to the compensation fund for victims of criminal offences;
- performing community service.

The juvenile judge can order that a juvenile be taken into *pre-trial detention*. Any juvenile aged between 14 and 18 can be detained, while only juveniles aged 16 and older can be sentenced to prison. The Criminal Procedure Code explicitly defines that juvenile offenders can be detained only in exceptional cases.

151 The Code of Criminal Procedure 2013.

As formal responses to juvenile offending, the Slovenian criminal legislation provides educational measures and court penalties. Court decisions are to be guided by the notion that, in the majority of cases, a criminal offence committed by a juvenile is a manifestation of a personality disorder. Thus, educational measures and juvenile penalties must primarily seek to promote the juvenile's rehabilitation and social re-integration.

The following educational measures may be imposed on juveniles:

- a reprimand,
- restrictions and prohibitions (11 different possibilities exist),
- supervision by a social welfare agency,
- committal to an educational institution,
- committal to a re-educational institution,
- committal to an institution for physically or mentally handicapped youth.

In Slovenia, institutional educational measures encompass two types of measures: placement within an institution under the jurisdiction of the Ministry of Labour, Family and Social Affairs and in which the juvenile offenders are placed together with juveniles with behavioural problems (who have not committed a criminal offence); placement within the institution under the jurisdiction of the Ministry of Justice. In practice, approximately two thirds of juveniles upon whom an institutional measure is imposed are placed in the former group of educational institutions.

The educational institutions by nature are not penitentiary institutions; within them juvenile offenders represent merely ten percent of the population. All institutions organize various educational programmes and try to integrate juveniles into the local schools of where the institution is situated. Schooling programmes are also carried out within the institution with their own teachers, with the consent of the local school. At this point it must be said that the school certificate issued does not state that the juvenile finished his/her education within an institution.

According to Art. 83 CC, during its implementation the measure originally imposed can be replaced with another measure, if it is deemed that the new measure improves the likelihood that the purposes of educational measures will be achieved (rehabilitation and re-integration of the offender).

The Slovenian criminal law provides for two forms of court penalty for juveniles: fines and imprisonment. The court can impose a fine on a juvenile who (a) has been convicted of an offence punishable by up to five years imprisonment (b) if the juvenile can pay the fine himself (because he or she has a job or a scholarship). A fine may be imposed in two forms:

in daily amounts or in absolute amounts. Should a juvenile fail to pay the fine, it cannot be converted into imprisonment (contrary to the sanctioning system for adults), but must be converted into a non-residential educational measure (a reprimand, instructions and prohibitions, or supervision by a social welfare agency).

Juvenile imprisonment is the most severe sanction available. It can only be imposed on older juvenile offenders aged 16 or 17 who have committed offences for which a minimum sentence of five years or more may be imposed if committed by an adult.

Notwithstanding the prescribed sentences for adult offenders, the court can impose juvenile imprisonment for not less than six months and no more than five years. Criminal offences punishable by 30 years of imprisonment for adults (e. g. aggravated murder) can attract juvenile prison sentences of up to 10 years. In ordering a sentence to juvenile imprisonment, the court shall – apart from assessing all mitigating and aggravating circumstances – take into account the degree of maturity of the juvenile and the time necessary for his/her education, reformation and vocational training.

The statistical analysis shows that less than one third of all juveniles who are reported to the police are sentenced by the court. Among tried juveniles, about 1 percent (only 4 juveniles in 2012) received a prison sentence. In 99% (2012) of cases the court imposed educational measures.¹⁵²

B. Restorative approach within juvenile justice

In Slovenia, different forms of restorative justice have been introduced: mediation, restitution or reparation of damages, and reintegration of offenders through the delivery of community service. Mediation and deferment of prosecution can only be implemented if both the victim and the offender agree to it after referral of the case.

The greatest attention is devoted to mediation. Mediation is used in pre-trial procedures, but can also take place once court proceedings have been initiated. For juvenile offenders aged 14 to 18, mediation is also available as a court sanction. Mediation is deemed as having been successful when offender and victim reach an agreement and the offender fulfills the obligations stipulated in that agreement. The statistical data show that the number of cases referred to mediation in juvenile cases has been in decline in recent years, from 344 cases in the year 2004 to 88 cases in the year 2011.¹⁵³

The rate to which mediation is successful according to this definition of success is more than 60% in the case of juvenile offenders and about 50% in the case of adult offenders. Statistical data shows that, in over half of all cases, victim and offender agreed that the

152 Statistical Office of the Republic of Slovenia 2013.

153 Data from the Office of the State Prosecutor General.

offender should apologize to the victim, while the second most popular obligation was the payment of damages.

If mediation is successful, the prosecutor withdraws the criminal charge, the court proceedings are terminated and the offender receives no entry on his/her criminal record. If mediation is not successful, the judge continues with the main hearing. If the offender is found guilty, unsuccessful mediation shall not have any negative consequences for him/her in terms of being an aggravating factor in sentencing.

As already mentioned above, the prosecutor can conditionally defer prosecution if the suspected juvenile: performs certain actions to remove/alleviate the harmful consequences of the criminal offence; repairs or compensates for any caused damage; pays a contribution to a public fund, to a charity institution or to the compensation fund for victims of criminal offences; performs community service.

Also, the court can impose sanctions with that entail restorative elements, including community service. Restorative approaches can also be found in the educational measure "Instructions and Prohibitions" which can entail one or more instructions, including reparation, apologies etc. Finally, a strong element of restorative justice can be found in the provision in the Criminal Code on voluntariness, which stipulates that when selecting instructions, the court has to take the juvenile's will to cooperate into account.

C. Foster care within the juvenile justice system

Foster care cannot be applied as an alternative to sentence, but it can, however, constitute an element of it. In proceedings against juveniles, during the preliminary phase, the juvenile judge may order that a juvenile be sent to a diagnostic center, be placed under the supervision of a social welfare agency or with another family, in order to provide the juvenile with assistance, protection and/or accommodation, or if it is necessary to take the juvenile out of the environment in which he/she lives. Such measures are ordered by the juvenile judge and can last for the entire duration of the proceedings, or can be terminated by the judge at any time.

In Slovenia, it is also not possible to place juvenile suspects in juvenile institutions in the context of pre-trial detention. In some cases, juveniles are residing in an institution while the court proceedings underway, but this is because the juvenile had already been placed there on other grounds. The only possibility for detention is prison detention, which is also not often used.

A look at the statistics about juvenile delinquency and the measures issued in response to it, we can see that, at the moment, there is no marked need to implement foster care as an alternative to custody/detention since educational measures are issued in more than 99% of cases.

3.27 Spain¹⁵⁴

A. Juvenile Justice

In Spain there is a special juvenile justice law (Ley de Responsabilidad Penal del Menor, Constitutional Law 5/2000) that applies to juvenile offenders aged 14 to 18. There is a special juvenile court and judges, prosecutors and lawyers have to be specialised in juvenile justice matters. The Spanish legislation furthermore provides for a “technical team”. It comprises at least one psychologist, a social worker and an educator and assists the prosecutor and the court by exploring the offender’s personal situation and his needs. The main objective of the juvenile justice system is to “educate in responsibility” and to rehabilitate the juvenile offender.

For minor offences or petty crimes (and first time offending) the public prosecutor can close the case and ask the juvenile judge to dismiss the case under the condition of an out-of-court settlement or community service. The different forms of diversion play a major role in the sanctioning practice of the juvenile justice system.

If the case comes to court the law provides a wide range of measures and sanctions for juvenile offenders. Juvenile offenders can be sentenced to a closed prison, a low security detention centre and an open prison. The general maximum limit of these sentences is two years, which the judge has to split into a detention and probation period. Under extremely serious circumstances the detention period can be up to 6 years. Prison sentences can be suspended under probation, and this possibility is often used in practice. In cases of psychiatric disorders or alcohol or drug abuse, juvenile offenders can be sentenced to a stay in a closed psychiatric hospital or to visit ambulant (non-residential) treatment services.

Juvenile offenders can also be sentenced to “weekend-detention” which can be conducted both at the home of the offender or in a special centre.

