

YOUNG OFFENDERS AND YOUTH AT RISK : OVERVIEW OF CURRENT INTERNATIONAL APPROCHES

Juvenile Justice in Europe

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I. Introduction

Penal Reform International works on Prison and Penal Reform around the world. A great deal of our work concerns juveniles and juvenile justice. PRI believes that a proper administration of juvenile justice cannot be achieved without a strong education and welfare system. Helping young people in conflict with the law to become law abiding adult citizens is much more the job of parents, teachers, social workers and psychologists than it is of police, courts and prisons. PRI is of the opinion that juvenile offending should be dealt with as far as possible from the formal criminal justice and penal system. PRI has established a *Ten Point Plan for Juvenile Justice* which focuses on ways of reducing violence within juvenile justice systems world wide. The plan builds on the relevant international instruments;

- The UN convention of the rights of the child
- The Standard Minimum Rules for the Administration of Juvenile Justice
- The UN Rules for the Protection of Juveniles Deprived of their Liberty.

The plan emphasises the following points;

1. **Arrest and interrogation**; arrest of children should be a measure of last resort. Separation between children and adults. Questioning undertaken by selected and trained officers.
2. **Age of criminal responsibility**; an as high minimum age of criminal responsibility.
3. **Diversion**; need for diversion and community alternatives.
4. **Pre-trial detention**; where possible, children should be released into the care of their families to await trial.
5. **Alternative sentences**; emphasize the values of restorative justice.
6. **Youth courts**; special child courts with less formal proceedings should be established for dealing with minors.
7. **Custodial sentences**; custodial sentences should be used as a last resort and for the shortest time and only in exceptional cases.
8. **Detention facilities**; separation between children and adults, rehabilitation, education sporting and cultural activities available.

9. **Inspection**; independent scrutiny and inspection for child institutions.
10. **Family links**; every effort should be undertaken to encourage contact between detained children and their families.

II. Trends in juvenile delinquency in the rise

It is claimed that 39% of European Union (EU) citizens are seriously worried about juvenile delinquency as a consequence of vandalism and gratuitous violence spreading from the inner cities to the countryside.

Experts say that juvenile delinquency has become more serious in the last decades and the statistics show that the problem is increasing rapidly.

A conference on Juvenile Justice in the EU held in Paris in 2001 identified three main reasons behind the rising tide of juvenile delinquency in the EU.

1. The great exposure of violence in the mass media in general. It was found that an average western European child has by the time he or she reaches the age of 12 witnessed 100.000 scenes of extreme violence.
2. Children are not taught how to be good citizens. The rising number of dysfunctional families, and the increasing number of abandoned or neglected children, have lead to many children who, by the time they get to the school age, are not socialized for the class room and consequently find the education system hostile and intrusive and start their disruptive behaviour against society.
3. The drug issue. The big number of drug users in Western Europe and the trafficking around drugs further destabilise society.

For the Eastern and Central European countries there seem to have been a substantial growth in juvenile delinquency since the late 1980s. This is not very surprising given the rapid social and economic changes that these societies have undergone during the last decade or so. History shows that societies exposed to major social and economical changes tend to experience an increase in juvenile delinquency as well as other youth related problems.

When it comes to the type of offences committed both in Western Europe and Eastern and Central Europe face an increase in violent offences committed by juveniles. As a result of the increase in juvenile delinquency and lacking resources, juvenile detention is on the increase.

III. Legal concepts

a) Age of criminal responsibility

What is common to a number of Eastern European countries is that the age of criminal responsibility may be lowered for serious offences. This is the case for countries as Estonia, Latvia, Macedonia, Moldova, Poland, Russia and Ukraine. The age for criminal responsibility varies from 14-17, but can be lowered to 13 in the case of Estonia.

