

COLPI



THE ROLE OF EDUCATION
IN JUVENILE JUSTICE IN
EASTERN EUROPE AND
THE FORMER SOVIET UNION

Barbara Henkes

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B a r b a r a H e n k e s

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I. INTRODUCTION

COLPI has made the reform of juvenile justice systems in Eastern Europe and the former Soviet Union a priority for the year 2000. Therefore, it is developing a new programming line in the field of juvenile justice. The overall goal of the programme is to promote a more child-friendly and child-centred juvenile justice system in the region, based on human rights, and in accordance with the principles laid down in the UN Convention on the Rights of the Child (UNCRC). The COLPI strategy will concentrate on criminal juvenile justice: promoting the establishment of diversion programmes; training professional groups in the principles and applications of the UN Convention on the Rights of the Child; supporting harmonisation of national legislation with the UNCRC; training lawyers; and developing specialised educational programmes for incarcerated youth.

This paper will discuss the reformative and developmental roles that education can play in (criminal) juvenile justice systems. It is intended to assist national foundations, and in particular those officers involved in educational programming, in making more informed decisions about the strategies and programmes to be supported. The paper does not vend itself out as a study or research project, nor will it provide clear-cut answers as to how to integrate educational tools into reforms of the juvenile justice system in each country. The paper does strive to give law and education officers of the national foundations a rough framework for making decisions about educational approaches and programmes for incarcerated youth. Further, the paper provides examples of educational programmes and approaches in more developed juvenile justice systems, as well as in new juvenile justice systems. These examples are set apart in boxes, and are intended to help the reader form an idea of the various possibilities in the field of specialised education for these young people. The national foundations, with their deep knowledge of the local situation, will need to decide which approaches are most feasible. Thus the paper is designed to provide a framework for generating questions and reflection, and for identifying problem areas, possibilities and priorities.

Developing educational programmes within criminal juvenile justice systems requires the involvement of the disciplines of both education and law. The promotion of educational tools in juvenile justice systems is as much a matter of justice as of welfare. As I will explain below, penal sanctions and educational assistance given to these youth are two sides of the same coin, aimed at the re-integration of the juvenile. Therefore, the choice for any educational tool will strongly depend on the juvenile (criminal) justice and penitentiary systems and practices that are present in each country.

At the end of 2000, COLPI will provide the results of a detailed research into the legislative framework of juvenile justice. This paper should be read and understood in close connection with COLPI's legislative research. Knowledge of the legal framework is indispensable for making well-informed decisions about educational approaches within juvenile justice. In fact, I strongly suggest joint decision-making by law and education officers of the national foundations on issues concerning education within juvenile justice programmes.

The first part of the paper deals with general concepts of (criminal) juvenile justice (chapters I-VI). The second part (chapters VII and VIII) discusses possible target groups and strategies for specialised education for incarcerated juveniles.¹

II. WHAT IS JUVENILE JUSTICE?

II.1. Scope

"Juvenile justice" is rarely used with only one standard meaning. The term could, for example, exclude minors under the age of criminal responsibility; it could be restricted to the legal status of juvenile offenders; or it could be used in a broad sense: all situations in which protection of juveniles by the authorities would, in some way or the other, be an issue, including non-criminal situations. Criminal juvenile justice, as understood by the Committee on the Rights of the Child, refers to a separate justice system for juveniles, in which the juvenile suspect enjoys all due process and human rights, while also receiving special protection because he/she is under-aged. The Committee on the Rights of the Child interprets juvenile justice in the broad meaning: it also requires special protection for vulnerable groups (refugees, minorities, exploited children, etc.), especially when deprivation of liberty or separation from the parents is at stake.²

In this paper, I will refer to juveniles who are in conflict with the law, and not youths who are detained for other reasons than a penal sanction.

II.2. The stages of juvenile justice

The juvenile justice systems can be divided into three phases. The first phase covers the prevention of youth criminality. This phase can include implementing a social policy aimed at the best possible development of children, from providing social and pedagogical assistance to 'high risk' families or environments, up to individual coaching of juveniles who find themselves at the borderline of criminal behaviour. The second phase of the juvenile justice 'chain', the repression phase, constitutes the formal part of the system. This phase occurs from the moment the juvenile is being held responsible for an offence and lasts throughout the criminal proceeding and the detention. The last phase includes the re-socialisation of the criminal juvenile, which can start when he/she is still in isolation, or after he/she has been released.

It will be helpful to bear in mind that the line between prevention and repression is difficult to draw. Alternatives to custody imposed on first-time offenders are viewed

by some as part of the repression phase, while by others as part of the prevention phase. Understandably, the view taken can affect the educational approach that is applied to the juvenile.

II.3. Visions of juvenile justice

Throughout history and cultures, one can identify different visions for the purpose of the applied justice models with respect to juveniles.

In the protection model, the child is seen as vulnerable and in need of protection by the authorities if parents fail. Offensive behaviour is seen a result of backward social and economic conditions. The authorities have the right to intervene in family life in order to protect and treat the child. By placing the treatment of the child in a central position, the child receives punishment which may not be proportional to the committed offence³. The juvenile courts assume the role of the parents. De-institutionalised efforts, e.g. alternative sanctions, are carried out under the banner of protection, because the child is more or less seen as a victim. This approach leaves the child without the opportunity to take responsibility for his/her actions, let alone make decisions about the future.

At the other side is the punitive model. In this approach the juvenile enjoys all due process rights, and he/she is expected to be capable of exercising those rights. Juveniles are seen as participating members of society and as able to tell right from wrong. In this approach, the young person is held responsible for criminal offences. This approach is often combined with a more severe reaction of the authorities to the criminal behaviour of juveniles, in defence of the society. The line of thinking here is that the juvenile is fully capable of taking responsibility for their actions, and he/she is not in need of special protection. The critics of the punitive model say that respecting the due process rights of juveniles – but not taking other factors into account – does not guarantee the legal protection of juveniles. Criminal juvenile justice adds legal provisions to existing human rights treaties which go beyond due process rights as applied to adults. The added legal provisions safeguard special protection with respect to the juvenile. Critics point to the risk in a punitive model that criminal juvenile justice becomes a means for the fight against crime at the expense of the interest of the juvenile.

The model of criminal juvenile justice that is promoted by the UN Convention on the Rights of the Child gives full advantage to the notion that society needs to be

protected from the criminal behaviour of juveniles. But the model also asserts that juvenile justice should respect the due process rights of the juvenile and provide him/her with special protection. The UNCRC and the three UN resolutions are designed for establishing juvenile justice systems in which the needs of the juvenile are central, guaranteeing and promoting the rights and the dignity of the juvenile, and respecting the age of the juvenile and his/her rights to participate in society. However, the UN position is that the notion "human rights" rather than the more welfare-oriented "interest of the juvenile" should be incorporated into juvenile justice legislation in order to achieve this dual aim."⁴

In many countries one can discern a two-tier system. In such systems, child protection can be applied on the one hand to the execution of penalties (sending a juvenile offender to a re-education colony under a civil measure) and to the settlement of civil cases (e.g., status offences) on the other. In such rather fuzzy systems, criminal juvenile justice and child protection are barely separated from each other. The CRC does not disapprove of the welfare system, but it does require that criminal juvenile justice and child protection be clearly distinguished from each other.

Finally, it is important to stress the holistic approach of the CRC towards the implementation of the UNCRC and the three UN resolutions. The CRC stresses that all individual rights included in the CRC and the resolutions, as well as rights as a whole, are necessary for the development of the juvenile. This means, for example, that when national legislation stipulates that detention of a juvenile is a last resort, this provision is rather useless if there are no other facilities within society to coach or educate a juvenile. Deprivation of liberty, which on paper is aimed at re-integration of the juvenile, becomes meaningless if there are no sufficient educational facilities or other useful activities available for the juvenile.⁵ Thus, the holistic approach of the CRC prevents the articles from being read and interpreted separately.

As an aside, I should mention that in the literature one can find the term 'rehabilitation' next to 're-integration'. Rehabilitation is used in various ways: rehabilitation of victims; rehabilitation of first-time offenders; or of incarcerated juveniles. One can find the term in the Beijing Rules, however in the UNCRC and two other Rules, it has been replaced with the term 're-integration'. This term is supposed to sound less patronising, and to refer more to the role of society and direct social environment in the development of the juvenile's sense of responsibility.

III. RELEVANT PROVISIONS IN THE UN CONVENTION ON THE RIGHTS OF THE CHILD

III.1 The right to education as applied to incarcerated juveniles

Article 28 of the UN Convention on the Rights of the Child defines education as a right of all children, and requires that primary education be compulsory and available free to all. Secondary education should be made available for all, if need be, with financial assistance from the state for all. The holistic interpretation of the UNCRC should already be a safeguard for the right to education of incarcerated juveniles. Education is an inseparable part of the development of a child, under whichever circumstances he/she finds himself. However, more specifically for juveniles in isolation, the right to education, vocational training and work is outlined in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (art. 38-46). These rules stress the need for re-integration of the child into society. In these articles a non-exhaustive, but extensive, programme is presented: juveniles of compulsory school age have the right "to education suited to his or her needs and abilities and designed to prepare him or her for return into society." Moreover, "Such education should be provided outside the detention facility in community schools wherever possible [...]". Further, the articles stipulate that juveniles above school age should be permitted and stimulated to receive additional education; that diplomas should not refer to the place where it was received; that detention facilities should have an adequate and appropriate library. As to vocational training, the Rules state that "every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment" and that juveniles should have the right to select the vocational training themselves, insofar as possible within the institutional framework. In addition to vocational training, juveniles should have the opportunity to participate in the paid labour within a local community.

