



# THE ROLE OF SOCIAL WORK IN JUVENILE JUSTICE

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Many of the circumstances leading to conflict with the law are of a social nature. Children who offend often live in families facing difficulties such as poverty, substance abuse or separation; they may be excluded from school or be without a job; they may be involved in risky behaviours such as drug use or prostitution. When these children enter into contact with the police, the main purpose of juvenile justice systems should be to enable them not to reoffend. As stated in Article 40 of the Convention on the Rights of the Child, every child in conflict with the law has the right to be treated in a manner that takes into account “the desirability of promoting [his/her] reintegration and [his/her] assuming a constructive role in society.” Tailored support for each child and his/her family should be provided throughout the process – including after release in the case of a custodial sentence – if the intervention of justice is to be meaningful.

Obviously, justice systems are neither equipped nor mandated to fulfil this role alone, and need to work hand in hand with the social sector towards this end. In the absence of such intersectoral cooperation, juvenile justice interventions would miss the opportunity of supporting a sustainable change in the child’s behaviour, circumstances and environment.

Social services and the justice system are in many ways two distinct spheres and invariably the responsibility of separate ministries, but the occasions and ways in which they could and should interface and cooperate are numerous and important for the implementation of children’s rights.

This paper is designed to pinpoint the main activities and tasks that should be undertaken by social work professionals within the overall juvenile justice framework.

To do so, the paper first briefly reviews experience of social work in the Central and Eastern European/Commonwealth of Independent States (CEE/CIS) region since it is against this background that the realization of the potential of social work in conjunction with the justice system will have to be set.

The paper then moves on to examine the many facets of social work, taking inspiration from the description of its wide-ranging roles as set out by its international professional body – the International Federation of Social Workers (IFSW).

These two sections provide the backdrop for examining in more depth how social work and the justice system can work together to optimize responses to children in conflict with the law.

## Background to the current status of social work in CEE/CIS

The social work profession has a chequered history in the CEE/CIS region. The profession managed to retain official endorsement throughout the twentieth century in only a few countries in the region, among them notably the Federal Republic of Yugoslavia and Poland.

In the pretransition era, the authorities of most countries, in contrast, viewed social work as the reflection of a charity approach to problems engendered by, and inherent to, capitalist regimes. Social work was therefore considered unnecessary, irrelevant and/or unacceptable in a communist society. Thus, the profession was banned as of the 1930s in the Soviet Union, so “social work has little tradition as an academic or professional path in most former Soviet countries.”<sup>[1]</sup> Several Central and Eastern European countries followed suit, more or less gradually, once communist regimes were installed after World War II, e.g., Czechoslovakia, Hungary and Romania.<sup>[2]</sup>

Interestingly, the time taken to ‘rehabilitate’ the social work profession has varied greatly in the region. Hungary reintroduced social work education already in 1986,<sup>[3]</sup> and the profession was reinstated in the Russian Federation in Spring 1991, several months before the official dissolution of the Soviet Union, although it is currently claimed that “the status of social work as a profession is still weak and unclear even if there is more social work education being offered at universities and other signs of change.”<sup>[4]</sup> In Romania, social work training was re-established in June 1990, just months after the downfall of the communist regime, with a full four-year degree course in place as of 1992 and the first ‘new generation’ of social workers qualified by 1994, whereas Albania’s first batch of qualified social workers only completed their training in 2000. Elsewhere, it took even longer just to secure recognition of the profession. Thus, in Georgia, “[m]any health workers, teachers, and psychologists [had] been practising what qualifies as social work but lacks the official title... social work was finally recognized as an independent profession in 2003 [but] Georgian social work had no professional body or a code of standards [until 2004], and few concrete opportunities to work in the field.”<sup>[5]</sup>

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- 1 Zoe Brogden, *Creating a Space for Social Work in Post-Communist Society*, Open Society Foundations Blog, 28 October 2010, available at <<http://www.opensocietyfoundations.org/voices/creating-space-social-work-post-communist-society>>, accessed 15 April 2013.
  - 2 Darja Zavirsek, University Ljubljana, Slovenia, *The development of the international Social Work. Networks and their impact*, available at <<http://www.fhnw.ch/socialwork/international/module-history-of-social-work/abstracts/darja-zavirsek>>, accessed 15 April 2013.
  - 3 Maria Herczog, cited in Tobis, D., *Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe and the Former Soviet Union*, The World Bank, Washington, DC, 2000, p. 13.
  - 4 Trygged, S., and Eriksson, B., ‘Implementing Swedish Models of Social Work in a Russian Context’, in *Social Work and Society International Online Journal*, Vol. 7, No. 2, 2009, available at <<http://www.socwork.net/sws/article/view/78/337>>, accessed 15 April 2013.
  - 5 Zoe Brogden, *supra*.

