Juvenile Justice in the Russian Federation

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Content

List of Abbreviations[1]

CoE	Council of Europe
CSPR	Public Centre for Legal and Judicial Reform [*Obŝestvennyj centr "Sudebno-pravovaâ reforma"]*
CSUP	Moscow Centre for Prison Reform [*Centr sodejstviâ ugolovnogo pravosudiâ*]
CRC	International Convention on the Rights of the Child
FSIN	Penal Authorities [*Federal'naâ služba ispolneniâ nakazanij*]
KDN	Committee on the Protection of the Rights of the Child [*Komissiâ po delam nesoveršennoletnyh*]
MVD	Ministry of the Interior [*Ministerstvo bnutrenih del*]
PDN	Militia offices for preventing juvenile infringements of law
UK	1996 Criminal Code of the Russian Federation, as amended by March 1, 2009 [*Ugolovnyj kodeks*]
UIK	Criminal Procedure Code of the Russian Federation, as amended by January 30, 2009 [*Ugolovno-ispolnitel'nyj kodeks*]
VORP	Victim-offender mediation program

[1] I have kept the orginial abbreviations of Russian words. Criminal Code is therefor abbreviated UK [*Ugolovnyj kodeks*] instead of CC, and so on.

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1. Introduction

Since the 1980s, politicians in many European and North-American countries have moved away from the child care approach that characterized the policy towards children in conflict with the law in the larger part of the 20th century. Countries such as the US, England and the Netherlands, once pioneers in the child care approach to young offenders, have increasingly started to give priority to more punitive responses to youth crime (Muncie 1999; Doob and Tonry 2004; Junger-Tas 2004; Walgrave 2004). In Russia, the development has been in the opposite direction. In recent years, the sentencing policy towards young offenders has softened, and new alternatives to deprivation of freedom have been developed. Although children are still handled in the regular justice system, by and large under the same provisions as adults, increased attention is given to concerns about the child's best interests.

Changes in the policy towards children in conflict with the law should be viewed as a somewhat delayed part of the larger reforms in Russia in the 1990s. Following the collapse of the Soviet system, Russia experienced an increase in crimes and correspondingly in the prison population. When the Russian prison population was on its largest in the mid 1990s, it amounted to more than a million people, and the word in the street had it that one out of four Russian males had served a sentence. A corresponding economical crisis made the insufficiencies of the overcrowded, oversized penal system acute. The future of the sentencing practices and the penal system became a hot topic on the political agenda. The 1990s also saw an increase in the number of street children and amount of youth crime, provoking a debate on the effect and efficiency of the existing approaches to children at risk or in trouble.

The debate on the high incarceration level and amount of youth crime in Russia in the mid-1990s corresponded with two political processes: the writing of new legislation, and the entry of the Russian Federation into the Council of Europe (CoE). Russia's accession to the Council of Europe in 1996 was companied by significant legal as well as administrative changes. Russian law was by and large brought into accordance with European and international human rights standards, measures were taken to secure the independence of the judges, and the penal system was moved out of the political power of the Ministry of the Interior.

Furthermore, when becoming a member of the CoE, Russia took upon an obligation to change its juvenile justice system into accordance with existing European and international norms. Important changes have taken place, but the reform has so far neither been consequent nor fast.

1.1 The Research Questions

This thesis discusses the ambivalent juvenile justice system in contemporary Russia. My focus is on the framework of the system, i.e. laws, policies, and institutions. The study seeks to answer the questions:
How are juveniles in conflict with the criminal law approached in Russia today? And, *what characterises juvenile justice as a policy field in Russia?*

By answering these questions I also try to identify particular challenges that will have to be addressed in order for Russia to be able to completly fulfil its obligations under international conventions.

I will argue that since 1996, the legal framework have by and large been made into accordance with international standards for juvenile justice, but that formal and informal institutions, a legacy of the Soviet Union, constitute an obstacle to realization. In the current juvenile justice system rehabilitation of juveniles are seeked through retributive means.

The ambivalent nature of the system reflects the lack of a coordinated, holistic juvenile justice policy. 20 years after the collapse of the Soviet Union the juvenile justice system is still characterized by the systemic vacuum that the fall of the socialistic system created. In some Russian regions however, local politicians have managed to coordinate the efforts of all the actors involved in the juvenile justice system under a common strategy. The result is a significantly better point of departure for a child friendly juvenile justice system.

Laws and policies, while not without significance, seldom determine what actually happens. Arguably more important than the official approach to children in conflict with the law, is how the juvenile justice system functions in practice. The question of level implementation will, however, not be addressed in this thesis, but saved for later research.

1.2 State of Research

Traditionally many scholars of juvenile justice, the majority coming from the Anglo-American legal tradition, have tended to see the existence of juvenile courts, children's hearings or other bodies explicitly and solely addressing children in conflict with the law as a criterion for a juvenile justice system. Consequently those jurisdictions where child offenders are cared for otherwise, Russia among them, are underrepresented in the juvenile justice literature.

In general, Russian juveniles in conflict with the law have gained little attention from researchers, Russians as well as foreign observers. The obvious reason is the Soviet prohibition on publication on youth crime, which, with the exception of the perestroika-period in the 1980s, lasted from the 1930 until 2001 (Williams and Rodeheaver 2002:96). Today the Ministry of the Interior speaks quite openly about the problems of youth crime. Nevertheless statistics available to the public on crime are still limited. There are for instance no official statistics available on the number of juveniles in pre-trial facilities, *SIZO*s.

The Russian juvenile justice system is also a largely unmapped field of study. There are some descriptive studies of the current system available in English (Terrill 2007; Williams and Rodeheaver 2002; Pridemore 2002), but analyses of the official approach to children in conflict with the law are rare, two noteworthy exceptions being by Shestakov and Shestakova (2002) and McAuley (2008). The studies however, have in common that they only focus on the federal level and ignore the latest regional developments. In spite of the fact that criminal justice officially is a matter of federal jurisdiction, quite significant regional variations do exist. On the federal level, the approach to juveniles in conflict with the law may seem constant. If we take the regional developments into account, however, the picture of slowly changing approaches becomes clear.

Some recent studies on juvenile justice in Russian regions have been published in Russian language, including *Problemy soveršenstvovaniâ pravosudiâ v otnošenii nesoveršennoletntyh v Rossii* (2002), *Demografičeskie i èkonomičeskie apsekty ûvenal'noj ûsticiâ* (2008), Zykov, Hananašvili and Avtonomova (eds.) (2004), and Voronova and Tkačev (2004). With the exception of Maksudov ed. (2008), these studies tend to address developments in one region solely, thereby failing to identify comprehensive patterns and development trends in Russia as a whole.

Another limitation within Russian studies of the Russian juvenile justice system is that, as their main objectives is to present concepts of different approaches to the Russian public; they tend to focus largely on general theory. Consequently, little attention is given to the influence of Russian history and culture. By seeing regional developments in the light of federal frameworks, Russian history, culture, as well as economical and political concerns, this thesis aims at providing a more thorough overview of the changing field of juvenile justice in Russia.

1.3 Scope of the Problem: Children and Crime in Russian Federation

1.3.1 Children in Russia

There are approximately 27 million children in the Russian Federation[2]. The number has declined steadily for the last twenty years (UNICEF 2007). This demographic trend is subject to much political attention. Former President and current Prime Minister, Vladimir Putin, has on several occasions mentioned the declining birth rate among the state's major security threats. In order to increase the birth rate, the number of benefits and discounts for families with many children has been increased, supported by commercial campaigns for the institution of the family. Examples of these can be seen in the metro stations in Moscow and St. Petersburg, where banners have been posted in many central stations, focusing on the social and personal benefits of having children

The demographic decline corresponds with a general deterioration in the living conditions for children in Russia. Data collected by the regional non-governmental organization *Pravo rebenka* [The Right of the Child] suggest that more than 50 percent of families with children have an income below the official existence minimum level (Al'tšuler 2008).

In addition to poor material conditions, many Russian children suffer from parental neglect. Russia has a large number of social orphans, *beznadzornikie*. Estimates vary from 750,000 to

[2] In accordance with the understanding of a child found in the Convention of the Right of the Child, Article 1, and the understanding of a child under Russian Constitutional law, cf. Constitution of the Russian Federation, Article 60, and a child is here understood as a human being under the age of 18.

more than 3 million (Al'tšuler 2008, Nagaev 2009:48, 97), and the numbers are increasing even as the child population is declining[3]. Research suggests that approximately 30 percent of the social orphans leave home due to parental alcohol or drug abuse (Nagaev 2009:97). Another common reason for social orphanage is domestic violence. According to Ministry of the Interior, approximately 2,500 Russian children die every year from injuries inflicted upon them by their parents (statistics presented at a round table conference, February 20, 2008, cited in Al'tšuler 2008).

There is a dominant assumption in Russia that children living in poverty or suffering from parental neglect are more likely to get involved with criminal activities than other children. These children are categorized as 'children at risk', a group that is subjected to much attention from state agencies, in particular state youth crime prevention programs. That certain groups of children are more vulnerable to come into conflict with the criminal law is a view supported by statistics from the prison authorities, which show that 47 percent of all children in educational colonies were neither attending school nor working at the time the crime was committed. More than 70 percent of these children have only elementary education (four years), and one out of ten is an orphan (FSIN 2009b).

1.3.2 Crime and Youth Crime

Russia has one of the largest prison populations in the world, both in numbers and percentage. As of April 1, 2009, there were 889,948 prisoners in Russia. An additional 554,100 people are serving sentences not involving deprivation of freedom. The prison population peaked in the 1990s, followed by a decrease in the beginning of this decade, but has been steadily increasing again since 2004 (FSIN 2009a).

The country also has a significant number of incarcerated children. Children sentenced to punishment involving deprivation of freedom as a rule serve their sentences in so-called educational colonies, *vospitatel'nie kolonii* (cf. Article 88(6) UK). According to the latest official statistics, 8,000 children aged 14 to 15 and 7,300 children aged 16 to 17 are serving sentences in educational colonies in Russia (*Rossijskij statističeskij ežegodnik* 2008). Ninety three percent of the children in these colonies are boys, albeit the percentage of girls is

[3] *Pravo rebenka* estimates that the number of social orphans has increased with 100, 000 each year on the average during the last ten years (Al'tšuler 2008) while Nagaev (2009:97) operates with an estimate of 50, 000.

increasing (ibid.). The average term in educational colonies is 4.1 years. Ninety percent of the children receive sentences longer than 2 years (Alternative Report 2005:45). There are no statistics available on the number of children in pre-trial detention facilities.

In addition to 62 educational colonies (FSIN 2009a), there are 20 closed vocational colleges, *special'nie professional'nie učiliŝi zakrytogo tipa*, in Russia. These are under the jurisdiction of the Ministry of Education, and are not considered a part of the penal system as such. The closed vocational colleges are for children aged 11 to 13 who have infringed upon the law, but cannot be subject to criminal responsibility due to their young age, as well as juveniles between 14 and 18 who have committed a crime, but whom the court has exempted from punishment[4]. The maximum term in a vocational college is three years, as compared to ten years in an educational colony. The last years there have been about 1,000 children in these closed vocational collages at all times (Federal'noe agenstvo po obrazovaniû 2007).

Approximately 75 percent of children in closed vocational colleges have committed crimes of minor or moderate gravity (Federal'noe agenstvo po obrazovaniû 2007). The offences most frequently committed by juveniles are petty theft (40 percent), robbery (14 percent), and assault with intention to rob (13 percent). Less than 5 percent of the juveniles are serving sentences for murder (FSIN 2009b). These statistics largely correspond to the general picture of crime in Russia. According to the Federal Statistic Bureau, roughly one third of the 3,583,000 recorded crimes in 2007 were theft (*Russia in Numbers* 2008).

According to MVD, the number of crimes committed by juveniles decreased by 16.5 percent in 2008 compared to 2007. There were also significant reductions in the number of crimes committed by two or more children, -23.8 percent, and in the number of recidivists, -15.4 percent (MVD 2009).

1.4 Research Approach

In order to answer the research questions the thesis provides a qualitative study of the legislation, institutional set-up and policy development on the federal level, as well as studies

[4] The closed vocational colleges should not be confused with open vocational colleges. The close vocational colleges functions as correctional institutions for children who have infringed upon the criminal law or otherwise put their own or other persons life in danger, whereas open vocational colleges in reality are orphanages for older children.

of local reform initiatives in the federal subjects Rostov Oblast and Perm Krai[5]. In order to best highlight the complexity of the Russian juvenile justice system, I have chosen an interdisciplinary approach. The study draws on theories from the field of political science, sociology, and criminology, as well as cultural studies.

1.4.1 On the Research Approach

Qualitative studies. The strength of qualitative studies is the possibility to describe a specific phenomenon and to identify changes of that phenomenon over time (Grønmo 1998), inthis case the Russian juvenile justice system and changes in the Russian approach to children in conflict with the law the last approximately 15 years. The obvious disadvantage with such an approach is that the findings are of limited general relevance. A possible exception for this study is that the findings may be of some relevance for other post-soviet countries, in so far that the findings are related to Soviet heritage.

Interdisciplinary approach. An interdisciplinary approach allows us to grasp complex phenomena (Geertz 1973). The juvenile justice system provides a good example on the benefits of an interdisciplinary approach. Judicial approaches to juvenile justice tend to concentrate on legal safeguard;a criminological approach may explain the relationship between assumptions of crime and the nature of the justice system; sociological studies give us insides to the actors in the system, and so on. The actual nature of the juvenile justice system, however, depends on a variety of factors: laws and legal procedures; underlying assumptions on crime and justice; institutions available; demarcations between the justice and child care system; financial resources granted; level of trust in society etcetera. Only through a thick description of all these factors can we understand how juveniles in conflict with the law are really approached in a society.

The Benefits of Comparing. In this study the juvenile justice system on the federal level is contrasted with the operation of juvenile justice in the federal subjects Perm Kraj and Rostov Oblast. Comparison is a helpful tool in order to identify similarities and differences. One of

[5] Russia consists of 83 federal subjects. The subjects differ with degree to the autonomy they enjoy (from most to least): republic, oblast, krai, autonomous okrug, and autonomous oblast. In addition there are two federal cities, i.e. St. Petersburg and Moscow. Perm Krai came into existence in 2005 as a result of a merger between Perm Oblast and Komi-Permâk Autonomous Okrug. In order to avoid confusion however, all references made to the region in this thesis are to Perm Krai.

my hypotheses upon starting this thesis was that reform has been faster in some regions than on the federal level. A comparison between the federal and regional level was useful in order to verify or falsify this assumption. Furthermore, a comparison between two of the regional reform forces, i.e. Perm and Rostov, helped identify common ways to successful reform, as well as common challenges.

While the benefits from comparing are many, there is always a danger to exaggerate both similarities and differences. With regard to this thesis, there is a particular danger that the regions may be presented as more different from the federal approach than is actually the case. This is particularly so, since I have only looked at the proclaimed approaches, i.e. polices and norms, and not at implementation. Furthermore, the majority of the sources originate with actors within the justice system. This danger has been tried counterbalanced through reports from non-governmental child care institutions that monitor the situation for children in conflict with the law in Russia, in particular through interviews with staff at *Centr sodejstviâ ugolovnogo pravosudiâ* (Moscow Centre for Prison Reform).

Transcription. Transcriptions from Russian are made according to ISO 9:1995 /GOST 2002 standard. Exceptions are made for well-known words, places and persons, such as Oblast, Moscow, and Yeltsin (instead of Oblast', Moskva and El'cin). In those cases where the same author has published in both English and Russian language; I have stayed with the English variation of the author's name in order to avoid confusion.

1.4.2 Sources

The analyse of the federal level is based on sources of federal law, e.g. the Constitution, legal codes, Supreme Court resolutions, international norms and standards binding upon Russia; official policy programs and statements; and the experiences of actors in the field, i.e. interviews with staff at the mentioned *Centr sodejstviâ ugolovnogo pravosudiâ* (Moscow Center for Prison Reform, CSUP), *Centr "Sudebno-pravovaâ reforma"* (Centre for Juridical and Legal Reform, CSPR) and *Fund "Net alkogolizmu i narkomani"*(Fund NAN). In addition, the thesis draws upon secondary sources such as legal comments, studies in the field of criminology, sociology and history, as well as human rights reports.

The main sources to regional reform arelegal texts, policy programs, as well as descriptive, and to a lesser degree analytical, evaluations of the reform process by involved actors, mostly judges of the district courts. Similar to the federal sources, this information has been supplemented by reports from and interviews with the actors in the field of child care and justice programs in Russia mentioned above.

Perm Krai and Rostov Oblast were chosen as subjects of study, partly due to the relatively large amount of information available on the reform process in these regions, and partly because these are the regions in which alternative responses are generally recognized as being deepest implemented. In both subjects regional laws, policy programs, strategies for implementation, evaluations and criminal statistics, as well as comments from local judges and social workers are available from official web pages, i.e. the web pages of the regional governments, district courts, academical institutions in the region and so on. In order to moderate the official picture, additional information has been collected from non-governmental organisations involved in the regions, most importantly *Centr "Sudebno-pravovaâ reforma"* (Perm) and Fund NAN (Rostov).

A potential weakness of this study is that actors supportive of the status quo may be somewhat underrepresented, particularly in the written material. Due to lack of public debate, and especially lack of representation of state parties in the discussion, the level of real support of the current system by the actors involved has been hard to identify. As this thesis suggests, support for the current system may be found on the political level, within the procurator's office and within the penal system. While representatives from these sectors have not been accessible for interviews, official policies suggest that at least the penal authorities are realizing the need for profound changes in their approach to people in conflict with the law (cf. www.fsin.su).

Translation. Need for translation constitutes a particular challenge for cross-cultural studies of laws, as the legal language reflects the culture in a specific jurisdiction. Upon translation of laws and legal concepts, there is a danger that the original connotations may get lost. In this thesis references to the wording of the Russian Criminal Code are based on the translation of William Butler (2003). All other translations are done by the author. Russia has a variation of the continental system of law, and the wording is important for interpretation. It is a common opinion among scholars of continental law, that the English language is

insufficient for handling cases under continental law (for example within the European Union), due to the different legal culture of the Anglo-American world. Significant cultural and historical differences between the English and the Russian speaking world, suggest that there may be some Russian words that can not easily be translated. Butler (2003b) has argued that there is no English equivalent to the Russian word ‘pravo’. Another legal term central to this thesis, for which there is no obvious English equivalent is ‘ispravlenie’ ‘Ispravlenie’ is here translated with restoration, and sometimes with rehabilitation. The rehabilitive nature of ‘ispravlenie’ is, however, disputed (cf. Kurganov 2008)..

Qualitative Interviews. Legal sources, policy declarations and other written materials are supplemented with qualitative semi-structured in-depth interviews with representatives from three Russian non-governmental organizations; Fund NAN, *Centr “Sudebno-pravovaâ reforma”* and *Centr sodejstviâ ugolovnogo pravosudiâ*. All informants were asked about their view of the current system, their knowledge about alternative models implemented in Russia and the likability for further reform. The informants are involved in different phases of the justice system, i.e. prevention, mediation and rehabilitation. Qualitative interviews were chosen in order to be able to benefit from the informants expertise in his or her field of work.

A challenge facing qualitative interviews is that the outcome to a large degree may reflect the perceptions of the interviewer. There is a chance that the interviewer hear what she expects to hear, and not what the informant tells her (Johnson 2002). The knowledge, values and background of the interviewer may also affect the choice of questions asked, and thereby the information received (ibid.). Furthermore, there is a danger that the informant, consciously or unconsciously, adjusts her answers to what she thinks the interviewer would like to hear.

The likability of the mentioned sources of misinformation increases in cross-cultural studies. One reason is the problem of translation mentioned above. Another reason is what I will refer to as ‘cultural pride’. In meeting with representatives from other societies we are likely to either present our own society as better than it really is, or, if we belong to opposition groups, be extremely critical towards it. The risk of misinformation decreases, however, with the researcher’s knowledge of the studied language and society. In qualitative interviews, the risk may also be reduced through awareness and additional questions.

1.5 Structure of the Thesis

Chapter 2 lays out the theoretical framework of the thesis. The first section, section 2.1, provides a definition of the term juvenile justice. Section 2.2 presents three different criminological approaches to children in conflict with the law, followed by four different models for organization of juvenile justice systems. The last section in Chapter 2 is devoted to theories of change.

The discussion of the current juvenile justice system starts with a presentation of the official approach as found in the Criminal Code, in Chapter 3. Chapter 4 looks behind the regulations and into the policy field. Section 4.1 identifies the actors on the political agenda, before the current governmental policies on youth crime and child care are discussed in section 4.2. The last section in Chapter 4, section 4.3, identifies institutional factors of particular relevance for the functioning of the juvenile justice system.

Chapter 5 presents a case study of two regional models of juvenile justice that differ somewhat from the federal approach. In the analysis of the alternative models, attention is given to identify first, how they differ from the federal model, and second, factors that have made the establishment of these regional models possible.

Finally, Chapter 6 analyses the possibilities for a reform of the federal approach to juvenile justice similar to what has happened in the regions mentioned in Chapter 5. Factors studied are the level of support for the current system (6.1), knowledge of alternative models (6.2), relative strength of epistemic communities (6.3) and adaptability of existing institutions (6.4). A final section is devoted to a discussion on particular obstacles to restorative juvenile justice ideas in post-Soviet states.

