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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**

**(CDPC)**

**Committee of Experts**  
**on new ways of dealing with juvenile delinquency**  
**and the role of juvenile justice**  
**(PC-JU)**

**A TYPOLOGY OF JUVENILE JUSTICE SYSTEMS IN EUROPE**

- Provisional version -

by

Mr Nestor COURAKIS  
Professor of Criminology and Penology  
Faculty of Law, University of Athens

During the first meeting (18-20.9.2000, Strasbourg) of the "Committee of Experts on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice" I was invited to prepare a report on the typology of juvenile justice systems in Europe

### I. *Justice System Models as a Basis of Typology*

This report will consider two diametrically opposed models of juvenile justice systems; the welfare model and the justice model, since between them they embrace and contrast all aspects of juvenile justice systems currently in use in various national systems.

The *welfare model*, after the famous French "Ordonnance" (Act) of 2.2.1945 on Juvenile Delinquents, focuses on the *personality* of the offender, who is considered to be in need of *reeducation* and *rehabilitation*. To achieve this end, both legislator and judge place emphasis on sanctions (measures and penalties) of education and welfare, which can hopefully lead to an "improvement" of the offender's personality. All these sanctions are imposed "for the sake of the offender". Hence, they are implemented (a) *without taking into particular consideration* either *the problems created to the victim*, or *the kind of offence* committed by the juvenile (in some legislations it suffices that the juvenile is simply "at risk" of committing an offence). Also (b) the *duration* and the *criteria* for imposing a sanction have *not to be precisely fixed in advance*, but are a matter of discretionary power of the judge, because, as it is believed, the procedure of reeducation must be flexible according to the deficits or particularities of the offender's personality. Furthermore, (c) the offender has better chances of improvement if s/he remains *within an institution or detention center*, since in that case s/he can be subjected to a complete program of reeducation. Similarly, (d) the offender has to be brought before a specialized *Criminal Court for Minors*, which acts *loco parentis*. Finally, (e) the offender needs not to have an abundance of *constitutional rights and guarantees* (e.g. to have the right to a fair hearing, the right to legal representation and the right to appeal to a higher authority), because such "facilities" might put at risk the success of the program of reeducation.

On the other hand, the *justice model*, mainly based on ideas originally formulated by *Edwin M. Schur* in his book "Radical Non-Intervention" (Englewood Cliffs, N.J.: Prentice Hall, 1973) is conceptually at variance with the above model. It focuses on the *offence* itself and not so much on offender's personality, whose acts during adolescence need not to be an object of treatment, since they are believed to have an incidental and non-permanent character. Consequently, the main objective of this model is not rehabilitation at any cost, but reintegration of the juvenile into a society which respects her/his rights as a citizen. Hence: (a) the *sanctions* to be imposed must be principally *proportional* to the offence committed, in the sense that they cannot be heavier than the gravity of the offence. Yet, they can be more lenient, if this is necessary in view of the specific situation of the offender and the needs of her/his social reintegration. Besides, (b) the *duration of the sanction must be fixed* in advance, even though a part or the whole of the sanction can be served in different ways (e.g. through non custodial measures). Similarly, the *criteria for imposing a sanction* must be *clear and precise*. As a result, the legislator should not use indefinite terms or expressions with ambivalent meaning. In addition, (c) *incarceration* must always remain, according to the subsidiary principle, only the last resort ("ultima ratio") to cope with the juvenile delinquency, i.e. it has to be imposed and executed only in serious cases of offenses and/or on "hard-core"

(recidivist) offenders, of a certain age (e.g. about 15-16 years, when the juvenile is no more legally obliged to visit a school class). *Non custodial measures*, like fines, and, in particular, community-based measures, which can strengthen the offender's (and his parents') sense of responsibility towards society, as well as the offender's bonds with society, like community service and compensation of the victim in the spirit of a restorative justice, are always to be preferred, either alternatively or in combination with one another ("sanctions-cocktail") for minor and medium criminality, provided that the *offender agrees* with the enforcement of these measures. The measures to be chosen have to be taken without delays and have to be adapted to the offenders' needs and particularities. An *integrated* collaboration of police, public prosecutor, social services, non-governmental organizations and local *authorities* or local partnerships is undoubtedly vital for the successful performance of such measures, as well as for combating through *preventive measures* the social problems which can lead to delinquency, e.g. bad conditions in family, school-absenteeism and unemployment. Moreover, (d) it is better for the offender, at least in normal cases, not to be brought before a criminal court (which, if possible, must be, a specialized one), because this can stigmatize him/her and can lead him/her to a one-way criminal career (labeling approach). Instead of such formal procedures, or other state responses, other methods of handling the case must be put forward which are based on *diversion*. Of course, these informal methods are closely connected with the non-custodial measures already mentioned above, in the sense that if some of these measures are performed in time by the offender, his case will not be brought before a court. Finally, (e) *respect of constitutional rights and guarantees* ("due process") constitute nowadays a self-evident prerequisite for conducting prosecution (or even, in cases of diversion), imposing a sanction or executing a sentence on a person and, more particularly on a juvenile, who is usually unprotected and suffers from social exclusion. Hence, rights and guarantees for adults must also be safeguarded for minors and juveniles in the same extent or even more.