Where the profession as such was banned, certain of its many specific functions were sometimes in principle devolved to others, such as specialized juvenile officers in the police or educational workers in schools. Thus, for example, ostensibly preventive measures – such as ‘registration’ – have been assigned to police officers (with or without special training) rather than, more appropriately, to fully fledged social workers. If used at all, the term ‘social work’ often loosely referred to services whose nature or restrictiveness did not necessarily correspond to the more generally accepted conception of the profession. Thus, for example, in some cases, it was applied to an essentially administrative function involving more especially the determination and provision of social security payments and other material assistance to individuals and families in difficulty. Elsewhere, it was linked mainly to the (physical) health sphere: the so-called ‘medical model of social care’. Generally, to be sure, these perceptions have now evolved considerably, but elements of the legacy can still affect how the actual and potential role of ‘social work’ is viewed.

## The scope of social work

Given these very different experiences of, and approaches to, ‘social work’ in the region, it is clearly all the more essential to be aware of the internationally agreed scope and forms of its action and intervention when broaching its role in relation to juvenile justice. The scope and forms involved are considerably wider than the ‘popular’ conception of what social work is designed to accomplish.

Its principal professional body, the International Federation of Social Workers (IFSW), sets out three key action areas,<sup>[6]</sup> which can be characterized as follows:

- **promoting social change**, on the basis of its findings regarding the needs and the avoidable causes of problems confronted by individuals and groups seeking or requiring assistance;
- **problem-solving in human relationships**, whether interpersonal, intrafamilial, within the wider community or vis-à-vis the authorities and their agents;
- **empowering people to enhance their own well-being**, as opposed to creating ongoing dependency and thus maintaining inherent vulnerability.

The IFSW also stresses that the profession draws on theories of human development, social theory and social systems to facilitate individual, organizational, social and cultural changes, and that social work is founded on the principles of human rights and social justice.

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6 Based on: International Federation of Social Workers, 2004.

Given such a range of potential areas of intervention, together with the bases and approaches that inform its action, it is clear that the social work profession can have positive direct and indirect impacts on the juvenile justice system, and this in three main ways that loosely correspond to the three levels of the preventive framework:<sup>7</sup>

**(1) Working alongside, but independently from, the juvenile justice system:**

This relates to both the primary prevention role of social work and to elements of secondary prevention. At the primary level, social services should be accessible on a self-referral basis to respond appropriately to any individual or family experiencing difficulties. In addition, at the secondary level, social workers help to identify proactively, and respond to, families where children are at risk, wherever possible by enabling those families to address the root causes of 'presenting problems' such as intrafamilial violence, neglect and delinquency.

**(2) Interfacing with the justice system:** Other elements of secondary prevention may fall to the social work profession as a result of the child or a parent coming into contact with the justice system. Thus, social workers should be involved when the police question or arrest a child who is under the minimum age for prosecution or has not committed a criminal act but is clearly in danger (e.g., homeless, unaccompanied migrant). If a parent is arrested and detained, social workers should be able to check and ensure the well-being of their children.

**(3) Working within the justice system:** A wide range of tasks may be allocated to the social work profession in the context of the justice system, from the moment of the child's apprehension or arrest through to disposal and, where appropriate, follow-up.

Importantly, there is also every advantage in inviting the social work profession, in keeping with its potential mandate, to contribute to developing relevant policy, legislation and programmes, on the basis of the needs and issues that it identifies in the course of its functioning and casework at all three of the above levels. This might include findings that could incite and inform governmental initiatives ranging from readjusting social security thresholds to the decriminalization of vagrancy.

Primary prevention is obviously a fundamental element in the social work agenda and can have a significant impact in a number of spheres, including that of delinquency. However, it is not discussed further in this note since, save

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7 Primary prevention refers to strategies that address the root causes of conflict with the law, creating a protective environment for all children. Secondary prevention strategies target children considered at high risk of getting in conflict with the law, in order to prevent them from committing offences in the future. Tertiary prevention aims at preventing reoffending by children already in conflict with the law.

in exceptional cases, it does not involve actors in the justice system. This review therefore concentrates on the second and third components of the above listing.

