

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Recommendation Rec (2003) 20 of the Committee of Ministers to member States concerning new ways of dealing with juvenile delinquency and the role of juvenile justice

*(Adopted by the Committee of Ministers on 24 September 2003
at the 853rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that juvenile delinquency is perceived as a pressing concern in a number of European countries;

Aware of the fact that, although overall juvenile crime rates remain more or less stable, the nature and seriousness of juvenile delinquency require new responses and new methods of intervention;

Taking into consideration that the traditional criminal justice system may not by itself offer adequate solutions as regards the treatment of juvenile delinquents, given that their specific educational and social needs differ from those of adults;

Convinced that responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community;

Considering that the age of legal majority does not necessarily coincide with the age of maturity, so that young adult offenders may require certain responses comparable to those for juveniles;

Furthermore, considering that some categories of juvenile offenders, such as members of ethnic minorities, young women and those offending in groups, may need special intervention programmes;

Taking into account, inter alia, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (88) 6 on social reactions to juvenile delinquency among young people from migrant families and Recommendation Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality;

Having regard to the outcome of the 10th Criminological Colloquy on young adult offenders and crime policy (1991);

Taking into consideration the European Convention on Human Rights, the European Convention on the Exercise of Children's Rights, the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,

Recommends that governments of member states:

- be guided in their legislation and policies and practice by the principles and measures laid down in this recommendation;
- bring this recommendation and its explanatory memorandum to the attention of all relevant agencies, the media and the public; and
- acknowledge the need for separate and distinct European rules on community sanctions and measures and European prison rules for juveniles.

I. Definitions

For the purposes of this recommendation:

- "juveniles" means persons who have reached the age of criminal responsibility but not the age of majority; however, this recommendation may also extend to those immediately below and above these ages;
- "delinquency" means actions which are dealt with under criminal law. In some countries it also extends to antisocial and/or deviant behaviour which may be dealt with under administrative or civil law;
- "juvenile justice system" is defined as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support.

II. A more strategic approach

1. The principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be:

- i. to prevent offending and re-offending;
- ii. to (re)socialise and (re)integrate offenders; and
- iii. to address the needs and interests of victims.

2. The juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs.

3. Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending.
4. More appropriate and effective measures to prevent offending and re-offending by young members of ethnic minorities, groups of juveniles, young women and those under the age of criminal responsibility also need to be developed.
5. Interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances.
6. In order to prevent discrimination public authorities should produce "impact" statements on the potential consequences of new policies and practices on young members of ethnic minorities.

III. New responses

7. Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.
8. To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.
9. Culpability should better reflect the age and maturity of the offender, and be more in step with the offender's stage of development, with criminal measures being progressively applied as individual responsibility increases.
10. Parents (or legal guardians) should be encouraged to become aware of and accept their responsibilities in relation to the offending behaviour of young children. They should attend court proceedings (unless this is considered counter-productive) and, where possible, they should be offered help, support and guidance. They should be required, where appropriate, to attend counselling or parent training courses, to ensure their child attends school and to assist official agencies in carrying out community sanctions and measures.
11. Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.
12. To facilitate their entry into the labour market, every effort should be made to ensure that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise.
13. Instruments for assessing the risk of future re-offending should be developed in order that the nature, intensity and duration of interventions can be closely matched to the risk of re-offending, as well as to the needs of the offender, always bearing in mind the principle of proportionality. Where appropriate, relevant agencies should be encouraged to share information, but always in accordance with the requirements of data protection legislation.

14. Short time periods for each stage of criminal proceedings should be set to reduce delays and ensure the swiftest possible response to juvenile offending. In all cases, measures to speed up justice and improve effectiveness should be balanced with the requirements of due process.

15. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor. They should not be detained in police custody for longer than forty-eight hours in total and for younger offenders every effort should be made to reduce this time further. The detention of juveniles in police custody should be supervised by the competent authorities.

16. When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.

17. Where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures.

18. In considering whether to prevent further offending by remanding a juvenile suspect in custody, courts should undertake a full risk assessment based on comprehensive and reliable information on the young person's personality and social circumstances.

19. Preparation for the release of juveniles deprived of their liberty should begin on the first day of their sentence. A full needs and risk assessment should be the first step towards a reintegration plan which fully prepares offenders for release by addressing, in a co-ordinated manner, their needs relating to education, employment, income, health, housing, supervision, family and social environment.

20. A phased approach to reintegration should be adopted, using periods of leave, open institutions, early release on licence and resettlement units. Resources should be invested in rehabilitation measures after release and this should, in all cases, be planned and carried out with the close co-operation of outside agencies.

IV. Implementation

21. The response to juvenile delinquency should be planned, co-ordinated and delivered by local partnerships comprising the key public agencies – police, probation, youth and social welfare, judicial, education, employment, health and housing authorities – and the voluntary and private sector. Such partnerships should be responsible and accountable for achieving a common and clearly defined aim, and:

- provide initial and in-service training;
- plan, fund and deliver services;
- set standards and monitor performance;
- share information (adhering to the legal requirements of data protection and professional secrecy and taking into consideration the specific duties of the agencies concerned); and
- evaluate effectiveness and disseminate good practice.

V. Rights and safeguards

22. All new responses and procedures contained in the current recommendation must be considered within the framework of the rights and safeguards set out in relevant international instruments.

VI. Monitoring, evaluation and dissemination of information

23. To increase the knowledge base as to what interventions work, funds should be allocated to the independent scientific evaluation of such interventions and the dissemination of findings to practitioners.

24. To prevent discrimination on ethnic grounds within the juvenile justice system and to identify cases where culturally specific interventions are required, information should be collected and/or research undertaken on the involvement and treatment of ethnic minorities at each and every stage of the juvenile justice system.

25. To counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet. This should be accomplished without making available personal information or other data that may lead to the identification of an individual offender or victim.

EXPLANATORY MEMORANDUM

ON RECOMMENDATION REC (2003) 20

CONCERNING NEW WAYS OF DEALING WITH JUVENILE DELINQUENCY

AND THE ROLE OF JUVENILE JUSTICE

I. INTRODUCTION

Background and terms of reference

In 2000, the Committee of Ministers adopted Recommendation Rec(2000)20 on the Role of Early Psychosocial Intervention in the Prevention of Criminality. This Recommendation set out a comprehensive strategy for preventing crime and criminal behaviour before a child becomes involved in the criminal justice system. The Recommendation's principal rationale is that a new approach to controlling crime and its consequences is required in the face of a number of important developments in advanced industrialised societies that have increased the risk of psycho-social problems affecting children and young people, including anti-social behaviour and crime.

The rationale underpinning this Recommendation is similar – that the rise in juvenile crime, anti-social and violent behaviour requires new measures and in particular a reappraisal of the role of the juvenile justice system. Following the adoption of Recommendation Rec(2000)20, the European Committee on Crime Problems (CDPC) adopted the following terms of reference for the establishment of a new Committee of Experts on new ways of dealing with juvenile delinquency and the role of the juvenile justice system (PC-JU):

“Current trends in juvenile delinquency are perceived as a cause for concern in several European countries. Although the overall level of (known) juvenile delinquency has remained relatively stable, changes in the (nature) of delinquency mean that there is a need to reconsider the possible responses and the role of the juvenile justice system.

The changes in question include the emergence of delinquency resulting from exclusion, which is often reflected in antisocial and unruly behaviour, a trend towards a reduction in the age of young people involved, and the emergence of violent and gratuitous forms of crime that are sometimes connected with gang membership.