In most Eastern and Central European countries the age of criminal responsibility is higher than in many Western European countries. The age of criminal responsibility varies greatly. In France young delinquents from the age of 13 can be prosecuted and in England from the age of 10. In Scotland this is theoretically possible from the age of 8 and in Ireland and Switzerland from the age of 7. In Sweden the minimum age is 15 and in Belgium 16. There is

a considerable support in some of these countries, however, to raise the age of criminal responsibility. This great variety in the age of criminal responsibility is a first indication of the difficulties in responding adequately to the transitional period between the child, presumed to be innocent and not punishable, and the adult, presumed to be responsible and punishable.

b) Courts

It is important to stress that children must not be dealt with in the same way as adults. Special child courts/tribunals should therefore be established for dealing with juveniles. Such courts should encourage the presence of the parent and have specially trained judges. Sentencing should be based on a careful assessment of the needs of the child as well as the circumstances of the offence.

In contrast to many Western European countries very few countries throughout Central and Eastern Europe have specialised courts for minors. In most of these countries, however, court proceedings involve social workers, teachers and educators. In most Western European countries, Juvenile Courts operate with a professional judge. In Italy the judge is assisted by two non professional observers.

IV. Measures for dealing with juvenile delinquents

a) « Dialogue citoyen », a French experience

In 1999 in France, a pilot project was launched to deal with young offenders differently. The experiment was called “dialogue citoyen” (Civic dialogue), which is an integral part of the Community Service sanction. Young offenders sentenced to Community Service for vandalism, outrage or aggression against public authority persons (urban violence offences) can, if they wish, participate in an 18 hours of civic dialogue and practice. These 18 hours dedicated to the so called “dialogue citoyen” are deducted from the total hours of Community Service.

The offenders meet with different institutional representatives such as the police, the “prefecture”, the transport companies and fire brigade. During three days the offenders have six different dialogue of three hours each. The objective of the judges and the correctional service is to create an open dialogue between the protagonists. Representatives from the judiciary are not present at these meetings. They open each session, present the different speakers, remind the participants of the rules and discipline to respect and leave the meeting.

The structure and organisation of this mechanism propose consequently a dialogue as free as possible from constraints, dominations and hierarchies of the social reality. Its artificial character is supposed to offer a balanced dialogue between protagonists. It recommends the dialogue as a means of communications. This mechanism, of course depends on the participants’ acceptance of the rules.

The French experience depends, further, on the following conditions. It accepts to :

- Consider the juvenile participant as an adult, a citizen, and not only as a “youngster”.
- Give a positive meaning to the word “conflict”.
- Break down prejudices like, “neighbourhood”, “youngsters” etc; the adult interveners should question themselves and participate in the dialogue in the same way as the participants.

The results obtained since December 1999 have encouraged for the continuation of this type of dialogue in open environments. Dialogues taking place in a closed environment constitutes a new (since May 2001) experience and new challenges and adaptations of the programme.

b) Non-violent communication in FR Yugoslavia

The Institute for Psychology in Belgrade and the Centre for Social Work have implemented a project for older juvenile offenders sentenced to re-education measures with heavy surveillance. The project is called *non-violent communication* and it is implemented through workshops. The programme is based on discussion between a group of juveniles and adults. Juveniles and adults are active and equal partners in exchanging attitudes, opinions and experience. The role of the adult is to recognize and understand the child's needs, feelings, and to discuss his/her behaviour and actions in a setting free from fear of punishment and rejection.

c) Closed re-education centres in France: One step forward two steps backward

The wind in Western Europe, and more generally in the West, is blowing fast to push to the right. Elections of the last years and months show that the mood is for tougher penalties, zero tolerance and more and longer prison terms. The campaigns for these elections have been dominated by public debates, with politicians, left, center, right and far right have used the popular theme of insecurity, the rising of crime and violent crime and the crimes by youngsters. Speaking about exclusion policy factors is not popular. Exaggerating insecurity and violence does attract voters. Thus the policies of zero tolerance and profiling of youth. Populist governments came to power and others are hijacked by stronger extreme right movements. The general situation as it evolves is not helpful to alternative policies, which put innovative approaches at great risks. This is what is happening in old democracies like France.