2. Theoretical Framework

2.1 Defining Juvenile Justice

Juvenile justice may be defined as

> *A system of law, policies and procedures intended to regulate the processing and treatment of non-adult offenders for violations of law and to provide legal remedies that protect their interests in situations of conflict and neglect (Encyclopaedia Britannica).*

For the purpose of this thesis, the term 'juvenile justice' will be used to refer to the handling of children[6] suspected of infringements upon criminal law solely, hereby excluding not only cases under family law, but also children charged with status offences. In accordance with this definition, the term juvenile justice system will refer to institutional arrangements by which the state authorizes intervention in respond to offences, or assumed offences, committed by minors, as well as intervention upon infringements of the rights of the child.

According to the *International Convention of the Rights of the Child* (CRC), children, due to their young age and immaturity, are in need of and have the right to special care and protection. In those jurisdictions that recognize juveniles as a distinct legal category, juveniles are, like adults, assumed to have some knowledge of right and wrong. Unlike adults, however, juveniles are not assumed to fully understand all the consequences of their behaviour. Furthermore, they are believed to be more vulnerable to negative influences from social conditions and other persons. With regard to crimes, this reduces the juveniles' responsibility and hence their guilt.

International standards for handling children in conflict with the law are found in *The United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines) and *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*

[6] According to *Convention of the Rigth of the Child* (Article 1), a child is person under the age of eighteen. Eigtheen is also the age of majority under Russian law (Constitution of the Russian Federation, Article 60). For the purpose of this thesis a child is therefore any human being under the age of eighteen.

(hereafter The Beijing Rules). Similar regional norms for juvenile justice are also found in the regulations of the Council of Europe.

Although generally recognized as an international norm, juvenile justice is still disputed. First, there is no general consensus on *who* constitutes a juvenile. A common definition is that a juvenile is a person who has obtained the age of criminal responsibility, but not yet reached the age of majority. This definition makes juvenile a precise term within one jurisdiction, but has the drawback that it makes it difficult to compare across different jurisdictions. For example, following this definition the term juvenile will refer to children aged 10 to 17 in England, children aged 15 to 17 in Norway, and be redundant in Belgium where the age of criminal responsibility is set equal to that of majority (both 18) (Muncie 1999:255; Doob and Tonry 2004:5 et al.). In many jurisdictions, taking into account the fact that the age of majority is in itself a legally fixed standard which does not necessarily reflect the real maturity level of the child, the upper age limit for juveniles have been set above the age of maturity, e.g. at 20 or 22 years.

Second, there is divergence with regard to *what degree* juveniles should be treated differently from adults for the purpose of justice. The spectre of opinions spans from those reducing the difference to a matter of leniency, to those who consider all minors incapable of criminal responsibility. Whereas advocates from the first group believe that fair handling is always best secured within the legal system, the second group argues that exposing juveniles to a legal system they do not have the capability to understand is an extra punishment and therefore not just.

Under Russian criminal law a juvenile, *nesoveršennoletnij*, is a person who "at the time of the commission of a crime was fourteen years of age but not yet eighteen years of age" (Article 87(1) UK), 18 being the age of maturity in Russia (Constitution of Russian Federation, Article 60).

There are currently two ways to express 'juvenile justice' in Russian language: *pravosudiâ nesoveršennoletnyh* and *ûvenal'naâ ûsticiâ. Pravosudiâ nesoveršennoletnyh* is compounded by the traditional Russian words for justice[7] and juveniles respectively, while *ûvenal'naâ ûsticiâ* is an English loanword which entered the Russian language in the late 1990s.

[7] According to some scholars there is a difference between pravosudiâ and justice, cf. Butler 2003b.

Pravosudiâ nesoveršennoletnyh is the Russian term most commonly used to refer to fair handling of juveniles under the law. In contemporary legal and criminological literature *pravosudiâ nesoveršennoletnyh* is by and large equivalent to the English 'juvenile justice', as the English term is used above. Like 'juvenile justice' *pravosudiâ nesoveršennoletnyh* is used both as a generic term for all approaches to juveniles in conflict with the law, and as a conceptualisation of the understanding of fair handling of juveniles within a specific legal culture. The term is arguably mostly associated with the retributive approach, but is frequently also used to refer to both rehabilitive and restorative responses (cf. Voronina and Tkačev 2004, Šmidt 2007).

In comparison with *pravosudiâ nesoveršennoletnyh, ûvenal'naâ ûsticiâ* is a much more concrete concept and it does not have a generic meaning. Here in lays the main difference between *pravosudiâ nesoveršennoletnyh* and *ûvenal'naâ ûsticiâ*. The term *ûvenal'naâ ûsticiâ* is used about approaches to children in conflict with the law funded in the CRC and the Beijing Rules solely. The term refers to juvenile justice approaches that combine elements of the justice and the social service systems.

2.2 Juvenile Justice as a Policy Field

In the book *Deti v Tûrme* [*Children in Prison*], Mary McAuley (2008:66f) identifies several factors that are of special importance to the actual approach to children in conflict with the law in a society. First, juvenile justice policies are shaped by how we think about youth crime, in particularour assumptions about its origin and nature. Second, juvenile justice policies reflect the society's view on children. The clearest expression of this is the age of criminal responsibility (McAuley 2008:66), although the status of children in a society is also reflected by the degree to which children are granted participation rights, as opposite to protection rights, and the degree of demarcations between private and public sphere. Third, the actual approach to children in conflict with the law depends upon the institutions available. McAuley (2008:66f) particularly mentions the nature of the criminal justice system, the sanctions available, and the existence of a social service system as factors that are likely to have an influence on a society's juvenile justice policy. The mentioned factors will be taken into account in the following analysis of the Russian juvenile justice system.

2.2.1 Three Assumptions on Youth Crime

Within criminology there are three common assumptions on the origins of youth crime. Youth crime is either viewed as a result of socio-economical factors, as a rational choice, or as the outcome of an unwise decision. These three different views on crime have led to three different schools of how to respond to children in conflict with the law.

Common Causation

The rehabilitive school of criminology sees youth crime as a result of socio-economical factors. Simply put, children are believed to become offenders due to factors out of their control, such as poverty or failure of care (Muncie 1999:264).

Vital to the understanding of the rehabilitive approach is the argument of common causation (Hill, Lockyer and Stone 2007:11). Early forfeiters of the rehabilitive approach observed that children who engage in crime often have similar background to children with welfare problems; therefore they concluded that similar measures should be taken to address these children (ibid.). In the words of the director of one of the first juvenile justice systems based upon this approach to juvenile crime:

> *[There is] no need anymore to be puzzled by the circumstances or coincidences that have brought the child before the judge rather than before a psychiatrist* (in Walgrave 2004:545)

It follows from the argument of common causation that youth crime is not crime as such, but a form of childish misbehaviour. Rather than to be punished for factors out of their control, the children should be offered help, education, and treatment (Muncie 1999:257f). Underlying the rehabilitive approach is the assumption that children are easily susceptible to education and behavioural change (Muncie 1999:264).

The view that youth crime is rooted in socio-economical factors is likely to lead to a juvenile justice system where children are either treated by distinct legal institutions with special competence on children, or in the social service system. Within such a system, the main emphasis is put on offender relevant criteria, as opposite to offence relevant criteria. Since youth crime is believed to be a consequence of shortcomings in the child's upbringing, developing the welfare system is seen as important in order to prevent crime (Muncie 1999:264 et al.).

Rational Choice Theory

"Old enough to do the crime, old enough to spend the time"

North American slogan

The argument of common causation stands in sharp contrast to the rational choice approach to crime forfeited by the retributive school[8]. Rational choice theory holds that juvenile offences, like offences committed by adults, are a result of rational decisions. Crimes are committed because the offender believes that by breaking the law he or she may achieve an advantage that he could otherwise not attain (Muncie 1999:271).

The retributive school sees the purpose of the criminal justice system as promoting and securing certain rules in society that hinder the behaviour of one individual in infringing upon the right of another (Gaylin and Rothman 1976:xxvii et al.). Whereas the rehabilitive school stresses that children are different from adults, the retributive school maintains that juveniles, like adults, have a notion of right and wrong. Consequently, juveniles should be held responsible for their actions under the law. Within this approach to youth crime, juvenile justice is mainly understood as legal safeguards, the principle of proportionality, and emphasis on offence relevant criteria, which secures equal treatment before the law (Von Hirsh 1976). In the words of Gaylin and Rothman (1976:xli), a rational choice approach allows for "a greater mechanization of justice", as opposite to the individual approach which is the inevitable consequence of the rehabilitive approach.

Crime as a Social Construct

Underlying both the argument of common causation and rational choice theory is the assumption that crime has a specific origin which can be identified, addressed, and removed. This view has been challenged by Nils Christie (2004; 1981). He argues that there is no such thing as a crime; there are only acts. Whether an act is considered a crime will often depend on coincidences, on good or bad luck, and always on the man-made norms and laws of society (ibid.).

A similar view on crime is found in the restorative school of criminology. The restorative approach is based on the postulate that crime harms people and relationships. Instead of

[8] Also frequently referred to as the justice approach, whereas the rehabilitive approach is sometimes referred to as the welfare approach.

paying attention to the actual law broken, the restorative approach focuses on the specific needs created by the offence and how these needs can be met (Walgrave 2004:551).

Advocates for the restorative approach point out that the punitive approach tends to stigmatize people by addressing them as "criminals" and "victims". The rehabilitative approach, on the other hand, tends to excuse and protect the offenders and thereby keep them from experiencing the consequences of their wrongdoing. Neither of the approaches addresses the emotional needs of those who have been affected by crime (Walgrave 2004; Zehr 2005). Hence, where the retributive approach focuses on the offence and the security of society and the rehabilitive approach on the offender and his needs, the restorative approach focuses on the needs of the victim and how the offender can correct an unwise decision (Walgrave 2004; Zehr 2005).

The restorative approach differs substantially from the retributive and the rehabilitive approach to youth crime with regard to the role given to the state in the justice system. From a rehabilitive and retributive point of view, the state is the main provider of justice (Muncie 1999; Von Hirsh 1976). Under the restorative paradigm on the other hand, society plays a much more important role in the justice process (Zehr 2005; Walgrave 2004; Omaji 2003).

2.2.2 A Rights-Based Approach to Children

International standards for juvenile justice, most widely recognized by the *Beijing Rules*, are based on the *Convention of the Rights of the Child* (CRC), in particular the principle of 'best interest of the child' (Article 3, *CRC*). The CRC grants children individual rights, i.e. the child is recognized as a holder of rights independent of its guardians. These rights do not only include a recognition of the child's need for special care and protection, but also, as stated by Article 12.2, the child's right to be heard in all cases involving the child, including judicial procedures. This granting of participational rights to children is disputed (Archard 2007).

It has been argued that rights may not be the best way to protect children. Following a Kantian view on obligations, Onora O'Neill (1992) argues that "children's fundamental rights are best grounded by embedding them in a wider account of fundamental obligations" (O'Neill 1992:24-25). She refers to the fact that the obligations of the roles of parents or teachers are "commonly taken to require more than meeting those rights which are

institutionalized with the role" (ibid.:27). If we narrow the approach to children to look at their rights, we risk losing the account of the quality of children's lives. O'Neill points to a crucial difference between adults and children: the children's dependence upon adults for fulfilment of their rights. This make rights a less powerful weapon in the hands of children than of adults, who are capable of claiming their rights themselves. O'Neill concludes that as long as children's rights can only be fulfilled through adults, they are in reality only indirect ways of reminding adults of their obligations and should therefore be treated as such. The view that the protection of children is best secured through adult obligations are widespread in Russia, as will be shown in Chapter 6.

2.2.3 A Categorization of Juvenile Justice Systems

Traditionally, many scholars of juvenile justice, the majority coming from the Anglo-American legal tradition, have tended to see the existence of juvenile courts, children's hearings, or other bodies explicitly and solely addressing children in conflict with the law as a criterion for a juvenile justice system. Consequently, those jurisdictions where child offenders are cared for otherwise, Russia among them, are underrepresented in the juvenile justice literature.

In the later years, the view that juvenile justice is largely a question of separate institutions has been challenged and more attention has been drawn to the importance of the level of demarcations in the system. Doob and Tonry (2004:5), studying western juvenile justice systems, have come to the conclusion that a formal creation of juvenile courts or other separate bodies handling juvenile cases, as opposite to adult courts, is not necessary for a distinct juvenile justice system to be operational. More important for the existence of a juvenile justice system than separate courts, is the nature of the administrative structures and practices determining society's responses to youth offences. The most important is how the system works, not formal laws and institutions.

The international standards for juvenile justice do not make any preferances for particular models. The *Beijing Rules* states three operative standards: Emphasize on the well-being of the offender, the punishment should be proportional to the circumstances of the offender, and the punishment should be proportional to the circumstances of the offence. The first two components reflect concern for the offender (rehabilitive approach), while the third

component indicates a preference for the retributive approach due to its emphasize on legal safeguards (Sebba 1992:240f).

Juvenile justice systems differwith regard to whether or not children are cared for in distinct institutions, and with regard to the level of demarcations between the justice and the social service system. Viktoria Šmidt (2007:43f) suggest the following classification:

	Strong demarcations between justice and social service system	Fluidity between justice and social service system
Common system	**Type 1**	**Type 2**
Seperate system	**Type 3**	**Type 4**

Adopted from Šmidt 2007

In juvenile justice systems of category 1, juveniles are treated within the regular criminal justice system and there are strong demarcations between the justice and the social system. As most regular criminal justice systems stress equality before the law as an ideal, these systems will usually not be considered to provide juvenile justice within the understanding of the *Beijing Rules*, which stress the need for an individual approach.

Similar to the first category, juvenile justice systems in the second category are also founded in the regular court system. However, unlike systems of type 1, the second group of justice systems is characterized by cooperation between the justice system and the social service system.

There is a distinction between category 1 and 2 on one side, and category 3 and 4 on the other. Category 3 and 4 falls into the typical Anglo-American definition of a juvenile justice system; i.e. children are handled by distinct institutions designed for children. They differ with regard to whether the institutions are situated in relation to the justice system, such as juvenile courts, or within the social service system, for instance children's councils.

Alternatively, different approaches to juvenile justice may be viewed as a continuum, where type 1 and 4 represent the limits of the spectre. Within this understanding, type 1 represents

the typical retributive approach to juveniles in conflict with the law, while a system like type 4 is seen as the ideal model for most rehabilitive justice advocates.

2.3 Theories of Change

2.3.1 Path Dependency and Path-Shaping Theory

The collapse of the state socialist economics in 1989 was followed by an economical and political transformation. The new-established Russian Federation struggled to move from command economy to marked economy, and from alleged communist party dictatorship towards a representative democracy. The transformation process has sometimes been seen as involving a de novo construction of institutions and norms of conduct. Contrary to what many scholars though at the time, however, the collapse of the Soviet Union did not create an institutional vacuum. Rather, the situation may be described as a 'systemic vacuum' (Nielsen, Jessop and Hausner 1995:4). There was a lack of overall systemic logic, of guidelines regulating and connecting agents and sets of institutions.

Path-dependency theory suggests that legacies of the past limit the possibilities available in the near future. The existence of old institutions limits the number of strategic choices available, and the effects of reform. In the words of Nielsen, Jessop and Hausner (1995:4): "Choice is real but it is also constrained, likewise its effects are real but they too are constrained".

Some theories suggest that social forces can intervene in current conjunctures, actively reformulate the rules of the game, and thereby make new trajectories possible, so-called path-shaping (Nielsen, Jessop and Hausner 1995:6). This however, is not the same as creating from scratch, as the path-shaping approach takes the existing system as a point of the departure. In other words, path-shaping is about actively promoted reform.

In this thesis I will argue that there in the current juvenile justice system is a contradiction between the institutional legacy of the past and the norms of the present. Laws and policies have been changes almost over night, but the institutions – formal as well as informal ones- have survived. This has created stability, but also been a hindrance for systematic change. Put differently, the development of the juvenile justice system during the last 15 years has

been path-dependent. There is however, signals that some actors have started to actively reformulate the rules of the game in order to make new trajectories possible.

2.3.2 The Role of Ideas and Actors

What initiates a path-shaping approach? Max Weber has argued that ideas, believes and values are the most important forces for conduct (Weber 1930). According to Weber, all complex social entities, i.e. economies, political systems, organizations and so on, are the outcomes of social actions. The form of social actions is shaped by cultural values, norms and rules (Weber 1994). Weber's sociology stands in sharp contrast to, and was indeed developed as a critic of, the Marxist historical materialism. In comparison with Marxism determinism, Weberian sociology includes a change from focus on organisms or systems as driving forces for development towards agents and actions. Following Weber, change presupposes knowledge of new ideas and agents willing to advocate them. The actual change will depend on the relative strength of the different epistemic centres.

Whereas ideas, values and mental attitudes may be transformational forces, the same factors may provide barriers to change. As accounted for by Piotr Sztompka (1993:243f), many observers of Post-Soviet society has pointed to the 'socialist mentality' or 'homo Sovieticus' as an obstacle to economical and political transformation in the region. According to Sztompka there are particularly two ways in which the Soviet State shaped the personality of its citizens. First, through the establishment and widespread use of institutions and organizations in the indoctrination of socialist (or Soviet) values, in the words of Sztompka (1993:244) "to a point where it ultimately reached the domain of unreflexive motivations". Second, the people developed strong informal mechanisms to cope with every day life. These informal mechanisms, Sztompka argues, have become deeply rooted in the consciousness of the people (ibid.). He concludes:

> *Thus the domain of mass psychology shows surprising resistance to change and seems to outlast the organizational and institutional forms of 'real socialism' […]. The unfortunate legacy of 'real socialism' seems to be most lasting in the mental domain. [] As a journalist puts it in metaphorical terms, the Berlin Wall may be down, but the 'wall in our heads' remains (Sztompka 1993:244).*

In other words, while the Soviet Union no longer exists, many people are still interpreting the reality as if it was. The people's experiences with the Soviet Union, its authorities, policies,

institutions etcetera, influence on their actions in and reactions to the current state. Applied to the field of juvenile justice, this suggests that experiences with the Soviet approach to youth crime and the Soviet justice system is a contributing factor to how Russian citizens view approaches to juvenile justice in Russia today.

A few traits of the socialist mentality mentioned by Sztompka (1993:245f) is of particular relevance for this thesis. First, there is a contrast between the passive conduct and reluctance to make decisions found in the public sphere, and the self-reliance and innovativeness shown in the private sphere. More generally people in post-socialist states are reluctant to engage in public life as this is associated with high risks and few advantages. Second, there is a widespread distrust in politicians and the authorities on all levels, whereas informal networks, private connections and the like is highly valued and often idealized. Piotr Sztompka (1993) has argued that the Soviet citizens came to idealize the private due to lack of identity with the state.

2.3.3 A Note on the Legal System as a Subject of Change

Legal systems are conservative in nature and therefore highly resistant to change. The system is designed to maintain stability and order in society, the status quo. In addition, the legal system often contains hinders to rapid change, such as procedural requirements about the number of instances a change must pass in order to become a law, the period of time that must pass, and the number of actors that must be present, etcetera.

The slow adaptability of the system can be illustrated by the reform of the Soviet Criminal Procedure Code. The process of adapting the criminal procedure code started already in the 1980s, before the collapse of the Soviet Union. Still the new procedure code did not become a reality until 2001. With regard to the juvenile justice system, it may therefore, due to the dependence upon legal changes, but also institutional heritage, be expected that reform will be slow.

3. Organization and Operation of Juvenile Justice

Russia has a higher number of incarcerated children than most other European countries. In Russia, 28 out of 100.000 children are deprived of freedom[9], the corresponding numbers being 6 in Greece, 16 in Estonia, and 30 in the USA (Altschuler 2008). Due to the large number of children in closed institutions, as well as the lack of a distinct justice system for juveniles, it is commonly assumed that the Russian approach to children in conflict with the law is exclusively retributive. This chapter challenges that opinion.

Although the Russian approach to juvenile as well as adult offenders are based on a 'rational choice' approach to crime, there is also a tradition for rehabilitive measures dating back to the 1920s. The classic criminological dilemma between juveniles as responsible actors and as objects vulnerable to socio-economical factors and easily influenced by adults is well and alive in the Russian juvenile justice system. I will argue that a problem with the current legal provisions is that the relative weighting of these factors is not clarified. Consequently, the degree to which the juvenile is viewed as mature and responsible is very much left for the judges to decide.

Arguably, the Russian judicial tradition is to give priority to 'rational choice' concerns. Furthermore, there is a tradition for responses involving deprivation of freedom. The latter reflects a culture of harsh responses, but also the fact that society-based sanctions are little developed. In Russia not only retributive responses, but also responses which primary purpose is to educate or rehabilitate frequently include deprivation of freedom.

3.1 Brief History of Juvenile Law and Justice in Russia

3.1.1 Crime Control in Tsarist Russia

The general approach to juvenile justice, as to justice for adults in second part of the 19th century was one of crime control, emphasizing punishment and incarceration (Rodeheaver

[9] Children in closed medical institutions and closed vocational colleges excluded.

and Williams 2005:227; Shestakov and Shestakova 2002:414; McAuley 2008:53). The first criminal code and code of criminal procedure in tsarist Russia was created during the legal reforms of the 1860s. It was also during this period that legislative attention was first given to the treatment of children in conflict with the law (Rodeheaver and Williams 2005:227). The first legal document that explicitly mentioned juvenile offenders was the Punishment Regulations of 1864, which established that minors should be detained separately from adults and be sentenced to specially assigned corrective shelters rather than prisons. The regulations also limited the length of imprisonment for minors. With these exceptions, juvenile offenders were to be dealt with in the same manners as adults, as stated by the "Rules on Corrective Shelters" of 1866 (Rodeheaver and Williams 2005:227).