The responses of the competent institutions (juvenile justice system, educational and social services etc.) to the changes in juvenile delinquency and the more acute forms of antisocial behaviour are often inadequate. The juvenile justice system is being called into question in several member States, both because of the delays that affect it and the inadequacy of the resources at its disposal. It is therefore becoming increasingly difficult for the juvenile justice system and the educational and social services that co-operate with it, to implement the principles set out in international texts such as Recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency.

In relation to the above questions and changes, the Committee of Experts should consider, in particular:

- the current trends in juvenile delinquency and the response of the juvenile justice system
- the functioning (and possible malfunctioning) of the juvenile justice system, along with possibilities for making it more effective
- the safeguards that young offenders should enjoy throughout proceedings
- the methods of intervention, both in open and closed environments, in response to juvenile delinquency, and the problem of persistent offenders and
- the functioning and possible malfunctioning of the existing institutions for dealing with young offenders in closed environments (prisons, custodial centres, new types of residential establishments, for instance); particular attention should be paid to the conditions in which young offenders are detained and the implementation of appropriate socio-educational programmes in closed institutions.”

The Committee of Ministers last addressed this theme fifteen years ago in Recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency¹. Many of the principles contained within that Recommendation are reiterated in this Recommendation, including:

- That the juvenile justice system is only part of the overall response to juvenile crime;
- That the juvenile justice system should avoid repressive approaches and focus on education and reintegration;
- That juveniles should at least receive the same level of procedural safeguards as adults; and
- That depriving juveniles of their liberty should only be used as a last resort and that, as far as possible, interventions should be carried out in the juvenile's home environment.

Since then, the accession of new member States from Central and Eastern Europe, advances in scientific research, developments in juvenile justice policy and practice and in particular significant changes in the lives of young people, require a re-appraisal of our response to juvenile crime and delinquency.

The changing lives of young people

Since the 1980s, there is some evidence to suggest that changes in the lives of young people living in Europe, particularly in the rapidly changing societies of most Central and Eastern European countries, have increased the risk of their involvement in violent and criminal behaviour. The most important of these are:

- the rise in child poverty and income inequality, especially in Central and Eastern Europe
- the greater incidence of divorce and family breakdown and the impact this has on parenting
- the growth in experimentation, at an increasingly young age, with psychoactive substances, including alcohol
- the decline of the youth labour market and the rise in unemployment among young adults, particularly young men and those with low skill levels
- the increasing concentration of social and economic problems and related crime and violence in specific areas, often inner cities or housing estates on the periphery of urban conglomerations
- the mass migration of ethnic minorities into and within Europe and
- the increased risk of psycho-social disorders among young people, especially young men.

The changing nature of crime and delinquency

Whilst these changes are likely to have adversely affected the scale and nature of juvenile crime and delinquency, there is little empirical data to support this. Many countries in Central and Eastern Europe, but also in Western Europe, lack the infrastructure and means to produce reliable crime data over a reasonable period of time to allow for valid conclusions to be drawn on trends and developments. The available statistics are usually based on recorded crime rates, which are heavily dependent on the efforts of the police and the judiciary and depend, in part, on the willingness of victims to report criminal incidents and the ability of the police to solve them. They may also be influenced by political priorities, policy changes and other factors that lead to artificial fluctuations over time.

Police statistics from some Western European countries suggest that juvenile crime (based on recorded crime rates) is generally stable, but that violent crime is rising (in some countries, quite dramatically). Other sources of information, however, question this view. In those few countries where victim and self-report studies have been undertaken, the rise in violent crime appears to be more modest or even non-existent. Based purely on anecdotal evidence, it would seem that rates of juvenile crime and violence in some but not all of the countries of Central and Eastern Europe are lower than in the West. It must be acknowledged that it is alongside this imperfect knowledge base that the PC-JU committee has reached its conclusions.

¹ The work of the PC-JU committee is seen as an extension of the work leading to Recommendation Rec(2000)20 (the two Recommendations should be read in tandem), as well as reinforcing and building on Recommendation No. R (87) 20.

The need for new responses

Irrespective of whether juvenile crime and violence has increased (and if so to what extent), there is clearly a general perception that juvenile violence is increasing, that offenders are starting to offend earlier and that better ways of dealing with a small proportion who commit large numbers of offences need to be found. In the 1980s, juvenile justice policy in Europe was heavily influenced by the prevailing view that exposure to the juvenile justice system was at best ineffective and at worst counter-productive and that young offenders should be diverted from prosecution whenever possible. Today, developments in research tell us more about the causes of crime and cautiously suggest that some interventions can work with some young offenders some of the time. Experimentation with alternative approaches to dealing with juvenile offenders, such as the emergence of restorative justice and intensive, community-based support and supervision, suggests that there are ways of supplementing the more traditional approaches which could improve our response to juvenile crime and violence.

However, at the same time as concern over juvenile crime and violence is increasing, there is a parallel concern that the system for tackling it is slow, ineffective and over-burdened. Delays are commonplace, public confidence is low and re-offending rates are as high or even higher than for adults. As traditional sources of informal social control - schools, families and the workplace - have weakened, the expectations placed on the criminal justice system to regulate behaviour have increased. These developments have led, at least in a few member states, to a popular response for a more repressive approach, which is reflected in higher rates of custody for juveniles and a shift from a needs-led (or 'welfare') model to a punishment-led (or 'just deserts') model. In others, there is simply not enough information to establish whether custody rates are rising or whether the data they do publish includes those on pre-trial detention or in secure residential homes. It is believed that in many countries, increasing use is being made of such provisions.

In Central and Eastern Europe, where resources are much more limited, some member states are struggling to implement existing international standards. For them the most pressing issues are the provision of adequate capacity and the quality of such provision. If they are to avoid returning to cheaper but less effective and more repressive forms of social control, they must be allowed to benefit from the insights which new research now offers as they continue to develop and refine their systems of juvenile justice.

The PC-JU committee has therefore identified a number of new principles emerging in Europe, which build on those identified in Recommendation No. R (87) 20, but are seen to be of equal if not greater importance today. They include:

- That the response to juvenile offending should be swift, early and consistent;
- That the responsibility for offending behaviour be widened to include a young offender's parent(s);
- That, as far as possible and where appropriate, interventions with young offenders should include reparation to victims and their communities;
- That interventions should directly address offending behaviour and be informed, as far as possible, by scientific evidence on effectiveness.

The main elements of such a new approach constitute the essence of this Recommendation.

II. COMMENTARY ON THE RECOMMENDATION

This Recommendation contains a set of standards to guide member states' policies, legislation and practices in the field of juvenile delinquency and juvenile justice. It should be brought to the attention of all relevant agencies, the media and the public.

However, the Recommendation does not contain any provisions on the treatment of juveniles in prison or subject to community sanctions and measures. This is why the Committee of Ministers highlights the need to develop separate and distinctive European Rules for juveniles deprived of their liberty or subject to community sanctions and measures.

Lacking the resilience of older offenders, juveniles faced with a period in custody are often highly vulnerable. The high prevalence and incidence of suicide, attempted suicide, bullying, self-harm and mental health problems amongst children and young people held in custodial establishments suggests that the experience of custody for a young person, particularly pre-trial detention, is considerably more traumatic than it is for adults. Reflecting this, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommends that juveniles deprived of their liberty because they are accused or convicted of criminal offences be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. It also acknowledges that the care of juveniles deprived of their liberty requires special efforts to reduce the risks of long-term social maladjustment and that this in turn requires a multidisciplinary approach, drawing upon the skills of a range of professionals in order to respond to the individual needs of juveniles within a secure, educative and socio-therapeutic environment.

In 2001, the CDPC decided to revise the European Prison Rules². It identified gaps and weaknesses, including inadequate provision for, amongst others, young offenders. Reports over the last 3 years by the CPT have also identified a series of inadequacies, problems and shortfalls, particularly with respect to prisoners held on remand. And in its 1999 Report, the CPT set out a number of recommendations for improving the detention of juveniles, including an overarching requirement to design detention centres and their regimes to fit the specific needs of young offenders.

