Country: ROMANIA

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?

(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.)

Yes. As a body engaged in carrying out the justice for juveniles, one of the prosecutors' duties during the criminal investigation stage is enforcing a derogatory penal treatment and a milder penalizing regime foreseen by the criminal law for the juvenile offenders.

According to article 99, paragraphs 1 and 2 of the Criminal Code, the minimum age for the criminal liability of a minor is 14 years old, without exceptions, the lack of discernment is legally purely presumed, and 16 years old, if the existence of discernment is not proved, which is presumed until proved otherwise.

The prevailing nature of the policy is educational. Thus, the law provides that against the minors who committed a criminal deed and are criminally liable, an educational measure can be enforced or a punishment can be applied. When selecting the sanction the following factors will be given consideration: the degree of social risk of the committed offence, the physical state, the intellectual and moral development, the minor's behavior, the conditions in which he /she was raised and in which he/she lived and any other elements that could characterize the minor's person.

These elements are also established by means of the evaluation report.

Thus, according to art. 482 of the Law no. 29/1968 – Criminal Procedure Code:

In the cases dealing with juvenile accused or defendants, the prosecutor controlling or, depending on the case, conducting the prosecution may require, when he/she deems it necessary, that the probation service attached to the tribunal in the territorial circumscription of which the minor resides do the evaluation report, under the law.

In the cases dealing with juvenile defendants, the court of law has the obligation to order the accomplishment of the evaluation report by the probation service attached to the tribunal in the territorial circumscription of which the minor resides, under the law, with the exception of the case in which the accomplishment of the evaluation report was requested during the criminal prosecution, according to the provisions under par. 1, situation in which the court's requiring of the report is optional.

The evaluation report is accomplished according to the structure and content foreseen by the special legislation regulating the activity of the probation services.

The evaluation report was introduced by Law no. 356 of July 21st 2006 so as to modify and complete the Criminal Procedure Code, as well as to modify other laws. Heretofore, the same text (art. 482) stipulated the fulfillment of a social enquiry, "consisting in collecting data on the regular conduct of the minor, on his/her physical and mental condition, on his/her antecedents, on the conditions in which he/she was raised or in which he/she has lived, on the manner in which the parents, the tutor or the person in whose care the minor is perform their duties towards the latter and, generally speaking, on any elements that may lead to adopting a measure or to enforcing a sanction toward the minor.

The social enquiry is done by persons appointed by the tutelary authority of the local council in the territorial circumscription of which the minor resides."

The evaluation report is a more qualified instrument than the social enquiry.

The punishment shall apply only when it is considered that an educational measure is not sufficient in order for the minor to turn (according to article 100 of the Criminal Code). In this case, the limits of the punishments provided by the law for the committed offence shall be reduced to half (according to article 109 of the Criminal Code). After the reduction, under no circumstances shall the minimum of the punishment exceed five years.

When for the committed offence, the law provides for the punishment of life detention, the imprisonment between 5 and 20 years shall be applied to the minor.

Complementary punishments shall not be applied to the minor.

The convictions pronounced for offences committed while being a minor shall not draw incapacities or termination of rights, nor the recurrence state.

In case of the conditional suspension of the punishment execution applied to the minor, the trying period shall consist in the duration of the prison punishment adding up a time period between 6 months and 2 years, set by the court. The trying period is 6 months, if the punishment applied is the fine.

Therefore, the enforcement of a punishment is an exceptional and subsidiary measure to the enforcement of an educational measure. There is no minimum legal age under which the prison punishment shall not be allowed for a child. The judge shall select the sanction, and the assessment shall not be subjective, but based on the selection criteria foreseen by the law: the physical state, the intellectual and moral development and so on.

The educational measures that can be applied to the minor are provided by article 101 of the Criminal Code:

a) the reprimand;
b) freedom under observation;
c) the confinement into a reeducation center;
d) the confinement into a medical-educational institute.

The educational measure of freedom under observation consists in freeing the minor during one year, under a special supervision.

The measures foreseen by article 101 letters c) and d) are taken for an indefinite period, but they can last only until the age of 18 years old.

The measure of the confinement into a medical-educational institute must be lifted immediately after the cause that imposed this measure has ceased. The court, ordering that the measure be lifted, may, if necessary, apply the minor the measure of confinement into a reeducation center. The moment when the minor reaches full age, the court may order the prorogation of the confinement over a period of 2 years, if it is necessary for the achievement of the confinement purpose.