The first of these models, the *welfare model*, was preponderant in legislations and jurisprudence of Europe and of the U.S.A. and still prevails in some countries, e.g. in Greece and Belgium. Yet since the beginning of '70ies, it has been heavily attacked as paternalistic, arbitrary and ineffective. In its place, the justice model gradually started to gain ground, also as a result of important international instruments in favor of it, issued by the United Nations (esp. UN Convention of 1990 on the Rights of the Child, Beijing Rules of 1985, for example art. 17.1c, and Riyadh Guidelines of 1990) and the Council of Europe (esp. Recommendations No. R (87) 20 & No. R. (92) 16 and European Convention of 1996). As typical examples of legislations oriented to the *justice model*, one can mention primarily those of England/Wales and of the Netherlands. However, in some countries the justice model is incidentally applied in practice, not so much in view of attaining the objective of social reintegration of the delinquent juvenile, but rather in a rigorous spirit of retribution (cf. Andrew *von Hirsch*, *Censure and Sanctions*, Oxford: Clarendon Press, 1993) in order to reassure public opinion (incited by the media) that "crime is under control" and that trouble makers will "pay" for their activities. Such deviations of the justice model towards harshness and "tough alternatives" are mainly observed when violent and serious criminality seems to be in ascent or when some unprecedented criminal cases crime (e.g. murder by small children and/or of small children) create an atmosphere of "moral panic" in a society (cf. Christian *Pfeiffer*, *Juvenile Crime and Violence in Europe*, in: *Crime and Justice*, vol. 23, 1998, 255-328: 322). Furthermore, some other countries adopt several non-custodial measures but they are unable to implement them due to lack of resources and/or of qualified personnel (e.g. social workers).

## II. *Typologies according to the justice systems in European countries.*

Evidently, it is particularly difficult and even fruitless, in view of rapidly changing legislations, to undertake here a detailed updated inventory of the various juvenile justice systems in Europe today, by classifying each of them according to the one or the other of the above mentioned models. Besides, differences between these justice systems are not particularly deep, since most, if not all of them, are evolving nowadays *towards a model combining educative objectives and due-process guarantees for juveniles, hence towards a "balanced" justice model.* However, one can generally depict the following situation of various European countries, according to basic legislative criteria, like the age of the criminal responsibility, the existence of custodial and/or non-custodial measures, and the extent to which policy strategies like reparation of the damage and mediation are favored:

### Age of Criminal Responsibility I. Countries of Western Europe

Austria*	14 (also persons of 18 to 19-year age are included into the juvenile system)
Belgium	18 (but may be lowered to 16 for traffic offences)
Cyprus	10 (yet rare cases of imprisonment)
Denmark	15
England / Wales	10 (15 for imprisonment)
Finland	15
France	13
Germany*	14
Greece	12
Iceland	
Ireland	12
Italy*	14
Luxemburg	18 (in some cases: 16)
the Netherlands	12
Norway	15 (Reform of 1987)
Portugal	16 (may be lowered to 14 for serious or persistent crimes)
Scotland	8
Spain	14 (Reform of 2000)
Sweden	15
Switzerland	7 (15 for imprisonment)
Turkey	12

\* For criminal responsibility, a personal capacity of the juvenile to understand the wrong of his act is also needed.

