INTERNATIONAL JUVENILE JUSTICE OBSERVATORY

ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Austria

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A. Juvenile Justice

A.1. Austria's juvenile justice system

A.1.1. Legal framework and competent courts and authorities

The most important sources of law are the Criminal Code (Strafgesetzbuch, StGB), the Code of Criminal Procedure (Strafprozessordnung, StPO) and the Penal Law (Strafvollzugsgesetz, StVG). The laws therein are generally also applied to juveniles, although the Juvenile Court Act (Jugendgerichtsgesetz, JGG) provides additional provisions designated particularly for juveniles and young adults with regard to the sanctioning system, criminal proceedings, parental involvement, and the enforcement of sentences against juveniles. Additionally, it puts forth guidelines for the Guardianship Court and the Jugendgerichtshilfe.

In general, the same courts are responsible for conducting proceedings against adults as they are for juveniles. However judges and prosecutors who deal with criminal proceedings against juveniles are required to have special skills in pedagogy, psychology and social work (see § 30 JGG).

In a criminal proceeding at a trial by jury, at least four (of eight) members of the jury need to work or have formerly worked as a teacher, child/juvenile care worker or in child welfare. At least two members of the jury need to have the same sex as the juvenile. At a criminal court of lay assessor, one of the lay assessors needs these preconditions (see § 28 JGG).

Additionally, the Jugendgerichtshilfe (see §§ 47-50 JGG) supports the court and prosecutor in the fulfilment of their respective responsibilities. While the main purpose of the Jugendgerichtshilfe is to provide evaluations and psychological opinions, usually in the form of oral reports during the trial or a written opinion at an earlier stage of the

criminal proceeding, its tasks can also include the following:[1]

- Asking the Guardianship Court or Child Welfare Authority to make suggestions in case of any kind of endangerment or damage to the education or health of a juvenile. In cases of emergency, it can also take the necessary measures independently.

- In order to provide the judge or prosecutor with a detailed picture of the young adult at trial and his/her social environment, the Jugendgerichtshilfe examines all relevant facts and circumstances for a decision about the release of a juvenile from prison, including an evaluation of the juvenile's personal background and his/her living conditions. To do so, the Jugendgerichtshilfe's workers talk to the juvenile, his/her parents and all authorities that were in contact with or are involved in the juvenile's life in some way, to reach a sound overview and evaluation. Based on this analysis the Jugendgerichtshilfe suggests sensible pedagogic measures to support the juvenile's development, for instance probation assistance or therapy.

- The Jugendgerichtshilfe can take over the defence of the juvenile in a trial.

- In measures of restorative justice, the Jugendgerichtshilfe organizes and coordinates victim-offender mediation, community service and special trainings.

- The Jugendgerichtshilfe also offers support for young adults in remand prisons. The main aim is to minimise negative effects caused by imprisonment for the juveniles and young adults and to enhance their social skills and conflict resolution abilities.

- In Vienna, the only Austrian state where this procedure is carried out to the whole extent, the Jugendgerichtshilfe is informed immediately if a juvenile is subject to pre-trial detention and subsequently starts researching and networking to evaluate the juvenile's situation.[2]

The Guardianship Court is located in every district court which deals with so-called "non-contentious proceedings" (guardianship, divorce, visiting rules in divorced families, adoption…). The most important task in the field of juvenile justice is the question if any measures regarding the guardianship of the juvenile have to be taken.

The Guardianship Court has to be informed by the prosecutor if criminal proceedings are initiated or finished. If the proceedings at court end, the court has to inform the Guardianship Court about that fact.

The Child Welfare Authority has to be informed, too. The Guardianship Court and the Child Welfare Authority take measures to enhance the best interests of the child.

1 See http://strafvollzug.justiz.gv.at/einrichtungen/jugendgericht/

2 Bundesministerium für Justiz: Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung (2013), page 43-44.

A.1.2. The definition of criminality of juveniles

The term “juvenile” includes persons between the ages of 14 and 18. Between the age of 18 and 21 a person is a “young adult” and is also subject to specific regulations.

In general, the age of criminal responsibility is 14 (see § 4 (1) JGG). Any crime committed before that age will be noted in the files of the police, those of the Guardianship Court and the Child Welfare Authority, but the prosecutor has to refrain from prosecution. The prosecutor has no legal discretion in that point.

Furthermore, criminal acts committed by juveniles are not punishable if the offender is between 14 and 16 years old, committed only a petty offence (less than three years imprisonment or only penalty) and if his/her fault is not severe. In such cases the prosecutor has to refrain from prosecution. In case a juvenile is unable to see that the action was an offence and is seen unfit to act according to such an understanding, the prosecutor also has to refrain from prosecution. In these two cases the judging whether a person did act with severe fault or whether he/she is not mature enough to understand his/her wrongdoing contains a certain amount of legal discretion by the prosecutor (§ 4 (2) JGG).

The scope of juvenile justice only includes criminal behaviour which is clearly defined by the Criminal Code and its ancillary laws. Anti-social behaviour that is not punishable by law can only be noted by the Child Welfare Authorities. However, if criminal proceedings are initiated due to a crime committed by the respective juvenile, the Jugendgerichtshilfe will take these reports of anti-social behaviour into consideration, particularly if they report repeated or continuous transgressions. The reports are then consulted to provide an opinion on the juvenile’s social environment and for recommendations about and the necessity of measures being taken.

A.1.3. Procedural rules for juveniles in criminal proceedings

In general, the Penal Code (StPO) is used for juveniles and young adults as well as for adults. However, there are some specific rules for juveniles.

For adults, local responsibility of prosecution and the court for the criminal proceedings are in general the place where the crime was committed; in case this cannot be determined, the place where the success of the crime occurs determines which institutions are responsible; in case this cannot be determined the last place of residence in Austria defines the local responsibility; in case even that cannot be determined the prosecution which first takes notice of the crime starts the criminal proceedings (see §§ 25, 36 StPO). For juveniles the local responsibility is always the responsible court/prosecutor in the area the juvenile had his residence at the beginning of the criminal proceedings (see § 29 JGG).

In a criminal proceeding a juvenile can always have a person of trust with him/ her. This person of trust can be a parent or any other kind of guardian; a relative, a teacher, a worker from the Jugendgerichtshilfe, the Child Welfare Authority or a probation assistant (see §§ 37, 38 JGG). The probation assistant has the right to join any kind of legal action during the criminal proceedings and has the right to be heard (§ 40 JGG).

Austrian criminal law includes several offences which are subject to private charges (especially offences against another person's honour, violations of the secrecy of correspondence, spying business or trade secrets, defamation of business reputation, offences against property within the family etc.). In these cases the victim takes over the role of the prosecutor. Furthermore, the Austrian law allows subsidiary prosecution by the victim in case the prosecutor retreats from the charge. The subsidiary prosecutor takes over the prosecutor's role (see § 72 StPO). Neither can juveniles be prosecuted for an offence subject to private charges, nor can a victim initiate subsidiary prosecution against a juvenile. In such cases, these offences are turned into authorization offences and the juvenile can only be prosecuted if it seems necessary for pedagogic reasons or other justified interests of the victim (except spite) (see § 44 JGG).

Different rules also apply to juveniles concerning the necessity to have a lawyer. While adults generally need a lawyer for crimes with a threat of punishment for more than three years and in case of pre-trial detention, juveniles need to have a lawyer for any kind of crime that is treated in front of the Regional Court (Landesgericht) – so any crime which has a threat of punishment for more than 1 year imprisonment plus some specific offences (e.g. criminal dangerous threat) (see § 39 JGG, § 61 StPO)

For adults the trial can be conducted in the absence of the accused in case he/she is only accused of having committed a petty offence (less threat of punishment, less than three years imprisonment or only penalty), if the accused was heard at an early stage of the criminal proceedings and if the summons to the trail was delivered to him personally (see § 427 StPO). In the case of juveniles, it is not possible to conduct the trial in their absence (see § 32 (1) JGG). However, in case of a possible hazard, damage or negative influence for a juvenile, he/she can be expelled from certain parts of the trial (see § 41 JGG).

Arrest and pre-trial detention are to be kept to a minimum in cases involving juvenile offenders. A juvenile can only be placed in pre-trial detention if the disadvantages for the juvenile are in proportion to the crime committed as well as the expected punishment and if the normal development of his/her personality is not endangered. In case the purpose of the detention is no longer existent because of an agreement in family law, if necessary combined with other measures, the juvenile has to be released (see § 35 JGG).

In criminal proceedings against adults any trial has to be public. Exceptions are only permitted if public safety or *ordre public* could be endangered, to protect the identity of a witness or a third person in case of an anonymous testimony or if the personal life (especially the sexual life) of the victim, the accused or a third person has to be discussed

(see §§ 162, 228, 229 StPO). In criminal proceedings against juveniles the trials are in general public, too; however, the public can be excluded if it is in the juvenile's best interest (see § 42 JGG).

As mentioned above, 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 (§ 33 JGG).

As also mentioned above, the Jugendgerichtshilfe has to evaluate the relevant personal and social circumstances of the juvenile and report about them to the court. If necessary the accused is also examined by a psychologist, psychotherapist or doctor. Only if the criminal act itself does not require any further consideration of these circumstances can such investigations be neglected (§ 43 JGG).

These rights and process guarantees are in general respected.

