

**Age of Criminal Responsibility  
In Terms of Comparative Law  
and  
Alternative Sanctions for Children  
Under the Age of Criminal  
Responsibility**

**2007**

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Alternative Sanctions for Children Under the  
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This report is an outline based on a report dated  
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This study consists of two sections.

**In Section I**, the age of criminal responsibility, non-criminally liable children and alternative methods for resolving conflicts involving criminally responsible young persons are discussed; laws in France, Italy and the Netherlands are examined, and examples are given. German law is examined in detail.

**In Section II**, rules regarding the structure of the Turkish positive juvenile justice system in force as of May 1, 2007 are discussed on a number of clauses basis by examining the existing law, and some suggestions are made based on examples from comparative law.

## 1. § - AGE OF CRIMINAL LIABILITY AND RESTORATIVE JUSTICE APPLICATIONS

### I – The age of criminal responsibility:

An international standard on the minimum age for criminal responsibility has yet to be established. The Convention on the Rights of the Child (Art. 40.3. a) does not stipulate any specific minimum age to the signatory states on this issue but only states the obligation to designate such an age.

The criteria brought by the Beijing rules (Art. 4.1) state that the age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.” This regulation is significant in that it stresses the foremost importance of medical and psychosocial data. In **French** Criminal Law, children under 13 do not have any criminal responsibility. An informal session is held in the Child Protection Institution or the child court about such persons. Suits can also be filed in civil court in order to protect children (Terrill, 1999, 267). While the onset of criminal responsibility in France is age 13, children aged 10-12 may be brought before child court judges solely for the purpose of applying security measures, provided that child is at risk (Unicef Innocenti Digest 3, Juvenile Justice, p. 4). Accordingly, it is possible to apply a minimum age excluding serious offenses. Sentencing young persons at least 13 but not yet 17 happens as an exception; as a rule, “educational security measures” are applied instead

As a legal indication, laws indicate the age limits where the criminal responsibility of the child is not accepted unconditionally. These limits range between 7 and 18 in comparative law.

For instance, in **Sudan, Jordan** and **Pakistan**, criminal responsibility starts at age 7, whereas in **Belgium, Panama** and Peru it starts at 18 (UNICEF Innocenti Digest 3, Juvenile Justice, p. 4).

In **Britain**, children age 10-13, if they are in a condition to be aware of the fact that the act they have committed violates the law, shall be criminally responsible. They are fully responsible between ages 14 and 17 (young person) (Terrill, Richard, World Criminal Justice Systems, Fourth Edition 1999, p. 96). Young people aged 18-20 have the status of “juvenile adults” .

In **Germany**, children under 14 are not criminally liable. If a child 14 or over lacks the ability to perceive the injustice of the act he or she committed, the child is not criminally responsible. If said person is age 18-24, they have the status of “juvenile adult.”

Spanish Criminal Law does not consider persons under age 18 to be criminally responsible. In offenses committed by persons up to this age, the provisions of the “Ley Organica” law are applicable. Legal changes passed in 2000 emphasized the principle that children committing offenses should be responsible for these acts. However, social reintegration and healing was maintained as the basic aim, and criminal responsibility was set as starting at age 14. Moreover, each social examination report was required to have an action plan on the incident in question, and the courts are meant to comply with this.

## 2. § - THE RESTORATIVE JUSTICE APPROACH

### I - Restorative Justice:

In the restorative justice system, society is considered the primary organ responsible for controlling and investigating criminal incidents. In the classical approach, on the other hand, the justice system is indicated as the primary organ for preventing and investigating offenses. Restorative justice searches for the problems which cause conflicts between victims and perpetrators. Such problems may be resolved by well-educated personnel who are aware of both theory and application (Marshall 1985, 1; Restorative justice 1995, 6).

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## **II – Fundamental components of the restorative justice system:**

The restorative justice system is based on three benefits: the offense is an act which damages the victim, the perpetrator and society. Therefore in the penal justice system, the victim, the perpetrator and society should contribute actively, in addition to the state, in order to produce a solution. This view points out that society itself has a responsibility in ensuring and protecting the peace, which is disturbed due to offenses (Van Ness 1990).

In restorative justice, the fundamental purpose of the penal justice is different. The purpose here is not having someone suffer or be punished due to his or her committing a crime, but rather to prevent recurrence of the offense by tackling the problem.

In restorative justice practices, the perpetrator is suggested and encouraged to undertake this responsibility, and he/she is assisted in bringing his/her private life in line with societal standards.

## **III – Restorative Justice Principles of the European Council:**

The recommendations of the European Council, which are part of the legal documents of the European Union, foresee the practice of restorative justice, especially in juvenile law.

Under Recommendation **R (2003) 20**, adopted on September 24, 2003 based on Article 15b of the Convention and referring to previously adopted Recommendations R(87) 20, R(88) 6, and Rec (2000) 20, the European Council requested that a highly disciplined approach be taken in the sanctions applied to juvenile crimes and that society, individuals, families and schools should play an active role in determining and applying these sanctions. The 'definitions' section of Recommendation Rec (2003) 20 states that everyone of the age of criminal responsibility but under the age of discretion, as well as those slightly under or over that age, shall be included in the definition of a child.

A significant article of the Recommendation is the provision defining the juvenile penal justice system. Accordingly, besides child courts, also included in this system are the police, public prosecutor's offices, defense counsels, probation centers and sentence execution institutions, and it is stressed that healthcare, education, and social services institutions as well as non-governmental organizations are also included in the juvenile justice system.

Promoting the use of alternative methods in lieu of pursuing prosecution in offenses committed by the young has been made a European Union standard (III, 7). It is also foreseen that the member states, in cooperation with the parents or legal representative of the perpetrator, should work to reconcile with the victims in order to redress and correct the damage done in cases of young re-offenders who employed violence, provided that doing so is prudent (III, 8).

European Council Recommendation **Rec (2005) 5** adopted on March 16, 2005 underlines that in principle a child who committed a crime should be restored to his or her own family, but that in certain cases such persons may be placed somewhere other than the family. The basic principles of restoration to the family are stated in the list attached to the Recommendation, in which the fundamental rights of children placed in institutions are underlined and the basic quality standards in such institutions are given. These rights and quality standards found in Recommendation Rec (2005) 5 will be an important aid in dealing with repeat child offenders, while structuring security measures restricting children's liberty, which should be treated carefully in Turkey.

## **IV – Restorative justice models:**

Since restorative justice has a flexible structure, in comparative law it is found and regulated under various headings.

Conciliation: This means resolving disagreements between parties through agreement and

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assent (Restorative Justice, A discussion paper, Ministry of Justice, New Zealand, Wellington, 1995).

Diversion: This means taking the suspect out of the criminal procedure with a decision reached in any phase of the proceedings – e.g. a decision to end the investigation, suspend filing charges, postpone announcing a verdict, etc.

Mediation: This means resolving a conflict between parties through negotiations facilitated by an impartial third party.

Netwidening: This means widening the area of application of the sanctions applied by the criminal justice system.

Reconciliation: This means trying to reestablish amicable relations between conciliated parties in a system after a certain conflict is experienced. This initiative was first suggested by churches in Canada in 1974. When the courts decided to require use of this method, it became an institution. A volunteer, by negotiating separately with the perpetrator and the victim, determines their needs and enables a meeting between the two. In this meeting held in an impartial place, the parties can conduct negotiations which set forth their own needs. In this phase, reconciliation applications are utilized and the impartial conciliator presents to the judicial authority which charged him or her with the duty a report on the outcome of the agreement (Stutzman Amstutz and Zehr 1990; Restorative Justice 1995, 11).

Reparation: This is a method for compensating for the damage suffered or the material lost by the victim through the perpetrator acquiring it.

Victim-offender mediation: This is a method in which the victim and the perpetrator meet before a mediator to resolve the conflict between them. When family members participate in this meeting, they act only as observers, and are not allowed to take responsibility. This method differs from the conference model, in which families also contribute actively.

There are two types of victim-offender mediation: In the first, charges have yet to be filed, and they are suspended with a warning to the perpetrator. In the second, used for cases pending in court, following admission of guilt by the perpetrator, either the court's verdict or execution of the sentence can be suspended (Restorative Justice 1995, 11).

Family or community group conferencing: This type of meeting held with families or community groups is organized by the police to facilitate the perpetrator accepting responsibility by comprehending the gravity and significance of his or her act. In such meetings, the victim and his or her family or group and the perpetrator's group or family contribute to resolution of the conflict by voicing their opinions.

In some restorative justice practices, such meetings are included in the criminal justice system and are regulated by law. Other systems welcome such meetings with families based on custom and practice.

In our view, restorative justice practices should be treated within a legal structure and be implemented by a judge, lawyer, probation officer or social services officer with set authorities and duties.

#### **V – Phases of the “official” restorative justice system:**

Under the law, the official restorative justice system has three phases: (a) pre-conviction practices, (b) pre-judgement practices, and (c) post-conviction practices.

- (a) Pre-conviction practices: If a public prosecutor is on the verge of filing public charges equipped with sufficient evidence and no denial of guilt by the perpetrator, in such cases the conflict may be resolved through conciliation between the perpetrator and the victim, after which the prosecutor does not file charges (Restorative Justice 1995, 10).

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(b) Pre-judgement practices: After the court establishes that the accused committed the act and the accused confesses, and if the crime came about through intent or negligence or was a mistake based on negligence, the court may orient the perpetrator and victim towards conciliation without concluding the case with a verdict.

(c) Certain restorative justice practices are applied to perpetrators who have been sentenced to prison. Here, the conciliation is aimed at reconciliation between the convict and society.

First-time child offenders should be prevented from entering the general or juvenile justice system. One of the tools for this is **diversion**.

One method used for diversion is the **judicial reprimand** method as applied by the police. After contacting the family and a social worker about a child who committed simple crimes, the police agree to talk with the child about the wrongness of the act he or she committed instead of filing charges. The effectiveness of this method has, however, been criticized (Unicef Innocenti Digest 3, Juvenile Justice, p. 10).

In another method tried in some French cities, **a judge from the court meets with the child and his or her family** and explains the nature of the crime and possible sanctions if there is a conviction. Trial runs of this policy have reportedly yielded successful results. The most significant successful results, however, have been obtained through pre-trial **social assistance** provided to children in conflict with the law by social workers. The methods such as **suspending the filing of charges or suspending announcement of the conviction** which prevent the child having to face the court can be successful with contributions of social workers.

Applying out-of-court methods has certain benefits, but also certain dangers in terms of the rights of the accused. The most significant danger here is the possibility of violating the presumption of innocence. Methods which may pressure the accused to, for instance, make an admission of guilt, thus violating the right to a fair trial, are illegal.

### **3. § - CONCILIATION AND RESTORATIVE JUSTICE IN ITALIAN and FRENCH JUVENILE LAW**

#### **I – France:**

In France, the first juvenile courts were established in 1907. Later, in 1912, the established court was turned into a juvenile office beside the criminal court, located near the river Seine (Losseff-Tillmanns/Steindorf/Borricand 1992, 92). The single juvenile court in Paris was restructured by a 1945 ordinance into specialty courts throughout the country, and since 1992, there have been 268 juvenile courts with judges in 99 regions. The Paris Juvenile Court (13 judges) maintained its pre-eminence compared to other courts (3 judges). Although juvenile courts in Germany operated outside courthouses, in the buildings of the Youth Assistance Organization (Jugendamt), in France the **Youth Assistance Organization and the Juvenile Court Assistance Organization** are both located inside the courthouse. This enables social workers to work in closer cooperation with the courthouse (Losseff-Tillmanns/Steindorf/Borricand 1992, 93). French juvenile courts not only deal with children and children in conflict with the law, but also are the only courts authorized to issue rulings on the protection, care and education of children under 18 (decisions such as guardianship, custody and other decisions regarding the protection of children).

Juvenile courts can only issues protective and educational precautionary rulings for children in conflict with the law; however, starting from age 13, “if the character of the young person requires punishment,” these courts may also hand out punishments.

Under French Criminal Law, children under 13 do not have criminal responsibility. Educational

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security measures are to be used as sanctions for children in conflict with the law age 13 to 16; sentencing children to punishment is exceptional. In the 1980s, French juvenile law was regulated by ordinances dating from 1945 and 1958 (Herz 1982, 11). The power to issue rulings on children is granted to a single judge. This judge hears both guardianship and custody issues and issues verdicts in criminal cases when a crime has been committed (Herz 1982, 12). First the evidence regarding the young person is examined, and if it found sufficient, a social environment investigation is conducted by social workers. The juvenile judge may reach a decision even before starting a hearing. If a trial should commence due to the gravity of the crime, then the ruling is issued by the juvenile court. Should the juvenile court find the crime proven, then the court may place the young person in a reformatory or hand down a judicial sanction or, in exceptional cases, a prison sentence (Herz 1982, 12).

