

# THE TREATMENT OF YOUNG OFFENDERS IN CONTINENTAL EUROPE

RAPHAEL LEMKIN\*

## I. GENERAL CONSIDERATIONS

Since Lombroso formulated his theories on the causes and remedies of crime,<sup>1</sup> there have been two schools of thought about the treatment of persons who have committed acts against society. One, the classical school, declares the right and duty of the state to bring the offender to repentance by punishment and by prison sentences to instill in him fear of the consequences of a repetition. The other, the sociological school, holds that the commission of an offense against society is due to corrupting surroundings, psychological disorders, and lack of discernment or will power in the offender himself.

In the final analysis, both schools want to achieve the same result; namely, to prevent the offender from repeating the offense. The classical school asserts that the fear of being imprisoned again is the best means of obtaining the desired result, while the other school maintains that the will is not free but dependent upon exogenic (*i.e.*, exterior, social) and endogenic (*i.e.*, interior, psychophysical) influences. This school desires therefore to remove detrimental influences and by education to develop the discernment as well as the will power which is necessary to act according to this discernment. Accordingly, the classical school proposes to punish the offender while the sociological school wants to educate him.

In Europe, there is hardly a country where these two different contentions have not led to heated controversies in actual law as well as in penology. While the struggle still continues insofar as the treatment of adults is concerned, the sociological

\* Magister Juris, Doctor Juris, 1926, University of Jan Casimir, Lvov. Member of the Warsaw Bar. Head consultant, Board of Economic Warfare, Washington, D. C., since June, 1942. Member of the Law Faculty, University of Warsaw, since 1931, University of Stockholm, 1940; lecturer, Duke University School of Law, since 1941. Member of the International Committee for the Unification of Penal Laws of the League of Nations (Fifth Committee) 1931-39; representative of Poland on the Board of Governors of the International Association of Penal Law, Paris, 1932-1938; representative of Poland at the International Juridical Conferences in Brussels, Paris, Copenhagen, Rome, Palermo, Prague, Cairo, Amsterdam, and Budapest. Author, in Polish: THE POLISH PENAL CODE (with Justices Jamontt and Rappaport of the Polish Supreme Court) (2 vols., Warsaw, 1932); THE JUDGE CONFRONTED BY THE MODERN CRIMINAL LAW AND CRIMINOLOGY (Warsaw, 1933); AMNESTY (Warsaw, 1935); FINANCIAL LAW (Warsaw, 1937); THE RUSSIAN PENAL CODE (Warsaw, 1928); THE ITALIAN PENAL CODE (Warsaw, 1929); in French: THE REGULATION OF INTERNATIONAL PAYMENTS (Paris, 1939); in Swedish: EXCHANGE CONTROL AND CLEARING (University of Stockholm lectures, 1940-1941). Author of numerous monographs, papers, and articles on criminal law, penology, and international monetary problems in Polish, French, German, Italian, and English.

<sup>1</sup> LOMBROSO, CRIME, ITS CAUSES AND REMEDIES (1899; Am. ed. 1911).

school had won, and was still winning, ground in regard to young offenders at the outbreak of the second World War. Consequently, the treatment of youthful delinquents has gradually but surely moved from the province of criminal law to the province of social legislation.

Before the advent of totalitarianism this trend was unmistakable and general. A great number of European countries had gone as far as abolishment of punishment altogether, such as the Nordic countries, Spain and, until 1935, Russia.<sup>2</sup> A retrogression, however, is taking place in Germany<sup>3</sup> and Italy.<sup>4</sup> Because in these two countries fear is a predetermining factor for social behavior, punishment is again in the foreground.

## II. THE ESTABLISHMENT OF GUILT

### *a. Statutory Age*

In determining the age up to which young offenders were to be educated rather than punished, the two schools were bound to clash. The sociologists, true to their contention that all punishment should be replaced by correction, tended to extend the age up to which education should take place as long as possible. In practically all scholarly discussions of national as well as of international scope, their views prevailed. The Ninth International Penitentiary Congress held at Prague in 1930 passed a resolution for correctional sentences up to the age of 24.