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.**

Yes. There are specialized judges and prosecutors for juveniles.

Thus, according to article 39, paragraph (2) and article 40 of the Law No. 304/2004 on the judicial organization, within the courts of first instance specialized sections or panels shall be established for juvenile and family. The specialized panels and sections for juveniles and family, as well as specialized tribunal for juveniles and family shall judge offences committed by or against minors. When there are more accused in the same case, some of them being under age, and others of age, and severance of causes is not possible, the competence shall lie with the juvenile and family specialized tribunal.

The prosecutors specialized in cases with minors are not a part of the specialized panels. In the criminal trial, during the trial stage, the prosecutor has a special statute and role: he is not a party in it and he is not the representative of the state. His role is *sui-generis*, that of a guarantor of finding the truth and of the observance of the legal provisions, because, on the one hand, he is the titleholder of exerting the criminal action and, on the other hand, he has the obligation to lay down conclusion according to the situation resulting from the evidence produced in the case.

According to article 316 of the Law 29/1968 – the Criminal Procedure Code: "During the judicial investigation and debates, the prosecutor performs an active role, in order to reveal the truth and to ensure the observance of the legal provisions. The prosecutor is free to present the conclusions he deems to be well-grounded, according to the law, taking into account the evidence produced in the case. (…)When the judicial investigation does not confirm the accusation or when one of the causes of cessation of the criminal trial foreseen by article 10 has occurred, the prosecutor lays down, according to case, conclusions of acquittal of the defendant or cessation of the criminal trial. "

The prosecutors together with the judges specialized in cases with minors do not form an entity within the court where, for example, the general policy for juvenile justice is discussed and defined. The independence of the judges and the role of the prosecutors are mistakenly interpreted, the first one is seen absolute, rigid, and

the second is reduced to the role of "party" in the trial, which, of course, does not correspond to the legal status. Anyway, within the judicial activity, there are no mechanisms of cooperation provided between judges and prosecutor, any of such forms are not foreseen by the legal framework and are perceived as an infringement of the judge's independence.

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

The National Institute of Magistracy is the main institutionalized structure for the training and specialization of judges and prosecutor.

According to article 103 paragraph (1) of the Law No.304/2004, The National Institute of Magistracy shall be the public institution (…) placed under the co-ordination of the Superior Council of Magistracy, that achieves the initial training of judges and public prosecutors, the continuous professional training of magistrates in office (…).

The selection is achieved at the level of prosecutor's offices, according to the training and specialization and personal option.

According to article 95 paragraphs 2 and 3 of the Law No.304/2004: "The head of each prosecutor's office shall designate prosecutors within sections, services and offices, according to their training, specialization and capabilities.

(3) The head of each prosecutor's office shall assign files to the prosecutors, taking into account their specialization."

The training is achieved through the 3 forms of professional training: centralized training, decentralized training and individual training.

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.

The minor victims of offences are heard by the prosecutor according to the common rules of procedure, ensuring the non-public character of the procedure and the observance of the human dignity.

The law no. 211/2004 on the measures of ensuring the protection of victims of offences provides as special measures: psychological counseling of the victims of certain offences and others forms of assistance for the victims of offences, upon request, ensured by the services of victims' protection and offenders' social reintegration, such as free legal assistance granted to certain categories of victims, upon request.

A special protection measure for the victims of offences is the "Interdiction to come back to the family residence for a determined period," provided under art. 118^1 of the Criminal Code.

According to these provisions, "When the person sentenced to at least one year of imprisonment for battery or any other acts of violence causing physical or mental suffering, perpetrated against family members, if the court of law ascertains that his/her presence at the family residence seriously jeopardizes the other family members, it may take against this person the measure to ban his/her going back to the family residence, at the request of the injured party. This measure may be taken for a duration of up to two years."

Prosecutors do **not** have the liberty to choose the prosecution modality. The Criminal Procedure Code does not stipulate the principle of opportunity or the plea bargain. The prosecutor can but acknowledge the fulfillment of the legal conditions for carrying out the criminal action.

The types of penalties are not limited by law for the minors already convicted either, as it rests upon the court of law to assess according to the legal criteria, with the mention that there is no relapse into crime for minors and that previous convictions do not call *de plano* for an aggravated treatment.

Even if, while being confined in a reeducation center or in a medical-educational institute or while being released before becoming of age, the minor perpetrates another offence, the enforcement of the prison punishment is not mandatory (article 108 paragraph 2 of the Criminal Code). The absconding of the minor from fulfilling the obligations provided in case of freedom under observation also does not mandatory entail the enforcement of the prison punishment (article 110^1 paragraph 3 of the Criminal Code).

