

New horizons in youth justice — European and international developments¹

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The comparison of youth justice systems has a long tradition with an increasing number of publications since the end of the 1990s. Across Europe, policies based on the notions of the subsidiarity and proportionality of state interventions against young people involved in crime are remaining in force or emerging afresh in most, if not all, countries. In the 1990s and early 2000s, however, in several European countries, we witnessed the adoption of a contrary approach. These developments intensified youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation (see for example the Netherlands, France or England and Wales).² The causes of the more repressive or ‘neo-liberal’ approach in some countries are manifold. It is likely that the punitive trend in the United States, with its emphasis on retribution and deterrence, has had considerable impact in some European countries, particularly in England and Wales. However, many continental European jurisdictions have resisted punitive turns, often in contrast to the penal law legislation concerning adults over 18 or 21 years-of-age. A large comparative study on 36 jurisdictions in Europe has not found evidence that more repressive answers were the dominant orientation of European youth justice policy in the early 2000s.³

In addition, after a period of ‘neo-liberal’ orientations, changing trends are visible in the Anglo-American world: a revitalization of the educational ideal

in the US, abandoning or at least tempering the repressive orientation towards retribution and deterrence, and even expanding the scope to young adults, reducing waiver transfers to adult courts and abolishing life without parole for minors, and more.⁴ An example from the UK of a changing climate in youth justice policy can be seen in the strong orientation to restorative justice measures such as family group conferencing in Northern Ireland since 2001.

These developments at the national level, which is the primary focus of the present article, have to be understood against the background of international and regional instruments that set standards for youth justice. Most important in this regard is the 1989 UN Convention on the Rights of the Child (CRC), a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the ‘best interests of the child’—with ‘child’ defined for the purpose of this convention as a person under the age of 18 years—and to provide education, support, and integration into society for children. These ideas are developed further in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (so-called Beijing-Rules) and at the European level in the recommendations of the Council of Europe, in particular, the 2003 recommendation regarding new ways of dealing with juvenile offending (Rec. [2003] 20) and the 2008 rules for juveniles involved in crime subject to sanctions or measures, ERJOSSM (Rec. [2008] 11).⁵

The developments in Eastern Europe deserve special attention. The more lenient approach of youth

1. The present paper is a shortened, actualised and modified version of earlier publications of the author, see Dünkel, F. (2015). Juvenile Justice and Crime Policy in Europe. In F. E. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile justice in Global Perspective* (pp. 9–62). New York University Press; Dünkel, F. (2016). Juvenile Justice and Human Rights: European Perspectives. In H. Kury, S. Redo, & E. Shea (Eds.), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (pp. 681–719). Springer International Publishing; Dünkel, F. (2022). Youth Justice: European and international developments and (good) practices. In D. Nelken, & C. Hamilton (Eds.), *Research Handbook of Comparative Criminal Justice* (pp. 30–48). Edward Elgar Publishing.
2. Cavadino, M., & Dignan, J. (2006). *Penal Systems: A Comparative Approach*. Sage; See footnote 1: Dünkel (2015).
3. Dünkel, F., Grzywa, J., Horsfield, P., & Pruin, I. (2011). *Juvenile Justice Systems in Europe – Current Situation and Reform Developments* (2nd ed). Forum Verlag Godesberg; See footnote 1: Dünkel (2015).
4. See footnote 1: Dünkel (2015); Bishop, D. M., & Feld, B. C. (2012). Trends in juvenile justice policy and practice. In B. C. Feld, & D. M. Bishop (Eds.), *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (pp. 898–926). Oxford University Press.
5. See footnote 1: Dünkel (2016).

justice reforms may be influenced by the political will to abandon the old Soviet style of 'reformatories' or 'labour colonies' and to consider Western human rights standards, inspired by the desire to improve integration with EU through progressive legislation (e.g. Estonia, Lithuania or Romania).

In the past few years, a remarkable shift can be observed in countries that adopted neo-liberal ideas in the 1990s and first decade of the 21st century, such as England and Wales.⁶ From outside Europe, a comparable revival of the traditional youth justice ideas can be observed in the US as well.⁷

Youth justice models

If one classifies youth justice systems according to typologies, the 'classical' orientations of both the justice and the welfare models can still be differentiated.⁸ However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems of welfare and justice, for instance within German and other continental European youth justice legislation.

Youth justice policy in recent decades has demonstrated a tendency to strengthen the justice model by establishing or extending procedural safeguards (supported by Council of Europe and EU initiatives such as the EU directive 2016/800) and providing welfare measures. This tendency also includes a strict emphasis on the principle of proportionality, thereby moving away from sentences and educational measures that are disproportionately harsh (see e. g., the Council of Europe's ERJOSSM of 2008).

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

Recently some states have passed legislation related to certain misbehaviour ('anti-social' behaviour), which is addressed by civil law, but with a 'hidden' form

of criminalisation in case of civil law order violations. (Bulgaria, England and Wales, Ireland, and Northern Ireland). For instance, with anti-social behaviour orders in England and Wales, a violation of civil injunction constituted a criminal offence, and therefore a young person could have been subject to criminal punishment even if he/she had only violated a civil law obligation. The concept is so wide that any behaviour can be criminalised on the basis of relatively vague evidence. In contrast, in continental European youth justice systems, status offences, such as truancy or running away from home, are dealt with in separate civil or welfare laws and therefore cannot be 'punished' by youth courts.

On the other hand, restorative justice and minimum intervention policies, as well as 'neo-liberal' tendencies towards harsher sentences and 'getting tough' on youth crime are not necessarily based squarely on 'justice' or 'welfare,' and it is also difficult to view them as independent models of youth justice, as e. g. minimum intervention is an orientation enshrined in both, welfare and justice systems, as is the ever-widening net of restorative justice.⁹ The same is true for the 'neo-correctionalist model' described by Cavadino and Dignan,¹⁰ which held sway in England and Wales in the early 2000s, which saw increased criminal justice intervention justified on welfare grounds.

