

YOUTH JUSTICE – EUROPEAN AND INTERNATIONAL DEVELOPMENTS

Alenka Šelih's Contribution to Comparative Youth Justice*

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1. PRELIMINARY REMARKS: ALENKA ŠELIH AND THE "SLOVENIAN EXCEPTIONALISM"¹

It is an honour and pleasure to be the inaugural speaker of the newly established Alenka Šelih Lecture at the Institute of Criminology at the University of Ljubljana. It is an honour because Alenka is one of the outstanding experts and colleagues in international comparative youth justice, and a pleasure because we have collaborated intensively for about 35 years. We could not pinpoint the exact date when we first met, but it must have been in the late 1980s, before Slovenia gained independence. Even at that time Alenka was a recognised expert on youth justice, regularly invited to conferences and a member of various working groups and associations. She was involved in drafting the new juvenile justice legislation which entered into force on 1 January 1995. With her practical experience as a youth judge in Slovenia, she was elected to the Executive Committee of the International Association of Juvenile and Family Court Magistrates when Horst Schüler-Springorum was its president in the early 1990s. We also met in the Council of Europe's Criminological Scientific Council, of which she was a member from 1994 and, from 1998, its president

* Text of this article is based on the lecture in honour of Prof. Alenka Šelih's 90th birthday, Slovenian National Criminology Conference, Ljubljana, 5 October 2023.

¹ To a large extent, the present paper is based on earlier publications of the author with an actualisation of recent reform developments and a special focus on the role of Alenka Šelih's contribution to Slovenian and European youth justice, see Dünkler, 2015; Dünkler, 2015a; Dünkler, 2016; Dünkler, 2022.

until I succeeded her in 2001. One of our joint projects was editing a publication of a subcommittee of the IAJFCM on alternative (“community”) measures for juveniles in a European comparison.² Her knowledge of many Eastern and Western European languages, combined with her balanced and always friendly personality, made her a true “bridge-building” person between East and West. She represented Slovenia in many international youth justice publications.³

Slovenia is “exceptional” in many aspects of comparative criminal justice. One notable aspect is its traditionally low prison population rate. I explored this phenomenon on the occasion of Alenka’s 80th birthday in the *Festschrift* (*liber amicorum*) dedicated to her by analysing the Slovenian prison population rates in the context of political science indicators, which are considered relevant in Lappi-Seppälä’s theoretical model explaining the “Scandinavian exceptionalism”.⁴ The same indicators—trust in the legitimacy of the political system, social welfare, and socio-economic factors (e.g. the Gini-index measuring economic inequality in a society)—apply in Slovenia.⁵

In the early 1990s, Alenka Šelih explained the traditionally moderate Slovenian youth justice⁶ and general penal law system, particularly in comparison to other former Yugoslavian jurisdictions. This view was recently corroborated by Hacin, Meško, Aebi, and Flander (2022), who referred to 70-year historical and cultural identity of Slovenia, especially in contrast to other former Yugoslavian jurisdictions, such as Serbia. However, another important factor should be considered. In small countries, where crime policy is developed by a small group of people, a moderate and evidence-based crime policy can be implemented much more easily than in larger countries with media-driven policies and a marginalised role of experts. Alenka’s outstanding personality, combined with her excellent scientific standing as the director of the Institute of Criminology in Ljubljana and as a member of the Slovenian Academy of Sciences and Arts (SASA), including her tenure on the Presidency of the SASA (2005–2008), should be seen as a protective factor contributing to resilience against populist crime policy trends.

² See Dünkel, Šelih et al., 1994.

³ See, e.g., Dünkel, Šelih et al., 1994; Šelih, 1997; Dünkel, Grzywa, Pruin and Šelih, 2011; Šelih, 2000.

⁴ See Lappi-Seppälä 2010; Lappi-Seppälä 2020.

⁵ Dünkel, 2013.

⁶ One of the international human rights standards is to use deprivation of liberty only as a last resort and for the shortest period possible. See section 3.4. below. Slovenia has been and is outstanding in implementing this principle (Šelih, 1997; Filipčič, 2011); less than 2% of all convictions since the 1980s are youth imprisonment. On 4 September 2023: Three out of 1,494 inmates (= 0.2%) were under 18. See <<https://www.prisonstudies.org/world-prison-brief-data>> (last accessed 1 October 2023).

2. PROBLEMS OF COMPARATIVE YOUTH JUSTICE

The comparison of youth justice systems has a long tradition with an increasing number of publications since the late 1990s.⁷

Why should one compare and what are the aims of comparative research in the area of youth justice? One motivation has always been to find commonalities and explain differences between various countries, jurisdictions, and legal cultures, considering contextual factors.⁸ Another aim, particularly evident in international human rights based-research, is to identify best practices or explore possibilities for harmonisation, as seen in Council of Europe and European Union publications and initiatives.

The concept of best (or “good”) practices underlying this publication is ambivalent. It can imply a colonialist style of translating practices from one system to another, fraught with pitfalls if contextual factors and legal cultural differences are not considered. It can also involve adopting best practices from abroad, with similar challenges. There is a long history of transferring European law to colonies, which did not fit traditional methods of conflict resolution and concepts of justice. Even in modern times, we see significant implementation problems when new ideas confront traditional justice values, such as introducing restorative justice elements into youth justice.⁹ Finally, the difficult question remains of judging good, better, or best practices (or legislation). This presupposes shared assessment criteria and may be easier to agree upon if, for example, international human rights standards form the basis of establishing rankings. For instance, if the Council of Europe’s CM Rec. No. (2018) 8 on Restorative Justice in Criminal Matters requires member states to establish RJ as “a generally available service” (Rule 18), it is relatively simple to evaluate the extent of such services’ implementation. A further question of “best practice” would be how effectively RJ-schemes work regarding victim satisfaction and the reintegration of offenders (see 3.2. below).

Comparative research on youth justice is particularly challenging if more than two countries are to be compared. Most studies rely on national experts to report on their country. This approach can overcome language barriers, such as

⁷ For reasons of limited space only a few examples may be given by referring to Dünkel, van Kalmthout and Schüler-Springorum, 1997; Albrecht and Kilchling, 2002; Goldson, 2002; Goldson, 2019; Junger-Tas and Decker, 2006; Bailleau and Cartuyfels, 2007; Junger-Tas and Dünkel, 2009; Duenkel, Grzywa, Horsfield and Pruin, 2011; Zimring, Langer and Tanenbaum, 2015; Dünkel, 2016; Dünkel, 2022; Decker and Marteache, 2017.

⁸ Jung, 2017; Nelken, 2019.

⁹ See Dünkel, Grzywa-Holten and Horsfield, 2015; Dünkel, Horsfield and Păroşanu, 2015; Dünkel and Păroşanu, 2020; Dünkel and Păroşanu, 2022; Dünkel, Păroşanu, Pruin and Lehmkuhl, 2023.

when comparing Eastern or Southern European countries, but finding reliable and independent experts can sometimes be problematic.¹⁰

The sophisticated comparison of Italy and England and Wales by Nelken (2019) benefits from his extensive working and research experience in both countries. The advantage of such research is the ability to find similarities and differences based on deeper insights rather than merely viewing systems through the filter of national reporters. Nelken's writings teach that the seemingly lenient Italian approach to youth crime, compared to England, must be relativised. Contextual factors such as family, church, or the role of the police and judiciary as independent variables for different forms of social control may explain some differences in crime reporting and sentencing practices.

Comparative research that includes various EU or Council of Europe member states often aims at evaluating principles or guidelines established by these organisations or on comparing youth justice policies concerning welfare, justice, and neo-correctional orientation.¹¹

The task of comparing not just specific measures but entire youth justice systems is much more complicated and presents numerous problems, as the social control of juveniles has developed in different ways and legal approaches.

This begins with the question of the target groups.¹² Youth justice in Germany involves offenders aged 14 to 20 who are alleged to have committed offences defined by penal law. The English youth justice system covers offenders aged 10 to 17, but also individuals exhibiting anti-social behaviour, not necessarily defined as a penal offence. The overlap of the two systems is only the small age range of 14 to 17, whereas the age groups of 10 to 13 and 18 to 20 are dealt with by different control systems (civil law for those under 14 in Germany, adult penal law for those from 18 onwards in England and Wales).

Another comparative problem is the forms of control, which might be "functionally equivalent" although appearing different at first glance as they are provided in different legal settings. Welfare-oriented systems may place minors in closed residential care comparable to youth prisons in other countries. The respective "inmates" are not counted as prisoners, but they possibly have less access to legal remedies and may be detained for indeterminate periods according to "educational needs", in contrast to the limits imposed by the principle of proportionality in a youth justice setting.

¹⁰ See also Nelken, 2017, pp. 430 ff.

¹¹ Bailleau and Cartuyfels, 2007; Junger-Tas and Dünkler, 2009; Dünkler et al., 2011; Dünkler, 2015; Dünkler, 2016.

¹² See section 3. below.

An additional example is the interchangeability of different ‘sanctions’ within the same system or in comparison with other legal systems. In some countries, short-term youth imprisonment is banned due to its potential negative effects (deterrence) and non-rehabilitative character (see, for example, Germany, Greece, and Serbia, where the minimum youth prison sentence is six months). However, in practice, the judiciary may circumvent these concerns by using short periods of pre-trial detention as a “short-sharp shock” sentence.

