ANSWERS TO THE QUESTIONARY OF CCPE- RELATED TO THE PRINCIPLES OF PUBLIC PROSECUTION AS REGARDS JUVENILE JUSTICE

COUNTRY: TURKEY

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.)

- According the Article 61. of the Turkish Constitution the state has to take all kinds of measures for social resettlement of children in need of protection and to achieve these aims the state has to establish the necessary organizations or facilities.

The public prosecutor has according the articles 18, 19 and 20 Law on the Establishing, Duties and Competences of Courts of First Instance and Regional Courts in the Ordinary Judiciary (Law Nr. 5235) the obligation a) to investigate if there is a need to file a public trial or not b) to follow up the prosecutions on behalf of the public, to attend and if necessary appeal them, according the rules settled in laws c) to perform the related procedures for the execution of the court decisions and d) to perform the juridical and administrative tasks e) to carry out other duties given by laws

The Juvenile Protection Law (No: 5395) which has been adopted on 3th July 2005 sets up the general policies and rules which the public prosecutor has to comply with during his/her activities.

The law defines in Article 1 its purpose as "to regulate the procedures and principles with regard to protecting juveniles who are in need of protection or who are pushed to crime, and ensuring their rights and well-being".

In order to protect the rights of juveniles the law uses the expression "children who are pushed to crime".

The public prosecutors must as regards the Article 4 of the law mentioned above observe by their actions the following fundamental principles:
a) safeguarding juveniles' right to life, development, protection and participation,
b) safeguarding the interest and well-being of juveniles,
c) no discrimination towards the juvenile or his/her family for any reason whatsoever,
d) ensuring the participation of the juvenile and his/her family in the process via keeping them informed,
e) cooperation between the juvenile, his/her family, the related authorities, public institutions and non-governmental organizations,

f) following a procedure that is based on human rights, fair, effective and swift,
g) employing special care appropriate to the situation of the juvenile throughout the investigation or prosecution process,
h) supporting the juvenile in developing his/her personality, social responsibility and education as appropriate for his/her age and development, when taking and implementing the decisions,
i) Penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles,
j) When deciding measures, caring at institution and keeping at institution shall be considered as the last resort; when taking and implementing the decisions, ensuring that social responsibility is shared,
k) Keeping juveniles separate from adults at the institutions where they are cared for and looked after and where the court decisions are implemented,
l) Taking measures to prevent others from detecting the identity of the juvenile in transactions related to juveniles, trials and when carrying out the decisions."

- The prevailing character of the policy is protecting and educative rather than repressive.
- This can be understood from Article 5/1 of the law which uses the wording "before all else" by the separating of the measures foreseen in the law:
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- "*Protective and supportive measures are measures to be taken* in terms of consulting, education, care, health and shelter, for the purpose of protecting the juvenile within his/her own family environment *before all else."*

The protective and supportive measures anticipated in the law are as follows:
a) *Consultancy measure,* is a measure oriented to providing guidance on child rearing to those who are responsible for the care of the juvenile, and guidance to juveniles on solving problems related to their education and development;
b) *Education/training measure*, is a measure oriented to ensure that the juvenile attends an education institution as a day-student or boarding student, attends a vocational training course or arts and crafts course, or is deployed with a master of profession or at a workplace belonging to the public or private sector for the purpose of acquiring a job or a profession,
c) *Care measure*, is a measure to make governmental or private care centre services or foster family services available for the juvenile or place the juvenile under the care of such institutions, in the event that the person responsible for the care of the juvenile fails to fulfill his/her care duties due to any reason,
d) *Health measure*, is a measure to ensure necessary temporary or continuous medical care and rehabilitation for treatment and protection of the juvenile's physical and physiological health, and treatment and therapy for juveniles who use addictive substances,
e) *Shelter measure* is a measure to provide a suitable shelter for those who have children but do not have a place to live, or to pregnant women whose lives are in danger.

The identification and address information of those about whom a shelter measure as defined in paragraph 1 subparagraph (e) is being implemented shall be kept confidential if they so demand.

If it is established that the juvenile is not under any danger, or if it is understood that, although the juvenile is in danger, such danger can be eliminated by supporting the juvenile's parent or guardian or the person who is responsible for the juvenile's care, then the juvenile shall be delivered to these persons. For the purposes of this paragraph, one of the measures specified in paragraph one can also be decided with regard to the juvenile.

Beyond that the public prosecutor has to comply with the rules set in article 30 of the Juvenile Protection Law (No: 5395:

He/She has,
- to carry out the investigation procedures related to juveniles pushed to crime,
- to ensure that necessary measures are taken without any delay, in cases which require measures to be taken with regard to juveniles,
- to work in cooperation with the relevant public institutions and organizations and non-governmental organizations for the purpose of providing the necessary support services to juveniles who need help, education, employment or shelter, from among juveniles who need protection, who are victims of a crime or who are pushed to delinquency; and to notify such and similar cases to the authorized institutions and organizations, and
- to carry out the duties specified in this Law and in other laws. "

But " in cases where delay is considered to be risky, these duties may also be carried out by Public prosecutors who are not assigned to juvenile bureaus."