Here, too, there are no clear boundaries for the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies, but also minimum intervention (as is especially the case in Germany),¹¹ restorative justice and elements of neo-correctionalism (for example, increased 'responsibilisation' of people involved in crime and their parents, tougher penalties for recidivists and secure accommodation for children). The differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European youth justice is moving towards a mixed system that combines welfare and justice elements, which are further shaped by the trends mentioned above.

Restorative justice

Over the past few decades, numerous countries across Europe have introduced restorative justice into

6. Case, S., & Hazel, N. (2023). *Child First. Developing a New Youth Justice System*. Palgrave Macmillan.

7. See footnote 1: Dünkel (2015); See footnote 4: Bishop & Feld (2012).

8. Doob, A. N., & Tonry, M. (2004). Varieties of youth justice. In M. Tonry, & A. N. Doob (Eds.), *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives* (pp. 1-20). University of Chicago Press; See footnote 1: Dünkel (2015).

9. Dünkel, F., Grzywa-Holten, J., & Horsfield, P. (2015). *Restorative Justice and Mediation in Penal Matters in Europe – A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries*. Forum Verlag Godesberg; Dünkel, F., & Păroșanu, A. (2022). Restorative justice in European youth justice systems – Contextual, legal, practice-related and analytical aspects. In A. Wolthuis, & T. Chapman (Eds.), *Restorative Justice from a Children's Rights Perspective* (pp. 137-156). Eleven Publishers.

10. See footnote 2: Cavadino & Dignan (2006).

11. Dünkel, F. (2016). *Youth Justice in Germany*. Oxford Handbooks; Dünkel, F., & Heinz, W. (2017). Germany. In S. Decker, & N. Marteache (Eds.), *International Handbook of Juvenile Justice* (2nd ed., pp. 305-326). Springer International Publishing Switzerland.

their criminal justice systems, often particularly in the context of youth justice. Various international standards have increasingly highlighted and supported the application of restorative justice (see the Recommendation No. R (99)19 on Mediation in Penal Matters and recently the Rec. (2018) on Restorative Justice in Criminal Matters). Although there exists a body of other international human rights instruments of the UN and the EU, the definition of 'Restorative Justice'(RJ) is not always clear, and practices vary considerably. A deeper look inside reveals uncertainties, e.g., if the personal involvement of victims and contacts with perpetrators are an indispensable component of RJ, if in a wider sense community service is also 'restorative' etc.¹² However, there is a consensus that in practice, community service is used as a more or less repressive sanction, not based on the voluntariness of the perpetrator and without any restorative quality with regards to the victims.

Victim-perpetrator mediation has become the dominant restorative measure. Recently, in some countries, different forms of conferencing were implemented in some jurisdictions (Belgium, Northern Ireland etc.) and some projects have also been established in prisons (Belgium, Germany, Hungary etc.) altogether in 23 of 48 European jurisdictions,¹³ to motivate people convicted of crime to make reparation or efforts for mediation with victims and to resolve conflicts between prisoners and prisoners and prison officers.

The practice in Europe seems to be rather diverse. Major importance is given to mediation and RJ in Belgium, Finland, Northern Ireland, France and Germany, whereas the experience in Eastern Europe remains only 'symbolic' in most cases, a fact which is related to an only marginal infrastructure of mediators and restorative justice facilitators. The results are

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encouraging on the one side, as RJ more and more becomes an integral part of youth (and adult) criminal justice systems, but there is also a justified concern that in most jurisdictions the numbers remain marginal and in some countries (often in Eastern Europe) practitioners are still reluctant and concerned about the new approach. In a large overview on RJ in the (at that time 28) EU-member states three countries were identified as examples of best practice: Belgium and Finland because of the large scale of RJ-practices including in prison settings (Belgium) and Northern Ireland because of its youth conferencing system as a leading orientation in youth justice.¹⁴ A recent survey of 48 European jurisdictions (2023/2024) confirms the expansion of restorative justice measures overall in

Europe, but also the quantitatively moderate, often marginal importance in practice.¹⁵ Evaluation results indicate that RJ-measures have a great potential to satisfy victims, improve people convicted of crime in terms of desistance and social reintegration and reduce reoffending.¹⁶

Diversion, minimum intervention, and community sanctions

There has been a clear expansion of the available means of diversion applicable to young people involved in crime. However, these are often linked

to educational measures or merely function to validate norms by means of a warning.¹⁷ Sometimes, however, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in Belgium about 80 per cent, in Germany more than 75 per cent.¹⁸ In some countries,

12. See footnote 9: Dünkkel, Grzywa-Holten, & Horsfield, P. (2015).

13. Dünkkel, F., Păroșanu, A., & Pruin, I. (2023). Restorative Justice im Strafvollzug. *TOA-Magazin*, 2/2023, 4-8.

14. Dünkkel, F., & Păroșanu, A. (2022). Restorative justice in European youth justice systems – Contextual, legal, practice-related and analytical aspects. In A. Wolthuis, & T. Chapman (Eds.), *Restorative Justice from a Children's Rights Perspective* (pp. 137-156). Eleven Publishers.

15. Dünkkel, F., Păroșanu, A., Pruin, I., & Lehmkuhl, M. (2023): Restorative Justice – Aktuelle Entwicklungen wiedergutmachungsorientierter Verfahren im europäischen Vergleich. *Neue Kriminalpolitik*, 35, 146-171.

