



Responses of justice to urban violence

Juveniles as perpetrators and victims
Organised groups and their new ways of communicating

URBAN VIOLENCE - JUVENILES - NEW MEDIA Tackling the current challenges in Austria

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1. Introduction

According to the UN Population Fund's "World Urbanization Prospects – The 2011 Revision" report, the amount of people living in an urban area increased from 75 million to 3.63 billion people from 1950 to 2011. Up to the year 2050 prospects predict the number to rise up to 6.25 billion, leading the UN to announce the 'urban millennium'. Concerning the situation in Austria, the urban population increased from 4.4 million in 1950 to 5.7 million in 2011 and is supposed to grow up to 6.6 million people living in cities in the year 2050.

In many countries this increasing urbanization entails the occurrence of urban violence. Once mainly a problem in Latin America, South Africa and some cities in the USA, urban violence in the form of riots has occurred in Europe on several occasion, for example in France in 2005, in Madrid in 2007, in Athens in 2008 or in London in 2011.

Urban violence is a complex phenomenon which is influenced by social, economic, political and institutional factors. As research shows, the state plays an important role in the development of urban violence. If a state is unable to provide safety, social security and a functioning economy with access for all people, parallel power systems might evolve. Significant examples are youth gangs. In many cities of South America youth gangs provide safety for their members as well as a sense of belonging and economic opportunities, for example through their involvement in the drug business. These parallel power systems might bring fear to the community but frequently they also provide services for the community, which are exceptionally valuable if the state is unable to provide them, like medical treatment or soup kitchens.

It is also known from the literature that it is not poverty itself, which increases the risk for violence, but inequality. People, who live from a low income and are at the same time cut off from social services and security provided by the state, are at high risk to develop violent behavior. Especially young people whose economic expectations through the globalization are high and who must face the reality of having no economic possibilities are likely to join a youth gang. Within there, violent behavior might be a way of solving problems as well as gaining power and result in pride and a high social status.

Concerning gangs and riots, the involvement of young people in urban violence is particularly high. But juveniles not only act as perpetrators in this context, very often young people become victims of this kind of violence as well. It is up to the state to prevent young people from becoming involved in criminal acts as offenders as well as victims.

In light of the continuing urbanization and the current financial crises with its impacts on the daily life of a great number of people, measures have to be taken to prevent further events of urban violence in Europe.

Another characterizing aspect of crime in the 21st century is the possibility to connect over the internet and social networks like Facebook or Twitter. A study conducted after the riots in London in 2011 shows that the free messaging system available on

BlackBerry phones ('BBM') played a significant role in the process of the riots.¹ In the future, organized groups will take advantage of the anonymity and the speed of the communication on the internet to connect with other members of the group and to commit crimes. This development poses a major challenge on the police and law enforcement agencies.

This report aims to give an impression of the situation in Austria concerning the subjects 'Juveniles as perpetrators and victims' and 'Organized groups and their new ways of communicating'.

The first chapter gives an overview over juvenile justice in Austria, discussing the important laws and specialties before the court concerning juveniles as offenders. Subsequently the penal system for young perpetrators is described, showing the practice of the system as well as presenting statistics for young prisoners and the distribution of age, gender and nationality. In the process of reintegrating young offenders the organization NEUSTART plays an important role in helping them to find their position in society again. NEUSTART offers different kinds of services, like probation services, anti-violence training or community services. Their activities are presented in the third chapter.

Concerning new media and their impact onto criminality, right-wing extremism might be a field in which special attention on the electronic activities is essential. After presenting the overall situation of right-wing extremism in Austria, the forth chapter focuses on the appearance of extremist groups on the internet and the possibilities to deal with these threats. Concluding the general topic 'cybersecurity' will be discussed, presenting characteristics, the situation in Austria and the best-practice examples 'Click & Check' and 'saferinternet.at'.

¹ Available under <http://www.guardian.co.uk/uk/interactive/2011/dec/14/reading-the-riots-investigating-england-s-summer-of-disorder-full-report>, last visit July, 9th 2012.

2. Juvenile justice in Austria

The majority of this article is based on the country report for Austria by *Karin Bruckmüller, Arno Pilgram and Günter Stummvoll* in “Juvenile Justice Systems in Europe, Current Situation and Reform Developments”, 2nd revised edition, Vol. 1-4, published by *Frieder Dünkel, Joanna Grzywa, Philip Horsfield and Ineke Pruin*.

2.1. Historical development and overview of the current juvenile justice legislation

The reactions provided for under Austrian criminal law in cases of juvenile delinquent behaviour are covered by a special Act, the so-called Juvenile Court Act (*Jugendgerichtsgesetz* 1988 – JGG).² This Act aims at taking into account the special, development-related characteristics of juvenile delinquency by focusing on the transitional period between the ages of criminal minority of children and the full criminal majority of adults. This Federal Act contains substantive and procedural regulations, including regulations on the enforcement of imprisonment.

The Juvenile Court Act defines “juveniles” as persons between 14 and 18 years of age at the time of the offence. The JGG contains specific provisions for age groups within and beyond these brackets. For 14 and 15 year olds it specifies particular grounds for immunity. For so called “young adults” (*Junge Erwachsene*), i. e. persons between 18 and 21 years of age, the code of procedure outlined in the JGG partly applies.

Looking at the history of the Austrian JGG, the main policy trends can be understood as follows (*Jesionek* 2003): In 1928, the first JGG Act took its cue from the idea of education. Conventional punishments, both fines and imprisonment, were to be used only as measures of last resort where juvenile delinquency is involved (*Neumair* 1996). During the Nazi era (1938-1945) the JGG remained nominally in force; in practice it was rendered inoperative by a great number of special provisions (*Jesionek* 2007). In 1945 it became part of Austria’s legal system again.

In 1988 the JGG was subjected to a sweeping reform. Not only was the age of criminal majority raised from 18 to 19 years but the whole system of juvenile jurisdiction was given an entirely new footing. This comprehensive reform was designed with a view to achieving decriminalisation and better rehabilitation results (*Jesionek* 1990; *Bogensberger* 1992; *Jesionek* 2001). On this basis, a new form of immunity from punishment was introduced for misdemeanours committed by juveniles aged 14 and 15 years old at the time of the offence. For the same reason, the potential for non-intervention and diversion through victim-offender-mediation

² This report shows the legal situation of and the developments up to Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Jugendstraftaten, Federal Law Gazette (Bundesgesetzblatt – BGBl.) 1988 No. 599, as amended by BGBl. I 2006 No. 102. – For the most recent reports on Austrian legislation in the field of juvenile justice, compare *Löschnig-Gspandl* 2002; *Höpfel* 2004; *Bruckmüller* 2006; *Jesionek* 2007. Some chapters of this report you can find more detailed in *Bruckmüller* in the Handbook “Juvenile Justice” of *Junger-Tas/Decker* 2006.

(*Tatausgleich*) was included. With diversion the JGG assumed a pioneering role.³ For cases in which conventional criminal penalties proved unavoidable, legislation made sentencing more flexible by removing minimum sentences. Equally in the spirit of the principle of last resort, emphasis was put on special prevention (*Spezialprävention*), as opposed to general deterrence (*Generalprävention*), which can be taken into consideration only in exceptional cases. As the JGG acknowledges the principle of special prevention, it also clarifies the limits of educational theory (*Jesionek* 2001; *Burgstaller* 1997; *Triffterer* 1988; *Köck* 1999) within juvenile criminal law. Although historically the JGG stemmed from educational thinking, in the weighing of sentences any educational needs could only be considered in so far as this is justified and necessary within the legal framework of special prevention. The need for education over and above punishment can be met outside the boundaries of penal law through the family or youth welfare organisations (*Jesionek* 2007).

In addition to procedural simplifications special regulations with regard to penal custody were introduced. Release of information pertaining to the criminal records of individuals was restricted in order to avoid the stigmatisation of offenders as much as possible.

Another important matter was to ensure continuance of cooperative, coordinated activities of juvenile jurisdiction, youth welfare jurisdiction and youth welfare agencies in the interest of the juvenile. Therefore, a system of separate Juvenile Courts was put in place in the larger cities, in particular in Vienna (Vienna Juvenile Court – *Jugendgerichtshof Wien*). Juvenile judges, youth welfare courts, youth welfare agents and Juvenile Court Assistance (*Jugendgerichtshilfe*) all had their offices in the same building, which ensured close cooperation. In the rest of the country special departments for juvenile cases were established within the regular criminal courts.

An amendment in 2001 lowered the age of civil majority from 19 to 18 years in the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch – ABGB*) (*Fuchs* 2002). For this amendment it was argued that the 1988 reform had granted access to the more flexible and lenient juvenile justice system to an age group commonly associated with a great deal of criminality. By way of compensating for this move certain new procedural regulations were introduced for young adults. This legislation recognised that crime levels in this age group can rise temporarily due to the difficulties associated with adjusting to adulthood.

In 2003, the Vienna Juvenile Court was closed down. Its agenda was carved up and integrated into several district courts (*Bezirksgerichte*) and the Vienna Regional Court for Criminal Matters (*Landesgericht für Strafsachen Wien*). It was only possible to ensure continuing cooperation between juvenile judges and the Juvenile Court Assistance, as the latter was relocated to the building of the Vienna Regional Court for Criminal Matters.

³ After a test run of victim-offender-mediation on the basis of positive experience and acceptance, not only from the legal community but also from the general public, the “out of court settlement” and other measures of diversion were introduced into adult criminal law as well.

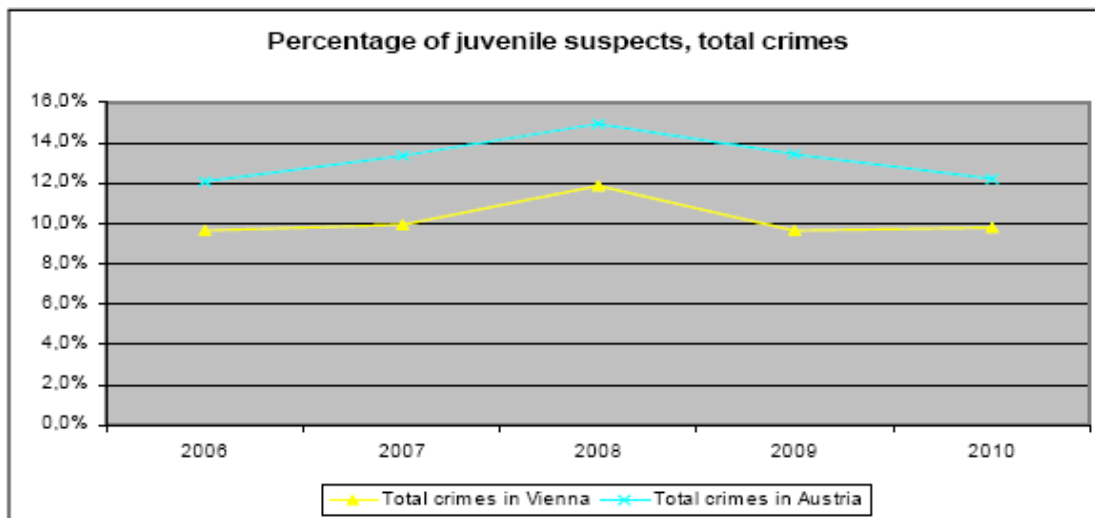
2.2. Trends in reported delinquency of juveniles

In Austria, data on delinquency and respective suspects are recorded by the Ministry of the Interior. In annual publications crime statistics are published which distinguish suspects according to age, gender, and nationality. The statistics presented in this chapter are based on the “Polizeiliche Kriminalstatistik”.

2.2.1. General trends

About 8,4 Mio. people are living in Austria, 1,7 Mio. of them or rather one of five in the capital Vienna. So it seems interesting if juvenile crime rates differ between Vienna and Austria as a whole.

Figure and Table 1: Recorded suspects, total crimes

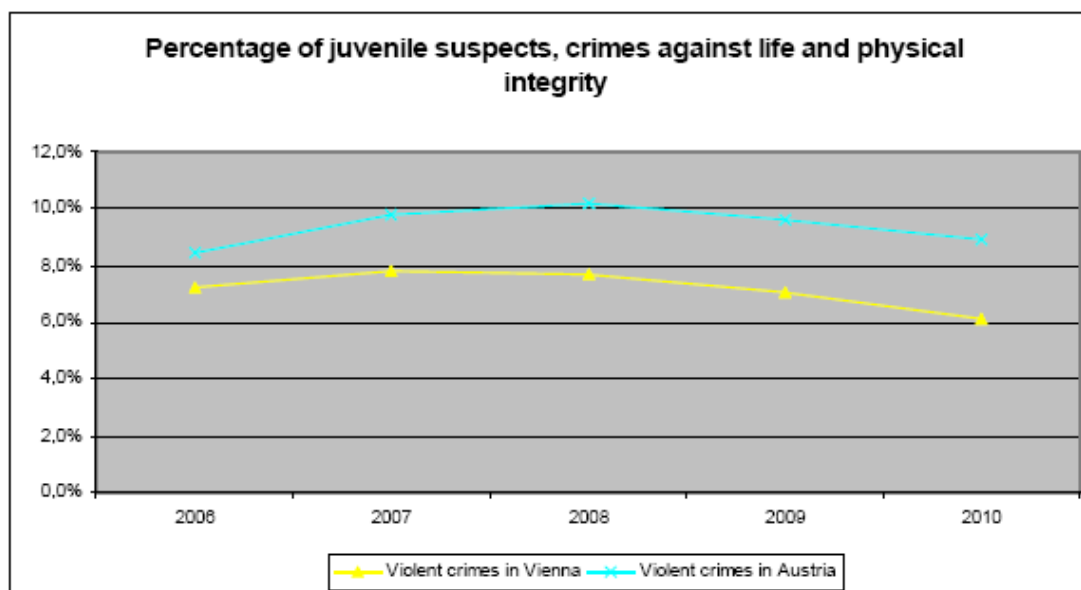


Total crimes	Juveniles		All suspects		Juveniles (%)	
	Vienna	Austria	Vienna	Austria	Vienna	Austria
2006	6.430	28.683	66.587	238.111	9,7%	12,0%
2007	6.426	33.068	64.517	247.021	10,0%	13,4%
2008	7.724	35.912	65.100	240.554	11,9%	14,9%
2009	6.399	33.063	66.160	246.378	9,7%	13,4%
2010	6.737	29.306	68.859	239.954	9,8%	12,2%

Figure and table 1 show the percentage of juvenile suspects on all suspects and compare Vienna with Austria as a whole for the last five years. The numbers in both Vienna and Austria increased from 2006 to 2008, since then there was a decline. What is interesting is that in Vienna the percentage of juvenile suspects is lower. But these numbers alone do not prove that juvenile delinquency in Vienna is not a concern. The reason for the smaller rate could be the fact that the crime rate in Vienna is much higher than in the rest of Austria. We will see later that one of four

convictions in Austria occurs in Vienna. To get a further insight it is necessary to look at different types of crimes.

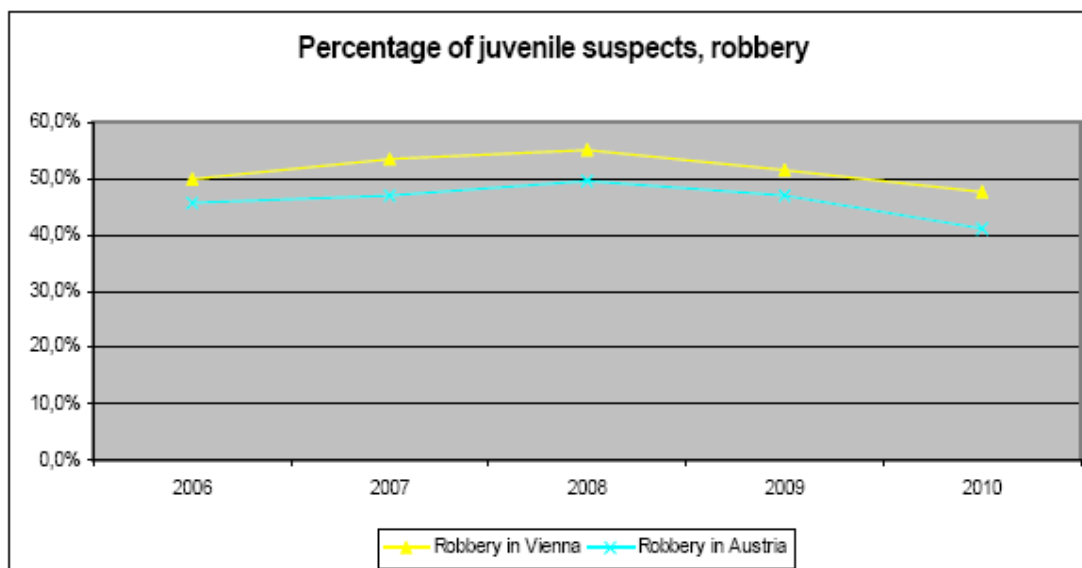
Figure and Table 2: Recorded suspects, crimes against life and physical integrity



Crimes against life/ physical integrity	Juveniles		All suspects		Juveniles (%)	
	Vienna	Austria	Vienna	Austria	Vienna	Austria
2006	1.303	7.272	18.018	85.853	7,2%	8,5%
2007	1.417	8.617	18.094	88.115	7,8%	9,8%
2008	1.519	9.049	19.806	88.524	7,7%	10,2%
2009	1.372	8.514	19.401	88.578	7,1%	9,6%
2010	1.234	7.866	20.177	88.295	6,1%	8,9%

Figure and table 2 make the same comparison as above but consider only crimes against life and physical integrity. With these offenses the rate of juvenile suspects is some percent lower, but again as in *figure and table 1* the percentage in Vienna is lower than in Austria as a whole. A look at the prevailing form of crime shows that juvenile offending is predominantly characterised by property crime. In 2010, 56,4% of all juvenile suspects were reported to the police for some form of property related offence. With regard to all suspects in Austria, property crime is less dominant (40,8%). Because of that fact *figure and table 3* focus on robbery.

