Some basic facts about juvenile justice in Slovenia

In the last 20 years no dramatic rising trend in juvenile delinquency was observed in Slovenia. Approximately 4% of juveniles aged 14 to 18 (which are under court jurisdiction) are dealt by police each year and less than 1% are imposed an educational measures or sentence by the court. The amount of juvenile delinquency remained within socially acceptable limits.

Slovenia doesn't have special law about dealing with juvenile offenders; a part of Criminal Code and Criminal Procedural Code contained provisions about juveniles. In 1995 new Criminal Code and Criminal Procedure Code were enacted and the court system was reformed. In the field of juvenile justice the changes followed the movement toward restorative justice and alternative sanctions; some new educational measures (in an open environment) and diversion were introduced. The main characteristic of Slovenian juvenile justice system remained protection.

The age limit for "criminal" liability is 14 years of age (and there is no debate about necessity of changes it). In criminal law young offenders are divided into several groups (age categories):
- **Younger minors** (aged 14 to 16), against whom only educational measures may be applied,
- **Older minors** (aged 16 to 18); as a rule, educational measures are imposed on them and only in exceptional cases a special sentence may be imposed (a fine or juvenile prison).
- **Young adults** (they committed a criminal offence as adults and have not yet reached the age of 21 by the end of a trial); they are not dealt with by juvenile judge but some educational measures may be applied.

The sentence of imprisonment is imposed only in exceptional cases as the last resort (about 1% or even less of all imposed sanctions) and about 6% of sentenced juveniles are sent to juvenile residential institutions. Just one institution is specialized for juveniles who have been sending in this institution by court decision because of commitment the crime. In all others they live there with other young people send in residential institution by decision of social agencies; they are treated in the same way. Nowadays, residential institutions base their concepts on education and correction.

In the last 20 years imprisonment and committal to the educational institutions are really used as a last resort opposite to the many European countries, which changed the law in more punitive way. And no strong public demands for introducing harsher penalties for juvenile delinquents have been made.

Trends in changing of juvenile justice in Europe

Since 90s the juvenile justice systems in the majority European (and nonEuropen) states has been changed. In almost all changes we can see the new attitude to juvenile criminality
and to childhood in general. Because of that practically all changes are connected (directly or indirectly) with the issue of penal age - age of criminal responsibility.

The meaning of age of criminal responsibility

1. In one sense »age of criminal responsibility« is the age below which a child is deemed to lack the capacity to commit a crime; the child cannot be brought into the criminal justice system (juvenile justice system), he is handled by nonjudicial mechanisms. The child under this age cannot be subject to criminal prosecution, irrespective of his actual capacity to form any criminal intent. This age supposed based on empirical data on the understanding of children of right and wrong but more than by psychological theories it is influenced by legal tradition. This age is different in European countries; from 8 in Scotland to 15 in Scandinavian countries.

2. By contrast another meaning of age of criminal responsibility is the point at which the age of offender has no relevance for his treatment or disposal as part of the criminal justice system, most typically the age at which an accused becomes subject to the adult system of prosecution and punishment. In all European countries this is the age of 18 years.

Now I would like to briefly describe some changes in dealing with juveniles who committed crimes in the last 15 years to show their connection with an age issue.

1. Changes of age limits

The worldwide trend is to raise the age, generally to at least 14. In literature we can read an interesting statement that those countries that have an age of less than 14 tend to be Commonwealth countries or those that have an early association with the British legal system. Reasons for retaining such a low age are thus, more connected with historical tradition than with consideration of children's best interests. And research indicates that »there are no negative consequences to be seen in terms of crime rates« from raising the age of criminal responsibility.

Examples of raising the age of criminal responsibility (under this age the child cannot be brought into the juvenile justice system):

- Until last year Switzerland had the lowest age of criminal responsibility in Europe – 7 years. Juvenile justice Bill of 2003 raised the minimum age of criminal responsibility from 7 to 10 years.

- In Scots law there is a rule that a child under the age of 8 is deemed incapable of being guilty of an offence and the Lord Advocate has a discretion to allow for children between the age of 8 and 16 to be prosecuted in the criminal court. From 2001 the debate about raising the minimum age of criminal responsibility to 12 years is going on.

