

Secretariat of the Consultative
Council of European Prosecutors
(CCPE)

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Hereby I am forwarding the response of the Prosecutor General's Office of the Russian Federation to the questionnaire of the Consultative Council of European Prosecutors (CCPE) on principles of public prosecution as regards juvenile justice.

Number of pages enclosed: ____

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The Russian Federation

I. Criminal justice

1) Criminal policy in cases against juveniles — in accordance with Article 87, Part 1, of the Criminal Code of the Russian Federation, juveniles are persons aged 14 (fourteen) to 18 (eighteen) years — is carried out in the Russian Federation pursuant to the requirements set out in the Constitution of the Russian Federation, criminal law and law of criminal procedure, and other statutory instruments regulating legal relations in this sphere.

The Code of Criminal Procedure of the Russian Federation contains, in addition to general provisions that apply to juvenile offenders, special sections and a separate chapter that regulates criminal proceedings in juvenile cases (Chapter 50 of the Code of Criminal Procedure of the Russian Federation).

Thus, in criminal cases where offences were perpetrated by juveniles, their legal representatives are mandatorily engaged in the case, which are admitted to participation in the case for the moment of the first questioning of the juvenile in the capacity of the suspected or accused person, as well as summoned to the court session (Article 48 of the Code of Criminal Procedure of the Russian Federation). A legal representative may be dismissed from participating in the criminal case if there are grounds to believe that his actions prejudice the interests of the suspected or accused juvenile. In this case, another legal representative of the suspected or accused juvenile is admitted to participation in the criminal case (Article 426 of the Code of Criminal Procedure of the Russian Federation).

The participation of a defence lawyer is also held mandatory (Article 51 of the Code of Criminal Procedure of the Russian Federation).

When preliminary investigation and judicial proceedings are carried out in a case involving a crime committed by a juvenile offender, it is mandatory to establish the following data: the age of the juvenile; the conditions of the juvenile's life and education, the level of his/her mental development and other specific features of his/her personality; the impact exerted upon the juvenile by older persons (Article 421 of the Code of Criminal Procedure of the Russian Federation).

In the presence of information on a retardation in mental development which is not related to a mental disorder, it is also established whether the juvenile could be fully aware of the actual character and social danger of his/her actions (or omission of actions), or to control them.

A criminal case against a juvenile who participated in the perpetration of an offence together with an adult, is severed into a separate case (Article 422 of the Code of Criminal Procedure of the Russian Federation).

The duration of uninterrupted questioning of a suspected or accused juvenile may not exceed 2 (two) hours, the total duration of questioning being not more than 4 (four) hours per day.

It is mandatory that an educationist or psychologist take part in the questioning of a suspected or accused juvenile who has not reached the age of 16 (sixteen), or has reached the said age but suffers from a mental disorder or has retarded mental development (Article 425 of the Code of Criminal Procedure of the Russian Federation).

If it is established in the course of preliminary investigation in a criminal case involving an offence of minor or average gravity, that the correction of the accused juvenile can be achieved without administering punishment, then the investigator, on consent of the head of the investigation authority, as well as the inquiry officer, on consent of the prosecutor, has the right to issue a decision on terminating the prosecution and submitting a motion to the court to impose a coercive measure of educational influence provided in Article 90, Part 2, of the Criminal Code of the Russian Federation (Article 427 of the Code of Criminal Procedure of the Russian Federation), with the exception of cases where the suspected or accused juvenile, or his/her legal representative object to it. The court considers the application and the case materials in accordance to the procedure set out in Article 108 of the Code of Criminal Procedure of the Russian Federation, grants or rejects the motion, whereon an appropriate resolution is passed.

Also, if in the course of consideration of a case concerning an offence of minor or average gravity the court becomes convinced that the accused juvenile can be corrected without administering criminal sanctions, the court is entitled to free him/her from criminal liability, coercive measures of educational influence being imposed (Article 90 of the Criminal Code of the Russian Federation and Article 431 of the Code of Criminal Procedure of the Russian Federation).

A juvenile can be freed from punishment (Article 92 of the Criminal Code of the Russian Federation) under the following circumstances:

- release from punishment with the imposition of coercive measures of educational influence;
- placement in a special teaching and educational institution;
- conditional early release.

There exist the following types of coercive measures of educational influence:

- a warning, i.e. an explanation of the inflicted harm and the consequences of the repeated commission of offences;
- the transfer of the juvenile to the supervision of parents or persons acting *in loco parentis*, or of a specialised state body. In this case the court should make sure that the said persons have a positive influence on the juvenile, assess correctly the actions committed by the juvenile, can ensure the juvenile's proper behaviour and everyday control over the juvenile. The court must have at its disposal materials characterising the parents or persons acting *in loco parentis*, monitor their life conditions, possibility for them to provide material support to the juvenile, etc.;
- the imposition of the obligation to undo the inflicted damage, a specific coercive measure of educational influence which cannot be imposed on every juvenile (for instance, if it is connected with certain material costs and physical effort, the application of this measure is only possible to a juvenile that receives a salary or a stipend and has necessary work skills, etc.);
- the establishment of special requirements concerning the behaviour of the juvenile and restriction of his/her leisure — a prohibition may possibly be imposed on visiting certain places or using certain forms of leisure, etc.