If during the trying period, the convicted person perpetrates another offence, for which a final decision was pronounced, even after the expiry term, the court shall revoke the conditional suspension, ordering the entire execution of the punishment, which shall not be absorbed by the punishment applied for the new offence (article 110^1 paragraph 3 and article 83 of the Criminal Code).

The *mala fide* non-fulfillment of the supervision measures or of the obligations settled by the court shall entail the revocation of the suspended execution of the punishment under observation and the entire execution of the punishment (article 110^1 paragraph 3 and article 86^4 paragraph 2 of the Criminal Code).

The law does not specify between these two ways of prosecuting according to the age of the minor in case.

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 art. 481 of the Criminal Procedure Code, "When the accused or defendant is a minor under 16 years of age, for any hearing or confrontation of the

minor, if the criminal investigation authorities consider necessary, they will summon the Service for the protection of victims and social reintegration of offenders from the domicile of the minor, as well as the parents, and, if the case, the tutor, the curator or the person under whose care or supervision the minor finds himself.

The summoning of the persons stipulated under the previous paragraph is compulsory when presenting the criminal investigation materials.

Non-attendance of the persons legally summoned to the accomplishment of the acts mentioned under par. 1 and 2 does not hinder their accomplishment."

Also, under art. 484, "Judgment of the case concerning an offense committed by a minor shall be done in his/her presence, except for the situation in which the minor eluded the judgment.

When judging the case, the authorities summon, beside the Service for the protection of victims and social reintegration of offenders from the domicile of offenders, his/her parents or, according to the case, the tutor, curator, the person in whose care or under whose supervision the minor is, as well as other persons whose presence is deemed as necessary by the court.

The persons mentioned in the previous paragraph have the right and the duty to give clarifications, formulate requests and present proposals as for the measures to be adopted.

Non-attendance of the persons legally summoned does not impede the judgment of the case."

a) While in custody before a court hearing, it is in the prosecutor's duties to hear the minor and to ensure him all the other procedural rights (article 143-144, 160^{e} -160^{g} of the Criminal Procedure Code).

The custody measure may be taken by the prosecutor against the defendant, only after he was heard in the presence of a defender, if there are sufficient evidence and grounded indications that he committed a deed foreseen by the criminal law.

The prosecutor shall inform the defendant that he has the right to hire a defender. He is also informed of his right to silence, being informed that anything he states can be used against him.

The custody measure can be applied in the cases provided by article 148 of the Criminal Procedure Code, as well as in case of *flagrante delicto*, no matter the limits of the punishment stipulated by the law.

Exceptionally, the minor between 14 and 16 years old, that is criminally liable, can be retained into custody at the prosecutor's order or at the criminal investigation body's order, with the notification and under the control of the prosecutor, over a period that cannot exceed 10 hours, if there are certain information that the minor has committed an offence punished by the law with life detention or imprisonment for 10 years or more.

The custody can be prolonged with another 10 hours at most, only if is necessary by a motivated ordinance of the prosecutor.

When establishing the provisions applicable regarding the custody measure and preventive detention, the age of the defendant is taken into account at the date

when the enforcement, prolongation and maintenance of the preventive measure is ordered.

Beside the rights provided by the law for the preventive detainees exceeding 18 years old, certain rights are ensured to minors in custody or in preventive detention.

In all cases, mandatory legal assistance is ensured to minor defendants in custody or in preventive detention, the judicial bodies are compelled to take measures for the designation of an *ex officio* defender, if the minor did not choose one and so that he can take direct contact with the minor arrested and to communicate with him.

Whenever the custody or the preventive detention of a defendant or of a minor defendant is ordered, the parents, the legal guardian, the person in whose care or supervision the minor is under, other persons designated by him are immediately informed about it, in case of custody and in case of arrest in a period of 24 hours, and in the case of arrest the service for social reintegration of the offenders and observation of the execution of non-custodial sanctions attached to the instance that shall try the case in the first instance, shall also be informed, this fact being consigned in a report.

During the custody or the preventive detention, the minors are kept separately, in places specially allocated for the minors under preventive detention.

b) During the hearing before the judge, the prosecutor's duties do not differ very much in comparison with the common procedure, he can address questions through the president, he can draw up requests and lay down conclusions.

c) During detention, after conviction, the prosecutor does not have any duties *de lege lata*.