## The interface of social work with the justice system

The police are the front-line actors of the criminal justice system, and it is through them that children and young people invariably have their first contact with that system. However, after this first contact, the police may have no further direct role to play. Three main scenarios are involved.

The first concerns children who are apprehended or arrested on suspicion of having committed a criminal offence but are below the minimum age at which they could be prosecuted for such acts. Under such circumstances there is general agreement that, while police action is no longer warranted or appropriate by definition, neither is it desirable or constructive simply to ignore the event and thus to leave the child without follow-up. “For these children,” notes the Committee on the Rights of the Child, “special protective measures can be taken if necessary in their best interests.”<sup>8</sup> Thus, whatever the nature of the alleged act and the conditions in which it took place, it is essential that there be clarity as to the overall situation of the child concerned, so that, if necessary, appropriate levels and types of assistance and support can be foreseen, to avoid as far as possible subsequent behaviour inconsistent with the law. The task of investigating the child’s situation and providing any necessary assistance should come within the remit of social workers. To ensure that this is an accepted and systematically applied procedure, the best solution is to draw up a protocol between the police and social services, whereby responsibility for children below the minimum age of criminal responsibility is transferred immediately and effectively by the police to the social services.

It is worth pointing out in this respect that, since minimum age for prosecution in CEE/CIS countries is higher than average,<sup>9</sup> the potential roles and responsibilities of social work professionals in such countries are particularly heavy and crucial in regard to ‘underage’ children.

The second scenario is typified by situations where children or young people are approached by the police because their behaviour or circumstances arouse concern although they are not suspected of a criminal offence as such. This is frequently the case, for example, for vagrant or homeless children. Here again,

8 Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 31.

9 The world average age is 12 years. This is the lowest age found among CEE/CIS countries, the great majority of which have to date retained the ages of 14 and/or 16 (according to the seriousness of the offence) established during the Soviet era and also widely adopted by countries in the region outside the former Soviet Union.

recognized and accepted procedures need to be in place for the police to contact social services (or specialized street workers) if their concern remains after initial contact with the children.

The third scenario enters into play in situations where the police, having arrested a child above the age of criminal responsibility, have been granted the discretionary power to set in place a diversionary measure instead of pursuing prosecution through the court. Such diversionary measures may optimally involve initial referral to a social worker. They are currently rare in the CEE/CIS region, however, where diversion usually happens at the prosecutor's level.

A very different but also important aspect of the police-social work interface involves children whose carer(s) have been arrested or detained by the police. One of the first questions that need to be put to an arrested or detained person concerns their family status and, in particular, whether their arrest or detention prevents them from ensuring a necessary caring role for a child or children. If such is the case, once again there must be procedures to secure the involvement of social workers who can check on the children's situation and ensure that their well-being is guaranteed.

## Social work within the justice system

In countries of the former Soviet Union and several others in the region, children dealt with by the justice system generally faced sentences (or suspended sentences) involving deprivation of liberty in some form, often for several years, albeit with the leitmotiv of 'rehabilitation' rather than pure punishment. To the extent that this legacy persists to a greater or lesser degree, "social workers have a weak position in this system."<sup>(10)</sup> There are now, however, a growing number of efforts to address this issue, implying "a chain of social treatment – from the time the youngsters were caught by the police, through the trial and during sanctions, such as serving sentence in a youth colony or being put on probation – to a new start in the society."<sup>(11)</sup>

The links in such a chain are many, with the following being among the 'key' actions to be carried out by social workers in the justice system:

**Assisting the child from the moment of arrest.** In some countries, a social worker has to be present with the child during police questioning if the parents cannot be (and sometimes even when the latter are also there), providing emotional and possibly paralegal and other support to the child. A social worker may also be able

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10 Trygged, S., and Eriksson, B., *supra*.

11 *Ibid.*

to propose pretrial solutions other than remand in custody that will be acceptable to all parties, and can in any case maintain contact with the child throughout the pretrial period in order to provide assistance and advice as required.