16. Shapland, J., et al. (2008). Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. Ministry of Justice; Sherman, L. W., & Strang, H. (2007). *Restorative Justice: the Evidence*. The Smith Institute; Sherman, L. W., et al. (2015). Twelve Experiments in Restorative Justice: The Jerry Lee Program of Randomized Trials of Restorative Justice Conferences. *Journal of Experimental Criminology*, 11, 501-540; See footnote 14: Dünkkel & Păroșanu (2022).

17. See footnote 3: Dünkkel, Grzywa, Horsfield, & Pruin (2011).

18. See footnote 1: Dünkkel (2015); See footnote 3: Dünkkel, Grzywa, Horsfield, & Pruin (2011); See footnote 11: Dünkkel and Heinz (2017).

such as Croatia, France, the Netherlands, Serbia, and Slovenia, this is a direct consequence of the long-recognised principle of allowing the prosecution and even the police a wide degree of discretion—the so-called expediency principle. Exceptions, where such discretion is not allowed, can be found in some Central and Eastern European countries, but in these cases, one should note that, for example, property offences that cause only minor damage are not always treated as statutory criminal offences and there exist further possibilities of an ‘exemption from guilt or punishment’. Italy, to take a Western European example, provides for a judicial pardon that is similar to diversionary exemptions from punishment but is awarded by the youth court judge. So, there is a large variety of forms of non-intervention or of imposing only minor (informal or formal) sanctions.

Empirical evidence reveals that diversion is not less effective than formal sanctions; in many cases it is better at preventing reoffending.¹⁹ Constructive measures, such as social training courses (Germany) and so-called labour and learning sanctions or projects (The Netherlands), have also been successfully implemented as part of a strategy of diversion. Most countries explicitly follow the ideal of education, while at the same time emphasising prevention of reoffending, that is, special prevention (as is done by the Council of Europe’s 2003 recommendation on new ways of dealing with juvenile delinquency and the role of youth justice).

Deprivation of liberty ‘as a last resort and as short as possible’

Everywhere it is proclaimed that deprivation of liberty should be a measure of last resort. In practice, the level of what is meant by ‘last resort’ varies across

time and in cross-national comparison. England and Wales, for example, experienced sharp increases of the juvenile prison population in the 1990s until the mid-2000s, but a dramatic reduction in immediate custody since then: the monthly average population of 10- to 17-year-old young people in custody declined from 2007/08 to 2020 by 75 per cent.²⁰

Spain and a few other countries also showed increases in the use of youth custody in the 1990s and early 2000s, but in general, recent developments go in the other direction. This is particularly true for Central and Eastern European countries. In some of these countries, such as Croatia, the Czech Republic, Hungary, Latvia, Romania, Slovenia and recently Russia, the high level of diversion and community sanctions

and the low level of custodial sanctions characteristic of Western European and Scandinavian countries has been achieved. In Russia, the number of young people aged under 18 years in youth custody declined from 18,677 in 2001 to only 946 in 2021.²¹

In Germany, the numbers of 14- to 20-year-old people involved in crime (dealt with by youth courts) from 2007 to 2019 declined by 54 per cent. The main reason was the decline in serious crimes. The youth prison population rate, composed of 14- to 25-year-olds declined by 54 per cent as well from 2001 to 2022. Interestingly, the recidivism rates are also declining.²² This can be seen as an indicator that the moderate trend in sentencing has had no negative effects on crime rates.

One recent example of a youth justice reform is the Youth Justice Act in Estonia from 2018. The reform law expanded alternative youth sanctions, in particular restorative justice measures and aimed at a reduction of youth imprisonment. The reform was a great success, by 2020 the number of juveniles in youth custody had reduced by 87 per cent.

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19. Heinz, W. (2019). Sekundäranalyse empirischer Untersuchungen zu jugendkriminalrechtlichen Maßnahmen, deren Anwendungspraxis, Ausgestaltung und Erfolg. Gutachten im Auftrag des Bundesministeriums für Justiz und Verbraucherschutz. Universität Konstanz; McAra, L., & McVie, S. (2019). Transformations in youth crime and justice across Europe. In B. Goldson (Ed.), *Juvenile justice in Europe. Past, Present and Future* (pp. 74-103). Routledge.
20. Youth Justice Board (2021). *Youth Justice Statistics 2019/2020 – England and Wales*. Ministry of Justice; See footnote 19: McAra & McVie (2019); This development is in sharp contrast to the general prison population in England and Wales: newest data from World Prison Brief (see <https://www.prisonstudies.org/world-prison-brief-data>) reveal an overall stable rate at the highest level of prison population rates in Western Europe. There is no political will to reduce the prison population rate for adults, on the contrary successive governments plans to expand the prison capacities.
21. See the data at <https://www.prisonstudies.org/world-prison-brief-data>
22. Dünkel, F., Geng, B., & Harrendorf, S. (2023). „Systemsprenger*innen“? Junge Menschen im Strafvollzug – Entwicklungsdaten zu Belegung, Öffnung und Merkmalen der Gefangenensstruktur im Jugendstrafvollzug. In D. Kieslinger, M. Dressel, & R. Haar (Eds.), *Systemsprenger*innen. Ressourcenorientierte Ansätze zu einer defizitären Begrifflichkeit* (2nd ed, pp. 115-160). Lambertus Verlag.

