

No. F.092.22/66

ANSWERS

1st Question

In Greek legal order, the protection of child age and juvenility, the function of minors courts, their special penal jurisdiction and the establishment of the procedure “in camera” are secured by the Constitution (article 21 par.1, 3 and 96 par.3). Minors Public Prosecutors, as well as Minors Judges follow its dispositions and the special penal or procedural dispositions provided for the penal treatment of minors (mostly articles 121 to 133 of Penal Code, as those were modified at a large extent by Law 3189/2003 “Reform of minors criminal law” (Official gazette A’243/21.10.2003) and the disperse provisions of penal procedure articles concerning special dispositions on minors.

The age limit of minors’ criminal responsibility is 13 years completed, according to article 127 of Greek Penal Code and in particular:

Minors criminally irresponsible and Minors criminally responsible

Minors of 8 to 13 years of age who committed criminal acts are penally prosecuted, but the Minors Court imposes only penitentiary or remedial measures (article 126 par.2 in combination to article 122-123 of Penal Code, as replaced by article 1 of Law 3189/2003) and are considered criminally irresponsible, while the Minors Court imposes to minors who have completed the thirteenth year of age (article 126 par.3 of Penal Code) mainly penitentiary or remedial measures and only exceptionally the disposition of article 127 of Penal Code is

applied, they are therefore considered criminally responsible and are condemned to confinement in a special juvenile detention establishment, if it is deemed that “*penal reformation of the minor is necessary to restrain him from committing new offenses*”.

2nd and 3rd Questions

The Minors Public Prosecutor’s seat is always in the building of the local 1st Instance Public Prosecutor’s Office, so that immediate conveyance of the apprehended minor offenders before him is made possible. He exercises penal prosecution against minor offenders and either remits them directly to the competent Minors Court or orders holding main investigation by the competent Minors Investigator. In Athens, there are two (2) special Minors Investigators (article 33 par.3 Code of Penal Procedure and article 26 Courts Organisation Code), who hold investigation in cases for which adults are punished at the grade of felony. Minors Investigators as well as Minors Judges are selected on the basis of their special studies or knowledge (article 7 Code of Penal Procedure and article 26 Courts Organisation Code) and their previous occupation with issues concerning minors (i.e. judges for family law disputes). During their two-year tenure of office –which may be extended for another two years- they have the opportunity to further training by attending special seminars and congresses organised by scientific agents, international organisations, universities and the National Judges and Public Prosecutors School.

All the above mentioned is also applied to the specially appointed Minors Public Prosecutors.

In Athens, 1st Instance Minors' Courts, that is Minors' Judge, Minors' Court Secretariat and Minors' Court trial hall are established in a different place from all the rest 1st instance penal courts, so that mingling of minors with the rest accused adults is avoided and a better environment for them is obtained. In particular, they are established in a separate part of the Athens Court of Appeal along with the offices of the Minors' Supervisors Service of Athens, the Supervisors of which carry out the investigation concerning moral and mental situation, previous life, family conditions and in general the environment of every accused minor and draw up his/her individual file card, which they present to the Minors' Judge and during the trial, in which they are present (article 239 par.2 passage 2, 3 Code of Penal Procedure and article 8 par.1 Presidential Decree 49/79).

The trials of the accused minors are always held in camera, that is without publicity, where only the persons having the custody of the accused minors (parents, guardians, etc.) are permitted to be present, beyond Judges and Minors' Public Prosecutors, litigant parties, their Counsels and the Minors' Supervisors.

Article 113 of Code of Penal Procedure provides for the Minors' Courts as having substantive jurisdiction to judge criminal actions committed by minors from thirteen to eighteen years old. These courts are divided into One-Judge and Three-Judges 1st Instance Courts and to 2nd Instance Courts, called Courts of Appeal. The One-Judge Minors' Court judges: a. the actions committed by minors except from those judged by the Three-Judges Minors' Court, b. the minor offenses committed by minors in the 1st Instance Court seat and c. the appeals

against resolution of the Minors' Magistrate Court. Also, the One-Judge Minors' Court imposes the penitentiary or remedial measures determined by Penal Code for minors who have not completed the 13th year of age. The Three-Judges Minors' Court judges criminal acts committed by minors, for which the penalty of confinement in a special juvenile detention establishment, which must be imposed according to the Penal Code, is at least five years. The Minors' Court of Appeal judges the appeals against the resolutions of One-Judge and Three-Judges Courts that operate in Misdemeanours' Courts. The substantive jurisdiction is determined by the characterisation of the action by Penal Code as felony, misdemeanour or minor offense, based on the real circumstances contained in the indictment bill or the Public Prosecutor's summons.