The other sanctions and measures are more community based. The juvenile offenders can be sentenced to visit a day centre or to comply with special obligations set by the judge, for example to visit school or special educational courses or to avoid certain places. The judge can also sentence the offender to the obligation not to approach the victim or other persons or to live with another person, family or group. Community service is an option that is also often used by the court, as is the warning. The judge can furthermore withdraw the driver’s licence of the offender or prohibit him or her from undertaking specific professions.

154 The snapshot is based on *Giménez-Salinas, E. et al. (2011): Spain. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (eds.): Juvenile Justice Systems in Europe: Current Situation and Reform Developments. 2nd edn., Mönchengladbach: Forum Verlag Godesberg, p. 1313-1353 and on own research by Ineke Pruin. The information about restorative justice is taken from the country report written by Juan José Periago Morant, Spain.*

B. Restorative approach within juvenile justice

Spanish juvenile justice provides mediation, reconciliation and reparation in cases of juvenile offending. Such restorative justice measures can take place in the pre-trial phase or during the trial. The technical team is responsible for the planning and the execution of victim-offender-mediation.

The Spanish juvenile justice law appreciates mediation insofar as the prosecutor can close the case if the minor has reconciled with the victim, or has committed to repair the damage caused to the victim. Reconciliation is understood as being when the minor recognizes the damage and apologizes to the victim, and the latter accepts the apology. Repair is understood as the commitment of the minor to the victim to perform certain actions on behalf of the victim or community, followed by its effective realization.

Furthermore, the judge can consider victim-offender-mediation at any time of the criminal procedure and can divert a case after a successful mediation process where doing so is commensurate to the offence.

There are special standards for the execution of victim-offender mediation: The technical team is responsible for pointing out the possibility of extrajudicial solutions to the minor, and will hear the legal guardians. If the minor or his/her legal guardian agrees to mediation, the technical team contacts the victim(s) in order to ascertain whether they agree to participate in mediation either directly or indirectly. If the victim is a minor or disabled, this consent must be confirmed by their legal representatives and be made known to the competent juvenile judge. If the victim is motivated to participate in the mediation process, the technical team will propose a meeting to the offender and victim at which the settlement or reparation agreements shall be finalized. However, reconciliation and reparation may also take place without a meeting, at the request of the victim, by any other means which provides a record of the agreements. If social or direct reconciliation/reparation is not possible, or when the technical team considers it to be in the best for the interest of the minor, socio-educational tasks or the provision of services to the benefit of the community will be proposed. The technical team shall inform the public prosecutor about the result of the mediation, of any agreements reached by the parties, and the extent to which the offender has complied with them, or, if applicable, the reasons why he has failed to put into effect the commitments made in the agreement.

A problem that may arise is the protection of the presumption of innocence when the mediation process is initiated, but the minor fails to fulfil the proposed solution and therefore the judicial process has to continue. Given that mediation processes require the minor to assume responsibility for the damage caused, in order to guarantee and protect the principle of the presumption of innocence, it is necessary that such an assumption of responsibility not be taken into consideration by the judge in the course of the proceeding.

C. Foster care and alternative care within the juvenile justice system

As indicated above, the juvenile judge can theoretically sentence the juvenile offender to the obligation to live with another person, family or group. The judge has to indicate the time period for this placement. In practice this sentence does not play any significant role.

3.28 Sweden¹⁵⁵

A. Juvenile Justice

In Sweden there is no specific juvenile justice system, at least in terms of there being special juvenile criminal courts or a specific juvenile justice law. Nevertheless, Sweden has had a practice of treating young offenders differently from adults since the beginning of the 20th century. The principle of rehabilitation and the welfare system play important roles in the approach towards young offenders, but so does the principle of proportionality that requires sanctions to be commensurate to the seriousness of a crime. The law does not recognise status offences.

The age of criminal responsibility is fifteen years of age. Special rules are valid for offenders between 15 and 18 and under special circumstances still apply to offenders aged between 18 and 20. In keeping with the welfare principle, special policies apply to young offenders, including waivers against prosecution, restrictions on prison sentences, and handing over offenders to the local social services. The extent to which the judicial authorities and the social services share responsibility for the response to crimes committed by young people is mainly dependent on the age of the offender. For juvenile offenders aged between fifteen and seventeen (and in certain cases up to the age of twenty), the responsibility is divided between the social services and the judicial authorities, and from the age of eighteen to twenty, the responsibility lies mainly with the judicial authorities.

The social services take part in the court procedure for young offenders as they can be requested to write a report about the personal situation and the needs of the young offender. The social services are furthermore responsible for the majority of the measures targeting convicted young offenders. There is a strong focus on rehabilitation and the criminality of young offenders is regarded primarily as a social welfare problem. Nevertheless, in 2007 the Swedish justice system was reformed in an effort to allow it to work efficiently and to accomplish due process inter alia through reserving rehabilitative measures for those offenders who are in presumably well-documented and undisputable need of rehabilitation. This change was based on the assumption that there was a group of young offenders who were referred to the social services for rehabilitative measures without having any particular rehabilitative needs (the term for this measure was before 2007: “överlämnande till vård inom socialtjänsten”). With the changes in 2007, the measure

¹⁵⁵ The snapshot is based on the country report written by *Sophie Andersson*, Sweden.

that was restricted to providing solely rehabilitative interventions became reserved for those who have more apparent needs.

Still a major share of young offenders is referred to the social services following court procedures. Most common measures by the social services for convicted young offenders are counselling, mentoring, different kinds of rehabilitative programmes and various forms of out-of-home placement.

By law, juveniles receive special consideration when found committing a crime. Over 80% of all juvenile crimes are not prosecuted but dealt with informally through the police or the public prosecutor.

The police have a large amount of discretionary power. When the police discover that a minor offence is being committed, their efforts are often limited to an order to cease and desist. If this is sufficient to stop the improper behaviour, the police do not report the matter. According to the legislation, the police have the right in certain cases to direct young offenders to repair the damage caused by their criminal acts. If the offender complies, the offence is not reported. In case of more severe offending the police are obliged to have a prosecutor assigned to an investigation.

The prosecutor is also responsible for deciding whether the suspect should be arrested and whether an application should be made to a court for a detention order. However, neither arrests nor detention orders are utilized very often in relation to offences committed by juveniles. For an individual aged fifteen to seventeen to be detained during an ongoing investigation, the law requires “exceptional cause”.

The prosecutor can issue a prosecution waiver or a summary sanction.

A waiver of prosecution still constitutes a relatively common form of decision taken by prosecutors in Sweden although its use has decreased substantially since the mid-1980s. This waiver means that the offender will not be subjected to any further measures by the justice system under the condition that he or she will not commit any further offences. The Swedish Young Offenders Act (LUL) gives prosecutors broad powers regarding the issuance of prosecution waivers when a suspect is below the age of 18, and in certain cases up to the age of 20. Since a legislative change in 1994 (SFS 1994:1760) waivers of prosecution may in principle no longer be used for juvenile offenders who have previously been registered in connection with offences.

Another option available to prosecutors is to determine the sanction for a crime themselves. The conditions for the prosecutor to be able to issue a summary sanction order are similar to those for a prosecution waiver: the crime must be relatively minor and the suspect must have confessed. In addition, the suspect must have accepted the size of the sanction. Summary sanction orders may be issued only in the form of day-fines, where the number of days is determined by the seriousness of the crime while the size of each day-fine is determined by the guilty party's economic circumstances. Approximately one third of all

the entries into the police register involve summary sanction orders.

If the prosecutor decides to prosecute, the court can sentence a juvenile offender to day fines. This is the most common court sentence for young offenders (approx. 50% of all court sentences). A similarly common court-imposed sanction regarding juveniles involves being delivered into care in accordance with the Social Services Act. This sentence (“youth care”) means that the court transfers the responsibility of finding a suitable measure for the guilty party to the local social services board.

Another specific sanction for young offenders is “youth service” which involves unpaid work for 20 to 150 hours under the auspices of the social services. The sanction, which was introduced as an independent sanction in 2007, is intended as an alternative to fines and deprivation of liberty for less than one year, primarily for young people between the ages of 15 and 17, and who are not in need of care under the Social Services Act. Young people aged between 18 and 20 can also be sentenced to youth service if there are special reasons for this. Youth care and youth service require the consent of the young person concerned; youth care can, however, be enforced without consent in certain circumstances under the Act with Special Provisions on the Care of Young People.