Equally important to the purpose of education within juvenile justice are the four general guidelines of the UN Convention: non-discrimination (art. 2), best interests of the child (art. 3), the right to life, survival and development (art. 6), and the views of the child (art. 12). The non-discrimination criteria specifically calls for investigation into whether children in institutions receive quality education. The best interests of the child should take priority in any decision of the authorities affecting chil-

dren and refers, in the case of education, to school conditions and curriculum⁶. "Development" in article 6 should be interpreted in the broadest sense, meaning mental, emotional, social, and other aspects of development. Article 12, lastly, refers to the right of a child to participate and to be heard, which should be reflected in the education the child receives.

III.2 Responsibility of state agencies to educate about the UNCRC

Article 42 of the UNCRC reads: "State Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

Implementation of the provisions of the UNCRC and the Guidelines will fail if the juvenile does not have an idea about his/her rights under the CRC, and if the relevant judicial bodies do not possess sufficient knowledge about the CRC. Implementation will also fail if the authorities do not succeed in creating acceptance within society for the principles of the UNCRC, and understanding of their implications for the national juvenile justice system.

However, not only the authorities are responsible for educating the public and the judicial branch in the CRC. National and international non-governmental organisations also share this responsibility.⁷ In addition, under the CRC (in particular art. 12, the right to participate) the juvenile should not only receive information, but should also be given the opportunity to actually participate in the provision of information itself.

IV. FORMING AN UNDERSTANDING OF THE PRACTICE OF EDUCATING INCARCERATED YOUTH: SOURCES OF INFORMATION

The educational approaches towards juveniles in conflict with the law are embedded in the overall legal and social systems, practices and conditions in a country. Taking account of the holistic approach of the UNCRC, one should look at all components in order to assess the needs and strengths in the education of these young people. This includes the basic material conditions for incarcerated juveniles, via the legal framework and its implementation in practice, up to the perceptions within society pertaining to dealing with juvenile delinquency.

IV.1. The importance of statistics

When planning a specialised educational course for these juveniles, a first step should be to determine the target group. A juvenile being held on remand or a juvenile having already served most of his/her prison term will need different educational approaches. Therefore, one needs to discern (1) the different phases in the criminal justice system, (2) how big the group in a certain phase is, and (3) how the system deals with the juveniles in the particular phase. Such legal and statistical analysis will not only help in determining which educational tools to apply, but could help establish whether the system allows for an outside educator to step in (this is often less clear in less developed juvenile justice systems than in more developed ones). This may sound obvious. However, unravelling the criminal justice system into its different phases is not easy and requires considerable knowledge. The legislative analysis that COLPI is sponsoring will contribute to this knowledge base.

The following questions can help guide data-collection:

For the police:

- How many juveniles come into contact with the police?
- How many of them are forwarded to the public prosecutor, and on what grounds?
- How many of these cases are dismissed, and on what grounds?
- How many of juveniles are referred to another institution, and on what grounds?
- What are the institutions to which the juvenile can be referred by the police, and what are their areas of competence?

For the public prosecutor:

- How many juveniles are forwarded to the public prosecutor?
- How many of them are further prosecuted (i.e. forwarded to the court), and on what grounds?
- How many of these cases are dismissed, and on what grounds?
- How many cases are settled by the public prosecutor (e.g. fine, task, etc.)? If the public prosecutor has the authority to impose an alternative sanction, how and on which grounds are these applied?

For the judge:

- How many juveniles appear before the court?
- How many of them are discharged or acquitted, and on what grounds?
- How many of them receive a fine, and on what grounds?
- How many of them receive another task (work or educational), and on what grounds?
- Does the judge have the authority to impose a task, and on what grounds are these applied?
- How many juveniles are sent to a penal institution, and on what grounds?

Each authority in the juvenile justice chain has some discretion in dealing with the case of a juvenile who has committed an offence (though in many East European and Former Soviet Union countries only the court has this discretion). Research could show how and on the basis of which criteria the judicial authorities make use of their authority. For example, in Romania 11.800 juveniles were sentenced for criminal activity in 1997. The number of juveniles (including pre-trial detention) detained in penitentiary institutions was 2.613, as of 1 January 1998. The obvious question is how the cases of the other sentenced juveniles have been dealt with (e.g. acquittal, fine, alternative punishment, educational measure, etc.), and in which numbers and on which grounds. In Russia, where there are no substantive alternatives to imprisonment, 73,7% of the sentenced juveniles received a provisional conviction, and 25% were sent to prison in 1998⁹.

Further, it is important to take into account the term of (pre-trial) detention of a juvenile (suspected or convicted), which can be extremely long in some East European and FSU countries. Often there is also the possibility to transfer the juvenile to an adult prison upon his/her reaching the age of 18 or 21.

Lastly, data on the amount of available educators and social workers/psychologists should be known, insofar possible. This concerns in particular the educators in penal juvenile institutions, and whether they are in-house educators or outside edu-

cators. Often one will find that in juvenile penal institutions there is one educator for every 15 to 20 incarcerated juveniles, which is very little in comparison to the actual needs of the youth.

Legal analysis and statistical research will shed light on the decisions authorities make concerning a juvenile in conflict with law, and could reveal whether a more welfare-oriented or punitive approach is being applied. Moreover, statistics will reveal the different groups of youth being dealt with by the legal system; how long they remain in the justice system; and which opportunities the law (available alternatives) and practice (available educators and social workers) provides them to receive specialized as well as regular education.

IV.2. Information from State Reports and other sources on the state of education

A further source of information as how juveniles in conflict with law are dealt with by the authorities are the State Reports to the Committee on the Rights of the Child. It is, however, extremely difficult to collect information from the State Reports to the CRC on the type of educational support given to children in penitentiary institutions, on prevention schemes, or on re-socialisation programmes. The problem is that art. 28 CRC refers to education in general, and that arts. 37 and 40 CRC concentrate on due process rights of a juvenile in conflict with the law. States do mention in their reports whether a social juvenile policy is implemented, and which diversion or alternative sanctions are available in the juvenile justice system, but their principles, substance, extent, and practice are not discussed. Thus, the quality and intensity of (specialised) education for these youth are difficult to determine from official sources.

In **Russia**, for example, a first-time offender may avoid judicial procedure "if it is recognised that correction may be achieved by use of compulsory measures of an educative nature."¹⁰ Compulsory education is also available as an alternative sentence.¹¹ As to education in corrective labour (penal) colonies, the government reports to the UN Human Rights Committee that each colony has a general school and an industrial trade school. Almost all juveniles have the opportunity of increasing their level of education and of acquiring an occupation or trade on release.¹² In contrast, the Russian government informed the CRC that, as to the educational and vocational programmes in the penal institutions, some correctional centres offer vocational training and occupational activity, with visits from NGOs.¹³ An independent source throws light on the general education in colonies: teachers in colonies

are generally not only unprepared to deal with educational needs, but also are below average teachers because no one wants to teach in colonies.¹⁴

The initial report of **Ukraine** to the CRC did not mention any alternative sanctions or educational support. However, the authorities seem to provide some programmes for the social rehabilitation of sentenced juveniles after they have been released. The same programme provides cultural and sports activities for youth in educational-labour colonies.¹⁵ According to one active visitor of youth institutions in Ukraine, the authorities claim to offer differentiated educational programmes that cover all the different levels of development among the convicted juveniles. But he doubts whether this is the case in practice, although admitting it is very difficult to gain some insight in this matter, even on the spot.¹⁶ It might be telling that during visits to libraries in Ukrainian juvenile prisons the only books on law he saw concerned the Constitutional Law.

With respect to **Georgia** some alternative sanctions are available, among which, however, there are no programmes of an educational nature. The court may decide that the juvenile is capable of reform without criminal penalty, and can impose measures such as public apology, warning, placing under observation, and so forth.¹⁷ While serving a sentence, the juveniles receive regular education, and have access to sport facilities. It should be added that a Georgian NGO stated that in the juvenile prison for boys, education is in practice limited to only a few topics, although the prison school looks well-equipped and pleasant. According to the report prepared for the U.N., vocational training is being planned.¹⁸

For **Romania**-though the information is slightly outdated 1994 report stated that "during the academic year 1992-93, 1365 juveniles participated in intensive courses ranging from the primary to college levels. There are no specialist teachers for the rehabilitation of juvenile delinquents. There are also large gaps in the syllabus. The emphasis is on apprenticeship for a trade, and general education is neglected."¹⁹

The government of **Lithuania** reported to the Human Rights Committee a number of preventive educative measures that can be imposed by a court for minor crimes, including the performance of public work and detention in a reformatory institution.²⁰ As to education in penal institutions, the government attaches importance to creating conditions in which the juveniles receive general secondary education, and are professionally prepared for work and life in society.²¹ However, the authorities have not yet managed to put this principle into practice, as there are no significant special educative programmes in the closed facilities. Sometimes psychologists and other specialists visit the facilities; but on the whole there is a lack of experienced

social workers and educators in Lithuania. At the basic level, general education is compulsory until a certain age, however in practice the teachers in the colonies have to deal with very low levels of education among the juveniles.²²

Though the above information is valuable, it remains very limited. Through the official State Reports to the CRC, one does not gain insight in the whole educational policy and practice towards juveniles in conflict with the law. The State Reports only mention when an institution or provision is apparently in place or not, which, in a post-communist context, means precious little. Non-official sources often present a completely contrasting picture.