## **II – Italy:**

### *1) Legal framework*

In Italy, filing charges is required and therefore juvenile law regulations are drafted towards ending the trial before this stage. The first of these is Article 9 of Ordinance 448/88 of the President of the Republic, which stipulates that evidence should be collected regarding the young perpetrator and his or her character should be examined.

Article 27 of the same ordinance, under the heading “Not pursuing prosecution,” stipulates the possibility of not filing charges by instead delivering the perpetrator to his or her family. Article 28 regulates suspending the filing of charges and putting the young person under probation. This decision can be reached by the judge and is mentioned if it is determined that the victim has attempted to reconcile with the perpetrator. Finally if the judge is convicted, than the lawsuit is abated.

Article 564 of the Criminal Procedural Code stipulates the possibility of achieving reconciliation on the crime based on the complaint, between the complainant and the accused, through a conciliation proposal by the public prosecutor before charges are filed.

In addition, the conciliation method is acceptable during trials, even during the application of alternative sanctions (Article 47 of Law 354/75).

Since conciliation is an institution included in the penal system, young people should see this as a social institution supporting personal liberty, not a punitive system. Positive results as well as negative experiences of conciliation are announced in the justice system, and lessons are learned from both. In 1995, studies were carried out in Turin, Milan and other cities. These studies found that conciliators in Italy stand in an impartial position and are trusted by both the victim and the perpetrator. Thus, they have the opportunity to facilitate negotiations between parties.

### *2) Principles of conciliation for issues concerning children in conflict with the law:*

Conciliation was accepted in Italy within the framework of diversion practices starting in the 1970s. If, after examining especially the young in each incident, a judge decides that doing so would be more beneficial for his or her education, then the trial may be halted and the conciliation method applied.

This method was realized by a decree in lieu of a law adopted in 1988 and was prepared in light of national and international legal developments, especially the Convention on the Rights of the Child. There is a bylaw to this end prepared by the General Directorate of Juvenile Law under the Ministry of Justice<sup>1</sup>.

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<sup>1</sup> Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, April 10-17, 2000, Ministry of Justice, Italy; [http://www.giustizia.it/ministero/struttura/dipartimenti/dirigen/dap\\_documentazione/v0053401.pdf](http://www.giustizia.it/ministero/struttura/dipartimenti/dirigen/dap_documentazione/v0053401.pdf); accessed in January 2007.

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Due significance is given to the impartiality of the conciliator, and it is emphasized that the conciliator should not be close to any party, and cannot rule like a judge but instead only lay out the suggestions for resolution made by the parties.

It is underlined that the purpose of conciliation in punishment has benefits such as confronting the perpetrator with the consequences of his or her act, better protecting the rights of the victim, and resolving the conflict and establishing social peace by creating dialogue between the parties. Also, members of the community in the place where the crime was committed are requested to contribute.

### **III – The Netherlands:**

Juvenile criminal law in The Netherlands allows diversion during any phase of the trial. For instance, the police may employ a judicial reprimand and apply a diversion program to a young person, or may inform the public prosecutor with an official report. Public prosecutors apply various conciliation methods in two-thirds of the juvenile crimes brought before them (Junger-Tas 2003, 382). The public prosecutor summons the young person and his or her family to the public prosecutor's office to explain to them the conditions he or she stipulates for not filing charges before doing so.

Only in extremely serious crimes does the public prosecutor directly file charges. In such cases, arresting the young person may also be considered. At the end of the trial the court may decide to impose a judicial sanction, require community service (more than half of the sanctions are of this type) or hand down a juvenile prison sentence for a maximum of two years. If the young person is deemed dangerous, the court may decide to place the child in a treatment institution for a maximum of 6 years, provided that he or she is under 18.

Dutch law gives prosecutors and judges wide latitude in dealing with children in conflict with the law.

However, Dutch law is currently moving towards a more restrictive direction due to social pressure and fear of crime.

### **IV – Spain:**

Spain's first juvenile courts were established in 1920. But much later, in 1980 and 1987, the juvenile courts and family courts were separated. Family courts deal with such issues as child neglect and awarding guardianship and custody.

The 1992 Provisional Law adopted the best interests of the child and minimizing the interference of criminal law as fundamental principles. In addition, it mandated the preparation of a social examination report, stipulating that this report be considered in the decisions of prosecutors and judges. Such methods were also made mandatory in extra-judicial system measures, such as conciliation and putting children in social safety institutions. With these changes, Spanish law was harmonized with the Recommendations of the European Union, the Beijing rules of United Nations, and the Convention on the Rights of the Child.

Another amendment in 2000 stressed the principle that children in conflict with the law should be held responsible for these crimes. However, reintegration to society and correction were kept as the central aims, and criminal responsibility was stipulated to start from age 14. Moreover, each social examination report was required to have an action plan regarding the incident in question, and the courts were directed to follow this.

However, before this law was enacted, it was re-amended in 2001. Depending on the gravity of the crime, both penalties and limiting the long-term liberty of young recidivists and young persons who commit serious crimes were made acceptable. The juvenile court established in Madrid was authorized in particular to deal with children suspected of terrorist crimes (Junger-Tass 2003, 383).

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## V - Britain

In Britain, if children aged 10-13 are in a position to know that their acts are against the law, then they are stipulated as having criminal responsibility. Between the ages of 14 and 17 they are assigned full responsibility, and between 18 and 20 they are given adult status.

Trials of children in conflict with the law are held in closed sessions. To make an accusation against a young person, the principles of giving the accused full rights in a trial and an appropriate adult being present before the court both apply.

Changes in British law have adopted methods for not filing charges, which serves to both prevent children's cases from moving to further levels as well as divert children in conflict with the law from entering the criminal justice system. However, these changes also allowed decisions under which youths can be put in custody in care institutions. Here we would highlight especially the method called youth custody which lasts 6 to 24 months for persons aged 15-20, and provides education and training.

Another important measure that limits liberty is called "secure training orders," which requires prison sentences of 2 or more years and is applicable to young recidivist offenders aged 12-14.

Under another liberty-limiting measure, children in conflict with the law can be held in "detention centers" from 21 days to 4 months.

There are also measures which do not restrict liberty but place it under probation: in the "care orders" measure, children in conflict with the law are put under the administration of the local government, and the parents lose guardianship. Also, some children aged 10 and over are required to go on weekends to places called attendance centers where handcrafts are taught.

## 4. § - GERMAN JUVENILE CRIMINAL LAW

### I. Development of German Juvenile Law:

In Germany, there was nothing called "juvenile criminal law" prior to 1923. The criminal responsibility of the young was set at age 12. There was an approach which was satisfied by certain provisions present in the general criminal law.

**The First German Juvenile Courts Law** was drafted in 1923. This law, which reflects perfectly the modern German criminal law doctrine of "reintegrating the perpetrator to society," raised the age of criminal responsibility to 14 (Albrecht 2004, 444).

The Juvenile Criminal Law was formulated as an "educational criminal law" (Erziehungsstrafrecht) and the societal reaction against crimes committed by young persons were called "decency measures" (Erziehungsmassregeln). This view of the 1923 law based on education is still valid (JGG 71), and is applied in execution institutions for the young.

This law adopted two principles: that juvenile criminal law should highlight the perpetrator (Täter-Strafrecht), and that the sanctions given to child perpetrators should be directed towards reintegrating them to the community (Ostendorf 2001, 6).

A 1953 legal amendment allowed suspending the sentence and announcement of the verdict, thus enabling young convicts to avoid prison time by being supervised by a probation officer.

Amendments made on August 30, 1990 expanded the use of judges' orders for outpatient treatment of child offenders before being placed elsewhere. Measures were also passed enabling perpetrator-victim conciliation, participation in social training courses, and offenders being placed under the supervision of a designated person, and a system for suspending

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prison sentences for the young for up to two years was adopted. Public prosecutors' authority to use diversion practices was expanded. Regulations making it harder to order the arrests children aged 14-15 went into effect. Providing defense counsel in cases of arrest was also mandated.

**1. "Jurisdiction based on place" and "Subject-matter Jurisdiction" over children who commit crimes and are not criminally liable:**

In German law, children under 14 do not have any criminal responsibility. Even if a child is over 14, children in conflict with the law who cannot perceive that the act includes injustice (Unrecht) or lack the capacity to act due to this perception, in terms of moral or mental development at the time of the act" shall not be criminally responsible (JGG 3, clause 1).

Criminal responsibility is a "condition of criminal adjudication." Not being criminally responsible is an "obstacle to criminal adjudication" (Ostendorf 2001, 3). In such cases, refraining from punishment is unconditionally required (StGB 19).

The age of criminal responsibility in German juvenile criminal law is treated as an issue of "the jurisdiction of the juvenile courts based on subject matter: persons under 18 who were aged 14 or below at the time of the act are considered "juvenile" (Jugendlicher), and persons who are over 18 but under 24 are considered "young adults" (Heranwachsende) (Böhm/Feuerhelm 2004, 32). The law has accepted some age limitations in order to ensure "legal security" (Rechtssicherheit). For instance, the age limited act competence begins is 7 in terms of civil law, 14 in terms of freedom of religion, and 18 for full competence, and the minimum age to be elected president of the republic is 40 (Böhm/Feuerhelm 2004, 35). Age 14 is a strict minimum for criminal responsibility. However, in the 18-24 age group, the responsibility of the perpetrator is determined in accordance with the level of maturity. The "level of maturity" (Verantwortungsreife) means that the person is mature enough to comprehend that the act he or she has committed includes an injustice (Unrechtseinsicht). For example, every young person knows that stealing a bicycle is an offense; however, persons of the same age may not know that selling this bicycle to an unknowing buyer may constitute fraud (Böhm/Feuerhelm 2004, 38). In the second generation children of foreigners, this maturity may come late (Böhm/Feuerhelm 2004, 39). Some children may not comprehend at an early age that scuffles between them may entail committing assault and battery. The ability to comprehend the injustice in the act committed and the ability to direct one's own acts (Steuerungsfähigkeit) are separate concepts. This concept is the ability of the juvenile to resist committing an act he or she knows to be an offense. For instance, if a young person surrounded by offenses committed by his or her parents or their friends is mature enough to resist and so hinder the commission of an offense, then he or she has the "ability to direct his or her acts" (Böhm/Feuerhelm 2004, 40). Whether or not a young person has the dual "maturity for criminal responsibility" (Verantwortungsreife) is determined by experts in accordance with JGG 3 (Böhm/Feuerhelm 2004, 41).

Children pushed into committing crime cannot be arrested, under the Criminal Adjudication Law (StPO 127), or have their physical identities recorded, under StPO 81b (Roxin 22 Aufl. 215).

If it is clear that a child does not have criminal liability, then the prosecutor cannot commence an investigation. In such cases since the "initial cause for suspicion" (Anfangsverdacht) is lacking, the prosecutor should decide not to commence preliminary inquiry phase at all, rather than later end it (nicht das Ermittlungsverfahren gem StPO 170/2 einzustellen).

If it is later found that the child lacks the necessary maturity, the prosecutor cancels the investigation, since the investigation would have already started (StPO 170/2). If later, during the trial phase, it emerges that the necessary maturity is lacking, then the case is

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dismissed or an acquittal is issued (JGG 47/1, Nr.5).

Children lacking criminal responsibility can testify as witnesses in court.

If prosecutor reaches a decision not to commence an investigation or to end one, or the court decides to issue an acquittal, then such decisions are recorded in a special “education registry” (Erziehungsregister) (BZRG 60/1, Nr.6).

However, far-reaching measures are available for children who lack criminal responsibility. These measures may be applied by the family court, based on the provisions of the German Civil Code and the Law on Protecting Juveniles (KJHG).

In lieu of taking any criminal adjudication operations on children not criminally responsible, police may use “preventive enforcement authorities” on them.

The KJHG stipulates applying “assistance measures” for such children.

The Assistant Association of Juvenile Courts (Jugendgerichtshilfe) is authorized to take measures for children pushed to commit offenses but not criminally responsible.

As for the jurisdiction in terms of place, the jurisdiction lies not in the place where the offense took place, but rather the place where the child regularly and actually resides.

## **2. Children having criminal responsibility**

Children who are criminally responsible are tried in juvenile courts. If the child is aware that the act he or she committed is prohibited and did so when he or she had the ability to overcome the will to commit this act, then this child shall be criminally responsible (Ostendorf 2001, 1).

## **3. Young adults:**

German juvenile criminal law defines the age group 18-24 as “young adults” (Heranwachsende) and states that persons in this age group in principle should be subject to the criminal law of adults and accept criminal responsibility, as circumstantial evidence.

However, considering the status of developments pursuant to StGB 20, 21, it also states that they are subject to juvenile criminal law in cases where the gravity of the offense is related to this law. Security measures regulated under Articles 63 and 64 of the German Criminal Law are applicable to such persons.

