

Perfection of the Trends in Juvenile Justice Systems

On the basis of comparison of German, Georgian and the U.S. juvenile law

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I. Introduction

As it is broadly acknowledged, the crime and criminal justice management are recognized as a growing problem worldwide. There are a few places in the world that are not currently dealing with issues related to juvenile justice. A very practical issue that most countries face is how to manage youth crime through drafting, revising or rethinking the juvenile justice system, including the court system and legislation. Hence, examining the experiences of different jurisdictions allows for the identification of common problems and themes and contributes to the comprehension of the strengths and weaknesses of a particular juvenile justice system. Overall, this process contributes to improving trends in juvenile justice policy. From this perspective, this article focuses on the topics facing the Georgian juvenile justice reform through identifying solutions found in the German and the American juvenile justice settings.

Studying the German model of juvenile justice policy is especially important since the structures of legal systems in these two countries, Germany and Georgia, are quite similar. The Georgian legal system stems from the German framework, whereas the U.S. model of juvenile law recognizes some distinct features of the American juvenile justice system.

Consequently, this comparative research endeavors to describe, evaluate and summarize the advantages, benefits and best sides of the juvenile justice system in light of American and German trends in this regard. Reconsidering the juvenile justice in Georgia and the adoption of reasonable and non-discriminative regulations is almost unfeasible without finding and assessing the weaknesses and strengths of these systems found in the legislation of Western countries.

II. The system of juvenile justice and the authorities applying juvenile law

1. The United States of America

The United States of America do not have a national juvenile justice system. Juvenile justice systems vary substantially from state to state, though the U.S. Constitution, federal policies and legislation, – produce significant common features. These separate systems, which are controlled largely by state law, differ from each other in mission, scope and procedure. These inherent variations provide many opportunities to test different approaches and new programs and to learn from each other, but they make it difficult to describe the juvenile justice in the United States comprehensively.¹

Researching the origin of the juvenile justice system in the U.S. and examining the legal responses to minors who break the law could be achieved through a profound analysis. This analysis should consider jurisdictional issues – when

does the juvenile court have authority to act, and when and how do adult criminal courts assert jurisdiction instead?²

When the first juvenile court was created in Cook County, Illinois, in 1899, the court's jurisdiction clearly was distinct from its adult criminal court counterpart. The proceedings were confidential, informal, and non-adversarial. In terms of subject matter jurisdiction, the juvenile court had the responsibility for three kinds of cases: delinquency, dependency and neglect. Dependency and neglect cases did not deal with what the child had done but with the situation in which the child was found. In reality, these types of cases were directed more at parents and guardians than at youngsters. Children were not offenders in these circumstances; they were more often viewed as victims.³ As Judge Cabot of the Boston Juvenile Court observed: "Remember the fathers and mothers have failed, or a child has no business [in the court], and it is when they failed that the state opened this way to receive them, into the court, and said 'This is the way in which we want you to grow up'".⁴

Nearly all states had a juvenile court by the 1920s. These civil (i.e., non-criminal) courts were guided by the principle that their actions should be in the best interest of the child. Juvenile justice in the United States was molded by the concept of *parens patriae*, which saw the state in the role of a parent. As a parent, the state had a responsibility to intervene in the lives of children when the child was in need of care due to the inability of the natural parents to provide appropriate care or supervision. Within this framework, a child violating criminal law was considered to be a delinquent in need of the court's "benevolent intervention".⁵

Before juvenile courts were established, minors accused of a crime were treated much the same as adults. The procedural framework for determining the guilt of a child was the same as for an adult, and, if found capable of criminal intent, a minor defendant was in principle subject to the same range of penalties as an adult offender. The simplest way to see the juvenile court movement is as a reaction against the criminal court treatment of youthful offenders. Proponents of the juvenile court movement sharply criticized the treatment of young people as if they were "hardened" adult criminals, and especially the incarceration of youthful with seasoned offenders.⁶ Once the juvenile court establishes the scope, procedure, and sanctions, it differs greatly from those of the criminal court, and to mark these differences, even the vocabulary changed. Those subject to the juvenile court process were called "respondents" rather than "defendants". A re-

¹ Bala et al., Juvenile justice systems, an international comparison of problems and solutions, 2002, p. 43.

² Harris/Teitelbaum/Birckhead, Children, Parents, and the law, 3rd ed. 2012, p. 285.

³ "Status Offenders", see Mays, in: McShane/Williams (eds.), Encyclopedia of Juvenile Justice, 2002, p. 355 ff.

⁴ Cabot, in: Addams (ed.), The Child, the Clinic and the Court, 1925, p. 224.

⁵ Bala et al. (fn. 1), p. 43.

⁶ Harris/Teitelbaum/Birckhead (fn. 2), p. 285.

spondent found to have committed misconduct was “adjudicated” rather than “found guilty”, and labeled a “delinquent” rather than a “criminal” or “felon”. Upon adjudication, the child was subject to “disposition” rather than “sentence”.⁷

Beginning in the late 1960s, rulings by the United States Supreme Court substantively changed the character of the juvenile courts. The informality of the juvenile courts was greatly diminished when they were ordered to give accused delinquents many of the same legal rights adults had when charged with a criminal act. For instance: protection against self-incrimination, the right to receive notice of the charges, the right to present and question witnesses, the right of indigent youth to have an attorney provided by the state, and the right to have the charges against them proven beyond a reasonable doubt. These decisions reduced the procedural differences between the juvenile and criminal justices systems.⁸

Another important point while researching the U.S. juvenile justice system is the waiver of jurisdiction as it is a “critically important” action determining vitally important statutory rights of the juvenile, whereas this point is not the subject to serious consideration in Germany.

In two-thirds of the U.S. states, juvenile courts have original jurisdiction over most cases in which a person younger than 18 is charged with an offense. However, in New York and North Carolina, only youths of the age of 15 and younger are tried in juvenile court, and the upper age limit for juvenile court jurisdiction is 16 in ten states: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin.⁹ Connecticut’s legislature voted to rise the age of juvenile court jurisdiction from 16 to 18 in 2007, implementing it for 16-year-olds in 2010 with a plan to add 17-year-olds in 2012.¹⁰

All states have one or more means of transferring at least some cases involving minors younger than the maximum age limit from juvenile court to an adult criminal court. Until the 1960s, individual orders by the juvenile court judge were the means for transferring a case to the adult court. The Supreme Court’s first decision concerning juvenile court practices reviewed this process.¹¹ In such cases where the decision to transfer a juvenile to the adult criminal justice system was made by a juvenile court judge, the prosecutor would request a transfer hearing and attempt to prove that the youth was not amenable to rehabilitation within the juvenile justice system. If the judge believed the youth could not be rehabilitated, the

judge transferred the matter to the adult criminal court. Increasingly, in recent years, other system actors have been given the decision-making authority to transfer a juvenile to the adult criminal court. Prosecutors in many states now may file a juvenile case directly in the adult criminal court, a process labeled prosecutorial discretion. Legally, this is accomplished by the legislature classifying a set of crimes or offenders as being under the concurrent jurisdiction of both the juvenile and criminal justice systems and empowering the prosecutor to select the appropriate venue for the case.¹² In 15 states, where juvenile and adult courts have concurrent jurisdiction over some offenses for offenders older than prescribed ages, the prosecutor has discretion to choose where to file.¹³

As it was mentioned the correct application of the judicial waiver (transfer) in the U.S. performs a significant role in exercising impartial judgment and fair justice. In this relation, the threats confronting the juvenile’s rehabilitative interests in case of an inappropriate transfer should be evaluated and analyzed.