I would draw two conclusions from this peripheral research. First, there is a need for in-depth research in each country to determine which educational measures and policies are being implemented with respect to juveniles in conflict with the law. Such research should be done on the spot, as there are many different stakeholders in the field of education – e.g. Ministry of Justice, Ministry of Education, Ministry of Family, etc, NGOs, penal and non-penal institutions – who often do not themselves have the full picture. Secondly, NGOs could play a more active role in providing the Committee with information.

IV.3. Other international efforts in the field of education of incarcerated youth

The lack of information on the quality and intensity of (specialised) education provided to these minors is reflected in international efforts to improve education within the framework of juvenile justice systems.

Apart from the repeated calls from the CRC for more sustained efforts in this field, the 1998 General Report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) calls for regimes to be tailored to the specific needs of the juveniles and staff trained in dealing with youth. The CPT, furthermore, encourages a multidisciplinary approach in order to create a secure educative and socio-therapeutic environment for the juveniles in custody. Imprisoned juveniles should receive a full programme of education, sports, vocational training and other purposeful activities.²³ Moreover, this education should be guaranteed without regard to gender, as the CPT has often noticed that female juvenile prisoners are typically offered courses in sewing or handicrafts.

On a practical level, several international non-governmental organisations have engaged themselves in reforming juvenile justice in Eastern Europe and the former Soviet Union. Important to mention are the Council of Europe's Programme for Children (launched in November 1998), which is aimed at the promotion, participation and protection of children. The Forum consists of representatives of a number of relevant European Committees, Member States, Directorates of the Council of Europe, the Parliamentary Assembly, European Commission, UN agencies, and international NGOs. Though new ways of dealing with juvenile delinquency is on its agenda, the different working groups of the programme have not elaborated this topic as yet.

Organisations like UNICEF, Defence for Children International and Save the Children are very dedicated to the reform of the practice and system of juvenile justice, and implement educational activities responding to country-specific needs and possibilities.

In the Republic of Georgia, UNICEF endeavors to assist the government in implementing the Convention for the Rights of the Child (CRC), by means of: 1) legislative review, to be carried out by local NGOs; 2) developing structures within the government for implementing the CRC; 3) assistance to the re-establishment of the State Commission of Women's and Children's Issues; 4) drafting of a report on the situation of women and children in Georgia, in which all four chapters of the CRC will be dealt with (the report should be finalized by the end of this year); 5) raising awareness among the general public on the CRC.

As of 2001, UNICEF will implement a Social Development Programme within the framework of CRC in Georgia. In addition, UNICEF has a programme for children in need of special protection. Lastly, it has trained a group of representatives from different institutions (e.g. Ministry of Education, orphanages, local NGOs, penitentiary institutions, teachers) in social work. UNICEF does not have the means to support this group in carrying on the training.

UN Volunteers in Georgia has conducted a train-the-trainers programme in 'methods of non-violent behaviour' for teachers, psychologists, NGO leaders, students, etc. UN Volunteers intends to bring this programme to the prisons. It is also planning to adapt a Dutch project called "Lifestyle for Juveniles" for implementation in the three rehabilitation centres in Georgia (half-open penitentiary colonies).²⁴

V. RE-INTEGRATION INTO SOCIETY

According to the UNCRC, the purpose of a juvenile justice system is the successful and swift re-integration of the juvenile into society. Re-integration is assumed to be best achieved by means of extra-judicial settlement of offences, rather than the deprivation of liberty. The measures that are applied for extra-judicial settlement should reflect a full arsenal of assistance programmes, which can be tailored to the reintegration needs of each juvenile. Modern views on the re-integration of a juvenile offender or suspect centralise the involvement of the community. The community is seen as playing an active and supportive role so that the young offender can reclaim a positive place in society.

V.1. Diversion and re-integration

Diversion (art. 18 Beijing Rules) is one of the pillars of the UNCRC, together with decriminalisation, relinquishment of imprisonment, and reintegration of the juvenile²⁵. The UNCRC was drafted with the vision to avoid the painful consequences of imprisonment. Under a diversionary scheme, a juvenile offender who confesses to his/her crime is offered the option to go through extra-judicial proceedings (i.e. prosecution is stopped, and he/she will not be proceed to court). In exchange, he/she should fulfil a task (e.g. paying back damages, making apologies, complete an educational or working project, etc.). He/she will not receive an annotation of the committed offence.

Ideally, in any stage of the criminal judicial proceedings, the possibility should exist to impose an extra-judicial measure. Judicial authorities of all kinds – the police officer, the public prosecutor and the juvenile judge – should be allowed to impose such measure as long as they have had specialised education or training (art. 12, 22 Beijing Rules jo. art. 81087 Havana Rules jo. art. 58 Riyadh Guidelines).²⁶

The main aim of diversion is the re-education and re-socialisation of the juvenile offender. Within this approach, society wants to make the juvenile offender aware of his/her wrong doings in a humane and child-friendly way, and guide him/her to a life that will no longer be offensive. Although unlearning negative behaviour is the aim, diversion does not always include formal educational programmes per se. For example, the assignment of apologising to the victim would have a pedagogical aim, but could not be categorised as educational.

Diversion is supposed to enforce the re-integration process of the juvenile offender. By allowing the juvenile suspect to sustain his/her ties with family and community and by not creating a criminal record, the juvenile is given the possibility to start from 'square one'.

What separates diversion programmes from welfare and education programmes is its strong and inevitable embedding in the justice system. The juvenile in conflict with the law has throughout the procedures against him/her recourse to the formal justice system, if he/she thinks that his/her due process rights are being infringed. In a welfare system with no link to the justice system, such due process opportunities would be doubtful.

In many criminal codes in western countries the extra-judicial provisions in the legislations have not been used for many years. Only with the insight that a great deal of small criminality is age-related and with the increasing pressure on the penitentiary systems, the significance and thus the application of extra-judicial measures have grown. One should bear in mind, however, that the central aim of diversion is to keep the juvenile away from formal court proceedings in order to benefit the juvenile, and not to solve the problems of an overloaded court system.

V. 2. Diversion experience in the Netherlands

Only a limited amount of countries world-wide applies extra-judicial measures of punishment, as understood from the State Reports to the UNCRC.²⁷ The Netherlands is the only country that offers the possibility of extra-judicial measures at all three juvenile justice phases (i.e. police, public prosecutor, judge). This situation is quite unique, and consequently deserves a detailed presentation.

The institution for police dismissal is called HALT (Het Alternatief: the alternative), and is outlined in the penal code. The HALT bureaus have been established by the local authorities in co-operation with the state prosecution service. The HALT bureaus are private organisations that work in close co-operation with police, and operate under the auspices of the public prosecutor's office. The first HALT bureau was established as an experiment, which was then reiterated in the whole country, and incorporated in the law.

The police can refer a juvenile first-time offender (provided that it concerns a small crime or petty theft) to a HALT bureau. The charges against him or her can be dropped if he/she confesses to the crime and agrees to participate in a HALT pro-

ject. The offender actually consents to the type of project. A HALT project should not exceed 20 hours. HALT measures include carrying out tasks or work related to the offence: payment for the damage used with offenders above 14 years of age), activities of an educational nature, or a combination of these. If the task has not been carried out satisfactorily, the juvenile will be further prosecuted.

At a stage subsequent to the 'police dismissal', the public prosecutor and the juvenile judge have the option to impose a so-called 'task' or 'learning' penalty. The Child Protection Board, which is a part of the Ministry of Justice, is responsible for carrying out these penalties, as well as for youth rehabilitation in general. The actual projects are delegated to a number of non-governmental organisations. The penalties should not exceed 40 hours. Examples of task and learning penalties are:

- a course to make the juvenile aware of the harmful consequences of his/her criminal behaviour, including a visit to a juvenile detention centre;
- a course to make the juvenile aware of the danger of fireworks;
- a training in social skills;
- digging out an old blockhouse as part of a team, in order to practice social competence;
- a course in leading discussions and dealing with one's own aggression;
- a vocational course in a day-training centre;
- working in a kitchen of a home for disabled or elderly persons;
- damage repair work; and
- sex education for young sex offenders.²⁸

Although generally being seen as a success, the extra-judicial measures-and in particular HALT-have also been criticised. HALT has been accused of encouraging judicial settlement rather than reducing it, since cases that once were settled by a mere warning or dismissal are now being treated as a suspended dismissal. Taking this perspective, the sanction policy seems to have become harsher instead of more humane, according to critics.²⁹

General concerns have been expressed about diversion and alternative systems in the Netherlands and elsewhere. The most significant is that diversion entails the risk of a reduction of due process rights, which the juvenile would have in a normal court proceeding.³⁰ The juvenile has to admit guilt and in avoiding formal proceedings, may not be fully aware of the possibilities that legal representation would offer. Such risk could be avoided if, at all phases, recourse to formal due process procedures is guaranteed.

