

SIGRID HEMPELMANN

**THE AGE OF CRIMINAL RESPONSIBILITY -
A JAILBIRD AT THE AGE OF TWELVE?**

**A COMPARISON OF THE GERMAN AND NEW ZEALAND
LEGISLATION**

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William Shakespeare, Winter's Tale, Act 3, Scene 3

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The paper investigates the Public Crime Statistics regarding child delinquency and focuses on children between the ages of twelve and fourteen. The statistics show the enormous number of offences committed by children and, especially, the massive increase in their delinquency rate in the 1990's. It is also shown that the offences are not only violent crimes but include very serious crimes, which must be penalised accordingly.

In order to answer the question whether it is necessary to lower the age of criminal responsibility, New Zealand's legal system is presented. In New Zealand children under the age of ten are not criminally responsible. Between the ages of ten and fourteen it must be proven that the young offender has comprehended the act as a crime, which would involve an adult in criminal liability. Further, they must have known that their act or omission was either against the law or was morally wrong. New Zealand provides various measures for young offenders, such as meetings, formal Police cautions, and the Family Group Conference. Special attention is drawn to the Family Group Conference, which is a meeting with the affected parties, such as the child's family, the Police, and the victim.

Lastly, the paper recommends that lowering should lower the age of criminal responsibility to twelve. The age of criminal responsibility should not be dependent on the offence. Necessary should not give existing legal measures for juvenile offenders, but instead adopt an additional measure, such as the Family Group Conference.

The rest of the paper (including abstract, table of contents, summary, bibliography and appendix) consists of approximately 11250 words.

Abstract

This research paper analyses the German legislation regarding the age of criminal responsibility. It questions whether the existing provisions are adequate or need to be altered. In Germany, children are criminally responsible at fourteen. Due to an enormous increase in child delinquency during the 1990's, a debate has started about whether the age limit should be lowered to twelve.

This paper gives a brief overview of the historical background of German youth criminal law, the relevant laws and the adoption of the current provisions dealing with the age of criminal responsibility. For conviction, it is not enough that all elements of the crime have been established. The offender has to be mature enough in moral and mental development to appreciate the wrongfulness of their actions and to act in accordance with this appreciation. If these prerequisites are fulfilled, the German Youth Criminal Law (Jugendgerichtsgesetz - JGG) provides various legal consequences the court may impose, such as directives, educational support, and youth imprisonment. The paper compares these consequences with the ones legally fixed in Volume VIII of the Social Security Code (Sozialgesetzbuch - SGB VIII), which applies to children under fourteen. The purpose of penalising young offenders is to support, care and protect them, so educational measures take priority. Thus, for youths, imprisonment is considered to be the last resort and can only be imposed, if the perpetrator has committed a very serious offence or a multitude of offences. The main disadvantage of the SGB VIII compared to the JGG is the fact that the measures are not enforceable without the parents' or legal guardians approval. If this approval is withheld, such measures must not be applied, even if it is in the child's best interest.

This paper investigates the Police Crime Statistics regarding child delinquency and focuses on children between the ages of twelve and fourteen. The statistics show the enormous number of offences committed by children and, especially, the immense increase in their delinquency rate in the 1990's. It is also shown that the offences are not only youthful escapades but include very serious crimes, which must be penalised appropriately.

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Lastly, the paper recommends that Germany should lower the age of criminal responsibility to twelve. The age of criminal responsibility should not be dependant on the offence. Germany should not alter existing legal measures for juvenile offenders, but instead adopt an additional measure, similar to the Family Group Conference.

Statement on word length

The text of this paper (excluding abstract, table of contents, footnotes, bibliography and appendices) comprises approximately 11750 words.

I INTRODUCTION

On 12 February 1993 in Liverpool, two ten-year-old boys battered the two-year-old James Bulger to death and placed his body on the railway line, where a passing train mutilated it further.¹ In August 1999, three boys aged between ten and twelve raped an eight-year-old girl in Ichenhausen (Germany).² In 1998 in Jonesboro (Arkansas), two eleven and thirteen-year-old children shot four pupils and one teacher, and injured ten other people.³ In New Zealand on 12 September 2001, twelve-year-old Bailey Junior Kurariki⁴, with a group of six other children and juveniles under the age of seventeen, killed the pizza deliverer Michael Choy.⁵ Such lurid tales of criminal children give the impression that offenders all over the world are becoming much younger and, at the same time, their offences more serious.

In respect of child delinquency, investigations are carried out worldwide. These investigations hope to reveal to find out the origin of criminal actions and, the same time, help ways how to counteract them. It is impossible to determine one single reason for children becoming delinquent. Frequently it is a combination of multiple aspects, such as school and/or family problems. One frequently mentioned accusation is that the legislation might be insufficient. It is said that the age limit for "penalising" young offenders as well as the legal measures are unsatisfactory. Oftentimes, there are demands to penalise young offenders harder. A further proposal is to lower the age of criminal responsibility and consequently be able to "punish" young offenders at an earlier age and thus more effectively.

¹ In November 1993, when they were both eleven, a jury at Preston convicted them of a murder, which the trial judge, Morland J, described as "an act of unparalleled evil and barbarity". He imposed the mandatory sentence of detention during Her Majesty's pleasure, and recommended to the Secretary of State that they should serve eight years to meet the requirements of retribution and general deterrence.

² As a consequence to this crime, the state offered the perpetrator's voluntary participation to group work at the Youth Welfare Office. "Die Eltern der kleinen Täter stehen unter Druck" Die Welt, 8 August 1998.

³ The court imposed an undetermined term of detention (maximal up to the age of 21), Michael Braun "Kinder in Tarnanzügen töten Mitschüler" Die Welt 26 March 1998.

⁴ Bailey Junior Kurariki had not been to school for two years. He was thrown out of five schools before he was enrolled at the Correspondence School. Leah Haines "Child Youth and Family Services does not know if all the vulnerable children and young offenders in its care go to school." (21 October 2003) available at STUFF <<http://www.stuff.co.nz/>> (last accessed 30 October 2003).

⁵ This killing made Kurariki the youngest person ever to be convicted for manslaughter in New Zealand.

In Germany these issues have received a lot of attention in the last decade. According to Police Crime statistics, the German child delinquency rate increased dramatically in the 1990's.⁶ The number of offences committed by each individual child also seemed to rise. Some children offend more than 200 times before they reach the age of criminal responsibility and can be taken to court.⁷ Based on these facts, one of the most common demands is to reduce the age of criminal responsibility⁸ from fourteen years of age down to twelve. Surveys have shown that only 46 % of all Germans who have been questioned about this issue disagreed with lowering the age limit.⁹ Politicians in particular argue for reduction, citing regulations of other European countries.¹⁰ Proponents suggest that reducing the age limit will dramatically lower child delinquency rates, while antagonists argue that even if this were true, the problem of high child delinquency rate cannot and must not be solved by imprisoning children.¹¹

This paper will examine the question of whether it is appropriate to lower the age of criminal responsibility in Germany to age twelve in order to reduce the delinquency rate. By giving a brief overview of the historical background it becomes obvious that the determination of a strict age limit is somewhat arbitrary. The age limit has been changed many times in the past, mainly

⁶ See Appendix B and C.

⁷ Günther Kaiser "Internationale Tendenzen der Jugendkriminalität und des Jugendkriminalrechts" (2001) DRiZ 460, 461.

⁸ It is not clear which meaning forensic psychiatrists are really asked for when they are supposed to assess responsibility. H L A Hart illuminated the many possible meanings in the following extremely interesting example: "As captain of the ship, X was {1} responsible for the safety of his passengers and crew. But on his last voyage he got drunk every night and was {2} responsible for the loss of the ship with all aboard. It was rumoured that he was insane, but the doctors considered that he was {3} responsible for his actions. Throughout the voyage he behaved quite {4} irresponsibly and various incidents in his career showed that he was not a {5} responsible person. He always maintained that the exceptional winter storms were {6} responsible for the loss of the ship, but in the legal proceedings against him he was found {7} criminally responsible for his negligent conduct, and in separate civil proceedings he was {8} legally responsible for the loss of life and property. He is still alive and he is {9} morally responsible for the death of many women and children." This example shows six different meanings of responsibility: 1. Causal responsibility, 2. Moral responsibility, 3. Accountability, 4. Culpability, 5. Liability, 6. Answerability. Norbert Nedopil "Assessing Responsibility – A Misleading Duty" available at <<http://www.mpipf-muenchen.mpg.de/MPIPF/vw-symp-texte/nedopil.pdf>> (last accessed 30 October 2003).

⁹ Kriminalität – "Strafe schon ab zwölf Jahren?" (1997) Polizei Kurier available at <http://www.polizei.rlp.de/index2.htm?/050service/060polizei_kurier/010juli_97/top.htm%23inhaltsangabe> (last accessed 25 November 2003).

¹⁰ Die Welt, 21 June 1997 and 4 August 1997. In Spain, for example, children are criminally responsible at the age of 6, in England at the age of ten, and in France at the age of thirteen. See Curt Weinschenk "Beginnt die Schuldfähigkeit wirklich erst mit der Vollendung des 14. Lebensjahres?" (1984) 1 MschrKrim 15, 16.

¹¹ See the federal minister of justice, Mrs. Däubler-Gmelin, Die Welt, 14.04.1999, S. 4.

because of political and social changes. Further, the prerequisites for prosecuting young offenders are presented and the potential legal consequences are discussed. In this respect, the paper distinguishes between the measures of the Youth Criminal Law and Volume VIII of the Social Security Code. Based on police crime statistics the paper concludes that changes need to be made in Germany. It will show the necessity of altering the current legal framework in response to the significant increase in child delinquency in the last decade as well as to the seriousness of some offences committed by children. With respect to the issue in question, New Zealand's provisions and especially the legal consequences for young offenders are demonstrated. Finally the paper investigates the appropriateness of three potential proposals and will conclude with some recommendations.

II CRIMINAL RESPONSIBILITY

It is neither logically nor scientifically proven that children at a certain age are mature enough to be criminally responsible. The determination of a strict age limit is rather arbitrary. Consequently, the age of criminal responsibility has always been an issue for discussion and argument and its assessment has been a challenge to forensic psychiatrists and philosophers. The respective German provisions both in common law and legislation have been altered many times in the past for various reasons. Therefore, the tremendous increase in child delinquency could well be a good reason for further revisions.