A.2. Austria's sanctioning system regarding juvenile justice

The Juvenile Courts Act is a law primarily concerned with educating and disciplining juveniles, which is expressed in the law itself:

§ 5 (1) JGG: The use of the juvenile criminal law has the purpose to keep the juvenile away from committing further criminal acts.

These aims are to be reached primarily by the Child Welfare Authority's orders, actions taken by the Jugendgerichtshilfe, forms of diversion in the criminal proceeding, orders, probation assistance, and convictions with or without punishment reserved. Prison sentences and fines are to be used as *ultima ratio* only against juveniles.[3]

Special deterrence plays an important role and has to be taken into consideration when discussing a refrain from prosecution (§ 4 (2) (2), § 6 JGG), diversion (§ 7 JGG), conviction without punishment (§ 12 JGG) and conviction with punishment reserved (§ 13 JGG).General deterrence is only relevant at §§ 6, 12, 13 JGG.

Furthermore the Juvenile Courts Act sets out in § 53 JGG, that the penal system shall educate the juveniles on a behaviour that is in line with the law and the requirements of community life. If the duration of the prison sentence the juvenile faces allows it, the juvenile is to take part in vocational training which is in accordance with his/her abilities and interests.

Justice has several provisions on how to avoid involving juveniles in a formal procedure, although the police, prosecutors and partly the court are involved in alternative penal

3 Köck: Der Erziehungsgedanke im Jugendgerichtsgesetz, JRP 1999, 269.

measures of course. The responsible judges and prosecutors need to have special skills in pedagogy, psychology and social work. In any instance of launching prosecution against a juvenile, the Youth Welfare Office and the Guardianship Court must informed about that.

A.2.1. Impunity of juveniles

The age of criminal responsibility in Austria is 14 years (see § 4 (1) JGG).

Juveniles between 14 and 16 years are not punishable if they commit only a petty offence (threat of punishment less than three years imprisonment), if there is no serious guilt attributable to the offender and neither general nor specific deterrence require any kind of punishment (see § 4 (2) (2) JGG). This means that juveniles under the age of 16 cannot be punished for petty offences, as long as special deterrence does not require the use of any other measure of the juvenile justice system. The majority of offences which are typical for juveniles (shop lifting, property damage, assault etc.) are thereby not punishable for juveniles under 16.

Additionally, if a juvenile is not able to understand his/her action as an offence or is seen unfit to act according to such an understanding, the offence will not be punished. In these cases, the procedure will be suspended without any further consequences by the prosecutor (seen § 4 (2) (1) JGG). These reasons are only presumed in case of a serious retardation of the personal development of the juvenile are determined by the High Court.[4] Causes of such retardations can, for instance, be psychological or physical diseases, massive neglect or serious social defects. Disadvantageous family situations – the parents' divorce for example – or unsuccessfulness in school, are not seen as sufficient evidence for a possible retardation according to the High Court.[5] Furthermore, the High Court[6] does not assume that impunity is constituted by a juvenile's deficits in controlling his/her behaviour, urges or impulses.

A.2.2. Refrain from prosecution

The application of the youth penal law by a refrain from prosecution is required for juveniles who commit a crime subject to a threat of punishment of less than five years imprisonment and if the use of diversion for the reason of specific deterrence is not necessary. If the offence caused a person's death the refrain from prosecution is

4 RS OGH 1952/12/05 5Os605/52; 10Os38/70; 10Os13/71; 10Os196/72; 10Os190/72; 10Os8/73; 10Os113/74; 1994/03/02 13Os188/93; 12Os114/02; 13Os50/06m.

5 OGH 15Os184/08k.

6 OGH 12Os114/02.

excluded. The refrain of prosecution can be combined with an instruction by a judge for the juvenile.

The refrain from prosecution based on § 6 JGG is the most simple option of an informal reaction by the criminal law to an offence. It takes into consideration the necessity of education of a juvenile by the juvenile justice law.[7] This regulation is – different to the refrain from prosecution of § 4 (2) JGG, which causes impunity – a renunciation of prosecution. Partly, literature[8] speaks of "simple diversion" when mentioning § 6 JGG.

Compared to § 4 (2) JGG, the scope of applicability is much broader: in general, it includes any offence with a threat of punishment of less than five years. For juveniles, this corresponds to any crime according to the Criminal Code for an adult could receive a prison sentence of up to ten years for (see § 5 (4) JGG). This means that not are only petty offences included in the use of the refrain from prosecution according to § 6 JGG, but all medium-serious and partly even serious crimes can be concluded by a refrain from prosecution.

However, the application of special deterrence as well as general deterrence reduces the scope of use. As an example of a requirement for general deterrence, the High Court[9] mentioned the repeated participation in attacks of a gang against visitors of a park without any specific reason, except the exertion of violence itself.

The prosecutor can refrain from prosecution at any time of the criminal proceedings. Likewise, the judge can also suspend the proceedings based on § 6 JGG up until the end of the trial.

A.2.3. Diversion

A diversion is a form of ending criminal proceedings for crimes under a certain level of severity and under certain conditions. Instead of classic criminal proceedings and a "classical" punishment the diversion is usually characterized by a less complicated and less formalistic procedure and does not result in a conviction.

In general, a diversion is based on the assumption that re-socialization by "classic" punishment (imprisonment, fine) does not work. Diversions are intended to end the criminal proceedings in an informal way without causing stigmatization by a conviction and thereby facilitating re-socialisation.[10] Furthermore, research about recidivism after a

7 Kucera: Die Anwendung der §§ 6 und 7 JGG 1988 in der Praxis, ÖJZ 1990, 586.

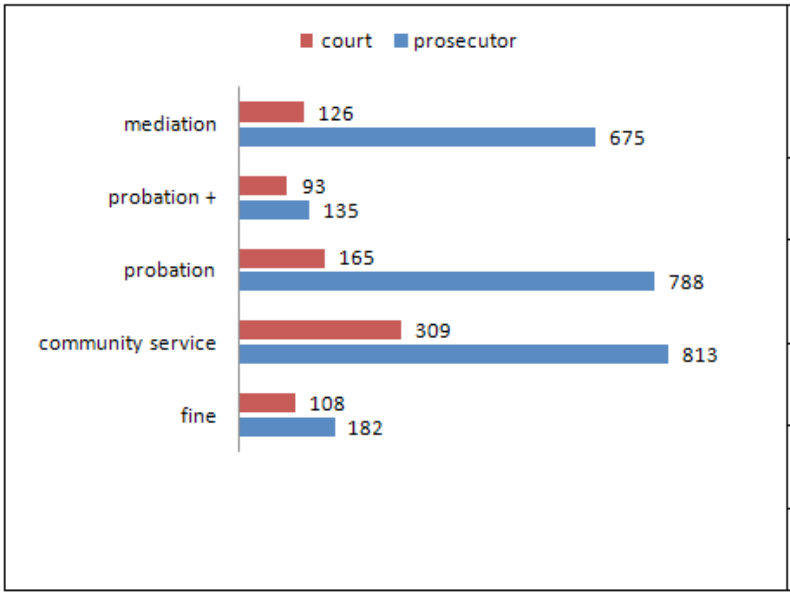
8 Schroll: Strafverfahren ohne Strafe, JRP 1997, 44.

9 OGH 17.12.1996, 11Os157/96.

10 Köck: Der Erziehungsgedanke im Jugendgerichtsgesetz, JRP 1999, 269.

conviction showed that the forms of punishment are to a certain degree interchangeable without causing a considerable variance regarding recidivism. Based on the principle of subsidiarity of criminal law, the prosecutor or court are to take the least invasive course of action that still leads to the desired effects. The requirements of special deterrence are also expected to be fulfilled better with diversion than with a prison sentence or a fine.[11]

Criminal proceedings can be ended in a diversion by the prosecutor as well as in front of the court after a formal trial has already been begun. In practice most cases of diversions, an average of about 75 % in 2012, are settled with the prosecutor:[12]



	Prose - cutor	Court
Fine	63 %	37 %
Community service	72,5 %	27,5 %
Probation	83 %	17 %
Probation +	59 %	41 %
Mediation	84 %	16 %

Figure 1: Forms of diversion for juveniles at the prosecutor and courts in 2012 (n=3394)[13]

11 Hinterhofer: Diversion statt Strafe (2000), 5.

12 See Bundesministerium für Justiz: Sicherheitsbericht 2012 – Bericht über die Tätigkeit der Strafjustiz.

13 See Justizstatistik Strafsachen 2012, Einstellungs-, Diversions- und Anklagestatistik der Staatsanwaltschaften, Urteilsstatistik der Gerichte.

