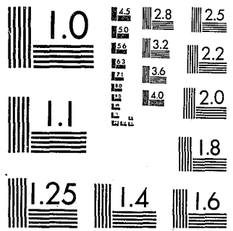

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International Summaries

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The Penalty of Law: An International Comparison of Practices Affecting the Prosecution and Sentencing of Juveniles

This article summarizes current practices and procedures for handling juveniles in several European and non-European countries.

By Jean-Pierre Peigne

Systems for Deciding on the Prosecution of Juveniles Cases

Who has the power to decide whether a juvenile delinquent should be sent to court? The answers to this simple question vary widely from country to country. Certain countries do not distinguish, on a procedural level, between the juvenile delinquent and the difficult juvenile or juvenile at risk; other systems apply different rules to these categories of juveniles.

One distinction is immediately clear. In certain countries, usually those of the Anglo-Saxon tradition, the factual investigation is the function of the police. The officer who questioned the suspect decides if he should be referred to the prosecutor and the court. The plaintiff may be either a witness or a victim. In other countries, usually those of continental Europe, a special committee, frequently composed of magistrates without judges' powers whose designation varies (e.g., public prosecutor), exercises the right to decide whether a minor or adult suspected offender should be prosecuted or whether the case should be dropped. This committee, which may exert control over police activities, has a monopoly on the right to decide, but sometimes the victim is also permitted to intervene. The distinction between the two approaches corresponds to the traditional distinction between the accusatorial and the inquisitorial procedures.

Careful examination indicates that the situation is not actually so clear. In certain cases, the power to take criminal action or to start proceedings belongs either unquestionably to the police or to the public prosecutor, whatever he may be called in the particular country. But intermediate situations exist, as when a court committee must decide about prosecution.

The first system discussed above is practiced in such countries as Brazil, Sri Lanka, Austria, Australia, Bangladesh, England, and Wales. Other countries—for example, Yugoslavia, Saudi Arabia, the Philippines, the United States, Holland, and France--have a more or less structured public prosecutor's office, which is sometimes staffed by individuals with the rank of judge. In these countries, the public prosecutor acts either on the basis of police records or after a preliminary inquiry; in British Columbia (Canada), for example, the probation officer files a report before the public prosecutor reaches a decision. In the German Federal Republic, the judge charged with prosecuting juveniles may, prior to reaching a decision, require a report by a special service organization on the personal situation of the juvenile to be prosecuted.

The power to decide whether to prosecute is sometimes assigned jointly to the police and the public prosecutor or even jointly to a judge, a court, and the

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victim himself. In Japan, the public prosecutor can lay the matter before a family court, which will decide how the public prosecutor is to prosecute the case. In Scotland, criminal proceedings against youth less than 13 years old can be instituted only at the special request of the Lord Advocate. There, the public prosecutor can send only a limited number of juveniles to criminal court: a local special official, the reporter, can decide to hold a children's hearing, a sort of administrative rather than judicial panel that endeavors to reach an amiable settlement in a conference with the juvenile and his family.

In Switzerland, proceedings are initiated in juvenile court by the public prosecutor or directly by the police, while in Canada the judge can send youthful defendants to adult court but also can revoke that decision in order to avoid the juveniles' appearance in adult court. In some countries, a special agency decides on prosecutions, but precise regulations are not available. Elsewhere (e.g., Jamaica and Saudi Arabia) the victim plays an important role together with the police and the public prosecutor.

Certain legal systems seek to avoid the need for juvenile delinquents to appear in criminal court, and proceedings are almost identical for delinquent children and children at risk; the children's hearing in Scotland and the juvenile aid panel in Australia serve that purpose. Careful consideration of offenses committed has given way in other countries (e.g., Venezuela) to a psychosocial approach, with the police bringing the case before a special judge. But even in countries that use separate proceedings for the two classes of juveniles, protective proceedings are more common than criminal proceedings either because the offense in question caused insignificant damage or because the offender is young.

It is thus difficult to state precisely who is responsible for the appearance of a juvenile delinquent before a special criminal court. The role of the police may compete with that of the public prosecutor. In France, a more sophisticated distinction should be made between the right to initiate criminal proceedings, which can be done only by the public prosecutor when delinquent minors are involved, and the decision to have juveniles appear in special court, which is left to the judge placed in charge of the proceedings by the public prosecutor—i.e., the juvenile judge or the examining judge.

Organizational Problems

The first problem that arises in connection with the question of who decides to try juveniles relates to the degree of specialization of the agency that decides between criminal proceedings and a juvenile court. This matter has received little attention from the police despite the existence in many countries of special police units. However, reports focusing on the problem within the public prosecutor's office show that, in West Germany, an official of the prosecution section specializes in juvenile affairs and must prove particular competence in educative matters. French law provides for a deputy prosecutor to handle juvenile cases, but in reality he is rarely a specialist and seldom prepared for his duties.

