

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES
 ASSOCIATION INTERNATIONALE DES MAGISTRATS DE LA JEUNESSE ET DE LA FAMILLE
 ASOCIACION INTERNACIONAL DE MAGISTRADOS DE LA JUVENTUD Y DE LA FAMILIA

CHRONICLE

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EDITORIAL

**FORGING PARTNERSHIPS ACROSS BORDERS
 THE WORK OF THE IAYFJM**

Partnership is the foundation stone of the IAYFJM. The Tribunaux des Enfants, meeting in Paris in 1911, drew together more than 300 delegates from all over Europe. Delegates were struck by the number of problems which were common to them all. They agreed that, in practising their vocation, the exercise of jurisdiction over minors, juvenile court judges and magistrates sometimes feel isolated from their colleagues who deal with civil and criminal matters in the adult courts. It is comforting to know that, in countries around the world, there are others who are fighting the same battle, armed with the same ideals. They discussed the possibility of setting up an international association which would help to coordinate their efforts. The outbreak of the First World War meant that this aspiration did not become a reality until 1928 when the group met again in Paris. The Association was formally constituted at the first Congress which was held in Brussels in 1930. This was an association of colleagues from many parts of Europe, in effect, a partnership.

We are mandated by our Statutes to forge partnerships. Indeed, the Association's aims, as outlined in the Statutes adopted at that first Congress, could not be achieved without them.

I should make it clear that I am talking about "close cooperation between parties in a mutually beneficial relationship" and not about "a contractual relationship governed by a formal memorandum or legal document".

In working to achieve its aims, the Association, for many years:

- has been active in both the United Nations and the Council of Europe in providing leading experts to assist with the drafting of international conventions relating to the rights, interests and welfare of children and young people;
- has worked closely with UNDP, UNICEF and a range of NGOs;
- has helped organise and/or contributed to seminars in various parts of the world covering a range of topics: including adoption; child labour; child soldiers; children who kill; domestic violence; family law; family group conferencing; fostering; juvenile justice; mediation; organised crime and the exploitation of children; sexual exploitation; sport and the exploitation of children; the Convention on the Rights of the Child; trafficking; youth sentencing.

- has held quadrennial International Congresses.

While these activities worked very well it has to be admitted that, for the most part, arrangements, from a partnership point of view, were very much on an ad hoc basis with bursts of activity once every four years for the Congress and localised activity when a seminar was being organised. This is understandable as communication was difficult, particularly with areas remote from the hub, which was in Europe. Members were largely unaware of the work being carried out by a small, dedicated, band at the heart of the Association.

The work of the Association has always been restricted by lack of financial resources and relied heavily on the generosity of a small core group who were willing to give of both their time and their personal resources to further the aims of the Association. None-the-less, following the end of the Cold War, our work began to expand – particularly in the newly-developing democracies of Eastern Europe and in Russia. Later we were involved in the Balkans, particularly in Kosovo. Our expertise is in demand in Africa – particularly in the French-speaking countries, but also in South Africa and, more recently, in Malawi. In Asia experts were or are involved in Afghanistan, Bangladesh, Bhutan, India, Myanmar, Nepal, Pakistan, the Philippines and Vietnam. There have been requests for help from South America, e.g. Argentina, Colombia, Peru, Guatemala and Uruguay.

Why this sudden demand for support from the Association? As early as 1911 our forbearers identified the communality of problems which faced judges and magistrates, irrespective of which country they came from. Today that is even more apparent. International criminals move freely from country to country. The displacement of peoples as a result of war or famine means that one country's problems quickly flow over the border into neighbouring countries. The trafficking and sexual exploitation of women and children, international adoption and fostering; test-tube babies with donors in one country, birth mother in a second and

“parents” in a third; genetic engineering; cloning – these phenomena are not confined by borders.

It is no longer possible for any country to remain isolated from the outside world. Four years ago, Bhutan, the fabled Himalayan Shangri-la, became the last nation on earth to introduce television. Suddenly a culture, barely changed in centuries, was bombarded by 46 cable channels. And all too soon came Bhutan's first crime wave - murder, fraud, drug offences. In one month, April 2002, the chief accountant of the State Trading Corporation was charged with embezzlement; a truck driver appeared in court charged with murdering his wife; a farmer was charged with murdering his niece and injuring his sister; a group of youths were charged with robbing and vandalising three of the country's most ancient stupas. This level of criminality was unheard of in Bhutan where, for centuries, over-indulgence in rice wine was the only social vice. The Bhutanese point to the five large satellite dishes, planted in a vegetable patch, ringed by sugar-pink cosmos flowers on the outskirts of Thimphu to explain why their isolated kingdom is falling victim to the kind of crime associated with urban life in America and Europe.

One thing we can be certain about: problems, which are being faced by a judge for the first time - whether these be murder, fraud and drug offences in Bhutan or a test-tube baby demanding to know his/her natural parents in the industrialised world - will, almost inevitably, have been faced and dealt with by colleagues in other countries. There is no need to reinvent the wheel. We can learn from one another.

While our work continues to expand exponentially arrangements continue on an ad hoc basis. Clearly the time has come to streamline our operations and to build a structure into our work. To this end a Corporate Plan has been drawn up to cover the period 2002 to 2006. This plan attempts to put our aims and objectives into sharper focus and to outline a strategy for achieving them.

In this more focused approach it seems clear that we cannot achieve our aims and objectives

alone. We need to consider partnership arrangements. There are three distinct levels of partnership. These are

- a) partnership arrangements with National Associations
- b) partnership arrangements with organisations like UNDP, UNICEF, the Council of Europe and a range of NGOs and
- c) partnership arrangements with the private sector to fund our Chronicle, our Web Site and our secretarial backup.

The first will not be formal but rather continue as before to be “close cooperation between parties in a mutually beneficial relationship”. An exception might be the Quadrennial Congress which has now become a major undertaking. We need to introduce at least a “memorandum of understanding” between the IAYFJM and the host Association.

In the case of ‘b’ and ‘c’ a “contractual relationship governed by a formal memorandum or legal document” will be required if the Association is to give long-term commitments rather than ad hoc responses.

The benefits of working in partnership

The opportunities opened up by forming partnerships are manifold:

- Facilitating access to the range, quality and integrity of IAYFJM expertise in the fields of judicial education and in the development of international law and comparative law
- Sharing experience and skills to mutual benefit
- Enhancing programmes through combining resources and skills
- Extending impact to wider groups of people through partners’ networks
- Enhancing perceptions of the IAYFJM and the organisation’s profile through joint events
- Promoting IAYFJM interests strongly by working in an international context.

Strategies for Partnerships

It is easier to develop an appropriate approach to partnership if you have a simple theoretical framework for thinking about the wider issues of participation. There is a need to clarify our aims and objectives and what exactly we are trying to achieve. The Corporate Plan attempts to do this.

Planning the partnership process takes time. Our Treasurer set the wheels in motion some 18 months ago and made informal contacts with two separate agencies, namely UNICEF and IDE. He drew up draft proposals and discussed them with the potential partners to assess their attitudes and levels of interest. When he received a positive response we decided it was time to consider drafting formal proposals. But first it was necessary to ensure that IAYFJM members were in agreement that the Association should work with others. The proposal to form strategic partnerships with UNICEF and IDE was laid before members at the General Assembly in Melbourne and was formally approved.

Selecting Strategic Partners

In selecting strategic partners it is necessary to ask ourselves what is our role. It is the role of judges/magistrates to apply and maintain the rule of law in all its aspects in a civil society, particularly as it relates to children, young people and their families or to determine issues in dispute between individuals and/or the State by identifying and applying the appropriate law with regard to the human rights issues raised.

In a criminal case the judge’s/magistrate’s role is to ensure that every defendant has a fair trial and hearing in accordance with law and is not convicted or sentenced unless such a charge is properly proved in accordance with due process and then to apply a sentence which is consistent with the seriousness of the charge, the interests of the community and the special considerations which are due to the particular individual charged, as well as being as far as

possible “positive” and rehabilitation-oriented rather than purely punitive.

In a civil case, which includes child protection applications, there is usually a dispute between either, State authorities and individuals or, between individuals and individuals. The Judge’s job then is to ensure that each party has a proper opportunity of advancing their case in accordance with established principles and procedure and to ensure that the best interests of the child involved are given paramount consideration in arriving at a decision which resolves the dispute.

The court is the appropriate institution to hold society responsible for raising its children to adulthood. It is in the best interests of the court to insure that the system is working effectively. If every child in conflict with the law, status offender or dependent child were brought before the court, the court would be overwhelmed. The system must be able to resolve the majority of cases effectively and satisfactorily long before they reach the courtroom. The system must provide appropriate sanctions and services at different junctures depending on the seriousness of the case. In addition there must be an array of dispute resolution options available to those children and families who might otherwise come before the court.

It seems to me that judges and magistrates must work together with all of the various agencies and professions if we are to achieve the best outcomes for all concerned. I do not believe that this will compromise their position. Each profession will have a different focus and role but this will not prevent the partnership having a common purpose – the best interests of the child and the family.

What are our strengths and weaknesses?

In considering potential partnerships it is important to consider our strengths and weaknesses so that the partnership will be complementary.

Our strengths lie in our ability to access expertise and best practice amongst our members in

all aspects of judicial training, the understanding and development of international law and comparative law, particularly as it affects children and their families and in the drafting and implementation of international conventions relating to the rights, interests and welfare of children and young people.

But there is more to running projects than selecting experts. In devising a project a vision and an action plan needs to be developed with people on the spot – it is their needs which have to be met. It may be necessary to build confidence through a pilot project before getting involved in more extensive work. Ad hoc partnerships may need to be created at the local level. It is important to be aware of what resources are available locally and to understand local priorities and skills. Local resources may have to be supplemented. It may be necessary to develop an infrastructure and it is almost certain that local organisations will need long-term support. Training and support services will have to be coordinated.

These are areas where the IAYFJM does not have either the expertise or the financial resources to be most effective. It was our view that UNICEF would form an ideal strategic partner. UNICEF, we believe, is strong where we are weak while we can offer them something which they don’t have. The partnership would combine IAYFJM expertise with a strong UNICEF mission.

Such a move would demand changes in the way the Association is organised. Moving towards a more professional approach would require the setting up of an office with secretarial support. With this in mind we selected our second strategic partner, namely IDE. As with UNICEF, our contribution to the partnership will be the provision of experts to assist in programmes organised by IDE. In return IDE will make office accommodation and support services available while we will share the cost of a part-time secretary.

