



**Doc. 12523**

18 February 2011

## Young offenders: social measures, education and rehabilitation

### Report<sup>1</sup>

Social, Health and Family Affairs Committee

Rapporteur: Ms Marietta KARAMANLI, France, Socialist Group (SOC)

### Summary

Crime by young people can blight communities and make everyone feel unsafe. However, socially excluded young people and young offenders remain children first, offenders and/or antisocial individuals second, and thus cannot be treated in the same way as offending adults.

It is important to find the right balance between protecting the community – and other young people – from crime, while making the best possible use of the fact that a child/young person, as a developing, learning human being, is still open to positive socialising influences. Retribution and punishment should thus take second place to social measures for, and education and rehabilitation of young offenders. Deprivation of liberty should be a last resort.

Member states are therefore invited to take the necessary measures to prevent juvenile delinquency in the first place and to educate young offenders to avoid reoffending.

---

1. 2011 - March Standing Committee



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Explanatory memorandum by Ms Karamanli, rapporteur .....	5
1. Introduction .....	5
2. Social exclusion, child poverty and child well-being in Europe .....	6
3. Social factors affecting social exclusion, educational disengagement and youth offending .....	8
4. Models of intervention: the theory .....	10
5. Policy responses: the practice .....	11
6. Conclusions .....	15

## A. Draft resolution<sup>2</sup>

1. Crime by young people can blight communities and make everyone feel unsafe. However, socially excluded young people and young offenders remain children first, offenders and/or antisocial individuals second, and thus cannot be treated in the same way as offending adults.
2. Young offenders often come from amongst the most disadvantaged groups in society. Many have histories of unemployment, educational disadvantage and/or disaffection, substance abuse, mental health problems, and disrupted and/or abusive family backgrounds. Systematic processes of social exclusion in terms of lack of formal education and training and ensuing low earning capacity often create barriers, preventing young people from entering the legal economy, making crime more attractive for them – including in financial terms.
3. The Parliamentary Assembly believes that it is important to find the right balance between protecting the community – and other young people – from crime, while making the best possible use of the fact that a child/young person, as a developing, learning human being, is still open to positive socialising influences. Whilst it is imperative that young persons are taught to take responsibility for their actions, young offenders are children first and foremost and must be protected by all the accepted human rights standards for children. Retribution and punishment should thus take second place to social measures for, and education and rehabilitation of young offenders. Deprivation of liberty should be a last resort, as posited in the Committee of Ministers European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11).
4. The Assembly shares the concern of the Council of Europe Commissioner for Human Rights about a disturbing trend in Europe today to lock up more children at an earlier age. Furthermore, in the last two decades, several Council of Europe member states have developed policies and plans based on retribution and behaviour-focused programmes, rather than on prevention of youth offending and addressing the welfare needs of young offenders.
5. The Assembly believes that this is in contrast to the proof of cost-effective welfare and community-based measures. Evidence strongly suggests that welfare-based responses lead to greater social inclusion, greater participation and greater commitment to education and socially acceptable behaviour. They are able to tackle different levels of social exclusion, offending and disaffection and incorporate mechanisms to ensure children's best interests and to protect their rights. Furthermore, inter-agency and multi-professional work is key both to the prevention of crime and to the rehabilitation of educationally disaffected young people and young offenders.
6. The Assembly therefore invites member states to:
  - 6.1. prevent juvenile delinquency in the first place by:
    - 6.1.1. providing family support services based on disadvantaged areas with high crime, low educational attainment and high unemployment rates;
    - 6.1.2. encouraging young people at risk to continue beyond minimum leaving age in education/training, possibly with enhanced benefits;
    - 6.1.3. designing specific programmes that provide help for young people and teachers in schools by the provision of social work, psychological and mental health support, with specialist teachers trained not just in academic development, but also in citizenship and relationship skills, and in dealing with difficult behaviour;
    - 6.1.4. promoting mentoring, involving volunteers, appropriate peers and part-time workers who have credibility with young people in a specific area/ethnic/faith group, and who can provide emotional support and act as role models, to help increase personality development, social inclusion and feelings of connection within their own and the wider community, while avoiding pushing young people into conformity with traditional (gendered or culturally determined) stereotypes;
    - 6.1.5. promoting community development and youth work with ethnic minority/faith groups in identified geographical areas;
    - 6.1.6. providing alcohol and drug abuse counselling services;

---

2. Draft resolution adopted unanimously by the committee on 25 January 2011.

6.2. educate young offenders to avoid reoffending by:

6.2.1. fully implementing the European Rules for juvenile offenders subject to sanctions or measures, which put the emphasis on community sanctions and measures while safeguarding children's and young people's rights in all settings (from court proceedings to the deprivation of liberty);

6.2.2. ensuring that the age of criminal responsibility is not set too low, and that sanctions and measures involving the deprivation of liberty are only applied to children and young offenders as a last resort;

6.2.3. developing restorative justice and mediation programmes which make victims feel included;

6.2.4. working with police, prosecutors and youth judges to promote diversion and welfare-based approaches.

## B. Explanatory memorandum by Ms Karamanli, rapporteur

### 1. Introduction

1. Juvenile delinquency is not a new phenomenon. The vast majority of Council of Europe member states have been faced with this problem for decades (even if reading the press sometimes tends to suggest the contrary). However, they have developed different ways of dealing with the problem, based on different theoretical and practical approaches.

2. To begin with, it is worth mentioning here that despite the high stakes, there is little quantitative and qualitative research monitoring juvenile offenders and the consequences of their imprisonment as regards possible reoffending. Moreover, the information available to date in the 47 member states of the Council of Europe is not sufficiently homogeneous. It is difficult to assert the superiority of one model over another on a general level. However, a number of elements can be taken into account which deserve the attention of the Parliamentary Assembly.