A second problem relates to the filing of proceedings, which takes place either at the level of the agency responsible for either the inquiry or the decision on whether to begin criminal proceedings, or at the level of the court. Responsibilities are explicitly defined in some cases. In the German Federal Republic, the judge of the court in which the case is being tried can decide not to continue the trial; the same applies in Yugoslavia, especially after information about the offender's personality becomes known. Depending on the country, halting criminal proceedings can lead either to referral to an agency which is more administrative than judicial, or to purely protective judicial proceedings, as in France. Certain legal systems follow the principle of automatic criminal proceedings, while others leave the police or prosecutor's office considerable discretionary freedom.

At whatever level, the power to decide whether to file and initiate penal proceedings is very important, but halting the proceedings or the filing does not necessarily serve the best interests of the juvenile, his family, or society. Juvenile proceedings, even in criminal cases, must have an educational objective. Juveniles who come before the court frequently have already been subjected to numerous interventions, usually by the police, without avail. Educational intervention is most effective in very young individuals from the moment they are first involved in delinquent behavior.

Modification of Court Decisions

After finding the juvenile guilty, does the court receive information on the delinquent's progress? Can the court modify its decision? Can the court control the actions of extrajudicial agencies eventually given responsibility for the juvenile?

Most countries have a kind of probation officer who, because of his court-related functions, must keep the court informed of the juvenile's progress. The role of probation officers is essential because they are much closer to the judge than are institutions for reeducation. In most cases, the agencies or institutions must periodically file reports (e.g., in the German Federal Republic, Belgium, and France), although some countries do not seem to have institutionalized such reports (e.g., Great Britain, Jamaica, and India). Certain countries limit the situations in which the court may receive reports, most frequently to cases involving new offenses and especialy requests for revocation of probation; such reports are filed by the institution or the probation officer at the special request of the court (e.g., in British Columbia and Australia). In certain cases, the juvenile himself must be heard by the court.

The possibility of modifying a sentence already imposed, whether penal sanctions or educative measures, depends on circumstances. A change may involve appeal of a court decision, modification of a supervised educative measure, placement in an institution, revocation of probation, suspension of a sentence, postponement of sentencing, or early release of the juvenile. Appeal generally is recognized everywhere, but precise details for appeals of decisions made chiefly by administrative agencies are not known. Furthermore, the problem of appeal is not directly related to the problem at hand.

Revision of educative measures is generally possible but within exceptionally variable limits. It is unclear who can request such a change. The most common petitioners are parents, juveniles themselves, the public prosecutor, the probation officer, and the responsible party at the educational institution in which the juvenile delinquent has been placed. In France and Zaire, the judge may act ex officio. Certain countries recognize only appeals from or revocation of probation; revocation of the prescribed measure through a new judgment seems contrary to the principles of certain national systems of law, e.g., double jeopardy. The right to revise sanctions is restricted to countries such as Great Britain and Japan. Some countries are very strict in applying precedent authority. South Korea recommends that the court designate maximum and minimum time limits for carrying out the sentence, and the court can also place a time limit on institutional placement. Certain countries, which do not recognize the principle that the court, as an autonomous juridical institution, has the right to revise decisions, permit the court to specify the method of executing the sentence and of treating juveniles in institutions. The court can later modify these methods. Finally, the law can also prohibit modification before a certain time period has elapsed, as in Yugoslavia.

In most states, penal sanctions can be imposed on juvenile delinquents; the age for which such sanctions are possible is variable. These sanctions take different forms, e.g., various types of probation or deferred sentences. In Australia, placement on probation is normally the only case in which the court can modify its decision; revision occurs when the sentenced juvenile did not respect the terms of his sentence or in cases of recidivism. The court can then withdraw the privilege of probation or sustain probation in a stricter form. The court can order early release of the juvenile from a sentence; in Colombia this is a frequent practice. Most countries affirm the need for a climate of trust and mutual respect to help achieve the common goal, improvement in the condition of juveniles with problems.

Certain legal systems do not provide for judges who are specialists in juvenile affairs or in problems regarding execution of court decisions (e.g., in Great Britain, there is no supervising judge), while in other countries the law assumes specialization and permanent availability of judges (e.g., in Belgium and France).

Many countries attempt to make juvenile proceedings less judicial (e.g., use of children's hearings in Scotland and classification of juvenile delinquents and juveniles at risk together in Venezuela, Panama, and Spain) and to use less penal vocabulary (e.g., in the United States, Australia, and India, the term "disposition" replaces "sentence").

