The Polish Approach to Juvenile Delinquency. Context and Tendencies

1 Introduction

As far as juveniles are concerned Poland has been generally far in advance with a long tradition of legal guarantees and separate proceedings for children and youth. Juveniles are treated by about 312 family courts competent in most family matters. Family courts never apply any penal sanctions. The criminal liability is possible only before criminal court and starts with 17. The diminished penal sanctions may, as a rule, be applied only when the perpetrator attained the age of 17 at the moment of committing an offence, he or she is then called young criminal (till 21). In exceptional cases (enumerated in the penal code as murder or aggravated rape etc.) the age limit of criminal responsibility may be ad causam lowered by two years and then the criminal court applies penal sanctions. In some cases the age limit of criminal liability may be increased by one year (it’s up to mental development and circumstances of the deed).

The Juvenile Act of 1982 broke most of the still existing links between provisions concerning criminal law and provisions concerning juveniles so that some authors claimed that the new branch of law had just emerged. The main principle of this act and the guideline for any intervention made under this law is the Welfare of the Juvenile (the principle of rehabilitation). The law provides two reasons for intervention: the first means that the juvenile committed a criminal act (as defined in penal law provisions), the other one means that the juvenile shows symptoms of demoralisation. Although, in practice, most cases of demoralisation among its symptoms have the criminal act committed by a juvenile it is not necessarily needed in order to
start intervention. Indeed, the Juvenile Act which contains some procedural as well as substantive provisions, concerns all children under 18 who show symptoms of demoralisation. The law does not provide any definition of the notion of "demoralisation" but gives examples of symptoms of what is called "demoralisation", namely, breaking the principles of community life, committing criminal deeds, truancy, use of alcohol or other drugs, prostitution, vagrancy, taking part in criminal gangs etc. This behavioural description seems to be insufficient from the pedagogical point of view but it still gives at least a broader field for any reasonable pedagogical intervention.

The whole intervention in cases of demoralisation is dealt with by the family court based on civil procedure. The family courts were established in 1978 (they replaced juvenile courts) in order to deal with all family matters which strengthen the educational and therapeutic approach towards juveniles. The family courts deal with most cases concerning family problems and any intervention without consent of the family in its life must be based on family court decision. The family courts, in most cases act on the basis of Family Code or Juvenile Act sometimes other laws like Mental Health Act etc.

2 The notion of Juvenile in Juvenile Act of 1982.

The Polish notion of juvenile is too some extent different from most other western systems and it has never followed the Soviet patterned model of commissions for juveniles either. There are at least three different scopes of the notion of juvenile under the legal provisions of Juvenile Act of 1982:

- Firstly: a juvenile is a child under 18 who shows symptoms of the described above demoralisation. In such cases the family court deals under civil law proceedings adapted to the juveniles matters by the Juvenile Act. The minimum age is not provided by the Juvenile Act. In practice the courts do not start any intervention on the basis of the Juvenile Act in cases of children who are 9 or 10 years old. In case of very young children the intervention is based on art. 109 of Family Code and its justification is the failure of legal guardians (in most cases parents) to secure the proper care for children;

- Secondly: a juvenile is a child between 13 and 16 who committed a criminal deed. A criminal deed is an offence of Penal Code and some selected provisions of the code of administrative petty offences mentioned in the Juvenile Act. The case is dealt with by family court either under civil law proceedings or under the criminal proceedings adapted by the Juvenile Act if after the preliminary stage the court considers the use of correctional measures. In that last case the proceedings cover the protection of the rights of the juvenile such as the principle of nullum crimen, the right to defence (to examine witnesses, to be present at the court room), to the legal adviser and other typical guarantees of penal procedure (the right to keep silence, for instance). However in all cases the whole proceedings are followed in the best interest of the juvenile and the penalties provided by Penal Code may not be applied. The broad category of juvenile delinquents is always reflected in police and court statistics concerning juvenile delinquency and in this article I will deal mostly with that category. To sum up for the Polish statistics of juvenile delinquency, the juvenile is a perpetrator of a criminal deed who was between 13 and 16 at the time of committing the criminal deed. In case of
children below 13 a criminal act is only treated as a symptom of demoralisation and is not reflected in criminal statistics. As mentioned above in some really very few cases 15-year-old perpetrators may be judged by criminal court which can apply to them normal although diminished penalties, and in some mild cases socially well adjusted perpetrators of criminal deeds, who committed them between 17 and 18 may be treated with educational measures provided by the Juvenile Act.

