

Continuity in the Welfare Approach: Juvenile Justice in Poland

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INTRODUCTION

Poland is a relatively large country in central Europe. The area of Poland amounts to 312,000 km². According to current statistics, Poland's population as of 30 June 2004 numbered 38,180,249. As for the age structure, over one-fifth of the population (21.5%) had not attained the age of 18. The number of juveniles, who were at least 13 but below 17 years of age, amounted to 2,235,865 (Statistical data of the Central Statistical Office are available online, www.stat.gov.pl).

In 1989 Poland experienced a radical change in the political, social, and economic systems; after the collapse of the communist system in that year, the Republic of Poland re-emerged as an independent and democratic law-abiding State. Since 1991 Poland has been a member state of the Council of Europe and in 2004 it entered the European Union.

As many other post-communist countries, in the 1990s Poland faced an increasing number of offences recorded by the police, including offences committed by juveniles, and also negative changes to the structure of the crimes committed. This chapter focuses on basic recent trends in juvenile crime rates in Poland as well as on legal provisions concerning reactions to juvenile offences.

1. A BRIEF HISTORY OF THE POLISH JUVENILE LAW

1.1. The Juvenile Justice System under the 1932 Penal Code

It was not until 1918 that Poland became independent after a long period when the country had been divided between Austria, Germany, and Russia. After having regained independence it was a matter of great urgency to unify both the penal and civil law. As far as the penal law is concerned, the legislative commission set up to prepare the draft of the Penal Code stressed continuously that children and youths who had broken the law should not be treated as "little adults"; as a result, they should not receive the same penalties as adult offenders. Finally, the Penal Code of 1932 contained a separate chapter on juveniles which introduced a separate system of juvenile justice.

According to s. 69(1) of the 1932 Penal Code a juvenile was a person who had committed an offence before having reached 17 years of age. Juveniles who had committed an offence before his or her 13th birthday could not be accountable for their illegal actions. As a result, only educational measures might be imposed that ranged from a reprimand through the supervision of parents, guardians, or a probation officer to placement in an educational institution. The same measures were imposed on juveniles who had committed an offence after the 13th birthday, but before the 17th, provided that they were not competent to understand the nature of the act and direct their behaviour. Under s. 70 of the 1932 Penal Code, juveniles aged 13–16 who had committed an offence, while having been able to understand the nature of the act and direct their behaviour, should be sentenced to placement in a house of correction. It was possible, however, to impose educational measures on such juveniles as well, if the court found placing them in a house of correction useless on the basis of the circumstances of the offence, the juvenile's character or conditions of his or her life and environment.

As in many other countries there was a shift at the beginning of the last century towards a discretionary welfare-oriented model of juvenile justice. In Poland juveniles placed in a house of correction under the Penal Code of 1932 could be institutionalized until the age of 21. However, they might be granted conditional release earlier. Section 73 (1) of the Code gave courts the authority to suspend conditionally the execution of the placement of a juvenile in a house of correction provided that the crime committed was not punished by the death penalty or life imprisonment in the case of adult perpetrators.

The nature of the placement of a juvenile in a house of correction under the Penal Code of 1932 was a matter of great controversy. According to some lawyers placing a juvenile in a house of correction constituted a special educational–preventive measure, different from other educational measures provided by the Code. In the opinion of others, however, placing a juvenile in a house of correction for an indeterminate term was a specific penalty or quasi-penalty that combined some retributive elements and a predominant rehabilitative goal (Stando-Kawecka, 1993: 10–15).

It should be added that in Poland, immediately after having regained independence, separate juvenile courts were set up in some of the biggest cities. The Code of Penal Procedure enacted in 1928 also introduced separate proceedings in juvenile cases. In fact, there were only a few juvenile courts in Poland before World War II. It was only in the 1960s that the number of separate juvenile courts started to grow significantly (Marek, 1988: 42–43).

1.2. The Juvenile Act of 1982

The Penal Code and the Code of Penal Procedure of 1969 did not contain any provisions on juveniles with one exception; the 1969 Penal Code introduced the