Starting from 1900, youth crime was increasingly viewed as "an indicator of the failure to apply basic precept in the education" (Shestakov and Shestakova 2002:214). Education was introduced as a sanction, as reflected in the draft criminal code from 1903, of which roughly 10 percent became legally codified (Rodeheaver and Williams 2005:227). The draft code recommended that corrective institutions for children aged 10 to 17 should have a distinct educational character and that girls should be taken care of by nunneries (Shestakov and Shestakova 2002:414).

Over the next decade, the view of the origins of youth crime gradually changed. From being dealt with as a result of poor education or upbringing, it became increasingly interpreted as a product of poverty. The justice system changed correspondingly. In 1910, the first Russian juvenile, i.e. *detskij*, court was established in St. Petersburg after models from Western Europe and particularly Northern America[10] (Karnozova 2008:49). Later, juvenile courts were established in Moscow, Kharkov, Kiev, Odessa, and Saratov[11] (Karnozova 2008:50).

The core element of the juvenile courts was the introduction of the institution of guardianship, which provided the judge with information regarding the social conditions under which the child was brought up. The social conditions were to be taken into account upon establishment of the guilt and punishment of the accused child (ibid.). There is

[10] The concept of juvenile courts is believed to have been introduced to Russia by professor P. I. Lûblinskij in 1908 in a lecture at Judicial Society of St. Petersburg titled "Special Courts for Juveniles in North America and Western Europe" (Karnozova 2008:49).

[11] The cities of Kharkov, Kiev and Odessa are situated in today's Ukraine; although in 1910 these areas were still a part of tsarist Russia and later the Soviet Union.

currently a discussion in Russia on whether these courts represented the establishment of a real juvenile justice system or only some of its elements. Today's advocates of juvenile justice reforms (Karnozova 2008; Zykov, Hananašvili and Avtonomova 2004 et al) are emphasising their value, while foreign observers (i.e. McAuley 2008) are of a more moderate opinion.

3.1.2 The Rehabilitive Approach of the 1920s

After the revolution in 1917, the turn towards a more rehabilitive approach to juvenile justice continued. Of particular importance was the establishment of the Committees on Juvenile Affairs in January 1918. During the 1920s, the majority of cases involving minors were handled by the committees (McAuley 2008:55), i.e. outside the criminal justice system. When approaching juveniles, the committees gave priority to offender relevant criteria over offence relevant criteria. In the words of an important legal scholar at the time, V. I. Kufaev, the new legal professions and the work of the committees "did not so much concern the damage the juvenile's offence inflicted upon the state, as the harm it caused to the child itself" (cited in McAuley 2008:54). Initially, the committees were responsible for handling all criminal cases involving juveniles, but already in 1920 it was established that severe crimes committed by children aged 14 to18 should be handled by the people's courts, i.e. regular courts, according to standard procedure (Karnozova 2008:51).

The understanding of crime as closely related to poverty led to the view that juveniles were not offenders as such and therefore should not be imprisoned. Rather, in accordance with the mandate of the committees, they should receive "measures of a medical-pedagogical character" (Kufaev in McAuley 2008:54).

With the 1922 Criminal Code the age of criminal responsibility was increased from 12 to 14 years. Children aged 14 to 16 were only to receive measures of medical-pedagogical character, while children aged 16 to 17 were in general approached like adults, although they could not be sentenced to capital punishment. The 1922 Code also established the practice of leniency for juveniles (Karnozova 2008:51, McAuley 2008:55).

The changes in laws and policies resulted in a sharp reduction in the number of incarcerated children. According to data collected by the Russian scholars P.I. Lûblinskij and V. I. Kufaev, only about 12 percent of the juvenile offenders were sentenced to incarceration in

orphanages, so-called working communes, or colonies. The majority received warnings or different provisions of supervision and care (McAuley 2008:55).

3.1.3 The Retributive Approach of the Stalin Era

Starting from 1935, the Soviet criminal politics towards juveniles took a turn to the retributive, an approach which by and large lasted until the 1980s. The age of criminal responsibility was lowered to the age of 12, and the use of measures of medical-pedagogical character was put to an end. By the end of the 1930s, children were no longer exempted from any punishment, capital punishment included. The juvenile courts, as well as the Committees on Juvenile Affairs, were abolished, and juvenile offenders were again dealt with by the regular justice system (Karnozova 2008:52; McAuley 2008:60f).

Underlying this approach was the view of crime, and particularly youth crime, as a threat to the socialist society, its values, and ideology. The official Soviet doctrine held that crime was a product of capitalist society (Terrill 2007:495). Youth crime was largely seen as a result of the exposure of the young minds to Western influence (ibid: 565).

Reform of the criminal code and criminal procedure codes in the late 1950s and early 1960s resulted in a slightly softer approach to juvenile offenders. The age of criminal responsibility was again raised to 14 years; the norm of leniency for juvenile offenders was reintroduced; and the focus on due process and proportionality of punishment for juveniles increased. The Code reopened for giving measures of compulsory education instead of regular imprisonment to juveniles, yet only on the judge's initiative (Karnozova 2008:53; Rodeheaver and Williams 2005:228; McAuley 2008:64f).

In 1961, the Committees on Juvenile Affairs were re-established and tasked with the responsibility for all cases involving children under the age of criminal responsibility and minor offences involving juveniles aged 14 to 18 (McAuley 2008:66), a mandate maintained more or less until the late 1990s. In 1968, separate colonies for young first and second time offenders were established (McAuley 2008:71). The reforms of the 1950s and 1960s laid the fundament for the current juvenile justice system.

The changes in criminal policy from alternative and informal in the 1920s towards more controlled and retributive under Stalin, and then back again towards a softer approach under Khrushchev, reflect the political development in the Soviet Union as a whole. In the words

of Maksudov (April 2009): “The Russian justice system reflects the state’s attitude towards its people”.

3.1.4 The Dual Tracking System, 1968-2001

From 1968 until the implementation of the 2001 Criminal Procedure Code, Russia had a dual tracking system for juvenile cases (Terrill 2007:570; Shestakov and Shestakova 2002:219f). Cases where the suspected offender was under the age of 18 were either considered by courts of general jurisdiction or by the local Committees for Juvenile Affairs (hereafter KDN). Although not technically a judicial body, KDN performed a range of juridical functions. KDN handled all offences committed by children below the age of criminal responsibility, i.e. 14 years, so-called “dangerous public acts” committed by children aged 14 to 16, and first time offences of minor gravity committed by 16 to 18 year olds (Shestakov and Shestakova 2002:419). Cases where the offence was considered grave and/or the juvenile had been previously sentenced were tried by regular courts (Terrill 2007:570).

The KDN procedure differed substantially from a trial. The preventive mandate of the KDN made the commission more concerned with determining measures preventing the child from committing further crimes than with establishment of guilt (Terrill 2007:571). Rodeheaver and Williams (2005:232) claim that the orientation of the committees is similar to that of restorative justice, pointing to KDN’s emphasis on reconciliation.

The mandate of KDN to solve criminal cases was disputed. There were both disagreements within the KDN (Shestakov and Shestakova 2002:419) and between the KDN and the prosecuting authority (Maksudov 2000) on how to proceed in cases involving children older than the age of criminal responsibility. Several legal scholars argued that the mandate of KDN was void under the new Russian legal system, as it contradicted the 1996 Constitution’s Article 118. It seems clear that KDN was de facto operating as an extrajudicial body. This practice was reduced following the enactment of the 1996 Criminal Code and put to an end all together in 2001.

In the 1980s, criminal justice in Russia in general underwent a significant liberalization. The judges started to pay more attention to the quality of the material prepared by the police and prosecutor, which resulted in an increased number of cases being dismissed. There was also a general increase in the use of non-custodial forms of punishment (Fogelsong 1997:282).

Consequently, the number of criminal defendants found guilty at trial went down from 94 percent in 1980 to 84 percent in 1990, whereas during the same period the use of deprivation of freedom was reduced from almost 60 percent to less than 40 percent (ibid.). According to Todd Foglesong (1997:282f), this was the largest shift in the Soviet criminal justice approach in the post-Stalin period.

While the Soviet approach to juvenile offenders, as well as to offenders in general, was largely retributive in its nature, it also had a strong educative element. As noted by among others Laura Piacentini (2004: xii), the Soviet faith in the value of correctional work and re-education to raise good citizens was strong. Behavioural correction, i.e. *ispravlenie*, was an important aim for juvenile punishment in Soviet times (Kurganov 2008:11).

Still, it should be noted that youth crime, both its formand its origin, in general was given little attention during the Soviet years. As mentioned above, crime was assumed to be a product of capitalism, and the official doctrine held that crime would disappear with the establishment of a socialist society. It was therefore not considered necessary to develop special policies or programs for handling crime. Correspondingly, the increase of visible youth crime in the late 1980s and particularly 1990s was by many not only viewed as a result of increased poverty and social problems among a large part of the population, but also as the dark side of capitalism and the increased influence of West-European and American values.

3.2 Legal Framework

3.2.1 Laws and Regulations

Responses to and procedure for handling juveniles in conflict with the criminal law are regulated by the Criminal Code of the Russian Federation [*Ugolovnyj kodeks*, UK] from 1996 and the 2001 Criminal Procedure Code [*Ugolovno-ispolnitel'nyj kodeks*, UIK] respectively[12]. The primary task of the Criminal Code is to protect the security of citizens, their legal rights, and their freedoms (Article 2 (1) UK).

[12] Administrative offences are regulated by a separate code. Although it accounts for a large part of the offences committed by juveniles, administrative offences will not be addressed in this thesis.

Children are generally highly valued in Russia, and their rights are well protected under Russian law. In addition to the general human rights protected by the Constitution, the Constitution's Article 15(4) stresses the obligation of Russia to follow the norms found in international law. *The International Convention on the Rights of the Child* (hereafter CRC) has been implemented into Russian law through Federal law No. 124 of July 24, 1998 "On the Basic Guarantees of the Rights of the Child in the Russian Federation". Another important law with regard to the regulation of children's rights and youth crime prevention is Federal law No. 120 of June 24, 1999 "On the Principles of Prevention of Juvenile Neglect and Juvenile Delinquency", which regulates preventive measures on youth crime, as well as interventional measures towards children below the age of criminal responsibility. Provisions regarding closed vocational colleges are regulated by the mentioned Federal Law No. 120 of June 24, 1999 and Federal law No. 3266-1 of July 10, 1992 "On Education" jointly.

Two recommendations by the Plenum of the Supreme Court have been of particular importance for recent developments in the field of juvenile justice in Russia. Recommendation of the Supreme Court of October 10, 2003 "On the application of universally recognized international standards and norms by judges of general jurisdiction" underlines that Russian judges are directly bound by international norms and standards such as the CRC and *Beijing Rules*, and that international norms and standards take precedence over Russian laws in case of legal conflict. Recommendation No.7 of February 2000 "On court practice in cases involving offences committed by juveniles" recommends the specialization of judges in juvenile cases, the inclusion of expert opinions (psychologists, social workers etc) in handling them, and closer cooperation between the legal system and other bodies working with children, in particular the youth crime prevention agencies. It also states that measures involving deprivation of freedom should only be used as a measure of last instance and that the reason for imposing such sanctions must be given explicitly.

Whereas criminal law is a matter of federal jurisdiction, family law and laws on prevention of juvenile crime are joint jurisdiction of the federation and its subjects (Voronova 2008). The subjects therefore have the power to enact law in the field of youth crime prevention and develop the provisions of the federal laws applicable to the specific subject. Thus, while the criminal justice system should be assumed to be quite uniform in the Russian Federation, there may be variations among the federal subjects with regard to crime prevention policies and practices.

3.2.2 Juveniles and Criminal Responsibility under Russian Law

The official age of criminal responsibility in the Russian Federation is 16 years (Art.20(1) UK). Children who have attained 14 years of age are subject to limited criminal responsibility, i.e. they can be held responsible for certain offences including homicide, intentional causing of grave or average grave harm to health, theft, open stealing, assault with intent to rob, hooliganism under aggravating circumstances, and vandalism (Art. 20(2) UK). As the list includes the by far most common offences committed by Russian children, i.e. theft, stealing, and assault with intention to rob, cf. *Rossijskij statističeskij ežegodnik* 2008, the age of criminal responsibility in Russia is 14 years for all practical purposes, cf. the definition of juvenile under Russian crimian law in section 2.1.

Separate chapters devoted to provisions for juveniles are found both in the Criminal Code and the Code of Criminal Procedures.Young age is considered a mitigating circumstance equal to other mitigating circumstances, and the Criminal Code ensures the practice of leniency for minors. The maximal punishment to be given to a juvenile is 6 years of incarceration for children who at the time of the commitment of the crime had not yet reached 16 years and 10 years of incarceration for children aged 16 to 17 (Article 88(6) UK). Adult offenders may in comparison receive life time deprivation of freedom (Article 57 UK).

3.3 Criminal Procedure in Juvenile Cases

Russia does not have a distinct justice system for juveniles. Juvenile cases are handled in the regular justice system under the provisions given in the 2001 Criminal Procedure Code. With a few, but important, exceptions laid out below, juveniles are treated like adults during the criminal procedure.

3.3.1 Criminal Investigations and Pre-trial Procedures

When a child is reported to be in conflict with the law, a preliminary investigation is required. Whereas procedures involving adults are centred on offence relevant criteria the preliminary investigation in juvenile cases takes offender relevant criteria into account. Herein lays the main difference between adult and juvenile procedures. The significance given to socio-economical factors upon establishment of guilt depends upon the age of the

subject. The relative significance given to socio-economical factors is , however, not clarified.

The pre-trial investigation is usually conducted by police investigators from the local militia office for preventing juvenile infringements of law (PDN) and controlled by a representative from the prosecuting authority (Shestakov and Shestakova 2002:430; Butler 2003a:262).

The investigation includes three sets of considerations (Shestakov and Shestakova 2002:429). First, the investigation establishes the age of the child, i.e. whether or not the child can be held legally responsible. If the preliminary investigation shows that the child can not be held responsible for his behaviour under the law, the procurator turns the case over to the local KDN office (Terrill 2007:579). The case will then be handled outside the criminal justice system, i.e. by the authorities responsible for child care and youth crime prevention. For a discussion on the current mandate of the committee, see section 4.1.1.

Second, the investigation should consider the child's emotional maturity; cognitive, intellectual, and moral character; and its living and educational conditions. Finally, the investigation should consider the child's accountability, taking into account the mentioned factors and the potential influence of adults or older children (Shestakov and Shestakova 2002:429). In addition to the general exceptions from criminal responsibility laid out in Article 20 (age) and 21 (non-accountability due to mental illness), the Supreme Court has made it clear that social and educational circumstances, and potentially assistance or encouragement of an adult, shall be taken into account upon determining the criminal responsibility of juveniles, as provided for in Article 89 UK (Resolution No. 7 of February 14, 2000). The court can, upon judgement of these factors, decide on measures of educational influence instead of punishment. The difference between punishment and other measures will be discussed in section 3.4.1.

3.3.2 Procedures in Justices of the Peace and District Courts

Criminal cases involving juveniles are handled by regular criminal courts (Terrill 2007:571). There are currently two types of regular courts of first instance in Russia: district courts, i.e. oblast courts, krai courts, and city courts; and justices of the peace. Justices of the peace are judges of general jurisdictions. Their competence at first instance includes cases under civil law and criminal cases for which the maximum punishment does not exceed two years of

deprivation of freedom (Article 31 UIK). District courts have jurisdiction over all other cases.

In both justices of the peace and district courts a trial requires the participation of the juvenile and its lawyer. The 2001 Criminal Procedure Code also established the right of the juvenile to assistance of a parent or guardian, unless it can be proved that this is not in the best interest of the child. Open courts are the norm, although it is possible to make an exception on special grounds if the offender is under the age of 16 (Shestakov and Shestakova 2002:432f; Terrill 2007:571).

Similar to adult cases, juvenile cases may be tried by a judge or, since 2003, by a judge and a jury. Since the use of juries are limited to very severe cases such as murder or rape, most juvenile cases are tried by a judge only. The trial is an advercial process, although, as pointed out by among others Solomon Jr. (2005), biased in the favour of the prosecuting authority, who is the only part allowed to present evidence in court.

A peculiarity of the Russian criminal procedure with regard to juvenile cases is the role given to teachers. In cases where the suspected juvenile is below 16 years of age, one of the juvenile's teachers may be asked to participate in the questioning of the child (Shestakov and Shestakov 2002:431; Terrill 2007: 571). According to Shestakov and Shestakova (2002:431), this participation goes beyond that of a regular witness, as the teacher also may provide the court with professional advices. In other words, the teacher may participate in court simultaneously as a witness and as an expert.

The procedure in justices of the peace differs somewhat from that of the district courts. In the justices of the peace, the judge discusses with the parties the possibility of reconciliation. If reconciliation is achieved, the criminal proceedings are terminated. If it is not, the case is considered by the court following usual procedure (Butler 2003a:277). The mandate of justices of the peaces may be compared to that of KDN between 1968 and 2001, the main difference being that within the justices of the peace the offended part has more power over the outcome of the case, i.e. whether or not reconciliation will be possible, than what was the case during the former KDN procedure. Russian restorative justice advocates see the objective of reconciliation as constituting a legal ground for establishing victim-offender mediation programs in Russia. It should be noted that procedures for reconciliation are not mentioned in the Criminal Procedure Code. Furthermore, the Criminal Code only opens for a

limited range of cases to be terminated on grounds of reconciliation of the parties. I will return to the implications of this in section 6.1.2.

3.3.3 Alternatives to Handling Juvenile Cases in the Criminal Justice System

Upon the enactment of the 2001 Criminal Procedure Code it became clear that all criminal cases involving juveniles aged 16 or older should be handled by courts exclusively (Shestakov and Shestakova 2002:419; Rodeheaver and Williams 2005:232). This is in accordance with the Russian Constitution which states that the judging powers lay with the court and the court alone (Article 118 (1)). The establishment of extrajudicial bodies is explicitly prohibited (Article 118 (3), cf. Federal Constitutional Law No.1 of December 31, 1996).

Although the dual tracking system for juvenile cases no longer exists, the Russian justice system gives some room for informal leverages. According to people working with children at risk (Sergeev April 2009; Gordeeva April 2009; Maksudov April 2009, cf. also Pridemore 2002:199), less serious infringements upon the criminal law are often treated as administrative offences. Repeated misbehaviour may lead to the writing of a protocol which is passed on to the KDN. The KDN may then prescribe an individual preventative program for the child. Another common reaction to repeated misbehaviour is the practice of putting the child under police supervision (Sergeev April 2009). If the juveniles are enrolled in school, teachers may also on some occasions take on the task of mediators in order to keep the young persons out of the criminal justice system (Maksudov 2000). The widespread use of such informal practices has led some sources to suggest that only about 1/3 of criminal offences committed by children are investigated as criminal cases (Shestakov and Shestakova 2002:420).

3.4 Sanctions and Sentencing Practices

3.4.1 Punishment and Other Types of Interventions Provided for by the Law

Russian criminal law distinguishes between two categories of sanctions: punishment, *nakazanie*, and "other measures of criminal law character" [13]. Of the latter category are measures of educational influence, *mery vospitatiel'nogo vozdejstviâ,* of particular relevance for juveniles. Juveniles who get sanctioned within the criminal justice system may therefore be assigned either punishment or compulsory measures of educational influence (Art. 87(2) UK).

The Criminal Code states that punishment shall take the form of "deprivation or limitation of rights and freedoms" (Article 43(2)). The punishment must be provided for by the law and take the form of a fine; deprivation of right to engage in determined activity; obligatory tasks; correctional tasks; arrest; or deprivation of freedom for a determined period (Art. 88(1) UK). Children sentenced to incarceration usually serve their sentences separated from adults in educational colonies, *vospitatel'nie kolonii*[14].

Measures of educational influence include warnings; transfer from supervision of parents, persons replacing them, or a specialised state agency; imposition of the duty to make amends for harm caused; limitation of leisure time; and establishment of special requirements for the behaviour of the minor (Art. 90(2) UK).

While punishment is directly connected with criminal responsibility, measures of educational influence have a dual nature. As noted by legal scholar Kurganov (2008:33), measures of educational influence may take the form of both realization of criminal responsibility (cf. Article 92(1 and 2) UK) and release of liability (Article 432(1 and 2) UIK). In other words,

[13] There is no clear legal definition of "measures of criminal law character", *mera ugolovno-pravogo haraktera*. According to the Criminal Code "other measures of criminal law character" includes measures of medical character and confiscation of property. The literature also normally includes measures of educational influence and special provisions applying to pregnant women and women with the responsibility for young children. This classification is, however, disputed, see for example Kurganov 2008:32.

[14] The educational colonies are in reality child prisons, cf. McAuley 2008, *Dety v Tûrme* 2001, Amnesty International (2002)

measures of educational influence can also be imposed on the juvenile on grounds not directly related to the question of guilt (cf. Article 90(1) UK and Article 431(1) UIK).

3.4.2 On Assignment of Punishment to Juveniles

Under Russian criminal law the principle of differentiation in assignment of punishment takes two forms. First, differentiation takes place on background of category (Kuraganov 2008:40). Juveniles are established as a distinct legal category under Russian criminal law. The Criminal Code states that juveniles, due to their young age, shall be subject to only a limited range of punishments and that incarceration, if necessary, shall take place in special institutions assigned for juveniles. Second, differentiation takes place on grounds of individual characteristics identified during the pre-trial investigation (Kuraganov 2008:40).