Figure and Table 3: Recorded suspects, robbery



Robbery	Juveniles		All suspects		Juveniles (%)	
	Vienna	Austria	Vienna	Austria	Vienna	Austria
2006	482	623	965	1.365	49,9%	45,6%
2007	416	566	778	1.202	53,5%	47,1%
2008	496	662	900	1.333	55,1%	49,7%
2009	470	697	909	1.445	51,7%	47,1%
2010	372	551	781	1.337	47,6%	41,2%

Figure and table 3 show juvenile suspects among all suspects relating to robbery and again make the comparison between Vienna and Austria as a whole. In this context it becomes clear that the percentage of juvenile suspects in connection with robbery is higher in Vienna. It seems that robbery is much more of a problem in Vienna than in the rest of Austria.

The *figures and tables 1, 2 and 3* show that juvenile delinquency differs on the one hand between urban regions and less populated areas and on the other hand between different forms of crimes.

2.3. The sanctions system: Kinds of informal and formal interventions

Juvenile law covers a wide range of sanctions in the JGG. It includes sanctions that are familiar with adult penal law, but have been adapted to the needs of juveniles and include special options that only apply to juveniles (but not to young adults). Thus §§ 4-13 JGG offer grounds for immunity, options of diversion, conviction without

punishment, and conviction with a suspended sentence. The traditional fine and prison sentences – for which § 5 JGG contains modifications for juveniles – are also included. These last two sanctions may only be implemented as measures of last resort (*ultima ratio*). Given a defendant's unlawful, culpable offence the court and the public prosecution respectively must always – on a case-by-case basis – opt for the sanction that has the least severe impact on the lifestyle of the minor, yet which at the same time has the best special preventative effect (*Jesionek 2001; Löschnig-Gspandl 2002*). According to the general sentencing rules of Austrian Criminal Law, sentencing must take both the offence and the culpability of the offender into account. It should reflect the circumstances and motivation that led to the act as well as the personality of the offender.

All possible sanctions are presented below in order of increasing severity.

2.3.1. Grounds for immunity

There are two rules to be noted in Austrian juvenile criminal law, in cases of delayed maturity on the one hand and of moderate misdemeanours committed by juveniles under the age of 16 on the other. For the age group of 14 and 15-year-olds § 4 (2) 1 of the JGG excludes punishment if the juvenile offender was incapable of distinguishing between right and wrong or of acting accordingly due to certain circumstances. This so-called delayed maturity (caused e. g. by social or psychological defects, child neglect or by illness), which must be evidenced by an “unusual level of development retardation”, must be examined in relation to the criminal act in question. Such cases are cleared up with the help of expert witnesses. There is another reason for non-punishment for juveniles under 16. There is immunity for members of this privileged group for any moderate misdemeanour (petty offence), if the juvenile, having committed a misdemeanour without serious guilt, does not show special reasons which speak for the enforcement of juvenile penal law to prevent the offender from committing further acts (§ 4 (2) 3 JGG, which refers to § 42 Criminal Code, *Strafgesetzbuch – StGB*).

In all such cases the public prosecutor must drop the charge and notify the youth welfare court, which in turn can apply appropriate family or welfare measures.

2.3.2. Diversion

If there is sufficient evidence to support it, the prosecution authority⁴ must decide whether the juvenile shall be tried in court or whether one of the other measures outlined in the JGG should be adopted. The JGG allows the court to decide on diversion, too (*Schwaighofer 2001*).

2.3.2.1. Non-Intervention

The prosecutor and the judge may drop a juvenile's case if the offence is punishable by a fine or not more than five years of imprisonment (which corresponds to a 10-year sentence in adult penal law), unless measures of interventionist diversion

⁴ In Austria the function of Staatsanwalt is not adequately described by the English expression “prosecutor”. The role of the Staatsanwalt rather resembles that of a “procurator” who has the obligation to be objective.

appear necessary to prevent the juvenile from re-offending. Non-intervention is not an option if the crime has led to the death of a person (§ 6 JGG).

The premise of presumed innocence should be noted. Non-intervention is particularly recommended in cases of petty misdemeanours by non-problem juveniles, for whom a special preventive effect results from the mere fact that the authorities have become involved (*Jesionek* 2007; *Schroll* 2006).

2.3.2.2. Diversion with intervention

Austrian legislation also includes the concept of diversion with intervention. The public prosecutor decides on diversion as an intervention when it is not possible to simply drop the case and yet there are no grounds of general prevention that make it seem indispensable to institute criminal proceedings including the pronouncement of a sentence (§ 7 JGG). This applies to juveniles but not to young adults. Furthermore, the prosecutor may only use this instrument in the case of criminal offences that carry the penalty of a fine or not more than five years of imprisonment, and if the remaining general pre-conditions of a diversion measure are met. Cases of “severe guilt”, a resulting death or in which there are grounds of special prevention that require punishment are excluded (*Schütz* 1999). Under these preconditions the courts are also entitled to deal with young offenders using diversionary measures. There is only one significant difference: diversion by the court is allowed in more severe cases. As opposed to the prosecutor, the court can go beyond the limit of offences with a maximum sentence of five years of imprisonment. However, there is a doctrinal controversy as to how far the extension of the rule goes. The victim’s consent is not required in cases of diversion (§ 8 JGG) and diversion measures when applied by the court never amount to a conviction.

The implementation of diversion is independent of the agreement or cooperation of the victim, but is based on the principle of consent of the suspect (*Höpfel* 2002). The diversion options⁵ range from suspending prosecution for a probation period (§ 203 StPO)⁶ to an out-of-court settlement – such as victim-offender mediation, known as *Tatausgleich* (§ 204 StPO) – to community services (*Gemeinnützige Leistung* – § 201 StPO) and fines without conviction (so called *Geldbußen*, § 200 StPO). Whenever possible, compensation or a settlement should bear a direct relation to the diversion measure, although it must be appropriate to the capabilities of the juvenile and must not unnecessarily impede a young person’s societal reintegration. Diversion measures implemented by the public prosecution or the court are recorded in the court register for a period of ten years. However, no entry in police records is made; hence there is no criminal record.

2.3.2.3. The field of narcotic drug offences

In cases involving narcotic drugs, the public prosecution must drop the charge for a probation period of two years if a person only possessed or purchased a small amount of narcotic drugs for their own consumption, or committed a criminal act in

⁵ In § 7 JGG a reference to § 90 Code of Criminal Procedure (*Strafprozessordnung* – StPO) can be found.

⁶ The suspension can possibly be bound to duties (directives or obligations).

order to finance the purchasing of drugs (§ 35 Narcotic Substances Act - *Suchtmittelgesetz* SMG; see *Schwaighofer* 1997). This special form of diversion – which in historical terms is actually one of the roots of the entire system – must be deemed more appropriate under the aspect of special prevention than a conviction. Prior to withdrawing the charge, information must be gathered from the Ministry of Employment, Health and Social Welfare and an opinion must be obtained from the local health authority in the case of a small amount of cannabis on whether or not the accused must undergo health-related treatment. Such treatment may include monitoring by a doctor, or taking part in a rehabilitation, or substitution programme, or even undergoing psychotherapy. The preliminary withdrawal of the charge may also take place if the accused agrees to be supervised by a parole officer. In the case of withdrawal symptoms, the ministry and, in some cases, the local health authorities must be informed.

2.3.3. Conviction without sentence

After the trial, instead of pronouncing a short sentence (up to three months of imprisonment) (*Schroll* 2006) the court may convict the juvenile offender and abstain from passing sentence, if the official conviction is considered sufficient to prevent the offender from committing further criminal acts and no exceptional general preventative grounds are found to pre-empt such an approach (§ 12 JGG) (*Schroll et al.* 1986). Hence, a formal conviction is made, yet no sentence is passed. Thus the offender has been given a warning but has not been stigmatized. No sentence may be passed in retrospect. Whether or not a conviction without sentence can be passed is left to the discretion of the court.

The conviction is recorded in the register but will be expunged after only three years.

2.3.4. Conviction with suspended sentence

As an alternative to a conviction without sentence the court may retain the right to pass a sentence with a probation period of between one and three years (§ 13 JGG). A prerequisite for this is for the court to consider a conviction and the mere threat of a sentence, alone or in combination with other measures, as sufficient. This course is only open in absence of any general preventative concerns against such an action being taken. Once again, the implementation of this measure is left to the discretion of the court. A conviction with a suspended sentence can be combined with a personal directive and/or the appointment of a parole officer if this is deemed necessary or advisable on grounds of special prevention. Passing sentence in retrospect is only possible if the convicted person commits another criminal offence within the probation period and reasons of special prevention speak in favour of such action or if the offender disregards a court directive with bad intent or stops seeing his or her parole officer. Here, too, the conviction is deleted from the criminal record after three years.

2.3.5. Fines and imprisonment

In passing a judgment that involves a fine or a prison sentence, the court must consider the minimum and maximum punishments provided in the Criminal Code. There are some modifications for juveniles (§ 5 (2) to (6) JGG).

Fines can be substituted for short prison terms (of up to six months), if the maximum prison sentence for the criminal offence does not exceed five years (ten years for

juveniles) (§ 34a (2) StGB). Imprisonment can be suspended in whole (§ 43 StGB) or in part (§ 43a StGB), fines only in part (§ 43a StGB). The probation period after a suspension lasts one to three years, and may be terminated after one year if new facts support a good prognosis of the young person abstaining from crime in the future.

2.3.5.1. Fines

With regard to fines the maximum possible sentence for juveniles is halved compared to the provisions for adults. In Austria, the prevailing system of fines is the day fine. In passing sentence, the first step includes the setting of a number of daily rates commensurate to the offence and the degree of responsibility of the young offender. These are set according to the general rules on sentencing. The second step lies in determining the amount of each daily rate. Here the personal circumstances and the financial capability of the convicted individual are the main determinants when passing the sentence (*Leukauf/Steininger* 1992). The minimum daily rate is € 4 and the highest is € 5000. The relevant figures for calculating the daily rate are the net daily income of the offender, which defines the upper limit, and the minimum subsistence level defining the lowest limit. Yet juveniles, such as those still at school, frequently have no income. In such cases the limits are determined by their pocket money. What must also be taken into consideration is the portion of the family income that is spent on the offender as well as the monetary equivalent of sports, hobbies and holidays as well as potential sources of income, such as holiday jobs if this constitutes a viable option and if the job is suited to the offender (*Platzgummer* 1980; *Lässig* 2002).

2.3.5.2. Imprisonment

The shortest possible prison sentence is one day. Any time spent in police or pre-trial detention must be deducted from the total sentence. For serving time in prison maximum sentences are halved for juveniles (§ 5 JGG), and there are no minimum sentences. There are however two exceptions. Life or 10-20 year sentences are replaced by 1-15 years if the juvenile committed the offence when he or she was 16 or older, and 1-10 years if the offence was committed before the age of 16. A possible sentence of 6 months up to 10 years replaces a possible prison sentence of 10-20 years. The possibilities for the suspension of a prison term in whole or in part are expanded for juveniles.

The serving of the sentence may be delayed for juveniles for more than one year if necessary. In addition to health, family or financial reasons, completion of a job-training programme or preparation for a professional qualification or university studies are also considered valid grounds for delay. This is applicable only if the sentence to be served does not exceed one year.

Early release from an unconditional prison term is possible after one half of the term has been served provided the prognosis is fair. After two-thirds of the term, however, release must be granted unless there is a high risk of re-offending. A minimum of one month in prison has to have been served before early release becomes an option. Minors are exempt from all considerations of general prevention. Early release must be combined with the assignment to a parole officer unless there are reasons to believe there will be no relapse.

2.3.6. Preventative measures

In addition to, or as an alternative to formal punishment, Austrian penal law also provides for so-called preventative or prophylactic measures (§ 21 et seq. StGB). The applicability of this option is not determined by the culpability of the offender, but solely by the danger he or she represents to the public. As regards alternative forms of imprisonment, the placement of insane offenders, of criminal offenders with diminished responsibility, or of criminal offenders in need of drug rehabilitation in an institution is of rather theoretical relevance for juveniles (see *Table 10*).

2.3.7. Adverse consequences of legal rules

In accordance with Austria's Criminal Code many regulations entail adverse consequences that the defendant will suffer in addition to the direct consequences of the conviction. These so-called legal consequences may include the automatic loss of their job, their driving licence or their permit of residence. Administrative authorities use these legal consequences for juveniles also, even though the juvenile penal law explicitly forbids these consequences (§ 5 (10) JGG) (*Jesionek 2001*).

2.4. Juvenile criminal procedure

In principle criminal procedures against juveniles and young adults follow the rules laid down in Austria's Code of Criminal Procedure for adults. The JGG does however include a number of provisions for juveniles, the majority of which also apply to young adults (§ 46a JGG). On the one hand these provisions strengthen the legal protection of juveniles and young adults and offer them general support during the court proceedings; on the other hand, they are aimed at bypassing their stigmatization even more than is the case for adults.

At the district and regional courts special departments have been set up for juvenile criminal cases. The judges and prosecutors in charge of juvenile criminal matters are theoretically required by law to be pedagogically skilled and to have a certain expertise in psychology and social work (§ 30 JGG). In practice, little attention is paid to this requirement in staffing juvenile departments (*Jesionek 2007*). In-service training is available through the private association of juvenile judges.

Subject-matter jurisdiction as a rule follows the maximum sentence for the punishable offence as stated by the law (§ 27 JGG):

- offences with a maximum sentence of up to one year fall within the remit of district courts;
- offences with a maximum sentence of more than one year fall within the remit of regional courts.
- Within the competence of regional courts
 - offences with a range of sentences of up to five years (barring i. e. sex offences) are adjudicated by a single judge;
 - offences with a range of sentences of more than five years are adjudicated by a court of lay assessors; and

- offences with a minimum sentence of more than five years and a maximum sentence of more than ten years as well as certain political offences are adjudicated by a jury court.

The issue of competence, i. e. whether the case will be tried by a court of lay assessors or a jury court, is determined not on the basis of the sentence range stated in the penal code but on the basis of the reduced sentences for juveniles.

As regards the composition of the court care has to be taken that lay assessors/jurors include persons experienced in dealing with juveniles. Therefore the law stipulates for a court of lay assessors consisting of one judge and two lay assessors to include at least one lay assessor who is or was a teacher or someone working in youth welfare, or some other project beneficial to young people. Jury courts (consisting of three judges and eight jurors) have to include at least four such persons. In addition to this the law stipulates that at least one lay assessor or two jurors must be the same gender as the accused (§ 28 JGG).

In juvenile criminal cases the venue does not depend on where the crime was committed but rather – and without exception – on the usual place of abode of the accused. This means the trial has to be conducted as close as is feasible to the young person's home, so that the life of the accused is not unduly disrupted during the trial (§ 29 JGG).

The young offender is afforded increased protection by a number of regulations that are different from the normal provisions of the Penal Code. During the entire proceedings the young offender is entitled to have a confidential person (e. g. legal guardians, teachers or probation officers (§ 37 JGG)) by his or her side during questioning, if he or she wishes so. Legal guardians (normally the parents) benefit from all significant procedural rights (e. g. the right of access to the files) that the juvenile has (§ 38 JGG); this is not the case for young adults. To further strengthen the protection of juveniles – who are predominantly ignorant of the legal system – special provisions have been made regarding the provision of defence counsels, that are more stringent than those for adults (§ 39 et seq. JGG). In proceedings before a regional court there will always be a defence counsel. On the district court level a defence counsel is obligatory if the juvenile is in detention pending trial and it takes a defence counsel to ensure the safeguarding of the juvenile's rights throughout the proceedings. In principle a mandatory defence starts with the first interrogation. The state shall bear the costs for a court-appointed legal counsel if the accused is unable to do so. If defence is not obligatory, a Juvenile Court Assistance representative is entitled to provide support in district court proceedings (*Jesionek* 2001). As regards mandatory defence, the general rules of the penal code for adults also apply to young adults.

In principle, trials of juveniles and young adults are public. However, the public may be excluded to a greater extent than is possible in the case of adults and will be excluded whenever this is deemed in the interest of the young person (§ 42 JGG). In concrete terms this happens whenever public proceedings might reflect negatively on the development of the accused or on his or her future, e. g. on his or her education (*Schroll* 2006). During legal proceedings, all television and radio recordings or transmissions, filming or photographing are prohibited as a general rule. Moreover, the identity of minors accused or convicted of an offence is specifically protected under media law from being revealed (§ 7a *Mediengesetz*; for adults different

provisions apply). Hence, even when the accused has been found guilty the juvenile may sue for compensation if any report in the mass media has disclosed his/her identity. In addition to this, the release of information on juvenile penal cases is closely restricted so as not to negatively impact the future career of the minor and not to endanger or destroy any future vocational or professional chances (§ 33 JGG). Relevant information has to be passed on to the Youth Welfare Agency. Reintegration into society should be encouraged and stigmatisation should be avoided by restricting access to police records and by shortening the length of the period before the records of minors are deleted. After a specific period of time has elapsed the police record is deleted automatically. The convicted person is then considered as having a clean criminal record. Juvenile offences are deleted after five years, the exception being multiple convictions (§ 3 *Tilgungsgesetz*).

Juveniles and young adults are also buffered against procedural costs (§ 45 JGG). They are obliged to repay them only if payment does not seriously jeopardize their livelihood. Reimbursement of costs is therefore only sought in exceptional cases (*Jesionek* 2007). Cost absorption by the Federal State in cases where a prescribed therapy is not covered by social insurance (§ 46 JGG) is another measure designed to prevent juveniles from being saddled with too great a financial burden. This is done in order to facilitate their reintegration.

In cases of juvenile offending, victims' rights are defined in principle by the general provisions of the code of criminal procedure. Victims' rights were considerably enhanced in Austria by the Framework Decision on the Standing of Victims in Criminal Procedures (dated March, 15th 2001). Among other improvements, the reform of the code of criminal procedure which entered into force on the 1st of January 2008, has accorded victims far-reaching rights as regards communication and information (for instance, as to progress of the trial or, under certain conditions, the release of the accused) as well as rights of cooperation and control (for instance, participation in the main trial and the right to put forward questions).