A Historical Background

1 Before 1923

Every century drew its own distinction between 'old' and 'young' offenders, often separated by gender.¹² Many times there existed neither regulations dealing explicitly with the age of criminal responsibility nor special laws for children or juveniles. Young offenders were, as a consequence, subject to the same punishments and laws as adults.

In the 12th century the Council of Lübeck developed a Common Law, the so-called "Lübische Recht", which was over time adopted by approximately 100

¹² The age of criminal responsibility was not the same for males and females.

towns around the Baltic Sea during the medieval times.¹³ It provided inter alia a regulation, which was called the apple-test. According to this test, a child below the age of twelve years, who has killed another child, has to choose between an apple and a penny. If the child grabbed the penny, he or she was punishable, if the apple was chosen, the child was deemed incapable of crime.¹⁴ In the following century, Eike von Repgow fixed in his *Sachsenspiegel*¹⁵ the limit for liability at the age of twelve.¹⁶ About fifty years later, the age of liability was stipulated in the *Schwabenspiegel*¹⁷ at seven.¹⁸

Contrary to this Common Law, the *Constitutio Criminalis Carolina*¹⁹ did not impose a specific age of criminal responsibility, instead it provided special rules for juvenile offenders committed a simple theft. One rule provided the option to mitigate the sentence if the offender was younger than fourteen.²⁰ Due to this mitigation, capital punishment could be commuted into corporal punishment. All other crimes apart from simple theft were punishable independent of the offender's age.

Between the 16th and 18th century, children below the age of seven were in principle considered incapable of crime. The law provided, however, in special cases, corporal punishment.²¹ The Penal Codes of the Prussian States 1851 and of Bavaria 1861 were both modelled after the French legal code²² and thus

¹³ Gesellschaft für Schleswig-Holsteinische Geschichte <<http://www.geschichte.schleswig-holstein.de/index.htm>> (last accessed 18 October 2003).

¹⁴ Ulfried Neumann, Ingeborg Puppe, Wolfgang Schild (ed) *Kommentar zum Strafgesetzbuch* (looseleaf, Nomos, Baden-Baden, Strafgesetzbuch) StGB § 19 (last updated March 2003).

¹⁵ The *Sachsenspiegel* is the oldest German-language chronicle of Common Law. It was published at around 1225.

¹⁶ Sächsische Landesbibliothek – Staats- und Universitätsbibliothek Dresden <<http://www.tu-dresden.de/slub/proj/sachsenspiegel/sachs.html#eike>> (last accessed 15 October 2003).

¹⁷ The *Schwabenspiegel* (around 1275) has been apart from the *Sachsenspiegel* the most significant book of law in the medieval times.

¹⁸ Juristenlatein-Sachsen-Schwabenspiegel <<http://www.recht-find.de/schwabenspiegel.htm>> (last accessed 5 October 2003).

¹⁹ The *Constitutio Criminalis Carolina*, which was the first German Penal Code, was enacted in 1532. Learn:line NRW. <<http://www.learn-line.nrw.de/angebote/neuemedien/medio/tele/hexen/carolina.htm>> (last accessed 16 October 2003).

²⁰ Art. 164.

²¹ Ulfried Neumann, Ingeborg Puppe, Wolfgang Schild (ed) *Kommentar zum Strafgesetzbuch* (looseleaf, Nomos, Baden-Baden, Strafgesetzbuch) StGB § 19 (last updated March 2003).

²² Friedrich Giese *Preußische Rechtsgeschichte, Übersicht über die Rechtsentwicklung der Preußischen Monarchie und ihre Landesteile, Ein Lehrbuch für Studierende*, (1 ed, Berlin - Leipzig, 1920) 163; Gerd Heinrich *Geschichte Preußens, Staat und Dynastie, Propyläen* (1 ed, Frankfurt am Main - Berlin - Wien, 1981) 315; Utikal in Manfred Schlenke *Geschichte Preußens, Eine Bilanz in Daten und*

determined that an alleged offender, who is under the age of sixteen, shall be found not guilty, if the court also finds that he or she did not act with discernment.²³

In 1871 a new Penal Code, called *Reichsstrafgesetzbuch* (RStGB), was adopted. Although it did not provide any special regulations regarding the culpability of, and the criminal procedure for, young offenders, the RStGB expressly stipulated the age of criminal responsibility. According to section 55, children were incapable of crime, if they were under the age of twelve when the crime was committed. Further, section 56 stated that young offenders between the age of twelve and eighteen had to be found not guilty, if they did not have criminal accountability²⁴ at the time of the offence. Section 57 provided the opportunity to mitigate the punishment for offenders aged between twelve and eighteen.

2 The Youth Criminal Law of 1923

The first German Youth Criminal Law, called *Jugendgerichtsgesetz* (JGG), became effective on 16 February 1923.²⁵ It was the first step to an expressly fixed Juvenile Court Law and, at the same time, a separation from the "general" Criminal Law. In this context, sections 1 to 3 JGG replaced sections 55 to 57 RStGB. Under section 1 JGG, a juvenile offender was defined as being at least fourteen but below eighteen, either at the time of the crime or at the time of the trial. Juveniles were afforded some protection. They could not, for example, be sentenced to death or to terms in penitentiary. Perpetrators aged under fourteen could not be prosecuted for a criminal offence under any circumstances²⁶, whereas the prerequisite for criminal accountability could only be applied under certain conditions to juveniles aged at least fourteen.²⁷ Further, section 16 of the

Deutungen (2 ed, Freiburg-Würzburg, 1991) 210; Mieck in Otto Büsch *Handbuch der Preussischen Geschichte, Das 19. Jahrhundert und große Themen der Geschichte Preußens* Volume II (1 ed, Gruyter, Berlin - New York, 1992) 96; Jodocus D. H. Temme *Lehrbuch des Preußischen Strafrecht* (1 ed, Berlin, 1853) 50.

²³ S 42 of the Penal Code of the Prussian States 1851.

²⁴ Criminal accountability means soundness of mind or capacity for penal responsibility.

²⁵ Ulfried Neumann, Ingeborg Puppe, Wolfgang Schild (ed) *Kommentar zum Strafgesetzbuch* (looseleaf, Nomos, Baden-Baden, Strafgesetzbuch) StGB § 19 (last updated March 2003).

²⁶ S 2 JGG.

²⁷ S 3 JGG.

JGG demanded juvenile education be the aim of penal enforcement and that juveniles have to be separated from adults.²⁸

3 *Changes in the time of the Third Reich*

On 6 November 1943, the Youth Criminal Law was altered and replaced by the Federal Juvenile Criminal Court Law, called *Reichsjugendgerichtsgesetz* (RJGG). This new law marked the culmination of Nazi reform to juvenile criminal law in so far as the political intentions of the Nazi state shaped the legal reforms.²⁹ The RJGG was presented as a modern criminal law. It was different from the JGG in many respects, including the age of discretion, jurisdiction of cases and sentencing. In addition, the age of criminal responsibility was lowered again to twelve so that young offenders could be prosecuted in "exceptional cases". If the culprit's character indicated that he or she would develop into a criminal, then prosecution on account of "healthy sentiment" would become necessary.³⁰ Paragraph 1 of section 20 of the same decree provided for the transfer of juveniles to an adult court, if the juvenile had moral and intellectual faculties comparable to an eighteen-year-old and healthy sentiment required this action because of the "particularly wicked character of the perpetrator and because of the seriousness of the deed." In cases where the above condition could not be met, transfer was still possible if the personality of the perpetrator and the nature of the act showed "that the juvenile was a major criminal of a degenerate character and the protection of the people demanded such treatment."³¹

4 *The Youth Criminal Law dated from the 04.08.1953*

After 1945 the regulations in the RJGG were not explicitly repealed. Instead, certain regulations were not used for judicial decisions, which caused demands for fundamental law revisions. Finally, in 1953 the new German Youth Criminal Law (JGG) was enacted. The age of criminal responsibility was raised and again

²⁸ Jörg Wolff, *Jugendliche vor Gericht im Dritten Reich: Nationalsozialistische Jugendstrafrechtspolitik und Justizalltag* (1 ed, Beck, Munich, 1992) 1-4.

²⁹ Jörg Wolff, *Jugendliche vor Gericht im Dritten Reich: Nationalsozialistische Jugendstrafrechtspolitik und Justizalltag* (1 ed, Beck, Munich, 1992) 1-4.

³⁰ Heinz Kümmerlein, "Das neue Reichsjugendgerichtsgesetz, Part 1", *DJ*, 1943, p. 531.

³¹ S 20 para 2 RJGG.

set at fourteen.³² The legislator selected fourteen because juveniles of that age could leave school and legally enter the workplace and are mature enough to be considered criminally responsible. In 1962, due to its general importance, this provision was taken out of the JGG and put into the German Penal Code. Further, a new age limit for juvenile offenders was provided. Accordingly, offenders aged from eighteen up to the completion of their 21st year came under the JGG provisions.

This JGG is the foundation for the Youth Criminal Law in Germany to this day. In addition to this law, there are standardised directives. While these directives are binding for prosecutors, they are only recommendations for the Youth Courts.

5 *Interim conclusion*

The historical background shows that there has been a long debate about the best way to deal with young offenders. The need for special regulations has been recognised. It is essential to treat young offenders differently from adults. This knowledge led, finally, to the adoption of the JGG. Further, it has become clear that children may not always be sufficiently mature and/or do not understand the consequences at the time of the act or omission to be held responsible. As a consequence, over centuries, common law and legislation devised age limits below which children were declared incapable of crime and therefore not "punishable".³³ Many different reasons influenced the determination of these age limits. The purpose of considering children not criminally responsible at a certain age also varied. It is reasonable to demand a reduction of the age of criminal responsibility in order to react more efficiently to child delinquency.

B *Legal Framework*

German legislation provides an enormous range of legal measures applicable to young offenders. The imposition of potential measures depends on the offender's age as well as on the fulfilment of prerequisites. It is essential to analyse these prerequisites to ensure that children aged under fourteen are

³² S 1 para 2 JGG.