International human rights standards require that youth imprisonment should be 'as short as possible' (e.g., Rule 10 of the ERJOSSM 2008; similarly Rule 17.1b of the UN-Beijing Rules 1985), thus aiming to prevent indeterminate (and possibly disproportionate) detention and its prolongation for educational purposes beyond what the principle of proportionality would justify. The range of youth prison sentences varies considerably. Systems allowing for longer sentences than two years regularly do not provide for transfer to adult courts in, for example, serious murder cases. Continental European jurisdictions provide in these cases for up to 5 or 10 years of imprisonment (Austria, Croatia, Czech Republic, Germany, Russia, Slovenia, Spain etc). An exception is Switzerland, which provides a maximum sentence of 4 years without the possibility of transferring juveniles to adult courts. The common law tradition, but also the youth justice system in the Netherlands, provide only for short youth prison sentences of up to 1 (12-15-years olds) or 2 years (16-17-years-olds), but also to transfer 16-years-old juveniles to adult courts in order to manage very serious offending by imposing adult criminal law sentences.

At first glance contradictory to the principle that youth imprisonment should be as short as possible, is the exclusion of short-term youth imprisonment in some European jurisdictions by setting an elevated minimum term for youth imprisonment of 6 months as it is the case in Croatia, Germany, Greece, Serbia and Slovenia.²³ The reason behind is that the legislator believes that less than 6 months is not counterproductive as regards the educational/rehabilitative aim of youth imprisonment. Indeed, youth prison administrations report that a rehabilitative programme, the preparation for release and aftercare would be difficult to organise for short-term prisoners.

It is difficult to assess the severity of youth justice punishments in practice as the age groups covered are so different. Campistol and Aebi tried to evaluate youth justice statistics of 45 European jurisdictions for the year 2010.²⁴ Their main conclusion was that the existing data are hardly comparable across countries. The main reasons were that the definition of 'a minor' is not

harmonised, the rules applied for the construction of the statistics are not the same, and there are differences in the legal procedures for minors as well as on the type of sanctions that can be imposed on them. Looking at the sanction of imprisonment in youth prisons is problematic as different forms of deprivation of liberty (prisons, close residential care, young people in mental health institutions) are interchangeable and in most cases are not fully covered by youth justice statistics.

The scope of youth justice

Although on the basis of comparative research, one may speak, albeit cautiously, of a common European philosophy of youth justice, which includes elements of education and reintegration (apparent in, for example, the recommendations of the Council of Europe), the consideration of victims through mediation and restoration, and the observance of legal procedural safeguards for victims and perpetrators, there are some issues on which such a development is not as clear. In this regard, we consider the age of criminal responsibility and its corollary, the age at which people cease to be regarded as juveniles and are treated as adults as a core problem. The latter issue also raises the question of whether there should be some

mechanism for the converse, namely, allowing juveniles to be tried in adult courts.

Target groups of welfare- and justice-oriented systems

The differences between welfare- and justice-oriented youth justice systems are based on different target groups: welfare-oriented systems deal with any behaviour indicating a danger for the well-being of the child including different forms of problematic, antisocial or criminal behaviour. Justice-oriented models (prevailing in continental Europe) are focussed on criminal behaviour defined by the general penal law. This implies a dualistic approach characterised by civil and social welfare law interventions (in particular family law and family court magistrates) for children below the age of criminal responsibility, and on the other, a youth justice system represented by criminal procedures and

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23. In the Czech Republic and Slovakia the minimum term is 1 year. See footnote Dünkel et al. (2011).

24. Campistol, C., & Aebi, M. F. (2018). Are juvenile criminal justice statistics comparable across countries? A study of the data available in 45 European nations. *European Journal on Criminal Policy and Research*, 24(1), 55-78.

youth courts dealing with youth crime. Civil and criminal law systems are interconnected, but they follow distinct approaches. The reality is becoming more complicated as systems are converging. The distinction is difficult if anti-social behaviour is made a criminal offence (see, for example, England and Wales) and if the youth judiciary in a multi-agency approach work closely together with the youth welfare agencies, which organise and execute youth court sanctions.

Age limits — Minimum age of criminal responsibility (MACR)

Although international human rights organisations such as the Council of Europe follow an inherent policy of harmonising youth justice policy and legislation, which is certainly acceptable when discussing minimum standards, harmonisation should not be the primary aim of comparative youth justice research. More may be learned from under which societal and cultural conditions different approaches work or perhaps fail. Therefore, varying age limits and forms of social control of youth delinquency can be seen as a natural experiment.

There is an assumption that low ages of criminal responsibility (as in England and Wales with 10 years) are an expression of harsh, punishment-orientated youth justice systems, whereas elevated minimum ages (as in Belgium with 16/18, see below) symbolise a more lenient approach, which emphasises education instead of punishment. This argument is easily rebuttable when looking at Switzerland with a low age of criminal responsibility of 10, which follows a rather lenient educational approach and excludes youth imprisonment until the age of 15. Further examples are Scandinavian experiences with possible harsh reactions under the flag of 'welfare' (e.g. in closed residential homes, see the Swedish Secure Youth Care sanction). This shows the other side of the successful policy of very low and decreasing numbers of juveniles in prison.²⁵

International youth justice standards, not only in Europe (see the UN-Beijing Rules of 1985, Rule 4; the UN Model Law, see UNODOC, 2013, commentary to

Article 9), are rather weak in their statements about the age of criminal responsibility. The 2008 ERJOSM recommend no particular age, stating only that some age should be specified by law and that it 'shall not be too low' (Rule 4). This vagueness is reflecting the large differences in the minimum age of criminal responsibility (MACR) worldwide.²⁶ It varies in Europe between 10 (England and Wales, Northern Ireland, and Switzerland), 12 (Netherlands, Scotland, and Turkey), 13 (France), 14 (Austria, Germany, Italy, Spain, and numerous Central and Eastern European countries), 15 (Greece and the Scandinavian countries), and even 16 (for specific offences in Russia and other Eastern European countries) or 18 (Belgium). Including the developments in Central and Eastern Europe after the break down of the 'Iron Curtain', the most common age of criminal responsibility is 14 years. The actual overview on 41 European jurisdictions revealed the minimum age of criminal responsibility was at least 14 in 31 cases, of them six have introduced the age of 15 as minimum age. Only seven countries/jurisdictions provide for possibilities to apply the criminal law for juveniles at the age of 10 or 12, one further at the age of 13.²⁷