The laws which were actually enacted before or thereafter, however, did not go so far as that, for the officials in control seem mostly to have been adherents of the classical school. They did not want to give up the idea that the fear of harsh punishment is the main deterrent against crime and that, once an offender has experienced hard punishment and prison life, he is expected to be too afraid to repeat. Nor did they want to yield the rights of their offices without putting up a stiff fight. Thus, each new law that was passed during this period in Europe became a compromise between the two opinions.

In most European countries,<sup>5</sup> only such youths were subject to corrective (edu-

<sup>2</sup> See note 18, *infra*.

<sup>3</sup> FRANK, NATIONALSOZIALISTISCHES HANDBUCH FÜR RECHT UND GESETZGEBUNG (1935) 1320: "Combat against crime by education, even if going under the name of punishment, leads to destruction of justice, as long as human nature does not change." And at p. 1335: "§6 of the Youth Court Law must be eliminated. . . . According to this paragraph, punishment shall only be meted out if educational measures do not suffice. That shows a basic wrong view of punishment. Punishment, according to law, and education are not means to the same purpose; they serve different purposes. Education is necessitated by lack of education; punishment by offense against the public statutes. The basic idea of punishment is just retribution for the purpose of protection of lawful rights, in the interests of preservation of authority."

Villinger, in MONATSSCHRIFT FÜR KRIMINOLOGIE, 1939, p. 305; "There was danger that the Youth Court Law and its application would leave out of consideration too completely the character of expiation and the preventive effect, especially by the all too magnanimous application of probation and short prison terms. Consequently, in the circles of such experts who had not fallen victims to a Marxist view of life, one held that an energetic application of the law and a stern execution of sentences are pressing pedagogic necessities."

<sup>4</sup> PRITSCH, DAS ITALIENISCHE JUGENDGERICHTSGESETZ (1935): "The Italian Youth Court Law holds fast to the total basic difference between punishment and education and, consequently, punishment can not be replaced by education."

<sup>5</sup> Pre-*Anschluss* Austria, Denmark, Germany, Norway, Sweden, France and others.

ational) measures as had not yet completed their eighteenth year of life at the time the prosecution or procedure was started.<sup>6</sup> Hence, the measures here considered apply to only a part of the 16-21-year age group which would be subject in the United States to the proposed Youth Correction Authority Act.<sup>7</sup> However, Finland goes up to 21 years of age,<sup>8</sup> and Rumania up to 19.<sup>9</sup>

In some countries there exists a possibility of drawing older juveniles into the jurisdiction of the youth tribunals, either when the public prosecutor decides to prosecute before that tribunal,<sup>10</sup> or when the court of general jurisdiction so holds,<sup>11</sup> or when the parents so request.<sup>12</sup>

In some other countries, as for instance in France, crimes are excluded from the jurisdiction of the youth tribunal, if the offender is over 16 years of age.<sup>13</sup> Belgium has set an age limit of 16 years, with an extension to 18 in cases of begging and vagrancy.<sup>14</sup> In Spain, also, the upper limit is 16 years. Poland has chosen the age of 17 as the upper limit<sup>15</sup> while the Netherlands have been most progressive by setting the upper age limit at 21.<sup>16</sup>

Summarizing, it can be said that European criminologists have subscribed to the ideas of the sociological school and want the jurisdiction of youth legislation and tribunals to include youths up to 24 years of age, while the practitioners, whose views often find expression in laws, are only gradually giving way to that conception. This trend is especially obvious in those countries where the public prosecutor has the right to bring criminal cases against youths who are older than the statutory age, to the youth tribunal. That provision, in itself, is an admission that education is possible for older youths.<sup>17</sup>

<sup>6</sup> Evidently, the acceptance of this age limit in such form is wholly arbitrary. Two criteria should be used: (1) What are the discernment and will power of the offender *at the time when he committed the crime*, not at the time when the prosecution happens to start, and (2) is the offender still of an age when education is feasible?

<sup>7</sup> In this article no effort will be made to differentiate between "youths" and "juveniles" as these terms are used in the proposed Youth Correction Authority Act and in American juvenile court acts. Within the age limits prescribed in European laws there is no distinction drawn, at least legislatively, between the older and younger juvenile offenders.

<sup>8</sup> Child Welfare Law, Finland, Forfattningsamling No. 51-60, 1936.

<sup>9</sup> New Criminal Code, in force since Jan. 1, 1937.

<sup>10</sup> Denmark: The public prosecutor may abstain from prosecution against minors over 18, if the offender is in the care of the Child Welfare Commission.