**II. Countries of Central and Eastern Europe**  
(cf. Stewart *Asquith*, *Juvenile Justice and Juvenile Delinquency*  
in Central and Eastern Europe, Council of Europe, 1996, p. 23)

Bulgaria	14
Czech Republic	15
Croatia	14 (16 for incarceration)
Estonia	15 (but may be lowered to 13 for serious offences)
Hungary	14
Latvia	16 (but may be lowered to 14 for serious offences)
Lithuania	16 (but may be lowered to 14 or 15 for "malicious acts")
F.Y.R.O.M.	16 (but may be lowered to 14)
Moldova	16 (but may be lowered to 14)
Poland	13
Rumania	
Russia	16 (but may be lowered to 14 for serious offences)
Slovak Republic	15
Slovenia	16 (14 for serious offences)
Ukraine	16 (but may be lowered to 14)
Yugoslavia	

Education and Penal Measures

I. Countries of Western Europe

	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation Mediation	Waive prosecution sentencing measures	Fine	Conditional and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
Austria (Reform of 1988)			+	+	+	+		+	Imprisonment (Freiheitsstrafe)	10 years
Belgium	+	+	+	+	+					
Cyprus (Reform of 1996)		+	+	+			+		Imprisonment	
Denmark				+	+	+	+	+	detention center	2 months
					(local project of 1997)	(through social contracts drawn up by Youth Offender Panels)			detention in a young offender institution	2 years



	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation	Waive prosecution measures	Fine	Conditional and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
France (Reform of 1993, 1998 and 1999)	+	+	+	+	+	+		+	Centre éducatif renforcé ----- Centre de placement immédiat Peine à emprisonnement	6 months ----- 3 months
Germany (Reform of 1990)	+		+	+	+	+	+	+	Jugendarrest- ----- Jugendstrafe	4 weeks ----- 5 years, or even 10 years for serious offences
Greece	+	+	+						+ Correctional detention	10 years (for murder etc. 20 years)
Iceland	+						+	+		

	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation Mediation	Waive prosecution measures	Fine	Conditional and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
Ireland (Reform of 1999)	+		+			+		+	+ Children detention schools (12-15 years old) Secure detention centres (16-17 years old)	
Italy (Reform of 1988)	+			+	+	+		+		
Luxembourg	+	+		+						
Netherlands (Reform of 1995)	+			+	+	+	+		+ Hospitalization in a juvenile institution Youth detention	1 year for 12-15, 2 years for 16-17 (longer punishments for crimes)

	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation	Waive prosecution measures	Fine	Conditional and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
Norway (Reform of 1993)				+	+	+	+	+	+ Training institution + Imprisonment for 15-18 years of age	1 year for under 15 ----- Maximum in relation to the offence committed
Portugal (Reform of 1999)	+	+	+	+	+	+	+		+ Educational Establishment	Maximum in relation to the offence committed
Scotland									+	4 months detention centre, detention of young offenders
Spain (Reform of 2000)	+	+	(functioning of social services not on national level)	+	+	+			Placement in a closed centre	
Sweden (Reform of 1999)	+		+ (max.: 3 m.)	+	+	+	+		+ in combination with probation ----- Detention centre	1 week and in exceptional cases: 2 weeks ----- 4 years







## Conclusion.

Over the last few years, a wind of change aimed at the modernization of existing juvenile systems has become discernible in most European countries. Already in 1988 Austria and Italy undertook an ambitious legislative reform. Other countries followed: soon in 1990 Germany, in 1991 England/Wales (which proceeded to new reforms in 1994 and 1998), in 1993 Norway, in 1995 the Netherlands, in 1997 Finland, in 1999 Portugal, Sweden, Ireland and in 2000 Spain. Most of these countries have adopted measures which: (a) consider imprisonment only as the last resort for juvenile delinquents, and avoid the introduction of long-term prison sentences; (b) develop a large scale of non-custodial measures, whose successful performance by the offender can waive further prosecution; (c) encourage various strategies of diversion and mediation, especially when their criminal procedure is based on the principle of opportunity; (d) pay particular attention to the reparation of the damage created to the victim; (e) organize various bodies at local and national levels to offer assistance to the juvenile delinquents either when they are at risk or when they indeed commit an offence. The reforms of these countries are therefore oriented to a "*balanced*" *justice model*. Other countries are still entrenched in the welfare model, yet with modifications which establish a greater respect of the due-process principle and/or which open a door to non-custodial measures (an interesting example of this trend is the case of Belgium, which is planning to modify in this direction its law of 8.4.1965, already modified in 1992 and 1994, relevant to the protection of youth). In view of these developments, this Committee deems it feasible and desirable to undertake the *specification and concretization* of the various and already existing international instruments (conventions, recommendations etc.) on social and state reactions to juvenile delinquency.