In Greek penal law, despite the general tripartite division of crimes into minor offenses, misdemeanours and felonies on the basis of the penalty that might be imposed by law, felonies, when committed by minors, have always the character of misdemeanour, as explicitly determined in article 18 par.2 of Penal Code, since the confinement in a special juvenile detention establishment is the heaviest penalty which might be imposed. The most important favourable consequence of characterising felonies committed by minors as misdemeanours, is that those are time-barred as misdemeanours, that is at any case after five years, instead of twenty or fifteen years, as provided for adults.

According to article 130 par.1 of Code of Penal Procedure, in case a minor participates in a crime along with adults, penal prosecution of the minor is disjoined and the

minor is judged by the Minors' Judge. In case of misdemeanours, if the Public Prosecutor -in case of induction through direct summons and by virtue of a well-reasoned decision of his which mentions the concrete reasons which concern the interest of justice- or if the judicial board deems that disjoining is not indicated for reasons concerning the interest of justice, the case is judged by the court competent for the accomplice who is punishable with the heaviest penalty, in which court the special minors' judge also participates at all instances, if possible. According to the disposition of article 130 par.3 Code of Penal Procedure as modified by article 7 par.2 Law 3090/2002 the joint trial of the minor along with his adult collaborators and his non referral to the minors' court is always forbidden, if he/she has not completed the fifteenth year of age. As it concerns the infringements of Drugs Laws Code, in case a minor participates in criminal actions infringing this law, committed by adults or in case of connection, the case is always disjoined as per the minor, independently of his/her age (article 18 Law 1729/97 and Ath.Kontaxi, Code of Penal Procedure, 4th ed.2006, 1st volume, article 130, p.1011). Currently, in practice, it is extremely rare to judge minors together with their adult collaborators.

Moreover, article 45A Code of Penal Procedure provides for the power of the Public Prosecutor to refrain from exercising penal prosecution against a minor who has committed a misdemeanour or a minor offense, if by the investigation of the circumstances in which the action was carried out and of the whole personality of the minor, he/she deems that its exercise is not necessary in order to restrain the

minor from committing new criminal actions. In that case, penitentiary measures may be imposed to the minor or the payment of a pecuniary amount up to 1,000 euros to a non-profit or a public benefit legal entity, within a time limit set for his/her compliance.

After modification of article 489 par.1 d Code of Penal Procedure, by article 4 par.4 of Law 3189/2003, the minor condemned by One-Judge or Three-Judges Minors' Court to confinement in a special juvenile detention establishment, has always the possibility to file an appeal against the above condemnatory resolution, which is appellable, independently of the penalty's magnitude, that is the duration of the confinement imposed. On the contrary, the resolutions of the Minors' Courts are not attacked by legal recourses if they impose penitentiary or remedial measures provided for in articles 122 and 123 of Penal Code, because these are of an administrative character and do not constitute penalties and the resolutions by virtue of which they are imposed are not condemnatory but releasing (Supreme Court 366/1998).

4th Question

By virtue of the dispositions of Law 3625/2007 (Official gazette A'290/24.12.2007) by which the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography has been ratified, adopted by Resolution 54/263 (25th May 2000) and by virtue of the dispositions of Law 3727/2008 (Official gazette A'257/18.12.2008) by which the Council of Europe Convention on the Protection of Children against Sexual Exploitation and

Sexual Abuse, adopted in 2007 in Lanzarote, Spain, has been ratified, many new dispositions have been introduced in the Greek penal law concerning the protection of minor victims of crimes against personal and sexual freedom during penal procedure. In particular, the following innovations have been established among others: the obligation to register the deposit of the minor victim during the preliminary proceedings at an electronic audio-visual medium, so that its electronic presentation may replace the physical presence of the minor victim during subsequent stages of the procedure; the obligatory presence and preparation of the examination of the minor victim by a child psychologist or child psychiatrist who collaborates with the investigation officers and the judicial officers, drawing up the relative report (article 226A Code of Penal Procedure); holding investigation for the above minor victims' cases in absolute priority; their trial by a higher court even in the first instance, that is the Three-Judges Felonies Court of Appeal, in which no jury participates, but only ordinary judges; and the brief (6 months) determination of the hearing date of these cases. The Minors Public Prosecutor competencies and duties, both during the preliminary investigation and the main procedure in the Minors Court, do not present differences from those provided for adult perpetrators, with the exceptions already mentioned and in particular with the possibility of applying the disposition of article 45A Penal Code. Both for adults and minors, penal prosecution is mainly exercised ex officio except from the cases for which the filing of a complaint is required. Bending down of the principle of legality is however provided for, through the

power of Public Prosecutor to refrain from exercising penal prosecution in case of misdemeanours or minor offenses, according to article 45A Code of Penal Procedure.