The Criminal Code clearly states that the offender should always be assigned the least strict punishment possible (Article 60(1) UK). In the case of juveniles, this takes the concrete form of a provision that states that the possibility of assigning measures of educational influence always shall be considered before the assignment of punishment. In those cases where the court finds it necessary to assign punishment to juveniles, types of punishments that do not involve deprivation of freedom shall be considered first. This is in accordance with international standards, such as the *Beijing Rules*, which state that children should only be deprived from freedom as a very last resort. Furthermore, the Russian Supreme Court has made it clear that the reason for depriving juveniles from freedom must be explicitly stated by the court (Supreme Court Resolution No.7 of February 14, 2000, paragraph 12). In other words, deprivation of freedom may not legally be used as the default option.

A milder punishment than prescribed by the lowest limit in the Criminal Code may be assigned by the judge in exceptional circumstances. The Code does not include an exhaustive list of such circumstances, leaving much to the decision of the judge. One exceptional circumstance mentioned is the inducement to assist the authorities in solving a crime (Butler 2003a:589).

In Resolution No. 7 2000, the Supreme Court stated that juveniles can only be deprived of their freedom for the purpose of reformation, i.e. *ispravlenie*[15]. Hence, the fact that a juvenile

[15] The exact meaning of *ispravlenie* is disputed among Russian scholars, cf. Kurganov 2008.

may constitute a threat to society does not in itself justify incarceration. Incarceration can only be justified when the juvenile is assumed to benefit more from incarceration than from any other sanctions or even non-intervention (cf. Supreme Court Resolution No.7 of February 14, 2000, paragraph 12).

3.4.3 Sentencing Practices

Since the the new Criminal Procedure Code came into force in 2001, a profound change has taken place with regard to the sentencing practices for juveniles. There has been a significant reduction in the number of offenders receiving incarceration and an increased use of more community-based responses (William and Rodeheavers 2002:104; Abramkin 2008). It is a paradox that the change towards less retributive measures corresponded with the dismantling of the dual tracking system and the transfer of juvenile cases to the regular justice system. The changes, however, reflect the general liberalization in Russia in this periode.

Currently, warning and conditional sentences are used towards all first time offenders and increasingly also to second and third time offenders, with exception of those who have committed very grave crimes “that caused physically harm to a person”, (Sergeev April 2009). A conditional term implies that the child has to register with the police once a month and avoid committing further crimes for a certain period. If the child breaks these rules, the term is made operative (ibid.).

Centr sodejstviâ ugolovnogo pravosudiâ has pointed to several insufficiencies in today’s form of conditional sentences. The conditional term is not accompanied by neither corrective or rehabilitive measures, nor job or education opportunities, thereby giving juveniles few real opportunities to change their way of life. Consequently many, if not most, conditional sentences turn into real terms (Sergeev April 2009; Gordeeva April 2009; see also Alternative Report 2005:55).

Since the implementation of the 1996 Criminal Code, Russian judges have been frequently criticized for not making enough use of educational measures and reconciliation (Supreme Court Resolution No.7 of February 14, 2000; Kalinin 2002; Voronova and Tkačev 2004:32). Pressure from the Supreme Court and amendments to the law between 2001 and 2004 led to more exemptions of criminal responsibility due to reconciliation. According to data provided

by *Centr "Sudebno-pravovaâ reforma"*, the use of reconciliation increased from 1.4 percent of the juvenile sentences in 2001 to 25 percent in 2005 (Maksudov April 2009).

With regard to types of punishment, incarceration and conditional incarceration are still the most common sentences given to juveniles. Currently, approximately 20 percent of the sentenced juveniles end up in educational colonies (Altshuler 2008). Correctional work (introduced in 2004) currently makes up only 8 percent of the sentences not connected to deprivation of freedom (FSIN 2009d). Similarly to correctional tasks, mandatory tasks are also seldom applied by the courts. There has, however, been an increase in the use of this type of punishment the last years, its share rising from 1.5 to 4.8 percent between 2005 and 2007 (FSIN 2009e). The prison authorities report on huge regional differences with regard to the use of obligatory tasks. In some subjects, including Adygeâ, Kalmykia, Saha, Tyva, Magadansk, and Murmansk, this form of punishment is in reality non-existent (FSIN 2009e). The prison authorities are currently addressing the limitations and working to increase the use of correctional and mandatory work (FSIN 2009d; FSIN 2009e).

3.5 Concluding Remarks

Following Šmidt's classification of juvenile justice systems, as laid out in chapter 2, Russia belongs to type 1. Once they pass the minimum age of criminal responsibility, children are handled in the regular justice system in manners similar to adults. With a few possible exceptions, there is no direct involvement of the social service system. Justice is primarily understood as referring to legal safeguards. The general underlying assumption is that crime is a result of rational choice. In addition, the approach is largely institutional, as shown by the widespread use of measures involving deprivation of freedom.

Contrary to what is commonly assumed, the Russian approach to juveniles in conflict with the law also contains some rehabilitive elements, and these are well rooted in history. The living condition of the child is to be taken into account upon the establishment of guilt and punishment, and punishment can only be given to a child for the purpose of reformation. According to the law, deprivation of freedom shall only be used as a measure of last resort, and never habitually. In addition, the aim of reconciliation is often understood as a restorative element. In other words, the Criminal Code and Code of Criminal Procedures contain legal provisions for restorative and rehabilitive approaches to children in conflict

with the law. Furthermore, the Constitution clearly states that international norms and standards always should be taken into account and that they take procedure over Russian law in case of legal conflict. Consequently, there is a fundament for the establishment of a juvenile justice system in accordance with the standards of the *Beijing Rules.*

4. Juvenile Justice as a Policy Field

The political approach to children in conflict with the law in Russia is dual. The official juvenile justice policy, if such a policy may be said to exist at all, is made up by the general criminal policy, characterized by a 'hitting hard on crime' approach, and the Russian child care policy. Within the policy field, the ambivalence between general security concerns and special concerns for the child is even more evident than from a judicial point of view. There is a fundamental contradiction between the responsibility for one's own actions stressed by the first, and the innocence due to immaturity stressed by the latter. So far, little effort has been made on the federal level in order to coordinate these two policies.

The lack of coordinated efforts is characteristic for the current juvenile justice system as a whole. The disparity on the policy level is reflected in the organization of the system, where actors fall into two main groups: actors responsible for justice and actors responsible for child care. Due to the strict demarcations between the justice and the child care system, there are currently few arenas in which the actors may come together and coordinate their approaches. This lack of coordination of efforts constitutes a weakness of the current juvenile justice system. It is also one of the main challenges to reform, as the agencies are often more concerned about maintaining their own relative position than improving the system's overall functioning.

In addition to the contradiction between welfare and justice concerns, the current juvenile justice system suffers from the incompatibility of policies and measures available. Whereas norms and policies have changed significantly during the last 20 years, the institutional framework remains much the same as during the Soviet era. The Soviet institutional heritage, in particular the penal system, constitutes a significant challenge to realizations of change.

4.1 Main Actors

4.1.1 State Actors

Juvenile justice policies fall under the responsibility of four different ministries. The main actor in the development of justice policies in Russia is the Ministry of Justice. The Ministry

is responsible for the court and penal system, including the educational colonies. Child care, the protection of children's rights, and youth crime prevention are the responsibilities of the Ministry of the Interior (MVD). MVD is also, together with Ministry of Education and Science, responsibile for children in closed vocational colleges. Ministry of Education is in addition responsible for the education provided for children in the penal system, whereas all measures involving medical treatments- including treatment of alcohol and drug addictions- , both in and outside of the penal system are the responsibility of the Ministry of Health.

Federal law No. 120 of June 24, 1999 (Article 4 and 24) defines the actors that are part of the crime prevention system. These are the municipal committees on juvenile affairs (KDN); organs of social security such as social shelters, centres for helping children who are left without parental care, and rehabilitation centres; educational bodies, including orphanages and closed and open vocational colleges; organs of guardianship; organs of youth affairs; and organs of internal affairs. These actors fall within the responsibility of three of the ministries mentioned above: MVD, Ministry of Education, and Ministry of Health.

Out of the operational actors, KDN is currently the actor with most political influence both on the federal and regional level. The federal KDN committee is tasked with preparing guidelines and recommendations for the work with children at risk in accordance with international standards, and it functions as an expert body for the preparation of normative laws and federal programs, as well as providing general information (MVD 2006). The committee is led by the Minister of the Interior and consists of 15 members from the administration of the federal subjects, employees of the relevant federal bodies, and representatives from public society (MVD 2008). Local KDN offices are more directly involved in crime prevention programs, as well as preliminary investigations (Gordeeva, April 2009).

Other actors that are actively involved in the operation of juvenile justice are the Police Department for Juvenile Affairs (PDN) and the penal authorities (FSIN). The organization of PDN is similar to that of KDN in the preventive field, although PDN does not hold the same political power (Alternative Report 2005:46). PDN has, since 1999, been placed under the jurisdiction of the Ministries of Justice and Interior jointly, and according to Rodeheaver and Williams (2005:243), the dual jurisdiction has weakened not only the political position of PDN, but also its capacity to fulfill its operational tasks.

4.1.2 Non-Governmental Actors

The non-governmental actors, hereafter NGOs, may be divided into two subgroups: charity organizations and interest groups. The first group has a mainly humanitarian agenda, focusing on the needs of the children for care, protection, and support. The NGOs in question are often religious charity organizations established on the initiative of, and led by, local religious communities, such as the Moscow-based Miloserdce or Pravoslavnogo narodnogo dviženâ "Kurskij vokzal, bezdomnye detei"[16]. In spite of their significant position within child care and rehabilitation, it seems that the charities mostly work outside of the juvenile justice system and are little involved in policy making.

Contrary to the charities, the other cluster of NGOs has a clear political agenda: reform of the juvenile justice system. They work actively towards politicians and official institutions on all levels in order to promote major changes in the approach to juveniles in conflict with the law[17]. From a criminological point of view, their agendas vary substantially. The organizations work with everything from establishing distinct juvenile courts (Fond NAN), through promoting restorative juvenile justice ideas (*Centr "Sudebno-pravovaâ reforma"*), to simply improving the current system (*Centr sodejstviâ ugolovnogo pravosudiâ*). In spite of these differences, the organizations share some main goals. They all promote an approach to juveniles in conflict with the law that is less retributive and less institutionalizing, and more focused on offender relevant criteria and individual solutions than the current system. Most importantly, they work to abolish the strong demarcations between the justice system and the social service system.

[16] According to Valery Sergeev at *Centr sodejstviâ ugolovnogo pravosudiâ*, all, but one of the major religious communities working with juveniles in conflict with the law, are orthodox. It is his impression that the government generally support the involvement of the Orthodox Church in rehabilitation of juveniles, but that the involvement of other religious communities are less welcome (Sergeev April 2009).

[17] Two examples: Director of the NGO Fund NAN, Oleg Zykov, is also one of the members of KDN's federal committee, while Director of *Centr sodejstviâ ugolovnogo pravosudiâ*, Valery Abramkin is one of the representatives in the Presidential Human Rights Council.

4.2 Governmental Policies on Youth Crime and Youth Crime Prevention

Russia lacks a consistent policy for handling juveniles in conflict with the law. The governmental policies on juvenile crime and justice fall within two larger policies: the fight against crime and efforts to promote child care. There is a fundamental contradiction between these two policies, as the first stresses the rational behaviour and accountability of the juvenile, and the second its immaturity and innocence.

A common feature, however, is a fundamental change in the norms and values underlying the policies following the transformation of Russian society from authocracy towards democracy. Most prominently, the general objective of the policies is no longer to serve the purpose of society and protect its ideology, but to serve the well-being and protection of the individual. In the field of child care, the change can be seen in a policy shift from the precedence of institutionalism to precendence for family-based approaches. In the justice system the main objective of criminal law has shifted from protection of society from the criminal to protection of the rights of the individual.

4.2.1 Child Care and Youth Crime Prevention Policy

Child care is given a high priority in the official Russian rhetoric. According to Minister of the Interior, General Rashid Nurgaliev, and Head of the Public Council, Ilya Reznik (2007), within the work of the MVD

> *a priority status is given to securing rights and freedoms of minors and, first and foremost, to protect children from criminal assaults and involvement into unlawful activity* (Nurgaliev and Reznik 2007*).*

The priority given to securing the well-being of Russia's children is reflected in the relatively high amount of money allocated to child care in the federal budget. For the period 2007-2010, RUB 669 million were reserved for the purposes of prevention of social orphanage and youth crime alone (Pravitel'stvo Rossijskoj Federacii 2007).

The main strategy for improving children's living conditions and promoting child care is the federal program "Children of Russia" [*Deti Rosii*], established in 1994 by then-president Boris Yeltsin. The larger part of official programs directed at improving child care are financed under this framework (Apostolova and Kosevič 2008:273). The overall objective

for the period 2007 to 2010 is to strengthen the institution of the family by helping families in difficult life situations and to establish a more family-based child care system. The strategy for the current period explicitly states the objective of reducing the number of children that are being raised in state institutions (Pravitel'stvo Rossijskoj Federacii 2007).

"Children of Russia" identifies several priority areas. Of particular relevance for this thesis is "prevention of social orphanage and youth crime", included in 1996 as a priority area (Apostolova and Kosevič 2008:273). The program aims at improving the protection of families and children at risk, increase the protection of the right's of the child, and improve the system for prevention of social orphanage and youth crime (Pravitel'stvo Rossijskoj Federacii 2007).

Although "Children of Russia" is officially a strategy (cf. Apostolova and Kosevič 2008; Pravitel'stvo Rossijskoj Federacii 2007 et al), it may be better described as a financial umbrella. While the federal program identifies both an overall goal, i.e. improved living conditions for families and children, and priority areas, for example prevention of youth crime, it gives very few clues on how these areas should be addressed or what is to be considered improvement. One notable exception is the priority given to family-based solutions over institutional ones. The strategy does therefore not succeed in its main goal: establishing a common agenda for child care in Russia.

Ensuring a coordinated policy in the field of child care is further complicated by the plurality of the actors involved. In the absence of general guidelines, it is largely up to each ministry and its subordinated departments to decide on their own strategy. As the ministries often have very different priorities, their approaches are not likely to be coordinated (Rodeheaver and Williams 2005). As a consequence, policies in the field of child care and crime prevention are primarily based on departmental regulatory acts, rather than federal plans or legislation. The inevitable result is that "decisions passed by one ministry often contradict the decisions passed by other ministries which preclude any coordinated decision making strategy" (Zykov, October 2009). Furthermore, the activity of several agencies, such as PDN, is made difficult due to dual jurisdiction and lack of cooperation between the bodies responsible (Rodeheaver and Williams 2005).

The experience of Fund NAN working both with children at risk and children in conflict, is that the complexity of the child's problem, combined with the rigid structure of the institutions, often make the child fall victim to the programs that was supposed to care for

him (Zykov, October 2009). There is a danger that the child falls behind two stools, as none of the actors involved feel responsible for the child's total development.

4.2.2 War on Crime

Stalin introduced the 'war on crime' in the 1930s. The following 50 years were marked by a 'hitting hard' approach to crime (Schwartz 2005). After a softening of the approach to crime during the perestroika (Foglesong 1997), the 'hitting hard on crime' was reintroduced into the Russian criminal policy in the mid-1990s (Gavrilov 2008), following the rise in crime in this period (Lévay 2000). Since juveniles are handled in the regional justice system, and on the whole under the same provisions as adults, the general policy on crime also applies to children, though with the exeptions laid out in Chapter 3.

The clearest expression of the 'hitting hard' policy is the widespread use of deprivation of freedom for juveniles as well as adults. A typical punishment for a petty theft equivalent to 300 roubles committed by a juvenile, is two years of imprisonment (Alternative Report 2005:45, see also *Dety v Tûrme* 2001). Furthermore, deprivation of freedom is frequently used preventively, both in order to prevent street children from breaking the law (Fund NAN 2002) and as a rehabilitive measure (i.e. closed vocational colonies, cf. section 3.4.1).

Legal scholar Boris Gavrilov (2008) has pointed out that in Russia there is a mismatch between the graveness of crimes and their corresponding sentences. In Gavrilov's opinion, many crimes have been wrongly categorized, i.e. categorized as more 'socially dangerous' than they really are, thereby demanding stronger punishment than necessary or reasonable. Gavrilov mentions theft, *kraža*, as an example. Until 1994, the only type of theft categorized as grave crime was large-scale theft of state property (Gavrilov 2008:85). However, starting from July 1, 1994, a number of changes were made to the Criminal Code, increasing the numbers of theft subcategories considered grave (ibid.:86). Today only theft covered by paragraph 1 of Article 158, i.e. petty theft committed by one person, is considered a minor offence.

The percentage of grave crimes increased from 15.1 percent of all crimes in 1992 to 59.6 percent in 2001. Gavrilov shows that this was primarily due to the above-mentioned categorization of crimes, and not reflecting a general increase in the graveness of crimes

committed. In 1999, he argues, theft alone constituted 82.6 percent of all grave crimes (Gavrilov 2008:88).

It should be noted that this recategorization of crimes took place in a period in which the Russian state was generally assumed weak and both population and state were experiencing strong economical problems. Confusion over cultural values, together with the deterioration of social institutions, had a negative impact on the social control of Russian youths in the 1990s (Pridemore 2002). Under such conditions, theft may have seemed an easy way for some people to get what they otherwise could not afford. Increasing the potential cost of the crime is a way for the state to make crimes seem less attractive, thereby assumingly having an effect of general deterrence.

There are, however, several drawbacks to a ’hitting hard’-strategy. Harsh types of punishment, when applied on petty crimes, may loose their deterring effect over time. Contrary to what the theory of rational choice proclaims, the Russian experience seems to be that when becoming the norm, harsh punishment is not considered harsh anymore, thereby reinforcing the need for even harsher measures. In the words of Sergeev (April 2009): “You know with our history… We don’t understand one or two years of incarceration”. A premise of this theory, of course, is that the risk of getting caught is comparatively low. This may explain why Russia, with is strict punishments, rank top three on global prison rates.

Excessively harsh responses also defeat their own ends by undermining the respect for the justice system. If the sentence is not understood as fair (or reasonable) by the juvenile himself, he is likely to begin looking upon himself as a victim. The victimization of the offender makes him less susceptible to behavioural change (Braithwaite 1989; Muncie 1999:269).

Lately there has been a shift in the criminal policy from a ‘hitting hard on all crimes’-attitude towards a priority on combating grave and organized crime, and a corresponding softer approach to minor offences. According to the penal authorities (FSIN 2009c), the current criminal policy is

> *oriented towards strengthening of the fight against grave and particularly grave crimes, while at the same time relieving the criminal responsibility for less serious crimes and crimes of average gravity.*

The new approach differentiates, although unofficially, between crime with a clear socio-economical origin, i.e. offences that are committed due to lack of other options, and crimes

that to a larger degree is a result of a rational choice. The first should primarily be fought by preventional measures. With regard to juveniles this can mean the use of ‘measures of educational characther’. The dominant approach to rationally motivated crime is still deterrence, both individually and collectively, and ‘securization’, i.e. imprisonment in educational colonies.

The shift, however, seems more significant than it really is. As mentioned above, the recategorization of crimes in the last half of the 1990s resulted in a larger number of crimes being considered grave. Due to the categorization of crimes, a ‘hitting hard’ approach to grave and particularly grave crimes only, still means ‘hitting hard’ on most crimes.

According to Laura Piacentini (2004), Russian criminal politics, and particularly the penal system, is experiencing an identity crisis. During the Soviet times, criminal politics was largely related to questions of economy and ideology. The criminal politics, i.e. the institution of the working colonies, served the threefold purpose of isolating security threats, bolstering economic income, and political indoctrination. When the Soviet Union collapsed, so did the fundament of the penal system. Piacentini (2004:116) characterizes the situation in the current system in the following way:

> *Unlike Western criminal justice systems where government have invested in areas where they think they might effect change in order to produce ordered environments, the events in Russia is revealing how prison officers and prison square up same penological insecurities, namely filling the penal void*

Piacentini finds that the penal staffs try to fill this void mainly in two ways: by re-embedding traditional social norms and by importing standards and ideas from Western Europe and Northern America. She notices that these solutions more often than not are in conflict (ibid.).

As a result of the lack of an official policy towards not only juvenile crime, but crime in general, the operational agencies have been left very much to themselves in deciding how to approach people in conflict with the law. As Piacentini has documented, this has led to huge variations. Yet, there is a general trend towards increased use of rehabilitive measures (Piacentini 2004:53).

4.2.3 Underlying Assumptions on Children and Crime in Russia

The governmental policy towards child care, as laid out in “Children of Russia”, reflects the official Russian view on the origins of youth crime. Deviant child behaviour is commonly

assumed to be the result of poor living conditions. In other words, the level of youth crime in society is believed to reflect the problems of Russian families (cf. 1.3.1). It is illustrative that in the program spelling out the priorities of "Children of Russia", youth crime is only mentioned in connection with social orphanages and never addressed as an independent challenge (cf. Pravitel'stvo Rossijskoj Federacii 2007).