In addition to the gaps and weaknesses identified by the CPT, there are others that an adapted set of European Prison Rules for Juveniles should address. These include, for example, the specification of minimum requirements for participation in education and training; the need to distinguish the different needs, conditions and requirements of sentenced and non-sentenced prisoners; and the specification of treatment and preparation for release programmes which take account of the specific problems of juveniles, such as anger management, parent training and drug treatment programmes.

Whilst reinforcing the clauses referring to the use of custody both pre and post trial set out in Recommendation No. R (87) 20, as well as the principles contained in the United Nations Standard Minimum Rules for the Administration of Justice (also known as the Beijing Rules) and more particularly the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Committee of Ministers strongly felt that there was a need for these documents to be revised and updated.

² The existing European Prison Rules (Recommendation No. R (87) 3) broadly cover the type and range of custodial institutions, the functioning of closed environments, the conditions of those in detention and the implementation of programmes in closed institutions. They set out minimum standards and identify what constitutes good practice and describe how best to measure and raise performance. They also set out some key principles, such as respect for human dignity, no discrimination and the importance of gearing custodial regimes to securing rehabilitation and resettlement. The Rules require the regular external scrutiny of custodial establishments and their regimes, the independent protection of prisoner's rights, the separation of tried from untried prisoners, the protection of young prisoners and the classification of custodial institutions on the basis of risk. A wide range of issues are covered, from what constitutes suitable accommodation and appropriate disciplinary procedures, to how to handle complaints and ensure contact with the outside world. They also cover personnel issues, the treatment of inmates, the provision of work, training and education and preparation for release, and there are specific sections on untried prisoners and those with mental health problems.

Since the same applies to the European Rules on Community Sanctions and Measures³ and neither set of Rules is sufficiently child-oriented, it seems eminently sensible to suggest the development of European Rules for Juveniles covering both of these areas. Covering both prisons and community sanctions and measures would also reflect the emerging trend in some European member states to combine elements of custody, supervision and support in the community in one sentence (see, for example, the Detention and Training Order in England and Wales). The Committee of Ministers considered that the new sets of Rules applying to juveniles should cover all forms of detention, including asylum and immigration detainees.

Chapter I. Definitions

The Recommendation sets out a definition of the terms 'juvenile' and 'delinquency' to ensure a common understanding.

The term 'juvenile' is a legal rather than a developmental term and the age of what constitutes a 'juvenile' therefore varies between member states. In practice, the Recommendation extends above the age of majority to encompass young adults, in recognition of the lengthening transition to adulthood. It also extends to those below the age of criminal responsibility as a number of countries have expressed concern about how better to respond to the anti-social behaviour of children which, were they older, would be defined as criminal and responded to accordingly.

The term 'delinquency' is not a legal term and means different things in different countries. Not all acts of delinquency are criminal acts and in most countries its common meaning extends beyond offending to other areas of anti-social and unruly behaviour, including incivilities, bullying, truancy, drug misuse and under-age drinking. Strictly speaking, the term 'delinquency' is therefore to be distinguished from the terms 'crime' or 'offending', with the focus of this Recommendation being primarily (but not exclusively) on the latter.

The term 'juvenile justice system' can also mean different things in different countries. To ensure a common understanding the Recommendation embraces a relatively broad definition that ensures that the juvenile justice system is not seen as an independent and separate entity, but rather as one component of a broader, inter-connected approach to tackling youth crime that includes, for example, preventive interventions with children and young people at risk of offending.

Chapter II. A more strategic approach

Paragraph 1

European juvenile justice has no common vision or philosophy. Some countries have predominantly 'welfare' based models constructed around the needs of the juvenile, whilst others have 'justice' based models, which emphasise retribution and public protection. Although these models are not in direct conflict, they tend to lead to confusion. For example, is the main purpose of the juvenile justice system to punish or to help a juvenile offender and are these aims easily reconcilable?

In practice, juvenile justice systems must meet the welfare needs of the young offender as well as the protective and retributive needs of society. But this tendency towards a 'polarisation of purpose' undermines public confidence in the capacity of the juvenile justice system and its practitioners to effectively tackle juvenile crime. This suggests there is a need for a common, public vision and purpose around which a European consensus can be built. This common vision and purpose should be constructed around three principles - the prevention of offending, the reintegration of the offender and reparation to compensate for wrongdoing. These reflect, in combination, the best interests of young offenders, their victims and the public.

³ Recommendation No. R (92) 16.

Paragraph 2

Juvenile crime cannot be tackled by the juvenile justice system alone. Only a small proportion of offences end up as criminal convictions and using the law as the only tool for tackling crime would severely limit society's capacity to control and prevent criminal behaviour. Numerous studies on the causes of crime confirm families, schools, local neighbourhoods and peer groups as key influences on delinquent behaviour. This suggests that in any strategy to tackle juvenile delinquency, there are important roles for the key institutions of socialisation – the family, the school, the workplace and the local community – to play.

Those who persistently offend or commit serious acts of delinquency often have multiple needs and experience a number of inter-connected problems - for example drug misuse, truancy from school or problems at home - that need to be tackled together. Juvenile justice systems, which tend to focus on the nature and seriousness of the offence and the character and history of the offender, therefore need to connect with local agencies to identify and address these wider contextual factors to reduce the risk of offending and re-offending. Many European countries are now developing much wider strategies that start with early preventive interventions with children at risk of future offending and extend to involving a host of formal and informal mechanisms for controlling the behaviour of children and young people within their communities.

Paragraph 3

Since resources within the juvenile justice system are limited, they need to be targeted at those offenders whose behaviour is most troublesome. Serious, violent and persistent young offenders have been singled out as being of particular and increasing concern. They are responsible for a large amount of crime and have a disproportionate impact on their families and local communities. This is covered in more detail in paragraph 8 below.

There is also special concern about drug-related offending. The concern over the increasing prevalence of drug misuse amongst children and young people in some member states has led to the development of specific measures for treating drug misuse, but also to specific measures aimed at tackling drug-related crime. For example, measures such as diverting problem drug users from prosecution where they agree to undertake treatment and testing them to ensure they remain drug free are being experimented with in some countries.

Similar concerns exist about alcohol-related offending. In some countries the increase in public order offences and violent offences, including fights and wounding in entertainment centres and around big sporting events, is believed to be the result, at least in part, of the widespread and more excessive drinking habits of young people. Measures such as banning the consumption of alcohol from certain places during certain times and using licensing laws to discourage under-age drinking by young people are being adopted in several countries.

Paragraph 4

Most member states are concerned by the large and increasing numbers of young offenders from minority ethnic communities who appear before the courts. This concern is partly (if not predominantly) a consequence of recent trends in mass migration, but in some countries minority ethnic communities are into their second and even third generations, whilst other countries have historic or indigenous minorities. This concern is also reflected, at least in some countries, in the disproportionate representation of offenders from minority ethnic communities at each stage of the criminal justice system, from arrest through to custody. This may be partly explained by higher offending rates, which in turn may be due to higher exposure to poverty and social exclusion, but there is also concern that this reflects discrimination. This is discussed further in paragraph 24 below.

In developing more effective responses to offending by minority ethnic groups, member states are encouraged to build on initiatives in specific countries⁴ and on existing Council of Europe initiatives, aimed explicitly at integrating young migrants. Recommendation No. R (88) 6 on Social Reactions to Juvenile Delinquency Among Young People coming from Migrant Families deals with the latter. Given the recent trends in mass migration in Europe it may be necessary to revisit this Recommendation in the near future.