Another specific youth sanction called “secure youth care” was introduced in 1999 for young offenders to minimize the number of juveniles in prison. It is insofar reserved for serious crimes. A fixed-term sanction between fourteen days to four years (ten months being the average) is served in an institution established for the care of young people (here referred to as a youth care facility). These are the same institutions where youths are placed in compulsory care by the social services. These institutions are focused on the treatment of young people and have a staff to ‘inmate’ ratio approximately three times that of prisons (approximately three staff members per youth in care).

The court can apply suspended sentences and probation. In practice these sanctions are seldom applied. The court can also sentence a young offender to prison. Since the introduction of “secure youth care” in 1999, only very few persons under the age of eighteen (to date no more than four per year) have been sentenced to prison.

A certain number of the sanctions presented above may be combined with each other or with other forms of intervention. Thus probation may for example be combined with contractual care or community service. Combinations of this type are rare, however, for young people under the age of eighteen. On the other hand, surrender into the care of the social services may be combined with youth service, which comprises community service specifically adapted to younger people. For approximately twenty per cent of the fifteen to seventeen year olds sentenced to care within the social services, the sanction is combined with youth service in this way. In rare instances, youth service is also applied in combination with probation for young people over the age of eighteen. Fines, too, may also be awarded in combination with other sanctions. Finally, young people are in rare cases sentenced to psychiatric care. This sanction is, however, extremely rarely used for the youngest age group.

B. Restorative approach within juvenile justice

The main form of restorative justice applied to young persons in Sweden is victim-offender mediation. Victim-offender mediation in Sweden is regulated by the Mediation Act (Medlingslagen 2002:445), which came into effect on July 1st 2002. The Act, which focuses primarily on young offenders, constitutes a piece of framework legislation and covers mediation organized by the State or by local authorities.

According to the Act, the offence must first have been reported to the police, and the offender must have acknowledged his or her guilt before mediation can be initiated. Participation in mediation is always voluntary for both parties. This is a necessary condition for a successful mediation meeting. Mediation does not constitute a penal sanction or an alternative to the regular justice system, but rather plays a complementary role. It is, however, possible for the prosecutor to take the fact that mediation has taken place into consideration in relation to the prosecution of young offenders. There is no restorative justice intervention in the young offenders' institutions (YOI's).

According to evaluation results, the majority of the mediation projects are organised by the municipal social welfare services, either as separate distinct projects or in parallel with regular activities. The projects are run in close contact with the police. The police are the body that refers most cases for mediation, followed by the social welfare services.

C. Foster care and alternative care within the juvenile justice system

Children and young people may in general be forcibly taken into care only following a decision by an administrative court pursuant to the Care of Young Persons Act (special provisions).

If the parents of someone under the age of 18 cannot, for some reason, provide the young person with the support he or she needs, or if the young person her or himself lives a destructive life involving, for instance, substance abuse or criminality, it is possible for such a young person to be cared for according to the Care of Young Persons (Special Provisions) Act (LVU). It is necessary that such social problems involve a high risk of the young person's health or development being harmed, and that the care that is necessary cannot be provided on a voluntary basis. Care, under LVU, may come into question when voluntary solutions are not sufficient, and results in the parents' right to make decisions about the child being restricted. There are two main cases where care under LVU can come into question:

- when deficiencies in care or some other circumstance at home involve a manifest risk that the young person's health or development will be harmed (known as 'environmental cases')

- when the young person exposes her or himself to manifest risks through substance abuse, criminal activity or some other socially destructive behavior.

Persons under the age of 18 can receive care under LVU. A person who is over 18 but under 20 can receive care under LVU in the so-called behaviour cases if this is more appropriate than other care.

Another form of alternative care is “secure youth care” as indicated above. Young people who commit serious criminal offences between the ages of 15 and 17 can be sentenced to secure youth care rather than imprisonment. Such sentences, which range from fourteen days to four years, are served in special units of special residential homes for young people run by the National Board for Institutional Care. Every year around a hundred young people are sentenced to secure youth care, most of them boys. The majority have committed serious violent crimes: robbery, aggravated assault, rape, manslaughter or murder. During their time, these young people receive treatment with a focus on their criminal behaviour.

The young person is first admitted to a secure reception unit. Here, psychologists, educationalists and treatment providers determine his or her needs in terms of care and treatment, carry out a risk and needs assessment, and, together with the young person, draw up an individual sentence plan.

Individually tailored care: young people sentenced to secure youth care have similar problems to those looked after under LVU. This means that, alongside work on their criminal behaviour, many of them need treatment for substance misuse and to address relationship and educational issues. These interventions are tailored to the risk level, needs and learning style of each individual. The young people also have the opportunity to receive school education. To prevent absconding, security is high. Initially, young people are cared for in a secure unit, but eventually, as they progress in their treatment, they are able to move to more open units.

The aim of secure youth care is to facilitate the young offenders’ return into the community after serving their sentence. Transition is planned in collaboration with social services in the young person’s home municipality. Aftercare, the care a young person may need after he or she is released, is the responsibility of social services. Many of these young people need support for a long time to reduce the risk of reoffending.

4. Foster Care in European Juvenile Justice

Ineke Pruin, Andrea Păroșanu, Joanna Grzywa-Holten, Philip Horsfield

4.1 Introduction and research material

This article aims to summarise the role of foster care within the scope of juvenile justice in Europe. It is based both on the 28 country reports which were prepared by the project partners in the course of the project “Alternatives to Custody for Young Offenders – Developing Intensive and Remand Fostering Programmes (see the introductory chapter in this volume) and a “Survey on Alternatives to Custody for Young Offenders“ which was sent by the International Juvenile Justice Observatory to several experts and institutions to find out more about the role of foster care in the national juvenile justice systems in Europe (see annex).

All country reports were supposed to follow an outline that contained a section with questions about foster care. The submitted information on foster care differed in both length and content: some experts wrote very little about foster care in welfare and family law but concentrated on foster care for juvenile offenders who have committed a criminal offence, whereas others described the general approach towards foster care in the welfare and family law of their country.

The answers on the “Survey on Alternatives to Custody for Young Offenders” were diverse as well. The survey comprised eight questions, and responses were delivered by 39 persons from 25 countries. *Table 2* provides a breakdown of how many respondents replied from which country.

Table 2: Number of respondents

Country	Number of respondents
Austria	2
Belgium	2
Croatia	2
Cyprus	2
Czech Republic	1
Denmark	1
Estonia	2
Finland	1
France	1
Germany	1
Greece	6
Ireland	1
Italy	1
Latvia	1
Lithuania	2
Luxembourg	1
Malta	1
Netherlands	2
Poland	1
Portugal	3
Romania	1
Slovakia	1
Slovenia	1
Spain	1
Sweden	1
25 countries	39 respondents

The respondents came from different professional backgrounds. Most respondents were representatives from NGOs or researchers with an education in legal studies. There were also respondents who work in a prison or a custodial institution, for the national Ministry of Justice or as a children's ombudsman.

The questions covered the existence of alternative family care both in the welfare system and in the juvenile justice system. Not all respondents answered all questions, and the responses provided varied greatly in terms of length and depth. For instance, while one question was answered with merely three words by one respondent, the response provided by another respondent for the same question was over a page long.

4.2 Main results

4.2.1 General overview

The answers revealed that foster care generally plays only a minor role in the juvenile justice practices of most European countries participating in this study.

All countries provide for foster care in the youth welfare or family law system. The scope of foster care as a measure of child or family welfare is quite comparable all over Europe: Foster care can be used as a measure of last resort if a child's well-being is endangered and the family is unable to take care of the child adequately. Foster care must thus be seen as being in the best interest of the child, and if all conditions are met foster care can be ordered on a voluntary (if the parents and/or the child agree) or an involuntary basis. Delinquent behaviour, such as repeatedly committing (minor) offences, can be one indication for the endangerment of the child's well-being, but must be accompanied with other factors in favour of a foster placement – children cannot be “sentenced to” or “sanctioned” with foster care.

Voluntary foster care is then oftentimes organised by the child welfare board, while involuntary care must be imposed by the administrative or family court. Many respondents reported that there are high standards for the assessment of foster families, who are trained and (financially) supported by the state.