Besides facing the potential of much harsher sentences, one of the disadvantages of transfer is that minors tried as adults rather than juveniles receive little or no rehabilitative programming and have more difficulty expunging their criminal records. Minors transferred to an adult court may be held in adult jails and prisons, where they are at greater risk of victimization and death than in juvenile facilities.¹⁴

The legislatures’ choices regarding the type of waiver statutes and their specific terms have not been significantly limited by the courts. The courts have generally accepted the argument that, since juveniles have no constitutional right to be tried in a separate court system at all, the states may design their procedures for sorting minors into the adult and juvenile courts as they see fit, provided that the procedure comports with fundamental fairness.¹⁵

2. Germany

While the U.S. juvenile courts were formed as early as 1899, the juvenile justice system in Germany emerged much later, as late as the 1920s.

It was not until 1923 that the Youth Court Act (*Jugendgerichtsgesetz*) entered into force in Germany. The Youth Court Act signaled a profound change in dealing with young offenders. It provided for a different legal framework for criminal cases committed by juveniles (14 to 17 years old). Until then juvenile offenders (12 to 17 years) fell under the jurisdiction of the adult court system, although their minor age led to mitigated penalties.

The development of the idea of the “modern school of criminal law”, led by *Franz von Liszt*, coincided partially with the emergence of the “youth court movement” in Germany which stressed the rehabilitation of juvenile offenders. In addition, the movement stressed the need for a completely

⁷ *Harris/Teitelbaum/Birckhead* (fn. 2), p. 287.

⁸ *Bala et al.* (fn. 1), p. 44.

⁹ *Puzzanchera/Adams/Sickmund*, *Juvenile Court Statistics 2006-2007, 2010*, p. 105.

¹⁰ Campaign for Youth Justice, *State Trends Report, 2011*, p. 29 f.; available at:

http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf (21.10.2014); for an account of the legal history of the movement to raise the age in North Carolina, see *Birckhead*, *North Carolina Law Review* 86 (2008), 1443; for a discussion of New York’s history, see *Sobie*, *Pace Law Review* 30(2010), 1061.

¹¹ *Harris/Teitelbaum/Birckhead* (fn. 2), p. 377.

¹² *Bala et al.* (fn. 1), p. 56.

¹³ *Harris/Teitelbaum/Birckhead* (fn. 2), p. 380.

¹⁴ *Ray*, *Scholar* 13 (2010), 317 (342 ff.).

¹⁵ *Harris/Teitelbaum/Birckhead* (fn. 2), p. 380.

different system of justice for juvenile offenders, which then was conceived as a system of education. The “youth court movement” relied heavily on the ideas of the North American child-saver movement as well as on North American experiences with juvenile courts. In 1908, Frankfurt became the first German city to establish a special department for juvenile offenders. The first juvenile prison opened in 1911.¹⁶

One year before the enactment of the Youth Court Law, another youth law, namely the Youth Welfare Act (*Jugendwohlfahrtsgesetz*, 1922), came into effect. The Youth Welfare Act was aimed at youths (under the age of civil responsibility, which then commenced at the age of 21 [today 18]), in need of care and education. The development of the German youth laws has been based on those basic beliefs that characterized the emergence of youth laws in virtually all Western juvenile justice systems.¹⁷

It could be argued that the commencement of juvenile justice-prone settings, attitudes and legislation was stipulated by the creation of the U.S. juvenile court movement. However, not all features of the U.S. juvenile courts were applied to the German system.

Particularly, contrary to the U.S. system of juvenile justice, in Germany no specific juvenile courts are provided, but the courts hearing juvenile cases function under the regular court system instead. Additionally, the German Youth Court Act does not provide for waivers of juvenile rights and the possibility of transferring juvenile offenders to adult criminal courts. On the contrary, young adults (18 to 20 years) may be transferred to the juvenile justice system instead of being tried in an ordinary criminal court.¹⁸

The amendments of Youth Court Act in the twentieth century (1943, 1953 and 1990)¹⁹ as already indicated, adhered to the principle of education, although in 1943, under the influence of German national-socialism,²⁰ a special amendment concerning juvenile felons introduced the possibility of the transfer of juvenile offenders at the age of sixteen years and older to adult criminal courts with adult criminal penalties. This law was abolished immediately after World War II. The amendment of 1953 brought important changes in terms of the opportunity to sentence young adults as juveniles.²¹

A comparative theoretical research of the U.S. and Germany shows considerable differences between these countries concerning the existence and criteria of transfer to adult courts. Nowadays the transfer issue is not the point of practical interest for the German juvenile justice system. The reason is that since juvenile justice is seen as a special branch of the criminal justice system in Germany, it is consequent that the procedure in juvenile justice cases follows the general

principles of the criminal procedure against adults with the trial as its central stage and the court as its main actor. Because Germany like most other states of continental Europe follows the inquisitorial – not the adversarial – system, the trial is governed by the court, especially by the presiding judge, and not by the public prosecutor and the defense counsel which are the main actors in the Anglo-American legal tradition. In the pre-trial stage, on the other hand, the process is directed by the public prosecutor, who is bound by law to take up a case, if there are sufficient factual indications (sec. 152 of the Code of Criminal Procedure), and who alone is in the position to terminate the proceedings.²² Without a formal indictment of the public prosecutor’s office, no juvenile case can be brought to the juvenile criminal court.²³ The Youth Court Act requires a specialization of the juvenile criminal court insofar as the judges should have a special (psychological and sociological) knowledge of youths and finally, as a general rule, judges in juvenile criminal courts should at the same time be appointed as a family judge (*Vormundschaftsrichter*) responsible for applying juvenile welfare law in the family court.²⁴

In Germany, the penal law can by no means be applied to young offenders, and juveniles can under no circumstances appear before the adult court. Juvenile offenders are always dealt with within the juvenile justice system and under the jurisdiction of the juvenile law. Despite this, within the European space (including countries like the Netherlands, Belgium or the United Kingdom) the possibility or obligation to sentence young offenders in an adult court (i.e. a police court) for petty offences or traffic violations exists in all countries except Germany.²⁵

3. Georgia

Georgia first addressed the issue of juvenile justice as late as 2009, when an explicit approach was assumed, implying the liberalization of criminal policy toward juvenile offenders. For this reason, no in-depth comparison of the Georgian juvenile court system or transfer issue to the U.S. and German experience is in place. It is reasonable to assume that the Georgian juvenile justice system is far from being fully formed or perfect, as it currently undergoes a long-term process of formation and completion. However, within the frames of this policy, a significant effort was directed toward amending and improving the juvenile justice system.

