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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Questionnaire on principles of public prosecution as regards juvenile justice

Background information

Juvenile justice is one of the most challenging and complex field of action for prosecutors. Today the functions of juvenile prosecutors go beyond prosecution and proceedings as they should cope with other activities such as working with civic and social groups, school and the community itself to prevent juvenile crime.

This questionnaire addresses the prosecution of offences where a child is victim, witness or perpetrator. It primarily focuses on juveniles in the criminal justice system. Additionally it touches upon the place of children in civil cases and administrative proceedings.

The aim of this questionnaire is to find out the best practices and standards of the role of prosecutors in the field of juvenile justice in the Council of Europe member states. The replies to it will serve as a basis for the drafting of the Opinion N^o 5 of the Co nsultative Council of European Prosecutors on “the principles of public prosecution as regards juvenile justice”.

This survey is aimed at the role of public prosecutors, therefore it is up to the members of the CCPE to reply to it in consultation, if need be, with the specialists in juvenile justice in their countries. This

exercise is a separate one from the survey on juvenile justice organised in 2006 by the CDPC. Nevertheless, the part of the questionnaire “any other remarks and peculiarities” should contain information regarding major reforms that have been done or are under way concerning juvenile justice in the criminal field and the protection of juveniles in danger which may involve important changes since 2006 as to the role of prosecutors in this field.

Country: ALBANIA

I. Criminal justice system:

1. In your country, do public prosecutors have the duty to apply a general policy concerning juvenile justice? To do so, do they follow specific guidelines?

According to the Constitution of Republic of Albania and the Criminal Procedure Code (CPC) the Prosecution Office is the only institution in the country entitled to exercise the criminal action. In such capacity it applies the general policy on criminal matters, the juvenile justice included.

The Constitution of Republic of Albania, article 54, deals in general with the juveniles affirming the duty of the state to guaranty a special protection to them. Such general policy is expressed even through CPC.

The age

In article of CPC the minimum age of criminal responsibility is 14 years old and the minimum age to apply life imprisonment is 18 years old.

Warrant of arrest

The article CPC stresses out that in issuing warrants of arrest for the minor offenders (14 to 18 years old) the Courts have to take into account the needs of the minor to attend the educative processes (school, etc)

Imprisonment sentences

According to article of CPC the minor defendants can not be sentenced more than the half of the maximum penalty provided by Criminal Code for the offence committed by him/ her.

Alternatives of imprisonment penalties

Article of CPC underlines that penalties different from imprisonments are to be applied for minor defendants when crimes committed or their social risk are not of a high importance.

(If yes, please specify. Answers to this question should include, inter alia, the prevailing character of the policy between more repressive or more educative as well as the minimum age of

criminal responsibility and the minimum age under which it is not permissible to imprison a child.)

- 2. Does your country's criminal justice system provide for specialized public prosecutors for juveniles, entrusted with the implementation of specific laws and procedures? Do public prosecutors form, together with specialized judges for juveniles, a specialized entity within the court where, for instance, a general policy for juvenile justice is defined or discussed? Please give details.**

From September 2007 there exist a specialized Department for juveniles within 6 major District Prosecution Offices (DPO). That Department is entrusted with exercising criminal action against minor offenders but not even with cases where minors are involved as crime victims.

There is no law or procedure entrusted specifically to be applied by that Department, thus the Department applies the same CPC as the other part of the DPO.

No, there is no any specialized entity on juvenile justice within the court.

- 3. If yes, how are the public prosecutors educated, selected and trained?**

According to an Order issued by the General Prosecutor in October 2007 it is the Chief of the District Prosecution Office who appoints the prosecutors on the Department for Juveniles, based on their experience and training in dealing with juvenile crimes. As a rule their training process is the same with that followed by other prosecutors of the DPO, but of course it takes into consideration the needs for specialization.

- 4. As regards victims of offences, can the public prosecutors apply specific procedures and means, in particular to collect testimonies? Moreover, are they free to choose ways of prosecuting or are their powers sometimes limited by the law, for instance as regards the choice of alternatives to prosecution or of the prison sentences requested for juveniles already condemned or second offenders? Does the law specify according to the juvenile concerned between these prosecution**

choices, for prison, for some types of sentences? If yes, please specify.

