German Judges Association (DRB)

Answers to the questionnaire 3rd study commission 2007

1. Yes, there are special legislative provisions. Children up to the age of 13 years will not be trialled in criminal cases. In criminal cases concerning juveniles (14 to 18 years of age) and adolescents (18 to 21 years) the juvenile courts act is to be applied. Investigation against a juvenile offender will be run by a special prosecutor, the so-called juvenile prosecutor. Court hearings will take place at the juvenile court. In criminal cases against juvenile delinquents the scale of punishment against adults will not be applied. The sentence has to be in accordance with the principle of (re)education of the offender. The same goes for the trials against adolescents if their grade of maturity is similar or equal to a juvenile or if the crime/offence committed is to be considered as a typical juvenile offence.

2. Yes. The court hearing in juvenile delinquency cases is not open to the public without any exception. The court hearing in cases against adolescents is open to the public. The public may though be excluded to protect the victim or when the private personal circumstances of the adolescent are evaluated. The proliferation of the name of an adolescent trialled in public hearing underlies the general press law limitations.

3. Yes. At any stage of the juvenile court proceedings measures can be taken to avoid repressive penal consequences. To avoid formal criminal proceedings the case can be dismissed if the admitting offender complies with prosecutional or court orders that are suited to have an educational influence on the offender (e.g. social work or payment to a charity organisation). Such measures are to be taken at the most early stage possible according to an agreement or on proposal of prosecution or defence.

4. No. In cases against adolescents the adult criminal justice system is applied, if the juvenile court has come to the conviction that the adolescent is to be regarded as a grown up. This mainly applies to traffic offenders. If the adult justice system is to be applied against an adolescent the court may reduce the lifetime imprisonment to a 10 to 15 years sentence. Security detention so far may not be applied besides the sentence. The reservation of security detention is possible only under limited conditions. For the rest the general adult criminal justice system is applicable, usually the sentences though are reduced compared to adults.
5. Yes, please see the answers above cif.4.

6. All sanctions of the juvenile criminal code have to be suited to educate the juvenile offender with the goal to enable him to live a life without criminal offences. The same goes for adolescents on who the juvenile jurisdiction act is applied. General deterrence and the protection of the public may not be considered when imposing the sentence. But as far as general deterrence is of importance for the guilt of the offender it influences the imposition of the sentence. Incarceration is only applied if because of the destructive tendencies of the juvenile shown by his offence other educational measures do not seem to be sufficient or if because of the amount of guilt imprisonment is necessary.

7. Yes. There are no special provisions to consider mental disorder of juveniles for the imposition of sentence. The juvenile court though is obliged to investigate the criminal responsibility of a juvenile offender, that is has he - when committing the offence - been mature enough according to his ethical and intellectual development to recognise to criminal content of his acting and has he had the capability to act according to this recognition.

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