Reactions to a diversion being offered by the prosecutor or the court are mostly positive (80,8 %), particularly among juveniles (84 %) compared to young adults (79,9 %) and adults (80,5 %):

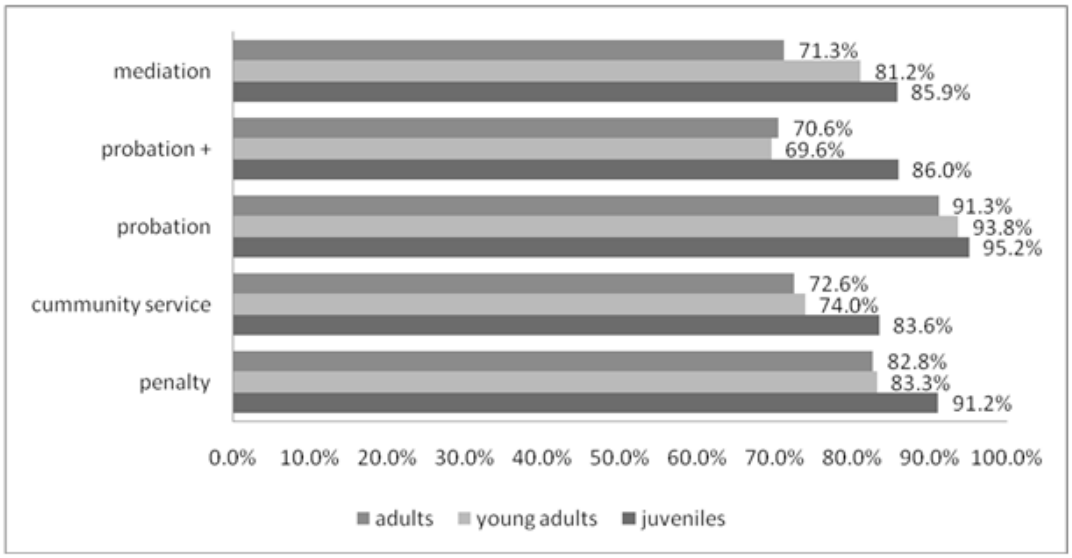


Figure 2: Success of diversional offers in 2012 (n=39.053)[14]

Diversions can theoretically be used as a reaction to any kind of offence committed by a juvenile since the reform of the Criminal Code on 01.01.2008.[15] In practice, diversions are used for juveniles up to medium serious criminality.

Of course not all prosecutions can end with a diversion, so a very important limitation is that the offender did not act with serious fault. A "typical" event of an offence, for instance a robber who violently tears away a woman's handbag and runs off, is not per se a proper basis for an assumption of "severe fault". A certain threat of punishment cannot cause "severe fault".[16] The term includes the subjective element of the offence as well as the circumstances and results of the deed and finally (which is controversial in literature,[17] but used in practice) also the behaviour after the offence, especially if compensation for damages has been paid.[18] So the relevant moment for evaluating the severity of the fault is not only the moment of the offence, but also the moment the diversion is considered.[19]

In general, the death of a person caused by the offence excludes the use of diversion,

14 See Bundesministerium für Justiz: Sicherheitsbericht 2012, page 69.

15 BGBl. I Nr. 93/2007.

16 Kucera: Die Anwendung der §§ 6 und 7 JGG 1988 in der Praxis, ÖJZ 1990, 586.

17 Schütz: Diversionsentscheidungen (2003), 92 f.

18 Schroll: Wiener Kommentar zur StPO, § 198, RZ 25.

19 Malzkorn: Einstellung von Strafverfahren nach Bezahlung eines Geldbetrags (2010), 50, 52.

except in cases where a relative of the juvenile was killed by negligence and the juvenile suffers from mental stress caused by the incident. Further limitations of the use of diversion are the settlement of the circumstances of the offence. Furthermore, specific deterrence does not require any other measure.

The measures of diversion are the same for juveniles as they are for adults: paying a fine, community service, a probation period of up to two years (partly combined with probation service or certain constraints) and victim-offender mediation. These measures cannot be cumulated.[20] A change of the form of diversion is controversial even if it is possible according to the law: In theory, the prosecutor has to initiate a prosecution in front of court if the offer of diversion fails; however, in practice there are several documented cases of diversions whose form was changed, especially if the initial failing of the diversion was not the fault of the accused person.[21]

Although the offender has the right to have his/her procedure ended with diversion if the relevant conditions are fulfilled, there is no right to end a procedure with one certain measure. Additionally, neither the prosecutor nor the court can choose freely, but have to opt for the most suitable form of diversion. To find out which form of diversion is the most appropriate, the circumstances during the offence as well as the behaviour after the offence have to be taken into account. Based on these factors, a decision is made whether a retrospective or a prospective measure is more proportionate to the requirements of prevention.[22] The *ultima ratio* principle and the prohibition of the excess of individual fault also have to be taken into consideration.

Forms of diversion are divided into intervening and non-intervening measures: Non-intervening measures of diversion have in common that the state retreats from prosecution without any further measures taken because only a petty offence was committed and because it is assumed that the fact that somebody pressed charges, the interrogations by the police and the resulting sanctions within the social environment already suffice to fulfill the requirements of special deterrence.[23] In the case of an intervening diversion, the accused has to exhibit some form of effort to compensate for or accept his/her wrongdoing. The particular characteristics and qualities of that effort or acceptance have to take the circumstances of the offence and of the accused into consideration.[24] The effects of special deterrence are far better in the form of intervening measures, especially if they are socially constructive and meaningful.[25] It is important that the forms of diversions mentioned above are adapted to the juvenile's abilities and that each version maintains

20 Schroll: Die Fortentwicklung der Diversion durch die Rechtsprechung, in: Moos/Jesionek/Müller [Hrsg]: Strafprozessrecht im Wandel (2006), 503.

21 Ruderstaller: Rückfälligkeit jugendlicher Gewalttäter (2013).

22 Schütz: Diversionsentscheidungen (2003), 10 ff, 27, 113 ff.

23 Schroll: Strafverfahren ohne Strafe, JRP 1997, 44.

24 Christ: Schwere Schuld als Ausschlusskriterium bei der Diversion (2010), 8.

25 Expertenkommission unter der Leitung von Dr Brigitte Bierlein zur Prüfung der staatlichen Reaktionen auf strafbares Verhalten in Österreich, ÖJZ 2004, 550.

the central principle derailing the juvenile's future.[26]

A.2.4. Conviction without punishment

A conviction without punishment (see § 12 JGG) can be a sanction if a juvenile committed an offence which would justify only a minor punishment, but where it can be expected that the conviction without punishment will also fulfill the requirement of specific deterrence. Neither the specific threat of punishment, nor the concrete severity of fault and wrongdoing by the offence are relevant, but only the prospective prognosis concerning the juvenile's behaviour in the future.[27] This prognosis is a discretionary decision by the court, its use (or refrain of use) can be reason for an appeal.[28] Of course, the use of the conviction without punishment is limited by the requirement that the punishment can be only of minor severity - thereby the threat of punishment and individual fault are observed. General deterrence shall only be considered in exceptional cases.[29]

This sanction is only to be decided upon by the court, not by the prosecutor. The decision is final (disregarding the possibility of appealing the conviction), so neither an additional punishment – e.g. prison sentence or fine – nor a withdrawal of the punishment is possible.[30] The reasons for the conviction without punishment have to be given in the judgment in detail and thereby replace the punishment.

The conviction without punishment in principle does not have the character of a classical punishment but still is a formal conviction which also causes an entry in the criminal record. The main requirement for the use of a conviction without punishment is that it fulfills the education-centered approach of the Juvenile Court Act, which it adheres to by considering special deterrence.[31]

While the juvenile faces fewer consequences directly affecting him/her, a clear disadvantage of a conviction without punishment is the criminal record entry, which inevitably leads to the stigmatisation of the juvenile. Thereby, convictions without punishment have more drastic and long-term effects than in the case of diversion being applied, which is not part of the criminal record. The knowledge and awareness of the consequences of a conviction without any form of punishment can be questioned.[32]

26 Schroll: Wiener Kommentar zur StPO, § 204, RZ 3 ff.

27 Kucera: Die Anwendung der §§ 6 und 7 JGG 1988 in der Praxis, ÖJZ 1990, 586.

28 OGH 14.01.1997, 14Os188/96.

29 Amtsblatt zu BGBl I Nr. 599/1988

30 OGH 09.05.1996, 15Os69/96.

31 Köck: Der Erziehungsgedanke im Jugendgerichtsgesetz, JRP 1999, 269.

32 Ruderstaller: Rückfälligkeit jugendlicher Gewalttäter, page 149.

However, the actual significance of convictions without punishment decreased continuously since the introduction of diversions. In 2012, a conviction without punishment was ruled in only 34 cases (0,1 %), while in 2000, 109 juveniles (0,3 %) were subject to a conviction without punishment.[33] An even more drastic decrease in usage can be noted concerning convictions with punishment reserved (see A.2.5. for details).

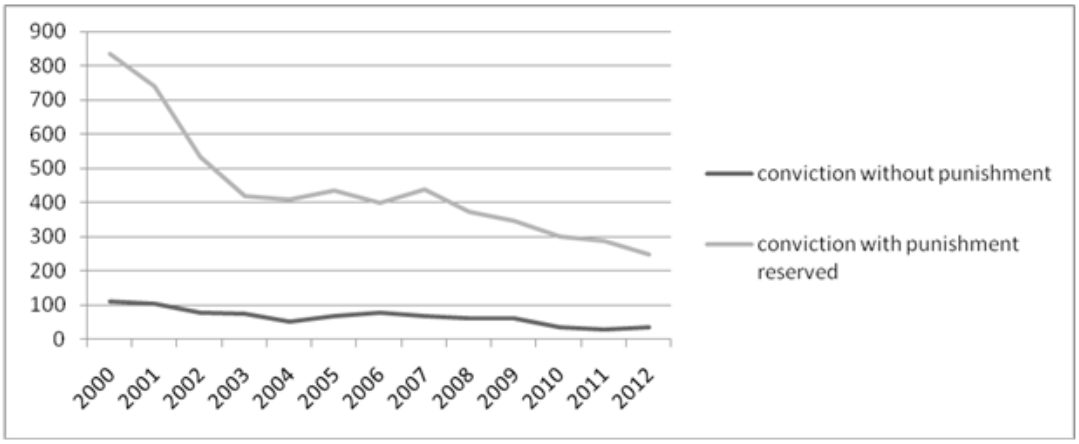


Figure 3: The development of conviction without punishment and conviction with punishment reserved from 2000-2012[34]

A.2.5. Conviction with punishment reserved

A conviction with punishment reserved (see § 13 JGG) is to be used by the court if a juvenile committed an offence and it is assumed that only the threat of a punishment would prevent him/her from committing any further offences. Hence, § 13 JGG considers specific deterrence in the same way as in the case of the conviction without punishment, only in exceptional cases is general deterrence also an option.