**Preparing social enquiry reports on the child's circumstances and characteristics.**

These reports are usually drawn up to provide the court with background information on the child – above all on all aspects of the family situation, as well as health and education status and highlighting any special problems or strengths – in order to help determine the most appropriate course of action regarding that particular child in response to the offence. At the same time, in systems allowing for 'diversion' at the pretrial stage, similar reports might also be used more especially for 'borderline' cases where the competent body is unsure as to whether diversion would be suitable.

**Organizing diversion.** If pretrial diversion is ordered, the social worker can take responsibility for selecting the most appropriate programme or setting, and assisting the child to complete the diversionary measure successfully.

**Supervising young offenders in the community.** Social workers (often specialized, such as probation officers) can clearly be made responsible, by the court, for overseeing supervision orders. This involves not only working with the child concerned but also with his/her family and, where appropriate, with the school and community associations. Similarly, social workers may be tasked with ensuring proper completion of measures such as community service.

**Support during custodial sentences.** The availability of a social worker for children deprived of their liberty can be an important factor for their well-being, and thus for the prognosis on completion of sentence. In such circumstances, a social worker can also suggest and mobilize other services – education, NGOs, etc. – to make the detention measure more constructive. In most cases, if the social worker concerned is also in contact with the family, this will be an added benefit (although it should never replace, of course, family visits or other communications between family and child).

**Preparation for release.** Here, the direct and indirect roles of the social worker are particularly crucial; in that it is rare to find any system where this vital function is undertaken by others, save in some cases by NGOs. Preparation for release involves working not only with the child and trying to ensure that his/her prospects on release are as positive as possible (continued education, vocational training, employment) but also and necessarily with the family, so that the home setting is also as propitious as possible for the child's return.

**Post-release support (aftercare).** Whether or not there are formal conditions attached to a child's release from a custodial sentence (such as a subsequent probationary period, close supervision or 'on licence'), which a social worker may be tasked with overseeing, the availability of support and advice from a social

worker at this stage can be invaluable in enabling the child to avoid reoffending.<sup>121</sup> In many cases, the child's overall environment (family, friendships, community, material conditions, opportunities...) will have changed little during his/her time in custody, and to the extent that these were causal factors in the original offending behaviour, the child may well need ad hoc or ongoing support to resist recidivism.

## Enhancing the role of social workers in the justice sphere

It is often said that the wide-ranging 'international' view of social work is essentially a Western-based model. This is undoubtedly broadly true as such, but the pertinence here of that wide scope reviewed above lies more especially in setting out the potential range of functions – from casework to advocacy – that the social work profession as a whole can play, and the settings in which it may be called upon to do so. This enables the desirability, necessity and appropriateness (feasibility) of each function to be assessed in specific country situations with, in this instance, the goal of improving responses to children in conflict with the law, in harmony with the justice system.

In a similar vein, the profession has evolved significantly over time, in keeping with documented needs, changing approaches (from a focus on assistance to a facilitating and enabling thrust), a vastly increased body of research and more systematic evaluations of effectiveness and impacts. Thus, social work should be seen as a sphere of action that is responsive to societal realities rather than as an immutable set of functions and strategies. It now potentially incorporates a range of specialized professionals such as street workers, educators, residential care workers, family support workers and probation officers, and operating in a variety of settings from 'the street' to the courtroom. Suffice it to say, therefore, that the aim must surely be that each country examines the extent to which each potential social work function could contribute to the promotion and protection of children's rights in the justice system and, where the result of that examination is positive, that progressive implementation of the role(s) concerned be planned and carried out.

Finally, if the social work profession is to be able to play its role to its fullest potential with and within the justice system, it is clearly vital that there be mutual trust and respect among all actors involved. Even in countries where social work is

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12 As an example of the perceived importance of this role, the full official title of the body for which probation officers worked in the United Kingdom was the 'Probation and Aftercare Service'.

a long-standing and well recognized profession, there are examples of lack of such trust and respect between social workers and the police, prosecutors and judges. At least five preconditions from the social work side must be met if such problems are to be avoided:

- The social work profession and its roles must be fully and officially recognized.
- Social workers must receive adequate professional training to fulfil – and to be seen to fulfil – those roles effectively.
- Social work must be given adequate resources (human and material) that enable it to offer valid responses.
- Roles and responsibilities of social work vis-à-vis other actors in the justice system must be clearly defined and agreed by all concerned.
- Multiprofessional fora must be foreseen at all levels where actors can discuss any difficulties encountered in their cooperation and propose solutions, strategies and targets to improve their combined efforts.

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