Persons Authorized To Institute Proceedings, To Attend Hearings, and To Request Sentence Modifications, as Well as Kind and Extent of Proof Required

Who may set proceedings in motion? Depending on the situation, initiating parties may be parents or guardians of the minor, any citizen aware of a dangerous situation (e.g., in Switzerland, India, and Brazil), public or private agencies for youth protection, probation officers, or police. The public prosecutor, when he exists, has a particularly important function and may even have a monopoly on initiating proceedings (e.g., in Belgium). School authorities (e.g., in Yugoslavia, Canada, Brazil, South Korea, and the United States) and private organizations (e.g., in England and Scotland) play a significant role in identifying juveniles at risk.

Special judges, as in France, the Ivory Coast, Poland, and Canada, may decide ex officio to start proceedings, to conduct an inquiry, and to preside over the trial. Juveniles themselves may request assistance from a special judge. Requests of this sort were common in France before the legal age was lowered from 21 to 18 years in 1974. In Canada, the judge can appoint ex officio a person who, under oath, requests the commencement of protection proceedings.

To avoid criminal action against very young children (i.e., 9 years old in the Philippines and 10 to 11 in France), protection proceedings are utilized. Administrative services for juvenile protection take a case to juvenile court only after having attempted to reach a conciliatory agreement with the family (e.g., in West Germany).

Who must and may attend hearings? Unanimity exists on who is to be called to the hearing: the minor, who may be excused if he is too young, parents or guardians, social workers, probation officers, representatives of juvenile protection agencies familiar with the case witnesses, teachers, experts, psychologists, and persons whose presence is deemed necessary by the court, as well as the public prosecutor.

In Great Britain, a press representative may be admitted to the hearing, but he must respect certain restrictions on information published. Discussion generally takes place behind closed doors, and the court may ask the minor or his parents to retire. A number of countries permit (or require, as in Belgium) the presence of defense counsel appointed by the interested parties or by the judge and compensated with public funds.

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Court procedures vary but tend to avoid the usual legal formalities (e.g., in Yugoslavia and the Federal Republic of Germany); in some cases (e.g., the Philippines) proceedings are only written. Few directions are given for summoning individuals; in some cases, no special form is followed, whereas in others an official summons may be issued at the public prosecutor's request.

What kind and extent of proof are necessary? The situation of the minor, either as a difficult child or as a child victim, must be established as dangerous to justify judicial intervention, and all the usual means--hearings, witnesses, social inquiries, expert testimony, and so forth--are used to that end.

The proof needed varies from country to country and usually depends on the judge's convictions. In some countries, more precise regulations exist for criminal procedure, but the proof demanded by the juvenile protection authorities is often less rigorous. For individual culpability, certain countries require proof beyond reasonable doubt, and in juvenile cases, a balance of probabilities (e.g., Jamaica). In Australia and Great Britain, such looseness is evident in proof requirements for criminal or even civil proceedings. In most countries, however, matters are left "to the conscience of the judge" (e.g., in Belgium and Switzerland), so that absolute rules are difficult to define; some countries (e.g., Austria) do not impose any particular rules. The United States demands clear and convincing evidence, and in Canada proof need not be absolute but must be circumstantial.

Who may request that the court revoke or modify sentences of earlier proceedings? In addition to appeals before a superior court, most countries recognize the possibility of revocation or modification by the court which has already passed an educative sentence. There is a broad consensus on who can act: parents, the minor in question, educators who are responsible for the juvenile and can judge whether the sentence has become useless or inadequate, the probation officer, and the public prosecutor. The court or the special judge can act ex officio in Brazil, the German Federal Republic, France, and Spain.

Sometimes the possibility of revising the judgment for a juvenile delinquent or child at risk does not exist or is limited. In some cases a court cannot reconsider a case that it has already tried and a new decision must be reached, this time at the supreme court level (e.g, in British Columbia). In Australia, this new decision is administrative, at the ministerial level, while Zaire has institutionalized the changes which can be made every 3 years while the child remains delinquent or at risk. Certain countries (e.g., the Ivory Coast) believe that affected parties must be informed of possibilities for revoking or modifying earlier judicial educational arrangements, and some (e.g., Yugoslavia) note that this option is not often used by the most disadvantaged population.

Conclusion

If the sanction of the law is necessary, then it must be applied only with attention to the full penal process and its ends: i.e., from initiation, intervention, and the institution of proceedings, to the enactment of a sentence and the modification of a decision, consideration must be given to the significance of the goal of the process—the juveniles' eventual freedom and the resocialization of their personalities.

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