Successful partnership

For a partnership to be successful the following factors should emerge:

- Agreement that a partnership is necessary.
- Respect and trust between different interests.
- The leadership of a respected individual or individuals.
- Commitment of key interests developed through a clear and open process.
- The development of a shared vision of what might be achieved.
- Time to build the partnership.
- Shared mandates or agendas.
- The development of compatible ways of working, and flexibility.
- Good communication.
- Collaborative decision-making, with a commitment to achieving consensus.
- Effective organisational management.

Failed partnership

Where difficulties have arisen in the past the key area of difficulty appears to have been that financial and time commitments outweighed the potential benefits. This was compounded by lack of clear purpose, unrealistic goals and lack of communication.

Awareness Raising

As we move towards the formation of strategic partnerships it is important that we bring our members along with us. We want them to understand why we are going down this particular route and convince them that this is the way to go.

We should recall that the IAYFJM represents worldwide judicial efforts to deal with the protection of youth and family. Our *raison d'être* is the administration of justice. A new world order must have justice as its foundation. We may be a very small cog in a very big wheel but in aiming to promote the administration of justice and the maintenance of the rule of law as it affects children and their families we do have a role to play in ensuring that justice is delivered to all.

Taking this perspective we believe that our plans are very much part of the bigger picture. Furthermore, we believe that it is not just morally right to help bring justice to all. It is in our mutual interests, because of the correlation between justice and terrorism.

An important strategy of the Corporate Plan is the appointment of Regional Commissioners. It is intended that they will provide direct lines of communication between the periphery and the centre. They will ensure not only the two-way flow of information but will bring the Association to the members and ensure transparency.

Actions not words

We have a saying in Ireland that "fine words butter no parsnips". No matter how eloquent the argument it is the delivery that matters. How are we going to deliver?

We have published a Corporate Plan which lays out our strategy for the period 2002 to 2006. We have much work to do and it is no longer possible to leave it to the dedicated few. We need the help of all of our members. We need the help also of academics and NGOs.

It is my hope that, over the next four years, the IAYFJM will see more change in international development than we have seen for a very long time. Our challenge will be to keep the momentum going, not by gimmicks, not by manufacturing initiative after initiative, but by sustained pressure on our key targets. There is no time to lose. The first year has almost gone.

The cause of supporting judges and magistrates to apply the rule of law is noble. It is not an easy mission. We can succeed if we work together. We must succeed. In guaranteeing justice to everyone we bring some pride and dignity to ourselves.

Willie McCarney, President

JUVENILE JUSTICE AND THE PROTECTION OF CHILDREN'S RIGHTS IN CHILE

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Introduction

Motivated by the 2nd International Conference on "Children and Residential Care - New Strategies for a New Millennium" to be held in Stockholm, Sweden, in May 2003, SENAME, the Chilean National Social Service for Juveniles, has organised a preliminary conference in order to gather previous experiences and reinforce the co-operation of the said institution with various organisations.

In this context, I have been asked to participate in order to bring a vision of "Juvenile Justice and Protection" to the Panel: "The Chilean State and Residential Care: From the Doctrine of Social Irregularity to the Protection of Children's Rights".

In the name of the Chilean National Association of Juvenile Court Judges, of which I am President, I am glad of this invitation, which allows us to contribute the point of view of the specialised judiciary, thus boosting the level of co-operation between the State Institutions regarding our *raison d'être*: the welfare of minors as an indispensable element for the development and well-being of our society.

I will attempt to develop the idea that in the implementation of the different models which have historically been created and applied to tackle the problem of delinquent and abandoned children, the existence of Juvenile Courts has been central. Various societies have demanded solutions from them, without necessarily providing them with the support they need to enable the judiciary to effectively

count on the necessary instruments to accomplish its aims efficiently. This is true whether it adopts the protection model or the guarantee model, or whether it favours dealing with offenders through the courts or attempts to avoid court proceedings if possible. On the other hand, society demands solutions to problems which often exceed the classical functions proper to the Judicial Power, and in particular the Juvenile Court System.

By this we mean the perennially difficult budgetary situations which prevent a significant increase in resources, even though it is not a matter of expanding administrative or judicial bureaucracies. However, the point we aim to develop is the necessity of co-operation between the different pillars of the State and in particular between all institutions, whether they belong to the State or to civil society. Institutions in the academic field must be involved, and dedicated to improving the situation of children and young people, to guarantee the best possible success of all initiatives, plans and programs which respond to the concerns of society regarding Juvenile Law.

This idea will be developed throughout this report as a contribution to the necessary integration of the different powers, as well as collaboration between them in the face of a common objective: the well-being of minors and of society, particularly concerning the subject of residential care and strategies for the future.

The Origins of the Juvenile Justice System: The Protection Model

Since the very first legal systems came into being, all civilisations have been concerned with the appropriate sanctions linked to the commission of criminal acts. However it was only in the second half of the 19th Century that the need was felt to devise appropriate responses for the circumstance in which minors are involved in the commission of such acts. Therefore, in response to the commission of acts considered crimes or offences by the law, a system has been set up where the State curtails or restricts the liberty or other rights of adolescents. At the same time, a system has been conceived for the accommodation of homeless minors.

Historically, the system for controlling juvenile delinquents was contained within the general criminal justice system, applying to children or adolescents above a certain age the same criminal justice rules or proceedings as adults, with no reduction of the applicable penalty.

The deplorable conditions of detention and the overcrowding with juveniles and adults together generated strong moral indignation which translated into a vast reform movement. In the face of these circumstances, a specific system of social and judicial control was created for children and young people. The culminating point of the movement is usually identified with the emergence of the first Juvenile Court, an event which took place in Chicago in 1899. This model was taken up first by European countries, then by Latin American countries.

Nevertheless, the system conceived for this purpose was based on the inability of the Administration to deliver to citizens, especially to the most needy, basic health services, education and other types of social assistance. At the time this was used to justify the so-called protection measures which deprived children, young people and teenagers of their liberty, due to the mere fact of their being in a so-

called “irregular situation”, turning the juvenile court judge into an instrument of the state for the application of concrete measures against the type of social inadequacies to which we are referring.

In addition to this, the system of subjecting children to the same rules as adults generated strong and well-founded criticism, due especially to the cramped conditions observed in the prisons in which adults and children were mixed. Faced with this situation, in many cases the judges, in order to avoid its clear negative consequences, and out of charitable feelings, released young people who appeared guilty in order to avoid sending them to penitentiary institutions for adults. Not absent from the debate was the circumstance that keeping minors in such conditions within those walls, far from correcting “irregular” conduct, rather gave them a thorough grounding in other forms of anti-social behaviour.

Juvenile Law initially emerged in this way to reduce structural deficiencies in basic social policies in the middle of a strong global debate on the obligation of the State to provide a minimum level of social guarantees, fully embracing the concept of a Benefactor State. This corresponded in Constitutional Law to the theories of the Social State of Law, put in place by the German Weimar Constitution of 1919, in the midst of all the post-World War I adjustments and profound social upheaval.

It is therefore in the middle of this context that in developing countries, then in American countries and in Chile, the first major Juvenile Justice system emerged, the protection model, which emphasised rehabilitation of the young offenders and their needs.

This system was characterised by considering the child as the responsibility of his or her family, and to justify State intervention in the family environment, the family was considered a victim of its circumstances and of the inadequacies of its environment. To correct the irregular conduct manifested by each child, coercive methods put in place which generally

consisted of curtailing or restricting children's liberty or other rights. Refuges or homes were thus set up, which were considered the best solution for children and adolescents, who until then had had to face the rigors of adult prisons.

To be exact, in this protection model, the Juvenile Court Judge took on a vague and imprecise role, given that the protection measures were completely discretionary, and subject to a system of appeals and supervision by superior courts. In practice however, the judge had enormous leeway, given that he was ordering a measure without determined duration, and the suspension or modification of which were arbitrarily up to him. In such a case, it was often difficult to assume the indispensable role of social referee, and judges sometimes abdicated the said role, delegating judicial discretion to the hands of subordinates who in practice had a strong influence on the decision whether to release minors, putting an end to their detention, while informing the Juvenile Court Judge on their conduct and making proposals on the culmination of the program.

Juvenile Law, in matters of protection, based on the doctrine of the irregular situation, was subjected to severe criticism which can be summarised in the following terms:

- Judicialisation of the problems linked to children at risk without evaluating the type of risk (minors in danger or with health problems, educational or other social problems received similar or sometimes identical treatment to juvenile delinquents);
- Impunity for the treatment of conflicts with the criminal law;
- Criminalisation of poverty - the courts imposed custodial measures which meant actual deprivation of liberty, for reasons linked to the simple lack of material resources;
- Absence of due process - denial of the right of juvenile delinquents to defence: there were no criminal proceedings in which at the same time a minor was ac-

cused of an offence, allowed his or her defence against the charges brought;

- The characteristics of the custodial sentences in this type of model were based on the personal needs and characteristics of the child, obtained through medical, psychological and social evaluations submitted by the various agents of the judicial system, oriented towards the "best" solution applicable to the type of irregular situation presented; and finally there was no possibility of giving the juvenile a discharge.
- Excessive discretionary power: Very wide discretionary power of the judge to "solve" the future of the juvenile at risk and at the same time there was a lack of interdisciplinary technical support to adequately address each juvenile's specific problems.

It is worth noting that in Chile, the creation of juvenile courts, which was to be a logical consequence of the passing of laws dealing with minors, did not come about in the way it had been hoped, but on a very small scale, with a limited number of Courts and officials and minimal infrastructure. Moreover, many laws have not set clear boundaries to such a Jurisdiction, and many ways can be seen in which guarantees could be strengthened, but only once the young person is passing through the judicial system. Even today we observe that procedures could also be refined, in such a way as to better guarantee the minimum formalities for that which is known, in procedural terminology, as "due process".

Already at the time of that judicial system, but even today, it has been observed that many times, in the absence of lawyers for delinquent or "irregular" minors, or of a "guardian ad litem", or an "Ombudsperson", Juvenile Court Judges have practically been turning themselves into Defence Lawyers for minors, sometimes against the police or society, and in many cases even against their own parents.

The "irregular situation" or protection model was clearly established in Chile in Juvenile Law No. 4.447, enacted in 1928. However

much it may be criticised today, in its time it represented a clear social advance compared to the previous reality.