The role of foster care in the juvenile justice systems is much more heterogeneous: Most countries covered in the study either make no provision for foster care to play a role within their juvenile justice system, or it is theoretically possible to apply foster care as a reaction to juvenile offending and this alternative is not used in practice. Table 3 below breaks the countries covered in the study down into different categories of foster care application within juvenile justice.

Countries that follow a strong welfare approach within their juvenile justice system¹⁵⁶ provide foster cares as a possible reaction to juvenile offending (e.g. Belgium, Luxembourg, Poland). This can be seen as a logical consequence of the welfare approach, in which (in its pure form) juvenile offending is regarded as an indication that a juvenile's well-being is endangered, and which reacts to such behaviour with educational (welfare) measures. Countries that follow a stricter justice approach within their system do in some cases (e.g. Cyprus, Germany) provide for placing juvenile offenders in the care of a non-related person as a possible response to juvenile offending. This could theoretically end in foster care. However, most countries report that such possibilities for foster care are never used in practice and that, instead, foster care remains a reaction of the child welfare system, while juvenile criminal offending is persecuted independently. An important exception to

¹⁵⁶ See the chapter by Dünkel above, and Pruin, I. (2011): *The scope of juvenile justice systems in Europe*. In: Dünkel, F.; Grzywa, J.; Horsfield, P.; Pruin, I. (Eds.): *Juvenile Justice Systems in Europe – current situation, reform developments and good practices*. 2nd ed. Mönchengladbach: Forum Verlag Godesberg, pp. 1513-1556, with further references.

the previously described use of foster care in the juvenile justice systems can be seen in England and the Netherlands. Here, so-called “treatment foster care” has been introduced into the juvenile justice systems as a direct response to juvenile offending. Treatment foster care differs from the “traditional” concept of foster care and can, for the scope of juvenile justice, be categorized as a special form of “educational measure” applicable by the youth court or youth judge in cases of criminal offending. The concept of treatment foster care was developed in the US and is discussed later in this chapter. Respondents from Finland reported the existence of an “intensive specific care” measure in the child welfare system, which seems to be comparable to the concept of treatment foster care in various aspects.

The sections of the country reports and the answers to the questionnaire revealed a different understanding of the term “foster care” in some cases. While most experts defined foster care as the placement of a juvenile in a non-related family/with a non-related person, some experts defined different forms of placements as “foster care” (Estonia, Finland, Poland), e. g. placement in (foster) care institutions, like family foster homes, with up to eight foreign juveniles (Poland). According to the understanding of the Greek experts, foster care comprises the situation that a juvenile stays with his or her family of origin, but is cared for and supervised by a care person (called “foster carer”). In other countries, this situation would likely be described as a “supervision order” or a “mentoring programme”, but not as “foster care”. Such forms of “ambulant” child and family support from a person not related to the family seem to exist in most juvenile justice systems. Furthermore, many juvenile justice systems provide the placement of juveniles in (closed) welfare institutions (under the responsibility of the youth welfare system) as an alternative to youth prisons.¹⁵⁷

¹⁵⁷ See Dünkel, F., Stańdo-Kawecka, B. (2011): *Juvenile Imprisonment and placement in institutions for deprivation of liberty – Comparative aspects*. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (Eds): *Juvenile Justice Systems in Europe. Current Situation and Reform Developments*. Vol. 3. 2nd edn. Mönchengladbach: Forum Verlag Godesberg, pp. 1789-1838. In some countries, we find concerns about the non-observance of international juvenile justice standards in such closed youth welfare institutions, see for example Kanev et al. 2011, pp. 174 ff.

Table 3: Foster care in European juvenile justice systems

No foster care	Foster care as a (direct) reaction to juvenile offending applicable in theory but not used in practice	Foster care applicable and used in practice
Austria	Belgium*	England** (?)
Croatia	Cyprus	France* (?)
Denmark	Czech Republic	Netherlands**
Estonia	Germany	
Finland	Greece	
Ireland	Poland*	
Italy	Portugal*	
Lithuania	Luxembourg*	
Romania	Slovakia	
Sweden	Slovenia (?)	
	Spain	

* Strong welfare approach in the juvenile justice system

** Treatment foster care scheme

(?) experts refer to their experience, no statistical data available

4.2.2. Foster care for juvenile offenders in single countries of the study

Austria

Foster care is not regulated in the Juvenile Court Act. This means that the judge at a criminal court does not have the option to send a juvenile to alternative family care.

In the youth welfare system, the Guardianship Court and the Youth Welfare Office have a very broad spectrum of interventions into family life at their disposal, such as counselling or ordering children/parents to attend therapy, etc. If the family is unwilling to cooperate, the child can be taken to a foster family or other types of residential facilities for troubled youth. Foster parents for children with special needs (mental other physical disability, or other kinds of behavioural problems) have to have had special training (or other professional education) for dealing with such special needs. The foster parents are always subject to supervision from the moment it is planned that a foster child will be placed in their custody.

Belgium

The Belgian Juvenile justice system follows a strong welfare approach. Foster care is a measure within both the juvenile justice system and the general youth welfare system, depending on the prosecutor's decision as to how to classify a case.

Foster care within the juvenile justice system can be imposed by the youth court either as a provisional or a final measure for juveniles aged 12 and above. Younger children are placed in foster care according to the child welfare system. Foster care is included in the measure of placement in a private institution or with a 'trustworthy' private individual with the aim of housing, treatment or education. The measure is applicable for all offences, but the Youth Court has to first consider non-residential, ambulant and restorative measures before imposing placement in a foster family.

Foster care as a juvenile justice measure does not play an important role in practice. According to research results foster care accounts for less than one percent of provisional or final measures. One reason for the scarce use in practice might be that foster care is considered to be more suitable for child welfare issues than for cases brought into the juvenile justice system.

Foster carers are specially trained volunteers and are paid a daily allowance to cover the expenses for the foster child.

Bulgaria

Bulgarian law does not provide possibilities for foster care to be applied as an alternative to deprivation of liberty. However, it is applicable as a measure for protecting vulnerable children.

Croatia

Foster care in Croatia cannot be imposed as an alternative to custody or pre-trial/police detention, since it is not considered to be directly linked to the Croatian juvenile justice system.

Alternative family care is provided under the provisions of the Social Care Act and the Foster Care Act for children without parents, neglected or abused children, children exhibiting anti-social behaviour, and other cases in which such accommodation is in child's interest. Foster carers, children and young people in foster care, and their families are provided with various forms of support and supervision.

Accommodation in a social care institution according to Art. 65(1) of the JCA can be one alternative for pre-trial detention. This measure can last until the termination of criminal proceedings, but the court needs to review *ex officio* its justification every two months.

Cyprus

In Cyprus foster care does not play a role in the juvenile justice system. Foster care is not provided as a measure to be imposed on young offenders. The court can theoretically place a young offender into the care of a fit person, but there is not data about the application of this possibility in practice.

Foster care is a measure within the welfare system, handled by the Social Welfare Services. Children at risk can be placed in a foster family (the foster family is remunerated) or in a child protection institution. At the same time, the child's family is offered access to social work services.

As provided by Art. 15 of the Juvenile Offenders Law, the court can order placement of young offenders aged under 16 in a reform school, an institution or into the care of a fit person, see above. Parents can be ordered to contribute partly or entirely to the maintenance of the juvenile, if they are able to do so.

Czech Republic

In the Czech Republic, foster care is provided as a measure of the youth welfare system that can be applied if the juvenile's well-being would be jeopardized if he or she were to remain in his/her family environment. In the juvenile justice system, foster care does not play a role as a direct response to juvenile offending. Foster care can theoretically play an indirect role in a juvenile justice case, for example as an alternative to placement in an educational care institution, if the requirements of the welfare laws are met.

Denmark

Foster care does not play a role in the criminal juvenile justice system. It is an option in the child protection system for children in need of care.

Children who have committed a crime or behaved antisocially are – as a last resort- usually not placed in foster care but in a closed juvenile care institution. Moreover, juveniles sentenced to imprisonment and diverted from prison are accommodated in (social) institutions and pensions, and not in foster homes.

There is ongoing discussion that the involvement of social services in the enforcement of sanctions (e.g. social institutions) may create inequality and confusion due to different approaches in the fields of social welfare and criminal justice, which would also be a topic of discussion with private foster care.

