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ΑΛΙΚΗ ΓΙΩΤΟΠΟΥΛΟΥ - ΜΑΡΑΓΚΟΠΟΥΛΟΥ

ESSAYS IN HONOUR OF  
ALICE YOTOPOULOS - MARANGOPOULOS

ETUDES EN HOMMAGE A  
ALICE YOTOPOULOS - MARANGOPOULOS

- Δικαιώματα του Ανθρώπου
- Έγκλημα-Αντεγκληματική Πολιτική
- Human Rights
- Crime-Criminal Policy
- Droits de l'homme
- Crime-Politique Criminelle

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# A typology of juvenile justice systems in Europe\*

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Nestor Courakis

Professor, Faculty of Law, University of Athens

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## 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** on Juvenile Delinquents, focuses on the personality of the offender, who is considered to be in need of *re-education* 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* neither the problems created to the victim, nor *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 re-education 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 re-education. Similarly, (d) the offender has to be brought before a specialized

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\* During the first meeting (18-20.9.2000, Council of Europe, Strasbourg) of the «Committee of Experts on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice» in which I participated as the delegate of Greece, I was invited to prepare this report on the typology of juvenile justice systems in Europe. The report has been elaborated in close collaboration with the other European delegates, to whom I am grateful for their assistance. It was distributed to them in final revised version as Document PC-JU (2000) 28 REV 6 Final/3.4.2003.

*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 in 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 subsidiarity 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 offender's 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 was 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 No. R. (2000) 20 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 (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 favoured:

## AGE OF CRIMINAL RESPONSIBILITY IN COUNTRIES OF EUROPE

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

Austria*	14
Belgium	18 (but may be lowered to 16 if no other protection measure seems to be adequate and also for traffic offences)
Bulgaria	14
Czech Republic	15
Croatia	14 (16 for imprisonment)
Cyprus	10
Denmark	15
England / Wales	10
Estonia	15 (but may be lowered to 13)
Finland	15
France* (reform of 2002)	All juveniles having the capacity of discretion, mainly (according to the decisions of the courts) between 8 and 10 years of age, for education measures (10 to 13 years: education measures and/or education sanctions; 13 to 18: education measures and/or education sanctions and/or penal sanctions)
F.Y.R.O.M.	16 (but may be lowered to 14)
Germany*	14
Greece	12
Hungary	14
Iceland	15
Ireland	12 (12-14: application of the doli incapax principle)
Italy*	14
Latvia	14
Lithuania	16 (but may be lowered to 14)
Luxemburg	18 (in some cases: 16)
Moldova	16 (but may be lowered to 14)
the Netherlands	12
Norway	15 (Reform of 1987)
Poland	13
Portugal	12
Rumania	14
Russia	16 (but may be lowered to 14 for serious offences)

Scotland	8
Slovak Republic	15
Slovenia	16 (14 quasi criminal responsibility: only educational measures)
Spain	14
Sweden	15
Switzerland	7 (15 for imprisonment)
Turkey*	12
Ukraine	16 (but may be lowered to 14)

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

# EDUCATION AND PENAL MEASURES IN COUNTRIES OF EUROPE

(cf. Stewart Asquith, op. cit., 1996, p. 27 and 29)

Austria (Reform of 1988)	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation	Mediation	Waive prosecution sentencing measures	Fine	Conditional and/or Suspended Sentence	Detention or Privation of liberty	Maximum of Sentence to Imprisonment
			+	+	+	+	+	+	+	Imprisonment (Freiheitsstrafe)	10 years (for juveniles under 16 years of age) ----- 15 years (for juveniles of 16- 18 years of age)



	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
Belgium	+	+	+	+	+				+ provisory confinement in a closed federal institution (14-20 years of age) ----- provisory confinement in a closed communal institution (12-20 years of age) ----- closed education in communal institution (12- 20 years of age)	5 days to 1 month + 1 month ----- 3 months + 3 months, then every month ----- 3 months + 3 months, then every month
Bulgaria (mainly under the jurisdiction of local commissions)	+	+	+	+ (for offences of not great social danger)	+	+		+	+	10 years (14-16) 12 years (16-18) as a substitute for life imprisonment

