

Strasbourg, 26 May 2003

CPGE (2003) 12

Conference website address: www.coe.int/prosecutors

Conference of Prosecutors General of Europe
4th session

organised by the
Council of Europe in co-operation with the
Prosecutor General of the Slovak Republic

Bratislava, 1 – 3 June 2003

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PROSECUTORS AND JUVENILE DELINQUENCY

Report
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Introduction

It is expected that later this year the Committee of Ministers of the Council of Europe will adopt a recommendation on new ways of dealing with juvenile delinquency. This recommendation will succeed an earlier recommendation from 1987.

The reason for the Council of Europe to ask an expert committee to draft a new recommendation was twofold. First of all there were concerns about levels of juvenile crime and the increased use of violence in particular. If that were true perhaps new answers should be found and new policies developed. Secondly, the Council of Europe has grown rapidly over the last decade. The Council of Europe now counts 45 member states. The new member states all come from Central and Eastern Europe. They are confronted with similar problems as Western European countries, but also have to deal with specific problems related to their own domestic situation. It was believed not only that Recommendation 87 (20) in some respects was a little out of date, but also that it would not cover sufficiently the needs and specific situations and problems of the new member states.

In this paper some of the major issues of the draft recommendation are presented. A few topics – increasing effectiveness, community sanctions and measures in general and electronically monitored house arrest in particular – are dealt with in more detail. But first some insight is given in juvenile crime trends. Also, recent developments with regard to juvenile justice are discussed.

Juvenile crime trends in Europe

In 1998, the German criminologist Pfeiffer published an overview of juvenile crime and violence in 10 European countries, apart from Poland all Scandinavian or Western European. On the basis of police statistics and, where available, of self report studies a picture was drawn of overall stable and sometimes even declining levels of juvenile crime. However, this somewhat reassuring outcome was only part of the whole picture. In many of the countries included in the study police data showed a sometimes small but nevertheless ongoing increase of violent crime. Robberies, minor and more serious assaults and threats with bodily harm had become more common. There were also indications that more young people were carrying arms (mainly pocket knives and stilettos). Although self report studies, in which representative samples or stratified high risk samples of young people are interviewed about their delinquent and antisocial behaviour irrespective of police detection and arrest, are less reliable with regard to more controversial types of criminal behaviour like serious violent offending or sexual offending, they seem to support in their own way the outcomes of analyses of police data. Even though numbers are relatively small compared to involvement of young people in other types of crime more young people report to have participated in harassment of other people, in bullying, in fights etc. Furthermore, young people themselves, too, report that more often they carrying arms, for instance when they are going out in the weekends. Even though they do not have the intention to use arms – their main purpose is ‘to feel safe’ – and carrying arms in itself does not necessarily mean that they are actually used, the risk of doing so is undoubtedly bigger.

A few years later Estrada (2001), using the same kind of data as Pfeiffer did, came to slightly different conclusions than Pfeiffer. Estrada was of the opinion that the increase of violent crimes committed by minors as shown by police data is to a large extent the result of increased awareness and societal concerns regarding young people. The actual increase is probably not as big, but result from changes in how certain actions by young people are perceived and judged by the police and the judiciary. An example of this change of view has been reported in the Netherlands where 10 or 15 years ago cases of theft of a handbag – handbag snatching - occasionally were considered so-called simple theft. Today such crimes are all regarded as theft under the threat or actual use of violence (robbery). The former falls into the category of property offences the latter no doubt is seen as a violent crime even though one may argue that the actual act in itself has not changed.

The actual situation with respect to juvenile delinquency in most of the current member states of the Council of Europe is largely unknown. Like many Western European states countries in Central and Eastern Europe lack the infrastructure and means to produce reliable crime data over longer periods. Available data are based on recorded crime. Such data do not automatically reflect the actual state of affairs since they are not only dependent on police efforts but also on the willingness of victims to report crime. Crime rates are also affected by political priorities and policy changes. There is no reason to believe that countries in Central and Eastern Europe differ from Western European countries in this respect.

Based on mainly anecdotal evidence it seems that absolute levels of juvenile delinquency and violent crime in some Central and Eastern European countries are lower than in Western Europe, but that especially with regard to property crime these countries are catching up. Fairly recent data from the Russian Federation and some other countries suggest that violent crime committed by young people has increased quite dramatically and is reason for concern.