- The age of criminal responsibility is settled in article 31 of the Turkish Criminal Code.

According the law;

- *Minors under the age of twelve are exempt from criminal liability.*

- While such minors cannot be prosecuted, security measures in respect of minors may be imposed.

- *Where a minor is older than twelve, but younger than fifteen, at the time of an offence, and he is either incapable of appreciating the legal meaning and consequences of his act or his capability to control his behavior is underdeveloped then he shall be exempt from criminal liability*.

However, such minors may be subject to security measures specific to children.

- Where the minor has the capability to comprehend the legal meaning and result of the act and to control his behaviors in respective of his act, for offences requiring a

penalty of aggravated life imprisonment, a term of twelve to fifteen years of imprisonment shall be imposed and for offences that require a penalty of life imprisonment, a term of nine to eleven years imprisonment shall be imposed. Otherwise the penalty to be imposed shall be reduced by half, save for the fact that for each act such penalty shall not exceed seven years.

- Where a minor is older than fifteen but younger than eighteen years at the time of the offence then for crimes that require a penalty of aggravated life imprisonment a term of eighteen to twenty four years of imprisonment shall be imposed and for offences that require a penalty of life imprisonment twelve to fifteen years of imprisonment shall be imposed. Otherwise the penalty to be imposed shall be reduced by one-third, save for the fact that the penalty for each act shall not exceed twelve years.

Therefore it is possible to consider that in Turkish criminal law the responsibility ages of juveniles is separated in two parts: From the age of 12 to 15, and 15 to 18.

But a different criterion exists together with the age of responsibility for the minors between 12 and 15.

It has first to be checked out by a medical attest if the minor older than 12 but younger than 15 "is incapable of appreciating the legal meaning and consequences of his act" or "his capability to control his behavior is underdeveloped".

If it is clear that the minor older than 12 but younger than 15 has the capability to comprehend the legal meaning and result of the act and to control his behaviors in respective of his act he benefits from a more reduction of the penalty than the minors between 15 and 18. For the minor older than 12 but younger than 15 a maximum limit of 7 years imprisonment too is foreseen for each crime.

This criterion mentioned above as regards the mental capabilities of the minor does not apply to the minors between the ages 15 and 18. Their mental capabilities fall within the general clauses of the law foreseen for mental disorders. But the special measurements foreseen in Juvenile Protection Law has to be applied them too. For the minor older than 15 but younger than 18 a maximum limit of 12 years imprisonment is foreseen for each crime commited.

- *However the provisions of the Turkish Criminal Code which relate to minors over fifteen years of age but under eighteen of age has to be applied to deaf and mute persons who are over eighteen years of age but under twenty years of age.*

- According Article 45 of the Turkish Criminal Code the penalties foreseen for criminal offences are imprisonment and judicial fines.

When we consider the Article 31 of the Turkish Criminal Code mentioned above we may understand that the children under 12 cannot be imprisoned even they should have committed a crime. But an investigation as regards their crimes can be performed. And

special measurements mentioned in the Juvenile Protection Law (No: 5395) could be ordered for them too.

- According the Article 21 of the Juvenile Protection Law (No: 5395) there is a prohibition of arrest for children from the age 12 to 15 if the crime they committed does not shall request an imprisonment more than 5 years.

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

According the article 29 of Juvenile Protection Law (No: 5395) has in every Chief Public Prosecutor's Office a juvenile bureau to be established.

An adequate number of Public prosecutors shall be assigned to this bureau by the Chief Public prosecutor, from among those who meet the qualifications provided for in paragraph one of Article 28."

The referred article 28 which regulates the abilities of the judges to be appointed to the juvenile courts finds application to the public prosecutors too.

We understand from the text that the public prosecutors functioning in the juvenile bureau of the Chief Public Prosecution Service should have preferably specialized in juvenile law with training in the fields of child psychology and social services.

According article 30 of the Juvenile Protection Law (No: 5395) the duties of the Juvenile Bureau are as follows:
"-) to carry out the investigation procedures related to juveniles pushed to crime,
- to ensure that necessary measures are taken without any delay, in cases which require measures to be taken with regard to juveniles,
- to work in cooperation with the relevant public institutions and organizations and non-governmental organizations for the purpose of providing the necessary support services to juveniles who need help, education, employment or shelter, from among juveniles who need protection, who are victims of a crime or who are pushed to delinquency; and to notify such and similar cases to the authorized institutions and organizations, and
- to carry out the duties specified in this Law and in other laws."

But in cases where delay is considered to be risky, these duties may also be carried out by Public prosecutors who are not assigned to juvenile bureaus.

The law foresees in Article 31 that in law enforcement services a juvenile unit has to be established.

- The law enforcement duties related to juveniles shall be carried out first of all by the juvenile units of the law enforcement.

