



Centre for the Prevention of Youth Crime (ed.)

**Prevention of Youth Crime in Germany:
Educational Strategies**

Trends, Experiences and Approaches



Arbeitsstelle Kinder- und
Jugendkriminalitätsprävention

Band 8

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Foreword

In 1997, when the Centre for the Prevention of Youth Crime at the German Youth Institute (*Deutsches Jugendinstitut; DJI*) began its work, we knew little about what preventing crime among children and young people actually involved. With the exception of the *Jugendgerichtshilfe* (youth services in youth court proceedings) – a social inquiry service maintained for the youth courts and a relatively minor feature of the child and youth services – crime among this section of the German population had been a fairly marginal aspect of socio-educational activity. Since the late 1970s the child and youth services responsible for young people »in trouble« and their families had concentrated on specialist issues and on problems resulting from a sharp increase in unemployment. Following a long period of economic prosperity, unemployment now became a major focus for the media, politicians and the general public. Youth crime was the province of the *Jugendgerichtshilfe*, which attempted to combat it in co-operation with the police and the justice. However, as more and more cases of criminal behaviour among children and young people began to hit the headlines, increasing numbers of politicians and members of the public called for strict measures of the kind introduced to combat such behaviour in New York. With demands for this type of repressive legislation becoming more insistent, advocates of preventive strategies were at a clear disadvantage.

The ensuing debate was conducted with insufficient knowledge of the complex reality of prevention activity in Germany, which was taking place primarily at a local level, with projects and those involved in them largely ignored by the public as a whole. Though by no means as wide-ranging as it is today, such activity already included a number of meaningful and promising approaches. But it was the USA, the Netherlands, and England and Wales that were seen as a combined Mecca of crime prevention. German politicians and members of the police force went in droves to New York and other parts of the US and came back holding up such strategies as »zero tolerance«, »three strikes and you're out« and »community policing« as models. This was accompanied by euphoric reports in the media about boot camps and by proposals made by experts to set up institutions in Germany resembling the Glen Mills Schools. The curfew schemes introduced in England and the »Halt« projects implemented in the Netherlands also came in for praise.

Two parallel approaches took root among experts in Germany. On the one hand, they engaged in a nationwide discussion of preventive strategies and measures, in which the role of social education became increasingly

prominent. On the other hand, they investigated strategies and measures pursued abroad that might work at home if they were adapted to German conditions. The result has been a constant improvement in the quality of provisions.

A look at the current, increasingly urgent discussion of crime prevention throughout Europe – within the European Union Crime Prevention Network (EUCPN), for example – clearly indicates that approaches developed in Germany have a significant innovative contribution to make to the theory and practice of crime prevention. Along with such basic principles as informal rather than formal procedures, non-residential rather than residential support and support rather than sanctions, there are other results of German research that would benefit the European debate. Yet, having published seven books on prevention strategies aimed at criminal behaviour among children and young people in Germany – books that are in widespread demand at home – the Centre for the Prevention of Youth Crime was forced to realise that little note is taken abroad of publications in German. On the other hand, considerable interest has been shown in German research and practice at the small international colloquiums organised annually by the Centre. We have therefore decided to make available English translations of some articles that have appeared in our publications over the years. Published as our volume 8, the articles provide a wide-ranging introduction to crime prevention aimed at young people in Germany and are intended as a basis for discussion at an international level.

Articles have been chosen for inclusion in the present volume because they are relevant to the current situation. Nevertheless, their discussion of the issues involved inevitably relates to specialist debates at the time of their original publication and their focus would certainly be different today. Articles such as these played a significant part in advancing knowledge in Germany, helping to overcome an initial phase of uncritical euphoria towards preventive strategies and of indiscriminate application of a wide variety of socio-educational approaches to crime prevention. Now that discussion has been put on a firmer basis, defining the specifics of crime prevention in socio-educational terms has become less important than ensuring the long-term effectiveness of provisions. Quality control will be a major concern in coming years.

The volume opens with two articles surveying crime prevention strategies as a whole and discussing the theoretical foundations of crime prevention from a socio-educational perspective. These articles offer background information that will help readers to understand crime prevention practice in

Germany, which is examined in the main section of the book through descriptions of strategies pursued in selected fields. Individual projects are not included here because they have a very strong local component; instead, the focus is on a representative selection of transferable approaches devised for specific target groups (children below the age of criminal responsibility, for example, or young immigrants) and specific areas of activity (fast tracking of offences and avoidance of remand in young offenders institutions). This is followed by discussion of a field in which prevention strategies have clearly failed: the imprisonment of young people. The volume closes with a summary of the two main acts of Parliament governing crime prevention activity aimed at young people in Germany. Those with strong legal interests are advised to read this article before the rest of the book.

In the first article Bernd Holthusen and Heiner Schäfer give a summary of crime prevention aimed at children and young people in Germany, surveying current trends, strategies and challenges (p. 11 ff). They show how the disparate nature of the bodies involved (the child and youth services, the police, the justice and so on) and the wide range of possibilities at a local level have led to considerable variety in prevention activities.

In the second article Christian Lüders examines the scope of prevention activity and the opportunities available to it (p. 25 ff). He addresses an issue that has been hotly debated among experts in Germany: the use of the term »prevention« by the child and youth services. Unrestricted use (especially when it is a matter of crime prevention) automatically makes potential suspects of all children and young people, and this may have (unintentional) negative consequences that are incompatible with the view of youth policy advanced here.

The four articles that follow describe practice in selected areas. In the first of these Heiner Schäfer surveys methods of combating criminal behaviour among those below the age of criminal responsibility, which in Germany is fourteen (p. 45 ff). A series of wide-ranging and innovative provisions have been developed that is largely the responsibility of the child and youth services.

In the fourth article Heiner Schäfer discusses a group of people whom public and political opinion, the media and even some experts depict as brutal savages: young immigrants of German extraction known as *Aussiedler* (p. 61 ff). Their case makes it especially clear how important it is that preventive strategies take into account the social and cultural background and the environment of their target groups.

Following these discussions of approaches related to specific target groups, Gabriele Gabriel turns in the fifth article to fast tracking of criminal offences (p. 99 ff). The aim is to reduce the time lapse between the commitment of an offence and official responses to it, so that court proceedings, for instance, take place soon enough for the young people to appreciate the connection between the offence and the penalty imposed as a result. In socio-educational terms, fast tracking involves recognising the need for help and acting quickly to provide it. Increased co-operation among various bodies is thus a prerequisite of efficient fast tracking.

In the sixth article Heiner Schäfer reports on the theoretical basis of provisions devised by the child and youth services in Germany for avoiding remand in young offenders institutions (p. 113 ff), which all experts agree can have seriously damaging consequences for those detained. The discussion highlights the fact that all activities of this kind are subject to tension between the justice on one hand and the youth services on the other. Yet it is also made clear that scope exists for expanding socio-educational measures, even in the most difficult circumstances and with target groups particularly hard to reach.

In the seventh article Bernd Holthusen reviews data relating to the imprisonment of minors, taking into account the terms of the UN Convention on the Rights of the Child, which permit people under the age of eighteen to be deprived of their liberty only as a last resort (p. 133 ff). Despite the small number of people actually in this situation, the article calls for further research and draws attention to the inadequacy of the available data, which renders most comparative studies unreliable.

In the final article Bernd Holthusen and Heiner Schäfer take a look at the legal framework within which crime prevention activity aimed at children and young people takes place in Germany (p. 157 ff). The authors summarise the principal goals of the most important acts of Parliament in this area, the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act) and the *Jugendgerichtsgesetz* (Youth Court Act). The focus here is on the fundamental aims of the acts and the principles enshrined in them, not on details. Various stipulations of these acts are referred to in the other texts; this closing article enables them to be seen as a whole and in context. It needs to be emphasised that the acts provide guidelines that are valid throughout the country; specific projects, provisions and so forth are developed at a local level.

All the authors of the present volume are, or have been, on the staff of the *DJI*, Gabriele Gabriel, Bernd Holthusen and Heiner Schäfer at the Centre for the Prevention of Youth Crime, Christian Lüders at the Department of Youth and Youth Services. We are grateful to the Federal Ministry of Family Affairs, Senior Citizens, Women and Young People, which has funded the Centre since 1997 and has made this publication possible. The Centre's brief is to promote effective prevention of criminal behaviour among children and young people by linking practice and research. Hence, this book, like all our publications, is directed at the members of the various institutions involved, at politicians and at social scientists. For a summary of the Centre's activities and a list of its publications, readers are referred to the websites www.dji.de/youthcrime and www.dji.de/jugendkriminalitaet. Information about the *DJI*, Germany's largest sociological research institute not attached to a university, may be obtained at www.dji.de.

We wish to thank Michael Foster for translating articles. The fact that precise English equivalents do not exist for some German terms indicates how different systems have been developed to address specific national situations and should warn us of the dangers involved in transferring one set of experiences to another context and make us be extremely careful when making comparisons. We are confident, however, that the present volume, its terms of reference ranging from legal frameworks and discussion of terminology to statistics, empirical studies and practical implementation, will give experts in other countries a comprehensive idea of recent debates about the prevention of crime among children and young people in Germany.

It is our hope that this publication will promote discussion of approaches to preventing crime among children and young people in Europe and beyond. Since this represents a new type of undertaking for the Centre for the Prevention of Youth Crime, we would be especially grateful for any feedback from our colleagues abroad.

Munich 2004

The staff of the Centre for the Prevention of Youth Crime

Bernd Holthusen/Heiner Schäfer
**Strategies and organisation of youth crime prevention in
Germany – the importance of the educational approach¹**

1. Introduction

The strategies employed to prevent crime among children and young people in Germany go beyond criminal law, for penal laws relating to young offenders offer only limited scope for effective prevention. The large number of organisations engaged in preventive work – encompassing youth services, police, justice and a host of other bodies and institutions, each with its own brief and each working within a specific set of conditions – has resulted in the development of a wide range of strategies. Co-operation among those involved is essential if the various strategies are not to exist in isolation or to compete and possibly obstruct one another.

Public discussion of criminal behaviour among children and young people usually centres on spectacular cases, not least during election campaigns. Demands are voiced for heavier penalties as an effective deterrent to young offenders.² Specialist opinion, as expressed, for example, in the current debate in Germany about the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*), tends to the opposite view: crime experts generally agree that preventive strategies³ are a more successful way of combating crime than repressive measures. For them, the question is not whether prevention is desirable but how it can be made most effective. The preventive approach also accords with the principle of proportionality anchored in the German

1 This article has been published in a slightly modified version in German as follows: Bernd Holthusen/Heiner Schäfer, *Strategien und Strukturen der Jugendkriminalitätsprävention in Deutschland*, in: VHN Vierteljahresschrift für Heilpädagogik und ihre Nachbargebiete, vol. 71 (2002) 4, pp. 414-425.

2 The present discussion of strategies aimed at preventing criminal behaviour among children and young people does not take into account the widely differing ages of criminal responsibility among European countries.

3 Crime prevention is frequently described as a task involving the whole society, a view indicating that the numbers of those involved could increase almost indefinitely.

constitution, which favours mild penalties provided that they do not entail endangering legally protected rights. This has been pointed out time and again in recent years in the course of discussions relating to penal laws for young offenders.⁴ As an instrument of law, imprisonment can thus be no more than a last resort, to be used with extreme caution.

As in many other European countries, experts in Germany view criminal tendencies among children and young people as ubiquitous and episodic. Violating norms has always been part of growing up. Many minors who infringe the law are not even »caught« in doing so, and in the course of time most of them automatically relinquish such behaviour: it is a temporary phenomenon that generally involves so-called »petty« offences (such as shoplifting), and in the rare cases in which it entails theft on a larger scale, the financial damage done is minimal. Public discussions should take note of these facts and stop dramatising infringements of the law on the part of children and young people as a threat to society.

A small number of children and young people in Germany finds it difficult to adhere to norms. They require expert help and support. Known as »multiple and serious offenders«⁵, they did not attract much public attention before the early 1990s, when police statistics began noting an increase in criminal suspects among minors.⁶ Sensational reports of individual cases in the media spread a lot of fear among the German population and led to calls for the Government to address the »alarming increase« in youth crime and finally bring the situation under control. With socio-educational approaches to the problem subjected to severe criticism, solutions were sought in strategies employed in the USA, the strategy of »zero tolerance« among them. Although the enthusiasm that accompanied the adoption of such solutions soon vanished, the discussions led specialists in Germany to take greater notice of youth crime prevention activities in other countries.

The reality of criminal behaviour among children and young people is complex and there are no simple answers to the problem. Analysis of the issues involved has to be undertaken on various levels and from a variety of

4 Ostendorf, pp. 196 -198

5 The small group of multiple and serious offenders is reckoned to be responsible for the majority of offences committed by young people in Germany.

6 Criminal statistics produced by the German police are required to register all punishable offences known to them in terms of certain basic categories. These statistics thus constitute a record of police activities, including not only offenders but suspects and reflecting not the totality of criminal activities but only the reported cases.

perspectives: e.g. on whom or on what should preventive work focus – the offenders and their victims, the offences, or processes of social and physical exclusion that encourage offences? Similarly, the responses, initiatives and interventions generally subsumed under the term »crime prevention« are quite wide-ranging.

2. Definitions, protagonists, aims and strategies

Crime prevention is still frequently divided into the categories of primary, secondary and tertiary prevention:

- Primary prevention addresses the conditions favouring criminal activity. It seeks to influence the fabric of certain subsections of society, creating more positive perspectives for young people and thus effecting a change in the circumstances that might lead them to become criminal offenders. The vast range of primary prevention activity often obstructs its effectiveness. It addresses virtually all aspects of life, encompassing poverty, unemployment and a wide variety of other social and/or psychological burdens and involving support for families, schools, urban development, health care, stabilising and strengthening individual personalities, social education and combating prejudice.
- The aims of secondary prevention are likewise general in nature, but, in seeking to forestall crime, it focuses on a small, clearly defined group: children and young people whose personal development and/or the circumstances of their upbringing make them potential offenders (or, indeed, victims). Help is given to members of this group in specific cases. This aid may involve either working with minors who live in socially deprived areas, or street work for young people who are difficult to reach in other ways. Some forms of prevention involving technology, including CCTV cameras in public places and »safe home« activities, also belong to this category.
- Tertiary prevention is the most clearly defined in terms of its aims and target groups. It attempts to prevent repeated offences and promotes the social integration of young offenders. The activities of the *Jugendgerichtshilfe* (youth services in youth court proceedings; *JGH*) and of offender and probation services, all of them tried and tested over many years, belong to this category, as do intensive social education work with individuals and various forms of detention.

This tripartite categorisation of the theory and practice of crime prevention, which is not peculiar to Germany, has not gone unopposed.⁷ One alterna-

7 Lüders

tive proposal divides prevention activities into:

- those related to people (i.e. potential offenders),
- those related to circumstances (the occurrence and consequences of offences), and
- those related to locations (communities).⁸

This categorisation has not been widely accepted. The most important organisations involved in youth crime prevention are child and youth services, police, justice and, to a more limited extent, education authorities. All are concerned with children and young people, but their aims, approaches and strategies differ, sometimes radically.

The role of the German child and youth services in supporting and protecting children and young people, providing them with socio-educational help and generally exerting a positive influence on their living conditions is defined in Section 1 of the *Kinder- und Jugendhilfegesetz* (Children and Youth Services Act, *KJHG*) of 1990. A large number of effective approaches and projects have been developed on the basis of this legally binding brief. The *JGH* (youth services in youth court proceedings), which forms part of the child and youth services, has co-operated with other institutions, notably the justice. Other areas of the services have had to accustom themselves, gradually and sometimes with difficulty, to working with new partners. General agreement now exists; however, that co-operation among the various organisations, each with its own circumscribed opportunities and responsibilities, is an essential condition of effective prevention.

Drawing on a wealth of experience, the police force has always played a significant part in German crime prevention. Recognising prevention as an important element of its work with children and young people, this force has continually expanded its responsibilities in the field. Its reputation is high, its work judged to be efficient and effective. The police have devised and implemented a large number of preventive activities and projects,⁹ and are regarded as an extremely desirable working partner and frequently take the lead in co-operative undertakings. This can lead to problems with the child and youth services, which may see the police as encroaching on their own areas of responsibility and expertise. In addition, the »principle of legality«, which obliges German police to register and investigate every

8 Graham

9 These projects are collected in an electronic database at the *Bundeskriminalamt* (Federal Criminal Police Agency) in Wiesbaden. An English translation is available at: <http://195.145.38.32/bka/search.asp?lang=en>

offence, is frequently adduced as a major obstacle to effective co-operation by the child and youth services, which are subject to no such obligation.

Like police, justice has always had to concern itself with young offenders and has constantly co-operated with both the police and *JGH* (youth services in youth court proceedings). The latter connection is given legal form in the Youth Court Act (*JGG*), which includes many *JGH* provisions. Co-operation between justice and *JGH* has developed almost organically. Viewed with suspicion by youth services, the close links between the two have often been the subject of disputes.¹⁰

Only in recent years have German education authorities begun to address the issue of violence and other extreme forms of criminal behaviour among school children. Spectacular cases, such as that of an 18-year-old student who ran amok in a secondary school in Erfurt and killed several teachers as well as students and one policeman, have increasingly led education authorities to seek help from outside – from child and youth services or from police. Social work in schools, tested for some time in certain parts of Germany but still not available throughout the country, has been supplemented by many provisions developed by the child and youth services as a means of dealing with conflicts in schools.

The younger the age of an offender, the greater the significance of the family environment and the influence it can bring to bear on him or her. Everyone involved in crime prevention recognises this fact, but work with the parents concerned can be extremely difficult in all respects.¹¹ Provisions for advice and other forms of help are often ignored or outrightly rejected. Only exceptionally, in cases in which more members of the family and others are held to be at risk, are the Family Courts asked to intervene, so that decisions can be taken even against the will of the parents.

Without claiming to be exhaustive, the following discussion examines some of the many approaches developed in youth crime prevention in united Germany.

10 Almost by definition, a certain amount of friction exists between the concerns of the Youth Court Act (*JGG*) as a penal code relating to young offenders and the Children and Youth Services Act (*KJHG*) as a piece of socially oriented legislation contained in the new *Sozialgesetzbuch* (Social Code Book VIII).

11 Cf. Hoops

In many places, crime prevention councils have been set up in response to increasing demands for strategies that are devised jointly by those involved. Some of these councils cater for the *Länder* (Federal States), but most are only local in scope. Nearly all include a team responsible for youth crime. The councils organise exchanges of information and practical experience, co-ordinate the activities of the various organisations and occasionally carry out projects of their own. Recently, they were joined by the *Deutsches Forum Kriminalprävention* (Foundation German Forum for Crime Prevention, *DFK*), a body set up by the federal government, the *Länder* and various economic organisations to co-ordinate prevention activities throughout the country and to promote innovative approaches.¹²

As an example of tertiary prevention, the services rendered by *JGH* (youth services in youth court proceedings) and by some voluntary organisations in connection with criminal proceedings taken against young people (generally males) occupy an almost »traditionally« important place in youth crime prevention. These bodies have co-operated with the justice in devising and establishing a number of alternatives to detention and youth prison, including diversion projects (introducing measures that can stop criminal proceedings), victim-offender mediation, social training courses, anti-aggression classes, alternatives to remand in young offender institutions¹³ and the reparation of damage done.

Along with measures designed for young offenders, many provisions aim to assist children and young people living in difficult circumstances who are assumed to not (yet) have committed offences. These examples of secondary prevention may address individuals (in intensive non-residential support, for instance), families (as in the families first project) and social spaces or seek to influence social contexts (as with courses in conflict management conducted in schools).

Although there is still a lot of space for improvement, youth crime prevention activities have increasingly come to reflect the heterogeneity of the target groups. Thus, provisions have been geared to groups defined by age, gender or ethnic affiliation. Moreover, projects have been devised to

12 More information on their activities may be obtained at:

<http://www.kriminalpraevention.de/englishdata.htm>

13 German judges can, e.g., order young offenders to stay temporarily in a home run by the youth services as a means of preventing the further jeopardisation of their future development, especially by committing additional offences. Thus, the remand in young offender institutions may be reduced in length or avoided altogether.

enable specialists, who are often overtaxed by the acuteness of the problems confronting them, to acquire new approaches and skills in dealing with »difficult« children and young people.¹⁴ These provisions offer useful support to those whose training has often left them ill-equipped to cope with the practical demands of their work.

In recent years, many regional, national and international conferences have been devoted to the prevention of crime among young people. These have encouraged the exchange of information among specialists and have resulted in the foundation of various associations and committees.¹⁵ Despite efforts to establish common indicators, relevant conferences, at both national and international levels, have demonstrated a wide variety of expectations among the participants. On national level, for example, police, concerned to investigate offences or to prevent them in the first place, and *justice*, charged with maintaining the rule of law and seeing that justice is done, pursue aims different from those of child and youth services, which focus on personal development of children and young people, and of education authorities, which are responsible for intellectual and social education. On international level, such diverging interests are, moreover, joined by historical, cultural and social differences among various countries and by policies relating to youth and to society in general that may vary fundamentally from nation to nation.¹⁶ The risk that international co-operation may lead to misunderstandings and inconsistencies as a result of simplistic comparisons between countries thus is extremely great. Nevertheless, such joint efforts are not only possible and desirable; they are indispensable for further success in the field.

14 For example, social work has been undertaken with groups whose members were below the age of criminal responsibility (in Germany, young people under 14 years), with groups that consisted solely of young women or young men and (in München) with groups of young males of Turkish origin.

15 Among the latter is the European Committee on Crime Problems, a network of bodies active throughout Europe. In May 2001, the European Council established a Europe-wide network of those involved in crime prevention. Its work includes collecting and evaluating information on preventive measures directed at combating youth crime. (EUCPN, European Union Crime Prevention Network) Official attitudes of the respective E.U.-bodies to crime prevention are, however, governed more by security aspects and the rule of law than by factors relating to education and social policies towards young people.

16 IARD

3. Current issues and challenges

In Germany, as in other industrialised countries, rapid progress in youth crime prevention has not succeeded in removing deficiencies in the implementation of strategies and in knowledge of such practical work, despite the intense commitment of those involved. In the following section we describe some of these deficiencies and examine current issues of specialist concern that will affect the future of crime prevention.

4. Deficiencies

There are two basic kinds of deficiency in youth crime prevention in Germany:

- First, a number of tried and tested approaches have not been adopted throughout the whole country. Section 10 of the Youth Court Act (*JGG*), for example, places a range of non-residential measures at the disposal of Youth Court judge, yet, although the effectiveness of these measures is generally recognised, their implementation is subject to (ideological and geographical) limitations. This is especially true of victim-offender mediation, one of the few provisions involving victims. Measures designed to avoid or reduce the length of remand in young offender institutions – a practice that has consistently come in for criticism – are likewise capable of only sporadic implementation and need to be established on a firmer basis.¹⁷
- The second main deficiency in youth crime prevention concerns the lack of appropriate strategies and procedures for dealing with certain problem areas. Provision desperately needs to be made, for instance, for migrants, ethnic German migrants and refugees (mostly from Third-World countries). No effective help is available to combat their language difficulties or the problems resulting from their position poised between two or more cultures. Instead, they are exposed to processes of exclusion and stigmatisation. Reasonable victim-offender mediation barely exist for young people with a poor knowledge of German, and insufficient language skills may also be one of the reasons why young people of non-German origin are remanded in custody more frequently than their German peers. Young male ethnic German immigrants, particularly those from the former Soviet Union, also account for a disproportionately large percentage of young offenders who receive youth prison treatment.¹⁸

17 Cf. Bindel-Kögel or Schäfer

18 Cf. Walter 2002

4.1 The challenge of multiple and serious offenders

Both the public and experts view so-called »multiple and serious offenders« as a special challenge for society. This very small group consists of children and young people who have to cope with enormous socio-psychological problems and repeatedly commit offences.¹⁹ The provisions of child and youth services, with their specific areas of responsibility and resources, apparently do not reach this specific group, and others involved in crime prevention, including police, justice, education authorities and child and youth psychiatry, generally seem helpless. Close examination of specialist dealings with these young offenders often reveals a situation resembling an institutional »shunting yard«. The grave problems of the offenders soon prove to demand too much of each single institution. Hence, calls are repeatedly made for the various bodies to closely co-operate in addressing individual cases in an effective manner. Such co-operation is obstructed, however, by the self-contained nature, the conflicting interests and the conditions (including finance and access restrictions) governing the youth-related work of the various bodies.

4.2 Co-operation among institutions

Over and above treatment of young multiple and serious offenders, institutional co-operation has become a major challenge in all areas of crime prevention, but remains fraught with difficulty. The diverging briefs and roles of the various protagonists constantly lead to tension and misunderstandings among them and may also result in entrenchment and isolation. Among the factors that continually cause such difficulties are the conflicts between the »principle of voluntary« governing the work of the child and youth services and the »principle of legality« that informs police activity, the fact that the requirements of data protection and confidentiality obstruct the free exchange of information, and the often incompatible claims of focusing either on the offence as such or on the psychological and socio-educational needs of the offender as a person. The magic word »co-operation«, invoked by many ad nauseam, tends to mask the irreconcilability of the aims pursued by the bodies concerned, obscures the need to change procedures and to adjust organisational modes, and results both in a loss of effectiveness through friction and, occasionally, in a feeling of frustration. It is the rule rather than the exception that one body is not even familiar with the basic principles governing the work of the other.

19 *Arbeitsstelle* 1999

4.3 Evaluation by protagonists

Evaluation of crime prevention strategies is an indispensable part of the activities of those involved. A great deal remains to be done in Germany in this area, however, for knowledge of whether specific goals have been reached and of how their long-term success can be ensured are limited, although certain approaches are widely recognised as effective. A major study published in the USA has enquired into what works, what doesn't, and what's promising in crime prevention (Sherman et al. 1997). Such an approach urgently needs to be established in Germany too, as the lack of such knowledge is documented in the *Erster Periodischer Sicherheitsbericht der Bundesregierung* (First Periodical Report on Crime and Crime Control in Germany), which resumes: as a rule, no systematic evaluation has hitherto been made of crime prevention provisions, projects, initiatives, etc. Yet this is a long-term necessity if real progress is to be achieved on a firm basis.²⁰ This need has at least been recognised by politicians, social scientists, specialists and, rather slowly, by those practically engaged in crime prevention activities.

Evaluation faces considerable methodological challenges when it comes to judging the effectiveness and long-term results of educational measures. Projects carried out by bodies engaged in crime prevention, e.g. always address only one (and generally a relatively minor) aspect of young people's lives. Yet many other factors may play a decisive role, and not all of these can be monitored all the time. Hence, it is not possible to determine the precise cause of certain observed results or to establish the extent to which the results were achieved by the content of a provision or by the people implementing it. And if measures did not meet with success, was that because of their strategy of implementation or because they contained conceptual errors? Or was it, perhaps, a combination of both? And, if so, what was the relative importance of the two factors?

4.4 The expansion of social control

All those involved in youth crime prevention undoubtedly have the interests of the children and young people at their minds and hearts and are convinced of the necessity and positive character of their activities. Nevertheless, crime prevention has a negative side: it facilitates the expansion of social control by the state bodies. Under the banner of prevention, the

²⁰ *BMI & BMJ*, p. 455

state encroaches on areas to which it previously had virtually no access. It circumscribes, even abolishes, certain freedoms that should form an important part of growing-up »normally« in a modern, liberal society. Some public spaces, for example, that were largely ignored by the police, have become subject to surveillance, either by officers in person or by CCTV cameras.²¹ This is always done explicitly as a »preventive measure« designed to reduce public risks. Such developments should be carefully monitored and subjected to critical appraisal.

5. The future: some political aspects from the point of youth politics

In socio-educational terms, the prevention of crime among children and young people must always go beyond society's need to exert control and to address the issue of the significance of transgressive behaviour in growing up. If »seeing how far you can go« can be an important identity-testing aspect of individual and group life, is it necessary and adequate that every instance of criminal behaviour or norm violation has to be met with preventive measures? It can be a valuable hint that the German government's *11. Kinder- und Jugendbericht* (11th Child and Youth Report) calls on the child and youth services to be self-critical and considered in their approach to prevention²², noting that the idea of prevention can be used all too easily to legitimise the instrumentalisation of certain forms of control. On occasion, decriminalisation strategies and less severe treatment may be more appropriate ways of dealing with the ubiquitous and episodic character of offences committed by children and young people (Walter 2001: 181-182). Although the term »decriminalisation« may be open to misinterpretation in the context of what is often an emotional issue, it describes the gist of the proposals submitted by the interdisciplinary committee set up to reform the penal laws relating to young offenders.²³

The disturbing nature of offences committed by children and young people is not at issue here. What is required is a more careful examination of the annual crime statistics and the existing studies of reported and unreported crime, so as to facilitate differentiation between cases involving real

21 Following practice in the United Kingdom, CCTV cameras have been installed in increasing numbers of railway stations and public settings in German towns. Discussions about violence in schools almost invariably involve a call for such surveillance measures as the best solution to the problem.

22 *Deutscher Bundestag*, p.243

23 Cf. Dünkel, Albrecht

danger, serious offences, repeated offences and the violation of norms typical of young people. To rule out any misinterpretation of such statements, let it be said that every increase in the number of suspects among children and young people represents a problem and that every offence is one offence too many – and not only from the victim's point of view. That does not mean, however, that prevention strategies and the relevant penal laws should not be implemented with the utmost circumspection. The outbursts of activity that sometimes follow the expression of intense, often media-induced public concern or populist attempts to gain attention, are fundamentally flawed as a response to the problem. Persistence over a long period of time and a carefully considered approach are far more likely to lead to success.

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Christian Lüders

Where does crime prevention start? Some remarks from the point of child and youth services ¹

1. Introduction

Prevention has been a central focus of the *Kinder- und Jugendhilfe* (child and youth services) in Germany at least since publication of the eighth *Jugendbericht*² (Youth Report) by the Government in 1990. The report criticised the services for sometimes »failing to take action until problems have become serious, entrenched and so acute that the situation appears hopeless«. In a call supported by the Government of the day, the report advised that the work of the services be preventive in orientation: »As primary prevention, [prevention] aims to create stable conditions for fulfilling lives, conditions that do not allow conflicts and crises to arise; as secondary prevention, it seeks to offer help in situations that are known to be problematic and may generate crises.«³ The report was relatively open about the drawbacks of this view: »Seeing the child and youth services exclusively as an agent of prevention might entail interpreting all their activities in terms of avoiding problems (and thus viewing normality as the state achieved when problems are successfully avoided). It could even be claimed that this attitude might lead to reality being interpreted not only from the perspective of threats to it, but also in pathological terms.«⁴ Stating that this would be a terrible conclusion, the report emphasises that social work must »make sense in its own terms, not in those of possible

1 This paper was read on 2nd June 1999 to the conference »Ist Prävention gegen Jugendkriminalität möglich? Erklärungsansätze, Grenzziehungen und Perspektiven für die Handlungsfelder Jugendhilfe, Schule, Justiz und Politik«, organised by the Ministry of Arts, Youth, Family and Women of the federal state of the *Rheinland-Pfalz* in association with the City of *Mainz* and the *Institut für Sozialpädagogische Forschung Mainz e.V.* I wish to thank the organisers for consenting to the publication of the paper outside the conference documentation. The paper could not have been written without material provided by the Centre for the Prevention of Youth Crime at the German Youth Institute in Munich and the discussions I had with its members Gabriele Gabriel, Bernd Holthusen and Heiner Schäfer.

2 *Deutscher Bundestag*

3 *ibid*, p. 85

4 *ibid*, p. 86

problems and risks«⁵. The report concludes that a »preventive orientation does not constitute a conceptual model for the work of the child and youth services as a whole, but is only one aspect of their activity«⁶.

One does well to recall to such statements when examining the contribution of the youth welfare services to preventing crime among children and young people and when examining the current state of the prevention debate. In general terms, it has to be said not only that the services present a rather sorry picture, but also that the problems have by no means become fewer. Recent years have certainly seen a marked and widespread increase in the services' crime prevention efforts, in co-operation with the police, the judiciary and other bodies, including education authorities. Yet this has been accompanied by a number of problematic developments:

- Throughout the country new projects and initiatives have been started, sometimes at considerable expense. Welcome though this is, one occasionally suspects that »crime prevention« is being as a magic term to detract attention from existing failings. In itself, this would not necessarily be a problem if it did not entail a surreptitious redefinition of aims. One federal state known for its lack of interest in social work in schools, for example, responded to public concern by increasing considerably its support of such activity within the framework of emergency measures introduced to combat crime. Thus made part of the state government's policy on crime, social workers are now under pressure to succeed in those terms – an impossibly tall order and not an isolated case.