The reasons for such trends are to be found in the changing lives of young people. Particularly in Central and Eastern Europe societies have changed rapidly. The expert committee identified the following relevant changes:

- the rise in child poverty and income inequality;
- the greater incidence of divorce and family breakdown and its impact on parenting;
- the growing experimenting at an increasingly young age with drugs and alcohol;
- the decline of the youth labour market and the rise in unemployment among young adults;
- the increasing concentration of social and economic problems and related crime and violence in specific areas like inner cities and/or housing estates;
- the mass migration of ethnic minorities into and within Europe;
- the increased risk of psychosocial disorders among young people.

Changes in societies may have led not only to increasing levels of juvenile crime and violence, but also give rise to concerns about the possible involvement in delinquency of specific groups of young people like girls, small children and young members of ethnic minorities. Due to a lack of reliable data and surveys it is difficult to establish whether or not today more girls are involved in delinquency than in the past. Likewise it is believed that young offenders are increasingly younger when they commit their first offence, but data to support this presumption are not available. However, the situation concerning young members of ethnic minorities is different. In, again, some Western European countries occasional studies clearly show more than average levels of delinquency among young

people from certain ethnic groups. In some countries young Moroccans or young people from the Caribbean or Somalia are over-represented in police statistics, in others young Turks or young immigrants from Eastern Europe are over-represented. Certain selection mechanisms in the processing of cases by the police and the judiciary may play a role and to some extent explain the more than average proportion of youngsters from ethnic minorities, but such mechanisms nor the particular difficult socio-economic situations they find themselves in cannot fully account for this.

Another worrying trend, even though difficult to ascertain with reliable data, regards the sometimes serious crimes committed in groups and the alleged links that young offenders seem to develop to serious, sometimes trans-national, organised crime. The vulnerability of certain groups of young people due to their minority and/or socio-economic status make them an interesting target for adults involved in organised crime.

Developments in juvenile justice

Not only juvenile delinquency has changed over the years. The same is true for the ways juvenile delinquents are being dealt with by society. Many countries in both Western and Central and Eastern Europe have reconsidered their legislation. New penal laws, separate from those for adults, have been introduced or are being discussed. Especially in Central and Eastern Europe many countries have decided to change the laws that date back from the old regimes. New ideas about formal reactions to juvenile crime have been developed leading to new types of punishments that are executed in the community instead of in secure residential settings. Ideally they restore the damages caused by the offence. Limiting the use of custody is considered an important goal in many countries. More attention is given to victims and where possible the idea of paying compensation, be it directly or symbolically, has been materialized. Programmes promoting mediation and reconciliation between victim and offender have gained popularity and serious governmental support in a number of countries in both the West and the East. Other noticeable changes in the recent past concern the age of criminal responsibility that has been increased. Such developments have also led to the introduction or strengthening of probation support and supervised activities.

Of a different nature is the idea to pay more attention to parents and other important people in the immediate periphery of young offenders. Young people are held more and more responsible for their own acts, but on the other hand the important role and influence of parents and other adult cannot be denied. In some countries this has already led to specific measures that aim primarily at the parents. Such measures are often to be taken in the context of civil law and, therefore, show much resemblance to protection or care measures. But a slightly more penal approach is no longer an exception.

Two other developments are important to mention. First of all the notion of early detection and early intervention. It is known from longitudinal research that antisocial or unruly behaviour at a young age should be seen as an indicator for the possible emergence at a later stage of a criminal career. For that reason the behaviour should be taken seriously and the necessity of taking certain preventive measures should be considered. Secondly, the increased knowledge about what kind of interventions may lead to an actual reduction of (re-)offending. Pessimism about the effectiveness of interventions that dominated in many Western countries since the mid-seventies is more and more replaced by optimism since research in the form of large meta-analyses shows that certain interventions with certain

offenders and under certain circumstances can indeed make a difference. Reduction of re-offending by 5 to sometimes 40% is no longer out of reach as long as certain so-called What Works-principle are met.

To what extent European countries have actually changed their reactions to juvenile crime remains mainly unknown. For the same reason that it is difficult draw conclusions about juvenile crime trends and developments it is impossible to show what kind of developments and changes in juvenile justice developments have taken place. Only a few countries produce reliable statistics on police and public prosecutor decisions, punishments imposed by the courts, use of prison and other measures. A further complication is the fact that in several countries reactions to delinquent behaviour are taken under civil or administrative law and that such decisions are not always included in the statistics.