## **II. Characteristics of the investigation and prosecution of young persons:**

Commission of a crime is always a prerequisite for the purpose of showing a social reaction from the perspective of juvenile criminal law. (The society’s reaction against a juvenile begins with the commission of a crime.) From this point of view, juvenile criminal law, like adult criminal law, has a structure which examines the act but first and foremost considers the perpetrator and his or her character.

The investigation and prosecution of children should be just, and the act he or she committed should be determined. However, the investigation and prosecution of young persons is also structured in a manner to prevent the perpetrator from committing new offenses.

Considered from this point of view, the purposes of juvenile criminal adjudication may be listed as follows: (a) establishing that the perpetrator has committed a culpable act (StPO 263), (b) applying a sanction to the perpetrator and determining security measures (JGG 7), (c) promoting prevention on the personal and general levels, i.e. preventing the same perpetrator from committing the same offense and satisfying the public by witnessing that the perpetrator of the crime received a sanction.

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Young persons generally commit offenses in groups. The reason for committing coercive acts in general is the fact that children lack the ability to resolve problems through discussion or amicable means. These offenses committed during youth development are normal (Ostendorf 2001, 9). A great majority of the offenses committed by children are caused by normal childhood activities such as sports, games and adventure; however, children then unknowingly “enter the area prohibited by criminal law.” Punishing such behavior alienates the child completely; instead of punishing, applying alternative sanctions such as perpetrator-victim reconciliation is much more beneficial (Kaiser 1996, 1059).

Although acts which have the nature of simple offenses (Bagatell) do great damage to society economically, compared to the economic offenses committed by adults, the financial damage of such acts is fairly low. Most of the children who commit crimes do not have police records and after they are recorded by the police for an offense, they do not commit another. However, a small group (approximately 2.5%) of child offenders is responsible for fully 28% of the offenses committed by children (Kaiser 1996, 491).

The fundamental purpose of the criminal adjudication of children in conflict with the law is to give a lesson to young people for their future. Judges, by explaining the social damage of the crime committed by the young accused, and through his attitude and words during the trial, should teach him or her the malignity of the act. Thus the suspect should learn that the act he or she has committed is unjust and that he or she did not act justly (Eisenberg *Kriminologie*, 4. Aufl. p. 381).

For the criminal adjudication of children in conflict with the law to accomplish this expected correctional role, it should be carried out in a way that allows communication with the child in conflict with the law. For the judge to enter into communication with the child, the trial should be closed, the witnesses should not make statements under oath, and parents and the Assistant Association of Juvenile Courts should be present at the hearing.

During the trial judges should strive to understand the problems of the accused and the victim, yet he or she should project the adjudication power he or she bears. The accused young person is not the leading actor. The judge may address the accused young person in the second person as “you.” He or she may decide not to wear judicial robes in order to facilitate communication. Especially in juvenile courts carrying out simple procedures (JGG 76-78), it is an accepted practice to go without a robe. Moreover, during the testimony of child witnesses in adult criminal courts, judges have been seen not to wear robes.

The criminal adjudication of children in conflict with the law loses its correctional effect if it takes place a long time after the offense was committed. Thus the trial should be done quickly after the offense.

In 1995 in Germany, the time span from the date when an issue was brought to court up to the final verdict was found to be as 3.7 months for single-judge courts, 4.1 months for collective juvenile courts, and 5.5 months for juvenile high criminal courts (Jugendkammer) (Ostendorf 2001, 12).

### **III. Periods of the juvenile criminal court**

#### **1. Juvenile police:**

The police are obliged to obey the orders issued by the prosecutor during investigation of a crime (StPO 161/2).

However, due to the large number of offenses committed by young persons in Germany, it is observed that in general police start investigations on their own accord. The basis for pursuing offenses committed by children by police officers trained specially on this issue was adopted (PDV 382, Nr. 1.2), and no special juvenile police force is established, as in Turkey.

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The principle of leaving prosecutors out of the system in cases where the crimes committed by children are minor was adopted by agreements signed between the Ministries of Justice and the Interior of the German states. In line with following procedural economy in such offenses committed by young persons, the police directly inform the Juvenile Office (Jugendamt) about the offense.

## **2. Assistant Association of Juvenile Courts:**

The Assistant Association of Juvenile Courts (Jugendgerichtshilfe) is an independent organization of the Association for Assisting Juveniles (Jugendhilfe), an organization similar to Turkey's Social Services and Child Protection Institution (SHÇEK).

The Assistant Association of Juvenile Courts contributes to every phase during an investigation and prosecution of a young person (JGG 38/2). This assistance is also provided for young adults (JGG 107).

The association is something like a “double agent” among spies: its most important duty is to support and help the suspect, but it also has the obligation to help the court reach a sound decision on the allegation.

It is inevitable that in performing these two important duties concerning opposite interests, the association will in certain cases be in conflict. However, it should be emphasized that protecting the juvenile's interests takes precedence.

Another duty of the association is providing mediation between the perpetrator and the victim. The priority duty of this association, which has a professional structure in the social services field, is to protect the interests of children in conflict with the law during mediation.

When the family of the accused, legal representatives or defense counsel do not help the accused, the association undertakes the duty of, so to speak, a “social solicitor.”

*The following are the rights of the Assistant Association of Juvenile Courts during investigation and prosecution:*

- Right to contribute to procedural operations during the entire investigation and prosecution (JGG 38/3, clause 1, clause 2)
- Right to be present at the hearing (JGG 50/3 clause 1, JGG 48/2)
- Right to give explanations (JGG 38/2 clause 2, paragraph 3, clause 3), especially the right to take the floor during the trial (JGG 50/3 clause 2)
- Right to talk with the accused child under arrest (JGG 93/3, StPO 148)
- Right to interview the child in sentence execution institutions (JGG 389/2 clause 9)
- Right to obtain information regarding any decision reached during the investigation or prosecution in order to begin an investigation or cancel a procedure (JGG 70 clause 1)
- Right to request a criminal record be stricken from the judicial registry (JGG 97/1 clause 2)

*The following are the duties of the Assistant Association of Juvenile Courts. (Ostendorf 2001, 17):*

- To prepare reports to be consulted by the juvenile court in making decisions about young people (Jugendgerichtshilfebericht) (JGG 38/2)
- To immediately prepare an opinion in cases where children are arrested and to ensure that the judge relies on this while reaching a decision on the arrest (JGG 38/2, clause 3, JGG 72a)

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- To submit proposals on sanctions applicable by the court (Santionenvorschlag) (JGG 38/2, clause 2)
  - To assist a convicted young person when sanctions are carried out (JGG 38/2, clause 5, 6)
  - When another person is not charged by the judge but the association is given the duty, to supervise the young person while fulfilling the orders given to him or her (JGG 38/2, clause 7)
  - When young persons are sentenced to prison, to assist them (betreuen) (JGG 38/2, clause 8, 9)

### **3. The Juvenile Prosecutor's Office:**

In Germany, juvenile prosecutor's offices are to be established in prosecutor's offices (JGG 36).

The duties of juvenile prosecutor's offices are basically similar to the adult ones. They lack only the authority to carry out decisions. In Germany, the duty of carrying out the decisions reached on children belongs to the juvenile judge (JGG 82).

In principle, the prosecutor who carried out the investigation into the young person should also act as the prosecutor in the trial (Richtlinie zu JGG 36).

The idea that the authorized juvenile prosecutor's office should be the located where the child lives is a significant privilege. This enables the court to be informed about the social environment of the accused.

The office of the prosecutor requires getting hold of specialized information. Therefore, special training seminars are organized for juvenile judges and juvenile prosecutors (Ostendorf 2001, 14).

### **4. Juvenile courts:**

German law authorizes juvenile courts on every issue (Allzuständigkeit). For this reason, where it is necessary to decide if an arrest warrant is called for during the investigation phase, the general authorized bodies are not the judges but the juvenile judges (Ostendorf 2001, 14).

### **5. Defense Counsel:**

Among courts, judges, prosecutors and police, German law seeks special statuses and the possession of specialized knowledge, but for the defense counsel this necessity is not stipulated.

Only mandatory defense lawyer cases are expanded (JGG 68): where the child accused is to be arrested or placed in custody pursuant to StPO 126a, and is under 18, then a defense counsel is required.

The defense counsel should employ all procedural opportunities in order to defend the child and avoid punishment. The child lacks any experience in legal issues and thus clearly requires the legal assistance of a defense counsel.

Other duties of the defense counsel include informing the child about the alternative sanctions under juvenile law, explaining the significance of perpetrator-victim reconciliation, and facilitating acceptance of this method.

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## 6. Legal representative:

The legal representative of a child under the guardianship of his or her parents has significant duties to be fulfilled during the adjudication, as follows:

The legal representative has the right to be heard by the judge (a kind of interrogation!), ask questions during the procedure, submit requests and be present during procedures during which the child suspect or accused should be present (for instance, reaching a decision on an arrest warrant pursuant to StPO 115 or during the trial).

The legal representative has the right to be present when law enforcement officers take the deposition of a child in conflict with the law. Police should inform the child of this right (StPO 163a/4, 161/1). Hindering the child suspect from speaking with his or her legal representative makes a deposition illegal and inadmissible as evidence (BGH, MDR 1993, p. 257; Ostendorf 2001, 19).

Failure to invite the legal representative to the hearing violates the court's obligation to seek the material truth (StPO 244/2) and will result in the reversal of the verdict. In cases where the accused is a foreigner and his or her legal representation is abroad, the court's endeavor to invite this representation is sufficient and is considered the ground to release the invitation pursuant to Article 50/2 (Ostendorf 2001, 19).

Legal representative have the right to the "final word" (StPO 258/2), just like the accused (BGH, StV, p. 155).

## IV. Applying out-of-court methods in investigations and prosecutions of children in conflict with the law (diversion).

### 1. Diversion:

"Diversion" means applying sanctions in lieu of a formal punishment by re-directing the case of an offense headed towards court towards methods of alternative conflict resolution.

There are three aims of diversion in juvenile law: (1) to prevent placing child suspects under an extreme burden; (2) to prioritize exercise of influence methods outside the penal system; and (3) to reduce the overload of the criminal law system.

To employ a diversion method, an offense must have been committed, and this act must be a real one. Following this determination, the prosecutor's office, utilizing its "jurisdiction to file charges" found in the general provisions of German law, may elect not to do so (Einstellung aus den Gründen der Opportunität, StPO 170/2).

Directing the case to out-of-court methods, i.e. applying diversion to a child in conflict with the law, belongs under the jurisdiction of prosecutors, and it is beneficial for parties to submit proposals to prosecutors on this matter.

Where sufficient suspicion is lacking that the child committed the offense, a decision to halt the prosecution is reached. Recording these decisions in a separate "education registry" (Erziehungsregister) prevents slander and scandal.

Such decisions can happen with or without alternative sanctions. However, a decision to halt prosecution without applying any sanctions is deemed to have priority.

The prosecutor may give a warning lecture to the child suspect. However, the child may not be forced to listen to such a lecture.

The Juvenile Protection Department (Jugendamt) looks beforehand if there is an issue in helping a child in conflict with the law, and if there is, tells the prosecutor or juvenile judge about the issue. If the child in question acts amicably and performs the requested acts, then the prosecutor reaches a decision to halt the prosecution (JGG 45), or if there was a prosecution filed before, a decision of abatement is reached (JGG 47) (Osterdorf 2001, 26).

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However, the prosecutor cannot single-handedly order the education measure (Erziehungsmassnahmen); in German law this is under the jurisdiction of juvenile judges. And for starting conciliation between the perpetrator and the victim (Täter-Opfer Ausgleich), the first move should come from the perpetrator.

## **2) Perpetrator-victim reconciliation in juvenile law (Täter-Opfer Ausgleich):**

The first possibility for perpetrator-victim reconciliation is among the alternatives which may be tried by a prosecutor before filing charges (JGG 45/2). Another possibility is an attempt at reconciliation ordered by the court at the end of trial as a safety measure with correctional qualities.

Reconciliation is beneficial because it enables the perpetrator to constructively liberate him- or herself from a sense of guilt and thus take responsibility for an act he or she has committed.

Since the perpetrator has to face the victim after the crime and can see the harm he or she has caused, the possibility of recidivism decreases.

For the victim, the damage is repaired by conciliation. When the victim meets with the perpetrator and learns the factors that drove him or her to crime, then the victim may overcome the fear of crime by seeing the perpetrator as someone who is not to be feared.

Due to their fear of being victims of crime, many people today shy away from many social activities and live in isolation. Reconciliation is also beneficial in this aspect.

However, the main benefit is the possibility of reaching a state of reconciliation between the perpetrator and the victim, which may prevent similar future cases.

## **V. Arrest:**

The principle of proportionality has a special significance in arrests under German law: a judge who issues an arrest warrant for a juvenile should explain in the grounds of the decision “why methods for measures which limit rights less, such as temporary accommodation in the dormitory of the Juvenile Protection Organization or the like, were not applied” and “why the warrant is accepted as proportional in this particular incident” (JGG 72/1, clause 3).