In the case of a conviction with punishment reserved a period of probation is allotted, during which the punishment can be promulgated. This period is required to last for at least a year but not longer than three years. The prolongation of an ongoing probation period is not possible.[35] The decision that the punishment is reserved must be part of the judgment and the reasons for it must be given. The court has to inform the juvenile about the legal consequences of a conviction with punishment reserved orally as well as written in simple terms. The written explanation has to include information on which grounds

33 Bundesministerium für Justiz: Sicherheitsbericht 2012, page 79-80; Sicherheitsbericht 2009, page 70-71.

34 Ibid.

35 OGH 30.05.1995, 14Os62/95.

the punishment can be promulgated during the time of probation.

In case the juvenile is convicted of committing a second offence while he/she is on probation, a delayed punishment is issued under the aspect of special deterrence. The severity and extent of the ensuing punishment should be based on the hypothetical punishment the juvenile would face if he/she was convicted for both offences during one trial – the initial offence that caused the conviction with punishment reserved and the following transgression committed while on probation.[36] Furthermore, the violation of the court's orders, representing a formal admonition, or the retreat from the probation officer's influence can cause a subsequent punishment. In case the court does not promulgate a punishment although the orders were violated, the court has to examine whether the measures can be maintained or if any other measures have to be taken (see § 15 JGG). The subsequent punishment can be promulgated if the prosecutor applies for it at the court. The court which decides on a ruling about the second offence also decides on the appropriate punishment for the initial conviction with punishment reserved (see § 16 JGG).

Compared to the conviction without punishment, the conviction with punishment reserved is the more invasive sanction.[37] Similar to the conviction without punishment, the conviction with punishment reserved lost its importance since the introduction of the forms of diversion. While in 2000 still 834 juveniles (2 %) were convicted with punishment reserved, in 2012 only 246 (0,7 %) were sanctioned that way.[38]

A.2.6. New alternative measures – social-net conferencing

The so-called social-net conferencing was introduced as an alternative measure in Austria and was conducted as a model project during the time from 01.01.2012 to 31.12.2013 in Vienna, Carinthia, Styria and Upper Austria. It focused on juveniles and young adults who were subject to probation services. The project will be continued at least until the end of 2014 and an expansion to all of Austria is being discussed at the moment with the Ministry of Justice.[39]

The social-net conferencing is used for all problems dealing with social inclusion and integration, especially the step from a prison sentence to freedom, but also concerning restorative justice while including the victim and his/her social network. The advantages of the use of social-net conferencing are the activation of the juvenile's family and friends as well as the strengths of the juvenile him-/herself. The organisation "Neustart", which

36 OGH 05.08.1997, 14Os93/97, OGH 02.03.1999, 11Os7/99 as well as OLG Linz 12.12.1996, 8Bs319/96.

37 OGH 15.11.1983, 9Os166/83.

38 Sicherheitsbericht 2012, page 79-80; Sicherheitsbericht des Bundesministeriums für Justiz 2009, page 70-71.

39 E-Mail from Hansjörg Schlechter on 07.01.2014.

is responsible for probation services in Austria, organises and supports these meetings. In practice, the coordinators informed the judges and prosecutors about the model project in advance, explained the methods used and indicators for the use of the measure to increase the acceptance and use of the social-net conferencing.[40]

There are four types of social net conferencing with different aims: the care conference (Sorgekonferenz) intends to help a person in a problematic situation but without any current problems with penal law; the prison release conference (Haftentlassungskonferenz) for persons, who are soon to be released from a prison sentence; the restorative conference (Wiedergutmachungskonferenz) is directly connected with a certain criminal offence and is a measure of restorative justice; the pre-trial detention conference (Untersuchungshaft-Konferenz) is a method to find a solution for juveniles to avoid/finish pre-trial detention.[41]

Social-net conferencing consists of three phases. In the first phase the main aim is to collect relevant information. All participants assemble and the juvenile's responsible probation assistant explains the current situation and the problems, the other participants can give their opinion, the victim has the opportunity to report about the offence, the consequences for him/her and whether he/she wishes to make amends for the caused damages. In the second phase, a plan is developed on how to resolve the situation. Neither the victim, nor the social workers or the coordinator take part in this stage, but only the offender and his social environment. Finally, in the third phase, all participants come together once more. The plan is presented to the coordinator and the social workers and the terms of its implementation are discussed. The victim is also part of this discussion and can accept or refuse the offer for compensation. Three months later there is a possibility to reassemble the participants to discuss the success of the plan.[42]

The first evaluations in 2013 showed a positive development of the project, especially in the use of social-net conferencing as an alternative measure to pre-trial detention (see chapter C.2.). Social-net conferencing as a measure of sanctioning also showed positive results because the juveniles were put in positions that forced them to become active and allowed them to experience appreciation. The result was usually that the juveniles took responsibility for their own actions, not least because they wanted to avoid disappointing their social environment.[43]

Until 31.12.2013, there were 186 requests and preparations for a social-net conferencing from probation service officers. Finally, 56 conferences took place, while 70 % of the plans were fulfilled completely or almost complete. Since August 2013, social-net conferencing was also used to avoid pre-trial detention (see chapter C.2.). In general, the use of social-

40 http://www.neustart.at/at/de/blog/entry/3094

41 See Grafl et al: Evaluationsstudiu zum Projekt Sozialnetz-Konferenz in der Bewährungshilfe – Abschlussbericht (2014)

42 Information Folders for victims and accused persons from Neustart

43 Interview with Christoph Koss (Neustart); http://kurier.at/chronik/wien/termine-einhalten-ist-besser-als-haft/35.032.421

net conferencing was very broad: [44]

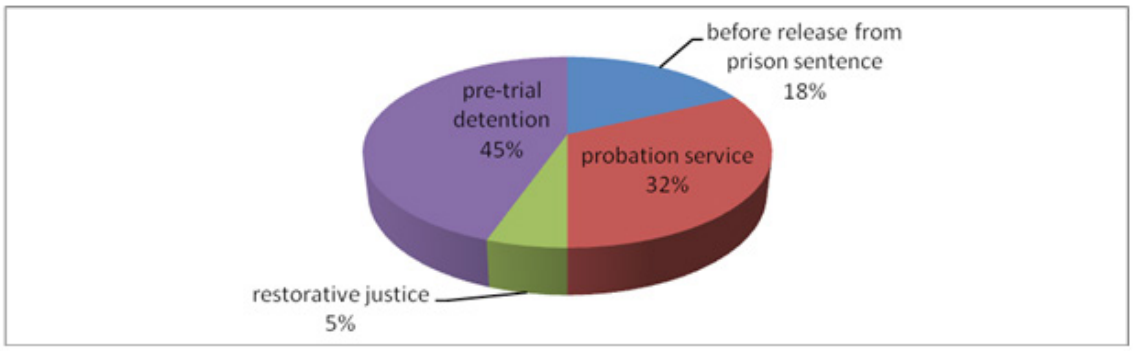


Figure 4: The use of social-net conferencing from 01.01.2012 to 31.12.2013 (n=56)[45]

In ten cases social-net conferencing was used as a measure before the release from prison sentence, in 18 cases during the time of probation to resolve problems regarding accommodation, education, work and/or therapy. In three cases social-net conferencing was used as a measure of restorative justice, in one of these cases (a conflict within a family) it was not successful. In 25 cases it was used to avoid pre-trial detention, which was successful in 18 cases; none of these juveniles were placed in detention after the release.

The evaluation of the social net conferencing showed that the persons involved were generally satisfied, even though there were some minor practical problems due to the fact that the project was in its implementation phase. These problems are mostly easy to overcome; however, the pre-trial detention conference needs special attention because of the different settings and circumstances. It was recommended to take social net conferencing in continuous practice all over Austria and to use this measure even for children under the age of criminal responsibility if problematic circumstances led to deviant behaviour and, therefore, indicate the inclusion of the social network to find a solution to avoid further problems.[46]

After the completion of the project, the Ministry of Justice decided to take social net conferencing into steady practice, beginning on 01.11.2014.[47] Conferencing is used for juveniles in pre-trial detention as well as preparation to a release from prison. At the end of October 2014, Neustart conducted almost 100 cases of social net conferencing, around 60 of these in the course of pre-trial detention. 70% of the conferences were successful and led to a release from detention.[48]

44 E-Mail from Hansjörg Schlechter, 07.01.2014.

45 Ibid.

46 See Grafl et al: Evaluationsstudiu zum Projekt Sozialnetz-Konferenz in der Bewährungshilfe – Abschlussbericht (2014), page 109.