Germany: Youth Court Law, §17.2: If the offense is committed before the offender was 18 and prosecution starts after he has completed his 18th year of age, the public prosecutor may choose to bring the case before the Youth Court.

<sup>11</sup> Sweden: The Children's Protective Council can take correctional action against minors over 18 but not yet 21, if they are lazy and dissolute.

<sup>12</sup> Luxemburg: Law on the protection of children of Aug. 2, 1939. The Youth Court can act, up to the age of 21, on request of the parents.

Belgium: In non-criminal cases, correctional measures can be applied to minors above the statutory age, if the parents so request.

<sup>13</sup> LEAGUE OF NATIONS, CHILD WELFARE COMMITTEE, *Organization of Juvenile Courts and the Results Attained Hitherto* (1935) 72.

<sup>14</sup> Law on the protection of children of May 15, 1912 and 1919.

<sup>15</sup> Ordinance of Feb. 6, 1928, LEGAL GAZETTE, text 93.

<sup>16</sup> Law of July 5, 1921, STAATSBAD No. 834.

<sup>17</sup> That conclusion should have been obvious from the start. For it is common knowledge that youths

*b. Tribunals and Authorities*

No general formula for the handling of youthful offenders nor for the selection and appointment of appropriate personnel has been developed in Europe. Those countries with the longest history of separate jurisdiction for juveniles have eliminated courts completely and have created special authorities to deal with juvenile cases. Denmark, for instance, has set up communal "Child Welfare Commissions," consisting of three members, two of whom must belong to the municipal council. Norway has set up "Guardianship Councils" in each community, consisting of a judge, a clergyman and five expert members, one of whom must be a physician.

Soviet Russia created "Commissions" in which an educator presided while a judge and a physician were associate members. But in 1935 Russia abolished them because of an unchecked increase in juvenile delinquency. The ineffectiveness of the commissions in checking criminality was attributed to lack of trained personnel.<sup>18</sup> This former Russian system is noteworthy, however, for its effort to eliminate all semblance of court proceedings in the sessions of the Commission.<sup>19</sup>

The remaining European countries still maintain that the jurisdiction over juveniles should stay within the domain of the courts. This attitude becomes understandable if one observes two trends. One is the fact that many European countries have specialized judges for juvenile matters in civil proceedings, especially for guardianship and similar family right subjects. They are accustomed to deal with juveniles and their problems and seem to be the ideal youth judges in criminal matters. The other trend is the tenacity with which European judges have been defending any encroachment on their jurisdiction.<sup>20</sup>

The countries which have criminal court procedure against juveniles can be divided into three groups, signifying the degree of progress made in juvenile matters:

- (1) Countries where the court can pronounce an educational measure as necessary, but leaves its determination to special juvenile institutions.
- (2) Countries where special judges, sitting together with educational experts, try the juvenile offender.
- (3) Countries where only a special judge tries them.

are easily affected by adverse economic circumstances as, for instance, unemployment. But they can easily be brought back to normality by vocational guidance and work, so that they may consider themselves to be members of society and not outsiders.

<sup>18</sup> The Attorney General of the Union of Socialist Soviet Republics called a special conference in April 1935 to decide about changes in the juvenile jurisdiction because of the great increase in juvenile criminality. Most of the members of this conference stressed the fact that the failure of the pre-existing program was due to the lack of trained personnel which could intelligently deal with juvenile offenders. Because of the great importance of the problem of personnel for handling juvenile matters also in other countries, we quote the following statement of Faiviszevskaya, Chairman of the Juvenile Offenders Commission for Moscow: "The personnel of the commissions is not only insufficient as to number but it has had no professional training and insufficient experience. Among all the chairmen of the commissions in the District of Moscow only three or four had special training, with less than five years experience. The others came into the work without training and have been working less than one year. In Russia there is no one school which trains experts for juvenile offenders' commissions, and therefore there is no possibility of obtaining appropriate personnel." See SOVIETSKAYA IUSTITSIYA (1935), No. 13, pp. 11, 12.

<sup>19</sup> LEAGUE OF NATIONS, *op. cit. supra* note 13, at 142.