A warrant may be issued for children aged 14-16 based on suspicion they will attempt to flee. It is also necessary to show that the child failed to come to a procedural operation despite a summons or is preparing to flee or lacks a regular residence (JGG 72/2).

In order to ameliorate the negative effects of the arrest, the law stipulates that the Assistant Association of Juvenile Courts (Jugendgerichtshilfe) should become active without delay, even before the warrant is carried out (JGG 72a).

In the ongoing adjudication of children under arrest, decisions are reached on non-suspendable juvenile prison sentences (36.2%), suspended juvenile prison sentences (34%) and outpatient treatment sanctions (29.8%) (Ostendorf 2001, 27). However, arrest is a method which always causes negative consequences for young persons. Fifty percent of the children who had a stable job before being arrested were found to be fired after they were released.

In addition, in order to prevent repeat child offenders from continued recidivism, charges should be filed within a short period of time and a speedy trial date set (Ostendorf 2001, 28).

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## **VI. Criminal records and educational registry records:**

### **1) Criminal records:**

Convictions are recorded in criminal records under the general rules (BZRG 4) and are kept there for a certain period of time (BZRG 46). Copies of criminal records are given to courts and prosecutor's offices who request them (BZRG 41).

For offenses committed by children and young adults, only sentences of two or more years are recorded in "certificates of good standing." Other than this, if the court found guilty but suspended giving a sentence pursuant to JGG 27, this decision is recorded in the certificate of good standing (BZRG 32/2, Nr. 2, 3).

If an investigation is opened on a child or a decision is reached in the investigation, the Assistant Association of Juvenile Courts, and the family doctor and school administration, are notified when necessary.

### **2) Education registry:**

The convictions of children given sanctions in accordance with the provisions of criminal law for children are recorded in another registry, the education registry (Erziehungsregister).

All convictions, decisions to not file charges pursuant to JGG 45 and dismissals reached by judges pursuant to JGG 47 are recorded here (BZRG 60). Dismissals and determinations of a lack of grounds reached for adults are not recorded in the federal judicial registry; these are recorded in the inter-state prosecutor's office investigation registry found in the book recently appended to the Criminal Procedural Code (StPO 474).

## **VII. Sanctions in juvenile criminal law:**

There are three types of sanctions for children: (a) Educational security measures (Erziehungsmassregeln) (JGG 10), (b) Disciplinary security measures (Zuchtmitteln) (JGG 13), and (c) prison sentences for juveniles (Jugendstrafe) (JGG 17). In addition to these three security measures, restorative and protective security measures can be taken into consideration.

Among these three types of sanctions, the purpose of educating that child comes first and foremost in determining the sanction applicable to the child who committed the crime (Albrecht 2004, 473) (JGG 5).

If it is necessary, through applying a safety measure, to place the child in a psychiatric or drug rehabilitation facility, then disciplinary measures and prison time will not be pursued (JGG 5/3).

### **1) Educational security measures:**

Educational security measures (Erziehungsmassregeln) which children are sentenced to should be in direct relation to the act and the reason behind the act in order to prevent the perpetrator from re-offending.

The court, in applying this safety sanction, is obliged to learn well the character of the accused and designate a sanction suitable for his or her character. An educational safety measure which promises success when applied to a child aged 15 may be meaningless if applied to a perpetrator aged 17 (Ostendorf 2001, 30).

Educational security measures should always be subject to monitoring, and the order for such a safety measure (Weisungen) should be long enough to allow the perpetrator to get used to the ordered matter.

Educational security measures are regulated in JGG 10 and consist of orders given by the judge (Weisung) such as requiring the perpetrator to do community service, take a course raising

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social awareness, take part in victim-perpetrator reconciliation (Taeter-Opfer Ausgleich), take a traffic course, be under the supervision of a social worker, or enter an apprenticeship. Also, orders to be placed in a dormitory created under the organization for helping children or to stay with a foster family may also be given. Failure to follow the educational security measures given by the judge may cause limited restriction of the child's liberty (Albrecht 2004, 472).

The following are educational security measures practiced since 1990:

- Child holding him- or herself subject to the supervision and control of a designated person (Betreuungshelfer)
- Order to take a educational course which raises social awareness
- Order to try to reconcile with the victim of the crime (Taeter-Opfer Ausgleich) (JGG 10/1, clause 3, Nr.5-7).

## 2) Disciplinary security measures:

Disciplinary security measures (die Zuchtmitteln) are divided into three categories.

The first is the **judicial reprimand** method, which has been repealed in the Turkish system. The juvenile judge, by warning the child, tells him or her the bad side of the act he or she has committed (Verwahnungen). Judicial reprimand takes the form of a conviction and is recorded in the criminal record (and in the educational registry for children).

The second type of disciplinary safety measure is **giving the child in conflict with the law certain obligations in the judge's order** (Auflagen). These may be monetary sanction (Geldbusse) or orders to do community service, redress the harm done to the victim of the crime, or give an official apology to the victim.

The third type of safety measure is **disciplinary detention for children in conflict with the law**, that is, under the Criminal Procedural Code, restricting the child for a short period of time. In German Law a separate term is used for this such as "Jugendarrest" (Albrecht 2004, 473). We propose the provisional term "disciplinary detention for children" as being equivalent to Jugendarrest.

Disciplinary detention for children in conflict with the law (JGG 16) is a very limited-duration restriction under the Criminal Procedural Code. It has **three types**:

The **first** is a disciplinary detention applied on holidays for one or two weekends (JGG 16/1).

The **second** is called "short-term disciplinary detention" (kurzarrest) and lasts a maximum of four days (JGG 16/2).

The **third** is continuous disciplinary detention (Dauerarrest) and extends to a maximum of four weeks (JGG 16/3).

During juvenile disciplinary detention, the offender is to examine the difficult conditions which drive him or her to crime with a view to eliminating them.

Juvenile disciplinary detention takes place in buildings built solely for this purpose (Jugendarrestanstaltan) or in social locals in courthouse buildings. The juvenile judge present at the building is responsible for the management of the detention (JGG 90/2).

## 3) Restorative and protective security measures:

Restorative and protective security measures are limited for children in criminal law. The other security measures of general criminal law are not applicable to children.

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The following are security measures applicable to children in conflict with the law: (a) placing him or her in a psychiatric or drug rehabilitation facility, (b) supervising behavior and conduct, and (c) revoking the driver's license (JGG 7).

In cases where the court applies a disciplinary safety measure and juvenile prison sentence or a safety measure of placing the child in a psychiatric clinic, the safety measure of placing the child in a psychiatric clinic has priority (JGG 5/1).

Since placing the child in a psychiatric clinic will create special pressure on the young person, doing so requires great diligence and discernment, and this decision should be reached after carefully examining all the details regarding the incident in question. As the time to be spent in the psychiatric clinic increases, the proportionality of such a deprivation of liberty to the incident should be examined carefully.

#### **4) "Non-suspended juvenile prison sentence:**

The original prison sentence under German juvenile criminal law is the juvenile prison sentence (Jugendstrafe, JGG 17/1).

The court may decide on a juvenile prison sentence only if at least one of the following is present: (a) it is understood that security measures for correction or discipline are not sufficient due to the harmful inclinations of the child which were revealed during commission of the act or (b) the perpetrator should be punished due to the gravity of the offense.

The court is not limited by the sentence terms or minimum or maximum limits found in the Criminal Code in determination of the sentence. The minimum and maximum limits are determined for children in conflict with the law in terms of criminal law; for prison sentences the minimum is 6 months and the maximum 5 years, and in exceptional cases the maximum is 10 years (JGG 18/1).

In determination of the prison sentence, the court determines a time period which will allow the desired correctional effect to be realized on the child (JGG 18/2). The time period applicable in sentence enforcement institutions created for children in conflict with the law should be considered in determination of the term of the sentence. Moreover, the period of the prison sentence determined at the end should be proportional to the crime committed by the accused.

**Suspending juvenile prison sentences:** If all the conditions are present for giving a juvenile prison sentence, the court may request that the conviction be handed down without a sentence being determined. This decision and a decision to suspend carrying out the sentence (JGG 21) are two separate legal issues.

In suspending the juvenile prison sentence pursuant to JGG 27, the court first of all determines that the accused is guilty (Schuldspruch) and in determining this, gives certain orders and obligations to the accused and thus sets a trial date and may request suspension of determining the juvenile's prison sentence.

Suspending a juvenile's prison sentence cannot be simultaneously combined with disciplinary detention for children in conflict with the law (Jugendarrest) (BGHSt 18, 207) (Ostendorf 2001, 42).

For the court to suspend determination of the prison sentence for the young person under JGG 27, the following conditions should be fulfilled:

1. The fact that the perpetrator committed the act and that criminal intent or negligence was present should be proven.
2. The fault of the perpetrator in the incident should not be serious.
3. There should be certain circumstantial evidence that the perpetrator had harmful inclinations; however, there should not be a final judgment on the scope of the harmful inclinations.

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4. Before reaching such a decision, since the decision will be based on a juvenile prison sentence, the court should have checked less strenuous alternative sanctions and decided that they would not be sufficient.

If the court decides to suspend determination of the juvenile prison sentence, then the court explains that this decision is an alternative sanction as well as its significance, in a manner comprehensible to the accused. Since there is a suspension at the end, for the expected achievement to be reached, it is very important that the accused is given certain obligations to be fulfilled during the trial period (Ostendorf 2001, 43).

Suspending execution of the juvenile prison sentence: The court, after determining a prison sentence for the child in conflict with the law and reaching a verdict, may suspend execution of this sentence (JGG 21-24). The suspension decision itself is deemed an alternative sanction.

What is important in suspending the execution of the juvenile prison sentence is the use of the imposition of orders, obligations and the responsibility to get the required assistance of a supervisory officer, all of which should be fulfilled during the suspended trial period.

The court suspends execution of the juvenile prison sentence in the form of a verdict; in exceptional circumstances, it is possible to reach this decision later on (JGG 57).

## **VIII - Some features of sanctions applicable to young persons:**

### **1) Combining sanctions:**

In juvenile criminal law, it is possible to apply more than one sanction to the accused and to combine these sanctions. However, in order to realize this, a clear legal regulation is required.

Laws have explicitly accepted combining sanctions under the following conditions: (a) educational security measures and disciplinary security measures can be combined (JGG 8/1, clause 1); (b) this is accepted for juvenile prison sentences, orders and correctional assistance (JGG 862, clause 2).

At the same time, combining sanctions is explicitly prohibited by law under certain circumstances: assistance measures for correction cannot be combined with juvenile disciplinary detention. Likewise, combining suspension of determination of the prison sentence with juvenile disciplinary detention is prohibited.

One issue of particular note is that measures which require placement in an institution are not combined with outpatient treatment measures. Applying too many sanctions for the same act may reverse the desired correctional effect. The principle of proportionality should also be observed here.

### **2) The single-sanction principle:**

Even if a young person or a young adult has committed more than one crime, educational security measures, disciplinary security measures or juvenile prison sentences may be used for this person as single sanctions. Juvenile judges are authorized on this issue, provided that he or she does not go beyond the authority to apply sanctions (JGG 39).

Whether multiple offenses committed by the accused are truly part of a whole or only considered that way will be decided in line with the general provisions of the criminal law; however, juvenile criminal law accepts only a single sanction.

Another feature of German juvenile criminal law is that it stipulates that sentences a child received for earlier offenses are considered when reaching a conviction (JGG 31/2).

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### **3) Recidivism:**

For previous convictions to be considered in the new verdict, the following conditions should be realized:

1. The previous verdict should be finalized.
2. The sanctions under the previous verdict should not be completely fulfilled yet.

If a child was sentenced to prison but execution of this sentence was suspended in the previous finalized verdict, then canceling this suspension is not required in order to consider the previous verdict in the new one.

If the perpetrator was found guilty but determination of his or her sentence was suspended, and this person then commits a new crime, the second verdict should consider the suspended sentence.

If it is deemed to be more beneficial for correction of the child, then the previous sentence can be disregarded in the new verdict.

### **4) Crimes committed by the same accused in different age groups:**

If the accused has committed some offenses subject to juvenile criminal law and other offenses subject to general criminal law because he or she committed the latter ones as a legal adult, then the gravity of the offenses is considered. If the gravity of the offenses committed as a legal adult have the hallmark of the juvenile offenses, then only the sanctions of juvenile criminal law are applied (JGG 32).

### **5) Deducting time served under arrest:**

Periods passed during execution of an arrest warrant for a child in conflict with the law are in principle deducted from the period of the sentence given in the end. However, in order to do this, the former deprivation of liberty should be due to an offense or should be realized by such means. Where more than one offense is combined and bound by a single sanction (JGG 31/1, 2), the time under arrest due to one of these offenses can also be deducted from sentences for the other offenses.