A third issue is the debate about “new punitiveness”¹³ and the “punitive turn”¹⁴, particularly in the Anglo-American world. The term “punitiveness” is not always clearly defined. The obvious way of looking at incarceration rates, and longer and more severe punishments, seems to provide clear evidence. Yet, a deeper examination may raise doubts, as shown by Nelken comparing Italy and England.¹⁵ Furthermore, punitive rhetoric in political debates and even youth justice reforms are not always reflected in practice.¹⁶

3. KEY ISSUES OF YOUTH JUSTICE: DRIVING FORCES OF YOUTH JUSTICE REFORMS BETWEEN WELFARE AND JUSTICE, RESTORATIVE JUSTICE, MINIMUM INTERVENTION, AND PUNITIVE TURNS

Across Europe, policies based on the principles of subsidiarity and proportionality of state interventions against juvenile offenders remain in force or are emerging anew in most, if not all, countries. In the 1990s and early 2000s, however, several European countries adopted a contrary approach. These developments intensified youth justice interventions by raising the maximum sentences for youth detention and introducing additional forms of secure accommodation. The youth justice reforms in the Netherlands in 1995, and in some respects in France in 1996, 2002, and 2007, should be noted in this context, as should the reforms in England and Wales in 1994 and 1998.¹⁷ The causes of the more repressive or “neoliberal” approach in some countries are manifold. It is likely that the punitive trend in the United States, with its emphasis on retribution and deterrence, has had a considerable impact in some European countries, particularly in England and Wales. However, many conti-

¹³ Goldson, 2002; Pratt et al., 2005.

¹⁴ Muncie, 2008.

¹⁵ Nelken, 2006; Nelken, 2019.

¹⁶ See for Canada: Bala, 2016; for Germany: Dünkkel, 2006; Dünkkel, 2016a; Dünkkel and Heinz, 2017.

¹⁷ Cavadino and Dignan, 2007, p. 284; Cavadino and Dignan, 2006, p. 215; Dünkkel, 2015, pp. 10 ff.

nental European jurisdictions have resisted punitive turns, often in contrast to the penal law legislation concerning adults over 18 or 21 years of age. A large comparative study of 36 jurisdictions in Europe found no evidence that more repressive responses were the dominant orientation of European youth justice policy in the early 2000s.¹⁸

In addition, after a period of “neoliberal” orientations, some changing trends are visible in the Anglo-American world: a revitalisation of the educational ideal in the US, abandoning or at least tempering the repressive orientation towards retribution and deterrence, and even expanding the scope to young adults, reducing waiver transfers to adult courts and abolishing life without parole for minors, among other changes.¹⁹

As an example from the UK, the changing climate in youth justice policy can be seen in the strong orientation towards restorative justice measures such as family group conferencing in Northern Ireland since 2001. This may be related to the end of the civil war and the political wish to find peacemaking solutions in criminal justice as well. This significant shift is currently being discussed in other jurisdictions of the UK.

These developments at the national level, which are the primary focus of this article, must be understood against the background of international and regional instruments that set standards for youth justice. The most important in this regard is the 1989 UN Convention on the Rights of the Child, a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the “best interests of the child”—with “child” defined for the purpose of this convention as a person under the age of 18 years—and to provide education, support, and integration into society for such children. These ideas are further developed in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and at the European level in the recommendations of the Council of Europe, particularly the 2003 recommendation regarding new ways of dealing with juvenile offending²⁰ and the 2008 rules for juvenile offenders subject to sanctions or measures, ERJOSSM.²¹

Developments in Eastern Europe deserve special attention. The more lenient approach of youth justice reforms may be influenced by the political will to abandon the old Soviet style of “reformatories” or “labour colonies” and to consider Western human rights standards, inspired by the desire to approach

¹⁸ Dünkel et al., 2011; Dünkel, 2015.

¹⁹ Dünkel, 2015; Bishop and Feld, 2012.

²⁰ Rec. [2003] 20.

²¹ Rec. [2008] 11; Dünkel, 2016.

the EU more easily through progressive legislation (e.g., Estonia, Lithuania, or Romania). In recent years, a remarkable shift towards the educational ideal of youth justice can be observed in countries previously driven by neoliberal ideas in the 1990s and the first decade of the 21st century, such as England and Wales. Outside Europe, a comparable revival of traditional youth justice ideas can be observed in the US as well.²²

3.1. Youth Justice Models

If one classifies youth justice systems according to typologies, the “classical” orientations of both the justice and welfare models can still be differentiated.²³ However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems of welfare *and* justice, for instance within German and other continental European youth justice legislation.

Youth justice policy in recent decades has demonstrated a tendency to strengthen the justice model by establishing or extending procedural safeguards (supported by Council of Europe and EU-initiatives such as the EU Directive 2016/800), and providing welfare measures. This tendency also includes a strict emphasis on the principle of proportionality, thereby moving away from sentences and educational measures that are disproportionately harsh.²⁴

An emphasis on the justice model also denotes a clear differentiation of the kind of misbehaviour that is subject to youth justice interventions. Most European youth justice laws rely on criminal behaviour defined by general criminal law, whereas other forms of problematic behaviour that could endanger the juvenile and their future development are dealt with by separate welfare or family laws. A unified welfare and justice approach (as in the classic welfare model) in Europe is only found in Belgium and Poland and, for those under 16 in Portugal and Scotland.

Recently, some states have passed legislation related to certain misbehaviour (“anti-social” behaviour), which are addressed by civil law, but with a “hidden” form of criminalisation in case of civil law order violations (e.g., Bulgaria, England and Wales, Ireland, and Northern Ireland).²⁵ For instance, a violation

²² See Dünkler, 2015; Dünkler, 2015a; Bishop and Feld, 2012; for Canada in spite of a “law-and-order”-rhetoric, the judicial practice seems to go in the same direction. See Bala, 2016.

²³ Doob and Tonry, 2004, pp. 1 ff; Dünkler, 2015, pp. 16 ff.

²⁴ See, e.g., the Council of Europe’s ERJOSSM of 2008.

²⁵ For England and its legislation on Civil Injunction and Criminal Behaviour Orders, see Politowski, 2015.

of anti-social-behaviour-orders constitutes a criminal offence, and therefore a young person may be subject to criminal punishment even if they have only violated a civil law obligation. The concept is so wide that any behaviour can be criminalised based on relatively vague evidence. In contrast, in continental European youth justice systems, status offences, such as truancy or running away from home, are dealt with in separate civil or welfare laws and therefore cannot be “punished” by youth courts. The English particularity is that preventive orders immediately open the door to criminal law.

In contrast, status offences such as truancy or running away from home in the continental European youth justice systems are dealt with in separate civil or welfare laws, and, therefore, cannot be “punished” by youth courts.²⁶

On the other hand, restorative justice and minimum intervention policies, as well as “neoliberal” tendencies towards harsher sentences and “getting tough” on youth crime, are not necessarily based squarely on “justice” or “welfare”. However, it is also difficult to view them as independent models of youth justice, as minimum intervention is an orientation enshrined in both welfare and justice systems, as is the increasingly widened net of restorative justice measures.²⁷ The same is true for the “neo-correctionalist model” described by Cavadino and Dignan²⁸ for England and Wales, which—from the perspective 15 years later—can be seen rather as an episode of youth justice policy.

Here, too, there are no clear boundaries, as the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies, but also minimum intervention,²⁹ restorative justice, and elements of neo-correctionalism (for example, increased “responsibilisation” of the offenders and their parents, tougher penalties for recidivists, and secure accommodation for children). The differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European youth justice is moving towards a mixed system that combines welfare and justice elements, which are further shaped by the trends mentioned above.

3.2. Restorative Justice

Over the past few decades, numerous countries across Europe have introduced restorative justice into their criminal justice systems, often particularly in the

²⁶ See, in summary, Pruin, 2011, pp. 1553 ff.

²⁷ Dünkel, Grzywa-Holten and Horsfield, 2015; Dünkel and Păroşanu, 2022.

²⁸ 2006, pp. 210 ff.

²⁹ As is especially the case in Germany. See Dünkel, 2006; Dünkel, 2016a; Dünkel and Heinz, 2017.

context of youth justice. Various international and regional standards have increasingly highlighted and supported the application of restorative justice.³⁰ Although there exists a body of other international human rights instruments of the UN and the EU, the definition of “Restorative Justice” (RJ) is not always clear, and practices vary considerably. A deeper look reveals uncertainties, such as whether the personal involvement of victims and contact with offenders are indispensable element of RJ, or if, in a broader sense, community service can also be considered “restorative” etc.³¹

Victim-offender mediation has become an important alternative to more repressive sanctions. Recently in some countries, different forms of conferencing have been implemented in some jurisdictions (e.g., Belgium, Northern Ireland), and some projects have been established in prisons (e.g., Belgium, Germany, Hungary, altogether in 23 of 48 European jurisdictions)³² to motivate offenders to make reparation or efforts for mediation with victims and to resolve conflicts between prisoners and between prisoners and prison officers.