In other words the juveniles who are between 13 and 16 and committed a criminal deed are treated by family courts and do not bear the criminal liability and they can not be punished. Moreover in serious cases where after the preliminary stage the court considers using correctional measures the juvenile has some important guarantees of a due process of law typical for criminal law proceedings in their cases. This general rule of criminal non liability of juveniles knows three exceptions: 1) the juvenile who is 15 or more may bear criminal responsibility before criminal court and the (diminished) penalties may be applied to him/her if: he or she committed a serious, enumerated by criminal law crime and his/her level of maladjustment is considered very high, especially if previous educational measures failed; 2) if a juvenile under 17 committed a criminal deed but at the time of conviction is over 18 and taking into account his or her personality the use of educational or correctional measures would not work; 3) if correctional or educational measures ordered by the family court were not executed till the juvenile reached 18 and the personality of juvenile suggests that they would fail. In all exceptional situations only diminished penalties may be applied. In some western publications it is often stated that in Poland the criminal liability starts with 13, which is a simplification. For the juveniles of this age no penalty can be applied, only educational and correctional measures which neither in doctrine nor in practice should be confused with any kind of penalty, although the genesis of correctional institutions is comparable to borstal schools and other institutions considered in other systems as a kind of special punishment for juveniles. The family court in case of juvenile delinquency should establish the true nature of the act, but when deciding about the educational and correctional measures is concerned with the personality and social situation of the juvenile and the deed itself is not more than the very symptom of maladjustment. Its importance is judged mostly on the basis of psychological and educational diagnosis of the juvenile and there is no fixed measure which is foreseen for any type of criminal deed.

- The third category are juveniles under 21 both treated because of showing the symptoms of demoralisation and those who committed criminal deeds to whom the educational or correctional measures of the Juvenile Act are applied. The educational and correctional measures provided by the Juvenile Act may be applied as a rule for the indeterminate period of time but no longer than till the juvenile reaches the age of 21. It is a deadline even for the perpetrators of the most brutal and atrocious deeds.
3 The educational and correctional measures provided by the Juvenile Act.

The educational measures which are at the disposal of the family court are: warning, obligation of the juvenile to specific conduct. He or she should be made to restore the damage, apologise to the injured person, start to study or to work, avoid certain places or persons, quit drinking or using drugs. That provision is nowadays more often used by family courts. So in projects it is planned to formulate this provision in a more detailed manner saying in law what should constitute such a conduct. Moreover the court may establish the parents’ or guardian’s responsible supervision, the supervision of the NGO dealing with youth, or a trustworthy person who guarantees security, supervision by the probation officer. The court may also direct the juvenile to the probation officer’s centre for juveniles, forbid to drive mechanical vehicles, decide about the loss of things gained due to the criminal deed, decide about the placement in an institution providing professional training for juveniles, in a foster family, rehabilitative centre or in another institution providing care and education. The court may also at every stage of the proceedings agree to divert the case to the mediation and the mediator after reaching an agreement between the juvenile and the victim sends the case to the court to accept the agreement and stop the proceedings. The court may also use correctional measures if a juvenile is between 13 and 16 and committed a criminal act (an offence) and shows a high level of demoralisation (maladjustment) and the circumstances and character of the act are serious especially when the earlier used educational measures did not work out. The correctional measures are: suspension of the stay at the correctional institution (in that situation the court decides about applying one of the educational measures during the probation period), or the placement at the correctional institution. The correctional as well as educational measures are adjudicated for an unspecified time: their duration depends on the progress of the rehabilitation but they cannot be applied longer than till the age of 21. Correctional measures are till now under the auspices of the Ministry of Justice but since 1948 have been completely separated from the penitentiary system in terms of organisation, training of staff, the whole ideology and the principles applied. Last but not least the family court may oblige parents of juveniles to certain behaviour and may punish them with fines if they do not obey family court’s orders.

4 The very short phenomenological overview of juvenile delinquency.

The population of Poland has been stabilised since 1989 on the level of 38 – 38.6 million. The population of youth at the age of 13-16 made 6.5 % of the whole population in 1990, 6.8 in 1995 and 6.4 in 2001.

In 1990 the police registered 60 575 criminal deeds committed by juveniles (the number of all registered offences was 883 346) and in 2001: 69 366 (the number of all offences reached 1 390 089). In the same period of time the number of all teenagers at the age between 13 and 16 rose (the demographic top of births was noted in 1983), so the proportion of juveniles to the whole population of youth at the age of 13-16 was relatively stabilised (had Rosen slightly till 1995) and the proportion of juvenile perpetrators to adult offenders diminished. The number of chosen types of offences com-
mitted by juveniles was in those years as follows (the number of all offences of a given type in a given time is in brackets):