However, it seems fair to believe that community sanctions and measures are imposed more frequently and in more countries than in the past, but information on actual use is still difficult to collect. Neither is it possible to say much about the actual length of custodial sentences or the extent to which custodial sentences are replaced or shortened by the use of community sanctions. Circumstances under which young people are held in detention are also largely unknown, but reports from for instance the CPT and NGOs give reason for concern. Even more problematic seems to be the situation with regard to pre-trial detention. Proper registration is often lacking leaving us with little or no information.

Based, again, in part on anecdotal evidence it is believed that after years of reduction in some Western European countries the use of detention for young offenders is increasing due to repressive tendencies in society. In Central and Eastern Europe the opposite seems to happen: less and shorter – but sometimes still relatively long - custodial sentences. At the same time the use of community sanctions including probation supervision has seen a rapid growth over the last decade, particularly in the West, but also in the East. A limited survey by the expert committee showed that in at least 29 member states provisions were made for community sanctions and measures. The variety of community sanctions and measures also seems to have expanded. It is no longer just a matter of early or pre-release from prison programmes, probation programmes and community service. Interventions and punishments that pay respect to victims and try to incorporate their needs and interests either materially or immaterially are gaining more popularity, but surprisingly the support they receive differs enormously from country to country. Furthermore, specifically designed training and treatment orders are introduced. A more detailed account of developments in community sanctioning follows at a later stage.

New ways of dealing with juvenile delinquency

The recommendation drafted by the aforementioned expert committee includes a broad range of ideas and suggestions. In no specific order a few are mentioned here.

It is believed that similar to the state of affairs for adults the Council of Europe should develop European Prison Rules and European Rules for Community Sanctions and Measures for minors. The execution of such sanctions should be governed by sets of rules. Today, apart from the UN Convention of the Rights of the Child only not too specific guidelines from the UN serve as a tool to judge the way young offenders are dealt with. The existing European Prison Rules and the European Rules on Community Sanctions and Measures explicitly

exclude minors. In Central and Eastern European countries, and in Western European countries too, such rules may help to reduce the negative side effects of the use of secure accommodation. The CPT will probably welcome such rules since it has no concrete criteria at its disposal when assessing secure facilities for young people. Young persons in custody are highly vulnerable. The high prevalence and incidence of suicide and suicide attempts, other forms of self-harm and bullying indicate that custody can be quite a traumatic experience.

In the same line it is believed that limits should be set to the periods of time spent in a police station or in pre-trial detention. That young people should be kept separate from adults is widely accepted. The same should be the case for limiting the periods in such provisions. Therefore, bail schemes and other alternatives should be developed and promoted.

Furthermore, countries are advised to use interventions that have proved their working. A so-called evidence based approach is still far from common. A few countries are considering formal accreditation of programmes that meet certain standards. Fortunately, there is evidence that interventions can be very effective if they meet certain conditions. These conditions are discussed further on.

Thirdly, the committee believes that, as was already mentioned before, parents have a role to play when it comes to efforts to reduce the risk of offending and re-offending of their children. They are to a greater or lesser extent responsible for the behaviour of their children and should, therefore, accept responsibility and take certain actions with regard to their child but also to themselves. That is why initiatives are supported that explicitly address and possibly change parents' behaviour concerning their children by means of parenting courses and the like.

Another substantial issue in the draft recommendation is about restorative justice. Initiatives to explicitly bring together all parties involved and that address the needs and concerns of the victim and to reconcile between victim and offender are supported. Developments in New Zealand and Australia to have victims and important people from the direct vicinity of the young offender to discuss the behaviour and the possible solutions that are acceptable for the victim but also for the young person deserve broad support. Opportunities for offenders to apologise to their victims and make amends for the harm they have caused are increasingly used to help offenders see and understand the impact their behaviour has on others and to modify their behaviour in the future. Since the requirement for reparation and mediation will not always be suitable, or where there is no identifiable victim, reparation to the community will be more appropriate.

Initiating new interventions and including parties like victims and parents and other relatives in the ways young offenders are dealt with requires strong co-operation of various authorities and organisations. Not just the police and justice-related organisations are responsible for actions and intervention. Other organisations too, ranging from local authorities, the education and health system, volunteers, victim support schemes should equally play a role.