The ages of criminal responsibility have to be defined further: whereas one can talk of a really low age of criminal responsibility, for example, in England and Wales, in some countries only educational sanctions imposed by the family and youth courts are applicable at an early age. In Switzerland, the youth court judge can only impose educational measures on 10- to 14-year-olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are restricted to those aged at least 15 with a maximum sentence of one year for 15- and 4 years for 16- and 17-years-olds. The same approach of banning youth imprisonment for the younger age groups of youth justice can be observed in Ireland and the former Yugoslavian republics of Croatia, Kosovo, Serbia, and Slovenia for 14- and 15-years-olds.

Further still, some countries, such as Lithuania, Russia and Ukraine, employ a graduated scale of

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25. Lappi-Seppälä, T. (2019). Youth Justice and youth sanctions in four Nordic states. In B. Goldson (Ed.), *Juvenile justice in Europe. Past, Present and Future* (pp. 104-127). Routledge.

26. Cipriani, D. (2009). *Children's Rights and the Minimum Age of Criminal Responsibility – A Global Perspective*. Ashgate.

criminal responsibility, according to which only more serious and grave offences can be prosecuted from the age of 14, while the general MACR lies at 16. Such a graduation of the age of criminal responsibility is problematic, as it is contrary to the basic philosophy of youth justice that sanctions should refer to the individual development of maturity or other personality concepts rather than to the seriousness of the offence.

Whether these notable differences can in fact be correlated to variations in sentencing is not entirely apparent. For, within a system based solely on education, under certain circumstances the possibility of being accommodated as a last resort in a home or in residential care (particularly in the form of closed or secure centres as in England and Wales and France) can be just as intensive and of an equal or even longer duration than a sentence of juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs considerably from the language used in the reform debates.²⁸ Despite the dramatisation of events by the mass media that sometimes leads to changes in the law, there is often, in Germany for instance, a remarkable continuity and a degree of stability in youth justice practice.²⁹

The reforms of the last few decades in raising or decreasing the MACR were clearly connected to more punitive or lenient policies: The abolition of *doli incapax* in England and Wales in 1998, de facto lowering the MACR from 14 to 10, is an example, another the lowering from 15 to 14 in Slovakia combined with increasing penalties for recidivists and people convicted of violent crime. Hungary (under a populist right-wing government) followed in the same line making 12 and 13-year-old perpetrators of serious crimes criminally responsible. The contrary reform orientation is evident elsewhere: the MACR increased from 10 to 14 in Cyprus, from 13 to 15 in Greece, from 10 to 12 in

Ireland (with restricting youth imprisonment to juveniles aged at least 16), and finally from 8 to 12 in Scotland.³⁰

The case of 18-20-year-old young adults involved in crime and the impact of neuroscientific and other empirical evidence

Empirical evidence on emerging adulthood

There are also interesting developments in the upper age limits of criminal responsibility (the maximum age at which juvenile criminal law or juvenile sanctions can be applied). In Germany, a flexible system of applying youth or adult criminal law sanctions on young adults was introduced as early as 1953.³¹ The decision of the youth court is based on an estimation of the maturity of the young adult or the nature of the crime being a typical youth delinquent behaviour.

This tendency is rooted in criminological understanding of the transitional phases of personal and social development from adolescence to adulthood and a recognition that such transitions are taking longer. The criminological evidence of the so-called age-crime-curve indicates that it is a global phenomenon, although the peak age may vary.³² For Europe one can state that the peak age of young persons involved in crime is between 16 and 21 with the observation that in the last decades the peak has moved to the elder age groups of 18 years and more.³³ There is a coincidence with sociological and developmental psychological evidence about maturing and integration into adult life.³⁴ The phases of school and professional education and of integration into working and family life (the establishment of one's 'own family') have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties.³⁵

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27. Dünkel, F. (2024). Youth Justice – European and International Developments. Alenka Šelih's Contribution to Comparative Youth Justice. In *Pravnik* (Ljubljana) 141 (5-6), 253-294, at p. 272 f. (Table 1).
28. See footnote 8: Doob & Tonry (2004).
29. See footnote 11: Dünkel (2016), and Dünkel and Heinz (2017).
30. See footnote 1: Dünkel (2015).
31. See footnote 1: Dünkel (2015); See also the more recent reforms in Austria, Croatia, Lithuania, and the Netherlands.
32. Loeber, R., & Farrington, D. P. (2014): Age-Crime Curve. In G. Bruinsma, & D. Weisburd (Eds.), *Encyclopedia of Criminology and Criminal Justice* (pp. 12-18). Springer.
33. See footnote 19: Heinz (2019).
34. Moffitt, T. E. (2018). Male antisocial behaviour in adolescence and beyond. *Nature Human Behavior*, 2, 177-186
35. See footnote 1: Dünkel (2022).

Sociological indicators such as the age of marriage or founding family life have increased from 23-24 years in the 1970s to 30-31 in the 2000s. In parallel, the birth of the first child has also been delayed by a decade, which — with regional variations — is true for the whole of Europe.³⁶ Maturation from the developmental psychological point of view is not a linear and equal process in comparison of individual adolescents, but it becomes clear that higher cognitive capacities of self-control are developing until the mid-twenties and in some cases even beyond.

