



# ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Cyprus



**Dr. Antonios St. Stylianou**



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## A. Juvenile Justice

**A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.**

**A.1.1. Is there a special law or code regarding juvenile justice?**

**A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialized juvenile criminal courts, family courts, special prosecutors, police etc.)?**

**A.1.3. What is the scope (only criminal or also antisocial behavior) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?**

**A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?**

The legal framework related to juvenile justice in Cyprus consists of a number of different laws that deal with issues relevant to children, their welfare, juvenile delinquency and juvenile justice and the procedures to be followed before a Court of Law when a child is involved in the court's processes. Those legislative measures range from provisions relevant to criminal, civil and family law procedures and issues, as well as protective measures relevant to children when they are involved with the justice processes or law enforcement authorities.

In light of the above, it can be said that one of the main characteristics of the Cypriot juvenile justice system in Cyprus is the fact that there is not a uniform, extensive and detailed legislation relevant to juvenile justice but rather a compilation of different

laws and provisions found within these that are relevant to juvenile justice. Various recommendations have been made in the past years so as to improve the juvenile justice system in Cyprus but to this day the system remains hugely unchanged. In addition, the practical implication of the aforementioned characteristics of the juvenile justice system in Cyprus is that in some instances the system is not friendly to children coming into contact with justice.

The key legislation regulating juvenile justice in Cyprus is the Juvenile Offenders Law, Cap. 157. This law was adopted in 1946 under the British colonial rule of the island and since then has been amended only once, in 1972.<sup>1</sup> The only amendment was related to a deletion of a sub-section of Article 12 (1) of the Law relating to the methods of dealing with juvenile offenders.

The Juvenile Offenders Law, Cap. 157 consists of 25 Articles, dealing, inter alia, with declarations of reform school and approved residences for children, appointment of probation and deputy probation officers, juvenile courts, remands by courts, association with adults during detention in custody, notices to probation officers by police officers or persons bringing child or young persons before Courts, the procedure in the juvenile court, the power of the Court to require the attendance of parents or guardians, the methods of dealing with juvenile offenders, the duration of reformatory orders, children that are liable to be committed to care of relative etc., the Court's power to order maintenance of children or young persons, the power of the Court to order the parents or guardians to pay fine etc., instead of the juvenile offender in certain cases, the presumption of age and its determination, the power of the Governor to order the removal of persons attaining the age of 16 to a place of detention, the power of the Juvenile Court to commit inmate of a reform school to prison, the suspension of operation of a detention order, children's association with adult prisoners, and the power of the Executive to make Regulations with respect to certain purposes.

It should be noted that the Juvenile Offenders Law, Cap. 157 as amended in 1972, is outdated in most respects and is not fully followed as some of its provisions have become inactive. In particular, the Law makes various references to the powers of the 'Governor', which was the Executive Power under British rule of the island, prior to the establishment of the Republic of Cyprus in 1960.<sup>2</sup> Those references have not been deleted or changed since the adoption of the Law despite the fact that the Parliament amended the Law in 1972. It is understood, however, that any references to the 'Governor', now relate to the Executive Power as regulated by the Constitution of the Republic of Cyprus adopted in 1960.

The Juvenile Offenders Law, Cap. 157, establishes, under Article 5, a specialized Court – the Juvenile Court. In accordance with Article 2 of Cap. 157, Juvenile Court means any

1 Juvenile Offenders (Amendment) Law of 1972, Law No. 94/1972.

2 Juvenile Offenders Law, Cap. 157, Articles 3(1), 3(2), 4(1), 4(2), 14(4), 18, 22 and 23.

member of a District Court when sitting to hear charges against children or young persons other than charges against a child or young person jointly with an adult. The Juvenile Court, according to the Law, sits in a different building or room from that in which the ordinary sittings of the District Court are held, or on different days or at different times from such sittings. Moreover, the Law provides that in a Juvenile Court no person other than the members and officers of the Courts and the parties to the case before the Court, their advocates, and other persons directly connected with the case can attend the Court proceedings. The Law gives the power to the Court to allow by a special order bona fide representatives of newspapers or news agency in a court hearing involving a child. It should be further noted that under Article 5(4) of Cap. 157, no person is allowed to publish the name, address, school, photograph or anything that is likely to lead to the identification of the child or young person involved in a case before the Juvenile Court, except with the permission of the Court or in so far as required by the provisions of the Law. A breach of this proviso carries a penalty not exceeding 50 Cypriot Pounds.<sup>3</sup>