- When starting a procedure related to juveniles in need of protection or pushed to crime, the juvenile unit of the law enforcement shall notify the situation to the juvenile's parent or guardian, or to the person who has undertaken the care of the juvenile, to the bar and the Social Services and Child Protection Agency, and if the juvenile is residing at a public institution, then also to the representative of such institution. However, any relatives of the juvenile who are suspected of soliciting the juvenile to commit the crime or of abusing the juvenile shall not be given any information.
- The juvenile shall be allowed to be accompanied by a next-of-kin during the period he/she remains at the law enforcement.
- The personnel at the juvenile unit of the law enforcement shall be provided with training on topics such as juvenile law, prevention of juvenile delinquency, child development and psychology, social services and so on, by their own agencies.

- In case of a notification or establishment that the juvenile is in need of protection or in case of existence of reasons indicating that waiting for an urgent protection decision will be against the interest of the juvenile, the juvenile unit of the law enforcement shall secure the safety of the juvenile by taking the measures required due to the circumstances and shall deliver the juvenile to the Social Services and Child Protection Agency as soon as possible.

According to the article 32 of the Juvenile Protection Law (No: 5395) judges and pblic prosecutors to be assigned at the courts, and the social workers and probation officers appointed at probation and assistance centre directorates shall be provided with training on subjects such as juvenile law, social service, child development and psychology in line with the principles set forth by the Ministry of Justice during candidateship periods.

It shall be ensured that those appointed to serve at courts receive in-service training oriented to provide them with the opportunity to specialize in their fields and self-development.

- As it it has been mentioned above a juvenile bureau has to be established at the Chief Public Prosecutor's Offices. An adequate number of Public prosecutors shall be assigned to this bureau by the Chief Public prosecutor, from among those who meet the qualifications provided for in paragraph one of Article 28.

This bureau works together with the juvenile courts or juvenile heavy penal courts.

Article 25 of Juvenile Protection Law (No: 5395) foresees that, the juvenile court shall be composed of a single judge. These courts shall be founded in each provincial centre. In addition, they may be established in the districts determined taking into consideration the geographical locations and work load of the regions, by obtaining the positive opinion of the Supreme Council of Judges and Public Prosecutors. Where required due to heavy

work load, more than one chambers may be established for juvenile courts. These chambers shall be given numbers.

A remarkable regulation of the Juvenile Protection Law (No: 5395) is that the Public prosecutor shall not be present at the hearings administered at juvenile courts.

The main reason for this regulation is given as that there is insufficient number of prosecutors to conduct this work. But there are opinions too which do not consider positive the presence of public prosecutors during the trials of minors which evaluate that their presence requesting for a penalty could have a negative effect on the feelings of the minors.

But a difference of the public prosecutor within the Turkish Criminal law is that he is obliged according the article 160 of the Criminal Procedure Code "to collect and protect all the evidence in favor of or against the suspect and to protect the rights of the suspect, through the judicial security force under his or her authority, for the investigation of the material truth and for the execution of a fair trial." Therefore to consider that the public prosecutor as a public officer which wants only the disadvantage of the minors would be a jump towards wrong direction.

This regulation which do not allow the prosecutor being present at juvenile courts could be thought to be changed because it may lead to circumstances that an improper prosecution takes place in courts without a prosecutor during the search of the material truth and by the implementing of the procedural rules. And this could cause disadvantages for the accused minors.

Of course the public prosecutors of the locality of the juvenile courts may refer to legal remedies against the decisions of juvenile courts.

Around 80 juvenile courts are functioning together with juvenile heavy penal courts all over the country already.

Juvenile heavy penal courts have one presiding judge and an adequate number of members, and the court sit with one presiding judge and two members.

These courts have to be established in the localities determined taking into consideration the geographical locations and work load of the regions, by obtaining the positive opinion of the Supreme Council of Judges and Public Prosecutors.

Where required due to heavy work load, more than one chambers may be established for juvenile heavy penal courts. These chambers are given numbers.

Opposite to the juvenile courts, in the hearings in juvenile heavy penal courts the public prosecutor has to be present.

According Article 26 of the Juvenile Protection Law (No: 5395) the Juvenile courts have to administer the actions filed with regard to juveniles pushed to delinquency, for crimes falling under the jurisdiction of basic penal courts and penal courts of peace.

Juvenile heavy penal courts have to administer suits related to crimes committed by juveniles and falling under the jurisdiction of the heavy penal court.

Courts and juvenile judges have the duty to take the necessary measures specified in this law and in other laws.

Public prosecution suits filed with regard to juveniles have to be administered at the juvenile courts according the Juvenile Protection Law (No: 5395**).** But the provisions of Article 17 as regards the *crimes committed through participation* are reserved.

Article 17 of the Juvenile Protection Law (No: 5395) foresees that "In case it is considered necessary that the trials be carried out together, general courts may decide, during any stage of the trial, for consolidation of trials, on the condition that such consolidation is found appropriate by the courts. In such an event, the joint cases shall be administered at general courts."

- The judicial territory of juvenile courts have to be determined with the territorial boundaries of the province or district in which it is established.