This law was also strengthened and reinforced with the Decree on Special Procedures for the Prevention of Juvenile Delinquency. Law 4.447 created the juvenile jurisdiction and set out specific legislation for minors, and with various modifications, it remains on the statute books today. It was revised by Law 16.618 of 1967, which in turn was updated by Law 19.711 of January 18th, 2001. It must be mentioned that, due to the reform of criminal procedure law currently underway in our country, Law No. 19.806 was passed on May 31st, 2002 to update existing legislation. This last law also altered the substance of the law in force in Chile concerning Protection.

This new context gradually led society to question the philosophy of the protection model, which responded essentially to minors with unmet needs.

Towards the model of total protection

The reform process which unfolded in the second half of the 20th century was a period of realisation of individual rights. This orientation gave rise to a series of important legal instruments within the international community which were discussed by various organisations. This included the adoption of various charters to protect people's individual rights.

Therefore, the following must necessarily be mentioned:

- The United Nations Charter,
- The Universal Declaration of Human Rights;
- The Geneva Declaration of 1924 on the Rights of the Child;
- The Declaration on the Rights of the Child adopted by the General Assembly on November 20th, 1959;
- The International Pact on Civil and Political Rights;
- The International Pact on Economic, Social and Cultural Rights;

- The Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”);
- The Declaration on the protection of women and children in states of emergency or of armed conflict (Resolution 3318 (XXIX) of the General Assembly, of December 14th, 1974);
- The United Nations Minimum Rules for young people deprived of liberty, and
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”).

As for the American continent, among various instruments for the protection and the promotion of human rights, the following must be mentioned:

- The American Convention on Human Rights: “Pact of San José de Costa Rica”;
- the Additional Protocol to the American Convention on Human Rights regarding Economic, Social and Cultural Rights: “San Salvador Protocol”.

The Convention on the Rights of the Child, although it was not the first instrument in chronological order, nevertheless constitutes the most important instrument in that it established a framework for the interpretation of the other rules. In addition to introducing the obligation of respecting all basic legal principles, it required states to start transforming their legislation by changing their previous legal systems. Practically all the countries in the world, except the United States and Somalia, have ratified it and consequently integrated it into their respective legal systems.

The Convention appears to be the central framework for the new doctrine which privileges the concept of Full Protection, making an urgent appeal for legislation to be an effective instrument for the defence and promotion of the specific human rights of all children and adolescents.

In accordance with the new concept which is present throughout, and emerges from, the Convention, there is a clear consensus that judicial functions must be redirected to their

specific mission of resolving conflicts of a legal nature and stop being primarily an instrument to remedy or compensate for omissions of basic State social policy.

Nonetheless, the importance has been established of holding the respective institutions accountable for their actions or omissions concerning their obligation to satisfy the fundamental needs of juveniles - housing, education and health services - to permit the full development of their personalities. Despite budget constraints, society's demand for the concrete realisation of these social rights guaranteed by various standards is becoming ever more manifest. The concept of global citizenship through such a realisation of social rights is taking shape, and it is certain that also in Chile a structural and fundamental change is taking place in the way in which Juvenile Law is regarded. This also includes a new vision of Juvenile Justice, considering the minor not as an object of law but as a subject of rights, as a citizen.

The change in the social context has led Human Rights defence organisations to denounce abuses committed against minors, who were deprived of mechanisms to protect their procedural rights, since in general their right to a defence was not respected, and many children were subjected to measures of undetermined duration for acts which did not even count as offences when committed by adults.

The coming into force of the Convention has begun to noticeably alter the legislative panorama in many countries. In Chile this process began with the ratification of the Convention and with its incorporation as a law of the Republic, according to Supreme Decree No. 830 of August 14th, 1990, under the government of President Patricio Aylwin. Nevertheless, its effective and thorough implementation is a reality which is still a long time in coming, despite the efforts and progress made.

The new legislation has been passed under the influence of the Convention on the Rights of the Child and recent social, political and legal

doctrines which fundamentally stress the concept of CITIZENSHIP, which emphasises the nature of the guarantee which the judiciary must offer to members of society, changing the role of the State. In the doctrine of Constitutional Law the concept of the Social and Democratic State of Law emerges, putting more emphasis on the limits to State power and guarantees towards citizens.

In fact, while we certainly have laws such as that which regulates the removal of children from prisons, the law dealing with the parentage of children and that which refines the system for the adoption of abandoned minors, it is no less certain that such laws are either present in or inspired by the substance of Law 16.618, which authorises the judge to hear all cases in which they juveniles have been charged with crimes, misdemeanours or minor violations, (both persons under 16 and those who have passed this age but are still under 18 and who have acted without discernment), and to apply the corresponding protection measures. It is also necessary to bear in mind that these laws apply without distinction to those who have committed criminal offences and those who need assistance and protection.

Law No. 19.806, passed on May 31st last year, introduced changes to the Juvenile Law, with the intention of harmonising its provisions with those of the system of public investigation and judgement (with adversarial proceedings) of the new criminal procedural system, in order to thus correct certain provisions of Law no. 16.618. This was an interesting achievement as regards separation of protection from criminal cases, but unfortunately this only applies to delinquents aged over 16 and under 18. Nevertheless, adolescents aged under 16 and children whose rights have been violated, can theoretically receive measures which restrict their liberty, because this is still present in our legislation, reflecting anachronistic but still existing laws from a previous model of protection, the old system I have already commented upon. This feature distorts the protection-oriented view of juvenile law. Thus the legal possibility still exists that children at risk

may be put in the same category as delinquents, and “for their benefit” be detained in reception centres, which, even if they have a more modern vision, aiming for the development of young people, do not in practice prevent young people, supposedly for their own protection, from being subjected to a violation of essential rights like liberty.

Likewise, on the subject of deprivation of liberty, Article 15 of Law 16.618 establishes that one of the aims of the police in dealing with minors is to round up children in irregular situations and in need of assistance and protection. The ambiguity of the terms used for this law allow the police to restrict minors' freedom of movement, when for example they sell things in the street, or as is now in fashion, show their artistic expression or circus acts. While it is certain that some measures are warranted for the risks to which minors are exposed, this does certainly not call for a criminal or punitive sanction which would justify the curtailment or suspension of the constitutional guarantees for children.

A clear advance in this field was the recent repealing of Article 32 of Law 16.618, which allowed the Judge to apply a protective measure even after concluding that the act had not been committed or that the minor had played no part in it, if he or she was in material or moral danger.

Nonetheless, it is also a matter for concern that the custodial measures authorised by Article 29 No.3 of the current Juvenile Law (Law 16.618 according to the revised text with subsequent modifications) do not satisfy the required criteria for the authorisation of precautionary measures for adults, since the Code of Criminal Procedure establishes in general terms that it is inadmissible to deprive individuals of liberty when the alleged perpetrator is charged with offences or misdemeanours which the law does not punish with imprisonment. Further, this type of measure is reserved only for typical illegal acts for which the typical penalty would involve the incarceration of the offender. On the other hand, the new sys-

tem of procedural guarantees for adult defendants further stipulates that the police must already have a court order in order to act; only exceptionally can they detain someone on their own initiative, when the offender is caught red-handed. These are circumstances which are not considered in Juvenile Law regarding children or adolescents who have been involved in such situations.

The deficiencies mentioned were moderated by changes made to Article 16 of Law 16.618, through the revisions brought by Law N°19.806, but this only applies to minors aged over 16 but under 18 found in the situations set out in Articles 129 and 131 of the Code of Criminal Procedure. This power was subsequently given to judges, charged with guaranteeing procedural rights, in the new criminal procedures.

Because of this, there remains, regarding minors aged under 15, a troublesome amount of confusion as to the measures to be taken to deal with them, even though the passing of Article 26 No.7, modified by a subsequent law, moderated the powers granted to the Juvenile Court Judge. Let us note: “the judge has the power to find solutions regarding the future life of the juvenile according to Section 3 of Article 234 of the Civil Code and to hear all cases where minors appear whose rights have been seriously violated or threatened, and where protection measures are adopted according to Article 30”. In this way, the Juvenile Court Judge has lost power in cases of “material or moral danger” or “violation of rights” when these rights are not specified.

In many cases, children and/or adolescents continue to be brought before the courts simply because they happen to be in a situation of poverty, destitution or abandon, lacking in basic necessities, which causes them to display maladjusted behaviour - in these cases it is not appropriate to “bring them to justice”.

It is also quite common for the children's own parents to ask the police or the courts to place their children in detention, since they feel their

parental authority has been overcome and feel powerless, faced with certain behaviours on the part of their children which they are unable to prevent or correct.

In addition to these requests, there is a certain amount of clamour on the part of the media, who call on Juvenile Courts to respond appropriately to situations which adversely affect children. This strengthens the idea among inadequately informed citizens that it is the job of the specialized judiciary to tackle and solve all problems caused by violation of children's rights. For example, some time ago a minor (aged 17) was found roaming naked around the city and the National Social Service for Juveniles requested the Juvenile Court, with its powers to impose protection measures, to deal with the case.

With the changes mentioned, it would be desirable to define with greater precision which rights we desire and hope that the Juvenile Courts will protect, and with or without these boundaries, provide special training and/or qualification courses for Police Officers, especially Carabineros, in order to train them in their new and noble task under the new concept of Juvenile Law, thus preventing the obvious expectations from arising when a child is brought before the courts for protection.

We are not anxious to take on wider responsibilities than at present. Nevertheless, it is appropriate to ask whether in the case of treatments for alcoholism or drug addiction, which are extremely expensive, prolonged and uncertain as to the outcome, it is appropriate for a Juvenile Court Judge to order such treatments. For whom? Under what authority? Under pain of what sanction? Or in the case of the right to an education being violated, will this procedure be comparable to a kind of *sui generis* protection measure under Juvenile Law?

We consider that this problem can arise under the legislation currently in force, since Article 62 of Law 16.618 grants power to Juvenile Courts to deal with mistreatment resulting from an action or omission detrimental to the

physical or psychological well-being of juveniles, where the situation is not covered by specific laws on similar matters.

The inertia we have mentioned is to be found not only with police authorities, but also with hospital management and staff, schools, doctor's offices, institutions collaborating with SENAME (the National Social Service for Juveniles) and other administrative organisations, all of whom daily report this kind of occurrence to the Juvenile Courts. Civil and Criminal Court Judges do likewise, when they learn of cases of mistreatment or sexual abuse of children, referring such cases to Juvenile Courts so that measures may be taken to assist these children. Nevertheless, jurisdiction over mistreatment of children within the family has been granted to Civil Courts under Law 19.325, handing over power to what is called the ordinary justice system to take effective measures for the care and protection of the victims of family violence, affecting the rights of the offender and not those of the injured party. The Juvenile Court Judge does not have this power and can only take measures to assist the victim, which generally adversely affect his or her rights.