The observance of the rights and the special statute foreseen by law for the minors in custody or in preventive detention shall be ensured through the scrutiny of a judge, specially designated by the court's president, through the visitation by the prosecutor of the places for preventive detention, as well as through the scrutiny of other bodies entitled by law to visit the preventive detainees (article 160^{f} paragraph 5 of the Criminal Procedure Code).

According to article 6 paragraph 1 of the Law No.275/2006 on the execution of the punishments and of the measures order by the judicial bodies during the criminal trial, the execution of the punishments shall be carried on under the observation, control and authority of the deputy judge.

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.?

In their relations with the courts and all the other public authorities the prosecutor's offices (and the prosecutors) are independent; the prosecutor's duties are established only by law. The prosecutors' duties do not provide their involvement in such activities or in the organizational framework. The prosecutor's duties are practically limited to the judicial activity, both criminal and civil, and to matters regarding crime prevention (article 63 of the Law No.304/2004).

Although the prosecutor does not have prevention attributions, he/she may take part in various scientific or consultative manifestations or structures, as art. 63 of the Law no. 304/2004 stipulating the legal duties of the prosecutors does not forbid it.

But the prosecutor cannot take part in his/her quality as such in decision making or authority structures, in the absence of explicit attributions. In practice, prosecutors occasionally participate in scientific manifestations in the field, but there are no partnerships with the institutions aforementioned.

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 criminal investigation stage, the prosecutor directly conducts and controls the criminal investigation activity of the judicial police and of the other special investigation bodies and supervises that the criminal investigation papers shall be drawn up with the observance of the legal provisions. The drawing up of any criminal investigation paper may be ordered by the prosecutor. As regards the investigation bodies of the judicial police, their hierarchically superior bodies may not provide them with guidance or dispositions concerning the criminal investigation, the prosecutor being the competent authority to do so. The prosecutor's dispositions are mandatory for the criminal investigation body.

The child protection services are not subordinated to the prosecutor, having their own duties. Likewise, other persons involved in the act of justice – professionals, experts, physicians – are not subordinated to the prosecutor, their duties are provided by the law. Upon the request of the prosecutor, according to the questions and objectives established by him, with the observance of the procedure foreseen both by the Criminal Procedure Code and the legal methodology, professionals and experts, physicians included, have the obligation to draw up the technical-scientific findings and expertises. If he considers that the forensic or technical-scientific report is not complete or its conclusions are not precise, the prosecutor shall order that the forensic or technical-scientific finding be redone or completed or he shall order the drawing up of an expertise. When he deems necessary, he shall also ask the expert for written additional information or he shall call for the expert in order to provide oral explanations concerning the expertise report. In this case, the hearing of the expert shall be carried out according to the provisions regarding the hearing of the witnesses (articles 115 and 124 of the

Criminal Procedure Code). A supplement of expertise or a new expertise may be requested.

The collaboration between the prosecutor and the professionals or experts is resumed to providing them with the materials and information which will enable them to perform the finding or the expertise.

II. Civil justice system and administrative report 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.

The law no. 211/2004 on the measures of ensuring the protection of victims of offences provides as special measures: psychological counseling of the victims of certain offences and others forms of assistance for the victims of offences, upon request, ensured by the services of victims' protection and offenders' social reintegration, such as free legal assistance granted to certain categories of victims, upon request.

The prosecutor's role is restricted to the judicial activity and his duties are stated in the Criminal Procedure Code and article 45 of the Civil Procedure Code.

According to article 131 paragraph 4 of the Criminal Code, in case of offences for which the initiation of the criminal action is conditioned by the lodging of a prior complaint from the injured person and that person lacks legal competence or has a diminished legal competence, such as in the case of minors, the criminal action shall be put into motion *ex officio*.

As protection rules, the Criminal Procedure Code provides that the prosecutor shall exert the civil action *ex officio* and shall support it as well (articles 17 and 18).

Thus, the civil action shall be also initiated and exerted ex officio, when the injured person lacks legal competence or has a diminished legal competence. For this purpose, the criminal investigation body or the court shall request the injured person that, through his/her legal guardian or, if applicable, the person that approves his/her acts, to present the situation concerning the size of the material and emotional damages, as well as information regarding the deeds that caused the damages.

The court is compelled to rule *ex officio* on the reparation of the prejudice and emotional damages, even though the injured person did not ask for civil claims.