5th Question

The Minors Public Prosecutor exercises penal prosecution against minor offenders, as mentioned above. Especially for minor offenders, flagrant crimes procedure provided for in articles 417 and subs. of Code of Penal Procedure, that is apprehension and direct (within 24 hours) referral to trial is never applied, because although there does not exist an explicit law disposition that prohibits its application, this direct and accelerated procedure of crimes trial does not correspond to the need of individualised treatment and the obligation of special study of the personality of minor offenders by Minors Supervisors.

During investigation, Public Prosecutor suggests (proposes) to the Investigator the temporary or not detention of the accused minor. According to the disposition of article 282 par.5 of Code of Penal Procedure, as replaced by article 4 par.5 of Law 3189/2003 (Official gazette A'243/21.10.2003), temporary detention of a minor is permitted, upon accord opinion of Minors' Investigator and Public Prosecutor, only if: a. the minor is accused for the perpetration of a criminal action for which a penalty of imprisonment of at least ten (10) years would be imposed to an adult and b. the minor has completed the thirteenth year of age. The inability of the minor to pay the pecuniary guarantee which may have been imposed to him/her, is not permitted to lead to his/her temporary detention by itself,

that is if it is not accompanied by the infringement of some other restrictive condition by the minor, as for example his/her obligation to present him/herself in the police office or the prohibition of his/her exit from the country, in order to avoid the antipedagogical practice of imposing temporary detention to minors who do not have the financial ability to pay a pecuniary guarantee. Finally, after receiving the minor's defence, it is possible, instead of imposing the restrictive conditions that indicatively are mentioned in paragraph 2 of article 282 of Code of Penal Procedure, which are imposed to accused adults until the definitive hearing of the charges filed against them and intend to securing their presence in the investigation or the court and their subjection to the execution of the penalty, to impose to the minor one or more of the penitentiary measures mentioned in article 122 Penal Code, that is the assignment of their custody to minors supervisors, the attendance of a social or psychological programme in state, municipal or private agents, their attendance of professional or other educational or formational schools, etc.

During the main procedure, he/she participates in the court, presenting questions and proposing to the judges the penitentiary or remedial measure or the penalty (Confinement in a Special Detention Establishment) which should be imposed to the minor.

Minors Public Prosecutor competencies
after pronouncement of judgements

According to the disposition of article 549 par.5 of Code of Penal Procedure, as this was added by the disposition of article 4 par.6 of Law 3189/2003, the locally competent

Minors Public Prosecutor takes ex officio care for the execution of the Minors Courts resolutions as well as for the application of the penitentiary or remedial measures imposed to the minor offenders and their confinement in Special Juvenile Detention Establishments. According to the disposition of article 572 of Code of Penal Procedure, the locally competent Minors Public Prosecutor is the Supervisor of the Special Juvenile Detention Establishment where the minor prisoners serve the sentence of confinement in Special Juvenile Detention Establishments imposed to them by Minors Courts and visits it at least once per week, when he accepts to hearing the prisoners who wish to see him and listens to their requests. Beyond all these, in the two Special Juvenile Detention Establishments operating in our country, in Avlona Attica and in Volos, according to disposition of article 12 Law 2776/1999 “Correctional Code” (Official Gazette A’291/24.12.1999) all “juvenile prisoners” are detained, that is “prisoners who are of 13 years to 21 years old” and exceptionally may remain in these up to completion of 25th year of age, if this is deemed necessary, in order to complete the educational or professional programmes they attend within that particular detention establishment. The women minor prisoners remain in a separate wing of the Women Detention Establishment of Elaionas, Thoeves.

6th Question

No collaboration or/and joint resolution of the Minors Public Prosecutor with local social and administrative agents, who determine the state’s policy concerning minor offenders or victims is institutionally provided for.

7th Question

Minors Public Prosecutor accepts to hearing citizens who face problems in relation to their minor children and either directs them to the competent civil courts to resolve their disputes (i.e. arrangement of issues concerning custody between two divorced parents, arrangement of issues concerning visitation of parent who does not have the custody with his/her minor children) or orders the competent police officers to make recommendations to parents involved concerning the application of the law dispositions or judicial resolutions, or – in more severe cases- summons before him parents or third parties (relatives or/and parents' companions, neighbours etc.) or has telephone communication with teachers or social workers or other competent services.