However, Juvenile Court law contains special provisions that may limit the rights of the victims of juvenile delinquents. For instance a "private suit" and a "subsidiary suit" of juvenile crimes are both inadmissible. Crimes that are normally prosecuted only at the victim's request have to be prosecuted by the Public Prosecutor, if authorized by the victim to do so. This is contingent on certain preconditions: when it is deemed advisable on pedagogical grounds or in view of justified demands of the victim that go beyond a desire for retaliation. There are further limitations in the case of a possible motion for a mistrial (§ 44 JGG).

Important assistants in juvenile criminal cases are social workers (particularly those associated with the Court Assistance Service) and probation officers. A probation officer, if he or she was already assigned to the case of the juvenile or young adult in the pre-trial phase, is entitled to be present and to be heard at the main trial (§ 40 JGG). This gives him/her opportunity to report on the background of his or her "charge" and to provide the necessary information on which to base the most effective sanction (*Schroll* 2006). He or she is also entitled to abstain from any statement in court in order to protect his or her client (*Aussageverweigerungsrecht*).

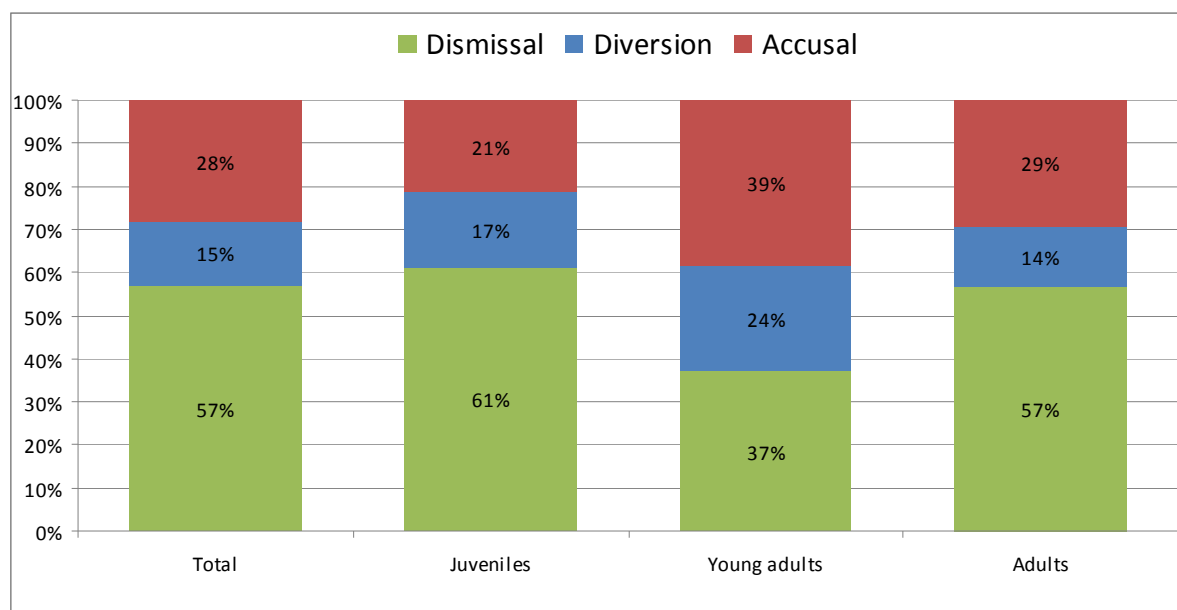
Social workers associated with Court Assistance are also entitled to take part in the main trial on the side of the accused: as has already been mentioned above, they can take the role of defence counsel in district court proceedings.

The primary function of the Court Assistance lies in supporting the courts and the public prosecutor's office (§ 47 et seq. JGG). This is the main reason why it should be housed in the court building. In the pre-trial phase it is up to the Court Assistance to identify the salient facts on which to base decisions as to pre-trial or preliminary detention. Throughout the entire proceedings they are entitled to make suggestions regarding how to avert dangers for the minor defendant's health or educational development. A particularly valuable service they perform for the courts are the so-called *youth inquiry reports* (§ 43 JGG). These comprehensive reports on the background and living conditions of the juvenile are designed to serve as stepping-stones for the courts in their decision-making processes, particularly as regards choice of sanction and the severity of the sentence. Therefore it is necessary to research the living conditions and family circumstances of the accused, along with his or her development and all other circumstances that could help to establish the bodily, mental, and spiritual state of the young person. In case of doubt, a medical expert or a psychologist can be consulted. It is left to the judge's discretion as to which inquiries are necessary on a case-by-case basis (*Jesionek* 2003). Other contexts for Court Assistance to become active are through out-of-court settlements or the organisation of community work within a diversionary framework. Court Assistance can also help in identifying suitable training courses and therapy of all kinds, especially in cases of drug addiction.

2.5. Sanctions – Part I: Decisions by public prosecutors

In Austria the public prosecutor mainly has three different possibilities to complete criminal proceedings: He can dismiss a criminal case, end it by measures of diversion or he can bring the suspected person before court by accusation. The statistics in this chapter are based on the "Justizstatistik Strafsachen 2010".

Figure and Table 4: Decisions by age groups



	All ages 2010		Juveniles 2010	
Total final decisions	250.838	100,0%	25.355	100,0%
Total dismissals	142.853	57,0%	15.531	61,3%
§ 190 Z 1 StPO No crime	45.594	18,2%	2.162	8,5%
§ 190 Z 2 StPO No evidence	71.563	28,5%	3.992	15,7%
§ 4 Abs. 1 JGG Under 14 years	5.879	2,3%	0	0,0%
§ 4 Abs. 2 JGG Lack of maturity	3.125	1,2%	3.124	12,3%
§ 6 JGG Diversion without intervention	5.552	2,2%	5.522	21,8%
§ 191 Abs. 1 StPO Minor offence	11.140	4,4%	731	2,9%
Total diversions	36.957	14,7%	4.402	17,4%
§ 35 SMG Drugs	7.955	3,2%	1.249	4,9%
§ 198 Abs. 1 Z 1 StPO Fine	11.344	4,5%	187	0,7%
§ 198 Abs. 1 Z 2 StPO Community service	1.770	0,7%	998	3,9%
§ 198 Abs. 1 Z 3 StPO Probation without duties	10.441	4,2%	869	3,4%
§ 198 Abs. 1 Z 3 StPO Probation with duties	725	0,3%	172	0,7%
§ 198 Abs. 1 Z 4 StPO Victim-offender-mediation	4.722	1,9%	927	3,7%
Accusal	71.028	28,3%	5.422	21,4%

Figure 4 shows the decisions by the public prosecution service as a whole and for the three age categories. *Table 4* provides a more detailed insight and compares the overall decisions with cases against juveniles.

In *Figure 4* one can see that criminal proceedings against juveniles end with an accusation at a lower rate (21%) than in cases against young adults (39%) and adults (29%). There are two reasons for this outcome (see *table 4*): The specific provisions for juveniles in the Juvenile Court Act (§§ 4 und 6 JGG) lead to higher rates of dismissals (61% versus 37% and 57%). On the other hand measures of diversion are used more frequently against juveniles (17% versus 24% and 14%).

In 2010, almost four out of five juveniles were treated “informally”, i. e. without a formal accusation, but almost one out of five received some form of social intervention, for instance medical treatment according to the SMG (4,9%), victim-offender mediation (3,7%), community service (3,9%), fine without conviction (0,7%), or probation with or without duties (4,1%) (see *table 4*).

Figure 5: Diversion with intervention by public prosecutor

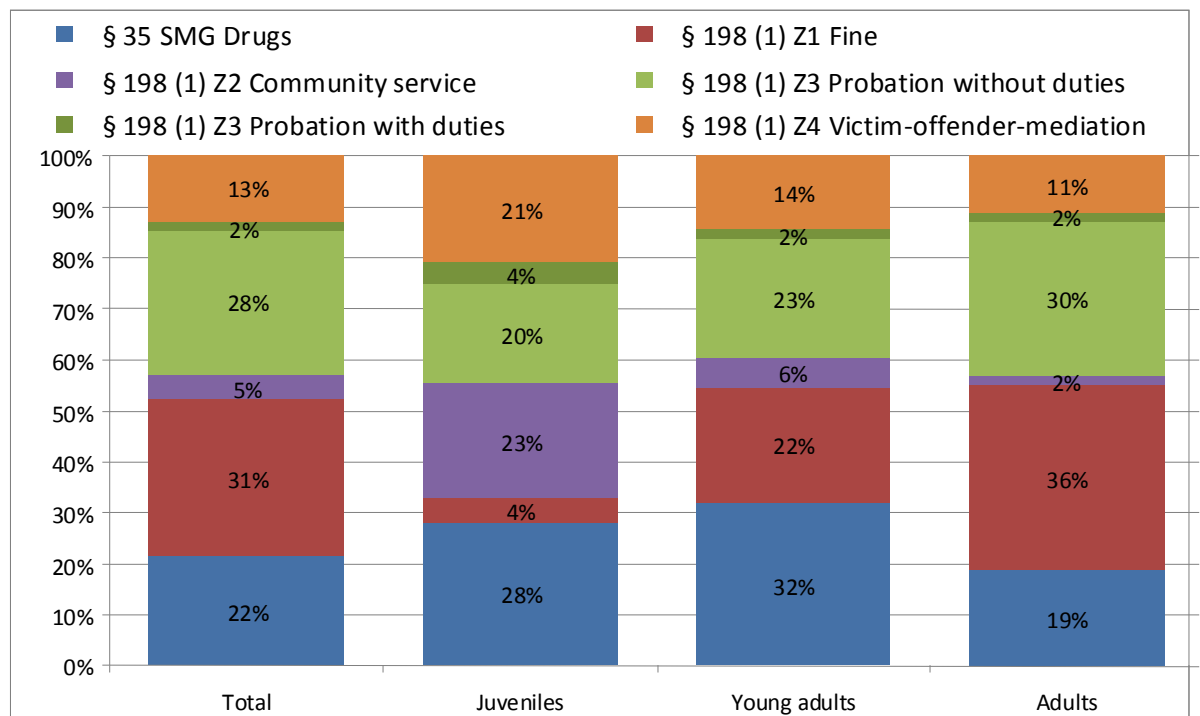


Figure 5 provides a closer look at the practice of diversion through the prosecutor. It reveals a different use of the four forms of diversion, depending on the three age groups of juveniles, young adults and adults. Victim-offender-mediation is offered twice as often to juveniles as to adults. In contrast in only 4% of criminal proceedings which end by diversion a juveniles pays a fine, whereas against adults this is the most frequently used measure (36%).

2.6. Sanctions – Part II: Decisions by Juvenile Court

2.6.1. General trend

Table 5: Convictions in Austria and Vienna, juveniles and adults

Austria	1984	1988	1989	1994	1999	2004	2010
Total in Austria	85.669	67.756	63.298	69.485	61.954	45.185	38.394
Juveniles in Austria	7.809	3.562	2.808	3.349	3.764	3.336	3.063
Juveniles in Austria (%)	9,1%	5,3%	4,4%	4,8%	6,1%	7,4%	8,0%
Total in Vienna	36.512	19.243	19.097	21.346	16.417	12.860	9.836
Juveniles in Vienna	2.932	782	770	1114	788	949	566
Juveniles in Vienna (%)	8,0%	4,1%	4,0%	5,2%	4,8%	7,4%	5,8%

Figure 6: Convictions of youth offenders – all offenders

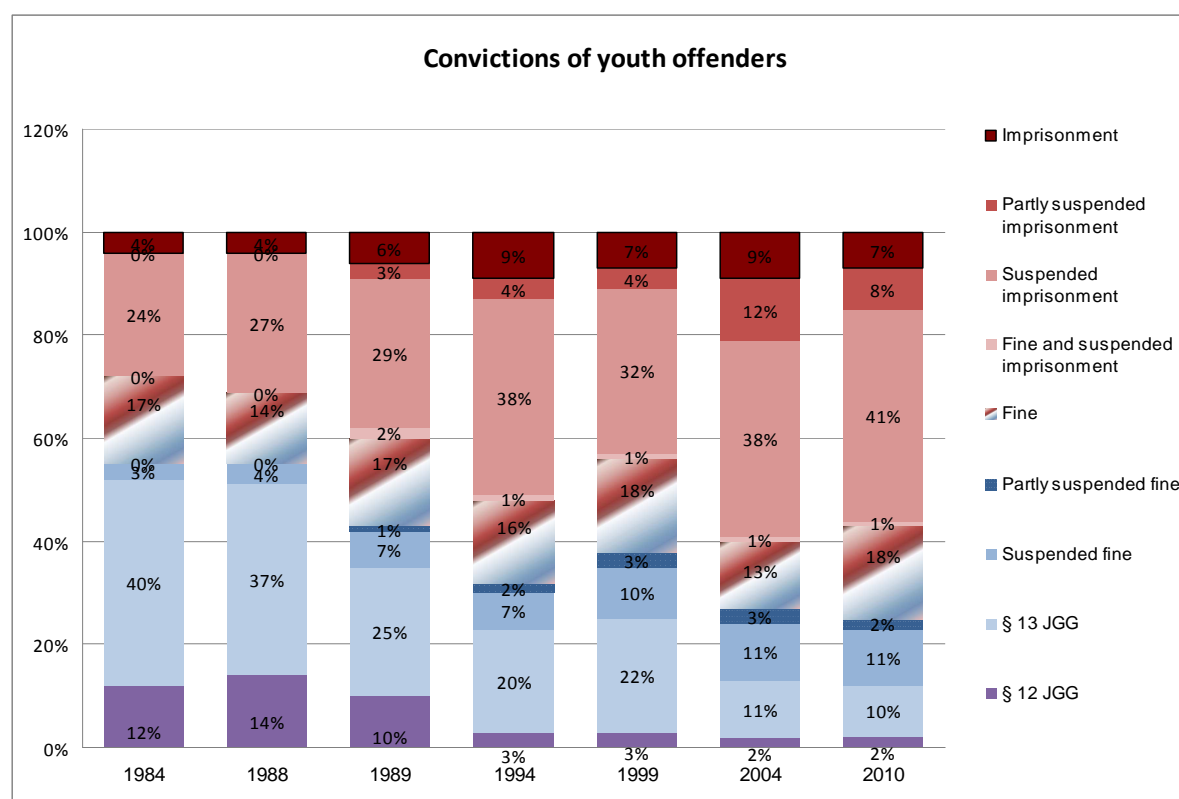


Table 5 shows the changes in the number of convictions. In Austria the court has a variety of options for convictions. The respective data are presented in descending order from the most severe to the least severe reaction in figure 6 above. These

statistics are based on the “Gerichtliche Kriminalstatistik”, yearly published by Statistik Austria.

The percentage of convicted juveniles in *table 5* above is correlated with the numbers from the police and supposes prima facie that juvenile delinquency is a lesser problem in Vienna than in the rest of Austria. This is of course not true; the conviction rates for juveniles are smaller only because the crime rate in Vienna is that much higher than in the rest of Austria: In 2010 9.836 persons were convicted in Vienna so this is about one quarter of the overall number of convictions in Austria.

The most significant changes over time are the clear decrease in the total number of convictions from 7,809 cases in 1984 to 2,808 in 1989. That drop is considerable, as in 1989 the juvenile law already included 19 year-olds. This major change reflects a decrease of reported juvenile offenders as well as the introduction of the Juvenile Court Act 1988 (JGG) and the allowance for measures of diversion by the prosecutor and the court. During the 1990s the conviction rates slightly increased to 3,764 in 1999. The drop after 2000 is due to the exclusion of 19 year-olds from the Juvenile Court procedure. In the last ten years there was a further drop to 3.063 convictions. In Vienna the conviction rate decreased in the same way from 2.932 convictions in 1984 to 566 convictions in 2010.

In comparing the years 1984 and 2010 (with equal age brackets falling under Juvenile Court law) with respect to court sentences, diversion – which was first piloted and subsequently introduced in law by an amendment in 1988 – is mainly applied as a substitute for convictions without sentence and convictions with suspended sentences. Their share of all court responses to juvenile offending dropped from 52 to 12 per 100 convictions (see *figure 6*). The lessened application of § 12 and § 13 JGG accounts for two thirds of the general drop in sentences, while fewer unconditional fines (substituted by fines without conviction) and conditional prison sentences account for the rest. The specifically restrained formal reactions to juvenile offenders – used particularly for younger, not previously convicted, socially integrated and informally controlled persons – have lost ground.

This kind of court response and the measures connected to it are largely supplanted by diversion with intervention on order of the prosecutor or the court. The number of juveniles who are affected by intrusive court measures is not rising in the way that is suggested by police data and public images of juvenile crime.

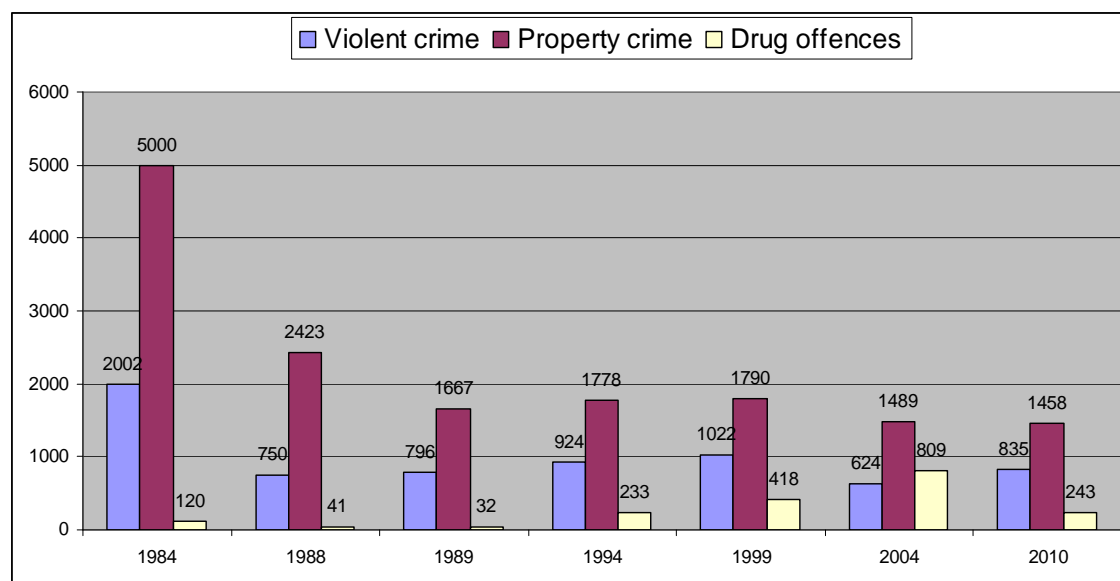
However, the changing distribution of sentences has to be considered: In case of a formal conviction today at least 15% of juveniles serve an unconditional or at least a partly unsuspended prison sentence, in 2004 the rate was 21%. These numbers are much higher than in the 1980s because back then the majority of juveniles with minor offences was convicted whereas now a lot of cases are completed by measures of diversion.