³³ This paper explains at a later stage that children do not get punished but rather educated. This paper will, however, use the term "punish" as a synonym for the imposition of legal measures.

generally able to fulfil them. The relevant laws and provisions dealing with the age of criminal responsibility will be briefly described.

1 Relevant laws

The JGG is primarily concerned with juvenile crimes and potential legal consequences for young offenders. The type of consequence that will be ordered depends, inter alia, on the offender's age at the time of the act. In this respect, the JGG differentiates between three age groups³⁴: Children, teenagers, and adolescents. By definition children are aged from zero up to fourteen, teenagers from fourteen to eighteen, and adolescents from eighteen to twenty-one. For each group there are special rules on how to combine the use of the JGG and the criminal code for adults. Apart from the JGG there are other important laws and legal measures applicable to young offenders.

The German Penal Code³⁵ regulates the most important and most common offences. In exceptional cases other acts include criminal provisions, too.³⁶ Outstanding offences are valid for all people, both youth and adults. The Code of Criminal Procedure³⁷ deals with the rules of carrying out criminal procedure. The most important principles are based on the German Constitution³⁸, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The legal consequences for child offenders aged below fourteen, are fixed in Volume VIII of the Code of Social Law.³⁹ The potential measures do not exclusively deal with the young offender but also include the family and other people in the decision-making.

2 Relevant provisions

With respect to the age of criminal responsibility, two particular provisions have to be taken into consideration.

³⁴ S 1(2) JGG.

³⁵ Called Strafgesetzbuch (StGB).

³⁶ For example, the Weapon Act (Waffengesetz).

³⁷ The so-called Strafprozessordnung (StPO)

³⁸ Called "Grundgesetz", abbreviation: GG.

³⁹ So-called Sozialgesetzbuch – SGB VIII.

Section 19 StGB deals with the criminal incapacity of the child. It states: "A child who, at the time of the act, is under the age of fourteen has no criminal capacity." This section lays down an irrebuttable presumption that a child under the age of fourteen does not have under any circumstances the required mental and moral maturity to understand the wrongfulness of their action or omission.⁴⁰ In this respect, in contrast to some other countries, the German law does not consider the gravity of the respective act. Even if the child commits a serious offence such as manslaughter it is incapable of crime.

On the other hand, this provision indicates that offenders aged at least fourteen, could, in principle, be guilty of any crime. The provision does not consider the fact that children vary in their mental and moral development and maturity. The determination of a certain age limit without any option of considering the child's actual development and degree of understanding could lead to unjust decisions. Further, the imposition of legal measures might not serve its purpose.⁴¹ As a solution to this problem, the legislator enacted section 3 JGG, which enables the court to individually investigate each offender's degree of maturity. It states that "the juvenile offender must be mature enough in his moral and mental development to appreciate the wrongdoing of his crime and to act in accordance with their appreciation."⁴² This prerequisite has to be proven, in addition to the age, both by the prosecutor and the court. This usually requires a test, which is divided into two steps: (1) On the "biological level" the general moral and mental development of the offender will be investigated. (2) On the "psychological level" it must be proved whether the alleged delinquent has the maturity to appreciate the wrongdoing and to act in accordance with this appreciation. If the felony is a well-known act such as theft, bodily injury or damage to property, the required maturity is assumed. At the age of fourteen juveniles know that it is prohibited to hurt other persons and steal or destroy their property.⁴³ If the trial lawyer wants to convince the court of the offender's

⁴⁰ Hans-Heinrich Jescheck, Wolfgang Russ, Günther Willms *Strafgesetzbuch Leipziger Kommentar, Volume 1* (10 ed, de Gruyter, Berlin, 1985) StGB § 19; Herbert Tröndle, Thomas Fischer *Strafgesetzbuch und Nebengesetze* (51 ed, Beck, München, 2003) StGB § 19.

⁴¹ The intention of penalising will be shown in paragraph four of this paper.

⁴² S 3 JGG.

⁴³ Surveys have shown that children at the age of seven already have this knowledge. They know exactly that it is prohibited to destroy other people's property. Even though they have this knowledge

lack of capacity, they have to list special circumstances within the offender's responsibility which make a "penalisation" impossible. This test must relate to the offender's capacity at the time of the act, and not at the time of the decision. If there is no reliable assessment of the young offender's responsibility for an act, the court must ask for child psychiatric or psychological expert evidence. If the court concludes that the juvenile offender is not sufficiently morally and mentally developed to be "penalised, the court has to find the young offender not guilty. All things considered, there exists a rebuttable presumption for juveniles to be criminally responsible, if not proven otherwise.

In conclusion, the German legislature has determined the age of criminal responsibility and its prerequisites in detail. The age limit is, however, not a strict rule but rather makes it possible to allow discretion depending on the child and the nature of the offence. Ultimately, it is the court's decision whether juvenile offenders are actually mature enough to be "punished". Young offenders aged under fourteen are specially protected by law and thus may or may not be considered sufficiently mature.

III PREREQUISITES FOR PROSECUTION

In order to prosecute young offenders, certain requirements have to be fulfilled. First, juveniles have to complete the respective elements of an offence⁴⁴ and, secondly, be responsible for their acting. Although it is often said that children aged under fourteen are not mature enough in their development to understand their wrongdoing, this paragraph will prove the converse.

With respect to the second requirement and the examined issue, it has to be analysed, whether the average child of today possibly fulfils this reasonable and essential prerequisite already under the age of fourteen. If this question had to be negated, a reduction of the actual age limit could, under no circumstances, being recommended. A reduction would be disproportional and not practicable. The entire procedure would be too costly and time-consuming, because of the court's obligation to positively assess the juvenile's responsibility and their maturity. If

they usually have problems with recognising the distinction between stealing, for example, food out of the fridge at home and stealing something in a supermarket.

⁴⁴ They are mainly fixed in the StGB.

the offender's responsibility is not assessed or there are doubts, the court must not order any educational measures, but rather ask for expensive and delaying youth-psychiatric or child-psychological expert evidence.

1 Maturity

The crucial question is, therefore, whether juveniles who are younger than fourteen are, in general, mature enough in their moral and mental development to appreciate the wrongdoing of their crime and, secondly, to act in accordance with their appreciation.⁴⁵ This issue is highly disputed. Considering the bodily development of juveniles, it is accepted that nowadays children are more mature than children were fifty years ago. Some surveys prove that girls reach their sexual maturity with an average age of 11.5 and boys with an average age of 12.5 years.⁴⁶ Further, they are earlier and better orientated and, in particular, better informed.⁴⁷ Some sociologists found out that children at the age of thirteen have already an enormous political interest that, inter alia, led to the demand of reducing the suffrage-age in Germany from eighteen years down to sixteen years.⁴⁸ Furthermore, three-quarter of all children aged thirteen have their own bank account and are authorised to dispose of their bankcard.⁴⁹ Considering these aspects it is obvious that children's degree of development and independence justifies a reduction in the age limit. Contrariwise it is argued that the initiation of puberty at an earlier stage does not automatically lead to an earlier emotional, moral and social maturity of any child.⁵⁰ This rather results in a delayed maturity because children stay longer at their family home, leave school later and are overloaded with an incredible amount of information through media, that they cannot always cope with.

⁴⁵ S 3 JGG.

⁴⁶ "Reden und Vorträge – "Wahlalter" (1997) available at <<http://www.spd-berlin.de/home/thomas.krueger/votr160.htm>> (last accessed 30 October 2003).

⁴⁷ It occurs frequently that criminal children elucidate their parents and the Police of their criminal irresponsibility as a result of their low age. Werner Hinz "Strafmündigkeit ab vollendetem 12. Lebensjahr?" (2000) ZRP 107, 110.

⁴⁸ Klaus Hurrelmann, Kieler Nachrichten, 10 June 1998.

⁴⁹ Klaus Hurrelmann, available at <<http://www.spd-berlin.de/home/thomas.krueger/votr160.htm>> (last accessed 30 October 2003).

⁵⁰ Arthur Kreuzer "Ist das deutsche Jugendstrafrecht noch zeitgemäss?" (2002) NJW 2345, 2348.

2 *Act in accordance with their appreciation*

Secondly, the provision requires offenders being able to act in accordance with their appreciation. Thus, children have to be able to control their behaviour and resist the chance of committing the crime. The affirmation of this prerequisite might be problematical in some cases. It is argued that the investigation of this prerequisite requires by all means a complicated and therefore expensive maturity-test.⁵¹ In practice, however, this test is in principle not required but rather unproblematic.

3 *Interim conclusion*

Taking all mentioned aspects into account, it is obvious that children aged under fourteen realise the wrongdoing of their crime. If they are mature enough to understand complex bank transactions and political contexts, they are also able to differentiate between wrong and right. They are definitely aware of society's values and, thus, able to resist perpetrating and acting in accordance with their appreciation. These aspects are especially applicable to children who have already committed a crime and were confronted with their wrongdoing before. It would be unreasonable saying that those children did not know about their wrongdoing.

It is problematic, however, to exactly determine when children should be held criminally responsible. Should the age be set at twelve, ten or even eight years? As each child matures at a different age, it is extremely difficult to answer this question. Even though there is the option of entirely abolishing a certain age limit and rather investigating each child offender regarding their degree of maturity and, thus, their criminal responsibility, this alternative would barely be practicable. The procedure would evoke enormous costs and be very time-consuming due to the obligation of mandating a child psychiatrist or psychologist regarding this issue. As younger children are considered criminally irresponsible, these costs are in most cases dispensable. The need for constituting an age limit is, therefore, certain.

⁵¹ Karl Thomas "Der Kinderdelinquenz Einhalt gebieten – aber wie?" (1999) ZRP 193, 194.

As mentioned earlier, surveys have shown that children under the age of ten are neither bodily nor mentally capable of understanding their wrongdoings. The competence of offenders aged between ten and fourteen years is, however, much harder to evaluate. A closer discussion of the problematic determination of the age of criminal responsibility will be given in the following chapters.

IV LEGAL CONSEQUENCES FOR CHILD OFFENDERS

Regarding the issue in question, it is essential to have a closer look at the legal consequences for child and juvenile offenders. A reduction of the age of criminal responsibility would be strongly required, if the measures of the SGB VIII, in comparison with the ones of the JGG, are insufficient and therefore ineffective. Thus, it is essential to carefully analyse and compare the potential legal measures. In this context it is also important to consider the objective of "penalising" young offenders. If this objective were not fulfilled, it could be argued that the legal consequences might not be adjusted to the respective age group.