The practice in Europe is rather diverse. Mediation and restorative justice hold significant importance in Belgium, Finland, Northern Ireland, France, and Germany, whereas the experience in Eastern Europe remains largely symbolic, a situation related to the marginal infrastructure of mediators and restorative justice facilitators. The results are encouraging on one hand, as RJ increasingly becomes an integral part of youth (and adult) criminal justice systems. However, there is a justified concern that in most jurisdictions, the numbers remain marginal, and in some countries (often in Eastern Europe), practitioners are still reluctant and concerned about the new approach. A large overview of RJ in the (at that time 28) EU Member States³³ identified three countries as examples of best practices were identified: Belgium and Finland, due to the large scale of RJ practices, including in prison settings (Belgium), and Northern Ireland, because of its youth conferencing system as a leading orientation in youth justice.³⁴ A recent survey of 48 European jurisdictions (2023/2024) confirms, on one hand, the expansion of restorative justice measures across Europe, but also, on the other hand, the quantitatively moderate, often marginal importance in practice.³⁵ Evaluation results indicate that RJ measures

³⁰ See Recommendation No. R (99)19 on Mediation in Penal Matters and more recently Recommendation (2018)8 on Restorative Justice in Criminal Matters.

³¹ See Dünkler, Grzywa-Holten and Horsfield, 2015, pp. 1051 ff; Dünkler and Păroşanu, 2020, p. 312; Dünkler and Păroşanu, 2022.

³² See Dünkler, Păroşanu and Pruin, 2023, pp. 4 ff.

³³ Dünkler, Horsfield and Păroşanu, 2015.

³⁴ See Dünkler and Păroşanu, 2022, with further references.

³⁵ Dünkler, Păroşanu, Pruin and Lehmkuhl, 2023.

have great potential to satisfy victims, improve offenders in terms of desistance and social reintegration, and reduce reoffending.³⁶

3.3. Diversion, Minimum intervention, and Community Sanctions

There has been a clear expansion of the available means of diversion applicable to young offenders. However, these are often linked to educational measures or merely function to validate norms by means of a warning.³⁷ Sometimes, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in Belgium about 80%, and in Germany more than 75%.³⁸ In some countries, such as Croatia, France, the Netherlands, Serbia, and Slovenia, this is a direct consequence of the long-recognised principle of allowing the prosecution and even the police a wide degree of discretion—the so-called expediency principle. Exceptions, where such discretion is not allowed, can be found in some Central and Eastern European countries, but in these cases, it should be noted that, for example, property offences that cause only minor damage are not always treated as statutory criminal offences and there exist further possibilities of an “exemption from guilt or punishment”. Italy, to take a Western European example, provides for a judicial pardon that is similar to diversionary exemptions from punishment but is awarded by the youth court judge. Thus, there is a large variety of forms of non-intervention or of imposing only minor (informal or formal) sanctions.

Empirical evidence reveals that diversion is not less effective than formal sanctions; in many cases, it is better at preventing reoffending.³⁹ Constructive measures, such as social training courses (Germany) and so-called labour and learning sanctions or projects (The Netherlands), have also been successfully implemented as part of a strategy of diversion. Many countries explicitly follow the ideal of education (Portugal), while at the same time emphasising the prevention of reoffending, that is, special prevention (as is done by the Council of Europe’s 2003 recommendation on new ways of dealing with juvenile delinquency and the role of youth justice).

³⁶ See, e.g., Shapland et al., 2008; Sherman and Strang, 2007; Sherman et al., 2015; in summary also Dünkler and Păroşanu, 2020; Dünkler and Păroşanu, 2022.

³⁷ Dünkler, Pruin and Grzywa, 2011.

³⁸ Dünkler, Pruin and Grzywa, 2011, p. 1684; Dünkler, 2015, pp. 42 ff; Dünkler and Heinz, 2017.

³⁹ Heinz, 2019, pp. 1869 ff., 1890 f., 1923 ff.; McAra and McVie, 2019, pp. 93 ff.

3.4. Deprivation of Liberty “as a Last Resort and as Short as Possible”

It is universally proclaimed that the deprivation of liberty should be a measure of last resort. In practice, the interpretation of “last resort” varies across time and between nations. For example, England and Wales experienced sharp increases in the juvenile prison population from the 1990s until the mid-2000s, followed by a reduction in immediate custody:⁴⁰ The monthly average population of 10- to 17-year-old young offenders in custody declined from almost 3,000 in 2007/08 to about 780 in 2020, representing a decline of about 75%.⁴¹

Spain and several other countries also saw increases in youth custody in the 1990s and early 2000s, but recent developments generally indicate a trend in the opposite direction. This is particularly true for Central and Eastern European countries. In some of these countries, such as Croatia, the Czech Republic, Hungary, Latvia, Romania, Slovenia, and recently Russia, the high level of diversion and community sanctions and the low level of custodial sanctions characteristic of Western European and Scandinavian countries have been achieved. In Russia, the number of young offenders under 18 years in youth custody declined from 18,677 in 2001 to only 946 in 2021—a decrease of 95%.⁴²

In Germany, the number of 14- to 20-year-old offenders (dealt with by youth courts) declined by 54% from 2007 to 2019. This decline was mainly due to a reduction in serious crimes such as burglary, robbery, and other violent offences. The youth prison population rate, composed of 14- to 25-year-olds (90% of whom are young adults aged 18 to 25), declined by 54% from 2001 to 2022 (from 96 to 44 per 100,000 of the age group). Recidivism rates have also declined slightly.⁴³ This can be seen as an indicator that the lenient trend in sentencing has not negatively affected crime rates.

A recent example of youth justice reform is the Youth Justice Act in Estonia from 2018. The reform law expanded alternative youth sanctions, particularly restorative justice measures, and aimed to reduce youth imprisonment. The re-

⁴⁰ Horsfield, 2015.

⁴¹ See Youth Justice Board, 2021, pp. 37 ff.; see also McAra and McVie, 2019, pp. 76 ff., 80 ff.; this development is in sharp contrast to the general prison population in England and Wales: newest data from World prison Brief (see <https://www.prisonstudies.org/world-prison-brief-data>, last accessed 21 October 2023) reveal an interim decrease of the prison population rate from 156 (2011) to 130 (2021) with a new increase to 146 in 2023, i.e. an overall stable rate at the highest level of prison population rates in Western Europe. There is no political will to reduce the prison population rate for adults, in contrary the conservative government plans to expand the prison capacities.

⁴² See the data at <<https://www.prisonstudies.org/world-prison-brief-data>>.

⁴³ Dünkler, Geng and Harrendorf, 2023, pp. 119 ff.

form was highly successful, reducing the number of juveniles in youth custody by 87% by 2020 (see section 3.5. below).

International human rights standards require that youth imprisonment should be “as short as possible” (e.g. Rule 10 of the ERJOSSM 2008; similarly, Rule 17.1b of the UN Beijing Rules 1985), thus aiming to prevent indeterminate (and possibly disproportionate) detention and its prolongation for educational purposes beyond what the principle of proportionality would justify. As with the principle of detention as a last resort, the range of youth prison sentences varies considerably. Systems allowing for longer sentences than two years regularly do not provide for transfer to adult courts in serious cases such as murder. Continental European jurisdictions provide for up to 5 or 10 years of imprisonment in such cases (Austria, Croatia, Czech Republic, Germany, Russia, Slovenia, Spain, etc.).⁴⁴ An exception is Switzerland, which provides a maximum sentence of four years without the possibility of transferring juveniles to adult courts. The common law tradition, and the youth justice system in the Netherlands, provide only for short youth prison sentences of up to one year (for 12- to 15-year-old juveniles) or two years (for 16- to 17-year-old juveniles) but also allow for the transfer of juveniles to adult courts to impose adult criminal law sentences in serious cases (see section 4.4. below).

A second statement of international human rights standards is that youth imprisonment should be “as short as possible”,⁴⁵ thus aiming to prevent indeterminate (and possibly disproportionate) detention and its prolongation for educational purposes beyond what the principle of proportionality would justify.

The range of youth prison sentences varies considerably. Systems allowing for longer sentences than two years regularly do not provide for transfer to adult courts in serious cases such as murder. Continental European jurisdictions provide for up to 5 or 10 years of imprisonment in such cases (Austria, Croatia, Czech Republic, Germany, Russia, Slovenia, Spain, etc.).⁴⁶ An exception is Switzerland, which provides a maximum sentence of four years without the possibility of transferring juveniles to adult courts. The common law tradition, and the youth justice system in the Netherlands (only for juveniles at least 16 years old), provide relatively short youth prison sentences of up to one or two years but also allow for transfer to adult courts to impose adult criminal law sentences, including life imprisonment (in the US, even life without parole, see section 2. above).

⁴⁴ Dünkler and Stańdo-Kawecka in Dünkler et al., 2011, pp. 1798 ff.

⁴⁵ See, e.g., Rule 10 of the ERJOSSM 2008; similarly, Rule 17.1b of the UN Beijing Rules 1985.

⁴⁶ See Dünkler and Stańdo-Kawecka in Dünkler et al., 2011, pp. 1798 ff.