Likewise, in the criminal field, Law 19.325 grants the judge powers to protect the victim, however the cases are reported to the Juvenile Courts, sometimes even by Criminal Court Judges themselves. In these cases, the victims of mistreatment or abuse are caught up in the court system, with the further risk that their rights will be compromised, since the Juvenile Court does not have the power to curtail the rights of the offender.

In fact, Article 30 of Law 16.618 states: "In cases envisaged by Article 26 No.7, the Juvenile Court Judge, by means of a well-justified solution, can order the measures necessary to protect minors whose rights have been seriously threatened or violated. In particular, the judge can: 1) order the parents or other persons responsible for the child to attend programs of action, support, reparation or orientation in favour of minors, in order to tackle and

overcome the crisis situation in which they may find themselves, giving the appropriate training, and 2) order that the minor be taken to a reception centre or temporary refuge, foster home or residential establishment.

The same law continues: "If the measure referred to in Section 2 is adopted, the Judge, in determining the guardianship of the minor, will give preference to blood relatives or other persons with whom he or she has a relationship of trust. The measure of detention in a protective institution will only be taken in those cases where, to protect the physical or psychological integrity of the minor, it proves indispensable to separate him or her from the family environment or from the current guardians, and in the absence of the type of persons referred to in the previous subsection. This measure will be an essentially temporary one, will not be ordered for a period exceeding one year, and must be reviewed by the court every six months, for which purpose the appropriate reports will be submitted. Without prejudice to the foregoing, the measure can be renewed under the same terms and conditions, while the cause which led to it persists. In any case, the Court can substitute or halt the measure altogether before expiration of the time period for which it was ordered".

The Law, in referring to the concept of violation of rights, naturally includes situations of violence, mistreatment and sexual abuse, which leads Civil Court and Criminal Court Judges to refer cases to the Juvenile Court Judge, so that the corresponding judicial measure may be taken. They sometimes refer to the said judge a problem over which he or she may not have full jurisdiction, except for the measures mentioned.

Detention and the rights of the juvenile

From the aforementioned Article 30, we can deduce that since mistreatment and sexual abuse against minors are mostly committed by family members who live with the minor, and since the Juvenile Court Judge does not have the power to take measures against the of-

fender, the Judge is necessarily required to separate the child from the family; often the minor who has been abused is deprived of liberty and will find it difficult to understand such a "protection measure".

These are subjects which make necessary a holistic vision of the rights of juveniles in the wider context of family rights. From this perspective there is no way round the necessity to finalise the creation of Family Courts, in order to have one judge whose competence includes all these matters and who has the necessary powers to prevent a mistreated or sexually abused child from being punished even more. The Judge is empowered, according to the Law on violence within the family, to adopt measures against the aggressor and not the injured party. In this way the minor can be effectively protected and removed from the court setting, preventing him or her, in a case of sexual abuse or ill-treatment, from passing through two, or sometimes even three different courts (Juvenile Court, Civil Court and Criminal Court).

We would like to point out that this Judiciary recognises the abolition of children in adult prisons as an additional advancement produced by reforms to Juvenile Law, and of no small importance in the progress of human rights.

Nevertheless, we must also note that even now in some isolated Courts, which we must term degrading, minors have been brought before the courts by the Chilean Gendarmeria. It is difficult for judges to oppose such a move, since they do not have individual treatment for every juvenile due to obvious personnel limitations and must deal with several juveniles at once. This is worrying for the well-being of officials, those who use the system and the other children who go before the Courts.

Among other measures that may be suggested, we could include the specialisation of lawyers who defend the rights of children and who act in this type of judgement, especially when they

are institutional lawyers at the service of the juvenile.

We are aware that the commission of punishable acts by children and adolescents has historically generated strong feelings in the population. On the one hand they are considered people in stages of development who must be educated and protected, and on the other hand it is considered that the privilege of immunity from criminal sanctions cannot be justified and that they must be punished in order to effectively combat delinquency. Nevertheless, we know that historically no system has been able to eliminate delinquency or to implement a system of state responses which perfectly respects the human rights of children and young people.

Campaigns with a tendency towards more supervision and punishment, instigated to a certain extent by certain media through their informing the public about the increase in juvenile delinquency, regrettably centred on the sometimes spectacular nature of some isolated criminal acts, often make positive action more difficult for those who are committed to constructing a justice model respectful of the human rights of children and adolescents.

It is certain that there exist great difficulties in enforcing the human rights of adolescents and children who are charged with delinquent acts and ensuring that child victims of ill-treatment or abuse are not further victimised, while at the same time responding to the community, which is often horrified when minors are in-

involved in violent and aggressive acts, and all this without violating their rights.

For this reason, Juvenile Courts must, together with auxiliary justice organisations, Non-Governmental Organisations and especially with competent State organisations, look for effective solutions and achieve a comprehensive justice system for our children. This system must respect their essential rights, grant them chances to atone for their mistakes without the application of measures restricting their liberty. I am certain that today no-one supports such measures. We must find alternative measures to incarceration, which can effectively lead the way to comprehensive protection of children and adolescents. We are aware of the significance of minors who are charged with offences or given protection if appropriate, and the need to ensure that they become citizens imbued with social values and able to make a contribution to their communities.

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THE RIGHTS OF THE CHILD

AIDS

FROM TABOOS TO INTERVENTION STRATEGIES

SION, SWITZERLAND

14-18 October 2003

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e-mail: ide@iukb.ch; web: www.childsrights.org

Languages: French, English and Spanish with simultaneous translation throughout the plenary session.

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**INTERNATIONAL SEMINAR
OUAGADOUGOU – BURKINA FASO
March 2003**

1. Organisation

From March 24 to 26, 2003, in the UEMOA conference center in Ouagadougou, an international seminar took place, with the theme: “The Rights of the Child and Social Exclusion”.

This seminar was organised by the Ministry for Social Action and National Solidarity (MASSN) in partnership with the International Institute for the Rights of the Child (IDE), the Tunisian Association for the Rights of the Child (ATUDE), the Intergovernmental Agency of French-speaking countries (AIF), the Swiss Agency for Development and Cooperation (DDC), UNICEF (Western and Central African Region) and with the support of the International Association of Youth and Family Judges and Magistrates (IAYFJM).

This seminar brought together over 150 participants representing 23 countries, of which 21 were African countries, and from the international organisations mentioned above; governmental and non-governmental organisations for the promotion, the protection and the defence of children. It was enhanced by the presence of Mrs. Chantal Compaore, the wife of the President of the Republic of Burkina Faso, eleven serving Ministers particularly active in the area of women’s and children’s rights, as well as two African representatives of the Committee on the Rights of the Child, Mrs. Awa N’Deye Ouedraogo from Burkina Faso and Mr. Hatem Kotrane from Tunisia.

The IAYFJM was represented by its Treasurer, Michel Lachat, who at the beginning of his lecture during the plenary sessions on the “Convention on the Rights of the Child and Juvenile Justice: Repercussions in Europe”,

conveyed greetings from our venerable Association, then summarized its objectives and called on the participants to become members.

2. Content

The aims of the seminar were to review the activities for the promotion, protection and defence of the rights of the child in Africa and to outline new strategies to better guarantee these rights in a context more and more affected by exclusion, particularly the exclusion of children, a phenomenon aggravated on one hand by neo-liberal globalisation and on the other by social and cultural difficulties in African countries.

The opening ceremony was marked by eight interventions, among which it is worth highlighting the speech made by the representative of the Children’s Parliament in Burkina Faso, which goes to demonstrate that Africa wishes to include children in the problems of primary concern.

The actual work of the seminar took place focusing on the following 4 points:

- (i) The Convention on the Rights of the Child, the obstacles to its implementation and perspectives, with 5 interventions during the plenary sessions,
- (ii) Social exclusion: a denial of the rights and well-being of the child, with three interventions during the plenary session,
- (iii) Workshops on the following themes:
 - the manner in which children are socially and economically marginalised;

- the rights and well-being of the child: social and cultural specifics;
- justice for minors;
- poverty and mistreatment of children;
- protection of the fundamental rights of women - a *sine qua non* condition for better protection of the rights of the child.

(iv) The African Collective on the Rights of the Child, whose founding principle was retained by consent in the Ouagadougou Declaration of March 26th, 2003. For this purpose, a work group, made up of representatives of Burkina Faso, Cameroon, Tunisia, the IDE and the AIF, will have the task of finalising the basic documents.

3. Recommendations

The seminar adopted the following recommendations:

- setting up a committee to follow up on the recommendations;
- organisation of a wider international workshop on children orphaned by AIDS and other vulnerable children;
- the creation of a juvenile jurisdiction in every country;
- synchronisation of actions for the effective implementation of the Convention;
- the establishment of a sector-based partnership for the promotion of children's rights;
- the setting up of children's parliaments in countries that have not yet done so.

4. Follow-up

The IDE and ATUDE intend, following the Ouagadougou Declaration of March 26, 2003, to intensify their cooperation during the year 2003. In collaboration with the representatives of the AIF, Cameroon and Burkina Faso, they have the task of preparing the statutes of the African Collective for the constitutional meeting, already fixed for Tunis in November 2003, during a third seminar on Tunisian soil. For this purpose, ATUDE, during the closing ceremony, invited all African countries to participate in the Tunis seminar.

In addition, the IDE and the AIF made a commitment, with the support of the AIMJF, to take part in a training program for African magistrates in 2004. The project has already been delivered to the offices of the AIF.

5. Conclusion

The Ouagadougou seminar met with great success from all points of view. The analysis of evaluation forms filled in by the participants demonstrate that, apart from the never-ending malcontents who can be counted on the fingers of one hand, almost all participants were satisfied or very satisfied with the organisation, communications, the themes and sub-themes chosen, as well as the work done in the workshops. It is also appropriate to address our warm congratulations to the Local Organisational Committee for their efficiency, their availability and the welcome they gave us.

Ouagadougou, 28.03.03
Michel Lachat

THE VEILLARD-CYBULSKI AWARD 2006

The Veillard-Cybulski Fund Association aims to reward deserving works, particularly those which make a new contribution towards perfecting methods of treatment for children and adolescents in difficulties and their families.