There is no specific provision in the CPC on how the minor crime victims make their declaration during the investigation process. Article 361 of CPC deals only with cases of testimony collected during the hearings. It is interesting that according to this article, it is considered only as a right and not as a duty of the Court do decide cross-examining the minor witnesses in the presence of their parents or a psychiatrist or to bar the parts in proceedings addressing questions to them directly if not through the court.

Initiation of criminal action. According to article 58 of CPC a minor crime victims with no juridical capacity can initiate criminal action for minor crimes only through a legal representative. Even the withdrawal from the criminal action, according to article 245 of CPC, can be done only through their legal representative, it means through parents or appointed legal representatives.

Execution of penalty. According to article 51 of the CPC in case of minor crimes and when minor defendant shows self reflection, the Court has the right to order to dismiss the penalty.

Place of serving the penalty. According to the Law on the rights of the sentenced people, the minor defendants serve the sentence only to specialized institution of imprisonment for minor defendants.

5. What is the specific role of public prosecutors in custody before a court hearing, during the hearing and in the detention after conviction, in cases involving juveniles?

According to article of 49 of CPC it must always be appointed a lawyer **ex-officio** for minor defendants in custody. That lawyer is to represent the minor during all the investigation period before hearings and during all the hearings in the court. After his conviction, the prosecutor has to place the minor at a specialized institution of imprisonment for minor sentenced people.

6. What is the role played by public prosecutors in the partnership with local social and administrative agencies working in the field of juvenile delinquency? For instance, are public prosecutors involved in the choices regarding the city policies and do they participate in instances where these

partners sit together with elected persons (such as city mayors), schools, teachers, etc.?

The Law for the Organization of the Prosecution Office, article 5, provides the prosecutors with the role of coordination and cooperation with other education of the public on criminal matters and crime prevention. But in practice this role is played in a low profile and it seems the Prosecution Office does not feel involved in the city policies or school programs on matters of juvenile delinquency.

7. In practice, what is the role played by public prosecutors in the coordination and cooperation of the main actors involved in the investigation process (such as the child protection services, police, prosecutors, courts, the medical profession, others)? Please specify.

During the investigation process the prosecutor is in charge of controlling the process of taking declaration from minor witnesses as well as the interrogation of minor defendants. In such a role, whenever in need of examination or interrogation of minors, prosecutor affords the minor with specialized service such as the presence of a psychiatrist or the parents of the minor even though there is no compulsory provision in the law for the prosecutors to afford such help.

II. Civil justice system and administrative proceedings:

8. What is the role of public prosecutors as regards access to justice for juveniles? Please specify between juveniles in danger as regards their education, the living conditions, etc., for whom a judicial protection is needed, and juveniles who are victims of offences and who claim for compensation.

9. In your country, are there situations affecting juveniles where public prosecutors can initiate *ex-officio* investigations? If yes, please specify.

The prosecutors are entitled by CPC to initiate *ex-officio* any investigation without any restriction and with no specification relating to the subjects affected by the crimes under investigation.

10. What is the specific role of public prosecutors in applying protective and educative measures towards juveniles? Within the framework, are public prosecutors in relations with other instances or bodies such as, for instance, community homes,

schools and how are their contacts with these bodies organized (designated correspondents, free telephone line, etc)?

The prosecutors do not seem to play any direct or significant role in protecting or educating juveniles.

11. What is the role of public prosecutors in child abduction cases by one parent and other family related cases?

In our Criminal Code the unlawful seizure of the child taking him away from the parents or legal representatives constitutes an offence and the prosecutors are expected to initiate investigation and bring criminal action against those who commit such crime.

12. What is the role of prosecutor in cases such as placement of juveniles in the name of their self protection or placement of children pending expulsion or any other case?

There is no any specific provisions in the CPC relating to the role of the prosecutor on placement of juveniles in need of protection or of those pending expulsion.

III. Any other remarks and peculiarities which could be indicated, according to you, and which concern the role of public prosecutors in your country vis-à-vis juvenile justice.