Criminal justice systems focus on establishing the culpability⁵ of individual offenders and sentencing them accordingly. They are less effective at establishing and apportioning culpability when faced with individual offenders who have committed offences as part of a group, especially where culpability should, on the basis of the facts, be apportioned to members of the group that have not been apprehended. Member states should develop more innovative approaches to the prevention of offending and re-offending by juveniles who offend in groups, such as group-based community measures, and introduce systems for the identification, monitoring and supervision of group crime, as currently being developed by the Dutch probation service.

There is considerable concern in a number of member states over the increasing involvement of young females in crime and delinquency, especially violent crime. But because girls account for a small percentage of juvenile offenders appearing in court and their offences are generally considered to be less serious than those committed by boys, they tend to be overlooked. Research shows that the characteristics of female delinquents do differ from those pertaining to boys – they are, for example, much more likely to have been previously victimised (e.g. experienced sexual, physical or emotional abuse) and to have suffered from mental and physical health problems (e.g. depression, anxiety, drug misuse and high risk sexual behaviours). In practice, there are few initiatives and programmes designed specifically to cater for the gender-related needs and problems of female delinquents. As with group offending, member states should develop gender-specific programmes and interventions for girls involved in delinquency.

Efforts to deal more effectively with anti-social behaviour by children under the age of criminal responsibility (which would, were they older, be defined as criminal behaviour) have also been identified as a priority. Concern about a perceived increase in antisocial behaviour by younger children has focused attention on how better to deal with this group without resorting to lowering the age of criminal responsibility. Further details are provided in paragraph 9 below.

Paragraph 5

Reflecting again the importance of carefully targeting limited resources, it is important to ensure that, as far as possible, interventions with juvenile offenders are effective. Twenty-five years ago, the prevailing view among academics about the effectiveness of formal interventions for young offenders was that 'nothing works'. This belief contributed to developments in juvenile justice policy in Europe and in particular the trend towards diverting offenders from prosecution whenever possible. But crime overall, or certainly concern about crime, has continued to rise in most member states and politicians have become increasingly frustrated with the notion that contact with the criminal justice system is to be avoided.

Over the last decade, research has begun to show that the 'nothing works' doctrine was at best misplaced and at worse simply wrong. New ways of effectively dealing with young offenders are emerging and whilst the findings of evaluations are still modest, there is now scope for cautious optimism. Essentially, effective interventions are those which:

- address the criminogenic factors which caused or directly contributed to the offending behaviour (e.g. antisocial attitudes, drug misuse, poor cognitive skills, educational failure and poor parenting) and would continue to place the offender at risk of re-offending in the future

⁴ In some countries relevant programmes already exist, such as in Germany within the framework of the "Alliance for Democracy and Tolerance Against Extremism and Violence" as well as extensive programmes on the integration of young migrants.

⁵ The term culpability as used here is not limited to admission of guilt but extends more widely to encompass associated feelings, actions and demeanours that indicate remorse and an understanding of, and an acceptance of responsibility for, having committed a wrongful act.

- ensure a close match between the risk of re-offending and the nature, intensity and duration of the intervention
- employ practitioners whose teaching approach best matches the learning approach of the offender (i.e. structured participatory styles rather than unstructured didactic styles) and uses material specifically tailored to the offender's needs and abilities.
- are based in the community and are closely connected to the offender's home environment rather than based in institutions and
- draw on a range of methods (e.g. social skills training, anger management, problem-solving etc.) often referred to as a cognitive behavioural approach (which addresses perceptions, thinking, feeling and behaviour).

Much of this evidence comes from North America (although increasingly it is being replicated by European studies) and focuses on interventions with serious and persistent offenders. The prevailing view is that petty and first time offenders should continue to be diverted from formal prosecution, but the evidence on effective interventions with serious, violent and persistent offenders needs to be replicated, particularly in countries outside North America. Furthermore, very little is known about the effectiveness of interventions designed specifically for young women, ethnic minorities and migrants and this also needs to be addressed.

To continue to build a better evidence base of effective interventions with young offenders, resources need to be dedicated to scientific evaluations and the findings need to be widely publicised and disseminated, including findings which do not support certain interventions or reactions. The emergence of the internet as a form of communication means information can be collated, organised and transmitted throughout the world almost instantaneously. Knowledge banks, which are continuously updated to reflect the best and latest evidence on what works and what does not, should improve the work of policy makers and practitioners and minimise the tendency to continue to rely on ineffective interventions "because we have always done it this way".

A recent development in the promotion of evidence-based policy and practice was the setting up of the Campbell Crime and Justice Group (also referred to as the Campbell Collaboration) in 2000. The Group – an international network of scientific experts committed to providing the best evidence on effective policy and practice – systematically reviews scientific research and evaluation studies. Inspired by the success of the Cochrane Collaboration, which performs the same function in the medical care and health field, it currently comprises co-ordinating groups in the areas of education, social work and social welfare and criminal justice. The Group is committed to international collaboration to ensure worldwide coverage of the literature and the translation of review results into multiple languages. Reviews are published electronically so that they can be updated promptly as relevant additional evidence emerges, and amended in the light of new evidence. Information about the Campbell Collaboration is available online at: www.campbellcollaboration.org.

Paragraph 6

Requiring public authorities consciously to monitor the impact of justice reforms and practices on equality can also help to reduce the risk of discrimination. One way of doing this is to require public authorities to prepare (or better still publish) a statement setting out how the needs of ethnic minorities have been taken into consideration and what procedures and safeguards have been put in place to ensure that the new reform does not inadvertently discriminate against them. The kinds of issues that impact statements should seek to address are whether the policy might place some ethnic minority at a disadvantage or adversely affect relations between different ethnic minorities and how such impacts might best be avoided.

Chapter III. New responses

Paragraph 7

Most youth crime is minor, most young offenders commit no more than one or two offences and alternative measures to prosecution have shown (and continue to show) high success rates. This Recommendation therefore reinforces the accepted wisdom that it is more appropriate for those offenders to be kept out of the criminal justice system, as set out in Recommendation No. R (87) 20. Diversion from the criminal justice system reflects the fact that the majority of young offenders only ever commit one or two relatively minor offences and that a caution or a warning is often enough to deter them from further offending. It is simply considered disproportional, expensive and potentially counter-productive to use the criminal justice system in these cases. Exceptions to this must however be made for those where there is a dispute regarding responsibility for the offence and where prosecution is considered to be more likely to achieve a better outcome for all concerned, including the young offender.

In reaching proportional decisions, the circumstances of the offender need to be taken into account as well as the nature and seriousness of the offence and the offender's previous offending history. Care must therefore be taken to ensure that just because an intervention is labelled as a welfare measure, there is no less emphasis on the need to adhere to the principle of proportionality or apply due process.

Paragraph 8

Expanding the range and use of alternatives to the formal processing of young offenders through the criminal courts frees up the resources of the juvenile justice system to focus on more serious, violent and persistent offenders. With smaller caseloads, the courts can begin to harness their resources more effectively and tailor their sentencing decisions to the whole circumstances of these more serious cases. To do this, they need much more sophisticated options than just fines and imprisonment and a wide range of community disposals are now being used in many European countries. In the Netherlands, for example, new 'task sentences' that emphasise work and training, make up more than half of all sentences imposed. They vary from short, low-intensive work-based projects to relatively long term referrals (up to three months) to day training centres. These disposals reflect not just the nature and seriousness of the offence, the young offender's history and any mitigating circumstances, but also target the causes of the offence and include measures that are most likely to prevent future occurrences.