3. If we take the case of France, imprisonment represents one third of the sentences for those aged between 13 and 16 and about 40% for those aged between 16 and 18. The “criminal response rate” in case of recidivism has at the same time increased from 67.9% in 2000 to 83.6% in 2007 (91.5% for minors).<sup>3</sup>

4. Moreover, as far as the risk of reoffending as a follow-up to the deprivation of liberty is concerned, research carried out in the Netherlands in 2005<sup>4</sup> on the relationship between reoffending and personality, post release environmental risk and protective factors, has highlighted the number of young offenders who reoffended after their release from the De Hunnerberg juvenile detention centre. Four studies were conducted of respondents’ reoffending rates. In the study on personality and juvenile criminal offending and reoffending, it emerged that 61 of the 95 former prisoners (64%) had been arrested at one time or another after leaving De Hunnerberg. This figure was obtained from the criminal records statistics. In a more detailed study of the environmental risks following release and the factors likely to militate against juvenile reoffending, 75% of the respondents reported one or more criminal acts after their release. Both the official and the self-reported rates of reoffending in this study are high. The most likely explanation for the discrepancy between the official and self-reported figures is that a considerable number of offences remain undetected.

5. In the same line of thought,<sup>5</sup> according to Milton L. Barron, “punishment is especially likely to be followed by recidivism, possibly because punishment does not reform and because it results in social ostracism of the punished. The younger the child is at the time of his or her first adjudication as a delinquent, the greater is the likelihood that there will be recidivism”.<sup>6</sup>

6. It is therefore clear that attention must be paid to preventing first offences, as well as reoffending. The two go together; offering a response to offending today is a means of preventing it in the future. What are needed are alternatives to prison, with an emphasis on establishments with an educational purpose.<sup>7</sup> The European Forum for Urban Safety invites local elected representatives to recognise publicly that prisons and detention should be one of the last resorts for young people in conflict with the law. Preference must be given to alternative approaches, such as special education centres and open detention facilities, whose aim is social reintegration and which focus on the individual and his or her particular circumstances, while taking into account the interests of the victim. Consideration should be given to alternative, community-oriented, sanctions.<sup>8</sup>

7. The overarching goal of all policies addressing juvenile delinquency must be to teach children and young people how to live a fulfilling life in society – without committing any crimes. The juvenile justice system comes into contact with children and young people only after they have already committed a crime (or are suspected of having committed one), while the welfare system can come into play both before and after a crime has been committed. The juvenile justice system tries to ensure respect for the societal norms as

3. This does not mean that the number of young people involved is greater. Thus the share of minors in all persons implicated by the police and the gendarmerie decreased in France from 22% in 1998 to 18% in 2007.

4. Coleta van Dam, *Juvenile Criminal Recidivism: Relations with personality and post release environmental risk and protective factors*, Nijmegen, 2005, ISBN 90-9018835-5, p. 94.

5. Milton L. Barron, *The Juvenile in Delinquent Society*, New York: Knopf, 1954, p. 319.

6. Ibid.

7. Address by Jean Pierre Rosenczveig, President of Bobigny children’s court (France), and of the International Bureau for Children’s Rights (IBCR), New York, 9 May 2002.

8. European Forum for Urban Safety, *Innovative strategies for the prevention of re-offending: Practices and recommendations for local players*, Belgium, 2009, ISBN 2-913181-36-8.

codified by criminal law. In contrast to the justice system for adults, punishment (and atonement through punishment) is less central to the juvenile justice system, which has at its heart the avoidance of future delinquency through education. This is where the welfare system touches the justice system: it also tries to avoid delinquency through education. However, its contribution can often be delivered in a more “positive” spirit, because it can be construed as an aid to help children and young people realise their right to be educated and to grow up to become independent personalities who are nevertheless integrated into society.<sup>9</sup>

8. Crime by young people can blight communities and make everyone feel unsafe. It is thus important for every country to find the most appropriate response. At the Council of Europe level, harmonisation of the juvenile justice systems has gone further than that of the welfare systems for children and young people. In 2008, the Committee of Ministers adopted the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11) which posit both the basic principles – that all sanctions and measures that may be imposed on juveniles, as well as their implementation, shall be based on the principles of social integration and education and on the prevention of reoffending – and put into place a clear legal framework governing community sanctions and measures as well as the deprivation of liberty. The rapporteur believes this recommendation is very complete; it remains only for it to be implemented. This is why this report concentrates on the contribution of child and youth welfare services, namely on social measures for, and education and rehabilitation of young offenders – a subject which the rapporteur fears has so far been rather neglected.

9. Nevertheless, a key issue remains regarding the extent to which the welfare and best interests of the child/young person, as a developing, learning human being, and still open to positive socialising influences, are incorporated in youth justice systems.

10. Against this background, the Council of Europe Commissioner for Human Rights recently stated that “there is a disturbing trend in Europe today to lock up more children at an earlier age. The age of criminal responsibility is already very low in some countries, such as the United Kingdom”, whilst also recognising that “it is imperative that young persons are taught to take responsibility for their actions”. The Commissioner at the same time emphasised that “Young offenders are children first and foremost and should be protected by all the agreed human rights standards for children”.<sup>10</sup>

11. In this report,<sup>11</sup> the rapporteur would like to address all these interlinked issues. On 12 December 2008 in Paris, the Social, Health and Family Affairs Committee organised a hearing with the participation of representatives of different NGOs and research institutes.<sup>12</sup> On 11 June 2009, the rapporteur also visited the Rochester Institute for Young Offenders in Kent (United Kingdom) to nourish her reflections on this issue, which she first presented to the committee in November 2009.

12. There is evidence that the best crime prevention policy is social policy, and that the most effective social policy is one which reaches down from the national to the local level.

## **2. Social exclusion, child poverty and child well-being in Europe**

13. A growing number of young people in Europe lack the means to participate fully in economic, social, cultural and political life or are prevented from doing so by economic disadvantage, lack of skills and knowledge, discrimination or personal attitudes.