Control over the execution by the juvenile of the measure of educational influence imposed on him/her is assigned to a specialised government authority responsible for his/her correction.

A juvenile can be freed from punishment with the imposition of coercive measures of educational influence in case of passing a judgment of guilt for an offence of minor or average gravity. In this case, if the court comes to believe that it is necessary to impose coercive measures of educational influence, it must set out in its judgment the grounds for taking such a decision (the juvenile is brought to justice for the first time; he/she is characterised positively, assesses his/her actions critically, a stable and serious upbringing given in the family; a concurrence of circumstances that influenced the behaviour of the juvenile, etc.).

Placement of a juvenile offender in a special teaching and educational institution is admitted by the law as one of the grounds to free the juvenile from punishment if an offence of minor or average gravity was committed by him/her, as well as in case of the commission of a grave offence.

However, if an offence of high societal and social danger was committed, the juvenile cannot be freed from punishment.

A peculiarity of conditional early release of a juvenile from serving his/her punishment consists in that shortened terms of serving punishment are provided in the law for deciding the issue of conditional early release (Article 93 of the Criminal Code of the Russian Federation).

2) It should be noted that work on the creation of juvenile courts within the system of courts of general jurisdiction is carried out in the Russian Federation. In a number of courts of general jurisdiction certain judges are selected who specialise in criminal cases of juvenile offenders. This can be regarded as a first step to creating juvenile justice.

Within the system of the Prosecutor General's Office of the Russian Federation, it is provided that the duties of supervision over the enforcement of laws on juvenile and youth matters are assigned to certain prosecutors, or to a special unit.

3) Pursuant to Article 43.4 of the Federal Law "On the prosecution Service of the Russian Federation", in order to provide high-level professional qualifications of the staff, there functions a system of permanent training and professional development for its officers which includes individual and group training in accordance with special plans, probation in higher-level prosecution bodies, scientific and educational institutions of the prosecution service, training at regional training centres and institutions of advanced training.

Professional development is a service duty for the prosecutors.

4) As regards juvenile victims of criminal assaults: the Russian law provides additional guarantees for their rights and legal interests, as supplementary to the general provisions of the Federal Law "On State Protection of Victims, Witnesses, and Other Persons Participating in Criminal Proceedings" that regulate protection of rights of victims, as well as measures aimed at ensuring safety for persons participating in criminal proceedings.

In particular, questioning of juvenile victims as well as witnesses are conducted taking into account the requirements of Article 280 of the Code of Criminal Procedure of the Russian Federation: if the age of victims and witnesses participating in a questioning does not exceed 14 years, and also — at the discretion of the court — lies in the range from 14 to 18 years, an educationalist must take part in the questioning. Juveniles with physical and mental disabilities are in all cases questioned in the presence of an educationalist.

For juvenile victims, the participation of their legal representatives in a court hearing is ensured in all necessary cases; in the absence of the said

persons, it is ensured that representatives of guardianship and tutelage bodies take part in the court hearing.

Public prosecution in such cases is conducted by public prosecutors in accordance with the requirements set out in the Order of the Prosecutor General of the Russian Federation No. 185 dated the 20th November 2007 “On Participation of Prosecutors in the Court Stages of Criminal Justice”.

There are certain peculiarities in awarding punishment to accused juveniles (being on trial) which are provided in Chapter 14 of the Criminal Code of the Russian Federation. Thus, in addition to general principles of awarding punishment to juveniles, the following data are taken into account: the conditions of the juvenile’s life and education, the level of his/her mental development, other specific features of his/her personality as well as the impact exerted upon the juvenile by older persons (Article 89 of the Criminal Code of the Russian Federation).

Juvenile age as a mitigating circumstance is taken into account together with other circumstances.

Punishment in the form of deprivation of liberty may not be imposed on juvenile convicts who committed for the first time an offence of minor or average gravity being aged under 16 (sixteen), as well as on other juvenile convicts who committed an offence of minor gravity for the first time.

For juvenile convicts who committed an offence of minor or average gravity, as well as a grave offence being aged under 16 (sixteen), the term of punishment imposed cannot exceed 6 (six) years. For the same category of convicts who committed an especially grave offence, the term of punishment may be imposed in the form of deprivation of liberty for a term not exceeding 10 (ten) years. Such a punishment may also be imposed on other juvenile convicts, that is, those being older than 16 (sixteen) years, who committed an offence of any category.

If a juvenile aged under 16 (sixteen) years has committed a number of offences, one of which is an especially grave one, the final punishment imposed on such a convict may not exceed 10 (ten) years of deprivation of liberty. If a grave or especially grave offence was committed by a juvenile convict, the lowest possible term of punishment for the commission of the crime is decreased two-fold.