- It's sometimes difficult to believe your eyes these days. Yesterday's familiar provisions for socio-educational leisure, group and adventure activities have been transformed overnight into crime prevention strategies with allegedly good prospects for success. Existing theoretical papers have quickly been rewritten, expanded and provided with a new foreword. Ever since crime prevention began attracting widespread interest three or four years ago, many organisations have used this method to »prove« that they have a long record of success in the prevention field. Suddenly, virtually everyone engaged in youth work, whether in the form of activity provision or of specialist associations, notably those devoted to sport or to political and cultural education, discovered that they were being offered a new and promising market for the services they had been providing all along. The real issues involved in crime prevention generally remained unaddressed.⁷

- Finally, there has been a great deal of readiness to experiment and em-

5 *ibid.*, p. 86

6 *ibid.*, p. 86

7 Cf. Lindner

brace unconventional approaches. The results have not always been unproblematic. The social training courses defined in Section 10 of the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*), for instance, are generally offered young offenders on the basis of a magistrate's ruling or in accordance with Sections 45 and 47 of the *JGG*. When such courses are introduced as preventive measures aimed at twelve- or thirteen-year-olds, it needs to be asked whether good intentions might not lead to unfortunate consequences – for example, to a lowering of the age of criminal responsibility, which German law defines as fourteen.

The above instances could easily be extended to include other basically positive developments that harbour remarkable shifts in the relationship between the police, the judiciary and the child and youth welfare services. However, it is more important to establish that these are only individual cases, examples that point to a general problem that has been largely ignored, namely: what do we mean when we speak of crime prevention as a goal to be pursued by the child and youth services? To put it differently: what did the eighth *Jugendbericht* mean by stating that a preventive orientation does not constitute a conceptual model for the work of the *Kinder und Jugendhilfe* (child and youth services) as a whole, but is only one aspect of their activity, and what bearing does this have on the present discussion?

Taking the bit between my teeth, I attempt here to provide some answers. I shall focus on conceptual aspects, because it is in this area that all those involved are suffering from a lack of clear parameters. That, at least, is how I interpret the often vague responses of workers in the child and youth welfare services when asked by the police and the judiciary, and rather less frequently by politicians and members of the public, how their activities involve crime prevention. In my view, the lack of a firm conceptual framework is also responsible for the ineffective communication between the police, the judiciary, education authorities and the child and youth services when it comes to crime prevention. I shall proceed in three stages:

- (1) Examining the widely accepted distinction between primary, secondary and tertiary prevention, I shall define those aspects of the work of the child and youth welfare services that can genuinely be said to involve crime prevention.
- (2) On the basis of these findings, I shall outline what I believe should be the chief concerns of crime prevention activities in the child and youth services.
- (3) I shall conclude by outlining what seem to me to be the main challenges facing those working in this field.

To avoid any misunderstanding, I wish to emphasize that my discussion is based on the assumption (which lack of space does not permit me to justify) that prevention of crime among young people is only one of the aims pursued by the child and youth services. The more and more frequent use of the word »security« in the context of living conditions increasingly seen as heavy-risk, and the appearance of new forms of informal control, surely require a thorough re-examination of what society as a whole and the child and youth services in particular seek to achieve through crime prevention activity. My aim here is to reach a clearer definition of the opportunities and limitations of crime prevention work in the child and youth services in order that both those active in the services and their partners in other organisations may acquire a deeper understand of the issues involved.

2. Crime prevention in the *Kinder- und Jugendhilfe* (child and youth services)

Crime prevention in the context of social work and education is a recent development and it therefore comes as no surprise to find it missing from most relevant handbooks, introductory volumes and standard works. By contrast, prevention has long been an established category in criminology. A whole range of concepts was thus available for appropriation, discreetly and unquestioningly, by the child and youth services. That is what happened with the distinction between primary, secondary and tertiary prevention. Although an agreement among criminologists does not exist as to the precise areas encompassed by these three categories, for present purposes a general outline will suffice.⁸

- Primary prevention addresses society at large and general conditions favouring criminal behaviour. It is concerned to strengthen awareness of justice and social skills, to create new life-perspectives and to reduce such crime-inducing factors as poverty and socio-psychological burdens. Typically, primary prevention is said to »remove the deeper causes of delinquent behaviour and to attack crime at its roots«⁹. To this end, its activities include support for socialising agents (notably the family, schools and vocational training), combating poverty and social disintegration, offering leisure opportunities at a local level, influencing urban development and traffic engineering, and involvement in media and health policy.

- Secondary prevention generally denotes measures intended to stop potential offenders committing offences. They include security systems that increase the risk of discovery, protective instruments such as burglar alarms,

8 Cf. Heinz 1998, pp.24-26

9 Northoff, p.6

the alteration of surroundings that might encourage spontaneous offences, and assistance with specific problems and high-risk situations.

■ Tertiary prevention encompasses measures introduced to combat repeat offences and to support the rehabilitation of young offenders. They include »diversion«-projects, probation services, therapy provisions and support programmes offering training opportunities to imprisoned offenders. Whether or to what extent custodial treatment of young offenders constitute preventive measure is a matter of dispute.

This widely accepted categorisation of crime prevention strategies is easily applied to the work of the child and youth services:

■ Most activities of the services can be subsumed under the first category, since »in some way« they would all seem to promote the prevention of offences. This assumes that meaningful leisure pursuits, the stabilisation and strengthening of individual identities, education and training, the combating of prejudice, the promotion of social awareness and skills, the creation of new opportunities, the receipt of various kinds of support, the removal of obstacles and much else besides are all effective in terms of crime prevention.

■ If the same logic is applied to the second category, then everyone in the child and youth services who addresses problem areas, groups or milieus that might encourage the emergence of offenders is engaged in secondary prevention. In the most general terms, such activities would encompass the entire field of socio-educational services as defined in Sections 27-29 of the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*), the majority of social services designed to protect children and young people, and most areas of social work with young people. In slightly more restrictive terms, the category could be said to comprise those who work in non-residential situations, in socially deprived areas, with families containing offenders and with children and young people (and their families) who are at risk on a socio-psychological level.

■ The third category would include the activities of the *Jugendgerichtshilfe* (youth services in youth court proceedings; *JGH*) and all provisions for the social rehabilitation of young offenders made in accordance with the *KJHG*. Such social work with young people includes a wide range of advisory and non-residential services, intensive socio-educational support in individual cases and various forms of detention.

Categorising the crime prevention work of the child and youth services in terms of three categories derived from criminology may appear convincing at first sight, but it is not without its pitfalls. The problems start with defining how the services are, or might be, engaged in primary crime preven-

tion. Whoever claims that the services are active in this area implicitly makes two assumptions: first, that the needs of their target groups need to be met by crime prevention measures; second, that their provisions are effective as prevention.

As the eighth *Jugendbericht* (youth report) rightly stated, work in the crime prevention field assumes that those addressed are potential offenders. By claiming, for example, that camping activities are effective as primary crime prevention, youth workers imply that those who take part are deterred from committing offences by adventure and other group socio-educational activities. Yet, first of all, empirical data do not support this general assumption. Second, the assumption contradicts the principle underlying all social work, which should be based not on negative forecasts (which, in this case, are unsubstantiated and not circumscribed in time) but on the resources, interests and current living conditions of its addressees. Third, the assumption negates something that should be a central tenet of activity in the child and youth services, just as it is a fundamental premise of criminal law: that someone is innocent until proved guilty. To sum up: if the addressees of the services' work are not to be stigmatised as potential criminals, then the services must relinquish the rather irresponsible notion that they engage in primary crime prevention.

The assumption that the activities of the child and youth services in the area of primary crime prevention are successful does not bear close scrutiny. No one can prove whether, or to what extent, a two-week camping expedition, a one-week course in using video-cutting machines, regular meetings of nature lovers or the Red Cross youth organisation, and multi-cultural sport activities involving mothers and children are effective in terms of crime prevention. The most that can be claimed for such activities is that by embracing socio-educational aims, such as identity promotion, the acquisition of social, cultural, artistic and technical skills and the combating of prejudice, they make a contribution to effective crime prevention – if they are successful, that is. Strictly speaking, even this claim needs to be substantiated. To categorise measures and provisions of this kind as crime prevention in any precise meaning of the term amounts to making a promise that can never be shown to have been fulfilled.

My second objection to categorising such activities as crime prevention is that it renders the term itself vague to the point of meaningless.¹⁰ If used widely in this way, »crime prevention« would eventually suffer the same

10 For the issues discussed here, see also Lüders 1995.

fate as »addiction prevention«, which in recent years has come to denote primarily the acquisition of skills for everyday life. I believe the consequences would be disastrous, leading to such extraordinary claims as »[addiction] prevention can be effective only if it is the work of society as a whole«¹¹. Statements of this type, meant quite seriously, have become common in the field of addiction prevention:

»Today the goal of cause-orientated prevention of addiction is to enable people to lead their lives with greater awareness. Aiming to increase social and emotional skills, addiction prevention focuses on the acquisition of viable forms of living and experiential capacities as a means of promoting a sense of personal identity and value, a capacity for enjoyment, a more fulfilling life, a sense of responsibility and a capacity for action among young people – and not only them. The work of addiction prevention thus begins long before addictive behaviour has a chance to appear, obstructing or at least deflecting it. This type of addiction prevention concentrates on feelings, attitudes and behaviour patterns in everyday contexts, addresses strengths, not deficiencies, and focuses on people, not drugs.«¹²

In this view, »addiction prevention« encompasses just about everything on the face of the earth. The term »crime prevention« would be similarly meaningless if expanded to include all the activities of the child and youth services, becoming indistinguishable from the other aims pursued by the services and synonymous with any set of desirable conditions.

Finally, the child and youth services could learn from criminology, which recognises that primary crime prevention fails »because there is no such thing as a single cause or set of causes of criminal behaviour and because the cause or causes cannot (yet) be established: reliable criteria do not exist for predicting incidences of crime with any reasonable degree of accuracy«¹³. Furthermore, criminal behaviour among young people is generally episodic (i.e. temporary) and ubiquitous: it is »normal«, in the empirical, not the normative sense of the word.¹⁴ This fact and the lack of reliable forecasting condemn to failure all attempts to distinguish »criminals« from »non-criminals« before offences have been committed.

In sum, there are two good reasons for treating with caution the claim that the child and youth services can use the means at their disposal to ac-

11 Weiss, p. 92

12 Appelt, p. 3

13 Heinz 1998, p. 29

14 See, for example, Walter, pp. 199-201

comply with primary crime prevention. The crux of the problem is the word »crime«. If it is to be applied meaningfully to preventive work performed by child and youth services – i.e. to denote an activity with clearly defined briefs, aims, target groups, strategies and so forth – then that work is better described as »crime avoidance«. The focus remains crime, and irrespective of how it is defined in everyday, legal and sociological terms¹⁵, the basic meaning of the word in the present context as denoting acts punishable by law or, as criminologists put it, acts having legal consequences is clear. This definition is not all-inclusive, but it provides an instrument for testing the claim that the child and youth services function in terms of primary crime prevention. The aims of the services as defined in Section 1 of the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) are:

- promote the personal and social development of young people and avoid or reduce discrimination against them,
- support parents and others legally entitled to take part in their upbringing and education,
- protect children and young people from risk for their own good, and
- contribute to the preservation or creation of positive living conditions for young people and their families and of environments sympathetic to children and families.

In the context of these goals, the child and youth services can at most be said to *contribute* to the primary prevention of crime among children and young people. Indirectly – not directly – their provisions aim, among other things, to forestall »deviant« behaviour and criminal offences. To promise anything else would amount to presumption with regard to the goals of primary prevention.

Whoever wishes to accomplish more than this must provide proof that possible future crime in a specific situation is a subject of specialist concern. To do this, however, would be to leave the field of primary prevention to focus on areas that might reasonably be termed problematic, high-risk or crime-inducing – in other words, to engage in secondary and, if previously convicted offenders are involved, tertiary prevention. Initially, the situation here would seem to be more clear-cut, since the risk areas, the potential or convicted offenders and their possible victims are more easily defined. There is apparently little need to produce arguments in favour of viewing social work in the street with young people who spend most of their lives on the streets partly (*sic!*) in terms of secondary crime prevention, because everyone is familiar with the risk potential of situations in which minor or serious offences are an everyday occurrence for

15 See Schwind; Lamnek; Janssen

many young people. The same holds true for group activities with young people from the extreme Right who are willing to use violence, for various kinds of neighbourhood-based community work in socially deprived areas, for aid of the »Family First« kind offered deprived families or families containing repeat offenders, for social work with convicted young offenders and much else besides.

Such activities can be justified as crime prevention with reference to empirically established data regarding the potential risk, repetition and encouragement of offences. In other words, there can be no objection to categorising work done by the child and youth services as secondary or tertiary crime prevention if plausible and more or less well documented reasons can be adduced for assuming that in a given case factors exist that could induce criminal behaviour and for assessing that potential. Remarkably, the services have by and large failed to produce substantiation of this kind, even in apparently clear-cut cases. Significantly, the subject of crime prevention is not treated systematically in a standard work on child and youth services published in 1995.¹⁶

Even with regard to secondary and tertiary prevention, however, the notion that the child and youth services perform crime prevention functions should be viewed with caution. We know far too little about the causes of crime and we rely far too much on instances in which we like to think of the relationship between cause and effect as proven fact, whereas in reality it is not. As indicated by the words of Heinz quoted above, criminology has not yet succeeded in defining reliable criteria for predicting incidences of crime with anything like reasonable accuracy. Above all, the observation that young offenders very often have certain characteristics in common, that they tend to commit offences in certain contexts, and come from certain social backgrounds cannot be used to establish the opposite: that these factors generate criminal behaviour. Secondary prevention thus »suffers from an acute lack of knowledge«¹⁷. Something that appears inevitable in retrospect cannot serve as a reliable basis for predictions. According to a study by Heinz, »false positive forecasts« – i.e. those for whom criminal offences and even criminal careers had been incorrectly predicted on the basis of supposedly tried and tested criteria – account for fifty to sixty per cent of all such forecasts.¹⁸ Since offenders cannot be identified in advance, the only arguments that can reasonably be adduced

16 Becker

17 Heinz 1998, p.31

18 Heinz 1990; see also Stiefel

in favour of secondary prevention are those couched in terms of plausibility – for example, that certain environments and situations increase the likelihood of offences, by encouraging them more or less directly or by decreasing the possibility of their detection.

Despite the uncertain nature of such evidence, there are good pragmatic reasons for doing everything possible to reduce the rate of unemployment, improve participatory opportunities and avoid social disintegration. Yet it cannot be the job of the child and youth services, for instance, to subject unemployed, foreign and/or socially disadvantaged families to a barrage of crime prevention strategies. Socio-educational needs must remain the chief point of reference for the services, and the issue of how the fulfilment of these needs can be achieved in tandem with crime prevention measures must be addressed in each and every case, in each and every situation.

With qualifications, the same is true of the child and youth services in relation to tertiary prevention. Forecasting who will commit subsequent offences is fraught with uncertainty. Yet the services should not leave it at that. Quite the opposite: young police suspects represent a particularly strong challenge – astonishingly, one that has barely been discussed among specialists. Every day, youth and social service offices are informed by the police that a young person is suspected of having committed an offence. Whether this situation belongs to the category of secondary or tertiary prevention – the individual concerned is »only« suspected of committing an offence, possibly for the first time – is open to question and less important in the present context than how the services react to this information in terms of crime prevention. In practice, as we all know, responses vary enormously, ranging from formal letters to efforts to organise discussions among all those concerned, from negligence as a result of overwork to well-judged intervention. I believe that such cases offer the child and youth services a viable opportunity of implementing crime prevention strategies, especially if the information is received soon after the offence has been committed. Here again, however, it needs to be remembered that not every instance of shoplifting, say, marks the beginning of a career in crime. Moreover, criminal behaviour among young people is often combated more efficiently and with more lasting success from within the offender's family or circle of friends. Sometimes, though, external advice and assistance is helpful. Yet how are these cases to be recognised?

An enquiry conducted by the *Deutsches Jugendinstitut* among specialist workers revealed that lack of resources forced most social service offices to focus on obviously difficult cases. Even where additional resources were

available, the decisions taken could not always be justified in terms of established basic criteria. Over time, practical experience equips workers with a sense of how to proceed effectively and with detailed knowledge of local circumstances. This can lead them, for instance, to pay particular attention to a first-time suspect from Street A, even if the young person concerned and his family have never before come in conflict with the law, but not to pursue the young person from District B caught shoplifting for only the third time in five years, because it can be assumed that the offender's social and family environment can keep the problem under control.¹⁹

These examples make it clear that crime prevention work in the child and youth services is based on more than the police's naming of a suspect and the potential, foreseeable or actual legal consequences. It must involve at least an evaluation of concrete socio-educational needs, i.e. an assessment in terms of the offender's biography, socialisation and psychology, in terms of the resources available to combat the problem and in terms of possible assistance required. The same applies if an offence has not actually been committed, the assessment here relating to the need for action in a situation in which the risk of criminal behaviour is becoming apparent. If crime prevention is understood in this way, as one aspect of social work, then I believe one can at least speak with justification of »socio-educational crime prevention«.

The preliminary results of our investigation may be summarised as follows. Viewing the work of the child and youth services in terms of the three customary categories of crime prevention is in several fundamental respects

- problematic, because indirectly it involves the services making promises they cannot fulfil,
- misleading, because it categorises the goals of the services in untenable specialist terms and
- obstructive, because it masks the real achievements and opportunities of the services in the field of crime prevention.

What is left? Clearly, the existing categories are of little value, yet the specialist perspective of the child and youth services provides others, involving who or what they focus on and which constellations they perceive as problematic.

19 *Projektgruppe*

3. Crime prevention in the *Kinder- und Jugendhilfe* (child and youth services) – a systematic approach

Lack of space does not permit me to describe in detail the entire range of approaches to socio-educational crime prevention and their preconditions. The following points may serve as an attempt to define the field.

First, I assume that it is an indispensable condition of socio-educational crime prevention that an attempt is made to determine to what extent and for what reasons each case really involves the avoidance of crime. Although necessarily incomplete, such justification of action is in my view essential not only for the reasons given above, but also to prevent the irresponsible stigmatisation of the target persons and thus aggravate the problem.²⁰

Second, in view of the points made in the previous section of this paper I believe it necessary to differentiate more strongly than has hitherto been customary between types of case. I propose to distinguish four groups of young people²¹ because the justification for action that they entail, the risks involved and the strategies that may be required differ markedly. The four groups are:

- young people at risk, i.e. those with whom there are reasoned grounds for assuming that they will commit an offence;
- young people suspected of having committed an offence, mainly by the police, but also by store detectives, schoolteachers and others;
- young people sentenced in a court, i.e. those identified as having committed an offence; and
- young people who have committed offences unknown to the police or other authorities but learned about from members of their milieu or from themselves when they mention them to the youth emergency services or boast of them in the context of activities organised by the youth welfare services.

As these groups are not hard-and-fast categories, a division into subgroups would seem appropriate. Repeat offenders, for example, represent a combi-

20 See also Scherr, p. 579. I do not otherwise agree with Scherr's analysis of the current situation and find his rather vague conclusions with regard to the relationship between the child and youth services and crime prevention to be unconstructive.

21 I wish to emphasise that I am discussing young people who have reached the age of criminal responsibility (fourteen according to German law). The typology I outline here would have to be altered in one major respect so as to apply to children below that age, because they cannot be sentenced in a court of law.

nation of the first and third categories outlined above. Because different socio-educational measures are required, a distinction should also really be made, on the one hand, between cases of young people who are registered in police databases with only one, two or three (generally minor) offences and in which there is good reason to believe that, with proper help, the problem will solve itself, and on the other, those with a long record of criminal proceedings brought against them who may justifiably be thought likely to continue their »career«. Then there is the group poised between these two poles. These young people present a special challenge to the child and youth services, which need to devise special measures to prevent them falling into a long-term career in crime and becoming established in the relevant milieus. For the sake of simplicity, I shall not discuss further possible subgroups.

My thesis is that each of the groups mentioned above requires of the child and youth services different goals and procedures in terms of crime prevention. I shall attempt to demonstrate this in the case of young people suspected of offences.

Specialist debate in recent years has revealed that considerable numbers of young police suspects have not actually committed an offence and that the results of police investigations appear in a different light when viewed from a judicial perspective. Offences may prove to be less serious, for instance; police enquiries may be shown to have involved questionable admissions of guilt or new evidence may appear in the course of youth court proceedings that lead to an acquittal on grounds of inconclusive evidence. Of paramount importance here is that the young person is »only« suspected of having committed an offence until proceedings are abandoned or otherwise brought to a conclusion: the proceedings themselves establish officially whether he or she has committed the offence and of what type it is. Since court proceedings generally take place some time after the suspect has been charged, the young person has to live with the stigma of being a police suspect for that period, which can often be as long as several months. Astonishingly, hardly anyone has investigated either the significance of this status for suspects, their parents, friends, school or instructors or its implications for crime prevention work. My thesis, which is substantiated by the records of many youth court proceedings, is that for most young people being a suspect constitutes a psychological burden and is experienced as a crisis, especially when they feel they have been charged unjustly. Hence, instead of treating the suspect as an offender, which happens all too often, the youth welfare services should, first, devise measures

to ease the burden of the suspect status and, second, make use of the opportunities this offers for long-term social education.

The experience of the child and youth services shows that at some point people stop believing repeat suspects. Even with first-time suspects there is a tendency to assume that there must be something in the results of the police investigations. Such attitudes induce the young people, on the one hand, to rely still further on their often problematic milieu and, on the other, to develop a defiant stance that is ultimately counter-productive. What measures could be developed as an effective response to these problems? And why should the negative experience of being a suspect not be seized on as a socio-educational opportunity? In my opinion the youth welfare services have paid too little attention to police suspects. It will have become clear from the present discussion that this group presents specific challenges not encountered in the other categories of young people outlined above.

Crime prevention strategies involve more than individuals, and it is therefore necessary to address the other levels on which they operate. In terms of the child and youth services, I propose to distinguish the following five levels:

- The individual level, which involves dealing with specific cases of young people belonging to the four categories outlined above.
- The target group level, which entails addressing the environment, the family and the relations of members of the same four categories. Here, too, a distinction needs to be made between, say, a gang of young people containing repeat offenders, a clique suspected of shoplifting and a milieu in which certain observed developments might lead to offences being committed.
- The community level, which requires a focus on local structures, conditions and occasional developments.
- The level of co-operation in individual cases, involving the police, the judiciary, education authorities and other bodies, which addresses the various institutional parameters and responsibilities involved in dealing with children and young people individually and in groups.
- The level of co-operation with crime prevention bodies, especially councils, which involves the development of new cross-section crime prevention policies.

Each level makes specific claims on the child and youth services with regard to skills, strategies and criteria. Again, these demands can only be outlined here. Socio-educational needs are the chief criterion of activities

on the individual level: what support, assistance or control requirements can be identified and justified in connection with specific individuals and their social environment if they are to be prevented from falling (back) into a career of criminal practices? On the target group level, the immediate social environment plays a far more significant role – the mobility of certain milieus, groups' structures and dynamics, patterns of escalation and de-escalation, internal self-determination mechanisms and so forth. These require various approaches and implementation strategies. In terms of debates within the youth welfare services, however, it is perhaps more important to establish that with reference to groups, milieus and relational systems socio-educational needs – defined in discussions of outreach youth and social work as »help in coming to terms with life« – must once again be the paramount specialist concern. At both the individual and the group level, the child and youth services possess a relatively high degree of autonomy in establishing which criteria and procedures result in successful crime prevention. At least in these areas, there is little foundation for the widely advanced claim that the services are in danger of becoming an instrument of politics, public opinion, the police or the judiciary.²² Things look very different at the community level and at the level of co-operation both with various partners in individual cases and with crime prevention organisations. Almost by definition, in these areas the services can identify and promote their concerns only in competition with other strategies and criteria of success. They are thus forced to justify and defend their specialist view and must be prepared to make compromises so as to remain effective in a co-operative context. Not to lose sight of one's own standards amid a maze of discussions involving other institutions and other areas of responsibility demands a range of skills acquired only with experience and quite different from those required, say, to devise appropriate help for a fifteen-year-old suspected once again of theft.

4. Challenges

As indicated several times above, I believe crime prevention in the context of the child and youth services to be a socio-educational task. Exaggerating slightly, I would say I regard the child and youth welfare services as the prime public and practical agent of social education in the context of criminal behaviour among children and young people, along with the police and the Youth Courts (which have limited opportunities for socio-educational

²² See Scherr

tional intervention). From this perspective, such criminal behaviour can be seen, for example, as a form of coming to terms with living conditions. It may be viewed as a kind of self-assertion, as an effort to maintain freedom of action.²³ On no account should interpretations of this type be seen as playing down the seriousness of youth crime. Rather, they should be understood as a means for the child and youth services to develop an independent specialist view of criminal behaviour as a basis for identifying their exact role in crime prevention. To accomplish this, the services must define their view of crime more positively and more consistently, stop making promises they cannot keep and establish the criteria governing their interventions. And they must convey all this clearly to those with whom they co-operate: after all, the police and the judiciary, for instance, can scarcely be blamed for ceasing to believe in the services' effectiveness if they are incapable of explaining their standpoint and strategies. I am convinced that the services' partners will come to terms with any controversial assessments they may make, if, say, they criticise as counterproductive strategies approved by the police and the justice.

The child and youth services must recognise that crime prevention not only has its limits, but also, if the issue is taken to its logical consequences, that it stands in irreconcilable opposition to the legally binding aims of the services as defined in the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) and to modern notions of the services as an agent of positive intervention. In all instances known to me in which the public, the Government, the police and the judiciary have repeatedly accused the services of reacting too late they did so after the person or persons in question had become a hardened case. Yet pathologists still make the most reliable forecasts. The correct time to intervene is far more difficult to establish, for child and youth services, for police and justice, for education authorities and families. The idea that services, along with schools, are particularly well placed to prevent crime because they deal with children, young people and parents before criminal careers have had a chance to become fully formed is too simplistic. This view ignores the fact that neither the services nor education authorities can intervene at will at a family level because, with good reason, the law sees personal education primarily as the responsibility of parents. Hence, plausible grounds have to be produced if permission for intervention is to be granted, and anyone familiar with Family Court sentences will know how great the obstacles are. There can be no generally valid criteria for determining the correct moment to intervene, but in order to improve existing practices I believe specialists

23 Among others, see also Böhnisch 1998 and 1999

must discuss which strategies, criteria and concepts have proved to be more and which less successful.

Finally, the child and youth services must inevitably begin addressing some of its most firmly established taboos. One of these relates to the point noted above, that crime prevention involves the risk of stigmatising all children and young people as potential law-breakers. I should like to mention three other aspects:

- It is naive to welcome prevention without realising that every preventive act represents an intervention in the life of those concerned and entails an element of control. Those who support prevention as the ideal way forward for the child and youth services must recognise that they are inevitably opening the door to new forms of social control. Social education workers intuitively oppose restrictions and other forms of control, but to avoid blind spots with regard to their own practice they must face up to the consequences of embracing crime prevention.
- Social education as applied to crime prevention has focused on potential offenders, young suspects and convicted offenders to such a large extent that victims are generally ignored. Although certainly not lacking in compassion, those active in the child and youth services have far to go before they acquire an understanding of crime prevention that includes potential and actual victims.
- The widespread enthusiasm for crime prevention in the child and youth services has sometimes led to faith in it being mistaken for proof of its effectiveness. I believe this makes it all the more necessary to establish in empirical terms, and on the basis of the limitations and qualifications discussed above, what crime prevention efforts really accomplish. As it is hard to measure non-occurrences (such as the number of criminal offences that have been prevented), assessing the effectiveness of crime prevention strategies is extremely difficult. Yet that should not be offered as an argument for failing to determine empirically what their effects are, both intentional and unintentional.

As the saying has it, the road to hell is paved with good intentions. Prevention of criminal behaviour among children and young people is both possible and desirable. However, we must be sure not to throw out the baby with the bath water.

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Heiner Schäfer

Combating criminal behaviour among children under 14 year of age – the responsibility of the educational system

Public debate in Germany in recent years about the rise in numbers of young criminal suspects has been accompanied by increased attention paid to criminal behaviour among children. The age of offenders, it is claimed, is becoming lower and lower, and their offences more and more serious. It seems that Germany is spawning a mass of »little monsters« – as a front-page story in *Der Spiegel*¹ called them – and that no one knows what to do about it. The »monsters« are children under the age of fourteen who have committed many and/or serious offences but cannot be convicted because they have not reached the age of criminal responsibility. Public and political discussion of this topic has become particularly heated when isolated cases, usually of a sensational nature, have received extensive media coverage throughout the country.

In 1997 and 1998, for example, the case of »Mehmet«, a repeat offender from Munich, occupied the headlines for months. Initially below the age of criminal responsibility, he was promptly – if controversially – deported to Turkey the moment he reached the age of fifteen. Since then he has returned to Germany and disappeared from the headlines. Similar cases were reported, and occasionally continue to be reported, in other German cities. Talk shows and special features on TV, combined with articles in magazines and newspapers, painted a picture of childhood inseparable from crime and violence. Mehmet's deportation was followed by a lapse of media interest in such issues, but public discussion of criminal behaviour among young people has flared up again recently in the wake of a small number of sensational events that took place in schools or were school-related. Attention this time has focused on violence in schools and children's part in it. It is safe to assume, therefore, that criminal behaviour among children will stay on the public agenda.

1 *Der Spiegel* is one of Germany's leading weekly news magazines.

1. A brief historical survey

In one way or another, society has always tackled the problem of criminal behaviour among children and young people, even if adequate attention has not always been paid to the difficulties they experience in adapting to adult society. A law was passed in Germany in 1871 protecting children from criminal prosecution until they had reached their thirteenth birthday. They could, however, be committed to »institutions« for »upbringing« for an unlimited period of time. The »upbringing« practised here generally used corporal punishment as a deterrent. Young people might spend ten or more years in these institutions, many not being released before they had reached the age of twenty. In the early years of the twentieth century this situation gave rise to a fierce debate concerning the most suitable age of criminal responsibility. A reform movement, the *Jugendgerichtsbewegung* (youth court movement), aimed at revising the penal law in order to extend freedom from prosecution to thirteen-year-olds. The First World War and subsequent political unrest meant that this aim was not achieved until 1923, when the first *Jugendgerichtsgesetz* (Youth Court Act) in German history to be passed by a democratically elected body raised the age of criminal responsibility to fourteen. This remained the limit throughout the first decade of Nazi dictatorship, until 1943, when the *Reichsjugendgerichtsgesetz* (youth court act of the *Reich*), passed against the background of clear indications of Germany's eventual military defeat, lowered the age to twelve.

This »relaxation« of regulations relating to the age of criminal responsibility became invalid at the end of the Second World War. In both the new German states Youth Court Acts again raised the age of criminal responsibility to fourteen, in 1952 in East Germany and in 1953 in West Germany. Raising it further, to sixteen, was discussed in the 1970s in West Germany in connection with a proposed reform of the *Jugendwohlfahrtsgesetz* (Youth Welfare Act). Later, in 1992, a demand was voiced at the *Jugendgerichtstag* (youth court convention) for youth penalty – the strongest form of intervention, resulting in the offender being sent to a youth prison – to be applicable only to young people aged sixteen or over. Such efforts have been unsuccessful, however, and the age of criminal responsibility in Germany has thus remained unchanged for almost half a century. This has not prevented some politicians in recent years from demanding that it should be reduced to twelve, a proposal clearly rejected by social scientists and those responsible for formulating and implementing youth policy. Fourteen is about the European average for ages of criminal responsibility.

2. The extent of criminal behaviour among children, and statistical problems

Experts agree that criminal behaviour among children has always been widespread and must therefore be viewed as »normal«. Children have always transgressed boundaries, challenged authority, looked for, found and survived »trouble« within the bounds of possibility, and have always sought the approval of their peers. Hence, as the *Bundeskriminalamt* (federal criminal police office; *BKA*) has stated, »offences committed...by children [are] for the most part minor offences«².

A quite different picture emerges from public discussions of the annual publication by the *BKA* of the *Polizeiliche Kriminalstatistik* (police criminal statistics; *PKS*), which contains information on suspects traced by the police. The 1998 *PKS*, issued by the *Bundesinnenministerium* (federal ministry of internal affairs) on 25 May 1999, stated, for example: »There was a notable increase in the number of child suspects (under the age of fourteen): 152,774 child suspects were registered in 1998, an increase of 5.9% over 1997«. In the public debate these figures were interpreted as an accurate reflection of real crime rates, even though the *BKA* itself had drawn attention to the fact that the value of the *PKS* is limited because some offences are never reported to the police. The size of this unknown quantity varies with the type of offence, the readiness of the public to inform the police and the care with which data is collected. The latter, in particular, may vary a great deal over time. The *BKA* concludes: »The police criminal statistics do not provide a precise record of criminal reality, but, depending on the type of offence, a more or less accurate approximation to that reality.«³ For this reason, we shall not satisfy readers' curiosity by reprinting misleading figures. These may be found in the annual *PKS*.