14. Young offenders often come from amongst the most disadvantaged groups in society and have complex needs. Many have histories of educational disadvantage and/or disaffection, substance misuse, mental health problems,<sup>13</sup> and disrupted and/or abusive family backgrounds. Systematic processes of social exclusion in terms of lack of formal education and training and ensuing low earning capacity often create barriers, preventing young people from entering the legal economy – a phenomenon exacerbated by the

---

9. “*Jugendhilfe und Jugendgerichtsbarkeit: Die Unterschiede als Chance verstehen!*” (“Welfare services for young people and juvenile justice – seeing differences as an opportunity!”), opinion of the German Institute for welfare services for young people and family law (DIJuF), 13 August 2007.

10. Council of Europe Commissioner for Human Rights, “Human Rights in Europe: time to honour our pledges”, 2 February 2009.

11. The rapporteur is grateful to Professor Brian Littlechild, professor of social work at University of Hertfordshire, for his valuable contribution to this report.

12. Defence for Children International (Belgium), Prisma (Prison Fellowship Germany), Leuven Institute of Criminology (Belgium).

13. See Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder.

current economic and debt crisis. Many young people depend upon state benefits, such as unemployment benefits, and find it increasingly difficult to gain access to jobs that allow them greater legitimate integration into the social and economic fabric of society. Youth unemployment rates increased by 4.6 percentage points in the developed economies and the European Union between 2008 and 2009 and by 3.5 points in central and eastern Europe (non-European Union) and the Commonwealth of Independent States (CIS).<sup>14</sup> These structural issues cannot be divorced from the personal effects of such changes on people.

15. Poverty in childhood has been identified as a key predictor of economic and educational disadvantage and poor levels of achievement and well-being later in life. In 2005, 22% of children in the United Kingdom lived in relative poverty (defined as 60% of the national median income); in Sweden this was 8%, and in Denmark 10%. Such exclusion from transition processes towards social and economic bonds means that young people are less likely to engage and commit to the other values of inclusion and acceptable social norms.

16. The rapporteur notes that the overlapping nature of the drivers of social exclusion for offending and educational disadvantage is borne out in statistics. For example, in the United Kingdom, nearly half of young people in custody in the criminal justice system have previously been in the public care system and have literacy and numeracy skills inferior to the norm for an 11-year-old. Reoffending rates within a year of leaving custody increase for those who are homeless.<sup>15</sup>

17. Sociological theories such as labelling are important in policy considerations in terms of how such labelling can negatively affect agencies' and professionals' responses to individual young people due to the geographical area the young person lives in, his or her ethnicity, previous offending, and mental health problems. The mix of such labelling factors and structural and economic disadvantage and discrimination within jobs, housing, educational opportunities, and treatment by the youth justice system and staff towards young people can lead to further exclusion and offending.

18. In the rapporteur's opinion, these are important areas to address in policies, provision and also training and monitoring of educational and social agencies. Whilst sociological theories such as labelling may be important in understanding why such problems may occur, they do not provide concrete ideas of how to understand the way young people personally experience their situation, or how to deal with them; these are the areas this report would like to address. It is necessary to consider young people's individual feelings and deal with them on a personal intervention level, including motivation to socially acceptable income generation, attitudes towards others and feelings of social responsibility, mental health needs, experience of abuse, and experiences of being bullied and of bullying.

19. Welfare, school and community-based programmes can help young people desist from all forms of criminal and antisocial behaviour, including violence, bullying, theft, gang-related crime and intimidation, race hate crime and potentially, at the extreme end, terrorism.

20. A major study by UNICEF (2007) assessed the well-being of young people in 21 of the world's most economically advanced nations according to six criteria: family and peer relationships, education, health and safety, material well-being, behaviour and risks, and subjective well-being. It concluded that a country's wealth is not an indicator of child well-being (a finding also from the statistics presented by the OECD in 2009<sup>16</sup>), with the Netherlands, Sweden, Denmark, Finland, Spain, Switzerland and Norway ranked highest, with France 16th and the United Kingdom at the bottom of the overall well-being league table. As far as material well-being is concerned, the UNICEF study also found that in comparing the percentages of children that lived in households with the equivalent of less than 50% of national median income (relative child income poverty), in all the Scandinavian countries this was less than 4%, in Belgium and France 7%, in the Netherlands 9%, and in Ireland, Italy and the United Kingdom 16%.<sup>17</sup> In terms of material well-being, the Scandinavian countries (Sweden, Norway, Finland and Denmark) ranked highest.

21. The factors of well-being may well have a bearing upon how young people view themselves, their life opportunities and relationships, and on disaffection and offending.

---

14. *Global employment trends for youth: Special issue on the impact of the global economic crisis on youth* (August 2010) International Labour Office, Geneva

(see [www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_elm/---trends/documents/publication/wcms\\_143349.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---trends/documents/publication/wcms_143349.pdf)).

15. Archives of the UK National Statistics.

16. OECD, "Doing Better for Children", Paris: OECD, 2009.

17. UNICEF, "Report Card 7, Child Poverty in Perspective: An Overview of Child Well-Being in Rich Countries", 2007.

22. The rapporteur noted that the countries which have welfare-based approaches as part of socially cohesive policies are the ones where young people feel most secure in personal and family relationships and do not fear for their prospects in terms of their economic and social future. These countries have the most inclusive and effective educational systems and the lowest rates of custody.<sup>18</sup> In the UNICEF survey, in terms of subjective well-being, the Netherlands, Spain, Greece, Austria and Ireland came highest, whilst France was ranked 19th, and the United Kingdom 20th. For educational well-being, Belgium was ranked first, the United Kingdom 17th and France 18th. For educational achievement, Finland was highest, with France 13th.

23. Scandinavian countries generally have retained a strong welfare approach to juvenile offending, compared to many in the rest of Europe, and have not been swayed from this by media and political pressure. Seven of the 10 top-ranked countries for child well-being had prison populations of less than 80 per 100 000, including all the Scandinavian countries. The numbers of juveniles in prison-based custody is negligible in Scandinavian countries as a percentage of their youth populations, which is also the case in Belgium, France, Italy and the Czech Republic.