England

An exception to most European juvenile justice systems, foster care plays a role in the juvenile justice system of England. Juveniles involved in the criminal justice system may be provided with a foster care placement whilst they are on remand (remand fostering), as part of a Supervision Order or Youth Rehabilitation Order (intensive fostering) or post-custody (for example, while on license from a Detention and Training Order).

Remand fostering can serve as an alternative to pre-trial detention. Placements for juvenile offenders on remand are often part of a local authority's general foster care pool, although some authorities and youth offending teams have arrangements for specialist foster care schemes working specifically with children on remand; these schemes may be managed by Youth Offending Teams, Local Authority Children's Services, Independent Fostering Agencies or charitable organisations. There is no data available on the use of remand fostering for juvenile offenders.

Since 2008, intensive fostering has been one of the requirements that can be added to a Youth Rehabilitation Order. The threshold for a Youth Rehabilitation Order (YRO) with Intensive Fostering provisions is that the offence/s must require being sent to prison, and it is so serious that if a YRO with Intensive Fostering was not available, then a sentence

of custody would be appropriate. In addition, for under 15-year-olds the young person must be a persistent offender. A Youth Rehabilitation Order with an Intensive Fostering requirement must be for a minimum of six months. Intensive fostering is intended to be an alternative to custody for children aged 12–18, and follows a highly structured foster care programme based on a the ‘Multidimensional Treatment Foster Care’ (MTFC) programme developed by the Oregon Social Learning Centre in the USA. The country report does not refer to data about the use of YROs with Intensive Fostering provisions in practice.

Post-custody fostering may be provided for young people who are completing the second half of a Detention and Training Order, which is served in the community under supervision. Such foster care placements may be provided as part of a local authority’s general foster care pool, although some authorities and Youth Offending Teams have arrangements for specialist foster care schemes working specifically with children on release from custody; these schemes may be managed by youth offending services, children’s services or independent fostering agencies. Again the report does not offer data about the application of this measure in practice.

Estonia

In Estonia, foster care is a measure that is reserved to the welfare system. In the justice system, foster care cannot be applied as a legal alternative to remand or custody. § 87 of the Penal Code states that the criminal court can release a minor from punishment and order him/her to be placed in a youth home. This provision plays no role in practice.

The Estonian Ministry of Social Affairs plans to implement a new concept for the Reform of Alternative Care by the end of 2015. The concept envisages a section on foster programmes which also include the use of fostering as an alternative measures in juvenile justice.

Finland

Foster care does not play a role within the juvenile justice system, but is a measure provided by the child welfare system. Foster care cannot be imposed as an alternative to detention, nor as a form or element of diversion. In case juveniles undergo child welfare measures, usually more intensive penal measures will not be applied as they are not considered to improve the juvenile’s situation. Child welfare and criminal juvenile justice are linked with and complement each other.

Besides placement in a foster family or in a welfare institution, for more serious cases the child welfare system provides “intensive specific care”, which is the most intensive measure of control under the Child Welfare Act. Intensive specific care will be applied in cases in which there is a serious risk for the health of the child or other people’s health in the context of substance abuse, where there has been serious and repeated offending and

other protection measures are insufficient. Children and juveniles are placed in (closed) special units for intensive specific care, which are established separately in the reformatory schools or in one communal children's home. Intensive specific care means that there can be restrictions on movement and contact to the outside, there are more staff, and daily activities (including school, group and individual discussions and leisure activities) are very structured. Intensive specific care can be initially ordered for a maximum of 15 days, and can be prolonged exceptionally for 60 days if there are weighty reasons.

France

Foster care can be applied in cases of offenders aged 13 to 18 years. They can be placed within a family, a social residence (young worker's home), a rural residence (farmer's home) or in individual housing ("pre-autonomous studio"). Juvenile judicial protection services work in cooperation with the host family.

Placement in a host family (foster family or rural residence) aims to provide juveniles at risk with a structured lifestyle in a positive environment. Host family members receive 36 € per day (or 1.080 € for 30 days) to cover the arising costs. Regarding host family selection criteria, communication and negotiation skills, motivation and commitment to the family are of importance. Host families are involved in a network in order to exchange information and experiences with professionals and other host families, as well as for training. Host families cooperate with an educational team, which provides support in relation to schooling, health and further relevant issues.

There is no information available about the use of foster family placement in practice. Juvenile Courts have both civil competence for children in danger and criminal competence in cases of criminal offending. Therefore the foster care concept must not be seen as a direct reaction to the offending behaviour of a juvenile.

Germany

Coercive foster care is a measure of last resort in the welfare system, when the well-being of the child is in serious jeopardy.

In the juvenile justice system, foster care does not play any role in practice. Theoretically, foster care could according to the law be possible at different levels of the criminal procedure (including pre-trial and after release from prison), but in practice other forms of alternative care are favoured over foster care in juvenile justice cases. Reasons are the better public control of residential homes and the constitutional right of the parents to educate their children which is very influential in both juvenile justice and welfare law.

Ambulant forms of supervision and support, with the child staying in his or her family of origin under the support and supervision of a non-related care-person, are possible and,

according to child welfare law, prioritized over any form of out-of-family care.

Other forms of alternative care are used if it comes to a prison sentence: The Youth Prison Laws of the Laender partly provide regulations which allow the introduction of an alternative to the youth prison sentence via the implementation of special institutions. Those institutions shall allow for the execution of the prison sentence in a quite open environment - comparable to a closed day and night-time institution. Usually those projects draw closer attention to the peer group and in general to contact with other people. Daily routines are in general quite strict and try to help the offender to find a place in society. The available evaluation results for alternative care projects show no benefits in terms of recidivism. However, positive effects have been measured with respect to the formal qualifications and the occupational outlook as well as to special occupational soft skills of the project participants.

Greece

Foster care can be applied for young offenders as a diversionary measure or an educational measure (placement under supervision of a foster family, Art. 122 Penal Code). It can also be applied as a therapeutic measure (Art. 123 Penal Code). Foster care was introduced into juvenile law with the reform in 2003, but is very rarely used in practice.

Surprisingly, according to the Greek report the juvenile remains in his or her natural family when being placed under foster care, which reveals a different understanding of the concept of foster care. Foster carers do not receive financial allowances for their work or to cover expenses for the juvenile. They are provided with basic training on foster care, but with no further specialist training regarding the supervision of young offenders which would be of advantage. Such a concept of foster care is comparable to mentoring programmes in other countries.

Hungary

The law makes no provision for foster care to serve as a direct alternative to custody, but it does play a role in the context of the youth welfare system.

Ireland

Foster care is not used as an alternative measure to child deprivation of liberty in Ireland. It plays a role within the child protection system for juveniles in need of care and support.

There are plans to put in place a fostering scheme to support children's compliance with bail conditions, for example, but these have not advanced beyond the discussion of a pilot programme.

Italy

In Italy, foster care is not provided as an alternative measure within the juvenile justice system. Foster care can be applied as a welfare measure for minors in need of care and protection. They can be placed with another family, a single parent, a family-type community or (as a last option) in a Care Institute.

Regarding other forms of alternatives to detention as a reaction to offending, home detention has to be mentioned. Juveniles can either remain in their family or be accommodated in a private residence under surveillance of their parent or another person with whom the juvenile is staying.

Latvia

Foster care cannot be used as a legal alternative to remand or custody, and thus it is not relevant to the Latvian juvenile justice system.

The concept of foster families is regulated by the Civil Code, the Law on the Protection of the Rights of the Child and the Law on Orphan's Courts. A child can be placed in a foster home if one of the following situations arises: the child's biological parents are unable to provide sufficient care; if a parent abuses the rights of children; if the parent has given his or her consent for the child to be adopted; or if a parent has used violence against the child, or if there is good reason to suspect that the child has been or is a victim of domestic violence from its parents.

Decisions on placing children in foster families are made by the Orphan's Court.

Lithuania

Foster care does not play any role in the Lithuanian juvenile justice system. Institutional care settings are used for juvenile offenders and juveniles who exhibit antisocial behaviour. Children can be placed in educational institutions both upon the imposition of an educational sanction under the Criminal Code; or as an intermediate care measure under the child welfare system.