It is important to remember that no valid conclusions can be drawn from statistics relating to child criminal suspects. Statistics for convicted offenders do not exist for the simple reason that people under the age of criminal responsibility cannot be prosecuted. Moreover, no statistical samplings have been made. In the meantime, however, some qualitative research has been undertaken into unlawful behaviour among children and its causes,⁴ as well as the work of socio-educational institutions with regard to repeat and serious offenders in this age group.⁵

2 Quoted in *Arbeitsstelle*, p. 94

3 *Polizeiliche Kriminalstatistik*, p. 7

4 See Hoops

5 For an analysis of the relevant records see *Arbeitsstelle*, p. 94

3. The legal background

Section 19 of the German *Strafgesetzbuch* (Penal Code) states that children under the age of fourteen are inculpable. The judiciary has no responsibilities here, as it deals with young people and adults. Since 1999, in accordance with the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) or the *Bürgerliches Gesetzbuch* (Civil Code; *BGB*), courts trying family cases have been empowered to issue socio-educational orders for children who have committed unlawful acts. If a case is dismissed on grounds of inculpability, the guidelines relating to Section 1 of the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*) stipulate that the public prosecutor must examine whether anyone is to be informed, and if so who (generally, schools or the family courts), and must determine whether action should be taken against those with supervisory obligations. All this does not alter the fact that the unlawful acts themselves cannot be prosecuted under criminal law: in purely procedural terms, the unconditional inculpability enjoyed by children precludes court proceedings. Even a trial begun in error would have to be terminated by dismissal of the case (though not acquittal of the accused), even if the child accused (perhaps incorrectly) had passed the age of fourteen by the time the case reached court. Because child suspects cannot be prosecuted, it follows that they cannot be convicted or acquitted. Their guilt or innocence simply cannot be established in legal terms. Strictly speaking, then, »child crime« is a misnomer. »Criminal behaviour« of children would be a more accurate term.

Children who commit unlawful acts are the responsibility of parents, schools (which have no explicit brief in this area, especially if the incidents of such criminal behaviour do not occur on the school premises) and state-organised *Kinder- und Jugendhilfe* (child and youth services). The services' area of responsibility and their scope for intervention are defined by the *KJHG*, which in Section 1 describes their aim as defending the right of children to promote their personal development and supporting their claim to be brought up as personally and socially responsible human beings. These generally worded goals give the services a clear socio-educational mandate in the area of crime prevention among children and young people.

Discussion of children growing up almost inevitably involves consideration of the parents as well, and their role in combating unlawful behaviour among children is indeed a major one. The legal status of parents in Germany is higher than in many other European countries, not least because legislators wished to prevent a recurrence of the kind of wholesale state intervention in the upbringing of children experienced during the Third

Reich. Parents were given wide-ranging rights by Article 6 of the *Grundgesetz* (constitution), and intervention by outside parties was made correspondingly difficult in Section 1666 of the Civil Code (*BGB*). Work with children on the part of the child and youth services services is subject to parental agreement. As the chief – often only – institution responsible, the services frequently find it hard to gain parents' consent in difficult cases.

4. Prevention of criminal behaviour

The widespread public debate in Germany in recent years about criminal offences among children and young people and the development of suitable prevention strategies has focused on the agents of law enforcement and security rather than on those involved in social education. Even the police have discovered children as a target group.⁶ The preamble to Police Regulation No. 382, for instance, which determines procedures in cases involving young people, also addresses the treatment of children below the age of criminal responsibility, emphasising the importance of social education. The police have now become active not only in schools, where they have always been involved in traffic education schemes, but also in areas traditionally the domain of *Kinder- und Jugendhilfe* (child and youth services) but addressed by them only sporadically.

This broadening of the strategies developed and the controls exerted by law enforcement and security agents has gone largely unopposed because the public has increasingly come to see children and young people as a threat to law and order. Current debates about schools, for example, focus not only on the lessons to be learned from Germany's poor showing in the PISA study, but also on aggression and violence as typical of school life and schoolchildren. At a time when the introduction of security forces – even armed security forces – and CCTV have been proposed as desirable means of combating violence in schools, social education has naturally become a minority pursuit.

For the *Kinder- und Jugendhilfe* (child and youth services), prevention of criminal behaviour is chiefly a socio-educational task, which they pursue without firm support from legal institutions. In this they differ from the *Jugendgerichtshilfe* (youth services in youth court proceedings), which, although by definition part of the child and youth services, is concerned

6 The German police are required by the »principle of legality« to register and investigate every offence.

with young people who have reached the age of criminal responsibility and thus occupies the relatively safe ground provided by close co-operation with the judiciary and the police. Generally, the police, the judiciary and the public know next to nothing about the goals and methods of the child and youth services, and it is thus scarcely surprising that they show little faith in the effectiveness of the services' work. The scope of the services' activities is misjudged, since they are seen more as an extension of the judiciary than as an independent specialist body. Despite this view, the principal challenge represented by unlawful behaviour among children is socio-educational and cannot be met effectively by the police and the judiciary.

For years, the notion that criminal behaviour among children was both ubiquitous («all children do that kind of thing sometimes») and episodic («they'll grow out of it») led the child and youth services to pay little attention to it. Forced by enormous public pressure to address the issue, they initially took their cue from the long experience, the wide-ranging approaches and the actual provisions of the youth services in court proceedings, developing their own strategies from the *JGH's* record of co-operation with the judiciary and the police and from recognition of the *JGH's* achievements – even though these appeared, and were presented, as the result of activities conducted on an independent, self-contained basis rather than as part of the services.⁷ Behind these strategies lay the image of the «naughty child» who needs to be punished or disciplined by strict supervision and firm guidance. In this way, provisions developed in co-operation between the judiciary (the youth courts and the public prosecutor) and the *JGH* gradually became the model for supposedly socio-educational activities and are now increasingly being adopted in work with children, sometimes circumspectly, sometimes naively and, now and again, insensitively.

Thus «social training courses»⁸, introduced as means of increasing the social skills of young offenders so that they no longer fall foul of the law, have formed the basis of various provisions devised by the child and youth services. It is generally forgotten that, as implemented on a daily basis, these courses – all subsumed under the heading «group social work» – bear little relation to the purpose originally intended by the Child and Youth Services Act. According to the expert opinion enshrined in Section 29 of the *KJHG*, the aim of the courses is «to overcome developmental difficulties and behavioural problems» amongst those below the age of

7 See Lüders 1998; Gabriel

8 These are among the court rulings provided for in Section 10 of the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*).

consent. That goal is often left out of account in public notions of how the youth services operate. Children's more or less voluntary participation in provisions of the penal code that relate to young offenders – and were thus devised for people at a far more advanced stage of development – has led to misconceptions. The provision of socio-educational help in accordance with children's specific needs has been lost sight of: »criminal behaviour« is now the sole concern. Complaints, sometimes fierce, that the youth services offices fail to act have led to group social work being presented as a weapon with almost miraculous powers.

A similar problem has occurred with regard to reparation of damage done, an approach of proven effectiveness with young offenders. It is used – and not in the case of minor offences – to reduce or exclude the possibility of criminal proceedings against young people. The youth services have begun to employ it and have proposed that it might be a successful way of helping children, too, to appreciate the cause-and-effect aspect of their acts. The method is by no means new: parents and local communities have always made use of it, and it has consistently played a part in the socio-educational aspect of school teaching and in the provisions of the child and youth service). The problems begin when this »extra-judiciary approach« is extended by the only state institution responsible to include all children »from the age of seven on« because Section 104 of the *BGB* (Civil Code) states that they possess limited legal accountability. This widening of the services' educational brief is fraught with risk. The services' activities should remain geared to socio-educational needs, assessing the »biographical, social and psychological significance of an unlawful act [and] using available resources to combat the problem«⁹. Quick, across-the-board solutions designed to accommodate populist criticism are quite inappropriate, because the services might then contribute to an introduction of official sanctions at an even earlier stage in the lives of children and young people.

Long-term specialist debate on preventing crime among children in Germany has brought certain basic issues into focus. Some of these are examined in the remaining sections of this essay.

4.1 Target groups

In recent years interpretations of *Polizeiliche Kriminalstatistik* (police criminal statistics) figures, some of them fanciful in the extreme, have occasion-

9 Lüders 2000

ally given the impression that all children have criminal tendencies and should thus be the target of preventive measures. The *Kinder- und Jugendhilfe* (child and youth services) have contributed to this impression. The focus of public funding on crime prevention at a time when public coffers are empty has induced the services to use the term »crime prevention measures« to describe tried and tested provisions for leisure activity. In this way, the emphasis of what are essentially unchanged provisions is transferred from social education to crime prevention. Nominally, the new label makes potential criminals of all children who take part in service activities out of a desire for adventure (understandable at their age) or because they lack other opportunities.

The way to prevent such »underhand« renaming or realignment of target groups is to define those groups precisely. They include the many children suspected of minor offences, the very small number suspected of several or serious offences, children of non-German origin (still regarded as especially liable to commit unlawful acts), »unruly« youths and the more recently discovered category of violent girls. A more precise definition of these groups will also help to correct the distorted picture of reality offered by generalisations.

Successful approaches to combating criminal behaviour among children in Germany may be categorised in terms of their respective target groups. One category comprises schemes directed at children already noted for such behaviour. Having been »caught«, they rank as suspects. »Good« schemes carefully assess their need for assistance before offering it. To prevent them committing offences in the future these children are encouraged to become accustomed to behaving in »normal«, law-abiding ways. While this approach generally effects a long-term change in the children's behaviour, a small group of children exists who do not accept the help provided by these otherwise successful, conventional provisions and who are frequently described by the services as »unreachable«. The results of some schemes devised specifically for this group show that calling them »unreachable« is an inaccurate stigmatisation. In Berlin, for example, a scheme aimed at Bosnian Roma children developed provisions that successfully involved children who are normally extremely difficult to reach. Clearly defined aims involving »social inventions«¹⁰ and closely co-ordinated co-operation have been major factors in the success of this scheme.

10 These are modules, developed in accordance with the children's needs that have played no part in work with »German« children because of their different social and cultural background.

Other schemes deal with children who have not committed unlawful acts. This attempts to develop and stabilise the children's personalities. Taking their cue from the avowed aim of youth work to promote the individual and social development of as many children as possible, these schemes operate where they can reach the maximum number of children: in schools. They target entire school classes on the assumption that criminal behaviour is ubiquitous. For all children, such behaviour is but one of several possible courses of action typical of their age group. The schemes do not marginalise »bad« children, preferring not to focus on the weaknesses of a school class or of individual pupils but to identify their strengths and put them to constructive use. This approach also includes adults active in schools – teachers and, occasionally, caretakers and head teachers – in order to increase their awareness of their part in the development of individual children and classes.

A third set of schemes mix children who have committed unlawful acts with children who have not (or have not been caught). In avoiding homogeneous groups, this approach seeks to harness the skills of suspects' peers in helping them to discover alternative modes of behaviour.

Activities specifically targeting criminal behaviour among children of non-German origin lie outside the categories outlined above and, although Germany has *de facto* become an immigration country, such activities are still far too rare. While many children of non-German origin naturally participate in the schemes described here, from group social work to sports and school programmes, their lack of German language skills frequently causes them to be marginalised or excluded altogether. Clearly, children with little German require special help if they are to be integrated successfully into German society, yet there are still nowhere near enough qualified workers with knowledge of the children's countries of origin and their native tongues.

Gender-related approaches are likewise rare in crime prevention activities aimed at children. This applies even to schemes in which gender sub-groups are formed from time to time, including work with school classes and assertiveness training. Gender is not the chief issue here and, fully aware of this, the organisers do not present their schemes in those terms. In group social work, too, »the child« tends to be viewed as a genderless creature. Girls can be included only if there is more than one of them, with the result that a girl is often turned away from a group because she is on her own. Although »bad boys« are in a clear majority, specifically male-orientated approaches to preventing criminal behaviour among children are

also a rarity. This reflects the general situation within the child and youth services, where gender-related approaches are reserved almost exclusively for girls. Nevertheless, some improvement in the rudimentary state of work with young males can be detected.

4.2 Physically orientated approaches

Complaints regularly voiced by the judiciary, the police and the public – criticism of the »why don't they do something about it?« or »they're never there when you need them« kind – decry the efforts of the child and youth services as non-existent, ineffective or fundamentally flawed. Yet a large number and a wide variety of schemes and approaches have been developed in recent years. It is not possible here to discuss all these activities but one aspect deserves to be addressed.

Preventive work with children operates mainly on a verbal basis, focusing on conversations with individuals or groups. If other methods are adopted they tend to be such traditional ones as handicrafts or making collages, with which children are familiar from the educational institutions they have attended, including crèches, schools and after-school facilities. A child's body and physical needs are largely ignored. Social education is rarely linked to sport, for example, and adventure pursuits are the only physical activity in which it plays a part. A few schemes initiated by the *Kinder- und Jugendhilfe* (child and youth services) have begun tentatively to accept the body as an »acquired« and often skilfully used means of expression that forms part of children's ability to resolve conflicts (an ability that, with many of them, resides in aggressive behaviour and violence). Similar attempts have been made in schools (surprisingly, because liability issues are involved and because a widespread fear of physical violence exists among teachers, who generally come from middle-class backgrounds). In the playground, for instance, teachers will not always join the fray to keep fighting children apart, but will instead seek to ensure a fair fight by supervising the conflict in accordance with a clear set of rules. Subsequently, they discuss with the children the causes of the conflict and other possible ways of resolving it. Approaches of this type are generally pursued on an unofficial basis.

4.3 Social work with parents

»The care and upbringing of children are the natural prerogative of parents and their prime duty... . The *Kinder- und Jugendhilfe* (child and youth services) exist ... to advise and support parents ... in matters pertaining to the upbringing of their children.« This is how Section 1 of the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) defines the respective responsibilities of parents and the child and youth services. Children's right to personal and social education accrues to them principally via their parents; the services are of secondary importance. However much the services may see themselves as representing the interests of children, they cannot intervene between them and their parents until empowered to do so by the judiciary, who must be convinced that the well-being of the children is at stake. As noted above, parents' wide-ranging rights are established by the *Grundgesetz* (constitution).

All the activities described here take place against this legal background. Hence parents, not their children, are the main addressees of the child and youth services: parents must give their consent before their children can take part in a scheme and sometimes, as in group social work undertaken in accordance with Section 27 of the *KJHG* (»Help with social education«), they, not their children, are the »holders of legal entitlement«.

The widespread experience among social workers, as among those active in schools and other institutions and organisations, is that working with parents can be very difficult. Parents often avoid involvement in crime prevention activities, sometimes deliberately absenting themselves when social workers call or claiming that they are not at home. Frequently, parents have found past encounters with the authorities unpleasant, feeling that they were being lectured or warned, threatened or put under pressure, but hardly ever experiencing the officials as genuinely helpful. These parents fight shy of all such contact, even with voluntary workers. They seek to prevent access to their family, either because they are unwilling to be held responsible yet again for the path their children have taken or, occasionally, because they have something to hide.

Various strategies have been developed to deal with this problem. Some social workers have reacted to the reality of the situation by reducing their expectations. They are satisfied if they see the parents only a few times, often on nothing more than a pro forma basis. Group social workers report that they sometimes have contact with a child's parents only once or twice, generally at the beginning and the end of the customary six-month

period. Those working in schools confirm that parents are rarely reached by their schemes. Systematic work with parents does not form part of the training of those employed either in schools or in the child and youth services. Many project organisers are pleased that the children are allowed to participate at all in their activities, without wishing to tackle »difficult« parents as well. This pragmatic, but problematic, attitude ensures that every place in their scheme is taken and that their staff can expect to be paid. Case-by-case funding, customary not only in group social work, puts enormous pressure on the organisers to fill every available place. Thus, children are hardly ever turned away, even if their parents are reluctant to co-operate. This is usually justified with reference to the fact that the children – the real target group, after all – would not otherwise be reached and that parental resistance is sometimes overcome only after work has begun. The latter seems not to occur very often, however, and social workers generally prefer to put all their limited resources into working with children rather than into frequently dispiriting attempts to involve parents.

Yet schemes do exist in which planning and carrying out work with parents, especially evenings spent with them, occupy a central place. Here, work with parents is not left to chance by making it subject to whatever degree of socio-educational skill happens to be available. Instead, it forms a significant part of a further-training concept. Successful techniques are implemented, limits defined and the need to accept setbacks explained. Above all, these provisions show how work with parents can harness the parents' own skills and motivate them. Schemes that have successfully involved the parents of migrant children prove that working with parents is possible even under the most adverse circumstances. Although past experience and lack of knowledge of German frequently led the families concerned to mistrust the authorities, they eventually agreed to co-operate. Activities of this kind seek to work together with parents in bringing about changes that both parties recognise as easing their burdens and improving their everyday lives.

4.4 Co-operation

Councils and round tables set up to discuss crime prevention are now widely accepted in Germany as helpful tools. Co-operation (or networking) among those engaged in preventive activities aimed at children has thus become an indispensable part of their work, one in which high expectations are placed. Effective prevention of criminal behaviour among children

is no longer possible if restricted to the courses of action and the modes of organisation practised in individual institutions and groups.

Many schemes instituted by the *Kinder- und Jugendhilfe* (child and youth services) automatically involve co-operation with other parties. These now include the police, who not long ago would have been inconceivable as partners. The public tends to rate police prevention strategies higher than the activities of the child and youth services. They are under enormous pressure to act, from youth officers and from the increase in the number of police provisions for children and young people («basketball at midnight», for example) and their socio-educational ambitions.¹¹ Hence, in recent years schemes involving close co-operation between the police and the child and youth services have been initiated in a number of cities, including Dresden, Halle and Magdeburg. Here, too, knowledge of structural differences is essential to successful co-operation. Failure either to acknowledge the police's duty to investigate every offence, for instance, or to recognise that the child and youth services are subject to less rigid restrictions (they can turn a blind eye to an unlawful act if they wish) is bound to result in difficulties. Again, knowledge of the responsibilities, skills and limitations of both parties should form the basis of co-operation. Success can be achieved only if each side is honest, to itself and its partner, about the opportunities open to it and the restrictions it is subject to. One basic requirement still needs much effort from all professions and agents involved if it is to be met: workers who are trained not as individuals equipped to cope with everything on their own, but as specialists capable of co-operating with others.

Despite the traditionally uneasy relationship between child and youth services and schools, co-operation between the two is becoming increasingly successful. The sheer weight of the problem of criminal behaviour among children has induced both parties to accept each other's help in an intensive search for new solutions. Often, however, insufficient attention is paid to the fact that their different structuring strongly influences their activities. The school system, for example, is centrally organised in most federal states in Germany, while the child and youth services are answerable to local government. Schools have a clearly defined mandate from the state: the education of, and allocation of opportunities to a whole generation of young people. The role of the child and youth services is to promote children's development and to advise and support their parents. Regulations here often speak of »may« with regard to those offering the services and

11 As revealed at many conferences and in *Projektgruppe*.

of the »voluntary« nature of participation on the part of the addressees. Schools, on the other hand, are empowered to enforce participation through compulsory attendance. The services are further influenced by the »subsidiarity principle«, which decrees that financial support from the state is secondary to that from voluntary organisations. Anyone who attempts co-operation without knowledge of such structural differences, who does not clearly define relative tasks and responsibilities from the outset, will soon experience disappointment and may become so involved in recriminations that co-operation breaks down altogether.

4.5 Children as victims

Public debate about crime and about the provisions of the child and youth services generally views young people who have reached the age of criminal responsibility as offenders. Children, on the other hand, are more often seen as offenders and as victims. This has become clear from discussions concerning children who have been subjected to sexual abuse or physical violence.¹²

4.6 Socio-physical environments

Approaches involving specific socio-physical environments seek to influence conditions in circumscribed areas, ranging from neighbourhoods to entire regions. Apart from a few isolated schemes, this is a recent development in Germany, forming part of a nationwide pilot project called *Soziale Stadt* (the social city). Individual provisions have successfully established a common basis for dealing at a regional level with conflict and violence in as many crèches, elementary schools and after-school facilities as possible. Such co-ordinated efforts among qualified social workers could lead to a deeper understanding of the problems and, eventually, to goal-orientated co-operation among all those engaged in educational activities with children in a particular region. Recognition of this fact has come slowly, however, and its importance is still underestimated.

¹² The use of violence in bringing up children and young people has been a punishable offence in Germany for several years.

4.7 Assessment

A notable feature of crime prevention in Germany is the almost total lack of adequate documentation of its activities. Assessments of the effectiveness and scope of schemes and programmes scarcely exist, and valid answers to the question »what works?« – important both in the context of public debate and for further developments in the field – have not yet been provided. Crime prevention aimed specifically at children is no exception.

5. Prospects

The present survey of crime prevention activities aimed at children in Germany is necessarily incomplete, yet it draws attention to two positive developments. First, it reveals the diversity of the approaches being implemented by the child and youth services: the activities are varied and imaginative, even if they sometimes still appear – and no doubt are – less than ideal. Second, the survey shows that, although the fields of activity available to all parties involved are highly complex and the issues and challenges facing the child and youth services are extremely numerous, recent years have seen the development of increasing numbers of strategies designed to meet those challenges. Workers engaged in socio-educational activities in Germany can await the results with some degree of confidence.

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Heiner Schäfer

»Young Russians« in Germany – immigrants lost between their origin and future?

In the last ten years more than two million immigrants of German extraction¹ have come to Germany from countries in Eastern Europe, especially from the former Soviet Union, as »ethnic German immigrants« and stayed permanently. In comparison with other immigrants they were privileged from the beginning because, in accordance with Article 116 of the Constitution, they are regarded as German citizens. Unlike other groups of immigrants they are not subject to the German Aliens Act.²

At the time of the Cold War they were welcomed in Germany and were regarded as hardworking, but in the last few years this has changed. Above all, young male ethnic German immigrants, who, in many instances are described across the board as »young Russians« are viewed more probably by the public and the media as a security risk. They are described as brutal, violent and criminal. Their appearance which emphasises their muscular and physical strength, their strange Russian language and their behaviour make the native population feel confused.

In schools and other educational institutions in the meantime there is widespread helplessness with regard to dealing with these boys. It is reported that there are teachers who are happy if the boys decide not to go into school any more, others back exclusion from school in order to avoid them. Even social workers admit that they often no longer get any contact with these kinds of groups of young Russians, »... who stand on street corners, drinking, sometimes roaming about rowdily and happy with their own company ...«³.

In reality, however, most young male ethnic German immigrants are only involved in minor offences and are no different from other children and young people, irrespective of whether they were born here or are immi-

1 Those who descend in a direct line from a German father or mother can be German.

2 In Germany as hitherto there is no immigration law. All previous attempts to pass such a law have failed in parliament, the last time in 2003.

3 Ramelsberger

grants. The widespread and typical offence⁴ is not brutal physical injury committed under the influence of alcohol but simple theft. Only a small group causes enormous problems, refuses to be integrated into German society, insists on its origin and defines itself as »Russian«. These young people emphasise that they do not want to be »German«; they have and cause problems, they commit offences repeatedly and reject the help offered.

But what makes this small group apparently so inaccessible for the German *Kinder- und Jugendhilfe* (child and youth services)? Their problems with integration are actually nothing special. They are »... in many respects comparable with other groups of immigrants...«⁵, so that no new or spectacular provisions have to be developed. Instead of this, the question is posed: how can try and tested social education provisions be used in a focused way, what changes and adaptations are necessary to make them suitable for these boys? This requires finding out more about these »young Russians«: about their origin, their families, their experiences, their hopes and their attitudes. In this way the »Russian« experiences which define these young people will not be devalued.

This article intends to define the social and cultural background of the »young Russians« as an example and therefore asks about the »Russian« day-to-day experiences and the conditions in which they have grown up. However, this background needs repeated investigation because the rapid political, social and economic changes in Russia still only permit one snapshot.

1. The background

1.1 Childhood and youth in Russia

The reasons for leaving the country are found primarily in the economic and political instability of the country of origin. About a third of the population currently does not yet have the officially laid down minimal living wage. The old economic structures have disintegrated; new initiatives are only at the early stage. Access to education and work is no longer open to everyone. In some countries religious and nationality conflicts have resulted in military conflicts and in the meantime they have got as far as Moscow. The newly developed states with their multinational populations are very na-

4 Luff

5 Töwe, p. 54

tion-state orientated, some even nationalistic. Ethnic minorities are confused and worry about becoming second class citizens in their own countries.

Society is still organised on a collective basis. Hitherto, self-realisation and autonomy or achievement and competition did not count for much. Relationships in the close social environment and mutual support are still more important. Without these types of networks survival for many families would have been even more difficult in the last ten years.

Russian society is extremely polarised. Many people live in terrible poverty. Structures which they believed were safe, e.g. the Soviet Union fundamental »right to work«, have disappeared. Social services such as public housing, government education establishments or public health services are difficult to finance. Government authorities have lost influence and credibility. But there is also the small group which has gained from the crisis. In Russia these are e.g. the unpopular »new Russians«, about whom there are in fact many jokes but who nevertheless have power and influence and are respected and feared. A new middle class is emerging only very slowly and it has not yet been able to establish itself as the motor and agency of commercial activities.

The position of Russian youth is contradictory if placed against this background. On the one hand, unlike in the past, they are no longer courted by the state because it can hardly offer prospects, given the scarcity of public funds. The relevant child and youth organisations which were the upholders of the government youth policy in the Soviet Union have ceased to exist or have lost their importance. New organisations are only in the initial stages and a government youth policy is only being established slowly. It is not a priority in Russian politics and remains »... on the periphery of government activity«⁶. Cultural and educational establishments can hardly provide orientation. Families, crèches, nurseries, pre-schools, schools or media are faced with huge challenges and existential problems. Instead of confidence there is widespread anxiety about the future.

The responsibility and care for minors has therefore passed to the families. But the families hardly have any options and many focus their hope solely on the future and hope that one day things will be better for their children. They are therefore investing in their children as well as they can.

6 Staatskomitee, p. 11

Nevertheless, minors grant themselves new and greater freedom. They can try out new things and develop their social and personal values quasi »profusely«. They are becoming the »... test material for new models of social relationships, cultural types, forms of economic contacts, interpersonal relationships, etc...«⁷. Similar to the countries in the west minors are defined by fast-living and consumer-orientated groups or styles of music, e.g. Rock, Techno, Metal or Hip-Hop. Other young people join protest groups or follow the Satanists. But there are also young people who support nationalistic or fascist ideologies. Even supporters of Adolf Hitler, a group which already existed undercover in the Soviet Union during the seventies, are emerging from the underground. These diverse groups and reference systems have taken over the duties and responsibilities of social organisations, and as a result in the youth phase »in the meantime the group of people of the same age which is no longer guided by state or party authorities is given tremendous importance. Friends and families play the central part in the lives of the young people. There are indications of a withdrawal into the »private domain«⁸.

Above all, youth unemployment is a serious problem in the radically changing Russian society. The official Russian report on young people states that the percentage of young people included in the registered unemployed at the turn of the century is more than 30 % and »... the situation is ... even worse, if you start with the actual unemployment figures«⁹. Those who have work are worried about their jobs. However, the young people get to grips with the new conditions and e.g. when trying to find a job back themselves rather than the state.

Recorded youth criminality has risen rapidly in the last few years. The boundaries between legal and illegal income have become blurred; the black economy and corruption are part of everyday life. Markets with public access to weapons and drugs have developed and criminality has become an everyday experience for young Russians during their adolescence. Many get involved in the world of crime¹⁰ and especially young people without any hope of getting a job find it offers attractive opportunities for earning money. As a result in Russia crime has a »young face«. More than every second (53.2 %) convicted youth offender was under 30 years of age

7 Melent'eva, p. 87

8 Dietz, p. 34

9 *Staatskomitee*, p. 39

10 *ibid*, p. 57

in 1998. It is still anticipated that there will be an increase in child and youth criminality »... and at official appearances of the custodians of the law there is talk of juvenile criminality as a direct risk to national security«¹¹. For »in the eyes of the majority of young people organised crime is perceived as a legal share of the »capitalists« (owners) and in this way its legitimacy and justification for existing are recognised ... The confidence of young people in the institutions of government power, especially the custodians of the law such as the state legal profession and the court is practically nil«¹².

Furthermore, the consumption of drugs by young people has greatly increased in the last few years. The number of youth drug addicts has more than doubled in the last three years. It is presumed that nowadays in Russia »up to two million young people take drugs on a regular basis and a quarter of a million are chronically drug dependent. Of the recorded addicts 82 % are below 24 years of age. The average age for becoming dependent on drugs is 15 to 17 years«¹³.

Overall, since perestroika, the possibilities of future planning and developing viable prospects for children, juveniles and adolescents have become more unclear and vague. Most have no recollections of the past and no positive experiences with democracy. Experiences with poverty and unemployment frequently result in pessimistic basic positions; psychological stress and health problems are not rare.

These are the disillusioning experiences with which children and young people from the countries of the former Soviet Union come to Germany. It is obvious that the learned strategies for action and attitudes can hardly be appropriate for dealing with daily life in Germany.

1.2 Minors brought to Germany or forced exit

Since 1990 approx. 500,000 children and young people have entered Germany from the successor countries of the Soviet Union, i.e. about every third ethnic German immigrant was less than 20 years of age. And the majority no longer conform to the cliché of the »foreign German«. »There is a lot of evidence to indicate a far-reaching generation-specific change in

11 *ibid*, p. 58

12 *ibid*, p. 59

13 *ibid*, p. 11

the cultural identity of the Russian-German immigrant which is largely ignored in public.«¹⁴ Many families have to a large extent integrated with the respective living context in the regions of origin over the course of time. The parents have frequently married into a different ethnic group and in terms of culture; standards and values have included the attitudes and patterns of behaviour of the specific ethnic group in their terms of reference. For young people »... it has become natural to hear Russian Rock music, to have Russian friends and to marry a Russian«¹⁵. They are firmly rooted in Russian society and its culture. And they are proud of it.

But German society is expecting German immigrants and for the most part takes no notice of their Russian identities. Despite years of other experiences the ethnic German immigrants continue to be regarded as »unlike other immigrants ... vehemently required to declare a belief in German culture ... Just speaking the Russian language amongst themselves in public leads to the reproach that there is a lack of willingness to integrate ...«¹⁶.

Although many parents placed the hope for a better future for the children and young people as central for the decision to emigrate, in reality they themselves had nothing to say: almost every second young person claims not to have played any part in the decision-making about emigrating. And those who were asked generally accepted their parents' decision and have lost their friends along with their native country. They are entirely a »generation which has been taken along«, which had emigration forced on it. The emigration as »a critical life event« with its material and cultural consequences has impaired their wellbeing with lasting effect. Friendships have been abruptly torn apart first love affairs have been irretrievably destroyed. As a result lots of children and young people suffer badly from leave-taking and separation; concentration disorders, extreme withdrawal, apathy, frequent illnesses, but also aggressive or deviant behaviour can be observed. As well as those the same age who stay behind, they also have to leave adults they are close to. From one day to the next the teachers who have given advice and provided security when there were difficult situations and problems have disappeared. In addition, there is the pain; in Germany the pain about the loss of the beloved Russian native country is frequently not understood. Unlike in Germany, in Russia its high regard is regarded as a moral quality. The native country is a constant reference point for people especially in the difficult times of radical change. With its

14 Holtfreter, p.15

15 ibid, p. 19

16 ibid, p. 17

loss the traditions and cultural values also disappear. The new society does not regard them as sources of enrichment but as obstacles.

2. The Migration

2.1 The German Language

The main criterion for belonging to the German nation is the ability to speak German. It is regarded as the admission ticket for Germany and since 1996 all those who want to be recognised as »ethnic German immigrants« must pass a language test in their country of origin. Only family members who do not want to obtain the status of »ethnic German immigrant« are excluded. In the meantime almost three-quarters of those wanting to leave avoid this difficult test, nevertheless fewer and fewer applicants are passing. Meanwhile it has become de facto a kind of regulation in the emigration process.

It is not surprising against this background that the German language competence of the migrant children and young people has become worse. More than one third of them have largely grown up in a homogenous Russian environment. They have attended Russian nurseries and schools and also almost exclusively spoken Russian in their own families. They have not been able to develop links with German cultural tradition because hardly any members of the German minority lived in the neighbourhood. Only » ... the parents' generation speak partly German ... the children's generation almost none at all any more ... in the meantime the fact is that the young people have almost zero knowledge of German ... «¹⁷. The eminent importance of language courses for integration becomes especially clear here. Out of the children and young people who immigrated between 1990 and 1994 only 8 % spoke exclusively German in their families¹⁸, and in the temporary hostels or in the housing estates with a high percentage of ethnic German immigrants, minors do not learn this language from each other to an adequate extent.

In schools lack of skills in German language resulted in young people being downgraded, sometimes by one class, occasionally by several classes. This is not necessary because the Russian school education is good, especially in natural science subjects, which are of a higher standard than in

17 Michel, p.38, cf. also *Bundesministerium für Familie, Senioren, Frauen und Jugend*

18 *Bundesministerium des Innern*

Germany. Despite all efforts without adequate knowledge of the German language the young people almost never succeed in getting the desired training, vacancy or access to professions with higher social prestige.

The independent commission *Immigration* therefore proposes linking obligatory language courses for all those already in Russia with a language test which must be passed and which can be retaken. Children and young people will then be forced to prove that they have adequate knowledge of the German language already before they emigrate if they want to leave with the immigrants of German origin from eastern European states.¹⁹

Comprehensive language lessons in Germany which are quick, unbureaucratic and are adapted to the respective age group (including pre-school age) can be helpful because most children and young people are very interested in »new things« and because the disappointments are not yet so great. In terms of content and duration this must be organised individually and start with the experiences of the minors. If the pride in the knowledge already acquired is included and these skills²⁰ are recognised and used, the feeling of self-conscious will be increased and learning will be easier. Here e.g. the conservation organisations could be helpful because there you could link learning the language with the kind of subject matter which Russian children and young people are familiar with and which is popular with them.