At first glance, the principle that youth imprisonment should be “as short as possible” seems contradicted by the exclusion of short-term youth imprisonment in some European jurisdictions by setting an elevated minimum term, as is the case in Croatia, Germany, Greece, Serbia, or Slovenia. The respective youth justice laws provide for a minimum of six months.⁴⁷ The reasoning is that terms shorter than six months are counterproductive concerning the educational/rehabilitative aim of youth imprisonment. Indeed, youth prison administrations report that a rehabilitative programme for short-term prisoners, preparation for release and aftercare are difficult to organise. Therefore, it is reasonable to prevent very short periods of deprivation of liberty. The experiences of the former British detention centre order⁴⁸ or the German youth detention (*Jugendarrest*, a kind of short-sharp-shock detention as an “educational” measure of up to four weeks)⁴⁹ illustrate this.

It is difficult to assess the severity of youth justice punishments in practice as the age groups covered are so different.⁵⁰ Campistol and Aebi (2018) attempted to evaluate youth justice statistics of 45 European jurisdictions for the year 2010. Their main conclusion was that the existing data are hardly comparable across countries. The primary reasons were that the definition of minors is not harmonised, the rules applied for constructing of the statistics are not the same, and there are differences in the legal procedures for minors and the types of sanctions that can be imposed on them. Even looking at the far end of the sanctions systems against young offenders, deprivation of liberty in youth

⁴⁷ In the Czech Republic the minimum is even one year, in Slovakia two years. All other countries have minimum sentences between one day and 3 (Armenia, Italy, Latvia, Lithuania) or 4 months (England and Wales), see Dünkler and Stańdo-Kawecka in Dünkler et al., 2011, pp. 1798 ff.

⁴⁸ It was introduced 1948. It consisted of deprivation of liberty of 3, exceptionally 6 months, since 1980 with a “short-sharp-shock-regime”; 1982, the minimum was lowered to 21 days. The detention centre order in 1982 was replaced by a uniform prison sentence, the youth custody order of 4–12 months, whose maximum in 1994 was elevated up to two years, see Horsfield, 2015, pp. 19, 27, 36, 38, 45 f. Youth crime policy in England and Wales with the “New Labour” government was moving to harsher punishments, the introduction of so-called boot camps in the mid-1990s was a kind of revival of the short-sharp-shock ideology of the 1990s, see Horsfield, 2015, p. 46.

⁴⁹ Although the German “*Jugendarrest*” was criticised by academics since decades and there is also good evidence on the negative effects in terms of preventing re-offending (or at least no positive effect compared to community sanctions, see Heinz, 2019, pp. 2000 ff.), all reform laws since 1990 rejected the claims for abolishing this short-term deprivation of liberty, in contrary, in 2013 a reform law introduced the combination of a suspended youth prison sentence (up to two years) with an up to 4 weeks detention order. There is no evidence either, that this combination is more efficient than the traditional suspended youth prison sentence with probationary supervision, but without detention, see Heinz 2019, pp. 2003 ff.; Klatt et al., 2016.

⁵⁰ See section 4.1. below.

prisons is problematic as different forms of deprivation of liberty (prisons, close residential care, young offenders in mental health institutions) are interchangeable and in most cases are not fully covered by youth justice statistics. Dünkler and Pruin,⁵¹ in comparative research on the Council of Europe member states, showed that statistical data on deprivation of liberty in welfare and mental health institutions were almost never available, and that prison statistics, due to the different age range of inmates, were not comparable.

Therefore, data collected by World Prison Brief⁵² are of limited value as they cover only young offenders under 18 in prison settings. It may be more valuable to look at national developments in a longitudinal perspective, allowing some estimation about punitive influences and the impact of other policy factors, including the importance of international human rights standards.⁵³

3.5. Examples of Recent Youth Justice Reforms

3.5.1. Albania

According to a comparative analysis by UNICEF of 11 countries in the European and Central Asian region,⁵⁴ Albania had the highest rate of juveniles in detention, with 178.3 per 100,000 children aged 14 to 17 in 2014. To counteract the negative trend of increasing youth crime and detention rates, Albania, with the support of UNICEF, passed the independent Criminal Justice for Children Code in 2018 for 14- to 17-year-old juveniles (including 18- to 20-year-olds if the crime was committed before the age of 18). The main aim was to expand diversion, educational measures, and restorative justice measures (mediation). Restorative justice pilot projects at the local level have been introduced with support from Norway.

In 2016, the State Probation Service introduced service providers for the socio-economic reintegration and restorative justice services for juveniles. Strengthened collaboration between the probation service and local governments established a multi-disciplinary approach to juvenile case management, aiming to reintegrate children into society and remove them from crime. The establishment of the probation service contributed to a significant decline in youth imprisonment: In 2016, the youth prison population decreased to 114 per 100,000, implying a 36% reduction within two years.⁵⁵

⁵¹ In Council of Europe, 2009, pp. 136 ff.

⁵² See <<http://www.prisonstudies.org>>.

⁵³ See for the latter Dünkler, 2016; Dünkler, 2017.

⁵⁴ See <<https://www.unicef.org/albania/child-friendly-justice>> (last accessed 30 May 2024).

⁵⁵ See <<https://www.unicef.org/albania/child-friendly-justice>>, p. 2.

3.5.2. England and Wales

Reforms in the early 2010s focused on preventing crime in the community, strengthening self-governance of crime policy at the local level. The “reinvestment approach” enabled the communities to decide on the expansion of community versus residential sanctions.⁵⁶ However, the initial approach to working with young delinquents was a deficit-oriented risk assessment (“dangerousness”). In the late 2010s, a shift began towards the “Child first” approach, challenging traditional risk-led and stigmatising policies. This approach has been adopted as a four-point guiding principle for all policy and practice across the youth justice system in England and Wales and is becoming a key reform principle for youth justice in Northern Ireland. The philosophy focuses on strengths, personal resources, and participation of young persons, similar to the “Good-lives” approach in offender treatment inspired by humanistic psychology.

The four guiding principles of the Child-first approach are:

- “1. See children as children: Prioritise the best interests of children, recognising their particular needs, capacities, rights and potential. All work is child-focused, developmentally informed, acknowledges structural barriers and meets responsibilities towards children.
2. Develop pro-social identity for positive child outcomes: Promote children’s individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.
3. Collaborate with children: Encourage children’s active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.
4. Promote diversion: Promote a childhood removed from the justice system, using pre-emptive prevention, diversion, and minimal intervention. All work minimises criminogenic stigma from contact with the system”⁵⁷

Reform movements since the mid-2000s have resulted in a significant decrease in youth detention and imprisonment (in contrast to adult penal policy and practice, see section 3.4. above).

⁵⁶ See Horsfield, 2015.

⁵⁷ Case and Hazel, Introduction, in Case and Hazel, 2023, pp. 12 f.

3.5.3. Estonia

The declared aim of the new Youth Justice Law of 2018 was to reduce the number of juveniles deprived of their liberty by expanding the legal conditions for diversion, alternative community sanctions, particularly restorative justice measures. For the first time, 18- to 20-year-old young adults were also included in the youth justice system, following recommendations from the Council of Europe in 2003 and 2008.⁵⁸ The number of accused young offenders had already decreased by 45% before the law was passed (2016–2020). The percentage of educational measures increased from 45% to 64% between 2018 and 2020, and the proportion of mediation rose from 0.2% (2007) to 7.5% (2020). Since 2016, the youth prison population decreased by 87% (from 60–70 to 2–3 juvenile detainees in the whole of Estonia).⁵⁹

3.5.4. France

The reform of the Ordonnance of 1945, ratified as the *Code de la justice pénale des mineurs* in 2021, came into force on 30 September 2021. This reform, was described as the “reform law of the century” as the Ordonnance had been kept for 75 years (however with some amendments in the 1990s, see sections 2. and 3. above). The scope of the target group of 13- to 17-year-old juveniles remained unchanged. Notably, an in-depth debate about young adult offenders did not take place.

Diversion, educational, and restorative justice measures were expanded, with community service orders restricted to at least 16-year-old offenders. A new development required obligatory uniform social inquiry reports from welfare agencies to support youth courts. Regarding educational measures, closed residential care (*centres fermés*) is provided as a last resort. Punishment dispositions include imprisonment and fines with maximum and minimum penalties of the general penal code reduced by half. Since the reform laws of 1996, 2002, and 2007, mitigation for at least 16-year-old recidivist offenders can be denied, With the maximum penalty being 20 years of imprisonment. In youth prisons, obligatory single accommodation during sleeping time is guaranteed.

The reform aimed to shorten criminal procedures against juveniles and improve restoration/compensation for the victims, both of which have apparently been achieved.⁶⁰

⁵⁸ See sections 3. above, and 4.3.2. below.

⁵⁹ See Markina, 2021; Markina, 2022.

⁶⁰ See <<https://www.justice.gouv.fr/actualites/actualite/code-justice-penale-mineurs-premier-bilan>> (last accessed 20 January 2024).