<sup>20</sup> For instance, in Germany. See DREWES-SANDRE, DAS REICHSGESETZ FÜR JUGENDWOHLFAHRT VOM 9. JULI 1922 UND JUGENDGERICHTSGESETZ VOM 16. FEBR. 1923 (Berlin, Leipzig, 1924) p. 125.

The Austrian law (pre-*Anschluss* Austria) represents the first group. The court could decide that educational measures were necessary and the Youth Agency would thereafter decide which educational measures were appropriate.<sup>21</sup>

In Germany, under the provisions of the law of 1923, the court can leave the determination of the educational measure to the guardianship judge (*Vormundschaftsrichter*).<sup>22</sup> But since in practice the president of the Youth Court and the *Vormundschaftsrichter* are the same person, this differentiation is not of practical importance.

In the second group, where tribunals include experts, the following European countries are represented: Italy,<sup>23</sup> Switzerland,<sup>24</sup> Spain.<sup>25</sup> It is noticeable that the composition of the special tribunals in this group is almost always identical. Whether the commission is composed of three or five, usually a judge presides and the other members are either educators, teachers or physicians.

The remaining European countries, insofar as they have set up special youth courts at all, belong to the third group, where only a special judge tries the juveniles.

The laws of most countries require that one member of the tribunal or commission should be a woman.

### *c. Relevancy of the Offender's Background*

It has become the opinion of European legislative bodies as well as of criminologists<sup>26</sup> that a thorough knowledge of the background, surroundings, and the moral atmosphere in which the offender has been living is indispensable. Hence the conviction that a social prognosis must be made before sentencing a juvenile. This prognosis of the future behavior of the offender and his rehabilitation should be based upon endogenic (psychophysical) as well as upon exogenic (environmental, social) factors.

The now generally accepted views about the importance of endogenic as well as exogenic factors have been expressed by Lenz,<sup>27</sup> Krasnuszkin,<sup>28</sup> as well as Wulffen<sup>29</sup> in several well-known writings.

<sup>21</sup> §2 of the Youth Court Law of July 18, 1928, BGBL., No. 234.

<sup>22</sup> Youth Court Law, §5.

<sup>23</sup> Law of July 20, 1934: president, judge and a layman, the last being either a teacher, psychiatrist, biologist, or criminal anthropologist.

<sup>24</sup> Penal Code of Dec. 21, 1937, in force since January 1, 1942, leaves tribunals of cantons untouched. Most cantons have tribunals of 3 to 5 persons, composed of a judge and experts. See Kuhn, in RECUEIL DES DOCUMENTS, COMMISSION PENALE ET PENITENTIAIRE (1941) 262.

<sup>25</sup> LEAGUE OF NATIONS, *op. cit. supra* note 13, at 62.

<sup>26</sup> PENAL AND PENITENTIARY CONGRESS, LONDON 1925, Vol. Ia, p. 129.

<sup>27</sup> GRUNDRISSE DER KRIMINALBIOLOGIE (Wien 1927) 182-221.

<sup>28</sup> In *Das Moskauer Kabinett für die Erforschung der Persönlichkeit des Verbrechers und der Kriminalität* in 2 MITTEILUNGEN DER KRIMINALBIOLOGISCHEN GESELLSCHAFT 17: It seems to me that the gravity of the situation which is brought about by the criminal acts of the offender corresponds to the biological types of their criminal personalities. The prognosis of their personalities and the prediction of their future social behavior can only be made under consideration of the convergency of biological and sociological factors.

<sup>29</sup> KRIMINALPSYCHOLOGIE (Berlin 1926) 17: "The distance between environmental influences and endogenic influences on the offender is not as remote as one would think; the environmental influences determine the development of the endogenic or inherited elements."

While formerly, in Europe, the study of exogenic factors was little known and inquiries into endogenic ones took place generally *after* imprisonment, the victory of the sociological school brought about a complete change of attitude insofar as young offenders were concerned. Throughout Europe<sup>30</sup> agencies were established whose task was, among others, to make painstaking investigations not only as to endogenic factors but also as to exogenic factors likely to have a bearing upon the delinquent youth, and to report these investigations to the court. These agencies in most cases are called youth agencies, in others, child welfare or guardianship committees. In most instances these agencies are public—federal, state, or municipal; in a few countries they are private institutions.<sup>31</sup>

The legislation of some Swiss cantons, recognized by the new Swiss penal code,<sup>32</sup> brought a further innovation by the establishment of "youth advocates." It is their task to assemble, group, and evaluate the information that has been provided about the youthful offender's background and to offer this complete information to the tribunal. The laws of most European countries provide that the courts are bound to hear and take reports of this character into consideration.<sup>33</sup>

Thus the scope of the evidence to be considered as to juveniles has been considerably broadened in comparison with that of adults. Not only the offence but also the personal and social background of the offender has to be taken into consideration.