In a speech to the Public Council of the Ministry of Interior in July 2007, Minister of the Interior, General Rashid Nurgaliev, and Head of the Public Council, Ilya Reznik (2007), explained the causes of youth crime this way:

> *In the Russian Federation, protection of the rights of the child is especially important. The number of street children increases every year. It is estimated that there are over 700 thousand orphans in Russia […] and over 6 million minors live in socially unfavourable conditions. These numbers mean damaged lives of millions of teenagers. We see them at railway stations, in underpasses, in troubled families. There, instead of in the warmth and care that the children need so much, they see only humiliation, violation, instability; they face such sins as alcohol and drug addictions. There are many examples when parents who had already gone the wrong way simply bully and haze their own children causing injuries and even deaths of minors. This is what feeds the continuing growth of unlawful acts by teenagers.*

Following Nurgaliev and Reznik the children who stand at risk of becoming criminals are the same children who are in danger of becoming social orphans and abuse alcohol and drug. This assumption is also found in the court system, although more rarly. Head of Perm Krai Court, Vel'âninov (2007) expresses the Perm courts' attitude to children in conflict with the criminal law this way:

> *The guilt does not belong with the child. The reason for the destructive behaviour lies with the social conditions, in the family. And if this is the case, society should offer the child a chance to resocialize.*

Both statements follow the argument of common causation laid out in section 2.2.1. They do, however, stand in sharp contrast to the rational choice approach stressed by the criminal policy. Given that the reasons for committing crimes are as described above, hitting hard is not likely to help.

The need to hit hard on youth crime is rooted in a perception of youth crime as particularly widespread and violent. There is a common opinion in Russia that teenagers in general are more likely to break the law than other age groups (Alternative Report 2005:45). There is, however, little evidence for this claim. Out of the 1,318,000 individuals that were sentenced

for criminal offences in 2007, 132,000, or 9.1 percent, were children. The majority of them, 93,900, were 16 or 17 years of age. Most criminal offences were committed by persons aged 18 to 24 (30 percent) and 30 to 49 (35 percent) (*Russia in Numbers* 2008).

Official policies on both crime and crime prevention reflect the assumption that crime cannot only be fought, but defeated. Today's crime prevention strategy of addressing youth crime through improving the living conditions of the family resembles the Soviet view that the way to a crime-free world goes through socialism. The danger with this approach is that it makes the development of a policy to handle juvenile offenders less urgent. There are 25 years since Russian (i.e. Soviet) politicians first recognized the insufficiencies of the current penal system and began to address the need for change (cf. Foglesong 1997). Still, very few plans have been developed.

The juvenile justice policy contains a large paradox. As long as a child is flirting with crime, his behaviour is viewed as the responsibility of society. Once he breaks the law and is caught, only the child himself is to blame, and the argument of common causation seems no longer to apply.

4.3 Institutional Heritage

Whereas policies provide guidelines, the actual approach to children in conflict with the law depends upon the institutions available. The Russian state inherited the institutions of the former Soviet Union. This section presents three institutional aspects of particular relevance for the operation of the current system, related to the child care system, the penal system, and the court system. Whereas the organizations of the first two institutions have been obstacles to reform, the organization of the court system is a double sword, as it both challenges the judicial independence and consequently the protection of legal rights, and at the same time allows for higher judges to be strong forces for reform.

4.3.1 A Social Policy of Institutionalization

Soviet ideology proclaimed equality as the foremost ideal of society, best achievable through collective effort. "Collectively towards the collective" was the guiding principle for all parts of society, from the criminal justice system (Sergeev April 2009), to child care (Goloviznina

2005). The faith in collective approaches paved the way for institutional solutions to children in need, as well as to children in trouble.

The faith in the collective raising of children, *detskij kollektiv*, originated with the scholar A. C. Makarenko in the 1930s (Goloviznina 2005:232). Makarenko, who belonged to what we today call the rehabilitive school of criminology, saw the rise in youth crime in the 1930s as a consequence of the increased number of social orphans in the same period. She blamed the parents for not raising and taking care of their children properly (ibid.). Later, in the 1950s, Soviet scholars following the tradition of Makarenko started to see youth crime as a consequence of the state's passive attitude towards the orphans. Youth crime was viewed as a direct consequence of the state's failure to take action and address its social problems. In respons to this view, the state started to take responsibility for raising its inhabitants (Goloviznina 2005:233).

During the Soviet times, however, the state's responsibility for the child's living conditions went beyond the paternalistic state role found in the rehabilitive school. The ideology of the socialist period held that the state could take *better* care of the child than its parents could. Care within child care welfare institutions, *internatnyj učreždenie*, was considered among the highest admissible forms of child care (UNICEF Social Monitoring 2006:62). Similarly, while collective handling of prisoners was seen as having economical and administrative advantages, it was in the Soviet Union also believed to be good for the prisoners themselves, i.e. the influence from working with other inmates was believed beneficial for the offender (Piacentini 2004).

After the collapse of the Soviet Union, the approach to child care has undergone tremendous changes. As "Children of Russia" clearly reflects, the ideal of the current child care policy is family-centered. As noted by among others Šmidt (2007), the shift towards family-centered rehabilitation programs pose a substantial challenge since neither the institutional structures nor practical experiences from such work do exist.

The lack of social services outside the institution can be illustrated by the vacuum the juveniles meet upon leaving the educational colonies. As shown in section 1.3.1, a substantial part of the children are social orphans or come from families at risk. During the time spent in the colonies, many of them are abandoned by their families or simply lose contact due to long distances and poor possibilities for communication, such as lack of telephones on one or both sides (Amnesty International 2002). After serving their sentences,

the children are usually provided with money for a train ticket and put on a train home. However, often there is no home awaiting the child in its former place of residence (Sergeev April 2009).

One of my informants at *Centr sodejstviâ ugolovnogo pravosudiâ* has been working on the case of a 17 year old girl, whose situation she described as very representative. The girl was about to be released from an educational colony for girls outside the city of Voronež where she had spent the last couple of years. The colony, which is situated in the south of Russia close to the border of Ukraine, is one of three girl colonies in the whole of Russia. The girl, who was originally from the Moscow region, had no contact with her family while she was in the colony. She had neither friends nor relatives awaiting her return, nor had she any personal documents or money. Nevertheless, representatives from the penal authorities had booked her a train ticket for Moscow (Gordeeva April 2009). What would a 17 year old girl do alone in Moscow on a Friday night without documents, money, or a place to stay? Given such a welcome, it is hardly surprising that many Russian juveniles upon release have problems establishing a life in accordance with the law.

A curious consequence of the institutionalization of the child care system is that the traditional criminological dilemma 'punishment versus rehabilitation' often does not apply to Russian conditions. Within the current system, deprivation of freedom is often the only way by which rehabilitation is available. If released from criminal liability, the child is either just let out on the street or deprived of freedom for the purpose of care and upbringing, i.e. sent to shelters or closed vocational colonies. The latter practice has been strongly criticized by child care organizations (see f.ex. UNICEF 2007) as they believe deprivation of freedom in itself constitutes a punishment, no matter how well the children are taking care of within the institutions. If one accept the assumption of a high correlation between social problems within the family and youth crime upon which the Russian approach to children at risk is founded, the first solution is also not ideal. In particular this goes for cases where the child has been exempted from criminal responsibility upon socio-economical grounds. The question of juvenile justice reform in Russia is therefore also a question of social service reform.

4.3.2 The Organization of the Penal System

Upon the collaps of the Soviet Union, Russia inherited one of the largest prison systems in the world, with a correspondingly huge prison population. Since deprivation of freedom in working colonies had been the norm in the Soviet Union, bodies responsible for implementation of alternative sanctions were few and underdeveloped. Furthermore, the very fact that the colonies were there, constituted in itself an obstacle to the development of alternatives. The costly development of alternative types of sanctions still would not allow for the closure of the existing institutions in the short term. Consequently, the development of alternative approaches to current practice of incarceration would result in additional fiscal stress on the already costly, and underfounded, penal system.

The organization of the educational colonies makes them largly unsuitable for realization of the purpose of reformation. Rather, it seems to make them 'schools in crime' (McAuley 2008; *Dety v tûrme* 2001; Sergeev April 2008). The system of internal control, *sistema samodeâtel'naâ organicaciâ*, is the official doctrine for organizing the prison system as well as the educational colonies for juveniles. The system has two main characteristics: imprisonment in group and classification of inmates. Contrary to Western European countries, imprisonment in cells has never been common practice in Russia. In tsarist Russia prisoners were held in cartels, and starting from 1917 the norm has been labour camps (Oleinik 2003:49). Classification of inmates was first introduced in 1918, abandoned in 1933, and reintroduced in 1958. There is a strict hierarchy in the colonies in which the inmate's classification in the hierarchy determines his treatment (ibid.).

Anton Oleinik (2003) has described the Russian penal system as a social society that functions by its own rules. This system of organization gives the inmates strong incentives to adjust their behaviour to that of the other inmates (Oleinik 2003:98):

> *Most inmates think that the respect for informal norms is more important than respect for the law even in a total institution. […]Any violation of the informal norms […] appears more dangerous than violating the law.*

The system of internal prison laws makes it hard for young persons arriving in the educational colonies to change their behaviour into a more useful pattern. Instead, they are socialized into the prison society. According to Sergeev and Gordeeva at the juvenile office of *Centr sodejstviâ ugolovnogo pravosudiâ* (April 2009), the young boys are especially concerned with their status in the hierarchy. This is evident in the educational colonies, but

even more in pre-trial facilities and when young men are transferred to regular colonies upon turning eighteen. In the regular colonies the young men are often the most violent and cruel to their fellow inmates (Maksudov April 2009; Oleinik 2003:69). Furthermore, the internal justice constitutes a second punishment for those on the bottom of the hierarchy. They are both punished by the state, i.e. through incarceration, and again by their fellow inmates repeatedly during the time of incarceration.

The internal hierarcy also makes it hard for the juveniles to develop into reflective and independent adults. Oleinik (2003:51) writes about the Russian penal system:

> *Imprisonment in groups affects the fundamental zones of autonomy, and this lack of respect could destroy the inmate's personality. […] the destruction of private space ruins the ability to act autonomously and, as a result, reduces the chances that the individual will start to master transfer of control over his actions".*

Thus, the system of internal control characterizing the educational colonies counteracts the purpose of punishment, i.e. reformation. Rather than providing rehabilitation, the colonies seem to be schools in crime, as the young juveniles are tempted to behave brutally in order to gain respect from their fellow, and sometimes older, inmates. Among professionals working with children in conflict with the law, there seems to be an agreement that the organization of the penal system in cartels is the reason for most of the infringements upon the right's of the child in the justice system today (Sergeev April 2009; Gordeeva April 2009; Maksudov April 2009; Altschuler 2008).

The negative effects of the system of internal organization upon the child are magnified by the colonies' physical location. Most juveniles serve their sentences in colonies far away from their families and friends. Consequently, their fellow inmates often provide the only social network they have while in the colonies (Sergeev April 2009; Gordeeva April 2009; McAuley 2008; Alternative Report 2005). Only 15 percent of the juveniles are placed in educational colonies in their home district, while 20 percent are sent far away (i.e. out of the federal subject where they used to live). Thirtysix out of 83 federal subjects have no educational colonies at all (Alternative Report 2005:49), meaning that the juveniles in

question will necessarily be sent to a colony in another subject. The situation is particularly difficult for girls, since there are only three girl colonies in the whole federation[18].

While the negative aspects of the organization of the penal system are increasingly being recognized by the authorities, there has so far been little political initiative to change the current organization. The organization of the prison system, as pointed out by Oleinik (2003:48), is a matter of economy. As one of my informants rhetorically asked: "What other organizational form would make it possible to control so many prisoners with so little personnel?" (Sergeev April 2009).

4.3.3 Judicial Dependence and the Special Position of Higher Courts

In the Soviet Union, judges were only independent in theory (Solomon 2005). For all practical purposes, the court "was simply obliged to provide the last state stage in this struggle against crime, which was proclaimed the basic goal of criminal justice" (Schwartz 2005:60). Judges were subjected to three sources of dependency: the Communist Party, the Ministry of Internal Affairs, and higher judges, particularly those of the Supreme Court (Foglesong 1997). The pressure upon the judges to implement the official policy (and possibly personal interests), can for example be seen from the high rate of convictions (Solomon 2005).

During the legal reforms of the 1990s, several steps were taken to strengthen the independence of the judiciary. The wages of the judges were increased in order to improve their status, and their security was strengthened by the introduction of bailiffs in courts (Schwartz 2005). In 1999, the power of MVD was significantly reduced when several institutions, including the prison authorities and KDN[19], were relocated under different ministries (King and Piacentini 2005; Kalinin 2002). This measure has succeeded in strengthening the position of the judges versus political and economical interests, as well as the administrative bodies.

[18] An additional mixed colony is located in Kaliningrad.

[19] KDN has later been moved back under the jurisdiction of MVD.

Todd Foglesong (1997) argues that judges are still subject to pressure from higher courts, particularly the Supreme Court, which holds a particular position in the Soviet and Post-Soviet legal system. Officially, the power of the USSR Supreme Court lied in its mandate to give guiding explanations and so-called 'judicial supervision', *sudebnyj nadzor*, to the judges (Foglesong 1997:286). These explanations were in theory binding upon lower courts, but had little practical influence on their work (ibid: 194). Nonetheless, USSR Supreme Court influenced the judges through its power to review their verdicts.

Reviews were a powerful weapon in the Soviet Union, as the right did not only encompass legal issues raised by the appellant, but also entitled the higher courts to search the whole procedure for any kind of errors (Foglesong 1997:287). In the Soviet Union, the main criterion for the performance of judges was 'stability of sentences', *stabil'nost' prigovorov*. This meant that a judge's career, as well as his possibility to receive economical bonuses, depended upon a high and stable percentage of verdicts. Together with the broad scope of appellate review in the Soviet system, this gave higher judges a considerable power over regular judges (Foglesong 1997:287).

From a democratic perspective, the dependence of judges is problematic, as it may lead to a situation where the law is used to serve special interests, so-called 'rule by law', as opposite to the democratic ideal of 'rule of law'. The power of the Communist Party in the courts of the Soviet Union provides a classical example. Regular judges' dependence upon judges of higher courts is also a threat to the democracy, although for other reasons. Whereas the legislative power benefits from the inbalance of power resulting from judges' dependence upon politicians, regular judges' dependence upon higher judges shifts the balance of power in favour of the higher courts. In a system where the influence of higher courts upon courts of lower jurisdiction goes beyond that of legal control, the ability of higher judges to interpret the legal codes independent of provisions given by the legislative power is strengthened. Foglesong (1997) mentiones as an example that changes in the sentencing practices in the 1980s were not so much due to a change in the criminal policy and legal provisions, as to changing attitudes within the Supreme Court and their power over judges of lower jurisdiction.

Whereas the two other sources of judicial dependence, i.e. political and administrative pressure, were addressed, if not solved (cf. Solomon 2005; Foglesong 1997), during the legal reforms of the 1990s, the influence of the higher courts on the lower judges remain.

Foglesong (1997:311) suggests that the higher courts may have become even more influential than during the Soviet period, referring to among others the higher court personnel's increased role in vetting of judicial candidates and the introduction of a judicial system of formal ranks. The influence of the Supreme Court upon judges in the current system will be addressed in Chapter 6.

5. Alternative Approaches: Juvenile Justice in Russian Regions

Although criminal justice is a matter of federal jurisdiction, several alternative models for how to handle juvenile offenders have been developed on regional and local level. This section looks into the models for handling juvenile cases developed in the federal subjects Rostov Oblast and Perm Krai.

The approach to juveniles in Perm Krai and Rostov Oblast differs from the federal norm. At first glance, the difference seems to be a matter of underlying values, guidelines, and norms. This normative difference is also often stressed by the actors involved. I will, however, argue that the real difference is not so much a normative one as an operational one. This chapter concludes that the main achievements of reforms in Perm and Rostov are more fluid demarcations between the child care and the justice system.

5.1 Rehabilitive and Restorative Approaches

The actors involved, as well as children's rights organizations and international actors, present the models for juvenile justice in the regions of Perm and Rostov as ideological alternatives to the current retributive approach to children in conflict with the law. The Rostov model is based upon rehabilitive approaches to juvenile justice, whereas the Perm model belongs to the restorative justice school. While arguments about the retributiveness of the current system can easily be made, the high level of incarceration being an obvious example, it should nevertheless be remembered that rehabilitive elements and provisions for reconciliation can also be found in the current system, cf. Chapter 3.

Out of the two alternative schools, the rehabilitive is the most influential one on the regional level and also the type of practices best provided for under federal law. The first regionally founded pilot projects with rehabilitive elements were established ten years ago, in 1999, under the framework of the United Nation Development Program (UNDP) projects "Encouraging implementation of justice for juveniles" and "Development of justice in Russian regions". Pilot programs were set up in Rostov Oblast, Saratov Oblast, and the city of St. Petersburg (*Spravka o vnedrenii ûvenal'nyh tehnolgij v sudy obŝej ûrisdikcii*, 2008:3).

Among the main advocates of rehabilitive justice ideas are judges in Rostov Oblast and the Moscow located non-governmental organization Fund NAN, headed by Oleg Zykov.

Restorative ideas were first introduced to Russia by *Centr "Sudebno-pravovaâ reforma"*. (CSPR) in 1997. It would take several years before restorative practises, *vosstanovitel'naâ pravosudiâ* or *vosstanovitel'naâ ûvenal'naâ ûsticiâ*, entered the justice system. The restorative method most influential in Russia is probably victim-offender mediation programs (Fellegi 2005:55; Maskudov 2000). The main advocates of a restorative justice approach to juvenile offenders are the Moscowbased CSPR and its regional offices.

Rostov Oblast and Perm Krai are only two out of several regions that have initiated reform of the juvenile justice system independent of Kremlin (*Spravka o vnedrenii ûvenal'nyh tehnolgij v sudy obŝej ûrisdikcii*, 2008). By mid-2008, regionally initiated reform of the justice system had started in the regions of Rostov, Irkutsk, Leningrad, Brânsk, Lipeck, Kamčatka, Vladimir, Ivanov, Saratov, Orenburg, Volgograd, Moscow, Perm, Hakasiâ, Kareliâ, Evrejskoj avtonomoj oblast, as well as in the cities of St. Petersburg and Moscow (*Spravka o vnedrenii ûvenal'nyh tehnolgij v sudy obŝej ûrisdikcii*, 2008:4). According to the Russian Supreme Court, changes have been most deeply implemented in Saratov, St. Petersburg, and Rostov (*Spravka o vnedrenii ûvenal'nyh tehnolgij v sudy obŝej ûrisdikcii*, 2008). An updated overview of changes in regional justice systems can be found in the material prepared for the second All-Russian Conference on juvenile justice, which was held in Moscow in June this year (*All-Russian Conference* 2009).

5.2 Case Studies of Reform in Perm and Rostov

5.2.1 Rostov Model

Background

Rostov Oblast was the first Russian region that started a throughout reform of the juvenile justice system (*Spravka o vnedrenii ûvenal'nyh tehnolgij v sudy obŝej ûrisdikcii*, 2008:4). The reform initiative originated with, and was a direct result of, the Plenum of the Supreme Court Resolution No 7 of February 14, 2000, which pointed out the need to make the operation of juvenile justice in Russia more in accordance with international norms and

standards as well as to increase the judges' use of measures not involving deprivation of freedom for juveniles, cf. section 3.2.1.

Main Elements

The Rostov model is based on a rehabilitive approach to juvenile justice. The model has four central elements: specialization of judges; specialization of the judicial apparatus, in particular the introduction of social workers in courts; establishment of necessary preconditions for juvenile justice, i.e. regional legal framework and a functioning social service system; and establishment of routines for coordination between all bodies working with juveniles in conflict with the law (Zolotyh 2008; Voronova 2008; Voronva and Tkačev 2004).

Unique to the Rostov model is the establishment of juvenile courts, *ûvenal'nie sudy*. The mandate of the juvenile courts is to decide juvenile cases according to Russian criminal law, but following the standards found in international norms, in particular the CRC and the *Beijing Rules* (Voronova 2008; Zolotyh 2008). The juvenile courts in Rostov handle cases both under criminal and family law, as well as administrative cases (Voronova 2008).

Realization

The reform was initiated by judges at the Rostov Oblast Court and realized in cooperation between the Rostov Oblast Court, the administration of the Judicial Department of Rostov Oblast, and United Nation Development Program (UNDP)'s Russia office (Voronova and Tkačev 2004:6). Seminars and conferences, involving both local actors such as court, procurator, representatives from legislative and administrative bodies, social services, and foreign experts, played an important role in the development of the program (Voronova and Tkačev 2004:6f).

Following the recommendation of the Plenum of the Supreme Court to let all criminal cases involving juveniles be handled by judges with special competence on children (Recommendation February 14, 2000), the regional judicial and administrative power decided to introduce specialized juvenile judges in all regional courts in Rostov Oblast (Zolotyh 2008). In Rostov Oblast, however, only 10-11 percent of the criminal cases involve juveniles. As a consequence, providing judges specialized in juvenile matters were only possible in courts of a certain size, i.e. regional courts that have 20 or more judges (Zolotyh

2008). For the same reason, the requirement for specialized judges was only introduced in regular courts and not in judges of the peace (ibid.).

Due to the strict demarcations between the justice and the social service system, it is often difficult for a judge to apply the provisions for offender relevant criteria today. Sometimes knowledge of the child's living conditions is insufficient. However, more often the judge is aware of these problems, yet sees no other way to deal with them but to send the child in question to an institution. In 2001, the profession of social workers was introduced in courts in Rostov district (Zolotyh 2008). The social worker, a new profession in Russia, assists the judges in the pre-trial investigation. His or her main task is to identify offender relevant criteria for the child's behaviour and suggest how to approach them. The social worker is responsible for communication with the social service system and for following up on the juvenile after the hearing (Zolotyh 2008; Voronova and Tkačev 2004:35). In other words, the social worker links the court with the social system. This link is new, as the court system has previously only been linked to the penal system. The social worker does however have a presecutor in the 'guardians' of the 1920 juvenile courts, cf. section 3.1.2.