Remarkably, before 2009, Georgia did not even have a juvenile justice reform strategy that would ensure the adequate protection of the rights of juveniles in conflict with the law and would respond to their needs within the criminal justice system. It was adopted by The Criminal Justice Reform Inter-Agency Coordination Council only as late as 2009

¹⁶ Winterdyk, *Juvenile Justice Systems, International Perspectives*, 1997, p. 234.

¹⁷ Empey, *American delinquency, Its meaning and construction*, 2nd ed. 1982, passim; Klein (ed.), *Western system of juvenile justice*, 1984; Winterdyk (fn. 16), p. 234.

¹⁸ Winterdyk (fn. 16), p. 237.

¹⁹ Kerner, *DVJJ-Journal* 1990, 68.

²⁰ Kerner/Weitekarnp, in: Klein (fn. 17), p. 147.

²¹ Winterdyk (fn. 16), p. 235.

²² Meier/Vasmatkar, *ZIS* 2011, 584.

²³ Winterdyk (fn. 16), p. 250.

²⁴ Winterdyk (fn. 16), p. 237.

²⁵ Vandijk/Nuytiens, *Objectives of Transferring Juvenile Offenders to Adult Court*, available at:

<http://www.fvv.uni-mb.si/conf2004/papers/dijk.pdf> (21.10.2014).

and was later revised in 2011 and 2013, followed by a relevant action plan. All of the strategy documents stress a need for adequate professional training and retraining for the court personnel. Despite the absence of juvenile courts within the Georgian court system, according to the amendment to the Criminal Procedure Code of Georgia, the adjudication of juveniles is carried out by properly trained judges, prosecutors and investigators.²⁶ Besides, the secession of a particular composition of judges, mainly focused on juvenile cases within the entire court system, is strongly recommended by the UNICEF policy paper and scheduled under the juvenile justice reform strategy.

According to the UNICEF policy paper, one of the specific recommendations on further reforming the juvenile justice system in Georgia is to ensure the comprehensive specialization of the justice professionals including sustainable capacity building. This can be done either: (a) through the creation of specialized units within the judiciary police and prosecution service, where a certain number of professionals will be designated to work solely on children's cases or (b) the identification and assignment of specialized professionals who will be entitled to work on cases involving juveniles, but will also be working on other cases.²⁷

Apparently, the transfer issue from adult to juvenile courts is not outlined within the Georgian juvenile justice system because of the non-existence of such courts and accordingly is not the point for consideration for the purposes of the comparative research below.

III. Construction of juvenile codes and related legislation

Disparities and differences among the U.S., Georgian and German juvenile justice could be found not only in relation to the systems, but also in the construction of the legislative acts regulating the point. The comparison of the juvenile codes or other juvenile-related laws in these countries aims to expose the necessity of how and why a particular approach to the designing of the law is applied in each country. Under this topic, one can learn that specific codes for juveniles are effective in each state of the U.S. In Georgia such a code is at the stage of drafting, whereas in the German legislative system the juvenile court law is the main act regulating the issue all through the country. If the structure of laws (codes and statutes) of these different countries is looked into, the basis of differential approaches to the topic becomes visible.

1. The United States of America

In the U.S., nearly every aspect of the juvenile justice system is controlled by state legislation²⁸ due to the federal structure of the country. Each state has the authority to adopt a juvenile

code or related statutes. For instance: The North Carolina juvenile code and related statutes involve all the substantive issues about juveniles should it have the nature of a civil character or bear the statements of criminal responsibility.

The North Carolina juvenile code covers abuse, neglect and dependency, definition and treatment of undisciplined and delinquent juveniles, the juvenile record and parental authority. All these chapters involve the rules of hearing procedures, law enforcement procedures in delinquency proceedings, venue and petition, dispositions, and many other points both for materialistic and procedural law.²⁹ Related statutes refer to evidence, criminal law, criminal procedure act and adoption, also to elementary and secondary education.³⁰

The U.S. philosophy of law drafting shows that all juvenile-related legislation is incorporated in the juvenile code and other related statutes covering a wide range of any aspect of the different fields of law if concerning juveniles. These could be the behavior, conduct, punishment, treatment, well-being, living conditions, family setting and even education.

2. Georgia

In Georgia, currently, provisions regulating juvenile-related legal proceeding are given in different codes and legislative acts. The criminal code involves the specific chapter defining the juvenile criminal liability in two terms: the peculiarities of juvenile criminal liability and the release of juveniles from criminal liability and punishment.

Since 2009 the Georgian legislative framework has significantly changed. Studies have confirmed the compliance of Georgian legislation with basic international standards. However, there are several issues that require the further improvement of legislation. Among them is the issue of protection of the right to privacy of minors as it is very important for avoiding his or her stigmatization and negative influence on his or her further development.³¹ The main challenges are related to the inability of the criminal justice system to provide the continuity of an individual, child friendly approach across the entire chain of the justice system. Currently, the issues concerning children in conflict with the law and child victims and witnesses in the criminal justice context are regulated by various laws and secondary legislative acts.

There is no comprehensive code that would combine norms defining the basis of criminal liability, sentencing principles and types of sanctions or other measures that cover due process guarantees for juveniles in conflict with the law and sentencing mechanisms. Considering the needs identified in the process of the on-going revision of criminal legislation, the development of a separate piece of legislation regulating the criminal justice system for juveniles has been deemed

²⁶ The juvenile justice reform strategy of 2011 and 2013 adopted by The Criminal Justice Reform Inter-Agency Coordination Council of Georgia.

²⁷ Policy paper by UNICEF, Justice for children in Georgia, Recommendations for the government to reform the justice system for children in Georgia, 2013.

²⁸ Bala et al. (fn. 1), p. 56.

²⁹ North Carolina Juvenile Code and Related Statutes Annotated, p. 6 ff.

³⁰ North Carolina Juvenile Code and Related Statutes Annotated, p. 281 ff.

³¹ The juvenile justice reform strategy of 2011 adopted by The Criminal Justice Reform Inter-Agency Coordination Council of Georgia.

appropriate.³² The government of Georgia is developing a separate code for juveniles covering all the aspects of criminal law, criminal procedure law and institutional treatment.

3. Germany

The case of Germany in terms of contraction of juvenile law differs from the others indicated above. Like the U.S., Germany is a federal republic. However, federal law in Germany contrasts greatly to the U.S. criminal law – just as the law of criminal procedure. The 16 German states (Bundesländer) do not have their own particular criminal codes or criminal procedural codes. Hence, it becomes clear that the adoption of specific juvenile codes for each of the “Bundesländer” is totally unrealistic for the German system. Accordingly, the Juvenile Court Act, which is a so-called supplementary criminal law, comprises substantive criminal law as well as law of criminal procedure applicable to juvenile offenders.³³ Consequently, the most important provisions regulating juvenile cases are contained in this act.