- The judicial territory of juvenile heavy penal courts shall be the administrative territories of the central province or district where they are located, and of the districts which are judicially connected thereto.

- Any decision to determine or change the judicial territories of the juvenile courts and juvenile heavy penalty courts in consideration of geographic location and work load shall be given by the Supreme Council of Judges and Public Prosecutors upon the proposal of the Ministry of Justice.

The judge or the juvenile court *may, ex officio* or *upon the request of the* supervision officers, the juvenile's parent, guardian, caretaker or supervisor, the representative of the institution or person implementing the measure *and the Public prosecutor*, examine the *results of the measure being implemented with regard to the juvenile, and abrogate, extend or change the measure.*

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

As mentioned above the Chief Public Prosecution Services public prosecutors working in the juvenile bureau should be preferably specialized in juvenile law with training in the fields of child psychology and social services

Judges and Public prosecutors to be assigned at the courts, and the social workers and probation officers appointed at probation and assistance centre directorates shall be provided with training on subjects such as juvenile law, social service, child development and psychology in line with the principles set forth by the Ministry of Justice during candidateship periods.

It shall be ensured that those appointed to serve at courts receive in-service training oriented to provide them with the opportunity to specialize in their fields and self-development.

The principles and procedures for pre-service and in-service training are determined with a regulation. (Article 32- Juvenile Protection Law (No: 5395))

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.

Article 52 pgf. 3 of Criminal Procedure Code lay down special rules for the taking of the statements of witnesses if the victims are children.

According it " The images and voices during the hearing of the witnesses can be recorded. However, this is obligatory in case of testifying by victimized children"

Article 90/3 of Criminal Procedure Code foresees that an offender can be arrested if the victim is a child although crime needs generally a complaint. "In the case of crimes detected in the act that are committed against children or against persons who are not capable of controlling their lives because of a physical or mental illness or disability or limited physical strength, although these crimes may only be investigated and prosecuted pursuant to a complaint by the victim, apprehension of the offender shall not be subject to a complaint."

According Article 236/2 of the Criminal Procedure Code " The child or the victim whose psychology has been disturbed as a result of the crime committed *can only be listened once as a witness during the investigation or the proceeding being carried out with regard to that crime.* Cases whereby this is necessary in order to reveal the concrete truth constitute an exception."

The prosecutor has to request ex officio for a lawyer according article 239/2 of Criminal Procedure Code if the victim is a child.

According Article 45 of the Criminal Procedure Code the witness who is in a insufficient age may be listened to as witness with the consent of its legal

representatives. If the legal representative is the accused or suspect, he/she cannot decide on refraining of these individuals.

- Normally the prosecutor has according Article 170 of Criminal Procedure Code a duty to pursue the crimes.

The duty to bring a public prosecution rests with the public prosecutor.

The public prosecutor shall prepare an indictment if at the end of the investigation phase the collected evidence supports a suspicion sufficient to indicate that the crime has been committed.

However according the article 171 of Criminal Procedure Code the prosecutor has a power of discretion :

The power of discretion in filing a public claim
*Article 171 - (*1) *In cases where the requirements for the application of the provisions of 'effective remorse, that lift the Punishment as a personal ground", or the provisions of personal impunity are present, the public prosecutor may render the decision that there is ground for prosecution.*
(2) Despite there being sufficient suspicion, the public prosecutor may render "the decision on postponing of the filing of the public claim" for a duration of five years for crimes, that are investigated and prosecuted only upon a claim and carry an imprisonment punishment at the upper level of one year or less; the provisions of Article 253, subparagraph 19 are reserved. The individual who suffered from the crime may oppose this decision according to the provisions of Article 173.

(3) All of the following requirements must have been fulfilled in order to be able to render "the decision on postponing of the filing of the public claim"; the provisions related to mediation are reserved:

a) *The suspect must not have been convicted for an intented crime* priorly with an imprisonment term,

b) The investigation that has been conducted must have revealed the belief that, in case of "postponing of the filing of the public prosecution*", the suspect shall refrain from committing furher crimes,*

c) In regard to the suspect and the public, the *"postponing of filing of the public prosecution" is more beneficial than would the filing of the public claim,*

d) *The damage* of the victim or the public, which has been occured through the committed crime *has been recovered to the full extend* by giving back the same object by restoring to the circumstances as it was before the crime has been committed, or by paying the damages.

(4) In cases where no crime has been committed during the period of postponement, "decision on no ground for prosecution" shall be rendered. In

cases where an intended crime has been committed during the period of postponement, the public claim shall be filed. During the period of postponement, time-limit prescription does not run.

(5) Decisions related to "the postponing of the filing of the public prosecution" shall be recorded in a specified data bank for this purpose. These recordings may only be utilized for the purpose mentioned in this Article, if it has been requested by the public prosecutor, judge, or the court, in relation to an investigation or prosecution.

The police have no discretion not to refer cases involving juvenile offenders to the prosecutor for investigation.