In 1990 there were 17 murders / in the 80 ties much fewer, in 1986 no murder by juveniles (in 1990 there were together 730 murders including 630 effective), in 2001 there were 20 murders by juveniles (1325 including 751 effective), in 1990 there were 741 (10 415) detriments to the health, in 2001 their number reached 2 853 (16 968), in 1990 there were 198 (9 395) participations in affray or battery, in 2001 they reached 1727 (14 369), in 1990 there were 107 rapes (1 840), in 2001 there were 166 (2 339), in 1990 there were 1 483 robberies (16 217), in 2001 they reached 10 838 (49 862), in 1990 there were 17 865 (159 998) thefts, in 2001 they dropped to 10 734 (314 820), in 1990 there were 27 353 burglaries (431 056), in 2001 they dropped to 16 814 (325 696). It is worth to mention, that in the mentioned above period the top level of juvenile delinquency was about 1995 with 82 551 criminal deeds and since that time on it stabilised around 70 to 75 000 criminal deeds. In 2001 the juveniles committed 5 % of all registered offences, and in 1990 it was 7 %. The proportion of robberies, offences causing detriments to the health, affrays or batteries committed by juveniles rose considerably (more than twice), the proportion of juvenile rapes rose about 20 %, meanwhile the proportion of murders, thefts, and burglaries committed by juveniles diminished. In respect of suspects 10% of them were juveniles between 13-16 in 2001, 16 % in 1995 and 14% in 1990. Although the juvenile delinquency has not been growing since 1995, the problem of aggressive juvenile delinquency is serious. The 20 % of all robberies , 15% of all detriments to the health and nearly 15% of all offences of taking part in affrays or batteries are committed by juveniles who are 13-16 years old and represent only a little bit more than 6% of the whole population.

5 Preliminary remarks on tendencies in the policy towards juvenile delinquency.

The main tendencies in the development of policy towards juveniles are mixed and do not follow the only one pattern. In the first years of the new political regime the general tendency in the state policy used to be strengthening the rule of law and improving the proceedings and instruments protecting human rights. This general tendency brought about positive changes in respect of the treatment of juveniles. The population of about 314 (some of them are branches) correctional institutions run by Ministry of Justice diminished and stabilised around 2 500, because of that their population became more difficult and dangerous but the general treatment and programmes improved. Since the 90-ties new interesting programmes of educational centres have been developing (MOAS), it means youth centres for social adaptation which are open institutions using programmes of individual rehabilitation and reintegration: there are more or less 6 of them among around 26 educational centres for juveniles with an average at 4 500 juveniles there. There are also about 2 500 juveniles in other educational and custody institutions.

In respect of police and family courts there is a visible tendency to develop a more professional approach to the juveniles based on the knowledge of education and psychology. Only a small part of juveniles who are judged by fam-
ily courts (less than 20%) is taken to any kind of educational or correctional institutions. Moreover in quite a lot of cases the courts decide to discontinue the case when its continuation would not be necessary for the welfare of the juvenile and not needed to protect the public safety. From all cases, including demoralisation more than one third is discontinued by the court. On the other hand the policy towards juveniles has to respond both to the growth of the number of violent juveniles (it grew considerably after 89 till 95 and then stabilised at this relatively high level) and the political and media organised pressure to use more repressive means against alleged growing danger of juvenile delinquency. The professional response to the real problem of aggression was quite rational and balanced, included new therapeutic programmes in educational and correctional centres as well as some repressive measures which could fit the public demand. In mid 90-ties the special proceedings for using force and coercion in correctional institutions followed by some comparable solutions for educational centres were introduced. This repressive change coincidence with the strengthening of the rule of law and was introduced after a lot of critical reports concerning the abuse of educational power in these institutions made by Polish Ombudsman, the special Commission of the Senate and some Human Rights NGO’s. To some extent those proceedings may be treated as a regulation and improvement of the informal hidden rules incompatible with the professional and legal standards - this point may be treated only as a working hypothesis. In the new Penal Code of 97 the law provided the possibility of lowering the age of criminal liability for enumerated serious crimes from 17 to 15. In the previous Penal Code of 69 there was a possibility to lower the liability only to 16-year-old juveniles and only for broadly and vaguely described serious crimes (in the Penal Code of 1932 the age of 17 was a deadline for criminal responsibility with no exception).

One can see in Poland typical for many other countries process of polarisation of the attitude towards juvenile delinquency. Juveniles who commit trivial offences, who are not violent, are treated with more leniency, the system tries to provide for them alternative solutions like mediation, restoration programmes etc. A lot of programmes of early intervention and postdelictual intervention has been developing in the natural environment of the juvenile in the framework of educational and welfare system, at least in big cities.