The second phase of the reform in Rostov began in 2003. Just like the first phase, the second was initiated by a Plenum of the Supreme Court Resolution, this time Resolution No. 5 of October 10, 2003. As mentioned in section 3.2.1., the resolution underlines that Russian judges are directly bound by international norms and standards, which take precedence over Russian law in case of legal conflict. Following the Resolution, the Presidium of the Rostov Oblast Court in January 2004 issued another resolution, "On additional measures for implementation of justice for juveniles in Rostov oblast". This resolution stated that Rostov oblast should realize the recommendations on juvenile justice found in the above-mentioned Supreme Court Resolution as well as the international norms for juvenile justice binding upon Russia (Voronova and Tkačev 2004:8). The resolution de facto means that judges in Rostov Oblast upon handling juvenile cases shall give priority to concerns about the 'best interest of the child' over criminal law.

A concrete outcome of "On additional measures…" was the establishment of juvenile courts. As accounted for in section 3.3.3, the Russian Constitution does not allow for the establishment of new types of courts or extrajudicial bodies. The juvenile courts are therefore officially categorized not as distinct courts, but as branches of the regular courts. For

example, the juvenile court of Taganrog is officially a branch of the Taganrog City Court specialized in juvenile cases (Voronova and Tkačev 2004:8).

In the juvenile courts, measures have been taken to change the deterrent nature of the courtroom and make conditions more inviting to dialogue. In Russian court rooms, the accused traditionally sits literary behind bars during the prosecution. Such a court room is arguably not well suited to give a child the impression of a justice system which primary goal is to provide help, i.e. rehabilitate. In the juvenile courts, the court room is designed for handling children. Judge Zolotyh (2008) describes the court room of Taganrog Juvenile Court this way:

> *Here there are no cells or bars. The participants in the processes – the parts – are seated around the same table. This underlines the common character of those tasks they will have to solve with the help of the judges.*

The court room of the juvenile courts resembles the court room found in justices of the peace. In the justices of the peace, which primary aim is the reconciliation of the parties, the parties are also seated around a common table (cf. section 3.3.2). The physical bodies of these two modern court instances where the parties are treated as having equal human rights stand in sharp contrast to the design of the more traditional district court rooms. The latter still reflects the Soviet attitude that all rights belong to the prosecuting side, and the accused is de facto guilty and treated as such (Solomon 2005).

A main characteristic of the realization of the Rostov model is that right from the beginning much attention was given to developing new regional legislation in the field of child care and justice. In the first phase of the reform, a fundament of new regional laws regulating the work of crime-preventing bodies, such as KDN and social services, was established within the framework of the federal law (Voronova and Tkačev 2004:7). On the basis of regional law, there was also established an ombudsman's office on children's rights in the region (Voronova 2008). A coordination council with representatives from all actors involved in the justice and child care system ensured, at least theoretically, a holistic and consistent approach in the whole region.

The new regional legal body was designed to ensure the exhaustion of all provisions for non retributive practices found in the existing federal criminal legislation, as well as to facilitate and encourage cooperation between the different bodies working with child care both outside and inside the criminal justice system. The legislation was developed in accordance with the

framework established by federal law, yet it was designed with international norms and standards for the right of the child in mind. In Taganrog the court building also contains offices for procurators, advocates, and psychologists (Zolotyh 2008). All instances are present in one building, facilitating responses that address all the needs and problems of the child, not only the crime committed.

Regional implementation

Since 2008 all 61 district courts in Rostov have judges specialized in handling juvenile cases. Fifteen courts of Rostov oblast have implemented the participation of social workers (Voronova 2008). So far, there have been established model juvenile courts in the city court of Taganrog (2004), Šahty (2005), Egorlykskaya (2006), and Azov (2008) (ibid.). International standards for children's rights, such as the CRC and the Beijing Rules, are normative for all work with children in conflict with the law.

5.2.2 Perm Model

Background

In the district of Perm, juvenile justice reform was initiated in 2002 as part of a larger reform of the work with children and families in difficult life situations. The background of the reform was the high level of youth crime in the region and the acknowledgment by politicians, as well as professionals working with families and children, of the insufficiency of the current system (Vel'âninov 2007).

The reform initiative came from restorative justice supporters within the district government, in particular deputy governor, now ombudsman for human rights, T. I. Margolinaâ. Restorative practices were implemented as a norm for the work with families and children at risk through the districtlevel program "Families and Children of Prikamiya 2002-2005", regulated by law of Perm Krai no.98-17 from April 15, 2005, and continued within the framework of the program "Families and Children in Perm Krai 2002-2010", regulated by law of Perm Krai no. 15 PK from March 13, 2007 (Râbova 2008:153; Vel'âninov and Soboleva 2008). Motivated by the success of restorative practices in the field of youth crime prevention, pilot projects were set up in two criminal courts (Râbova 2008).

Main Elements

At the two pilot sites, there have been introduced separate judges that only look into criminal cases involving juveniles and also the profession of a judge's assistant with functions similar to the social worker in Rostov Oblast (Vel'âninov and Soboleva 2008; *Programma vzaimodejstviâ suda goroda Lys'va…; Programma vzaimodejstviâ Industrial'nogo rajonnogo suda g. Perm…).*

In the Perm model, however, the judge's assistant has an important additional function. The judge's assistant selects cases that are suitable for victim-offender reconciliation programs (VORP). The VORP used in Perm is developed by *Centr "Sudebno-pravovaâ reforma"* and based upon the restorative ideas of Howard Zehr (2005). The mediation programs are led by an independent and qualified mediator and take place in a separate room in the building of the Krai court (Râbova 2008:163f). At the moment, the mediation programs are carried out under the supervision of employees at the local CSPR office, i.e. professional mediators. According to a mediator in Industrial'nyj rajon court, Anna Havkina, VORP is usually initiated in cases involving minor or average offences, most commonly theft (*Rossiskaâ gazeta*, March 19, 2009). The result of the mediation can either verdicted by the court as the official result of the case, lead to the dismissal of the case, or be a mitigating circumstance (*Programma vzaimodejstviâ Industrial'nogo rajonnogo suda g. Perm*).

Realization

The pilot projects were established as the result of cooperation between the Perm Krai Administration, the administration of the city of Perm, the local administration of Industrijal'nij and Lysva, as well as the respective courts. The restorative justice programs were developed by CSPR which also offered courses. The projects were coordinated by a local social services and medical centre (Râbova 2008:153).

The pilot project "Organization and realization of the pilot project on the basis of restorative justice and methods for introduction of restorative procedures" was established within the regional strategy for child care "Families and children in Prikam'â 2006-2011" under the program "Prevention of social orphanage and youth crime" (Râbova 2008:153; Vel'âninov and Soboleva 2008). "Families and children in Prikam'â 2006-2011" was a regional program within the federal program "Children of Russia". The work to promote restorative justice practices has been continued within the framework of the program "Families and Children in Perm Krai 2002-2010" and also as part of the federal program "Development of Russia's

legal system 2007-2011", the main goal of which is to improve the protection of the rights and legal interests of citizens (Vel'âninov 2007).

Of particular importance for the implementation of the program is the administrative regulation "Procedures for participation of social workers in KDN's work with application of restorative practices" which establishes restorative practices as the norm for the work of KDN and other preventive bodies working with children (Râbova 2008; Novikova 2008) and regulates cooperation between the different actors involved in the two pilot courts.[20]

The aim of the reform is to expand and develop the juvenile justice system to include judges with special competence on children, social workers, mediators, judge's assistants and psychologists. Central to the reform is the development and establishment of routines for cooperation between the court and the social service in the district; rehabilitation programs for juvenile offenders; victim-offender mediation programs within the court system; and routines for evaluation of the programs. (*Programma vzaimodejstviâ suda goroda Lys'va…, Programma vzaimodejstviâ Industrial'nogo rajonnogo suda g. Perm…).*

Just like the reform in Rostov Oblast, the reform in Perm Krai is realized within the framework of the existing federal laws and in accordance with international standards for juvenile justice (*Programma vzaimodejstviâ suda goroda Lys'va…, Programma vzaimodejstivâ Industrial'nogo rajonnogo suda g. Permi…).*

It is the opinion of Russian restorative justice advocates that mediation can be used in most cases, excluding accusations of murder or rape and cases in which the accused is under arrest (Maksudov April 2009). Still, a mediation agreement cannot lead to the termination of the criminal procedure in all cases. If the child is accused for having infringed on an article with a sentence of minimum five years, the current legal framework does not allow for the case to be closed, cf. reconciliation and the mandate of justices of peace. The court may then either refuse the agreement all together or give an additional sentence (Maksudov April 2009).

In Perm, restorative practices were first introduced in preventive work and later expanded to the field of criminal justice. Cooperation with the regional and local level administration led

[20] I.e. *Program for cooperation between the city court of Lys'va and the administration of Lys'va region on the use of juvenile justice elements in the work with juvenile offenders* and *Program for cooperation between the court of Perm city's Industrial'nyj district and "Centre for psychological-pedagogical and medical-sociological help to children and youth in the Industrial'nyj district" on the use of juvenile justice elements in the work with juvenile offenders*.

to the introduction of restorative practices in the work of KDN on the regional level in 2006 (Râbova 2008:157f) and the establishment of more than 200 school mediation services in the region (Vel'âninov and Soboleva 2008). Structures for cooperation between professionals, interest groups, and the different bodies of administration were set up. As a consequence of good progress in the field of crime prevention, interest for juvenile justice reform increased. The fact that restorative justice was already established as a norm among the actors in the field of youth crime prevention made broad cooperation possible in reforming the criminal juvenile justice system.

Regional Implementation

Pilot projects were initiated in the court of first instance in the Industrial'nij district of the city of Perm and in the city of Lysva in the Eastern part of Perm Krai in 2006 and 2007 respectively. By then, restorative practices had already been standard in the work of PDN and KDN and within schools throughout the region for a few years (Râbova 2008:163f). In March 2009, the regional government decided to make the projects in Lys'va and Perm city permanent and to establish 13 new juvenile courts in the oblast (*Rossiskaâ gazeta*, March 19, 2009).

Perm State University and Perm Regional Institute offer training in restorative practices for the purpose of higher pedagogical education. Currently, more than 500 persons working with children in Perm Krai are considered trained in restorative justice practices (Râbova 1008:160). Since 2004, Faculty of Law at the Perm State University has offered a separate course in juvenile justice ("Juvenile justice – theory and practice") and questions on juvenile justice are included in the final state exam (Vel'âninov and Soboleva 2008).

5.3 Analysis of the Regional Reform Initiatives

The regional reform models vary with regard to the content of the model, the degree of which the practices are being recognized, and their organizational form. Still, the similarities are arguably larger than the differences. Both models seek to realize the standards of the *Beijing Rules* within the existing legal framework, and in both regions the central element of the reform process has been the establishment of links between the child care and the justice system, regulations for cooperation between all actors involved in both systems, and common arenas where all actors involved may meet.

5.3.1 Different Normative Approaches?

The restorative school of juvenile justice appeared in the 1980s partly as a reaction to the rehabilitive approach (Walgrave 2004). In their purest forms, the two approaches differ substantially, with regard to both their view on the nature of crime and justice, actors involved in the justice process, and preferred organization of justice systems, as laid out in Chapter 2.

In Russia, however, the difference between rehabilitive and restorative juvenile justice is not as dramatic. Both approaches seek realization within the court system, based on the same core elements, i.e. juvenile, social worker and judge. The restorative practice of involving family and local society in the mediation program is not much used. In this matter, restorative justice programs in Russia differ from those of most Western European countries where restorative justice programs first and foremost have been established outside the existing criminal justice structure (cf. Walgrave 2004; Doob and Tonry 2004).

The emphasis on the needs of the victim, so characteristic of restorative justice in its purest form (Walgrave 2004; Zehr 2005), is faded in the Russian version. While this trait certainly makes the restorative process in Russia considerably less restorative (cf. f.ex Maksudov and Karnosova 2008), the tendency to ignore the victim is hardly surprising, taking into account the traditionally weak position of the victim in the Russian criminal system. Under Soviet criminal law, crimes were primarily viewed as infringements upon the ideology of the state and the state system, not as infringements upon the rights of individuals (Butler 2003a:580). Although this is no longer the case, -in fact the wording of the code is turned upside down- the victim still holds a marginal position within the criminal justice system (Hananašvili and Zykov 1999).

The main difference between restorative and rehabilitive justice within a Russian context, seems to be that restorative justice to a larger degree take the opinion of the accused child into account. In comparison, the rehabilitive approaches put more emphasis on the social worker’s findings.

Compared to the federal model, both Perm and Rostov models represent a normative change in the proceedings, as the climate in the court room is less stigmatizing towards the juvenile

than in regular district courts[21]. The nature of these court rooms does not, however, differ significantly from the nature of justices of the peace. Furthermore, as both the Perm and the Rostov model are realized within the existing legal framework, i.e. under the provisions found in federal criminal law laid out in Chapter 3, the sanctions and measures available to the judge in these special courts are the same as for a judge in any other court in Russia.

5.3.2 Recognition from Local Authorities as a Criteria for Change

Approaches to juveniles in conflict with the law also vary with regard to the degree to which these practices are being recognized by the local authorities and included in the procedural routine of the regional bodies. In the regions of Perm and Rostov, where the regional governments support restorative justice practices, there has been close cooperation on the regional level, with the regional government providing economical support, training for mediators, and participating in the development of regulations. Consequently, both places, a unified, consistent policy for juvenile justice and child care practices has been implemented as a norm in the whole region.

Perm and Rostov, however, are exceptions to the rule (Maksudov April 2009), or at least they used to be so, cf. *All Russian Conference on Juvenile Justice* 2009. Until the last years, few regional governments have been any more eager than their federal colleagues to implement changes in the justice system. Juvenile justice advocates have therefore worked to set up cooperation with local courts, through which they try to gain recognition and interest from the local criminal justice sector (Maksudov April 2009). One such example is the restorative mediation program set up by CSPR in the Akademičeskij district of Moscow. The achievements of these reform initiatives are, however, usually quite limited, as the initiators seldom are able to establish a good cooperation with all the actors involved in providing justice and child care (cf. Maksudov 2000; Maksudov and Karnosova 2008).

The experiences of Perm, Rostov, and Moscow among others (*All Russian Conference*, 2009) show how important the participation of the responsible authorities is in order to ensure and regulate cooperation between the actors. In praxis, there are established different models for cooperation between the justice and the social service system. Within most

[21] For a theory on stigma, see Braitwaite 1989.

regional models of juvenile justice, cooperation is ensured by the social worker (All Russian Conference, 2009). The administration of the social worker, however, varies. In Rostov Oblast, as shown above, the social worker holds the position of a judge's assistant. While this is also the case in Perm Krai, the coordination function there is in addition taken up by the mediator, and the overall responsibility is given to governmental child care institutions. Also other variants exist. In Moscow's Akademičeskij district, the social worker is on the staff list of a private social service centre, while in St. Petersburg, social workers are the direct responsibility of the city administration (Maksudov April 2009).

In Perm Krai and Rostov Oblast, the active involvement of the regional administration had several important consequences. First, it allowed for a uniform implementation of standards and practices in the whole region. Second, the involvement of the administration ensured financing, through among others sources the regional "Children of Russia" program.

Finally, the involvement of the administration ensured cooperation between all bodies working with children in conflict with the law, both preventive and reactive. At an early stage of the reform in Perm, an interdepartmental council and working committee was established on the krai level, including leaders of the administrative bodies; independent experts; ombudsmen; employees of the relevant bodies, most importantly KDN, the procurator's offic,e and GUVD; university administration; judges; and representatives of the court administration (Vel'âninov 2007). In 2001, Rostov District Court established a coordination council consisting of the district court's chairman, the leadership of the judicial department, procurator, lawyers, educational department, district KDN, and psychologists (Zolotyh 2008). In both regions the working committee on the reform of the justice system therefore consisted of both theoretical and practical expertise, from the preventive apparatus as well as the reactive.

Through the establishment of these committees, programs for cooperation, and a physical link between the child care system and the justice system (the social worker), the reforms in Perm and Rostov made possible the exhaustions of all the resources found in the current juvenile justice system, both resources and provisions in the justice system in its strict sence and in the child care system.The result of this organizational reform, a shift from type 1 to type 2 in Šmidt's categorization system, was a better point of departure for ensuring a more holistic and individual approach to children in conflict with the law.

6. Towards a New Conception of Justice for Juveniles?

This chapter looks into some factors that may explain why reform of the juvenile justice system so far has been slow on the federal level. In doing so, the chapter also identifies factors that will have to be addressed in order for reform to take place on larger scale. More precisely, it provides an analysis of the level of support for the current system and recognition of need for change; knowledge of alternative models; strengths of epistemological communities; and the adaptability of existing institutions.

I will argue that there are mainly three forms of obstacles to change in Russia: economical, institutional, and cultural concerns. Whereas economical and institutional concerns apply equally to restorative and rehabilitive reform initiatives, some cultural obstacles to reform are particularly relevant for restorative approaches. Special challenges for implementation of restorative justice are therefore addressed in a separate section.

6.1 Support for the Current System

In the 1980s, the stagnation of the Soviet economy forced Kremlin to take up both political and economical reform. During perestroika, Soviet legal scholars started to work on drafts for reformation of the criminal policy and in particular the penal system. The establishment of the new state, the Russian Federation, pushed the reformation of the legal codes. The political shift from an authoritarian towards a democratic state was symbolized by the shift towards ‘rule of law’ and the recognition of human rights, as stated by the 1994 Constitution.

Starting from the mid 1980s, there was a widespread recognition of need for change in the justice system. The question has not been *if* there is a need for reform, but *how much* reform is enough. The current debate on juvenile justice is between those who think the reform has barely started, and those who think the needed policy changes have been made and that what is left is the implementation.

6.1.1 Recognizion of a Failed System

During the heyday of the Soviet Union, the working colonies made a significant contribution to the Soviet economy. The inmates carried out work in among others the heavy industry sector, crucial for the Soviet economy. Due to the remote location of resources, it would have been hard to find “volunteers” to carry out this type of work. The remote location also had an advantage for the penal authorities, as it minimalized the expendures necessary for guards.The system did not, however, stimulate a modernization of the economical sectors involved (Gregory 2003). Consequently, the general downturn in the Soviet economy also affected the colonies. By the 1980s, the penal colonies, which once produced a net profit, had become an economical burden for the state (Piacentini 2004).

The developments in the penal system in the 1980s parallel the development of the Soviet State as a whole. How the general policy shifted from a focus on ideology and preservation of ‘the socialist state’ to focus on man and the protection of his rights, can be illustrated by the criminal codes. The main objective of the USSR Criminal Code was the protection of society and its ideology, and only secondary the protection of the Soviet citizen. The 1960 RSFSR Criminal Code, Article 1, defined the mandate of the code as

> *…the protection of the social system of the USSR, of its political and economic system, of socialist ownership, of the person and the rights and freedoms of citizen, and of the entire socialist legal order, against criminal infringements (reproduced in Butler 2003:580).*

In the 1996 Criminal Code the priority is turned upside down. The task of the Criminal Code (Article 2 (1)) is

> *protection of the rights and freedoms of man and citizen, ownership, public order and public security, the environment, and the constitutional system of the Russian Federation against criminal infringements, ensuring the peace and security of mankind, and also the prevention of crimes*

The need to modernize the penal system, particularly to restrict the use of deprivation of freedom, is also widely recognized by politicians and especially by the penal authorities themselves (cf. www.fsin.su). In the words of Kalinin (2002):

> *An excessively harsh criminal system had given rise to an unjustifiably wide use of restrictive measures, which had led to convicted prisoners who did not need to be isolated form society being detained and then deprived of their liberty*.

The level of support for the current juvenile justice system can be summed up in the words of Valerij Sergeev (April 2009), Director of the juvenile office of *Centr sodejstviâ ugolovnogo pravosudiâ:*

> *We are against sending children to the colonies, but at the same time we are for deprivation of freedom because we do not have any other alternatives.*

6.1.2 Lack of Political Will?

Upon Russia's entry into the Council of Europe in 1996 the Russian political leadership took upon themselves an obligation to establish a juvenile justice system in accordance with CRC, the Beijing Rules, Riyadh agreement, and relevant Council of Europe regulations (*Spravka o vnedrenii ûvenal'nyh tehnologij v sudy obšej ûrisdikcii,* 2008). Despite repeated political assurances, implementation on the federal level has so far been slow.

A draft law suggesting amendments to the constitution which would have allowed for the establishment of distinct juvenile courts, was presented to the State Duma already in 1999, but the reading was postponed, officially due to the presidential elections (Alternative Report 2005:46). In February 2002, the law "On amendments to the federal constitutional law 'On the legal system of Russian Federation'" passed the first reading in the State Duma with an overwhelming majority (366 pros, six contras). Just one month later, however, then-President Vladimir Putin presented his objections to the bill in a letter to the Duma, i.e. Letter No Pr-564 of April 2, 2002. Consequently, the law was not passed (Alternative Report 2005:46).

The law has been peddling the legal system ever since (Alternative Report 2005:46). In October 2004, the President supposedly promised in a meeting with the Human Rights Council to support the law that would make the necessary legal amendments to establishing a juvenile justice system (Naumov 2007). Naumov (2007) reports that the President confirmed this commitment in 2007, but no changes have been implemented this far.