Furthermore, new neuroscientific evidence indicates that maturity and psychosocial abilities are fully developed only in the third decade of life.³⁷ Neuroscientific research on 'brain maturation' revealed that different brain areas develop at different age periods, resulting in an imbalance between the subcortical limbic areas (responsible for impulsive behaviour and immediate needs to be satisfied, the reward system), and the prefrontal cortex (responsible for self-control and moderating impulsivity). The limbic area develops in early adolescence, whereas the prefrontal cortex fully develops only in the mid-twenties. This means that higher executive functions of the brain, such as the capacity for structured forward planning, the perspective of time, and the capacity to anticipate the consequences of certain (problematic) behaviour and psychological functions that are relevant in the context of criminal culpability and responsibility, such as inhibition (constraining impulses) and the suppression of interferences (risk-taking behaviour) are not fully developed until the mid-twenties.³⁸ Therefore, in affective/emotional situations the limbic system gains the upper hand over the underdeveloped capacities of impulse-control. The typically elevated risk-behaviour during adolescence may be explained by that imbalance in brain maturation.

Steinberg et al.,³⁹ in an international comparative empirical study, could show that the 'maturity gap' concerning intellectual and psycho-social maturity is a global phenomenon independent of cultural and

contextual social factors. Their study covered samples of adolescents between the ages of 10 and 30 in Columbia, Cyprus, India, Italy, Jordan, Kenya, the Philippines, Sweden, Thailand, and even in China.⁴⁰

The neuroscientific evidence on brain maturation and evidence on cognitive and psychosocial development chime with criminological findings on the age-crime-curve mentioned above. These findings justify a youth justice policy either enlarging the upper limit of the scope of youth justice to the age of 21 or even 24 or of considering those over 18-23/25 as a distinct group of juveniles with diminished culpability and responsibility compared to older adults.⁴¹ The core question remains which court should be responsible: 'Because of their immaturity, young adult offenders are more likely to benefit from the developmental approach taken in the juvenile justice system than from the adult system, which lacks this approach'.⁴² Therefore, the youth court with its specialised and (in developmental questions) more experienced judges seems to be the better solution. This argument is underlined by the Dutch experiences. The government in 2014 extended the scope of youth justice to the age of 23 (see below under 7.3.2). One of the weaknesses of the Dutch reform with a rather low application rate of youth sanctions for young adults (about 5 per cent in 2016) is that the competence to deal with young adults remained with the adult and not the youth court and that the decision to proceed in a juvenile or adult sentencing process is made by a (general) public prosecutor.⁴³

Youth justice reform movements in the US are mainly based on new neuroscientific arguments. Steinberg further reports that the jurisprudence of the Supreme Court, on banning capital punishment (*Roper v. Simmons*, 2005) and abolishing, or at least largely restricting, life without parole (*Graham v. Florida*, 2010; *Miller v. Alabama* 2012; *Montgomery v. Louisiana*, 2016), was strongly influenced by neuroscientific evidence.⁴⁴

36. See https://www.bib.bund.de/DE/Fakten/Fakten_formular.html

37. Weijers, I., & Grisso, T. (2009). Criminal responsibility of adolescents: Youth as junior citizenship. In J. Junger-Tas, & F. Dünkel (Eds.), *Reforming Juvenile Justice* (pp. 45-67). Springer; Bonnie, R. J., Chemers, B. M., & Schuck, J. (2012). *Reforming Juvenile Justice: A Developmental Approach*. National Research Council of the National Academies; Loeber, R., et al. (2012). Overview, Conclusions, and Policy and Research Recommendations. In R. Loeber, et al. (Eds.), *Persisters and Desisters in Crime from Adolescence into Adulthood*. Explanation, Prevention and Punishment (pp. 335-412). Ashgate.

38. See in summary Steinberg, L., et al. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, 21, 1-13; See footnote 1: Dünkel (2022); See footnote 37: Loeber et al. (2012).

39. See footnote 38: Steinberg et al. (2018).

40. Icenogle, G., Steinberg, L., et al. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a 'maturity gap' in a multinational, cross-sectional sample. *Law and Human Behavior*, 43(1), 69-85.

41. Steinberg, L. (2017). Adolescent Brain Science and Juvenile Justice Policymaking. *Psychology, Public Policy, and Law*, 23(4), 410-420.

42. Van der Laan, A. M., Beerthuis, M. G. C. J., & Barendregt, C. S. (2021). Juvenile sanctions for young adults in the Netherlands: A developmental perspective. *European Journal of Criminology*, 18(4), 526-546.

43. See footnote 42: Van der Laan et al. (2021).

44. See footnote 41: Steinberg (2017).

International human rights and national developments in dealing with young adults involved in crime

The Council of Europe has taken these considerations about the prolongation of the transitional phase of young adults into account in its recommendation on 'new ways of dealing with juvenile offenders and the role of juvenile justice' of 2003 (Rec. [2003] 20) and in the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) of 2008 (Rec. [2008] 11). Rule 11 of Recommendation (2003) 20 reads as follows: 'Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.'⁴⁵

Rule 17 of the ERJOSSM states that 'young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.' The commentary to this rule states that: 'it is an evidence-based policy to encourage legislators to extend the scope of youth justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation' (p. 42).⁴⁶

This widespread European consensus about the role of young adults in youth justice legislation is reflected by more national legislators, in the most far-reaching manner by the Dutch youth justice reform from 2014.

The United Nations' so-called Beijing Rules in Rule 3.3 state: 'Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.' In its proposal for a Model Law on Juvenile Justice of 2013 the UN follows this line with the statement in the commentary: 'States should note that a majority of European States have extended the applicability ... of their juvenile justice laws to the age of 21 as neuroscientific evidence and brain development studies have indicated that it is difficult to distinguish between the brain of an older child and that of a young adult' (UNODOC 2013: 57).