To achieve this objective the Association has established a Veillard-Cybulski Award.

Rules (summary)

- The award is made every four years, on the occasion of the quadrennial Congress of the International Association of Youth and Family Judges and Magistrates (IAYFJM).
- Candidates must submit four copies of their work in English, French or Spanish, together with a summary of not more than ten pages, to the address of the Association.
Papers will not be returned.
- The next award will be made in 2006. The deadline for submission of works will be 31 October 2005.
- The prizewinner receives an award of 10,000 (ten thousand) Swiss Francs. The amount of the second prize, where appropriate, will be decided by the VCFA Committee. Where two winners are classed ex aequo, they share the award. There will be no addition to the total amount of the prize.

Applications must reach the Veillard-Cybulski Fund Association

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JUDICIAL EDUCATION IN THE PACIFIC

PETER BOSHIER

New Zealand Youth and Family Court Judge, Peter Boshier, has been seconded by his Government to work in Fiji for a year as part of the Pacific Judicial Education programme. It is a bold initiative, and here he sets out some thoughts on his role.

Editor

All of us recognise the importance of on-going educational training. Conferences that we attend and articles we read constantly challenge us to re-visit our own practices, to see what others are doing and to consider what we might do next as a matter of good practice. That is the way it should be, for law is a living thing, and whilst its development must be orderly it must nevertheless be demonstrable.

Chief Justices in countries that make up the Pacific Islands have been very far sighted. While recognising the need for on-going training and education, they knew that, given the very stretched resources involved in the South Pacific, a clear structure needed to be put in place to ensure that things actually happened.

The Chief Justices here belong to a body called the *South Pacific Judicial Conference* and 3 years ago that Conference decided that it would set up a specialist-training unit. Funding was sought, particularly from the United Nations Development Programme and the Asian Development Bank, as well as from England Australia and New Zealand, and a full time judicial education programme was set up. The programme operates in a rather clever way. There are 14 Pacific member countries that belong to the Pacific Education Programme. The Chief Justices of each country are expected to lead in terms of where each country wants to put its emphasis. However, as well as that leadership, the countries concerned have a National Education Committee and a co-ordinator who is the link between that committee and the full time Pacific Judicial Education Programme.

Countries decide what their needs are and then ask the Programme to deliver training in terms of those needs. There is a blend of using resources from the individual countries and expert assistance from outside. It is important to get the balance right. Countries need to take ownership of their own issues and solutions and not be dictated to. On the other hand the cold reality is that many countries in the Pacific cannot manage without outside support. On a daily basis the rule of law is put to the test in some of the countries here.

Some further comment about our emphasis in training might be helpful. Excluding Papua New Guinea there about 1600 judicial officers in the Pacific, and of these, fewer than 100 have law degrees. The vast majority are lay judicial officers, and often the level of education and ability to speak English is limited.

Obviously when it comes to the superior Courts of the countries concerned, this is not the position, and the grasp on jurisprudence is clear to see. However expatriate judges from England, Australia and New Zealand service many superior courts. The task of putting in place indigenous superior court Judges still has some way to go in many Pacific countries.

The vast number of cases are dealt with at first instance, and before magistrates or Island Courts. Given then that most judicial officers are not legally educated, training we do must be pitched at just the right level, and must accommodate the fact that English is not a first language.

We have found that what is most wanted is an emphasis on two things. The first is revisiting basic law so far as evidence, decision-making, sentencing principles and so on, is concerned.

The second is an increasing interest in the Pacific as to how customary law can be used to resolve disputes, including criminal offending.

Because virtually all countries have very little infrastructure and money, the last thing they need is expensive sentences imposed by judges. If communities can be encouraged to become part of the resolution process, it is that much more conducive to proper outcome.

With this in mind, we are often asked to demonstrate creative sentencing, and to guide as to the blend of conventional common law, and more traditional customary resolutions. Some, it has to be said, are very inventive indeed.

At present solely Australia and New Zealand fund the Programme. The total budget for the period July 2002 – June 2004 is \$1.2M, a much appreciated, but nevertheless fairly sparse financial base given the sheer amount of work that needs to be done.

To respond to this challenge of making resources go as far as possible the Programme's present emphasis is to empower each Pacific country by promoting strong judicial leadership and expertise for local judicial trainers so that work is increasingly absorbed and delivered by member countries.

The key to all of this will be to keep the rate of progress even. For some countries, and the Solomon Islands is an example, the challenge to the rule of law for the judiciary is enormous. Survival is at times a challenge. A very great degree of support is therefore needed. On the other hand, Fiji is recovering from the trauma it experienced after the coup of 19th May 2000 and strong judicial leadership and collective responsibility is once again emerging as important. Judicial education is crucial in keeping the momentum of that process going.

Strong Judicial leadership is an aspect of judicial education that many of us are now spending much time on. At a forum for Chief Justices in Nadi, Fiji on 4 and 5 December 2002, we emphasised just how important this was.

A Chief Justice is of course the head of the third arm of state, the Judiciary. In the Pacific, where the role and status of the Judiciary is not uniformly understood, it is often necessary for a Chief Justice to be visible, and strong. We have therefore encouraged leaders of the Judiciary to consider the following as part of their role:

- Leader, and chairperson of the bench
- Initiator, in the event of a constitutional crisis, such as a coup
- Spokesperson for the judiciary, when a public statement is required
- Negotiator with government, on matters affecting the judiciary
- Formulator of the shape and calibre of the bench
- The guiding hand, and mentor, for ongoing judicial training
- Judicial discipline, and collegiality
- Shaping practice and procedure
- Visionary and planner of the future

Part of the judicial education role here is to support and encourage Chief Justices, who are often challenged through the Executive in a number of respects.

A challenge for well-established and resourced judiciaries in the Northern Hemisphere and elsewhere might be to consider how support could be given to what is a unique and wonderful judicial education programme. Reinforcement of, and contribution to, the Pacific Judicial Education Programme would go a long way in helping the rule of law and good governance to be maintained in the Pacific.

*Judge Peter Boshier, Fellow
Pacific Judicial Education Programme*

THE SYSTEM OF ADMINISTRATIVE AUTHORITIES IN THE RUSSIAN FEDERATION

OLEG OSHEEV

Juvenile Court Judge in Tchaikovsky The Perm region of the Russian Federation

The accession of Russia to international legal practice providing justice for juveniles according to the UN Convention on the Rights of the Child and the Minimum Standard Rules for the Administration of Justice (The Beijing Rules) revived the practice of juvenile justice in the Russian Federation.

Discussion of the topic is impossible without an analysis and comparison of the systems of State Bodies and public organisations which existed in Russia. They worked hard to reduce the number of cases of neglect and of youth offending. They also took preventive measures to cut youth offending and tried to achieve effectiveness in their field.

10 years after the foundation of the first juvenile court in Chicago, USA in 1899, the first Russian juvenile court was founded in St Petersburg (January 1910). By 1917 juvenile courts had appeared in 9 other Russian cities. They were in existence and fully functioning after the revolution of 1917/18. However, they were then abolished and re-emerged as the Commission Of Juvenile Affairs. They were placed under the control of the All-Russian Emergency Commission / the former KGB Committee of State Security for the USSR. This was done because the problems of neglect and the prevention of juvenile offending were considered important. In 1935 these Commissions in turn were abolished and juvenile affairs were placed once more under the jurisdiction of the courts. At the same time an administrative system of State and Public Bodies was set up. It is still in existence today and

provides for the defence of children's rights and for the prevention of neglect and of offending.

The system of State and Public Bodies which provides for the defence of children's rights, the avoidance of neglect and the prevention of offending is administrative in nature and helps to keep the child or teenager out of the court system. However, the Prosecutor, or other interested person, can appeal the decisions of this body by lodging a protest in the court. At the same time the most important decisions, concerning the imprisonment of a juvenile for a fixed period in a specialised institution, are dealt with in the Federal Court by the Commission of Juvenile Affairs and their rights are protected under local government administration.

According to the Federal Law of the Russian Federation (1998) 'About the basic guarantees of the right of the child' in regulating out-of-court proceedings concerning children and the defence of their rights and legal interests and in making decisions about any penalty to be imposed on them, officials of State power and officials of local self-government should act according to generally accepted principles and standards of international law and of international agreements signed by the Russian Federation. The State is obliged to provide for the welfare of the child, to provide specialisation in legal proceedings in his/her best interests and to take into account the age, characteristics and social status of the child.

A specific development which guarantees the best interests of the child as outlined above is reflected in the Federal Law of the Russian Federation (1999) 'About the bases of a system of prevention of neglect and of offending by juveniles'. This sets up a range of bodies, for example, the Commission Of Juvenile Affairs And The Defence Of Their Rights; authorities for social welfare; education, guardianship and care authorities; employment bodies and internal security organs. They provide individual preventative work with juveniles: neglected, homeless children, tramps and beggars, children who are in orphanages, drug addicted children, solvent abusers and offenders. At the same time these authorities provide individual preventative work with parents or the legal guardian of the juveniles, if they are not carrying out their duties with respect to the children's upbringing, education or maintenance, if they have a bad influence on their behaviour or if they treat them cruelly. Authorities and systems work in close cooperation with each other and should immediately inform each other about violations of the rights of juveniles, about their remaining in socially dangerous situations, about shortcomings in the work of the authorities and institutions thus preventing a decline in the instances of neglect and a drop in juvenile offences. Authorities and institutions should give this information to the Commission Of Juvenile Affairs And The Defence Of Their Rights, which is under the administration of local self-government.

The control and supervision of the activities of official bodies is carried out by higher bodies, by their officials and by the public prosecutor's office.

Financial support for authorities and institutions engaged in the prevention of neglect and of juvenile offending is drawn from the budget of the Russian Federation.

The key body in the system is the Commission Of Juvenile Affairs And Defence Of Their Rights which is under the administration of local government. Local government also controls those other bodies dealing with neglect and with juvenile offending. They provide measures for the defence and the restoration of legal rights for juveniles. They try to find out and remove the causes and conditions promoting neglect and juvenile offending; to control the conditions of the up-bringing of children, their education and the provision of employment. They also take measures in reference to juveniles, their parents and legal guardians.

The system also oversees people and institutions providing social services for juveniles who are in social danger, free of charge. These institutions identify such youth, organise their spare time in special clubs and make provision for improving health and rest. They also provide social rehabilitation for juveniles, their parents and legal guardians in regional centres providing social aid to the family, psycho-pedagogical aid or basic psychological aid.