The Youth Court Law focuses on the educational and rehabilitative needs of juvenile offenders. But German juvenile justice was never dominated by a social welfare model; the prevailing idea is that both, punishment and education should be reconciled within the framework of juvenile justice. German juvenile criminal law never deviated far from general criminal law.³⁴

Another important juvenile-related law in Germany is the Youth Welfare Act. It regulates the cases where a child is in need of care and education as well as in need of help and protection. In severe cases, namely where the child’s well-being is threatened, the state can take action against the parents via the guardianship court. Alongside the educational measures, the law on young people’s welfare provides in the 8th Book of The Social Security Code (SGB VIII) for numerous types of help and protection. The possibilities range from counseling to separating the child from his or her parents if necessary.³⁵

In relation to German juvenile law, it could be concluded that despite the non-existence of specific juvenile codes for each state in Germany, the issue of dealing with juveniles – both offenders and those in need of protection – are explicitly regulated by the two major acts. These acts are: the Youth Court Act and the Juvenile Welfare Act. While analyzing these laws, it becomes clear that the educational approach is the main concept behind the designing and understanding of the German juvenile-related legislation.

IV. Juvenile crimes and applicable criminal sanctions

1. Juvenile crimes/Delinquency

Delinquency or juvenile crime is an international phenomenon which is a subject of concern for all countries. However, as it is clear from the study of the juvenile legal systems in various countries of the world, none of these countries has managed to avoid such problems.³⁶

It is impossible to develop a general and common conception for juvenile crime as it depends on the social, legal and political order of the specific country. As there is no common understanding of the juvenile crime, for the purposes of research, we shall cover all components related to the nature of juvenile crime, adopted and implemented by juvenile legal systems in different countries.

a) Georgia

According to the Code of Criminal Proceedings of Georgia a juvenile is a person, who has not attained the age of 18 years; based on the Criminal Law Code a juvenile is a person who became 14 but was not 18 just before committing a crime. In Georgian criminal law, there are no specific juvenile crimes. The conception of the crime is defined in art. 7 of the Georgian Criminal Code and it is equally applicable both for adults and juvenile offenders. This article states: “The basis for the criminal liability shall be a crime, i.e. the illegal and culpable actions provided under this Code. Crime shall not be the action that, although formally carrying the signs of crime, has not produced, for minor importance, the prejudice that would necessitate the criminal liability of its perpetrator, or has not created the threat of such prejudice.”³⁷

b) The United States of America

Unlike Georgian criminal legislation, many countries with a common law system know the term juvenile criminals as well as juvenile delinquents and status offenders. In the U.S., youths can be charged with at least three different categories of offences.

First, they can be charged with a felony or misdemeanor by federal, state, and local statutes. Second, they are subject to relatively specific statutes applying exclusively to juvenile behavior: truancy, consumption of alcoholic beverages, and running away from home are examples. Third, juveniles can be prosecuted under general omnibus statutes that include such offences as acting beyond the control of parents, engaging in immoral conduct, and being ungovernable and incorrigible. Offences in both the second and third categories are status offenses,³⁸ which constitute the subject of interest for the purposes of the research below as they are not incorporated in Georgian or German juvenile law.

Violation of status was part of the U.S. juvenile legal system from its establishment. Such violations were considered as offences in the juvenile code for some periods (this is the

³² Policy paper by UNICEF (fn. 27), p. 12.

³³ Krey, German Criminal Law, General Part, Vol. 1, 2002, p. 150 ff.

³⁴ Winterdyk (fn. 16), p. 236.

³⁵ Robbers, An Introduction to German Law, 5th ed. 2012, p. 135.

³⁶ Winterdyk (fn. 16), Introduction.

³⁷ Art. 7 of the Criminal Code of Georgia.

³⁸ Bartollas/Miller, Juvenile Justice in America, 2nd ed. 1998, p. 196.

part of the definition of delinquency) and in some periods the same violation was considered as a problem different from and less serious compared with delinquency. To clearly understand the essence of the status violation, we shall provide a brief definition and review the history of a role, which the status violation played for the juvenile legal justice system, as well as discuss the potential legal basis for the status violation.

In the broadest definition of the term, delinquency involved any offense that would be a crime (felony or misdemeanor) for an adult. However, the original juvenile court's definition of delinquency also included violations of the law that would not be an offense for adults. These are so-called status offenses. Status offenses are defined primarily in terms of the child's age status (a person under the legal age of majority), and they are any violation of the law by a child – in the majority of states someone under the age of 18 – that would not be a crime if committed by an adult. Specific examples, along with definitions, will give further clarification.

There are various forms of status violations. The most common status offenses have almost always been truancy, running away, curfew violations, alcohol-related offenses, tobacco use, underage gambling, and virtually any form of sexual intercourse. Once again, it is essential to remember that these activities are not law violations for adults under most circumstances.³⁹

Status offenders can be processed through the juvenile justice system along with youths who have committed criminal offenses, or they can be handled separately from felony and misdemeanor. States refer to status offenders as MINS (Minors in Need of Supervision), CINS (Children in Need of Supervision), PINS (Persons in Need of Supervision), FINS (Families in Need of Supervision) or JINS (Juveniles in Need of Supervision). Some jurisdictions handle these youths in a different court; others will not place them in detention with delinquents or send them to a juvenile correctional institution.

The handling of status offenders, one of the most controversial issues in juvenile justice, has focused on two questions: Should status offenders be placed with delinquents in correctional settings, and should the juvenile court retain jurisdiction over status offenders?⁴⁰

Status offense jurisdiction still is a part of many juvenile codes and juvenile court systems in the U.S. There seems to be virtually no way to eliminate status offenses because much of the behavior is endemic to the teenage years. Youngsters from a variety of backgrounds and socioeconomic statuses engage in these behaviors. Many of them will stop without detection and with no legal intervention. However, in quite a few cases, status offenses are important, not in themselves but because they are symptoms of more serious personal and family problems. Status offense jurisdiction is not likely to totally disappear from the U.S. juvenile justice system anytime soon. While most people involved in the system express frustration and dissatisfaction over status offense treatment, many of them still want to retain the option of legal interven-

tion with status offenses to provide children and their families with the services they need, but might not seek.⁴¹

c) Germany

As opposed to certain case created rules that are still alive in many doctrinal rules of criminal law and criminal procedural law in the U.S., case law is not a source of law in Germany.⁴² Accordingly, the conceptions similar to those vague and broad definitions of delinquency including the status offences introduced in the U.S. do not exist in German Law. There are no provisions defining specific “juvenile crimes” or “juvenile delinquency”. All crimes are the same as those, committed by adult offenders.

Decisive for the definition of juvenile crime is the age of the perpetrator at the time of the offence. So criminal offences as defined in the German Criminal Code apply to juveniles as well as to adults. As to the basic rules which must be followed when establishing criminal responsibility, the differences between juveniles and adults lie in the type and the range of penalties that can be imposed.⁴³

In general, simply expressing criminal behavior “which is recognized as a crime under German law” is sufficient for imposing criminal responsibility.⁴⁴ The crime is regarded to be committed, and the accused is liable to be punished regardless of being juvenile or adult, if his or her act fulfills the elements of the crime, was unlawful, and was done with a culpable state of mind (*schuldhaft*).⁴⁵ However, the criminal culpability is only possible if a person has criminal capacity (*Schuldfähigkeit*). Children under the age of 14 do not have such a criminal capacity. The capacity must specifically be proved in accordance with the Juvenile Courts Act in the case of youth (aged 14 to 17).⁴⁶ Contrary to North American systems of juvenile justice, German youth laws do not provide for so-called “status offences”,⁴⁷ described above.