2.6.2. Convictions by offence group

A look at different types of crime provides a more detailed insight; *figure 7* analyses violent crime, property crime and drug offences. The introduction of the Juvenile Court Act 1988 (JGG) decreased the number of convictions in all three types of crimes from 1984 to 1988. Convictions for property crime decreased further and are constant since the 1990s. Violent crimes increased from 1988 until 1999. Since then

it is difficult to find a clear trend. Drug offences have increased until 2004, but decreased until 2010. One reason could be the major reform of the drug law in 2007.

Figure 7: Sentenced young offenders by type of crime



The numbers of recorded suspects by the Ministry of the Interior above have indicated that robbery is a specific problem in Vienna, so a look at the conviction rates seems interesting. *Table 5 and 6* show that although the overall rate of convicted juveniles in Vienna (5,8%,) is lower than in Austria as a whole (8,0%) the conviction rate regarding robbery is higher in Vienna (41,1% versus 40,3%). This finding correlates with the recorded suspects in Austria and Vienna above.

Table 6: Convictions concerning robbery

Robbery	Juveniles		Total convictions		Juveniles (%)	
	Vienna	Austria	Vienna	Austria	Vienna	Austria
2006	94	147	224	379	42,0%	38,8%
2007	110	167	240	389	45,8%	42,9%
2008	152	199	268	415	56,7%	48,0%
2009	87	156	179	358	48,6%	43,6%
2010	97	194	236	481	41,1%	40,3%

2.7. Young adults (18-21 years old) and the juvenile (or adult) criminal justice system – legal aspects and sentencing practices

The 2001 amendment to the JGG brought young adults, i. e. persons of at least 18 but not yet 21 years of age, within the remit of the JGG. However, the benefits that result from this are mainly confined to the procedural regulations of the JGG (see *Section 2.4.* above). Young adults are adjudicated according to adult penal law in sentencing. The range of sanctions and the rules for apportioning sentences are those of the Austrian Criminal Code. The StGB provides for the following exceptions for young adults:

Maximum sentences are lowered (§ 36 StGB). The prison sentence imposed by the judge must not exceed 20 years in the case of young adults. A life sentence is therefore not possible; the maximum sentence that replaces life imprisonment is 20 years and the threat of a term of 10 to 20 years is commuted into a 5 to 20-year term. In the case of the lowest threats the minimum sentence is reduced or removed altogether.⁷ In all other respects the threat of punishment remains the same as for adults.

Being below 21 years of age at the time the crime was committed is to be considered as mitigating factor when sentencing (§ 34 StGB). This means that young adults will benefit from a reduced sentence compared to adults, even though the difference will be less marked than in the case of juveniles (*Schroll 2002*).

As is the case with juveniles, young adults can have the commencement of serving their sentence postponed under certain circumstances, such as to enable them to complete vocational training etc. (*Schroll 2002*).

If the young adult has to serve a sentence, there is the possibility of a release on parole at an earlier date than would be possible for an adult. The minimum time to be served in this case is one month (§ 46 (2a) StGB).

Contrary to the situation adults are confronted with, the law also provides for considerable intervention by probation officers in the case of young adults (§ 50 StGB). The realization of decrees regarding medical or psychosocial treatment and drug withdrawal is facilitated by the fact that in the absence of social insurance coverage the costs of therapy will be absorbed by the state.

2.8. Transfer of juveniles to the adult court

In Austria it is not possible to transfer a juvenile offender to the criminal court for adults. Young adults are subsumed under the procedural regulations that apply to juveniles. In order to safeguard the application of the modified procedural regulations of the JGG to the juvenile defendant, the proceedings take place before a juvenile judge also in cases where an adult is complicit in the punishable offence (§ 34 JGG).

⁷

Minimum sentences of more than one year are reduced to one year; minimum sentences of one year are reduced to six months; the minimum sentence is removed if the threat does not transcend a five-year term.

2.9. Preliminary residential care and pre-trial detention

Pre-trial detention (*Untersuchungshaft*) is governed by the Code of Criminal Procedure and has to be imposed where there is the risk of absconding, suppressing evidence, or of an imminent criminal act. In addition to the general rules – which require its application to be proportionate to the offence, i. e. to the probable punishment, and as short as possible – detaining minors in pre-trial detention is strictly limited (§ 35 et seq. JGG). Not only is the maximum duration shorter but the special criteria are also more stringent. Pre-trial detention is not permitted – even granting the existence of the legal preconditions – if the purpose of detention can be achieved with the “softer” methods of a family law or youth welfare law directive. This is the case, for example, if the aim can be achieved by the minor undergoing treatment for drug addiction or placement in a home, or in a residential care facility.

Moreover, minors may only be detained if the attendant disadvantages for their personal development or rehabilitation are not out of proportion with the offence. The assessment of proportionality must therefore be conducted with utmost care. However, the proportionality rule applies not only to detention in relation to the offence, but also to the probable punishment. In a recent ruling, the Supreme Court has taken the view to interpret this literally and thus exclude any pre-trial detention as long as no punishment at all is to be expected (conviction without sentence, conviction with suspended sentence). To avoid the unnecessary extension of the time in custody and the delays in legal proceedings, the duration of police arrest should generally not exceed 48 hours. If the young suspect has to stay in pre-trial detention, the first review should take place at a hearing after 14 days, the second after a month, with subsequent hearings taking place every other month. The maximum period for pre-trial detention of minors may not exceed three months. In cases within the jurisdiction of mixed courts or jury trials it is six months, and can be for up to one year in extraordinary cases.

To protect the rights of minors as comprehensively as possible, the JGG grants the minor a special right of involving trusted adults in the first pre-trial proceedings. The trusted adult will usually be the legal guardian, a relative or a probation officer. In addition to this the juvenile is entitled to the services of a counsel of defence; where necessary a court-appointed legal defence counsel must be provided. The legal guardian must be notified that the juvenile has been arrested, unless there is a plausible reason not to do so.

2.10. Current reform debates, challenges for the juvenile justice system and outlook

It can be concluded that in many cases in the past the Austrian JGG had the function of a precursor for legal innovations that were realised later in the general penal law. The amendment to the JGG in 1988 was once more a great advancement. The possibility to renounce the criminal procedure for the sake of reconciliation between offenders and victims (“out of court settlement”), which was introduced as an experiment at first, represented a pioneering advance in European criminal justice systems (*Pelikan/Trenczek* 2006). This special form of “diversion with intervention”, mainly under the leadership of the state prosecutor, could reduce legal convictions without leaving criminal acts unanswered.

With the amendment to the penal procedure law in 1999 diversion was generalised and the advance of the juvenile justice system shrank even more: today the criteria for diversion predominantly have the adult offenders in mind. As a consequence we find victim-offender mediation even with juveniles as a more formal, legalistic procedure and just way of material compensation. One side-effect of formalisation is the principal demand to pay fees to cover court-expenses. The former alternative to a sanction tends towards becoming a form of alternative sanction itself. The economy of the procedure and the avoidance of expensive and counter-productive sanctions come to the foreground in the practice of diversion, whereas the pedagogic aspects lag behind.

In recent times, as elsewhere in Europe, the focus of the penal reform has shifted to the improvement of the situation of victims in the criminal procedure, with particular concern for minor victims. On the other side, the process of "individualisation" in the reaction to offenders seems to become limited also for juvenile delinquents. This is, for example, reflected in the compulsory order for probation for conditionally released offenders under the age of 21, or in the missing explicit denial of general preventive considerations in the recent amendments of the juvenile law. In fact juvenile prisoners may profit from the now intended extension of conditional release and other political measures for "custody relief", the reduction of prison overloads, without being the target group of further measures of procedural de-criminalisation themselves.

But since the reform in 1988 the JGG underwent only minor adaptation to some amendments to general penal law regulations, e. g. after the general introduction of diversion in the criminal proceedings. The most recent amendment to the JGG was enforced in 2000, which in essence meant a mere matching of the youth-age in penal law and in civil law (without implementing a separate penal law for young adults at the same time).

There are two major unsolved problems related to delinquency of juveniles in Austria:

It can not be confirmed that the more reserved legal practice of sanctioning and punishment against juveniles has lead to a stronger involvement of legal-welfare activities, orders for "full residential care" or accommodation in juvenile homes. There are already extra-penal measures according to family law or the Youth Welfare Act (*Jugendwohlfahrtsgesetz* 1989 – JWG). The purpose of this Act is to provide counselling and support for families, for example supporting education, though interventions are also permissible in cases where the legal guardians do not fulfil their obligations. But these measures are not alternatives to convictions, fines and imprisonment that can be imposed by a court. It is necessary to find new measures for young delinquents that lead to resocialisation and better education to improve juvenile's chances for their future, in particular finding a job. Fines and imprisonment have negative influences and should only be the last resort.

Another unsolved problem is the increasing crime rate of children who are younger than 14 years, the age limit of criminal responsibility. No plans are existing to reduce the age limit because criminal proceedings are not a useful measure for children under the age of 14 years. It is necessary to find other alternative ways which lead to resocialisation of minors under the age of criminal responsibility.

These are the main objectives for the future in the further development of the Austrian JGG.

3. Penal Service for Young Offenders in Austria

Pursuant to the Austrian Penal Service for Young Offenders Act, juveniles are persons having reached the age of 14 but not having yet completed the age of 18.

Persons between the age of 18 and 21 are called young adults or adolescents.

By law, prisoners may remain in penal service for young offenders only until they have reached the age of 27.

On the effective day 1 April 2012 a total of 8,998 persons were held in custody in Austrian prisons.

Thereof, 155 persons were juveniles and 500 young adults or adolescents. The following percentages result: 1.7 % juveniles and 5.5 % young adults or adolescents, i.e. a total of 7.2 % of the total prison population. The prisoners are predominantly male.

Young offenders should be held in custody separated from adults. In addition to the Youth Prison Gerasdorf and the Youth Ward in the Prison Vienna-Josefstadt, all prisons where a larger number of young offenders are held in custody on a regular basis maintain separate youth wards which are each laid out for about 20 young offenders.

The Youth Prison Gerasdorf in Southern Lower Austria, about 55 km from Vienna is the only facility for penal service of male juveniles and young adults in Austria. The prison has a capacity of 122 beds. The facility covers an area of about six hectares and is surrounded by an enclosure wall 5 meters high and 1.7 km long. The prison buildings consist of a cell block, a school block, a sports hall, a block with workshops, a market garden and an administrative section. A sports ground is also available on the area.

In the Youth Prison Gerasdorf there is compulsory education in all grades and school types (special school, elementary and secondary school and polytechnics school). There is continuous targeted teaching for all pupils and apprentices, if needed. Moreover, computer courses, the European Computer Driving Licence (ECDL), and language classes, etc. are being offered.

The private vocational school of the Federation Gerasdorf with public status holds theoretical and practical classes in these professions: gardener, baker, brick-layer, hair-dresser, carpenter, locksmith, tinsmith, auto mechanic, house painter, car body technician, cook and restaurant expert.

When working with, and counselling young offenders there is focus on three main points.

- Education:

Schooling, apprenticeship, courses.

- Therapy:

Individual psychotherapeutic treatment and treatment in groups, addiction therapy, anti-aggression training, etc.

- Recreational activities:

The prisoners are encouraged to spend their leisure time in a meaningful manner. Important factors are the generous recreation facilities available.

Penal service for young offenders is oriented exclusively towards special prevention – in adult penal service the effect of the punishment on the general public is also being considered (general prevention).

Special provisions for penal service of young offenders can be found in the Juvenile Court Act (JGG). Pursuant to Section 53 JGG young offenders should be educated to behave in a way consistent with the laws and with the requirements of community life. Furthermore, they should learn a trade corresponding to their knowledge, skills and if possible to their previous work activities as well as to their aptitudes. Penal service for young offenders is characterised by special pedagogical support.

Training and further education (vocational and in school) and the counselling of young offenders in Austria meets international standards of penal service for young offenders. Work in youth prisons and in youth wards is solely oriented on the legal situation and on state-of-the art educational sciences, psychology, social work and other scientific areas crucial for the work with young offenders.

For young offenders a structured daily schedule with minimum so-called lock-away periods is most essential. The typical daily schedule in the Prison for Young Offenders Gerasdorf is as follows:

6:30			a.m.	Wake-up time	
7:00	to	7:30	a.m.	Breakfast	
7:30	a.m.	to	2:45	p.m.	Work or school
12:30			p.m.	Lunch	
3:00	p.m.	to	5:00	p.m.	Outdoor activities
3:00	p.m.	to	6:00	p.m.	Visitors
5:45			p.m.	Dinner	
6:00	to	8:00	p.m.	Monitored recreational activity	
8:00			p.m.	All prisoners locked away, night shift begins	

At weekends activities are restricted; yet two hours outdoor and monitored recreational activities are guaranteed. Special importance is attached to sports activities.

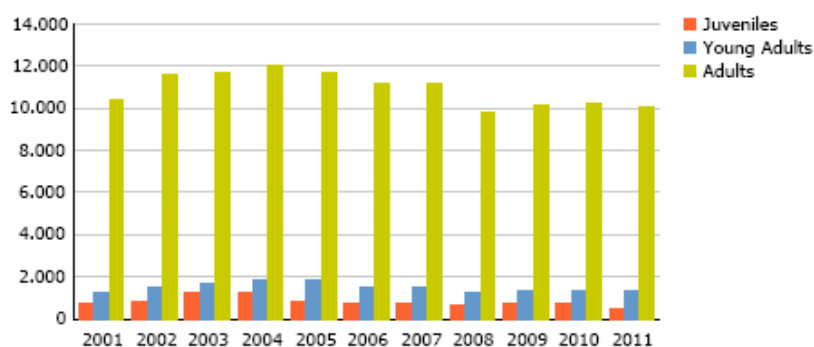
The staff in penal service for young offenders is specially qualified and trained (classes in pedagogics, psychology and psychiatry) and must have specific pedagogic skills. The majority of young offenders hail from desolate family circumstances. Many young persons were neglected, sometimes even abused (bodily or mentally) and thus were victim, before they became offenders. This often results in a high readiness to use violence, which can lead to occurrences with serious consequences during penal service. Therefore, young offenders are counselled more intensively than adult and should stay outside the cells as much as possible. They have to be employed always in a meaningful manner. Accommodation should be in single cells, if possible, in shared cells care is taken, that violence-prone prisoners remain separated. Violence und assaults among young offenders have to be prevented by a vigilant, sensitised and specially trained staff in the first place.

The purpose of penal service and therefore also of penal service of young offenders is described in Section 20 Penal Service Act. Accordingly, penal service is supposed to assist convicted persons to acquire an honest approach to life adapted to the needs of life in a community, as well as to prevent them from following criminal leanings. Moreover, penal service should demonstrate the worthlessness of the conduct which has led to the conviction. To achieve this objective, prisoners should also be subjected to education measures. Needless to say, that positive education measures are particularly important in penal service of juveniles and young adult, i.e. between the age of 14 and 21.

The following statistics give an overview of the situation of juveniles and young adults in the Austrian prison. The entries during the years from 2001 to 2011 are shown, as well as data concerning the status of young prisoners for this period. For the year 2011 the situation is also presented in detail. Further, the distribution of age groups and nationalities for the current situation is shown.