In a comparative view there exist two models of dealing with young adults: on the one hand to provide the application of youth justice disposals to young adults; on the other, to mitigate sentences within the general penal law to this age group. The first model reflects either the maturity or immaturity of the individual concerned or simply that just the disposals of youth justice are more appropriate for young adults compared to adults of over 20 (in the Netherlands: over 22). This variant of dealing with young adults existed in 20 out of 35 jurisdictions covered by the survey of Dünkel et al.⁴⁷ In the meantime Georgia in 2015 and Estonia in 2018 have introduced the possibility of applying youth justice dispositions on young adults. A specific mitigating factor in sentencing young adults existed in 17 jurisdictions and in eight jurisdictions regulations in both youth and adult criminal law could be found. Only in Bulgaria, Latvia, Romania, Spain and Turkey no specific rules for young adults involved in crime were provided.

Beyond Europe, there exist a few examples of widening the scope of youth justice in that way, as e. g. in Japan or in Brazil and Uruguay.⁴⁸ Salaymeh identified an elevated maximum age of youth justice between 19 and 21 in eight out of 47 Muslim-majority states in Near and Middle-East and Africa.⁴⁹ In the USA, the project of 'emerging adulthood' of the Columbia University in New York has initiated and furthered reform movements in several Federal States to expand the upper limit of youth justice. In consequence of new neuroscientific and developmental psychological evidence Vermont raised the upper age to 20, and there have been model or pilot projects to widen the scope of youth justice to 19, 21 or 24 years in several states.⁵⁰

Applying adult penal law on juveniles and transfers of juveniles to adult courts (waiver procedures)

While raising the upper limit of the definition of juvenile may be seen as a way of imposing more appropriate sentences on immature young adults, there is also an opposite trend, most prominent in the United States,⁵¹ but also found in a few European countries, of referring children for trial in adult courts. Such referrals

45. This rule was strongly influenced by § 105 of the German Youth Justice Act giving the youth court the power of a discretionary decision (based on a psychiatric or psychological expert opinion) to impose youth or adult criminal law sanctions, for detail see footnote 11: Dünkel (2016).

46. Council of Europe (2009). European Rules for juvenile offenders subject to sanctions or measures. Council of Europe Publishing.

47. See footnote 3: Dünkel et al. (2011); See footnote 27: Dünkel (2024) for recent reforms in further jurisdictions (e. g. Estonia, and Georgia).

48. See footnote 1: Dünkel (2015).

49. Salaymeh, L. (2015). Juvenile Justice in Muslim-Majority States. In F. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile Justice in Global Perspective* (pp. 249-287). New York University Press.

50. See the report of the Emerging Adulthood-Project under <https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Washington%20State%20-%20January%202021.pdf>

51. See footnote 4: Bishop and Feld (2012).

often, but not always have a distinctively punitive purpose, as the range of youth justice sanctions is seen as too limited to adequately sentence serious (violent) offences committed by young people.

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

In Belgium and the Netherlands, 16- and 17-year-old juveniles can be sentenced according to adult criminal law in cases of serious (violent) crimes. Since its 2006 reform, the waiver in Belgium is not to adult courts, but to so-called Extended Juvenile Courts. The same very restrictive application of adult criminal law against 16- and 17-year-olds can be seen in the Netherlands, the youth court remains competent as well, but the general criminal law can be applied. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law, but this is the case only in about 1-2 per cent of the cases.

In England and Wales, juveniles, even at the age of 10, can be transferred to the adult criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adults carry a maximum term of imprisonment of more than 14 years). Similar exceptions are provided for in Ireland (in practice less than 5 per cent of judgments), Serbia and in Northern Ireland, transfers are limited to juveniles who have been charged with homicide, in Ireland, to exceptional cases such as treason or crimes against the peace of nations, but also for murder or manslaughter.

The application of adult law to juveniles through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it. Whereas normally the application of (juvenile) law depends on the age of the person involved in crime, transfer laws or waivers rely on the type or seriousness of the committed offence. The justification for special treatment of juveniles (as an inherent principle of youth justice) is challenged by such provisions. The

fundamental idea is to react differently to offences that are committed by people up to a certain age, on the basis of their level on maturity or their abilities of discernment. Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility should signify — independently from the type of offence — from which age on a young person is deemed ‘mature enough’ to receive (adult) criminal punishment. On the other hand, however, the introduction of ‘transfer laws’ makes exactly those people fully responsible who often lack the (social) maturity to abstain from crime or even fully to differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be

regarded as not fully mature when charged with a ‘normal’ offence but fully criminally responsible for a serious offence. As Weijers and Grisso have put it, ‘An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits’.⁵² A systematic approach would treat all offences equally.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juveniles involved in crime. Additionally, they claim that waivers are needed as a ‘safety valve’ for the juvenile courts because juvenile law does not provide adequate or suitable

options for severe cases. However, so far criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.

In practice, transfers are of declining significance in Europe, but even if waivers and transfer laws are of little significance in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juveniles. Therefore, the UN Committee on the Rights of the Child recommends abolishing all provisions that allow people involved in crime under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years.⁵³

Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties.

52. See footnote 37: Weijers and Grisso (2009).

53. Committee on the Rights of the Child (2007). General Comment Nr. 10: Children’s rights in juvenile justice. CRC/CGC/10 (25 April 2007). http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en (paragraphs 34, 36, 37, and 38).

Concluding remarks

Youth justice systems in Europe have developed in various forms and with different orientations. Looking at sanctions and measures, the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve compliance with law ('norm validation'). Mediation, victim-perpetrator reconciliation or family group conferences are good examples of such diversionary strategies. On the other hand, from an international comparative perspective, systems based solely on child and youth welfare are on the retreat. This is not so evident in Europe where more or less 'pure' welfare-oriented approaches exist only in Belgium and Poland (or for juveniles under 16 in Portugal and Scotland) compared with, for instance, Latin American countries, which traditionally were oriented to the classic welfare approach,⁵⁴ and countries influenced by the Anglo-American welfare model, such as India.