-According Article 24 of the Juvenile Protection Law (No: 5395) the rules settled in the article 253 of the Criminal Procedure Code as regards the mediation have to be applied to the children.

The article 253 is as follows:

Mediation

*Articl*e 253 - *(1) There shall be an attempt to mediate between the suspect and the victim or the real or juridical person of private law, who has suffered damages from the crime for the following crimes:*

a) Crimes, that are investigated and prosecuted upon the claim;

b) At the following crimes that are mentioned in the Turkish Penal Code with no regard to whether they require a claim or not:

1. Intentional wounding (except for subparagraph 3, Art. 86 and Art. 88):

2. Negligent wounding (Art. 89):

3. Violation of tranquility of domicile (Art. 116):

4. Kidnapping of a child and keeping him (Art. 234):

5. Revealing the information or documents, that have the nature of commercial secrets, banking secrets or secrets of the customers (Article 239 except for subparagraph four)

(2) Except for crimes, that are investigated and prosecuted upon a claim, for crimes that are included in other statutes, there must be a special provision in that statute in order to apply the way of mediation.

(3) In crimes that allow the application of the provisions of effective remorse and crimes against the sexual inviolability, the way of mediation is excluded, even if their investigation and prosecution is dependant upon a claim.

(4) In cases where the crime under investigation is depending on mediation, the public prosecutor, or upon his orders, the official of judicial security forces, shall propose mediation to the suspect and to the victim or to the person who has suffered damages from the crime. In cases where the suspect, the victim or the person who has suffered damages from the crime is not an adult, the proposal of mediation shall be made to their legal reperesentative. The public prosecutor is also entitled to make the proposal of mediaton by a notification furnished with ah explanation or rogatory letter. In cases where the suspect, the victim or the person who has suffered damages from the crime does not notify his decision about the mediation within 3 days after the proposal of mediation, it shall be considered that he has refused the mediation.

(5) In cases where a proposal for mediaton has been made, the nature and legal consequences of accepting or refusing the mediation shall be explained to that person.

(6) If the victim, the person who has suffered damages from the crime, the suspect or their legal representatives cannot be reached because he is not present at the address that has been declared to the official authorities, or is outside of the country or for any other ground, then the investigation shall be concluded without applying the way of mediation.

(7) In order to apply the way of mediation in crimes where more than one person has been victimized or has been damaged, it is required that all of the victims or persons who have
suffered damages from the crime have accepted the mediation.

(8) The proposal of mediation, or the acceptance of mediation, does not hinder the collection of evidence of the crime that is under investigation nor the application of the measures of protection.

(9) In cases where the suspect and the victim or the person who has suffered damages from the crime has accepted the proposal of mediation, the public prosecutor is entitled to conduct the mediation himself, or may ask the Bar Association to appoint a lawyer as mediator, or may appoint a mediator from the list of persons who have obtained an education of law.

(10) The grounds of exclusion of the judge because of circumstances determined in this Code, shall also be considered while appointing the mediator.

(11) The appointed mediator shall be given a copy of each document included in the case file that are estimated appropriate by the public prosecutor. The public prosecutor shall caution the mediator about the requirement of complying with principles of the confidentiality of the investigation.

(12) The mediator shall conclude the interactions of mediation within 30 days the latest after he has received the copies of the documents included in the file of investigation. The public prosecutor may extend this period for a maximum of 20 days.

(13) The mediation conferences shall be conducted confidentially. The suspect, the victim or the person who has suffered damages from the crime, the legal representative, the defense counsel or the representative may be present during the

mediation conferences. In cases where the suspect, the victim or the person who has suffered damages from the crime or his legal representative, or representative does not attend the mediation conference personally, he shall be considered as if he has refused the mediation.

(14) The mediator is entitled to consult the public prosecutor about the procedure to follow during the mediation conferences; the public prosecutor may give directions to the mediator.

(15) At the end of the mediation conferences, the mediator shall produce a report and submit it to the public prosecutor, together with the copies of the documents that have been handed over to him. If the mediation occurs, the details of the kind of mediation agreement shall be clearly explained in the report that shall be furnished with the signatures of the parties. The suspect and the victim or the person who has suffered damages from the crime may apply to the public prosecutor the latest until the date the indictment has been prepared, and produce the document that states that they have mediated their dispute, even if the proposal of mediation has been previously refused.

(17) If the public prosecutor establishes that the mediation has been achieved with the free will of the parties, and the subject of the contract is in conformity with law, then he shall put his seal and signature under the report or the document and keep it within the file of investigation.

(18) If the mediation ends without any positive result, the way of mediation shall not be applied again.