24. Despite low incarceration rates in recent years, crime rates have not tended to increase in these countries disproportionately compared to other countries. Conversely, countries which have increased their use of custody have not tended to see a decrease in crime disproportionately compared to other countries. The Netherlands, Ireland, Scotland, Portugal and England and Wales have high rates of juvenile incarceration. Of the bottom 10 countries in the UNICEF report, six have prison populations of over 100 per 100 000. In England in early 2009, 2 625 children aged under 18 were held in custodial establishments in England and Wales, one of the highest rates of juvenile incarceration in Europe, compared to Finland and Norway's total of three.

### 3. Social factors affecting social exclusion, educational disengagement and youth offending

25. Evidence suggests that the key factors associated with youth offending are poverty, poor education, poor employment prospects, poor housing or homelessness, poor physical and mental health, poor access to financial resources, anti-social behaviour, drug and alcohol abuse and difficulties in forming and sustaining relationships.

26. The high-risk forms of behaviour pinpointed in sociological studies of young people, in particular the use of legal and illegal psychoactive substances such as alcohol, tobacco and cannabis, violence, both towards oneself and others, dangerous driving, dangerous forms of sport and high-risk sexual behaviour,<sup>19</sup> have to be prevented, as the situation can easily and very rapidly deteriorate. Such high-risk behaviour is often rooted in a feeling of malaise, hence the importance of paying heed to children and young people's well-being, including their mental health. It is to be noted here that conduct and behavioural disorders among children and young people also result in significant costs to the community, and that it would be possible to treat these disorders more effectively through prevention.<sup>20</sup> At the same time, the Committee of Ministers Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder invites member states to make all necessary provisions.

27. High-risk behaviour also represents a quest for autonomy and independence.<sup>21</sup> Acquiring independence, indeed, presupposes risk taking. This takes place at the boundaries between the known and the unknown, the allowed and the forbidden, the legal and the illegal. Such behaviour, which frequently conflicts with accepted standards and breaks the rules, enables those concerned to go one step further and thus appreciate the real meaning of social and individual conduct. This flirting with risk represents a desire to control one's environment, but also one's own behaviour, and is thus seen by the young person concerned as a crucial step towards greater autonomy.<sup>22</sup> The rapporteur therefore wishes to emphasise the importance of the earliest possible positive intervention to prevent risks and enable young people to use other means of establishing their identity and for their development, without harm to their well-being. In the absence of such intervention, the risk of problems such as offending rises rapidly.

---

18. It has to be noted, however, that these countries also have a policy in place which reduces youth custody rates to the minimum: this does not necessarily mean that the rates of offending are lower.

19. Martine Bantuelle and René Demeulemeester, *Comportements à risque et santé: agir en milieu scolaire*, Référentiel de bonnes pratiques, Saint-Denis: Editions INPES, 2008, ISBN 978-2-91619203-1, p. 38.

20. See the findings of the European Union in the Green Paper entitled "Improving the mental health of the population – towards a strategy on mental health for the European Union", COM(2005)484. These findings do not foresee specific measures to be implemented in order to prevent such disorders or to treat them.

21. Bantuelle and Demeulemeester, *Comportements à risque et santé*, p. 38.

22. Ibid.

28. Peer pressure is key to many young people's engagement with disaffection at school and in offending.<sup>23</sup> In the UNICEF survey, in the category of "peer relationships being kind and helpful", Switzerland ranked highest, France 18th, the Czech Republic 19th, and the United Kingdom 21st. For family and peer support, Italy was first, France 12th, Finland 17th, with the United Kingdom bottom, demonstrating the importance of positive influences from such groups in societies which do not make use of punitive policies.

29. As regards young people who declared having been drunk twice or more, France was ranked as having the lowest percentage and the United Kingdom the highest percentage, with Scandinavian countries ranked also quite low. For those aged between 15 and 19 not in education, employment or training, France had the highest percentage at 21st, Finland was 18th, and Norway, Denmark, Poland and Sweden had the lowest percentage. For the percentage of those in relative income poverty, Scandinavian countries ranked lowest, with France ranked eighth. As regards those experiencing fighting and/or bullying, young people in Finland, Sweden and Germany were least at risk, while France had the highest percentage reporting this.

30. The rapporteur notes that marginalisation is a risk factor. Recent studies<sup>24</sup> have shown that group membership as such does not equate with delinquency. When a young person joins a group of delinquents, rather than a traditional group, this is often largely a result of his or her own functioning within other conventional social systems, such as school. Where the young person concerned is marginalised, he or she will tend to seek the company of other young people on the margins of society, where alcohol or drug consumption is encouraged and misbehaving is regarded as normal.<sup>25</sup>

31. In neighbourhoods/communities with high levels of deprivation, illegal income sources such as drug dealing and selling stolen mobile telephones, often supplement or replace legitimate ones. One of the major reasons cited by young people who join gangs is that they see gangs as alternative reference groups, and see no life outside the gang. The gang provides social recognition and status which other areas of their lives, such as schooling, legitimate income, job status or relationships, do not.

32. Parenting is another key area of risk, if one is dealing with parents who are criminals, parents with mental health problems, parents who are too strict or too lenient or inconsistent or parents who are antagonistic to or disinterested in their child's education. For example, it has been determined that the impact of father absence on delinquency could be stronger than that of mother absence among both boys and girls.<sup>26</sup>

33. The rapporteur notes that risk factors are clustered together in the lives of the most disadvantaged children. The chances of such young people becoming antisocial and criminally active increase exponentially as the number of risk factors for the young person increases.

34. Lack of adequately funded youth services has been pinpointed as contributing to the disenfranchisement of some young people, including specifically ethnic minority or faith groups. The rapporteur is convinced that provision of specialist enhanced educational schemes, and mentoring for parents and young people from credible role models from within their own communities can be important in avoiding such disaffection. This also applies to community-based groups which are set up to challenge and engage young people in activities which they see as relevant to their culture and ambitions.

35. At the same time, it is important to emphasise that some young people need to emancipate themselves from traditional role models, in particular in ethnic minority or faith groups. This is particularly true for girls, who are often traditionally assigned a passive and submissive, "victim" role, but also for boys, who may be pushed into "macho" roles, where they have to prove themselves "strong", aggressive, or even violently "protective". Both girls and boys should be encouraged to develop their individual personalities instead.