V. 3. Restorative justice

Restorative justice provides alternatives to court proceedings and is intended to avoid detention³¹. The crucial element in restorative justice, which distinguishes it from the welfare approach, is that the juvenile takes responsibility for his/her illegal act. The case should be dealt with promptly and in clear connection with the offence committed. Not only the family and the community are involved in the process, but also the juvenile him/herself can participate in selecting the appropriate measure. Contact with the formal justice system is avoided, and deprivation of liberty is ruled out.³²

New Zealand at the end of the eighties chose for a restorative justice system in order to separate the welfare from the justice approach, and for the Maori to empower their youth. The so-called "Family Group Conferences" stress the retribution, the personal responsibility of the offender, and pay attention to the traditional culture and values of the Maori population, which had not been translated into the judicial system when New Zealand became colonised³³. In 1994 South Australia followed this example, and adopted the Family Group Conference as one of its two diversionary models (the other one being a police warning). In the Australian Family Group Conference a police officer, the young offender and a youth justice co-ordinator (the last can represent a wide range of backgrounds, but is not a member of the judiciary participate and, at the request of the offender's family, also the victim). At the conference an agreement can be proposed, thus avoiding court procedures. The police, though, have the power of veto over the agreement. Both the New Zealand as the South Australian experiences claim to have reduced recidivism considerably as a result of the Family Group Conferences.³⁴

Very often, though not always, restorative justice emphasises restitution to the victim. If possible, the offender should make up for the offence to the victim or community. The community serves as a facilitator of the reconciliation process, with the ultimate aim to make the community safer and more secure. The offender is supposed to come out of the process more competent than before since he has taken responsibility for his mischief, has repaired the harm, and has remained a member of the community. Increasing the offender's ability to function as a responsible citizen would theoretically strengthen an effective re-integration process.³⁵

V. 4. Re-socialisation and after-care services

These two terms basically mean the same: adjusting the juvenile prisoner to life after prison, and to reduce the chance of recidivism. After-care starts following the release of the prisoner, while re-socialisation can begin when the juvenile is still in detention.

In Bulgaria there is one prison for boys, and none for girls. (There is one girl prisoner, detained in the women prison.) There are about 170 boys detained, who spend an average of 160 days in prison. Most of them have been convicted of theft and deceit. A very small percentage have been convicted for violent crimes (rape, murder). About half of the boys do not have any contact whatsoever with their relatives. Approximately 10-15% sees their relatives about 1-2 times a month, although the amount of visits is in practice not restricted. Last year, 20 boys were transferred to adult prisons after they have turned 18. The percentage of recidivism is 30%. The number of minorities could not be determined.

The teachers in the prisons have a dual task: they teach one subject, and they serve as mentor/social worker for a group of boys. The teacher student ratio is 1:20. The teachers/mentors are under contract with the department for correctional facilities rather than the Ministry of Education. The curriculum used in the prison school is the regular national curriculum. In addition, there is a workshop for making furniture, and some juveniles on common regime take a technical course outside the prison.

According to the vision of the deputy head of correctional facilities, the juveniles in prison would benefit most from an extended education, in the broad sense. He pointed out that skills education for example has a positive influence more inside the prison rather than after their release. It gives the boys something new and challenging to do. But, apparently skills education does not help them to find work, since for any job one should have at least finished primary school, which is often not the case with the boys in prison. Logically, any course should be short and intensive, as the average time in prison is 160 days.

One NGO is working with the juvenile prison, and is mainly involved in charity-related work. Renovation has been undertaken, and a swimming pool and a chapel have been built.³⁶

In most countries an after-care service will be very practically oriented: guidance in finding a meaningful occupation, whether in studies or work, and housing. After-care services can also provide individual counselling, family counselling, educational courses, social skills courses, or therapeutic programmes to treat drug and alcohol addiction. In more developed social welfare systems, after-care services are provided for mainly by non-governmental organisations with funding from the government, which can thus steer a desired approach or policy.

VI. THE ROLE OF EDUCATION

The role of education is pervasive where it concerns efforts to re-socialise juvenile offenders and to foster their integration into society. Re-integration attempts are accompanied by the cautious assumption that juveniles can be lead back to a normal, non-criminal life, given the appropriate conditions. These conditions include many factors: from a healthy socio-economic environment to providing the juvenile with the psychological, educational and vocational tools for him/her to build a respectable life.

That is why all steps taken by law enforcement officials dealing with juvenile offenders have-or should have-a pedagogical tone. The main message should be that although society does not accept criminal behaviour, the juvenile has the opportunity to learn, take responsibility, and return to society. From the very moment the juvenile comes into contact with law up to the day or even after the day of his/her release, this message should be conveyed. A person can take responsibility for his own deeds if he has been given such responsibility, in other words, if he enjoys due process rights.

Thus pedagogy and due process rights are closely intertwined: by knowing and making use of his/her rights, the juvenile learns to behave as a responsible citizen. For example, the right of a juvenile to know the rules of the institution where he/she is held, is not only a formal right, but at the same time also an educational tool—a tool to teach the juvenile that he bears his own responsibility. Thus, a methodology intended to make the juvenile offender more self-reliable and responsible will not reach its aim if the juvenile has had no opportunity to study his/her rights and duties nor to apply this knowledge. Or, for that matter, if a juvenile has spent a long time in pre-trial detention, without explanation as to why certain decisions concerning his/her case are made, he/she cannot be expected to be receptive to a methodology aimed at learning from experience and accepting one's own responsibility.

This line of reasoning is behind a problem which is more common in western countries than non-western ones. A juvenile frequently gets a judgment from the judicial authorities—a fine, or educative punishment—only one and a half years following the arrest. Between the arrest and the judgment the juvenile has continued his/her normal life. Under these circumstances, he/she will likely experience the punishment as 'unjust', since the offence was committed a long time ago in the eyes of the offender. This will block the way for the juvenile to learn from the experience.

Therefore, education and specialised education are not added values to a true juvenile justice system, but are its indispensable components. The most important and basic role of education is that the juvenile should come out better than he/she came in: more capable and responsible, better educated and informed, more self-reliable and with more self-knowledge.

VII. STRATEGIES AND METHODS

In this chapter I will discuss possible strategies and methods for realising in practice the purpose of specialised education within the juvenile justice system. First, I will try to shed light on the different groups of juveniles within the system, as the social and legal characteristics of each group are the starting point of any educational strategy. I will then discuss possible strategies and methods for each phase – i.e. prevention, repression, re-socialisation – through which a juvenile offender is lead, and how specialised education can reinforce his/her re-integration into society at each stage.

As said before, education within a juvenile justice system does not only concern the juvenile. Judicial authorities and juvenile workers are formally obliged to implement a child-friendly juvenile justice policy within meaningful educational programmes, in accordance with the UNCRC. This means that these professionals need education in the principles of the UNCRC.

Responsibilities for education include raising awareness among the general public about the purpose of juvenile justice in accordance with the UNCRC. Without public support for child-centred ways of dealing with juvenile delinquency, it will be likely very difficult to bring about changes in more repressive systems.

VII.1. Different groups within the juvenile justice system

While general education distinguishes students on the basis of their performance, specialised education intends to give the juvenile at risk or in conflict with law extra help which could assist him/her to take a positive place in society. To provide such an education, one needs to be aware of the needs of the juvenile and his/her special position, and to establish goals for his/her development, given his/her situation.

Within the juvenile justice system, once can identify youth according to the following, non-exhaustive, categories:

- Juvenile offenders on remand or in police stations;
- First-time offenders who receive an alternative to imprisonment;
- First-time offenders who are imprisoned;

- Recidivist incarcerated juvenile offenders;
- Juvenile offenders who have committed a serious crime (murder, rape, violent robbery);
- Juveniles just before and after release from a penal institution; and
- Juveniles incarcerated under a civil measure.

It is equally important to take into account the social position of the juvenile such as:

- Juveniles in penal institutions who have special problems (for example, related to drugs, sex, feeble-mindedness, etc.);
- Juveniles in penal institutions belonging to a minority group (e.g. Roma, girls);
- Incarcerated juveniles without parents or care-takers; and
- Incarcerated juveniles without primary education and/or without basic literacy skills.

One will notice that I included juveniles who are incarcerated under a civil measure (e.g. in an educational colony, the detention in which can last many years in some countries), although I do not discuss this group in this paper. The reason for including this group is to attract attention to this sometimes vast group of juveniles, who live under conditions that are not quite known to the outside world in contrast to the more visible penal institutions for juveniles. International efforts to improve the situation of incarcerated juveniles often concentrate on the penal institutions. However, as mentioned above, the UN Convention is aimed at all children whose protection by the authorities is at stake.

Further, I included minority groups, without discussing these groups separately in this paper.³⁷ But again, these groups deserve special attention in educational terms: as in 'normal' society, the risk is already high that these groups are overlooked by regular educational programmes³⁸, let alone by specialised education.

VII.2. Specialised education as part of preventive strategies

Preventive strategies can be aimed at different groups, according to the level of risk a juvenile runs for coming in conflict with the law. The Riyadh Guidelines differentiate three layers.³⁹ The primary prevention is intended to strengthen social justice and equal opportunity, in order to tackle poverty and marginalisation as roots of crime. Secondary prevention is directed at children who are identified as more at risk. In the philosophy of the CRC, secondary prevention is

understood as the obligation of the state to assist parents in the upbringing of children and to intervene when it appears that parents are unable to assume their responsibilities. Tertiary prevention includes schemes to avoid unnecessary contact with the formal justice system. Here we see again that diversion can be understood as prevention and as repression (in the Riyadh Guideline it is seen as prevention: taking steps to bring the juvenile offender back to square one).