47 Executive Order from Ministry of Justice from 06.10.2014

48 E-Mail from Hansjörg Schlechter on 24.10.2014.

A.2.7. Prison sentence and fine

In general, the threat of punishment through fines or imprisonment for juveniles is about half as severe as for adults. Generally speaking, the minimum levels of punishment from adults' are not applicable for juveniles, except for crimes with a threat of punishment from 10-20 years or life imprisonment. If the juvenile is below 16 years, there is a threat of punishment of 1-10 years, for juveniles over 16 years it is 1-15 years.[49]

A fine or prison sentence can be imposed conditionally, partly conditionally and unconditionally. Diffusion between these types of sentences and between the types of punishment they are linked to differ widely: In 2012, a conditional punishment was imposed in 1,6% cases of a fine, but in 74,4 % of a prison sentence; partly conditional fines reached 34 %, while 11,3 % of prison sentences were partly conditional; finally, an unconditional fine was imposed in 64,4 %, but only in 14,3 % of prison sentences.[50]

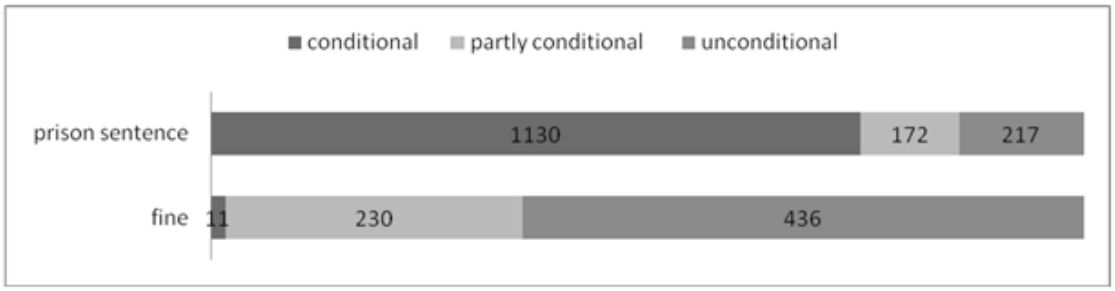


Figure 5: (Partly) conditional and unconditional convictions of juveniles in 2012 (n=2196)[51]

When a juvenile is convicted with a prison sentence he/she is to be placed in a youth prison (see § 55 JGG). In Austria, there is only one youth prison (Justizanstalt Gerasdorf), which is for male persons only. Female convicts and male convicts who are not located in youth prison Gerasdorf are placed in other standard prisons for adults but usually in special departments and separated from adults. In certain cases, if there is no threat of negative influence by the adult prisoners, exceptions are possible. This regulation intends to minimise damages to the juvenile's psychological health through isolation if there are only very few young prisoners present, which makes a separate accommodation for juvenile inmates difficult or impossible. However, even if adults and juveniles are not separated under these circumstances, a separation of the prison inmates in different cells is still possible.[52] In prison, a juvenile is subject to a more relaxed form of incarceration, meaning that even on weekends and national holidays the cell must be open at least for

49 See § 5 JGG.

50 See Gerichtliche Kriminalstatistik 2012.

51 Ibid.

52 Regierungsvorlage zu BGBl I Nr 599/1988.

three hours a day.[53]

People who are working in a youth prison must have a specialised education in pedagogy, psychology and psychiatry (see § 54 JGG). For the juveniles, school education and/or professional education are offered and promoted. The youth prison Gerasdorf offers different types of school education, up to a secondary-school qualifying for university admission, German language courses for foreigners and computer courses. Furthermore the juveniles can have vocational training as a gardener, baker, hairstylist, chef, carpenter, electrician, brick layer, painter, tinsmith, plumber, motor mechanic, metal working technician and chassis building technician, or acquire qualifications in the hotel and catering business. Furthermore, there are various offers for the organisation of the juvenile's leisure time, e.g. different kinds of sports (soccer, volleyball, body building, table tennis, darts), creative activities (theatre group, drum group, music group, cooking group, model making) and other social events (concerts, movies, tarock, group, excursions to museums, hiking or other forms of sport in a group outside the prison).[54]

After release from prison on probation, probation services can be requested for up to three years if seen as necessary. Release on probation is very common as well as the application to receive probation services. In each case of release from prison there is support by social workers even before the convict is released from prison and there are actions taken to organize accommodation and a job. These services are provided by the NGO "Neustart".

In general, the number of convicted juveniles is constantly decreasing slightly. In 2012, 2562 juveniles were convicted. Compared to 2011, this means a decrease of 6,7 %. In 2002, 3278 juveniles were convicted.[55] In 2012 43,5 % of these offences were property crimes, 21,9 % of the offences affected the physical integrity of a person. The percentage of convictions for violations of the Narcotic Drugs Act (Suchtmittelgesetz; SMG) increased from 7,9 % to 8,2 % while the absolute numbers decreased from 217 to 209 juveniles, primarily caused by the introduction of alternative measures of sanctioning.[56]

53 Bundesministerium für Justiz: Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung, page 28.

54 See http://strafvollzug.justiz.gv.at/einrichtungen/justizanstalten/justizanstalt.php?id=5

55 For further statistical details and the relation to other sanctions see chapter A.2.9.

56 Bundesministerium für Justiz: Sicherheitsbericht 2012, page 55.

A.2.8. Residential and custodial institutions for juvenile criminal offenders

Generally speaking, the accommodation in residential or custodial institutions for juveniles is subject to each province's law, resulting in nine different laws in Austria. However, these laws mainly regulate how minors are treated whose parents are not able to raise the child without endangering its development.

It is very difficult to give a precise number of children who are accommodated in foster families, but around 0,24 % of all children below the age of 19 might be in the custody of a foster family. There are regional differences from 0,16 % in Salzburg up to 0,33 % in Styria. There are no longer any differences between the numbers of boys and girls being placed in foster families. The general trend points toward supporting parents in raising their child rather than placing children in foster families. The two most important models in use are:

- *Long term foster care:* This model is used if support in the upbringing of the child is no longer adequate to guarantee the best interest of the child. Although the accommodation in the foster family is planned for a longer period of time, usually until the child is 18 years old, there are intents to return the child to its biological family or at least to maintain the relationship with the biological parents.

- *Crisis and short-term foster care:* Shared apartments with professional care and crisis centres are gaining importance. Their main goal is to offer short-term fostering in case of a family crisis. The maximum period for a minor to stay there varies between eight weeks and six months, depending on the province (8 weeks: Tirol; 8-12 weeks: Styria, Vienna, Carinthia; 3 months: Upper Austria; 6 months: Salzburg). The social workers and pedagogues develop an individual concept for the further accommodation of the child. The return to the family is the main aim and continuous contact with the parents is an important part of the work with the family and the situation.[57]

For the use of foster care and residential institutions for juvenile offenders see chapter C.1. Concerning the accommodation in residential institutions for juveniles instead of pre-trial detention see chapter C.2., regarding prison sentences chapter A.2.7.

57 Scheipl: Das Pflegekinderwesen in Österreich.

A.2.9. Sanctions against juveniles in practice - statistics

To sum up the data presented in A.2.1. to A.2.7. and to add some more statistical information, it can generally be said that the majority of juveniles subject to criminal proceedings are not convicted.

Unfortunately, there is no data available for juveniles concerning diversion by probation without probation services and a diversional fine. The development of the sanctioning system for juveniles from 2000 to 2012 shows some trends:

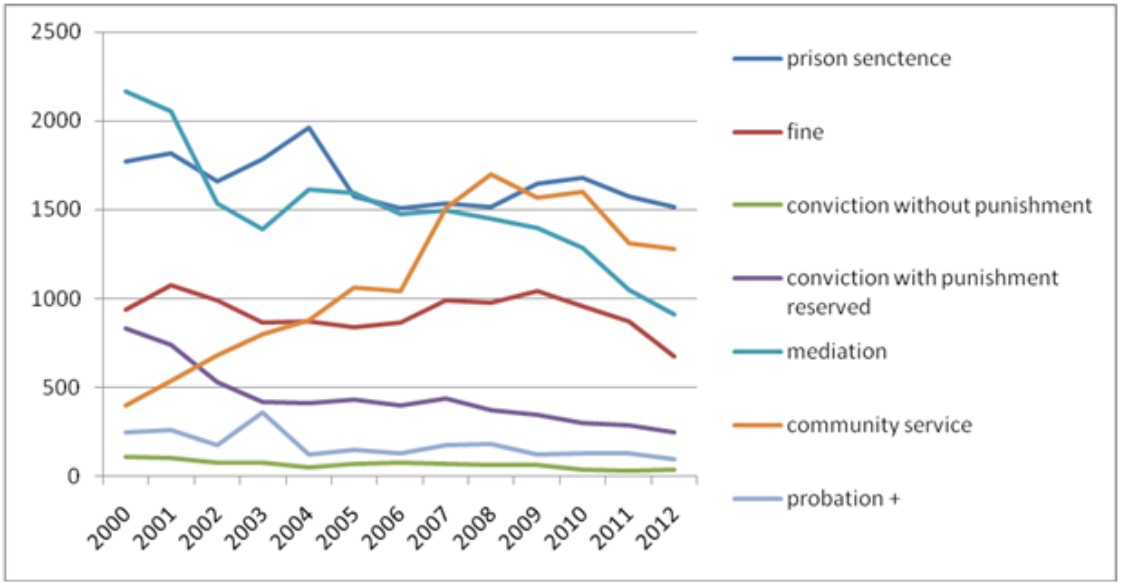


Figure 6: Selected sanctions against juveniles from 2000 to 2012[58]