36. On a personal level, poor self-image can be a risk factor (including the risk of being recruited into gangs), as are mental health problems. In addition to the other strategies used to combat exclusion, the rapporteur stresses the need to involve assessment and liaison with specialist social work and mental health services. Drug and alcohol abuse risks again require careful assessment and a range of clinical and community-based provisions for assessment, with close liaison between schools, social work agencies and local drug and alcohol agencies.

---

23. M. Stephenson, *Young People and Offending: Education: youth justice and social exclusion*, Cullompton: Willan Publishing, 2007.

24. Josine Junger-Tas, Ineke Haen Marshall, Dirk Enzmann, Martin Killias, Majone Steketeer and Beata Gruszczynska (eds), *Juvenile Delinquency in Europe and Beyond: Results of the Second International Self-Report Delinquency Study*, Dordrecht: Springer, 2010, ISBN 978-0-387-95982-8, pp. 2-3.

25. *Ibid.*, pp. 2-3.

26. *Ibid.*, p. 2.

37. The rapporteur firmly believes that the wide variety of risk factors related to low educational attainment, disaffection and offending means that preventing crime requires the active involvement of agencies outside the justice system, including education and health services.

38. Strategies aimed at combating educational disaffection and financial disadvantage include identifying the problems with educational engagement and attendance amongst groups and individuals, by working with schools and specialist educational units, employing educational psychologists, social workers, and adult and peer mentoring schemes within community programmes. The objective is to encourage participation in training and employment, in order to improve commitment to and confidence in education and thus enhance young people's life chances.

39. Comparisons of the educational backgrounds of young people caught up in the youth justice system with the general population show that, on average, young offenders have had difficulties in engaging and achieving at school. Low attainment, persistent truancy, exclusion, special educational needs and disabilities such as dyslexia are some of the most prevalent risk factors associated with offending behaviour. The correlations between low attainment in education, offending and reoffending and other forms of anti-social behaviour are well documented.<sup>27</sup> Education potentially has a key preventative role, as lack of statutory education is one of the key factors associated with reoffending.

40. The wider role of an educative focus of social development, rather than just academic performance, is recognised in the pedagogical approaches in some countries. The Scandinavian countries, such as Sweden, have a high performance educationally, without the high use of exclusion from schools or other forms of social exclusion for children (such as a high use of custody), whilst the opposite is the case in other countries, for example in the United Kingdom, which has low educational achievement levels and uses exclusion from school and has a high use of custody.<sup>28</sup> Germany, for example, uses "social training" courses which involve regular meetings with social workers and intensive weekend arrangements with sporting activities and challenges to engage and provide activities for young people to foster the development of social skills and appropriate behaviour.

41. Schools often exclude young people who are already socially excluded by family background factors, economically or by discrimination due to ethnicity or faith. In many countries, the highest rates of exclusion from schools are often in minority ethnic or faith groups, and this requires special attention.

42. The most basic of educational attainments, literacy and numeracy skills, need to be addressed in schools as part of prevention strategies to identify and help low achievers in all schools and also in community-based and custodial programmes for offenders. However important this is, though, the rapporteur stresses that policies should not just target young people and their families. They also need to address school ethos and staff attitudes to young people who are disaffected and offending, as well as young people who are at risk of low attainment and disengagement. The reluctance of schools to put in place support programmes for such young people is a key area to be addressed by training and guidance to schools.

43. In the rapporteur's view, it is not possible for one single agency to identify and deal with young people's problems which lead to social exclusion through disengagement with education, training and youth offending. One major obstacle in developing successful policies across agencies to co-ordinate and plan to increase social inclusion across Europe has often been in engaging mainstream schools in preventive approaches addressing such risk factors and in aiding social reintegration for those young people who have difficulties at school and/or are offending.

#### **4. Models of intervention: the theory**

44. "Welfare" models, "justice" models, and "restorative justice and mediation" models are the main ways of responding to these types of problems. These almost always overlap, to some extent, with different elements emphasised in different countries.

---

27. M. Stephenson, op. cit., 2007.

28. See Jerzy Sarnacki and Felipe Estrada, *Juvenile Crime in Sweden: A trend report on criminal policy, the development of juvenile delinquency and the juvenile justice system*, Stockholm University, 2004,

[www.esc-eurocrim.org/files/youth\\_crime\\_in\\_sweden\\_sarnacki\\_estrada\\_final\\_version.doc](http://www.esc-eurocrim.org/files/youth_crime_in_sweden_sarnacki_estrada_final_version.doc); and European Crime Prevention Network, "ELLEN-SZER" (Anti-dote) Secondary School Youth Protection Program of the Police in Hungary, 2007, [www.eucpn.org/gpdocs/HUNGARY-%20ELLEN-SZER.pdf](http://www.eucpn.org/gpdocs/HUNGARY-%20ELLEN-SZER.pdf).

45. Welfare models of intervention consist of assessment and intervention strategies deriving to a large extent from psychological, ecological and systems-based approaches of understanding and treating educationally disaffected young people and offending by young people. Such models focus on deficits in families in raising their children and socialising them, leading to intervention strategies which look at treatment both within and outside of the family.

46. The welfare-based approach promotes methods and interventions outside the judicial system, for example by diverting young people from formal systems, as used extensively in the Scandinavian countries, often accompanied by family support services. These countries also make extensive use of psychological and psychiatric interventions, based on family-focused interventions and supervision in the community and residential treatments. Such approaches work well for the great majority of socially excluded young people; however, for a small minority recruited into race hate and terrorist groups, additional methods also need to include more targeted programmes, as well as police work, in conjunction with other agencies.