However, there is the exception of deduction which is a general rule: if the period of the juvenile prison sentence remaining after the deduction of the period under arrest is not sufficient for the correction expected from the punishment, then the period under arrest is not deducted. As we have seen, the period under arrest is considered punishment under German law.

### **6) Trial expenses:**

Unlike in adult criminal law, the measure of making the accused pay trial expenses may be totally disregarded in juvenile criminal law.

### **7) Later correction of sanctions and arrests due to failure to observe measures:**

Orders given pursuant to Article 10 of the Juvenile Courts Law and obligations given pursuant to Article 15 of the same law may be amended after the verdict is finalized. If it is necessary for the correction of the young person, then the educational or disciplinary measures ordered in a finalized manner can be even cancelled completely.

If orders to the child to be subject to educational measures and obligations are not fulfilled, then an arrest for disobedience may be decided for (Ostendorf 2001, 58). However, for such a decision to be reached, the child must have disobeyed the order or obligation (JGG 11/3, 15/3).



## Section II: Structure and Evaluation of the Turkish Juvenile Criminal Justice System

### 5. § - AGE OF CRIMINAL LIABILITY IN THE NEW TURKISH CRIMINAL CODE.

#### I. Age of criminal responsibility:

Article 31 of the new Turkish Criminal Code stipulates a perpetrator being underage as being “among the reasons which abolishes or reduces criminal responsibility.” This article was amended by Law 5377, and punishments given to children who are criminally responsible are aggravated.

However, the lack of punishment for children in certain cases or lighter punishments in others has led some to fear that children may be used by others as pawns in committing crime. In order to prevent this, the sentence of any person who uses other persons not criminally responsible to commit an offense is increased from one-thirds to one-half (NTCC 37/2).

Children under 12 (or under 15 if deaf and mute) at the time they committed the act shall not be criminally responsible (NTCC 31/1). Criminal charges cannot be filed against children in this age group; however, safety measure trials may be held in order to apply security measures specific to children.

The duty of supervising children who were under 12 at the time of the offense and were forced into crime lies with the Social Services and Child Protection Institution (SHÇEK) (CPL 37/1). However, in order to do this, it first must be decided to place the child under supervision (CPL 36).

Before determining the procedure to be applied to children who were under 12 at the **time of offense** and stand accused while still under 15, it is necessary to carry out an examination. If the examination finds that “the ability to perceive the legal significance and consequences of the committed act or the ability to direct one’s own deeds is not sufficiently developed,” then the child will be considered not criminally responsible, and no sentence will be given to such a child; however, security measures will be applied.

The criteria of being able to “perceive the legal significance and consequences of the committed act” and an “underdeveloped ability to direct one’s own deeds” apply to children who were aged 12 at the time of the offense but are still under 15 (or for the deaf and mute, who were under age of 15 at the time of the offense but are still under age 18) (NTCC 31/2). For children in this age group, only reduced punishment is foreseen and the taking of security measures is not allowed.

“Being able to perceive the legal significance and consequences of the committed act” is the equivalent of “the ability to understand and will.” This should be understood in the form of “being aware that the committed act creates injustice.” The point which requires examination is violating the law: in other words, the child understanding that the act he or she has committed violates the rules of the common life makes the act unlawful. If the ability of child to comprehend this matter is underdeveloped, then he or she will not be criminally responsible.

Determination of whether the child has criminal responsibility or not is done by the court during the prosecution phase. The court may consider the social examination report when considering this issue. However, no opinion is stated in the report because the authority to gauge criminal responsibility belongs to the court. If the view in the report is not sufficient for the court, then another report may be requested from a forensic medical expert, child psychiatry expert or a specialist medical doctor (ÇÇKYön 17/2, TKYön 6).

These regulations made in the laws and regulations are appropriate. In general, the social examination report may provide sufficient information on the social relations of the child.

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However, in difficult situations, where the child has peculiar conditions, it is appropriate to leave the way open to get the opinion of a consultative authority.

Persons in this age range, in which they grow from childhood to late adolescence, are generally aware that the act they have committed constitutes an injustice, but in certain situations they cannot stop themselves from committing the act. Therefore the law stipulates that an examination must be carried out to gauge the ability to direct one's own deeds (Özgenç 2005, 437).

Reduced sentences may be given to persons who were over 15 but under 18 at the time of the act. Lawmakers accepted normatively that children in this age group have the ability to comprehend the legal significance and consequences of their conduct, but that they lack sufficient ability to direct their own deeds, i.e. their willpower is weak (Özgenç 2005, 437). Such young persons that have limited culpability may be tried without determining their characters and social factors and if their act is found to be proven, then the social examination report may be used to reduce their sentence pursuant to Article 61/5 of the new Turkish Criminal Code.

Although a social examination report as stipulated in Article 35 of CPL may be done for all children, by giving jurisdiction to the chief public prosecutor during the investigation phase and to the court president or judge during the prosecution, the term "when necessary" makes personal and environmental determination not mandatory for children in this group. However, if a social examination is requested for the child by the court or the child judge, then the grounds are stated in the decision (CPL 35/3).

## **II. Actors of the juvenile criminal justice system:**

With the new Turkish Criminal Code, the Law on the Execution of Punishments and Security measures, and the Child Protection Law, the new criminal justice system created by other fundamental laws restructured the juvenile criminal justice system and areas in this field (See § 11 for studies carried out on German law).

For public officer subject areas working in connection with the duties under the Child Protection Law, Public Officer Adjudication Law 4483 is not applicable (CPL 44).

The actors of the juvenile criminal justice system are as follows.

### **1) Courts:**

Child courts are restructured to be child courts or child high criminal courts (CPL 25 - 28).

*Child courts.* Child courts consist of a single judge (CPL 25/1). Chief public prosecutors do not participate in trials heard in such courts. However, the local prosecutor may appeal court decisions.

Child courts are tasked with both legal and penal duties. Under their jurisdiction are decisions on precautionary measures applicable to children in need of protection and children forced into crime who are not criminally responsible as well as decisions on offenses in the area of jurisdiction of criminal courts of first instance and the magistrate criminal courts for children forced into crime who are criminally responsible (CPL 26/1).

**Child high criminal courts.** Child high criminal courts are tasked with the duty to hear the criminal cases of children under the jurisdiction of the high criminal courts (CPL 26/2). These courts take the form of a council consisting of a president and two members (CPL 25/2).

If the child forced into crime is above age 15, then the charges for the offenses laid down in CPP 250/1 are heard in high criminal courts established pursuant to this article (Anti-Terrorism Law (LFT) 2006.5532 9): "Charges for offenses under the scope of the Anti-Terrorism Law are heard in high criminal courts, as stated in paragraph one of Article 250 of Penal Procedural Code 5271 dated December 4, 2004. Charges filed against children over 15 for these offenses are also heard in these courts."

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However, a 2006 amendment to the Anti-Terrorism Law, by Law 5532 (LFT 9), stipulates that charges for offenses under the scope of the Anti-Terrorism Law will be heard by the high criminal courts stated in CPP 250/1. Charges filed against children over age 15 are also heard in these courts. This regulation of the law contradicts Articles 1, 6 and 40 of the Convention on the Rights of the Child. Moreover, the prohibition of discrimination stipulated in the European Convention on Human Rights is also relevant here. Article 141 of the Turkish Constitution foresees special provisions regarding adjudication procedures for children, and in Article 37 the principle of natural judge is accepted. This amendment to the Anti-Terrorism Law thus also can be said to contradict the above principles of the Constitution.

## **2) Prosecutor's office:**

*Juvenile department of the chief public prosecutor's office (CPL 29 - 30).* With this provision of the law, a juvenile department has been established in chief public prosecutor's offices. As stated in CPL 28, chief public prosecutors preferably specialized in juvenile law, and who have received child psychology and social service training, are assigned to these positions. The investigation is carried out by the child prosecutor in person (CPL 15/1).

## **3) Law enforcement:**

*Juvenile department of the law enforcement units (CPL 31-32).* Law enforcement duties regarding children are first carried out by the juvenile department of the law enforcement units.

When the juvenile department of the law enforcement unit takes up the case of children who need protection and are forced into crime, this situation is communicated to the parents, guardian, ward or the person who undertook care of the child, to the Bar and the Social Services and Child Protection Institution, and – if the child was already at an official institution – to a representative of that institution. If there is a suspicion that a person close to the child coerced him or her to commit crime or if there is a suspicion of exploitation, then the close relatives are not informed and no information is given (CPL 31/2).

The law enforcement unit which will work on children in conflict with the law must be trained in issues such as juvenile law, preventing juvenile delinquency, child development and psychology, and social services.

If there are indications that it is against the child's best interest, staying in the law enforcement unit, then the law grants the law enforcement unit the authority to deliver the child to the Social Services and Child Protection Institution as soon as possible, by taking the measures necessary for law enforcement, without waiting for an emergency protective order pursuant to CPL 9 (CPL 31/5).

## **4) Other subjects:**

*Social workers (CPL 33 - 35).* Social workers are assigned as staff members to the courts by the Ministry of Justice. Especially persons having master's degrees in the areas of child law or preventing juvenile delinquency are preferred for these positions.

*Social Services and Child Protection Institution.* The Social Services and Child Protection Institution (SHÇEK) may request that protective, supportive measures be taken for the child (CPL 7); the child who must be placed under emergency protection is taken under the care and supervision of SHÇEK, which applies to the child judge for an emergency protective order (CPL 9). SHÇEK social service workers carry out their duties charged under CPL (CPL 33). SHÇEK fulfills the protective and supportive measures found in CPL 5 (CPL 45).

*Ministries.* The Ministry of National Education, Ministry of Labor and Social Security, Ministry of Health (CPL 45) and local administrations takes supportive measures (CPL 45).

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*Inter-institutional coordination.* The Ministry of Justice provides the inter-institutional coordination in taking measures (CPL 45/3)

*Probation office.* The probation officer provides guidance in the correction and exercising the rights of the child, and enables communication with the family and the environment (CPL 37, 38).

There are Probation and Assistance Centers, and also the actors created with the Law on Protection Committees. These are the *Probation Department* (DSYMKK 8), *Branch Directorate* (DSYMKK 10), *Protection Committees* (DSYMKK 16), and *Advisory Committees* (DSYMKK 19).

Children's Closed Penal Execution Institution (CGİK 11) and the Youth Closed Penal Execution Institution (GGİK 12) also have certain duties in the juvenile criminal justice system.

### **III. Measures on children:**

Measures applicable to children are covered in various scattered laws, and there are also some procedural and meritorious divergences in application.

#### **1) Measures foreseen in the Child Protection Law:**

The Child Protection Law regulates (a) juvenile security measures, as ordered by Article 56 of the Turkish Criminal Code, and (b) protective and supportive measures applicable to children in need of protection as well as children forced into crime (CPL 5).

1) *Consultancy measure.* A consultancy measure is meant to provide guidance on raising children to persons responsible for the care of children and to support children in resolving their problems related to their development and education (CPL 5/1-a).

2) *Education measure.* This is meant to enable children to attend an educational institution as a day or boarding student, or vocational or artistic courses in order to learn a trade or vocation, or for placing the child with a professional master or in public or private workplaces (CPL 5/1-b).

3) *Care measure.* When a person responsible for the care of a child cannot fulfill this duty for whatever reason, then this measure stipulates that the child is placed in a public or private care institution and benefits from its protective family services (CPL 5/1-c).

If a care decision is reached, then SHÇEK takes necessary steps and places the child in a public or private institution (CPL 10).

4) *Healthcare measure.* This enables children to receive short- or long-term medical care and education to protect and cure their physical and mental health and to treat children who abuse addictive substances (CPL 5/1-d).

5) *Sheltering measure.* This measure is for providing a suitable shelter to persons with children or pregnant women whose lives are at risk and are without shelter (CPL 5(1)e). Upon the request of persons to whom shelter is provided, their identity and addresses are confidential (CPL 5(2)). In cases where shelter (and care) measures are decided on, SHÇEK immediately places the children in public or private institutions (CPL 10).

6) *Measure for delivering the child to the parents, guardian, or person responsible for care and supervision.* If it is determined that there is no danger to the child, the child is delivered to his or her parents (CPL 5/3). Since, in general, other available measures are left aside and only this measure is applied, this can be seen as "imprudence".

The measure of delivering children to parents is applicable to children who are not in danger. If the child is in danger and this danger would be eliminated with the parents' support, then delivering the child to the parents is mandatory.

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Moreover, when delivering a child not in danger to his or parents also taking one of the other protective and supportive measures may be decided on (CPL 5/3).

7) *Emergency protective measure*. If there is a situation requiring the immediate protection of a child, then the child is placed under protection and supervision by SHÇEK. The institution applies to the child court judge within 5 days to request an emergency protective order (CPL 9/1).

The judge reaches a decision within three days. It may also be decided to keep secret the place where the children are staying and to establish a personal relationship when necessary.