On the other hand the juveniles who use violence or who are engaged in organised crime, for instance in drug industry are more and more perceived rather as young criminals who hardly fit traditional educationally based system of juvenile justice system. In public the claim for the lowering of the criminal liability of the juvenile serious offenders has been heard more and more, it has also some echo among professionals although still the majority of all professionals both academic and practitioners seem reluctant to such an oversimplified solution. Some researchers also argue that the number of undiscovered juvenile criminality is growing what would be related to the spread of drug related subcultures and the rising of the poverty areas in cities and in some rural areas which are not well controlled by the police (the hypothesis of the development of Polish quasi underclass).
6 A few remarks concerning the start of the proceedings:

The family courts may start any proceedings whenever they get the knowledge about a problem, so there is no need for formal complaint. In practice cases of juvenile delinquency are brought to the family court by police who find them or are informed about the problem by victims, witnesses or other institutions like schools. In serious cases and if adults are involved the case may be sent to the family court by prosecutor. In the big cities there are special units of police for the juveniles where only qualified specialists in education, sociology, criminology, psychology or law work. The police are responsible for the first hearing of a juvenile which should take place in the presence of the legal guardian of a juvenile, in most cases one of the parents. In case of juveniles whose identity is not sure or if the legal guardians for different reasons are not able to take them over and provide necessary control as well as in the case of juveniles considered ready to pose immediate threat to the public and themselves by the continuation of their criminal activities, juveniles may be placed in custody while waiting for the trial by the family court. They stay in special police rooms for juveniles, and the police have to inform the court about their apprehension in 24 hour time. In the following 48 hours the juveniles must be presented to the judge who shall hear him or her in the presence of a legal guardian (parents) or in most cases a probation officer for family matters. The court may then decide about the immediate placement of a juvenile in a special emergency educational centre where all children from 3 to 18 years old are sent if they should be immediately removed from the family. Moreover in cases of juveniles suspected of committing more serious offences, who could try to escape or are considered dangerous, the court may decide to place them in special shelters for juveniles which are closed institutions (about 18 all over Poland). They can stay there up to 3 months. In more complicated cases the court may prologue their stay for the next three months. In reality in certain cases the juveniles who according to the court should be sent to educational centre or correctional institution must wait till their placement is organised and they stay in emergency placement institutions for more than six months.

In all cases coming to the family court, also in cases of juvenile delinquency, one of the first orders considers sending the probation officer to check the situation and make the standard report about social, family and educational background. Only then when a report is made are the juveniles heard by family judge at courtroom in the presence of legal guardian or in the presence of a probation officer.