#### *d. The Sentence*

The way of rendering sentences has been and still is a controversial matter in Europe, especially in regard to juveniles. The first difficulty arose out of the controversy between the two schools. If a juvenile is found guilty of a criminal act, the question arises how the gap between the claim of the state for retribution and the socially justified necessity for education can be bridged.

Italy differentiates between lesser and more serious offences. If the criminal sentence would be less than two years of prison or 15,000 lira fine, the tribunal grants a court pardon and considers the advisability of educational measures. If, however, the offence calls for a higher sentence, such a sentence is imposed and the juvenile is put on probation, awaiting the outcome of simultaneously pronounced educational measures.<sup>34</sup>

In other countries<sup>35</sup> the pronouncement of the criminal sentence is delayed until the result of the educational measures is available. If the education has been successful,

<sup>30</sup> Finland, Sweden, Norway, Denmark, Germany, Swiss Cantons, Italy, Poland.

<sup>31</sup> Spain, France, Belgium.

<sup>32</sup> Swiss Penal Code of Dec. 21, 1937, in force since Jan. 1, 1942.

<sup>33</sup> Pre-*Anschluss* Austria, Youth Court Law, §2: "Before decision the court is bound to consult with the youth agency. . . ."

Germany, Youth Court Law, §22: "In all parts of the procedure in juvenile matters the organs of the 'Jugendgerichtshilfe' shall be called upon for cooperation."

<sup>34</sup> Italy, Law of July 20, 1934: Probation, if the sentence would be over 2 years or 15,000 lira fine.

<sup>35</sup> France: see in LEAGUE OF NATIONS, *op. cit.*, *supra* note 13, at 71: The court can postpone the decision, no matter if the juvenile acted with or without understanding. (Suspension of proceedings is like probation.)

Hungary: if formal hearings have been entered into.

criminal sentence will not be pronounced; if it was unsuccessful, it is up to the judge to pronounce sentence. In one other country—Austria—the court pronounces the offender guilty and then decides about the educational measures. In Sweden, the court formerly pronounced criminal sentence and thereafter substituted educational measures for it. This procedure has been changed<sup>36</sup> so that the court now pronounces the educational measure in the first place. In other countries the court pronounces correctional sentences instead of punishment.<sup>37</sup> Summarizing, it can be said that no uniform way of sentencing has been arrived at in Europe.

### III. EDUCATIONAL AND CORRECTIONAL MEASURES

Educational and correctional measures which are used in Europe are the reprimand, imposition of special obligations, educational supervision, placing in a family, placing in a private institution, and placing in a reformatory.

*The reprimand* is known to all European advanced correctional systems. Public statistical figures about its success are not obtainable.

*Special measures*, such as reporting at a youth agency at regular intervals, restitution of damages or similar measures may be sufficient in cases where a first offender of young age is concerned.

*Educational supervision*, which includes regular visits by a youth welfare officer, is a measure which has been taken mostly in cases where either the parents profess to be unable to deal with educational problems or where it seems obvious that the parents are not able or likely to exert the necessary good influence upon the juvenile.

*The placement in another family* is one of the hardest measures, for it deprives the parents of their parental rights to a large degree. But in cases where it is obvious that the youth is likely to be thoroughly corrupted if left in the present surroundings, such a separation may constitute the only means of rehabilitating him.

As to *private institutions and reformatories*, the experiences in Europe point to the greater value and better success of private, as compared to public, institutions. One of the examples is presented by the private institutions of Spain. In that country, where the Catholic religion is dominant, the education of offenders who have to be committed to an institution has been put mainly into the hands of monastic orders. The success has been such that a very noteworthy diminution of second offenders has been achieved.<sup>38</sup>

Next in line are countries with an elaborate set-up for *public reformatories*. Sweden has established two reformatories in Vieback and Skenas, one for boys and the other for girls.<sup>39</sup> They are not prisonlike institutions but agricultural schools where inmates are taught to work and to experience the elation of having done their

<sup>36</sup> RECUEIL DE DOCUMENTS, *op. cit. supra* note 24, Vol. 7, 1938, p. 83 (formerly Law of June 13, 1902, now Law of March 13, 1937).