It should be noted here that, due to the influence of the English Legal System upon the Cyprus Legal System and that Cyprus is considered a common law jurisdiction in most respects, English jurisprudence is relevant in most cases to Cyprus legal issues and considerations. As John A. F. Watson notes in his book “Which is the Justice?”, the work of the juvenile court is analogous to that of the doctor. Accordingly, “there are three stages in a doctor’s work. The first is observation of symptoms, the second diagnosis, the third treatment. The same applies to juvenile court magistrates.” This is relevant as to the fact that a specialized juvenile court has never been established in Cyprus in the form that similar juvenile courts exist in other jurisdictions and mainly within the English Legal System. As to this, it should be noted that the Courts dealing with children do not sit in a different building but rather sit in the existing seats of the established courts in the Republic of Cyprus.<sup>4</sup> Accordingly, the two-tier court system established in 1964 by the Administration of Justice (Miscellaneous Provisions) Law,<sup>5</sup> provides now that more than the Supreme Court which is the highest court in the Republic of Cyprus, there exist 4 District Courts,<sup>6</sup> Criminal Courts (Assize Courts), Family Courts, Industrial Disputes Court, Rent Control Courts and a Military Court. The first three, namely the

3 The currency of the Republic of Cyprus was the Cypriot Pound until 1 January 2008 when the Euro replaced the country’s monetary unit. The different Laws of the Republic still use references to the Cypriot Pound, which should be converted to Euros. The conversion rate that was agreed is: 1 euro is worth 0,585274 Cyprus pounds.

4 The organizational chart of the court structure in the Republic of Cyprus can be found in the following link, from the official website of the Supreme Court of Cyprus:  
[http://www.supremecourt.gov.cy/judicial/sc.nsf/19272ba1db66e57ec2257302003d2dc5/5C81C7697E14B37BC225730200423E67/\\$file/organisation.pdf](http://www.supremecourt.gov.cy/judicial/sc.nsf/19272ba1db66e57ec2257302003d2dc5/5C81C7697E14B37BC225730200423E67/$file/organisation.pdf). Accessed on 25 January 2014.

5 Administration of Justice (Miscellaneous Provisions) Law No. 33/64 of 1964, which merges the jurisdiction of the Supreme Constitutional Court and the High Court that were established under the 1960 Constitution of the Republic of Cyprus, following the eruption of intercommunal hostilities in Cyprus, as a result of which the neutral presidents vacated their posts without being replaced.

6 Nicosia – Kyrenia (the District of Kyrenia is wholly occupied by the Turkish Troops), Limassol, Larnaca – Famagusta (the town and a major part of the District of Famagusta is under occupation by the Turkish Troops) and Paphos.

District Courts, Assize Courts and the Family Courts (the last one is a court of specialized jurisdiction, as there should have been a distinct Juvenile Court), deal with cases involving children. As to the criminal jurisdiction, it should be noted that the District Courts have civil and criminal jurisdiction. As to the criminal jurisdiction of the District Courts that involves the trial of offences punishable with imprisonment up to 5 years<sup>7</sup> and with the consent of the Attorney-General of the Republic of Cyprus trial of offences beyond that limit, provided that the Court is satisfied that it is warranted by the circumstances of the case taking also into consideration the sentencing powers of the District Court.<sup>8</sup>

The above is relevant, as the scope of juvenile justice in Cyprus is administered by the aforesaid Courts, mainly in their criminal jurisdiction. More than the major criminal offences existing within most jurisdictions, and which are regulated and defined by the Criminal Code of the Republic of Cyprus, Cap. 154, and for which juveniles can be tried subject to the age of criminal responsibility, the Juvenile Offenders Law, Cap. 157 also provides that any person apparently under the age of fourteen years who is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), or is found in any street, premises, or place for the purpose of so begging or receiving alms, or is found wandering having no home or settled place of abode, or visible means of subsistence, or is found wandering having no parent or guardian, or a parent or guardian who does not exercise proper guardianship, or not being an orphan is found destitute, if his parent or surviving parent, or in the case of an illegitimate child, his mother, are or is undergoing imprisonment, or is under the care of a parent or guardian who is not exercising proper care and guardianship whereby the child is either falling into bad associations or is exposed to moral danger, or is lodging or residing in a house or the part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favor the seduction or prostitution of the child, might be brought before the Court.<sup>9</sup>

The Juvenile Offenders Law, Cap 157, defines children as persons under the age of fourteen and young persons as persons of fourteen years old or upwards and under the age of sixteen years. Cyprus legislation in general defines a child as any person under the age of eighteen, in accordance with the provisions of the Convention on the Rights of the Child.