7 Probation officers in family matters.

The first experiences with probation in juvenile courts started just after the first world war but the modern probation system has been continuously developing since the end of 50-ties of XX century. The great change in the system of probation brought the new Law on Judicial Probation Officers enacted by the parliament in 2001 which entered into force on 1 January of 2002. The law created the corporation of professional probation officers both for criminal and family matters which has its autonomy with the legal representative body (the National Council of Probation Officers), its own regional representations (Assemblies of Probation Officers), code of ethics, own disciplinary courts etc. To be a professional probation officer a candi-
date must have an M.A. degree in education, sociology, psychology or law and then if accepted, he/she can start the one-year training and pass exams to be qualified for a probation officer. The probation officers are divided into probation services for criminal court and family court, and are guided in professional matters by regional director of probation system with two deputy directors for criminal and family matters. They are part of the justice system and form a branch in the system of regional courts and in that respect the general coordination of their work is the task of the president of higher regional court (s.d. okr. gowy). In each family court there is a team of probation officers led by a coordinator. They have important tasks both in preliminary and executive parts of proceedings. In the preliminary part they prepare the report about the juvenile (in 2002 family probation officers prepared 288,302 reports for all cases under Juvenile Act, Family Code etc.). They go to the family, if needed they can go to school and any other institutions, they have the right to ask for support in their work any public institution. The report of probation officer is one of the main basis for the family court to make decision. The probation officer has to propose certain measures which seem to fit the case but nevertheless any legally bounding decisions in the whole proceedings are made by the judge. If the probation officer sees any need of making more profound psychological, educational or even psychiatric diagnosis of a juvenile he/she can ask the judge to order it. In that situation the juvenile is sent by the judge to one of the about 65 Family Centres for Diagnosis and Consultation (RODK) run by Ministry of Justice or to other specialised institutions (for drug problems, child abuse etc.) and then the diagnosis proposed by those specialists is used in decision making process in the court. If a juvenile is to be placed outside his or her family in a special educational centre or in a correctional institution, such deepened diagnosis has been obligatory since the amendment of Juvenile Act in 2000. In the executive part of proceedings the supervision of the juvenile by the probation officer is one of the most popular educational measures used by family courts in majority of cases of juvenile delinquency (about 40,000 cases). According to the Law on Judicial Probation Officers the main tasks of probation officers have the character of educational-rehabilitative, diagnostic, preventive and control activities (art. 1.). From that wording and other parts of that law one can clearly see that their duties consist mainly of “soft” educational activities and the control (repressive) function although important should not prevail. The probation officers who get the case have to set up the plan of the supervision, they have to define problems and provide the methods of coping with them. They are obliged to cooperate with all institutions in the local community; their natural partners are family members, schools, community day care centres and other parts of the local welfare and educational systems. In that respect the role of probation officer is to coordinate the work of different agencies which can include professional meetings to discuss problems and to look for complementary efforts in overcoming problems. In any situation when in the case of a juvenile the formal decision is needed, for instance to oblige a juvenile to certain behaviour or if the probation officer considers that the supervision does not work and the change of educational measure is needed, he or more often she has to put motion to the judge (who is also in most cases “she”) who shall decide. In many practical operational matters the decisions are made however on voluntary manner, the probation officer may sign “contracts” with a juvenile or just agree with him or her on a certain way of doing
things. In all cases the juvenile has to know exactly his or her rights and his or her legal representatives may always complain to the court if they disagree with the probation officer. The supervision is decided by family court for an indeterminate time period but cannot last longer than till the juvenile reaches 21 (in the cases run by probation officer under Family Code the supervision can last only till the child is adult it means till the age of 18). In practice the supervision of a juvenile should not last longer than two years. At that time some positive changes should be seen or the supervision should be considered as an ineffective measure. Of course these guidelines are used by probation officers as standards, but in individual cases the supervision may, in a justified way, last longer than the standard provides, especially if the problems of juvenile are closely related to family crisis. The professional officers for family matters (nearly 2000 all over Poland), work together with the volunteer probation officers who help them with certain cases. Most of volunteers are professionals from the education and welfare system, sometimes the graduates or older students in education, psychology or sociology. Usually they run some few cases under the supervision of professional probation officers. They are not paid but they are reimbursed for the expenses, what in reality may be a kind of financial stimuli to do this job. However for most volunteers the main motivation is to enlarge their professional experiences, for young persons to make their curriculum vitae stronger, sometimes it is the first step to apply for the status of a professional probation officer (there are about 30 to 300 candidates for one post depending on the region of Poland). There are nowadays slightly more than 9000 volunteers registered in family courts, each of them may have at maximum 10 cases, but they deal mostly with not so difficult issues and as a rule majority of their cases concern family problems or demoralisation, cases of juvenile delinquency as more serious are preferably dealt with directly by professional probation officers. In some districts probation officers run so called centres for juveniles (their number used to be about 800 all over Poland nowadays there are only 112) in some areas like in most districts of Warsaw or in the eastern district of Siedlce probation officers use only different types of social agencies for youth including day care centres run by local community welfare agencies. Indeed the quality of work of probation officers and as a consequence of the family court highly depends on the quality of social and educational services provided by local community, and in that respect there are big differences between rich communities (as Warsaw) and many underdeveloped rural or post industrial regions touched by high unemployment rate (the average unemployment rate in Poland is now 20%, in some regions crossed the psychological barrier of 30%).

8 Some further remarks on other measures used in juvenile delinquency matters.

The warning is used in cases of petty first offending cases if the whole situation suggests that the criminal deed had rather incidental character and is not a part of the whole behaviour system of a juvenile. In other lesser cases, if the family is considered as capable of coping with problems, the responsible supervision by parents is ordered (about 16 000 cases). In that situation parents have to write a formal report to court with the established frequency (for instance every 2 months), and the probation officer has only to react on the mentioned problems asking the judge for the order to intervene, he or
she has also to verify periodically the accuracy of the report. The general rule of the family court is that every ordered measure must provide the criteria for verification and in most cases this is the task of probation officer to check the situation. In certain cases when the victim and the damage are easy to identify the case may be brought at every stage of proceedings to the mediator, the list of mediators is provided by the Ministry of Justice, and they are not probation officers. The outcome of mediation should be written and presented to the family court which can accept the deal and the probation officer has to secure that the obligations will be realised. The mediation was always possible under the Juvenile Act of 82 and started as an experiment in some districts i.a. due to cooperation with German Colleagues in the mid 90-ties. Since 2000 the mediation has been further institutionalised in the amendment of the Juvenile Act but its practical use still varies among different regions and courts and is not very popular.

The court may divert the case to school to deal with the matter or to NGO (for instance scouts or sport club who take responsibility for resolving the problem), but this solution is not very popular, concerns very few cases. The family court may also oblige a juvenile and also his or her parents to a certain behaviour. In case of juveniles it may concern, for instance the reparation, apology but also the following of a certain treatment, therapy for drug addicted juveniles and so on. In former political regime in some family courts there was a quite popular idea of universities for parents of juveniles. Parents of juveniles were obliged to follow those courses (parenting), it is used now not so often, but parents may be obliged to provide necessary conditions at home for the juvenile (a proper desk to do homework for instance) or to control at what time a juvenile comes back home etc. Parents may be punished with fines if they do not follow the family court orders.