<sup>37</sup> Belgium: Law of May 15, 1912. A child under 16 commits no offence but "an act amounting to an offence." The Belgian probation in such instances refers to education or correction only.

Denmark: if the Child Welfare Commission handles the case.

<sup>38</sup> LEAGUE OF NATIONS, *op. cit. supra* note 13, at 62.

<sup>39</sup> Mittermaier, in MONATSSCHRIFT FÜR KRIMINALBIOLOGIE, 1939, p. 492.

work well. The same idea, though anomalous to fascist doctrines, has been realized in Italy's agricultural reformatories. Belgium, at first one of the originators of qualified youth treatment, so far as penitentiaries are concerned,<sup>40</sup> lays special emphasis upon the training of prison personnel. France first trained graduates in social science in Belgian prisons and then assigned them to take over a new institution for juveniles in France.

The reason why public institutions in Europe in general have not been as successful as private ones is obvious. While the personnel of public reformatories is likely to consist of persons who have been appointed by political influence or who have sought appointment as a means of livelihood, the personnel of private institutions frequently is made up of humanitarians who take a personal interest in the inmates and try to educate them individually. In this respect, also, the Spanish monasteries are conspicuous for their methods and success.<sup>41</sup>

In this connection it is noteworthy that in a growing number of countries the conviction that juvenile delinquency has its roots in social surroundings and education, has led to legislation that prescribes corrective measures even before offences have been committed. Such preventive measures sometimes can be adopted on applications of the parents or guardians<sup>42</sup> of an adolescent; in other instances on application of public organizations, such as youth agencies.<sup>43</sup>

One would think that a statistical evaluation of the experiments with educational measures, particularly in regard to repetition of offences, would give a clear picture of the efficacy of different measures. Unfortunately, such a statistical evaluation would be little short of arbitrary. For if one looks at the figures concerning juvenile delinquency in Europe, one immediately sees that they have increased in recent years. Statisticians and criminologists tried to explain the reasons for the growing criminality in some countries by attributing it to crisis and other emergency situations of a social and economic nature. The explanation was advanced that the rise of juvenile delinquency in Europe is due to economic disorders, propaganda of revolutionary ideas, revolution, war and disruption of family authority and family life. But how is one to go about evaluating these influences statistically and arrive at a true picture of the success of educational measures? Even youthful offenders who have been educated by the state are newly subjected to these outward influences. These statistics can only give indications and nothing more.

Only statistics of such countries should be perused where there were no upheavals or special economic difficulties. Denmark, for instance, presents a good illustration in this respect. Fully 50% of the most difficult children for whom educational measures were taken have become law-abiding, 20% are called "good," while only 20% left something to be desired and the remaining 10% could not be investigated.<sup>44</sup>

<sup>40</sup> Law of May 15, 1912.

<sup>41</sup> LEAGUE OF NATIONS, *op. cit. supra* note 13.

<sup>42</sup> Luxemburg, Law of August 2, 1939, Law on the protection of children, Memorial No. 54 of August 12, 1939.

<sup>43</sup> Finland, Law of January 17, 1936, Finlands Forfattningssamling, Nos. 51-60, 36.

<sup>44</sup> LEAGUE OF NATIONS, *op. cit. supra* note 13, at 57.

Most girls who married are reported to have returned to irreproachable life. In the same country, the placement of children with reliable families is declared to have been particularly successful.<sup>45</sup>

One should note that the Child Welfare Committee of the League of Nations published in 1935 the results of an international inquiry as to the effects of the organization of juvenile courts. Unfortunately, this publication consists only of official reports of the interested governments and not of a scientific digest of the material. Most of the government reports are conceived in an official pattern and give an optimistic picture as to the results. Hence they must be taken with a certain reserve.

#### IV. SUPERVISION OVER EDUCATIONAL AND CORRECTIONAL MEASURES

Obviously, the most important phase in juvenile matters is not the trial, but the process of education or correction. It is necessary, therefore, that the state designate a body for the supervision of correctional sentences. This is important not only for the achievement of the aim at which the measures are directed but also to discharge an obligation towards parents who either have been partly deprived of their paternal power or have voluntarily surrendered this power in order to contribute to the correction of their children.