3.5.5. Georgia

The 2016 Youth Justice Act of Georgia prioritises diversion and restorative justice measures (mediation projects have been in place since 2010). Sentencing practices reveal a strong increase in diversion and mediation, with evaluation studies indicating a 9% decline in recidivism rates among participants in diversionary measures, more than 50% of which are combined with mediation agreements.⁶¹

3.5.6. The Netherlands

Over the last decade, existing extensive regulations for diversion in youth and adult criminal law have been expanded, with a special emphasis on restorative justice measures, particularly mediation, including RJ measures in prisons. The state has invested significantly in training mediators and organising mediation at the local level (EUR 1 billion per year in the adult criminal justice system, EUR 300,000 in youth justice).⁶²

An interesting example of civil society involvement in legislative reform is the participatory civil rights initiatives (“citizens’ initiative bill”), which supported legislation and developed a Policy Framework for Restorative Justice.⁶³

3.5.7. Norway

In Norway, a specific youth sanction for 15- to 17-year-old offenders was introduced (“youth punishment”), replacing traditional youth imprisonment. This includes measures for the transition from deprivation of liberty organised by the Probation Service to aftercare (“Youth-Follow-up” and individual “youth action plans”). Similar reforms can be seen in Finland and Sweden. All amendments in youth justice policy and practice focus particularly on restorative justice and victim-offender agreements (mediation and conferencing procedures).⁶⁴

⁶¹ See Dünkel, Păroşanu, Pruin and Lehmkuhl, 2023, p. 156.

⁶² 2023 the government decided further funding: EUR 300,000 extra for mediation in criminal cases for increasing the number of cases and eur 700,000 for increasing the fees for mediators who conduct mediation proceedings in criminal cases. Further EUR 1.5 billion were allocated to achieve a single register for mediators, see Wolthuis, Slump and Claessen in Dünkel, Lehmkuhl, Păroşanu and Pruin, 2024.

⁶³ See Wolthuis, Slump and Claessen in Dünkel, Lehmkuhl, Păroşanu and Pruin, 2024.

⁶⁴ See Paus in Dünkel, Lehmkuhl, Păroşanu and Pruin, 2024.

4. THE SCOPE OF YOUTH JUSTICE

While comparative research cautiously suggests the emergence of a European philosophy of youth justice, characterised by elements of education and re-integration (evident in recommendations from the Council of Europe), victim consideration through mediation and restoration, and adherence to legal procedural safeguards, there are areas where this development is less clear. Specifically, the age of criminal responsibility and corresponding age at which offenders are no longer treated as juveniles but as adults remains a contentious issue. This also raises the question of whether there should be mechanisms to try juveniles in adult courts.

4.1. Target Groups of Welfare and Justice-Oriented Systems

The differences between welfare and justice-oriented youth justice systems stem from their distinct target groups. Welfare-oriented systems address any behaviour indicating a risk to the child's well-being, encompassing various forms of problematic, antisocial, or criminal behaviour. Justice-oriented models (prevalent in continental Europe) focus on criminal behaviour as defined by general penal law. This dualistic approach involves civil and social welfare law interventions (particularly family law and family court magistrates) for children below the age of criminal responsibility, and a youth justice system represented by criminal procedures and youth courts dealing with youth crime. Although civil and criminal law systems are interconnected, they maintain distinct approaches. The reality is becoming more complex as systems converge. The distinction becomes challenging when antisocial behaviour is criminalised (as seen in England and Wales) and when the youth judiciary collaborates closely with youth welfare agencies to organise and execute youth court sanctions (as in Germany).

4.2. Age Limits – Minimum Age of Criminal Responsibility (MACR)

Although international human rights organisations, such as the Council of Europe, advocate for harmonising youth justice policy and legislation—an acceptable approach when discussing minimum standards—harmonisation should not be the primary aim of comparative youth justice research. More insights can be gained by examining the societal and cultural conditions under which different systems operate or fail. Therefore, varying age limits and forms of social control of youth delinquency can be viewed as a natural experiment.

It is often assumed that low ages of criminal responsibility (e.g., 10 years in England and Wales) indicate harsh, punishment-oriented youth justice sys-

tems, whereas higher minimum ages (e.g., 16/18 years in Belgium) suggest a more lenient, education-focused approach. This assumption is easily refuted by examples such as Switzerland, which has a low age of criminal responsibility (10 years) but follows a lenient educational approach, excluding youth imprisonment until the age of 15. Similarly, Scandinavian countries exhibit harsh reactions under the guise of “welfare” in closed residential homes, despite having low and decreasing numbers of juveniles in prison.⁶⁵

International youth justice standards, including those in Europe⁶⁶ are vague regarding the age of criminal responsibility. The 2008 ERJOSSM recommend no specific age, stating only that some age should be specified by law and that it “shall not be too low” (Rule 4). This vagueness reflects significant variations in the minimum age of criminal responsibility (MACR) worldwide.⁶⁷ It varies in Europe between 10 (England and Wales, Northern Ireland, and Switzerland), 12 (the Netherlands, Scotland, and Turkey), 13 (France), 14 (Austria, Germany, Italy, Spain, and numerous Central and Eastern European countries), 15 (Greece and the Scandinavian countries), and even 16 (for specific offenses in Russia and other Eastern European countries) or 18 (Belgium). Including the developments in Central and Eastern Europe after the fall down of the “Iron Curtain”, the most common age of criminal responsibility is 14 (see Table 1).

⁶⁵ See Lappi-Seppälä, 2019, pp. 111 ff, 123 ff as regards the Swedish Secure Youth Care sanction.

⁶⁶ See the UN Beijing Rules of 1985, Rule 4; the UN Model Law, UNODOC, 2013, commentary to Article 9.

⁶⁷ See Cipriani, 2009.

Table 1: Minimum ages of criminal responsibility, ages of full criminal responsibility, age range for youth imprisonment and for the competence of youth courts

Country	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/custody or similar forms of deprivation of liberty	Age range for the competence of youth courts
Albania	14	18/21 for crimes committed under 18	14–21	14–18
Austria	14	18/21	14–27	14–21
Belgium	18	16 ^b /18	Only welfare institutions	14–18
Belarus	14 ^c /16	18	14–21	No specialised youth courts
Bulgaria	14	18 (18 + mitigated sentences)	14–21	14–18
Croatia	14/16 ^a	18/21	14–21	14–21
Cyprus	14	16/18/21	14–21	14–18
Czech Republic	15	18/18 + (mitigated sentences)	15–19	15–18
Denmark ^d	15	15/18/21	15–23	No specialised youth courts
England/Wales	10/12/15 ^a	18	10/15–21	10–18
Estonia	14	18/21	14–21	No specialised youth courts
Finland ^d	15	15/18	15–21	No specialised youth courts
France	13	18	13–18 + 6 months/23	13–18
Georgia	14	18/21	14–21	14–18
Germany	14	18/21	14–24	14–21
Greece	15	18/21	15–21/25	15–18
Hungary	12 ^c /14	18	14–24	12–18
Ireland	10 ^c /12/16 ^a	18	10/12/16–18 + 6 months/18–24	10–18

Country	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/custody or similar forms of deprivation of liberty	Age range for the competence of youth courts
Italy	14	18/21	14–21	14–18
Kosovo	14/16 ^a	18/21	16–23	14–18
Latvia	14	18	14–21	No specialised youth courts
Lithuania	14 ^c /16	18/21	14–21	No specialised youth courts
Moldova	14 ^c /16	18	14–21	No specialised youth courts
Montenegro	14/16 ^a	18/21	16–23	No specialised youth courts
The Netherlands	12	16/23	12–25	12–18
Northern Ireland	10	17/18/21	10–16/17–21	10–18
North Macedonia	14 ^c /16	18/21	14–23	14–21
Norway ^d	15	18	15–21	No specialised youth courts
Poland	13 ^b /15	15/17/18	13–18/15–21	13–18
Portugal	12 ^b /16	16/21	12/16–21	12–16
Romania	14/16	18/(20)	14–21	14–18
Russia	14 ^c /16	18/21	14–21	No specialised youth courts
Scotland	12 ^e /16	12/16/21	16–21	8–16 (Children's Hearings); 16–18 (youth courts)
Serbia	14/16 ^a	18/21	14–23	14–21
Slovakia	14/15	18/21	14–18	No specialised youth courts
Slovenia	14/16 ^a	18/21	14–23	14–18
Spain	14	18	14–21	14–18
Sweden ^d	15	15/18/21	15–21 ^g	No specialised youth courts

Country	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/custody or similar forms of deprivation of liberty	Age range for the competence of youth courts
Switzerland	10/15 ^a	18 ^f	10/15–22	10–18
Turkey	12	15/18	12–18/21	12–18
Ukraine	14 ^c /16	18	14–22	No specialised youth courts

^a Criminal responsibility resulting in juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice).

^b Only for traffic offences and exceptionally for very serious offences.

^c Only for serious offences such as murder.

^d Only mitigation of sentencing and specific youth sanctions without separate youth justice legislation.

^e The age of criminal prosecution is 12, but for children from 8 to 16, the children’s hearings system applies, thus preventing more formal criminal procedures.

^f Article 61 of the Swiss Criminal Code for adults provides for a special form of detention, a prison sentence for 18- to 25-year-old young adult offenders, who are placed in separate institutions for young adults, where they can stay until they reach the age of 30.

^g Youth custody. There are also special departments for young offenders in the general prison system (for young adults until about 25 years of age).