The authorities who control these educational institutions guarantee adherence to the law in the sphere of juvenile education within the limits of their competence. They also participate in the organisation of summer rest and leisure activity and in the employment of teenagers. They develop and introduce into the syllabus of educational institutions programmes oriented to developing respect for the law amongst juveniles.

Authorities for Youth Affairs under the administration of local government, social-rehabilitation centres for teenagers and youth, social-psychological centres providing aid to youth, centres for the professional orientation and employment of teenagers, and youth clubs all participate in the organisation of rest, leisure and employment for teenagers and provides them with social, legal and other services free of charge.

Some institutions under the control of Health authorities and similar bodies provide 24-hour reception and maintenance for children aged 14 and over who are not living at home with their parents. They also provide medical examinations for juveniles, 24-hour reception for teenagers under the influence of alcohol or drugs and prepare reports about the state of health of juveniles who committed crimes or offences. They do this with a view to sending such juveniles to special closed educational institutions, to reveal the source of illness and to examine and treat juveniles suffering from different illnesses.

There exists, within internal security organs, special structural subdivisions which take part in the prevention of juvenile offending within the limits of their specific remit. Subdivisions of juvenile affairs provide individual work with juveniles who have committed crimes, with their parents and also with other juveniles and their parents in order to prevent offences. They also identify persons involving juveniles in criminal activity, help to prepare reports on juveniles, put offenders in centres of temporary isolation and keep a record of juvenile offences.

The centres of temporary isolation for juvenile offenders provide 24-hour reception and temporary care of such children in order to protect their life and health and to prevent other offences. These centres keep children no more than 30 days. Departments of the criminal militia of the internal security organs bring to light, prevent, stop, reveal juvenile offences, identify persons involving juveniles in criminal activities, take part in criminal investigations for missing people, people who escape from an inquiry, or from court or who fail to complete their sentence.

Special educational institutions accept children aged 8 to 18 for care, upbringing and education, because they need special pedagogical help. Children are committed by a decision of

the Commission Of Juvenile Affairs And Defence Of Their Rights, by the recommendation of a report by the Psycho-Medical Commission, or with the consent of juveniles who have attained the age of 14, their parents or legal guardians.

Juveniles aged 11 to 18 who need a secure atmosphere and special pedagogical methods, who committed crime, who have not yet attained the age of criminal responsibility, who have been sentenced and released by the court from criminal liability on the grounds of decision of a federal judge and the Commission Of Juvenile Affairs And Defence Of Their Rights may be sentenced by the court to 3 years in a special closed educational institution. Officials of closed educational institutions in exceptional cases have the right to use physical force when it is necessary, but within limits not humiliating human dignity. They may use physical force to stop the juvenile committing further crimes or to stop them damaging their own life or health or endangering the health or life of others. Officials should warn juveniles that they will use force if necessary and after using it they should inform the prosecutor.

The Commission Of Juvenile Affairs And Defence Of Their Rights acts within strict guidelines and regulations. The last changes to these regulations were entered by presidential decree in 1993.

The Commission is formed by the decision of local authorities and consists of representatives of authorities and institutions of the system of prevention of neglect and juvenile offending, the public and the mass media. The head of the Commission is deputy head of the local administration. Meetings of the Commission are held no less than 2-3 times a month. At the meetings of the Commission different questions dealing with specific aspects of the work are considered. The Secretary and Specialist of the Commission Of The Juvenile Affairs And The Defence Of Their Rights are

(workers) on the staff of the local self-government. The upkeep of the Commission is at the expense of local budget which also finances all activities of the Commission. The Committee's decision is binding on all officials. Decisions about the imposition of an administrative penalty can be fulfilled with a help of force by a legally authorised person.

However the most positive law should have positive practice. We'll look at the statistics and take as an example the (small) provincial town of Tchaikovsky in the Perm region of the Russian Federation. The population of the town of Tchaikovsky with the adjoining territory is about 120,000 people. There were 32,094 juveniles as of the 1/1/2001. There were 15 large and more than 500 small industrial enterprises. During the year 2000 the Commission Of Juvenile Affairs And Defence Of Their Rights held 31 meetings in the city hall and 8 meetings at outlying venues. On the record of the Commission there are 701 juvenile offenders, 429 unfortunate families, 65 drug addicted juveniles, some glue sniffers and 28 alcohol addicted children. Ongoing preventative work is undertaken with them. In the town in the year 2000 there were 190 institutions dealing with the prevention of neglect and of offending, including 58 educational institutions, 1 home for neglected children, 1 boarding school, 1 orphanage, 3 specialised institutions for juveniles and 99 cultural institutions. There were 10 meetings of the Commission with the theme 'the defence of the

rights of juveniles' in 2000. As a result of the Commission's efforts 46 teenagers were back at school, 10 juveniles were found accommodation, 28 juveniles got back their right to work and 61 appeals from juveniles about the violation of their rights were examined. Affairs concerning 658 juveniles were investigated at the meeting of the Commission. 49 of these were given a penalty and 8 were sent to special open and closed institutions. In the year 2000 15 meetings of the Commission were about educational-preventative work. During these meetings 26 officials of the town who work with juveniles gave evidence. At the same time it should be mentioned that in spite of the work of the Commission, which is highly regarded in comparison to Commissions in other regions of the Russian Federation, the number of juvenile offenders is increasing. But there are some explanations for this. They are: the growth in the population; the economic situation and subject causes, which deal with the necessity for more preventative work.

In communication with officials of the above-mentioned institutions almost all spoke about the necessity for preventative work in the families of juveniles, because it is within the close family circle that the child develops a correct attitude to those around him. That's why it is necessary to provide measures to consolidate the family and to develop good family relationships and to eradicate immoral behaviour on the part of parents or guardians.

CURRENT TRENDS IN JUVENILE LAW IN ITALY

Luigi Fadiga

Deputy President of the Court of Appeal in Rome
Former President of the Juvenile Court in Rome

Paper presented to the General Assembly of the AFMJF in Paris 1-2 February 2003

1. Introduction

Dear Colleagues,

It was a real honour and a great pleasure for me to be invited to your general assembly, and I would like to give a special thanks to Mr Baranger and Mr Pical who have all the responsibility.

I realise that I accepted your invitation with enthusiasm but also with a little imprudence. Intervening in the middle of your work with a report on the Italian situation may seem presumptuous, as if we thought we had something to teach our French friends and colleagues, or worse still, that I myself thought I had my own remedy to propose to solve the problems that you are going to discuss in your assembly.

It is quite obvious that this is not the case. On the contrary, I know the French Juvenile Justice System well enough to be convinced that we are the ones who will have a lot to learn from your experience, which we have sometimes used as inspiration in our legislation.

Nevertheless, the current Italian situation shows, in my opinion, a tendency to evolve in very dangerous directions, and I therefore believe that it could be useful to share with you our problems and concerns.

2. A brief history.

To better understand the reasons for our concerns, a brief history is necessary.

Compared with other European systems, Italian Juvenile Justice came into being late and had difficult beginnings. It emerged late because the projects drawn up at the beginning of the century (1908, 1912) along the lines of other European legislations, were blocked and abandoned due to the First World War, and thus it was only in 1934 that a law instituting Juvenile Courts appeared in Italy. It had an unfavourable birth, because the new project drawn up by the Fascist government of the time was strongly focused on the criminal aspect and the reinforcement of social control, and not on the prevention of delinquency and the protection of children. Suffice to say that the text of the 1934 law was composed of 35 articles, of which 23 dealt with the criminal and re-educational side and only one with civil matters.

According to the law of 1934, the Juvenile Court was competent to judge minors aged 14 to 18 charged with a criminal offence, be it a felony, a misdemeanour or a minor infraction. Prosecution was compulsory and carried out by the public ministry (Prosecutor of the Republic at the Juvenile Court). The criminal responsibility of the minor charged was not presumed as with adults, but it had to be demonstrated and depended on the young person's ability to discern. The penalties provided by the Penal Code were reduced up to a third, and in the case of a first offence the Juvenile Court could grant a "judicial pardon", i.e. it could refrain from passing a sentence.

No criminal sanctions could be applied to children under the age of 14. Nevertheless, they could be made subject to administrative measures (also known as re-educational), i.e. they could be placed in correctional institutions until the age of majority.

The severe tone of the 1934 law was softened in 1956 by a reform which introduced the measure of treatment in an open setting for maladjusted young people. In addition, a specialised social service for minors was created within the Ministry of Justice, with the aim of carrying out social investigations and helping boys subjected to the measure. Other important reforms followed in 1967 with the first law on full adoption of abandoned children, which greatly widened the competence of the Juvenile Courts in areas of civil law, and 1975 saw a reform of family law. In 1988, with the reform of criminal procedure, a new criminal justice procedure for minors was created, and new, very important measures were introduced. It must be noted that Law No. 476/1998 on the ratification of the Hague Convention on international adoption, and finally Law No. 149/2001, brought changes to the system of national adoption.

At the end of this long route, characterised by gradual, uncoordinated widening of the jurisdiction, tasks and role of the Juvenile Court, the Italian system of juvenile justice is organised as follows.

3. The current situation

In the main city of each district of the Appeal Court (of which there are 29 in Italy or approximately one for each region), there sits a Juvenile Court with territorial jurisdiction over the whole district. The court is presided over by a magistrate holding the rank of Appeal Court counsel. A number of professional judges are assigned to each Court (for example 15 in Rome) and a certain number of judges who are experts, but not professionals, known

as Honorary Judges (for example 45 in Rome). Honorary Judges are nominated for a period of three years by the Superior Council of the Magistrature, according to their background in human sciences. They are psychologists, educators, social workers, teachers, etc.

The judgement panel of the Court is collegial and of mixed composition, consisting of two professional magistrates (a president and a judge) and two honorary judges, a man and a woman. As is obvious, and since in former years in Italy women did not have access to the profession of magistrate, it was desired that such a composition should reflect the parental couple in a certain way and that there should therefore be a maternal figure. This judgement panel has not been changed, therefore even today the Juvenile Court sits as a 4-member panel (but since women magistrates have become very numerous, it sometimes happens that the old rule today serves to guarantee the presence of a paternal figure!).

Each Juvenile Court has its own Prosecutor's Office, with the task of undertaking public prosecutions. As has already been said, prosecution in Italy is compulsory, and therefore the public ministry has no discretionary power in this matter and cannot evaluate whether or not it is appropriate to prosecute.