Among the educational sanctions applicable to minors, the Criminal Code provides placement in a special reformative facility as a direct reaction to offending behaviour. The duration of such a placement shall range between six months and three years, but shall not extend beyond the minor's 18th birthday. The specific duration of placements in special reformative facilities is set by a court upon taking into consideration the personality of the minor, the repetitive nature of his criminal conduct, the type of sanctions previously applied and other circumstances of the case.

It is furthermore possible to place a child in a welfare institution as a child welfare measure if the child has not reached the age of criminal responsibility.

Luxembourg

In Luxembourg, juvenile welfare law and juvenile justice are strongly interconnected. Criminal sanctions cannot be applied to juveniles under the age of 16. Foster care is provided in the field of child protection by the Law on Child and Family Welfare. Judges seem to prefer to apply foster care in cases of younger children rather than in the context of juvenile justice. It remains unclear how, whether and to what extent placements in foster care are linked to juvenile delinquency and anti-social behaviour, as there is no separate juvenile justice law. Juvenile justice and child protection are interlinked and youth justice is seen as a part of the youth protection system.

In general, foster care has not been important so far in Luxembourg in practice, as the focus is rather on placements in residential care. In 2013, about 500 children (voluntary; with consent of the parents; and judicial) were in foster care. In recent years, it has been observed that an increasing number of juveniles is placed in professional foster settings (intensive individualized care), mainly outside the country. Ambulant forms of supervision, with the child staying in the family while receiving support and supervision of a social worker, are prioritized over institutional settings.

Malta

Foster care is not provided as an alternative to detention in Malta. Foster care within the welfare system is provided, but in practice there is a lack of families that are willing to care for children and juveniles. The costs paid for foster parents are very low (about 70 Euro per week for a young person).

Moreover, other alternatives to custody are not regulated by the law.

The Netherlands

In the Netherlands, the “Multidimensional Treatment Foster Care (MTFC)”-programme has been introduced into the juvenile justice system and the child protection system. Within the juvenile justice system, the programme can be applied as part of the so-called non-custodial treatment order (*gedragsbeïnvloedende maatregel*, or GBM). GBM was recently introduced to the juvenile justice system and consists of an individual treatment programme outside detention, composed of several programmes. Juveniles aged 12 to 18 years with severe anti-social behavioural problems and a high recidivism risk can be placed under the alternative care programme. The youth court determines the specific duration of the programme, ranging from six to 12 months with the possibility of a one year extension (Art. 77w CC). The child protection service chooses which programme is adequate in the individual case and can choose the application of MTFC. The Salvation Army is in charge of the enforcement of MTFC. Besides a structured daily family life, juveniles are subject to cognitive behavioural therapy. Furthermore, the families of the juveniles receive training in (re-)education. The MTFC programme aims to foster positive

behaviour, social abilities, the capacity to solve problems as well as promoting building social relationships.

Research has shown that the MTFC programme was applied only 11 times in 2011, as part of the non-custodial treatment order. The programme tends to be rather bureaucratic and expensive, as practical implementation has demonstrated.

Furthermore, foster care programmes may be used when diverting young offenders to the child care system, e.g. as an alternative for closed youth care. In this context, MTFC is very rarely applied in practice, but other foster care programmes play a more important role within the child protection and youth care system.

Poland

In Poland foster care plays an important role in the child welfare system. In case a juvenile has committed a 'punishable act' or shown 'signs of demoralization' the law provides the possibility to place the juvenile in a foster family. No data are available on how often this possibility is used in practice, but on the basis of the data for foster care in general, it is estimated that foster care is used for juvenile offenders at the most exceptionally.

Portugal

The Educational Guardianship Law (LTE) does not provide foster care for young offenders. The use of foster care is only possible under the Law on the Promotion and Protection of Children and Juveniles in Danger (LPCJP) as a measure of protection for children and juveniles "in danger". Placements in foster care are only possible if repeated offending can be regarded as a sign that the juveniles wellbeing is in danger. The transitory, temporary nature of this measure (in that it is envisaged that the child shall return to his/her own family) is explicitly emphasized. Juvenile justice, protection and educational measures may be combined in order to protect young persons in danger and provide educational interventions. Therefore, foster care may be applied to young offenders within the juvenile justice system but as a result of an intervention of the protection system. There are no statistical data about the use of these interventions in practice so far.

Foster care can be provided by individuals or families without a relationship to the children or young persons. Foster carers, who are selected by a social agency, have to carry out their work as a primary or secondary profession, and are granted the right to receive benefits from social services. They have to be between 25 and 65 years old and must have completed compulsory school education. Furthermore, foster carers have to undergo initial and advanced training courses that the social services are obliged to offer. Prior to placements, families are prepared for foster care under close supervision by the competent social agency.

In general, foster care plays a marginal role in Portugal, and social policies do not promote the use of foster care. Foster care as an alternative to liberty-depriving measures for juveniles is not granted much attention or thought. There has been only little research on foster care and there is a lack of official statistics that could give insight into its use in practice.

Another challenge for the extension of fostering programmes can be seen in the impact of the austerity measures in the country, leading to cuts in public spending and higher rates of poverty in society. Families have been affected by these developments, which might also have led to decreased devotion to foster care.

Romania

In Romania, foster care is provided in the field of child protection. It is not provided by criminal law as an alternative measure to detention.

Under the framework of the child welfare system, foster care can be an option for juveniles who have committed an offence but are not criminally liable. This is the case for children below the age of 14, who are never criminally liable. In addition, foster care can be ordered for young offenders who are 14 and 15 years old, but who did not act with discernment when they committed the offence.

Foster care can be provided by a family or an individual person or by a maternal assistant who is a professional foster carer. These professional foster carers have to participate in a specific training course on child protection and are subsequently certified.

In practice, foster care does not play an important role, but with the decline of children living in residential institutions, the number of children living in family-type care has increased.

In addition to family based protection measures, which are prioritized, juveniles who are not criminally liable may be placed in residential care.

Another possibility besides foster care is placement in a family-type house, which provides so-called social apartments to accommodate juveniles (who are not considered criminally liable) in smaller units.

Slovakia

Foster care is a measure of the child welfare system and can be an option if the parents do not or are not able to care for the child and if the child's well-being is in danger. In contrast

to other countries, foster care is preferred over institutional care.

In the context of alternative care options, the country report refers to the option of “protective custody” for juvenile offenders. Protective custody is a protective measure that may be imposed only on a juvenile or a minor offender who has been convicted or who has declared his guilt. The objective of protective custody is to exert a positive influence on the mental, moral and social development of a juvenile person, to protect him/her from negative influences and to protect society from criminal activity and to rectify the juvenile person’s negative tendencies and habits.

Protective custody may be imposed separately if the court refrained from sentencing the juvenile offender, or in addition to a sentence. Protective custody can only be imposed if the juvenile’s upbringing has been inadequately tended to and a proper, adequate upbringing cannot be provided in the family in which he/she lives.

Protective custody is executed in special custody facilities (“institutional protective custody”) or in professional foster families (“family protective custody”) or, if required by the juvenile’s health, in a medical custody facility.

Protective custody is executed as long as is required in order to attain its objective, provided that the juvenile offender has not reached the age of 18. If required in the interest of the juvenile offender, the court may extend protective custody until a juvenile turns 19.

Other forms of foster care cannot be imposed as reactions to juvenile offending or as alternatives to custody or pre-trial/police detention. According to the Slovak criminal law, custody may be replaced by the guarantee of an interest association or of a trustworthy person to supervise and to support the juvenile. This trustworthy person could theoretically be a foster carer, but in practice foster care does not play a role in this respect.

Slovenia

In Slovenia, foster care can theoretically be an option as a direct reaction to juvenile offending. According to the law, during the preliminary phase of proceedings against juveniles, the juvenile judge may order that a juvenile be sent to a diagnostic centre, be placed under the supervision of a social welfare agency, or be placed with another family, if it is deemed necessary to remove the juvenile from the environment in which he/she lives, or to provide him/her with assistance, protection, or accommodation. The measure ordered by the juvenile judge may last for the entire duration of the proceedings, or the judge may end it at any time. There are no data available about how often judges make use of their powers to place a juvenile under the supervision of a foster family. Practitioners say that this alternative is not used in practice.

Placing juvenile offenders in foster care is not possible at other stages of the process, especially not as an alternative to other forms of detention. It is questionable whether

there is a need for such an option because youth detention as a reaction to criminal offending is applied in less than 1% of all cases.