The primary prevention is too vast an area to deal with in this paper, as it includes all social policies and educational methods that promote social justice.

The secondary prevention level is not part of the formal criminal juvenile justice system, because in this phase there is no contact with the law. However, given the overflow of juveniles from this phase into the formal justice system, special educational efforts should receive attention.

Main points for secondary prevention level:

- A programme which is aimed at secondary crime prevention should closely define its target groups. The programme should address those juveniles who are supposed to be particularly susceptible to criminal activities. Not all juveniles who live in bad socio-economic conditions run the risk of becoming criminal, and educational efforts should be careful to not stigmatize a whole group.

One way to identify the group is post-facto: look for evidence that juveniles belonging to particular groups have demonstrated to be deviant, though not criminal, behaviour, such as a high rate of dropping out of school and status offences. Identifying such groups is likely to be time-consuming. On the other hand, evaluation of the impact of the programme will be easier, as the target group consists of individuals who can be followed after completion of the programme.

In Bulgaria, the Ministry of Education has established a network of school projects in order attract drop-outs back to school as well as to retain these youth. The school projects offer different approaches and methods according to the type of school, grade level and socio-economic factors. Drop-out rates are traditionally high among Roma children. However, as the economic crisis has lead to a general social deterioration, the drop-out phenomenon is increasingly less linked to children from specific ethnic backgrounds.

The main purpose is to have the school drop-outs enjoy education, by offering them interesting activities, developed in accordance with modern pedagogical methodologies. The projects are active in thirteen town and cities of Bulgaria. In Sofia, for example, out of 2200 pupils from six technical schools, 108 have been identified as drop-out or at risk of dropping-out.⁴⁰

- It is also possible to identify groups at risk prior to the collection of direct data on juvenile drop-out rates or the crime rate, by looking at antecedent factors such as the level of poverty and crime rate in a neighbourhood. However, evaluation of the impact of a preventative educational programme is more difficult, as it needs reliable quantifiable data.
- Given the local differences in the causes and manifestation of youth crime, secondary preventive educational programme calls upon the involvement of all members of the local community: authorities, police, parents, schools, and NGOs. The programme should bear a strong local ownership character.
- Secondary prevention education ought not to be confused with general empowerment of a socially excluded group. The emphasis must be on crime prevention: e.g. the negative consequences of criminal behaviour; risk of social exclusion in the long run; insight into the causes of crime on an individual and societal level; anti-drugs campaign; and ways and attitudes for avoiding a criminal environment.
- Given the fact that most juveniles at risk do not attend secondary school, but do participate in education at a lower level, vocational guidance could be a component of secondary crime prevention education.
- Participation of the juvenile at risk should be an important element of an educational programme, in order to stimulate his/her feeling of self-responsibility.
- Within formal education one can address a whole group which can be considered as being at risk. Outside of the formal education system whether the juveniles are at school age or have finished school the tools could be used for both individuals and their parents.
- Secondary preventive educational programmes could precede the development of educational programmes within diversionary programmes. The knowledge and experience gained in preventive work on working with difficult youth and involving different stakeholders could be further developed into diversionary programmes, in case legislation provides or will provide for this.

Methods and tools:

- Secondary crime prevention programmes can be conceived and implemented by local working groups, consisting of local government, judicial authorities, schools, NGOs, juveniles, and parents. Such groups can study the causes of youth crime on a local level, and put forward strategies as to how to address the problems by means of educational tools.
- Training of teachers in modern methodology seems to be needed. The crime prevention education should not result in "do's" and "don'ts", but should actively involve the pupils, and stimulate their critical and independent thinking.
- Training of psychologists and youth workers is necessary for working with individual juveniles at risk.
- In many western countries, the police are engaged in preventive work with schools. However, in most post-communist countries, police officers are not engaged in any social or pedagogical work, and the mere thought of them doing so seems unlikely. Until now, the police in this region, in general, cannot boast a public-friendly approach, or policing that goes beyond pure repression.

In the district Amsterdam (Netherlands), where one can find drug problems, small crime, and crime among socially excluded second-generation immigrants, the police conduct several preventive programmes directly aimed at juveniles at risk. For example, within the framework of school adoption, one police officer in the district visits one school regularly. He/she gives educational lectures at the school, while at the same time fulfilling a counsel function and dealing with offences committed at the school. The police have developed two exercise books which are used by the police officers when giving lectures. One is for children aged 7-8 years, the other for children aged 9-10 years. It also has made a video film "Cleaning up your act" which is used to explain to parents and children from ethnic minorities how the Dutch juvenile criminal justice works and what happens to a child when he/she is held by the police.

Further, the police offer targeted programmes. For example, bringing a group of children to a detained adult drug addict to talk with him/her (and who has of course given his agreement to this, and is willing to tell the children what a miserable life is waiting for them if they choose for drugs). Lastly, police participate in "last chance projects": juvenile offenders are given a last chance before they

will be forwarded to criminal proceedings. The projects are educational in nature and are aimed at diverting the juvenile from a criminal career, by offering him/her better perspectives. Sometimes the police co-operate with regional job centres in finding a paid job for high-risk juveniles; the police may also offer these juveniles practical training, for example supervising a swimming pool or shopping centre together with a trained police officer.⁴¹ Many more examples of educational preventive work can be found in other countries.⁴²

There are obvious drawbacks of using preventive educational programmes involving the police (e.g. "Police as Community Trainers" of Street Law Inc.). These seem to put emphasis on providing insight into the work of the police and the judicial system rather than on increasing self-reliability among high-risk juveniles in an East European or FSU context. First, as said before, this type of work is often not within the mandate of the police in Eastern Europe and the FSU. Secondly, the police structure needs to be to a certain extent decentralised in order to conduct community-based school programmes. Thirdly, the reputation of the police in some of the countries concerned is particularly bad. In Georgia, for example, parents dread any contact between their children and the police, as the police are said to ill-treat children and even sexually exploit them. On the less extreme side, countries may have police who are badly legally educated and badly informed legally speaking, are not open to educational programmes, and so on.

- As to the role of Legal and Human Rights Education, it seems appropriate to use LHRE as a secondary crime prevention educational tool. However, the emphasis should be put on crime prevention, and include vocational guidance. LHRE as a tool for encouraging juveniles in general to become responsible and critical citizens would fit better in primary prevention education.

VII.3. Specialised education as part of diversion programmes

Tertiary prevention includes schemes to avoid unnecessary contact with the formal justice system. Here we see again that diversion can be understood as both prevention and as repression. In the Riyadh Guideline, it is seen as prevention: taking steps to bring the juvenile offender back to square one⁴³. As explained earlier, diversion is intended to keep the juvenile offender outside the formal judicial proceedings, while safeguarding his/her due process rights.

Diversion can be applied only to a restricted group of juvenile offenders, and only if a legal provision in the penal code is in place. Each country will have its own criteria, but in general one can say that juveniles who have committed a serious crime, recidivists, and juvenile offenders suffering from mental disabilities are excluded from such programmes. Also, juveniles who claim to be innocent should not be dealt with in diversion programmes, as they will need to appeal to formal judicial proceedings.

Main points for tertiary prevention level:

- As the institution of diversion is still quite unknown in Eastern Europe and the former Soviet Union, raising public awareness and understanding will be crucial for a successful introduction. Such public campaigns should stress the due process rights a juvenile suspect should enjoy, and the moral right of a juvenile to start from square one. The public should be convinced that isolation of juveniles for minor, age-related crimes like theft does not help the juveniles become a better citizens, but in fact does the contrary. Society in the end does not benefit and does not become a safer place when all juvenile offenders are being locked away. This is not an easy message to convey, since the public usually calls for harsher punishments of juvenile offenders.

When promoting diversion, campaigns could also address the ill treatment of juvenile suspects and/or offenders by the judicial authorities, though this does not necessarily go together with enhancing understanding and support for diversion.

- Judicial authorities, legislators and the executive should be well informed about the possibilities of diversion, and the purposes of specialised education within the diversion system. However, the main message of an information campaign (and possibly training) ought to be the necessity of a child-friendly juvenile justice system that protects the due process rights of young suspects. The message should not be that diversion will alleviate overloaded court and penitentiary systems. This is not the purpose of the UNCRC and, besides, a diversion system could prove to be more expensive since it requires the state to implement a well-functioning and safeguarded infrastructure for diversion, including social workers, child care, specialised juvenile public prosecutors and judges, etc.
- A study should be conducted as to the possibility of experimentation in the field of diversion in every country. Any experimentation should still guarantee all due process rights of the juvenile offender. He/she should decide whether or not to accept the extra-judicial measures, and he/she should also have recourse to judi-

cial proceedings after having taken the extra-judicial road. All this might prove to be difficult if diversion is not anchored in law.