But it must also not be forgotten to recognise the Russian mother tongue as a skill and not as a handicap. There should not be discrimination against speaking Russian; it should be possible institutionally. It is important to bring the Russian language out of the »illegality«, in which it partly finds itself. A bi-cultural starting point seems necessary if valuable skills and opportunities shall not be wasted. Thus e.g. comics or videos in Russian can be used in nurseries, schools or leisure institutions. The origin and language of the children is not denigrated if this kind of accepting strategy is in place. Acquired skills are assessed and promoted positively. Then it should no longer be: »you must speak German!«. And the German language is no longer replacing Russian, but it is given a place next to one's »own« language (Russian) as the language of the host country. As a result,

19 *Unabhängige Kommission*

20 Many children and juvenile bring skills e.g. in folk dancing, theatre or in folk art production, physical and sporting skills are high on the list. Many know a lot in the housekeeping field, have skills for looking after plants and animals or generally dealing with nature (e.g. fishing, making a fire, camping).

especially during the difficult initial stage in Germany, children and young people have the option of continuing to express their feelings as usual. Dreams and feelings continue to be allowed in »Russian«.

2.2 The legal status of young ethnic German immigrants: nationality »German« or really »Russian«?

The assumption that ethnic German immigrant children and young people are automatically »German« (as a rule this means: German citizens) and enter the country as such, has not been true for many for a long time. In addition, the assumption that unlike e.g. the young Turks, they are on legally firm ground in Germany is not correct. The reception process in accordance with the *Bundesvertriebenen- und Flüchtlingsgesetz* (federal refugees act; *BVFG*) has resulted in new risks for these children and young people which have hardly been acknowledged in public. »German« in the meaning of the constitution in the first place is each person, irrespective of whether he lives in Germany or abroad, who is a direct descendant of German ancestors, including over several generations. Children and young people, who are of German extraction, were born before 1.1.1993 and can show adequate German language skills, have a right to the status »emigrant of German origin from eastern European state« (Section 4 *BVFG*). They are entitled to German citizenship. However, if the minors do not meet these criteria, they are then given the status »descendant« (Section 7 *BVFG*) and on request can be included in the entry notice.

But if the children are not direct descendants, and instead they are »related by marriage« because one parent has different nationality, they are not regarded as »German« in the meaning of the constitution. The admission and residence of unmarried stepchildren who are minors and unmarried stepchildren of descendants are regulated in the law concerning aliens. In Germany these children are legally no different from other migrants. However, ethnic German immigrants have an important advantage. »In order not to tear families apart when they move to Germany, they can ... enter the country together with emigrants of German origin from an eastern European state on the basis of a generally issued alien-law authorisation.«²¹ In the last few years this ruling has gained in importance. The language tests are being passed more and more infrequently. If in 1993 about three quarters of those entering Germany still had the status »emigrant of Ger-

21 *Unabhängige Kommission*, p. 180

man origin from an eastern European state«, in the meantime this figure is only about a quarter.²²

In Germany a second obligatory language test is carried out and not until this test has been passed is the legally-binding conclusion drawn: »emigrant of German origin from an eastern European state« and since 1999 German citizenship automatically issued. The spouses and children included on the entry notice are also given this status, but not stepchildren or the spouses of children. They continue to be subject to the law concerning aliens.

Although children and young people are almost never »emigrants of German origin from an eastern European state«, some not even »descendants«, but legally are the same as aliens, to their advantage during the whole recognition process in Germany they are treated by the authorities as German. Therefore their factual situation is better than their legal situation. This does not apply if one parent of the children is not German; they then have Russian nationality. They are then no different in legal terms from other young migrants.

But there are other consequences resulting from the status »alien« for children and young people in ethnic German immigrant families. For some time the authorities such as e.g. the *Kinder- und Jugendhilfe* (child and youth services) must notify relevant information in terms of the Alien Act (e.g. drawing social assistance, unemployment relief or social-educational provision outside the family) to the foreign authorities. It is assumed that for this reason some foreign parents no longer claim the provisions and services of the youth work and youth welfare services. Instead they therefore look for solutions within the family, sometimes until it is too late.

2.3 Integration

The general conditions for implementing the processes of integration are especially important if these are to be successful. Because these are more important than personality factors, especially if the individuals have low ambitions with respect to integration, for the »young Russians« who are regarded as difficult, it is virtually exclusively the environment that determines the success of integration.²³ In the meantime the action plans for

²² ibid

²³ Strobl, p. 5

the integration of young emigrants of German origin from eastern European states has taken this into account. Thus e.g. the youth office in Hamburg puts forward as an aim »equally entitled participation« in the economic, political, cultural and social life of Germany.²⁴ Integration is no longer defined as a one-sided ethnic-cultural adjustment to »the« German, but a challenge of co-operation. Integration is a multi-layered process, which takes a long time and is interplay between »the receiving« and »the received«. Therefore integration does not only mean that young Russians speak »German«, learn in school, work at a job and comply with the constitution and German laws; it must also provide space for them to express their difference and diversity. The children and young people need enough space to retreat into familiar situations and to strengthen their own identity there.²⁵

At the latest many problems start when the ethnic German immigrants realise that they do not have very good opportunities in Germany. Especially the male ethnic German immigrants who came to Germany in their youth hardly have access to the employment market in the medium to short term and »... their financial circumstances (are) often incompatible with their consumption needs ... The methods which they employ nevertheless to try to participate in the market of services, goods and entertainment, frequently lands them in debt«²⁶. The high unemployment and the denigration of the qualifications the parents brought with them also reduce their chances of finding work and as a result the opportunities of participation for ethnic German immigrant families have become worse overall. This becomes apparent in the »First Federal Government Report on Poverty and Wealth«²⁷, because children and young people from ethnic German immigrant families draw social assistance more frequently than previously. Therefore, it seems reasonable to assume the risks of marginalisation and disintegration.

Even if »the cultural characteristics of the ethnic German immigrant... as promoting or hindering factors with respect to integration play a more insignificant role than popularly assumed (and) similarities in the perception of opportunities to participate ... especially for the explanation of problem behaviour are more decisive than ethnic and legal differences«²⁸, neverthe-

24 Töwe

25 Strobl

26 Giest-Warsewa, p. 29

27 *Bundesregierung*

28 Strobl, p. 28

less, in Germany this should not dispense with, »...getting more involved with the culture and language of the country of origin than hitherto and pursuing a bi-cultural starting point to promote learning the language and schooling. The learning situation should refer to the social contexts of the ethnic German immigrant«²⁹. This includes taking account of the fact that in contrast to the somewhat individualistic orientation of German society, the orientation of Russian society is still more collective, even if similarities have emerged.

Irrespective of this the young people in Germany are required to make a two-fold adjustment. »On the one hand it is a question of dealing with the general cultural, typical-for-young- people, psychological and physical stages of development and entering the adult world, on the other hand the young ethnic German immigrants arrive with ideas of values and standards which do not correspond with the prevailing standards in Germany and thus, in addition, they are required to integrate on a socio-cultural level to adjust to the society they are entering.«³⁰

Most assistance for the emigrants of German origin from an eastern European state is financed by the Federal Republic (Article 120 Constitution). The available funds were last regulated in 1998 and are combined in a so-called guarantee fund.³¹ It shall support the integration of young emigrants in schools, vocational training and universities. Even if the support is still directed at school pupils, young people who are no longer of school age are clearly placed in the foreground. At the same time the payments, periods of support and the diversity of the provisions are being restricted and there is a worry that it will no longer be possible to provide support for the lack of skills in the German language of the young ethnic German immigrants who are being admitted now.

Accommodation in former barracks or unpopular blocks of flats on the edge of the towns lead to ethnic colonies which have become an important reference system for the ethnic German immigrants. Here the culture »they brought with them« has a high status«. The resulting new specific Russian-German identity gains in importance. In the meantime there is a Russian-German youth culture which must be regarded as examples »... for

29 *ibid*, p. 28

30 Luff, p. 18

31 *Bundesministerium des Innern*

independent forms of Russian-German integration which run counter to the current – often one-dimensional – idea of integration«³².

To be able to develop this kind of Russian-German identity, the German part must be added cautiously. Confidants are important they can have the status of a »guide« and facilitate access to German society. In addition to the Russian language they must know and accept the culture and »love for the native country«. After the children and young people have experienced its loss as painful, in Germany they have to learn that »Russia« and »Russian« are often regarded as inferior. Even if cultural diversity (»multi-cultural«) is highly praised in public, the culture and traditions of the ethnic German immigrants are not seen as enrichment even by the child and youth services.

For these reasons as well, above all older young people retreat into an attitude of rejection. Utterances such as »I do not want any contact with Germans, they have a different mentality and are somehow not normal«³³ are not uncommon. Some think about returning to Russia, even if this is hardly realistic. Difficulties with official bodies, money, work, accommodation, family, lost contacts etc. might be too great.

3. Deviant behaviour of ethnic German immigrants

3.1 Investigations into the criminality of young ethnic German immigrants

Hitherto, academic investigations into the criminality of ethnic German immigrants in Germany were rare. On the one hand this is because this target group was not conspicuous for decades and was not specifically identified as »ethnic German immigrant« in *Polizeiliche Kriminalstatistik* (police crime statistics; *PKS*). In addition, they are German citizens. Previously, there have been only two empirical studies on delinquency and criminality in this target group in two federal states, one from *Niedersachsen* and the other from *Bayern*. The study from *Niedersachsen* only refers to young ethnic German immigrants, the one from *Bayern* to all age groups, but both only deal with the suspects.

32 Holtfreter, p. 21

33 Statement by Dmitrij, 21 years of age in an unpublished interview.

First of all the *Kriminologisches Forschungsinstitut Niedersachsen (KFN)*, dealt with the criminality of young ethnic German immigrants³⁴ based on special assessments of the *KFN* and on its own calculations for the *PKS* of Niedersachsen for the years 1985 to 1996. The result was that suspects in relation to population (*TVBZ*)³⁵ for young Germans – native and immigrant – had always increased especially in the areas where many ethnic German immigrants had moved in. And everywhere where the increase in *TVBZ* was less significant, this was not the case. But: »Just the fact that there has been a sharp rise in criminality of young Germans where there has been a high level of immigration of ethnic German immigrants, cannot automatically lead to the conclusion that it is the ethnic German immigrants who are mainly responsible for this development.«³⁶

As a result of the unsatisfactory data situation and the increasing public discussion about the violent criminal ethnic German immigrant, the *Kriminologische Forschungsgruppe der Bayerischen Polizei (KFG)* has been commissioned by the *Bayerisches Innenministerium* (Bavarian Minister of the Interior) to investigate the phenomenon of »... police-registered criminality of emigrants of German origin from eastern European states«³⁷. In this investigation the ethnic German immigrants are identified by their place of birth; the statistics of the Bavarian police of 1997 and 1998 were used as a data pool. There were also a supplementary longitudinal section investigation, assessments from police files, an independent questionnaire survey and a special assessment in selected towns and in one regional district.

Above all suspects are male young people. Young female migrants deal outwardly with the stresses of life's critical events in a less conspicuous way than young men. Findings from the women studies indicate this.³⁸

In Bavaria and presumably this applies to Germany in general the group of young male ethnic German immigrants is mainly suspected of simple thefts. »The myth of the ethnic German immigrant suspect suffering from the effects of alcohol and extremely violent ... at least for the time the of-

34 The *KFN* cannot say how many immigrants are among the suspects, but it calculates connections from the number of young people who have moved into the region and adolescents on the one hand and the development of crimes in the region on the other hand.

35 By *TVBZ* the Federal Criminal Investigation Department understands the number of investigated suspects, calculated out of 100,000 inhabitants of the relevant portion of the population.

36 Pfeiffer, p. 47

37 Luff, p. 8

38 Mies-van Engelshove

fence was committed, cannot be confirmed.«³⁹ This applies for children, young people, adolescents and young adults. In the regions investigated almost three quarters of the child suspects arrested by the police in ⁴⁰ 1998 were »only« alleged to have committed simple theft. And for young people it was after all even more than every second.⁴¹ »In addition to simple theft within the group of 14 to 17-year-old suspect ethnic German immigrants, it was only the other offences in accordance with penal law (*StGB*) ... and the violence offences (20.8 %) which were of statistical importance, with a considerable gap.«⁴² The vast majority of infringements of criminal law supplementary statutes⁴³ are drug offences although for young people overall this plays a secondary role because street crime is dominant. This is unlike for adolescents and young adults where drug offences play a more significant role. Conversely, violent crime loses more and more in importance with increasing age in quantitative terms, and this with relatively low case numbers anyway. Finally, as with native German young people, it is assumed that in the socially deprived areas of large cities a small number commit relatively many offences.

In the first place the Bavarian investigation does not provide any grounds for dramatising the criminality of ethnic German immigrants. However, we know from reports from experience that the minors who have immigrated in the last few years are burdened with significantly more criminality than the minors who immigrated previously. In the Bavarian investigation there is evidence of this: in 1997 »... every second suspected ethnic German immigrant was under thirty years of age (51.0 %), in the following year this applied to 55.2 % of suspects«⁴⁴.

In addition the *Erster Periodischer Sicherheitsbericht* (first periodical report on crime and crime control in Germany) of the Federal Government concluded that there is »... generally no especially increased or qualitatively especially serious «ethnic German immigrant criminality« in comparison with the old-established population« and that the »... crime problems ... are concentrated among young male ethnic emigrants of German origin from eastern European states of the »last wave« from the middle of the nineties«⁴⁵.

39 Luff, p. 191

40 74.6 % for the 6 to under 10 years of age and 73.3 % for the 10 to under 14 years of age.

41 53.1 %

42 Luff, p. 51

43 22 %

44 Luff, p. 49

45 *Bundesministerium des Innern*, p. 321

3.2 Experiences of violence

Male young ethnic German immigrants stand out in conflicts because of their behaviour which for Germans is unusually aggressive and brutal – this is a charge frequently made. This is confirmed by social workers, police, teachers and trainers in sports clubs. Violent behaviour defines the image of this group also in the media. At the same time there are reports of a kind of bafflement on the part of the young ethnic German immigrants when they are confronted with their crimes. They regard physical violence as »normal« in arguments and disputes. They think their behaviour is appropriate and correct. Physical strength, strength and hardness are important for them in many situations in life as orientation and provide them with security. If they are provoked and their »honour« is offended, they are expected to behave in »such« a way; other responses are not regarded as manly.

In Russia the upbringing of children and young people is closely linked with authoritarian structures. Conservative and patriarchal values are communicated in families and schools as nothing unusual. Already when they are nursery age boys are prepared for the role of the protector of women and families. In families the father represents authority in the schools the teachers have this role.

Despite all the radical changes in Russia the authorities are still largely accepted without resistance. It is true that the state has lost some of its dominance but the »gap« has been rapidly filled by entrepreneurial authorities, not infrequently authorities who are semi-legal or illegal. Frequently, the law of the strongest applied and children and young people experienced strength, power, the ability to assert oneself physically and violence as commonplace and normal even in post-Soviet Russia. Even in »... the private environment, in families, schools and the neighbourhood there was a rise in violent disputes ...«⁴⁶. In addition, in almost all the successor states of the Soviet union there are violent ethnic conflicts which affect children and young people indirectly and directly. Some ethnic German immigrants are marked by these kinds of traumatic experiences.

In Russia the widespread alcoholism almost exclusively among men is important in the context of violence. The traditional expectation that a man must be able to hold his drink is generally directed at all boys. Those who drink a lot and can hold a lot of drink are »real« men. The high consump-

46 Dietz, p.37

tion of alcohol in Russia is quasi part of the male initiation rite. And, above all, they drink high percentage proof alcohol. Frequently, the young people drink vodka even after immigrating to Germany. Alcohol causes people to lose their inhibitions and removes barriers which must be put in place again as a result of the use of violence. Many fights would be inconceivable without alcohol.

For the young men the two-year military service in the Red Army compounds matters. There is no right to refuse to do military service thus young men can hardly avoid the military. The brutality in dealing with the recruits, the attacks on conscripts, not infrequently accompanied by fatalities or suicides, are notorious throughout the world. Even in the Russian population and finally in the state organisations doubts have been voiced. »The military legal team in Russia described the bad treatment of the newly conscripted years by the older conscripts as the biggest problem of the Russian army.«⁴⁷ As self-protection young men toughen their bodies up before military service and train powerfully to avoid being victimised in the army with the approval of their parents.

It seems that the move to Germany during puberty is more problematic for boys than for girls. Unlike for girls, the development of sexual identity for boys occurs primarily outside the family. In Germany the boys are then confronted with an outside world which is confusing and scarcely provides direction. This is difficult to deal with together with the development of identity. If there are family problems as well and some parents already had difficulties with bringing up the children in Russia, to a large extent the family ceases to function as a support. The unemployed father sitting in the kitchen, drinking and feeling sorry for himself, cannot be a role model; he often loses his importance when the family migrates. The boys, insecure and frustrated by this entire still retain the usual role models, above all traditional masculinity: men are tough with themselves and others; men can assert themselves physically; men show solidarity with friends; and finally – quite important for boys: men have tremendous sexual potency and can hold their drink extremely well. In this way the boys secure respect and recognition from the other ethnic German immigrants, find affirmation and security and can disassociate themselves from German society.

This tremendous toughness, strength and ability to assert themselves are important within their own group. Finally each young man must position himself in relation to the other young ethnic German immigrants he must

47 *ibid*, p. 37

find his position and achieve power. This is accepted; everyone accepts physical strength as regulative. The rules are simple and clear, strength decides on the order of rank in the group. Because insecurities and failures continuously cause the self-image in Germany to waiver, the boys are forced to keep »adjusting« themselves, to renegotiate the order of rank. One »measure« for this is other German and foreign young people. However, fights with these young people are comparatively rare if you ignore the fights with the »right-wing radicals« – especially in East German towns. The others mostly have respect for the »Russians«, for their strength and courage and are somewhat cautious. Conflicts occur and escalate mainly unintentionally, sometimes triggered by »inaccurate assessments« or as a consequence of an incident. In some projects it has been assumed that there have been changes underway here recently. There have been reports of an increase in disputes between ethnic German immigrants and other young people, because, especially with the Germans – thus the assessments of many young ethnic German immigrants – feelings of power and superiority come »cheap«.

In the ethnic German immigrant's own group order of rank and privileges are awarded according to physical strength. If young people are drunk their perception is restricted and they therefore assess the situation incorrectly, and fights can then occur. However, sometimes »fights for position« are sought consciously. Almost always it starts with some »insult« or another from the Germans which is frequently not understood as such, or often an attack on one's honour. Then the young person must defend his honour and must not »chicken out«. If he evades the issue, he jeopardises his reputation and his order of rank in the group. He is then quickly put under more pressure and he runs the risk of being pushed downwards. In the event of a defeat »in the fight« he can in fact also lose rank and privileges, but in the end he also »gains« as a loser. Because, even then, he has still proved himself as a man: he can »swallow« it and bear the pain.

The rigid image of masculinity hardly leaves the young ethnic German immigrants an alternative to a physical dispute. The Germans are often not aware of this and usually they find this »masculine« behaviour unpleasant. Even male professionals scarcely know how to deal with it. They have not had much experience of violence, have never got into fights themselves. Violence makes them feel insecure and causes them anxiety. They reject the behaviour of the young people and in the end the young people themselves. As a result they do not develop contact with the boys. Finally there is the additional problem: being able to hold one's drink has a high status

on the masculinity scale, but alcohol is almost everywhere a specified criterion for exclusion from the institutions of the child and youth services.

3.3 Police

Many young ethnic German immigrants »... frequently show they do not have any regard for the police. Conflicts are usually resolved internally, so that the willingness to report an offence and make a statement is very limited«⁴⁸. Above all, this is a result of the fact that in the Soviet Union as well as in the successor states the police were and are an instrument of control. Young people and professionals report openly about rigid methods of intervention, violence in police stations and during checks.

The police in Germany are different. Infringements of the law are rare and if they occur they are often reported in the media and dealt with officially. Prevention has gained in importance in the police; they are involved in public celebrations or in »basketball at midnight«. Frequently, the police have initiated the reforms. The young ethnic German immigrants are not used to this, and they and their families have a reserved attitude to it. They do not want anything to do with the police and therefore they try to solve their conflicts internally. »Do not stand out«, is the motto. If the police are called to a fight at a disco or a leisure centre, they become aware of the »great respect« for the brutality and the willingness to fight of the young ethnic German immigrants. The first police car sometimes drives round a leisure centre for several minutes waiting for the requested reinforcement. Only then do the police step in. Because »... German policemen have a much less severe attitude than they are used to from the corresponding officials in the GUS states«⁴⁹, they are described as »too weak«, »too cowardly« or »too soft« and the young people behave fearlessly and without respect towards them.

But there are also other experiences. Above all many police see the »young Russians« as a security risk. They are regarded as criminal and violent and must therefore be frequently checked. Complaints about police checks without actual reason occur frequently in the projects. Frequently sufficient reasons for being stopped and searched are: simply looking »different« (short hair, broad shoulders), the foreign language, hanging around in spe-

48 Kreven, p. 12

49 *ibid*, p. 12

cific places (e.g. bus stops or near a »Russian disco«). In Germany they experience a »different control reality« from local young people.

Because the young ethnic German immigrants behave and speak differently the local population often links them with criminality (Russian Mafia) and they report them to the police more quickly. The police are often called for reasons which would be dealt with differently for local young people. »There are signs that ... ethnically selective reporting behaviour ... contributes to a massive exposure of the deeds of young ethnic German immigrants, thus making the official burden of criminality seem higher in comparison with other groups than it would be if the number of unreported cases were dealt with equally.«⁵⁰

3.4 Custodial treatment of young offenders

Male ethnic German immigrants have grown into a significant group in many youth custody institutes in the meantime. In some centres they represent more than 20 per cent of the prisoners, »... this is approximately three times their percentage in this age group in Germany«⁵¹. At the time of their arrest they have already been in Germany for about two to four years and the sentence is usually for between two and five years. They are sentenced primarily for offences against property, offences against life and limb and drug offences. Recently, sexual offences, robbery and offences against life and limb appear to be on the increase and the same applies to the length of the sentences. It is assumed that young ethnic German immigrants are less frequently given a probationary sentence, that non-residential measures and diversions are applied significantly less frequently. Presumably this is because the *Kinder- und Jugendhilfe* (child and youth services) hardly had any contact with these young people until they were sentenced. Presumably this is connected to their relatively short residence in Germany: in the short period between first being caught and arrested they can hardly have »careers« in the child and youth services system and finally, the child and youth services are not active on a wide scale in the residential districts of the ethnic German immigrants. As a result at the court hearings only rarely is there detailed information about the origin and background of the young people. In Germany, specialised provisions such as social therapy centres are scarcely available for the young ethnic

50 Bundesministerium des Innern, p. 329

51 Klare, p. 42

German immigrants, because only rarely do they meet the admission requirements (good skills in German language).

In the penal system the young ethnic German immigrants cut themselves off quickly more than the other ethnic groups, retreat into »their« group and adopt their rigid sub-cultural standards. They stick closely and unconditionally together, live according to their own ideas of justice and have contempt for any sign of weakness. There are signs that a sort of »code of honour of the Russian Mafia« is spreading according to which e.g. community cash is demanded, order of rank is laid down, information and smuggling channels are organised as well as a network for those released from prison. Accordingly, »dishonourable« perpetrators such as rapists or child molesters are firmly rejected: »there is no place amongst us for rats like that«⁵². They refuse to speak German, behave aggressively and follow the strongly tradition-orientated image of masculinity of their native Russian society. The groups are organised strictly hierarchically, hardly any new arrival can escape from this. Everyone is allocated his place. Physical injuries and sexual abuse are means of discipline in the groups. It is assumed that these groups are closely networked with each other even between the different institutions and tattoos e.g. are regarded as badges of rank recognised everywhere.

In the group there is also a ban on any kind of co-operation with the state and its representatives. This is enforced by violence. Violence is generally a legitimate means of asserting individual or joint interests. The group pressure is so strong and far-reaching that it can apply to non-arrested relatives. Relatives are so well integrated that in individual instances they have even had to smuggle drugs in.

Not many young people take part in school lessons but they are interested in work and vocational training. In their leisure time they prefer to do sports involving strength; a powerful body is a symbol of masculinity. Yard exercise is an important place to demonstrate the strength of the »Russians« in comparison with the scarcely organised Turks or Germans and the Albanians who are likewise prepared to use violence.

In all remand homes drug consumption among the young ethnic German immigrants is extremely high. Although when they were »outside« above all drinking a lot of alcohol was important, it only plays a secondary role

52 Otto, p.129; Klare, p. 43

when they are in detention. According to prison reports the drug market is firmly in the hands of the ethnic German immigrants.

The central educational objective in the penal system is educating the prisoners to acquire social competence and individual autonomy. The provisions are organised individually and for the ethnic German immigrants there is additional assistance for »...reorientation from a traditional society with external behaviour control to a modern society with internal behaviour control ...«⁵³. Despite a lot of resistance from the young people the attempt is made to improve their German language skills without ignoring the Russian language. This is difficult against the background of group constraint and their identity as »Russian«.

A popular requirement is the need »to deal« especially hard with the young male ethnic German immigrants in the penal system. Instead educational initiatives are preferred. These initiatives take account of origin and experiences and make new and difficult demands on the part of those professionals involved. It is of special importance that they have similar experiences to the young people and that they can »understand« their behaviour. Fears and reservations with respect to the professionals are widespread among the young people; »Tell me why I should trust them?« Trust must be developed and gained, bureaucratic regulations are often an obstacle, especially if they are linked to the German language. The requirement to make written applications in German is an example of this. Young ethnic German immigrants do not want to make a fool of themselves in front of others because of their spelling mistakes and only fill in application forms if it is absolutely essential.

In the meantime there is a small group which rejects all contact and all services that are provided and can hardly be reached. This must stop.

During detention contact with the family remains intense and after they have been released most young ethnic German immigrants return to their parental homes. Because they did not have to give up their contacts with the »underworld«, many parents have to watch powerlessly when their sons make renewed contact. Nevertheless, most parents continue to stick to their sons.

During the period of detention there is scarcely any contact with »Russian« organisations. These are also somewhat disapproving with respect to the prisoners.

53 Bieler

4. Young ethnic German immigrants and educational institutions

4.1 The family

Ethnic German immigrant families are above all large families with many children which stick together. The role behaviour is traditionally defined and authority, especially the father's, remains mostly unchallenged until the migration. He is the head of the family to the outside world, he lays down the models of behaviour and he is the first point of contact for contact with the outside world. However, in the meantime, unemployment and poverty have called this into question increasingly.

The system of values and standards in the families corresponds largely with the system in pre-war Germany. Conservative virtues such as order, cleanliness, obedience, industriousness and achievement are important. These values, including love for the community and brotherly love are regarded as »German« and are brought to Germany. Many people are surprised by the fact that here they hardly still play a role and that instead they are regarded as strange and peculiar and they are laughed at and rejected.

Parents and children have close and enduring relationships which last into adulthood. The post-socialist government only provides inadequate support in comparison with German standards for the social and above all financial support of children, young people and young adults with education, training and studies.⁵⁴ Even if many families cannot afford to support their children financially during education, they are investing in the children as long as possible. And »invest«, the team at a family centre in Wolgograd has concluded resignedly, means above all »give money, give money, give money but not bring them up«. Russian parents, according to the criticism, finance their children well but they hardly bring them up. Parents and children simply live with each other; parents are no longer role models.

Unlike formerly, the Russian state keeps in the background nowadays and above all backs the family. In addition to education, when there are problems the families are also left to deal with them themselves. Thus, e.g. drug dependency of the children is linked to a tremendous financial burden. In the first place the entire family bears the situation, helps with mon-

54 This explains why, e.g. in Wolgograd, an important Russian university town, unlike in Germany, a remarkable number of registered suspects are male students. As a result of an inadequate income and because of insufficient support from their families and the student grant they are »forced«, to get money by illegal means.

ey to buy drugs and even commits thefts within the family. It »helps« the young people even when it cannot continue and finances expensive and often unsuccessful »treatments«. Particularly in Russia and for the ethnic German immigrants in Germany »charlatans« and »con men« rush to promise the impossible in this area for a lot of money. This has also already resulted in the impoverishment of an entire family. The German drug advisory service is not only badly prepared in terms of the language, but also scarcely has any knowledge of »Russian« family structures.⁵⁵

In many Russian families violence is part of everyday life. It is usually the fathers who are violent and thus provide the boys with a negative role model. Man and violence are one and for many boys physical strength is the only hope from the violent father. If they can defend themselves against the violence of the fathers, they no longer get beaten. And thus they learn above all: violence against others. In public education there are also hardly any positive gender-specific role models because, as a rule, the persons to whom they relate specifically are female.

After they have left the country, the young ethnic German immigrants experience their own parents as helpless with their problems with the language and the employment market and rapidly withdraw from their influence. The children realise that the values and standards of their country of origin can hardly provide guidance any longer. In discussions between parents and primary school teachers the children do the translating and consequently decide what is translated and how it is translated. The children are slipping away from the parents and neither pressure nor authoritarian behaviour can keep the family together. Those working with parents must be aware of this, take it into account and connect with the experiences, standards, values, attitudes, needs and interests the parents bring with them. Tolerance is required because these are often strange or are regarded as old-fashioned. It would be important, unlike hitherto, to back the involvement of parents, children and young people in the planning and organisation of the provision of services. This requires linguistic competence on both sides, which is still lacking in many ways on both sides. Emotions, moods and »nuances« must be heard and understood. Language mediators with cultural competence are helpful here.

⁵⁵ Ethnic German immigrant parents suffer more than German parents suffer with their children and give in to their impulses and desires even if the professionals no longer think it is sensible. There is a wealth of complaints about this from the Germans employed in the project. Misunderstandings develop and co-operation between parents and project is frequently over before it has started.

4.2 The leisure facilities

The variety of organised school and out-of-school activities for children and young people no longer exist in the USSR. Sporting, technical, mathematical, artistic or musical courses which were previously free of charge cost money today. There has been a reduction in cinemas and programmes for young people on the television and radio. Theatre, concert and cinema tickets have increased in price. Even if children and young people in Russia continue to be interested in sport, it is no longer so important.

Comsomol and members of political organisations such as »the« important Soviet youth organisations took too little account of the interests of their members and have largely lost the children and young people. Provisions from the west have gained in influence, informal groups have become more attractive and new youth culture groups with diverse profiles have developed. Fashion, music, lifestyle and protest movements are identity defining. However, the most widely available and easiest to access service in Russia is probably the television, like almost everywhere else in the world. Many people spend almost all their leisure time in front of the television.⁵⁶

However, childhood and youth in Russia also reveal another unusual feature: children and young people had to take on time-consuming tasks in agriculture and the family for existential reasons from when they were young. There is a lack of money and time for leisure and e.g. mutual visits, ordinary being together on the street, in the courtyard or out in nature. Therefore, children and young people hardly spent any time alone, neither at work nor during leisure time.

In the beginning after arriving in Germany the children and young people only have the family and loneliness. Without knowledge of the German language they are unable to make contact with locals of the same age and they are left with contact with other ethnic German immigrants.⁵⁷ This is encouraged by the concentration of ethnic German immigrant families in temporary hostels or housing estates (ghettos). This is the first »social home« after departure; here they meet people the same age with the same language, familiar customs, patterns of behaviour and feelings: sadness, loneliness and being foreign. They are all living under the same diffi-

⁵⁶ Melent'eva 2001 specifies the figure at 76 %.

⁵⁷ Findings from *Baden-Württemberg* verify that every second minor questioned has exclusively these kinds of friends. Cf. Kerner

cult conditions and in the first place the networks of the temporary hostel offer assistance with orientation and the first steps of integration. The ethnic German immigrants organise themselves primarily in large groups, the cliques have mixed ages with hierarchical structures. Thus, young people the same age and the same provide security in the foreign country, areas to retreat to and security and thus help with orientation in the new culture. These cliques – positively formulated – are an expression of the need for protected social contacts and areas outside of integration and without uncertainties. In this way they get relief from the permanent pressure of having to cope in a foreign culture. However, on the one hand retreating into their milieu can also hinder the transition into the new milieu and on the other also lead to irritations on the part of the receiving society. If young people appear in groups they are rapidly accused of lacking the will to integrate.

Young ethnic German immigrants hardly get access to sports clubs even though they are interested in sport. Here the weak knowledge of the German language and withdrawal into their own groups are a hindrance, but hitherto the clubs have hardly found ways of dealing with these young people. Even role models from boxing, wrestling, bodybuilding or martial arts, all popular with the young ethnic German immigrants do not enable further progress to be made.

The integration problems are very much in evidence in the discos, youth centres, youth groups and in the neighbourhood. It is true that »Russian discos« have become established in the meantime providing the young Russians with a little bit of »home« in the middle of Germany. But there they keep mostly among themselves speak the same language and follow their type of music. Russians discos are not interesting for other people and thus hardly provide opportunities for making contact with local young people.