A The Goal of Penalising

Regarding the goal of penalising offenders, there do exist a few controversial theories dealing with the questions of whether and how to punish. They further determine the objective of punishment. The "theory of retaliation"⁵² assesses the sense of punishment as reasonable compensation for the offender's guilt. This theory does not take the offender's social future into consideration but focuses exclusively on the previous offence. Following the "prevention theory"⁵³, punishment aims to prevent young offenders from re-offending. The offence itself is not motivation for punishment but rather the cause. In order to find a reasonable punishment it is necessary to consider the offender's potential future development. The current and generally accepted theory is called "amalgamation theory". It connects the objects of the first two theories, so that prevention, the offender's rehabilitation, atonement for guilt, and retaliation are relevant in order to determine a reasonable punishment.⁵⁴

⁵² The so-called "Vergeltungstheorie" or "absolute Strafzwecktheorie" was opined inter alia by Immanuel Kant [1724-1804] and Georg Friedrich Wilhelm Hegel [1770-1831].

⁵³ The so-called "Präventionstheorie" or "relative Strafzwecktheorie".

⁵⁴ BVerfGE 45, 187, 253.

All these principles apply to adult offenders but are only partially applicable to juveniles. The exclusive purpose of the JGG determined by the jurisprudence is the education of young offenders. Atonement as well as compensation for guilt can exclusively be considered in order to educate the juvenile offender. When considering the determination of any legal measure, general crime prevention is not permitted to be considered under any circumstances.⁵⁵ The Federal Court of Justice established this principle almost fifty years ago judicially confirmed it many times. Nonetheless, there have been some critics claiming that this purpose is not practical. It is argued that prevention, as a matter of course, has to be considered when imposing penalties.

These critics overlook that crime prevention in particular is the direct goal of the JGG. By imposing legal measures on young offenders, various indirect intents are considered, such as confronting the offence and consequently prevention from re-offending.

B The Jugendgerichtsgesetz (JGG)

The JGG provides an enormous range of legal consequences applicable to juvenile offenders. They can be largely divided into two categories: measures with and without punishing character.

1 Legal consequences without punishing character

The legal measures without punishing character comprise directives and educational support.⁵⁶

(a) Directives

Directives are commands or interdictions that intend to govern the juveniles' lifestyle and also promote and secure their education. The Court is only allowed to impose directives if there is both the need and also the ability to educate the offender.⁵⁷ The Act supplies several examples of different directives, such as work without pay for community service. Further, the court may order the

⁵⁵ BGH, JR (1954) 149.

⁵⁶ Their existence is legally fixed in s 9 JGG.

⁵⁷ S 10 JGG. This means that the court is not allowed to order directives, if the teenager is criminal, neglected or considerable endangered, because in these cases education is considered to be impossible. According to a survey, there are 57 cases in Munich that are impossible to rehabilitate. Uwe Diederichsen "Das Mehmet-Menetekel" (1998) NJW 3471, 3474.

juvenile to be placed under the care and supervision of a special person, to attend a social training course or to participate in the provision of compensation to the victim by the offender.

The project of compensation for the victim by the offender is a relatively new institution which has proved very successful. It is suggested that the use of this provision be expanded. As conflicts between the involved parties often arise out of the offence, the provision intends to solve these conflicts, inter alia, by compensating victims for their damages.⁵⁸ Participation is voluntarily for both the victim and the offender. This meeting can be initiated, inter alia, by the Police, the Public Prosecution Service, the Court, and the involved parties themselves. In order to find out whether the involved parties are willing for an out of court reparation, professional persons advise both the victim and the offender in separate meetings. If the parties eventually accept reparation, the details will be negotiated in a further meeting, in which both the offender and the victim are present.

Even though legal measures are fixed in section 10 JGG, they are not exhaustive. Both the court and the prosecutor may impose other, not explicitly stipulated, directives, if this is appropriate for the juvenile's education. The maximum duration of any ordered directive is two years, which will be fixed by the judge⁵⁹. If the young offender does not follow the given directive, the judge might order a confinement of a maximum of four weeks to enforce the offender's compliance with the directive.⁶⁰

(b) Educational support

As the second consequence for young offenders the law provides support for educational reasons, which include two potential measures: the order of supervision for the teenager⁶¹ and the order to stay in a State home for

⁵⁸ "Täter-Opfer-Ausgleich" available at Niedersachsen Staatsanwaltschaft Braunschweig <<http://www.staatsanwaltschaft-braunschweig.niedersachsen.de/default.htm>> (last accessed 20 November 2003).

⁵⁹ Fixed in s 11(1) JGG.

⁶⁰ S 11(3) JGG. After enforcing the confinement the enforcement of the directive either could be continued or revoked. It is the judge's duty to inform the juvenile offender of these consequences in the pronouncement of the judgement. Without this information it is impossible to continue the directive.

⁶¹ Ss 12 No1 JGG, 30 SGB VIII.

education⁶². Although these measures apply for young offenders, its prerequisites are fixed in the SGB VIII rather than in the JGG. Only after the Youth Welfare Department has been heard is the judge legally permitted to impose educational support.⁶³ Supervision aims to support youth offenders in coping with their development problems.⁶⁴ As the supervisors' intention is to advise and support young delinquents instead of directing them, the offenders' social environment and the relationship to their families have to be taken into account. The supervision is completed, when either the educational aim is reached or the offender attains the age of eighteen. The order to stay in a State home for education requires appropriateness to support the juvenile offender in his development.

As the order of supervision and the order to stay in a State home for education are legally not enforceable, they are seriously flawed.

2 *Legal consequences of punishing character*

Although education is determined the JGG's exclusive goal, means of correction⁶⁵ and youth imprisonment⁶⁶ are two legally stipulated measures that indirectly intend to punish the young offender.

(a) Means of correction

If young offenders are considered criminal, neglected or considerably endangered, the court is not allowed to order means of correction as disciplinary measures⁶⁷, as education is considered to be unattainable. The JGG provides, however, three different discipline measures⁶⁸ which are the order of caution by sentence, the order of duties and conditions, and the order of confinement.

⁶² Ss 12 No2 JGG, 34 SGB VIII. There are two different forms of State homes: the closed and the open State home. In order to impose a stay in an open State home, the agreement of the offender and the support of his parents are required. The pedagogical effectiveness of a stay in a closed State home is controversial.

⁶³ S 12 JGG.

⁶⁴ S 30 SGB VIII.

⁶⁵ S 13 JGG.

⁶⁶ S 17 JGG.

⁶⁷ The character of the discipline measures either as an educational measure or a punishment is controversial. However, it is generally accepted that the confinement has a repressive character.

⁶⁸ S 13(2) JGG.

The order of caution by sentence is a serious explanation to the young offender. It is a formal reprimand by the Court, intending to clarify the offence's damnability.⁶⁹ It is most often imposed on juveniles who either offend for the first time or commit minor offences.

As an order of duties and conditions the JGG determines compensation for damage, the duty to apology to the victim and the payment of a fine to charitable institution.⁷⁰ Compensation for damage only comes into consideration if there is a claim against the teenager based on civil law. The apology to the victim can only be ordered if the victim is willing to accept the offender's excuse. The payment of fines is only allowed to be imposed for minor offences and when the teenager is able to pay the fine from his own resources.⁷¹

The JGG provides three different confinements. They vary in its duration, dependant on the seriousness of the crime committed. They can be ordered for a weekend, for up to four days, and for one to four weeks. The confinement has to include weekly leisure time and must not interfere with school or work.⁷² As a result it is generally from Saturday morning to Sunday evening. The confinement for the maximum of four days can be ordered instead of the weekend confinement.⁷³ As it is longer and especially continuous, it is more appropriate with respect to the JGG's goal and, thus, more often imposed by the courts. Confinements intend to show young offenders the seriousness of their conduct through giving them a first warning, encouraging them to think about the offence, and learn from their mistakes. As an educational tool the imposition of this measure should follow as quickly on after the offence as possible. In practice, however, the youth criminal procedure often goes on for months, not only from the act to the decision but also from the time between sentence and enforcement. In order to keep the juveniles away from serious offenders, the enforced confinement occurs in special detention centers.

⁶⁹ S 14 JGG.

⁷⁰ S 15 JGG. Although, the compensation between the offender and the victim is not explicitly determined as a measure of diversion, the practice developed, however, the project of compensation between the offender and the victim.

⁷¹ The Court cannot order the payment of a fine, when it knows, for example, that the young offender will take their parent's money for balancing their debts.

⁷² S 16(2) JGG.

⁷³ S 16(3) JGG.

(b) Youth-imprisonment

Due to its character as a deprivation of liberty, the courts are only allowed to impose youth-imprisonment in two expressly regulated cases. On the one hand, the nature of the respective offence shows the offender's damaging tendencies. By definition in permanent jurisprudence, damaging tendencies means "serious flaws in personality and education, which could result in the danger of new criminal acts, if the young offender is no longer in education."⁷⁴ These damaging tendencies have to be ascertained at the time of the judgment so that the offender's behaviour following the offence also has to be taken into consideration.⁷⁵ As a further prerequisite other educational measures as well as means of correction must seem insufficient. On the other hand, the gravity of the offender's guilt may necessitate the imposition of youth-imprisonment. The extent of guilt includes the offender's guilt, the degree of his criminal responsibility and, in the practical jurisprudence, the extent of the damage.⁷⁶ The order of youth-imprisonment is, however, not permitted, if other legal consequences are adequate and reasonable.⁷⁷

The minimum length of youth-imprisonment is six months, the maximum, ten years.⁷⁸ Its length of time depends on the need for educational influence.⁷⁹ The enforcement of youth-imprisonment and confinement is comparable as both occur principally in special open or closed detention centres, separated from adult prisons.⁸⁰

The enforcement of youth-imprisonment may be suspended on probation if it is not imposed for a longer period than two years.⁸¹ In order to determine the severity of the offence, it is the court's obligation to consider the juveniles' personality, their prior history, the circumstances of the offence, their behaviour

⁷⁴ BGHSt 11, 169 (171).