- If a new criminal code is being drafted, lobbying campaigns to incorporate diversion and specialised educational programmes within diversion should be carried out.
- Diversion needs the involvement of the local community. Local educators, social workers, employment services, companies, youth workers, and local government need to work together on the execution of diversionary programmes.
- Diversion programmes are set up to serve two main aims: 1. to impose a well-defined task on the juvenile offender that can be clearly evaluated, because non-fulfilment of the task will lead to re-opening the judicial procedure; and 2) to give him/her the needed psychological and educational support aimed at his/her re-integration. Specialised education within a diversion programme should reflect these principles.
- Restorative justice, as a diversionary tool, is centred around the process of going through shame (*vis-à-vis* the victim and community), taking responsibility, and making up for one's misdeeds. This means that specialised educational programmes within restorative justice programmes should address the juvenile's psychological needs.
- Restorative justice programmes could draw upon experience in conflict mediation. It will be worth investigating how mediation techniques already used locally could be transformed into restorative justice methods.
- Any educational programme should be in accordance with the four guidelines of the UNCRF. They should have no discrimination, be in the best interest of the child, include the participation of the child, and foster his/her right to development.
- For any specialised educational programme within diversion, training of all professional groups (social workers, judicial authorities, etc.) is necessary. While the training of judicial authorities (police, public prosecutor, judges) might be restricted to the procedural and technical aspects, the youth and social workers need to receive training in child psychology and pedagogy.

Methods and tools:

- When designing a specialised educational course within the framework of diversion, one should incorporate at least the following guidelines:
- The audience consists of first-time offenders who have committed a relatively small crime. The juvenile offenders ought to be approached as such.
- The programme should closely relate to the offence committed by the juvenile, and should be proportional to the seriousness of the crime. In most cases this will be petty theft. If the juvenile offender has not reached the age of civil liability, he/she can only carry out a task of an educational nature. When crime is related to offensive behaviour (e.g. aggressiveness) the educational task should include social skills training.
- The evaluation of the performance of the juvenile should be well established and clearly formulated, as well as the consequences of a non-satisfactory performance (for example, a return to judicial proceedings).
- The course should be restricted in time.
- The assigned educational tasks are typically carried out outside school hours (which adds to the punishment, as the juvenile has to spend his/her free time on the course) and under the supervision of trained social and youth workers and educators.
- Vocational guidance could be included in a diversion programme for the juvenile offender.

However, the impact of vocational training within diversion programmes could be doubtful. Due to the requirement of proportionality to the small crime, the task is not likely to cover the period needed to learn a profession.

- Some tasks assigned can be performed individually: repairing/paying the damage; apologising to the victim; performing community work; counselling (e.g. for drug-addiction, family problems, etc.); vocational training; and specialised education.
- Some tasks can also be performed in groups: community work; social skills training; and specialised education.

- Topics for specialised education that can be included within the framework of diversion and restorative justice could be: problem solving, decision making, dealing with one's aggressiveness, law in everyday life, dealing with sex-related issues in a healthy way, fireworks, alcohol and drugs, and unemployment.

The US programme "Street Law in Juvenile Court Alternative Settings" is aimed at teaching juveniles in conflict with the law about the juvenile (criminal) justice system, in order for them to make better informed decisions along the extra-judicial proceedings (i.e. within diversion). The programme can be given by community members. It is also used as part of probation services.⁴⁴

- Legal and human rights education (LHRE) could play a role within diversionary educational programmes. It can be incorporated into diversionary educational programmes with the following considerations:
 - The aims of LHRE within diversion should emphasize: increasing understanding for the injured party; developing the juvenile's social skills; and improving the understanding of the juvenile of the psychological and formal reactions of society to offensive behaviour.
 - LHRE can help the juvenile offender make better informed decisions about his/her own case, provided that the legal system in the country is stable.
 - Involvement of community members is possible in case a reasonable, practical legal knowledge is available among the community.
 - If LHRE does not stress the formal legal procedures, but rather the life skills, it could be given by social workers. They could combine LHRE with social skills training.

VII.4. In-prison educational programmes

Outside the formal education programme in penal juvenile detention settings, the programmes aimed at rehabilitation and re-integration of the offender can be manifold. The type of informal education depends on the offence committed, the age of the offender, his/her previous social environment, his/her intellectual capacity, his/her possible psychological problems, whether he/she is on remand or has already been convicted, and, last but not least, the capacity of the penal institution to divide the juveniles into appropriate groups.

In the Dutch high security prison and correction centre Teylingereind (for males from 12-18 years, on remand and after conviction), education is a major part of the daily activities. Although divided into groups of six (a total of 72 prisoners), most boys receive individual education since levels of education and intelligence and their specific needs very much differ. The approach of the institution is aimed at developing a respect for and understanding of rules, self-realisation, and self-responsibility. This approach is propagated in a basic programme that is provided for all boys.

Another, special programme, titled "EQUIP", stimulates a positive group culture; equips the boys with the skills to make moral judgements and to handle frustration and aggression; and teaches them social skills. The programme lasts 10 weeks and is divided into three sections: anger management; social skills, and social decision making (moral education).

Lastly, the institution provides an aftercare programme which starts in the last weeks of the juvenile's stay and continues after he has been released. The after-care programme aims at adjusting the boys to life after prison, and is carried out in co-operation with NGOs.

The average period of stay in the Teylingereind is three months, and can vary from a couple of days to two years.⁴⁵

With respect to education it is useful to note that Teylingereind applies penalties. In contrast to penalties (punishment), Dutch juvenile criminal law provides for measures (or punitive measures). The last one is imposed when, among others, at the time of the offence, the offender suffered from a defective development of sickly disturbance of mind. This measure is applied in serious criminal offences, and executed in a so-called treatment centre. The treatment centres offer assistance programmes to the juveniles, bearing a strong pedagogical character. They treat the offender for feeble-mindedness, drug addiction, sex crimes, hyperactivity, etc. There are 14 treatment centres in the Netherlands, which all are specialised in different fields, for example: provision of special education to increase chances on the labour market (boys, secure/open); retarded boys, sexual delinquents, and psychiatric care (boys, secure/open); modification of behaviour, individual therapy, retarded problems, psycho-therapy (boys and girls, secure/open); sexual delinquents, group-therapy, psycho-dynamic, borderline group, drug addicts, and adoption group (boys and girls, secure/open); crime-analysing, family-therapy, and psycho-therapy (boys, secure/open); to name only five of these centres.⁴⁶

Strategies:

- Specialised educational programmes should address the incarcerated juveniles in accordance with their special needs and situation. If no such distinction is made within the juvenile prison system, the programme could be aimed at establishing a division among different groups of juveniles.
- Specialised educational programmes, which aim to be comprehensive, should take into account that juveniles in some countries of Eastern Europe and the former Soviet Union serve disproportionately long sentences. Further, many juveniles are transferred to an adult prison upon the age of 18 or 21.

The Russian NGO "Sretenie" had been providing for some years food and clothing to juvenile prisoners in the Ardatov Juvenile Colony in the Nizhni Novgorod region, after which it started an auto-repair workshop in the colony. The workshop is being built with the participation of the prisoners, and with support from the local authorities.⁴⁷

- Vocational training is supposed to be very important for incarcerated youth. It helps them to prepare for a return to society and it gives them an occupation while serving their term.
- Educational programmes can have non-educational components, for example, providing food and clothes to the juvenile prisoners. But humanitarian work with young prisoners could also be the beginning of a longer-term project aimed at their rehabilitation.
- Penitentiary staff and in-prison educators should be trained in the principles of the UNCRC, and should be actively involved in the specialised educational programmes. NGOs that carry out the special educational courses should strive to establish the programme in the prison's curriculum.
- It could be doubted whether in-prison educational programmes should be strongly rooted in the local community. In many cases, this will simply not be feasible, as the required knowledge and experience is not available in the community where the prison is located. However, a special educational programme could be carried out outside the prison premises. To initiate such a programme, the local community will need to be strongly lobbied. The incarcerated juveniles often come from all parts of the country, and thus do not have a relation with the local community.

- Educational programmes can also concentrate solely on prison staff, thus directly transferring knowledge and skills on modern pedagogical techniques and children's rights.

An approach aimed at having a direct impact on the prison staff and incarcerated youth in Ukrainian juvenile prisons can be found in a project of a Dutch organisation. The effort includes the establishment of a twinning project between a Dutch and a Ukrainian juvenile prison, and a train-the-trainers programme to be carried out with the Ukrainian training centre for penitentiary staff. Within the framework of the twinning project, the development of two educational areas will receive special attention: after-care service and social skills training. These areas, underdeveloped or non-existent in the Ukrainian system, constitute the blend of the proficiencies of the Dutch juvenile prison system (re-adjustment and re-socialisation) and the needs of the Ukrainian juvenile prisons.

To give an indication of the complexity of such a programme: the partners in the programme will be the Ukrainian State Department for Execution of Punishment, one Ukrainian juvenile prison, the Ukrainian Training Institute for Penitentiary Staff, one Dutch juvenile prison, the Dutch Child Care and Protection Board, the Netherlands Helsinki Committee, and several Ukrainian NGOs.⁴⁸

- In relation to the above, an educational programme could also concentrate solely on the in-house teachers of the juvenile prison: i.e. focus on the substance of the UN Convention on the Rights of the Child; training in modern pedagogy and teaching methods; and guidance to in-house teachers in overcoming possible biases against the young prisoners.
- Specialised educational programmes should be aimed at involving the parents or other relatives, with the view on the juvenile's re-integration into society after his/her release.
- Special educational courses should be developed for juveniles held in custody. One needs to take into account that: often this group does not have access at all to normal education, or on a very irregular basis; the period of custody is long; the juvenile suspects do not have access to a lawyer; in general they are not being informed well about their rights; and the detention conditions are bad.