Of relevance here is the presumption and determination of age, which is regulated by Article 17 of the Juvenile Offenders Law, Cap 157. In particular, the law stipulates that,

7 Articles 23 and 24 of the Courts' Law, Law No. 14/1960, as amended by Laws No. 50/1962 11/1963 8/1969 40/1970 58/1972 1/1980 35/1982 29/1983 91/1983 16/1984 51/1984 83/1984 93/1984 18/1985 71/1985 89/1985 96/1986 317/1987 49/1988 64/1990 136/1991 149/1991 232/1991 237/1991 42(I)/1992 43(I)/1992 102(I)/1992 26(I)/1993 82(I)/1995 102(I)/1996 4(I)/1997 53(I)/1997 90(I)/1997 27(I)/1998 53(I)/1998 110(I)/1998 34(I)/1999 146(I)/1999 41(I)/2000 32(I)/2001 40(I)/2002 80(I)/2002 140(I)/2002 206(I)/2002 17(I)/2004 165(I)/2004 268(I)/2004 21(I)/2006 99(I)/2007 170(I)/2007 76(I)/2008 81(I)/2008 118(I)/2008 119(I)/2008 36(I)/2009 129(I)/2009 138(I)/2009 19(I)/2010 166(I)/2011 30(I)/2013.

8 Section 155(b) of the Criminal Procedure Law, Cap. 155.

9 Juvenile Offenders Law, Cap. 157, Article 14(1)(a)-(e).

“where a person, whether charged with an offence or not, is brought before any Court otherwise than for the purpose of giving evidence, and it appears to the Court that he is a child or young person, the Court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case... and, where it appears to the Court that the person so brought before it is of the age of sixteen years or upwards, that person shall for the purposes of this Law be deemed not to be a child or young person.”

As regards criminal liability of children, this is not imposed to any child under the age of fourteen, since children under fourteen years of age are not criminally liable for any act or omission under the Criminal Code of Cyprus, Cap. 154.<sup>10</sup>

The procedure in Juvenile Courts is regulated by the Juvenile Offenders Law, Cap. 157. In its Article 10, the Law stipulates that where a child or young person is brought before a Court for any offence, the Court has a positive duty to explain to the child as soon as possible in simple language the substance of the alleged offence. Furthermore, where a child or young person is brought before a Juvenile Court for any offence other than homicide, the case shall be summarily disposed of in such Court, and it shall not be necessary to ask the child or young person or the parent of such child or young person whether he consents that the child or young person shall be so dealt with in the Juvenile Court. Having explained the substance of the alleged offence to the child, the Court then asks the child or young person whether he/she admits the offence. In the case of a child or young person not admitting the offence, the Court then hears the evidence of the witnesses in support thereof and at the close of the evidence in chief of each such witness the child or young person is asked if he/she wishes to put any questions to the witness. If a child or young person instead of asking questions wishes to make a statement he/she shall be allowed to do so. It shall be the duty of the Court to put to the witnesses such questions as appear to be necessary. The Court may put to the child or young person such questions as may be necessary to explain anything in the statement of the child or young person.

Following the above, if it then appears to the Court that a prima facie case is made out, the evidence of any witnesses for the defense is heard and the child or young person is be allowed to make a statement or to give evidence on oath in which latter case he/she will be liable to cross-examination, under the rules of Evidence and cross-examination provided under the Evidence Law, Cap. 9. On the other hand, in the case the child or young person admits the offence or the Court is satisfied that the charge is proved, he/she is then asked if he/she desires to say anything in extenuation or mitigation of the penalty or otherwise. In order to enable it to deal with the case in the best interests of the child or young person, the Court may obtain such information as to his/her general conduct, home surroundings, school record, and medical history, as it may deem

<sup>10</sup> Criminal Code of Cyprus, Cap. 154, Article 14. It should be noted that the relevant Article was amended twice, raising the age of criminal responsibility from 10 as it was in 1999 (Law No. 15(I)/1999) to 14 (Law No. 18(I)/2006).

necessary, and may put to him/her any question arising out of such information. For the purpose of obtaining such information or for special medical examination or observation the Court may from time to time remand the child or young person on bail or in custody.

In the case that the child or young person admits the offence or the Court is satisfied that it is proved, and the Court decides that a remand is necessary for the purposes of inquiry or observation, the Court then records that the charge is proved and that the child or young person has been remanded. The Court before which a child or young person so remanded is brought may without further proof of the commission of the offence make any order in respect of the child or young person which could have been made by the Court which so remanded the child or young person.

It should be also noted that the Court may, in its discretion, in cases that a child or young person is charged with any offence, require the attendance of his parent or guardian and may make such orders as are necessary for the purpose.

