

Conclusions

This year, the Third Study Commission, which is focused on criminal law, undertook the study of “Juvenile Justice.”

In order to facilitate our studies and discussions, a questionnaire was prepared and distributed to the IAJ member organizations. The questionnaire asked for a description various aspects of the juvenile justice system in the member countries as well as opinions on both positive and problematic characteristics of such system. 37 responses were received, and all were quite comprehensive. Those countries responding were: Algeria, Armenia, Austria, Azerbaijan, Belgium, Brazil, Bulgaria, Canada, Chile, Republic of China (Taiwan), Denmark, England and Wales, Estonia, Finland, Georgia, Germany, Greece, Ireland, Hungary, Israel, Italy, Japan, Latvia, Luxembourg, Moldova, Morocco, Mozambique, Netherlands, Norway, Portugal, Scotland, Senegal, Spain, Switzerland, Tunisia, Turkey and The United States of America.

During our meetings, we debated and discussed the similarities and differences between the countries represented.

Certain conclusions emerged from our work.

Juvenile justice is in transition, procedurally and philosophically. There is a tension between juvenile courts acting a protectors of misbehaving juveniles in an informal, holistic setting which considers the “best interests of the child”, as opposed to juvenile courts acting in a more formal adjudicatory process regarding alleged juvenile misconduct which is marked by an adversarial character and which is accompanied by the panoply of substantive and procedural rights which typically accompany an adult criminal prosecution. Although juvenile courts were formed in respect of the former, the trend now is toward the latter.

Specialized courts are common, but some countries conduct juvenile proceedings in ordinary courts, but apart from the adult docket, with special rules. Collaboration with experts is beneficial.

The Third Study Commission recognized the necessity of specialized training for juvenile court judges, although such specialized training is rarely provided. Many judges simply learn by doing. More resources should be allocated to training in this area.

Some countries have open juvenile proceedings, while others conduct juvenile proceedings in closed or private settings. There are positive and negative aspects to both. There is an interest in not stigmatizing a youthful offender with open court. But there is an equal interest in transparency which is not apparent in closed court. We had much debate on this, and reached no definitive recommendation.

All countries separate detained juveniles from detained adults, although some countries simply do not detain juveniles at all. There was a preference in the Study Commission for separate buildings for detention, but resources often do not permit such a luxury.

Some countries permit the transfer of juvenile offenders to adult court in the case of very serious crimes such as murder, terrorism, aggravated rape or extreme violence. Some countries do not permit such transfer. Regardless, it was agreed that if a transfer is permitted under the law, it should be rare and only in very serious cases.

Some countries have specific qualifications for being a judge in a juvenile court, while some have no specific qualifications except for holding the office of judge in ordinary courts. Where judges are elected, there are rarely specific qualifications. It was agreed that, ideally, juvenile court judges should have some training and experience in psychology and sociology and desire to be a juvenile court judge rather than having that work simply assigned.

In the end, how a society views itself is revealed to some extent by how it treats its misbehaving youth. The hope that youthful anti-social conduct will fade in maturity gives substance to the notion that juveniles should be treated, insofar as is possible, so as to dissuade such anti-social conduct without damaging the promise of a productive future life. The judgements of the court should reflect the possibility of rehabilitation and allow the youth to lead a lawful future life. Juvenile courts have an important role in that regard.

Selection of the topic to be studied in 2016 provoked wide discussion. It was the consensus of those assembled that the Third Study Commission should, in 2016, consider: "The Sentencing of Criminal Offenders".

Respectfully submitted,

For the Third Study Commission

Charles R. Simpson III, President

At Barcelona, this 8th day of October, 2015