Entries

Breakdown by Age Group and Gender from 2001 to 2011



Number		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Male	Juveniles	673	775	1.165	1.170	737	694	680	552	639	618	459
	Young Adults	1.129	1.396	1.499	1.726	1.755	1.417	1.402	1.147	1.220	1.205	1.222
	Adults	9.528	10.545	10.638	11.028	10.725	10.179	10.209	8.908	9.251	9.172	8.953
	Total	11.330	12.716	13.302	13.924	13.217	12.290	12.291	10.607	11.110	10.995	10.634
Female	Juveniles	56	79	76	112	64	57	42	70	70	69	52
	Young Adults	90	106	125	101	116	95	112	75	109	99	109
	Adults	887	1.002	1.042	1.014	982	959	960	889	906	1.031	1.060
	Total	1.033	1.187	1.243	1.227	1.162	1.111	1.114	1.034	1.085	1.199	1.221
Gesamt		12.363	13.903	14.545	15.151	14.379	13.401	13.405	11.641	12.195	12.194	11.855

Breakdown by age groups is made as follows:

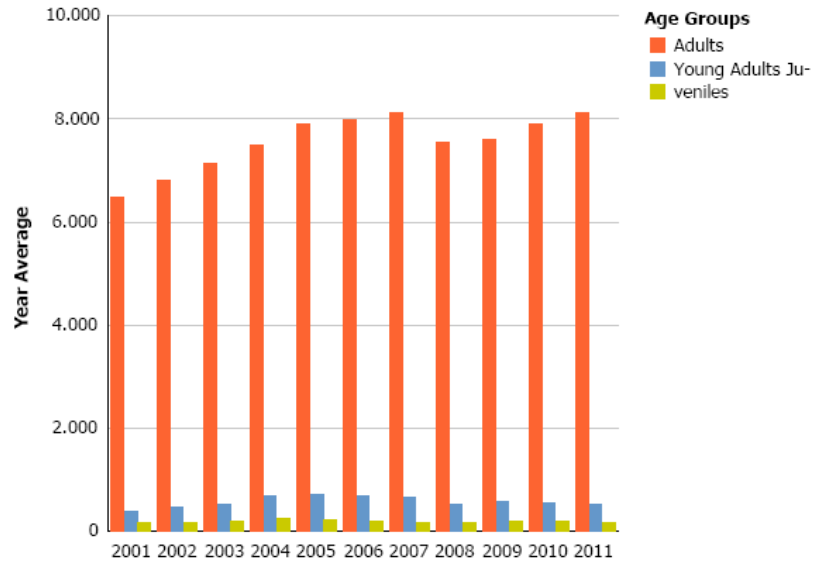
Age < 18 years: Juvenile

Age 18 - 21 years: Young Adult

Age > 21 years: Adult

Status

Age Groups (Year Average) from 2001 to 2011



Year Average	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Juveniles	155,0	180,6	209,8	260,5	212,6	181,7	174,8	155,2	194,9	198,3	149,8
Young Adults	399,8	463,3	533,1	674,2	727,6	689,2	653,7	533,3	576,0	541,9	532,5
Adults	6.489,6	6.817,5	7.147,2	7.480,3	7.915,2	7.979,8	8.115,6	7.553,8	7.596,1	7.901,0	8.121,8
Total	7.044,3	7.461,4	7.890,0	8.415,1	8.855,3	8.850,6	8.944,0	8.242,3	8.367,0	8.641,2	8.804,0

Breakdown by age groups is made as follows:

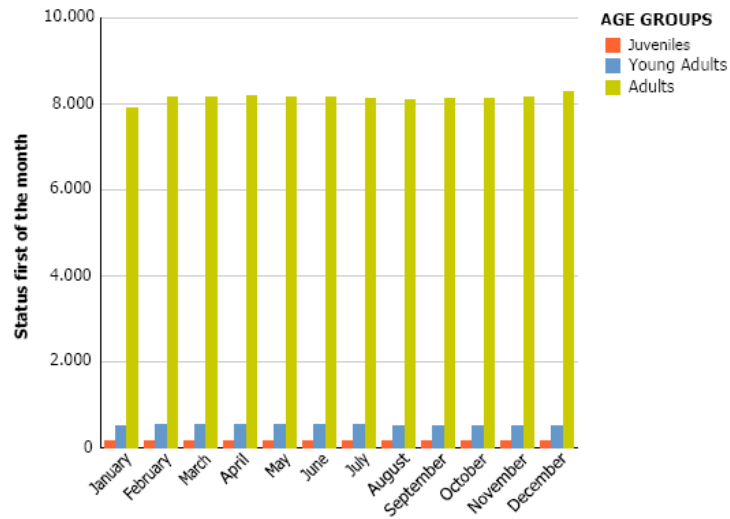
Age < 18 years: Juvenile

Age 18 - 21 years: Young Adult

Age > 21 years: Adult

Status

Age Groups in Reported Year 2011



Number	January	February	March	April	May	June	July	August	September	October	November	December	Year Average
Juveniles	158	144	137	138	147	159	162	153	149	148	138	164	149,8
Young Adults	492	540	539	537	555	555	556	523	518	527	526	522	532,5
Adults	7.890	8.131	8.132	8.193	8.156	8.135	8.099	8.087	8.101	8.118	8.151	8.268	8.121,8
Total	8.540	8.815	8.808	8.868	8.858	8.849	8.817	8.763	8.768	8.793	8.815	8.954	

Breakdown by age groups is made as follows:

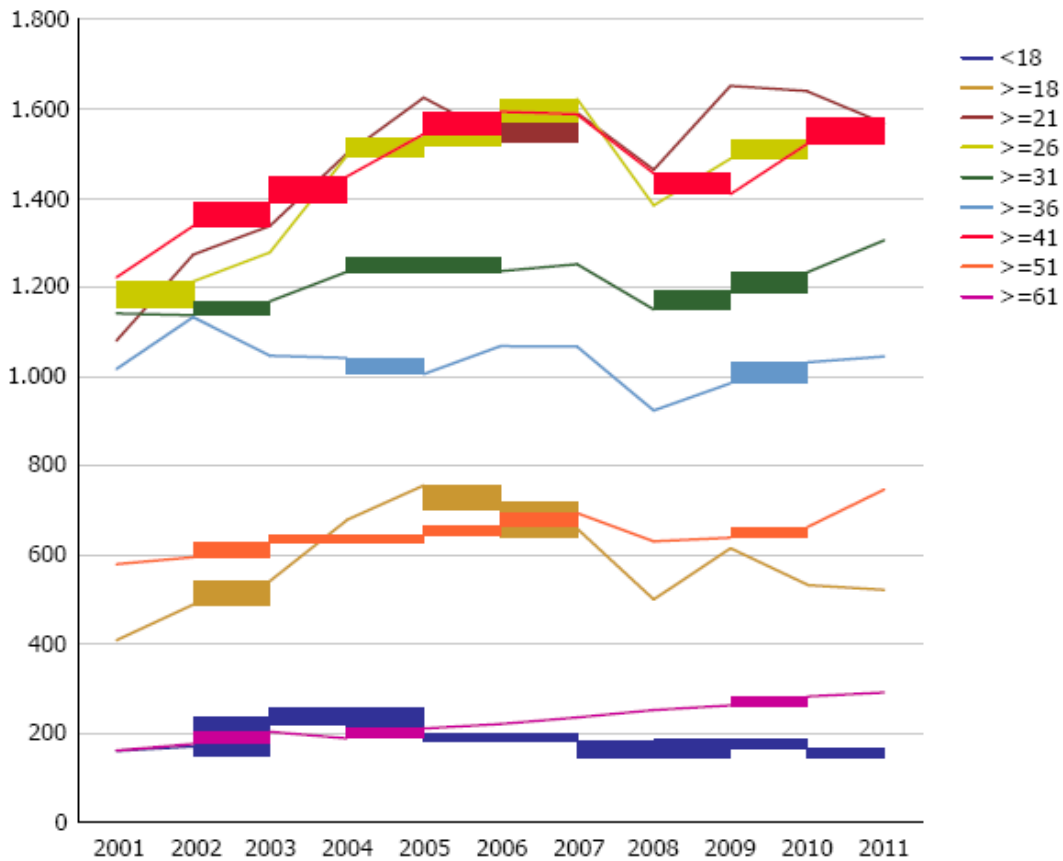
Age < 18 years: Juvenile

Age 18 - 21 years: Young Adult

Age > 21 years: Adult

Status

By Age from 2001 to 2011 as per 1.9.

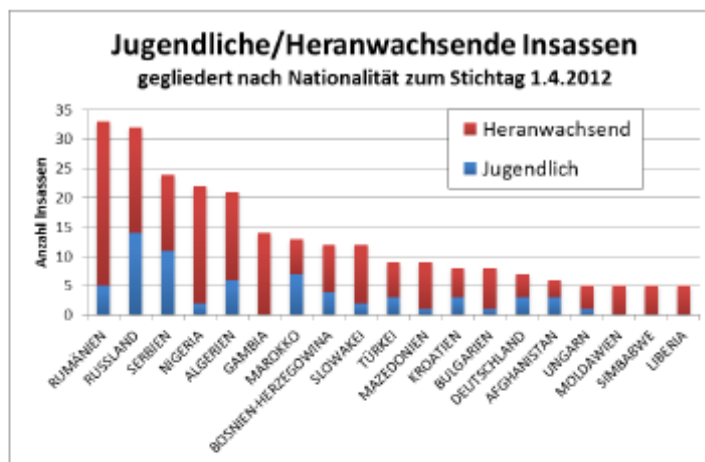


Number	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<18	160	170	220	255	195	192	181	145	187	167	146
>=18	408	488	541	677	755	702	659	499	614	532	521
>=21	1.080	1.273	1.337	1.499	1.625	1.534	1.591	1.463	1.651	1.639	1.567
>=26	1.153	1.213	1.278	1.494	1.532	1.572	1.622	1.383	1.488	1.529	1.571
>=31	1.141	1.137	1.168	1.234	1.264	1.236	1.252	1.150	1.190	1.233	1.305
>=36	1.017	1.133	1.046	1.041	1.005	1.068	1.067	923	984	1.031	1.044
>=41	1.221	1.337	1.390	1.447	1.543	1.593	1.587	1.455	1.409	1.522	1.577
>=51	578	594	628	631	645	663	693	630	638	662	746
>=61	161	176	203	188	210	220	235	251	262	282	291
Total	6.919	7.521	7.811	8.466	8.774	8.780	8.887	7.899	8.423	8.597	8.768

On the effective day April, the 1st 2012 the following persons served a sentence in Austrian penal service:

- **155** prisoners, age group juveniles (< 18) and
- **500** prisoners, age group young adults (18 to 21 years incl.).

The chart below shows all states, from which at least five prisoners hailed (juveniles or young adults), sorted by number of prisoners.



Nationality	Juveniles	Young Adults	Total
AUSTRIA	73	257	330
ROMANIA	5	28	33
RUSSIA	14	18	32
SERBIA	11	13	24
NIGERIA	2	20	22
ALGERIA	6	15	21
GAMBIA		14	14
MOROCCO	7	6	13
SLOVAKIA	2	10	12
BOSNIA-HERZEGOVINA	4	8	12
TURKEY	3	6	9
MACEDONIA	1	8	9
CROATIA	3	5	8
BULGARIA	1	7	8
GERMANY	3	4	7
AFGHANISTAN	3	3	6
MOLDAVIA		5	5
LIBERIA		5	5
SIMBABWE		5	5
HUNGARY	1	4	5

4. Activities by NEUSTART

4.1. Introduction

The organization NEUSTART provides help and support for criminal offenders. The range of services goes from de-escalation over probation work to help upon release and other ways of supporting the offender. Upon doing so, NEUSTART never loses sight of the victims, their rights and needs. Last but not least the organization is also engaged in prevention work. NEUSTART aims to support the individual and by doing so to increase the security of the society as a whole.

Especially concerning juveniles, alternative measures like social support and assistance are crucial for a successful reintegration of the offender. NEUSTART plays an essential role in reaching this goal. Juveniles and young offender form an important group within the clients of NEUSTART.

In this chapter an overview over the activities of NEUSTART in this field will be given, divided by the main services: probation services, Anti-violence-Training, Out-of-Court offence resolution and community services. Concluding the project “Family Group Conferencing” will be presented.

4.2. Probation services

4.2.1. Numbers (active cases)

Year	2007	2008	2009	2010	2011
Juveniles	2.415	2.549	2.682	2.768	2.829

4.2.2. Service

Probation is ordered by the court or used on a voluntary basis. Public prosecutors and judges may order probation services in the framework of a diversion order to replace the main trial. In general, probation services are meant as an alternative to a sentence or a prison term, but may also be used upon release from prison.

Probation service means:

- Individual support of offenders to facilitate their re-integration into society
- Specific assistance with housing or job hunts, in dealing with public authorities and with financial crisis situations
- Mental and social support
- Avoiding recidivism

Probation services are considered the most effective method to reintegrate offenders into our society in the long term. Prevention of committing new criminal acts is one of

the most important aims of probation services. Success rate* when probation services were employed: 59 %⁸.

4.2.3. Case Description

Mr M. Keita (name was changed), 18 years old, was born and grew up in Guinea, Western Africa and has lived in Austria since 2003. He came to Linz with his father, his step-mother and his step-sister. The step-mother and his father separated in 2004. There was no contact with his father from 2004 to 2011. He does not know his natural mother.

Mr K. claims he had assumed to be taken to a French-speaking country in Europe. About his first years in Linz he reports that he was repeatedly held in detention by his step-mother for longer periods of time. The relationship with his step-mother was difficult. At that time he had even tried to take his life. A lady neighbour once found him in the cellar as he tried to crush his head between iron bars. From Guinea he was used not to get any food over longer periods of time - sometimes one week. This he also did in Linz and did not eat until he became unconscious and was taken to the hospital. Mr K. finished the special school in Linz, speaks German well and was accommodated in several homes, after finishing school. He tried an apprenticeship as floor-layer and in an apprenticeship foundation. Mr K. was charged with bodily harm and theft. Mr K. committed theft to obtain money and bodily harm, because he is often faced with a situation to stand his ground. For that matter, he got hit on the head three times with a bottle or a glass in discothèque brawls and thinks that his head could take much, anyway.

He has probation service since early 2011. In mid-2011, his father, who in the meantime has a new life partner and 2 further children and lives in Vienna, took up contact with Mr K. again. I got to know Mr K. in late 2011. At this time, his father had promised him a flat, life with his family and a job in Vienna. Subsequently, the client moved in with his father and aborted his apprenticeship. It turned out that Mr K. was deemed worthless by his father and was barred from entering the flat on a regular basis. Mr K. would then sleep in the hallway. He had no own room or a key to the flat. Nor did the client receive any money. Mr K. hoped that his father would see reason if he behaved well. At that time Mr K. described the differences, as he called them, between "African and Austrian thinking". And in particular with respect to his father – son relationship. This offered me as his probation officer the possibility to acquire biographic and ethnographic understanding. We also talked about his alternatives. It became clear that Mr K. hoped his father would see reason and change his attitude, if he only tried hard enough. One idea which emerged from these discussions was to hold joint talks with the father. But such talks were refused by the father. At the same time Mr K. developed means to withstand the situation. Not to have anything to eat he calls to use the African method, and this was better than committing a crime or contracting debts.

⁸ Mag. Veronika Hofinger, Mag. Alexander Neumann, Institute for Legal and Criminal Sociology, 2009

The knowledge to have made horrific experiences and the focus on his underlying strengths feeds the client's confidence and is based on the sentence "he knows one's way around when having to suffer". As there was no change in the relationship with his father, Mr K. decided in early 2012 to move out of the flat. By doing this, he also decided to embark upon a new start.

Now the client lives in a monitored shared flat belonging to the Organisation NEUSTART. The relationship to his father, the differences and the application of "African and Austrian thinking" are still topics of discussion for Mr K. But now he focuses on learning how to decide independently.

Through the labour office Mr K. in March 2012 was accepted into an inter-company qualification measure in Vienna. There he was soon threatened to be dismissed, as the client showed good work performance, but was very unreliable in work attendance. At a joint discussion with the responsible qualification leader the client received a written warning, and it came into the open that the client often does not sleep as he suffers from nightmares. He has suffered from such nightmares for many years and this is always a problem when getting up in the morning. He quickly got an appointment with the consulting psychiatrist of the Organisation NEUSTART. He prescribed medication accordingly.

Since then his punctuality has increased. For the client it was an "aha" effect that suddenly he is able to sleep and he is very proud of himself, that he now comes to work in time. At the request of the client we started training sessions in April (affect control training) with application of physical work. The basic idea of such work is that all experiences are being stored in the body and may be utilised. Learning through the body is an effective method also with traumatised persons to learn to build up confidence in one's own abilities and skills through training experience. Through the training the client hoped to be able to integrate increased stability, a clearer direction and constructive assertiveness into his life.

4.3. Anti-Violence Training (AVT)

4.3.1. Case history/previous history

Claudia grew up with her parents in Vienna together with her brother, who is two years younger than her. Claudia is of Turkish descent and was born in 1991. When she was 8 years old, her mother got a divorce for the first time. The reasons were alcoholism of the father and constant quarrels between the parents. The parents remarried, and when Claudia was 12 years old, the parents separated for good. Her father repeatedly received alcohol withdrawal treatment. In spite of many conflicts Claudia stuck with her father.

On 19 November 2008 she passed her school with a girl-friend and observed a brawl between two girls. She was "teased" by one of the two girls; the situation escalated with the result that she broke the left and right jawbone of one of the girls. At the time of the offence she was 17 years old.

During the trial at the Regional Court on 16 April 2009 she was sentenced to four months on three years' probation, and ordered to receive probation service and take anti-violence training.

In December 2009 she started with one AVT group, which she did not keep up and aborted, however. In November 2011 she started a new AVT group, which she successfully concluded on 14 April 2012.

The Training – Short Overview:

- Before the training starts, the colleagues from probation service receive information on the framework conditions
- Thereafter there are selection interviews to allocate the groups

Methodology of the modules:

The training consists of 4 blocks

Block I:

Start Module (1) contains organisational input – getting to know each other – presentation of the programme – group objectives – rules – group view (responsibility and relapse) – rituals (welcome and farewell ritual)

Module forms of violence (2) – Module offence-related learning programme by K. Mayer – the young persons are to work through the programme on the basis of a movie example with the objective to apply it to their own offences in the next block.

Block II:

Number of modules depending on number of participants

Key modules: Here each participant per module shall take the floor presenting his/her own relevant offence. The key module consists of 2 parts: the first part includes a discussion of the offence and in the second part the offence situation will be re-played in a psychodramatic manner.

Block III:

This block consists of a mixture of the following modules:

Lawyer module (legal issues are discussed) – Module “letter written to myself” – Module “letter to the victim”

Block IV:

Module reflection – module closure

Upon termination of the training the participants receive a certificate confirming their positive completion of the training for the purpose of presenting it to the court.

During the training the young persons are to strengthen their social competences and acquire new ones. The main goal is the confrontation with the offences, for which they were ordered to participate.

Also the diversity of the participants gives them a chance to view and accept other personalities, their attitudes, different approaches and social and cultural differences or similarities.

The young persons run through a group dynamic process with clear substantive work in the foreground. A condition to face the group at all is that the young persons feel safe here.

At the beginning Claudia may have thought during the Start Module: Who are the others? Who is likeable? What are the rules here? Who is in command? How should I behave here? How open can I be?

In this connection, it is crucial that there are clear rules agreed upon. The framework and the rules are the same for everybody. In the second module we talked about forms of violence, where Claudia contributed personal examples (victim experiences). Firstly, the juveniles were to contribute the forms of violence they had experienced themselves and then the trainer added any missing forms of violence.

It should be mentioned here that psychic violence was not perceived as such by the young persons. With physical or sexual violence it was easiest to make it understood.

During the Module Learning Programme Claudia could contribute her “expert knowledge” on the subject violence. Here she also got to know the other participants, their attitudes and approaches with respect to this subject matter. (Possible learning experiences: synergies may emerge in the group, as participants are sharing their knowledge and influence each other by new views and proposals. Group work satisfies the human need for respect, recognition and exchange with others. Who participates actively in the dynamics of the group, learns to argue, to discuss and to present his/her knowledge in an understandable and structured manner.)

When working through the learning programme the following processes of group dynamics are passed through: Forming (orientation phase) – Storming (conflict phase) – Norming (agreement phase) and Performing (work phase).