(19) If at the end of the mediation the suspect fulfills the object of the contract at once, the decision on no ground for prosecution shall be rendered. If fulfillment of the object of the contract has been postponed to a future date, or to installments, or has the nature of continuity, the decision on "postponing the filing of public prosecution" shall be rendered, without checking the requirements that are listed in Art. 171. During the duration of the postponement, the time limitation shall rest. If the necessities of mediation shall not be fulfilled after the decision of the "postponing the filing of public prosecution", the public prosecution shall be filed, without checking the requirements that are mentioned in Art. 171/4. In cases, where the mediation is achieved, no tort claim may be filed for the crime under prosecution; if there is a pending case, this case shall be considered as withdrawn. If the suspect does not fulfill the object of the contract, the report or the document of mediation shall be considered one of the documents that is listed in Art. 38 of the Act on Execution and Concurs, dated 9.6.1932, No. 2004.

(20) The assertions made during the mediation conferences shall not be used as evidence in any investigation and prosecution, or in any case.

(21) The time limitations of the prosecution and the duration of the case that is a requirement for prosecution shall not run from the date when the first mediation proposal has been made to the suspect, the victim or the person who has suffered damages from the crime, the latest until the date when the initiative of mediation was unsuccessful, or until the date when the mediator prepares and submits his report to the public prosecutor.

(22) The fee of the mediator that is proportional to his work and expenses, shall be estimated and paid by the public prosecutor. The fee of the mediator and other expenses of

mediation shall be considered as court expenses. In cases where the mediation is accomplished, these payments shall be compensated by the state treasury.

(23) Against the decisions rendered at the end of the mediation, the legal remedies which are foreseen in this Code are applicable.

(24) The details about the application of the mediation shall be regulated by an internal statute.

The law was amended in 2006 to restrict the scope of application of this law to certain offences, eliminating the preferential treatment of juveniles. Such settlement can be proposed by the prosecutor, or by the police or the judge with the order of the prosecutor. It is handled directly by the prosecutor or judge, or by a lawyer, not by trained mediators.

- According the article 231 of the Criminal Procedure Code only for the ones who have not been convicted for an intended crime priorly can the related court decide to delay the pronouncement of the judgment.

If these conditions are met, and the judge approves, prosecution may be postponed for a period of three years. If the accused is not convicted of another offence during this time, the case is closed.

Pronouncement of the judgment and delaying the pronouncement of the judgment Article 231 –

(1) At the end of the main trial, the outcome of the judgment that has been taken into the records of the trial according to the rules as indicated in Article 232, shall be read out and the main outlines of the reasons shall be explained.

(2) To the accused who is present, additionally the legal remedies he may apply to, where to apply for them, and the time limits shall be notified. The accused who is acquitted shall be notified of ground of asking for compensation if there is any.

(3) The outcome of the judgment shall be listened to by everybody while standing.

(4) In cases where at the end of the adjudication conducted related to the crime charged to the accused, if he shall be punished with imprisonment of two years or less or a judicial fine, the court may decide to delay the pronouncement of the judgment. The provisions related to mediation are preserved. Delaying the pronouncement of the judgment means that the judgment that has been produced shall not have legal effect for the accused.

(6) In order to be able to render "the decision on delaying the pronouncement of the judgment", the following requirements must have been fulfilled:

a) The accused must not have been convicted for an intented crime priorly,

b) Considering the characteristics of the personality of the accused and his behavior during the main trial, the court has to reach the belief that the accused shall not commit further crimes,

c) The damage to the victim or the public, due to the committed crime has been recovered

to the full extent by giving back the same object, by restoring the circumstances as they were before the crime had been committed, or by paying the damages.

(7) In the judgment, of which the pronouncement has been delayed, the inflicted imprisonment term shall not be postponed, and in cases where the punishment is a short term imprisonment, it shall not be converted into the alternative sanctions.

In cases where a decision on delaying the pronouncement of the judgment has been rendered, the accused shall be subject to a probation term for five years.

The court may decide that the accused shall be subject to an obligation of probation, not exceeding one year:

a) In cases where he has no profession or skill, the cour t may decide that he shall take part in
an education program in order for him to obtain a profession or a skill,

b) In cases where he has a profession or a skill, the court may decide that he shall work for a fee in a public institution or in a private place, under the supervision of another person who performs the same profession or skill,

c) The court may decide that he shall be prohibited from going to certain places, that he shall be obliged to visit certain places, or to fulfill another obligation which shall be determined by the discretion of the court. During the period of probation, the time limit prescription of prosecution shall lapse.
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(9) In cases, where the accused is not able to fulfill the requirement that is mentioned in subsection (c) of subparagraph 6 immediately, the court may decide as well that the pronouncement of the judgment shall be delayed under the requirement that the accused pays the damages of the public or the victim in the full extent in monthly installments.

(10) In cases where there has been no intentional crime committed during the period of probation and the obligations related to the measures of controlled liberty, the judgment, of which the prouncement had been delayed, shall be annulled, and the court shall render the decision on dismissing the case.

(11) In cases where the accused has committed a new intentional crime during the period of controlled liberty, or has violated the obligations related to the controlled liberty, the court shall pronounce the judgment. However, the court may evaluate the circumstances related to the accused who was not able to fulfill the obligations inflicted on him, and may decide that the portion of the punishment which may be determined up to the half of the original one shall not be executed, or if the requirements are present, to suspend the imprisonment, or to convert the punishments in the judgment into alternative sanctions, thus forming a new judgment

12) The decision on delaying the pronouncement of the judgment may be subject to opposition.