The Juvenile Prosecutor's Office also has the power to ask the Court to take educational measures for children aged under 14, as well as to ask for civil protection measures (termination or restriction of parental authority, declaration that the child can be adopted in the case of abandon, etc.).

As can be seen, the Juvenile Court therefore has three types of competency: civil, criminal and administrative. It is a good idea to examine them one by one.

3.1 Civil competence.

Civil competence includes all the procedures provided concerning parental authority and declarations of abandonment. It also includes all procedures for adopting minors, simple or full adoption, national or international, family placement, questions of custody (even in the case of moving abroad), the late recognition of biological children, searches for paternity, maternity, etc. In its civil jurisdiction, the Italian Juvenile Court therefore has almost all the competence of a French Family Court Judge, with the exception of separation and divorce, which remain within the jurisdiction of the civil court.

In matters of parental authority, the Juvenile Court can take two measures; terminating the authority of one or both parents (in the latter case, future custody will be an open possibility); or ordering a partial curtailment of parental rights (Articles 330-333 of the Italian Civil Code, comparable to Articles 378-1 and 379-1 of the French civil code). In both cases, the Juvenile Court also has the power to order removal of the child as a protection measure. Since 2001, instead of removing the child, (laws 149/2001 et 154/2001) it is possible to order the removal of the parent or parent's live-in partner who has committed violence. Any decision of the Court can be made subject to an appeal to the chambers of the Appeal Court charged with juvenile affairs.

The Juvenile Court decides according to a very simple and rapid procedure which can be taken up by the other parent, even without a lawyer, or by the Prosecutor of the Republic. The Court can even instigate proceedings itself in an emergency, with a provisional judgement effective immediately, which it must confirm, modify or review within a short space of time.

The Juvenile Court can therefore limit or curtail parental rights and the exercise of parental authority, remove the mistreated child, placing

him or her in a home or with a family. In the case of abandoned children (a notion which the judiciary has sometimes extended to include seriously mistreated children), a procedure to have the child declared adoptable is undertaken at the request of the Prosecutor of the Republic, or even automatically in the case of an emergency.

Even though Italian law makes no reference to the term "child in danger", in this way civil competence concerns children in danger from their parents. It has made it possible to introduce through jurisprudence the concept of judicial protection of children, which in Italy has never had a separate status. It has become possible with the measures to limit and control parental authority, and especially, from 1967 on, with the application of the law on the adoption of abandoned children. After decentralisation, which in 1977 transferred the responsibility for children in danger from the local authorities to the social services. Formerly this had been the responsibility of the Ministry of Justice. Very close links have been established between Juvenile Courts and the services of the local community.

3.2. Administrative Competence

Administrative competence concerns minors who "have shown manifest proof of irregularity in their behaviour or in their character". It is therefore a jurisdiction which concerns minors of whatever age who are maladjusted or who have behavioural problems, who can be reported to the court by their parents, guardians, the public prosecutor's office or by social services. These administrative measures can be applied even if the child has obtained a judicial pardon.

The Juvenile Court can order two different measures: hand the child over to the social services or place the child in an educational establishment. The measures are taken by the Juvenile Court in the Council Chamber, where

the public ministry, the juvenile and the individual(s) holding parental authority are present. The measures can be revoked or modified by the Court and must come to an end when the young person reaches majority. Measures in an open setting can also be ordered if the child is in one of the situations envisaged by Article 333 of the Civil Code, that is to say if the parents' behaviour is harmful to the child.

At first glance, this power may seem the closest to that of the French Juvenile Court Judge as regards educational assistance. In reality it is very different, because basically the law does not see a "child in danger" that it must help, but rather a young person behaving badly that it must re-educate. In fact, in practice administrative competence is called "re-educational competence". This name came from reformatories and training schools which have now been abolished, where the courts could formerly place children. Despite the efforts of more attentive educators and Juvenile Court Judges, the nature of the typical correctional intervention envisaged by the legislator of 1934 thus remains immutable. From the end of the 1960s onward, the whole system of administrative competence for the Juvenile Court, heavily contested, fell into an insurmountable crisis from which it has never recovered.

As a consequence, in my opinion, judicial protection of young people in Italy has not developed, like in France, with adolescents in mind, but rather in relation to young children, by means of civil jurisdiction and interventions concerning parental authority. This tendency was accelerated by the transfer of responsibility to local services (1977) - even competence for the implementation of administrative measures, formerly attributed to the departments of the Ministry of Justice. The local authorities were very reluctant to accept this new and heavy task, and refused in practice to ensure its effective implementation. As a result,

little by little, Juvenile Courts stopped applying administrative measures, and this area of competence died out. These measures, which numbered 5,681 in 1971, had already declined to no more than 471 in 1983.

A second factor favoured this development: the approval (1988) of new criminal procedures and proceedings for minors, which it is now time to discuss.

3.3. Criminal Jurisdiction

In 1988, when the new code of criminal procedure was being approved, a code which introduced in Italy the accusatory rather than the inquisitorial procedure, a new procedure became necessary, even for minors charged with offences. Juvenile criminal legislation was then modified significantly, even though this was only from one procedural point of view, and many of the most advanced suggestions from the area of juvenile law were introduced into our system.

The principal aim of the reform was that of removing the minor from the criminal and judicial arena as quickly as possible, while at the same time encouraging the local community to deal with the case. An attempt was also made to avoid any conflict with the criminal justice system that would be harmful to the child's education, and to make sure that the judicial response was clear and comprehensible to him or her.

The most important innovations were the following:

- before judgement:
- abolition of compulsory arrest if the minor is caught red-handed;
- reduction in the number of cases and in the duration of pre-trial detention;
- introduction of pre-trial measures in an open setting (imposition of specific condi-

tions, house arrest, placement in an unlocked institution);

- during the judgement phase:

- introduction of a preliminary hearing as a filter, with the possibility of not proceeding with the case if the facts do not warrant it;
- non-admission of proceedings instigated by the victim of the offence before the Juvenile Court;
- suspension of proceedings and evaluation, with the possibility of ordering the minor to fulfil certain conditions appropriate for repairing the damage caused, or ordering a mediation procedure between the minor and the victim of the crime. The maximum period for suspension of proceedings is one year, and three years for the most serious crimes and misdemeanours.

- after judgement:

- suppression of entries into the criminal record.

The new criminal procedure code has had the effect of awakening interest among social workers concerning young delinquents, stimulating research into new methods of intervention, and better co-ordinating efforts between the justice system and the local community. In particular, the measure of evaluation has played a fundamental role in this regard.

The power to introduce new penal measures remains with the juvenile social services of the Ministry of Justice, but they must work in strict collaboration with the municipal social services. Before ordering an evaluation, the judge asks the Ministry of Justice for a plan of intervention, which must be drawn up in partnership with the local services. The projects, including mediation between juveniles and crime victims are preferred, as well as those involving community service. Little by little, all this has also favored a more attentive attitude on the part of local administrators regard-

ing young delinquents, who were formerly considered only as a matter for the state and the Ministry of Justice.

According to research carried out by the parliamentary commission for children in 2002, in the period from July 1st, 2001 to June 30th, 2002, the decisions to order such evaluations numbered 2,640 compared to 2,345 for the previous period. And the number of failures was insignificant (only 17 in 2001/2002). Even decisions to abandon proceedings where the facts did not warrant them were used a great deal by judges (2,852, 3064).

According to the same research, juvenile delinquency in Italy is in decline. Instigations of proceedings recorded by public prosecutors' offices were 36,358 (compared to 37,096 in the previous period), of which 3,159 concerned minors reported by the police after having been arrested.

During the same period, decisions to pass sentence numbered 2,183 (compared to 2,984). Among those reported, children aged under 14 and therefore not subject to criminal prosecution numbered 4,200 (compared to 4,546). At the end of 2002, juveniles present in penitentiary establishments for minors of the Ministry of Justice numbered 449, of whom 229 were Italians (9 girls) and 220 were foreigners (34 girls).

4. The government's proposals.....

The sketch I have just made is therefore not particularly worrying. No doubt there are many problems. The courts are too centralised and there are very few professional judges, while on the other hand Honorary Judges are too numerous. Social services are still inadequate. Likewise, in the criminal justice arena, reception centres and alternative measures are also inadequate. In civil law, the procedural rights of the parties involved are insufficient and should be better defined and widened,

while the nature of the judge's impartiality should be better emphasised - today judges are accused of being too biased towards the interests of the child. It is also necessary to merge jurisdiction in matters of parental separations and divorces, or at least better mark out the competence of the civil judge and the competence of the Juvenile Court Judge in this area. Finally, we should envisage new methods of support and supervised education for young delinquents aged under 14, who are not responsible for their conduct under criminal law - therefore today they are frequently neglected by the juvenile justice system, under the pretext that it is powerless to do anything for them.

Despite all that, I repeat that it must be recognized that today in Italy the problems of the juvenile justice system are not dramatic.

Nevertheless, last year the Ministry of Justice took the initiative of presenting to Parliament two bills concerning juvenile justice which do not resolve any of the said problems, but on the contrary carry the risk of turning the whole system upside-down. In the criminal arena, it is proposed to push the intervention of Juvenile Courts in a purely punitive direction. In the civil area, they would remove the entire system of legal protection of children, painstakingly constructed over 30 years of jurisprudence and work with the social services of the local community.

The first bill (no. 2501 C) was presented on March 8th, 2002, and has the title "*Modifications to the Composition and the Competence of the Juvenile Criminal Court*". The second was presented on March 14th, 2002 (no. 2517 C.) and has the title "*Urgent Measures and Delegation to the Government in matters of Family and Juvenile Law*". Since the most obvious changes are introduced by the second bill, we should start with it.

4.1.In civil matters

The civil jurisdiction of juvenile courts is to be abolished, and all such matters are to be transferred to *specialised sections* for family and juvenile affairs, which are to be created within ordinary courts (i.e. high-level courts). These sections will be composed solely of professional judges, and therefore Honorary Judges will be abolished for all civil matters. No previous specialisation is obligatory for professional judges - the bill confines itself to stating that assignment to a section will be given preferentially to judges who have at least two years' experience in family and juvenile matters, or who have participated in "courses, debates and congresses on family and juvenile law". Assignment to special sections does not preclude charging judges with other cases of a different nature, "provided that this does not lead to any delay in dealing with family cases".

