

Juvenile Justice in Germany: Between Welfare and Justice

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INTRODUCTION

Germany is situated in central Europe and shares borders with Denmark, Poland, the Czech Republic, Austria, Switzerland, France, Luxemburg, Belgium, and the Netherlands. The country has a geographical area of 357,026.55 km². With about 82 million inhabitants the population density is 231/km².

Germany, with its capital city Berlin, is a parliamentary democracy. Article 20 of the Constitution (*Grundgesetz*) defines the political system as “a democratic and social welfare state under the rule of law.” Germany is a federal republic consisting of 16 federal states, which dispose of a certain degree of autonomy, particularly concerning questions of education and culture, but not in criminal and prison law as well as juvenile justice. Therefore, the same federal law applies for all federal states.

In 2004 the gross domestic product was € 108 per capita and the unemployment rate lay at 12% (about 10% in West Germany; 20% in East Germany, i.e., the five states that formed the former German Democratic Republic before the reunification of Germany in 1990).

The age structure is as follows (1 January 2004): children under 8 years: 7.4%; children 8–14 years: 6.1%; juveniles 14–18 years: 4.7%; young adults 18–21 years: 3.4%; young adults 21–25 years: 4.8%; adults 25–30 years: 5.7%; adults 30–40 years: 15.5%; adults 40–50 years: 15.7%; adults 50–60 years: 12.0%; adults 60 years and older: 24.6%.

Approximately 9% (7.3 million) of the population has a foreign passport, of which 25% is of Turkish nationality. A further 25% comes from other EU member states, particularly from Italy, Greece, and Spain. Population growth in Germany has been on the decline for years despite the increase in the number of immigrants, which played a significant role in the 1980s and early 1990s. Immigrants from the former Soviet empire with German roots have been issued German passports and they are not classed as foreigners.

1. HISTORICAL ASPECTS OF JUVENILE JUSTICE IN GERMANY: THE COMPROMISE BETWEEN WELFARE AND JUSTICE

The history of a system of specific social control for minors in Germany goes back to the beginning of the previous century. Since 1908, some courts, like those in Berlin, Frankfurt/Main, or Cologne, started developing special court chambers that specialised issues concerning young delinquents. Only after World War I could the idea of specific legislation successfully be pursued by opting for the “dualistic” approach of welfare *and* justice. Thus, in 1922, the Juvenile Welfare Act (JWA – *Jugendwohlfahrtsgesetz* of 1922) dealing with young persons in need of care was passed and in 1923 the Juvenile Justice Act (JJA – *Jugendgerichtsgesetz*, literally translated as the Juvenile Courts Act)¹ dealing with juvenile offenders who had committed a delinquent act prescribed by the general penal law (*Strafgesetzbuch*, StGB). A totally welfare oriented model of juvenile justice did not fit with the German “mentality,” which remained intent upon keeping the penal option to deal with young offenders. The compromise was a “mixed” system of juvenile justice, combining elements of educational measures with legal guaranties and a procedural approach in general, which is characteristic of the justice model. The JJA did not create a new “juvenile penal law.” Punishable crimes are the same as for adults, i.e., so-called status offences do not form an element of the JJA. The JJA consists of a specific system of reactions/sanctions applicable to young offenders and of some specific procedural rules for the juvenile court and its proceedings (e.g., the principle of non-public trials).

In comparison with the general penal law for adults the legislator of 1923 for the first time “opened the floor” for *educational measures instead of punishment* (the corresponding slogan was *Erziehung statt Strafe*), particularly of imprisonment. Also opened was the possibility to abandon the otherwise strictly applied principle of obligatory prosecution (principle of legality, *Legalitätsprinzip*). The JJA thus was a forerunner of the notion of giving the prosecutor a discretion whether to, and how to, prosecute or to dismiss a case because of the petty nature of the offence or educational measures taken by other institutions or persons (see §§ 45, 47 JJA and below). The third pillar of innovation of the 1923 legislation was to increase the age of criminal responsibility from 12 to 14 years.

In this context one can mention that only in the period of the Nazi regime between 1933 and 1945 was the 12- to 14-year age group “re-criminalised” for certain offences and behaviour. Today, the lowering of the age of criminal responsibility is only an issue (of a more rhetoric or symbolic nature, particularly in times of elections) for a few conservative politicians of the Christian Democratic

¹The literal translation of *Jugendgerichtsgesetz* reflects the historical roots of the JJA. It goes back to the adjudication of specialised judges of youth chambers at some courts of bigger cities like Berlin, Cologne or Frankfurt. The *Jugendgerichtsbewegung* (“movement for establishing juvenile courts”) had a major influence on the first JJA in 1923 (see Schaffstein/Beulke, 2002: 34ff.)