(13) Decision related to "the delaying the pronouncement of the judgment" shall be recorded in a specified data bank for this purpose. These recordings may only be utilized for the purpose mentioned in this Article, if it has been requested by the public prosecutor, judge, or the court, in relation to an investigation or prosecution.

(14) The provisions of this Article related to the "the delaying the pronouncement of the judgment" shall not be applied for crimes that are mentioned in the "reform laws", protected by the provisions of Article 174 of the Constitution

- According the article 50 of the Turkish Criminal Code the court can substitute the imprisonment with some measurements like:

- *A judicial fine;*
- *Compensation to the victim or public which returns or restores matters to their previous condition or which indemnifies such in respect of all damage caused; Admittance to an educational institution;*
- *Restriction on freedom of movement in respect of certain places and restrictions in conducting certain activities for a duration of between one- half and twice the term of imprisonment;*
- *Confiscation of a driving license or any other certificate granting permission to perform specific acts;*
- *Deprivation of the right to carry out a profession or to operate in a certain area of activity for a minimum term of between one-half and twice the term of imprisonment;*
- *Publicly beneficial work for a minimum term of between half and two times the term of imprisonment, though only with the consent of the offender.*

Where any offender has not previously received a penalty of imprisonment and the penalty of imprisonment imposed is thirty days or less; or *where an offender was under eighteen years of age at the time of the offence and the term of imprisonment imposed is one year or less, such term of imprisonment must be substituted by one of the alternative sentences described above.*

After a judgment becomes final, if any requirements imposed by the alternative sentences have not been commenced, or continued with, within thirty days of the notification conveyed by the Public Prosecutor's Office, the Court which imposed the sentence shall decide whether to enforce the sentence of short-term imprisonment in full, or in part, and, if so, this sentence shall be enforced immediately.

When the alternative sentence has not been complied with due to reasons beyond the offender's control, the court which imposed the sentence shall amend the alternative sentence.

According the Article 51 of the Turkish Criminal Code a sentence of imprisonment for a term of two years or less may be suspended. *The upper limit of this term is three years for those under eighteen of age at the time of the commission of the offence.*

However, in order to decide to suspend the sentence,

a) the person should not have been sentenced to a penalty for a term of more than three-month imprisonment for an intentional offence,

b) the Court should be convinced, as a result of hearing the remorse he expressed during trial, that the offender will not commit further offences in the future.

The suspension of the penalty may depend upon the condition that compensation is provided to the victim or public, which returns or restores matters to their previous condition or which indemnifies such in respect of all damage caused. In such case, the enforcement of the penalty shall continue at the institution of enforcement until this condition is met. Once the condition is met, the offender shall be released immediately, upon a decision of a judge.

A probation period which is not less then one year and not more then three years shall be imposed for an offender whose sentence has been suspended. The lower limit of this period shall not be less than the term of sentence.

Within the probation period, the court may decide that an offender, who is under the age of eighteen years, shall attend an educational institution, which provides accommodation when necessary, in order to acquire a profession or trade.

The court may assign an expert to counsel the offender within the probation period. This expert shall give guidance to the offender designed to aid the person, to act responsibly and refrain from negative behaviour; meet and discuss with the authorities of the educational institution or work place of the offender; prepare a report, every three months, on the development, behaviour, social adaptation and sense of responsibility of the offender and convey these reports to the judge.

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?

(1) Protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either ex officio or upon the request of the Public prosecutor beside some other authorities.

Aside from rendering decisions for protective and supportive measures regarding juveniles that are in need of protection, the court shall also have the authority to decide with regard to custody, guardianship, warship, caretaker, trustee, alimony and personal contact, in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered 4721. (Article 7 of Juvenile Protection Law (No: 5395))

The judge or the court may, ex officio or upon the request of the Public prosecutor, examine the results of the measure being implemented with regard to the juvenile, and abrogate, extend or change the measure. (article 8 of Juvenile Protection Law (No: 5395))

Investigations related to juveniles pushed to crime shall be carried out personally by the Public prosecutor assigned at the juvenile bureau.

During interrogation and other procedures related to the juvenile, the juvenile may be accompanied by a social worker.
When considers necessary during investigation, the Public prosecutor may file a request to the juvenile judge for a protective and supportive measure regarding the juvenile. (Article 15 Juvenile Protection Law (No: 5395))

Protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either ex officio or upon the request of the juvenile's father, mother, guardian, the person responsible for the care and supervision of the juvenile, the Social Services and Child Protection Agency or the Public prosecutor.(Article 7 of Juvenile Protection Law (No: 5395)

- The public prosecutor has according the article 17 of the law on the Establishing, Duties and Competences of Courts of First Instance and Regional Courts within the Ordinary Judiciary (Law Nr. 5235) the obligation to investigate for deciding about if there is a need to start a public trial or not , to follow up the prosecutions on behalf of the public, to attend them and if necessary appeal, parallel to the rules set up in laws and the obligation to perform the related procedures for the execution of the court decisions and and to perform the juridical and administrative tasks given by laws as it was mentioned above.