In 2012, 26.549 juveniles were subject to criminal proceedings. In 4987 proceedings against juveniles, the prosecutor refrained from prosecution because the juvenile was under the age of criminal responsibility (§ 4 (1) JGG). In 2405 cases, the offence was subject to the regulations of impunity (§ 4 (2) JGG); in 4365 cases, the prosecutor refrained from prosecution based on § 6 JGG. These three measures have the highest numbers compared to all other sanctions and are 50,8 % of all criminal proceedings against juveniles. Furthermore, in 9,6 % of the proceedings against juveniles the prosecutor refrained from prosecution because the behavior was not qualified as an offence according to the criminal code. In 18,9 % the proceedings ended in a form of diversion, in 20,7 % the prosecutor initiated the prosecution at a court.[59]

58 See Bundesministerium für Justiz, Sicherheitsbericht 2009-2012.

59 Bundesministerium für Justiz: Sicherheitsbericht 2012, page 17.

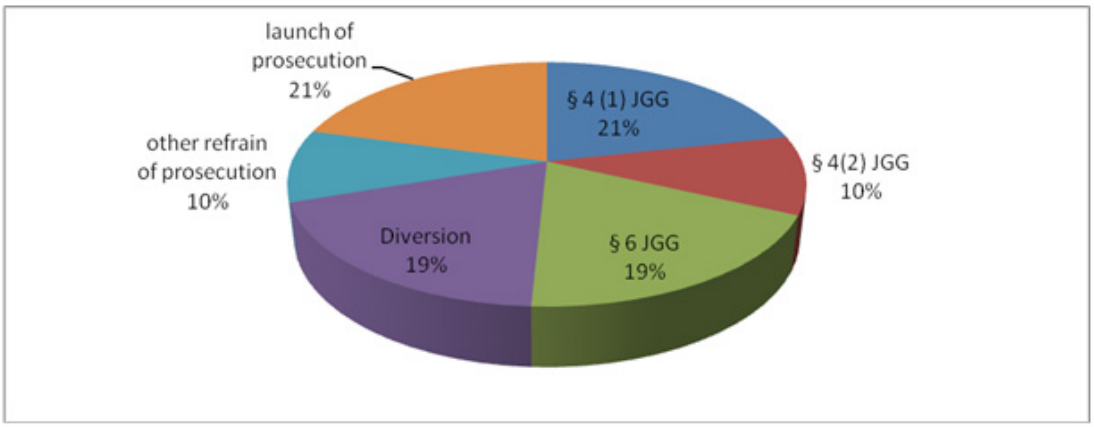


Figure 7: Prosecutor's decisions in criminal proceedings against juveniles 2012 (n=4987)[60]

In general (juveniles, young adults and adults) 17,7 % of all proceedings at court ended in an acquittal of the accused, 58,1 % result in a conviction and 15,5 % in some form of diversion. 8,8 % of all proceedings ended in a termination of the proceeding.[61] In 2012, only 2.562 juveniles were convicted, 463 of those actually were subject to a partly conditional or unconditional prison sentence and thus sent to prison.[62]

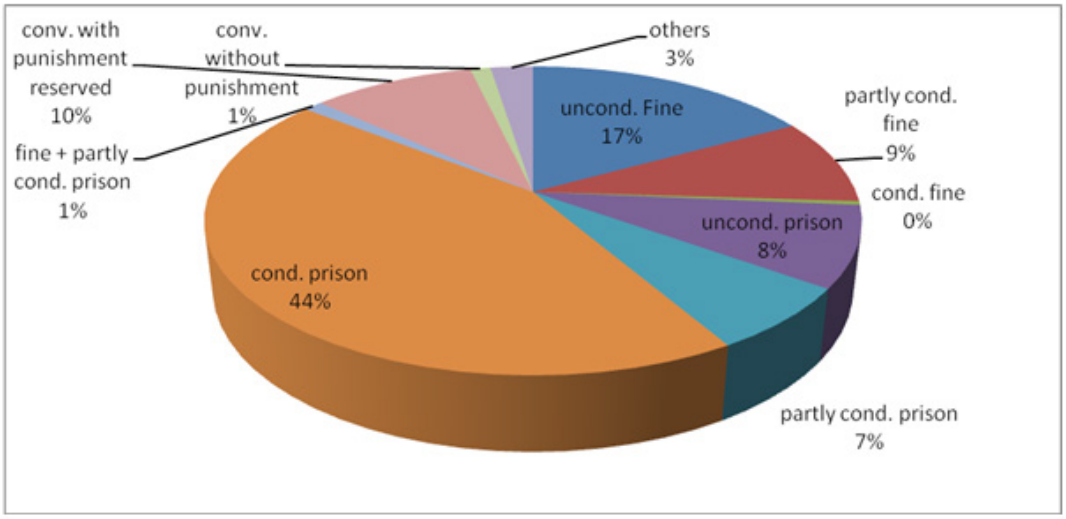


Figure 8: Convictions of juveniles in 2012 (n=2562)[63]

60 Ibid.

61 Ibid. page 24.

62 Bundesministerium für Justiz: Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung (2013), page 12.

63 Bundesministerium für Justiz: Sicherheitsbericht 2012, page 24.

A.2.10. Discussions about the development of the juvenile justice system

Measures to improve the juvenile justice system were discussed in 2013 within the framework of a task force launched by the ministry of justice, which in particular focused on conditions in (pre-trial) detention. The task force was initiated after incidents of sexual abuse of a juvenile inmate by fellow inmates became publicly known. The suggestions proposed in these discussions are:

- The introduction of community service instead of a short unconditional prison sentence.

- The possibility to combine different forms of diversion, especially victim-offender mediation or community service with a probation period, possibly including probation services.

- A change in the law concerning commercial or professional crime, which is characterised by structuring criminal acts, developing them into the main source of income and that often involves juveniles as tools for these affairs. It was agreed that the criminal code be changed so that the organisers of the criminal actions (especially concerning drug dealing and theft), who "employ" the juveniles are held to responsibility to a greater extent.

- The legal possibility to revoke only a part of a conditional prison sentence.

- Further restrictions on the information available from a juvenile's criminal records.

- Expansion of the Jugendgerichtshilfe to the qualitative levels found only in Vienna.[64]

64 ibid. page 52-56.

B. Restorative approach within juvenile justice

B.1. The restorative approach in Austria's juvenile justice system in practice

The restorative approach in the Austrian juvenile justice system is expressed in the form of diversions and the possibility to take civil action in criminal proceedings, and of course the model project of social-net conferencing.

While such diversions as community service and victim-offender mediation are classical forms of restorative justice, other forms of diversions (such as probation, probation with probation service or orders, or fines) also include aspects of restorative justice by the requirement to compensate for the material and/or immaterial damage caused by the offence. This right to compensation was strengthened by the change of the Code of Criminal Procedure in 2008,[65] but is of course limited concerning juveniles in order not to derail their future.[66] (see § 7 JGG, §§ 198-206 StPO)

Victim-offender mediation as well as community service is in practice supported and organised by the NGO "Neustart" which organises probation services, too. The responsible social worker reports to the prosecutor or court who offered diversion about the success of the measure. The costs of up to € 250 - for each of these measures are covered by a lump sum, which is paid by the offender (see § 388 StPO). The sum is to be adjusted in a way that allows the accused to maintain a simple way of life for him-/herself and his/her family, while still enabling him/her to compensate for caused damages and to provide indemnification.

The victim-offender mediation (§ 204 StPO) considers restoration to be the best option for restitution by offering the possibility to present one's own point of view on the offence and express the crime's impact. During the mediated discussions the victim can also claim compensation for material and/or immaterial damage.[67] In case of petty offences committed by juveniles without serious damage, the compensation often is more or less symbolic, i.e. an invitation to a skiing weekend or a dinner or a Go-Kart trip.[68]

Community service (§ 201 StPO) also includes a restorative approach *per se* by requiring 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 in case the diversion was suggested by the judge. The probation services agency "Neustart" offers assistance

65 BGBl I Nr 19/2004.

66 Schroll: Strafverfahren ohne Strafe, JRP 1997, 44.

67 Pelikan: Über den Außergerichtlichen Tatausgleich, WR 1996 H 34,7.

68 Ruderstaller: Rückfälligkeit jugendlicher Gewalttäter, page 138.

in finding a proper place for the community service and monitors the completion of the work hours. The victim can claim material and/or immaterial damages, though the main field of application of this approach is vandalism.[69] However, it can also be applied in case of repeated violence within the family if mediation seems not to be an adequate measure, or in case of other forms of repeated aggressive behaviour.[70] Pedagogic aspects can be considered when choosing the place the juvenile has to complete the community service. The law regulates that the terms of work are to be in proportion to the offender's willingness to take responsibility for the offence.[71] A contrastive program, i.e. letting a person who is in criminal proceedings because he/she harmed animals work in an animal shelter is usually not part of community service.[72]

Community service and victim-offender mediation have a different range of use concerning the relevant offences:

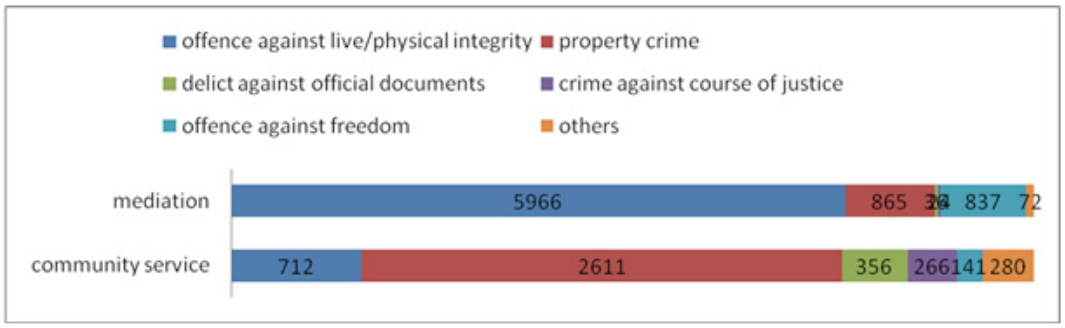


Figure 9: The use of mediation and community service for different types of delinquency in 2012 (n=12.166)[73]

The possibility to take civil action in criminal proceedings fulfils the restorative approach because it facilitates claiming compensation for material and/or immaterial damages caused by an offence. The victim has to file such claims before the end of the evidentiary proceedings at the latest. A verbal request for compensation before the court suffices to establish such a claim and should involve an amount the victim claims compensation for. However, the court is obliged to ascertain the amount of compensation as far as this is possible based on the criminal proceeding's evidence (see § 67 StPO). Victims of violent offences furthermore have the opportunity to receive legal and psycho-social support during the legal proceedings, which is provided by the state and intended to secure the victim's rights. The personal affection by the crime has to be considered (see § 66 StPO).

69 Hinterhofer: Diversion statt Strafe (2000), 31.

70 Schroll: Wiener Kommentar zur StPO, § 201, RZ 27.

71 Birklbauer: Arbeit statt (als) Strafe, Juridicum 3/00, 142.

72 According to Koss andHovorka; different opinion: Hinterhofer: Diversion Staat Strafe (2000), 31 f.

73 See Bundesministerium für Justiz, Sicherheitsbericht 2012.

Regarding the procedural and statistical aspects of the social-net conferencing see chapter A.2.6.

B.2. The importance of Austrian restorative justice for juveniles in numbers

The restorative approach plays a very important role in Austria's juvenile justice system. As described above the diversional measures with a restorative approach (community service and victim-offender mediation) are extensively used by the justice system. Additionally, almost all other forms of diversion integrate the restorative approach to an extent, usually through the offender's obligation to compensate for the cause material or immaterial damage. This broad application of compensatory measures is most commonly based on agreements between the accused and the victim.

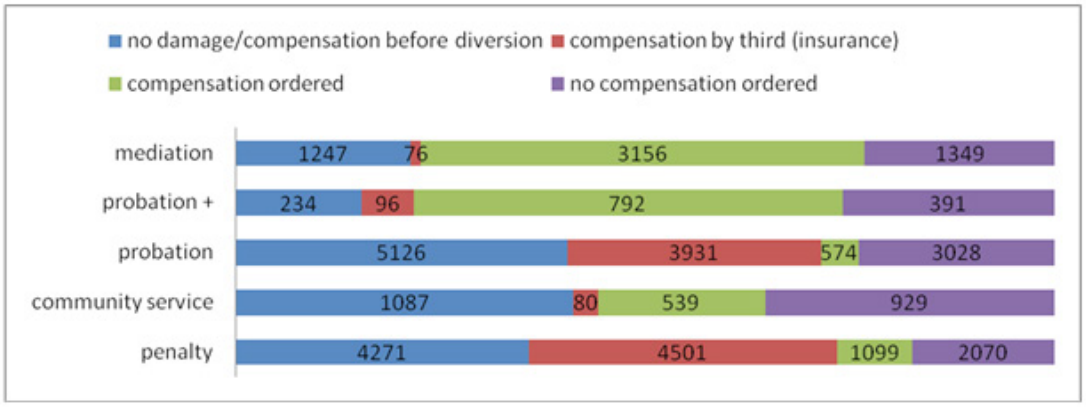


Figure 10: Compensation for damage at diversion 2012 (n=32.583)[74]

Statistical data on the application of diversional forms of restorative justice (community service, victim-offender mediation) implies how important diversions have become, particularly when compared to non-restorative forms of sanctioning, as it is described in chapter A.2.9. Diversions were introduced in 2000. The significance of community service as a diversional measure increased drastically and the numbers went from 399 juveniles in the year 2000 up to 1702 juveniles in 2008. Since then the numbers are decreasing slowly, but are still high. The use of victim-offender mediation reached its lowest point in 2006 with 1511 juveniles and its highest point right at the beginning in 2000 with 2164 cases of juveniles.[75]

74 Ibid page 71.

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

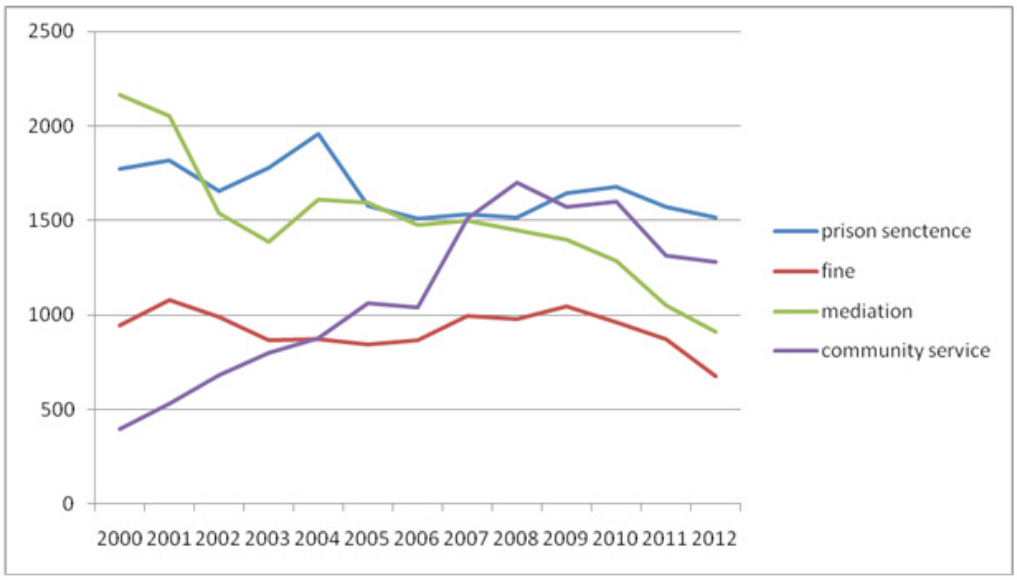


Figure 11: Restorative justice and classic punishment 2000-2012[76]

Concerning the effectiveness of civil actions within criminal proceedings, statistical evidence indicates a low success rate. In 2012, 23.088 persons took civil action within the criminal proceedings: in 7.600 cases (23,7 %), the court granted compensation for material and/or immaterial damage.[77] In 2011, 21.806 persons tried to get compensation granted during criminal proceedings, 6.940 victims (37,9 %) were successful.[78] In 2010, 22.009 persons took civil action within the criminal proceedings: in 8.258 of these cases (31,5 %) the court granted compensation.[79] In 2009, the courts granted compensation in the criminal proceeding in 5479 cases (36,8 %), while 20.630 persons applied for it.[80] Although this is a general statistic for juveniles, young adults and adults, the possibility to take civil action in the criminal proceedings is also available against juvenile offenders.

The statistical relevance of social-net conferencing is very low at the moment because it is only used regionally and is so far only a model project.

76 Ibid.

77 Anfragebeantwortung der Bundesministerin für Justiz vom 10.05.2013, BMJ-Pr7000/0077-Pr 1/2013.

78 Anfragebeantwortung der Bundesministerin für Justiz vom 29.05.2012, BMJ-Pr7000/0115-Pr 1/2012.

79 Anfragebeantwortung der Bundesministerin für Justiz vom 21.04.2011, BMJ-Pr7000/0047-Pr 1/2011.

80 Anfragebeantwortung der Bundesministerin für Justiz vom 08.04.2010, BMJ-Pr7000/0039-Pr 1/2010.

C. Foster care within the juvenile justice system

C.1. Foster care in Austria's juvenile justice system

Relocation of a child to a foster family or any kind of intervention within the family can be triggered by the automatic information of the Youth Welfare Office and the Guardianship Court (see chapter A.1.1.). The precondition for any of these measures is their necessity or inevitability and the assumption that they are taken in order to promote the best interests of the child and to avoid any kind of harm to the child.

Foster care as a measure of juvenile justice is neither regulated explicitly in the Jugendgerichtsgesetz, nor in the provincial laws concerning child welfare. Consequently, a judge at a criminal court cannot send a juvenile to alternative family care. The only option (which is not in practice) is the addition of certain constraints to an existing probation. However, the Guardianship Court has to be informed about any kind of criminal proceedings against a juvenile and theoretically could put a child into any kind of alternative family care; though it is usually not very common.