⁷⁵ BGH StV (1998) 331. BGH is the abbreviation for Bundesgerichtshof, the German Federal Court of Justice.

⁷⁶ BGHSt 15, 224 (226).

⁷⁷ Youth-imprisonment is the ultima ratio of all existing consequences in the JGG.

⁷⁸ S 18(1) JGG.

⁷⁹ S 18(2) JGG.

⁸⁰ S 17(1) JGG.

⁸¹ S 21 JGG. This is the same for adults.

after the offence, and the effect on their life.⁸² The juveniles' physical and mental maturity as well as lack of education might make probation an inadequate measure and, at the same time, make the enforcement of imprisonment essential.

In addition, the prosecutor and the court have the option of informally closing the proceedings if either the perpetrator has committed a minor offence or the degree of guilt is minimal.⁸³

C The Sozialgesetzbuch Volume VIII (SGB VIII)

The SGB VIII applies for children who are, at the time of the offence younger than fourteen. The order of measures is, however, generally dependant on the parents' or the legal guardian's approval. When a child comes to the attention of the police, they immediately inform the Youth Welfare Office. They invite the child and its legal guardian to the office in order to discuss the offence. As it is intended to help and support the child offender as well as its family, it is attempted to search for serious problems which might have caused the offence. The effort of showing the child and its family the seriousness of the criminal action is an attempt to prevent the child from re-offending. If it is determined that there are serious problems and a further offence is likely to occur, the imposition of other measures has to be taken into account. Within those measures, the idea of punishing the child offender is irrelevant. The child's best interest is considered as the only motive for imposing any measures of the SGB VIII. The measures provided are: educational help⁸⁴, such as expert advice regarding the child's further education, group-work, social pedagogical supervision, and family support.⁸⁵ Further, the child has the option to live in a special home or a supervised home.⁸⁶ Both the form and extent of the imposed measures depend on the child's need.

It is impossible to enforce any of the SGB VIII-measures contrary to the parents' or legal guardian's wishes. In addition, the procedure is extremely time-

⁸² S 21(1) JGG.

⁸³ Ss 45 - 47 JGG.

⁸⁴ S 27 SGB VIII.

⁸⁵ Ss 28, 29, 31, 35 SGB VIII.

⁸⁶ S 34(3) SGB VIII.

consuming, as it generally takes a long time for the Youth Welfare Office to respond adequately and, especially, to inform the family court if necessary. The involvement of the family court is required in cases concerned with a child's well-being. Therefore, all cases considering custody rights of parents or guardian are heard before this court. By the time supportive and educational help for the child is ordered, valuable time often has elapsed. During this period, the child might have committed a further crime.

D Interim Conclusion

In conclusion, both the JGG and the SGB VIII hold a broad variety of legal measures applicable to young offenders. They aim to support, educate and care for children and juveniles. They also intend to prevent them indirectly from re-offending.

There are some crucial differences, however, between the legally fixed measures of the SGB VIII and the ones of the JGG. The ones in the SGB VIII must not be enforced without prior agreement of the respective legal guardian, whereas the measures provided by the JGG are even enforceable against the legal guardians' explicit wishes. As parents oftentimes do not agree with any of the imposed measures, remedial and educational support for child offenders cannot always be supplied. Due to these facts, enforcement is impossible even though it is oftentimes essential for the child's well-being.

As a further disadvantage, the SGB VIII provides only adequate legal measures for minor offences, whereas children, who commit either a great number of offences or very serious ones, cannot be treated satisfactorily. If the child offender commits, for example, an armed robbery or manslaughter, the imposition of most SGB VIII-measures would be disproportionate in comparison to the gravity of the act.

Based on experience, particularly children who commit serious offences require efficient legal treatment, as the offender's family and environment is usually overwhelmed by the situation. Oftentimes, they are not able to support and help the child and, thus, prevent it from re-offending. As a reaction to this recognised insufficiency, the German State adopted over a short period of time a

variety of provisions⁸⁷, which were meant to help and support children and their families to get a grip on their problems. Contrary to the expectations, the provisions neither helped nor improved the situation as a whole. These projects have been both inefficient and extremely costly, which finally led to their cancellation.

As a result, one has to come to the conclusion that the legal consequences provided by the JGG are more effective than the ones of the SGB VIII, especially because they are enforceable. As the JGG holds a variety of measures, applicable to both minor and very serious offences, it does not oppose a reduction of the age of criminal responsibility.

V *POLICE CRIME STATISTICS*

In order to justify the demand for an age reduction the paper will have a closer look at the Police Crime Statistics. In this respect, it will concentrate on the statistics for child offenders, especially the age group of the twelve to fourteen. An increase in the child delinquency rate would be an indicator for a weak point somewhere. There are countless reasons and explanations for a growth in crime rate, such as the society, economy, family and school. Nevertheless, it could also be an evidence for the insufficiency of the current legislation. One could argue that there would be no raise in the delinquency rate if offenders were treated adequately. Further it could be said that, even if there is an increase in child delinquency, a reduction of the age limit is compulsory, as the JGG deals with offenders more effective.

In principle, the German statistics show criminal cases, which have come to the attention of the Police. Traffic offences and offences against the state are not part of the usual figure. Punishable attempts are counted as completed acts. The statistics aim, among other things, to show the general criminal development and the different kinds of offences. Further, they are the basis for the

⁸⁷ "Adventure holiday on an pedagogical basis" was one of these projects. Another one has been the "open-home-group-project". This project provided a free disposable presence and absence for the children in their home. They possessed their own key for the flat. The presence of the children at night was ordered, but their absence was frequently ignored. In the morning, they got up whenever they wanted to. They neither bought groceries nor cooked. The caring persons, however, controlled the children periodically. But, in general, they were hiding in their own room behind locked doors, due to their fear of most children. *Hamburger Abendblatt*, 1 July 1998, 10.

preventative and also persecutory fight against crime. The explanatory power of these statistics is highly constrained, because the Police naturally do not notice all of the committed felonies. Consequently, the statistics are dependent on varying factors, such as a population's willingness to make a report as well as the intensity of controlling crime.⁸⁸ Therefore, the Police Crime Statistics do not give an exact reflection of dimension of delinquency but only an approximation of reality, dependent on the respective sort of crime. The statistics, however, are an aid for legislature, executive, and science to come to the cognition of crime frequency as well as to show trends and tendencies to the development of delinquency.

A General Statistics

In 2002 a total of **6 507 394** felonies and misdemeanours in violation of the criminal laws were recorded in Germany. The offence rate constitutes **7 893** cases for the year 2002, which means that 7 893 cases of alleged offences have come to the attention of the police, calculated on the basis of 100 000 inhabitants. After a steady decrease of offences in the 1990's, this rate increased in the last two years by 1.5 % and 2.0 %.

Keeping these statistics in mind, it is very interesting and enlightening to take a closer look at the offences of alleged child delinquents.⁸⁹ Those statistics show the alleged number of offences committed by certain age groups of child perpetrators as well as the distribution in percentage compared to the total number of cases.

When analysing these statistics it is very conspicuous that there are no tendencies of child delinquency for the group of children below the age of six years. Although, there has been a variation in the number of annual cases in the last ten years, the offence rate has not been adjusted to those of the other investigated age groups. This phenomenon indicates that children below the age of six commit crimes independently of exterior influences, such as a decreasing economy and its negative effects. With respect to the issue in question, the

⁸⁸ PKS 2002, page 7. Available at *BKAonline* Bundeskriminalamt Wiesbaden <<http://www.bka.de/>> (last accessed 5 November 2003).

⁸⁹ See Appendix B.

statistic shows that it is dispensable to impose any legal measures on children younger than six. Society has rather to accept a certain degree of delinquency. As investigated earlier, children under the age of six are not mature enough to be criminally responsible.

These tendencies, however, do not apply to the other investigated age groups. If contemplating the child delinquency rate in general, one notices a dramatic increase in registered cases between 1993 and 1998. Within five years the alleged offences committed by children nearly doubled from 88 276 up to 152 774 annual cases. This upward trend occurs almost simultaneously within all investigated age groups. Within the age group six to eight years the offence rate increased by 43.7 %, within the group of eight to ten years it grew by 63.2 %. Children between the ages of ten and twelve were suspected of committing 22 755 cases in 1993 and 39 321 in 1998. This is an immense development of 72.8 %. However, the most significant increase of alleged offences was realised within the age group of the twelve to fourteen. The number of registered cases increased within only five years by unbelievably 80.5 %.

After 1998 this dramatic upward trend suddenly changed into a steady downward trend. In 2002 it reached its lowest point by 134 545 alleged child offences in total. This is a decrease of 11.9 % in the last four years. Considering the different age groups, this trend behaved similarly. The delinquency rate of children aged six to eight went down by 22.2 %, whereas children aged eight to ten committed 24.1 % less offences, and children between ten and twelve 19 % less. What attract attention are the registered cases of alleged child criminals aged from twelve to fourteen years. Even though there has been a decrease by 6.3 %, this rate has been extremely low compared to all other age groups. Despite the fact that the crime rate declined steadily in the last four years, it still is disproportionately high compared to the average decrease of 11.9 %.

In summary we can see that after a very strong upward trend of registered cases there has finally been a slight but steady downward trend of child delinquency since 1998. This trend applies to all different age groups except for children under six years.

B Specific Statistics

In order to achieve a general overview of the dimension of child delinquency in Germany, it is also interesting to have a closer look at the nature of the respective offences committed by children as well as the frequency of felonies committed by each child offender. Unfortunately, there are no frequency statistics in Germany but only some surveys, which can only deliver an inexact insight. Regarding the different offences committed by children, this paper concentrates on a few striking examples.

The statistic⁹⁰ shows that the child delinquency rate regarding some specific offences is extremely high. Although the group of children compared to the adults group is relatively smaller, the children's crime rate is for some offences proportionally high. This applies especially for theft and damage to property. Not only these minor crimes but also robbery as well as dangerous and aggravated bodily harm finds favour with children. In 2000, for example, juveniles below the age of fourteen committed 9.4 % of all robberies. This number is extremely alarming and shows that child delinquency must be taken seriously.