Moreover, when Minors Public Prosecutor receives complaints or/and reports of services or schools concerning dangers menacing the life or health of some minors, has the power (except from holding preliminary investigation for detecting perpetration of any criminal actions) to give order to the locally competent social services to hold a detailed inspection of the family, the residence, the physical and psychological health of the minors involved and remit to him/her the respective report, in order to identify their life conditions and the possibilities of its improvement through social welfare agents. If there is no possibility of improvement and if it is impossible for parents or persons who cohabit with minors to raise the danger run by minors (cases of physically or mentally ill parents) or if the same create this danger (cases of

minors abuse) and if the competent social workers also propose removal of children from their family environment and their hosting either in relative persons or private or public institutions, Minors' Public Prosecutor has the power, in exceptionally urgent cases, by issuing an Order "*to order any convenient measure for the protection of the minor, until the Court, to which he/she must refer within thirty days, pronounces its judgement*". In those cases, he/she gives the respective orders of removal, hospitalisation in emergency children hospitals and hosting in relatives or institutions (article 1532 par.3 Civil Code as added by article 22 Law 3346/2005) and files a petition to the competent court for divesting the custody of minors from their parents and its assignment to third parties or institutions. These resolutions may always, by virtue of a petition of the Minors Public Prosecutor or parents or relatives or the child itself be revoked or reformed if there exists a change in the living conditions (article 1536 Civil Code).

In Athens and in particular in the General Police Directorate of Attica, the Minors Protection Subdirectorates operate, the 1st Department of which is occupied with prosecution, apprehension and police preliminary investigation of minor perpetrators of criminal actions and the 2nd Department of which is occupied with the protection of minor victims of criminal actions. Policemen of both Departments, who act *ex officio* and upon order of Minors Public Prosecutor for the detection and investigation of perpetration of criminal actions by minors or against minor victims, are specialised and trained in receiving depositions and defences by minors. Minors

(perpetrators or victims) deposit in the special offices of these Departments, with the purpose to avoid mingling with adults. Police officers are obliged to behave to minor offenders “*with particular sensitivity, understanding and humanity*” as explicitly determined in articles 3 and 5 of the Presidential Decree 254/2004 “Police Officer Ethics Code” (Official Gazette A’238/3.12.2004). It is self evident that any apprehended minor offender is detained in the special detention centres of the Minors Protection Subdirectorate until they are brought before the Minors Public Prosecutor. The institution of Minors Police has been extended to Thessaloniki, Heraklion and Patras.

8th Question

In penal procedure, the minor who has directly suffered an offense and has completed the 12th year of age has, according to article 118 par.2 Penal Code the right to ask by himself the penal prosecution of the perpetrator, and his legal representative has the same right separately. The Prosecutor’s responsibility is to investigate if the charge presented by the minor is grounded and to exercise penal prosecution against the offender.

Public Prosecutor, in case that perpetrator is parent or relative of the minor and there exists direct danger for his/her physical or mental health, may order any convenient measure for his/her protection until the court, to which he/she has to refer within 30 days, pronounces its judgement. He/she may also ask the Court to divest parental custody from the father or the mother who violates the duties imposed by his/her office concerning the custody of the person of the child or the

administration of his/her property or who exercises this office abusively or who is not in a position to respond to it and to assign the child's care to a third party and until the court passes a judgement, to order any convenient measure for the minor's protection, according to article 1532 of Civil Code.

9th Question

If there are suspicions that some minor is victim of sexual or physical abuse, Public Prosecutor ex officio orders holding of investigation (preliminary investigation) for detecting the perpetration or not of criminal actions against minors and finding and apprehension of perpetrators. He, moreover, orders special examination of the minor's mental or/and physical condition and if it is deemed necessary, he also orders the therapy of the minor. In addition, if Public Prosecutor deems it necessary for the defence of the minor victim, orders the removal of the perpetrator from the victim's environment or of the victim from the perpetrator's environment and his/her temporary residence in a protected environment, as well as the prohibition of communication between perpetrator and victim, in application of disposition of article 1532 par.3 of Civil Code.

10th Question

There is no direct collaboration between the Minors Public Prosecutor for the application of protective and formative measures for the reinforcing of minors by public and private agents, as welfare services, schools, institutions, drug rehabilitation centres, etc. This role has been assumed by

Minors Supervisors and Social Workers of the Municipalities and Prefectures of the country.

11th Question

Public Prosecutor orders holding investigation (preliminary investigation) or exercises penal prosecution against the perpetrator, giving order to Police for his apprehension and direct referral to trial. However, even after the condemnatory sentence of perpetrator-parent by competent penal courts, the problems concerning minors' custody remain, until they are definitely resolved by competent civil courts.

12th Question

Minors Public Prosecutor, in cases that he/she orders the removal of the minor from his/her family environment and his placement in some institution (see questions 7 and 9), also decides in which institution or in which third party each minor will be hosted, gives the respective orders to the competent agents and is competent for the issues concerning visits and necessary medical examinations, procedures etc., until the minor's custody is assigned by the competent civil court to a particular person or institution. On the contrary, he has no competency in case of expatriation of a minor by the administrative authorities.

The answers have been formulated in collaboration with 1st and 2nd Instance Minors Public Prosecutors of Athens.

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