As Clark Hall and Morrison stated in their book titled “Law Relating to Children and Young Persons”,<sup>11</sup> “where a child or a young person is accused of an offence, he is entitled to be tried on precisely the same principles as those regulating the trial of an adult, although the procedure is or should be simpler in form. Only if he is proved guilty can the court proceed to exercise its powers, and it is in that event that it must have regard to the welfare. The fact that the court has due regard to the welfare of the juvenile does not necessarily exclude punishment, but it does mean that in deciding whether or not to punish or whether to adopt some alternative treatment instead of punishment, it should have regard to what is likely to prove best for the juvenile, and should not attempt the difficult task of measuring the degree of guilt, and the degree of punishment which it considers corresponds to that measure of guilt.” The immediately preceding statement applies to the procedure of the Cypriot Courts when those are dealing with juveniles.<sup>12</sup>

In relation to the respect of due process guarantees, it is noted that the presumption of innocence of an accused person and the doctrine of *nullum crimen nulla poena sine lege* are expressly pronounced in article 12 of the Constitution of the Republic and apply of course in the case of children. The relevant paragraphs read as follows:

“1. No person shall be held guilty of an offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed.”

“4. Every person charged with an offence shall be presumed innocent until proven

<sup>11</sup> London, 1969, p.133.

<sup>12</sup> Dr. George A. Serghides, Judge, *Reflections on Juvenile Delinquency with special regard to Cyprus*, Cyprus Law Review (2004), p. 38-48.

guilty according to law.”

Furthermore, article 12 of the Constitution lays down in paragraph 5 the minimum rights of every person charged with an offence, i.e.:

- To be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him.
- To have adequate time and facilities for the preparation of his defence.
- To defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require.
- To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
- To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **A.2. Please describe the sanctioning system regarding juvenile justice in your country.**

**A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.**

**A.2.2.1. Which possibilities exist to divert a juvenile from a trial? (Diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?**

**A.2.3.2. What types of interventions can the competent court impose?**

**A.2.5. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?**

**A.2.6. What types of residential and custodial institutions exist for juvenile criminal offenders?**

**A.2.7. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?**

According to Sir Edward W. Cox, “the principles that should govern the measure of punishment cannot be understood without a clear comprehension of the objects for the

attainment of which the punishment is designed... Punishment by the law contemplates three definite objects: 1. Its primary purpose is to deter from the commission of crime by fear of the pain that follows upon detection... 2. The second purpose of punishment is to deter the offender, by recollection of the pain he has already endured, from repeating his offence. 3. The third and last purpose is the reform of the moral nature of the criminal, so that he may be restrained from future crime, not by fear of the punishment, but through virtuous inclinations instilled by the prison teachers – in fact, a process of moral regeneration.”<sup>13</sup>

The Juvenile Offenders Law, Cap. 157 provides for the methods of dealing with juvenile offenders. In particular, Article 12(1) of the said law provides that, where a child or young person charged with any offence is tried by any court and the court is satisfied of his/her guilt, the Court shall take into consideration the manner in which, under the provision of Cap. 157 or any other Law of the Republic or otherwise enabling the Court to deal with the case, the case should be dealt with. In particular, the Court can dismiss the charge, deal with the case under the various provisions of the Probation of Offenders Law,<sup>14</sup> commit the offender to the care of a relative or other fit person, send the offender to a reform school, order the offender to pay a fine, damages or costs to which he is liable, or, where the offender is a young person, sentence him/her to imprisonment for the term for which he/she is liable. It should be emphasized here that Article 12(2) of the Juvenile Offenders Law, Cap. 157, stipulates that no child shall in any case be sentenced to imprisonment and no young person shall be sentenced to imprisonment if he/she can be suitably dealt with in any other way as set out above.

As regards probation, the Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996, which applies to juvenile justice, defines a probation order as an autonomous non-custodial sentence according to a convicted person placing him/her under the supervision of a probation officer for a period specified in the order not less than 1 year and not exceeding 3 years.<sup>15</sup> It should be emphasized here that the legal conditions of the probation order are that the sentence for the offence of which the person is convicted is not fixed by law and it is left to the court’s discretion, taking into account the nature of the offence and the character of the offender, to order such probation.<sup>16</sup> It is also noted that the relevant authority for supervising offenders under probation orders is the Welfare Services of the Department of Ministry of Labour and Social Insurance.

As a means of alternative sanctions which are non-custodial, the Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996 also provides for probation

13 Sir Edward W. Cox, *The Principles of Punishment as applied in the administration of the criminal law by Judges and Magistrates*, London, 1877, pp. 3-4.

