QUESTIONNAIRE

The Young Offender in the Criminal Justice System of Austria

During the September 2006 Congress in Siófok, the Third Study Commission studied the problems of persons suffering from mental disorders who face criminal prosecutions. In furtherance of our study of different approaches and solutions to the unique problems faced by particular identifiable groups in criminal justice systems, we turn this time to the situation of young offenders (juvenile delinquents). We hope to integrate certain themes that evolved from our earlier discussion, in particular, the difficulties associated with balancing the necessity of imposing societal norms of accountability and the objective of identifying and responding to the particular needs of accused persons whose faculties or levels of responsibility are diminished. In gathering the responses to this questionnaire, and then summarizing the main lines of discussion at our next session in Trondheim, Norway, we hope to (i) develop a deeper knowledge of the problems concerning young offenders within criminal justice systems; and (ii) study solutions that might usefully and effectively meet their particular needs.

1. Young Offender Legislation: Do special legislative provisions exist in your justice system for offenders who are not adults? Yes

If yes, please indicate to which age group they apply (for example, ages 12-17):

The Juvenile Courts Act applies to juveniles between the ages of 14 – 18. Subject of the greater part of the provisions are also adults who committed their offences as juveniles. Children under the age of 14 are below the age of criminal responsibility. Young persons that show signs of severe mental retardation or have under certain conditions committed misdemeanors before the age of 16 are not punishable.

2. Publication Bans: In your justice system applicable to young offenders, do legislative provisions exist that prohibit the publication of information that may disclose the identity of adolescents charged with offences? Yes

If yes, does the legislation provide for exceptions? Yes If yes, what are they?

The procedure shall take place in a closed court if this action is in accordance with the interest of the juvenile. In this case the publication of any information is prohibited. Beyond that, the media may not publish any information containing data which could identify the juvenile delinquent without consent. An exception can be made when the very importance of the case outweighs the privacy of the juvenile. In addition, official information does not include the disclosure of the young person's identity. All judgments rendered to the public are made anonymous by blacking out the names and addresses up to the initials.
3. **Recourse to Alternative Measures:** In your justice system, do alternative measures programs exist for young offenders for the purpose of avoiding penal consequences? **Yes**

The Juvenile Courts Act provides a system of different alternative measures that result in the stay of proceedings or the dismissal of the case. Generally, an alternative measure is not possible if the offence has caused a person's death, or, if these measures are not considered to be an adequate reaction that prevents the juvenile from further delinquency.

**If yes,** at what stage in the proceeding are these programs available? (i) in the discretion of the investigating officer at the initial investigation stage; (ii) in the discretion of the prosecutor after a charge is laid; (iii) in the discretion of the investigative judge during the pre-trial investigation; (iii) in the discretion of the judge at trial?

The programs are in the discretion of either the prosecutor or – solely at the stage of trial – of the presiding judge. The authority of the prosecutor is limited to less serious offences punishable by up to a maximum of ten years of imprisonment.

**If yes,** on what basis?

Taking into consideration the gravity of the offence and all aggravating or mitigating circumstances, the authority may decide to order a stay of proceedings if this is likely to have a positive impact on the future conduct of the suspect. In addition, the prosecutor shall order to reprimand the perpetrator to express the society's disapproval and to invite him or her to restrain from the commitment of an offence in the future.

Other non-penal measures can only be imposed when the juvenile accepts their liability for the offence and consents to participating. These measures include the possibility to postpone the filing on an indictment for a period of one to two years, the out-of-court settlement of the deed which usually includes an apology to any victim, the imposition of community services (for a maximum duration of 120 hours) or the charge of a financial contribution. The prosecutor may also oblige the young suspect to fully or partially compensate the victim for the damage caused by the offence and, in the case of postponement of the proceedings, order the supervision of a probation officer and set rules of conduct or other obligations to be adhered (e.g. to participate in a special training program). A criminal record is therefore avoided. If the juvenile fails to comply with the before mentioned measures, or in the case of recidivism, the proceedings may be resumed.

Whenever this is considered to serve the purpose of rehabilitation of a juvenile delinquent the court may pass a verdict without a sentence or suspend a sentence for probation to a period of one to three years. Beyond it the execution of fines or detention imposed against juveniles may be suspended without limit for a period of one to three years, if this penalty deems to de a
sufficient deterrent to the perpetrator. According to the court’s decision the juvenile shall be put under supervision and keep rules of conduct, including necessary medical or psychological treatment, which pursues the aim of a law-abiding way of life. Generally, the maximum penalty set up for all types of offences committed by juveniles is being reduced to 50%; the longest term of imprisonment to be imposed against persons up to 16 years old shall be 10 years, otherwise 15 years.

4. **Transfer of Young Offender to the Adult Criminal Justice System:** (a) Is such a transfer provided for in your justice system, for example, for certain serious offences or in situations of repeat offences? **No**

If no to question (a), please explain:

All trials concerning juveniles take place in the Juvenile Court. This court shall also adjudicate the case of a defendant of legal age which is related to the case of the juvenile offender. Exceptions may be made under the provisions of the Juvenile Courts Act, for example if a counsel of judges located at the regional court has to deal with the offence committed by the person of legal age.

5. **Type of Sentence Imposed on Offenders between 18 and 21 Years of Age:** Does your justice system provide special sentencing/treatment options for these offenders? **No**

According to the provisions of the Criminal Code the range of punishment is reduced to a certain level, depending on the types of offences. In addition to that, the age of the young person is always to be seen as a mitigating factor. Young persons may serve a sentence of imprisonment in a youth detention facility instead of a regular prison.

6. **Purpose of Sentencing:** What are the principles that govern the imposition of sentence on a young offender in your justice system? How do these principles vary from the principles that govern the imposition of sentence on an adult? Does general deterrence play a role in the imposition of sentence on a young offender? In what circumstances does a court consider imposing a sentence of incarceration on a young offender?

The general purpose of sentencing is to prevent the convicted offender from following criminal leanings and to show the negative value of the conduct underlying the conviction to him or her. On the other hand, the principles of special and general deterrence govern the imposition of a sentence. In the case of a young offender the emphasis is quite different: General deterrence plays a subordinate role and shall be taken into account only if severe reasons demand for it. The imposition of a sentence of detention against a juvenile offender is considered to be justified only if other penalties are not appropriate. The decision is based mainly on the personality of the perpetrator and on the severity of the offence.

7. **Mental illness:** Are there special provisions in your justice system to address the particular
problems of the young offender suffering from a mental disorder? yes

If yes, please describe them:

Juveniles that show signs of severe mental retardation are not punishable (question 1).

Thank you! Your responses will be gathered for the purposes of discussion at the meeting of the Third Study Commission in Trondheim scheduled for the fall of 2007.