In summary, we can conclude that it is impossible to unify the definition of juvenile crime due to an existence of multi-aspect determining factors. However, when we deal with juvenile crime under the modern juvenile justice system, it considers criminals as well as juvenile delinquents and juveniles violating the status.

2. Criminal sanctions and the measures of educational character assigned for juveniles

Criminal sanctions for juveniles as well as the measure of a coercive character must be viewed in the light of the purpose of the punishment. In this regard, most authors discuss and

⁴¹ Mays (fn. 3), p. 355 ff.

⁴² Eidam, German Law Journal 2004, 1179; available at: http://www.germanlawjournal.com/pdfs/Vol05No09/PDF_Vol_05_No_09_1171-1185_Legal_Culture_Eidam.pdf (21.10.2014).

⁴³ Winterdyk (fn. 16), p. 237.

⁴⁴ Eidam, German Law Journal 2004, 1171 (1180).

⁴⁵ Robbers (fn. 35), p. 162.

⁴⁶ § 3 Jugendgerichtsgesetz (JGG).

⁴⁷ Winterdyk (fn. 16), p. 237.

³⁹ Mays (fn. 3), p. 355 ff.

⁴⁰ Bartollas/Miller (fn. 38), p. 196.

explain the theory of retribution as well as the prevention theories.⁴⁸ Establishment of criminal sanctions for juvenile offenders should consider the sense and purpose of the punishment. The questions which have been the subject of dispute regarding the sense and purpose of the punishment since antiquity are asked in the following order: Does punishment aim at retribution? Does it intend prevention of future criminal acts? Or does it serve both prevention as well as retribution?⁴⁹ Consequently, each country considers the legislator's approach towards the issue and its perception of the punishment theories while drafting and adopting criminal sanctions in their codes.

a) Georgia

Taking into account the existing theories of punishment, the Georgian legislator defines in art. 39 of the Georgian Criminal Code that "Punishment is aimed at the restoration of justice, prevention of new crimes and re-socialization of a criminal. The purpose of punishment shall not be a physical suffering of a human being or humiliation of his or her dignity". Accordingly, criminal sanctions in the Georgian Criminal Code are created on the basis of the described perception of punishment.

One of the peculiarities of juvenile punishment in Georgia is that, under Georgian legislation, juvenile offenders are the only group subjected to mandatory educational measures in place of criminal punishment. Under the Georgian Criminal Code, both criminal sanctions and educational measures proportionate to the nature and category of a crime committed may be imposed upon juvenile offenders. Art. 82 of the Georgian Criminal Code gives a list of types of criminal punishments that may be applied to juvenile offenders, such as fine; deprivation of the right to engage in a particular activity; community work; corrective labor; restriction of freedom; imprisonment for a particular term. Despite legal provisions which establish shortened terms of imprisonment for juveniles according to their age, the period a juvenile has to spend under detention is too long to achieve the re-socialization of the offender, which is one of the aims of the punishment. For instance, under the Georgian Criminal Code: "The term of imprisonment awarded against a juvenile from 14 to 16 years old shall be reduced by one-third and from 16 to 19 years old – by a quarter. However, in the first case the final sentence shall not exceed 10 years and in the second one – 15 years". Still, it can be argued that regardless of the reduction of the imprisonment terms, keeping juveniles in custody for 10 and 15 years could hardly consider bearing rehabilitative character. Hence, focusing on the evaluation of the length of the imprisonment is one of the important points the legislator should keep in mind. Apparently, it is a serious issue in Georgia, as there are sanctions as long as 15 years, which hinders the process of re-socialization and instead returns a real and incorrigible perpetrator to society.

This is why the juvenile justice reform strategy of 2011 outlines the imprisonment as the harshest measure of criminal

sanctions and calls for shifts on the application of non-custodial measures where it is possible. According to this strategy "deprivation of liberty, including arrest, detention and imprisonment shall be used against a minor as a last resort and for a minimum period. However, in exceptional cases, when the use of preliminary detention is inevitable, derived from the true interest of a child, his case must be considered by the court as soon as possible, so that he can be isolated from society for as short a period as possible. Due to the low age of a minor, special attention should be paid to the educational activities, which should not be blocked even during his imprisonment".

The rate of using detention, as a coercive measure, has significantly decreased over the past few years. However, it remains quite high as does the sentencing to imprisonment of children in conflict with the law. In this regard, Georgia must enhance the application of alternative sanctions with respect to minors in conflict with the law. In addition, alternative sanctions should be further developed and used appropriately taking into full consideration the emotional, mental and intellectual maturity of the child and the specifics of the case.⁵⁰

Another appropriate tool for substituting imprisonment as well as other criminal sanctions applicable for juveniles is the provisions incorporated in the Georgian Criminal Code enabling judges to release a juvenile from criminal liability by application of a coercive measure of educative effect. However, it depends on the crime category and the number of crimes already committed. First-offender juveniles may be released from criminal liability if the court holds that it is advisable to correct the juvenile by application of a coercive measure of educative effect. The Georgian Criminal Code considers the following types of coercive measure of educative effect awarded by the court: caution; transfer under supervision; assigning the obligation of restitution; restriction of conduct and placement into a special educative or medical-educative institution.⁵¹ However, unfortunately in court practice the application of such measures constitutes a very low percentage of all adjudicated cases. The courts in general avoid ordering these measures and mostly apply imprisonment in a considerable number of cases. The priority of ordering of the measure of educational characters versus imposing the punitive measures must be turned into a guiding principle for judges applying the law in juveniles' cases.

In such cases, the judges should take into account the principle of proportionality in the narrow sense which constitutes the requirement of punishment-worthiness. Not all illegal behavior that violates legal interests may be prohibited on pain of punishment. Criminal penalties are the sharpest instrument within the system of governmental protection of legal interests. This fact proves to be true, especially since next to the penalty there is the socio-ethical condemnation of the perpetrator by the state. With the conviction by a criminal court, the condemned person is "publicly stigmatized". Only

⁴⁸ *Eidam*, German Law Journal 2004, 1171 (1178).

⁴⁹ *Krey* (fn. 33), p. 118.

⁵⁰ The juvenile justice reform strategy of 2011 adopted by The Criminal Justice Reform Inter-Agency Coordination Council of Georgia.