Across Europe elements of restorative justice have been implemented.⁵⁵ In addition, educational and other measures, such as social training courses and cognitive-behavioural training and therapy, have been developed more widely. These developments are in line with international youth justice standards. The 2003 Recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasises the development of new and more constructive community sanctions for recidivist and other problematic groups. This maintains the traditional idea of youth justice as a purely special 'educational' system of intervention designed to prevent re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been hailed as desirable across Europe, it cannot be denied that in some countries 'neo-liberal' orientations have

Another player is the European Union, which has strengthened the rights of juveniles involved in crime as well as of victims in youth justice procedures.

influenced youth justice policy and, to a varying extent, also practice in the 1990s and early 2000s.⁵⁶ Indeed, the increase of youth imprisonment in England and Wales and other Western European countries at that time confirmed the impression of the 'punitive turn' associated with the notion of incapacitation, retribution, individual responsibility and accountability. However, the trend of bringing juveniles to courts for harsher punishments has been reversed in the last two decades. Noteworthy downward trends in youth crime and youth imprisonment can be observed in many jurisdictions. The examples of England and Wales and Russia as former high incarceration countries, but also Germany,⁵⁷ Slovenia and the Scandinavian countries as low-level incarceration countries,⁵⁸ demonstrate a

remarkable shift in youth justice policies and practice. Youth justice policy in the USA follows the same line of reinventing educational and restorative orientations of youth justice and furthermore widening the scope towards over 18-year-old young adults by at the same time asking for fewer transfers of juveniles to adult courts (waiver procedures).

Nevertheless, one has to be careful in judging systems as punitive or lenient. When incarceration rates and other forms of juvenile social control (e.g. sending juveniles to closed residential care in welfare institutions) are taken into consideration, there may be less distinction between at first glance very different youth justice policies (see for example the lenient policy in Italy compared to England and Wales).⁵⁹

The notion of a punitive turn in youth justice in Europe has always reflected only one facet of the full reality. A different reality emerges when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare agencies and projects such as mediation schemes. These have continued to operate in a reasonably moderate way and thus resisted penal populism.⁶⁰ Sonja Snacken has explained why

54. Beloff, M., & Langer, M. (2015). Myths and Realities of Juvenile Justice in Latin America. In F. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile Justice in Global Perspective* (pp. 198-248). New York University Press.

55. See footnote 14: Dünkler & Păroșanu (2022).

56. Muncie, J. (2008). The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and in the USA. *Youth Justice*, 8, 107-121.

57. See footnote 11: Dünkler & Heinz (2017).

58. See footnote 25: Lappi-Seppälä (2019).

59. Nelken, D. (2019). Understanding and learning from other systems of juvenile justice in Europe. In B. Goldson (Ed.), *Juvenile justice in Europe. Past, Present and Future* (pp. 186-206). Routledge.

60. See footnote 3: Dünkler et al. (2011).

many European countries have resisted penal populism and punitiveness given their strong orientation towards the social welfare state,⁶¹ democracy and human rights. International human rights instruments and the jurisprudence of the ECtHR serve as 'protective factors' against penal populism,⁶² which can be found most clearly in many continental Western European states, particularly in Scandinavia.⁶³ More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand. Another player is the European Union, which has strengthened the rights of juveniles involved in crime as well as of victims in youth justice procedures.

Apart from varying approaches to youth justice, this article has highlighted three areas that are seen as crucial for the future of youth justice. The demographically declining age group of under 18-year-old juveniles and their decreasing crime rates will pose a question about the existence of a distinct youth justice system with educationally experienced, specialised police, prosecutors and judges.⁶⁴ The reason would be that the group of persons under consideration is small.

- ❑ One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15, while at the same time establishing or preserving human rights guarantees and fair civil law procedures and interventions for those under the age of criminal responsibility.
- ❑ A second step would be to build on initiatives to increase the maximum age at which young

people involved in crime can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and to divert them from a career of adult crime. The reform of 2014 in the Netherlands increasing the scope of youth justice up to the age of 23 and of similar initiatives in some Federal states in the USA may be seen as the forerunner in youth justice reform in this respect. The positive experiences of Germany to apply youth justice measures and sanctions to a wide extent to 18-20-year-old young adults (and thus moderating harsh punishments in serious crime cases) may encourage other countries as well. Such a policy is justified by new neuroscientific evidence on brain maturation and its consequences for a restricted maturity diminished culpability.

- ❑ Thirdly, the possibilities of trying juveniles as adults should be resisted. Only a small minority of European countries provide such a waiver procedure, but it must be clear that this is not only doctrinally dubious (and contrary to the CRC of 1989) but also holds the risk of increasing the impact of the worst features of the adult criminal justice system on young people.

Youth justice in the majority of European countries has revealed a moderate approach to young people in the difficult process of maturing to adult life. Therefore there is some evidence that the ideal of social inclusion and reintegration will be the *Leitmotiv* for youth justice law and practice of the 21st century in Europe and other continents as well.

61. Snacken, S. (2010): Resisting punitiveness in Europe? *Theoretical Criminology*, 14, 273-292; Snacken, S., & Dumortier, E. (2012). *Resisting Punitiveness in Europe? Welfare, human rights and democracy*. Routledge.

62. Pratt, J. (2008). Scandinavian Exceptionalism in an Era of Penal Excess: Part I and II. *British Journal of Criminology*, 48, 119-137 and 275-292.

63. See footnote 25: Lappi-Seppälä (2019).

64. See footnote 19: McAra & McVie (2019).