The criminal court could theoretically order any kind of constraint, e.g. curfews, psychological help, counseling, etc. combined with forms of probation, but these measures are hardly ever taken by the criminal court. If the background situation of the juvenile is identified as the basis for the behaviour that led to the offence, it is more common to request probation services to work with the juvenile in order to deal with the special needs he/she has. Only in cases of drug abuse is it common to send juveniles into other forms of constraint such as substitution therapy and/or psychological care.

The Guardianship Court and the Youth Welfare Office have a very broad spectrum of interventions in the family available to them, starting with counseling, the order for children/parents to attend therapy, etc. If the family does not cooperate, the child can also be taken to a foster family or other types of housing for troubled youths.

C.2. Alternatives to pre-trial detention

Generally speaking, the imposition of pre-trial detention against juveniles has decreased since the year 2000, although there were ups and downs in the statistical data. Since 2009 the numbers have been constantly decreasing and finally reached an all-time low in 2013 (although average numbers are only available for the period from 01.01.2013 to 01.10.2013).[81]

81 Bundesministerium für Justiz: Sicherheitsbericht 2009, 2010, 2011, 2012; Bundesministerium für Justiz: Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung (2013).

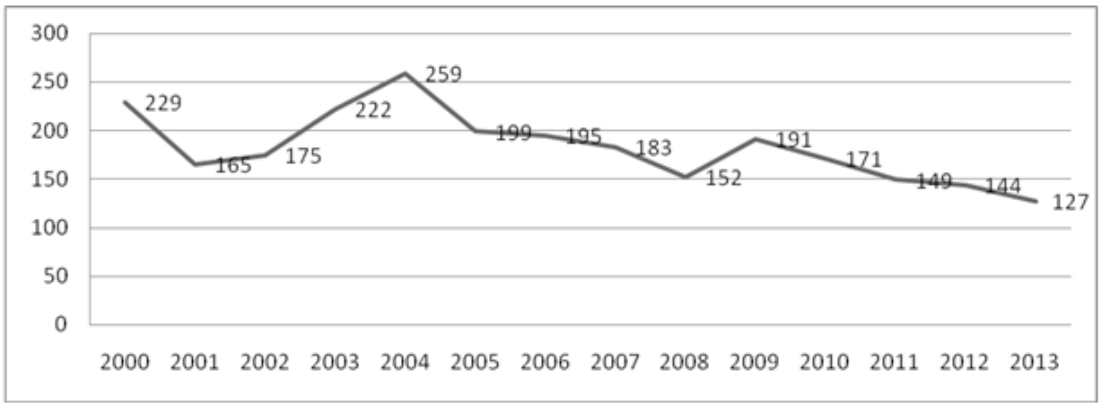


Figure 12: Average of juveniles in pre-trial detention 2000-2013[82]

In 2012, 43 juveniles of the age of 14 were in pre-trial detention, 55 were 15 years old, 148 16 years and 200 17 years old. Most of the juveniles (182 of 446 juveniles in 2012) were placed in the Viennese prison Josefstadt.[83]

In June 2013, pre-trial detention in Austria was subject to extensive media coverage after a 14 year old juvenile, who had been accused of robbery, was sexually abused with a broomstick by three of his fellow inmates in the Josefstadt prison. The Jugendgerichtshilfe later came to the conclusion that the abused inmate showed signs indicating delayed maturity, which would have made it impossible for him to understand his wrongdoing. Under this precondition, he would have fallen under the rules of impunity. The Jugendgerichtshilfe's opinion was later confirmed by a psychiatrist.[84]

After numerous discussions, pressure on politicians finally resulted in the installation of a task force. As a first measure, the use of the social-net conferencing was extended to pre-trial detention in August 2013, which was at that time in use as a model project for restorative justice, for conditional releases from prison sentences and convicts subject to probation services.[85] Until 31.12.2013, a total of 25 social-net conferences have been held, 18 of which resulted in the release of the juvenile. In none of these cases was it necessary to revoke the release.[86] See chapter A.2.6 for more information on the structure and aims of social-net conferencing.

Another immediate measure in the Josefstadt prison was the reduction of juvenile inmates per cell. Only two juveniles were allowed in one cell. Exceptions were only possible for a short term in case a juvenile was brought to the prison at night. Additionally, background

82 See Bundesministerium für Justiz: Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung (2013), 16.

83 Ibid, page 13.

84 ibid, page 30.

85 Gratz: Vom konstruktiven Umgang mit der Destruktivität (2013).

86 E-Mail from Hansjörg Schlechter on 07.01.2014.

checks on maturity and personality were conducted by a team of workers of the prison's department prior to the assignment of two inmates to a cell. The psychological and physical integrity of the juveniles were to be considered primarily. A steady officer in charge for the night was introduced to intervene in case of any immediate danger. For the times the inmates spent outside of their cells, a social room was installed as well as opportunities for meaningful occupations throughout the day. Starting in autumn 2013, the officers in charge at the Josefstadt prison participated in qualification training and courses.[87]

The task force installed by the Ministry of Justice started to work in July 2013 and presented its final report in October 2013. The experts of the task force were responsible persons from the Ministry of Justice, the prisons and enforcement agency (Vollzugsdirektion), representatives from the juvenile justice system (courts, prosecutor, police and youth welfare), from probation service agencies, the Jugendgerichtshilfe, from the Ministry of economics, family and youth, from child and youth psychiatry and from Swiss youth prisons. The main aim of this interdisciplinary team was to find measures in between the extremes of "prison" and "freedom".[88]

As alternative measures the task force suggested the following options:

To avoid pre-trial detention for juveniles, supervised living in shared apartments should be considered in case the juvenile can neither live with his/her parents, nor in any other kind of accommodation provided by the youth welfare (which is a serious problem in practice). So far there are two organisations which offer such services.

The organisation WOBES offers shared apartments with 24 hours of supervision by social workers and social pedagogues. This is not a closed institution, but accommodation with electronic tagging is also explicitly accepted. The Jungarbeiterbewegung (Young Workers Movement) offers individual accommodation in their youth institution, combined with a guaranteed place in qualification training in their training workshop.

Negotiations with other organisations (Diakonie, Pro Mente, menschen-leben) had not resulted in any binding contracts by the time the report was finished in October 2013.

To minimise the duration of pre-trial detention, the task force suggested individualizing proceedings by consulting each of the involved organisations who deal with the respective juvenile and to tailor the proceedings to each individual case. The intention behind this measure was to alleviate accommodational problems by reducing the time potentially spent in pre-trial detention.

87 Bundesministerium für Justiz: Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung (2013), page 37-39.

88 ibid, page 6.

> Social-net conferencing is also used to minimise the duration of pre-trial detention. It can be initiated by the custodial judge or the judge deciding on the appeal against the pre-trial detention. After a plan for the resolution of the problem is developed, it is presented to the competent judge who decides based on that information if it is necessary to maintain pre-trial detention.[89]

Meanwhile, several measures were taken to improve the situation of juvenile inmates in Josefstadt prison. In 2013 the situation of occupation for juveniles was improved, the management of leisure time we re-organised, and the security system for juveniles in the prison was strengthened. Furthermore, the station for juveniles was renovated and completely newly furnished and decorated. The Ministry of Justice pointed out that a sustainable change in the situation for juveniles will depend on the Ministry's financial situation.[90]

Electronic tagging for juveniles is also possible, but subject to the same conditions as for adults (§§ 156b, 156c Strafvollzugsgesetz). When a person, whose (residual) length of imprisonment is less than 12 months, can show proof of accommodation, a job, an income and health insurance he/she can apply for electronic tagging. The social environment and the criteria mentioned above are checked before a decision on the electronic tagging is made.

Electronic tagging was introduced in Austria in 2010[91] and can be applied for instead of pre-trial detention as well as to avoid a prison sentence. The majority of persons profiting from electronic tagging are persons who face a prison sentence. Pre-trial detentions being replaced by electronic tagging are usually exceptions. In 2012, 203 persons were subject to electronic tagging; only two of them during pre-trail detention. During the period of electronic tagging the convicted person is supported by a social worker. The main aim is to enable the convict to stay socially integrated and to work on possible social deficits to avoid recidivism.[92]

Electronic tagging for juveniles is possible under the same conditions as for adults (§§ 156b, 156c Strafvollzugsgesetz, StVG). When a person, whose (residual) length of imprisonment is less than 12 months, if he/she can show proof of accommodation, a job, an income and health insurance he/she can apply for electronic tagging. The social environment and the criteria mentioned above are checked before a decision on the electronic tagging is made.

89 Ibid, page 43-47.

90 Bundesministerium für Justiz: Sicherheitsbericht 2013, page 154.

91 BGBl I Nr 64/2010.

92 Bundesministerium für Justiz, Sicherheitsbericht 2012, page 98, 125-126.

Annex

D.1. Abbreviations

JGG	Jugendgerichtsgesetz	Juvenile Court Act
LG	Landesgericht	Regional Court
OGH	Oberster Gerichtshof	Supreme Court
OLG	Oberlandesgericht	Higher Regional Court
SMG	Suchtmittelgesetz	Narcotic Drugs Act
StGB	Strafgesetzbuch	Criminal Code
StPO	Strafprozessordnung	Code of Criminal Procedure
StVG	Strafvollzugsgesetz	Penal Law

D.2. Literature

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