After that the participants knew each other very well. Claudia had in the meantime shown much of herself and arrived at the phase of dealing with her offence. During that period she obtained many new perspectives about her offence. Possible learning experience: I finally am able to talk about my offence and nothing will happen to me. I hear how others deal with the situation. What did the victim and other bystanders go through? What did my double go through? What were the alternatives? At which point could I still have stepped off? What are risky situations? Which personal body sign tell me that a conflict could again be approaching? Which of my behaviour patterns contributes to creating a conflict?

During the lawyer module legal issues are discussed, e.g. what is legitimate self-defence? Here Claudia learned how to differentiate. She got to know the entire procedure from the police report to the trial. Who is involved here and how does the judge see the matter? Possible learning experiences: recognition of legal procedures. Gaps of legal knowledge are closed. Understanding an interrogation. Understanding, how the judge arrives at the sentence.

During the module “letter to myself” Claudia was supposed to deal with future questions (half a year) regarding her life. The letters will be returned by the trainer to the participants after half a year. Possible learning experiences: answer to the question, what has become of my future perspectives? What have I really achieved of the resolutions I made?

During the module “letter to the victim” Claudia was supposed to consider: What would I want to tell the victim in a letter? Possible learning experiences: emphatic capacity.

During the module reflection Claudia was supposed to draw a personal balance of the training, give messages (advice) to other participants and give a feed-back to the trainers. Possible learning experiences: an answer to the question, what have I learned here? What has changed? Why has something changed? What is my assessment of a relapse? What is my assessment of my responsibility? What part of the training did I enjoy? What do I want to pass on to other participants (message)?

After the reflection participants will be handed the certificate of participation to be presented to the court.

During the module closure Claudia must consider how to arrange closure with the other participants. Closure is a solemn ritual, most frequently consisting of a dinner with presentation of a diploma. Possible learning experiences: I have finished it. I have achieved my goal (court order). Recognition in the form of a diploma.

Upon termination of the training the responsible probation officers will be informed. If necessary, there will be individual closing discussions with the participants.

Effect and learning experiences of Claudia:

A principal element of this training is that the person will be accepted, but the offence will be criticised and dealt with. (“critical partiality”)

Due to this attitude Claudia was able to reveal much about herself. She told a great deal about her life story. She openly discussed the parenting style of her Turkish father. The achievement was that this topic could be broached and critically questioned.

In her feed-back she said that when she committed her offence, she had not reacted adequately and proportionately. She was quite frightened when feeling her power, after having struck the blow. For the first time, she had an opportunity to talk about and consider her offence (to assume different perspectives). This helped her and took a burden away from her.

She found a language by which she could name things. She learned that a woman should and is allowed to defend herself, but commensurate and in relation with the circumstances, in order to avoid critical situations. During the training she became aware of her physical strengths. Here she could feel right up close the effect of a punch or kick.

Claudia also manifested stamina, when at half-time of the training she found a position as an apprentice, but still always attended the training over a period of two months, in spite of the double burden (working hours until 6:30 p.m. and then right to the training at 7 p.m.). Although the participants were a motley lot, Claudia showed a great amount of empathy towards other women. At the closing dinner she took care of the group (she stood in the kitchen and volunteered to cook for the women).

At the end Claudia said: “Talking here has helped me”.

4.4. Out-of-Court Offence Resolution

4.4.1. Numbers (entries)

Year	2007	2008	2009	2010	2011
Juveniles	1.498	1.448	1.395	1.286	1.052
Young adults	1.025	921	1.059	980	937
Total	2.523	2.369	2.454	2.266	1.989

4.4.2. Services

Help for offenders and victims: NEUSTART Offence Resolution – an alternative to a court trial and already called “reform of the century” by many (e.g. *profil* No 19/97). The legal provision of out-of-court offence resolution has meant tens of thousands convicts fewer every year.

Out-of-court offence resolution is an up-to-date and new form of social conflict resolution (diversion), by which a “resolution” is achieved to satisfy both sides. For the victim such resolution means a specific and quick compensation by the offender himself. For the offender this form of conflict resolution means that he has to first very closely face the consequences of his actions and that to jointly with the victim and a professional conflict mediator he has worry about restoring the damage done. His profit: He avoids a sentence being imposed and he can use his efforts to compensate for his mistake.

Out-of-court offence resolution is not being applied for murder, drug and sexual crimes. The large number of all offences does not fall into this area and here out-of-court offence resolutions show their great worth. Offences of juvenile delinquents and young adults during situational conflicts are still the major focus of conflict resolution. It is often a question of integration in a group, of status within the group, of trying and testing the limits.

Success rate with conflict resolution: 90 %⁹.

4.4.3. Case History

In the following case description various specific elements of dealing with conflicts among young persons will become evident:

Mario and Andreas both were training as apprentices for mechanic. Mario lived in the Braunau district, Andreas in the Schärding district. They got to know each other in the first class of vocational school and in the vocational boarding school in Ried. At the boarding school they shared a room with two other youngsters. When the incidence happened they had known each other only four days.

⁹ Mag. Veronika Hofinger, Mag. Alexander Neumann, Institute for Legal and Criminal Sociology, 2009

Mario wanted to take a shower. The light switch was outside the bathroom, in the shared room of the youngsters. All three roommates were present. Andreas turned the light off, when they could hear that Mario was already under the shower. Mario exited and grumbled and turned the light on again. All three youngsters in the room were laughing. Mario re-entered the bathroom.

Andreas turned the light off a second time. Mario towelled, dressed, exited and abused the others. He already suspected that Andreas had switched off the light and told him to stop the nonsense. Mario went again into the bathroom – Andreas turned the light off a third time. Mario rushed out, ran to Andreas who was sitting on the upper bunk bed, pulled him from the bunk bed by his T-shirt (which tore apart) – the youngsters abused each other, jostled and started to fight. Mario kicked Andreas and injured him in the back. Also Mario was slightly injured in the face by Andreas. The two other roommates finally got a teacher. Andreas was in pain and could hardly stand up. He was taken to the hospital by an ambulance. Charges were filed.

As a consequence, both youngsters involved have to leave the boarding school and have to commute daily to the vocational school.

The Public Prosecutor passed the file accusing both youngsters of malicious bodily harm to out-of-court offence resolution.

In initially separate individual talks the persons involved are interviewed about the charges filed, the incidence and the background.

Mario was accompanied by his mother. Andreas had reached the age of 18 in the meantime and came to the interview alone. Mario wanted offence resolution, no trial. He was prepared to discuss matters with Andreas, but pointed out that Andreas had been teasing him already for some days previously. During the incidence he had provoked him in a way that he could not help himself but to fight. But he was sorry that he became violent because of this provocation and that he injured Andreas. He did not want to pay smart money and did not demand any either. He claimed to have had pains in the face for two days.

Andreas was also interested in an out-of-court resolution. He described that a nerve was hit and pinched so that he could not attend school for several days. Subsequently, he had great problems for 2 months and received several medical treatments. But in the meantime everything has healed over. He claimed smart money and damages for a new T-shirt, but was able to recognise his own provocation. The two youngsters had attended the same class for 10 weeks, but had not exchanged a single word until facing each other during the offence resolution.

During the resolution discussion they exchanged mutual apologies. They discussed that Mario felt teased even before and had the feeling of three against one at the boarding school. Various situations prior to the incidence and the charges of bodily harm were discussed in detail, the respective points of view were argued and solution strategies were jointly found different to those chosen during the incident.

Also Mario's mother was included in the resolution. Both youngsters finally agreed for Mario to pay to Andreas smart money in the amount of € 400.- in four monthly instalments of € 100.-, as the injuries caused by Mario were heavier, but considering that part of the blame also lay with Andreas.

Both youngsters will meet again in vocational school in autumn, and they pledged to greet and treat each other respectfully in the future, even if they will not become good friends any more, as things stand today.

Payments were monitored by NEUSTART; subsequently a report was filed to the Public Prosecutor on the results of the offence resolution (taking over responsibility, apologies and restoration of damages).

The Public Prosecutor terminated the criminal proceedings. Both defendants had to pay a lump sum cost contribution (in this case € 40.- each).

4.5. Providing Community Services (incl. probation)

4.5.1. Numbers (entries)

Year	2007	2008	2009	2010	2011
Juveniles	1.681	1.881	1.696	1.725	1.439

4.5.2. Services

Meaningful community work: The organisation NEUSTART offers suspects the possibility to perform unpaid community service instead of criminal court proceedings or custodial sanctions. Once the community service has been performed successfully, the public prosecutor will abstain from criminal prosecution or the court from enforcing a custodial sanction.

The goal of providing community services is to select a facility and service appropriate to the offence and the suspect, and to counsel and support the suspect when performing community service (e.g. in old peoples' homes).

A supportive element for a positive conclusion of the service is the readiness of the suspect to deal with the crime, its causes and consequences. NEUSTART files a report to the public prosecutor or the judge on the due completion of the community work.

Imposing community service should guarantee that the suspects are not completely torn away from their environment and their work place (e.g. by imprisonment). For example, when performing the community service work, any apprenticeship and education situations will be taken into consideration.

Community service therefore is a chance for the suspect to deal with the consequences of his/her criminal act in the interest of victim and society.

Success rate in providing community services (diversion): 77 %¹⁰.

¹⁰ Mag. Veronika Hofinger, Mag. Alexander Neumann, Institute for Legal and Criminal Sociology, 2009

4.5.3. Case History

Patrick N., born 1994, pupil. Sentence was imposed for reason of heavy property damage.

In the night of 29 January at 0:15 a.m. Patrick N. damaged two cars by running over them. Both cars had visible dents on the roof and on the bonnet. Total damage amounted to € 7,500.-

The Public Prosecutor in Korneuburg requested legal instructions and the provision of community service, 80 hours within 6 months.

The juvenile was pupil of an A-level class in secondary school. He conveyed a very eager impression. He seemed to have expected something like a moral lecture, and was surprised about the course of the conversation.

The client was the son of a wine grower. His father had paid the entire damage.

In autumn he started his law studies at the Vienna University.

A mediation interview was broken down in four key parts:

1. Description of the offence:

Patrick attended a birthday party. As usual on such occasions he had a few drinks. He thought it was fun to run across cars. There were no witnesses of the incident.

2. Taking over responsibility:

He recognised the responsibility for his drunkenness. He would not have done the deed, had he been sober. Since the incident he does not drink hard drinks anymore, because he loses control over his actions. He has a clear idea about his limits.

3. Restoration for damages:

He will work in his parents' vineyard all year long and will only receive half the amount originally agreed with his parents as a restoration for damages.

4. Selection of community service:

In school Patrick co-operated in a project called "compassion" and wanted to perform his community service hours in a nursing home for the elderly. The social worker contacted the Provincial nursing home. The manager readily agreed to have Patrick work in the nursing home. Suitable work was in a gardening project together with nursing staff and sprightly home residents.

The Public Prosecutor received a message about the client's readiness to serve his hours in the Provincial nursing home and was notified that the client was counselled concerning his rights and obligations.

After completion of his service hours there was a concluding interview with Patrick. This interview contains a statement concerning the consequences of his actions. There is a brief information talk with the Provincial nursing home, whether they were satisfied with the performance and the attitude of the client.

The Public Prosecutor receives a confirmation about the hours served and a form acknowledging the definite abstention from criminal proceeding, which has to be sent back to NEUSTART.

4.6. Project Family Group Conferencing

1. Preliminary remark

- Entries of offenders on probation have increased by 59% over the last few years.
- In 2008 for the first time the number of offenders on probation was higher than the average prison population (about 8,400) and with 9,700 by the end of 2009 such number was markedly higher.
- Because the number of offenders is on the rise, focus is placed on constructive alternatives to pure imprisonment with social significance. An increasing number of released prisoners are backed up by probation services as a flanking measure.
- From a criminal policy standpoint this development is most welcome, but also calls for an exercise of reflection on methodical expansion of facilities to cope with the rising number of clients.

The introduction of new methods going beyond classic assistance in individual cases must be oriented towards the key goals of social work in criminal justice, i.e.:

- To deal with and to a large degree eliminate the consequences of criminal acts, and offer pertinent assistance also to the victims of a criminal act;
- To assist persons accused of having committed a criminal act or sentenced for having committed them in their social integration, so that they will not commit any (further) criminal acts;
- To facilitate or execute measures to replace other means of criminal prosecution or response to criminal acts, which require more intensive intervention and incur much higher costs.

All these socially constructive measures are to prevent recidivism and should be oriented along the lines of restorative justice.

This will be achieved by

- Clarification of standards
- Dealing with offences and their consequences
- Supporting and encouraging restoration of damages
- Inclusion of victims' interests
- Supporting processes of social learning

- Securing subsistence (in particular with housing and work) and supporting (re-)integration into the social environment
- Supporting compliance with court orders and constraints.

Social work in criminal justice, apart from complying with monitoring requirements by the state, from a criminal policy standpoint should be oriented along the lines of restorative justice and from the standpoint of social work should focus on available resources and principles of empowerment. The human image, action models, work principles, goals, and methods should be structured and coordinated accordingly. Social work as state of the art means victim orientation and restorative justice, restorative compensation to be understood in a broader sense, focussing on offenders, victims and society, focussing on resources discovering and promoting all internal and external resources, but also encouraging utilisation of available resources and becoming aware of, and restoring missing resources and empowerment by activation conferences, conflict resolution, dealing with offences and motivating social work.

Social work, building on this capital of trust in the strengths of clients, bids farewell to unilateral power of experts, deficit orientation and conditioning of attitudes, renounces patronising care, and focuses on the entire community and the social environment, and equally shares responsibilities for work alliance and attainment of objectives.

For these reasons NEUSTART will test the application of Family Group Conference (FGC) in a project for juveniles and young adults.

2. What is a Family Group Conference (FGC)?

“Family Group Conference” (FGC) – often called “family council” in the German speaking countries – in (juvenile) criminal justice is a meeting of juvenile delinquents, their families and close relatives, but also of professional councillors to help the juveniles to learn from their mistakes, to support them in changing their lives, and to find out which assistance and help the juveniles need.

If there are victims who suffered damages or injuries a “Family Group Conference” is also called for to give the juvenile a chance for an apology and for restoring damages.

So this method is a conference for decision-making and for planning family assistance in crisis situations or difficult life situations, but also a process of mediation in which not only the victim take part but also persons who are only indirectly involved.

This method was first introduced in New Zealand in juvenile criminal justice and in youth welfare, but it is now being successfully applied in many countries in juvenile criminal justice and social work altogether. Thereby, the resources of the families involved and of their social network are being activated. The special element is the fact that the experts responsible for the case have only a monitoring function in the process. The solutions will be worked out by the families and their environment, which thereby are given increased responsibility, for that matter.

International experiences show that also “multi-problem families” are able to develop effective problem solutions in an appropriately organised framework.

Who participates?

- The juvenile
- One (several) person(s) of trust of the juvenile
- The family and important reference persons (e.g. grandparents, uncles, aunts, neighbours, teachers, employer, tutor) of the juvenile
- The probation officer
- Other social workers and experts (e.g. from youth welfare office, drug control centres, street-workers, health facilities, etc.)
- At a damage restoration conference: the victim and his/her person(s) of trust
- The coordinators of the conference

Key elements of the procedure

- The coordinators take a neutral position. They and not the social workers are responsible for the case. The coordinators are responsible for the conduct of the procedure. Responsibility for solving the matter falls back from the experts to the expanded family.
- Cultural idiosyncrasies are being considered.
- The entire social network (important people, relatives, friends, work colleagues, neighbours, supporters, counsellors, persons involved in the conflict) are invited, participate in finding a solution and join the decision.
- Participation during the conference is ensured in a discussion room free of experts, in which only the family and their network consider and deliberate possible solutions and prepare a plan.

Operational sequence: Each conference breaks down in five phases. During the preparatory phase, which is intensive work and lasts for several weeks, the coordinators talk with all family members and supporters – at damage restoration conferences contact is also established with the victims.

Circle of participants and external settings (cultural specifics, location, catering and time) will be discussed and determined with the family.

All participants in a FGC are well prepared; concerns, reservations and impediments to participate will be discussed and eliminated, if possible.

In the information phase, the experts responsible for the case and other helpful specialists input some information about their expert opinion, the legal possibilities and any public assistance. At damage restoration conferences a statement of the

circumstances of the offence is provided and the victim is given opportunity to describe injuries and damages. (Facts are put on the table)

The family phase is held “behind closed doors”; all experts and even the victim leave the room. In this protected environment the family and the social network may exchange views on different perspectives, ideas, solutions and restorative possibilities, and develop a solution and damage restoration plan. (Time for discussion without experts).

In the decision phase (the plan) the family and their social network present the solutions they worked out, how to further proceed and implementation details. The plan is adopted by the expert responsible. But supplementary information may be required. At damage restoration conferences the victim has an opportunity to comment on the damage restoration offered. The victim may accept the damage restoration and apology, or else reject it.

The plan will be evaluated in a follow-up phase after three months, and supplemented or amended, if necessary.

The objectives of a “Family Group Conference”:

- Families and the juveniles integrated in social networks are encouraged, empowered and supported, to deal with their problems, to make decisions and to find common solutions.
- Offender and victim are given the opportunity to address and reconcile their conflicts.
- Social networks and community relations are activated and participate in solving the problem and in restoring social peace.
- The family group and the social network become their own decision-makers for the solution, determine the extent of assistance needed and take responsibility for implementation and evaluation.

3. The NEUSTART Project

- Testing and implementing the FGC procedure with juvenile delinquents and young adults with probation orders.
- At four project locations in Vienna 1, Styria, Upper Austria and Carinthia 60 conferences are scheduled during the next 24 months.
- The aim is to develop and adapt the procedure for purposes of the Austrian probation services. At the same time, criteria and indicators for suitable cases and for case allocation for a FGC will be developed.
- With FGC the average duration of service is supposed to be reduced in comparison with individual service, thus easing the burden on probation services.

- Before FGC can be tested in practice, a training concept will be developed in co-operation with the technical college St. Pölten. This concept will be used to train the project workers.
- Should the evaluation be positive, a roll-out plan for all facilities will be prepared.
- The conferences are equally or more effective than individual counselling as measured by their cancellation rate.