An emergency protective order lasts 30 days at most (CPL 9/2).

The institution carries out a social examination during this time. If in the end it is decided that such an order is no longer necessary, then SHÇEK tells the judge about both this and what it will do (CPL 9/2). The judge, using this information, then decides if the child will be delivered to his or her family or will receive protective and supportive measures (CPL 9/2).

The institution can also request that the judge issue a protective and supportive measure decision (CPL 9/3).

## **2) Reaching and applying a decision on protective and supportive measures stipulated in CPL 5 (CPL 7):**

A decision to take protective and supportive measures is reached by the child court judge at the place where the child lives (CPL 8/1), upon a request, independently or following an emergency protective order (CPL 7/1).

The authority to request such measures may be used by a parent, guardian or the person responsible for the care of the child, or by SHÇEK or the chief public prosecutor (CPL 15/3).

A social examination report (SER) may be produced before a decision is reached on this measure (CPL 7/2).

The “type” is stated in the measure decision; more than one measure may be decided on (CPL 7/3).

Also, a decision to place the child under supervision may be reached besides this measure (CPL 7/4).

Besides the decision on this measure, decisions on guardianship, custody, administration, alimony and establishing personal relationships may also be reached (CPL 7/7).

These decisions are reached without holding trial; however, the opinion of the child can be consulted, and the relevant parties heard, and an SER may be requested (CPL 13/1).

The officer, institution or organization which will execute the decision will draft an implementation plan (TKYön 18/1) and submit it to the adjudicating authority within 10 days.

The adjudicating authority may request that this plan be changed.

In this plan, the person responsible for carrying out the decision is determined. The decision explains the type and time of the measures, institutions to cooperate during their application, services to be provided, objectives and how the progress will be measured.

The development of children for whom protective and supportive measures decision are reached are examined within three months by decisions of the adjudicating authority (CPL 8/2, TKYön 18/4).

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The examination is carried out by the social services working in the court (KTYön 18/9). If such experts are lacking, then the adjudicating authority gives a consultative authority this duty and pays for this from allocations in the act (TKYön 18/11).

### **3) Canceling or amending protective and supportive measures (CPL 7/5):**

A decision to cancel or amend the measure is reached by the adjudicating authority responsible for the previous decision, independently or upon request.

In emergency cases, the adjudication authority where the child is living is also authorized (CPL 7/5).

A cancellation request may be submitted by the probation officer, guardian, ward, person responsible for care and supervision, representative of the institution fulfilling the measure, or the chief public prosecutor (CPL/3).

Automatic termination of the protective and supportive measure is regulated under CPL 7/6.

### **4) Expiration of measures:**

The measure automatically expires when the child is over 18. However, with the consent of that person, who is then legally an adult, the measure may be continued for a certain period of time (CPL 7/6).

### **5) Decisions on guardianship, custody, administration, alimony, and establishing personal relations:**

The court, besides protective and supportive measure decisions (excluding juvenile security measures), may reach decisions which should be given pursuant to the Civil Code for children in need of protection (excluding those who were coerced to commit crimes) (CPL 7/7).

### **6) Decisions on juvenile security measures:**

Decisions on protective and supportive measures stipulated in NTCC 56 and found in CPL 5 with reference to CPL 11 are taken as decisions on juvenile security measures; however, the procedure is not indicated in the law.

CPL Article 11 states that the juvenile security measures should be understood as the above measures, i.e. protective and supportive measures in Article 5 of the same law, and that the measure decisions will include these measures.

### **7) Measures stipulated in other laws:**

There are two more laws which stipulate measures for children. One of these is Law 2828 on the Social Services and Child Protection Institution (SHÇEK) and the other is the Civil Code. There are also other laws which include provisions for protecting children.

**Civil Code:** Article 346 of the Civil Code (2002.4721) stipulates that if the interests and development of a child are in danger and the parents do not or are unable to find a solution for the situation, then a judge will take appropriate measures to protect the child. If the physical and mental development of the child is in danger and the child has been emotionally neglected, then a judge may take this child away from his or her parents and give this child into a foster family or institution. If a child staying in a family damages familial peace in a manner beyond the family's expected tolerance and there are no other alternatives left for the situation, then upon request of the parents or the child, a judge may take the same measures (CL 347).

*Civil Code provisions on guardianship, custody, and alimony.* In cases of protection of a child or where a child is subject to violence, measures against the abuser are regulated in the Family Protection Law. Law 4320, besides the provisions of the CL, states that the

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magistrate judge can independently take one or more of the measures stated in the law, in cases where a family member is subject to domestic violence, and the issue is forwarded to the chief public prosecutor's office.

The judge, besides this measure, can also order the payment of alimony, considering the social level of the victims, in order to prevent them from falling into poverty. There will be a warning in the court ruling stating that the order will be applied for a period of maximum of 6 months and if it is violated, the spouse at fault will be arrested and sentenced to punishment limiting his or her liberty<sup>2</sup>. Cases which constitute the basis of canceling guardianship are illustrated and regulated in the CL (MK 348/1).

Such cases are considered cases where the faults of the parents are not explored. Subsequent sections of the article list cases of abusing this right and severely neglecting obligations (MK 348/2). Cases which harm the safety and interests of the child and ones which endanger the child constitute grounds for taking protective measures and revoking guardianship.

**General Public Health Law:** If a protection decision is not reached for a child, then a measure should be taken pursuant to Article 161 of General Public Health Law 1593.

**Municipality Law:** Necessary measures are stipulated in the relevant provisions of Article 15 of Municipality Law 1580.

**Law on Social Services and Child Protection:** In paragraph (b) of Article 3 of this law, the definition of a child in need of protection is as follows: "A child whose physical, mental and moral development or personal safety is in danger, 1. who is an orphan, 2. whose mother or father or both are unknown, 3. who has been abandoned by the mother, father or both, 4. who has been neglected by the mother or father and left vulnerable to a wide range of social dangers and harmful habits such as prostitution, begging, alcohol and substance abuse, and who have been left bereft of guidance." Paragraph (e) of Article 3 of the same law lists social service organizations that children in need of protection can benefit from: nursery schools, orphanages, day care organizations, child and youth centers, and social service organizations which provide services directly to children.

### **8) Deciding on measures stipulated in other laws:**

When a court decides on a measure for a child, this means that the parents who are obliged to care for the child are not fulfilling their obligations in a satisfactory manner. This deficiency determines the quality of the applicable measure. The fundamental principle is that the child should be together with the family and be protected while in the family.

The Regulation on Applying the Guardianship, Custody and Inheritance Provisions of the Turkish Civil Code stipulates that protection decisions reached in situations laid down in Articles 346 and 347 of the Civil Code should be taken in accordance with Article 22 of the SHÇEK Law.

SHÇEK has the duty to identify and examine families, children, and disabled and elderly persons who need protection, care and help and also persons who are in need of social services (Article 21). Documents required for protection decisions are prepared by the institution and submitted to the relevant court. The protection decision is reached by the competent court. Under Article 14 of ÇMK, this court should be a child court. Children needing an immediate protective measure should be placed in one of the SHÇEK organizations or near a family, with urgent approval from the head of the civil service (in provinces, governorships) (Article 22).

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<sup>2</sup> Sayita, Sevgi Usta Sayita, "Mağdur Çocuklar Hakkında Koruma Önlemleri" (Protective Measures for Victimized Children), Mağdur Çocukların Hukuksal Konumu (The Legal Status of Victimized Children), İstanbul Bar, İstanbul, 2004.

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This applies to all children at risk, whether an offense has been alleged or not.

The following are the persons or bodies authorized to request that a measure be ordered for a child: guardian, ward, person obliged to give care, or the chief public prosecutor's office (ÇMK14), and SHÇEK (Law of SHÇEK 21); any others may open the process by applying to the chief public prosecutor's office under the title of denouncer.

Ordering a measure for a child does not necessarily require cancellation of the guardianship. However, if it is clear beforehand that other measures for protecting the child will fail or be insufficient, then the judge will decide to cancel the guardianship under the following conditions (CL 378):

1. The parents' inexperience, sickness, disability, living in another place or not fulfilling their guardianship due to a similar reason
2. Parents not giving enough care to the child or seriously neglecting their obligations

The costs of a child placed in a family or a tasked private institution are borne by the state. The amount payable is determined by a decision reached by the child courts. If the economic status of the person who is obliged to give care to the child under the Civil Code is sufficient to bear the costs of the child, then the decision to collect the amount payable from the state is revoked (ÇMK 31). The provisions on alimony being preserved, if the parents lack the ability to pay, then the costs caused by these measures are payable by the state (CL 347).

#### **9) Results of measures being broken:**

Protective and supportive measure decisions are recorded in the protective and supportive measure decisions book to be kept by the judge or the courts (TKYön 22).

When children for whom a measure on care and sheltering is ordered and who are delivered to the institution or the organization where the measure will be applied then leave the institution without permission, a report is prepared. Law enforcement units are then told of the situation via the most convenient means. This notification is turned into written form as soon as possible. In addition, the court or the child court judge is also informed (TKYön 22/4).

Operations regarding children who leave the institution without permission are carried out under the framework of "house regulations" of the institution or organization applying the measure (TKYön 19/14).

#### **IV. Social examination:**

The social examination of the personal features and social environment of children under CPL is very important in terms of evaluating the criminal responsibility of children, i.e. "the ability to comprehend the legal significance and consequences of the committed act and to direct one's own deeds regarding this act" (CPL 35/1).

A social examination should be completed on the child before applying punishment or measures (CPL 35, repealed ÇMK 20)<sup>3</sup>. The child's physical, spiritual, and mental development level and the experience of the environment, education and training should be examined.

A social examination report (CPL 35) is a kind of "examination by a consultative authority." The report should include reasons as well as the views of the consultative authority. However, a decision on the criminal responsibility of the child is reached by a judge.

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<sup>3</sup> Repealed juvenile courts decision, before applying punishment or measures, should have determined the juvenile's physical, intellectual and spiritual status (aware and responsible) in terms of comprehending the significance and consequences of the act committed. The legal examination should have been carried out by experts. The Supreme Court agreed that medical experts should be understood from the term "experts." The examination of being aware and responsible meant to examine "whether the child had the ability to comprehend and wish." To be aware and responsible did not mean to "be intellectually healthy, free of mental retardation, not show any childhood syndrome symptom, and be biologically developed."

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Before this decision is reached, the children’s family, manners, school record, conduct, living and growing conditions, and other similarly crucial issues should be examined. This examination is carried out by social service workers found in child courts and their assistants, or by experts such as pedagogues, psychologists or psychiatrists.

The court is not bound by the report<sup>4</sup>, but it does consider it in assessing whether the child has the ability to comprehend the legal significance and consequences of the act and direct his or her own deeds regarding this act (CPL 35/1).

## **V. Arrests and Judicial Control:**

### **1) Arrests:**

Arrest warrants can be issued where there are “facts indicating the presence of a strong suspicion of crime or a reason for arrest” (CPP 100/1).

Warrants cannot be issued for children under age 15 for acts which require prison sentences having a maximum of less than five years (CPL 21, CPL Yön 11). Warrants cannot be issued for children or adults for offenses punishable only by judicial fines or for a maximum of one year in prison (CPP 100/4).

The Child Protection Law (CPL 21) prohibits the arrest of children for acts which require prison sentences having a maximum of less than five years.

For children 15 or older, the general provisions are applicable. However, independent of the age, in order to issue an arrest warrant for children, judicial control measures must have been applied to no avail or it has become clear during the application that no result is forthcoming. Warrants cannot be issued before judicial control measures are applied (CPL 20/2).

If the judicial control measures are not observed, judges are authorized to issue warrants. However, with an appropriate regulation, “obligation to arrest” is not stipulated (CPL 20/2).

The period of arrest is a maximum of one year in areas not under the jurisdiction of the high criminal court; in necessary cases this period may be extended for another six months.

In cases in the jurisdiction of the high criminal court, the period of arrest can be a maximum of two years. However, where necessary, this period may be extended by three years after the grounds are stated (CPP 102/2).

In the general Penal Procedural Code (CPP 102), the regulated time periods are not specific for children. Article 37 of the Convention on the Rights of the Child states that depriving the liberties of children should be applied as a **last resort** and for the shortest time possible.

### **2) Judicial Control:**

Judicial control (CPP 109) is a significant institution under the new criminal justice system meant to reduce the harmful effects of arrests.

Applied under certain restrictions (CPP 109/1) for adults, judicial control was made a general rule for children forced into crime (CPL 20) and has been expanded for children (CPL 20/1).

Contrary to the general provisions in CPL (CPP 109), there is no penalty or age limitation for judicial control, and applying judicial control measures at the judge’s discretion can be done for all offenses.