14 Probation and other means of treatment of Offenders Law of 1996, Law No.46(I)/1996.

15 Probation and other means of treatment of Offenders Law of 1996, Law No.46(I)/1996, Article 5(1).

16 Probation and other means of treatment of Offenders Law of 1996, Law No.46(I)/1996, Article 5(1).

orders with conditions of community service, also applicable to children.<sup>17</sup> This is a probation order with the specific condition of carrying out community service, imposed by the Court with the consent of the convicted person, for a period specified in the order, not less than 1 year and not exceeding 3 years. The same conditions applicable in probation orders also apply in probation orders with conditions of community service, in addition to the consent of the convicted person to carry out such community service.

The Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996 also provides for probation orders with conditions of vocational or other training as a means of non-custodial sanctions.<sup>18</sup> This is a probation order with the specific condition of receiving vocational or other educational training, imposed by the Court with the consent of the convicted person for a period specified in the order, not less than 1 year and not exceeding 3 years. The same conditions applicable in probation orders also apply in probation orders with conditions of community service, in addition to the consent of the convicted person to receive vocational or other educational training.

Law No. 119(I) of 2000 on Violence in the Family and Protection of Victims, in combination with the Law on Probation and other means of treatment of Offenders, Law No. 46(I) of 1996, provide for probation orders with conditions of self-control treatment. Accordingly, the Court may, in lieu of imposing any other sentence, accept the request of the offender to place him on probation on the special condition that he/she will be submitted to self-control treatment by specialists. The Law applies in relation to offences under the Violence in the Family Law.<sup>19</sup>

A suspended sentence of imprisonment may be also given by a Court under the Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law of 1972, Law No. 95/1972. According to the Law, when a court renders a sentence of imprisonment for a term not exceeding 3 years, it may order the suspension of its execution, on condition that within a period of 3 years the convicted person commits no other offence punishable with imprisonment.

Moreover, under Article 64 of the Children's Law, Cap. 352, if a Juvenile Court is satisfied that any person brought before the Court by the Director of the Welfare Services or any police officer is a child in need of care or protection the Court may either order him/her to be sent to a reform school; or commit him/her to the care of a fit person, whether a relative or not who is willing to undertake the care of him/her; or order his/her parent or guardian to enter into a recognizance to exercise proper care and guardianship; or without making any other order, or in addition to making an order under either of the foregoing orders, make an order placing him/her for a specified period, not exceeding three years, under the supervision of a welfare officer or probation officer. Sub-section 2

17 Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996, Article 6.

18 Probation and other means of treatment of Offenders Law, Law No. 46(I) of 1996, Article 7.

19 Violence in the Family Law, Law No. 119(I) of 2000, Article 25 as amended by Law No. 46(I) of 1996.

of Article 64 further provides that the Director of Welfare Services or any welfare officer or any police officer having reasonable grounds for believing that a child is in need of care or protection may bring him/her before a Juvenile Court; and it shall be the duty of the Director to bring before a Juvenile Court any child who appears to him to be in need of care or protection unless he/she is satisfied that the taking of proceedings is undesirable in his/her interests, or that proceedings are about to be taken by some other person.

Imprisonment is treated by the law as to be the last resort in the cases that alternative sanctions as outlined above could be imposed and if the child can be suitably dealt with. Moreover, in case a child or young person is charged with an offence for which a fine, damages or costs may be imposed and the Court is of the opinion that the case would be best met by the imposition of a fine, damages or costs (with or without any other punishment), the Court has the power in this case to order that the fine, damages or cost are awarded by the parent or guardian of the child or young person, instead of the child or young person, unless the Court is satisfied that the parent or guardian cannot be found or that he/she has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.<sup>20</sup> In case the parent or guardian fails to make the payments, then the money are recovered by the parent or guardian, as if he/she was the one convicted in the first place of the offence with which the child or young person was charged.<sup>21</sup> In any case the parent or guardian might be order to give security for the good behavior of the child or young person.<sup>22</sup>

As former President of the Supreme Court, Judge Pikis, wrote “dealing with young offenders is particularly difficult task. In their case, the need of helping in the way of their reform is extraordinary strong, because it can be validly assumed that their chances of rehabilitation are better in comparison to those of older persons who have hardened in their habits and attitudes. The emphasis is on reform rather than punishment.”<sup>23</sup>

As regards the power of the Court to commit an offender to the care of a relative or other fit person, it seems that this is used as one of the last resorts. In order to remove a child from his environment, it must appear that the likely advantages from his removal outweigh such disadvantages, as removal from his surroundings usually entails, for example upsetting the feeling of security produced by living in stable surroundings. According to Article 15(1) of the Juvenile Offenders Law, Cap. 157, any Court having power to make an order committing a child or young person to a reform school or to an institution or to the care of a fit person may, if it appears to the Court that the parent or other person liable to maintain the child or young person possesses the means to contribute in whole or in part to his maintenance, make an order on such parent or other person to contribute to the maintenance of such child or young person during the period

20 Juvenile Offenders Law, Cap. 157, Article 16(1).

21 Juvenile Offenders Law, Cap. 157, Article 16(4).

22 Juvenile Offenders Law, Cap. 157, Article 16(2).

23 Pikis, J, *Sentencing in Cyprus*, Nicosia, 1978, p. 37.

of detention such sum as may appear to the Court that such parent or other person is reasonable able to contribute and the Court may from time to time vary such order.