⁵¹ Art. 91 of the Criminal Code of Georgia.

acts that might considerably harm society permit the use of this “sharp sword of criminal law” since such use must be adequate.⁵²

However, the advanced step in terms of avoiding criminal punishment and stigmatization of juvenile offenders assigned under the juvenile justice reform strategy of 2009 was the promotion of alternative measures to criminal prosecution by introducing and implementing the diversion and mediation programs. The broader implementation of restorative justice is articulated in the strategy.⁵³ Georgian prosecutors are free to exercise discretion and dismiss certain cases by diverting juvenile offenders and enlisting them in a range of diversion programs. Criminal prosecution shall not be commenced, or if already initiated, it shall be terminated if the prosecutor considers that diverting the juvenile from criminal responsibility serves to his best interest and is in compliance with the nature of the committed crime.⁵⁴

To sum it up, it should be outlined that criminal sanctions, especially imprisonment – as “ultima ratio” – should be applied only in cases where otherwise the effective protection of the legal interests would fail. Hence, giving application priority to educational measures over punitive measures in cases where such measures are applicable under the law is strongly recommended for the court personnel.

b) Germany

Under German legislation “the purpose of criminal law must never be to criminalize mere violations of moral, ethical or religious norms”. *Krey* therefore concludes that criminal law is not an all-round tool to deal with unpopular behavior. Thus, criminal sanctions may be used only where the idea of the protection of a legal interest justifies the use of criminal law towards people. On that basis, *Krey* explains the concept of the subsidiarity or in other words the “ultima ratio” character of criminal law. It means that criminal law may only be used by the legislature if the constitutional standard of proportionality allows it to do so.⁵⁵

The law on juvenile offenders differs from the ordinary criminal law primarily in terms of the applicable penalties. The dominant idea is correctional education.⁵⁶ Juvenile criminal law does not emphasize the criminal offence or the seriousness of the offence but the offender and his or her rehabilitative needs.⁵⁷ For this reason a distinction is made between three types of sanctions: educational measures for juvenile delinquents, disciplinary measures and juvenile detention. These measures show particularly clearly that the law on juvenile delinquency is by nature a special aspect of a comprehensive body of the law on young people’s welfare.⁵⁸

The corrective methods are regulated in sec. 9 et seq. JGG. They are imposed “on occasion” of an offence committed by a juvenile, and they should affect the life of a juvenile in a positive way. It is no actual punishment, and it has educational purposes. The orders under sec. 10 JGG regulate the lifestyle of juveniles and support their education. These orders are only legitimate if the general requirements of corrective methods are fulfilled. They should not serve the purpose of punishment and should not infringe fundamental rights.⁵⁹ The judge can issue orders on community service, participation in social training courses, participation in victim-offender mediation, participation in traffic education, supervision by a social worker, attendance at vocational training, etc. The assistance provided by the children and youth welfare laws may also include placement in a home or foster family.⁶⁰

Disciplinary measures (Zuchtmittel) are classified in three subcategories: these include warnings (Verwarnungen), the imposition of conditions (Auflagen) and the arrest of youthful offenders (Jugendarrest). In the scheme of the law on this subject, they are more severe sanctions than the educational measures. Their purpose is to make it clear to the youth in question that he or she must bear the responsibility for the wrong that they have done.

In contrast to the previous two categories of possible measures juvenile detention is regarded by the Juvenile Court Act as being penal in nature. It is imposed if other disciplinary measures have proved to be insufficient or if the seriousness of the crime demands it. Juvenile detention means detention for at least six months. The maximum period of juvenile arrest is ten years. A seventeen years old person who commits a murder can thus be sentenced to a maximum of ten years juvenile detention.⁶¹

In general, under German criminal law the primary types of punishment are imprisonment (Freiheitsstrafe) and the imposition of fines (Geldstrafe).⁶² With respect to the choice between these different types of measures for juvenile offenders, the focus lies on educational needs.⁶³ Despite the consistent construction of criminal sanctions established for juvenile offenders, problems in sentencing of juvenile offenders persist in the German law enforcement settings. It implies that like in Georgia the issue of the application of imprisonment in a big amount of cases is still observable in German practice.

Criminological studies reveal that juvenile judges make considerably more use of sanctions involving deprivation of liberty than their counterparts in the adult system. Juvenile offenders are thus treated more harshly than adults, which is explained by the prevailing belief that placement in secure

⁵² *Krey* (fn. 33), p. 17.

⁵³ The juvenile justice reform strategy of 2011 adopted by The Criminal Justice Reform Inter-Agency Coordination Council of Georgia.

⁵⁴ Art. 105 of the Code of Criminal Proceedings of Georgia.

⁵⁵ *Eidam*, German Law Journal 2004, 1171 (1175).

⁵⁶ *Robbers* (fn. 35), p. 184.

⁵⁷ *Winterdyk* (fn. 16), p. 238.

⁵⁸ *Robbers* (fn. 35), p. 184.

⁵⁹ Private source: Materials of the Course on Juvenile Justice by Professor *Dr. Heinrich* at Humboldt University Law Department; available at:

<http://heinrich.rewi.hu-berlin.de/download/jstr> (21.10.2014).

⁶⁰ *Winterdyk* (fn. 16), p. 252 ff.

⁶¹ *Robbers* (fn. 35), p. 185.

⁶² *Robbers* (fn. 35), p. 169.

⁶³ *Winterdyk* (fn. 16), p. 255.

detention will lead to favorable rehabilitative outcomes.⁶⁴ Differential treatment can be observed with respect to the length of prison sentences. The average juvenile prison sentence is longer than the adult prison sentences in comparable offence categories.⁶⁵

As for the similarities and disparities between the criminal sanctions incorporated in the codes of Georgia and Germany, the coincidence in dividing measures in two categories – as bearing criminal character and educational character – should be outlined. However, in contrary to German juvenile law, where a fine and community work are considered to be the measures of a disciplinary nature under Georgian law they are setted as criminal penalties that will be indicated in the criminal records of a juvenile.

c) *The United States of America*

Modern philosophers make an important distinction between criminal justice and social justice. Because both involve notions of justice, they are each based on the existence of a fair set of rules for how people treat each other and how citizens are treated by the government. Criminal justice is a type of a negative justice. It is concerned with the way a society allocates undesirable experiences to its members. The study of criminal justice is the study of the rules, procedures and practices under which residents experience the application of a criminal label and the imposition of criminal sanctions. Criminal labels and criminal sanctions are considered just when they are imposed upon the guilty, but only when imposed within the rules of substantive and procedural due process. Criminal justice is a set of institutions and procedures for determining which people deserve to be sanctioned because of their wrongdoing and what kind of sanctions they deserve to receive.⁶⁶

Criminal responsibility for juveniles and appropriate sanctions depend as on the conduct committed by the juvenile as well as on the mental state (maturity) of a youthful offender. The point at which children become adults has varied from one period to another. Whether children are adults or not, in other words, depends partly on the socioeconomic conditions under which they live. In terms of wrongdoing, the elusive concept of responsibility has its roots in the notion that juveniles know right from wrong, have developed a social conscience, feel guilt or remorse over their actions, are mentally sharp enough to know the rules, do not have any disease that reduces their ability to get along in society, fully understand that their actions are harming others, and are emotionally mature.⁶⁷ “At common law, children below 7 years are incapable of committing a crime, and in 1933, the age was raised to 8 by statute. It does happen that children even of this early age enter upon serious mischief, and in that event the community is not helpless against them: they can be

brought before the juvenile court as in need of care or protection. In the next age-group, from the attainment of 8 until the attainment of 14, the rule is that a child cannot be convicted of crime – and must be held not to have committed a crime – unless the court is put in possession of certain evidence from which his mental state at the time of act may be deduced”.⁶⁸ Accordingly, in the U.S. no unified framework is set for the age of criminal responsibility of juveniles and it varies from state to state as the age of criminal responsibility is established by state law. Simultaneously, the types of sanctions assigned for the juvenile offenders range from one state’s jurisdiction to another under the U.S. juvenile justice system.