Being in »nature« and »outside« – are important for the leisure time of young ethnic German immigrants. In their countries of origin campfires, spending the night outdoors, fishing etc. were very popular activities. In Germany, unlike in Russia, there is only limited free access to nature and many rules and conditions apply. Since the young people live in a very confined way in the hostels or urban apartment blocks they lack the space for their leisure time which they like to organise themselves and spend time spontaneously. However, sometimes their interests are not recognised by the professionals because they are not part of German standard social educational theory. Provision of outdoor pursuits for young ethnic German

immigrants is the exception, only in special instances. And the young people come from different climatic conditions and continue to stay »outside«, when the professionals prefer to work indoors. Even in winter in Russia house entrances or cellars served as meeting places. And »the meeting« is not understood (»they only hang about and do nothing«) or interpreted wrongly (»they don't want anything«) and as a result frustration and withdrawal are the result.

This is where provision of »education-free«, i.e. unsupervised and to a large extent uncontrolled rooms comes in. Small groups of up to 8 boys together with a street worker (himself originating from Russia) furnished empty cellar rooms according to their own ideas. They are used for activities they themselves have chosen. The boys can withdraw and dissociate themselves. They meet when they want, listen to »their« music, have their own rules and decide on access. In this way amongst other points there is a reduction in the »hanging around« regarded by Germans to be incomprehensible and sometimes even as threatening behaviour of the foreign-language-speaking young men who on the whole look physically strong. The locals' fear of criminality decreases.

If the families move away, this is often determined by personal contacts from the temporary hostels or through family relationships. They move to where many ethnic German immigrants live or where gradually they are replacing the local population (»Little Russia«). And once again ethnic German immigrants and locals avoid each other.

4.3 The educational establishments

4.3.1 Pre-school

In the USSR pre-school institutions formed the first stage of the unified state education system and they worked with timetables co-ordinated with the schools. At least in theory the educational programmes were interchangeable; there was equal opportunity for all children. The state was responsible for educational and medical welfare. Children were individuals and part of the collective. They should grow to become socialist personalities and mentally rich, morally honest, physically perfect, ideologically convinced, conscientious with respect to work and be able to operate in a collective. Above all the educational goals were determination, persistence, endurance, self-control and discipline. School attendance was compulsory from five years of age. This has changed. Many nursery places are no longer free of charge and more and more families are unable to pay.

New educational ideas came in with the ending of the Soviet Union. The individuality of the children is given greater emphasis even if the capacity to live in a community has not totally disappeared. Pre-school education is divided into physical, mental and aesthetic education, and there is also morality and work education. A series of daily conflicts have emerged because teaching from the front is slowly being replaced by group work and individual assistance. This cannot simply be organised by instructions; the consequences of dependence on authority conveyed over generations are still in evidence. The work is still planned like a lesson with specific lesson aims. The communal activities guided by the teachers are still central, which does not leave much time for free play. In this way the children learn facts and connections, but hardly any independent play.

The roles of the sexes have remained largely unchanged. Boys should be guided by »manly« virtues: these include courage, strength, honesty and magnanimity. In contrast, for girls it is beauty, compassion, industriousness, dexterity and modesty. Here, not only has it not been possible to implement innovations hitherto, there has even been a sort of »roll back« in the direction of traditional role models.

In the Soviet Union the work of the teachers was highly valued. They were responsible for ideological orientation, character formation and the specialist skills. They had to encourage and guide the children. The children were not required to have their own experiences but they should learn early on how to carry out orders and follow instructions. Only very slowly is a change occurring here.

In fact the parents lost the right to educate their children because the unprofessional upbringing in the family was regarded by the teachers – supported by the national education system – with potential concern. Therefore, the educational gap between those involved was large, supervision and guidance were clearly the responsibility of the teachers and the parents were allocated a somewhat passive role. They handed education over to the nursery and school because they were not professionals. The teachers were rarely contradicted. The changes of the last few years have resulted in uncertainties on both sides. Suddenly rules and values changed and parents were expected to have competence. This made excessive demands on many parents.

4.3.2 School

The tremendous financial difficulties have had catastrophic results in the education sector since the beginning of the nineties. Education has lost

importance, lost »...its stimulating role as a source of lifelong success ... and ... in the scale of values of the young ... in status. (It stood) ... in the way of rapid enrichment in the confused period of social reorganisation and disintegration of the USSR«⁵⁸. Many young people left school prematurely, the reasons are diverse. According to official data »...there are approx. two million adolescents of school age outside the school education system«⁵⁹. In the last few years this seems to be changing again, because the demand for education is growing. Education in the meantime is again being categorised »... among the most important values which are closely associated with ideas about success«⁶⁰.

Before immigration most children and young people attended a school which was still characterised by a central curriculum and strict regulations. The few private schools of diverse types are expensive. Experts describe the situation in the education sector as ambivalent.

In principle, in the schools teaching is still from the front and the knowledge the teaching staff present is reproduced. The first attempts at social learning methods, communicative teaching or group work are in place. As previously there is strict control, homework, comments and marks are entered in the obligatory personal school diary which each child keeps and shows to his parents.

The teaching climate and external image of school is more formal than in German schools and the teachers expect order, respect, obedience and discipline. They are respected by parents and pupils. A familiar relationship between pupils and teachers is inconceivable in Russia. Some teachers also deal with the out-of-school problems of the children in addition to teaching. Not only do they convey knowledge, they educate and help with problems in the families.

The school co-operates with other institutions, thus it is still represented e.g. on the »Committees for the Affairs of Minors«. Formerly multi-agency assistance plans were worked out here for difficult children and young people; nowadays these are more comparable with »Round Tables« or »Criminal Prevention Boards«⁶¹. In view of the increasing drug problems schools are expanding their co-operation with educational or drug advisory services.

58 Lukov, p.17

59 *Staatskomitee für Jugendpolitik der Russischen Föderation*, p. 27

60 *ibid*, p. 39

61 Holthusen

Teachers' working conditions have seriously deteriorated since about 1990. The salaries which in any case were not high were paid belatedly and incompletely over several years. For this reason many teachers had to take on a second job to be able to »survive«. This resulted in a drop in educational standards and a loss in interest in the quality of school education. Nevertheless, in public, as hitherto, the specialist privilege of the teachers' apply and thus the »factual loss on the part of the parents for responsibility for their children's educational needs«. The parents do not call in question the actions of the specialists; discussions with teachers occur rarely.

Young ethnic German immigrants have acquired in school »... high level of attention and reproduction. Their school skills include discipline, systematic learning ... and make a presentation. They can assess their achievement and their knowledge by means of the school control system. Often they have mathematical, natural-scientific and musical skills. They have a good capacity for improvisation and have developed practical skills from the struggle to »survive« and they bring collective and social group behaviour with them«⁶². But after migration to Germany this hardly brings them any gain.⁶³ They receive (as Germans) no lessons in the mother tongue their culture of origin is ignored or marginalised. Frequently they do not participate in the lessons because they do not understand contents, tasks or patterns of behaviour. They are irritated by the new and the different they lack clear standards and requirements, clear rules and boundaries. The valid codes of behaviour in Russia have lost their meaning and the associated securities no longer exist. Not infrequently they disgrace themselves with actions and assessments, feel that teaching personnel and fellow pupils do not accept them and are quickly isolated during lessons.

They remain unclear about the expectations of the school and they often find the teachers »weak«. They are used to compulsory and clear rules of work and behaviour but rapidly get the impression in Germany that »everything is allowed«. Their behaviour therefore often seems provocative and disruptive without this being their intention. This is especially difficult for boys. They are under pressure in school because they are expected to assert themselves. But the problems are so complex that many fail and they do not get any recognition. As a result their self-image of »tough boy« cannot be maintained; anxieties, failure in achievement and finally aggression can be the result.

62 Töwe, p. 18

63 Kestermann

It should not be concluded that an authoritarian teaching style is required in Germany in view of the more hierarchically and less co-operatively structured lessons in the countries of origin. The contact between teachers and pupils is important and with teachers who are familiar with normal practice in Russia and base themselves on it. In this way trust and security can develop, positive relationships and motivation for school attendance can be developed. To overcome mutual strangeness it is imperative for there to be an integrative and co-operative culture in the school. This refers to an improved integration of the ethnic German immigrants in mixed groups of pupils from different ethnic cultures of the same age. This is especially possible in school because the young people have to spend a substantial part of the day there. In addition, there are necessarily contacts with locals and foreigners here. If the school opens itself up more to the outside world, external institutions and parents can have greater involvement. »There should be greater consultation with educationally trained representatives from the Russian-German group as mediators. This could have a positive effect on the bi-cultural structure of the integration work.«⁶⁴

The parents of the ethnic German immigrants with their dual viewpoint of the school are potential alliance partners. They are aware of its importance for their children's opportunities in life, but they have language difficulties and feel insecure and anxious, because they do not cope with the »German« style of parenting. They do not follow up invitations because they are not sufficiently binding and compulsory. Parents judge their own educational skills only as low, family upbringing is merely secondary. Upbringing and education are primarily the duty of the teaching personnel. Teachers should deal with problems. If there are no direct instructions at a meeting with parents but merely conversations, the parents interpret this as an expression of professional »incompetence«, because a »proper« teacher knows what has to be done.

The school should not seek meetings with parents only when there are problems. Then it is possible to form impressions about the parental home and the family values and standards. Then the family and child can gradually be prompted to have more initiative of their own. This takes time. And since the teachers have »the home benefit« they can also listen to other family problems and establish contact with authorities. In this way the trust the parents bring with respect to the teachers (as educational specialists) can be used and maintained.

64 Strobl, p. 29

4.3.3 Child and Youth Services

Surprisingly, hitherto, child and youth work and welfare services have only dealt partly with ethnic German immigrants. In the planning for *Kinder- und Jugendhilfe* (child and youth services) they hardly appear as a separate target group, as a rule the *Jugendgemeinschaftswerke* (this special youth community service is responsible especially for young migrants) responsible for them are not involved. Also the »welfare and cultural associations for Germans born in the eastern areas of the former Reich« which have prospered in the last few years, organisations and networks, the shops and small firms, travel agencies and solicitors' offices as well as other companies of ethnic German immigrants, can become partners of the child and youth services. Their practical training, training places or jobs could contribute towards the integration of young people. But this is only available in the initial stages. There are still worries about contact on both sides; thus e.g. many German professionals find it difficult to accept the »Russian« culture and way of life which in Germany is regarded as »antiquated« and »old-fashioned«.

Thus the provisions of the child and youth services which have the young ethnic German immigrants in their sights, are directed primarily at local clientele. Basically, ethnic German immigrants are only regarded as an independent target group in a few instances because of their German passport (the expectation is that they must integrate as »German« quickly and without problems). There are hardly any specific provisions for them. This is only different in the temporary hostels and the housing estates where the number of ethnic German immigrants out of the residential population is very high. Specific provisions are made there.

The central problem of inadequate linguistic understanding between professionals and young people has still not been solved satisfactorily. Only a few learn at least a little Russian. This is surprising because just »a few scraps of Russian« makes it easier to make contact with the young people. This shows respect for their culture and native country. In the meantime the Russian language has gained in importance in several ways for the young people. On the one hand they use it to disassociate themselves with regard to »the« Germans in a two-fold way. As a result they are excluded from educational provisions (this applies e.g. for some peripatetic measures of the Community youth services in youth court proceedings) and on the other hand the German-speaking professionals cannot make contact with them. Solutions are attempted through mixed teams made up of German professionals and ethnic German immigrants who are professionals or

support staff. Contacts between the cultures can also be established through the linguistic contact.

When they arrive ethnic German immigrants know more or less nothing about the »German« child and youth services. The subsidiarity principle, public and free organisations or »German« institutions and structures do not mean anything to them. In the beginning principles such as »optional nature« and »participation« are incomprehensible.⁶⁵ The families have their Russian experiences and interpret the German system against this background. The Russian system gave strong emphasis to intervention and control measures and non-government organisations (NGOs) have hardly gained in importance as yet. The people are scarcely aware of their activities.

The parents regard the employees in the youth office as educational authorities and specialists. They are regarded as equivalent to the »control authority« of the child and youth services and youth office, irrespective of the authority they work for (public or voluntary). Parents and children are suspicious and anxious towards them. When there are crises they rarely turn to the child and youth services, but first try to solve the conflicts within the family. All possible private solutions are sought before external help is accepted as the ultimo ratio.

The Russian child and youth services are extremely well organised and often only provide working groups and circle for a closed group of participants. These have precise specifications as regards content with somewhat school-like structures, binding times and clear objectives. The children, young people and parents are confused by the differently structured German provisions. They do not understand what the projects and professionals want, or draw wrong conclusions. The relationship between the groups involved can be described as »structurally unclear«. The following is a typical comment of young ethnic German immigrants about the German child and youth services: »In the first place I did not understand what they actually wanted!«⁶⁶

The child and youth services in the country of origin provided the families with a certain amount of reliability, security and guidance. This is precisely what the ethnic German immigrants miss in the German child and youth services which they regard as unfathomable, anonymous and impersonal.

65 Thus e.g. many service provisions of the German child and youth services are not obligatory but can be used or rejected.

66 Statement from Jewgenij, 18 years old in the interview.

They lack knowledge and insight into the structures, the rituals and the obligations of organisations, provisions and the professionals. Some of it even seems threatening to them. If they have different experiences, they emphasise this especially, sometimes after they have been in Germany for a long time: »I think it is a positive quality that the project is well organised «⁶⁷. This provides security »then we know what we are dealing with«.

To be able to accept help and support from professionals, more than other young people the young ethnic German immigrants need personal contact and specific invitations. Trust is of central importance for the young people. Professionals must make a confident impression, radiate seriousness for the young people, know about the young people's origin and background and have Russian language skills.

At this point reference should be made to a widely tabooed problem: even if it cannot be conclusively clarified to what extent male young ethnic German immigrants actually get involved with female professionals, experiences and statements do suggest that the sex of the carer is important. Time and again delinquent young men stress that it is better if men work with them. To what extent this is necessary in terms of effective work cannot be conclusively clarified here. Possibly it would be better for the first contact to be made by male professionals?!

The confidentants of the young people get rid of the young ethnic German immigrants' feared anonymity of the child and youth services, can act as mediators in professional services (e.g. in advisory offices of other organisations) and at the same time accompany them. As a »sponsor« or »scout« they convey a feeling of security. They can mediate between professionals and young people. Without accompanying help many young people withdraw, keep to themselves and try to deal with the problems themselves.

However, in addition to the contact with the young ethnic German immigrants, the areas of provision by the child and youth services are also important. If the provisions are developed in line with the experiences of the ethnic German immigrants made in the country of origin this can lead to the development of provisions which are assessed as boring and old-fashioned by local young people. Thus, e.g. »fishing« or »chess« are popular with young ethnic German immigrants local young people find these extremely boring. The young people also like sitting round and chatting in a

67 Statement of Jewgenij, 18 years of age in the interview.

relaxed way. However, at the same time counselling situations in which advisers and young people sit together and talk to each other are often found to be unpleasant. Conversations which are held »during« an activity when young people seek advice are preferred. This is frequently misinterpreted by the professionals, not regarded as relevant and advice is not obtained.

Young ethnic German immigrants want to spend less time in enclosed rooms in the projects than is usual in Germany. Outdoor activities are very popular and in many instances only exist e.g. canoe trips or camps, because the ethnic German immigrants take part in them. Boys can almost always be interested in sport provisions. They like playing football, basketball and they are especially interested in types of sports which are linked with strength. Bodybuilding, boxing or wrestling e.g. are high on the course. But such opportunities are rare. Often the projects do not have »... the right responses to the highly complex situations of the young people seeking help and advice ...«⁶⁸. Also the familiar course character of the provisions for the young people is rather rare. The projects of child and youth services expect that parents and children attend voluntarily. In the first place these expectations are disconcerting for the ethnic German immigrants and professionals rapidly interpret this as »no interest«.

Visits by professionals to the parental home are rare. The confined living conditions in which these large families live in the temporary hostels and later then frequently in flats which are much too small can however rapidly make it clear why these children and young people often like hanging about outside the parental home, on the streets and in public places. They cannot bring friends to the flat in summer or winter. Many have to share their bedroom with their siblings and have nowhere to retreat to or be alone sometimes.

Above all, these young people need space for themselves, recognition of their identity and the opportunities to prove it. They must be able to maintain their Russian traditions, their language and culture as an important part of their own life story. Germans born here as well as the professionals must deal with the fact⁶⁹, that some traditions can be thoroughly problematic from the viewpoint of emancipation. The importance of masculinity, physical strength as the guideline for order of rank in the group, physical clashes as the generally accepted way to solve a conflict and the

68 Giest-Warsewa, p.29

69 Above all, the much ritualised, masculine behaviour of the young men with its extreme emphasis on cult of the body is not only difficult for female professionals to deal with.

excessive consumption of alcohol are however not accepted as a rule in the institutions of the child and youth services.

5. Résumé

If we are familiar with the processes and the culture the »foreign« children and young people have gone through in the countries of origin, educational work can be linked to them, i.e. without everything having to be accepted without objection. Effective discussions are not possible without knowledge of the backgrounds and causes of ways of behaviour and attitudes found to be strange. Educational perspectives and initiatives with integrative components can only be developed in this context. However, there is no overall answer to the question of how to achieve for each young person, irrespective of origin, »a right to support in his development and education so that he can develop into an autonomous personality capable of living in a community«⁷⁰. Individual and differentiated strategies must be developed and implemented. The essential basis for this is knowledge of the other, the foreign.

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Fast tracking and co-operation between police, justice and social services – crime as a cause for looking if support is required

Recent years have seen an increase in demands for fast tracking as an effective means of combating criminal behaviour among children and young people in Germany. Such demands, which call for action to be taken as soon as possible after an offence has been committed, are based on the assumption that the effectiveness of provisions for young offenders increases the more swiftly they are implemented.

Voiced by the general public, the media and politicians, demands for fast tracking reflect dissatisfaction with current practice. Court proceedings, for example, are often held to take place too long after the offence has been committed – a year or more in some instances. This may mean that the young people no longer perceive an immediate connection between official responses to the offence they have committed – in the form of a court sentence, for instance – and the circumstances of the offence itself. The sentence is incomprehensible to them because the offence, its circumstances and their own experiences at the time have receded into the past.

Calls for fast tracking relate to more than a perceived need to speed up proceedings in the youth courts. Especially with regard to repeat offenders among children, discussions in Germany in recent years have consistently involved complaints that the *Kinder- und Jugendhilfe* (child and youth services) frequently respond too late, if at all, to police information concerning young suspects. In such cases, it is argued, it is possible to establish immediately whether or not assistance should be provided.

In both respects – the lapse in time between the commission of an offence and its treatment by the courts, and the supposed failure of the child and youth services to respond soon enough – fast tracking in the first place means nothing more than that procedures should be made more effective by being accelerated. Acting quickly is here seen as a criterion of effectiveness in itself. The legal consequences it may have or its socio-educational implications are largely ignored. The present paper will focus on the socio-educational aspect.

Specialists need to address demands for fast tracking on two levels. First, the popular cry for swift responses in combating criminal behaviour among children and young people fulfils a symbolic function, proclaiming that the judiciary, the police, politicians and members of the child and youth services will not allow themselves to be made fools of by young »criminals« and that they will act quickly and decisively to show just how far these people should be allowed to go. Such action is supposed to have the added benefit of deterring potential offenders and thus of being effective in preventive terms. Second, demands for fast tracking represent a response to failings in crime prevention practice. We shall therefore need to discuss whether or to what extent fast tracking is an effective response to these defects, whether distinctions should be made and, if so, what kinds, and in which instances the approach may be counter-productive.

1. Approaches to fast tracking: sanctions or assistance?

In recent years some fast tracking projects have caught the attention of the media and the public. They are basically of two kinds. The first group focuses on the offence and its legal consequences; the second addresses the need for assistance among children and young people that has become apparent as a result of the offence.

Projects that concentrate on quick legal responses to an offence attempt to speed up sanctions by closer co-operation and co-ordination. Requiring reorganisation or readjustment of legal procedures, this involves the police, the judiciary (especially public prosecutors) and the child and youth services in the form of the *Jugendgerichtshilfe* (youth services in youth court proceedings; *JGH*). The aim is to reduce the time occupied by paper work and procedural matters, i.e. to improve co-ordination among the institutions involved so as to speed up criminal proceedings. In this way, conditions and sanctions are to be imposed on suspects soon after the offence has been committed, increasing, it is hoped, their impact on the young people concerned.

One pilot project of this kind, the *Haus des Jugendrechts* (house of law relating to young persons) in Stuttgart, has received much coverage in the media. By housing all the official organisations involved – the police, public prosecutors and the *JGH* – for the first time in one and the same building, the project seeks to improve co-operation among them, with the aim of speeding up procedures through closer co-operation and promoting the development of joint goals and strategies. Located in several buildings and

different administrative units, the organisations had previously worked in isolation and along their own lines. Now, in a single building, they are next door to each other, communication channels are short and spontaneous discussions possible. This is intended to facilitate »official« fast tracking, and indeed the project has demonstrated that procedures can be shortened in this way and that the continual exchange of information and opinions can lead to the devising of joint strategies.

The Stuttgart project and others of its type have shown that the role of the *JGH* as the police's and judiciary's first and chief point of contact in the child and youth services is expanding. Officially, the *JGH* is required to concern itself only with offenders who have reached the age of criminal responsibility; yet in Stuttgart, for example, it is now consulted in all cases, including those involving persons below the age of criminal responsibility, whom it directs to the relevant provisions of the child and youth services. This development raises a number of questions. Does it ensure, for instance, that children and young people are directed to socio-educational provisions appropriate to them and does it provide for the necessary involvement of socio-educational partners, especially from the child and youth services? Or again, could it lead to better treatment of those who have not yet come of age by helping to improve the traditionally tense relations between the *JGH*, with its close links to the judiciary, and the provisions of youth work and socio-educational aid, which have few connections with the judiciary.

Speed is also an important criterion in the activity of projects concerned with addressing the need for assistance when a child or young person is suspected of having committed an offence. The goal here is to discover the kind of socio-educational aid required by the suspects, and perhaps their families, and to determine what type of provisions and institutional structures and briefs are necessary to provide it. These projects focus on intervening in acute cases, on providing advice and on directing suspects to suitable provisions.

Examples of such undertakings are the *Interventions- und Präventionsprojekt* (intervention and prevention project) in Dresden and the *Jugendberatungsstellen bei der Polizei* (youth advice centres administered by the police) in the federal state of Sachsen. In these, the youth child and youth services and the *JGH* work together with the police, sometimes in police buildings, what is unusual for the German child and youth service system. Members of the services are careful to preserve their independence as experts and to ensure that their specialist knowledge is taken into account.

The status of police suspect is simply the trigger for investigating whether assistance is required and, if so, what kind. The status thus facilitates access to socio-educational provisions.

Approaches of this type have been founded on two main assumptions. The first is that many children and young people experience a crisis after being »caught« and coming in contact with the police for the first time. They feel insecure, frightened and uncertain of their future. Often there is no one they can turn to. The child and youth services can and should take action here, providing support for those who have not yet come of age, taking their problems seriously and offering further assistance. Experience shows that many children and young people are prepared to accept help of this kind. Individual cases require individual strategies, developed in accordance with suspects' age (whether they have reached the age of criminal responsibility, for example), with their family situation, with the seriousness of the offence they are suspected of having committed, with the frequency of their criminal behaviour, with the circumstances of the offence, with their personality and so forth. Practice in this area is correspondingly diverse, with considerable fluctuations in the frequency of contact with people who have not yet come of age, in the time devoted to diagnosing the problem and the strategies devised to provide a solution.

Nearly all projects of this type perform the role of intermediary in the case of long-term problems. They inform young people and their parents about the child and youth services and their provisions (about which suspects and their parents are often totally ignorant) and may direct them to sources of help outside those services. This activity involves working with other public bodies, including employment exchanges and youth offices, and with private organisations, such as *Sportjugend*, which helps children to join sports clubs.

In the help-orientated approach the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) within their area of specialist responsibility and rely on their socio-educational expertise. Demands for fast tracking are understood here in terms of providing socio-educational support for young suspects and their families as swiftly as possible.

2. Fast tracking and social education

The types of approach outlined above, the sanction- and the assistance-orientated, should not be seen as strict opposites. The reality of many pro-

jects shows that distinctions between the two are fluid. For the social scientist, however, it is important to note that the emphasis on speed, the tendency to view quickness itself as a mark of effectiveness, merits independent discussion with regard to the child and youth services and the young people they serve. This becomes clear when the assumptions underlying calls for fast tracking are examined in detail. In their popular form, the demands would appear to be supported by a simple theory derived from everyday experience with small children. Whether positive or negative, action, it is thought, must be taken in the immediate context of the occurrence or occurrences that provoked it, so that the child grasps the connection between the two. If the connection is severed, the action loses its meaning for the child.

Clearly, this naive justification for acting quickly in the case of children and young people suspected of having committed a criminal offence, although substantiated by many *de facto* arguments, will not withstand scrutiny. Even its effectiveness as a guiding principle in bringing up small children is questionable, but our concern here is with young criminal suspects. Without detailing all the possible constellations, it can be established that arguments in favour of fast tracking should be qualified in a number of ways. For one thing, although procedures extending over a long period of time do indeed run the risk of losing contact with the context, dynamics and background of an offence, those who work in the area are familiar with many constellations in which permitting time to elapse is the appropriate, and necessary, response because it enables the suspects and their families to »cool down« and acquire a more detached view, irrespective of possible official intervention. Indeed, it should not be forgotten that the fast tracking discussed here is invariably official action, taken in the name of the State, and that, rather than solving a problem, it can make matters worse.

The main thesis proposed here is, therefore, that demanding fast tracking is, at the very least, not necessarily the same thing as demanding appropriate socio-educational responses and that a suitable balance between the two has to be achieved in each individual case. Hence, offering appropriate socio-educational help at the appropriate time is among the most important tasks performed by the child and youth services (and not only by them). In other words, fast tracking in itself does not guarantee effectiveness: the main thing is to act in the right way at the right time. Each case requires careful assessment of the degree of assistance needed, of the aims to be pursued and the methods to be employed. Success will depend, of course, on the willingness of the young suspects and their parents or guardians to co-operate. The appropriate time to provide help is thus de-

terminated solely by co-operation among the suspects, their families and the project workers, not by the activities of the police or the judiciary.

A second reason for qualifying arguments in favour of fast tracking from a socio-educational vantage point concerns the model derived from the upbringing of small children, a model that equates action relating to an occurrence with socio-educational intervention. The first objection to this must be that offering socio-educational assistance is not the same thing as implementing corresponding provisions. Offers can be refused by the young people or their parents and specialists must be able to decide whether socio-educational intervention is appropriate or not in a given situation. In other words, the suspects may be »sent away« without receiving further advice. Especially in view of the ubiquity and episodic nature of criminal behaviour among children and young people (almost everyone indulges in at one time or another and it is generally nothing more than a passing phase) the need for official action needs to be assessed in each case. With this in mind it becomes clear that fast tracking should entail only prompt offers of support, not swift intervention at all costs.

Thirdly, it should be remembered that all socio-educational practice needs time in order to assess the response required and develop suitable strategies, to gain a clear picture of past events, to persuade those it is addressing – children, young people and others – to co-operate actively and to allow those affected to acquire a more objective view of occurrences.

Fourthly, demands for fast tracking stand on shaky ground empirically. Far too little is known about the amnesia theory that forms the basis of the assumption that speeding up procedures improves socio-educational effectiveness: »Although the development of the memory has been examined ... and the credibility of child witnesses has been investigated ... the core of the matter has not been addressed in empirical studies, let alone conceptualised in plausible theoretical terms ... How intense must the trauma resulting from being caught be in order to be felt or at least reactivated for how long by which young people in which social conditions?«¹

Fifthly, the notion that personal crises caused by being caught and questioned by the police make suspects particularly amenable to approaches by the child and youth services needs to be subjected to scrutiny. There is a theory that crises increase the willingness of suspects to accept help,² but

1 Feuerhelm, pp. 117-118

2 see Enke

practical experience of intervening in such situations – for example, by taking someone into care – tells a different story. Often, the first step is to attempt to ease matters, offering help chiefly intended to defuse and stabilise the situation rather than to address behavioural problems. For many children, for instance, fear of their parents and of unforeseeable consequences are a major concern following questioning by the police, which naturally relates primarily to their status as suspects. Social workers have reported that children in this situation worry intensely about the consequences for them at school, say, or about the possibility that they will be taken into residential care or subjected to physical punishment. The specialist's main task here is to address these fears, encouraging the children to articulate them fully and finding ways of stabilising and defusing the situation. Further, they need to decide whether talking to the parents would be a sensible means of de-escalation in preparation for the child's return home, whether the parents themselves require assistance and whether other people close to the child should be consulted. Support and stabilisation in precarious situations is a form of fast tracking, yet it is usually ignored in discussions of criminal behaviour among children and young people because interest here focuses on the effective long-term adjustment of behaviour in terms of established norms. The experience of those engaged in crisis intervention indicates that the pursuit of such socio-educational aims may well place excessive demands on children and young people who find themselves in an acute personal crisis.

The experience gained in relevant projects also shows that suspects and specialists mean different things by help. Whereas the young people are generally looking for assistance in coming to terms with their personal situation, those offering the help are aiming for lasting behavioural change. Arriving at the conditions necessary to pursue this aim – workable forms of co-operation with other organisations, precise knowledge of the case, the willingness of the suspect to co-operate, the consent of persons possessing right of custody and so forth – requires time and resources.

3. Problems and criticism

The *Jugendgerichtsgesetz* (Youth Court Act; *JGG*) and the *Strafprozessordnung* (Code of Criminal Procedure; *StPO*) form the legal basis of the judiciary's and the police's dealings with young criminal suspects in Germany, supplemented by the police laws in each federal state and by regulation 382 of the *Polizeidienstverordnung* (Police Service Regulations; *PDV* 382), which regulates police treatment of cases involving young people. The

chief legal foundation of the work of the child and youth services is the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*). The *JGH* works relatively closely with the judiciary, yet, as part of the social services, its brief in accordance with Section 52 of the *KJHG* is to ensure consideration of »educational, social and welfare aspects«; and it is the *JGH* that proposes suitable social measures in specific cases, which are then implemented by the services.

Projects that focus on fast tracking are a subject of constant debate and criticism within the judiciary and the police, on the one hand, and the child and youth services on the other. Frequent objections are that such projects may introduce sanctions at too early a stage, contravene the division of power anchored in the *Grundgesetz* (constitution), infringe the stipulation that someone be assumed innocent until proved otherwise, reduce data protection and go against the principle of voluntariness governing the work of the services.

The first of these five objections – that sanctions are introduced too early – applies to almost all the relevant projects. It involves two aspects. First, it is feared that diversion projects in particular, which aim for quick results, may entail the premature introduction of sanctions – for example, for minor offences. (A diversion project is one that attempts to avoid formal criminal proceedings and sentencing by proposing socio-educational measures or a form of reparation of damage done that makes it possible to cancel court proceedings.) In legal terms this means that cases that would normally be abandoned under Section 45, Paragraph 1 of the *JGG* are subject to measures instituted under Section 45, Paragraph 2 of that act. Although this is done with the best of intentions, i.e. in the belief that socio-education at the very least can do no harm, in practice it means that the young suspects may be subjected to measures out of all proportion to the offence committed. The police are also the target of criticism here, because they effectively initiate the diversion strategy by identifying suspects in the first place (albeit in consultation with the public prosecutor). In doing so, they go beyond their executive role to appropriate a task properly performed by the judiciary, and this may be interpreted as violating the law of the division of power.

It is also feared that socio-educational measures may entail a premature introduction of sanctions because, although child and youth services' specialists view their intervention as comprising »suggestions« – and that is how they are defined by the Berlin Diversion Guidelines, a series of binding guidelines drawn up by a mixed working group as a means of promoting diversion strategies in Berlin – the young suspects perceive them as a

form of punishment. Experience shows that many young people find it difficult to distinguish between a suggestion and a legally binding order. Both are provided for by German law. Because the services, which for the most part operate on the principle of voluntariness, and the judiciary, which generally works in prescriptive terms, co-operate closely in this field the suspects do not always realise which rules apply. And it is difficult to make this clear to them in their given situation.

The problem is compounded by a further issue. Existing diversion guidelines all stipulate that before a diversion strategy can be instituted the suspect must be shown to have committed the offence beyond reasonable doubt – that the truth of the proposed formal accusation cannot be »seriously disputed«, as the Berlin guidelines put it. As noted above, many young people suffer a personal crisis as a result of being caught, and this may well induce them to fulfil what they see as the police's expectations and, perhaps under pressure of questioning, confess to an offence they have not committed. This is especially likely if it is suggested to them that proceedings will be abandoned if they confess, but other factors may also lead them to accept responsibility for an offence they have not committed – group pressures, for example, or the wish to shield their friends or siblings. The notion that a proposed formal accusation that cannot be »seriously disputed« alone constitutes sufficient justification for instituting a diversion strategy needs to be investigated carefully.

