

The Swiss Federal Statute on Juvenile Criminal Law

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INTRODUCTION

Switzerland is a country of 7.5 millions inhabitants, of whom about 1 million are children and youths from age 7 to 18. The political system is a Federation of States, each with important decentralized power. The States making up the Helvetica Confederation are called “cantons” and there are 26 of them.

Juvenile Criminal Law is regulated by arts. 82–99 of the Criminal Code (Basic Law). As for procedures and judiciary organization, they come under the cantons’ competence. A procedures standardization project is being examined by the central government; it will be submitted to Parliament in the near future.

Accordingly each canton has a specific procedure and organization, making Swiss magistrates and lawyers the champions of comparative law.

Moreover, cantons are also competent as far as the implementation of sentences and measures are concerned, notably to provide facilities to accommodate young offenders. They can associate with other cantons to meet common needs. In that case they will sign an inter-canton agreement (called *concordat*), grouping the cantons’ resources for a specific institution. A new federal law requiring new institutions is consequently a source of problems: cantons will need a certain time to respond to these new requirements.

In Switzerland, the minimal age of penal intervention is currently seven years, and it will be raised to ten years under the new law. The age of criminal majority is 18 years. Between these two landmarks, protections limit imposing fines and the deprivation of liberty for minors younger than 15 years.

The aim of this chapter is to present the new Federal Law ruling the Juvenile offender’s regime, approved by Parliament on 20 June 2003.

1. RECENT CHANGES IN LEGISLATION

After a long gestation period lasting almost 20 years the new juvenile criminal law was born following a vote held at the Federal Assembly (the Swiss Parliament) on 20 June 2003 in which the first draft law on juvenile justice was adopted. The process had begun back in 1985 when Professor Martin Stettler of the University of Geneva first proposed a new draft law. This was submitted to a committee of

experts who worked on it from 1986 until 1993. The draft law then went through the consultation procedure, was sent back to the Federal administration for slight revision and was then submitted to the National Council which presented it to Parliament in 1998. It may seem surprising that a text for which the main parties concerned (juvenile courts, youth welfare services) as well as by the major political parties had reached an agreement in principle would have such a laborious delivery. And all the more so in that the parliamentary debate not brought about much change to the text.

The law is expected to come into force on the first of January 2007.¹ Such a long time-frame seems rather surprising but the reason is that the cantons, which retain sovereign authority not only regarding judiciary procedure and organization but also concerning institutional facilities, had requested extra time before the new law was implemented.

It should be recalled that the current legal code had been adopted in 1937 and entered into force in 1942. It had undergone a “face-lift” in 1971 but it needed to be revisited and updated. The law needed to be adapted to the change in the pattern of juvenile delinquency that had taken place since 1990–1995, and the significant statistical changes that had ensued. In general it can be said that the new law did not trigger a revolution, and that it had picked up many of the provisions enshrined in the existing legal regime, whilst modernizing and adapting them to current realities.

In the following presentation I would like to show you above all how the pattern of juvenile crime has changed in Switzerland and then briefly highlight the innovative elements of the text.

2. JUVENILE CRIME TRENDS IN SWITZERLAND

2.1. General Comments

Generally speaking, delinquency in Switzerland is characterized by four distinct findings. First, there has been a sharp rise in the number of minors charged and convicted in juvenile court. Second, there has been a shift from adult delinquency toward juvenile delinquency. And third, there has been a drop in the age at which minors commit offenses.

2.2. A Rise in the Number of Reported Offenses

Federal statistics on juvenile delinquency have been recorded in a generalized fashion since 1986 and systematically recorded since the “Jusus” system was

¹Not yet decided by the Swiss Department of Justice (Ministry).