^h Application of Youth Welfare Law (Family Courts), no criminal responsibility

The ages of criminal responsibility require further definition. For example, while England and Wales have a low age of criminal responsibility, some countries apply only educational sanctions imposed by family and youth courts at an early age. In Switzerland, youth court judges can only impose educational measures on 10- to 14-year-olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are reserved for those aged 15 and above, with a maximum sentence of one year for 15-year-olds and four years for 16- and 17-years-olds.

Similarly, Ireland and former Yugoslav republics like Croatia, Kosovo, Serbia, and Slovenia prohibit youth imprisonment for 14- and 15-years-olds.

Moreover, countries such as Lithuania, Russia, and Ukraine use a graduated scale of criminal responsibility, where only serious and offences can be prosecuted from age 14, while the general MACR is 16.

This graduation of the age of criminal responsibility is problematic as it contradicts the philosophy that sanctions should be based on individual maturity or other personality concepts rather than the seriousness of the offence.

Whether these differences correlate with variations in sentencing is not entirely clear. In systems based solely on education, under certain circumstances, the possibility of accommodation as a last resort in a home or residential care (especially closed or secure centres as in England, Wales, and France) can be as intensive and long-lasting as a juvenile prison sentence. Furthermore, the legal levels of criminal responsibility do not necessarily indicate whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs significantly from reform debate rhetoric.⁶⁸ Legal changes that formalise a more intensive regime sometimes result from, or contribute to, changes in practice. The effects of these changes vary. Despite the media's dramatisation of events leading to legal changes, there is often remarkable continuity and stability in youth justice practice, as seen in Germany.⁶⁹

Reforms in recent decades to raise or lower the MACR have been linked to more punitive or lenient policies. The abolition of *doli incapax* in England and Wales in 1998 effectively lowered the MACR from 14 to 10, is an example, while Slovakia lowered it from 15 to 14, increasing penalties for recidivists and violent offenders. Hungary, under a populist right-wing government, made 12- and 13-year-old perpetrators of serious crimes criminally responsible. Conversely, the MACR increased from 10 to 14 in Cyprus, from 13 to 15 in Greece, from 10 to 12 in Ireland (restricting youth imprisonment to those aged at least 16), and from 8 to 12 in Scotland⁷⁰.

4.3. How Long Does Adolescence Last? – The Case of 18- to 20-Year-Old Young Adult Offenders and the Impact of Neuroscientific and Other Evidence

4.3.1. Empirical evidence on emerging adulthood

There are also interesting developments regarding the upper age limits of criminal responsibility (the maximum age at which juvenile criminal law or juvenile sanctions can be applied). The central issue here is the extension of the applicability of juvenile criminal law—or at least of its specifically educational

⁶⁸ Doob and Tonry, 2004, p. 16.

⁶⁹ Dünkler, 2016a; Dünkler and Heinz, 2017.

⁷⁰ The Scottish Children's Hearing system is still relevant for children from the age of 8, but criminal prosecutions (i.e. also the transfer to adult courts for serious crimes) are only possible from the age of 12. See Burman et al. in Dünkler, Grzywa, Horsfield and Pruin, 2011, p. 1173. In summary, see Dünkler, 2015, pp. 31 ff; Dünkler, 2017, p. 283.

measures—to young adults aged 18 to 20, as has been the case in Germany since 1953.⁷¹

This trend is rooted in a criminological understanding of the transitional phases of personal and social development from adolescence to adulthood, and in recognition that such transitions are taking longer. Criminological evidence of the so-called age-crime curve indicates that this is a global phenomenon, although the peak age may vary somewhat.⁷² For Europe, it can be stated that the peak age of young persons involved in crime is between 16 and 21,⁷³ with the observation that in recent decades the peak has shifted to the older age groups of 18 years and above.⁷⁴ This aligns with sociological and developmental psychological evidence about maturing and integrating into adult life.⁷⁵ The phases of school and professional education, and of integration into working and family life (the establishment of one's "own family"), have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties persist into their mid-twenties.⁷⁶

Sociological indicators, such as the age of marriage or founding a family, have increased from 23 to 24 years in the 1970s to 30 to 31 in the 2000s. In parallel, the birth of the first child has also been delayed by a decade, which—with regional variations—is true for the whole of Europe.⁷⁷ Maturation from a developmental psychological point of view is not a linear and equal process among individual adolescents, but it becomes clear that higher cognitive capacities of self-control develop until the mid-twenties and in some cases even beyond.

Furthermore, new neuroscientific evidence indicates that maturity and psychosocial abilities are fully developed only in the third decade of life.⁷⁸ Neuroscientific research on "brain maturation" has revealed that different brain areas develop at different ages, resulting in an imbalance between the subcortical

⁷¹ See also the more recent reforms in Austria, Croatia, Lithuania, and the Netherlands; Pruin and Dünkler, 2015; Dünkler, 2015, pp. 24 ff; Dünkler, 2022, pp. 339 ff.

⁷² Loeber and Farrington, 2014.

⁷³ Schmidt et al., 2020, p. 3.

⁷⁴ For Germany, police registered data indicate an increase of the peak from 18 in 1990 to 21 in 2016 and for court based statistics of sentenced offenders from a peak age of between 18 and 21 in the 1960s to 1980s to between 21 and 25 in the 1990s until 2015. See Heinz, 2019, pp. 161 ff.

⁷⁵ See, e.g., Moffitt, 2018.

⁷⁶ Pruin and Dünkler, 2015; Dünkler, Geng and Passow, 2017; Schmidt et al., 2020, pp. 2 ff.

⁷⁷ See <https://www.bib.bund.de/DE/Fakten/Fakten_formular.html> (last accessed 21 January 2024).

⁷⁸ Weijers and Grisso, 2009, p. 63; Bonnie, Chemers and Schuck, 2012; Loeber et al., 2012, p. 336.

limbic areas (responsible for impulsive behaviour and immediate needs, the reward system), and the prefrontal cortex (responsible for self-control and moderating impulsivity). The limbic area develops in early adolescence, whereas the prefrontal cortex fully develops only in the mid-twenties.⁷⁹ This means that higher executive functions of the brain, such as the capacity for structured forward planning, the perspective of time, and the capacity to anticipate the consequences of certain (problematic) behaviour and psychological functions relevant to criminal culpability and responsibility, such as “inhibition (constraining impulses) and the suppression of interferences (risk-taking behaviour)” are not fully developed until the mid-twenties.⁸⁰ Therefore, in affective/emotional situations the limbic system gains the upper hand over the under-developed capacities of impulse control. The typically elevated risk behaviour during adolescence may be explained by this imbalance in brain maturation.

Casey, Getz and Galvan⁸¹ presume that the increase in psychic-affective problems and diseases found in this age period may be connected to such deficiencies in brain development.

Steinberg et al. (2018), in an international comparative empirical study, demonstrated that the “maturity gap” concerning intellectual and psycho-social maturity is a global phenomenon independent of cultural and contextual social factors. Their study covered samples of adolescents between the ages of 10 and 30 in Colombia, Cyprus, India, Italy, Jordan, Kenya, the Philippines, Sweden, Thailand, and even China.⁸²

The neuroscientific evidence on brain maturation and evidence on cognitive and psychosocial development align with criminological findings on the age-crime-curve mentioned above. These findings justify a youth justice policy either extending the upper limit of the scope of youth justice to the age of 21 or even 24, or considering those aged over 18–23/25 as a distinct group of juveniles with diminished culpability and responsibility compared to older adults.⁸³ However, the concerns of Steinberg et al. (2016), that “processing and sanctioning young adults in the juvenile justice system may threaten the viability of an institution designed to meet the needs of teenagers” and that, therefore, a third (intermediate) group should be created by distinguishing between

⁷⁹ Casey, Jones and Somerville, 2011; Casey, Getz and Galvan, 2008; Casey, Jones and Hare, 2008.

⁸⁰ See, in summary, Schmidt et al., 2020, pp. 3 ff; Steinberg et al., 2009; Loeber et al. 2012, p. 347.

⁸¹ 2008, pp. 62 ff.

⁸² Icenogle et al., 2019.

⁸³ Steinberg 2017, p. 417.

minors, late adolescents and/or young adults and adults,⁸⁴ are not entirely convincing. The core question remains which court should be responsible.

“Because of their immaturity, young adult offenders are more likely to benefit from the developmental approach taken in the juvenile justice system than from the adult system, which lacks this approach.”⁸⁵

Therefore, the youth court with its specialised and (in developmental questions) more experienced judges seems to be the better solution. This argument is underlined by the Dutch experiences. The government in 2014 extended the scope of youth justice to the age of 23.⁸⁶ One of the weaknesses of the Dutch reform, with a rather low application rate of youth sanctions for young adults (about 5% cent in 2016), is that the competence to deal with young adults remained with the adult court and not the youth court and that the decision to proceed in a juvenile or adult sentencing process is made by a (general) public prosecutor.⁸⁷

The reform movements in the US mentioned above are mainly based on new neuroscientific arguments. Steinberg⁸⁸ further reports that the jurisprudence of the Supreme Court, on banning capital punishment (*Roper v. Simmons*, 2005) and abolishing, or at least largely restricting, life without parole (*Graham v. Florida*, 2010; *Miller v. Alabama* 2012; *Montgomery v. Louisiana*, 2016), was strongly influenced by neuroscientific evidence.⁸⁹

4.3.2. International Human Rights and National Developments in Dealing with Young Adult Offenders

The Council of Europe has considered the prolongation of the transitional phase of young adults into account in its recommendation on “new ways of dealing with juvenile offenders and the role of juvenile justice” of 2003 (Rec. [2003] 20) and the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) of 2008 (Rec. [2008] 11). Rule 11 of Recommendation (2003) 20 states:

“Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles

⁸⁴ Scott et al., 2016.