In 2007 an Office for handling Juvenile Delinquency cases was established by the Cyprus Police, with the duty to enforce the relevant legislation. The office cooperates with all relevant agencies and organizes educational seminars in collaboration with the Cyprus Police. The aim of those seminars is to education the personnel in order to handle efficiently cases of such nature. It is noted that the Office for handling Juvenile Delinquency cases reviews criminal files concerning cases which involve juvenile offenders, and expresses opinions as to their further process. It also maintains a relevant database.

In case of young offenders, deterrence must be balanced by the interest of society to reform the accused. Base on case law, in cases of young offenders the element of deterrence, can only be allowed to be decisive if the offence is peculiarly prevalent among young persons, otherwise imprisonment can only be imposed if it appears to be justified as a measure of last resort.

Unfortunately, in Cyprus, there are no institutions for custodial treatment of young offenders between the ages of 16 to 21. A reform institution was established at Lambousa, Lapithos and Kyrenia. Specifically, the one in Kyrenia functioned until the Turkish invasion of Cyprus, in 1974. It was then transferred at Polemidia, Limassol and in 1986 his operation was suspended by a decision of the Council of Ministers. Thus, it is surprising to realize that since 1986 there is no reform school in Cyprus, and as the former Judge of the Supreme Court Pikis stated, this is “a vacuum that must be filled the earliest possible.”<sup>24</sup>

Based on the records of the Statistical Service of Cyprus, in 2008 the number of young offenders was 341; in 2009 the number was reduced to 281, 25 of which were girls. However, in 2010 the number of offenders was raised to 481, 31 of which were girls. In addition, based on Police Statistics the number of minors convicted for minor offences in 2010 was 233 and it appears that the number of juveniles offenders involve in the commission of crimes is higher than the previous years. As regards serious offences, the number of minor convicted is more or less the same since 1990, with the exception of 2004 (140 minors convicted) and 2005 (98 minors convicted). The number of boys convicted is every year far more in comparison with girls.

The following table illustrates the sentencing practice of the Courts, in relation to minors:

	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
Guardianship	194	54	62	81	46	102	61	13	18	12	5	20	9
Fine	20	16	28	13	14	50	123	23	34	31	57	14	21
Bail	2	0	11	5	10	9	35	5	2	0	0	3	0
Suspended imprin.	13	5	8	10	8	10	11	7	8	7	3	3	12
Social work	29	13	39	13	7	8	-	-	-	-	-	-	-
Other	5	10	6	9	5	19	33	6	16	2	0	9	10

<sup>24</sup> Pikis, J, *Sentencing in Cyprus*, Nicosia, 1978, p. 20.

The Juvenile Offenders Law, Cap. 157, provides for the operation of reform schools and approved residences for juvenile offenders.<sup>25</sup> The Court may also order for the child to be committed to care of relatives etc. under Article 14(1) outlined above. In those cases, the Court, if satisfied on inquiry of those facts, may order the child to be taken out of the custody, charge, or care of any person, and to be committed to the care of a relative of the child or some other fit person or institution named by the Court (such relative or other person or institution being willing to undertake such care), until the child attains the age of sixteen years, or for any shorter period, and may, in addition to such order or without making any other order, make an order that the child be placed under the supervision of a probation officer or some other person appointed for the purpose, for a specified period until the child attains the age of sixteen years, or for any shorter period, and the Court may of its own motion, or on the application of any person, from time to time, by order renew, vary or revoke any such order. Such orders shall be in writing, and any such orders may be made by the Court in the absence of the child.<sup>26</sup> When such an order is made by the Court, any person or institution to whose care a child is committed, whilst the order is in force, have the same right of control over the child as a parent and the child shall continue in the care of such person or institution, notwithstanding that he/she is claimed by his/her parent or any other person.

Article 18 of the Juvenile Offenders Law, Cap. 157 also gives the power to the Governor to order removal of persons attaining the age of 16 to a place of detention.

<sup>25</sup> Juvenile Offenders Law, Cap. 157, Article 3.

<sup>26</sup> Juvenile Offenders Law, Cap. 157, Article 14(2).