47. Justice models, in contrast to welfare approaches, state that young people should be subject to formal judicial (usually court) processes, where their rights before the law can be maintained. This approach assumes that punishment is the primary rationale for the youth justice system, with sentences set out as part of a “tariff” of increasing severity and punishment-based sentences, dependent on the seriousness of the offence and the perpetrator’s offending history. Such countries make high use of custody and punishment-based approaches and little use of conditional orders (as used in Belgium) and diversion. However, in very rare circumstances, there is the need to pick up on the risk factors for very serious offending and the need for residential, social work, and psychological/psychiatric treatment, sometimes for long periods into adulthood.

48. Restorative justice and mediation approaches have been put forward in recent years as ways to move beyond the binary divide of welfare and justice-based approaches. These approaches concentrate on the idea of repairing the harm done, allowing the victim to receive an apology and/or reparation. They encourage and require the offender to feel some shame and sorrow for what they have done and to learn to appreciate the effects of their behaviour and attitudes on others. They have been successfully used for all types of disputes, for example conflicts between different ethnic and religious groups, and specifically in the Northern Ireland Belfast Agreement to end such violence. They have also been used most extensively in the Scandinavian countries, worked in with their welfare-based models.

49. This model has struggled rather more to make headway in punitive-based countries, partly because the adversarial approach militates against offenders admitting to what they have done and the effects of it, as this could negatively affect the outcome for them in such a system.

50. These approaches have also been used in education settings to deal with conflict, crime and bullying which affects educational disengagement and attainment. Whilst this method may be valuable in the great majority of situations, the risk for the victims, as well as the need for protection, have to be properly taken into account, for example in cases of severe bullying.

51. Whilst restorative justice and mediation can be very effective when perpetrators are genuinely willing to take part, there can be concerns that some young people can purport to be “buying into” the process but in reality are not. Victims may fear further intimidation. This is true also for hate crimes and community conflict.

## **5. Policy responses: the practice**

52. The following is an analysis of current measures and existing policies and practices to deal with juvenile delinquency.

### **5.1. Age of criminal responsibility**

53. The United Nations Convention on the Rights of the Child (UNCRC) encourages a minimum age to be set for criminal responsibility, “below which children shall be presumed not to have the capacity to infringe the penal law”. The age of criminal responsibility correlates to a high degree with welfare or retributive regimes. In Scandinavian countries, it is 15 years, with very restricted use of penalties, especially custody, for older adolescents. This age varies greatly across Europe: Scotland 8; Northern Ireland, England and Wales 10; France 13; Spain, Italy and Germany 14; and Luxembourg and Belgium 18. In addition, Article 37 (b) of the United Nations Convention states that:

*“States Parties shall ensure that:*

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”*

This emphasises, as do many other of its articles, how children and young people should be dealt with by socially inclusive, rehabilitative methods rather than punitive ones where at all possible. The Convention on the Rights of the Child sets out other states' duties in relation to encouraging children's participation in decision making, providing access to legal representation for children and protecting children from capital or degrading punishment.

54. The rapporteur firmly believes that the age of criminal responsibility is a key area for reform as recently noted also by the Commissioner for Human Rights: “Time has come to move away from fixing an arbitrary age for criminal responsibility. Governments should now look for a holistic solution to juvenile offending.”<sup>29</sup>

55. In 2003, the European Network of Ombudspersons for Children (ENOC) stated that there should be separate systems of justice for under-18-year-olds. All provisions – residential, psychiatric, prison-based and community-based – should therefore be separate for under-18-year-olds.

## **5.2. Custody and community treatment**

56. Many young people sent to custody have a history of a range of disadvantages: poverty; family conflict and abuse; being looked after by local authorities; drug and alcohol misuse; mental disorder and distress; ill-health; emotional, physical and sexual abuse; self harm and suicide attempts; homelessness; isolation; educational, skills, training and unemployment disadvantage – all areas associated also with education disengagement and poor attainment. All these areas have to be examined at an early stage for families and young people in order to combat social exclusion and reduce criminality amongst young people.

57. The rapporteur believes that custody and punitive-based measures as found in a number of European countries can only very rarely, if ever, achieve this. With few commendable exceptions, such as the Kent institute which the rapporteur visited in June 2009, prison-based custody almost always excludes young people from education and job prospects. In their peer groups, it leads to expectations (labelling) by peers, professionals and families on them to be criminal and antisocial, leading to further social exclusion from positive peer groups and family support. As stated in the United Nations guidelines for the prevention of juvenile delinquency “labelling a young person as ‘deviant’, ‘delinquent’ or ‘pre-delinquent’ often contributes to the development of a consistent pattern of undesirable behaviour”.

58. Young people in custody need special measures to deal with their vulnerability, including issues of abuse, race hate and bullying. These factors contribute to murders and suicides of young people and exacerbate drug and mental health problems.

59. The rapporteur is of the opinion that prison-based institutions have failed to deal with educational disadvantage and social inclusion, as smaller custodial residential institutions based upon welfare and treatment models, like those that exist in Scandinavian countries, can do.

60. The extensive and serious criticisms of the welfare of young people in prison show that such custody can be argued to be contrary to young people's human rights under Article 3 of the European Convention on Human Rights, which provides that no one shall be subject to inhuman or degrading treatment. The bullying, intimidation and high number of incidents of self-harm and suicide can also be argued to contravene several articles of the United Nations Convention on the Rights of the Child, including: Article 3, “it shall be the duty of governments to consider the best interests of a child”; Article 19, “the right of children to protection from all forms of violence, abuse and neglect”; and Article 24, which provides for the highest attainable standards of health for children and young people, which also includes mental health and emotional health.

61. For these reasons, the rapporteur argues that custody should not be the chosen policy for young offenders. It should be used only where the crime is extremely serious and the young person represents a danger to others. There should be guidance on when, and at what severity of offending, it is acceptable for young people to be contained for the safety of others, as is the case in Norway, Denmark and Finland. Where custody is required, this should be in small units, with psychiatric, psychological and social work input, and near to the young person's family and community. A particular feature of these services should be mental health services in secure units, due to the high levels of abuse and suicide.

---

29. Council of Europe Commissioner for Human Rights, 2009 Viewpoints “Children should not be treated as criminals”, February 2009.