The strictest supervisory system had been evolved by pre-*Anschluss* Austria.<sup>46</sup> A federal commission made up of five members was required by law to visit the educational institutions in its district at least once a month. Members of the commission were a judge, a physician, a teacher, and persons trained in the care of juveniles. They supervised the institutions and their personnel as well as the treatment and progress made in regard to each inmate. They could recommend that the court free inmates, as the duration of any correctional measure in Austria was completely dependent upon the results achieved with each inmate. Three safeguards were evolved to insure this aim: the court could change its decision at any time,<sup>47</sup> on its own motion or on application of interested persons or organizations. The director of the educational institution had the right, at his discretion, to place inmates after at least one and a half years of institutional supervision in the care of a private family or in a position; after another one and a half years he could free them if he deemed the educational purpose reached. Finally, the commission could either recommend to the court that an inmate be freed or agree with the director to free an inmate earlier than provided by law.<sup>48</sup>

In Italy the director of a reformatory is bound to give a yearly report about each inmate to the court. In addition, he has to make a report whenever the district attorney so requests. The court is personally to investigate each institution frequently. If the court holds that the offender is no longer in need of betterment, he orders him freed. The court may act *ex-officio* or on application of the police, the district attor-

<sup>45</sup> *Ibid.*

<sup>46</sup> Youth Court Law of July 18, 1928, BGBL., No. 234.

<sup>47</sup> *Id.* §2. <sup>48</sup> *Id.* §7(2)(3).

ney, the parents or guardian, or youth agencies. Besides, there exists the institution of the *judice di vigilanza* (supervising judge) who is charged with the supervision of all state correctional institutions.

In other European countries the supervision set-up is less elaborate though not necessarily less effective. In a number of countries, where experts participate in sentencing, the trial authority is charged with constant supervision.<sup>49</sup> It decides about the termination of correctional measures or their change according to the response of the youth. In other countries<sup>50</sup> the court alone decides about the termination or change of measures, using as a criterion the degree of betterment that has or has not been achieved. There are only very few countries in Europe where it is not obvious that good behavior leads to shortening of the correction measures without difficult procedures.<sup>51</sup> As in almost all countries an offender could not be kept any longer in a correctional institution than until the day when he reaches maturity.

Summarizing, one must note that expert authorities supervise educational measures only in a very few European countries. In still fewer instances has the conclusion been reached that it should be up to these authorities to decide about change or termination of such measures. On the other hand, Europe has generally accepted, with very few exceptions, the attitude that the termination of correctional educational measures should depend on the results achieved in each case.

It should be noted that, in theory as well as in practice, it has become understood in Europe that no correctional system can be better than its personnel, no matter how elaborately the statutes provide for the inmates. Time and again resolutions as to the training and selection of personnel were passed, and one country after the other decreed more stringent qualifications for the personnel of reformatories. Nevertheless, European systems with very few exceptions have suffered from a personnel that only too often conducted reformatories more in the manner of a penitentiary than that of an educational institution.

#### V. SUMMARY

It has become evident that the treatment of youths according to sociological rather than penal conceptions was predominant in prewar Europe, except in states with authoritarian regimes. Nevertheless, only a few European countries have been progressive enough to replace courts by youth authorities consisting of experts and to place the determination of the correctional measure as well as its supervision and termination into their hands.

The general trend in Europe goes toward making the duration of educational measures dependent upon the response on the part of the delinquent and the degree

<sup>49</sup> Denmark, Italy, Norway, Sweden.

<sup>50</sup> Austria, Belgium (the Judge must review his decision every three years), Bulgaria, France, Greece, Netherlands (the Minister of Justice may terminate disciplinary education before maturity), Poland, Portugal, Switzerland, Czechoslovakia, Yugoslavia.

<sup>51</sup> France, August 24, 1940, in *JOURNAL OFFICIEL*, No. 212, August 25, 1940.

Italy, Decree-law of April 4, 1939, in *GAZ. UFF.* No. 114, May 15, 1939.

France: See Gentz, in *MONATSSCHRIFT FÜR KRIMINALBIOLOGIE*, 1937, p. 192, in regard to youth prisons.