If the educational centre is ordered after the specialised diagnosis, the report of the case is sent to a special commission which look for the proper institution where there is a place. The problem of placement and of organisation of the educational centres was related to the question of reforms of regional administration. In the first stage of reforms in 1999 the educational centres were transferred from the Ministry of Education to the welfare system run by local communities which were also responsible for the placement of juveniles. The system did not work well for many reasons, including financial problems and lack of interest of local communities in those institutions, so at the beginning of this year most responsibilities for placement and organisation of those centres came back to the Ministry of Education. It is worth mentioning, that apart from the public institutions which are part of special educational system there are other NGO institutions, sometimes financed partly by local communities or other public funds which provide care and education for juveniles on voluntary basis. It is possible at the first stage of proceedings that parents realise the scope of problems they face with a juvenile which can hardly be overcome at home and they look for independent institution where they can place their child on voluntary basis. If the institution is known to the probation officer and to the family court that solution is in most cases accepted, so there is no need to transfer a juvenile to the public institution, in this case also the probation officer shall control the situation. The placement of a juvenile by parents on the voluntary basis is especially needed in cases of drug addiction and mental health problems, as in that respect there are special difficulties with coercive placement. There
are too few such public institutions. Moreover most of them need a consent of a juvenile because of the requirements of their therapeutic programmes. So it happens that notwithstanding the judicial order it is impossible to place a juvenile in the required type of institution.

The placement in correctional institutions may be ordered only if any other measures would not be enough. It is used in cases of serious maladjustment of juveniles, very often in respect to the perpetrators of violent or aggressive deeds. Even in serious cases courts prefer to suspend the placement in correctional institutions and in the probation period the juvenile may be placed in educational centre or be under supervision by probation officer. The suspension is ordered for 1 to 3 years. If the conditions of the probation are not fulfilled the placement of the juvenile in the correctional institution is much easier as in the new case. The juvenile is directed to the proper type of correctional centre by a special commission in the Ministry of Justice, he or she may wait for placement in a special shelter for juveniles.

9 Question of early intervention

The whole Juvenile Act of 82 does not pay too much attention to early intervention or prevention and this decision of legislator seems to be deliberate. At least some pedagogical authorities as Stanisław Jedlewski and Czesław Czapów considered that the creation of a system of prevention against juvenile delinquency may have very bad consequences in terms of their social labelling and creation of the circulation of juveniles among different specialised institutions which would deal with them from different high specialised perspectives. For this reason the problem of prevention from juvenile delinquency is dealt with by different institutions mostly in the framework of general education and social work for all children and not under the label of an institution for any kind of socially "dangerous" children or youngsters.

In every primary (6-13), secondary (14-16) and in most high (17-19) schools all over Poland there should be the so called school educator responsible for dealing with social problems of pupils, bad behaviour, symptoms that something is wrong at home etc. In some schools there is also as a part time job a psychologist who can help the educator in his or most often in her work. The school may intervene and resolve many problems, including some incidents or conflicts among peers and so on. In schools where the social work is not active the danger of development of subculture favourable for development of delinquent behaviours is much greater. The school programs for children with problems with writing and reading or hyperactivity syndrome also increase considerably their chances for school success. Indeed, the failure at school significantly correlates with the risk of delinquent behaviour. Those programmes are now standards in most big cities. In many areas the social welfare organizes the day care centres where the youth may go after school, do homework, eat something and play or exercise sports. etc. A lot of those agencies are run by different NGO's which sign contracts with local communities. There is a good tradition, at least in Warsaw, of students who help children with school problems in doing homework, they do it in day centres but also can come home, it does cost nothing. It is important as the children from the better off families usually have highly professional additional lessons or attend private schools. In Warsaw there is a considerable network of different agencies which help children with drug related problems such as day care centres, therapy, consulting and
test providing agencies, where parents can immediately and for free check their children etc. There are a lot of educational programmes both for families and for children concerning sexual abuse, drug related problems, violence in family, also police are involved in such educational actions at schools. There are programmes for juvenile prostitutes (street workers at the Central Station in Warsaw), which also try to help with the HIV danger. On the other hand many schools have special guardians who prevent them from entering strangers especially drug dealers. In all Warsaw schools every child from a poor family has a lunch paid by social welfare, some of them get the school materials from welfare.