	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
Croatia	+	+	+	+	+	+		+	+	5 years 10 years only exceptionally and if all other measures haven't worked
Czech Republic	+	+	+	+	+		+	+	+	5 years 5- 10 years as a substitute of life imprisonment or imprisonment from 15 to 25 years
Cyprus (Reform of 1996)	+	+	+	+	+	+	+	+	Imprisonment	Related to the type of crime committed

	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
Denmark	+	+	+	+	+	+	+	+	+ pretrial detention in a young offender institution or in a jail detention in a young offender care institution imprisonment (for persons under the age of 18 years)	----- 2 years ----- 8 years
England/ Wales (Reforms of '91, '94 and '98)	+	+	+	+	+	+	+	+	Detention and Training Order 12-17 years of age ----- Different regimes of detention 10-17 years of age	2 years (half in custody and half in community) ----- longer punishment for serious crimes

	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
Estonia (reform of 1998)	+	+	+	+		+	+	+	+	8 years
Finland	+	+	+	Juvenile punishment for juveniles aged 15-17 (not on national level) and community service (only as an exception for juveniles under 18 years of age)	+	+	+	+	+	12 years (or 15 years in case of more crimes) for juveniles under 18 years of age (used only as an exception) and life imprisonment for juveniles 18 years and older (the maximum of the sentence is always in relation to the offence committed)

	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
France (Reforms of 1993 and 2002)	+	+	+	+	+	+	+	+	+	20 years for persons of 13-16 years of age ----- life imprisonment for persons aged more than 16 (very rare)
F.Y.R.O.M.	+	+	+			+			+	30 days (detention) ----- 1-10 years (imprisonment)
Germany (Reform of 1990)	+		+	+	+	+	+	+	+	4 weeks ----- 5 years, or even 10 years for serious offences

	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation Mediation	Waive prosecution measures	Fine	Conditional and/or Suspended Sentence	Detention	Maximum of Imprisonment Sentence to
Greece	+	+	+	+					+	10 years (for murder etc. 20 years)
Hungary	+		+(applied as a measure in criminal procedure)		+(possibility of compensation for loss and harm occasioned for persons of 15 years old or more)	+	+	+	+	10 years for persons of 14 years of age ----- 15 years for persons of 16 years of age
Iceland	+	+(as a social measure ordered by welfare authorities, not by the court)	+			+(waiving prosecution)	+	+		8 years for persons under the age of 18

	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
Ireland (Reform of 2001)	+	+	+	+	+	+	+	+	Children detention schools (12-15 years old) + Places of Detention (16-17 years old)	3 months - 3 years  ----- Period of detention arrangements for adults apply (according to the type of offence)
Italy (Reform of 1988)	+	+	+	+	+	+		+	14-21 years old If a crime is committed by a person above 18 years, the person is detained in adult prisons	16 years

	Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation Mediation	Waive prosecution measures	Fine	Conditional Sentence and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
Latvia	+ (Placement of the juvenile in the charge of his parents or any other person, or in charge of an educational institution)	+	+	+ (between 40 and 280 hours)	+	+	+	+	+	15 years for especially serious crimes, 10 years for other cases of serious crimes and 5 years for less serious or non violent crimes.
Lithuania (reform of 2000)	+	+	+	+ communi-ty service	+		+	+	+ educational institution ----- Imprisonment	3 years ----- 10 years
Luxembourg	+	+		+						
Moldova	+		+ supervision (but not probation)			+		+	+	15 years



Netherlands (Reform of 1995)	+	Education Assistance Measures	+	Foster Family	+	Probation Supervision	+	Community Service (Communi- ty service and restora- tion by labour of the caused damage)	+	Reparation Mediation	+	Waive prosecution sentencing measures (through social contracts)	+	Fine	+	Conditional and/or Suspended Sentence	+	Detention Hospitalization in a juvenile institution Youth detention	Maximum of Sentence to Imprisonment 1 year for 12-15, 2 years for 16- 17 Under specific conditions (gravity of offence, crime in groups, criminal record), persons of 16 and 17 years of age can be dealt with by adult law. That means that they can receive adult sentences, which yet in practice do not differ a lot from those of juvenile law.
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	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	8 weeks and in special cases up to 2 years for under 15 (in closed institution), yet by virtue of a Child Welfare Social Service decision and not of a Court's decision)
									Imprisonment for 15-18 years of age	15 years and, in cases of repeated crime, 20 years
Poland	+	+	+	+	+	+	+		+	