Before the court, the prosecutor may also support the civil action initiated by the injured person. When the injured person lacks legal competence or has a diminished legal competence, the prosecutor, when taking part in the trial, is obliged to defend his/her civil interests, even if he/she did not ask for civil claims.

According to article 45 of the Civil Procedure Code:

"The Public Ministry may initiate the civil action whenever it is necessary to defend the legitimate rights and interests of minors, of persons laid under interdiction, of missing persons as well as in other cases expressly provided by the law.

In the case in which the prosecutor has initiated the action, the titleholder of the right to which the action refers to shall be included in the trial. He/she will be able to use the provisions foreseen in articles 246, 247 and 271-273, and if the prosecutor should withdraw the request, he/she shall be able to request the continuation of the trial.

The prosecutor may lay down conclusions in any civil trial, no matter the stage, if he considers it to be necessary in order to protect the lawful order, the rights and liberties of the citizens.

In cases specifically provided by law, it is mandatory for the prosecutor to participate and lay down conclusions.

Under the terms of the law, the prosecutor may exert the means of challenge against any decision, and in the cases provided by paragraph 1, he may request for the execution of the decisions ruled in favor of the persons mentioned in that paragraph."

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

Yes. Against the minors who committed criminal deeds, the prosecutor can order the custody measure or another preventive measure, and as regards the minor victims, he may request the enforcement of protection measures, notifying the competent authorities. If he orders preventive measures against the minors' parents, he has the obligation to notify the competent bodies in order to enforce the measures for the child's protection.

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)?

According to article 63 letter g) of the Law No.304/2004, "The Public Ministry shall exercise the following powers by means of public prosecutors: (…) g) to defend the legitimate rights and interests of minors, of persons laid under interdiction, of missing persons and other persons, under the terms of the law (…)"

The prosecutor does not participate at the enforcement of the educational and protection measures for the minors; he is merely a criminal investigation body. His role is restricted to the judicial activity.

The educational and protection measures are ordered by the court. The prosecutor may participate in the trial and may lodge requests and lay down suitable

conclusions for the minor's protection. He may also exert the means of challenge, provided by the law, against the decisions ruled in these cases.

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

If there are indications or information concerning the committing of an offence – the non-compliance with the measures regarding the entrusting of the minor, provided in article 307 of the Criminal Code or others, the prosecutor shall be notified *ex officio* and may order the initiation of the criminal investigation and measures related to the investigation. If the deed is not an offence, the role of the prosecutor is restricted to the judicial activity and it is stated in article 45 of the Civil Procedure Code.

In case of family abandonment or harmful treatment applied to the minor offences, foreseen by articles 305 and 306 of the Criminal Code, the prosecutor shall also act in the same manner.

The prosecutor cannot order provisional or placement measures.

In the international child abduction cases, the prosecutor has specific attributions.

Thus, according to art. 6 of the Law no. 369/2004 un the application of the Convention on the civil aspects of international child abduction, adopted in the Hague on October 25th 1980, to which Romania acceded through the Law no. 100/1992, "The cases concerning the execution of the requests for the restitution of a child on the territory of Romania under the provisions of art. 3 of the Convention (abovementioned) are dealt with in an urgent manner. The participation is compulsory."

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?

The measures for the special protection of the child are provided in the Law No.272/2004 on the protection and promotion of the children's rights.

The special protection measures – placement, the urgent placement and specialized supervision (article 55) – are established by: the commission for the child's protection or by the court, upon the request of the general directorate for social assistance and child's protection (article 61), the director of the general directorate for social assistance and child's protection or by the court (article 65), respectively the commission for the child's protection or by the court (article 67). The competent court shall always be the tribunal. According to article 124, "The cases foreseen by the present law concerning the establishment of the special protection measures lie under the competence of the tribunal where the child has his/her residence".

According to art. 124 and 125 of the Law no. 272/2004, "The cases stipulated by the present law concerning the establishment of the special protection measures fall under the competence of the tribunal (…)" and "are subject to expeditious trials, and involve the summoning of the child's legal representative, and of the general department for social security and child protection, as well as the mandatory participation of the prosecutor."

The hearing of the child who attained the age of 10 years is obligatory. The child capable to discern has the right to freely express his/her opinion over any matter of his/her concern. In the cases dealing with the settlement of a special protection measure for the abused or neglected child, the hearing of the child shall be done only in the council room, in the presence of a psychologist and only after a preliminary preparation of the child to this effect.

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.

PROSECUTOR
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