## **B. Restorative approach within juvenile justice**

**B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?**

**B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.**

**B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?**

**B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?**

The purpose of criminal justice should not be to punish a juvenile offender but rather to undertake a restorative approach. As stated in numerous criminal cases, the Courts should as far as possible avoid sentencing to the prison young offenders. Imprisonment is not the best solution for young offenders. The justice system of Cyprus may be understood in a variety of ways, including the protection of society, the general prevention and deterrence, the punishment of the offender, the compensation of the victim, the imposition of a sentence other than the imprisonment and institutions for rehabilitation of convicted persons in the society, as it is evident from the aforementioned examination.

It should be emphasized here that, within the context of the process based definition of restorative justice in accordance with Article 2 of ECOSOC Resolution 2002/12,<sup>27</sup> restorative justice does not exist in Cyprus, as there is no legislation regarding mediation on criminal proceedings, despite calls and a proposed bill concerning mediation in penal law matters.

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<sup>27</sup> According to Article 2 of ECOSOC Resolution 2002/12, a restorative process means “any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”

In most respects and in the general context of restorative justice, the Welfare Services of the Republic manned by their Officers offer counselling to young offenders. The only Prison in Cyprus is divided into three sections, which are the closed prison, the open prison and the centre of guidance and out of prison employment. According to the stated policy of the Government, the aim of the open prison and the centre of guidance and out of prison employment is to help the social rehabilitation and resettlement of detainees. Young offenders sentenced to imprisonment are held in the Prison premises but separately and do not associate with adult prisoners, while they are encouraged to improve the level of their education and vocational training by attending classes in or outside the prisons or by correspondence courses. Psychological and psychiatric services and support are offered to all prisoners in need on a regular basis with personal meetings, group discussions and meetings in the presence on the prisoner's family.

As noted above, the most frequently used measure of dealing with young offenders the probation order, as an alternative to imprisonment, placing the convict under the supervision of a probation officer of the Welfare Office.

## C. Foster care within the juvenile justice system

**C.1. Does foster care play any role in your juvenile justice system?**

**C.2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster careers etc.) If there are possibilities in law, how are they used in practice?**

**C.3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?**

When the court assesses that the surroundings of the minor are not good for his/her physical nor his/her moral health, then it has the power to commit the child to the care of a relative or a fit person. A court will not remove a child from the parental home unless the parents have proved grossly incapable of taking proper care of the child.

The person responsible for alternative care is the Chief Welfare Officer ('The Director'). Article 3 of the Law 352 provides that the Director may receive a child under his care, in the event of a child under the age of sixteen, has neither parent nor a guardian or the parents or the guardian are permanently or for the time being prevented by reason of mental or bodily disease unable to maintain the child and there is no available person and the Social Welfare Department thinks is necessary for the interest of the welfare of the child. Moreover, the Director can assume parental rights, if parents are dead and has no guardian or the parent or guardian are incapable of caring for the child.

In the event that a person undertakes for reward the nursing and maintenance of a child under the age of sixteen apart from his parents or having no parents must give notice to the Director. It is the duty of the Director to make sure and satisfy himself as to the health and welfare of the children and give the necessary advice or directions as to the care of their health and maintenance.

The powers of Juvenile Courts in respect of children in need of care or protection are outlined below:

If a Juvenile Court is satisfied that any person brought before the Court under this section by the Director or any police officer is a child in need of care or protection the Court may either.

- (a) order him to be sent to a reform school; or
- (b) commit him to the care of a fit person, whether a relative or not who is willing to undertake the care of him; or
- (c) order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or
- (d) without making any other order, or in addition to making an order under either of the last two foregoing paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a welfare officer or probation officer.<sup>28</sup>

Of relevance here is also Article 14 of the Juvenile Offenders Law, Cap. 157, examined above.

The Court also has power to order maintenance of children or young persons. According to Article 15 of the Juvenile Offenders Law, Cap. 157, any Court having power to make an order committing a child or young person to a reform school or to an institution or to the care of a fit person may, if it appears to the Court that the parent or other person liable to maintain the child or young person possesses the means to contribute in whole or in part to his maintenance, make an order on such parent or other person to contribute to the maintenance of such child or young person during the period of detention such sum as may appear to the Court that such parent or other person is reasonably able to contribute and the Court may from time to time vary such order. Any such order may be made on the complaint or application of the authority in charge of the reform school or of the institution or of the person to whose care the child or young person is for the time being committed, and either at the time when the order for the committal of the child is made or subsequently and the sum contributed by the parent or such other person shall be paid to such authority, institution or person making the complaint or application and shall be applied for the maintenance of the child or young person. Any sum payable under such order shall be deemed to be a sum due by the parent or other person named in the order to the authority in charge of the reform school or of the institution or to the person named in the order and shall be recovered in all respects in accordance with, and subject to, the provisions of any Law in force regarding execution of judgments as though the amount thereof had been recovered in a civil action in the Court in which the order was made. When any parent or other person has, under this section, been ordered

<sup>28</sup> Article 64, Children's Law, Cap. 352.

to contribute to the maintenance of a child or young person, he shall give notice of any change of address to the Registrar of the Court which made the order and, if he fails to do so without reasonable excuse, he shall be liable to a fine not exceeding one pound.