	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
Portugal (Reform of 1999)	+	+	+	+	+	+		+	+ Establishments for young offenders	2 years for open and semi-open institutions ----- 3 years for persons of 14 years of age or more in closed institutions
Rumania	+		+	+	+	+		+	+	
Russia	+	+	+	+		+	+ if the juvenile has a legal income and a property	+	+	10 years for serious offences

	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
Scotland	+ (Children's hearings system up to 16 years and up to 18 years in some cases. Courts only in small number of cases)	Not a punitive disposal, but there are local intensive foster care programmes for u. 16s dealt with by hearings system with probation-like features)	+ (for 16 years of age or more by Court disposal, but there are intensive programmes for u. 16s dealt with by hearings system with probation-like features)	+ as previous column	+ (any age - court order, children's hearings supervision on requirement or voluntary basis)	+ (diversionary measures used by Procurator Fiscal for potential court cases. Children's Reporter can divert from formal measures)	+ (for 16 years of age or more by court disposal)	+ (by Court disposal)	+ (for persons of 16 years of age or more, except in certain circumstances. Young people under 16 who receive custodial sentences are generally held in children-only secure accommodation units)	Related to the type and gravity of crime committed. Hearings' supervision requirements are not sentences but are subject to regular review and can be extended up to 18 years old.
Slovak Republic	+					+	+	+	+	5 years (exceptionally 10 years for grave cases)

	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
Slovenia	+	+(according to family law)	+	+(Reform of 1995)	+(mediation since 1999)	+	+		+	10 years
Spain (Reform of 2000)	+	+	+	+	+	+		+	Placement in a closed, open or semi-open centre	2 years 5 years for persons of 16 or for severe offences.
Sweden (Reform of 1999)	+	+(as a social welfare measure, not after court's order)	+(max.: 1 year)	+	+	+(through social contracts)	+		pre-trial detention	
									Closed juvenile care instead of imprisonment when the convicted person is under the age of 18 Detention centre	4 years       10 years

Switzerland (federal and various local regulations)	Education Assistance Measures + Educational measures in an open institution : Educational Establishment ----- Vocational training institution ----- Vocational training institution for reeducation and therapy for particularly difficult adolescents	Foster Family +	Probation + (suspended)	Community Service + (prestation en travail)	Reparation +	Waive prosecution measures + (abandon of the judicial procedure after investigation / closure) ----- (annulment of any sanction or measure)	Fine + (sole or with supervision)	Conditional and/or Suspended Sentence + postponement of decision with a conditional term of 6 months to 3 years ----- conditional release after 1 year of placement measures (duration of the probation period : 6 months to 3 years)	Detention + Closed vocational training institution	Maximum of Sentence to Imprisonment 1 year
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		Education Assistance Measures	Foster Family	Probation Supervision	Community Service	Reparation Mediation	Waive prosecution sentencing measures	Fine	Conditional Sentence and/or Suspended Sentence	Detention	Maximum of Sentence to Imprisonment
Turkey	(12-15) (16-18: education and assistance)	+	+	(12-15)	+	for minor crimes		+	+	+	7 years (12-15) 13 years (16-18) (punishment is executed in open juvenile reformatories)
Ukraine (reform of 2001)	+	+	+	+		+	+	+	+	+	15 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 after 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 and Sweden, in 2000 Spain and in 2001 Ireland. Furthermore in Greece, the Ministry of Justice has constituted in June 2001 a Legislative Committee under the chairmanship of Evangelos Kroustalakis, vice president of the Greek Supreme Court, whose task is to modernize the juvenile justice system. The Committee accomplished its work in February 2003 and a draft of law on juvenile delinquency is expected to be voted soon by the Greek Parliament.

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).