- In England, the Liberal Democrats made it party policy to raise the age of criminal responsibility from 10 to 12 just a month ago (in september 2004). The party also said that all under 14 who committed crime should be dealt with through the educational and social service systems, not the criminal justice system. (news.telegraph, www.telegraph.co.uk)
Some other countries with the age of criminal responsibility about 14 years lowered the age or thinking about that:

- **France** recently lowered the criminal age for criminal liability from 15 to 13.

- In **Greece** and the **Netherlands**, it has been lower to 12.

- **England and Wales**: Until 1998 children aged between 10 and 14 could be guilty of a crime only where they knew that what they were doing was legally or morally seriously wrong (doli incapax principle). This rebuttable presumption was abolished by Crime and Disorder Act 1998. Since 1998 children are accountable for their acts from the age of 10, so we can say that England lower the age from 14 to 10. The English approach is more repressive than that of most other European countries.

- **Czech** new law, which was adopted in 2003, established the age of criminal responsibility at age 15. But the Czech Minister of Justice is now considering pushing to lower the age of legal responsibility from 15 to 12 for particularly serious crimes like murder. During this summer children under the age of 15 have been implicated in the murders of an elderly woman and the rape and murder of a young girl and the public is worried about the danger juveniles (Radio Prague, 13.9.2004).

Some countries are concerned about the criminality of children under the age of criminal responsibility and dealing with this problem in different way – not by lowering the minimum age of criminal responsibility but by introducing new sanction or special (cumpolsory) program:

- **France**: In 2002 a new decree made it possible to sanction children aged 10 – 13, who are not yet criminally responsible. It doesn't mean the lowering the minimum age of criminal responsibility but in fact the court may impose the so called educational sanctions on the children under the age of criminal responsibility.

- **Netherlands**: New juvenile justice legislation was enacted in 1995. There is a new focus on children below the age of 12, on the grounds that there is supposedly an increase in delinquency in that age group. In a special project, called STOP, police officers can arrest the children, then invite parents to a meeting and propose to them some intervention by social workers on their behalf. At present the intervention requires the parent's voluntary acceptance, but we don't know what the future will bring. (Junger Tas 2002; p. 34)

What is interesting about the current popular movement to lower the age of responsibility for crimes committed by youth is that it belies the foundations upon which the reform movement to build the juvenile justice system was built in the first place, thus turning the clock back toward a notion of children as no different from adults.
2. Harsher punishment

In last 15 years we can face a strong trend to introduce harsher punishment for juvenile offenders of serious crimes, and, correspondingly, there is an apparent hardening of the judicial response to petty offenders – development of a retributive system. At first glance this is not connected with the issue of age. But in fact there is very strong connection; introducing more severe punishment for juveniles changes the juvenile justice system that it would be more similar to adult justice system. And beside that by awarding due process rights to juveniles, judicial procedures have again become considerably more formal than they used to be. So we can say that the age limit between the childhood and adulthood are loosing his importance.

3. Transfer to adult court

Differences between the criminal justice system and the juvenile justice system have been reduced. Since both systems are increasingly alike, the number of transfers to adult court has increased in many countries. One of the key doctrines of reforming the criminal justice system when the juvenile court was established in 1899 was precisely to separate children from adults. Today, such decision around the use of »waiver« (the decision to prosecute juveniles in adult court) accomplish the opposite; they blur and reverse jurisdictional distinctions between juveniles and adults.

The most extreme example is the USA. Between 1992 and 1997 all states–but three-, have changed juvenile law, enlarging the possibility to apply adult criminal law. Law for some specific offenses required automatic transfer and in 20 states such transfer was possible for any offense. In nineteen of 47 states the minimum age for transfer is age 14, in six it is 13, in two it is 12 and in Kansas and Vermont it is even 10 years. (Junger Tas 2002, p.33) In extreme cases, this opens up the possibility of sentencing juveniles to the death penalty; 196 persons have been sentenced to death in the US since 1973 for crimes committed when they were children aged 15, 16, or 17 years old. (Schaffner 2002, p. 208)

In European countries the possibilities for removing juveniles from the juvenile criminal law system and sentencing them according to adult criminal law have increased in 90s.

- In **England and Wales** transfer of children aged over 10 years to the adult court is possible.

- **Luxembourg**: If the prosecution considers that the measures available are unsuitable because the offence is too serious, it may ask the youth court to transfer a case to the ordinary criminal judicial system. The condition is that the young person is older than 16 years. (the juvenile justice system is governed by the law of 1992). (VOM) Ne vem, kaj je bilo pred tem letom

- **Belgium**: transfer of 16 – 18 year olds to the adult court is possible.