62. These are also important factors in resettling young people in their families and communities in post-release and aftercare work. In many countries, the cut off is a sharp one and the model of flexible jurisdictions developed in Germany has a good deal to commend it. However, there can be a marked reluctance on the part of social agencies (whether schools, colleges, clinics or residential facilities) to take on people who have been in prison and this requires attention from local multi-agency groups.

### **5.3. Targeted programmes**

63. Early intervention programmes can be effective in reducing the risk of youth offending if targeted at high-risk children and young people in recognised geographical areas of poverty and disadvantage, at the appropriate stage, and if they take into account the specific needs of different economic, ethnic, faith and cultural groups. Whilst being integrated into a comprehensive prevention package, these programmes should include issues of family, community and personal and individual factors. They should be support-based and not label families as criminogenic.

64. Effective multi-agency groupings and policies at national and local levels are key to dealing with these multi-factorial issues. Welfare and education services need to be co-ordinated, at primary, secondary and tertiary levels, to prevent initial or further exclusion within schools. They include enhanced schooling, with an emphasis on education and training in custody and post-release programmes.

65. Low attainment of young people is partly due to family factors. Strategies to involve and engage parents in the aims of the school and in encouraging and supporting their children in their education remain critical. Poor engagement with schools by young people is correlated with weak parental supervision and poor attachment to parents and siblings. These areas are to be considered for parenting programmes in groups or by individual professionals and mentors to support parents.

### **5.4. Ethnicity/faith-based and hate crime**

66. The effects of systematic disadvantage based on ethnic or faith-based groups are frequently present in and beyond education and employment and into the criminal justice system. Structural inequalities in relation to “race” have contributed to the tendency for certain ethnic minority groups, particularly their male members, to be under-represented in training schemes and higher education and over-represented at all stages of the criminal justice system, and especially in prisons.

67. According to the 2008 British Crime Survey, the profile of hate crime has an intra-neighbourhood element in that most hate perpetrators and victims live in the same neighbourhood. These factors point to the need for better training for all professionals and monitoring of these effects, as well as institutional and geographically based community responses.

### **5.5. Diversion**

68. Diversion can be a very effective way of dealing with minor offending and, in appropriate circumstances, more serious offending. Measures can include enhanced support for education and training, counselling on job and career opportunities and the need to have attitudes which will keep them in employment, including mentoring on attitudes and personal approaches to others. Diversion is a key feature of the Scandinavian countries’ responses, at prosecutor and court levels. In Belgium, there is also pre-trial probation, that is to say another form of diversion. In retributive and justice-based systems such as the United Kingdom, the use of diversion pre-court and in court sentences has, through policy and legal changes, diminished in the last twenty years.

69. In the United Kingdom, an example of a different type of diversion is the so-called “referral order”, which is made for nearly all young people at their first appearance in the Youth Court. Panels consisting of community members and a professional from the local multi-agency “Youth Offending Team” meet with the young person, their parents and others (for example victims) to discuss the situation which led up to the offence and the factors which may have impacted on the young person’s delinquent behaviour.

70. These include issues of family conflict, conflict with others, issues in education or work/training, accommodation, drug use and mental health problems. They then set work to be undertaken, which includes reparation, apology and treatment on the risk areas identified in the order, with further meetings to review the young person’s progress. If the young person completes the order successfully, he or she has no offence recorded against them. Italy also has a system where many young people have pre-trial programmes, where they will not have a criminal offence recorded against them if they successfully complete the programme.

### **5.6. Participation**

71. Young people engaged in criminal activity are “experts by experience” and research illuminating their first-hand experience is fruitful in gaining knowledge to tackle the antecedents of crime and formulating more meaningful and effective policy responses. Research should raise awareness of what impacts on young people’s lives in disadvantaged, high-risk communities and young people from ethnic minority groups and disaffected groups, to feed into knowledge about the problems and solutions in local areas.

72. Another key area of participation can also be by way of young people’s involvement in young people’s panels in local areas, to gain their views on their situation and possible solutions to their perceived problems. At a more general level, in some countries there are “school councils” that foster young people’s involvement and contribute to their integration while instilling in them a sense of responsibility. However, there does not seem to be any particular effort to involve disaffected young people.

### **5.7. Ethnically sensitive work with socially excluded young people/offenders**

73. Children and young people from certain ethnic minority and faith communities continue in many countries to be disproportionately overrepresented throughout the youth justice system. In the police and prison systems in the United Kingdom, official reports have determined that there are forms of discrimination which act against the rights and interests of young Black and Minority Ethnic (BME) groups. This can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.<sup>30</sup>

74. The rapporteur believes that this will almost certainly be the case in many other European countries to some extent or another. Training and monitoring of agency and staff approaches in the relevant agencies – police, judiciary, custody staff, school staff, social work staff – is important to ensure greater compliance with the Convention on the Rights of the Child and Council of Europe requirements.<sup>31</sup>

### **5.8. Geographical and demographic issues**

75. Evidence is increasingly showing high concentrations of young and adult offenders in localised geographical areas who are known to the criminal justice system and who are disaffected from education, training and work. This suggests the need for detailed mapping work on demographics, educational attainment and crime rates and then the exploration of alternative ways of deploying resources and offering family and youth support services and activities in those areas.

76. Enhanced schooling related sometimes to ethnic/faith groups and sometimes to help to overcome family antagonism or disinterest in education and aggressive/criminal behaviour, can be valuable. It is therefore important to examine the overlaps and commonalities between social groupings within geographical areas that are socially excluded in order to facilitate effective multi-agency intervention across a range of policy areas. At the same time, as mentioned above, it is important to help young people emancipate themselves from traditional role models and expectations (in particular those linked to gender) which can be imposed by families, clans and ethnic/faith groups. Educational activities outside school, which are diverse and open to all, can be personality enhancing and contribute to the development of positive group dynamics.