Young people who are the subject of diversion strategies have no legal guarantee that proceedings against them will be abandoned, even if they have fulfilled the conditions imposed by members of the diversion specialists. They thus exist in a state of uncertainty, which can be of little benefit to them in socio-educational or any other terms. Moreover, explaining to the suspects that the diversion measures are voluntary, and that the decision to abandon or not abandon proceedings against them ultimately lies with the public prosecutor, is the sole responsibility of the diversion specialists. This weakness has been addressed by the relevant organisations, such as the Diversion Advice Centre in Berlin. Subjecting the role of the police in the entire process to critical examination, these bodies have attempted to reduce the problem by promoting communication among all parties involved, including the public prosecutor.

The criticism that fast tracking in its socio-educational form may endanger data protection has been directed primarily at those who undertake such activity in close co-operation with the police. If the child and youth services are to act swiftly they need to be informed quickly by the police. The po-

lice are generally willing to co-operate, but naturally expect to be kept informed by the services in return. This is where the services problems begin, with regard both to data protection and to the effectiveness of their work. Personal data may be passed to others only under certain conditions, and these do not include routine police investigations. The effectiveness of the services relies to a considerable extent on the establishment of trust between their workers and the young people concerned, and this may collapse if the latter suspect those members of the services are passing on information to the police.

The final objection to fast tracking of the socio-educational kind concerns the fact that social service centres that have young people »allotted« to them by the police may be said to be offending against the principle of voluntariness that governs the work of the services. Time and again, the police fail to explain to suspects that acceptance of offers of assistance is voluntary, a task then left to the staff of the service centre in question. Police behaviour in this respect may appear sensible in view of the necessity and desirability of providing help, yet it is not without negative repercussions for the services. Demands that the police make provisions accessible to all children and young people can also be met if police officers are trained more extensively to deal with this target group, if they are continually acquainted with the aims of, and options open to, the services. This is undoubtedly a laborious process for all concerned, but it pays dividends in the long run, both for the young people and for the services.

4. Fast tracking and co-operation

The term »co-operation« has always played a central role in discussions of fast tracking. All the relevant projects have sought to obtain the co-operation of the police, the public prosecutor, the *JGH* – and occasionally also of the courts and schools – as soon as possible after a suspect has been identified. The aim has been to encourage rapid exchange of information as a means of speeding up the project's work. Achieving this requires no reform of laws or procedures, regulations or guidelines. As in other areas of life »co-operation«, »networking« and other such terms have been invoked in the child and youth services like magic formulas guaranteeing innovation. The claims made for, and the effectiveness of, quick co-operation need to be looked at closely.

Practical experience shows that effective co-operation among the relevant organisations depends on a number of factors. First, prejudices, miscon-

ceptions and other hurdles need to be overcome in preparation for establishing the responsibilities of each organisation. These initial discussions are laborious in themselves, because it takes time for the organisations to become acquainted with and learn to accept one another and because each party expects the others to understand its point of view and make concessions. This can happen only if the briefs, aims and options of all those involved are clearly defined and readily intelligible. The main tasks of the police and the judiciary are to prevent offences being committed and to investigate and punish those that are. The work of the child and youth services, on the other hand, focuses on young people's socio-educational requirements and their well-being: the services activities are based not on identifying offenders quickly and administering suitable punishment, but on the needs of those living in difficult circumstances and their social integration. The services thus expect to receive information from the police as soon as possible, for only then can they act swiftly and directly. The police entertain quite different expectations: they expect that a young person whom they have helped to receive assistance from the social services will not cross their path again as a suspect. That is what the police expect the services to achieve.

Successful and swift co-operation requires agreed and effective procedures and the integration of these procedures in the work of the individual organisations. This can have far-reaching consequences in that organisations may need to implement some form of internal restructuring. (One instance of this is flexibility with regard to the way in which the police deal with an offence. Co-operation between the police and other organisations can be improved, for example, if an offence is dealt with by the police from the area in which the suspect lives rather than that in which the offence was committed, because repeat offenders are then always the responsibility of the same police officer.) Conflict can be avoided only if the institutions involved continually discuss their respective roles, the parameters governing their activity and their perceptions of their task, with a view to establishing who is and who is not responsible for what, and who is in a position to act quickly and who requires more time.

5. The advantage of fast tracking for the child and youth services

Promotion of fast tracking opens up opportunities for the child and youth services that they must seize if they are to further the interests of their clients. The goal of the services, after all, must be to find solutions to the problems of young people living in difficult circumstances.

Social practice includes cases in which the precepts of fast tracking have been harnessed to the prime task of the services. In Cologne the services joined forces with the police to develop and implement an approach to criminal behaviour among children. This involved assessing the effectiveness of the services and modifying their organisation accordingly. Internal procedures for offering assistance, and the services' ability to respond adequately both to existing and to new problems, were examined for weaknesses. The changes introduced as a consequence, and the first results of those changes, indicate that existing structures still contain considerable potential – with regard, say, to including people possessing the right of custody, schools and other relevant persons or organisations in the drawing up of plans for assistance, the regular monitoring and adjustment of such plans and so forth.

Practical experience has also shown that fast tracking enables many children and young people to be addressed who have no previous knowledge of the social services. Frequently, only a small proportion of them are acquainted with the services' provisions, so fast tracking grants the services access to children and young people who require assistance but could not be reached before. Without such contact the problems of many young people may become entrenched or may multiply. Fast tracking thus gives them immediate help and reduces the likelihood of problems increasing in the future. It also brings the social services into contact with children and young people who do not require assistance, because, for example, their families have sufficient resources to deal with problems. Workers in good fast tracking projects will automatically refrain from bombarding these young people with solicitous offers of socio-educational help.

New forms of co-operation bring with them new possibilities for the child and youth services. One innovation is that members of the services are constantly on call, so that in emergencies the police can reach them at a central point outside office hours. Developments of this kind enable the services to perform an important clearing function by facilitating swift decisions as to which of the available provisions for assistance should be implemented and by helping to avoid »shunting« children and young people from one provision to another.

Seeking to respond adequately to problems in an area where police and social concerns overlap, fast tracking projects have enlisted the support of new partners. This has been done in order to provide more effective assistance and, in cases where someone is correctly suspected of having committed an offence, in order to give the young person (or, less frequently,

the child) the opportunity of making good the harm he or she has done. In this way schools and private industry, along with public companies and local government institutions, have increasingly participated in the work of the services. Crime prevention activities are slowly being complemented by work with new partners and in new areas, something that has long been demanded of the services and can indeed represent a meaningful extension of their work with children and young people.

6. Prospects

The socio-educational approach to fast tracking brings with it two tasks. First, the child and youth services must constantly make it clear that criminal behaviour in these age groups is ubiquitous and episodic. In empirical terms, violating norms is customary among (nearly all) children and young people. To engage in such probing of limits they require certain latitude: only then can they learn to respect rules and laws and, if need be, to question them. The job of the social services is to make sure that such opportunities exist and are maintained, in order to forestall overreaction.

The second task entailed by the socio-educational approach is to draw attention to the fact that the majority of children and young people who indulge in criminal behaviour or commit offences do not require special socio-educational assistance. In most cases the fact of being caught, and the suspect's family and friends, exert a sufficiently positive socialising influence on him or her. A small group of children and young people, including the so-called repeat and serious offenders, cannot rely on support from their parents and friends. They urgently require the specialist assistance provided by the child and youth services. Service organisations in a position to offer that help soon after an offence has been committed or a suspect detained provide a promising basis for further help.

If the child and youth services view their activities in terms of what they can realistically achieve they are bound to disappoint the excessive hopes that have sometimes been placed in fast tracking, especially the expectation that it will provide quick and effective solutions. Social education takes time. In this field, fast tracking means the capacity to make offers of help as swiftly as possible. Implementing the assistance often requires a long time if it is to have a chance of success, and even then there is no guarantee that the goal will be achieved.

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Heiner Schäfer

How to remand juveniles in young offender institutions is avoided. Everything is better than prison – educational alternatives in Germany¹

1. Background

In criminology and *Kinder- und Jugendhilfe* (child and youth services) to remand juveniles in young offender institutions is regarded as an especially negative form of deprivation of liberty for young people.² The intensity of the intervention is frequently greater than in the instance of a prison sentence and the consequences of to remand mostly boys in young offender institutions are sometimes more negative.³ Thus, for example, to remand in young offender institutions does not provide for relief from the imprisonment and educational provisions hardly exist; however both are possible in a custodial sentence. Therefore, remand in young offender institutions frequently has a personally destabilising effect and contributes to the social and vocational disintegration of young people. Especially young people find it more difficult than adults »... to bear the isolation and inactivity forced on them as a result of imprisonment. The increased risk of suicide is rightly pointed out«⁴. On the one hand this is the result of an educational vacuum which can often suddenly occur on remand in young offender institutions, on the other hand at this time young people can be relatively easily influenced by »experienced« offenders. Unlike adults they are »... helplessly at the mercy of the bullying of older prisoners«⁵.

This criticism was taken up by the legislator in the reform process with respect to the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*). It was established that the detrimental consequences of remand in young offender institutions become apparent especially with young people: »Apart from the risk of criminal contagion the consequences can extend from loss of identity through to permanent disorders in psychological development.«⁶ The constitutional principle of proportionality therefore applies for young sus-

1 This article has been published in German language, cf. Schäfer

2 Young people in this sense in Germany are between 14 and under 18 years of age.

3 Cf. e.g. Lösel

4 Zieger, p. 123

5 Cf. Lösel

6 *Deutscher Bundestag*, p. 30

pects even if increasingly in the last few years demands for tougher sentences, faster imprisonment or for deportation to the country of origin have become known.⁷ This requires the priority of more lenient methods as long as legal interests can be safeguarded. The *Bundesverfassungsgericht* (federal constitutional court; *BVerfG*) formulated the priority of prevention before repression as the central idea in a decision: »The restriction of liberty which appears necessary and expedient from the viewpoint of criminal prosecution must always be objected to as a corrective measure on the grounds of the right to liberty of the accused person who has not yet been sentenced. This means: remand in young offender institutions must be controlled in terms of directive and custodial treatment by the principle of proportionality«⁸. Like the standards for sentences, remand in young offender institutions is also regarded to a certain extent as the »ultimo ratio« in the instruments of the courts. Deprivation of liberty as a coercive measure is the strongest government intervention in the rights of individuals. Remand in young offender institutions must only be used cautiously and with restraint, even if there is a compelling suspicion that a crime has been committed and not a reason for custody, even »... if other measures ... are possible«⁹. Finally, remand in young offender institutions should only be pronounced on a very restricted basis for young people aged 14 to 15 years in Germany.

Consequently, common positions have developed in the courts and education for remand in young offender institutions for young people in Germany. They are regarded as fundamentally disproportionate for young people, if the sentence to be expected can provide a probation order. In addition, remand in young offender institutions should be ruled out, »... if a prison sentence of up to one year is to be expected, because as a rule sentences up to this length must be suspended and are suspended«¹⁰. Against this background of criticism the child and youth services have developed and tried out alternatives to remand in young offender institutions and consolidated and qualified them.

2. Three preliminary remarks

We have evaluated the ideas from 20 institutions within the youth services system offering alternatives to remand in young offender institutions for

7 This is established in Art. 20 Subsection 3 of the Constitution.

8 Decision of the Federal Constitutional Court: *BVerfGE* Federal Administrative Court 19, 342 (347)

9 Ostendorf, p. 681

10 *Konstanzer Inventar*

this article¹¹ and taken account of the few existing evaluation studies in Germany.¹² However, we are unable to offer any insight into what happens on a daily basis in these institutions of remand in young offender institutions, because, hitherto, reports and documentation about them do not exist or are not accessible.

It must be emphasised that in view of the child and youth services only one section of the responsible institutions are included in the context of remand in young offender institutions. The courts are and remain »master of the proceedings« even if the child and youth services are entitled to an important role in the interests of the young people. The critical look at the child and youth services must not result in the courts for example looking away contentedly because critical questions can be raised there as well and questionable procedures specified. The frequent »on the quiet«, and also in court circles the frequently used metaphor of »to sock someone«, i.e. remand in young offender institutions is abused as a deterrent, shall only be mentioned by way of example.

Finally: If one starts with the legally defined duty of the child and youth services¹³, according to which this should be specifically available for difficult young people, then it is surprising that the alternatives to remand in

11 Soremski. At the centre of the interest there are questions about the educational directions of the ideas; the details are presented in a problem-centred way, but there are no statements according to frequency or distribution. Statements on the technical, organisational, personnel or financial general conditions of the projects are not provided, even if, e.g. the question about financing can be important for the child and youth services which is chronically short of funds.

12 El Zaher, Bindel, Lösel

13 Section 1 of the Child and Youth Services Act formulates the guidelines for the child and youth services in this way: »Right to be brought up and educated in the family, parental responsibility, child and youth services (»youth services«)

- (1) Every young person has a right to assistance in his or her development and to an appropriate upbringing so that he or she can become a responsible member of society.
- (2) Care, upbringing and education of children are the natural rights of parents and their primary duty. The public community watches over the fulfilment of that duty.
- (3) For the realisation of the right according to subsection 1 above child and youth services shall in particular:
 1. further young persons in their individual and social development and help avoid or remove disadvantages,
 2. give educational counsel and assistance to parents and other persons having parental powers,
 3. protect children and young persons from harm to their welfare,
 4. help maintain or create positive living conditions and a favourable environment for children, young people and their families.«

young offender institutions are applied for¹⁴ much too frequently e.g. by the lawyers and not by the youth services in youth court proceedings.¹⁵

3. The data situation¹⁶

The statistics for custodial sentences¹⁷ for remand in young offender institutions are only meaningful to a limited extent. Accordingly in Germany on 31. March 2002 there were 922 young people between 14 and 18 years of age (of these 892 male and 30 female) on remand in young offender institutions. These figures have remained the same in the last few years with slight variations. During the course of 2002, 5,473 were committed to institutions for remand in young offender institutions, 5,582 were released. However, a total annual figure cannot be calculated because the »...admissions are not only first admissions but also include transfers or change in type of custodial sentence. Accordingly, departures are not only releases into liberty«¹⁸.

Not even every second young person who was on remand in young offender institutions in 2001, and this is the latest figure publicly available, was sentenced to a custodial sentence without probation (deprivation of liberty).¹⁹ To turn the argument on its head this means that each second young prisoner on remand in young offender institutions only experienced deprivation of liberty in its most anti-re-socialising form: he was locked up without adequate educational assistance and without support for his education or training.

It is noteworthy that the rates for remand in young offender institutions (that is the percentage of prisoners out of those subsequently sentenced to a prison sentence without probation) for young people in the first half of the nineties of the last century was significantly higher than for adults, contrary to the intention of the legislator. However, in the last few years these rates appear to be becoming more similar slowly.

14 The social support service at the local court shall look after the young people in the penal process relating to young offenders and inform the court if the services of child and youth services apply. In this sense the youth services in youth court proceedings represents the interests of the young people in court in addition to the lawyer.

15 Will

16 The article by Holthusen in this volume provides more precise details.

17 *Statistisches Bundesamt*

18 Holthusen

19 Cf. *Konstanzer Inventar*

If it is true, and this is expressed on the quiet in some discussions about remand in young offender institutions for young people, that there are hidden and inadmissible reasons for imprisonment, then this indicates that there is a huge problem: To be precise it seems as if remand in young offender institutions is used now and then in a »educational« sense. In discussions statements such as follows can be heard: this or that young person needs a warning shot to prevent a criminal career in time. In addition, ethnic affiliation, the foreign, also seems to play a part.

An analysis of individual records carried out at the start of the nineties in the statistics for criminal prosecution²⁰ showed that, above all, the rates of imprisonment have risen for non-Germans, who do not originate from the »immigrant worker countries« or from EU countries.²¹ Frequently, these young people are arrested for less serious offences and also for shorter periods. In these cases »... in addition to criminal law criteria the social and personal situations of the detainees play increased roles. In this respect, obviously the instruments provided by the legislator, especially the involvement of youth services in youth court proceedings and the provision of alternative residential places, in practice are not effective to the intended extent«²². It is also established that the quota of young sentenced non-Germans, who are sentenced to imprisonment directly following remand in young offender institutions, only amounts to a little more than a third. »Even if account is taken of the prognostic uncertainty at the start of the procedure, nevertheless these figures must cause astonishment. They mean that the practice of arrest especially for young people and adolescents does not stick to the principle that as a rule only in the instance of an expected enforceable custodial sentence can remand in young offender institutions be instructed.«²³

At the same time there is a ruling for young people and adolescents in the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*) which the courts can fall back on. The judge can order their provisional accommodation in a suitable residential home of the child and youth services, »... if this is advisable with respect to the expected measures, to protect the young person from another risk to his development, in particular from committing new offences«. ²⁴ This provides two different points for the child and youth ser-

20 Jehle

21 Cf. in this context also Walter

22 Jehle, p. 9

23 *ibid.*, p. 78

24 Section 71 (2) *JGG*

vices: on the one hand it must provide factually and professionally suitable residential accommodation with adequate places as an alternative to imprisonment and on the other hand it must assert all the educational and social viewpoints in court on the date when the decision on remand in young offender institutions is made. This is the only way that young people can be protected from remand in young offender institutions.

4. The structure of the field

The alternatives to remand in young offender institutions provided by the child and youth services in Germany are many-layered and largely non-uniform. Basically three model types can be differentiated:

- The first type includes provisions which start before the decision on imprisonment and are intended to avoid imprisonment. The court and the public prosecutor's office shall be persuaded to admit young people to an institution of the child and youth services and not to prison, even if risk of an escape is assumed.²⁵
- The second type includes provisions which aim to achieve a reduction of the remand in young offender institutions. Above all, these projects become active when the young people are already locked up. However, there are also instances in which this is only set in motion by an inquiry of social work services to the penal institution or by the solicitors defending the young people.
- The third type includes the significantly smaller group of provisions which are understood as a clearing centre in the interface of the courts, custodial treatment and child and youth services. They do not look after the young people themselves but look for the appropriate assistance for each individual case within the child and youth services. In these provisions the young people are then quickly placed otherwise.

In the following this differentiation will only be important in the admission procedure, otherwise the discussion will be quite general and undifferentiated about alternatives to remand in young offender institutions throughout.

Basically, the avoidance of remand in young offender institutions is provided on a residential basis and in regular or special institution. Although the

²⁵ In the commentaries to the *JGG* the risk of escape is listed more than the risk of collusion or the risk of repetition as the important condition for the instruction of remand in custody pending further enquiries. An example of this: »There is the risk of escape... with young people with a tendency to rash actions often for actions of low significance.« Brunner, p.433

latter make target-specific provisions and the specialisms of the professionals can contribute to the quality of the work, the question is raised: is the concentration of such difficult young people in special establishment sensible? Another fundamental distinction can be made for the residential institutions: they are »open«, »partly open« or »closed«.

Whereas in child and youth services the debates about closed accommodation have been controversial and fiercely discussed for many years and for a long time there has been a broad front in favour of abolishing them, the courts have always occupied a clear position about them. Time and again there have been demands for closed accommodation and those with secure places for the avoidance of remand in young offender institutions from the courts. The contrary and often lively discussions held between child and youth services and the courts have sometime placed the relationship between them under severe stress. The debates about secure accommodation are ongoing, even if they occur more or less frequently and less fiercely.²⁶

Another fundamental difference in the concepts in the two groups is in the spatial location of the establishment. The first group wants to work with the young suspects close to the community. They shall not be removed from their everyday environment; they shall stay where they live every day. A basic assumption of this concept is that almost all young people must cope in and with their previous environment even after the verdict. It is therefore important that the project and young people jointly find out the existing positive references and include them in a specific way in the work. The second group of initiatives does not consider such a method to be very helpful. Instead the young people are consciously separated from their previous environment. Environment, conditions and persons play a part in the causes of the criminality and difficulties of the young people in terms of these concepts. They are therefore accommodated as far away as possible from their home towns and educational work is thus possible almost without the detrimental influence of the previous false friends.

5. Co-operation

The discussion on the question whether remand in young offender institutions is necessary or not depending on the case is above all held between

26 Cf. Arbeitsstelle 1999. In the meantime new places have been created in Hamburg after years of stagnation. See also the article by Holthusen in this volume.

youth services in youth court proceedings and the courts. In some instances the lawyer of the young person as the representative of the interests of his client is an ally for the youth services in youth court proceedings. However, in these conflicts the influence of the parties involved is unequal. Thus, in Germany the courts have significantly more weight than the child and youth services; they are an important part of government organisation and in the division of power, the legal body is the third power next to the legislative and executive, which has an important role. The administration of justice whose independence is guaranteed in the constitution, its power of definition combined with its far-reaching consequences, the high social reputation of the judges and many other factors distinguish the courts in structural terms clearly from the child and youth services. As a »soft« social institution the latter must fight for its social recognition and its importance for the upbringing of children and young people. In reality, the co-operations between the courts and child and youth services operate on a regional basis and are very different individually. Sometimes there are reports of harmonious co-operation and both parties seem to be clear which benefits emerge from a successful co-operation. In other instances there are reports of misunderstandings and conflicts, the courts clearly have the dominant role and the relationship can be described as unequal. However, irrespective of the actual organisation the same continues to apply: at the end of the day judicial processes are clearly determined by the courts.

The courts have formulated a quite clear requirement of the alternatives to remand in young offender institutions developed by the child and youth services: the young people shall be prevented from running away, their presence at the main hearing shall be ensured. In addition many judges expect the young people to attend school regularly, do vocational training or work in the period before the hearing. Before the hearing they should behave »normally« like the other people of the same age who do not stand out, and if necessary, this should be enforced.

The child and youth services place the individuals with their difficulties and problems at the centre. They offer assistance which shall contribute less with force and more with persuasion to the young people being capable of leading independent lives in future which are not subject to prosecution. In the concepts of avoidance of remand in young offender institutions force is rejected and instead there is support for the effect of educational means. Demands are made on the educational actions; they shall be »understanding«, »consistent«, »comprehensible« and »transparent«. Time and again the »principle of voluntary action« is emphasised. Young

people and adolescents shall choose between provisions and be able to develop a perspective beyond the main hearing.

In each instance, in addition to the courts and the child and youth services the young people themselves are involved in the decision whether remand in young offender institutions is necessary or not. They have their own experiences, ideas and expectations which often differ significantly from those of the other participants and which they also contribute. As a rule the young people do not want to be locked up, neither first of all on remand in young offender institutions nor subsequently given a prison sentence. Prison makes them anxious; they are scared by deprivation of liberty. They want to get off as lightly as possible and to achieve this almost any means is alright by them and they will then accept as good as any provision. But there are also some young people who search for a way out of their dilemma in an offensive way and therefore look for assistance in a specific way. However, these are rather rare. Many already have a long »career« in and with the child and youth services behind them when they are threatened by »remand in young offender institutions«. They get worked up by social services and they want to be left in peace by the employees and provisions of the child and youth services. They do not want to complicate their situation further by additional requirements when they already experience their situation as difficult anyway. Here the pressure as regards the time in which the decisions must be made creates extra problems. If the wrong decisions are made then this results in new difficulties in the relationship between the courts and the youth services in youth court proceedings as well as for individual young people.

6. The target group

In the concepts the target groups are only described in an imprecise way and on the basis of general criteria. On the one hand this indicates openness with respect to potential target groups defined by the courts, on the other hand there is the risk of arbitrariness. However, one priority is clear: above all the provisions are directed at young people, more rarely also at adolescents, even if the *Jugendgerichtsgesetz* (Youth Court Act) is often applied to them. This provides that the law can be applied to adolescents if »the whole assessment of the suspect's personality ... finds that at the time of the crime he was still the same as a young person in his moral and psychological development or if the crime in accordance with type, circum-

stances or motives is a young offender misdemeanour«²⁷. Furthermore, the projects for the avoidance of remand in young offender institutions are mainly directed at boys, few at girls. This is a reflection of reality – this is not a misrepresentation – because by far the overwhelming number of young people and adolescents who are suspects are male, and likewise those held on remand in young offender institutions are also mainly male. In the meantime a new development in one project is that co-education has become a central theme.

In addition to the description of target groups the existing criteria of exclusion which are described in detail in almost all the concepts say something about the objectives. In the first place an astonishing resemblance between the courts and the child and youth services is noticeable: the criteria specified by the courts for the exclusion of avoidance of remand in young offender institutions are largely accepted by child and youth services. This includes the »risk of escape« of the young people, »suppression of evidence« of crimes and their backgrounds as well as the risk of »repetition« of the criminal offence. Somehow this similarity is not surprising against the background of the already mentioned dominance of the courts. But it poses the question immediately whether it is possible for there to be such total acceptance when the argument is more education directed?

Precisely because of the dominance of the courts a biased child and youth services – acting in the interests of the young people – should differentiate more between such general criteria. Thus, young people cannot be compared with a thief who steals millions of Euros and clears off with his haul to South America or somewhere else – this becomes apparent e.g. with the criterion »risk of escape«. This thief disappears there and reckons on the fact that there is no extradition treaty with Germany. There are references to this in articles: »Against the risk of escape ... generally the dependence of the young person on the parental home, his mainly bad financial situation, the still inadequate competence in behaviour and the lack of serious alternative lifestyles which would enable an escape.«²⁸ The small group of young people without a permanent residence who live as street children or who are homeless really do present the child and youth services with the challenge of looking for suitable educational solutions. In this way, in addition to the usual requirements for notifying the police, consideration would be given to regular contact with youth services in youth court proceedings and the other provisions of the child and youth services

27 Section 105 JGG

28 Zieger, p. 123 f

or however – in the instance of runaways – the judicial order, »... to live in a residential home with social-educational support«²⁹.

However, it should be mentioned that for a long time, even if this is still rarely, there are those institutions within the child and youth services' system where clearing off is regarded as »normal« in an educational sense. This is because for a specific group of young people running away is one of the acquired strategies for dealing with difficulties even if they cannot deal with difficult situations in this way. The child and youth services can make a contribution by providing support for coping with the difficulties, but in the first place they allow the possibility of clearing off and calculate – in many instances apparently more successfully than many expect – that the young people will come back. For this there must be attractive provisions for the young people. In an acute situation of conflict for young people and educational professionals running away can provide »... a reason for reflection on the inadequate options for dealing with difficulties and a general tendency of avoidance ...«³⁰. Similarly, in the educational context, there should be discussion about »suppression of evidence« and »repetition« and new solutions sought.

The concepts specify other reasons for exclusion from the alternatives to remand in young offender institutions: physical or psychological illnesses, substantial risk to self or others (e.g. in the instance of suspected arson) and manifest alcohol or drug dependency. There is a trend to use dependencies to provide the reason for exclusion from the child and youth services. Alcohol and especially drug-dependent young people are systematically excluded from many provisions. This is often stipulated as a compelling reason by the concepts of projects and the house regulations in child and youth services institutions. There are hardly any alternatives for young people. However, in the meantime there are new developments in the alternatives to remand in young offender institutions. Thus in one project drug-dependent young people are in the meantime no longer generally and fundamentally excluded.³¹ New solutions are being developed and implemented for these young people jointly with other professional bodies, e.g. the courts and health office.

The exclusion of young people or adolescents who do not have adequate knowledge of the German language is also problematic. Here as well this

29 *ibid*, p. 124

30 Lösel, p. 94

31 Tolsdorf

reflects a typical problem for the German child and youth services because time and again the »other« language proves to be an obstacle in accessing the provisions of child and youth services. There are provisions for non-German delinquent young people in addition to existing provisions e.g. in open youth work, but hitherto, especially in »hard« cases there are scarcely any answers. This becomes especially clear e.g. with the difficult ethnic German young immigrants called »young Russians« (persistent offenders, violent offences). The inadequate knowledge of the German language rapidly becomes a hindrance for them; scarcely any provisions are in »Russian«. They find each other again in remand in young offender institutions and custodial treatment of young offenders.³² They are significantly over-represented there, because they are not offered either special non-residential assistance or places in the provision of avoidance of remand in young offender institutions.

The duration of the accommodation in avoidance of remand in young offender institutions also determines in some concepts the question of the admission of young people. If there are only a few days before the court hearing they are not accepted because the educational work does not make any sense, according to the argument – it needs a different temporal perspective to the courts. There are different assessments of the time needed to work effectively in educational terms. A minimum of six weeks is stipulated by all institutions; mostly it is at least two to three months. As questions, the following remain unanswered: what happens with young people who have only days or a few weeks before the hearing? What prospects of assistance can be developed for them? What assistance can be provided for them in court and what opportunities for long-term re-socialisation can be offered?

Finally, the concepts exclude joint accommodation of offenders who have committed a crime together. The risk of the dominance of groups used to working together in the institutions and agreement for the hearing in court (suppression of evidence) is thus ruled out in terms of the concept.

7. Admission

Basically the institutions can refuse young people if they are doubtful about their suitability. This raises questions with regard to dealing with difficult young people which are not satisfactorily answered in the child and

³² Cf. *Arbeitsstelle* 2002

youth services. It is only stated briefly here: in the exclusion of young people from professional viewpoints the child and youth services are subject to a quite special constraint with respect to providing the reasons. Some are then on the threshold of youth psychiatry or are sent there because next to custodial treatment this is the last resort: there is an urgent need of discussion and clarification here.³³

There are basically two objectives at the time of admission to avoidance of remand in young offender institutions: either remand in young offender institutions shall be avoided totally or it shall be reduced. In the instance of avoidance a decision must be made at the time of the date of the review of the detention order and before imprisonment. At this time all parties involved are under tremendous pressure to act both as regards time and professionally. Thus e.g. the child and youth services must make a decision quickly and rapidly draw up a plan of assistance, as a rule despite incomplete information. The temporal periods granted vary: in one project the plan is drawn up e.g. in 48 hours, others are given more time. However, in each instance one week is the longest period. It remains unclear how the plans for assistance are drawn up and who is involved. Above all, in the instance of accommodation which is situated far away from the place of residence it cannot be inferred from the concepts what the procedures are like. On the other hand, common to all the concepts is that the courts are then informed immediately.

The procedure for the reduction of remand in young offender institutions is totally different. At the time of the enquiry the young people are already in custody, and the enquiry comes especially from there. Now and then, however, it is the lawyers of the young people who want to prevent their clients being imprisoned. The young people are then visited in the penal establishment and a »selection interview« is held to clarify the suitability and motivation of the young person for avoidance of remand in young offender institutions. In the next step the project has a discussion about the suitability of the young person and the question of whether he fits in with the philosophy of the establishment and in one of the groups. The status of these last criteria cannot be reported. The concepts remain imprecise in the presentation of the important and serious decision-making processes. Thus important questions such as: »according to which criteria are the young people on remand in young offender institutions selected as candidates?« and »according to which standards are they accepted or refused?« remain unanswered.

33 At the start of 2004 a research project was started in the German Youth Institute on this subject.

Frequently a contract with clear if variable rules is then concluded with the young people who are determined by the organisational needs of the establishment. As a result all those involved are offered support and security. The adults provide control and this shall promote the development of self-control in the young people. Above all, order, cleanliness, punctuality, good table manners, reliability, honesty, loyalty, willingness to compromise, law-abiding behaviour and the renunciation of violence, force, drugs, alcohol are demanded of the young people. The courts are always there in the background even if they are not the direct contractual partner of the young people. In the event of breaches of contract as a rule the magistrate is informed and then there is again the threat of remand in young offender institutions.

In the admission procedure the relationships with the courts, the youth services in youth court proceedings, the probation assistance, if necessary with the social service of the court penal establishment and sometimes with the parents are readjusted. Parental work is, this must be stated reservedly, is mostly a difficult area. There is therefore hardly any reference to parental work in the concepts.

8. The educational aims and objectives

At the start the young people are in a crisis, according to the basic assumption in the concepts, irrespective of whether they are already on remand in young offender institutions or shortly before it. There is an opportunity for educational work here and thus the formulated aims and objectives common to all concepts are stabilising the personality and social behaviour. Fundamental for this is the structured organisation of the day in which all activities and provisions have their fixed place. However, the young people should be able to spend part of the day relaxing, stress-free and feeling good. They should be able to tackle developing an altered perspective on life without the previous daily pressures. They should be able to acquire new experiences and skills and reappraise their offences.

In order for them to be able to exploit these kinds of opportunities without the previous daily pressures from the environment and old friends, they must be provided with a defined living space. This can be close to the old place of residence and the attempt is made to support young people separated from the prior negative influences, but not separated from all »old« relationships. They shall become independent in their previous environment and be able to help themselves. Other projects back clear spatial

separation specifically and separation of the young people from their old »scene« and want to rule out contact with old friends categorically. These kinds of projects are mostly located outside towns.

As a result of the sometimes serious difficulties of young people some concepts provide for a costly 1:1 care. The young people are provided with a fixed educational person from the project to whom they relate specifically for a long period and this assistant can often be contacted round-the-clock (care provider contact).

Especially important in the educational work are the preparations for the court hearing. The young people need appropriate support from the project. They are therefore accompanied when they receive summons from the police; they must tackle the indictment together with the project, the necessary contacts with the solicitors are made, and possible compensations for the damage or mediation in an offender-victim-settlement measure are initiated. The individual steps and developments of the young person are documented and subsequently included in the court hearing.

In many projects thought is given at an early stage to the necessary assistance in the period after the main court hearing. The first plans and steps are planned and this is acknowledged appropriately in court. A future perspective accepted by the court can contribute to probation in the instance of a custodial sentence. Consequently, after avoidance of remand in young offender institutions, a prison sentence would also be avoided.