Regarding the number of offences committed by each single child, there are only some surveys. Most children commit only one offence and do not slide back.⁹¹ Other investigations show that only 4 % of delinquent juveniles are "serious delinquents". In order to be called "serious delinquent", one has to perpetrate either at least three crimes or very serious crimes, such as armed robbery. These 4 % of serious delinquents commit about 21 % of all offences.⁹²

C Interim Conclusion

In conclusion, the diverse statistics illustrate an enormous rate of child delinquency. Especially the rate of children aged twelve to fourteen is alarmingly high, even though it has decreased by 6.3 % in the last four years.

⁹⁰ See Appendix D.

⁹¹ Frank Neubacher "Kinderdelinquenz" (1998) ZRP, 121, 123.

⁹² Thomas Hestermann "Jugendgewalt und -kriminalität - Raub, Gewalt und Nervenkitzel - Jugendkriminalität - Ursachen und Auswege" available at <<http://www.gdp.de/fred/abb/pdp0205.pdf>> 3.

With respect to the immense increase of alleged offences from 1993 to 1998, some argue that the number of offences has been very low at the beginning (in 1993), so that the slight increase in felonies gives a mistaken impression. The crime rate seems to be worse than it actual is.⁹³ Nevertheless, the number of 83 783 presumed cases in 2002 committed by children between the ages of twelve and fourteen, is extremely high and must not be ignored by society.

The crimes' nature is alarming, too. A survey found out that 99 % of child delinquency comprises robbery, dangerous bodily harm, and aggravated bodily harm.⁹⁴ In this respect, some opine that the allocation of offences relativises the child delinquency statistics. Although the type of the committed offences sound very alarming, the actual act and the damage caused is usually not very serious.⁹⁵ Even if children use weapons, it does not automatically cause severe harm.

These arguments might be true to some extent. But, nevertheless, it is frightening that, for example, children at the ages of ten or twelve wear weapons. Even though the majority of crimes committed by children are misdemeanours, there are, however, extremely serious offences, which have to be attended.

The statistics show evidently that the age group twelve to fourteen behaves differently from all other age groups, as the delinquency rate increased more strongly, decreased more slightly, and the offences have been very serious. Nonetheless, it is conspicuous that children between ten and twelve also commit an enormous number of offences. Despite the fact that the increase and decrease in offences behaves differently, it could argue for a reduction of the age of criminal responsibility down to ten years. With respect to the previous investigations, however, this is not advisable. It is evident that children aged ten to twelve in many cases will not possess the required maturity for being considered as criminally responsible. Further, they commit significantly less

⁹³ Peter-Alexis Albrecht *Jugendstrafrecht. Ein Studienbuch*. (3 ed, Beck, München, 2000) 4.

⁹⁴ Roland Hefendehl "Täter und Opfer bei kindlicher Gewaltkriminalität" (2000) JZ 600, 601.

⁹⁵ Investigations found out that the average degree of damage, caused by child delinquency, amounts to under § 50. Christian Pfeiffer and Peter Wetzels (1997) DVJJ-Journal 346, 347.

offences than children aged between twelve and fourteen. The combination of these two aspects leads to the conclusion that it would be too costly to consider this age group as criminally responsible. Therefore, the age limit should be set at twelve.

VI CRIMINAL RESPONSIBILITY IN NEW ZEALAND

In the last decades crime has not only increased significantly in Germany but also in New Zealand.⁹⁶ Some New Zealand criminologists attribute increases in crime to poverty, unemployment, genetic defects, psychological problems and dysfunctional families. In 1995 and 1996 it was considered by the Justice and Law Reform Committee to lower prosecution to the age of twelve.⁹⁷

Due to the critical discussion in Germany regarding a potential reduction of the age of criminal responsibility, it is interesting to have a closer look at New Zealand's provisions and its way of dealing with this issue. In this regard, the paper will analyse New Zealand's legislation by showing their relevant provisions, legal consequences and some statistics of its child delinquency. If their legislation would comprise a legal consequence that is more effective than the existing German consequences, it could be preferable to alter the existing legal consequences rather than reducing the age of criminal responsibility.

A Relevant Provisions

Section 21 Crimes Act 1961 lays down an irrebuttable presumption that a person under the age of ten years is incapable of committing an offence.⁹⁸ Consequently, when an offender is under ten years of age, the State is absolutely prohibited from acting against that child⁹⁹ in response of any offence committed by them. In this respect, the actual degree of understanding regarding the nature and consequences of the offending child is irrelevant.

⁹⁶ In 1996 New Zealand had one of the highest burglary rates in the developed world, higher than the United States, Great Britain or Australia. Cathy Buchanan and Peter R Hartley "Controlling Crime in New Zealand" (1996) available at < <http://www.nzbr.org.nz/documents/publications/dba-publications/crime.doc.htm>> (last accessed 25 November 2003).

⁹⁷ Gabrielle Maxwell and Allison Morris "The age of prosecution of children" (1999) 12 *Criminology Aotearoa/New Zealand* 14, 14.

⁹⁸ According to s 2 Crimes Act, offence means any act or omission for which any one can be punished under this Act or under any other enactment, whether on conviction on indictment or on summary conviction.

⁹⁹ According to s 2 Children, Young persons, and their Families Act 1989 a "child means a boy or girl under the age of fourteen years."

A child between the ages of ten and fourteen cannot be convicted unless two prerequisites are proved: Firstly, the child must have committed the act in circumstances which would involve criminal liability for an adult. Secondly, they must have been aware that what they were doing had been wrong or that it was contrary to the law. The relevant principles are defined in section 22 of the Crimes Act 1961. In contrast to children under the age of ten, for children between the ages of ten and fourteen years there is a rebuttable presumption that they are incapable of crime. Therefore the prosecution has to prove that the child "knew" their act or omission was "wrong" or that it was "contrary to law". However, although section 22(1) Crimes Act implies that a child may be prosecuted if such knowledge is present and the incapability of crime-presumption is rebutted, in practice such prosecutions are very unlikely because of the provisions of section 272(1) Children, Young Persons, and Their Families Act 1989. Section 272(1) stipulates that a child over the age of 10 shall not be subject to proceedings brought under the Summary Proceedings Act 1957, except where the charges involve murder or manslaughter. If children between the ages of ten and fourteen commit one of these offences, the Act determines in section 272(2) that the preliminary hearing of the charge has to take place before a Youth Court.

B Legal Consequences

In New Zealand special protection for children is given by the Children, Young Persons, and Their Families Act 1989. This Act provides for jurisdictional separation between children and young persons¹⁰⁰ in need of care and protection and those who offend against the law. Where there is evidence that the child over the age of ten and under the age of fourteen is behaving in a way that is harmful to the child's well-being, or where the child's parent, guardian, or other person having the care of the child is unwilling or unable to care for the child, proceedings for "care and protection" may be commenced under Part II of the Children, Young Persons, and Their Families Act 1989.¹⁰¹ The purpose of this jurisdiction is not to punish but rather "to promote the

¹⁰⁰ According to s 2 Children, Young Persons, and their Families Act 1989, a young person means a boy or girl of or over the age of fourteen years but under seventeen years; but does not include any person who is or has been married.

¹⁰¹ S 14(1)(e) and (f) Children, Young Persons, and their Families Act 1989.

wellbeing of children, young persons, and their families and family groups.”¹⁰² Further, “the welfare and interest of the child or young person shall be the first and paramount consideration.”¹⁰³

The main aim of New Zealand’s Youth Justice System is to keep children and young people out of the courts and to instead deal with youth crime in other ways.¹⁰⁴ This is the reason why children, if they break the law when they are under the age of fourteen, will be dealt with by Police alternative action or by the non-criminal Care and Protection laws.

1 Police alternative action

The police have the choice between three different alternative actions, which intend to keep children away from the Court system. These actions comprise warnings, a formal caution and the Police Youth Aid officer who visits the child and his or her family. The purpose of these alternative measures is to prevent the child re-offending, to avoid them getting a criminal record and to give the child a second chance. They also intend to put the child in touch with community resources that might help them to deal with the cause of their offending. Another purpose of these measures is to ensure that the child put things right with the victim and the community in appropriate ways.

*(a) Warning*¹⁰⁵

If a child receives a warning, this will usually be noted on internal police records, but not on the national computer system that holds the official details of each person’s criminal record.¹⁰⁶ The main aim of a warning is to clarify for the child that they have done something wrong and came to the notice of the police, but no action is taken against the child. Instead, they get told that if it happens again they could be dealt with differently. A warning might be inappropriate due

¹⁰² Ss 4, 13 Children, Young Persons, and their Families Act 1989.

¹⁰³ S 6 Children, Young Persons, and their Families Act 1989.

¹⁰⁴ Before the system changed in 1989, some 90 percent of young offender cases went to court. Now it is 20 percent. “Attendance to Trials” available at <http://www.sasked.gov.sk.ca/docs/social/law30/unit02/02_15_sh.html> (last accessed 25 November 2003).

¹⁰⁵ Ibid S 209.

¹⁰⁶ This system is called Wanganui Computer.

to "the seriousness of the offence and the nature and number of previous offences committed by the child or young person."¹⁰⁷

(b) Formal Police caution¹⁰⁸

If the Family Group Conference¹⁰⁹ has recommended a formal Police caution the child has to go to the police station with their parents, where they get told that they will be dealt with more seriously if they get into trouble again. The aim of this measure is to make clear that this is the last chance for the child to improve their conduct and not become delinquent again.

(c) Youth Aid

Another Police action is to get visited by Police Youth Aid officers. They usually come to the child's house to speak with them and especially with their family. Just like the other measures, Youth Aid is a warning that emphasises that if the child does not keep out of trouble they will be dealt with more severely.

(d) Other penalties

Apart from the mentioned measures the police are further authorised to impose other not legally fixed punishments on the child offender if this seem to be more effective for the child, the family or the victim. These measures usually follow a caution or a warning and also have to be in agreement with both the child and their family. The most common examples are the payment of reparation¹¹⁰ to the victim or some work.¹¹¹ The family may also decide on some other suitable punishment for their child such as the repayment to the victim for any reasonable expenses that were directly caused by the child's offence. This measure aims to clarify for the child the damage they have caused by compensating for the victim's loss of or damage to property, or the suffered emotional harm.

¹⁰⁷ Ibid s 209.

¹⁰⁸ Ibid s 211.

¹⁰⁹ Explained below.