It is almost impossible to list and discuss all types of sanctions applicable to juveniles in the United States as there is a wide variety of sentencing options available for a judge to impose on an adjudicated juvenile, although these are generally not conceived of as “punishments” in the way that adult sentences are understood, but are instead seen as rehabilitative. Typically, juvenile courts have broad discretion in ordering any disposition that falls within their states’ statutory scheme. However, they are constrained by the requirement that they base their decision on an evaluation of factors such as an individual’s offense history and the severity of the current offense as well as his or her social history. At one end of the spectrum, many courts have the power to dismiss the case altogether after the juvenile has been adjudicated a delinquent if the judge finds that the juvenile does not need any services and that the dismissal is consistent with the best interests of the respondent and the community. On the other end, in a few states judges can go so far as to order incarceration of a juvenile in a state-run adult facility. Between these two extremes are a great number of alternatives and options. In North Carolina, for example, sentencing is guided by the philosophy that the court should impose the least restrictive dispositional alternative on the juvenile and should only resort to commitment to an institution when all other alternatives are found to be inappropriate. Under the North Carolina statute, there are twenty-four different dispositional alternatives. They include: ordering the juvenile to cooperate with certain programs (for example, substance abuse programs), requiring the juvenile to pay restitution or a fine or to complete a community service, placing the juvenile on probation, imposing a curfew, or committing the juvenile to a youth development center.⁶⁹

Dispositions vary according to whether children are adjudicated delinquents, children in need of supervision, abandoned or neglected, runaway or abused or victimized. The judge may decide that the child’s family environment, particular circumstances or other factors are such that the child may be sent home with his or her parents. In other cases, the child is assessed a fine or ordered to pay restitution to the

⁶⁴ *Heinz*, *Recht der Jugend und des Bildungswesens* 40 (1992), 123.

⁶⁵ *Winterdyk* (fn. 16), p. 262 f.

⁶⁶ *Clear/Hamilton/Cadora*, *Community Justice*, 2nd ed. 2010, p. 3.

⁶⁷ *Bartollas/Miller* (fn. 38), p. 194 f.

⁶⁸ *Williams*, *Criminal Law*, The General Part, 2nd ed. 1961, p. 814.

⁶⁹ Private source: Materials of the Course on Juvenile Courts and Delinquency by Professor *Birckhead* at Duke University School of Law, U.S. Spring Term, 2012; reference: *Bishop/Decker*, in: *Junger-Tas/Decker* (eds.), *International Handbook of Juvenile Justice*, 2008, p. 3.

victim. Parents, of course, usually end up paying a fine or restitution, but juveniles are frequently required to work for the victim or do community service in order to pay back.

Children who are mentally restricted or mentally ill are sometimes required to undergo a special training or therapy. Probation is used when youths are found guilty of an offense or in need of supervision, but not secure confinement. For high-risk youths, some communities have intensive probation programs, in-house detention and even electronic monitoring devices.

A much more severe disposition is to take youths out of their natural homes. It most often occurs when parents neglect their children or are in some other way unable to provide the kids with adequate care. These youngsters are placed in foster homes for short or extended periods of time – depending on their problems. Youths are removed from their homes in community-based correctional programs as well. Some of these homes offer specialized services for drug addicts, alcoholics, and mentally ill and mentally disturbed youths. Another kind of new facilities constructed because of the inadequacy of older county jails and detention centers are county or city institutions. Youths who do not need placement in state training schools (the most secure juvenile facility) may be placed in these institutions for short periods of time. Finally, some states permit juvenile judges to place youths in adult institutions: This practice has been used when youths presented a danger to themselves, other residents, or the staff or were serious escape risks.⁷⁰

However, it should be mentioned that the dismissal of the case as well as the assigning of the different kinds of non-punitive sanctions is possible even before transferring the case to the court according to the discretion of the prosecutor or law enforcement officer. The court intake function is generally the responsibility of the juvenile probation department and/or the prosecutor's office. At this point, a decision is made to dismiss the case, handle the matter informally or request formal intervention by the juvenile court. To make this, and the charging decision, an intake officer or a prosecutor first reviews the facts of the case to determine if there is sufficient evidence to prove the allegation. If there is not, the case is dismissed. When there is sufficient evidence, intake decides if the case should be handled formally.

In informally processed cases, the juvenile voluntarily agrees to specific conditions for a specific term. These conditions are often outlined in a written agreement. Conditions may include such items as victim restitution, school attendance, drug counseling or a curfew. In most jurisdictions a juvenile may be offered an informal disposition only if she or he admits to having committed the act. In contrast to informally handled cases, where the youth "volunteers" to abide by sanctions recommended by intake, formally handled (i.e., petitioned) cases involve the prosecutor asking the court to assume control over the youth and force the youth to abide by the sanctions ordered by the court.⁷¹

The U.S. sentencing options have not been established in an easy way, but rather they have always been created after consideration of reasonable recommendations by some of the important authorities or institutions. One of such important projects was the Juvenile Justice Standards Project, jointly sponsored by the Institute of Judicial Administration and the ABA. Officially launched by a national planning committee in 1971 comprehensive guidelines for juvenile offenders were designed that would base sentences on the seriousness of the crime rather than on the "needs" of the youth. The proposed guidelines represented radical philosophical changes and still are used by proponents to attempt to standardize the handling of juvenile lawbreakers.

The belief that disparity in juvenile sentencing must end was one of the fundamental thrusts of the recommended standards. In order to accomplish this goal, the commission attempted to limit the discretion of juvenile judges and to make them accountable for their decisions.

There were twelve key points for the proposed juvenile justice system: Juvenile offenders must be divided into five classes; the criminal code for juvenile offenders would cover the ages from ten until the youngster's eighteenth birthday; the severity of sanctions for juvenile offenders would be based on the seriousness of the offence rather than on a court's view on "needs" of the juvenile; maximum terms for various classes of offenses would be prescribed by the legislature; sentences should be determinate and the practice of indeterminate sentences prevalent in the states should be abolished; the least drastic alternative should be utilized as a guide to intervention in the lives of juveniles and their families; non-criminal behavior "status offences" and private offences "victim-less crimes" should be removed from the juvenile court's jurisdiction; visibility and accountability of decision making should replace closed proceedings and restrain official discretion; there should be a right to counsel for all affected interests at all crucial stages of the proceeding; juveniles should have a right to decide on actions affecting their lives and freedom; the role of parents in juvenile proceedings should be redefined with particular interest to possible conflicts between the interest of parent and child; limitations should be imposed on detention, treatments and other interventions prior to adjudication and disposition; strict criteria should be established for the waiver of juvenile court jurisdiction to regulate transfer of juveniles to adult criminal court.

In the late 1990s, many juvenile court judges still were quite concerned about these proposed standards. Their fundamental concern was that these standards attack the underlying philosophy and structure of the juvenile court. Judges also were concerned about how these standards would limit their authority. They also challenged the idea that it is possible, much less feasible, to treat all children alike.

Nevertheless, the adoption of the standards has occurred in many states across the nation. New York was the first state to act on them through the Juvenile Justice Reform Act of 1976. This law orders a determinate sentence of five years for Class A felonies.

⁷⁰ *Bartollas/Miller* (fn. 38), p. 186 ff.