The Alūksnes NGO Support Center in Latvia carried out series of brief seminars, based on the Popular Education principles (i.e. role-plays, group work, discussions, etc.) on democracy and human rights for students in the age of 10-16

years at regular schools. One of the seminars, without modification with regard to the regular schools, was held in the juvenile prison for boys. Evaluating this one-time seminar, the organisers note that they they felt that their message--that action and attitude can make a difference in human rights--did not come through. The difficult and negative life experience of the students and their aggressiveness stood between the trainers and students. Further, the organisers had the impression that topics such as tolerance, understanding, human dignity and respect to others would have been more suitable for the students in the juvenile prison. The organisers also noted that the incarcerated juveniles do not seem to have adults around them who are committed to taking care of the juveniles and easing their problems. ⁴⁹

Methods and tools:

- Specialised educational programmes for incarcerated juveniles could include social skills training, life skills training, guidance in returning to society, and legal education.
- Educational programmes can be aimed at the training of social workers and prison staff in the principles of the UNCRC and child psychology.
- When drafting an educational programme for incarcerated juveniles, one could make use, for time-saving purposes, of the many Western studies into the psychology of criminal juveniles, and on the effects of the deprivation of liberty on the development of the juvenile.
- As to the role of LHRE, one could be sceptical as to whether priority should be given to such course. First, in many post-communist prisons the first priority is to improve basic conditions, such as food and clothes. Secondly, increasing awareness of law and justice in an unpredictable legal system will be difficult from a methodological point of view. Thirdly, one has to bear in mind that the incarcerated juveniles live in an authoritarian prison structure, sometimes even military. Increasing knowledge among the juveniles about their rights could lead to empowerment, but it could also be counter-productive and make them more cynical. If a LHRE concentrates on legal issues in everyday life, the juvenile should be able to see in practice the functioning of rules, also for his/her benefit: house rules; a functioning complaint procedure; (more) visits by relatives and friends; improvement of material conditions, etc.. One could even argue that without these changes any effort to educate the incarcerated juveniles in the law is doomed. The

juvenile will not see a connection between the law in everyday life as taught by the programme and his/her situation.

"Street Law in Detention Settings" by Street Law Inc. is specifically targeted at youth in penal detention centres. The programme aims at giving insight in the justice system, in order for the juveniles to make better informed decisions along the judicial proceedings they go through; providing practical understanding of law, with emphasis on the juveniles' everyday lives. It further promotes positive communication with prison staff, and other resource persons, and among themselves. In post-communist countries, the only example so far is the Ukrainian experience, where the manual has been incorporated in a training manual for social workers, youth organisers, after-school day-care, and juvenile officers. The programme will be disseminated, through training seminars and meetings, in 27 districts in Ukraine.⁵⁰

As argued under 'diversion', LHRE could be used in addition to social and life skills training, with less emphasis on the legal side.

If LHRE is used to teach about law in everyday life, the course should be well placed in the overall curriculum of the juveniles. For example, upon the juvenile's arrival in the prison, LHRE could be used to help him/her gain insight in the position of the injured party, to understand the judicial proceedings he/she went through, and to understand the reaction of society to his/her criminal behaviour.

LHRE can further be used within the framework of re-socialisation of the juvenile, starting two or three weeks before he/she leaves the prison. In this case the purpose of LHRE will be very practical: to prepare the juvenile for life outside the prison, to guide him/her through the possibilities of work and study, and to make him/her aware of his/her rights with respect to state agencies.

In Poland, the Polish Association for Legal Education (PESP) administers the Street Law in Every Day Practice programme, which is a street law-type of clinic run at the Law Faculty. The programme is aimed at law students, and includes regular meetings of the law students with secondary school students, prisoners and juvenile prisoners. Some of the students also study at the Institute of Resocialisation and Social Pedagogy.

The programme is one the rare examples in Eastern Europe and the former Soviet Union of incarcerated juveniles receiving a legal education course, although they

are not the main target group of the programme (these are the law students). In carrying out the programme, PSEP Director, Ms Platek, found special obstacles related to working with incarcerated juveniles. For example, the juveniles have a strict schedule of education and activities, as set by the prison staff. This makes planning rather difficult. Another important remark was that juvenile prisoners often come from a difficult family background, have been abused, or have developed a cynical view as to anything that has to do with law. The law students, often from a very different background, have to find the right tone or approach in order to work with these youth. This is not an easy process, and the Polish students felt that it took one year before they had found the right approach.⁵¹

VII.5. Awareness and education campaigns

Incorporating the principles laid down in the CRC and the Guidelines in domestic law and implementing them involves, evidently, more than a technical operation. First and foremost it requires a change of mentality as to dealing with youth in conflict with the law. It is therefore logical that the CRC has often stated in its commentaries that the country concerned should be more actively involved in the dissemination of information on the principles of the CRC. Moreover, the national governments are obliged under the CRC to make the Convention widely known (art. 42 UNCRF). The same obligation could be seen as applying to non-governmental organisations and international organisations.

As in many countries in Eastern and Western Europe, Lithuania underwent a process of increasing crime rate by younger juveniles, and crimes becoming "heavier". At the same time, in line with new approaches to juvenile criminal justice in the international field, the application of deprivation of liberty of juveniles who committed light crimes came under question.

One of the results of the ongoing debate on juvenile justice in Lithuania, was the launching of an all-encompassing programme⁵² aimed at reforming the juvenile justice system: institutional reforms, legislative reforms, and a public awareness and information campaign.

It is hoped that within the framework of the programme, special educational programmes will be introduced in the juveniles facilities, that a Rehabilitation Centre for Juveniles (in co-operation with NGOs) will be established, and that, lastly, diversion will be soon incorporated in the new Criminal Code (now being

drafted)⁵³. Social and psychological work and cultural activities for the benefit of juveniles in all juvenile facilities will be strongly promoted through training programmes. Lastly, training in the spirit of the UN CRC will be provided for all law enforcement agents and the judiciary.

The drafters of the programme were acutely aware of the fact that a successful reform of juvenile (criminal) justice system in Lithuania depends largely on the available understanding and support within society of the principles of the proposed reforms (thus the principles of the UN CRC and Guidelines). Therefore, they made a public awareness and information campaign on the three pillars of the programme. The drafters have also conducted thorough research into the perceptions and experience among juvenile offenders of the juvenile justice systems and law enforcement officials⁵⁴, which should make a good basis for an awareness campaign.

The campaign is targeted at public officials, the general public, and the media. The media is hoped to become active in informing the public about juvenile justice. The instruments to reach this goal are seminars, and sending co-operating journalists to brief courses abroad. Apart from this, the programme will generate informational materials, which should be broadcast on television and radio and published in the written media. Thirdly, analytic research will be carried out on the crime environment; the media coverage of juvenile (criminal) justice matters, and public opinion in these matters. Lastly, NGOs will be invited to provide advice and to participate in the programme's activities, and to prepare and distribute materials, brochures and other publications.

Making the principles widely known does not lead automatically to a wide understanding of the principles. One can disseminate a million leaflets summarising the rights children enjoy under the UNCRC, but this will not necessarily build up sympathy. On the whole, an awareness campaign aimed at the general public should try to tackle suppositions and prejudices which are reflected in the system itself. For example, in many countries the increasing view is that the isolation of offenders will decrease the crime rate, or that youth crime is on the rise and offenders should be more severely punished. Another potential obstacle might be a public perception that juveniles are not capable of making decisions for themselves. In such case, the call for granting juveniles due process rights will likely meet resistance.

Strategies:

- An awareness campaign should aim at developing a profound understanding of the rights of juveniles in conflict with the law, in contrast only to condemning the present situation.
- The youth concerned should be very visible in a campaign, and they should as much as possible participate in the conception and implementation of the campaign.
- An awareness campaign should stress community involvement in dealing with juvenile offenders or youth at risk, and point out ways as to how to realise meaningful community involvement.
- An awareness campaign could also start with a "J'accuse" on behalf of the children held in institutions. Such campaign should not lose sight of the goal of sensitising public opinion to the principles of the UNCRC (which is more difficult than raising empathy for ill-treated children).

Methods and tools:

- As for teachers, an awareness and educational campaign could address the methods of dealing with crime prevention on the primary, secondary and third levels, and how to recognise and treat youths in a difficult situation.
- An awareness and educational campaign aimed at the judiciary (in particular judges, public prosecutors, and lawyers) could be more concentrated on the technical and procedural sides of dealing with juveniles in conflict with the law. Within the present legal framework, ways for approaching juveniles that are more in accordance with the UNCRC principles could be pointed out.
- A separate awareness and educational campaign must be targeted at the police. From a psychological point of view, a child's first contact with the law is likely to make a big impact. Therefore, a campaign targeted at the police should include the following elements: childrens' rights; the need for special training in juvenile affairs within the police; the social functions of the police, including participating in community-based crime prevention educational programmes; alertness to pre-criminal behaviour among juveniles; and meetings with schools and parents.
- As said before, social workers, psychologists, educators, and penitentiary staff need to receive in-depth training in the principles and applications of the UNCRC and the three UN Rules.

VIII. GETTING STARTED

The problems facing those who strive to improve the situation of juveniles in conflict with the law are tremendous. Legislation falls short; state budgets sometimes cannot even provide for food and clothes for the incarcerated juveniles, or for basic education; the health conditions of the incarcerated can be appalling; the rights of the juveniles can be and are very easily violated; and their voice is not heard, as childrens' rights advocacy is underdeveloped. On top of that, public opinion with respect to criminal juveniles can be harsh and difficult to change.