The lack of changes in the criminal politics and the penal system is often explained by lack of political will (Maksudov April 2009; Altshuler 2008; Piacentini 2002:11; Alternative

Report 2005). While lack of changes, as well as a general underfunding of the educational colonies (Altshuler 2008; Sergeev April 2009), surely is a sign that the juvenile justice system is not high on the political agenda, it does not necessarily reflect a retributive attitude towards young offenders among the politicians. Another factor that arguably is of importance for the juvenile justice policy is economical concerns. Interestingly, this factor is seldom mentioned in the juvenile justice literature. Criminologists tend to measure results of juvenile justice approaches in crime rates or numbers of recidivists, largely ignoring economic efficiency. From a political point of view, on the other hand, the advantages of each measure will always be weighted against its relative costs.

Justice is a matter of federal jurisdiction, and all staff in district courts, as well as in the penal system, is financed by the federal budget[22]. The introduction of, for instance, social workers in a majority of Russian court rooms, would imply an extra expenditure for the federal government[23]. Investments in the judicial system would not, however, allow for reduced expenditures for the penal system during the first years, as alternatives will have to be established before the penal systems can be closed down or reduced. In other words, reform of the juvenile justice system is costly in a short time perspective; hence, politicians may be tempted to postpone it.

While the big reform is lagging behind, positive changes have taken place. In December 2003, amendments to the Criminal Code ensured increased use of punishment not involving deprivation of freedom. Most importantly, the amendments included expanding the conditional terms to also apply to second-time offenders (Voronova and Tkačev 2004:12). The legal changes also established provisions that allow for more juveniles to be exempted from punishment upon grounds of expressed regret (Article 75 (1) UK); reconciliation of the parties (Article 76 UK); or if it can be proved that his life situation has changed significantly (Article 80(1) UK). The mentioned articles (75, 76, and 80) constitute the legal grounds for

[22] Justices of the peaces are financed over the regional and federal budget jointly.

[23] In 2003 the cost of introduction of social workers to all district courts of a certain size was estimated to about 500 million rubles. Maskudov (2003) have pointed out that this is an insignificant sum for the budget of Russia. Some recent estimates over extra costs connected with introduction of social workers in courts, education for these social workers, extra training for judges in handling juvenile cases and so on were presented at the Second All-Russian Conference on Juvenile Justice held in Moscow this year, see All-Russian Conference 2009.

today's restorative justice practices[24]. Another sign that the government desires change is that upon the entry into CoE educational colonies with an especially strict regime were closed, and two new types of punishment not related to deprivation of freedom, i.e. obligatory task and conditional term, were introduced (FSIN 2009e).

Further amendments to the Criminal Code are expected before the end of the year (Voice of Russia February 12, 2009). The signals from President Dimitrij Medvedev have been promising. The President said in a discussion on the Russian penal system in the Council of State in February this year, that only hard core criminals should be kept within bars and that he advocated increased use of civil measures. He went on to underline that in order to be effective, the penal system needs to use both measures of education and punishment (Voices of Russia February 12, 2009).

While there arguably has been a lack of initative on the federal level, many regional leaders have shown political will. As shown in chapter 5, the reform in Perm Krai and Rostov Oblast was by and large initiated by the local political leadership. The attendance at the All-Russian Conference on Juvenile Justice this summer, witnessed an increased interest for alternative approaches among political leaders in other regions (All-Russian Conference on Juvenile Justice 2009). Oleg Zykov (October 2009) sees it as a particularly positive sign that Moscow region has decided to introduce social workers in court starting from this year. Alternative responses to juvenile justice have so far been dominant in the Russian regions, and their experiences have not always reached Kremlin. Zykov believes that the reform in Moscow will gain more attention from Kremlin, and he adds that hopefully changes will appear also on the federal level within the next two years.

[24] The amendments made a significant change to the number of cases that can be solved through victim-offender mediation programs. Before the amendments the law only allowed for minor offences to be solved through such agreements. Due to the strict classification system of crime in Russia, however, most offences are considered average or grave. In Perm region only 4 out of 553 offences committed by juveniles were classified as minor in 2008. The fact that the amended law also allows for offences of average gravidity to be solved through reconsiliation agreements, made a difference of 106 cases in 2008 numbers (*Spravka po rezultatam monitoringa rassmotreniâ sudami Permskogo kraâ, 2009*).

6.1.3 Demand for Harsh Punishment in the Population?

Russians frequently contribute harsh sentencing practices to a punitive mentality. When asked about the possibility of implementing victim-offender mediation programs in Russia, Valerij Sergeev (April 2009) answered:

> *I see no perspectives at some visible scale for restorative justice in Russia due to the Russian mentality. [The Russian mentality] is punitive*.

Rustem Maksudov (2000) also explains the current system's punitiveness with culture:

> *The current criminal justice system in Russia reflects a state's attitude to people […]. There is a common view in Russia that it is impossible to keep people's behaviour within bounds without applying brute force and coercion. Why are many in Russia not outraged by police torture and monstrous jail conditions? I think people feel that law enforcement bodies serve to keep society from self-destruction and collapse. We see daily evidence that men in uniform see people not in uniform as those who engaged in harmful, false, selfish, and criminal behaviour. This attitude could not be sustained if it were not for the silent consent of the people.*

It is a standard opinion among criminologists that politicians justify their criminal policies, and particularly use of harsh measures, by the need to respond to sentiments in the population (Garland 2001; Muncie 2004). In Russia, such justifications are seldom heard. Nevertheless, also Russian politicians may be influenced by what they perceive to be public demands (McAuley and Mcdonald 2007:5).

In 2004, a sociological survey of people's attitudes towards 'crime by young people' was conducted in the Russian cities of St. Petersburg, Saratov, and Ulânovsk (McAuley and Mcdonald 2007).The survey showed a tendency among the adult population to overestimate the percentage of crime committed by juveniles, as well as the level of violence in crimes committed by this group (ibid.). This tendency is also found in Anglo-American world (Roberts 2004). However, while the perception of youth crime is followed by a demand for stronger punishment in US, England, and Wales, this was not the case among the majority of the Russian respondents (McAuley and Mcdonald 2007).

Studying the collected information, McAuley and Mcdonald (2007) concluded that punitive sentiments are not common among the adult Russian population. On the contrary, the majority of the respondents seemed to prefer rehabilitive responses to children in conflict with the law. Almost half of the Russian respondents were negative to the use of deprivation of freedom for non-violent crimes, and only 10 percent emphasized more positive than

negative aspects with the use of educational colonies. More than half of the respondents associated educational colonies with 'risk of tubercolosis, AIDS', 'creating recidivists', and 'becoming a victim of prison brutality'.

Nevertheless, the history of harsh measures, may lead the government to stay with a widespread use of deprivation of freedom. In the opinion of Valry Sergeev (April 2009), the young offenders do not see the changes in the sentencing practice as a humanitarization of the criminal justice system, but as sign of the weakness of the government, cf. section 4.2.2.

How Gender Matters

Employees at the juvenile department of *Centr sodejstviâ ugolovnogo pravosudiâ* who monitor several juvenile colonies claim that there is a fundamental difference in the nature of colonies for girls and boys. According to Valery Sergeev (April 2009),

> *[t]he girls are usually treated differently by the staff. The personnel in girl's colonies are mostly women. They tend to a much larger degree to see the girls as girls, not as prisoners.*

His view is supported by some of the girls who have been to pre-trial facilities, SIZOs, before they came to the colonies. In the words of 18 year old Veronica:

> *The colonies are totally different from prisons. Here the personnel treat us like children, help us and teach us how to be good. I am thankful. I have understood a lot…*(*Deti v Tûr'me* 2001).

Sergeev and his colleagues also find that the more relaxed environment in the girls' colonies allows the girls to have a more positive development and leaves them with better social and coping skills:

> *When we visit the colonies the girls are open, social and eager to tell about their lives. The boys are closed. The boys, they are very concerned about their status in the criminal community* (Sergeev April 2009).

These findings suggest that the educational colonies for girls to a larger degree succeed in implementing the purpose of reformation than the boy's colonies do. This difference can hardly be explained withouth considering cultural differences in the way society responds to girls and boys in conflict with the law, since the response to and resources available are the same.

6.2 Knowledge of Alternative Models

The knowledge of alternative models has increased a great deal over the last ten years; still, Russian experiences with these models are relatively unknown to most Russians. When presenting the topic of my thesis to Russian citizens, I often experienced blank faces. Even students of Russian law had not heard about the changes in Perm Krai and Rostov Oblast. As a Russian critic of the Rostov model once wrote, "There need be no doubt that the phrase '*ûvenal'naâ ûsticiâ'* is unknown to 95 per cent of our population" (Terehov 2007). My own experiences suggest that this is not too far from the truth. The knowledge of restorative juvenile justice practices may be even poorer. According to Professor at Russian State Academy of Law in Perm Krai, Lidiâ Voshobitova, restorative ideas are unknown even to most Russian legal scholars (*Rossiskaâ gazeta*, February 6, 2006; see also Zykov, Hananašili and Avtonomova eds. 2004:284). The lack of knowledge is an obstacle to reform and a challenge for the juvenile justice advocates.

6.2.1 General Lack of Information

Discussions on juvenile justice seem to be almost totally absent form the official agenda. Piacentini (2004) also documented a general lack of literature on criminology in Russia. Working on this thesis, I found that information about alternative practices is available in Russia, however only for those that actively seek it.

The best source to knowledge about alternative models is the internet, a still not too common source of information for many Russians. There has been established a common, public internet portal (www.juvenilejustice.ru), and regional courts usually also have information about their practices on their web pages. Some NGOs (NAN Foundation, CSPR, CSUPet al.) publish information about juvenile justice: usually booklets, books, and journals. These publications, however, are usually only available through the home organization. One notable exception is *Centr sodejstviâ ugolovnogo pravosudiâ*, which provides a variety of information upon request.

Juvenile justice is debated among Russian scholars (All-Russian Conference 2009), but this discussion has so far not entered the public sphere. When the development of juvenile justice programs a seldom time is addressed in television or radio ("Russkij vzglad" February 8,

2009; Ého Moskvy November 28, 2008 et al), the topic is addressed from a purely theoretical point of view, presupposing both a legal and an institutional vacuum. Instead of discussing the actual situation in Russia and the experiences of Russian regions, the debate tends to centre on the negative experiences of other countries. It often seems like the opponents to juvenile justice reform are not even aware of the practices that exist in their own country or at least have not bothered to familiarize themselves with these practices. Very representative of the debate are statements such as "*In Ireland* […] a little boy was taken away from his biological parents because he did not smile" (Roditel'skij Komitet 2009a, my emphasis) (cf. also "Russkij vzglâd" February 8, 2009; Roditel'skij Komitet 2009b; Terehov 2007; Besedoval 2008).

One may also be tempted to question the conceptual knowledge of some of the reform advocates themselves. The general impression from Russian juvenile justice literature is that there is an almost blind faith in the powers of the social worker. Maksudov and Karnosova (2008:101), for instance, write on the introduction of the social worker to a rajon court in Moscow: "The introduction of the social worker symbolized the turn to juvenile justice, from a primarily repressive to a primarily social-rehabilitive approach". The mentality 'now we have the social worker, so now we have juvenile justice' seems to be a lurking danger to implementation of real reform (cf. Vel'aninov 2007).

6.2.2 Myths about Juvenile Justice

In the absence of available information about juvenile justice theories and practices, some populist interpretations have come to dominate the (rare) public discussions. Most arguments against juvenile justice reform are a variation of one of the two following statements: "*Ûvanal'naâ ûstciâ*[25] is an attack upon the family" and "*Ûvenal'naâ ûsticiâ* reflects Western values foreign to the Russian people", or a combination of both.

In order to understand these statements, it is necessary to broaden the concept of juvenile justice somewhat. In Russia, rehabilitive approaches to juvenile justice are widely associated with the establishment of distinct juvenile courts. This is not surprising, taking into account

[25] Here used as a synonym for all rehabilitive and restorative approaches to children in conflict with the law, see also section 2.1.

first that juvenile courts were the original form of juvenile justice systems, and that this organizational form was the dominant one for the larger part of the 20th century. Second, juvenile courts have previously existed in Russia, cf. section 3.1.2.

Distinct juvenile courts may either handle all cases involving children in conflict with the law[26], or only a limited field, for example only cases under criminal law. Both approaches can be found in contemporary Russia. The juvenile courts in Rostov Oblast handle all cases involving children, while the courts in Perm Krai handle criminal cases only. Opponents to the establishment of juvenile courts tend to focus on the judge's functions under family law, i.e. limitatons of parental rights. In contrast, most reform initiatives have focused on responses to children in conflict with criminal law. Similarly, while most Russian reform initiatives have been concerned with the criminal law aspect of juvenile justice, the public debate is dominated by family law concerns. Although the handling of children under family law is not a part of this study, perceptions based on the court's performance in this field is still relevant, as the debate does not differentiate between the two types of juvenile courts, and negative statements in the public about one court type will therefore be perceived as representative of all juvenile courts.

The Ruin of the Final Stronghold of Our Society

The individualistic approach to the child, as found in the concept of *ûvenal'naâ ûsticiâ,* is by many Russians perceived as a threat to the institution of the family. Some typical examples from the debate may be illustrative:

> *Ûvenal'naâ ûsticiâ is the legal fundament for mass seizure of children from their parents* (Terehov 2007)

> *The child may become one of those small monsters, who supported by he law, disturb the balance of powers within the family […]. Just imagine, if the parents refuse to give their child money to buy a Snickers in the school cafeteria, the child can file a complain to the juvenile court, and the court may decide that the parents must give the child 20 rubles a day to buy Snickers* (Pavlova, interview in Roditel'skij Komitet 2009b).

[26] This includes not only cases under criminal, civil and administrational law where juveniles are a part, and also parents custody cases.

Two cultural factors may help explain the widespread existence of the above argument: the place of children in Russian society, and the distinction between private and public sphere.

First, children have until recently not been seen as active right holders in Russia, but rather as the subject of parental and state obligations. The concept of children as right holders was introduced into Russian law no earlier than with the new Family Code in 1995. Until then, children's rights had been approached as a part of the relationship between children and parents. Children, due to their mental and physical development, were seen not as holders of individual rights, but as objects of parental obligations and also obligations of the state (Nagaev 2009:27; Apostolova and Kosevič 2008). Consequently, children were provided with protectional rights, but not with participational rights. With the introduction of a separate chapter on the rights of the child in the 1995 Family Code, the legal protection of children's rights in Russia was made into accordance with the CRC. Still many Russians, and particularly the Orthodox Church, continue to see children primarily as members of the family, and not as individuals. It is commonly heard that recognizing the active rights of children and giving them a place to be heard, i.e. the juvenile court, will weaken the status of the family, and interfer with its autonomy from the state.

Second, in Russia there has traditionally been a strong demarcation between the private and the public sphere. As the Russian saying has it: "My home is my fortress". The Soviet experience, where the state had monopoly on public life, made people extra protective about their private sphere (Sztompka 1993). Nodar Hananašvili, lawyer and vice president of the national associaton of charity organzations (Èho Moskvy December 11, 2008), has argued that Russians have an extra high treshold for intervention in family matters:

> *God knows what may be going on next door. But as long as they don't start to swing the axes, we rather don't intervene. […] We consider it to be their personal business.*

The illustrative statements by Terehov and Pavlova above reflect a fear that juvenile courts may become a tool the state may (mis)use to intervene in people's lives. The Soviet experience of 'rule by law', house commissions, spionage, and politically motivated trials is still well and alive in people's minds, and there is a general low trust in the justice system (McAuley and Mcdonald 2007). The paradoxical situation is that while the reform advocates wish to remove the Soviet legacy from Russian criminal politics, their suggested alternative

measures are often perceived as a continuation. In other words, juvenile courts are perceived not as a guarantor for children's rights, but as a potential weapon in the hands of the state.

Cultural Imperialism

Another widespread myth about rehabilitive and restorative juvenile justice practices is that these practices represent values that are foreign to Russia. The debate on juvenile justice reform reflects the traditional Russian philosophical debate about Eastern and Western values, and the idea of Russia as centred in between.

Although Russia has officially recognized international human rights standards, it is still an issue in Russia whether these norms are really universal or only the values of the "West". The concept of juvenile justice, as well as that of human rights on which it is based, originated in the North American and Western European cultural sphere. Even though states in all parts of the world have agreed to human rights as a good and taken up the responsibility to protect and implement them, it is still from time to time argued that these standards are not universally given. One element that is sometimes mentioned as typical for Western cultures, but more foreign to Asians, is the individual approach. Exactly the individual approach is a core element in rehabilitive and restorative juvenile justice.

The 1990s were a period of reform-eagerness in Russia. The political climate encouraged getting rid of everything associated with the Soviet Union and replace it with the systems of the countries further west with a higher living standard, most notably democracy and capitalism. The reform process, however, was not entirely smooth. The reform models of the 1990s, be it political, economical, or judicial, had in common that they were developed abroad and often not well-adapted to Russian reality and values. As a reaction, many Russians, both politicians and the regular man in the street, have turned towards older Russian history and the East in search of other values.

Although reform initiatives in the juvenile justice system are developed in Russia through the experience of pilot projects, i.e. international standards adapted to local cultural values and institutions, it is nevertheless often associated with reform from abroad. A typical statement is: "How come *they* are intending to protect the rights of *our* children?" (Terehov 2007, my emphasis). The feeling of foreignness is increased by the frequent use of the term *ûvenal'naâ ûsticiâ* to describe the reform initiatives. The term was, like many other English

loanwords, introduced into Russian language in the 1990s. Many loanwords from this period have in common that they are associated with Western values, systems, and the painful reforms. This is arguably the case also for *ûvenal'naâ ûsticiâ* and suggests that the word may have negative associations for most Russians. The frequent use of the term *ûvenal'naâ ûsticiâ* may therefore in itself be a source of suspicion, and hence an obstacle to reform.

Why Myths Matters

The existence of these myths is a serious obstacle to reform. This is not due to their critical view on rehabilitive (and to a lesser degree restorative) juvenile justice practices or the establishment of juvenile courts, but because the counter-arguments most frequently heard are in reality a listing of social problems that indeed exist in Russia also today. Most opponents are attacking the problems of society instead of the methodology and solutions of the juvenile justice advocates. The picture they paint is therefore that reform creates youth crime and social problems, instead of being a way, although many will argue insufficient or even wrong, of approaching them. The opponents drive attention away from what should have been the real topic of discussion: how to improve the approach to children in conflict with the law.

Constructive discussions of the future of the juvenile justice system are absent in the debates. A television debate on Kanal 3 earlier this year provides a good example ("Russkij vzglad", February 8, 2009). The guests in studio had all devoted their career to improve the situation for children living under difficult conditions. As became clear towards the end of the debate, they all shared the opinion that the current system is insufficient, and they all desired policy changes. However, in stead of discussing Russian reality and possible improvements or alternatives to the existing system, the participants had a heated discussion on the possible harm juvenile courts may cause to families.

6.3 Strength of Epistemic Communities

The lack of knowledge of alternative models suggests that the epistemic communities pushing for reform are weak. On the contrary, the changes in Perm Krai and Rostov Oblast signal the existence of strong reform forces, at least in these regions. As the presentations of reform in Perm and Rostov show, there are mainly three pro-reform forces in Russia: non-

governmental special interest organizations; individual politicians and judges holding some power on the regional level; and the Russian Supreme Court. Each group will be addressed in the following section.

Non-Governmental Special Interest Organizations

The idea that juveniles should be handled according to different principles than adults for the purpose of justice, originated with charity organizations in the beginning of the last century (Munice 1999). As the history of juvenile justice in Russia (Chapter 3) and the description of models for juvenile justice in Rostov Oblast and Perm Krai (Chapter 5) show, child care organizations and NGOs were also among the main actors introducing rehabilitive and later restorative ideas to Russia.

NGOs rose as political actors during the glasnost period in the 1990s. The political influence of the NGOs in Russian politics is however weak. The NGOs mainly have a function as service providers in the social sphere. In those cases where they have succeeded in becoming active partners in the justice system and influence the regional policy on youth crime, this has happened due to cooperation between local government and the court system, cf. Perm and Rostov. If the NGOs do not gain political support for their reform ideas, they remain marginalized. As an example may be mentioned the fate of CSPR in the city of Moscow and Perm Krai. CSPR has for ten years tried to establish pilot projects with victim–offender mediation in different regions of Moscow without success. Their activities remain in the blue due to lack of support from political, administrative, and legal agencies. In Perm Krai, on the other hand, where the initiative to reform originated with the governor, mediation programs have within the same period gone from being unfamiliar to increasingly becoming standard procedure. Since the state has monopoly on providing justice in Russia, reform of the justice system must originate with the political leadership in order to go beyond the sphere of child care.

A reason for the weakness of the NGOs is that they do not represent one unified model or approach. One of the reform advocates, Rustem Maksudov at CSPR, identifies the lack of unity among the reformers as a significant obstacle:

> *One of the major problems is that those who are engaged in juvenile justice cannot agree among themselves […]. Therefore we are not able to create a broad coalition towards the government to promote our ideas* (Rustem Maksudov, Director Center for Judicial and Legal Reform, April 2009)

Individual Politicians and Lawyers

A characteristic of the regional reform of the juvenile justice system in Russia is that it has often been initiated by individuals: the regional governor, judges at the regional court, or both. In Perm Krai, as shown, the governor was a main force behind the introduction of restorative justice practices, while in Rostov Oblast, a few district court judges were the engine. Similarly, reform initiatives in St. Petersburg and the recent initiative in Moscow regions were initiated by the major and governor respectively (All Russian Conference 2009).