77. According to the rapporteur, providing high quality youth services (clubs, activities, enhanced schooling, restorative justice/mediation services, training and work opportunities) is a fundamental requirement for addressing social cohesion. Alongside this primary-based approach, services at the secondary level can be targeted at those children and their families who come to the attention of the authorities – potentially for all families in identified areas – where there are high indices of disadvantage, such as poor housing, low incomes, poor job opportunities, interpersonal and inter-ethnic conflict, and high crime rates.

78. Local multi-agency groups can identify such areas and groups of young people for interventions and formulate and review action plans for community and restorative programmes and also formulate action plans for young people who are clearly exhibiting offending and disaffected behaviours. For example, one programme in England has used a system to provide professional and mentoring services, by inviting families and young people to partake in a support programme if they became known to the triumvirate of social services, school, and police agencies. Wider use of functional family support programmes is also found in Sweden and in anti-bullying programmes in Norway.

---

30. Sir William MacPherson, *The Stephen Lawrence Inquiry*, London: The Stationery Office, 1999.

31. H. Sender, B. Littlechild and N. Smith, “Black and Minority Ethnic Groups and Youth Offending”, *Youth and Policy*, 93 (2006) pp. 61-76.

79. Ideally, these programmes should be presented positively, as fostering safe and healthy communities by strengthening protective factors, rather than as a negatively framed labelling process. This is in accordance with the United Nations guidelines for the prevention of juvenile delinquency, which say that “formal agencies of social control should only be utilised as a means of last resort”. Consequently, approaches to prevent criminality, particularly in young people, necessitate a broader approach focusing on prime influences – family, school and community, linking social and economic opportunities and ensuring the empowerment and renewed social capital of young people themselves.<sup>32</sup>

### **5.9. Restorative justice and mediation**

80. A key feature of social exclusion is not just economic and educational/training and job opportunities and difficulties, but also relationships. Restorative justice and mediation are increasingly being examined by different nations in order to develop new ways of making links between the welfare approaches which focus on the needs, development and well-being of the young offender/disaffected young person, as well as their commitment to understanding their responsibilities for their behaviour, both criminal and antisocial, on others. Such approaches include restorative justice and mediation at all levels from young people in schools through to communities where there are tensions between groups (ethnic/religious or otherwise).

81. The Committee of Ministers adopted recommendations for the development of mediation in penal matters in 1999. Finland and other Scandinavian countries use these methods extensively at all stages of the process.

82. Making reparation to the victim directly or indirectly by work on community projects is an important part of restorative justice, as is making a genuine apology to the victim, preferably face-to face. The benefits of restorative justice have been shown to be improved sense of responsibility and guilt, a feeling that the young people and the victims were part of the process, an understanding that actions have consequences, improved skills for managing conflict; greater empathy towards others, increased mutual respect, and an improved feeling of community. Another form of restorative justice/mediation, the so-called “family group conferencing”, has also been shown to be able to reduce rates of reoffending.

83. One of the criticisms of restorative justice/mediation relates to the fact that legal representation is not present. A counter argument to this concerns the fact that if solicitors/advocates take part in these processes, the young person can have the solicitor/advocate argue their case for them and the young person does not have to engage personally with his or her responsibilities for any offences or harm caused. Any system of welfare-based or restorative approaches must take into account the requirements of the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, in particular in terms of proportionality and avoidance of degrading treatment.<sup>33</sup>

## **6. Conclusions**

84. The rapporteur took note of the many good examples of initiatives around Europe. Evidence strongly suggests that welfare-based responses lead to greater social inclusion, greater participation and achieving greater commitment to education and socially acceptable behaviour. They should tackle different levels of social exclusion, offending and disaffection and incorporate mechanisms to ensure children’s best interests and to protect their rights.

85. Economic recovery and greater social justice are essential to prevent delinquency, but must not be regarded as the answer to all the problems, since it is also necessary to establish a family policy, a social policy, an integration policy and a citizenship policy in tune with the lives and the needs of today’s young people.

86. National legal and policy provisions should see socially excluded young people and young offenders as children first, offenders and/or antisocial individuals second. Retribution and punishment, viewing young people as being responsible for their actions, to be controlled and punished for transgressions which are criminal, is, in my opinion, not only secondary, but the wrong approach. It is important to find the right balance between protecting the community – and other young people – from crime, while making the best possible use

---

32. Paul Soto Hardiman, Sian Jones, Steve McAdam, Simon Hallsworth and Alex Allain, *Youth and exclusion in disadvantaged urban areas: addressing the causes of violence*, Trends in Social Cohesion No. 8, Council of Europe Publishing, April 2004, ISBN 92-871-5389-2.

33. For example, the Scottish children’s hearings system, which is welfare based, was recently amended to ensure that an appropriate justice-based system assesses guilt before moving into welfare and restorative systems.

of the fact that a child/young person is a developing, learning human being and is still open to positive socialising influences. Welfare services and juvenile justice systems can and must work together, hand-in-hand, in order to educate children and young people with a view to them growing up to become independent personalities who are nevertheless integrated into society, and thus accept society's norms (which includes avoiding criminal and anti-social behaviour).

87. Inter-agency and multi-professional working is a key prerequisite to the prevention and rehabilitation of educationally disaffected young people and young offenders. Locally organised, multi-professional, multi-agency teams should include senior management representatives from schools, children's social care services, police, probation, health, mental health agencies, drug and alcohol agencies and youth work agencies. They would also benefit from career-focused agencies, which provide education, training, careers and work advice and support, to identify risks and action plans for excluded groups, communities and individual young people.

88. In the last two decades, different states within Europe, like the United Kingdom and the Netherlands, have developed policies and plans based less on prevention of youth offending and addressing the welfare needs of young offenders, and more on retribution and behaviour-focused programmes. The rapporteur believes that this is in contrast to the evidence of cost-effective welfare and community-based measures.

89. The Parliamentary Assembly should thus recommend that member states develop further their child and youth welfare services to prevent offending (and reoffending) in the first place, concentrating on social measures, education and rehabilitation of young offenders. Member states should also be encouraged to fully implement the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11), which puts the emphasis on community sanctions and measures while safeguarding children and young people's rights in all settings (from court proceedings to the deprivation of liberty).