Further, the area of juvenile justice is vast. It includes all juveniles at risk of becoming involved in criminal activities, those in detention, and those who have been released from detention and who are in need of special care. All the groups need a different approach if education is to make a difference for them. However, it will take time before the appropriate institutional and legal frameworks will be set up. And as we are dealing with youth in very difficult circumstances, we cannot let time go by.

Therefore, I would suggest to start working with incarcerated youth as soon as there are any opportunities, without losing sight of the legal changes to be pursued. The following steps might be useful in getting started:

- Decide in which phase of the juvenile justice chain (i.e. prevention, repression, re-socialisation) you would like to start educational activities. This choice will likely depend more on the opportunities (that is, access) than on actual needs.
- Try to get a rough overview of social and educational policies and practices applied to the phase concerned, and of the institutions, which are already in place. One might find promising practices, or possibilities for further development.
- Visit some of the institutions (jointly by the law and the education officers of the OSI). Visits will give a good first impression of the level and intensity of (specialised) education; they will sharpen one's intuition as to what needs to be done; and they will provide one with first-hand information from educators, social workers, and penitentiary staff.
- Vocational training in penal institutions could be initiated on rather short notice, and it is likely to be endorsed by the prison administration. The training carried

out will generate valuable information on the incarcerated youth themselves (level of intelligence, crime committed, mental defects, etc.). On the basis of this information, specialised educational programmes could be developed with a subsequent training of professionals and the development of materials.

- Another option which could precede special educational programmes is recreational programmes for incarcerated juveniles, including organising sports, games, theatre, and other non-formal education activities.

For mid-term planning, consider these suggestions:

- Make sure that valuable information collected by an executing NGO is documented carefully, in order for a following project to benefit from this information. Working with incarcerated youth and juveniles in conflict with law needs an individualised or personal approach. The people working with the juveniles or having worked with them collect priceless information on the needs of the many different characters inside the juvenile prison.
- It will be helpful to read studies about working and dealing with juveniles in conflict with law, which have been produced in more developed juvenile justice systems. A juvenile offender in a western country has a completely different background than one in, for example, Kazakhstan; however they might also have many things in common, such as shared backgrounds of social exclusion, economic deprivation, and an inability to control one's impulses.

NOTES

¹ In this paper, I quote extensively from the dissertation of E. M. Mijnaends: "Richtlijnen voor een verdragsconforme jeugdstrafrechtpleging, 'Gelijkwaardig maar minderjarig'", (Netherlands, 1999), "Guidelines for a juvenile justice in accordance with the UN Convention for the Rights of the Child, 'Equal though underaged'". The book explores the possible guidelines for the interpretation of the State Reports by the UNCRC which can be used by the Committee on the Rights of the Child to realise a juvenile justice system that is in conformity with the UNCRC.

² See also: E. M. Mijnaends, "Richtlijnen voor een verdragsconforme jeugdstrafrechtpleging, 'Gelijkwaardig maar minderjarig'", p. 24-26, 1999.

³ E. M. Mijnaends, p. 8.

⁴ E. M. Mijnaends, p. 24.

⁵ E. M. Mijnaends, p. 44.

⁶ Thomas Hammarberg, "A School for Children with Rights", Innocenti Lectures, UNICEF, 1997.

⁷ E.M. Mijnaends, p.50.

⁸ "Prison Reform: Attempts and Achievements", Kharkiv Group for Human Rights Protection, 1999.

⁹ "Nakazanie nesovershchennoletnykh i ego regional'nye osobennosti", G.I. Zabryanski, Moscow 2000.

¹⁰ CRC/C/65/Add.5, nr. 384, 20 November 1998.

¹¹ *ibid*, nr. 406.

¹² CCPR/C/84/Add.2, 22 February 1995.

¹³ CRC/C/SR.565, 30 September 1999, nr. 44.

- ¹⁴ Interview by E. Keen (HREA) with Gregory Zabryanski, September 1999.
- ¹⁵ CRC/C/8/Add. 10/Rev.1, 18 January 1995, nr. 153.
- ¹⁶ E-mail interview with Henk Krooi, Director, Direction South, Child Care and Protection Board, Netherlands, November 1999.
- ¹⁷ CRC/C/41/Add.4/Rev.1, 6 October 1998, nr. 285.
- ¹⁸ CRC/C/41/Add.4/Rev.1, 6 October 1998, nr. 291.
- ¹⁹ International Prison Watch, 1994.
- ²⁰ CCPR/C/81/Add.10, 10 September 1997.
- ²¹ CRC/C/11/Add. 21, 24 November 1998.
- ²² Email interview with A. Jatkevicius, Coordinator, Juvenile Justice Programme, February 2000.
- ²³ CPT/Inf(99)12[EN], nr. 28 and 31.
- ²⁴ Interviews with UN staff members in Tbilisi, November 1999.
- ²⁵ For more information on diversion, see also paper by COLPI, February 2000.
- ²⁶ E.M. Mijharends, p. 272.
- ²⁷ E.M. Mijharends, p.273.
- ²⁸ Presentation (unpublished) by B. Haasbroek, "Sanction policy for juveniles", Dutch Ministry of Justice, February 1999; "Juvenile Justice System in the Netherlands", Stan Meows, Defence for Children International Section, Netherlands, November 1998; HALT information brochure; "Rules of behaviour relating to punishment assignments", Dutch Child Care and Protection Board.
- ²⁹ E.M. Mijharends, p. 273.
- ³⁰ "Juvenile Justice", Innocenti Digest, UNICEF International Child Development Centre, p. 12.

³¹ See also COLPI paper, February 2000.

³² "Juvenile Justice", Innocenti Digest, UNICEF International Child Development Centre, p. 17.

³³ E.M. Mijnaerends, p. 19.

³⁴ "Family Conference as a Sentencing Option - Port Adelaide", Rosanne McInnes, Murdoch University Electronic Journal of Law, Vol. 3, No. 2, July 1996.

³⁵ "Balanced and Restorative Justice for Juveniles", University of Minnesota, 1997, p.28.

³⁶ Interview with central prison administration of Bulgaria, September 1999.

³⁷ One example: in 1997, in Ukraine 29,498 juveniles were accused of criminal activities, among which 22,284 (75%) juveniles were from minority groups (from National Report, submitted to the programme "Towards a Child-Friendly Society" of the XXVI session of the Conference of European Ministers Responsible for Family Affairs, Stockholm, 14-16 June 1999.

³⁸ For comparable information, see "Recommendation No. R(88) 6 on Social Reactions to Juvenile Delinquency among Young People Coming from Migrant Families", by Prof. S. Asquith, Council of Europe, 1993. In this report, West European and a few East European countries report on specialised programmes for juveniles in conflict with the law, with special reference to children from migrant families. For problems related to girl offenders, see also "Juvenile Justice", Innocenti Digest, UNICEF.

A comparative study in the field of juvenile justice and Romani youths in Italy, France, and Hungary was published in UNICRI publication No. 59, "Rromani Youths: The Pathways of Juvenile Justice".

³⁹ "Prevention and Reintegration", Juvenile Justice Information Portfolio, www.unicef-icdc.org.

⁴⁰ Interview with management of School Dialogue Programme in Sofia, March 2000; Evaluation report of the programme.

⁴¹ Presentation (not published) by Ieta Polman, Regional Co-ordinator for Juvenile Affairs, Amsterdam-Amstelland region, February 1999.

⁴² See for example: "Youth Justice: Preventing Offending", Home Office (United Kingdom), <http://www.homeoffice.gov.uk/yousys/youth>.

⁴³ "Prevention and Reintegration", Juvenile Justice Information Portfolio, www.unicef-icdc.org.

⁴⁴ Information brochure, see also www.streetlaw.org.

⁴⁵ Presentation in Teylingereind, February 1999.

⁴⁶ Information from the Department Individual Youth Matters, Ministry of Justice, Netherlands.

⁴⁷ Penal Reform International, <http://www.penalreform.org>, section 'regions'.

⁴⁸ Project document, Netherlands Helsinki Committee.

⁴⁹ Email interview with Eva Aizupe and Eriks Markovs of the Alūksnes NGO Support Center, Latvia, September 2000.

⁵⁰ Street Law on-line: www.streetlaw.org.

⁵¹ Telephone interview with Monica Platek, September 1999.

⁵² Drafted and implemented by the Centre for the Prevention of Crime in Lithuania, Law Institute, Ministry of Justice, Ministry of the Interior, the Prosecutor's Office, Penitentiary Department, Ministry of Education and Science, Ministry of Social Security and Labour, and the Lithuanian Centre for Human Rights, under the auspices of UNDP Lithuania.

⁵³ E-mail interview with Antanas Jatkievicius, Co-ordinator, Juvenile Justice Programme, February 2000.

⁵⁴ Published by UNDP Lithuania, Vilnius 1998, under the title "Impact of criminal justice on personality and behaviour of juvenile offenders", by E. Vileikiene and S. Geceniene.

Human Rights Education Associates (HREA)

HREA is an apolitical, non-profit organisation working internationally to support efforts aimed at introducing human rights concepts and values into educational curricula and teaching practices. HREA works with individuals, non-governmental organisations, inter-governmental organisations and governments interested in implementing human rights education programmes. Queries to HREA should be addressed to:

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