Three types of conferences: Three forms of conferences are to be tested during the project:

- Conferences with victim participation (consequences of the offence, taking over responsibility, damage restoration, restoring social peace)
- Conferences without victim as solution and decision process for social problem situations
- Conferences as assistance and integration measure prior to prison release

Framework conditions in probation service

- The probation officer is responsible for the case;
- He/she engages the coordinators of NEUSTART to conduct a FGC;
- The coordinators prepare and implement the FGC;
- The probation officer participates, outlines the concerns from his/her point of view, describes the offence, the risks and problems and provides information on legal and social opportunities;
- The probation officer comments on the agreements made, confirms them and reports them to the court;
- The coordinator makes the agreement binding.

Effects of successful FGC's

- Resolution of conflicts
- Accepted problem solution
- Shared responsibilities
- Post-release integration

Resulting in: avoidance of further criminal acts being committed and of risk situations emerging.

5. Right-Wing Extremism

5.1. Right-Wing Extremism in Austria

5.1.1. General Comments

The phenomenon right-wing extremism occurs in various shapes and different manifestations in all European states. When compared with the European environment, where right-wing ideologies with regard to the number of participants in the scene, with regard to the number of type of criminal acts, and with regard to the election successes and positioning of right-wing parties are partly on the rise, the level of activities of right-wing extremism in Austria is rather low. A consolidated right-wing ideology can be observed only with a very small part of the population. The political, economic and social stability of Austria has so far offered no basis for right-wing extremism which could seriously threaten democracy and internal security. The right-wing terrorist acts committed in Germany in 2011 and the links of perpetrators with the ideologised scene are an indication, however, that the subject matter of right-wing extremism must be taken seriously.

5.1.2. Definition

So far, there is no legal definition of the term right-wing extremism which clearly describes and delimits the phenomenon and clarifies it with regards to causes, social evaluation within society and social consequences.

Right-wing extremism is a term hotly disputed in a political-ideological context, whose specific contextual interpretation depends on prevailing overall social and political conditions. In principle, extremist ideologies are not punishable by law in Austria. The only punishable acts in the context of right-wing extremism are national socialist activities as described in the 1947 Prohibition Statute. All other relevant behaviour patterns have to be judged pursuant to the provisions of the general Penal Code. Moreover, preventive observation of attitudes and possible intentions to act by persons outside of well-defined groups of offenders or scenes with concrete underlying danger potential are unknown to Austrian law.

The term right-wing extremism is used in politics, in the media and in society and the phenomenon is assessed in quite a differentiated manner and there is often a discrepancy between what is still allowed and what is already prohibited according to the respective point of view and the prevailing legal situation. This is particularly true for propaganda activities which often touch on but do not cross the limits of criminality.

For some years, such attitudes and activities can be observed spreading to the centre of society, which frequently suggest right-wing suspicions, but hardly constitute acts “fit for punishment” under the law. These include single ideological elements of right-wing extremism or phenomena such as xenophobia, everyday racism, national socialist references in various sub-cultures, etc.

As a result of this lack of legal clarity of terminology or the lack of delimitation of right-wing extremism punishable by law from terms such as xenophobia and racism the security authorities, when fulfilling their tasks, were frequently subjected to high

expectations by political bodies or the media, which they could not always meet in spite of using all legal possibilities.

5.1.3. Task of the Security Authorities

In the context of right-wing extremism the detection of criminal acts and the activities of right-wing groups are the responsibility of the security authorities. Of a total of 341 persons charged in Austria in connection with punishable right-wing activities in 2011, 29 came from a right-wing extremist scene. 91.5% or 312 of the persons charged could not be assigned to any relevant scene.

The statistical data relevant to charges do not represent an image of the factual spread of right-wing extremist attitudes or criminally relevant behaviour patterns in the population. But they indicate that the relevant perpetrators are mainly persons acting as individuals based on more or less vague xenophobic/racists attitudes or out of frustration and the will to provoke, and increasingly also out of mischief.

The security authorities observe the agitation of the right-wing scene within their legal possibilities and vehemently counter any relevant criminal acts by using all legal possibilities. Apart from such repressive tasks, the security authorities devote particular attention to matters of prevention measures.

5.1.4. Present Situation - Overview

The right-wing milieu in Austria includes right-wing revisionist groups, a juvenile right-wing sub-culture, rather primitive in its ideology and active on a regional level (skinheads or blood & honour groups), neo-Nazi groups of persons with personal and/or virtual contacts and some individual activists.

The right-wing revisionist groups on the surface act quite cautiously and low-key, and strive to avoid getting in the focus of the security authorities and of the political-ideological opponents. On the inside, they are quite active to recruit young followers and to educate them in their ideology.

The sub-cultural forms of right-wing extremism (skinheads, hooligans, etc.) are manifested in public by their conspicuous, provocative and violence-prone or even violent behaviour. The right-wing revisionist scene is mainly active behind closed doors in an intimate circle, unrecognised by the general population.

Some relevant associations of persons, still organised traditionally in the form of parties or clubs and still belonging to the war generation, are gradually losing their significance.

The death or the retreat of previous leaders in some of the groups of ideologised right-wing extremism shows, where an internal change of generations has taken place, and where such a change could not be effected so far for lack of suitable new blood.

The number of widely publicised events of the traditional right-wing extremist camp has decreased over the last few years. The pressure by the general public and by the media, when such projects become known, the watchful eye of the security authorities with respect to observing legal provisions, and last but not least the

counter demonstrations accompanying any right-wing extremist events have made relevant public events rather unattractive for the right-wing scene.

Yet the decrease of publicly known events does not mean – at least where the next generation has taken the lead - that activities are on the decrease, for that matter, but they indicate that a process of consolidation is underway or that there is increased conspiratorial behaviour.

Those groups who have tried for several years to position themselves in a politically effective way, continue their efforts, e.g. by group mergers and by establishing themselves in several Provinces. Behind critical statements addressing contemporary national and international social and political issues, this milieu assumes nationalistic, xenophobic and extreme political positions. Yet they have not been very successful in recruiting new followers.

The neo-Nazi circles act in a highly conspiratory manner, the activists have to be regarded as well-educated and consolidated in their ideology, and their actions (training, Internet activities, etc.) are quite professional. In several stages (abolishing the Prohibition Statute, establishing anti-democratic ideas, infiltration of organisations of civil society, etc.) they try to achieve political positions, on the basis of which they may aim to establish a political system along the lines and the example of historic national socialism. Violence is endorsed in principle as proven means to achieve the goal. The neo-Nazi scene has good international contacts and connections.

The members of the young neo-Nazi scene organise their activities in a highly conspiratory manner. The neo-Nazi actions are managed from the background. The trend of decreasing formal structures in favour of virtual fellowship mainly exchanging views on the Internet and directed towards action, has to be regarded as indicator that in many areas the next generation has taken over.

The trend that a young, neo-Nazi and particularly xenophobic right-wing extremism tries to incite and recruit young people through websites directly addressing youngsters is continued. In particular, hostility toward Islam and towards Muslims is being stirred up. Such agitation recently have resulted in some flyers being distributed and some posters being put up, protesting against the allegedly imminent “ethnic death”.

Generally, activities of the neo-Nazi sector with relevance to security issues are at present on the decrease. This is mainly the result of the security measures taken against the Internet platform “Alpen-Donau-Info” which was active since 2009, by which the scene lost some of its masterminds. When the main suspects were arrested, first the quantity and the quality of contributions to the website went down and subsequently the website itself went offline. In neo-Nazi circles the usual solidarity actions for the arrested comrades were organised. In doing so, a particular conspiratory approach was chosen, lest they should come in the focus of the security authorities.

The trial against the persons responsible “Alpen-Donau-Info” which is scheduled during 2012 will be a factor of mobilisation. It must be expected that the outcome of the trial will affect the propaganda actions of the neo-Nazi scene and its further development.

Attempts of right-wing groups and activists to infiltrate civil society (citizens' initiatives, clubs, etc.) and political parties or front organisations of political parties are evident.

Various youth scenes and youth sub-cultures show an affinity to, or overlap with right-wing ideas. Particularly relevant is the hooligan scene which is primarily active in the football area. This scene is characterised by a high degree of readiness for violence, aggressivity and xenophobia.

The economic and financial crisis did not lead to any perceptible increase of right-wing ideas, nor to an increased influx of adherents to right-wing groups or to increased propaganda and recruiting activities. Linking the global crisis with anti-Semitic positions and conspiracy theories is an evident and typical element of the scene. Within the scene, unemployed persons and other "losers in the crisis" are regarded as potential sympathisers, available recruiting chances are to be utilised according to the situation.

For several years now it has become evident that the conflict between left-wing and right-wing extremism shows an increasing inherent trend towards potential violence. Conflicts with the political foe are mainly fought in public; escalations could so far be prevented by the police.

5.1.5. Development Trends

The quantitative and qualitative development of the Austrian right-wing extremist scene will be significantly influenced by the political, economic and social developments and issues.

Times of crisis and problems (keywords economic crisis, loss of confidence in politics) could lead to an increased influx of adherents to right-wing associations of persons and to booming relevant areas of the scene.

The developments of right-wing extremism in Germany are significant also for Austria to a high degree. Due to the close connections of the scenes and the example set by Germany a partial spreading of German trends and strategies to Austria cannot be excluded.

New right-wing features, which have already emerged in several European states, such as the phenomenon of "autonomous nationalists", could also appear in Austria.

It must be assumed that a further increase of scene contacts abroad – in particular to the state of the former Eastern bloc – will occur.

Should appropriate developments and conditions occur, an increased right-wing agitation, in connection with increased public presence and increased attempts to stand in political elections must be expected.

In the neo-Nazi spectrum a further encouragement of the "fight against left" are to be considered likely.

Importance and usage of the Internet will continue to rise. As the number of young Internet users is continuously rising, right-wing extremists have the chance to make close and direct contact with an ever increasing number of young persons at low

cost. In the light of international experience more intensified efforts to recruit new followers via Internet are also to be expected in Austria.

The continuity of a long-term strategy to recruit and train young blood within existing organisations and efforts to establish new forms of organisations – such as action groups – have to be considered likely.

A sustained readiness for violence by the skinhead scene and by active groups on a local or regional level or by new emerging groups – in particular by exponents of a young right-wing sub-culture which must be classified as rather primitive – have to be expected as permanent phenomena. It has been evident for some time that the “typical” appearance of skinheads seems out-dated and is being replaced by a new – less martial and conspicuous – outfit, which facilitates group identity and a delimitation to the outside through brand names well known in the scene.¹¹

There are no indications for planning of terrorist attacks or building terrorist structures in the Austrian right-wing scene, and such indicators are not to be expected, at least not in the short term, for that matter.

5.1.6. Statistical Data 2011

Criminal statistical data and list of charges filed cannot in the least illustrate the “criminal reality” in the meaning of the actual spread of crime-relevant behaviour patterns. They mainly contain information received by the authorities about actions to which the security authorities attribute criminal relevance or with respect to which at least in the initial stages of investigations and police interventions relevant suspicion must be assumed.

Criminal Acts

In 2011 a total of 479 right-wing, xenophobic/racist, Islamophobic, anti-Semitic or other criminal acts were committed, with relevant charges filed, (2010: 580 criminal acts), with one criminal act possibly containing several infringements with separate charges. 241 criminal acts, i.e. 50.3%, could be solved; in 2010 the clear-up rate was at 48.6%.

Out of the 479 criminal acts, 58.9% were motivated by right-wing extremist, 7.7% by xenophobic/racist, 3.3% by anti-Semitic and 0.9% by Islamophobic ideas. With 29.2% of criminal acts an unspecific or other motivation caused the criminal act (e.g. provocations, offering Nazi devotional objects on flea-markets, etc.).

In 2011 four persons were injured through xenophobic/racist criminal acts. (2010: three).

Charges Filed

In connection with the 479 criminal acts, a total of 963 charges were filed in 2011. (2010: 1040 charges).

¹¹ This fact or this development makes it more difficult – at least for some time - for security organs to identify relevant activists

Charges	2009	2010	2011
Prohibition Statute	396	522	436
Hate speech (s. 283 Penal Code)	33	79	84
Other Penal Code infringements (e.g. property damage, bodily harm, dangerous threat)	253	380	368 ¹²
Insignia Act	40	20	26
Art. III (1) clause 4, EGVG	69	39	49
Total	791	1.040	963

Nationwide a total of 341 persons were charged in the course of combating right-wing activities in 2011. (2010: 405 persons); 25 of the persons charged were female and 72 were juveniles. Of the persons charged 29 could be associated with a right-wing scene. 312 persons could not be associated with any relevant scene or such association was unknown.

In the course of combating right-wing activities 16 persons were arrested in 2011. (2010: seven).

The Internet-reporting site “National Socialist Offences” has received 338 pieces of information and hints in 2011.

5.2. Right-Wing Extremism on the Internet

5.2.1. World-wide Network

With the advent of the Internet and the offer of accessing this virtual word open for everybody – whether as sender or recipient of messages – the agitation of extremist groups largely shifted to this world-wide network. The information provider achieves quicker access of potential addressees or a theoretically much larger number of recipients as would be possible in the real world. But this is also accompanied by a comprehensive confrontation of society with extremist messages. This development represents new challenges to the security authorities.

For several years now right-wing extremist Internet activities have been on the rise. The number of relevant websites is increased every year; the Internet as basis for

¹² Breakdown of the 368 charges: 225 charges pursuant to Sections 125 or 126 Penal Code (property damage), 41 charges pursuant to Sections 83 or 84 Penal Code (bodily harm), 31 charges pursuant to Section 107 Penal Code (dangerous threat) and 71 charges for other Penal Code infringements (fighting, coercion, resisting the police, etc.)

communication, organisation and recruiting has proven to be a most appropriate medium for politically motivated right-wing extremists. In the meantime, the vast plethora of openly accessible contents has rendered any closer monitoring of Internet activities quite impossible.

Moreover, the protagonists make intensive use of the advantages of different legal systems and of the technical possibilities of anonymisation and encryption. This is likely to largely complicate and protract investigations by the security authorities.

5.2.2. Appearance of extremist groups on the Internet

The appearance of extremist groups on the Internet cannot always be recognised as such on first glance. Frequently, traditional or current social issues are used as vehicle to convey their own position and any encouragement of violence as a political means is frequently articulated in a camouflaged manner. Right-wing extremists demand social and national renewal of the prevailing social order by force and often design Internet pages in a consciously provocative style, which are in clear breach of the law according to the Austrian Penal Code or the Prohibition Statute. Such pages impart a view of the world, in particular through the violent language used, promoting aggressive stance against political opponents and against all those corresponding to the ideological hostile image, such as Muslims, black Africans or Jews.

Even if the provisions of criminal procedure make available the necessary means to take action against the protagonists, the actual facts largely complicate investigations against the originators of such Internet presences.

5.2.3. Issues of Investigations

Independent of modern forms of communication, there is a barrier which has existed all along because of discrepancies in national legislation in connection with extremist criminal acts.

Offences according to Austrian law frequently cannot be raised with prosecuting authorities of other states. Cases in point are the Prohibition Statute and the provisions protecting human dignity in the Austrian Penal Code.

As extremist groups are cognizant of this fact, they exclusively make use of providers and server locations in countries outside the EU-area and overseas, where the legal system does not allow information of user data on the basis of relevant offences under Austrian law.

But even access to the required user data in many cases does not lead to direct discovery of the responsible persons behind the user names, e-mail addresses or IP-addresses employed. Allocation of user names and e-mail addresses by various Internet providers does not follow any binding rules, and users who wish to remain unknown can register without or with false personal data. Thus even positive answers to investigative requests frequently lead into thin air and the required information must – if at all possible – be verified by way of extensive indirect clarification.

By improving user friendliness of anonymisation services for the use of the Internet, also users with dishonest intentions were afforded a possibility to be active on the Internet and yet remain unrecognised. Access to the Internet is through a system of servers, which do not maintain any log files regarding accesses obtained. Tracking of

IP-addresses made available to the investigative authorities by the destination servers stops at such nodal points. The services of such anonymisation systems are quite legal; the providers justify their services as a means to protect personal data security of Internet users. The accusation that this favours a multitude of criminal activities on the Internet, including the extremist acts mentioned, is given much less priority.

When discussing the issue of Internet usage by extremist groups, mention should also be made of the usage of encryption systems. In this area user-friendly systems have been developed in the last decade, which do not require much technical know-how. By means of the so-called asynchronous systems encrypted messages may be exchanged between two partners quickly and without previous matching of keys. Any direct decryption by third parties, i.e. also by security authorities, is not possible and investigative results can only be achieved through indirect measures.

Discovery of extremist criminal acts on the Internet has become a very difficult problem because of the protective mechanisms used by the offenders, the required cross-border co-operations and the different legal system in the states involved in the investigations.

In particular the systems of anonymisation and encryption used by offenders require comprehensive and time-consuming additional investigative work by the authorities, to achieve the ultimate goal. As things stand at present, there are not substantial changes in the offing and the issues mentioned above will remain a challenge for security authorities.

With respect to improving the fight against extremist phenomena there are above all relevant initiatives to be implemented at EU-level. The European strategy framework for Internet security can be regarded as a first step towards strengthening investigative authorities. Ultimate future goal could be the matching of European legislation to prosecute extremist criminal acts, so that a common approach can be established at least in Europe. But this would leave a total solution of this issue open, which would also include the scope of action of prosecuting authorities outside of Europe.

6. Cybersecurity

6.1. Introduction

The increase in threats and criminal acts in and from cyberspace also in Austria has increased the importance of providing security in virtual space. Special attention must be given to security for young people in virtual space. The Internet and social networks such as Facebook or Twitter have in the meantime become indispensable for the social life of young people. But they are not always aware of the effects of their behaviour in virtual space. Increasingly, personal data such as telephone numbers or addresses, passwords and user IDs, or even holiday plans and photo series are revealed to their private environment and are being used by (sometimes also juvenile) offenders to commit criminal acts. Often the young person him/herself becomes the victim of such criminal acts.

6.2. General Characteristics of Cybersecurity

Generally speaking, cybersecurity is not a new subject matter relevant to security, although the public perception in the most recent past (also in Austria) has been much enhanced by numerous, sometimes spectacular cyberattacks with far-reaching consequences. Criminal acts in and from cyberspace are not much different in their goals and ways to “traditional, real-world forms of offences”, even though the implementation tools are new: IT-systems become instruments and objects of the crime. Therefore – in the context of digital media – cyberattacks have properties which are unique or very specific.