¹¹⁰ Ibid s 283(f).

¹¹¹ Ibid s 283(l).

2 *Non-criminal Care and Protection laws*

Non-criminal Care and Protection laws involve a Family Group Conference¹¹² and the Family Court. A Family Group Conference is a meeting with the child's family, the Police and others to discuss the child's offence or alleged offence. There are several different intentions of these conferences. One important purpose is to divert children away from the court system. Like the other measures mentioned above, the Family Group Conference makes sure that the child is confronted with its offence and also takes part in deciding what should be done about it. As known from experience the child's family is usually overwhelmed by the new situation and also shocked about the fact that its child has committed an offence. In many cases this will cause tensions and problems within the concerned family. Another purpose of the Family Group Conference is to help the child's family to effectively support the child. Furthermore, the involvement of the victim in the decision about how the offending child should be dealt with is the most crucial aspect of the conference.¹¹³

There are several situations in which a Family Group Conference can be called. The court, for example, is able to direct a Conference to be held, when the child is arrested and appears in court. Another alternative in which the Family Group Conference is not compulsory could arise when the child has not been arrested but has been warned, cautioned or visited by Police Youth Aid. As a prerequisite the Police have to be convinced that further action needs to be taken. The Family Group Conference is explicitly required and must be held before the child appears in the Youth Court, if they have been charged but were not arrested.

3 *Youth Court*

The Youth Court has jurisdiction over young offenders aged fourteen to sixteen. It is separated from the adult criminal justice system and strongly focused on the rehabilitation of young offenders. Young offenders are generally

¹¹² Ss 20 – 38. New Zealand introduced an innovative Juvenile Justice System in legislation that came into force in 1989. "Family Group Conference" available at Ministry of Justice <<http://www.justice.govt.nz/>> (last accessed 10 November 2003). The family group conference is defined in s 2 Children, Young Persons, and their Families Act 1989. There are further provisions in ss 20-38 of the Act.

¹¹³ Ibid s 208.

not convicted or sentenced. In most cases, Youth Court judges will try to put into action the recommendations of the Family Group Conference plans. In general, the most serious orders are either the supervision with activity order or the supervision with residence order. If the juvenile offender commits a very serious offence, they will be transferred to the District Court or the High Court for prosecution or sentencing.

4 *Interim conclusion*

New Zealand's Juvenile Justice System provides a variety of measures applicable to child offenders, which are similar to the German legislation. Regarding young offenders, first priority is given to a warning and thereby to only frightening measures. The striking difference between New Zealand and Germany is New Zealand's Family Group Conference and the involvement of all potentially concerned and affected parties. This institution has been very effective so far. With the invention of the Conference system, fewer young people, for example, are being arrested, charged and convicted in court.

Although this relatively new and innovative system is generally praised, some critics argue that the Children, Young Persons and their Families Act 1989 has made it more difficult for the Police to catch juvenile offenders and for the courts to punish them. Further, the Family Group Conference appears to be enormously expensive, and it has not reduced juvenile crime.¹¹⁴ These statements, however, are not based on any statistics or other evidence, which make them highly unbelievable.¹¹⁵

C *Statistics*

It is essential to compare New Zealand's and Germany's crime statistics. If New Zealand had similar problems than Germany, it would be possibly inadequate to adopt parts of its legal system. As there is no centralised collection of statistics and trends about offending youths in New Zealand, it is extremely difficult to compare the child delinquency rate on the basis of statistical

¹¹⁴ Cathy Buchanan and Peter R Hartley "Controlling Crime in New Zealand" (1996) available at <<http://www.nzbr.org.nz/documents/publications/dba-publications/crime.doc.htm>> (last accessed 25 November 2003).

¹¹⁵ Comment on Cathy Buchanan and Peter R Hartley "Controlling Crime in New Zealand" (1996) by Allison Morris (1996) 6 *Criminology Aotearoa/New Zealand* 2, 2.

investigations. Due to this fact, the paper refers only briefly to some academic articles and their outcomes regarding this issue.

Till 1999 there has been no evidence that children aged under fourteen were responsible for a substantially greater proportion of juvenile crime than in the past. Further, the rate of offences attributed to children aged under fourteen has risen slightly in the 1990's, whereas the rate for violent offences almost doubled from 1991 to 1996. In 1996, for example, only 1% of all offences committed by children aged under fourteen involved a grievous or serious assault.¹¹⁶ Police deals with nearly 80% of all youth offences. Only the most serious offending comes to the Youth Court.¹¹⁷ About 80% of young offenders offend only once or twice; the remaining 20% tend to commit a high number of crimes across a greater number of years.¹¹⁸

When analysing these statistics, one has to come to the conclusion that the popular belief that youth crime is rapidly increasing and out of control, is not accurate.¹¹⁹ With respect to the statistics for perpetrators aged under fourteen both the rate, as well as the seriousness of the committed offences did not increase as sharply as it did for the age group of perpetrators aged fourteen to sixteen.¹²⁰ This statement is, however, extremely unhelpful in order to analyse the New Zealand crime statistics of child delinquency. It is insufficient to play down the high child delinquency rate of under fourteen-year-olds by emphasising the enormous increase in offences committed by juveniles aged fourteen to sixteen.

The surveys show that children in New Zealand commit almost no serious offences which varies from the German statistics. In comparison to Germany,

¹¹⁶ All these statistics are taken from one article: Gabrielle Maxwell and Allison Morris "The age of prosecution of children" (1999) 12 *Criminology Aotearoa/New Zealand* 14, 14.

¹¹⁷ "Media Statement – Principal Youth Court Judge Says the Picture of Youth Offending Is Distorted By Inadequate Statistics" (2002) available at Ministry of Justice <<http://www.courts.govt.nz/>> (last accessed 20 October 2003).

¹¹⁸ K L McLaren "Tough is not enough – getting smart about youth crime" (2000) Ministry of Youth Affairs, Wellington, New Zealand.

¹¹⁹ "Media Statement – Principal Youth Court Judge Says the Picture of Youth Offending Is Distorted By Inadequate Statistics" (2002) available at Ministry of Justice <<http://www.courts.govt.nz/>> (last accessed 20 October 2003).

¹²⁰ Gabrielle Maxwell and Allison Morris "The age of prosecution of children" (1999) 12 *Criminology Aotearoa/New Zealand* 14, 14.

the frequency of offences committed by each single child is quite frightening. In New Zealand, 20% commit more than one offence, whereas in Germany only 4% of all children re-offend. This investigation emphasises that New Zealand's legal system seems to be faced with problems as well.

D Comparison

The German and New Zealand legislation as well as their Youth Justice System are very similar. They both intend to keep young offenders out of the Courts. Further they try to care for the juveniles, integrate the family in the decisions and focus on warnings rather than "punishments". Regarding the issue in question, the main discrepancy between the two legal systems is the different determination of the age of criminal responsibility. In Germany the imposed age is fourteen whereas New Zealand opted for ten. Above these age limits in both countries a test is required in order to find out if the offender is criminally responsible. New Zealand is convinced that children above the age of ten might possess the required maturity so that they could be penalised for their actions. In Germany, for example, a thirteen-year-old child will not, under any circumstances, be considered of being able to understand their criminal actions.

The statistics have shown that in New Zealand the crime rate of child offenders increased in spite of the adoption of a new juvenile justice system. It is irrelevant that the offence rate of the fourteen to sixteen increased more than the one of child offenders.

VII RECOMMENDATIONS

With respect to the determined age of criminal responsibility and the doubtful effectiveness of the current German provisions regarding this issue, various alternatives could be considered which are likely to improve the current situation. This paper will analyse three potential modifications.

A Reduction of the Age of Criminal Responsibility?

Surveys have proved that most children aged twelve or over are either mature enough to appreciate their wrongdoing or are aware of the fact that their behaviour has been contrary the law. Further, they are generally mature enough to act in accordance with their appreciation. Offenders aged above twelve fulfil

the German legal requirements for prosecution. The argument that children under fourteen do not fulfil the legal requirements for being criminally responsible does not militate against the provision's amendment.

The Police Criminal statistics showed, however, that there are many offences committed by children between the ages of twelve and fourteen. Even though the numbers decreased in the last four years, the delinquency rate on the whole is significantly high. This applies especially to children between twelve and fourteen. In addition, there are offenders whose frequency and seriousness of offending cannot and especially should not be ignored by society and the state. These statistics clarify the need to deal with those children in an educational and caring way. It is proven that the earlier criminal children get educated, the more effective measures are in order to prevent re-offending.¹²¹ Although the SGB VIII provides educational measures for offenders who are younger than fourteen, there are crucial disadvantages that make a reduction of the age limit compulsory so that they became subject to the measures in the JGG. For example, the measures of the SGB VIII require the approval of the child's parents or legal guardian. If they refuse to agree to an imposition, a fast and essential determination of any measures is impossible. Instead long-winded proceedings are needed in order to be able to react adequately to the offence. In contrast, the educational measures of the JGG can be assessed independently from the approval. The courts are able to react as fast as necessary for the child's well-being. They also can order the measure that will help the child most.

The antagonists of a reduction opine that the aim of the high age limit is, inter alia, to keep children away from the courts. It is proven that the appearance in court has a negative impact on children. Further, it is said that a penalisation of young offenders should begin as late as possible.¹²² Instead, penalisation should concentrate on educational and caring measures in order to support the child and their family. Thus, children aged twelve are far too young for an appearance in court.

¹²¹ Rudolf Brunner "Überlegung zur Strafmündigkeit" (1997) JR 492, 493.

¹²² See Rudolf Wassermann "Der Kinderdelinquenz Einhalt gebieten – aber wie?" (1998) 2 NJW 2097, 2098.

All these counter-arguments do not hold water. In this regard, it is necessary to balance the pros and cons of a reduction. The appearance at court at the age of twelve might have a negative impact on some children. Nevertheless, by forcing the child to court they are confronted with their offence and their wrongdoing. It might frighten them and, therefore, clarifies for them the scope of their damage caused. This impression might also prevent them from re-offending, which is the indirect goal of penalisation of child offenders. Further, there is the possibility to respond in an adequate way to serious offences as well as to offenders who have committed numerous offences. In this respect, the measures provided by the SGB VIII are not effective enough. In many cases the state and the police wait for the child offender to turn fourteen so that they can take them to Youth Court and finally impose more appropriate measures. Within this waiting-period, the imposition of educational measures would, usually, be extremely important, but is impossible to fulfil if the parents or legal guardian do not approve. Due to the lack of any support, children often commit more crimes, which makes it even more difficult to order effective and helpful measures when they finally turn fourteen.