Spain

In Spain, foster care is a measure of last resort in the welfare system, for families who are not able to ensure the well-being of their child. In the context of juvenile justice, foster care can come into play if the juvenile judge makes use of his/her powers to sentence an offender to the obligation to live with another person, family or group. Theoretically, the “other person” or “other family” could be a foster carer or a foster family. The judge has to indicate the duration of this placement. In practice, this measure does not play any significant role.

Sweden

In Sweden, foster care is only used in the welfare system. If the parents of someone under the age of 18 cannot, for some reason, provide the young person with the support he or she needs, or if the young person her or himself lives a destructive life involving, for instance, substance abuse or criminality, it is possible for such a young person to be cared for according to the Care of Young Persons (Special Provisions) Act (LVU). It is necessary that such social problems involve a high risk of the young person’s health or development being harmed, and that the care that is necessary cannot be provided on a voluntary basis. Care, under LVU, may come into play when voluntary solutions are deemed insufficient, and results in a restriction of the parents’ right to make decisions regarding the child.

Foster care cannot be applied as a measure or sanction during criminal proceedings against juveniles. However, institutional care plays a major role as an alternative to imprisonment. Juveniles who commit serious criminal offences between the ages of 15 and 17 can be sentenced to secure youth care rather than imprisonment. Such sentences, which range from fourteen days to four years, are served in special units of special residential homes for young people run by the National Board for Institutional Care. Every year, around a hundred young people are sentenced to secure youth care, most of them boys. The majority have committed serious violent crimes: robbery, aggravated assault, rape, manslaughter or murder. During their time, these young people receive treatment with a focus on their criminal behaviour, but also on substance abuse and relationship and educational issues.

4.2.3 The arrival of foster care in European juvenile justice?

The analysis has demonstrated that the vast majority of European juvenile justice systems do not provide or do not use foster care as a direct reaction to youth offending or a measure in the juvenile justice system. In the beginnings of juvenile justice, there was a strong belief that it would be in the best interest of a child at risk of offending to be taken out of his/her family and place him/her in (closed) youth care facilities. Nowadays, alternative care and foster care in particular are part of the youth welfare laws and are used as a measure of last resort in cases in which parents are unable to secure the child's well-being and ambulant measures are deemed insufficient. This way of thinking may be a consequence of negative experiences with out-of-family-care (such as child abuse),¹⁵⁸ but also with there being insufficient legal protection for juveniles in foster care. It is believed that it would be difficult for foster carers to accept difficult juveniles in their home and to deal with them adequately, especially in cases of forced and involuntary foster care.¹⁵⁹ Another reason for the rejection of foster care may also be grounded on financial considerations, because alternative care is in general quite cost intensive.

However, there are new developments in Europe promoting the use of foster care for juvenile offenders.

Specific is (so far) the concept of remand fostering as it is used in England, where foster care can be used as an alternative to remand custody within a prison or a closed security accommodation. The idea behind this is that adults who support and supervise the juvenile and reinforce him or her positively can have a positive and lasting influence on the juvenile's behaviour.¹⁶⁰ Furthermore, remand fostering is hoped to be better than other forms of closed care, because young people on remand in prison are seen as a particularly problematic group, due to a lack of safe environments in closed institutions and limited resources (partly grounded on the short-term nature of the stay) to influence the future life.¹⁶¹ Whereas bail support schemes that enable juvenile offenders to remain in the community whilst they are remanded should be preferred whenever possible, there remains a special group of juvenile offenders eligible for remand foster care: According to *Lipscombe* "there remains a group of young people who cannot return home, for who remand foster care may be appropriate. These children include those who literally have no home; those whose offences or alleged offences are deemed too serious to

158 See for example a recent study on the prevalence of Child Sexual Abuse in out-of-home care: *Euser, S. et al. (2013): The Prevalence of Child Sexual Abuse in Out-of-Home Care: A Comparison Between Abuse in Residential and in Foster Care, Child Maltreatment 18, pp. 221-231, which reemphasized the fact that prevalence rates for child sexual abuse are higher in out-of-home-care with the highest prevalence in residential care.*

159 *Lipscombe, J. (2003): Another Side of Life: Foster Care for Young People on Remand. Youth Justice 3, pp. 36-50.*

160 *Lipscombe, J.; Russel, B. (2008): Remand Fostering. In Goldson, B.: Dictionary of Youth Justice. Devon: Willan Publishing, p. 288.*

161 *Lipscombe, J. (2003): l.c, pp. 37-38.*

allow a return home; those who live near to, or with, the victim or alleged victim; and those whose parents refuse to accept them back into the home.”¹⁶² There are not enough research results to decide whether these foster care placements are more effective than custodial placements. A small evaluation¹⁶³ using qualitative research methods revealed that offending rates during remand fostering were low, the juveniles appeared at their court hearings and the juveniles themselves felt to have developed positively during their foster care placement. The juveniles preferred foster care over placement in children’s homes or secure accommodation. The evaluation revealed that 50% of the placements in the study period broke down before the young person was sentenced,¹⁶⁴ which is not very surprising considering the specific group of juveniles eligible for foster care who combine a lot of risk factors for the breakup of relationships. *Lipscombe* comes to the conclusion that foster care can serve as a good alternative to custodial care for specific juveniles, but that it “is imperative to ensure that sufficient safeguards are built-in to prevent children from being placed with foster carers inappropriately, either whilst they are on remand or when sentenced. It is conceivable that agencies may become too willing to place children involved in the criminal justice system with foster carers, particularly if the birth parents do not conform to the ideal image of parents. Parents need to be encouraged and supported to take responsibility for their children’s behaviour wherever possible, and foster care should only be used when this is not feasible.”¹⁶⁵ Other concerns of remand fostering are net-widening effects or “up-tarring” effects produced by this alternative or the breakup of the remand fostering placement.¹⁶⁶ *Lipscombe* suggests that remand fostering can in particular provide individualised care for girls on remand who would otherwise be marginalised within residential units or prison service custody.¹⁶⁷

Another level in the use of foster care in juvenile justice are the forms of “intensive fostering” or “treatment foster care” as an alternative sanction or measure as a direct response to criminal behavior, as is possible in England and the Netherlands. Both systems follow the concept of “treatment foster care”, originally developed in the United States by the Oregon Social Learning Centre.¹⁶⁸ This concept is based on a structured six to nine month treatment foster care model that includes therapeutic services for youth, the biological family and treatment family, and minimal exposure to deviant peers by having a single child in a foster home placement. The original US programme has been

162 *Lipscombe, J.* (2003): l.c., p. 38.

163 See *Lipscombe, J.* (2003): l.c., p. 40.

164 *Lipscombe, J.* (2003): l.c., p. 44.

165 *Lipscombe, J.* (2003): l.c., p. 46.

166 *Lipscombe, J.* (2003): l.c., p. 46.

167 *Lipscombe, J.* (2003): l.c., p. 45 with further references.

168 *Fisher, P.A.; Chamberlain, P.* (2000): *Multidimensional Treatment Foster Care. Journal of Emotional and Behavioral Disorders* 8, pp. 155-164.

evaluated positively several times,¹⁶⁹ and has been termed “research based practice” by the Washington State Institute for Public Policy’s Inventory of Evidence-Based, Research-Based, and Promising Practices¹⁷⁰ and has been identified as “promising” to prevent violence and drug use by the US Department of Justice in its “Blueprints for Violence Prevention”.¹⁷¹

European research sees both advantages and disadvantages/difficulties in juvenile justice foster care schemes. *Lipscombe*¹⁷² highlights that foster families are more flexible than residential units in adapting to difficult and disruptive behaviour. He furthermore comments that placing young people individually in foster placements can avoid problems such as bullying and intimidation, and young people are probably not as easily encouraged by others to participate in delinquent behaviour as in closed care institutions. An evaluation of the English Intensive Fostering Scheme came to the conclusion that juvenile offenders who were treated with intensive fostering “were more likely to be in education or in training one year after entering their placements (70%), than members of the comparison group who were living in the community at that point (30%). The IF teams were also successful in engaging a number of young people in new leisure activities. At follow-up, one year after the start of the IF placements/release from custody, the IF group were more likely to be living with parents and less likely to be in custody than the comparison group.”¹⁷³ But it was difficult to maintain the positive changes in their behaviour after the intensive fostering ended. Birth parents were oftentimes reluctant to engage with the birth family therapist.