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<sup>4</sup> Uluğtekin, Sevda “Çocuk Mahkemeleri ve Sosyal İnceleme Raporları” (Juvenile Courts and Social Examination Reports), Ankara 2004 ; Tan, Ümran Sölez “2253 Sayılı Çocuk Mahkemelerinin Kuruluşu, Görev ve Yargılama Usulleri Hakkında Kanunun 19 ve 20. Maddeleri” (Articles 19 and 20 of Law 2253 on the Establishment, Duties and Adjudication Procedures of Juvenile Courts) Yeni Adalet Dergisi, İstanbul

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The judicial control measure can only be applied to “children forced into crime” (CPL 20).

The judicial control obligations for children forced into crime are wider (CPL 20/1) than those on adults (CPP 109).

The following are the judicial control obligations in CPP 109/3:

- a) Obligation to not leave the country
- b) Obligation to apply to designated places
- c) Obligation to obey the summons of authorities or persons of the control measure for continuing professional occupation or education
- d) Obligation to not drive any vehicle and to hand over one’s driver’s license
- e) Obligation to be treated or examined (for stimulants or narcotics, etc., and alcohol)
- f) Obligation to make a deposit to prevent flight (release on bail)
- g) Obligation not to carry a gun
- h) Obligation to bind the rights of the victim of crime to a guarantee (such as indemnity)
- i) Obligation to fulfill family obligations and regularly pay alimony

The following are the additional obligations in CPL 20/1:

- a) Obligation to not leave the designated area
- b) Obligation to not visit prohibited places
- c) Obligation to not establish relations with prohibited persons or organizations.

If no results are obtained from the judicial control obligation (measure) or it is clear that no result will be obtained or the measure is not observed, then an arrest warrant can be issued (CPL 20/2).

Controlled Release branch directorates are authorized to audit judicial control decisions.

If children forced into crime do not observe the measure in the form of judicial control (or no result is obtained from the measure or it is clear that none will be obtained), then the competent judicial authority can decide to arrest the child (CPL 20/2) or to remove, partially or fully, or to amend the obligation which forms the content of the judicial control or to hold some persons temporarily exempt from obeying the control (CPLYön 10).

## **VI. Suspending charges and conciliation**

For the chief public prosecutor to prepare an indictment, the presence of sufficient suspicion should be established (CPP 170). If there are sufficient suspicions, the chief public prosecutor takes the route of suspending charges in offenses where this is possible or the method of conciliation in offenses subject to conciliation

An indictment prepared without applying conciliation will be returned (CPP 174/1-c). However, submitting the indictment to the court does not mean that charges were filed, or that the court should make a decision to accept the indictment (CPP 175/1).

### **1) Conciliation:**

**Conciliation in the general procedure (CPP 253) and conciliation in juvenile law are fundamentally the same institution; however, juvenile conciliation<sup>5</sup> (CPL 24) had a wider area of application. But Article 24 of Law 5560 dated December 6, 2006 changed the structure of conciliation to make conciliation in juvenile law and conciliation in the general law bound by the same rules (see § 4 for explanation of the German Law).**

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<sup>5</sup> UThe conditions of reconciliation in juvenile offense were as follows prior to the amendments in Law No 2006.5560 (CPL 24/1): That the offense is based on complaint and that the minimum level of sentence is no more than two years in offenses that have intent (3 years for juveniles who are younger than 15 years of age): CPL 24/2) or if the offense is committed by imprudence.

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The law starts from the following four criteria in determining offenses subject to conciliation:

- a) Offenses whose investigation and prosecution is based on a complaint.
- b) Independent of the complaint intentional injury (except paragraph three, Article 86; Article 88); injury by negligence (Article 89); trespass to a residence (Article 116), kidnapping and detaining children (Article 234), disclosing information and documents which contain commercial secrets, banking secrets or customer secrets (except paragraph four, Article 239)
- c) In order to apply the method of conciliation in offenses found in other laws, excluding ones whose investigation and prosecution is subject to complaint, there should be an open provision in the law (CPP 2006.5560 253/1).

Offenses in which active remorse is allowed and offenses against sexual inviolability are not conciliated, although their investigation or prosecution is subject to complaint (CPP 2006.5560 253/3).

The following features are present in the conciliation model stipulated in CPP 253: For offenses whose law provisions allow the application of the conciliation provisions (CPP 2006.5560 253/1, 2, 3), the chief public prosecutor or upon his instruction the judicial law enforcement unit proposes conciliation to the suspect and the victim or the injured party. If the suspect, victim or injured parties are under the age of discretion, then the conciliation proposals are made to their legal representatives. If the proposal is not accepted in three days, then it is deemed refused (CPP 2006.5560 253/4). If the proposal is accepted, then the content of the conciliation and the outcomes of the legal consequences of accepting or refusing the conciliation will be declared. The chief public prosecutor may carry out the conciliation himself or may request a conciliator from the Bar or may himself task a conciliator from among people with legal backgrounds (CPP 253/9). As a result of the conciliation if the suspect fulfills his or her obligation a single time, then a decision of “insufficient grounds for prosecution” (CPP 172) is reached (CPP 253/19).

## **2) Suspending filing of charges:**

If the conciliation stipulates an obligation to be fulfilled in installments, then, maintaining the decision to suspend filing charges (CPP 253/19) in spite of sufficient suspicion, in offenses whose investigation and prosecution are subject to complaint and which require a prison sentence of one year or less, filing charges may be suspended for up to three years (CPL 19) (five years for adults: CPP 171/2).

This decision will be recorded in the system (CPP 171/5).

The injured party may object to this decision (CPP 173, 172/2).

In order to suspend filing charges, the conciliation method should have been tried and failed and the following conditions should be wholly fulfilled:

- a) The accused has not been previously convicted to a prison sentence for an intentional offense
- b) The suspension should voice the view that the accused will be reluctant to commit crime
- c) The suspension should be more beneficial for both the suspect and society compared to filing charges
- d) The damage suffered by the victim or the injured party should be:
  - returned as it was
  - restored to the condition before the offense; or
  - eliminated completely by compensation

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If an intentional offense is not committed within this “suspended period” of 3 years for children in conflict with the law (5 years for adults), then a decision of “insufficient grounds for prosecution” is reached (CPP 171/4).

If, however, an intentional crime is committed during the period of suspension, then an indictment will be prepared in order to file charges (CPP 170/2). If the indictment is accepted by the court, then the charges will be prosecuted (CPP 175/1).

If the evidence gathered in an investigation of a child forced into crime puts forth “sufficient suspicion,” then the juvenile prosecutor can decide not to prepare an indictment and suspend filing charges (CPL 2006.5560 19/1).

With the amendment to Law 2006.5560, the general procedure (CPP 2006.5560 171/2) and juvenile law (CPL2006.5560 19/1) are united.

If fulfilling the obligation in the conciliation is postponed to a future date, then a decision to suspend filing charges is reached.

## **VII. Sanctions applicable to children in conflict with the law**

### *1) Juvenile security measures*

The Child Protection Law, instead of regulating individually the juvenile security measures stipulated by the Turkish Criminal Code, states that protective and supportive measures (CPL 5) and emergency protective orders (CPL 9) should be understood as “juvenile security measures” (CPL 11). It seems that a measure applied as a “protective and supportive measure” turns into a “juvenile safety measure” for children who are forced into crime and are criminally not responsible.

### *2) Penalties*

Only time-limited prison sentences are applicable to criminally responsible children (NTCC 31/2 and 3). Children over the age of 12 at the date he or she committed the crime but still under age 15 will be criminally responsible “if he or she has the ability to comprehend the legal significance and consequences of the committed act and to direct his or her own deeds regarding this act,” and the following are sentences which such children in conflict with the law are subject to: if the offense calls for an aggregated life sentence, a prison sentence of 12-15 years is applicable; if it requires a life sentence, then a sentence of 9-11 years is applicable. Other sentences are reduced by half, and in such cases the prison sentence given for each act cannot be greater than seven years (NTCC 2005.5377 31/2).

The following are the sentences given to persons who were over age 15 at the date of the act but are still under 18: if the offense requires an aggregated life sentence, then a prison sentence of 18-24 years is applicable; if it requires a life sentence, then a prison sentence of 12-15 years is applicable. Other sentences are reduced by one-third, and in such cases the prison sentence given for each act cannot be greater than 12 years (NTCC 31/3).

## **VIII. Result from the hearing, judgment and postponing announcement of the verdict:**

As a result of the trial based on the offense alleged to have been committed by a child, a verdict is rendered.

If a prison sentence up to or including three years or a judicial fine is given at the end of the trial, then announcement of the verdict for children in conflict with the law may be postponed (CPL 23) (see § 4 for explanation of the German Law).

Where conciliation is successful, if fulfilling the obligation is postponed etc., then postponing the announcement of the verdict may be decided on without seeking the conditions laid down in CPP 231 regarding the accused. If the requirements of the conciliation are not fulfilled, then the verdict is announced without seeking the conditions laid down in CPP 231/11 (CPP 2006.5560 254/2).

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The following are the other conditions for reaching a decision to postpone announcement of the verdict (CPP 231/6):

- a) if the accused was previously convicted due to an intentional offense;
- b) if the court believes that the accused will not commit further crimes (to judge this, during the hearing the court considers the accused's character, attitude and behavior);
- c) if the damage to the injured party or the public is fully redressed (goods should be returned in original condition, and/or damage should be restored to its pre-offense condition or should be fully redressed through compensation). Where the damage is irreparable, announcement of the verdict may be postponed, provided that the damage is repaired fully via monthly installments payable during the probation period (CPP 231/9).

Probation period is three years (CPL '2006.5560' 23). At the court's discretion, during this period the accused may be ordered to fulfill an obligation stated in CPP 231/8 or another obligation, for a time of less than one year. Assigning such an obligation is, however, not required.

#### **IX. Suspending the prison sentence:**

The sentence of a person who is sentenced to prison for 2 years or less may be suspended (NTCC 51/1) or, for people who were under 18 (or over 65) at the date of incident, sentences of 3 years or less may be suspended (NTCC 51/1-cü.2) (see § 4 for explanation of the German law).

For a suspension decision, the person a) should not have been sentenced to prison for more than three months due to an intentional offense, and b) through remorse shown during the trial, should have led the court to a preponderance of belief that the person will not commit further crimes.

The sentence may be suspended unconditionally or may be conditional on redress of the damage to the victim or public, to return it to its pre-offense state or to fully redress the damage through compensation (NTCC 51/2). If the law stipulates that the sentence should be completed in the sentencing execution institution until the condition is fulfilled and the condition is then fulfilled, then the child shall be immediately released from the institution based on the judge's decision.

A convict whose penalty is suspended shall have a probation period of more than one year and less than three. The minimum length of this period cannot be less than that of the convict's sentence.

#### **X. Turning the short-term prison sentence of an under-18 convict into alternative sanctions:**

A prison sentence of one year or less is considered a short-term sentence (NTCC 49/2). Alternative sanctions may be chosen in lieu of these sentences (NTCC 50/1). Short-term prison sentences of one year or less given to persons who were under age 18 at the date of act must be commuted into one of the following alternative sanctions (provided that the person has not been previously sentenced to prison) (NTCC 50/3).

In addition, long-term prison sentences in offenses of negligence, excluding intentional negligence (NTCC 50/4), may also be commuted. Short-term prison sentences may be commuted to the following alternative sanctions, in light of the character of the accused, socioeconomic status, remorse shown during the trial period or the character of the offense: a) fine, b) redressing the damage to the victim or the public, through either returning it to the pre-offense state or full compensation, c) a minimum of two years' attendance at an educational institution which offers boarding options in order to acquire a profession or vocational skill, d) prohibition against going to certain places and/or doing certain activities

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for a period ranging from half to double the sentence, e) revoking relevant license and permit certificates or prohibiting practicing a certain profession for a period ranging from half to double the sentence, if the offense was committed through abusing rights and authorities or violating the obligation of care and diligence, or, f) doing community service for a period ranging from half to double the sentence, provided that the person is there voluntarily.

After the verdict is finalized, if the person does not start to fulfill the alternative sanction or starts but does not continue in spite of official communication made by the chief public prosecutor's office, the court which made this decision will rule that the short-term prison sentence must be carried out, fully or partially, and the rule to be carried out immediately. In such a case the provision of paragraph five is not applied (NTCC 50/6).

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## **SUGGESTIONS ON ISSUES THAT SHOULD BE DEALT WITH IN TURKISH LAW IN THE AREA OF CRIMINAL LIABILITY AND ALTERNATIVE SANCTIONS**

**SUGGESTION 1:** Spanish Criminal Law has the following approach to the criminal responsibility of children in conflict with the law: persons under age 18 do not have criminal responsibility (Spanish CL 19/1). Persons who commit crimes up to this age shall be responsible under the provisions of Law 5/2000 dated January 12, 2000, called “Ley Organica” (Spanish CL 19/2). In Turkish law, uniting all the provisions on children under a “Child Protection Law” can be considered.

**SUGGESTION 2:** The adjudication of children should be divided into three headings, i.e. protective measures, security measures and criminal adjudication.