The whole ideology of policy towards juveniles is that it tries to look at the child problem from the holistic point of view. The reality is that in such a system success or failure of the policy much depends on the whole work of many welfare agencies, the more they do, the better the juvenile policy is. It concerns early prevention but also the possibility of working with juveniles in open environment when they already got under probation officers order or other educational order. The quality of juvenile policy depends highly on the coordination and development of community work of schools, clubs, consulting agencies, etc and if the network is poor the opportunities for successful work with juveniles diminish. When many block music clubs disappeared the youth from neighbourhood started to hang around corners and they became more and more troublesome, they did not have any idea what to do. That is important to be able to propose some interesting alternative instead of antisocial and criminal behaviour. The police also play a very important role in prevention and in juvenile units they also use rather educational approach, their staff is well educationally prepared. At some moments they try to play the “zero tolerance” and send to the family court for instance a case of a wonderful pupil of a prestigious high school because he drank one beer in the park which is forbidden. It seems that they could resolve this problem in many other ways without engaging the whole justice system and labelling a young person. But playing “zero tolerance” is fortunately not the main achievement of police which pay special attention to the drug market, dealers and to robbers who sometimes work with adults and who, indeed form a small but dangerous minority of juveniles.

There are cases in which the probation officer is dealing with dysfunctional family (on the basis of Family Code), and at a certain moment one of the growing children from this family comes under supervision of this officer because he (or seldom she) committed an offence of having some forbidden drug substance or taking part in battery. It is quite often that in one family the parents have problems with alcohol and children with drugs or delinquent aggressive behaviours. The ideology is that youth is a victim of adult’s failures so the first reaction should be to correct the situation in which the potential juvenile delinquent lives. Even if this approach fails at the stage of early intervention, the family court will act mostly under this ideology of helping and educating a juvenile who is rather a victim of the situation. The probation officer and other agents try to responsibilize the juvenile, but the responsibility is something which is not natural but must be socialised and in most cases, indeed we see many failures in the process of socialisation of the juvenile clients of family courts for which parents, schools, welfare and politicians should be blamed first.
10 Final remarks.

The juvenile delinquency is a very broad notion, so it is rather doubtful that there is one main aetiology which applies to all cases and all juvenile delinquents, it is so obvious but in public debate often forgotten. The public debate is very often stimulated by dramatised examples of very drastic and mostly untypical and rare cases of violent juvenile behaviours which are very often committed by juveniles on the border line of psychiatric norm. For instance, in the last 5 years I know only two cases of juvenile’s murders committed in Warsaw (nearly 2 million inhabitants), once two brothers killed mother, put her body into the wardrobe and went on holidays. One of them was diagnosed schizophrenic the other was completely dependent psychologically on his older brother. Another case concerned also an unbalanced young person who killed father. The dramatised publicity of strange criminal cases is used in politics to make the public fear and play on the very basic instincts. This wave of populist criminology is also coming to Poland although up to now has had little influence on our way of dealing with juveniles. From years of experiences in my work with probation officers in Warsaw I can say that the correlation between poor and dysfunctional families and the juvenile delinquents who appear in family courts is more than 90%. In other words the old cliché of juveniles who are victims of social order and family conflicts has still empirical validity, at least in Poland. One can see that some socially dysfunctional activities of youngsters from socially excluded families although morally and legally unacceptable may give them rewards which would be objectively hardly accessible for them if they follow the quiet and socially well adjusted behaviour. If it is counted that big part of computer programmes or DVD which are sold in Warsaw are illegal and a juvenile is engaged in that deal it is not easy to convince him or her, that all “normal”, sometimes good looking people who buy them are OK and he or she is not. And if good looking buyers of illegal devices are not OK, so who is OK? Politicians, who follow the war activities in Iraq? The same problem may appear in certain areas where the use of light drugs is on the one hand an offence on the other is a socially accepted subcultural pattern of life. The moral panic may be understood but it is not a reasonable answer.

Although the Juvenile Act of 82 is considered as liberal and humanistic it is now very often criticised or may be it is criticised because it is so. Some critics object to its legal concept. Namely, it is argued that the situation in which the family court should ad causam decide if it would work under penal law procedure or under civil law procedure may provoke practical problems. Such a structure of this Act is to certain degree the price paid for the holistic approach in which the problems of maladjustment of youth are to be dealt with on the pedagogical basis and the objective penal law approach (orientation on the criminal act as the basis of action) had been abandoned. But this is the objection mainly of those who do not know the practice of family court which has hardly any problems with procedural questions, it is hard for those who are out of that system. The Act does not provide the minimum age of a child who can be dealt with under this act which is also sometimes criticised. The court has a large power to decide if it starts to deal with a child on the basis of Juvenile Act or on the basis of Family Code. This criticism does not concern the issue of juvenile delinquency but the cases of demoralisation (difficult youth), and is also not so relevant from my practical experiences. Moreover, critics say the judge has a great discretionary
power under the Juvenile Act, he or she may discontinue the legal proceed-
ings at any stage of the case, or pass the case to the competence of a school
etc. The question is serious and may be the subject of discussion but should
not directly lead to the criticism of the whole approach rather to the dis-
cussion about amendments or its application. The criticism concerns also the
possible bad effects of the directing to the same educational centres the
“demoralised” juveniles who did not commit any offence or may by some
petty one (like having some marijuana for own use), and the “real” juveniles
like those who stole cars or took part in robberies. Indeed the criticism may be justified but it concerns more details of the system, the question of types
of institution and the process of placement and not necessarily the very
principle of the Juvenile Act, its holistic approach.