Finally, with regard to the increasing involvement in crime of young people of ethnic minorities and the need to respond to this phenomenon in a proper, non-discriminatory way the idea of requiring so-called race impact statements should be explored. Such statements explicitly set out how the needs of ethnic minorities have been taken into consideration and what procedures and safeguards have been put in place to ensure that the new reforms do not

inadvertently discriminate against them. It makes governments and private organisations aware of how their actions can affect minority groups in an undesirable direction. The kinds of issues that impact statements should address are whether policies might place some ethnic minority at a disadvantage or adversely affect relations between different ethnic minorities and how such impacts might best be avoided.

Effective interventions

It is important to ensure that, as far as possible, interventions with juvenile offenders are effective. Since the mid-seventies the prevailing view among academics about the effectiveness of formal interventions for young offenders was that ‘nothing works’. This belief contributed to the trend towards diverting offenders from prosecution whenever possible. But crime overall, and certainly concern about crime, continued to rise and politicians and the public have become increasingly frustrated with the notion that contact with the criminal justice system is to be avoided. Over the last decade, research has shown that the ‘nothing works’ doctrine is not completely true. New ways of effectively dealing with young offenders are emerging and although the findings of evaluations are still modest, there is reason for some optimism. The following characteristics or approaches make interventions more effective:

- addressing the criminogenic factors which caused or directly contributed to the offending behaviour (e.g. antisocial attitudes, drug misuse, poor cognitive skills, educational failure and poor parenting);
- ensuring a close match between the risk of re-offending and the nature, intensity and duration of the intervention;
- employing practitioners whose teaching approach best matches the learning potential of the offender (i.e. structured participatory styles rather than unstructured didactic styles) and uses material specifically tailored to the offender’s needs and abilities;
- using community-based interventions that are closely connected to the offender’s home environment rather than based in institutions;
- drawing on a range of methods (e.g. social skills training, anger management, problem-solving etc.) often referred to as a cognitive behavioural approach (which addresses perceptions, thinking, feeling and behaviour).

Much of this evidence comes from North America and occasionally from European studies. They often refer to interventions with serious and persistent offenders. The prevailing view is that petty and first time offenders should continue to be diverted from formal prosecution. Unfortunately, still little is known about the effectiveness of interventions for young women, ethnic minorities and migrants.

Community sanctions and measures

Community sanctions and measures refer to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose. Current practice and initiatives in numerous member states clearly indicate that

community sanctions and measures are taken seriously. Not only by practitioners and policy makers, but also by judicial authorities, politicians and governments.

The best-known and most frequently imposed community sanction is *community service*. This implies doing unpaid work for the benefit of the community, for a specified number of hours, within a fixed period of time, preferably during leisure time. Community service is often regarded as a possible way to restore the damage caused. Wherever possible a link is made between the task to be performed and the offence committed. This is, however, not always possible; in such cases one could speak of symbolic restoration. Work done for the benefit of an individual is sometimes referred to as *restitution*. Here and there, a policy is followed where the work performed is indeed paid according to normal standards, but the earnings go to the victim (individual, government or other organisation) to cover for the losses experienced. Sometimes this is referred to as *reparation*. In some European countries the use of community service is still in an experimental stage, reflected by relatively small numbers. In other countries the number of community service orders imposed each year is quite impressive and indeed showing a yearly increase. In various European countries community service has become the most popular 'new' community sentence in a relatively short period of time as compared to 'old' community sentences like probation and schemes concerning early release from prison. Studies have shown that in the adult system between 35 to 60% of community service orders replace short custodial sentences, the others fall into the 'grey' area between suspended and non-suspended custodial sentences. For juveniles this proportion is probably smaller. This phenomenon used to be called net widening. It was seen as an unwanted side-effect since it not only meant that less prison sentences were avoided, but also because some offenders now received a more severe punishment than otherwise would have been the case with fines, probation orders and suspended custodial sentences. However, this rather negative perception of community service practice ignored the long existing feeling of dissatisfaction among judicial authorities with the wide gap between non-custodial and custodial sentences. There were cases where a prison sentence was felt too harsh, but a fine or probation would not really account for the seriousness of the offence. Courts embraced community service as a welcome response to such cases.

Major re-offending and reconviction studies have been carried out. Between 30 and 45% of young people receiving community service orders were reconvicted within one year, between 50 and 60% within two years, and between 60 to 63% after three years..