Beside the Prosecutor's Office of the ordinary court, "*a specialised office for families and juveniles*" will be set up, to which magistrates will be appointed for whom no form of specialisation is foreseen, and who could even be loaded with other cases, "provided that this does not lead to any delay, etc., etc.". The power of the public ministry in civil matters is enormously reduced, since its competence to ask the Court for protection measures will be limited solely to emergencies.

The specialised sections will be set up in every high-level court (currently numbering 162), and they will be competent not only in civil matters currently assigned to Juvenile Courts, but also in matters of separation, divorce, family law and individual rights in general.

The bill does not envisage any change in procedure concerning the limitation or termination of parental authority.

Finally, Article 8 of the bill is to restore the competence of the social services of the Minis-

try of Justice in civil matters, which was transferred in 1977 to the services of local communities. The competence of the latter will therefore become quite subordinate and theoretical.

4.2. ...and in criminal matters.

The juvenile court is to keep only its criminal jurisdiction. Its composition is to change, with a reduction from two Honorary Judges to one, with the consequence that the panel will always have a majority of professional judges. It is obvious, as the explanatory report for the project underlines, this choice “aims to ensure that the judicial element of the formation of judgement always prevails”.

In substance, the bill aims to reduce the application of mitigating circumstances related to a minor’s age, with the introduction of a distinction between two age brackets: 14-15 and 16-17. The circumstances, which involve a reduction in the penalty to be imposed, will be applied to a reduced extent (maximum reduction of a quarter) in the second age category.

With the declared aim of reducing the discretionary power of the judge, considered excessive, the bill introduces important changes to preventive measures. Thus, the violation of house arrest can lead to a month’s imprisonment, and the applicability of pre-trial detention is widened to a number of offences, including civil disorder, rape and sexual assault. The maximum duration of pre-trial detention is increased, from four to six months for the age bracket 14-15 and from six to eight months for the age bracket 16-17.

As for the suspension of proceedings after evaluation, the explanatory report for the bill stresses that the judge’s discretionary power has allowed excesses which must be prevented in the future for the protection of the community and of victims. With these aims, the project does not allow evaluation for rape or sexual assault, nor for crimes related to asso-

ciation with Mafia-type crime. Moreover, the maximum duration of an evaluation is fixed in all cases at three years, with the one-year evaluation abolished.

As regards carrying out the sentence, it must be noted that, according to the bill, the sentencing judge can order the transfer of a minor in detention to an adult prison once the minor reaches the age of 18.

The minimum age of criminal responsibility has not been touched by the Government plan. Nevertheless the explanatory report does underline the demand that this “delicate subject” be further explored by the Commission studying the reform of the penal code.

4.3. ...and in administrative matters?

However astonishing it may be, no proposal is made in the two bills regarding this competence of the Juvenile Court (see point 3.2 above), neither abolishing it, nor renewing it, nor updating it. Such an omission is incomprehensible, since the explanatory report on the bill strongly highlights the social sense of alarm caused by young delinquents aged under 14, who today are not criminally responsible and who may only be subjected to non-punitive educational measures.

It has already been said that the administrative competence of the Juvenile Court has been hotly contested as an ambiguous and marginalising type of intervention. It is therefore not malicious to suspect that the ulterior motive of the government is to settle the question by lowering the age of criminal responsibility from fourteen to twelve years, with the effect of making criminal penalties (including imprisonment) possible even for minors aged 12 or 13.

5. The risks of regression

It is evident that, if approved, the two government projects would bring no remedy to the problems of the Italian juvenile justice system I have mentioned above. In the civil domain, the procedure remains the same with all its faults, since procedural rights are not touched by the reform. Moreover, any possibility of introducing alternative methods of solving family conflicts is ignored. In the area of criminal law, the necessity of a new juvenile criminal law (which we have been waiting for since 1975) is not even mentioned. The situation is the same as regards penalties, even though a commission is now working to draw up a new penal code. As for the Convention on the Rights of the Child and the Beijing Rules, there is complete cluelessness.

As the report on the Parliamentary Commission states, we have the impression that the reform project for civil law has listened instinctively to public opinion, which refuses all State intervention in the private life of families in the name of the child - this is seen as an intolerable intrusion. On the other hand, it is evident that the reform project for criminal law has similarly listened to a societal attitude of alarm which is not justified by statistical data and by the real situation.

It is easy to imagine the negative consequences of this "reform". First of all, in general terms, instead of excessive centralisation (29 Juvenile Courts), there will be the opposite mistake, that is to say a pointless scattering of resources, which in small locations will make it impossible to set up the specialised section of the court.

In the civil domain, the absence of Honorary Judges, the lack of adequate training for professional judges assigned to the various sections, the impossibility of the court to act on its own initiative and the presence of a non-specialised public ministry will lead to the interests of the child being brutally under-represented. Given that in Italy there is no Ombudsman for minors, that social services do not have the power to initiate proceedings before the judge, and that the only possibility of ensuring legal protection of children requires public action, it is evident that, if the bill becomes law, this protection will very soon end in Italy without any replacement.

On the administrative side, I have already expressed my fears: the projects do not discuss them, because it is known that the age of criminal responsibility will soon be lowered to 12.

In the area of criminal law, the consequences of the reform are no less negative for juvenile justice. It is easy to imagine that the Juvenile Court, relegated to the criminal domain, will pay little attention to the family situation of the young people accused. What is more, the Court will only have the possibility of ordering, in an emergency, a provisional civil measure lasting thirty days.

Its task and its role will therefore be that of applying sanctions.

And afterwards?

Thank you for your attention.

TRIBUTE TO A GREAT LADY

HENRYKA VEILLARD-CYBULSKA



Henryka Veillard-Cybulska left us on June 3rd, 2003, in her native Poland. This 15th of July would have been her 95th birthday.

In the words of Judge Jean Zermatten, director of the International Institute for the Rights of the Child and former president of the IAYFJM, “this news saddens us, because the loss of this great lady means the end of an era: the era of the pioneers of Juvenile Justice in Europe”.

Henryka Nalecz was born in 1908 in Lublin, Poland. In 1931 in Warsaw she married Stanisław Cybulski, an architectural engineer.

The couple had two children: Julitta, who became a pediatric surgeon, and Andrzej, who became a civil engineer.

Henryka Veillard-Cybulska brought up her children while preparing her baccalauréat. She then obtained, still in Poland, a law degree, then a degree in philosophy and psychology and a doctorate in law. Then in Lausanne, Switzerland, she obtained a postgraduate diploma in criminology and a doctorate in social and psychological sciences.

From 1931, she participated in the humanitarian activities of various organisations such as

the Red Cross and Caritas. With admirable courage, determination and generosity, she became firmly involved from 1939 onward with the campaigners of the Polish Institute, the YMCA and the Red Cross in Budapest, Hungary. During the war, she continued her studies at the clandestine University of Warsaw. She took on responsibilities there, as well as within the clandestine Polish Army.

In 1943, during the occupation, she lost her husband.

In 1946, Henryka Veillard-Cybulska was appointed to the District Court and Juvenile Court of Lodz, Poland's second city. At the same time, she was a senior assistant at the Faculty of Psychology. At that time, the jurisdiction was under the Appeal Court of Warsaw, which actually sat in Lodz, since the Polish capital had been totally destroyed. From January 1951, she was President of the Juvenile Court in Lodz. In November 1957, while maintaining her professional commitment at the Juvenile Court, she became a judge at the Court of Appeal in Lodz.

After Stalin's death, the Western border finally became less impenetrable again, which allowed Henryka Veillard-Cybulska to be an official Polish delegate during international conferences in Brussels, London, Stockholm and Vienna. It is in this way that she began a new career, now an international one, but still focused on the improvement of juvenile and family justice.

In June 1959, in her capacity as President of the Juvenile Court Judges' Section in Poland, she welcomed to Warsaw Maurice Veillard, President of the Juvenile Court in the Swiss canton of Vaud and a United Nations expert on Juvenile Justice. They got to know each other better and decided to unite their destinies. From then on, they were both equally committed to several NGOs, and more particularly the International Association of Juvenile

Court Magistrates, of which Maurice Veillard-Cybulski was President from 1962 to 1966, and of which Henryka Veillard-Cybulska was Assistant Secretary General from 1966 to 1982. (The Association became the International Association of Juvenile and Family Court Magistrates from 1978).

From 1965, she was also a Council Member of the International Federation of Women Legal Professionals, and taught courses in juvenile criminology, juvenile law and family law at the Popular University of Lausanne and at the School of Social and Educational Studies in Lausanne, as well as at the Parents' School.

The Veillard-Cybulski couple published an important reference work: "Young delinquents in the world. What they are and what is done for them".¹

For a quarter of a century, Henryka Veillard-Cybulska edited the Chronicle of the IAYFJM, of which she rapidly became the living memory.

She represented our Association at the UN, UNICEF and other specialised agencies, as well as within various NGO groups and associations. With an endless reserve of energy, she went from one meeting to another, collected all the documentation which allowed her to make a summary, and wrote many articles, which were mostly published in magazines dealing with children's rights or criminology.²

On July 21st, 1978, on the very day of the General Assembly of the IAJFCM in Montreal, Canada, Maurice Veillard-Cybulski lost his fight against illness.

To honour her husband's memory, and to pur-

¹ Publishers Delachaux & Niestlé, Neuchâtel, Switzerland, 1963, 240 p.

² The IAYFJM has at its disposal a summary list of Henryka Veillard-Cybulska's main publications since 1962.

sue their ongoing commitment, in 1986 Henryka Veillard-Cybulska created the Veillard-Cybulski Fund Association, to which she contributed a generous amount. This made possible the conferring of a Veillard-Cybulski Prize, given out every four years, during the IAYFJM World Congress. This prize is to reward “works of particular merit, especially those which make an innovative contribution to the improvement of treatment methods for children, adolescents and families in difficulty”.

In 1989, Henryka Veillard-Cybulska set up a similar Polish Foundation. In July 1993, for health reasons and in order to be closer to her family, she returned to her native country.

With the passion and perseverance for which she was known, in spite of all the difficulties she faced during her long life, Henryka Veillard-Cybulska continued until her last breath to keep up to date with the evolution of juvenile justice and the protection of children all around the globe.

All those who heard her during international and regional congresses or at smaller meetings will never forget her enthusiasm and her determination to advance the cause of young people who come before the courts.

André Dunant,
Former President of the IAYFJM
Geneva, July 2003

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