On the other hand there are concerns that the introduction or expansion of foster care scheme in juvenile justice could lead to net-widening, and recruiting and retaining foster carers for this specific target group of difficult juveniles is seen as problematic as well.¹⁷⁴ *Hollingsworth*¹⁷⁵ sees certain antagonisms between intensive foster care schemes and children’s rights, and from a German point of view it is questionable whether mandatory foster care as a result of offending can be implemented in accordance with the constitutional

169 A US study of Treatment Foster Care (TFC) for young people involved in serious and persistent offending aged 12–18, found that those allocated to TFC had fewer arrests and had spent less time in custody over the subsequent two years than the control group, *Chamberlain, P.* (1998): Treatment Foster Care. OJJDP Juvenile Justice Bulletin. Washington DC, US Department of Justice.

170 A programme or practice is “research based” when there is research that demonstrates effectiveness, but that does not yet meet the standard of evidence-based practices, see Washington State Institute for Public Policy’s Inventory of Evidence-Based, Research-Based, and Promising Practices from September 2014, www.wsipp.wa.gov/ReportFile/1564/Wsipp_Updated-Inventory-of-Evidence-Based-Research-Based-and-Promising-Practices-for-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems_Inventory.pdf.

171 *Mihalic, S.; Fagan, A.; Irwin, K.; Ballard, D.; Elliott, D.* (2004): Blueprints for violence prevention. US Department of Justice: Office of Juvenile Justice and Delinquency Prevention, p. 56.

172 *Lipscombe, J.* (2003): l.c., p. 45 with further references.

173 Youth Justice Board (2010): A Report on the Intensive Fostering Pilot Programme. <http://www.york.ac.uk/inst/spru/pubs/pdf/IFpilot.pdf>.

174 *Lipscombe, J.* (2003): l.c., p. 45 ff. with further references.

175 *Hollingsworth* (2008): l.c.

rights of the parents and the family. From the perspective of the rights of the children and their families, foster care should primarily be used if children and their families agree, as it is in general the case in child welfare and family laws.

The discussion about the introduction of treatment foster care into the juvenile justice system blends the concepts of welfare/family law and criminal law. As long as foster care is used as a measure of last resort in cases in which the stay of the juvenile in his family of origin would highly endanger his or her wellbeing, foster care can in individual cases indeed be an alternative to other forms of out-of-family care. However, if foster care is used as a direct consequence to the offending behaviour of a juvenile, it more and more comes to resemble a coercive sanction, and then due process guarantees have to be observed, inter alia the principle of proportionality, because foster care is a far-reaching measure that is highly invasive into the life of a juvenile.

If we look carefully at the experiences with Multidimensional Treatment Foster Care (MTFC) in the US, we see that the concept there is mainly used as a prevention program for juveniles with many problems - not as a direct consequence to juvenile offending, but rather as a consequence to the child-family relationship that endangers the child's wellbeing.¹⁷⁶ This situation is comparable with the situation in most European child welfare or family laws, and accordingly the US-American positive evaluation results should primarily fuel discussion on the introduction of a comparable concept into the child welfare or family law systems – based on the voluntary participation of juveniles and their families.¹⁷⁷ But such a use of foster care is different to the use of (mandatory) foster care in juvenile justice as a direct consequence to the offending behaviour. The latter might be an alternative in extreme individual cases, but surely is not appropriate in many cases, because according to criminological research the large majority of juvenile offenders do not offend chronically or pathologically, and instead their offending behaviour is of an episodic nature. Therefore, we cannot infer from offending behaviour of the children that their parents have failed at their education¹⁷⁸ and mandatory treatment foster care would be disproportionate due to the severe intervention into the life of the juvenile. If foster care is to be used within juvenile justice there must be clear regulations that only allow for the use of foster care as a last resort in cases in which the court would apply deprivation of liberty anyway, and considering the rights of the children and their families, it would be preferable to use foster care treatment only in cases in which the juvenile and his or her family agree to it.

What also does not become clear from the evaluation results is the definition of foster

176 *Rhoades et al.* (2013): MTFC for High-Risk Adolescent Girls: A Comparison of Outcomes in England. *Journal of Child & Adolescent Substance Abuse*, 22, pp. 435–449.

177 There are possibilities to subject juveniles to MTFC even if they do not agree. It would be very interesting to see whether there are differences in the programme outcomes depending on whether it was mandatory or voluntary. The results of mandatory treatment foster care from the Netherlands have not been very positive.

178 See for example *Walter, M., Wilms, A.* (2004): Kriminalrechtlicher Erziehungsgedanke und elterliches Erziehungsrecht- Zur Zulässigkeit und den Voraussetzungen jugendrechtlicher Weisungen gemäß § 10 I JGG. In: *Neue Zeitschrift für Strafrecht* 24, p. 604.

care. If the concept allows for more than one child in a foster care family (Rhoades et al. 2013, p. 438) it is questionable how such a concept of foster care can be distinguished from other forms of institutional care. Is real family life and family care possible if there is more than one child in the family that receives specific “treatment”, or will such a concept force the family to establish certain rules and strategies that bring the setting close to a concept that is comparable to institutional care?

The international juvenile justice standards support such a view on foster care in juvenile justice:

According to Art. 40(4) of the CRC, a number of alternatives to ‘institutional care’ (including foster care) should be available “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”. This regulation shows that the principle of proportionality has to be observed whenever foster care is an eligible concept. Art. 18 of the Beijing Rules¹⁷⁹ makes clear that orders concerning foster care may only serve to avoid institutionalization, and the Riyadh Guidelines¹⁸⁰ highlight that foster care should only be considered when “a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role”. Foster care should then aim to establishing a sense of permanency for children, thus avoiding problems associated with “foster drift”. This ideal speaks against programmes like treatment foster care, that is designed for a shorter period of 6-9 months. The European Rules for Juvenile Offenders subject to Sanctions or Measures¹⁸¹ refer to foster care in relation to aftercare. According to rule 102.1, “the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to reestablish themselves in the community, for example by: a assisting in returning to their family or finding a foster family and helping them develop other social relationships”. This concept refers to the concepts of foster care in family or welfare law- with foster care aiming at establishing stable relationships. The Council of Europe’s Recommendation (2003)20¹⁸² refers to remand fostering in Rule 17 that “where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation.” Here it becomes clear again that remand foster care should only used as an alternative in cases in which the juvenile would otherwise be placed in closed care (in a prison, detention centre or closed youth care institution). To establish treatment foster care programs as a form of remand fostering is

179 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985.

180 The United Nations Guidelines for the Prevention of Juvenile Delinquency (1990) (Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990.

181 Council of Europe’s Recommendation Rec(2008)11 concerning “European rules for juvenile offenders subject to sanctions or measures”, adopted by the Committee of Ministers on 5 November 2008(CM/Rec(2008)11 – ERJOSSM).

182 Council of Europe’s Recommendation Rec(2003)20 concerning “New ways of dealing with juvenile delinquency and the role of juvenile justice”, adopted by the Committee of Ministers on 24 September 2003(CM/Rec(2003)20).

not possible in most juvenile justice systems, because pre-trial detention shall only be imposed for the shortest period of time and is in many countries restricted to six months.

4.3 Conclusion

This stock-taking in 28 juvenile justice systems has revealed that foster care is an option in some juvenile justice systems, but is not used in practice in most systems. Remand fostering has been introduced in the juvenile justice system in England, and a new concept of treatment foster care has been introduced in the juvenile justice systems of England and the Netherlands and has brought both positive results and concerns to light.

It is a shared hypothesis that foster care can be a good alternative to custody because life in a foster family is more similar to the normal life than a placement in a closed institution. There are some positive evaluation results for both remand fostering and intensive foster care schemes. From the viewpoint of international juvenile justice standards, foster care can only be seen as good practice if the implementation of foster care schemes ensures that foster care is only used as a last resort and substitutes a form of institutional (closed) care. Due process rights and effective legal protection must be safeguarded and the juveniles must be protected as best as possible from any form of misuse. Answering the question as to whether foster care is generally to be favoured over alternative group care would require much more research based on process and outcome evaluations of existing programmes.

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