Further options within the context of community sanctions and measures are (intensive) supervision and support programmes in the community (probation), compensation and reparation to the victim, mediation, treatment orders (e.g. for drug and alcohol misuse, gambling) and when appropriate certain forms of restriction of liberty like curfews and electronic monitoring. It goes without saying that such community disposals should not jeopardise the privacy or dignity of the young offenders or infringe other human rights. That is why European Rules for Community Sanctions and Measures should be developed similar to those for adults (see Recommendation No. R (92) 16 and Recommendation Rec(2000)22). Such rules are also needed to ensure that community-based options like curfew and electronic monitoring are only justified if the actual content of the measures is meaningful to the young offender and contributes to their adjustment to society.

As outlined above (see paragraph 5), there is now a body of knowledge on what is most effective in changing offending behaviour and reducing the likelihood of future offending. Programmes combining the elements of best practice show recidivism rates that are more than fifty per cent lower than programmes without them. Those programmes specifically designed to change the behaviour of serious and violent young offenders are not as successful, but have also shown to reduce recidivism rates by up to 20 per cent. The wider welfare needs of young offenders, such as their educational, employment and housing needs, whilst not necessarily directly a cause of their offending behaviour, are likely to be an important part of the overall context in which a propensity to offend develops. Addressing these needs must therefore also form part of any intervention – it is not a case of either/or.

It is widely known that parents are both an important part of the cause and an essential part of the solution to the problem of juvenile delinquency. Given the findings of research on the effects of poor parenting, lack of parental care and supervision, family breakdown, parental involvement in crime and substance misuse and family violence on juvenile delinquency, it makes good sense to ensure that addressing these issues, where relevant, are part of any intervention⁶. New measures that extend the responsibility of parents are outlined below (see paragraph 10).

Restorative justice⁷, which brings together all the parties with a stake in a particular offence to resolve collectively the aftermath of an offence and its implications, is increasingly becoming a component of juvenile justice strategies. In several countries providing opportunities for offenders to apologise to their victims and make amends for the harm they have caused is now increasingly used to help offenders see and understand the impact their behaviour has on others and to modify their behaviour in the future. This fosters respect not only for the legal system, but also for the underlying social values. The requirement for reparation and mediation will, however, not always be suitable or possible and must only occur with the full consent of the victim. In some cases, and certainly where there is no identifiable victim, reparation to the community will be more appropriate.

Paragraph 9

Below a certain age (legally known as the age of criminal responsibility) children are not held to account for actions that, if committed by an older child, would be legally defined as criminal. The age of criminal responsibility varies considerably across member states, but the principle - that children should not be held as accountable or responsible for their actions as adults - is recognised by them all. Indeed the very existence of a separate system of criminal justice for juveniles reflects the developing maturity and hence incremental culpability (see footnote 5) of children.

Once a child is over the age of criminal responsibility, this should not mean that henceforth they should be treated like adults. They are more vulnerable in the face of the power of the state's criminal law than adults and need additional procedural safeguards. But equally, the law requires that they should be held to account for their behaviour and take responsibility for their (future) actions. In effect, the juvenile justice system has to balance the emerging competence of juvenile offenders with the requirement to secure the safety and protection of victims and the wider community.

As a general rule, the lower capacity of younger children should be reflected in the use of predominantly welfare measures. They should be seen as children first and only as offenders second. As children grow older, their capacity to understand and participate in criminal procedures, to distinguish right from wrong, to understand the impact their behaviour has on others and to moderate their behaviour accordingly all increase. This increasing capacity (and hence culpability) should be reflected in the increasing use of criminal or penal (as opposed to welfare) measures. But age is a crude and sometimes inaccurate mechanism for establishing a young offender's maturity and hence culpability. Put simply, some sixteen year olds are more or less mature than others. Ideally, the juvenile justice system should reflect different levels of maturity by assessing the culpability of each and every juvenile on an individual basis.

Paragraph 10

There is now considerable empirical evidence on the important role of the family in the aetiology of crime. Research consistently shows that family relationships, poor parenting and lack of parental care and supervision are important influences on juvenile delinquency. Whilst parents cannot be held solely or directly responsible for the offending behaviour of their children, they clearly have an important role to play, particularly when their children are still quite young. Parents who fail adequately to supervise their children, who exert inconsistent and harsh forms of discipline or who abuse and neglect their children, should therefore be held partly responsible for their subsequent behaviour.

⁶ In exceptional circumstances, the presence and involvement of parents in criminal proceedings and/or the implementation of sanctions and measures may be considered counter-productive (e.g. where the parent is the victim), in which case an exception to involving parents would need to be made. The key criterion is whether their involvement is considered to be in the interests of the juvenile and/or of achieving justice.

⁷ See Recommendation No. R (99) 19 on Mediation in Penal Matters.

Research also shows that family-based interventions in the form of parental support and training and improving parent: child relationships substantially reduce re-offending rates. It is, therefore, important that juvenile justice policy takes into account the responsibility of parents by placing them at the centre of any strategy to prevent future offending. One way to do this is to ensure that parents attend court hearings (unless this is not considered to be in the interests of the juvenile or of securing justice) and in some juvenile justice systems parents pay fines and compensation to victims. But these do not directly address the family and parenting deficits that are often at the root of a juvenile's offending. And, in the case of older offenders (for example 14 upwards), getting their parents to pay fines or compensation orders does little to confirm the offender's responsibility for accepting that they have done wrong and changing their behaviour accordingly.

The capacity of families to effectively socialise their children has been undermined by demographic and socio-economic changes in most European countries. The proportion of children growing up in poverty, experiencing family breakdown or being brought up by a single parent has increased. Governments in turn are increasingly looking for better ways of supporting families and where children start to offend, better ways are being sought to increase parental responsibility in order that they may better control the behaviour of their children.

Where the parents of a convicted juvenile offender are unable to control their child's behaviour they should receive advice, support and guidance on a voluntary basis or, where necessary, be required to attend a parent-training course. Given the high correlation between persistent non-attendance at school and juvenile offending, parents who fail to ensure their child's attendance at school should receive the same measures. Parents should be carefully assessed before such measures are applied and in some cases voluntary measures may be preferred to compulsory ones. Given the declining influence parents have on their children as they grow older, it may be that such interventions are considered more appropriate for younger rather than older juveniles.

Initial findings from an evaluation of a scheme introduced in England and Wales show that parents who attended training courses said they found them very useful in helping them to better parent their children. An additional benefit is the impact better parenting can have on younger siblings who, if they have an older sibling in trouble, must be considered at risk of future offending themselves. But it is important to ensure that these courses are not seen as just one-off interventions but are followed up and sustained through, for example, refresher or booster courses or more general parental support. In this way, judicial interventions can be seen to be part of a wider preventive strategy that goes beyond simply sanctioning a criminal act.

Paragraph 11

Over the last fifteen years, the lives of young adults have changed quite dramatically, as the transition to adulthood has been effectively prolonged by demographic, housing and labour market changes. Increasingly fewer young people now just finish their education at sixteen, get a job and leave home. By far the majority stays on in education, remains in the family home and delays entry to the labour market until their early or mid twenties. Instead of rapidly moving from a state of dependence to independence, they now pass through a relatively long period of semi-dependence before becoming fully independent adults.

In addition to the extension of the transition to adulthood, the routes to achieving adulthood have become more complicated and more risky. Those with no or poor qualifications and skills are particularly vulnerable to extended periods of unemployment alternating with periods of employment in low paid, insecure jobs with little or no prospects. Compared with their counterparts twenty years ago, young adults today are much more likely to experience psycho-social difficulties, such as homelessness and drug and alcohol misuse – and many grow out of crime later than they would have done 20 or 30 years earlier.