⁸⁵ Van der Laan and Beerthuizen, 2021, p. 541.

⁸⁶ See section 4.3.2. below.

⁸⁷ See Schmidt et al., 2020; van der Laan and Beerthuizen, 2021, pp. 534 ff.

⁸⁸ 2017, pp. 412, 415 ff.

⁸⁹ See Steinberg, 2017, pp. 412, 415 ff.

and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.”⁹⁰

Rule 17 of the ERJOSSM states that “young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.” The commentary to this rule states that

“it is an evidence-based policy to encourage legislators to extend the scope of youth justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation.”⁹¹

This widespread European consensus about the role of young adults in youth justice legislation is reflected by more and more national legislators, most notably in the 2014 Dutch youth justice reform.

The United Nations’ Beijing Rules in Rule 3.3 state:

“Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.”

In its proposal for a Model Law on Juvenile Justice of 2013, the UN follows this line with the statement in the commentary:

“States should note that a majority of European States have extended the applicability [...] of their juvenile justice laws to the age of 21 as neuro-scientific evidence and brain development studies have indicated that it is difficult to distinguish between the brain of an older child and that of a young adult.”⁹²

Comparatively, there are two models of dealing with young adults: one involves applying youth justice disposals to young adults, and the other mitigates sentences within the general penal law for this age group. The first model reflects the maturity or immaturity of the individual or simply that youth justice disposals are more appropriate for young adults compared to those over 20 (in the Netherlands: over 22). This approach existed in 20 out of 35 jurisdictions surveyed by Dünkel et al.⁹³ In recent years, Georgia in 2015 and Estonia in

⁹⁰ This rule was strongly influenced by § 105 of the German Youth Justice Act giving the youth court the power of a discretionary decision (based on a psychiatric or psychological expert opinion) to impose youth or adult criminal law sanctions. See, in detail, Dünkel, 2016a, pp. 23–27.

⁹¹ Council of Europe, 2009, p. 42.

⁹² UNODOC, 2013, p. 57.

⁹³ 2011, pp. 1594 ff.

2018⁹⁴ have introduced the possibility of applying youth justice dispositions to young adults. A specific mitigating factor in sentencing young adults existed in 17 jurisdictions, and in 8 jurisdictions regulations existed in both youth and adult criminal law. Only Bulgaria, Estonia, Latvia, Romania, Spain, and Turkey did not provide specific rules for young adult offenders.

Beyond Europe, there are a few examples of widening the scope of youth justice, such as in Japan, Brazil, and Uruguay.⁹⁵ Salaymeh⁹⁶ identified an elevated maximum age for youth justice between 19 and 21 in 8 out of 47 Muslim-majority states in the Near and Middle East and Africa. In the USA, the Emerging Adulthood project of the Columbia University in New York has initiated and furthered reform movements in several states to expand the upper limit of youth justice. As a consequence of new neuroscientific and developmental psychological evidence Vermont raised the upper age to 19, and from 2022 to 20, and there have been model or pilot projects to widen the scope of youth justice to 19, 21 or 24 years in several states. In January 2021, Washington State expanded the competence of youth courts from up to 17 to 19 years, and young offenders can stay in youth prisons up to the age of 22 or 23. Similar reform proposals are being discussed in California, Colorado, Connecticut, Illinois, Massachusetts, and Nebraska.⁹⁷

4.4. Applying Adult Penal Law to Juveniles and Transfers of Juveniles to Adult Courts (Waiver Procedures)

While raising the upper limit of the definition of juvenile may be seen as a way to impose more appropriate sentences on immature young adults and extend the scope of youth justice, there is also an opposite trend, most prominent in the United States⁹⁸ but also found in a few European countries, of referring children for trial in adult courts. Such referrals often, but not always, have a distinctively punitive purpose, as the range of youth justice sanctions is seen as too limited to adequately sentence serious (violent) youth offenders.⁹⁹

In some European countries, such as Scotland and Portugal, juvenile offenders from the age of 16 onwards can be dealt with in the adult criminal justice sys-

⁹⁴ See section 3.5. above.

⁹⁵ Dünkel, 2017.

⁹⁶ 2015, pp. 264 ff.

⁹⁷ See the report of the Emerging Adulthood-Project: <<https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Washington%20State%20-%20January%202021.pdf>> (last accessed 19 January 2024).

⁹⁸ Bishop, 2009, pp. 85 ff; Bishop and Feld in Feld and Bishop, 2012, pp. 898 ff.

⁹⁹ See section 3.4. above.

tem. In other countries, juvenile offenders can be transferred from the youth to the adult court, where so-called waiver or transfer laws provide for the application of adult criminal law to certain offences.¹⁰⁰ This is, in fact, a qualified limitation of the scope of youth justice¹⁰¹ and a lowering of the minimum age for the full application of adult criminal law.

In Belgium and the Netherlands, 16- and 17-year-old juveniles can be sentenced according to adult criminal law in cases of serious (violent) crimes.¹⁰² Since its 2006 reform, the waiver in Belgium is not to adult courts but to so-called Extended Juvenile Courts.¹⁰³ The same very restrictive application of adult criminal law against 16- and 17-year-old offenders can be seen in the Netherlands; the youth court remains competent, but general criminal law can be applied. In most cases, it is the seriousness of the offense that leads to the application of adult criminal law. In 1995, this was the case in about 16% of trials, but after the youth justice law reform of that year, when the maximum youth prison sentence was raised from six months to two years, the application of adult criminal law decreased to only about 1–2%.

In England and Wales, juveniles, even at the age of 10, can be transferred to the adult criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adult offenders carry a maximum term of imprisonment of more than 14 years).

Similar exceptions are provided for in Ireland (less than 5% of judgments).

In Serbia and Northern Ireland, transfers are limited to juveniles who have been charged with homicide, and in Ireland, to exceptional cases such as treason or crimes against the peace of nations, but also for murder or manslaughter.

In Scotland, there are no waivers or transfer laws, but the same effect can be achieved in another way. In the most severe cases, the juvenile offender will not be transferred to the children's hearings system. Formally, this is not a transfer to the adult criminal court, because the criminal court has original competence to try all cases, even if in practice the vast majority are transferred to the children's hearings system. However, Scotland shares the idea that in very serious cases the offenders should not be dealt with by the juvenile criminal system but in the adult criminal system.

¹⁰⁰ Bishop, 2009; Goldson and Muncie, 2006, p. 91; Keiser, 2008.

¹⁰¹ Hazel, 2008, p. 35.

¹⁰² Weijers, Nuytiens and Christiaens, 2009.

¹⁰³ Another form of waiver is the transfer of 16- and 17-years-old traffic offenders to (adult) police courts, which is not guided by a harsher punishment approach.

Countries, such as those in Scandinavia, that do not have specialised juvenile jurisdictions thus (evidently) do not provide provisions for transfers either. It should be emphasised, though, that in general in the Scandinavian countries, the same regulations apply in cases of “aggravated” as well as “normal” offences.

The application of adult law to juveniles through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it. Whereas normally the application of (juvenile) law depends on the age of the offender, transfer laws or waivers rely on the type or seriousness of the committed offence. The justification for the special treatment of juvenile offenders (as an inherent principle of youth justice) is challenged by such provisions.¹⁰⁴ The fundamental idea is to react differently to offences committed by offenders up to a certain age, based on their level of maturity or their ability to discern. Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility should signify – independently from the type of offence—from which age a young person is deemed “mature enough” to receive (adult) criminal punishment. On the other hand, the introduction of “transfer laws” makes exactly those offenders fully responsible who often lack the (social) maturity to abstain from crime or even fully to differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be regarded as not fully mature when charged with a “normal” offense but fully criminally responsible for a serious offence. As Weijers and Grisso¹⁰⁵ have put it, “An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits.” A systematic approach would treat all offences equally.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juvenile offenders. Additionally, they claim that waivers are needed as a “safety valve”¹⁰⁶ for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases.¹⁰⁷ However, so far, criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.¹⁰⁸

The second argument misses the point as well: Does adult criminal law provide adequate or suitable options for reacting to severe criminality? How do

¹⁰⁴ Keiser, 2008, p. 38.

¹⁰⁵ 2009, p. 67.

¹⁰⁶ Weijers et al., 2009.

¹⁰⁷ See section 2.4. above.