With respect to reconviction rates community service seems to do better than short prison sentences.

Community service may count on strong support from politicians and the public. Custody is regarded inevitable in cases of serious offending, also because it may give the victims at least somewhat satisfaction. However, many people also see it as an expensive option with little or no impact on offending behaviour. Public support for community service is not anything that comes automatically. It requires that full information is given about what is expected from an offender, and also that full information is provided on the offence committed, the harm or damage caused to the victim, the circumstances under which an offence is committed and the background of the offender. The more people know the more likely they are to support community service, even in cases of violent offending. Perhaps the strongest supporters of community service can be found amongst those people offering work places in their institutions.

Juveniles and electronic monitoring

Among the more recent alternatives to custody are electronically monitored curfew orders. In essence, it means that an offender is required to remain at a specified place, for a certain number of hours during a certain period of time. The curfew is monitored electronically, making use of a bracelet - or tag - fitted to the offender's ankle. Several times a minute the tag transmits an electronic signal to a receiver located in the offender's home. The receiver is linked via the telephone line to a central monitoring centre. Monitoring centres are often operated by private security companies. They provide the necessary equipment and responsible for installing the monitoring units and fitting the bracelet to the offender's ankle. A computer at the monitoring centre regularly checks by phone whether signals are received from the tag. The signal is interrupted when the offender is outside a certain range of the monitoring unit at home or when the tag is forcefully removed. The central computer records interruption of signals during the period the offender is supposed to be at the location of his curfew - for this purpose the computer contains a timetable of agreed activities outside the home. Authorities in charge of supervision (probation service, social services) are notified and can take appropriate action.

Electronic monitoring can be used in several ways. Instead of remand (pre-trial detention) an offender can be put under electronically monitored house arrest while awaiting trial. Other possibilities are the so-called *front-end* and *back-end* use. Front-end use implies home curfews that come in place of custody either by court sentence or a decision by the administration after the court has passed a custodial sentence. No time is spent in a prison. Within the back-end approach an offender is released early from prison under the condition that he spends the last part of his sentence at home under curfew.

Electronic monitoring can be used both as surveillance only and as an addition to intensive supervision. The latter includes for instance several visits a week by a probation officer at the offender's home or other places where he is supposed to be at certain times. Furthermore, specified activities can be required from the offender, including drug and alcohol controls. In such schemes the probation service is responsible for 'social' aspects like co-ordination, supervision and support, whereas security companies take care of surveillance and technical aspects only. In case of breach - indicated by an interrupted signal outside agreed periods - the only action security companies undertake is informing the supervising agency (probation service).

Electronic monitoring originated in the USA. As early as 1964, Schwitzgebel from Harvard University in Massachusetts conducted scientific experiments. Although Schwitzgebel's experiments were not entirely successful in the end, it had certainly fired people's imagination and had triggered commercial interest. Researchers, electronic industries and security companies started working on more sophisticated techniques and devices. The first official experiment in the field of corrections started in 1984, in Palm Beach, Florida. Only six years later, electronically assisted house arrest existed in all states. In Europe trials for adults started in England and Wales in 1989, and later on in Sweden in 1994 and the Netherlands in 1995. In England and Wales and the Netherlands experiments with minors started in 1998 and 2000 respectively.¹ In England and Wales the scheme was rolled-out

¹ Several countries have provisions in the law for (night) curfews, that are not electronically monitored. Apart from the Child Curfew Order in England and Wales there is no insight in the actual use of such orders.

nationally in 2002 after a two-year experiment in two pilot areas. The Dutch experiment was held in one court district and was officially put to a halt in spring 2002 due to a lack of eligible candidates. The use of electronic monitoring for young offenders developed in different directions in England and Wales and in the Netherlands. In England and Wales electronic monitoring is not necessarily combined with some sort of activity or support programme. It can be combined with other sentences, but in practice this is done in only a minority of the cases. In the Netherlands such a use of electronic monitoring - *basic* or *bare* electronic monitoring - is considered undesirable. Therefore, in the Netherlands the scheme took form as an intensive support and supervision (re-integration) programme monitored electronically. Another difference concerns the judicial modality. In both countries the front-end approach was practiced, but in England as a sentence in its own right or as condition for bail. In the Netherlands, electronic monitoring was used as a special condition under which pre-trial detention could be suspended. In both countries the decision to impose a curfew was taken by the court.