⁷¹ *Bala et al.* (fn. 1), p. 58.

In 1977, the state of Washington also created a determinate sentencing system for juveniles in line with the recommendations of the Juvenile Justice Standards. Moreover, throughout the 1980s and 1990s states continued to implement the standards; some stiffened juvenile court penalties for serious juvenile offenders, either by mandating minimum terms of incarceration (Colorado, Kentucky, and Idaho) or by enacting a comprehensive system of sentencing guidelines (Arizona, Georgia and Minnesota). States are continuing to implement the standards today.⁷²

In conclusion, it could be asserted that, despite more or less similar criminal and educative measures established in American juvenile law, the issue of indeterminate sentences is not a core issue in German and Georgian laws. But rather, each offence in the German and Georgian criminal codes is assigned its corresponding penalty with a minimum and maximum range. Georgia and Germany share almost similar relations and attitudes towards the juvenile sanctions, whereas in the U.S. vagueness and disparities still persist as to the juvenile delinquency conception, as well as to the age of criminal responsibility, juvenile court jurisdiction and sentencing options.

V. Conclusion

While comparative research has a great value, making international comparisons poses considerable challenges, especially if it is aimed at the exploration of the most advantageous components of juvenile justice. As many researchers engaging in cross-cultural studies have found, concepts do not always translate well across national borders. Even the countries sharing a common legal heritage have legal systems that differ significantly. This diversity is much more noticeable when comparing juvenile justice systems which are not founded on the same legal basis. It is especially true of the differences between the U.S. and the German juvenile law systems while Georgia takes a blanket approach to juvenile law that incorporates the features of both systems. Because of the partial incompatibility of concepts in the countries under research, the focus is more on the identification of broad themes and unique innovations rather than on details.

The first component typical solely for the U.S. juvenile justice system is the existence of the juvenile courts as separate units even since 1899. It was a court clearly distinct from the adult criminal court as the juvenile court was operated by the concept of *parens patriae*, and did not grant the juveniles with the due process rights available only for adult offenders. Besides the importance of the issue of the application of a judicial waiver (transfer) it is also the structural peculiarity of the U.S. juvenile court system. These characteristics and perspectives did not exist in the case of the German and Georgian juvenile justice systems. In contrast to the U.S. system of juvenile justice, in Germany no specific juvenile courts are provided. The courts hearing juvenile cases are functioning under the entire court system instead and are organized on three levels. Cases involving youthful offenders are tried by special juvenile courts at the first two levels of

courts, namely the (*Amtsgericht*) and the (*Landgericht*) and juveniles have procedural rights equal to those of adult offenders. The German Youth Court Act provides neither provisions for waivers of juvenile rights nor the possibility of transferring juvenile offenders to adult criminal courts. In Germany, juveniles can under no circumstances appear before an adult court. As for Georgia, its legislation is more or less similar to the German model and differs from the U.S. juvenile justice system in terms of functioning juvenile courts or encountering the transfer issue as in Georgia no separate branch of the juvenile court operates within the entire court system. However, under Georgian law specialized training is mandatory to serve as judges on juvenile cases. Moreover, specialized units within the judiciary system might be created, where a certain number of experts will be designated to work solely on children's cases, or specialized professionals will be identified, who will be entitled to work on juvenile cases as well as on other cases.

The construction of juvenile codes and related legislation is another important point for shedding light on the following issues: What is a particular country's attitude toward juvenile law? How does each country prescribe ways for dealing with juvenile offenses? Do their legislations build upon social, demographic, historical and cultural factors? In general, it should be said that comprehension of a particular country's juvenile-related legislation best describes the country's administrative policies. From this point of view the comparative research of the design of the U.S. German and Georgian law shows that American juvenile law considers the federal structure of the country as juvenile codes vary substantially from state to state, despite the common basis of the U.S. Constitution and federal policy. Inherent to the U.S. juvenile law is the unification of almost all aspects of the different fields of law regulating juvenile-related issues in one legislative act: the juvenile code. Albeit, some supplementary legislation related to the issue is still provided. Unlike the U.S., Germany disregards its federal structure as it has developed an act on juvenile law applicable in all states across the country. The youth court law does not advocate the use of the welfare model as punishment and education under consideration of the principle of proportionality are reconciled within German juvenile legislation. As for Georgia, up to now it has no particular act regarding juvenile delinquency. However, the criminal code makes special provisions for the sentencing of young offenders. Only recently has Georgia started developing the unified juvenile code incorporating the features and structure of both the U.S. and European juvenile related acts. The purpose of this code is to establish a juvenile justice legal framework in compliance with the Convention on the Rights of the Child and other international standards and norms aiming at safeguarding children's rights and promoting the reintegration of the child into the society.

The variation in the given systems of juvenile justice and a comparison of the U.S., German and Georgian juvenile law can serve as visible indicators of how different nations view the same phenomena like juvenile delinquency. The nature and status of delinquency are stipulated by social perception and legal definition of this phenomenon. As the comparative

⁷² *Bartollas/Miller* (fn. 38), p. 202 ff.

research of the U.S., German and Georgian juvenile law has shown, the patterns of delinquency can vary dramatically from one country to another. While the term “delinquency” is defined in a broad sense to include status offenses under the U.S. juvenile law, Germany has no direct equivalent in its language for the English language concept of the “juvenile delinquent”. Rather, they speak of juvenile criminality that does not include status offences. Neither does Georgian legislation provide for the concept of status offences and instead of delinquent applies the term of juvenile offender in its criminal code. However, the new Juvenile Code of Georgia, which is in the process of being drafted elaborates the new term “child in conflict with the law” – that is defined as “A child alleged as, accused of, or recognized as having infringed the criminal law”.

Cross-cultural comparisons of juvenile justice put not only different crime phenomena, but also different social and legal reactions into perspective of treatment of the juvenile offender. Each of the countries in this study asks itself the question as to how to respond to youth crime, what its respective concerns are and what measures are being undertaken or being considered. Answering these questions stipulates the adoption of different policies for dealing with young offenders. However, despite these policy differences and a wide range of sentencing alternatives varying from punitive sanctions to educational measures, the common features of U.S., German and Georgian law are still detected. Common to each of these countries is the consideration of both approaches to the offence – punishment and education – according to where they better fit children’s needs in terms of their rehabilitation. The second common feature of these countries is quite a high percentage of the application of youth incarceration in the court practice. The difference among the above-mentioned countries is observed in terms of establishing criminal liability due to the fact that each country has its own legally prescribed lower and upper limits of criminal responsibility for youths. The main point isolating and differentiating the U.S. juvenile- related sanctions from their German and Georgian *bis wohin und nicht weiter?*

es, which cause disparity in juvenile sentencing. Although some of the U.S. states have abolished them and created a determinate sentencing system for juveniles according to recommended guidelines, they are still retained in some others, whereas in German and Georgian legislation only determinate sanctions with a minimum and maximum penalty limitation are prescribed in the codes.

Finally, comparing similarities and differences between the countries and juvenile justice models enables us to draw some conclusions. These inferences will further help us to understand the strengths and weaknesses of each system as well as to identify possible responses and new trends for the perfection of the juvenile justice system in our respective countries.