Deprived of the means of achieving independence and full adulthood, many of them remain immature for longer and behave more like juveniles. So the case for a more flexible and individually tailored approach to determining the culpability of young adult offenders, treating them more as juveniles rather than adults, is now much stronger. The very fact that their personalities are still developing

suggests there is also more scope for changing their attitudes and behaviour and the principles that underpin juvenile justice are simply more likely to achieve this aim.

In most member states, the age of majority is eighteen, which is when most criminal justice systems consider an offender to be a fully mature adult. However, as recognised in Recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency, the age limits for penal responsibility do not always coincide with an offender's level of maturity. In some member states (e.g. Germany, Austria, the Netherlands, Spain, Portugal, Slovenia, Croatia and Lithuania), this has been acknowledged through a more flexible approach to young adults under 21, who can be dealt with under juvenile rather than adult criminal law or at least attract the same kinds of sanctions as juveniles. In Germany and Croatia, for example, the use of juvenile law applies where the moral and mental development of the young adult offender is considered to be equivalent to that of a juvenile or where the offending behaviour is considered to be a typical example of juvenile misconduct.

Paragraph 12

It is well known (and indeed evidenced by research) that obtaining stable employment is one of the most powerful ways of preventing re-offending and keeping offenders away from a life of crime. At the same time, somewhat paradoxically, one of the greatest barriers to accessing employment is the legal requirement, in some countries, to disclose previous criminal convictions to potential employers. Changes in the nature of contemporary labour markets, especially reduced demand for manual labour and higher skills thresholds, already make it very difficult for those with poor qualifications or serious educational deficits to obtain work and for young people entering the labour market for the first time it is crucial that there are as few barriers to overcome as possible. To ensure therefore that they are given as much chance as possible when starting out on their employment career and to provide an additional incentive to refrain from future offending, the requirement to disclose criminal convictions to prospective employers should not apply to young adult offenders. Even the existence of a custodial sentence should not, on its own, lead to a requirement for disclosure, since young offenders who have spent periods of time in custody face even greater hurdles to finding employment.

There will be exceptional cases where the right not to disclose should be waived. A typical example would be where a young person has a record of an offence involving sexual abuse of a child and is applying to work with children, but each case should be considered on its individual merits and where possible every chance should be given to a young offender to access the labour market unencumbered by the burden of a criminal record.

Paragraph 13

The growing body of knowledge on the causes of juvenile crime and the effectiveness or otherwise of interventions means we are now in a better position to prescribe what needs to be done to maximise the chances of reducing the incidence and seriousness of re-offending (see also paragraph 5). A key element of this more knowledge-based approach is to develop as close a match as possible between the risk of re-offending and the intensity, duration and nature of the intervention. To assess scientifically the actual level of risk of an individual's re-offending, reliable and valid instruments are required. Such instruments are built around the risk factors that are believed to be the best predictors of juvenile delinquency. They include individual and family factors, peer-related factors and school and community factors. In North America and England and Wales such instruments have been developed and used to the satisfaction of judicial authorities and practitioners and other European countries are beginning to follow suit.

While there is little doubt that reliable and valid risk assessment instruments will add to the quality of decisions on what type and intensity of interventions should be preferred, the principle of proportionality must still be observed. Where a risk assessment clearly identifies a number of needs and risks that should be met but the offence itself is relatively trivial, the formal reaction must be moderated accordingly. In such cases, it is important to ensure that there are referral mechanisms that ensure that the young person's needs are met through non-criminal measures on a voluntary basis. This is one way in which the multi-agency youth offending partnerships, as described in paragraph 21 below, can be very effective.

The effectiveness of risk assessments depends to a large degree on the scope and quality of the information collected and how efficiently this information is shared between relevant agencies. Management information systems can be developed to facilitate the collection and dissemination of information, but some of the information will be personal or confidential. In all cases, the setting-up of risk assessment procedures should therefore be subject to the requirements of data protection legislation, taking also into consideration the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (N° 108).

Paragraph 14

Justice delayed is justice denied. Neither young offenders nor victims benefit from delays in court proceedings, which can also seriously undermine public confidence in the law. Long periods between committing an offence and receiving a sanction disconnects the two events in a young person's mind and undermines the effectiveness of any disposal. For persistent young offenders, delays increase the risk of offending prior to their court appearance and postpone interventions that might otherwise stop further offending.

Recognising the importance of a swift response to juvenile offending, member states are beginning to address the issue of delays in a number of ways. One strategy is to set maximum time periods for each stage from arrest through to sentence. Other strategies include improving information sharing between criminal justice agencies, fast-tracking persistent young offenders and dealing with separate offences together rather than on separate occasions. Different juvenile justice systems will have different weak points, but explicitly setting targets to reduce delays should form a key part of an overall strategy. In all cases, however, it will be important to recognise the time needed to ensure due process, including sufficient time to undertake a full and proper risk and needs assessment, consulting relevant agencies about the offender and his circumstances (police, welfare, education, health) and preparing full reports for the court.

Paragraph 15

Whilst police officers have a legitimate and necessary obligation to ensure the security of those held in their custody and to investigate the circumstances of the offence and the alleged offender's part in it, the pressure on them to obtain self-inculpatory statements and other evidence increases the risk of engaging in illegal practices, including ill-treatment. The CPT has found that juveniles held in police custody are more likely to be ill treated than in other places of detention. It is therefore important to ensure that, where juveniles are detained in police custody, special provisions are made which take account of their status as minors, their age (the younger the suspect, the greater the need to exercise caution in the use of police custody), their vulnerability and their relative level of immaturity compared with adults. For some juveniles, being held in police custody will in fact be a very frightening and/or bewildering experience. To ensure their safety and prevent them from being exploited, it is important that they are protected through various rights, safeguards and procedures. These need to be communicated immediately and in a language and manner which ensures that juveniles, especially the youngest, fully understand them.

Juveniles held in police custody should not only have the right immediately to notify their parents (or their legal guardians) of their detention but, in principle, the authorities should ensure their presence during questioning. Compared with adults, juvenile suspects are inherently at a disadvantage when under interrogation by police officers. Their vulnerability to exploitation, their fear of the circumstances they find themselves in and, in some cases, their limited grasp of what is happening means that every effort should be made to ensure the presence of their parents/legal guardian, particularly when a juvenile suspect is being interviewed or being asked to make a written statement. This also ensures the rights of parents (or legal guardians) under such circumstances to exercise parental responsibility.

Where a parent/legal guardian is unavailable or un-contactable within a reasonable period of time, some other responsible or appropriate adult should be contacted, for example a relative or a social worker. Exceptions may apply where, for example, there are reasonable grounds for believing that delaying questioning or the taking of a written statement would involve a risk of death or injury to a third party, the escape of accomplices or the obstruction of the course of justice.

In certain circumstances, while in police custody, the juvenile may display signs of apparent ill- health, either physical and/or mental. In such cases, there shall be a right to access a medical doctor. This is also an effective safeguard against ill-treatment by the police.

The upper limit on the maximum period of detention in police custody for juveniles should be lower than that for adults. The experience of being held in police custody is likely to be more traumatic for juveniles (particularly on the first occasion) and this, combined with their status as dependents, means they are less equipped to cope with being away from their families. Given the additional potential for interruptions to their schooling, a strong case exists for limiting the time juveniles are held in police custody to no more than 48 hours. The potential deleterious consequences of police custody increase with decreasing age. It follows that the aforementioned maximum time period should be progressively re-adjusted downwards for younger age groups.

As observed in paragraph 22, the Recommendation builds on the rights and safeguards contained in other instruments. It was considered redundant to repeat all of these rules in paragraph 15, although they should, of course, enjoy full respect. The only exceptions that were made is the reiteration of the right of presence of parents/legal guardians and the right to access to a counsel.