5) When addressing the issue of selecting a measure of restraint for a suspected or accused juvenile, the possibility of his/her transfer to supervision is discussed in all cases (Article 423 of the Code of Criminal Procedure of the Russian Federation).

An opinion on the possibility of taking a juvenile into custody, presented by the prosecutor at a court hearing and based on the results of the consideration of an application lodged by the investigator or inquiry officer, is possible in exceptional cases.

Legal representatives of a suspected or accused juvenile are notified without delay of his/her arrest, taking into custody or extension of the time of detention.

Pursuant to the Federal Law No. 103-FZ dated the 15th of July 1995 “On the detention in custody of persons suspected and accused of the commission of offences”, juveniles are detained in separate premises of investigation detention facilities, that is, they are held separately from adults.

The state of legality when criminal penalties are enforced against juvenile offenders is under constant control of the prosecution bodies; regular inspections are carried out in correction colonies and investigation detention facilities.

6) Pursuant to the laws of the Russian Federation and the orders of the Prosecutor General of the Russian Federation, the prosecution bodies exercise supervision over the legality of the investigation of criminal cases; moreover, the supervision over the legality for criminal cases against juveniles or cases where juveniles are victims is considered a priority line of activities.

7) Under the law, the prosecution bodies of the Russian Federation exercise supervision powers in relation to agencies for healthcare, education, guardianship and tutelage, etc.; prosecutors supervise over legality of investigation of criminal cases and take part in court hearings when criminal cases are considered by the courts.

II. Civil proceedings and administrative offences proceedings

8) Issues of ensuring children’s safety, timely detection and suppression of violations of laws ensuring the respect for the rights of juveniles are constantly monitored by prosecution bodies. When violations of juveniles’ rights are detected (for example, as regards education) the prosecutor applies to the court, and the restoration of rights is attained by means of civil law mechanism. In case an offence has been committed against a child, it is possible to address the issue of obtaining compensation by bringing an action in a criminal case as well as after the judgement had entered into force in a civil case.

9) The Code of Civil Procedure of the Russian Federation established specific terms for consideration of cases by the court, but the prosecution bodies are not entitled to expedite the consideration of a case.

10) The Federal Law No. 120-FZ dated the 24th of June 1999 “On the Foundations of the System for Prevention of Neglect of and Violations of Law by Juveniles” established the scope of agencies and institutions of the prevention system within which fall commissions for juveniles’ matters and protection of their rights, bodies of guardianship and tutelage, social protection of the population, education, healthcare, employment service, on youth matters, bodies of internal affairs, which perform the functions for prevention of neglect, homelessness, violations of law and anti-social actions by juveniles, detection and elimination of causes and conditions favouring this; ensuring the juveniles’ rights and legal interests; social and educational rehabilitation of juveniles being in socially endangered position; detection and suppression of involving juveniles in committing crimes and anti-social actions. The co-ordination of activities for bodies of the prevention system is assigned to commissions in the work of which prosecutors participate.

Prosecutors, in accordance with the powers provided to them under the law, exercise supervision over all bodies and institutions of the prevention system; contacts between them may be effected either by way of holding telephone talks or in the course of meetings.

Since the supervision activities are carried out by the prosecutor: if violations in the activities of bodies and institutions of the system for prevention of neglect of and violations of law by juveniles are detected, the prosecutor reacts to this by taking necessary measures — that is, he/she files protests against legal enactments that are contrary to the law, makes presentations requesting to eliminate the violations that were detected found and to ensure their prevention in the future, and in certain cases, presentations on bringing to disciplinary liability; initiates administrative proceedings; in the presence of information on preparations for committing violations of law and with a view to their prevention, issues warnings on the inadmissibility of violations of law.

11) The role of prosecutors in civil cases connected with family law relationships is insignificant. Typically, parents resolve disputes concerning the determination of the child’s domicile, the participation in his/her upbringing/education, the procedure of interaction with a juvenile, in court. In Russia, in such cases the participation of the prosecutor is not provided by law. However, the prosecutor may file an action or take part in such a process when the issue of deprivation (limitation) of parental rights is addressed.

This being said, from June 2009 the restriction of the prosecutor's right to apply to the court which is established by Article 45 of the Code of Civil Procedure, does not apply to the prosecutor's submission made on the grounds of citizens' applications to him/her concerning the protection of their (violated or disputed) social rights, freedoms and legal interests in the sphere of protection of family, maternity, paternity, and childhood; social protection, including social welfare; ensuring the right for domicile in government and municipal housing facilities; healthcare, including medical aid; ensuring the right to favourable environment; education.

In 2009, prosecutors filed to courts more than 86,000 claims in the interests of the juveniles.

12) The Administrative Offences Code of the Russian Federation establishes the procedure for the administrative detention of juveniles. Every case of detention of a juvenile is controlled by prosecutors for legality of actions performed by the official that carried out the detention. If violations are detected, the prosecutor frees the detained person that is subject to transfer to his/her parents or legal representatives.

Prosecutor General's Office
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