Regarding cyberattacks, the very anonymity of the offenders, but also the cross-national nature of the phenomenon pose great problems to prosecution authorities. Solving such attacks has become more complicated, as becomes evident during collection of evidence. Like with a multitude of modern forms of threats, with cyberattacks the principle of territorialism and the defence of borders lose their relevance. Direct identification of offenders in cyberattacks is a time-consuming task which often can be solved only with great difficulties or which is impossible to solve. Therefore, it is difficult as a rule to fathom or comprehend the motives involved.

As cyberspace gives precedence to a general and open access against security, an attacker has a clear advantage. So cyberspace makes it possible, for instance, to join forces on the occasion of politically motivated actions, without even getting to know each other. This is a great challenge for security authorities, as offensive actions can often be implemented easier or at lesser expense, than defensive or protective or investigative measures.

As a rule, an asymmetric conflict is fought, which means that protagonists with relatively limited financial and technical resources are and can be capable to compromise “superior” targets. Attacks can be launched automatically at high speed and in parallel, and may be directed at a large number of targets.

Modern types of threats such as criminality, terrorism, espionage or industrial espionage and the asymmetric conflict situation mentioned above merge when cyberthreats occur. Therefore, the resource “knowledge” plays a key role both with

offenders and with prosecution authorities. For these reasons, pooling know-how and expertise in an appropriate way seems indispensable in the future on a national and international level. In this respect the examples should mentioned here i.e. the Austrian CERT (Computer Emergency Response Team) or the Austrian GovCERT (Government Computer Emergency Response Team), which can act as points of contact for IT-security or can document cyberattacks on a national level and inform the respective Internet providers and the competent local security teams, if required.

6.3. Preventing new Forms of Attack

The Internet provides numerous attack options, such as manipulations of websites (in particular of military and government institutions) and intentional overloading of servers. Possible forms of attack include designing malware, distributed denial of service-attacks, i.e. overloading server systems with so many requests, that they can no longer cope and break down, or web-defacement, an unauthorised alteration of a website.

Prevention must start with educating the users. The importance of educated users for security on the Internet is shown by the example of social engineering. This scheme describes interpersonal influencing in the real and/or virtual world aimed at obtaining data and information in an unauthorised manner. Selected persons are systematically spied on, in order to elicit the desired data by exploiting human traits such as curiosity, fear or obedience to authority.

Favourite locations for social engineering are social network – also frequently used by young people - such as Facebook, on which many users voluntarily reveal personal data such as names, dates of birth, telephone number, hobbies or connections with close friends. In a special form of social engineering, the so-called “phishing”, fake e-mails are sent to potential victims, masquerading as a trustworthy entity. Such an e-mail may contain the information, that a certain service used now has a new URL at which one should log in in the future. In layout and presentation, such a faked site is a copy of the original website of the service provider. If the user follows this prompt and logs in at the faked site, the criminals obtain the user’s access data. Another option of this form of fraud is to prompt the victim by e-mail to return the log-in data because of alleged technical problems.

A particular illustrative example for successful social engineering is the experimental fictional character named Robin Sage developed by the US security expert Thomas Ryan. He created numerous profiles in social networks masquerading as cybercrime expert. For the profile images of Robin Sage Ryan used photos from a pornographic website, so as to obtain as many so-called “friends” as possible in a short period of time. The virtual decoy was deployed on Facebook and Twitter only between December 2009 and January 2010, and was able to collect a wealth of partly quite explosive information during this rather short time. A soldier stationed in Afghanistan e.g. passed on secret military documents to the fake profile, including the coordinates of his unit. And the office manager of a Member of Parliament, the Information Director of the Navy and even employees of the National Security Agency passed information on to “her”.

6.4. Cybersecurity in Austria

In recent months and years, the subject matter cybersecurity has become increasingly more important on an international level, in the European Union and also in Austria. The risks resulting from cybercriminality are multifarious, ranging from rearmament of States in virtual space by developing cybertools for defence and attack, to possible attacks (also by non-public or semi-public protagonists) on critical government infrastructures, to hacking or defacing websites for political motives. On a national level, the increased offerings of e-government could provide targets for cyberattacks. Also the widespread distribution of mobile devices (smartphones, tablet-PCs) holds the danger of additional attack scenarios, much like cloud computing. Targeted hacking in the industrial field entails the loss of research and innovation know-how.

Not least because of these multifarious risks, numerous initiatives involving cybersecurity were launched in 2011. Among these initiatives two key projects have emerged, firstly the forming of a national cybersecurity strategy and secondly the creation of a central agency for combating cybercrime.

6.4.1. National Cybersecurity Strategy

Dangers in or from cyberspace are likely to affect individuals as well as government and business institutions. Against this background, the forming of a nationwide cybersecurity strategy can make an important contribution to security in cyberspace. Government, business and society should join in this process and pool all relevant national and international measures to protect cyberspace.

To begin with, a “cyberrisk matrix” was prepared for Austria, illustrating the existing potential threats. The matrix describes risks of potential manipulation of critical infrastructure as well as inadequate political and legal framework conditions, the lack of institutionalised co-operations and exchange of information between businesses and authorities, lacking or deficient “awareness” of dangers in cyberspace, the “human factor” as security risk and concrete technical leaks and possibilities of attack.

On this basis, a national cybersecurity strategy for Austria is to be established by 2013. Such strategy should contribute to define competences and thematic fields in order to adequately cover the following areas relevant to cybersecurity:

- Early recognition and analysis of cyberattacks
- Effective averting of cyberattacks making use of all necessary resources
- Protective and preventive measures
- Increasing awareness (sensitising)
- Innovation and research (“see eye to eye with offenders when investigating and analysing the crime”)

6.4.2. Cybercrime Competence Centre (“C4”)

In order to be adequately prepared for the multiple dangers of cybercrime, an implementation concept was adopted in 2012 to create a central agency for combating cybercrime (“Cybercrime Competence Centre“, in short: “C4”)

The idea of establishing a centre for reporting cybercrime was based on the following premises or the following expectations of the population:

- To recognise and warn against imminent dangers concerning cybercrime at an early time (prevention, direct public relation) – i.e. on all levels and aimed at all stakeholders (local, regional, national, international, families, providers, industries, authorities, media, etc.).
- To directly avert any imminent danger by (compulsory) measures.
- To identify danger sources and originators and eliminate them by high-quality investigative and evidential procedures, and
- To establish sustainable security in this respect (neutralising criminal networks by long-term, sustainable penal enforcement measures, seizing logistic facilities, shutting-down technical structures and included criminal functionalities, etc.).
- To recycle insights about criminal thinking, planning, acting and designing directly back into the prevention process to protect society, business, etc.

6.4.3. Deletion of Illegal Website Content

When combating illegal content on the Internet the authorities under Austrian law may order mandatory deletion of child pornographic content on the Internet on the basis of the provisions of Section 16 e-Commerce Act, Section 26 Penal Code and Section 110 CCP. Section 16 e-Commerce Act obligates the host provider, as soon as he obtains information about unlawful content, to immediately remove it or bar access to such content. Considering that allowing access to pornographic material depicting a minor is already a punishable crime (Section 207a (1) clause 2 Penal Code), in an investigative procedure to enforce the deletion of child pornographic content on the Internet the public prosecutor may order the material to be secured (Section 110 CCP), in order to ensure the subsequent seizing of such material pursuant to Section 26 Penal Code.

A more difficult situation persists, if the server involved is located abroad and a deletion order cannot be enforced.

6.4.4. Best-Practice Example: Project Click & Check

Again and again, films with extremely violent or pornographic content have appeared on mobile phones of young people in schools. The new information technologies and media are also increasingly used in connection with psychological and physical violence by juveniles.

In order to counter this development, the Austrian police have developed the prevention project Click & Check. All Austrian police officers involved in preventing

violence have been trained accordingly and are performing preventive measures at Austrian schools. (www.clickundcheck.at).

The following issues are covered by this prevention project: trendy criminality such as “happy slapping”, “snuff-videos” and “cyberbullying” via mobile phones or PCs, violent films, either on TV or on video, violent games on PC or game consoles and online platforms and chat rooms in general.

This prevention campaign aims at creating awareness with children and juveniles for proper, safe, responsible and non-criminal use of mobile phones and computers, making them understand the dangers of Internet forums and chat rooms in the framework of projects and workshops, and explaining appropriate legal standards to prevent them from producing, distributing and possessing extremely violent and pornographic videos and from using information technologies to exercise psychological or physical violence.

As this is a problem of society, also teachers, educators and parents are to be integrated in this prevention project. Parents and teachers are supposed to gain media competency on the one hand, and should be informed on the other hand about proper reaction, when such occurrences become known (happy slapping, etc.). The basic issue is to achieve co-operation, and make teachers, parents and the police stand shoulder to shoulder in this matter.

Problem Areas

- Mobile Phone Videos – Happy Slapping

Starting point:

Happy slapping means an unprovoked attack on an unknown passer-by. The attacker runs towards and assaults the unwitting victim, hitting him/her in the face once or several times. Sometimes victims are even beaten unconscious. Thereupon, the attacker runs away, without caring for the victim. Usually, the attack is being filmed by an accomplice with a mobile phone or video camera. Subsequently, the recordings are published on the Internet or disseminated by mobile phone.

Preventive approach:

On the basis of experiences and surveys from Germany, young people must be preventively taught the proper use of media, explained the outcome for the victims and by made aware of imminent legal consequences by explaining legal standards.

This will be demonstrated in schools by showing the film OUT – DIE OUTSIDER (film scenes with happy-slapping videos, made by pupils – discussion of the scene in a workshop). Apart from providing this information to the juveniles, it is absolutely essential to bring also parent and teachers on board the “prevention boat”. These responsible parties are supposed to obtain profound media competency by appropriate lectures, so that they will be able to counter this phenomenon.

- Violent Games and Violent Films

Prevention in this area should not be achieved by prohibitions, but in the project the motivation of the young people should be addressed, challenged and discussed. The basis for such discussions, much like with happy slapping, is an instructional film. Subsequently, the young people work out in groups the effects of excessive use of violent games and are supposed to ultimately name alternatives to violent games.

Involvement of Parents and Responsible Parties:

One of the most important preventive approaches in this matter is the involvement of parents and teachers. The responsible parties should be familiarised also with this matter, so that they will be able to counter the development or excessive consumption of violence by children and juveniles.

- Online Platforms and Chat Rooms – Cyberbullying

Starting point:

The use of chat rooms and Facebook & Co by children and juveniles is on a steady increase, and apart from legal usage a development can be observed, that these platforms are also abused for criminal acts. Whereas in the beginning only quarrels and verbal abuse occurred, more frequent cases have occurred recently that users are being threatened in a massive manner. There were even physical fights between users who had not known each other previously.

Moreover, cases have been known where these forums were misused for the propagation of national-socialist ideology. In Germany, paedophile offenders made contact with children and juveniles via chat rooms and harassed them sexually.

Practical examples have shown that online platforms are often used in schools, with technical restrictions proving to be quite ineffective.

Preventive approach:

It is the goal to point out to children and juveniles how to use chat forums and online platforms in a meaningful and responsible way and to demonstrate to them the purpose of such forums (networking of persons interested in the same subject matters).

6.4.5. Best-Practice Example: Project saferinternet.at

The Austrian initiative saferinternet.at launched by the Internet industry counsels Internet users how to safely use the Internet, mobile phones and computer games. It provides numerous tips and pieces of advice concerning the protection of privacy, cybermobbing, online-shopping, phishing and social networking.

Saferinternet.at is the Austrian information and coordination point within the EU Safer Internet Network (Insafe). It is coordinated by the Austrian Institute for Applied Telecommunication (ÖIAT) in co-operation with the association of Internet Service Providers Austria (ISPA) and is being implemented in co-operation with the public sector, NGOs and the business community.

In the framework of saferinternet.at also “Stopline” is managed – the Austrian reporting centre for child pornography and national-socialist offences on the Internet established by ISPA in 1998. In 2011 about 3500 reports were received there, about 90% of actual illegal content related to cases of child pornography, about 10% cases related to national-socialist offences. Only in one of the cases reported in 2011 the illegal content was hosted on an Austrian server, but owing to the good co-operation of the Internet industry with the initiative “Stopline” and the police the website was deleted within a very short time.

The increased co-operation with INHOPE partner organisations is aimed at more efficiently handling illegal content located on servers abroad. Such content should be deleted without delay, before it can be propagated further.

6.5. Grooming

Starting point:

The use of chat rooms, Facebook & Co by children is on a steady increase and is being misused by adult to establish sexual contacts (in particular for sexual abuse and producing child pornography). Generally speaking, “grooming” means abusing a child for sexual misconduct. The offenders sometimes masquerade as children on the Internet to gain the trust of their victims and fake common interests. Once they have gained the trust of the child, they wish to obtain pornographic material from the child or abuse it during an actual encounter.

Preventive approach:

It is the goal to point out to children and juveniles how to use chat forums and online platforms in a meaningful and responsible way and demonstrate to them the dangers of making contact with persons unknown to them in real life.

6.6. Outlook

The threats in and from cyberspace today have become more complicated than ever. Many different stakeholders such as government institutions and/or criminal minds investigate and use options to openly or covertly pursue their interest in the virtual world. The lack of boundaries in cyberspace or the lack of binding rules can favour criminal activities and impede prosecution.

Possible threats range from hacker attacks to elicit data, to targeted sabotage as in the case of Stuxnet, and to misuse of computer access as in the case of publishing classified information on the WikiLeaks platform. Even rather common classic cybercrimes such as credit card fraud show that it is no longer a matter of a purely theoretical threat.

By the complexity of cyberspace, criminal minds are enabled, in accordance with their technical abilities, to deploy malware for their purposes. On the Internet, easy access can be obtained to software by which tailor-made malware can be designed. Moreover, cyberattacks can be anonymously “ordered” on the Internet and performed against payment. Technically skilled persons with adequate financial and organisational means may even pool their resources to create required malwares, as shown by the example Stuxnet.

Austrian criminal law already at present provides, by implementing the provisions of the Convention on Cybercrime of the Council of Europe (ETS N° 185) as well as the Framework Decision 2005/222/JH of the Council of 24 February 2005 on Attacks against Information Systems, comprehensive possibilities to sanction such offences. So the offences “unauthorised access to a computer system” (Section 118a Penal Code), “abusive interception of data” (Section 119a Penal Code), “disturbing the operability of a computer system” (Section 126b Penal Code), “misuse of computer programmes and access data” (Section 126c) or “falsifying data” (Section 225a Penal Code) have been defined.

But the progressive development in the area of cybercrime requires continuous efforts to expand or adapt these existing provisions.

By implementing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS N° 201) the offence “initiating sexual contacts with minors” (Section 208a Penal Code) was defined.

Nevertheless, to be prepared for the challenges of cybersecurity, it is important to create proper awareness with all relevant protagonists, such as with young persons and their parents. Such awareness is not primarily aimed at acquiring proper technical skills, but should result in the definition of responsibilities, creation of capacities and availability of budget, personnel and technology. Of particular importance in this respect is the “human factor”. As the majority of cyberattacks is targeted at human fallibilities, it is necessary to find ways to take into account “human weaknesses” - in line with safeguarding hardware and software.

Furthermore, it is essential to take protective and preventive measures, permitting early recognition and analysis of cyberattacks. An important step towards achieving this goal on a national level has been the establishment of the Cybercrime Competence Centre (“C4”).

Awareness must also be generated with respect to the necessity to counter an international phenomenon through international co-operation. This requires the formation of alliances with all walks of society (authorities, businesses, citizens, etc.) as well as the creation of a legal basis for such alliances. Moreover, it is a matter of interweaving existing powers and intensifying prevailing co-operations.

In this connection, and in addition to creating awareness and addressing the issue of whether protection and prevention is a government duty or should be mainly left to self-regulatory forces, intensive discussions must be held in a subsequent move about providing the required IT-personnel, to be adequately prepared (as security authority) for the challenges of cybersecurity on all levels.

7. Conclusion

Currently the world is greatly influenced by developments like globalisation and the ongoing financial crisis. Due to that, securing jobs and safety for all people is quite a difficult task for states. The youth unemployment rate in Europe has risen tremendously since 2008. Being young and willing to work does not guarantee a solid future these days. The feeling of being excluded and unable to change this situation combined with political disenchantment spreads an atmosphere of hopelessness among today's youth. On several occasions riots have already taken place in Europe, and even if not too common so far, urban violence has to be considered a serious topic in Europe.

Within this context social networks and the internet confront the authorities with new challenges. Recent examples have shown that not only the call for an assembly but also a whole atmosphere can spread out with exponential speed. Individual cases of injustice or governmental failure can easily lead to massive and often violent movements.

Given this background it is crucial for states to take action at an early stage in order to prevent young people - especially in an urban environment - from sliding into criminality. Education, work, general social security systems and successful anti-corruption policy are only the core aspects. The breeding grounds for urban violence can not only be deprived by general preventive measures. Action has also to be taken under a more direct approach. Measures to raise the awareness on urban violence within society - especially among youths as potential victims - and the implementation of social workers in vulnerable areas, could too be part of an integrated strategy. Last but not least also networking between authorities, schools and relevant stakeholders in society could help to create effective partnerships in order to challenge the phenomenon of urban violence.

Concerning young offenders, punishment and repressive measures should always be the last resort. It is essential to help young people find their way back into society through support, aftercare and active reintegration.

For young people the social surrounding is even more important than for adults. Therefore it is important to include the parents, siblings and friends into the process and to ensure that there is someone taking care of the juvenile if he himself is unable to do so. Projects like the above presented "Family Group Conferencing" (p. 49 – 53) play an important role in the realization of this goal.

With raising instances of urban violence a rising number of victims do need special care and support. It is the duty of every state to take care of those who have become victims of crime. Psychological support and measures of restorative justice are basic components in helping the victims to cope with their experiences.

Governments cannot further ignore the signs of the spreading phenomenon of urban violence, which is a potential threat for urban society. Already challenged, they have to develop a successful strategy centred on prevention mechanisms, social reintegration of perpetrators and appropriate legislative management.