Furthermore, it is argued that children at the age of twelve are far too young to be sent to jail. This penalisation, however, would be one potential legal consequence for twelve-year-old children when reducing the actual age of criminal responsibility.

Due to the fact that the order of youth-imprisonment is the ultima ratio, the court will not impose this measure as long as there are other potential options. In some cases, however, there arises no other alternative. The order of any other measure would sometimes be enormously disproportional with regard to the damage caused, the number of committed offences and the seriousness of the offence. Furthermore, it has to be taken into account that the prosecutor as well as the court oftentimes order the informal abatement of the action.¹²³ This measure takes absolute priority before any other measures. Consequently, children will not be penalised by any means, but rather confronted with their offence and wrongdoing, without the imposition of any drastic legal measure.

¹²³ Ss 45-47 JGG.

Due to these investigations it is, thus, recommended to amend section 19 StGB and reduce the age of criminal responsibility to twelve years.

B *Alteration of the Legal Consequences?*

In general, the legal consequences provided by the German legislation are very effective and multi-faceted. However, the creation of an institution like New Zealand's Youth Justice System could prove beneficial. One very positive aspect of its adoption would be the simultaneous involvement of the victim, the police and the child offender's entire family. By involving the victim in the criminal proceeding, the child is confronted in a more intense way with the damage caused. With the presence of the child's whole family it is made certain that the offence is discussed and that the family deals with its causes and consequences. In addition the family has the feeling of being helped if necessary.

Although the German legislation has adopted a similar institution, the project of compensation between the offender and the victim does not engage all concerned people collaboratively. There is the opportunity to talk to the offender and their parents, but the measure does not involve the victim. Another disadvantage of the German project is that it is impossible for the courts to order it as it is voluntarily. In this respect, the New Zealand Family Group Conference is different. It can be ordered even though the victim's appearance is not essential.¹²⁴ Although the victim does not appear, the other affected people are involved, which is also helpful.

In conclusion it is recommended that Germany adopt a provision which enables the court to impose a measure similar to the Family Group Conference. The involvement of the offender's families, the Police, a social worker of the Youth Welfare Office, and the offender itself is the most effective way to confront the offenders with their offence and hopefully prevent them from re-offending.

¹²⁴ In both countries it is not possible to force the victim to participate at the Conference. This would infringe the victims' personal rights. A confrontation against the victim's will would possibly cause further damage.

C Dependency on the Seriousness of the Offence?

Another potential alteration of the current legislation could be the adoption of a provision, in which the age of criminal responsibility is dependant on the seriousness of the committed crime. In cases of murder and manslaughter, the age of criminal responsibility could be, for example, twelve, whereas it remains fourteen for all other offences. When investigating this alternative, various aspects have to be taken into consideration. First, the imposition of any educational measure is dependent on each child's capacity and maturity to understand the perpetrated offence. The existence of this capacity and maturity does not differ when the crime is more or less serious. If children with the same degree of understanding were treated differently, their stipulated basic right of equality¹²⁵ would be infringed.

The only reasonable explanation for a justifiable unequal treatment might be the dissimilar necessity for the young offender's education, care and protection. It could be said, for example, that juveniles who commit a very serious crime, such as murder and manslaughter, have a distinct educational deficit, as they would otherwise have not perpetrated the respective crime. Consequently, caring and protecting measures are essential in order to support the child as well as their family in dealing with the misdeed and the damage caused. This argumentation presumes, however, that other criminal juveniles do not have a comparable lack of education and do not need any further care, protection, and help from the state. The different treatment based on the seriousness of the perpetrated crime would, therefore, often be unjust.

It is, however, not recommended to adopt a provision, in which the age of criminal responsibility depends on the seriousness of the committed crime. Instead, the limit should be imposed at the age of twelve. This provides the option to determine legal measures individually. The court does not have to refuse help where it is essential for the juvenile's well being.

¹²⁵ Art. 3(1) states: (1) All humans are equal before the law.

VIII CONCLUSION

Is there a certain age at which children are beyond doubt old enough to be criminally responsible? There is no satisfactory answer to this question and probably never will be, as there is an enormous range of aspects that have to be considered. Each young person is unique and therefore possesses his or her own degree of understanding and maturity, which is contrary to the crucial characteristic for determining a certain age limit at which children are considered criminally responsible.

In conclusion, the age of criminal responsibility must be reduced to the age of twelve. The investigations clarified that these children are generally mature enough to understand their wrongdoing and act in accordance with their appreciation. The actual legal consequences for children aged under fourteen and the ones for young offenders aged between fourteen and eighteen are adequate and, as a result, should be retained. All potential legal measures for young offenders are not designed to punish the offenders, but rather to support them and also clarify to them their wrongdoing. Although the German project of compensation between the offender and the victim has been adopted successfully in the German legislation, however it is recommended to amend a new legal measure that is similar to New Zealand's Family Group Conference. This new measure has to involve at the same time all effected parties, that is, the victim, the police and the entire family of the offender. It should be provided both for children and young offenders. It is pedagogically extremely useful to confront offenders with their act. This confrontation is more intense if they notice the damage caused and also have to explain their action in the presence of their family, police and the victim. Usually the more people attend the hearing, the greater will be the influence on the young offender.

²⁸ Polizeiliche Kriminalstatistik (Police Criminal Statistics 1997/98) and Aufklärung der Tatverdächtigen nach Alter, available at: <http://www.bundeskriminalamt.de> (last accessed 26 November 2001).

IX APPENDIX

A *Population Growth and Offence Rate*

The following table shows the growth of Germany's population in the last decade. Further, it demonstrates the total number of registered offences as well as the total offence rate within this period.

Year	Population on 30.06.	Cases	Change compared with the previous year (in %)	Offence rate	Change compared with the previous year (in %)
1993	80 974 600	6 750 613		8 337	
1994	81 338 100	6 537 748	-3.2	8 038	-3.6
1995	81 538 600	6 668 717	2.0	8 179	1.8
1996	81 817 500	6 647 598	-0.3	8 125	-0.7
1997	82 012 200	6 586 165	-0.9	8 031	-1.2
1998	82 057 400	6 456 996	-2.0	7 869	-2.0
1999	82 037 000	6 302 316	-2.4	7 682	-2.4
2000	82 163 500	6 264 723	-0.6	7 625	-0.7
2001	82 259 500	6 363 865	1.6	7 736	1.5
2002	82 440 300	6 507 394	2.3	7 893	2.0

Source: PKS 1993 - 2002¹²⁶

B *Alleged Child Criminals*

The following table uses three broad indicators to show the crime rate of alleged child criminals from 1993 to 2002. First, it lists the cases in total, and, secondly, shows the children's age divided into five different age categories. Further, it demonstrates the distribution in percentage compared to the total number of German cases.

¹²⁶ Polizeiliche Kriminalstatistiken (Police criminal statistics) 1997-2002 and "Aufgliederung der Tatverdächtigen nach Alter" available at BKAonline Bundeskriminalamt Wiesbaden <<http://www.bka.de/>> (last accessed 20 November 2003).

Year	Cases	Below 6	6 to below 8	8 to below 10	10 to below 12	12 to below 14	Distribution in %
1993	88 276	1 746	3 826	10 417	22 755	49 532	4.3
1994	100 077	1 545	4 092	11 706	24 896	57 838	4.9
1995	116 619	1 477	4 783	13 420	28 792	68 147	5.5
1996	131 010	1 533	5 126	14 540	32 060	77 751	5.9
1997	144 260	1 599	5 498	16 661	36 397	84 105	6.3
1998	152 774	1 582	5 459	17 002	39 321	89 410	6.6
1999	150 626	1 698	5 342	16 533	39 301	87 752	6.7
2000	145 834	1 664	5 130	15 436	37 191	86 413	6.4
2001	143 045	1 866	4 610	14 083	35 384	87 102	6.3
2002	134 545	1 707	4 279	12 909	31 867	83 783	5.8

Source: PKS 1993 – 2002¹²⁷

C Children between the Age of Twelve and Fourteen

The table shows the special age group of child offenders aged 12 to 14 years. It demonstrates the rate of increase compared with the previous year and the distribution in percentage.

Year	Cases	Change compared with the previous year (in %)	Distribution in %
1993	49 532	--	2.4
1994	57 838	16.8	2.8
1995	68 147	17.8	3.2
1996	77 751	14.1	3.5
1997	84 105	8,2	3,7
1998	89 410	6,3	3,9
1999	87 752	-1,9	3,9
2000	86 413	-1,5	3,8
2001	87 102	0,8	3,8
2002	83 783	-3,8	3,6

Source: PKS 1993 - 2002¹²⁸

¹²⁷ Polizeiliche Kriminalstatistiken (Police criminal statistics) 1997-2002 and "Aufgliederung der Tatverdächtigen nach Alter" available at BKAonline Bundeskriminalamt Wiesbaden <<http://www.bka.de/>> (last accessed 20 November 2003).

¹²⁸ Ibid.

D Child Delinquency Regarding Special Crimes

The table below demonstrates the child delinquency in percentage regarding special crimes and in distribution to the committed crimes in total. It illustrates that although the age group of the children is compared to the adults group relatively smaller, the crimes rate is comparatively high.

Year	Damage to property	Robbery	Dangerous and aggravated bodily harm	Theft		
				In total	Pick pocketing	Bicycles
1998	13,6	8,7	6,9	13,4	12,9	13,9
1999	14,2	8,5	5,8	13,6	11,6	15,1
2000	14,2	9,4	7,2	13,3	11,0	14,2
2001	14,6	8,6	6,4	12,9	14,2	14,2
2002	13,3	7,3	5,4	11,8	13,4	12,8

Source: PKS 1998 - 2002¹²⁹

¹²⁹ Polizeiliche Kriminalstatistiken (Police criminal statistics) 1998-2002 available at BKAonline Bundeskriminalamt Wiesbaden <<http://www.bka.de/>> (last accessed 20 November 2003).

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