The law should state what juvenile measures are under protective measure adjudication and the sanctions for not observing these rules.

**SUGGESTION 3:** The distinction between “young person” and “child” found in comparative law in juvenile criminal justice systems will facilitate harmony with international principles because juvenile criminal law considers the act first and foremost since it explores the conditions under which offenses were committed and has a structure which prioritizes the consideration of character.

The provision for conciliation in the Child Protection Law (CPL 24) and in CPP 253 in its current form is formulated in a way harmful to children. A system of conciliation specific to children must first be formulated.

Moreover, applying alternative sanctions leading to reintegration into society would be more beneficial to children in terms of rehabilitation, as reintegration of a child who was forced into crime (through punishment or other measures) does not seem possible under the current regulations (No. 29/III).

**SUGGESTION 4:** Child court judges, who consider the child forced into crime as his or her own child, should be authorized to follow up children whom the judges tried previously.

**SUGGESTION 5:** Judicial controls applicable to children have specialties. Since CPL only refers to the obligation types in CPP 109 for judicial controls on children, the sentencing limits in Article 109 are not valid in the application of judicial controls on children.

For this reason, in all offenses committed by children, the application of judicial controls is required, independent of the length of the prison sentence.

Another significant feature of judicial controls is that it is an application which substitutes for arrests. Therefore, even in cases where the reasons and conditions for arrest are fulfilled, arrest warrants should not be issued without using judicial controls.

Arresting children should be a final resort. Even in cases where judicial control obligations have not been fulfilled, the existence of a jurisdiction for turning the application to arrest should be accepted.

Obligations applicable as judicial control measures (attending educational courses, receiving treatment, guaranteeing the rights of the victim of a crime, not leaving a designated area, etc.) are obligations which organize the life of a child. Just like measures, these obligations should also be used carefully by the juvenile justice system and should be spread, with the purpose of reintegrating the child into society.

**SUGGESTION 6:** Arrest is also a protective measure (CPP 100); however, what is protected is not the child but the result that the sentence is carried out.

In the current system warrants are issued by magistrate judges. In children’s cases, child court judges can also issue warrants. However, if it is said that only child court judges can

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issue warrants (the 6th CD is said to have a decision on this issue), this may be generalized and an unacceptable result may result, such as each specialized court issuing its own arrest warrants (for instance the court in CPP 250).

However, if the system is changed and the idea of “child court judges observing the child” is accepted, then it will be appropriate to grant legal exceptions for juvenile law.

Applying a decision on protective measures and the issue of uniting the interpretations between protective measure decisions should be resolved.

The closing off all arrest options for offenses committed by children is harmful to both habitual child offenders and those within the prison sentence limit. For this reason, considering the correction effect, in some exceptional cases, a judgment similar to the German institution of restricting the responsibility of so-called “Jugendarrests” may be accepted.

Other than this, it should be considered that, when judicial controls are first applied and the child is given certain obligations, the route to arrest opens even for offenses where arrest is prohibited, without considering the length of the prison sentence if the obligations are not fulfilled.

If protective measures are also applied during arrest, the arrest of a child can be turned into a measure (No 31-VI).

**SUGGESTION 7:** In classical criminal law, some features in organized crime and juvenile offences have been developed:

Classical criminal law is an “**act criminal law.**” However, the juvenile criminal justice system is a “**perpetrator criminal law**” (Täterstrafrecht).

Therefore, for a child forced into crime, unambiguous technical reports which aid understanding of the child are needed. The Supreme Court does not accept as valid reports by non-specialist practitioners, as it argues that such reports should be authored by forensic medicine, neurology or psychiatry experts. Under Article 31 of the New Turkish Criminal Code, we should accept that this is valid.

**SUGGESTION 8:** The sanction for not following protective measures was indicated in CPL. The situation of children who did not commit an offense but did not observe the measure should also be considered. The juvenile justice system should approach children who do not observe the measures in a gradual manner.

However, arresting a child forced into crime is not a remedy for removing that child from the criminal environment, as since measures for the correction of children are lacking in the current arrest system, the child could come into contact with new criminal circles. That aspect aside, this method may be beneficial for the child since it removes repeat offenders from their criminal settings.

When conditions allow, making judicial control decisions including obligations for children who do not observe the measures may be recommended.

If the obligations given by the judicial control decision are not met, arrest is possible even for offenses where arrest is prohibited.

**SUGGESTION 9:** Diversion aims to restore children by taking them out of the criminal system. However this application requires specialized personnel having sufficient information and experience for alternative sanctions. Therefore, diversion is somewhat foreign to Turkish law in the current system but it should be implemented with certain legal reforms. It is especially a legal obligation for Turkey as a country which approved the Riyadh Recommendations prepared by UN CCR and UN YC.

Conciliation is beneficial because it helps the perpetrator, through constructive action, to be liberated from a sense of guilt and thus take responsibility for the act he or she committed.

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Since the perpetrator and the victim face each other after the crime and the former can see the harm he or she has caused, the possibility of recidivism decreases.

**SUGGESTION 10:** Return of the indictment. For children in the NTCC 31/2 category, indictments should not be prepared before the social examination report (SER) is received. The prosecutor should include his or her request at the end of the indictment (CPP 170). In order to decide on this, SER is required. Incomplete investigation is a reason for returning indictments (CPP 174/1-b).

The SER is regulated as a consultative authority report, but different from other such reports, it should say if the SER has been received or not and if not, why not. (CPL 35/final). However, it should be mentioned that this regulation does not prevent judges from resorting to a consultative authority (CPP 61).

**SUGGESTION 11:** It should not be forgotten that **the juvenile criminal justice system is a law of security measures**. Only security measures can be applied for a child as a sanction. Sentencing is the last resort (*ultima ratio*). However, the NTCC accepts a structure based on sentencing (NTCC 31/2, 3). The approach of giving only reduced sentences or only security measures (NTCC 31/2) and only limited sentences (NTCC 31/3) should be left behind. While the CPP 223/3 stipulates that “a decision to dismiss a sentence should be reached due to lack of fault,” in NTCC 31/2 it is formulated in a manner to open the way to a “rule for a sentence” or “rule for a safety measure” alternative. Indeed the law (NTCC 31) should be amended and judges should be able to judge security measures for all children by using their jurisdiction. Sentencing should be used in very exceptional cases such as in the German “Jugendarrest” institutions.

The aim in the juvenile criminal justice system is not sentencing the perpetrator but seeking the reasons for deliberate acts and eliminating the factors pushing a child to crime, in other words protecting the child. A child pushed into crime is a child in need of protection. For this reason, child courts have the authority to decide on protective measures for children who have committed crimes (CPL 5 et seq.) and are making such decisions.

On the other hand, the Turkish juvenile criminal justice system is still very far from the ideal. Alternative systems which take children out of the court are accepted in a limited way with CPL and are applied partially; however, with the amendments in Law 2006.5560 and in CPL, this was connected with the general rules and narrowed. We see that these amendments are not very appropriate.

**SUGGESTION 12:** In comparative law, wide latitude is granted to judges in determination of the sentences for children. This authority should definitely be used. The judge should use his or her jurisdiction independently and in favor of the child, when he or she comes to a clear point where there is sufficient information to decide whether to order measures or a sentence, and to determine the scope and length of such sentences.

**SUGGESTION 13:** In criminal law, a decision to suspend is per se an alternative sanction (eine Bewehrung in Freiheit).

What is important in suspending carrying out a prison sentence is applying the orders (Weisungen) and obligations (Auflagen) to be fulfilled during the probation period in the suspension and the obligation to get the assistance of a probation officer (obligatorische Bewährungshilfe). The significance of using probation is very important for suspending carrying out the sentence and for full application of the institution of suspending filing charges, which is new to Turkish law.

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## **DISCUSSION TOPICS**

This report aimed to make a comparative legal study on age of criminal responsibility linked to articles 37 and 40 of the UN Convention on the Rights of Children.

It is useful to raise discussion on some of the statements made in the report in order to analyse opportunities on strengthening the implementation of alternative measures and applying punishments and measures of deprivation of liberty as a last resort:

1. For the crimes whose penalty is less than 5 years, would a prohibition for arresting children under 15 prevent those children to be taken into custody?
2. Do limitations for adults mentioned in the article 109 (CMK) apply for children as well in terms of the issue of legal control?
3. Is a prior application for legal control or a legal ground for realization of the fact that the legal control will not lead in a result required for issuing an order for arrest?
4. What are the characteristics of the investigation required for determining criminal liability?
5. What kind of an investigation should be made to state the impact of a low age of criminal responsibility?

## ANNEX.1 – COMPARATIVE TABLE ACCORDING TO COUNTRIES

COUNTRY	AGE FOR CRIMINAL LIABILITY	PROCEDURES FOR CHILDREN UNDER THE AGE FOR CRIMINAL LIABILITY	RESPONSIBLE AGENCY	OTHER AGE GROUPS	DECISION POSSIBILITIES FOR THOSE WITH CRIMINAL LIABILITY	RESPONSIBLE AGENCY
GERMANY	<b>There is no criminal liability for those who have not completed their 14th year</b>	<ul style="list-style-type: none"> <li>• Police can only use their capacity as preventative law enforcement.</li> <li>• Prosecutor does not prosecute</li> <li>• It is prohibited to capture carry out transactions for identification. Precautionary measures can be applied</li> </ul>	Family courts decide; Organization for Assistance to Juvenile Courts (Jugendgerichtshilfe : independent agency of Jugendhilfe).	<b>14 – 18 (juvenile)</b>	I. Diversion: Postponement of a public case.  II. Placement in Jugendamt institution instead of arrest  III. Arrest	Organization for assistance to Juvenile Courts, Juvenile Courts
	<b>14 – 18 (juvenile)</b> Juveniles who cannot perceive the offensive content (unrecht) of the offense that he has committed at the time of the offense due to his moral and psychological development and who do not have the capacity to act in accordance with such perception.				<b>IV . Sanctions in Juvenile Criminal Law</b> <b>1. Security measures for education:</b> <ul style="list-style-type: none"> <li>• The juvenile is subject to the supervision and control of a specific person (Betreuungshelfer), Court order to participate in a social training course</li> <li>• Order for the juvenile to show an effort for reconciliation with the victim he has done damage to as a result of the offense committed</li> </ul>	
					<b>2. Security measures for disciplinary purposes:</b> <ul style="list-style-type: none"> <li>• Judicial Reprimand</li> <li>• Subject to certain liabilities:               <ul style="list-style-type: none"> <li>o Payment of monetary fines,</li> <li>o Working in a job for the benefit of society,</li> <li>o Compensating the damages of the victim,</li> <li>o Apologizing to the victim</li> </ul> </li> <li>• Disciplinary confinement for juveniles (restriction of liberty for a short period of time) :               <ul style="list-style-type: none"> <li>o Restriction of liberty for one or two weekends;</li> </ul>               Restriction of liberty for up to maximum 4 days; restriction of liberty for up to maximum 4 weeks)             </li> </ul>	
					<b>3. Rehabilitative security measures and treatment</b> <ul style="list-style-type: none"> <li>• Placement in a psychiatric clinique or addiction treatment centre;</li> <li>• Supervision of behaviours and attitudes;</li> <li>• Cancellation of drivers license</li> </ul>	
				<b>18 – 24 (young adult)</b>	Youth in this group are mainly considered in adult justice. However, in some cases, they can be considered in juvenile justice as well.	
The Juvenile Court Assistance Organization is an agency of the Juvenile Assistance that is a counterpart of SHÇEK in Turkey. This organization assists juveniles and young adults at all stages of the trial. The organization works in the court house. See page 16 for the rights and duties.						

COUNTRY	AGE FOR CRIMINAL LIABILITY	PROCEDURES FOR CHILDREN UNDER THE AGE FOR CRIMINAL LIABILITY	RESPONSIBLE AGENCY	OTHER AGE GROUPS	DECISION POSSIBILITIES FOR THOSE WITH CRIMINAL LIABILITY	RESPONSIBLE AGENCY
FRANCE	13	Protective-Educational measures	Juvenile Court	13 – 17	Training orders, sanctions in case of failure to comply (monetary fines or imprisonment)	Juvenile Court
	The Juvenile Court Judge is responsible for custody and guardianship as well as passing judgements about the offense measures					
	The Organization for Assistance to Juveniles and The Organization for Assistance to Juvenile Courts (works)					

COUNTRY	AGE FOR CRIMINAL LIABILITY	PROCEDURES FOR CHILDREN UNDER THE AGE FOR CRIMINAL LIABILITY	RESPONSIBLE AGENCY	OTHER AGE GROUPS	DECISION POSSIBILITIES FOR THOSE WITH CRIMINAL LIABILITY	RESPONSIBLE AGENCY
ENGLAND	-10 No criminal liability	Care orders : Taking from the custody of the parents and granting of custody to local governments		12 – 14		