School education forms part of the core of almost all concepts since it is important for at least a minimal future perspective of young people. Before the young people come into the project many have not met the requirements of compulsory education. The necessary school attendance must therefore be facilitated in agreement with the education authorities. School provisions are multi-structured. Many closed accommodations have their own schools, so that the teaching can be closely co-ordinated with the project. Occasionally even individual tuition is provided, above all in institutions with secure places. Final examinations can be made up under these conditions. However, this close dovetailing of child and youth services and school are rare. Integration of the young people in a school in the »normal« local environment of the establishment is the predominant course of action. This provides the advantage that the young people can continue to have contact with the outside world during accommodation in the project and even in the instance of a long distance from their home towns.

The concepts assume that almost all the young people need additional support with their studies. However, they do not focus on assistance for young people who are tired of school. The latter have frequently had unpleasant and de-motivating experiences with school. Special provisions are required for these young people – this is substantiated by experiences from youth social work.³⁴ But it remains unclear whether there is careful and individual case-related planning of assistance or whether being tired of school or school anxiety in the end are also criteria for exclusion?

The professional education sector plans to provide the young people with job orientated provisions. On the one hand individual solutions shall be sought; on the other hand the specified provisions hardly give the impression of a promising future. Above all, they occupy the young people (cooking, cycle repair) but hardly qualify them. This can be explained partly by the fact that in the first place reliable perspectives can only be developed up to the hearing. In addition, case numbers are low. The conditions are better in the few projects which have been established within a larger establishment with a professional-educational focus. Here there is often a broad provision; there are options and vocational fields with a promising future and qualified personnel available. There are not many of these institutions and therefore some projects provide for placement of the young people in workshops or businesses outside the project. The fact that there are no prospects of focusing on vocational qualification with the provision of a training place in some provisions until the period after the main hearing, seems sensible depending on the case situation. Not only because provisions with prospects for this target group are not easy to find and but also because there can hardly be definite planning for the young people against the background of an uncertain court verdict. Also, other questions seem more urgent in the first place.

9. A short note on after-care

Without exception after-care following the avoidance of remand in young offender institutions is considered to be absolutely essential. It shall be agreed jointly with the young people and give the court an indication of a possible better future. However, the statements in the concepts are vague and are often discussed in the context of difficulties with finance. After-care does not seem to occupy a key position in the list of priorities of the projects.

³⁴ Cf. Schreiber-Kittel

10. Education in the context of compulsion

The young people in the projects of the avoidance of remand in young offender institutions are under constant pressure. They are only in the establishment for a limited period of time, they always put their liberty at stake in conflicts and they know that their behaviour during their stay in the establishment can influence the verdict. This many-times catch-22 situation is exploited in some concepts educationally and the young people are made to comply with standards. The means of exerting pressure are the courts and their compulsory institutions, which thus become a sort of »powerful co-educationalist in the background«³⁵.

Many concepts are very rigid because for these young people pressure is regarded as an important possibility, if not the last possibility for changing behaviour. Many have acquired sound experiences in dealing with education and its strategies in their child and youth services careers and have become virtually experts in dealing with the child and youth services. Consistent and non-lenient behaviour is regarded as essential and therefore some concepts rule that each breach of the previously agreed arrangements by the young people is passed on to the courts.

The inventory of offences of those released from prison makes it clear that the projects of avoidance of remand in young offender institutions are faced with unusual legal problems. These might e.g. already exist if a project no longer considers a young person for whom there is already a residential order, acceptable from an educational viewpoint and »shows him the door« without informing the courts beforehand. As a result the tensions become apparent which can develop from the co-operation between education and the courts.

11. Closed accomodation

In the avoidance of remand in young offender institutions secure accomodation is created by structural measures. In some institutions only departments are blocked off and supervised, others are virtually secure because of the regional seclusion. Unlike in an urban environment escape is made significantly more difficult. However, in the concepts secure accomodation is only planned for a limited phase. This phase shall be rapidly dealt with. During secure accomodation contact with the outside world

35 El Zaher, p. 391

starts mainly with telephone calls, followed by time-limited and accompanied going out and later going out unaccompanied. Depending on the development of the young person trips home on the weekend and sometimes holiday trips are possible – always with the authorisation of the courts.

Only a few concepts indicate that the escape of young people from closed accommodation can be considered not only in terms of safety or the courts but also educationally. Temporary running away can also be seen as a possible reaction of the young person to his difficult situation and be included in the educational strategy.

12. Prospects

In the last few years things have been moving in the German discussion about avoidance of remand in young offender institutions. The Minister for Social Affairs of the state of Rheinland-Pfalz took up the subject in 2002 and made it the subject of a hearing; the *Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfe* (Organisation for youth courts and youth court assistance; *DVJJ*)³⁶ implemented an exchange of institutions. An assessment of the current position is necessary under the conditions of the unequal weighting of the co-operation partners of the courts and child and youth services, and an open and controversial discourse on concepts and practice is unavoidable. It is to be expected here that there will be diverse and partly conflicting interests, but also common ground between the parties involved. It is the duty of the child and youth services to make its independent contribution much clearer; it must provide crisis intervention and assistance planning and rule out temporary accommodation on the instruction of the court.

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Bernd Holthusen

Ultima ratio? Deprivation of liberty measures for children and young people – Findings and need for research¹

1. Preliminary remarks

The agreement on the rights of the child of 20 November 1989 (UN Convention on the Rights of the Child) was signed by the Federal Republic of Germany on 26 January 1990 and came into force in Germany on 5 April 1992 after the instrument of ratification had been deposited. More than 90 nationally-active organizations have merged in the »National Coalition for the Implementation of the UN Convention on the Rights of the Child in Germany«. In October 2000 the National Coalition organized the Third German Day of Rights of the Child with the main focus »The rights of children and young people in case of deprivation of liberty«. The aim was to focus on the statutory regulations and everyday practice in Germany against the background of the UN Convention on the Rights of the Child – in particular Article 37 and 40. This article provided a survey of the data situation on the deprivation of liberty of children and young people (under 18 years) in Germany.

An article usually starts with information about what the readers can expect. However, for this subject the reverse approach has to be used: a comprehensive picture must not be expected of how, where, for how long and for what reasons minors in Germany are deprived of liberty, what their biographical backgrounds look like and what prognoses can be concluded for the future.² As a result of the data situation in Germany even apparently simple questions cannot be answered: e.g. how many children and young people are affected by deprivation of liberty measures within one year?

Nevertheless, we shall present information about deprivation of liberty for children and young people based on official statistics and to a limited extent from the police and court sector, and supplement them by findings

1 Revised lecture for the third German Day of Rights of the Child, 8. - 10.10.2000 in Berlin. For this publication figures and statistics from custodial treatment, child and youth services and child and youth psychiatry about the children and young people concerned were updated (status November 2003). I thank Regina Soremski for the research into the new details.

2 Or as formulated by Dünkel in 1996: »The prisoner, the unknown being!« (p. 35).

from empirical studies and other surveys. However, as a result of the inadequate data situation the picture must remain fragmentary in large sections – so that in different areas only the deficits of research can be specified. The data from which a need for action can be deduced with reference to the UN Convention on the Rights of the Child are given particular emphasis.

If we disregard the decades-long repeatedly revived debate in Germany about closed accommodation, the deprivation of the liberty of children and young people is not a subject of tremendous public interest. Accordingly, there are only isolated studies. Not only does this apply to the courts, child and youth services as well as child and youth psychiatry, but above all when the question about co-operations and interactions between these sectors is asked.

2. Deprivation of liberty for children and young people in the courts – prison sentence, remand in young offender institutions and the treatment of young offenders at youth detention centres

A custodial sentence is the ultimo ratio as the most severe measure of liberty deprivation – it should only be imposed as the exception and for the shortest possible duration. The custodial sentence is at least 6 months and at most 10 years (Section 18 Youth Court Act). The custodial treatment of young offenders should be implemented separately from adult institutions. This is as far as the legal standards go.

The statistics on criminal prosecution and custodial treatment both have their own objectives and because of the specific modalities³ cannot be summarized and compared with each other easily. They are therefore presented individually with information about their respective meaning.

3 Here only some of the problems shall be listed: e.g. it makes a difference if persons, offences or sentences are listed, because persons can be noticed with several (and different) crimes and be given one sentence for several crimes. The number of the young people taken into custody during the course of a year on a fixed date and by number cannot be compared. Totals of individual establishments, communes or federal states are also added together, and this can lead to double counting. Finally, the comparability is also made more difficult by temporal postponement, because there are often long periods of time between the crime and the start of the sentence.

2.1 Youth criminal prosecution

In the annual statistics of criminal prosecution⁴ information is gathered about persons sentenced and convicted in the West German federal states including Berlin, differentiated according to suspended sentence, duration of sentence, sex and federal state. The information for the East German federal states is still missing; the data partly available for *Brandenburg*, *Sachsen* and *Thüringen* is not included in the total statistics.⁵

In total, in the year 2001, 49,275 young people under 18 years of age – of these 19,338 aged 14 to under 16 years and 30,644 aged 16 to under 18 years – were convicted for an offence; that is 1,557 sentences for 100,000 German young people.⁶ For male Germans under 18 years of age the figure is 2,595, and for female young people only 468. These numbers of convicted persons (number of convicted per 100,000 of people the same age) differ tremendously according to federal states, as shown in the following selected states:

1,919 in *Niedersachsen*; 1,787 in *Bayern*; 1,555 in *Nordrhein-Westfalen*; 1,273 in *Sachsen*; 1,221 in *Bremen*; 1,039 in *Brandenburg*; 976 in *Schleswig-Holstein*; 788 in *Hamburg*.

This very wide mean variation throughout the Federal Republic can be a reference to the fact that diversion⁷ is used differently by region in Germany and that in the federal states with a high number of convicted persons there are still potentials for diversion.

Only a small percentage of sentences are youth prison sentences. In West Germany 6,076 young people (5,683 male) were given a youth prison sentence in 2001, of these 2,113 without probation.

4 The last is available for 2001: *Statistisches Bundesamt* (Federal Statistical Office) 2002. The following figures refer to this year.

5 The reliability of data in criminal prosecution statistics is partly thrown in doubt. Thus, Pfeiffer/Strobl see above all in the sector of youth prison sentences with and without probation considerable discrepancies in the comparison with the data of the *Bundeszentralregister* (Federal Central Register).

6 Suspect young people under 18 years of age are possibly included in these statistics as adolescents because of the period of time between the time of the crime and the hearing, and in fact, if they are over 18 years of age when they are sentenced. Out of those convicted in 2001 in accordance with the penal law relating to young offenders in 31,524 cases the offences were committed in the year of sentence, in 56,754 cases in the previous year and in 8,397 cases even earlier.

7 Diversion means an informal procedure, i.e. if other measures are used, a formal sentence is disregarded.

Figure 1:
Length of youth prison sentence: Convicted young people 2001
 (former West German territory)

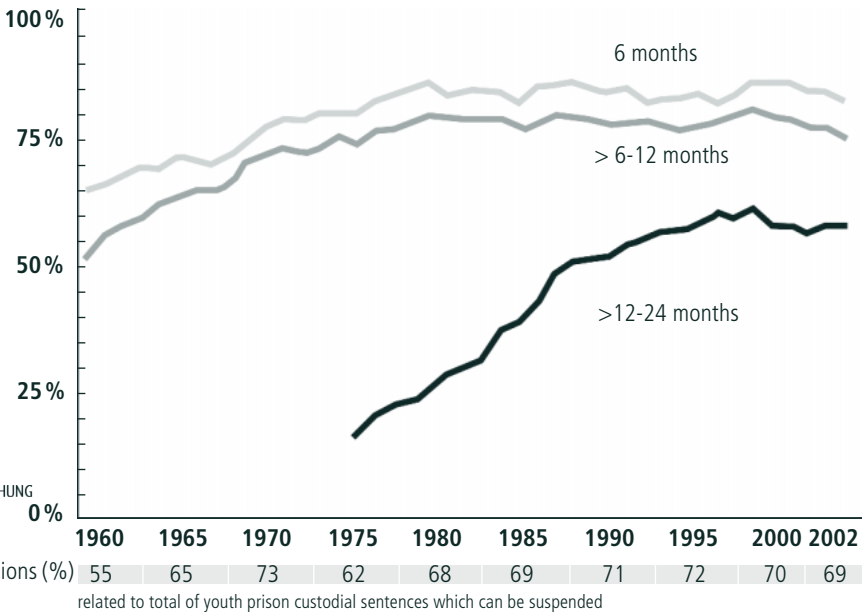
Convicted	6 months	6 to 9 months	9 months to 1 year	1 to 2 years	2 to 3 years	3 to 5 years	5 to 10 years
Custodial sentence	1,151	1,188	1,362	1,855	369	132	19
of these with suspended sentences	944	977	990	1,052	–	–	–

Source: Statistisches Bundesamt 2002 (statistics of criminal prosecution 2001)

The next chart⁸ shows that not only are youth prison sentences frequently suspended for one year but also that this practice is being used increasingly even for youth prison sentences of up to 2 years.

Figure 2:
Rates of suspensions for youth prison custodial sentences which can be suspended

Rates related to all custodial sentences which can be suspended



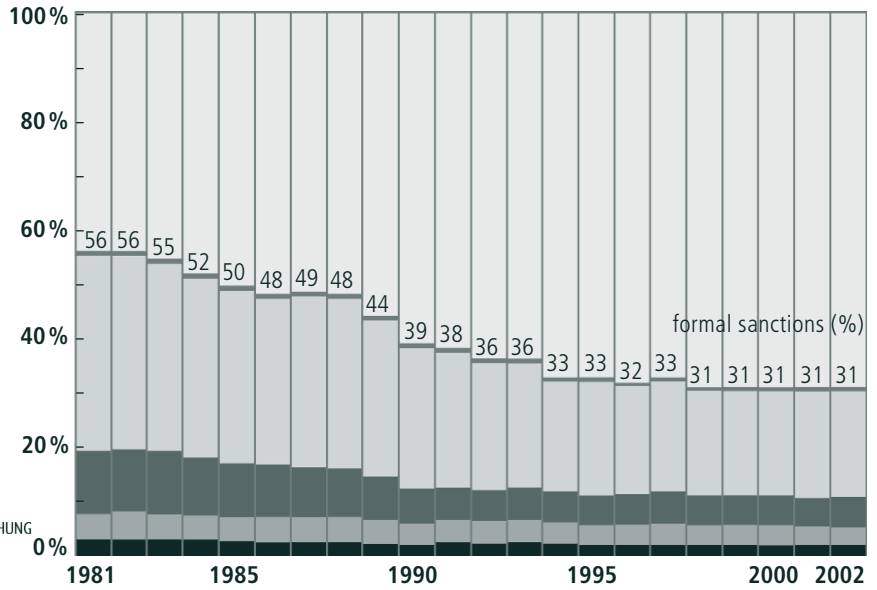
Source: Heinz 2003, chart 37

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In the long-term development of sanctions for young people (fully in the meaning of the UN Convention), in first place a growing number of informal sanctions and secondly a decreasing number of sanctions without deprivation of liberty (treatment of young offenders at detention centres and youth prison sentence without probation) can be observed.

Figure 3:
Development of the sanctioning practice in the penal law relating to young offenders (West German Federal States, since 1995 including Berlin)
 Rates of informal and formal sanctions for young people

- diversion
- §27 JGG (suspended decision on youth prison)
- socio-educational measures/non-custodial disciplinary measures
- (short) youth detention
- suspended youth prison sentence
- youth prison sentence without probation



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rate of diversion	44	44	45	48	50	52	51	52	56	61	62	64	64	67	67	68	67	69	69	69	69	69
non-custodial measures	36	36	35	33	32	31	32	31	29	26	25	23	22	21	21	20	20	19	19	19	19	20
youth detention	11	12	11	11	10	10	9	9	8	6	6	6	6	6	5	5	6	6	5	5	5	6
youth prison	8	8	8	8	7	7	7	7	7	6	7	6	7	6	6	6	6	6	6	6	6	5

Source: Heinz 2003, chart 26

8 This and the following charts are taken from the »Konstanzer Inventar Sanktionsforschung«, cf. Heinz 2003. There is also an internet publication on this homepage about criminality development which is worth recommending (The Constance Inventory on Crime Trends in Germany): Heinz, Wolfgang, Criminality of Germans according to age and sex, Constance 2002; Heinz, Wolfgang, *Kriminalität von Deutschen nach Alter und Geschlecht*, Konstanz 2002 (Internet publication: www.uni-konstanz.de/rtf/kik/German2000.htm, status: 2000). The Constance Inventory is thus a very good and up-to-date survey of research into sanctioning and the development of criminality in Germany. (Material and links: www.uni-konstanz.de/rtf/kik/)

2.2 Youth prison treatment of young offenders

The official statistics for youth prison treatment⁹ – in the meantime with reference to the whole of Germany – establish the structure of prisoners annually on the fixed date 31 March. These statistics are subject to criticism and there are demands for substantial improvements.¹⁰ Hitherto, only domicile, family status and nationality have been ascertained as social characteristics; these include just as little information about the social background of the juvenile prisoners as the statistics on criminal prosecution.

At the end of March 2002, 7,455 young people and young adults were serving a custodial sentence, of which 7,178 were male and 277 female. Of these the group of prisoners under 18 years of age made up the significantly smaller percentage. At the same time there were 849 young people aged from 14 to under 18 years serving a custodial sentence, of which 811 are male and 38 female. Only 41 young people were in an open youth prison (4.8%). In comparison to the middle of the nineties (1996: 583) a considerable increase in young prisoners must be recorded.

Figure 4:
Young prisoners fixed date 31.3.2002 (West German Federal States)

Prisoner age	Total	Open penal system	Male	Female
14 – 15	2	–	2	–
15 – 16	58	4	56	2
16 – 17	237	12	225	12
17 – 18	552	25	528	24
Young people total	849	41	811	38

Source: *Statistisches Bundesamt* 2003 (penal system statistics 2002)

It is noteworthy that the figures for open imprisonment are very low. In the meaning of the Rights of the Child Convention the question must be asked whether it is not possible to have further extensions in the sense of

9 *Statistisches Bundesamt* (Federal Statistical Office) 1999. Fixed date surveys – this must be pointed out – have the following distortion as a result of the methodology: »The prisoners sentenced to short sentences are underrepresented in comparison with long-term prisoners. The shorter the imprisonment or custodial sentence the greater the probability of being included in the fixed date survey which is only carried out once a year. This fact affects the results to the extent that in most instances the structural data (e.g. age group, type of offence, number of previous convictions) can be different for those in prison short-term than for long-term prisoners.« (p. 4).

10 Cf. *Bundesministerium* (Federal ministry) 1992

expanding open prison. Obviously, the extensive opening stipulated by law is apparently not implemented equally in all federal states. (Youth Court Act Section 91 (3), Custodial Treatment Act Section 10)

Figure 5:
Expected duration of sentence fixed date 31.3.2002
(West German Federal States)

Prisoner age	for less than 6 months	6 months to 1 year	1 to 2 years	2 to 5 years	more than 5 years
14 –15	–	2	–	–	–
15 –16	6	17	24	11	–
16 –17	17	69	95	53	3
17 –18	19	131	243	142	17
Young people total	42	219	362	206	20

Source: *Statistisches Bundesamt* 2003 (penal system statistics 2002)

Figure 6:
Prisoners with youth prison sentences fixed date 31.3.2002
(West German Federal States)

Prisoner age	Total	Male	Female
14 –17	849	811	38
18 –20	3,540	3,402	138
21 –24	2,952	2,858	94
more than 25	114	107	7
Young people total	7,455	7,178	277

Source: *Statistisches Bundesamt* 2003 (penal system statistics 2002)

The group aged 14 to 17 years represents only a small percentage (11,4 %) of prisoners in custody. The prison treatment of young offenders is mainly made up of those over 18 years of age, so that instead the discussion should be about the custodial treatment of adults.¹¹

Out of 7,455 prisoners every third prisoner had a previous conviction (2,594)¹², of these 1,909 once, 458 twice, 142 three times, 52 four times,

11 Another reason for this is the periods of time in the proceedings, cf. footnote 6.

12 This high quota of young people without previous convictions is surprising because a larger number of young people would be expected to have several previous convictions before being given a prison sentence without probation (as a ultima ratio). A precise analysis should be carried out to clarify this question.

27 five to ten times and six persons 11 to 20 times. Out of the 849 young people sentenced to a prison sentence the main groups of offences were theft and misappropriation (316), robbery and blackmail (241).

2.2.1 Problems in the youth prison treatment of young offenders

In the following the problems in the youth prison treatment of young offenders which have been worked out from investigations and studies are identified in accordance with these general data from criminal prosecution and the custodial treatment of young offenders. Even if the database is limited and there is an urgent need for systematic research, suggestions for German discussion shall be made against the background of the UN Convention on the Rights of the Child. Above all, empirical data was gathered and published about the custodial treatment of young offenders in the eighties and nineties:

- Establishments: In youth prison for young offenders there are school and vocational provisions. In comparison with the provision of professional personnel in the adult penal system, it is better and the institutions are smaller. Whereas the institutions are frequently newly built or renovated in West Germany, in East Germany »the buildings are seriously in a state of deterioration, the conditions are partly catastrophic and could partly be classed as contrary to human rights. In view of the considerable pressure on places in East German institutions there is for example almost only joint occupancy during the rest period ...«¹³. In addition, in the last few years increased prisoner numbers have resulted in overcrowding.
- Disciplinary measures: »In the youth prison – in accordance with a nationwide trend – even in *Schleswig-Holstein* the response with formal disciplinary measures occurs three times as frequent as in male adult custodial treatment (46 % in comparison with 18 % of the prisoners with disciplinary measures), a remarkable interpretation of the philosophy of education!«¹⁴
- Styles of sanctioning: Just like with disciplinary measures there are regionally different styles in the management of relaxations. Thus »... in *Bremen, Hamburg* or *Schleswig-Holstein* 7 to 17 times more frequent granting of leave of absence ... than in *Bayern*, incidentally without abuse quotas being increased in these states.«¹⁵
- Suicide rate: In the youth prison the suicide rate is five times higher than for the comparable population in the outside world.¹⁶

13 Dünkel 1999, p.120

14 Dünkel 1996, p.37

15 Dünkel 1999, p.122

16 Dünkel 1990, p.271

■ Recidivism quota: one can »... generally assume a recidivism quota after release from the youth prison at the amount of approx. 80 %, in which, however, »only« in 50-60 % of cases is there a new conviction for a custodial sentence or prison sentence without probation, therefore for renewed imprisonment«¹⁷. It must be pointed out that there are no studies on social integration (workplace/family/neighborhood) after release. However, these would be important for statements about medium-term legal probation.

■ Female young offenders: The sections for female young offenders are mainly accommodated in institutions for women because of the low figures. As a result it is not possible for there to be a strict division between young and adult female prisoners, although this is expressly stipulated in the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*).¹⁸ Overall the structural organization of the provision for young female prisoners is assessed as poor.¹⁹ In contrast to male young offenders on average they get less holiday or time allowed out. A survey in five federal states in 1988 showed that for male young offenders the quota for day release is three times higher.

2.2.2 Young people without German passports in the penal system

In the last few years an increase in the percentage of immigrants in the youth prisons has been observed and subject to public discussion.

In a fixed date survey in 19 of 26 western youth prisons in 1998 it was established that out of a total of 3,949 prisoners, 2,163 were other Germans (54.8 %), 395 ethnic German immigrants (10.0 %), 645 Turks (16.3 %) and 746 other foreigners (18.9 %). In the youth prisons it was assumed that young ethnic German immigrants²⁰ were overrepresented by a ratio of about double, young foreigners by about 2.3 times. »Furthermore, the results of our survey make clear the problems confronted by the youth prisons in the West German federal states increasing. The increasingly heterogeneous mixture of young offenders gives rise to expectations of increasing social tensions within the institutions. ... In this context reference is made to one problem. The personnel of the institutions are made up as hitherto approximately of 99 % employees who are native Germans according to their origin.«²¹

17 Dünkel 1999, p.124

18 Section 92 Subsection 1 Youth Court Act

19 Cf. Jansen; Dünkel 1990, p.272

20 See the article by Schäfer in this volume for the term »ethnic German immigrant«.

21 Pfeiffer/Dworschak, p.167

Other studies²² of young offenders in youth prisons report similarly high figures for young people without German passports, again increasingly on remand in young offender institutions. In the meantime, in some youth prisons offenders are held from 42 countries and some of these young people have no or only very little knowledge of the German language.

A study from the federal state of *Nordrhein-Westfalen* established that almost 4 out of 10 young offenders did not have a German passport. The analysis of files of foreign offenders in youth prison of this federal state (408 offenders, 9 women) found: 36 different nationalities, in which half the inmates have Turkish nationality. Irrespective of the fact that the offenders did not have German passports, half of them were born in Germany. At the time of arrest more than 77 % were above 18 years of age. In the youth prison only 11 % of foreign offenders were under 18 years of age. About three quarters grew up in Germany and 4 % found communication in the German language totally impossible. Not even every fourth (23 %) achieved school final examinations. The young offenders are primarily taken into prison for violent and drug offences.

Two problem areas should be identified where there is still need for research into young people with a migration background:

- After a youth prison sentence of several years has been imposed and served, young people without German passports can – even if they have been born in Germany – be deported to the country whose nationality they have. This kind of deportation can actually be more serious for these young people and adolescents than the actual sentence and can be regarded as a double punishment. As yet there is no data available.
- The security concept in remand in young offender institutions leads to additional problems: during acoustic supervision of visiting time, in so far as the conversations are not held in German (able to be held), a sworn interpreter must translate for the supervising employee of the institution. In factual terms this leads to a reduction in contact with the outside world for specifically those young people who inside the institutions can only communicate on a limited basis.

22 Cf. Schwind, p. 323f; Fiedler, p. 135; Schütze, p. 142

2.3 Remand in young offender institutions

Section 93 *JGG* (Youth Court Act) stipulates the accommodation of young people separately from adults in a special institution or section. Moreover, remand in young offender institutions shall be organized on an educational basis. But the imprisonment practice remains behind the aim of the legislature. »In general there can be no talk of an educational organization and impact of remand in young offender institutions.«²³

The statistics²⁴ of custodial treatment for this area are not very meaningful: on 1.1.2002 there were 923 young people between 14 years of age and under 18 years of age (876 male, 47 female) on remand in young offender institutions; during the course of the year there were 5,473 admissions and 5,582 releases, so that at the end of the year the number was 814. No total figure can be calculated based on these statistics because admissions are not only first admissions but also include transfers or change of type of custody. Accordingly, releases are not only releases into liberty.

In accordance with the position of the law there are high obstacles for the imposition of remand in young offender institutions. Consequently, proportionality must be safeguarded, i.e. after remand in young offender institutions a residential sanction must be expected. »However, contrary to expectations, just every second young offender in young offender institutions (2001: 48.4 %) is not given a sentence without probation in accordance with penal law relating to young offenders. Therefore, a substantial number of those sentenced only experience deprivation of liberty in its most anti-social rehabilitation form, namely on remand in custody pending further enquiries.«²⁵

The next two figures show in first place the low number of unconditional youth prison sentences after remand in young offender institutions and secondly, contrary to the intention of the *JGG* (Youth Court Act), that the rates of remand in young offender institutions for young people are higher than those for adults.

23 Heinz, Point III.3.4

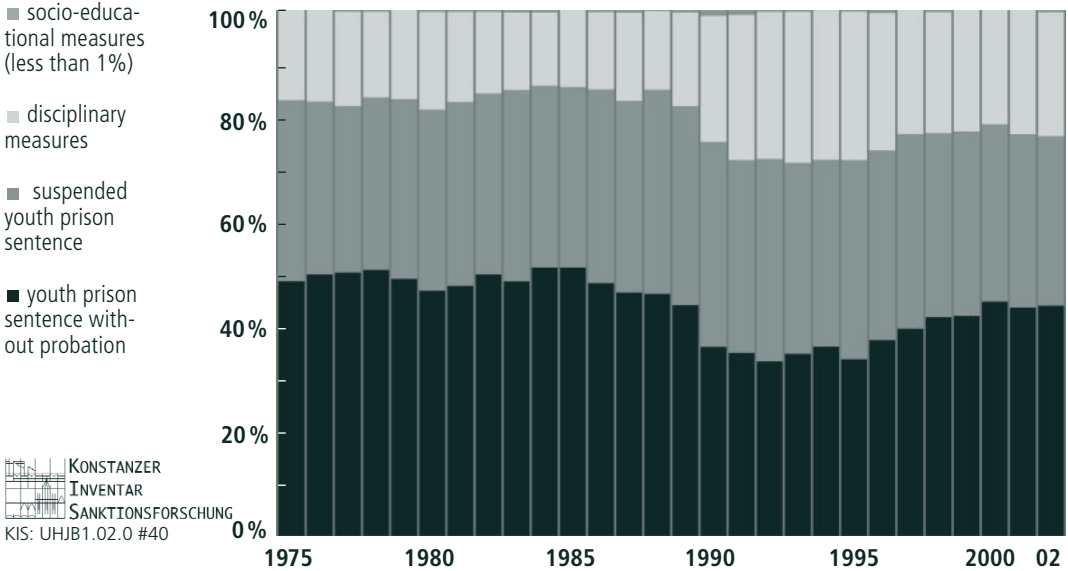
24 Statistisches Bundesamt 2003

25 Heinz, Point III.3.4

Figure 7:
Offenders on remand in young offender institutions according to type of sanction (penal law relating to young offenders)

(West German Federal States, since 1995 including Berlin)

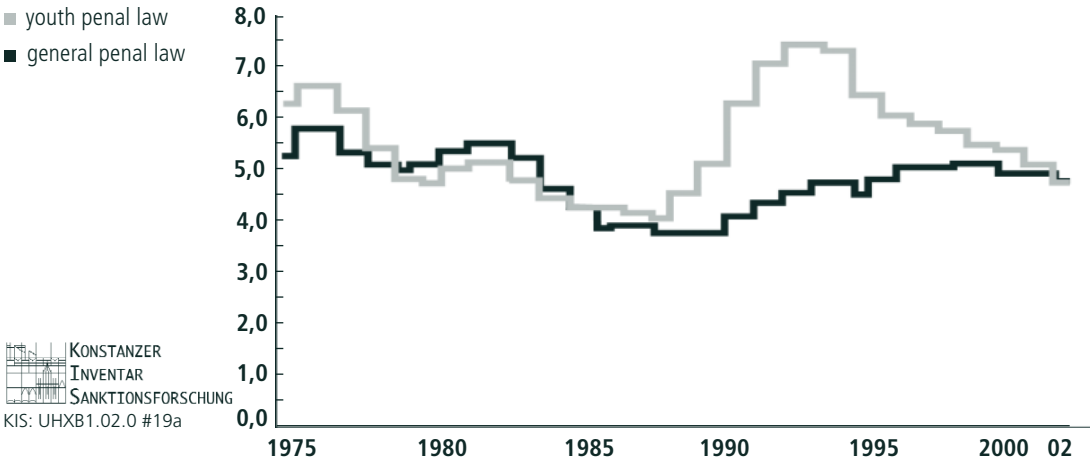
Percentages referring to those sentenced in accordance with the penal law relating to young offenders with prior remand in young offender institutions.



Source: Heinz 2003, chart 40

Figure 8:
Rates in offenders on remand in young offender institutions in accordance with the penal law relating to young offenders/ general criminal law (West German Federal States including Berlin)

Rates referred to persons convicted in accordance with youth penal law/general penal law



Source: Heinz 2003, chart 19

It must be assumed that there are hidden reasons for the high proportion of remand in young offender institutions for young offenders. The analysis of individual records of the statistics for criminal prosecution indicates that remand in young offender institutions is sometimes abused as a hidden short imprisonment.²⁶ Above all, there has been an increase in custody rates for the group of non-Germans who do not originate from either »immigrant worker countries« or from EU countries. This group is »... predominantly arrested for less serious offences and for shorter times and are given lower sentences«²⁷. »The finding that young people are arrested for less serious offences and held in custody for shorter periods of time and are less frequently sanctioned with enforceable deprivation of liberty than adults, can be interpreted to mean that in addition to criminal law criteria, the social and personal situation of the arrested person plays an increased role. In this respect the instruments provided by the legislator, in particular the involvement of the *Jugendgerichtshilfe* (youth services in youth court proceedings; *JGH*) and the provision of alternative residential accommodation, are obviously not effective to the intended extent.«²⁸

2.4 Treatment of young offenders at youth detention centres

The treatment of young offenders at youth detention centres, which are frequently badly equipped, has been criticized for a long time as short-term deprivation of liberty. However, it is hardly considered in professional discussions. Nevertheless, the ideology of the shock of being held in custody for a short term with the demands for a so-called starter treatment or warning treatment is experiencing a renaissance²⁹ nowadays. Whereas short and leisure time treatment often consists merely of being locked up, continuous treatment (at least one week, at most four weeks) shall also have an educational orientation. To what extent the educational structure demanded in the UN Convention on the Rights of the Child is actually put into practice here remains open.