As far as legal guarantees are concerned the Polish system is fully compati-
ble with Be Jeing Rules and the Convention on Children Rights. The cases of
demoralisation which are dealt with in Poland directly by family courts are
in many countries dealt with by specialised welfare agencies. Although the
formal decisions of those agencies can be questioned in court and usually
are the effect of more or less forced bargain with a juvenile and family, the
Polish situation in which the court decides about intervention seems to
give more not less legal guarantees (there is also always the right to appeal to
the higher court, of course). Moreover in cases of serious juvenile delin-
quency, if the use of correctional measures is considered, the juveniles have
all guarantees typical for the penal proceedings although they do not bear
penal responsibility and are not punished. Their legal status is as well pro-
tected as adults in criminal court.

Nevertheless the future of Polish juvenile policy is uncertain, still new
amendments and even a new law on juveniles is possible in the near future.
The general (and official) principles of a reform of rehabilitative system
which has been going on since the beginning of 90-ties are:

- further encouragement of the present tendency to reduce the application
  of the most severe measure - placing in the correctional centre - and the
  promotion of various measures in an open setting,
- the replacement of sentencing to a correctional institution with alterna-
tive methods, such as compensation for victims, mediation, and the substi-
tution, as far as feasible, of hostels and centres of social adaptation for
correctional institutions,
- the introduction of differentiated correctional institutions with special-
ised profiles, improvement of individual educational measures and the
use of different forms of institutions, from semi-open to open, to provide
medical, psychiatric and psychological treatment,
- a full commitment to the treatment of juveniles in institutional care with
  respect for them as human beings, and to provision for their active par-
ticipation in establishing their present and future position in the com-
munity,
- the institution of therapeutic and probation support as an alternative to
  a correctional institution even where the individual concerned has al-
ready begun serving in such an institution,
the provision of greater scope for the initiative and activity of governors of juvenile centres, and an improvement of selection procedures and professional training for staff dealing with difficult youth, improvement of co-operation between sectors, organisations and local authorities with regard to prevention of juvenile delinquency and after care systems.

Some authors, like Leslaw Pytka, one of the leading reformers of the system of special education for juveniles suggested also to move the correctional institutions from the Ministry of Justice to the Ministry of Education. Some discussion concerned also the limiting of staying of juveniles in correctional institutions only till they are 18. There are also voices of much deeper reform, such as coming back to the old model of juvenile courts, which would be the response to the growing number of violent and aggressive deeds committed by juveniles. One can expect that this tendency may be strengthened by some European influences. The problem is, that notwithstanding certain good reasons for this move, the general public climate of such debate suggests that it would be related with the tendency to make the policy towards juveniles more repressive and punitive.

I do not question many doubts about the effectiveness of educational and therapeutic programmes for different types of juvenile perpetrators but indeed as I deal for many years at the Warsaw University with the question of “adult” penology, I do not see any serious alternative to the weak answers of educationally biased system in the system which would be more repressively biased. In many criminological books concerning the tendencies in Western criminal policy (see for instance Sentencing and Sanctions in Western Countries (ed. Michael Tonry, Richard S. Frase, Oxford University Press 2001)) it is argued that from the empirical findings we can say that the considerable differences in the criminal policy among western countries, which are, by the way, even greater in respect of juvenile delinquency, are mostly related to the system of values of the societies and not to the level of criminality or real effectiveness of those policies.

The policy towards juveniles is only a part of the whole policy of resolving social problems and cannot be fully understood out of this context. In the Polish context the main question concerns the model of social policy we would lead: more directed toward inclusion or toward exclusion of those who are less fortunate in social games and mostly not because of their choices or talents but of social and family background. In all countries the repressive attitude towards criminality developed simultaneously to the process of the dismantling of the welfare system and the growth of the social distance between richer strata and the underclass. The best example may be USA where the prison population in the times of Great Society at the end of 60-ties was comparable to those in Western Europe and nowadays after neoliberal revolution is about seven times higher, although the level of criminality (except for very violent one) is comparable to those in Europe. Punishing juveniles is also a good method of educating professional gangsters.
I hope my country had better correct its foreign militaristic, breaking international law policy than that related towards juveniles. In respect of foreign policy my voice represents the big majority of Polish people. In respect of juvenile delinquency I and my colleagues have to face the public justified fears and work to convince people that the juvenile justice system we have now, if improved, may well protect Poland from changing our society into a jungle where only big gangsters with a lot of money and big armies may feel safe. It is difficult to teach young people that the greatest crime, which is responsible for the majority of victims in the history is that of obedience.