Finally, the Recommendation also stresses that it is necessary to have some form of external scrutiny of the conditions under which juveniles are detained in police custody. This should be exercised by the authorities that are competent under national law, e.g. a judge or other judicial officer.

Paragraph 16

Juveniles deprived of their liberty up to the commencement of their trial experience all the negative aspects of imprisonment without having yet been found guilty of committing an offence. Furthermore, the conditions under which juvenile suspects are held are, in many countries, worse than for offenders serving custodial sentences. They are often locked up for long periods of time, exposed to overcrowding, bullying and intimidation and suffer long periods of boredom without any access to constructive activities. The risk of suicide, self-harm and other health problems, is also higher and, compared with adults, young defendants lack the resilience of older defendants to deal with the trauma of being imprisoned. Consequently, the use of detention for juveniles prior to trial should, as set out in Recommendation No. R (87) 20, be avoided as far as possible and used only for a small number of older serious offenders where there is a real risk of absconding, interfering with witnesses, tampering with evidence and/or re-offending. It goes without saying that juveniles should not be remanded in custody for an offence for which, if found guilty, they could not receive a custodial sentence.

Proceedings against juvenile defendants in some countries can be very slow and those deprived of their liberty pending their appearance in court can sometimes remain in detention for a year or more before their trial without any structured activities or purposeful daily routines. Given that a young suspect remanded in custody has not, as yet, been found guilty of committing an offence, such delays in bringing a young suspect to court are not only potentially quite damaging, but also unjust. It is therefore crucial that young suspects should only be deprived of their liberty for as short a period as possible.

Some countries have tried to tackle this problem by setting maximum time limits for holding suspects in detention prior to trial, including juveniles. Setting a maximum of six months detention leaves ample time to acquire information on a young person's background and needs and gather the necessary evidence to place before the court. Such time limits strengthen the rights of young suspects, reduce the costs of judicial proceedings, limit the disruption caused to their everyday lives (in terms of education, training, work, family life etc.) and increase the chances that, if found guilty, the young person will understand and internalise the connection between the offending act and the official response to it. In very exceptional cases one might envisage circumstances where every effort has been made to bring a case to trial within this period, but for one reason or another the time limit has not been met. Under such circumstances, the time limit should only be extended where a judge not involved in the investigation proceedings is satisfied that every effort has been made to avoid such a delay. The workload of the judicial authorities involved in the investigation of the case can, under no circumstances, constitute sufficient justification for prolonging the detention period beyond the six-months limit. The decision as to whether an extension should be granted must be taken by a judge not involved in the investigation of the case in order to ensure that the outcome is not prejudiced.

Paragraph 17

In some cases, the courts decide that juveniles cannot (or should not) be returned to their families prior to their case being heard in court. They may be homeless or in care or the court may decide not to send them back to their families for their own protection or to counter a risk of further offending. In such cases, every effort should be made to ensure that other alternatives are exhausted before the alleged offender is remanded to custody. A range of such alternatives is being developed in many countries, including placements with relatives or foster families and placements in small hostels or other forms of supported accommodation. Weekend or night-time remands may be considered as an alternative option since they avoid the disruption to schooling, work and family life that full time custodial remands inevitably produce and often coincide with periods when juveniles are most likely to commit offences.

It is also important to emphasise that under no circumstances should custodial remands be used as a punishment or as a form of intimidation. To do so undermines one of the most fundamental principles of criminal law, namely that an alleged offender is innocent until proven guilty. (This alone justifies placing specific time limits on pre-trial detention). Similarly, it is wholly inappropriate to use custodial remands in cases where a court is of the opinion that a child is in need of protection (from abuse or neglect, for example) or because they have mental health needs. In both cases, alternative solutions outside the juvenile justice system should be secured.

Paragraph 18

In practice, some juveniles are remanded to custody simply because the courts do not have the necessary information that would have reassured them that it was possible to allow defendants to return to their community. The courts often lack information on the alleged juvenile offenders' character, criminal record, family, home and school circumstances, which seriously hampers their capacity to decide whether to deprive young suspects of their liberty or not. The more, and the better the information at their disposal, the easier they can reach a decision in which they have confidence and which best reflects the interests of the young person, the victim (if there is one) and the public. This applies particularly where a juvenile is remanded to custody. Many juvenile offenders are quite vulnerable and it is crucial to ensure that everything possible is undertaken to minimise the additional risks to which remanded juveniles are exposed (e.g. bullying, intimidation, overcrowding, boredom, abuse etc.). The risk of suicide, self harm and other health problems are high in remand centres and reliable information on a young person's vulnerability may help to avoid a tragedy.

Paragraph 19

Juvenile deprived of their liberty often have lives that have been blighted by a whole range of inter-connected problems, including:

- chronic educational deficits, with significant periods – often years – of being out of education altogether
- very low levels of literacy and numeracy, poor social and life skills and low employability
- highly disrupted family backgrounds, including, for some, a history of neglect and abuse (physical, sexual and emotional)
- highly unstable living conditions, including periods of homelessness and movements in and out of state care
- living in neighbourhoods characterised by high levels of deprivation, unemployment and crime
- behavioural and mental health problems, typically anxiety, depression, hyperactivity and personality disorder, which may have led to incidents of self-harm and attempted suicide
- dependency on opiates, such as heroin, and alcohol problems and
- a family history of involvement in offending, drug misuse and other forms of anti-social behaviour.

Given these problems, it is not surprising that re-offending rates for juvenile offenders released from custody are higher than for adults, with some 4 out of 5 being reconvicted within 2 years. If left untreated, they present a risk not only to others, but also to the young people themselves who, on release, are highly likely to continue offending and return to prison. It is therefore important to ensure that what happens in prison, including at the point of reception, is designed to maximise their chances of successful reintegration on release. So on entering prison, juvenile offenders must be carefully assessed within the first week, preferably by qualified specialists, in order to establish what needs and problems they have. Once this assessment has been carried out, an individually tailored programme can be devised which addresses these needs and fully prepares the young offender for release back into the outside world.

The breadth, complexity and inter-connectedness of the problems faced by many juvenile prisoners require equally broad and inter-connected solutions. Ideally, this means providing a co-ordinated, multi-agency response that cuts across the prison/community divide to secure seamless transitions into and out of custody that are sustained long after release. Key elements here include the effective transmission of information on the young offender, good links between local agencies, NGOs, potential employers and prisons (with representatives of external agencies and potential employers coming into prisons to help plan an offender's release) and addressing education, training, employment, health, income, housing and other related needs prior to release.

Paragraph 20

It makes little sense to invest heavily in the provision of high quality education, training, employment and a range of other activities designed to minimise the risk of re-offending and maximise the chances of resettlement whilst an offender is in custody if these are not followed up with similar provision and support on release. All too often the positive efforts undertaken in custodial establishments are undone by the lack of adequate continuity in the community. Once released, young offenders need if anything even more support and supervision than they did whilst in custody as they are once again exposed to the very influences which put them there in the first place. And to ensure that they are not passed from one agency to another or fall between the cracks of provision, it is essential that their multiple needs are systematically met by coordinating provision from all the outside agencies concerned. So once back in the community, it is important that regular support and supervision continue and constructive links are established between the juvenile, his/her family and local agencies. Efforts begun in an institution to study or to address, for example, the juvenile's offending behaviour, drug and alcohol problems or parenting issues, should also continue beyond release.

In most cases, it is particularly important to ensure that re-integration follows a phased approach that balances risk and responsibility. Rather than moving young offenders straight from a highly structured and supervised environment to one in which there is little or no structure or support, it is preferable to phase reintegration over a period of time. This can be achieved by, for example, introducing periods of home leave, releasing the offender on licence or transferring the juvenile to more open settings or units that specialise in resettlement.