Additionally, the Governor has the power to order removal of persons attaining the age of 16 to a place of detention. In particular, and in accordance with Article 18 of the Juvenile Offenders Law, Cap. 157, where it is made to appear to the Governor by the person in charge of a reform school, that with regard to any person therein who has attained the age of sixteen it is undesirable that he should continue associating with persons of a younger age; or on account of lack of accommodation in the reform school, it is desirable that he should not remain in the reform school, the Governor may order that such person shall be removed to any place of detention approved by him for a period which, together with the period during which he has already been detained in the reform school, shall not exceed the period for which he was liable to be detained in a reform school under the provisions of section 13 of this Law. The Director can provide for a remand home and while the child is being to a remand home is deemed to be in legal custody.

Based on the Juvenile Offenders Law, Cap.157, a court on remanding or committing for trial a child or a young person who is not released on bail, where practicable, instead of committing him to prison commit him to custody in a police station.<sup>29</sup> However, a commitment under the above principle may be varied or in the case of a young person who proves to be of so unruly character that he cannot be suitably detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court acting in or for the place in or for which the Court which made the order acted, and if it is revoked the young person may be committed to prison.

Foster care in Cyprus' juvenile system does not exist, although welfare services relevant to the protection of the child are offered in the following instances:

- (a) Children in the care of the Director - The Social Welfare Services, as the official agency of the State for the implementation of legislation concerning children undertake the care and protection of children who, for certain reasons, must be removed from their families. These children are taken into the care of the Director of Social Welfare Services and placed in foster families on payment or in child protection institutions. At the same time, practical assistance and social work services are provided to the child's family with the aim of improving conditions and facilitating the earliest possible return of the child to its own home.
- (b) Day-Care of Children - With the goal of further supporting and empowering the family, Social Welfare Services implement a child day care programme either in foster families on payment, or in institutions.
- (c) Custody Cases - In accordance with the Parents and Children's Relationship Law,

<sup>29</sup> Article 7, Juvenile Offenders Law, Cap. 157.

the Social Welfare Services supervise cases which are before the Family Court after an application of either parent. In compliance with the Court's instructions, officers of the Social Welfare Services prepare socio-economic reports, in order to inform the Court, with the aim of safeguarding and protecting the children's best interests. They also supervise and facilitate communication between the children and the parent who does not live with them.

- (d) Day Care Centers, Child - Minders, Day Centers for School-aged Children

The Social Welfare Services operate the Child Day Care Programme. Within the scope of this Programme, Social Welfare Services provide day care services in governmental Day Care Centers, register and inspect private and community Day Care Centers and Child – Minders, register and inspect Day Centers for school-aged children.

- (e) Institutional Services for Children and Young people - In 2003, the Social Welfare Services were operating 8 child protection institutions. On 31.12.2003 the number of children living in these institutions was 129.

In accordance with the Adoption Law, Officers of the Social Welfare Services have the following responsibilities: to prepare a documented report concerning the eligibility of persons wishing to adopt, who have not yet found a child to adopt, but also persons who wish to adopt a specific child; to safeguard the interests of the child to be adopted in their capacity of guardians ad litem appointed by the Court and to prepare the relevant report for the Court.

In addition the Social Welfare Services continue to function as the Competent Authority, in accordance with the provisions of the Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoptions.<sup>30</sup>

It is to be noted that in relation to juvenile delinquency, the Department of Social Welfare Services prepares and submits socio-economic reports for minors showing criminal behaviour.

In general, based on the Department's of Social Welfare Services policies, aimed at decriminalizing the treatment of juvenile offenders, children under the age of 14 who are involved in criminal offenses are not prosecuted, but, depending on the problems presented, handled by the Welfare Services. All cases of offenders aged 14 to 16 years are discussed by a committee consisting of the District Welfare Officer and the Chief of Police of each District, which makes recommendations to the Attorney General regarding their prosecution or other action.

<sup>30</sup> Cyprus Social Welfare Services.

In conclusion, the aforementioned examination evidences that there is no coherent juvenile justice legislation in Cyprus and that a restorative approach within juvenile justice and foster care within the juvenile justice system in Cyprus has not yet been implemented.





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