The newly elected French government has decided to take repressive measures to deal with the increasing juvenile delinquency in France. So called "closed re-education centres" are going to be opened for "*a number of individuals who must be removed from society to be re-educated*" (Mr Schosteck, French politician). According to the French government a strong signal must be given to these youngsters and to their victims. This type of centres will make it possible to lock up minors, even though they are not referred to as "prisons". Experts and trade unionists have launched a petition which reminds the governments of the closure of this type of centres some 30 years ago. The closed centre *Juvisy-sur Orge* was the last centre of this kind closed down by a conservative government. It was closed down because of the acknowledgement that it was a failure. Trying to re-educate and reintegrate a minor who is locked up, when he has no other choice, no free space, is an impossible mission. The *Juvisy* centre was infamously known for its extreme violent climate. There was constant violence between the minors themselves as well as between the minors and the adult staff. As a result, the rehabilitation of the juveniles remained most uncertain. The director of the *Juvisy* centre described it as "a prison which won't say its name" and as "a bomb ready to explode".

Even though all Eastern and Central European countries recognise the importance of educational and welfare measures for juveniles, most children in a majority of the countries receive a custodial sentence. This situation is in total contradiction with the principle, which says that deprivation of liberty should be used only as a last resort. Moreover, reality shows that many times educational measures involve deprivation of liberty. In most countries in the region there is a lack of alternative rehabilitation and reintegration measures.

V. What the Council of Europe has done on the issue of Juvenile Justice

The CoE has for several years addressed the subject of Juvenile Justice. This is reflected in a number of recommendations;

- R(87)20 on social response to juvenile delinquency
- R(88)6 on a social response to delinquent behaviour among young people from migrant families
- R(92)16 concerning European rules on community measures and sanctions
- R(99)19 on mediation in penal matters
- R(2000)20 on the place of early psycho-social intervention in preventing criminal behaviour.

On 22 November 2000 the CoE decided to set up an expert committee to examine new ways of responding to juvenile delinquency and the role of justice with minors. The committee is due to complete its work at the end of December 2002 with the production of a report and recommendations.

VI. Conclusion

Some of the reasons for the relative neglect of juvenile justice are the unpopularity of the topic, the fact that juvenile justice is an overlapping of systems, structural injustices, over-reliance on the negative approach and the fact that many states do not take a holistic approach.

At the Paris Conference on Juvenile Delinquency in the EU, the importance of preventive measures was emphasised. It was noted that closer policing policies produce better results than super-squadrons. Close policing involves more police working in the community, in crime prevention schemes rather than punishment.

I was last Friday, 14 June, in Almaty, Kazakhstan. I listened to Pr. Monika Platek from Poland. She asked a disturbing and challenging question. She said: "How comes that a society which was unable to educate youth and help them grow as responsible citizens while they are free children, believes it can achieve that by putting them in prisons, by setting up expensive institutions, and to re-educate them in closed places. This should emphasise the needs for proper education and preventive programmes. Thus our interest for this conference.

In addition to prevention schemes, it is crucial to develop adequate education schemes for young offenders. Such schemes will provide the services young people need at a time when they can still be helped, whereas locking them up in closed institutions only highlights the failure of society to provide them with the equal opportunities they have as a birthright.

The Defence of Children International, DCI, has set up, few years back, an International Network on Juvenile Justice, which is an important forum for discussion and exchange of experience and good practice in the field of juvenile justice.

Even though Europe is often referred to as a continent with a well developed administration on Juvenile Justice, it has to be stressed that Europe is facing major problems at the moment. The increase in juvenile delinquency and the reactions from the public opinion in Europe, in combination with less resources invested in this area of preventative measures, have pushed several European governments to introduce populist, tougher measures to tackle juvenile delinquencies and an increased punitive approach. The danger is that the social and political

reactions to the more serious cases could well influence the nature of juvenile justice as a whole.