The dominant role of individuals as actors for change is not unique to Russia. Rather, a few active advocates seem to be the recipe for success. In a well-known study on North American restorative justice practices, Omaji (2003:166) found that:

> *Most of the projects turned on committed and capable individuals, using their personal skills and imagination in discerning the concerns of their communities and devising solutions for them. They underline the fact that the role of a visionary or local champion is critical to the successful formation and implementation of partnership projects.*

While committed individuals are a resource, they may also constitute a weakness. Similarly to the situation for the NGOs, individual initiatives also depend upon support form other actors. Another challenge, which is recognized by some of the actors themselves, is that the reform initatives may be heavily dependent upon a few persons' understanding of a concept – Maksudov mentions restorative justice. In the lack of debate, one may fail to find the best solution (Masudov April 2009).

The Supreme Court

Criminal law is a matter of federal law; hence it should be interpreted identically throughout the federation. Still, there are quite significant regional differences in the operation of criminal justice for juveniles, as illustrated by the cases of Perm and Rostov. The explanation lies in the role of the Russian Supreme Court.

As laid out in section 4.3.3, the Supreme Court holds a particular position in the Russian court system due to its power to supervise judges in lower courts. The Supreme Court has made extensive use of this power to influence judges' handling of cases in the field of child care and juvenile justice. Two particularly important actions taken by the Supreme Court were the issuing of Recommendation No. 7 of February 2000 and Recommendation of October 10, 2003, mentioned in section 3.2.1. Supreme Court recommendations are considered a legal source in Russia. The mentioned recommendations have, at least in Rostov Oblast and Perm Krai, been interpreted as a legal ground for letting international standards take procedure over Russian criminal law, as laid out in Chapter 5. In other words, it is the resolutions of the Supreme Court that have opened the door for regional reform of the juvenile justice system.

According to Todd Foglesong (1997:283), the Supreme Court was also the main driving force in the liberalization of criminal justice in the late Soviet period:

> *Whereas in an earlier era, Soviet judges were supervised, pressured, instructed, and even influenced primarily by officials from the Communist Party and Ministries of Justice. In the 1980s as a result of the campaign to liberalize criminal justice, Russian judges' approaches to the application of law and the administration of justice came to be dominated by the views and wishes of their immediate judicial.*

Foglesong seems to suggest that the Supreme Court went beyond its role as a legal interpretor and entered the policy field. Arguably, the same may be said about the current situation.

Sergei Pašin (1999) is one scholar that argues that federal legal change is necessary in order to reform the juvenile justice system, and that real reform cannot legally be implemented in any other way. Pašin argues that in order to establish a juvenile justice system in Russia, it is not sufficient to introduce judges with special competence on children or establish distinct juvenile courts. Rather, the whole understanding of punishment in the present criminal code must be changed. It follows from the *Beijing Rules* Article 7.1(2) that in a juvenile justice system "[t]he well-being of the juvenile shall be the guiding factor in the consideration of her or his case". As Pašin elaborates (1999), this implies that every time a judge handles a criminal case involving juveniles, he should not only consider

> *his age, guilt and whether or not he has infringed upon the criminal code, but also answer whether or not he will gain from the punishment prescribed by the criminal code, whether or not the punishment is judicial advisable in this case, and whether or not such a judgment will serve the purpose of ensuring the well-being of the juvenile.*

Pašin argues that the current Russian legal framework does not allow for the judges to make such additional considerations (ibid.). The current Criminal Code is complete both with regard to crimes, punishment, and circumstances to be taken into account (cf. Article 1 (1) UK). Thus, a legal commitment to establishing separate juvenile courts is not sufficient for a distinct juvenile justice system to exist. Pašin's view here differs from that of the Supreme Court, which in Resolution No.5 of October 10, 2003 explicitly states that the principle of the best interest of the child, due to its status as an international norm recognized by the Russian Federation, takes precedence over other provisions found in Russian national law and that international norms should be considered as directly binding upon Russian judges.

6.4 Adaptability of Existing Institutions

Political and economical change prerequire that the old institutions are either able to adapt or replaced by new, better-functioning institutions. Reform of institutions may be a costly and hard process. Furthermore, employees of old institutions, if against the reform, constitute a strong anti-reform force. If there are not sufficient political will or resources, the existence of old institutions may be an obstacle to reform. As this is arguably more a matter of implementation than policy making, I will not address the question in depth, but general tendencies related to the Soviet institutional heritage will be mentioned.

In order to change the current juvenile justice system, three institutional changes seem to be particularly needed. Development of responses to these three challenges is the recipe for the beginning reform in Perm Krai and Rostov Oblast. First, there is a need to improve the child care system and establish provisions for sanctions not involving deprivation of freedom and rehabilitation. Lack of capacity in the social service system is identified as the main problem with the existing approach to juvenile justice by staff at NGOs working with children at risk and official rehabilitation centres alike (Islamagulov, Stapanov, Šarmina at "Russkij vzglâd", February 8, 2009; Sergeev April 2009; Gordeeva April 2009).

The Russian understanding of social services and social service system often still reflects the Soviet past and sometimes differs substantially from a child rights' approach to juvenile justice and in particular a Scandinavian understanding of the term social service. Examples of measures that are considered of a social character in Russia, and the use of which is encouraged by juvenile justice reform advocates (cf. for example Voronova and Tkačev 2004), are closed vocational colleges and temporary shelters for juveniles in conflict with the law. Although not a part of the penal system, the nature of these institutions are arguably just as punitive as educational colonies (cf. Amnesty International 2002?).

Second, as a change prerequires less use of deprivation of freedom, this implies that at least part of the existing juvenile colonies will have to be replaced. Due to underfunding, the educational colonies have suffered from a reduction in the number of social, educational, and health workers the last years, and many of the most experienced employees have quitted their jobs due to worsened working conditions (Abramkin 2008). According to Valerij Abramkin, the financial constraints and the flight of qualified cadre from the prison system have made the prison system less sustainable to reform than it was five years ago (ibid.).

Finally, there is a need to ensure better cooperation between actors involved in child care and justice. Several studies (Foglesong 1997; Huskey 1997) have documented that employees in the Russian justice system often constitute major obstacles to reform. As mentioned, Russian judges were not only dependent upon the Supreme Court but also on the Party and the administrative apparatus. The court and penal system was seen as only fulfilling the official policy. Consequently, the employees came to see themselves as responsible for fulfilling the political goals. One guard put it this way: "It seemed to them that they had worked in vain if the accused was not deprived of freedom" (Foglesong 1997:299). Furthermore, due to the traditional state monopoly on justice and care, official agencies are often reluctant to learn form the experiences of NGOs (Hananašvili 2006).

One of the bodies which have proven most resistant to reform is the procurator's office (Râbova 2008; Voronova and Tkačev 2004; Fliamer and Maksudov 2001; Huskey 1997:328f). The procurator's office holds a special position in the Russian legal system. In addition to being the actor responsible for the prosecution, it also serves as the guarantor of justice. This particular position of the procurator goes back to tsar-Russia, and has no equivalent in Western legal tradition (Huskey 1997:329). The mandate as guardian of legality

allows for the procurator institution to exercise some control over the other actors in the field.

General Procurator A.G. Zvâgincev claimed in 2003 that juvenile justice programs are void, as they contradict the Constitution's Article 118 (Vel'aninov 2007), i.e. the courts' monopoly on justice. However, as shown in Chapter 5, there are currently no other bodies besides the courts that decide upon guilt and punishment in neither Perm Krai nor Rostov Oblast. According to Vel'aninov (2007), this is also the case for all other juvenile courts, or court departments, in Russia. The argument of the General Procurator therefore seems void. That was also the conclusion of the Human Rights Council, which in 2003 sent a letter to the General Procurator's office where it criticized the stand of Zvâgincev (Vel'aninov 2007). The incident nevertheless shows that close cooperation with and the support of the procurator's office is needed in order to succeed with reform.

6.5 Particular Obstacles to Restorative Justice Ideas in Post-Soviet States

Restorative justice practices differ from both retributive and rehabilitive approaches insofar as justice is not seen as provided primarily by the state, but by several actors both inside and outside the state system. Restorative justice is a collaborative process involving those most directly affected by the crime. It seeks to hand back power to key figures in the juveniles' social network and enable them to benefit from resources available in the community (Hill, Lockyer and Stone 2007:17).

Restorative justice programs are characterized by a high level of informality and interdisciplinary cooperation. While informal procedures and high level of flexibility have been welcomed in the child care system in Russia, cf. the interest in restorative justice practices shown by workers in the child care system in Perm, there is a general mistrust towards informal procedures in cases involving law and order. The tendency to mistrust extrajudicial procedures originated with the Soviet regime's abuse of informal control. Based on historical experience, extrajudicial bodies are commonly assumed to be undemocratic and serving the interest of the state, not the individual. A researcher who has particularly pointed to this problem is Nils Christie (2004:74). He sums up the potential for restorative justice

practices in Russia this way: “They have had house committees or neighbourhood committees. Or they have had worker’s courts in the factories – no more of this, thank you!”.

Distrust in extrajudicial bodies is, according to Albrecht (1999:496) and Schwartz (2005:61), rooted in the tsar-Russian and Soviet tradition for special units for elimination of so-called state enemies. A more recent historical example is Stalin’s troikas. The troikas were special extrajudicial bodies created under the campaigns against ‘anti-Soviet elements’. The troikas, which sorted under the ministry of interior, were exempted from normal judicial procedure and could hold closed hearings, where the accused neither held the right to defence nor appeal (Schwartz 2005:61). Aware of the dangerous potentials of extrajudicial bodies, authorities did, as mentioned above, explicitly outlaw all such bodies in the 1993 constitution.

The timing of the introduction of restorative justice ideas in Russia was also not the best. Restorative justice ideas were first tried introduced in the period when the Russian political, as well as legal and judicial system, went through transition. One of the major objectives of this transition period was to establish rule of law in Russia. In this period, there was thus little room for arguments about ‘justice through informal means’. In the words of Fellegi (2005:68): “Advocates of restorative justice fell in this ‘gap’ between the two systems by promoting the necessity of informal processes in a democratic justice system”.

The argument mentioned above may also to some degree apply to rehabilitive reform initiatives. The guiding principle for the rehabilitive school, “the best interest of the child”, entails that subjective criterias are given priority over legal safeguards. Consequently, although the procedure may still be formal, sentencing practices take a more arbitrary form (Muncie 1999). As shown, rehabilitive elements have been a part of the Russian approach to juveniles in conflict with the law since the early 20th century, and rehabilitation is currently the main objective for responses to juvenile crime. In the Soviet years, rehabilitiation was primarily seeked outside the justice system, by handing less severe cases over to KDN. The KDN was de facto operating as an extrajudicial body. Upon the enactment of the Russian Constitution in 1994, and the following law regulating the judicial system, it was stressed that Russia was a legal state, and all extrajudicial bodies became void, KDN included.

The paternalistic attitude of the state in the former Soviet countries may constitute another obstacle to implementation of restorative justice practices. The state’s monopoly on

providing justice and care, combined with a lack of tradition for interdisciplinary cooperation and bureaucratization, makes the establishment of for example mediation programs difficult on the local level. There is a need for implementation from above, i.e. removal of bureaucratic obstacles to cooperation, coordination of different departmental strategies, and establishment of regulations for cooperation. In Perm region, where the reform initiative came from the regional government, the reform has simplified the work with juveniles. The CSPR staff establishing a single pilot project in Moscow however, experienced that their work became more complicated, as they had to interact with several different governmental departments that all had a different 'official' version of how their work should be done (Maksudov April 2009).

In a study on restorative justice in Eastern Europe, Fellegi (2005:70-71) argues that the low level of cohesion in communities is a main obstacle to restorative justice ideas in post-socialist societies. She writes:

> *During the socialist –communist era, the 'sense of community' almost disappeared: people relied heavily (and often exclusively) on the state authorities for solving economic and social problems and state authorities were perceived as the sole responsible institution for economic and social well being.*

She concludes that it is a main challenge to "stimulate people to play a more direct role in conflicts, occurring in their community" (ibid.).

Here Fellegi contradicts the experience of the Russian restorative justice practitioners (and indeed her own main source on Russia) in CSPR. They have found that Russians like to solve their problems themselves, be it in the family, school, or neighbourhood, keeping them out of the state system. According to Maksudov (2000), the strong interest in the centre's school-mediation program is rooted in the teachers' wish to solve the problems among students themselves, not involving the police. One reason for this may of course be the low level of trust in the justice system (and the bad reputation of the police). Another reason, however, may be found in the relationship between society and state. While there used to be "general knowledge" amongst sovietologist that the social community in the Soviet Union was weak, newer research have claimed that this only applies to the formal social society, that is, the part of social society that interacted with the state. Life in Soviet Union was characterized by a strict demarcation between public and private sphere. What could be

solved in the private sphere without the involment of the state, people tended to solve in the private sphere (Sztompka 1993).

The resistance towards restorative ideas in Russian society has primarily risen when representatives from state agencies, court, state social service system etcetera have been involved. The restistance from society has been particularly strong in cases where the restorative practice has taken a form that is similar to the way of interaction between state and society during the Soviet era, i.e. hearings (Sergeev April 2009). The challenge is therefore not to make people participate more directly in the solving of conflicts in their community, but to break down the barrier between the private and the public sphere and to increase people's trust in the state, thereby allowing for the social community and state agencies to work together in solving conflicts. However, what may be a threat to the community feeling are increases in social diffrerences and lack of a new, shared value-system to replace the socialist ideas.

7. Conclusions

The Russian approach to children in conflict with the law has taken a significant turn to the less punitive during the last 10 years. Yet, there are challenges to be approached before the Russian juvenile justice system is in accordance with Russian obligations under international conventions. Untraditionally for Russia, the leading part in the reform process is undertaken by the Russian regions.

A Softer Approach to Juveniles in Conflict with the Law

Although juveniles are handled in the regular justice system and by and large under the same provisions as adults, there are some important differences. The general Russian approach to offenders are based on a 'rational choice' approach to crime. The underlying assumption being that crimes are committed because the offender believes that by breaking the law he may achieve an advantage he could otherwise not afford. Consequently, in adult cases the question of guilt is established upon offence relevant criteria solely.

In juvenile cases on the other hand, the Criminal Code states that also offender relevant criteria should be taken into consideration. Upon consideration of the child's emotional maturity; cognitive intellectual and moral character; its living conditions; and the potential influence of adults or older children, the judge may relief the accused child from criminal responsibility, or sometimes only for punishment. Contrary to what is commonly believed, Russian criminal law therefore allows for taking special child relevant criteria into consideration when dealing with juvenile cases. The relative significance given to socio-economical factors is, however, not clarified. As a result, the actual degree to which the juvenile is viewed as mature and responsible or young and innocent is very much left for the judge to decide.

Arguable, the Russian judicial tradition is to give priority to offence relevant criteria. One reason may be that some judges still see themselves as simply fulfilling the criminal policy of the state, i.e. 'the war on crime'. In the Soviet Union, a judge's career was dependent upon a high and stable ratio of convicts. Russian judges have, however, become significantly more politically independent during the last 20 years. I therefore suggest that the main reason for

the still widespread use of deprivation of freedom in juvenile cases is that society-based sanctions are little developed in Russia.

While deprivation of freedom for juveniles are still more common in Russia than in most other countries in Europe, a significant liberation of sentencing practices have taken place since the enactment of the new Criminal Procedure Code in 2001. While deprivation of freedom by and large was the default opinion for juveniles in the 1990s, warnings and conditional sentences are now used towards all first time offenders, and increasingly also second and third time offenders, with the exceptions of those who are found guilty in murder or rape. Community based types of sanctions are currently little developed, but the development of different forms for community services are among the priorities of the penal authorities.

Lack of Common Policy

When children in reality often are treated similar to adults for the purpose of justice[27], Russians commonly explain it with a punitive mentality. In this thesis I have argued that there is no real evidence of a special punitive attitude towards juveniles in the Russian society. Contrary, there seems to be a widespread agreement among politicians, scholars, professionals and the public in general that youth crime is a result of the socio-economical problems of Russian families and should be handled as such. Furthermore, it is commonly agreed that educational colonies causes more harm to children, than good. One may ask, why then are they still in use.

My suggested answer is that the retributive elements persist mainly due to a lack of a common juvenile justice policy and institutional heritage. 20 years after the collapse of the Soviet Union the juvenile justice system is still characterized by the systemic vacuum that was left after the Socialistic state. As shown in Chapter 4, the juvenile justice system in Russia is very diverse. The actors are subordinated under four different ministries, and two fundamentally different strategies. In the absence of common guidelines, the actors have been left to decide their own objectives. More often than not, dealing with children in conflict with the law have not been a priority.

[27] I.e. the questions of guilt and punishment are decided based on offence relevant criteria solely. The Russian criminal code always ensures the practice of leniency for minors.

The lack of coordinated efforts is characteristic for the current juvenile justice system as a whole. The official approach to juveniles in conflict with the law, encompass both the general criminal policy, characterized by a 'hitting hard' approach to crime, and the Russian child care policy. There is a fundamental contradiction between the responsibility for one's own actions stressed by the first, and the innocence due to the immaturity stressed by the latter. Due to strict demarcations between the justice and the child care system there are currently few arenas in which the actors may come together and coordinate their efforts.

The Lesson from the Regions

The approach to juvenile in conflict with the law in some federal subjects differs from the federal approach. In the regions studied in this thesis, Perm Krai and Rostov Oblast, efforts have been taken on the legislative and organizational level in order to ensure that child care concerns are really taken into account upon handling juvenile cases. Measures have been taken to increase the judges' awareness of the special provisions for juveniles in the Criminal Code and Criminal Procedure Code. Even more important, in these regions there has been established a common strategy for child care and juvenile justice, and there has been established routines for cooperation between actors in the child care and the justice system. This effort allows for the exhaustion of all resources found in the juvenile justice system when approaching a specific child. According to actors in the child care system, a holistic approach was previously not possible due to lack of common arenas.

Historical Legacy, Reform Forces and Obstacles to Change

Upon starting this study, one of my hypotheses was that the Soviet institutional legacy would constitute a significant obstacle to fast change. This I found to be true with regard to the penal system, which due to its organization and location is by and large unsuitable for providing reformation of the offender, the main objective of the Criminal Code in juvenile cases. The very existence of the colonies (and their enormous capacity) has in addition made the development of other types of sanctions less acute, and consequently not a political priority.

The Soviet legacy is also found in the minds of the Russian people, manifested in their distrust in extra-judicial bodies and scepticism towards direct involvement in justice processes that involves state actors. This cultural heritage constitutes an obstacle to structural

reform of the juvenile justice system, in particular the introduction of restorative justice practices. State actors are not trusted to know what is best for a child

While I assumed existent institutions to be an obstacle to change, I was more surprised to find that in one case Soviet legacy also functioned as reform force. The power of the Supreme Court to supervise lower judges, a heritage form the Soviet time, gives the Plenum of the Supreme Court power as a political actor. With regard to juvenile justice, the Supreme Court has issued several recommendations that have opened the door for interpretations of Russian criminal law in line with international conventions on juvenile justice.

Reformation from below?

The legal reform of the first part of the 1990s, the purpose of which was facilitating the transfer of marked economy, was characterized by a strong faith in policy transfer. Laws were adapted form other contexts to Russian circumstances on a large scale. A substantial part of the legal reform from that period has never been properly implemented. According to Hendly (2001) the legal reforms of the 1990s did not work because they did not take into account the experience and practices of the people working in the system. The lesson to be learned is that in order to be appealing and realistic, legal changes must be implemented from a bottom–up perspective (ibid.).

Exactly the bottom-up approach is part of the secret behind the reform in Perm Krai and Rostov Oblast. From the beginning of the reform process all actors working with children in the regions, in the child care system as well as the justice system, were included. Furthermore, the regional governments established a common strategy with common objectives for all work with children, as well as regulations that ensured cooperation between the different responsible bodies. In other words, they broke down the strong demarcations between the justice and the child care system. The new, coordinated approach was symbolized by the introduction of social workers in the court room. As the lack of coordinated approaches is among the main obstacles to implementation of international norms for juvenile justice in the current system, the mentioned changes in Perm Krai and Rostov Oblast represent a significant policy shift.

The fact that the reform has taken place in the regions upon the initiative of the regional actors themselves and has not originated with Kremlin, may be a positive sign for the future

development. As mentioned above, Russia has a tradition for adapting laws from other countries, laws that have not always turned out to be easily implementable under Russian conditions. In the words of Dimitrij Lisicyn, Director for the National Foundation for the Protection of Children from Violence: “first we create laws, and then we struggle to live by them”. Lisicyn is positive to the resent development in juvenile justice, exactly because it is not initiated from above. He sees the current development pattern, where Russian regions are gaining experiences with adapting international juvenile justice norms to Russian reality as more sustainable. In a few years, he believe, federal legislation can be based upon these experiences, and thereby the law will be possible to implement within the current Russian reality (Èho Moskvy November 23, 2008).

McAuley and Mcdonald (2007) are more uncertain about what the future Russian approach to children in conflict with the law will be. They point out that the general tendency in post-soviet states has been that the softening climate following the collapse of the Soviet Union, has been replaced with more punitive attitudes after a few years. Arguably, this has been the case with the political climate in Russia, and the general approach to human right’s issues in the country. It remains to be seen, if the last years ‘humanitarization’ of the juvenile justice system will be kept up, or if Russia will follow the general trend towards more retributive measures seen in Europe and North-America.

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