In 1988 the following were counted: 36 institutions for the treatment of young offenders at detention centres with 1,047 custody places, plus 683

26 Jehle

27 Jehle, p. 66

28 Jehle, p. 9

29 Thus in the joint paper of the conservative parliamentary group and the conservative led internal and court departments of the states (*Innen- und Justizressorts der Länder*) »Offensive for more security through social prevention and modern crime fighting« of 28.6.2000.

custody places in leisure detention rooms which are annexed to the county courts.³⁰ »Similar to the treatment in youth prisons – although not so heavily pronounced – the treatment of young offenders at detention centres accordingly presents itself quite predominantly (1988: 66 % of intake) as adult custodial treatment.«³¹

How frequently young people and adolescents are sentenced to deprivation of liberty as a result of treatment of young offenders at attendance centres is shown by the following statistics of criminal prosecution³²:

Figure 9:
Persons sentenced to treatment of young offenders at detention centres 2001 (former West German territory)

Treatment	Total	Male	Only young people
Long-term treatment	8,409	7,726	4,360
Short-term treatment	1,109	991	633
Leisure time treatment	7,448	6,711	4,655

Source: *Statistisches Bundesamt* 2002 (statistics of criminal prosecution 2001)

If there is regional differentiation, above all *Bremen* and *Hamburg* indicate very low total numbers. The length of the treatment is not indicated.

Therefore, more young people are affected by the treatment of young offenders at detention centres than by youth prison sentences. In 2001 more than 70 % of all residential sanctions in accordance with the *JGG* (Youth Court Act) were apportioned to the treatment of young offenders at detention centres (Figure 10), and in fact above all long-term and leisure time treatment and less for short-term treatment.

30 Cf. Dünkel 1990

31 Meyer-Höger specified 32 institutions for the treatment of young offenders at attendance centres in the old federal states with about 1000 places and 700 custody places in so-called leisure custody rooms.

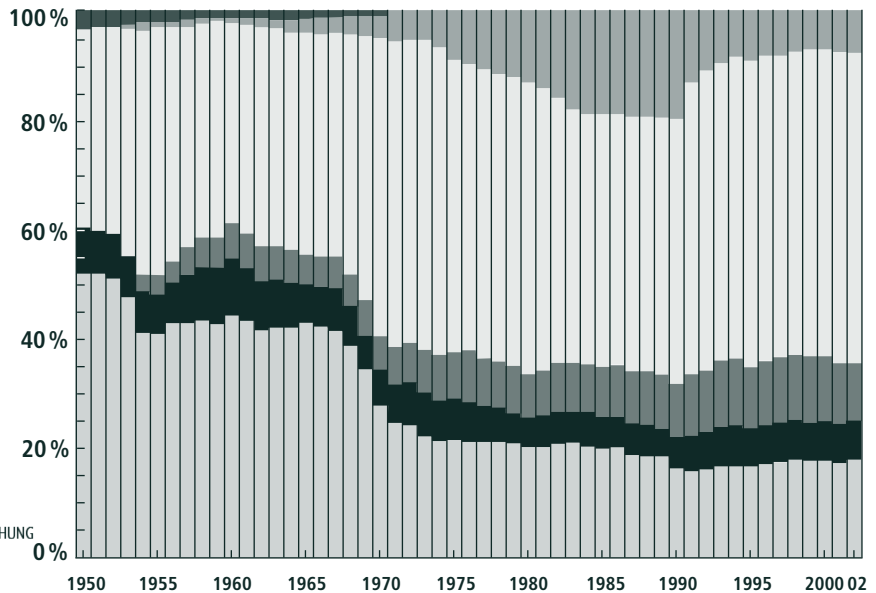
32 *Statistisches Bundesamt* (Federal Statistical Office) 2002

- residential welfare education
- non-custodial socio-educational measures
- non-custodial disciplinary measures
- suspended youth prison sentence
- youth prison without probation
- youth detention (up to 4 weeks)

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Figure 10:
Development of sanctioning practice in the penal law relating to young offenders

Formal sanctions. Percentages referring to persons sentenced in accordance with the penal law relating to young offenders



detention rate *	63	50	56	51	35	29	26	26	22	23	25	25
suspension rate **	0	32	39	46	52	56	62	62	64	64	62	62
non-custodial disciplinary measure rate ■	37	46	37	40	54	53	53	46	48	57	57	57

* Rate of custodial treatment (youth prison without probation + youth detention + residential welfare education)

** Rate of suspension: youth prison sentences with probation as % of all youth prison sentences

Source: Heinz 2003, chart 29

2.5 Summary of court deprivation of liberty

In summary, with respect to the deprivation of liberty of young people, it can be established that long term there is a trend for informal and non-residential forms of sanctions. This development which is also desirable in the meaning of the UN Convention on the Rights of the Child should be given more support. Initiatives for other options for improvement including in the specified problem areas (relaxations, disciplinary measures, young offenders without German passports, remand in young offender institutions, facilities of the custodial system) are in place, in particular in view of the large regional discrepancies.

3. Closed accommodation in child and youth services

In this field the data situation is worse because official statistics of child and youth services do not give any information about it.

As a result of the limit on the age of criminal responsibility the deprivation of liberty under 14 years is only possible as closed accommodation in child and youth services or in child and youth psychiatry, with family court authorisation in accordance with Section 1631b *Bürgerliches Gesetzbuch* (Civil Code; *BGB*).³³ This deprivation of liberty is not a criminal law sanction.

Exactly what closed accommodation means and how it is organized differ according to establishment: e.g. an internal opening can be possible during accommodation; it can be possible to go out accompanied and unaccompanied. The establishments have developed differentiated types of care depending on the target group and the development of the young people, which can also be open despite the security. In fact, nowadays closed accommodation means intensive therapeutic care, but the establishments provide other services as well e.g. in open groups. There is no published survey of the different forms.

The deprivation of liberty in a closed accommodation does not mean it is not possible to escape. The rates for escapes are roughly the same for closed and open establishments.³⁴

At the present time there are closed establishments of the child and youth services in seven federal states. It is true that the other federal states reject them but there are nevertheless queries from them about places.

According to a survey carried out in the middle of 1996³⁵ by the *Landesjugendämter* (youth offices at the level of the federal states) the following picture emerges: in the Federal Republic there are a total of 122 places in eight establishments which provide closed accommodation. There are 74 places in three establishments for boys and 48 in three establishments for girls. There is a tremendous variation in the information about the length of the stay. The target group is between 12 and 18 years of age, the largest group is made up of young people aged 14 to 16 years of age. There is no data with regard to capacity, but it must be assumed that it is high

³³ The family court authorisation must not be equated with a ruling.

³⁴ Cf. Wolffersdorff, p. 305

³⁵ Schmitt

because the few establishments get queries from throughout Federal Republic and the places are taken.

A survey carried out by *Landesjugendamt Saarland*³⁶ (youth office of the federal state *Saarland*) in 1998 identified 8 establishments with a total of 131 closed places. They are located in only 6 out of 18 *Landesjugendamts-bezirken* (districts of the German federal state youth offices) and also partly provide places to avoid remand in young offender institutions.

The details vary according to counting method and new places may have been added in the last two years. Currently in professional discussions it is assumed that there are approximately 150 closed places nationwide with the trend rising.³⁷ There are plans for new establishments; e.g. in the federal state of *Hessen*.

In relation to other measures of liberty deprivation the percentage of girls in closed accommodation is high.

Studies – in comparison with discussion articles on the subject – are rare.³⁸ Evaluations of cases, terms and indications are only used internally and not published. The institutional transfer effect described at the start of the nineties, i.e. young people being transferred from a »normal« to a specialist establishment, has lost relevance because of the lower number of places, nevertheless they do occur. Thus the head of a youth centre in *Baden-Württemberg*, which also has 18 closed places, describes the transfer effect between the federal states: »At the same time in the centre we find that 60% of inquiries for a closed place come from the youth offices at the federal level where closed accommodation has been abolished and appropriate alternatives developed ... The longer and more intensively I deal with the biographies of children and young people for whom a closed place is requested in our centre, the more critical I become with respect to the structures and methods of procedure of the child and youth services themselves. Lack of consideration for professional standards, excessive demands on general social services, communication problems and competition between professional disciplines, lack of co-operation between child and youth services, schools, the courts and child and youth psychiatry, de-

36 Cf. also *Bundestagsdrucksache* 14/4113, p. 26f.

37 Pankofer 2000

38 Exceptions are Wolffersdorff and Pankofer, 1997, who have presented a study carried out in a centre for girls.

decisions which are arbitrary rather than based on previously determined criteria, polarization instead of flexible arrangement of provisions of assistance, the structure of blocking financing conditions and financing restrictions etc. frequently seem exacerbating with regard to specific constellations of the problems of children and young people.«³⁹

4. Closed accommodation as avoidance of remand in young offenders institutions

In *Baden-Württemberg* 16 places and in *Bayern* 8 places are provided in establishments of closed accommodation for avoidance of remand in young offenders institutions. In an evaluation it was established at the partly closed *St. Severinshaus* that the average length of stay is 89 days. Out of 70 young people 35 ran away a total of 49 times.⁴⁰ This confirms the trend of earlier studies⁴¹, according to which the number of escapes from closed and open accommodation is similar.

5. Closed accommodation in child and youth psychiatry

The data situation for the minors accommodated in closed accommodation in child and youth psychiatry is also insufficient. »We do not know enough about this target group, about their life histories and about the effects of intervention. The legal position of these children is weak, neither the child and youth services nor the child and youth psychiatry push to be responsible for them.«⁴²

For closed accommodation in child and youth psychiatry authorization by the family judge must be obtained in accordance with Section 1631b *BGB* (civil code) and the hospital must clarify the question of accommodation on this basis in accordance with professional judgement. The stay lasts frequently only a few days and is really short in comparison with child and youth services (up to 6 weeks).

The same applies as in child and youth services: escapes are not ruled out. At the centre of the concepts there is intensive care, which requires a high-

39 Bauer, p. 33f

40 Lösel/Pomplum, p. 89

41 Wolfersdorff

42 Fegert 1998, p. 215f

er number of key personnel. The development of relationships clearly has priority over technical security precautions.

The instruction of the youth office of the federal state of *Brandenburg* was to carry out case analyses to find out more about very difficult children and young people accommodated in closed accommodation.⁴³ The files of 27 minors were analysed, of these one was accommodated in the child and youth services, the others in child and youth psychiatry. Different defects were identified. Thus, the hearing of the young people, which should actually be carried out before the decision on accommodation is made, is sometimes not carried out until afterwards, and in some instances, it is not carried out at all. The authors also have doubts about the psychiatric indications for some of the investigated case histories and therefore pose the question – in view of the group of children who are wrongly placed in closed psychiatric accommodation – why they are not accommodated in an appropriate provision of child and youth services. The period for which the family court authorises deprivation of liberty in a decision with an average 11.4 weeks for girls and 7.5 for boys is significantly longer for girls; the actual period of being locked up was twice as long as the time taken for the decision.⁴⁴

It is not known how many children and young people are held in closed accommodation in the frame of child and youth psychiatry and how long deprivation of liberty lasts. For this reason a written survey of all child and youth psychiatric establishments is being carried out at the moment.⁴⁵

Two additional items of information to round off the subject:

- Experts⁴⁶ assume that nationwide 35 to 40 young people are accommodated in special institutions by order of the judge not as punishment but as a measure to make sure the safety of the community. The offenders are not responsible for the offence because of illness or mental disease.
- According to Section 73 Youth Court Act young people can also be given closed accommodation in the psychiatric department for observation and assessment. This custody must last a maximum 6 weeks. There are no quantitative data about this either.

43 Paetzold/Lachmann

44 Paetzold/Lachmann, p. 73

45 As a very rough estimate nationwide about 3000 cases are assumed.

46 Cf. *Bundesarbeitsgemeinschaft*

6. Outlook

Despite the explosive nature of deprivation of liberty of children and young people in Germany there is only incomplete information about this field. As a result many urgent questions remain unanswered.

On the one hand differentiated statistical records on the numbers of cases, age, duration, biographical background and regional distribution are needed which enable conclusions to be drawn about trends and long-term developments. On the other hand case studies which go beyond file analysis and which expand the knowledge about the »unknown being« of young prisoners and take account of biographical contexts before and after deprivation of liberty are required. On the basis of an improved data situation, the following questions should be worked on against the background of the UN Convention on the Rights of the Child

- the psychological and social consequences of custodial sentences,
- regional distribution of disciplinary sentences, relaxations in the custodial treatment, daytime release for offenders pending release,
- remand in young offender institutions as kind of advanced youth prison
- deprivation of liberty for young people with migrant background, (especially with regard to remand in young offender institutions, language competence and deportation),
- educational provisions in treatment of young offenders at detention centres,
- legal representation in process of custodial treatment of young offenders as well as for closed accommodation in child and youth services or child and youth psychiatry,
- the time taken and the recidivism quotas for different measures,
- the transitions and assistance after deprivation of liberty,
- the transfer effects in child and youth psychiatry.

Deprivation of liberty as an especially serious intervention, as the *ultimo ratio*, requires particular care. This also includes adequate data being ascertained to facilitate an appraisal of the development overall – not only in the individual sectors but also with reference to the interaction between the sectors, so that in the first place the deprivation of liberty is actually only used as the *ultimo ratio* and in the second place so that the conditions in the custodial treatment are appropriate for the target groups, are organized to be as supportive, harmless and as short as possible, as set out in the thinking of the Convention on the Rights of the Child. The objective must remain to improve the situation of children and young people in these difficult situations.

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Youth crime prevention and the law: support, social education and punishment

1. Introduction

This article describes the two acts of Parliament that govern youth crime prevention activity in Germany: the *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) and the *Jugendgerichtsgesetz* (Youth Court Act; *JGG*). What is done within this legal framework, and how the terms of the acts are interpreted, varies considerably. Youth crime prevention in Germany, and hence many aspects of the articles collected in this volume, cannot be understood fully without knowledge of these acts. Attention has already been drawn in the Foreword to the fact that precise English equivalents do not exist for some German names and terms and the institutions or activities they denote. Readers of the present article are asked to bear this in mind.

Successful crime prevention depends on co-operation among bodies that are subject to their own sets of regulations. In Germany these include the Education Acts passed by each federal state (*Land*, pl. *Länder*), police regulations and data protection laws. Because they are of secondary importance in youth crime prevention activities these regulations and laws are not described here. Instead, we aim to give a general, and admittedly simplified, idea of how the law operates with regard to youth crime prevention. The following notes are intended to provide background information on the workings of the two acts described in the subsequent sections of the article.

The *Jugendstrafrecht* (Penal Code for Young Offenders), codified in the *JGG*, is part of criminal law. For many years, the *Jugendstrafrecht* has been the subject of constant »reform from below«, helping to link the *JGG* closely to the *KJHG* and its socio-educational provisions. Unlike the penal code for adults, the *JGG* addresses problems at the level of the individual offender. It appeals to offenders' sense of responsibility and aims at social education and prevention rather than atonement and reprisal.

The *Jugendstrafrecht* thus addresses the offender rather than the offence, focusing on his or her development and personal needs. The *Jugend-*

gerichte (youth courts) impose sanctions in accordance with this socio-educational orientation. This is where the *Jugendstrafrecht* meets the *KJHG*, which contains socio-educational provisions for children and young people and determines responsibility for interpreting and implementing them. The *KJHG* offers support for children and young people in trouble and their parents. Since publication of the eighth *Jugendbericht* (Youth Report) by the Government in 1990, prevention has been a determining principle of the activities of the child and youth services.

The justice and the youth services work together on the basis of these acts, not least through the mediation of the *Jugendgerichtshilfe*, a social inquiry service maintained by the youth services for the youth courts. The services are assisted by statutory bodies – the youth offices – and by so-called voluntary institutions, which range from large public and ecclesiastical organisations to small-scale schemes and associations. Other bodies involved include the police, schools and sports associations. All engage in crime prevention. Basic principles governing their activity include the desirability of support rather than sanctions, informal rather than formal procedures and non-residential rather than residential support. Although isolated cases of extreme criminal behaviour among children and young people have led to calls for stronger repressive measures from politicians and the media, specialists remain largely undeterred in their adherence to these three principles.

Local authorities are responsible for implementing the provisions of the child and youth services, including prevention strategies. The *KJHG* grants implementational powers to the local youth offices, which number more than six hundred. This is reflected in the different ways in which various regions address the problems of young offenders and young people in high-risk situations.

The differing responsibilities of the justice and the youth services frequently lead to tension between the two, yet this tension can be creative. While the justice must uphold the public's confidence in the rule of law and its sense of justice, the services – particularly in notably difficult cases – are often the only institution to take the part of the children or young people in trouble. This entails negotiation, a process that may be as difficult as it is essential.

Compulsion, in the form of passing sentences, issuing court orders or imposing conditions, is an attribute of the justice. By contrast, the work of the child and youth services is based on voluntary co-operation. Parents

and their children are not obliged to accept the support offered: they have a right to reject it and to voice preferences. This applies only in part, however, to convicted young offenders, who are additionally subject to compulsory measures. In these cases, therefore, the provisions of the services can at best be termed partly voluntary, a fact that needs to be taken into consideration when developing socio-educational concepts. Other sources of tension between the justice on the one hand and the child and youth services on the other – two unequal partners – are described in the texts published here.

The rest of the present article summarises the *KJHG* and the *JGG*. Although we have stayed close to the legally binding wording of these acts (hence the use of terms such as »juvenile« and »adolescent«), in general we have attempted to render their provisions in easily intelligible language.

2. The *Kinder- und Jugendhilfegesetz*

The *Kinder- und Jugendhilfegesetz* (Child and Youth Services Act; *KJHG*) was passed in 1990 and is part of the *Sozialgesetzbuch* (Social Code). It establishes the right of all young people to assistance in their development and to an upbringing that will teach them to feel responsible for their actions and to serve the community. The act states that to care for and bring up their children is the natural right and the foremost duty of all parents, yet that the state must perform a monitoring function. The youth services are to uphold the rights of young people by promoting their personal and social development and by helping to prevent or remove disadvantages. The services are to offer parents and those with parental powers counsel and active support in protecting children and young people from harm. The services are to help maintain or create positive living conditions for young people and their families on the one hand and a social environment favourable towards them on the other.

The act distinguishes between three groups: »children« (those under the age of fourteen), »juveniles« (those between the ages of fourteen and seventeen) and »young adults« (those between the ages of eighteen and twenty-six). The term »young people« refers to everyone under the age of twenty-seven. Children and juveniles must be involved in decisions concerning them that are taken by the youth services.

Benefits are provided by a variety of bodies adhering to various philosophies. Hence, the content of their provisions, their methods and proce-

dures differ widely. Providers divide into so-called voluntary organisations (roughly the equivalent of what are termed non-governmental organisations [NGOs] in other countries) and statutory bodies. Benefits offered on the basis of official commitment must be provided by the statutory bodies. Other kinds of benefit may also be provided by these bodies or they may be expressly delegated to NGOs.

Statutory youth services are to co-operate with NGOs and respect their independence in defining their objectives, performing their functions and structuring their organisation. When appropriate services can be provided or instituted by NGOs the statutory sector must refrain from implementing measures of its own (this is known as the »principle of subsidiarity«). Statutory youth services are to support NGOs and promote all forms of self-help among young people and their parents. The statutory services must provide NGOs with financial support. In turn, NGOs must meet the professional requirements needed to implement measures they propose, must pursue charitable goals and must contribute a reasonable amount of the necessary funding. The kind and extent of funding to be received by NGOs is determined by the statutory youth services within the limits of current budgeting. In the case of equally appropriate proposals preference is to be given to schemes that respond most strongly to the needs of the target group or person and give them a say in how the schemes are implemented. If NGOs and statutory bodies offer similar schemes the same standards and criteria are to be applied to the funding of the NGO schemes as to that of the statutory bodies. Funding for authorised NGOs must include funds for further training of full-time, part-time and voluntary staff and for the establishment and maintenance of leisure and educational centres for young people.

Corporate bodies and associations of individuals may become authorised NGOs provided, they operate in the field of child and youth services, pursue charitable goals, have the qualifications and staff necessary to making a worthwhile contribution to the work of the services and undertake to further the goals of the German constitution, the *Grundgesetz* (Basic Law). Christian denominations and other religious communities recognised by public law, and nationwide welfare associations, are authorised NGOs. Statutory youth service organisations may transfer some of their functions partly or wholly to authorised NGOs. In such cases the statutory sector retains full responsibility for implementation. If the statutory bodies make use of facilities belonging to NGOs or their services, both parties must attempt to reach agreement on the distribution of the costs involved between the two sectors.

The obligations of the youth offices are to be discharged by the youth services committee and by the youth office administration. Committee members with a vote include representatives of statutory youth services and NGOs. The committee addresses all issues relating to the youth services, especially current problems among young people and their families, proposals for improving the services, planning for the services and funding of NGOs. Other bodies and institutions, including the police, education authorities and justice, may be represented on the committee but are not entitled to vote.

The *KJHG* obliges the youth services to co-operate with other bodies and public institutions, including school authorities, other educational and training facilities, the health service, employment organisations, the police and the justice.

Youth offices are to participate in proceedings in the youth courts in accordance with the terms of the *JGG*. The offices are to determine at an early stage whether the juvenile or young adult concerned requires the assistance of the youth services. If this is the case, or if suitable provisions have already been requested or approved, the offices must immediately inform the public prosecutor or judge, so that he or she may establish whether the provisions justify refraining from prosecution or dismissing the case. Throughout proceedings, the juvenile or young adult is to receive assistance from a representative of the youth offices or of an authorised NGO. Local bodies clearly play a major part in the stipulations and implementation of the *KJHG*. The role of the *Länder* (federal states) is restricted to specialist supervision and further training. The promotion of specialist knowledge is also of paramount importance at a national level. The federal government carries out and evaluates model schemes, for example, as a way of improving practice across the country; it provides funding for nationwide associations; and it regularly publishes data on the living conditions of young people and on developments in the child and youth services.

3. The *Jugendgerichtsgesetz*

The *Jugendgerichtsgesetz* (Youth Court Act; *JGG*), which was subjected to far-reaching reform in 1990, forms part of the penal code. It comes into force when a »juvenile« or an »adolescent« has committed a punishable offence. The act defines a juvenile as anyone from the age of fourteen to seventeen and an adolescent as anyone from the age of eighteen to twenty, both relating to the time the offence was committed.

If the moral and intellectual development of an adolescent can be shown to have been that of a juvenile at the time the offence was committed, or if the type, circumstances and motives of the offence are characteristic of those committed by juveniles, the judge must apply the provisions applicable to a juvenile.

A juvenile bears criminal responsibility if, at the time the offence was committed, he or she had reached a degree of moral and intellectual maturity that enabled them to comprehend the wrongfulness of their offence and to behave in accordance with this knowledge. If criminal responsibility cannot be borne owing to lack of maturity, the judge may prescribe the same measures as would a judge in family and guardianship affairs.

The seriousness of a juvenile's offence, and when it becomes barred by statute, is determined in accordance with the provisions of criminal law.

A judge may order socio-educational supervisory measures to be implemented in response to a criminal offence committed by a juvenile. Such measures entail issuing instructions to offenders and ordering them to accept socio-educational support. Instructions comprise directives and prohibitions influencing conduct so as to promote and ensure the effectiveness of the offender's social education. Instructions must not make unreasonable demands on how the offender leads his or her life. Among other things a judge may instruct offenders

- to comply with instructions relating to their place of residence,
- to live with a family or in residential care,
- to accept a training post or employment,
- to accept support and supervision by a specific person,
- to attend a social training course,
- to attempt a settlement with victims of the offence (victim offender mediation),
- to avoid contact with certain persons and places of public catering or amusement and
- to attend a road-traffic training course.

If deemed necessary, disciplinary measures or a »youth penalty« may be imposed instead of socio-educational measures. If a penalty is inappropriate, the judge is to apply disciplinary measures in order to make offenders realise that they must accept responsibility for the wrong they have done. Disciplinary measures, which do not have the same legal consequences as a sentence, comprise cautioning, imposition of conditions and detention. Cautioning is intended to instil in offenders an awareness of the wrongfulness

ness of their offence. Conditions imposed by a judge may require offenders to do everything in their power to make good any damage caused by the offence, to apologise personally to the victim, to perform certain tasks or to pay a sum of money to a charitable organisation. Juveniles may be detained for the duration of one week's leisure time («leisure-time detention»), for a short uninterrupted period («short-term detention») or for a period of at least one week but no more than four weeks («long-term detention»).

A «youth penalty» means commitment to a prison for young offenders. Such prisons must be kept separate from prisons for adults. The penalty is to be imposed when supervisory or disciplinary measures are thought to be insufficient or when the seriousness of the offence requires imprisonment. Prison sentences must be for a minimum of six months and a maximum of five years. If the seriousness of the offence is such that criminal law requires a maximum penalty of more than ten years, then the maximum sentence that can be imposed under the terms of the *JGG* is ten years. Achievement of the desired socio-educational aims is to be determined so as to enable the length of sentence.

With prison sentences of one year or less judges may suspend enforcement on probation if they are convinced that an offender has perceived the sentence itself as a warning and that the probation period will have the desired socio-educational effect and lead the offender to conduct the life of an honest citizen. Factors to be taken into consideration here are the offender's personality and previous life, the circumstances of the offence, how the offender now views the offence, the offender's living conditions and the estimated effect on him or her of suspending the sentence. Judges may also suspend sentences of up to two years if the offender's personal development makes enforcement seem unnecessary.

Judges fix the duration of the probationary period, which must be at least two years but no more than three. They place offenders under the supervision and guidance of a professional probation officer for a maximum of two years. If it appears beneficial to achieving the desired socio-educational ends judges may also enlist the services of a voluntary probation officer. Probation officers are to provide offenders with help and advice. In consultation with the judge, officers must monitor the offender's compliance with instructions, conditions, assurances and provisions. Officers are to promote the offender's socio-educational development and, wherever possible, to work together with his or her parents, guardians or legal representatives on a basis of trust. Officers possess right of access to the offender and is empowered to require information about the offender's

conduct from parents, guardians, legal representatives, school authorities and training personnel.

Cases involving juveniles are heard by the youth courts. A youth court may consist of a criminal court judge sitting as a youth court judge, a court of assessors («lay assessors youth court») or a criminal division («youth division»). The youth assessors' court consists of a presiding youth court judge and two assessors. One male and one female lay assessor must be present at each hearing. The youth division consists of three judges including the presiding judge and two lay assessors («large youth division») or, in cases of appeal against sentences pronounced by a youth court judge, of a presiding judge and two law assessors («small youth division»). A youth court judge is charged with all the tasks incumbent on a judge sitting in a local court. Lay youth assessors are selected on the basis of proposals made by the youth services committee; these proposals must contain an equal number of men and women. This constitutes a direct link between the *JGG* and the *KJHG*. Public prosecutors with responsibility for youth affairs are assigned to proceedings falling within the jurisdiction of the youth courts. These public prosecutors and the youth court judges are to have undergone appropriate training and have had experience in socio-educational affairs relating to young people.

The youth courts are assisted in their work by youth services in youth court proceedings: the *Jugendgerichtshilfe (JGH)*. Representatives of the *JGH* highlight the socio-educational and welfare aspects of a case during court proceedings. To this end, they support the authorities involved by investigating the personality, development and circumstances of the accused and offer an opinion on suitable measures. In cases involving remand in young offender institutions they must report the results of their enquiries without delay. The member of the *JGH* who headed the enquiries must appear at the main court hearing. In the event of no probation officer being appointed, members of the *JGH* ensure that the offender complies with instructions and conditions. They are to co-operate closely with the probation office during probation. They are to remain in contact with offenders serving sentences and to promote their reintegration into society. The *JGH* must become involved as soon as possible in proceedings against the accused and must stay involved at all stages of those proceedings. Its representatives must be heard before instructions are issued to an offender, and if an offender is to be placed under supervision they must suggest a suitable supervisor.

Once proceedings have been initiated, investigations must be conducted without delay into the personal and family circumstances of the accused, his or her previous development and behaviour, and any other factors relevant to an assessment of the accused's psychological, mental and emotional make-up. Parents, guardians, legal representatives, school authorities and people providing training are to be consulted wherever possible. School authorities and people providing training need not be consulted if it is thought that this might result in undesirable consequences for the accused, e.g. loss of training opportunities or job. If required, the accused must be examined in order to obtain information on his or her state of development or on any other matters relevant to the proceedings. If possible, the examination should be carried out by an expert specialising in youth affairs. If the imposition of a youth penalty seems likely, the public prosecutor or the judge presiding over a youth court must question the accused before charges are brought.

The public prosecutor may refrain from prosecution if socio-educational supervisory measures have been implemented or initiated and if he or she deems it unnecessary to involve a judge or bring charges. An attempt on the part of an offender to reach a settlement with the victim of the offence is to be considered equivalent to a socio-educational supervisory measure. The public prosecutor proposes that a youth court judge issue cautions, instructions or conditions if the accused admits his or her guilt and the public prosecutor considers such measures necessary but the bringing of charges inappropriate. If the judge agrees to this proposal the public prosecutor is to refrain from prosecution. In cases in which instructions or conditions have been imposed, prosecution is dispensed with only after the offender has complied with them.

Court proceedings, including sentencing, are not public. The *JGH* and, where appropriate, judges with responsibility for guardianship and family affairs and any schools involved are to be informed of the initiation and outcome of proceedings. The *JGH* must inform the public prosecutor if and when it learns that other criminal proceedings are pending against the accused.

Before a sentence takes effect a judge may issue preliminary orders relating to socio-educational supervision or propose the provision of services in accordance with the *KJHG*. If considered appropriate in view of measures that may be expected to be imposed by the court, the judge may order the offender to be placed in suitable accommodation run by the youth services so as to protect the offender from further risk, especially from committing further offences.

Remand in young offenders' institutions may be ordered and implemented only if a preliminary supervision order or other measures cannot accomplish the desired aim. In assessing the suitability of remand, the special burden places on young people must be taken into account. If remand is imposed, the custody order must list the grounds for assuming that other measures, particularly temporary placement in youth services accommodation, will be insufficiently effective and that remand is not a disproportionately severe response to the offence. If the offender has not reached the age of sixteen, remand in custody on the grounds that he or she may attempt to escape justice may be ordered only if the offender has already tried to do so, has failed to appear in court before or has no fixed abode or place of residence. Proceedings must be conducted especially quickly if an offender has been remanded in custody. The *JGH* must be informed immediately of the enforcement of a custody order and should be informed at the time of its issue. The *JGH* must likewise be informed when an offender is detained temporarily if the investigations thus far indicate that he or she is likely to be brought before a judge.

The public prosecutor may apply orally or in writing to a youth court judge to have proceedings conducted in a simplified form for young persons if it is to be expected that the judge will issue instructions only, order socio-educational supervision, apply disciplinary measures, withdraw the offender's driving licence or impose a ban on driving of no longer than two years. The public prosecutor's application is to be considered equivalent to bringing charges. In these simplified proceedings judges reach their decision on the basis of hearings, and that decision has the status of a judgement. The public prosecutor is not obliged to attend simplified proceedings.

The purpose of detention is to appeal to offenders' sense of self-respect and to impress upon them the need to accept responsibility for the wrong they have done. The detention period is to be used for social education, helping offenders to overcome the problems that led them to commit offences. Offenders are detained in youth detention centres or in leisure-time detention facilities.

Youth penalties are intended to teach convicted offenders to lead their lives in a law-abiding and responsible manner. Respect for order, work, learning, physical education and meaningful leisure-time activities are to form the basis of the socio-educational measures employed during imprisonment. Convicted persons' professional skills must be promoted. Training facilities must be set up for them. Religious counsel must be available to them. In order to achieve the desired socio-educational aims, supervision

may be relaxed and, where appropriate, implemented on a largely voluntary basis. Prison officers must be selected according to their suitability and must be equipped to perform socio-educational tasks. Youth penalties are to be served in prisons for young people. In the case of exceptions to this rule penalties are to be served in accordance with the regulations governing the imprisonment of adults. Convicted persons over the age of twenty-four must serve their penalty in accordance with the regulations governing the imprisonment of adults.

Wherever possible, juveniles are to be remanded in custody in a special institution or, at the very least, in a special department within a prison or a youth detention centre. The period spent in custody is to be used for social education. Representatives of the *JGH* and, where applicable, probation officers and persons in supervisory socio-educational positions are to have the same right of access to the accused as his or her defence counsel.

4. Conclusion

The terms of the two acts summarised above provide the legal framework within which the penal code for young offenders is applied and the child and youth services operate. How the code is applied and how the services operate varies enormously in practice. It must be said that widespread use is not made of many stipulations and provisions that are very much in the interests of children and young people. The possibilities of avoiding remand in custody contained in the *JGG*, for example, are rarely exploited; a desirable range of non-residential provisions offered by the child and youth services is not available everywhere; and socio-educational practice in youth prisons leaves much to be desired. German law offers the child and youth services considerable scope for constructive and effective work, and they have achieved much. Yet a great deal remains to be done.

Publications

Volumes edited by the Centre for the Prevention of Youth Crime:

■ **Literaturdokumentation von Arbeitsansätzen der Kinder- und Jugendkriminalitätsprävention (vol. 1)**

Munich, 1998

■ **Der Mythos der Monsterkids**

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