¹⁰⁸ Bishop (2009, p. 97) emphasises that the negative effects of transfer laws are found among those who receive community sanctions as well.

we measure effectiveness? If we look at recidivism rates, then long prison sentences—the typical reaction by adult criminal law to serious offending—are relatively ineffective in preventing further crimes.¹⁰⁹ Research results furthermore show that a lenient, minimum-interventionist youth justice system does not produce more juvenile offenders than a more punitive one.¹¹⁰

In practice, transfers are of declining significance in Europe. It is also important to note that decisions to transfer or of apply general criminal law instead of juvenile law—at least in the continental European countries mentioned earlier—are regularly based on a (juvenile) court decision, often referring to psychiatric/psychological experts or social inquiry reports, with the legal prerequisite of a judicial review. Even if waivers and transfer laws are of little significance in practice in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juvenile offenders. Additional safeguards in adult courts are unable to compensate for them.¹¹¹ Therefore, the UN Committee on the Rights of the Child recommends abolishing all provisions that allow offenders under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years.¹¹²

5. CONCLUDING REMARKS – THE IMPACT OF ALENKA ŠELIH AND THE FUTURE OF YOUTH JUSTICE SYSTEMS IN EUROPE

Youth justice systems in Europe have developed in various forms and with different orientations. Examining sanctions and measures, the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve compliance with the law (norm validation, *Normverdeutlichung*). Mediation, victim-offender reconciliation or family group conferences are good examples of such diversionary strategies. Conversely, from an international comparative perspective, systems based solely on child and youth welfare are in decline. This is less evident in Europe, where more or less “pure” welfare-oriented approaches exist only in Belgium

¹⁰⁹ Killias and Villettaz, 2015.

¹¹⁰ Smith 2005, p. 192.

¹¹¹ The European Court for Human Rights has not found that such trials in adult courts necessarily violate the European Convention of Human Rights, but in *T. and V. v. The United Kingdom* ([2000] 30 E.H.R.R. 121), a case concerning the 10-year-old murderers of James Bulger, a significant minority of the judges took the view that trying such young offenders in an adult court would inevitably violate their rights, see Keiser, 2008, p. 38.

¹¹² Committee on the Rights of the Child, 2007: paras. 34, 36, 37 and 38; see also Doek, 2009, p. 23.

and Poland (or for juveniles under 16 in Portugal and Scotland) compared with, for instance, Latin American countries, which have traditionally been oriented towards the classic welfare approach.¹¹³

Across Europe, elements of restorative justice have been implemented, both in countries that have to some extent adopted neo-liberal or neo-correctional approaches and in those with a relatively strong welfare orientation.¹¹⁴ Additionally, educational and other measures, such as social training courses and cognitive-behavioural training and therapy, have been more widely developed. These developments align with international youth justice standards. The 2003 Recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasises the development of new and more constructive community sanctions for recidivist and other problematic offender groups. This maintains the traditional idea of youth justice as a purely special “educational” system of intervention designed to prevent re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been widely regarded as desirable across Europe, it cannot be denied that in some countries “neo-liberal” orientations have influenced youth justice policy and, to varying extents, also practice in the 1990s and early 2000s.¹¹⁵ Indeed, the increase in youth imprisonment in England and Wales and other Western European countries at that time confirmed the impression of a “punitive turn” associated with notions of incapacitation, retribution, individual responsibility, and offender accountability. However, the trend of bringing juveniles to courts for harsher punishments has been reversed in the last two decades. Noteworthy downward trends in youth crime and youth imprisonment can be observed in many jurisdictions. The examples of England and Wales and Russia as former high-incarceration countries, as well as Germany,¹¹⁶ Slovenia, and the Scandinavian countries as low-level incarceration countries¹¹⁷ demonstrate a remarkable shift in youth justice policies and practice. Youth justice policy in the USA follows the same line of reinventing educational and restorative orientations of youth justice, and furthermore widening the scope towards over 18-year-old young adult offenders by simultaneously advocating for fewer transfers of juveniles to adult courts (waiver procedures).

Nevertheless, one must exercise caution when characterising systems as either punitive or lenient. When incarceration rates and other forms of juvenile

¹¹³ Beloff and Langer 2015, pp. 198 ff.

¹¹⁴ Dünkler and Păroşanu, 2022.

¹¹⁵ See Muncie, 2008, with further references.

¹¹⁶ Dünkler and Heinz, 2017.

¹¹⁷ Lappi-Seppälä, 2019; Lappi-Seppälä, 2020.

social control are considered, the distinction between the apparent in Italy, where few juveniles are prosecuted and sentenced to prison, and the practices in England and Wales may be less pronounced.¹¹⁸ Furthermore, the notion of “Scandinavian exceptionalism” may seem less remarkable when welfare-based forms of deprivation of liberty are included, or when considering the flow of individuals into institutions rather than merely stock data.¹¹⁹ At times, the rhetoric of punitiveness in policy debates is more ritualistic than reflective of actual practices, as evidenced by examples from Germany and Canada.

The notion of a punitive turn in youth justice in Europe has always reflected only one facet of the full reality. A different reality emerges when one considers the practice of juvenile prosecutors, courts, social workers, and youth welfare agencies, and projects such as mediation schemes. These have continued to operate in a reasonably moderate way and thus resisted penal populism.¹²⁰ Sonja Snacken has explained why many European countries have resisted penal populism and punitiveness¹²¹ given their strong orientation towards the social welfare state, democracy, and human rights. International human rights instruments such as the 1989 UN Convention on the Rights of the Child, other recommendations and standards mentioned above, and the jurisprudence of the ECtHR serve as “protective factors” against penal populism,¹²² which can be found most clearly in many continental Western European states, particularly in Scandinavia.¹²³

More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand. Another significant player is the European Union, which has strengthened the rights of juveniles in youth justice procedures, for example, through the 2016/800 Directive, which is binding for EU Member States.

Apart from varying approaches to youth justice, this article has highlighted three areas that are seen as crucial for the future of youth justice. The demographically declining age group of under 18-year-old juveniles and their decreasing crime rates¹²⁴ will pose a question about the existence of a distinct youth justice system with educationally experienced, specialised police, pros-

¹¹⁸ Nelken, 2019.

¹¹⁹ Ugelvik and Dullum, 2012.

¹²⁰ Dünkel et al., 2011.

¹²¹ Snacken, 2010; Snacken and Dumortier, 2012.

¹²² Pratt, 2008.

¹²³ Lappi-Seppälä, 2019.

¹²⁴ McAra and McVie, 2019, pp. 76 ff.

ecutors, and judges. The reason is that the group of persons under consideration is small.

- One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15, while at the same time establishing or preserving human rights guarantees and fair civil law procedures and interventions for those under the age of criminal responsibility.
- A second step would be to build on initiatives to increase the maximum age at which young offenders can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and divert them from a career of adult crime. The 2014 reform in the Netherlands increasing the scope of youth justice up to the age of 23 and similar initiatives in some Federal states in the USA may be seen as the forerunner in youth justice reform in this respect. The positive experiences of Germany in applying youth justice measures and sanctions to a wide extent to 18-20-year-old young adults (and thus moderating harsh punishments in serious crime cases) may encourage other countries as well. If raising the maximum age of youth justice over 21 is not acceptable to youth policymakers, the age between 21 and 25 (like that between 18 and 21) should be recognised as a mitigating sentencing factor, based on immaturity and generally diminished culpability.
- Thirdly, the practice of trying juveniles as adults should be resisted. Only a few European countries provide such a waiver procedure. It is important to recognise that this approach is not only doctrinally questionable (and contrary to the 1989 CRC), but also carries the risk of subjecting youth offenders to the most detrimental aspects of the adult criminal justice system. If waiver procedures are to be banned within youth justice, then youth law must offer solutions for handling the most serious cases of violent crimes, potentially through extended youth prison sentences (of, e.g., up to five or ten years, but still distinct and milder compared to the maximum penalties in adult criminal law).¹²⁵

The future of youth justice as a distinct pedagogical approach, compared to general penal law, will hinge on whether the scope of youth justice can be extended to include young adult offenders aged between 18 and 21 or even up to 25 years. In the majority of European countries, youth justice has adopted a moderate approach to young offenders navigating the challenging transition to

¹²⁵ This will also be a consequence if young adults over 18 are included in youth justice. In Germany the maximum penalty for young adults can be up to 10 years, in serious murder cases even 15 years, but the general principle should be that the culpability of young adults is diminished (see the neuroscience evidence on brain maturation under 4.3.) and therefore the sentencing frame of the general penal law should be reduced by half as in Austrian youth law.

adulthood. Therefore, there is evidence that the ideals of social inclusion and reintegration will become the *leitmotiv* for youth justice law and practice of the 21st century, both in Europe and globally.

The role of Alenka Šelih in developing the European model of a moderate and educationally oriented youth justice in Slovenia, as well as across Europe, cannot be overstated. She played a pivotal role in the Council of Europe during the 1990s and 2000s, a period when the most important human rights standards were drafted and implemented across Europe, both East and West. She was an outstanding personality bridging the divide between East and West, representing Slovenia—a small yet very important country. Penal moderation and a rational, human rights-oriented crime policy continue to be hallmarks of this beautiful country, often described as the “Slovenian exceptionalism”.¹²⁶

Thank you, dear Alenka for your life-long commitment!

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¹²⁶ See Dünkel, 2013.

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