TABULAR ANALYSIS OF YOUTH CORRECTION ADMINISTRATION  
IN ELEVEN EUROPEAN COUNTRIES

Nation	Ages (upper limits)		Who Tries Case?	Who Pronounces Sentence?	Who Supervises Correction?	Who Decides About Termination?
	Normal	Exceptional				
AUSTRIA (pre- <i>Anschluss</i> )	18		Youth Court	(1) Court, but (2) Court can leave selection of measure to Youth Agency	Federal Commission (1 judge, physician, teacher and youth experts)	(1) Director of correctional institution (2) Court (3) Federal Commission
BELGIUM	16	18	Special Judges (in regular court)	Court	Court	Court, on own motion or on application
DENMARK	18	21	Child Welfare Committee	Child Welfare Committee	Child Welfare Committee	Child Welfare Committee
FRANCE	18	16	Special Judges (Examining Magistrates)	Court	Court	Court
GERMANY (pre-Nazi)	18		Youth Court	(1) Court, but (2) Court can leave selection of measures to the Guardianship Judge	Youth Agency	Court, on own motion or on application, when purpose attained
ITALY	18		Tribunal of three: (1 judge, 1 expert, 1 layman)	Court, which, however, is the Guardianship Court	(1) Leader of Institution reports yearly (2) Court visits frequently (3) <i>Judice de vigilanza</i>	Court
NORWAY	18		Guardianship Council	Guardianship Council (1 judge, 1 clergyman, 5 laymen)	(1) Director of Reformatory (2) Guardianship Council	(1) Director of educational institution, after at least one year (2) Guardianship Council cancels measures as soon as no longer necessary
POLAND	17		Children's Judge	Children's Judge	Court	Court
RUSSIA (before 1935)	16		Committee (1 advocate who presides; 1 judge; 1 physician)	Committee (since 1935: Court)	Committee	Committee, when purpose attained
SPAIN	16		Children's Court	Children's Court	Children's Court	Children's Court
SWEDEN	18	21	Special Court; also Children's Protective Council	Court or Children's Protective Council	Children's Protective Council	Court

## CRITERIA FOR CHOICE BETWEEN PUNISHMENT AND CORRECTIONAL MEASURES

- AUSTRIA: (Pre-*Anschluss*) If discernment or will power lacking, only correction. If discernment and will power confirmed, court pronounces guilty but can reserve sentence and order educational measures.
- BELGIUM: Discretion of court with choice between (a) removal from paternal control; (b) placing under control of court; and (c) punishment.
- DENMARK: Prison sentence only if tendency towards crime revealed and permanent measures necessary. Otherwise only educational measures.
- FRANCE: Discretion of court with choice between (a) sending back to family; (b) placing in other family or an institution; and (c) turning over to public relief authority.
- GERMANY: (pre-Nazi) No punishment if either discernment or will power lacking.
- ITALY: Court pronounces not guilty if lacked insight and will power. Thereafter *may* consider educational measures. Otherwise court pronounces guilty but may put on probation or grant a court pardon. Then court must consider educational measures.
- NORWAY: No punishment. Preventive measures taken (1) if youth committed an offence and has a bad character *or* is uncared for; (2) if youth is uncared for or corrupted as a consequence of guardian's neglect; or (3) if youth generally behaves badly *and* resists measures.
- RUSSIA: Only education; no punishment. (Since 1935: punishment.)
- SPAIN: Measures promising most profitable solution for the future.
- SWEDEN: Educational measures instead of punishment if court thinks that rehabilitation can thus be better achieved. Children's protective council can act to prevent offences.

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of betterment that has been achieved. In most cases it is still the court which decides if the aim of the correctional measures has been reached. Only in the most progressive countries have expert bodies the right and the duty to decide about the termination of correctional sentences on juvenile offenders.

But no matter how progressive the legislation and how socially-minded the intended treatment and how strict supervision of measures may be in Europe, it has been recognized there as elsewhere that the personnel question is bound to be the determining factor for success or failure. For in the treatment of juveniles, the complete confidence of an inmate in the moral leadership of his educator is indispensable. No amount of supervision can replace the effect of this personal relationship.

Other countries may well remember the experience of Russia which dissolved her youth committees with the assertion that lack of properly trained personnel had rendered them ineffective.