- **The Netherlands**: Under the old law (before the year 1995) three conditions had to be met for transfer juveniles aged 16 – 18 to adult court: tha offence committed had to be serious, there had to be aggravating circumstances, such as the commission of the offence with adults, and the offender had to
have an adult or mature personality. Under the new law one of these conditions is sufficient for transfer to adult court.

- **In Scotland** children over the age of 8 may be prosecuted and tried as adult in criminal procedure for adults (in exceptional cases if that would be in the public interest – Scotish Law Commission 2001, p.21). In practice the vast majority of children under 16 who commit crimes are not prosecuted – only about 0.5% are prosecuted in the criminal courts (Scotish Law Commission 2001, p. 23)

### The inconsistent concept of childhood

These trends in juvenile justice systems since 90s are a consequence of changed concept of juvenile who commits crime: the offender is viewed as a rational being with a free will – consequently he is considered as fully and individually responsible for his actions (Junger Tas 2004). This is in a sharp contrast with the leading idea of introducing the special juvenile justice system in 1899 that children are different from adults. By general public opinion the children in today's information era get a lot of information and so they develop quicker than 100 years ago when the need for special juvenile court was recognized. Maybe this is true – I don’t have enough knowledge of psychology and sociology but I know that moral development is not depended just on the possibility to have enough information. Many studies still support theories of Laurence Kohlberg, a theorist on moral development; those children will have reached a level of conventional reasoning by 12 – 14 years old.

We can say that on one hand, children are seen as responsible decision-makers and their behavior is seen to be threatening and destructive, requiring a severe social reaction and punitive response. Consequently the distinction between childhood and adulthood is blurred. But on the other hand, children are seen as vulnerable individuals who are not capable of making the decision what are in their best interest in many other regulated behaviors, such as their sex activity, privacy issues, legal consent for health care and finally they cannot vote. In these cases the legal distinction between childhood and adulthood is still very firm or we can even say that the emphasized protective role of the state resulting in a prolongation of the childhood. A good example is worldwide trend of raising the age of sexual consent (in Slovenia it has been raised from 14 to 15) deriving from the concept that the children are not capable of making the adult decision.

While children are held to be capable of criminal responsibility they are excluded from participation in most areas of decision-making. These place the state in the illogical position of reaching opposite conclusions about construction of adulthood for the same children (Schaffner 2002). We could say that the state is inconsistent in its legal concept of childhood.

Another example of the inconsistency in the legal construction of childhood:

Antispanking movement was started in Sweden in the late 70’s when Sweden banned all forms of physical violence and any other form of degrading punishment or treatment of children in the family. Today this movement has great support of UNICEF, UNESCO, the United Nations High Commissioner for Human Rights of the Council of Europe, the European Network of Ombudsman for Children (ENOC). Twelve European countries have
already banned all form of degrading treatment of children in the family¹. Just few months ago the Parliamentary Assembly of Council of Europe enacted the special recommendation (recommendation 1666(2004)) with the title “Europe-wide ban on corporal punishment of children”. In explanatory memorandum it is said that spanking the child may cause psychological damage to children. The majority of parents in Europe still use spanking in upbringing their children and the state has to protect the children from their parents. The state can or even must intervene into the family in such cases as a “kind and just parent”. On one hand the state prohibits the parents the use of all forms of degrading treatment when the child doesn’t respect the family rules. The argument is that the state has to protect the best interest of the child. On the other hand the state introducing the harsher punishment if the child disrespects the state’s rules of behavior – commits a serious crime. From the point of the state this has to be done in the public interest, to ensure safer lives. And what about the best interest of the child? Is this principle important in the family but it can be forgotten in the court?

Conclusion

Committee of Ministers of Council of Europe adopted a recommendation about new ways of dealing with juvenile delinquency and the role of juvenile justice in September last year – Recommendation Rec (2003) 20. In its commentary it is said that younger children “should be seen as children first and only as offender second”. I agree with the statement in a commentary that as children grow older their capacity and responsibility increases. Considering that I think that all juveniles under the age of penal majority should be seen as children first; all sanctions and interventions should be focused on their rehabilitation and reintegration in the society.