



Third Study Commission  
Criminal law and procedure

Meeting in Trondheim, 23 - 27 September 2007

Conclusions

THE YOUNG OFFENDER IN THE CRIMINAL JUSTICE SYSTEM

Introduction

Continuing its study of different approaches and solutions to the unique problems faced by particular identifiable groups in criminal justice systems, the Third Study Commission examined the situation of young offenders. Our purpose was to deepen our members' understanding of the problems facing young offenders within different criminal justice systems and to study approaches that meet their particular needs more effectively.

Survey and discussion

Written responses to a questionnaire on a variety of issues related to young offenders were received from 41 countries. Delegates from over 30 countries participated in our two sessions and provided valuable contributions to our discussions.

We noted that special young offender legislation exists in virtually every member country, several of them having selected the age of 12, and others, the age of 14, as the minimum age of responsibility in criminal matters. Some countries have selected a younger minimum age. Scotland, for example, has established 8 years as its minimum age, while Nordic countries have opted for a minimum age of 15 years. The adult age of criminal responsibility is almost universally 18 years. We noted that in countries having a minimum age of less than 14 years, much emphasis is placed on education and social integration programs. While some delegates referred to an increase in gang-related crimes involving children less than 12 years of age, they also noted that adults seeking to avoid penal consequences for themselves often recruit these children. In response, Panama, for example, has adopted legislation designed to curb adult recruitment of young children for criminal purposes.

Most member countries have adopted measures prohibiting the publication of information that would disclose the identity of adolescents facing criminal charges. The exceptions, such as Finland and Sweden, have strong traditions of transparency in their criminal justice systems. Both countries, however, have set the minimum age of responsibility at 15 and the press in both countries has adopted guidelines to protect the privacy of juveniles. The lack of privacy protections was noted in situations where a young offender prosecution continues past the age category to which privacy protection measures extend. The consensus of the members was that privacy protections should remain in place throughout the proceedings.

A variety of alternative measures programs, among them, mediation programs, have been adopted by most countries, aimed at diverting young offenders from the penal consequences of their offences. Mediation is a consensual process involving the crime victim and the young offender in which a wide range of solutions may be implemented, from a written apology, to compensation and community service. However, while diversion programs exist "on paper" in virtually all member countries, many of

them, in particular, those of some African member countries, are not properly funded and as a result, may not be available as viable alternatives to penal sanctions.

Many member countries have adopted measures permitting the transfer of juveniles who have been charged with serious crimes or repeat offenders to the adult criminal justice system. Conversely, some countries, notably the Netherlands, have adopted special measures that permit young adults between the ages of 18 and 21 years to be treated as young offenders, depending on the circumstances of the offence and the character of the offender. In most countries, the age of the offender is determined to be his or her age at the time of the offence, not at the time of the trial or disposition of the offence. Members from countries having no specialized tribunal for young offenders reported that an offender's youth is considered as a mitigating circumstance. Some member countries expressed a concern about the potential for disparities in sentence in situations of multiple accused, where older offenders under 18 are transferred to adult court and younger offenders are tried in youth court. Some countries have avoided this situation by ensuring that all co-accused are tried in young offender courts despite their age differences.

In discussing different sentencing options available for young offenders, the use of penal sanctions as a last resort was a common theme in the responses of virtually all member countries. If detention is resorted to, most countries ensure that young offenders are housed separately from adults. Sentencing principles in the vast majority of member countries give primacy to education, rehabilitation and the reintegration of the young offender, while protection of society, general deterrence and accountability play a minor role. Only 4 countries have adopted general deterrence and protection of society as sentencing principles in the case of young offenders and, for the most part, these are countries that have not adopted specialized young offender provisions.

It was noted that legislated sentencing principles favouring education and reintegration stand at times in contrast to media reports of public opinion favouring the increase in accountability for youth crime. The consensus was that in parliamentary states, one would expect the legislated principles of sentencing favouring the rehabilitation and reintegration of young offenders, are, at least in some measure, reflective of public opinion on the subject. Some countries have recognized the important role of parents and guardians in controlling children in their care, by enacting legislation permitting courts to make parents and guardians subject to supervision and mandatory counselling orders, whose breach may be sanctioned.

Finally, the questionnaire responses reflected almost universally that special protections are afforded to young offenders who suffer from mental disorders. In countries that have no special statutory provisions applicable to young offenders, the protections afforded to adults charged or convicted of crimes who suffer from mental disorders also extend to children under the age of 18 years.

Next year's topic

The topic chosen for next year's questionnaire and conference is: "Sex offences: today's problems and effective legal solutions".

The survey will look into practices and problems of member countries in the investigation, trial and sentencing stages, and will include a review of specific legislative responses to Internet pornography and human sexual trafficking.

[Table](#)