Chapter IV. Implementation

Paragraph 21

Given that young offenders, particularly frequent and serious offenders, often present multiple problems, it makes sense for criminal justice agencies to come together with other local agencies - education, health, social and youth welfare - to address the causes and consequences of offending behaviour and devise joint solutions. By formally coming together in this way, agencies can develop a common approach, pool budgets and benefit from a wider range of professional skills and experience. They can benefit from sharing information on individual offenders (always adhering to the legal requirements of data protection, including the need, as a rule, for explicit consent and the provision of suitable safeguards to protect the offender's right to privacy) and by working in partnership they can jointly service the courts, supervise community disposals and design and oversee reintegration plans.

To be effective, it must be made clear that these local, multi-agency and multi-disciplinary partnerships, teams or committees are jointly in charge of planning, funding, co-ordinating and delivering this strategic response to juvenile delinquency. In addition, they should provide joint initial and in-service training, set standards, monitor performance, evaluate the effectiveness of programmes and interventions and disseminate good practice. Partnerships should also publish annual plans that set out the nature and scale of the problem of delinquency and how they will address them.

Chapter V. Rights and safeguards

Paragraph 22

Rights and safeguards for juvenile offenders are comprehensively laid out in a series of international instruments. The key ones are the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Exercise of Children's Rights, the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Recommendation No. R (87) 20 lists a number of these key rights and safeguards to illustrate how the legal position of minors should be reinforced throughout proceedings against them (i.e. from arrest through to compliance with any sanction or measure). It cites:

- the presumption of innocence
- the right to the assistance of a counsel who may, if necessary, be officially appointed and paid by the state
- the right to the presence of parents or of another legal representative who should be informed from the beginning of the proceedings
- the right to call, interrogate and confront witnesses
- the possibility for minors to ask for a second expert opinion or any other equivalent investigative measure
- the right to speak and, if necessary, to give an opinion on the measures envisaged against them
- the right to appeal
- the right to apply for a review of the measures ordered and
- the right to respect for their private lives.

This list is by no means exhaustive. Other rights which may also be considered important include:

- the right to silence
- the right to access an interpreter and
- the right to be given enough time to prepare a defence.

New responses do not mean that these rights should in any way be compromised or undermined. However, it may be necessary to build on the rights and safeguards of juvenile offenders to address new challenges, including those arising from new sanctions, measures or procedures. Examples might include the use of a cultural mediator, whose role is wider than that of an interpreter, as available in Italy, or the use of electronic recording of police interviews. This may in part be addressed by the development of separate European Rules for Community Sanctions and Measures and European Prison Rules for Juveniles, as suggested in this Recommendation.

Chapter VI. Monitoring, evaluation and dissemination

Paragraph 23

To improve responses to juvenile delinquency, it is important to continue building a knowledge base of effective interventions, particularly with serious and persistent offenders. Some progress has been made in identifying what works, with whom under what circumstances, but the impact of interventions on re-offending rates (including self-report measures of re-offending) is still often quite modest. There are still serious gaps in our knowledge base that need to be addressed and the effectiveness of interventions need to be measured not solely in terms of re-offending rates, but also other related outcomes, such as underachievement in school, unemployment and family relationships. Furthermore, much of the research on effective interventions with young offenders to date has been carried out in North America, where the nature of juvenile delinquency and the response to it is somewhat different from Europe. European countries should therefore be encouraged to invest in the development of their own programmes of high quality research and evaluation that builds on what is known, tests what appears to be effective in other countries, but also focuses on their specific problems. Such research should be undertaken by independent organisations in order to ensure that the results are not subject to sectional interests. Finally, it is equally important that the findings of research are widely publicised and disseminated to policy makers and practitioners across all member states. This not only helps to improve the effectiveness of interventions, but also avoid spending valuable resources on interventions that do not work or may even be counter-productive.

Paragraph 24

Young people sometimes feel that the agencies of the criminal justice system do not treat them fairly. For those from minority ethnic communities, this can be compounded by a perception that the system discriminates against them. In some countries, there is evidence that minority ethnic groups are in fact over-represented at each stage of the criminal justice process, which can seriously undermine the trust and confidence such groups might have in the fairness of the system.

The fight against all types of discrimination is a concern in all member states. Recommendation No. R (88) 6 on Social Reactions to Juvenile Delinquency Coming from Migrant Families provides for the avoidance of discriminatory practices within the juvenile justice system. This Recommendation extends this to minors from all ethnic minorities.

Both the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child contain clauses prohibiting discrimination on various grounds. Some countries have adopted legislation that goes further by requiring a positive duty to promote equality and develop and implement measures to reduce and prevent discrimination.

In recognition of this positive trend, this Recommendation suggests that member states should develop new methods for collecting accurate information on the ethnicity of those in contact with the criminal (and specifically here the juvenile) justice system. For example in England and Wales Youth Offending Teams regularly collect statistics on juvenile offenders subject to pre-court or court disposals, broken down by age, gender and ethnicity. These data are published and used to monitor the impact of disposals which includes possibility of identifying if there is discrimination against any particular group. Others have preferred instead to rely on research to inform their understanding of the nature of discrimination and how it might be addressed. Many countries have also created services which respond to the specific needs of young ethnic minorities, including measures to respond to identified discriminatory practices⁸. Given the sensitivity of this area, it is important to allow countries to find the best ways of addressing discrimination, including how best to provide reliable and valid information on the nature and scale of the problem. The development and exchange of good practice in this field is also to be encouraged and promoted.

Paragraph 25

Despite increasing evidence to the contrary, public opinion tends to believe that strict penalties are most likely to prevent juvenile offenders from further offending. Public attitude surveys consistently tend to underestimate the extent to which custody is used (particularly relative to adults), overestimate the involvement of juveniles in crime and perceive youth crime as perpetually increasing, even when it is not. If juvenile justice policy was immune from public opinion, this might not matter, but in reality this is not so. Research shows that there is a close relationship between punitive public attitudes and the use of custodial sanctions for young offenders across different countries. Countries where public attitudes are punitive tend to have the highest youth custody rates and vice versa. Furthermore, politicians listen and react to public opinion and calls for tougher sanctions for juvenile offenders, which the mass media tend to communicate uncritically, rarely go unheeded.

The discrepancy between the public's perceptions of youth crime and the reality is partly due to distorted media portrayals and partly the lack of any objective information to counter these portrayals. The media are the filter through which the public learn most of what they know about young offenders, but research shows that when members of the public are given more detailed and specific information about the causes of crime, the circumstances of young offenders and their offences, they tend to be less punitive. So since public attitudes constitute a serious obstacle to reducing the excessive use of custody, it is important to widely publicise and disseminate objective knowledge about the realities of juvenile crime and justice. The public needs to know some of the key facts about youth crime; for example that it is fairly common and mostly petty, that most young people grow out of it and that there are alternatives to prosecution and custody which, on balance, are more cost-effective. And it may help to counteract the largely negative coverage of youth crime if some of the successful stories were also given publicity.

Directly involving the public (and victims in particular) in the youth justice system is another way of reducing the gap between rhetoric and reality and increasing public confidence. Many victims express concern about being excluded from the judicial process and not even receiving information about the case in which they have an interest. Providing information to victims of youth crime – when the case is likely to be heard, what the proceedings will be, what the outcome is and what happens after an offender has served his or her sentence – would help to increase their sense of involvement. In some countries, information to victims is already being provided. The Netherlands have for a number of years now worked with official guidelines for both the police and the prosecutor's office on how to inform victims on proceedings and outcomes. The experiences thus far have been positive.

⁸ Examples include the Centre for Equal Opportunities and Opposition to Racism in Belgium and the Regional Information Services for Young Foreigners in France.