Article 20 of the Law on Execution of Penalties and Security Measures. (Law No.5275) gives special tasks to the public prosecutor:

- A finalised judgement containing a prison sentence shall be forwarded by the court to the Office of Chief Public Prosecutor, clearly indicating the identity of the convict and the nature of the sentence.

- A call or an apprehension order shall be issued for the convict, considering the length of the prison sentence specified in the judgement, which the Office of Chief Public

Prosecutor shall record in the execution book.

- The call shall be notified at the address indicated in the judgement. The convict must inform any change of address to the court or the Office of Chief Public Prosecutor. Otherwise, the notification made at the address specified in the judgement shall be effective.

- The convict shall be given a document issued by the Office of Chief Public Prosecutor indicating the date of his admission into the penal execution institution, the scheduled date of his release, the length of his prison sentence, and the legal provision under which the sentence has been imposed.

The main control of penal execution institutions are the duty of the public prosecutors. If the penal institution has a particular immensity a special prosecutor could be selected by the Chief Public Prosecutor for the task.

The law establishes in Article 11 *closed penal execution institutions for minors:*

These are institutions based on education and training where
minor remand prisoners or minors who are decided to be transferred from reformatories to closed penal execution institutions for disciplinary or other reasons are accommodated, which are equipped with barriers against escape, and which have internal and external security personnel.

- Minors in the age group of 12 to 18 shall be kept in separate parts of these institutions in view of their gender and physical development.

- Where there are no special institutions for them, these convicts shall be placed in those parts of closed penal execution institutions which are allocated for minors. Where separate parts do not exist, girls shall be accommodated in one part of closed penal execution institutions for women or in such parts of other penal execution institutions as are allocated for them.

- In these institutions, the principle of providing minors with education and training shall be implemented in full.

The law establishes in Article 1 2 , closed penal execution institutions for minors and young convicts:

- *Juvenile closed penal execution institutions are institutions in which young convicts who are aged 18 to 21 as of the date of beginning to execute the sentence serve their sentences, which are based on the principle of education and training, which are equipped with barriers against escape, and which have internal and external security personnel.*

- Where no separate institutions can be established for these convicts, they shall be

accommodated, in accordance with the principles laid down in this article, in those parts of other closed penal execution institutions which are allocated for juveniles.

The prison sentences of those juveniles who are covered by Article 9 (Persons sentenced to
imprisonment for establishing or leading a criminal organisation or, in the framework of the activities of such an organisation: Crimes against humanity (Articles 77 and 78 of the Turkish Criminal Code); Murder (Articles 81 and 82 thereof); Production of and trafficking in drugs (Article 188 thereof); Crimes against the security of the State (Articles 302, 303, 304, 307 and 308 thereof); ore Crimes against constitutional order and its operation (Articles 309 to 315 thereof regardless of the length of such sentence, shall serve their sentences in these institutions) hereof shall be executed in the high-security parts of juvenile closed penal execution institutions

The Article 15 of the law regulates the reformatories for minors .

- *Reformatories for minors are facilities where prison sentences against minors are executed by pursuing the objectives of educating the convicted minors, teaching them a trade and achieving their social reintegration. In these institutions, there shall be no barriers against escape; their security shall be provided under the supervision and responsibility of internal security personnel.*
- Minors attending any education and training programme within or outside the institution may be allowed to stay in these facilities after they complete the age of eighteen, until they are twenty-one years of age, so that they may complete their education and training.
- Convicted minors who are kept in these institutions, excluding those against whom a remand order has been made and those who fall within the scope of Article 11 hereof, shall not be sent to closed penal execution institutions.

The article 14 of the law establishes the open penal execution institutions

Open penal execution institutions are institutions where priority is given to employment and vocational training of convicts in their rehabilitation, which have no barriers against escape and no external security personnel, and where supervision and control by institution personnel is considered sufficient for security.

According to the need, open penal execution institutions may also be established in the form of:
a) Open penal execution institutions for women; and
b) *Open penal execution institutions for juveniles.*

The sentences against those who have committed an offence for the first time or who are convicted to imprisonment for two years or less may be executed directly in open penal execution institutions.

Of convicts who are in an open penal execution institution, those who have

received a disciplinary penalty other than a reprimand, those against whom a remand order has been made for a criminal act other than the one of which they have been convicted, those who are being investigated or prosecuted for another offence where the upper limit of the legally prescribed sentence is not less than seven years, and those whom it is determined would not be able to adapt to the working conditions with regard to age, health condition or physical or mental abilities, shall be sent back to closed penal execution institutions by a decision of the institution's administrative board. The said decision shall be submitted to the execution judge for approval.

Detained juveniles shall be kept at the juvenile unit of the law enforcement.

In cases where the law enforcement does not have a juvenile unit, the juveniles shall be kept separate from detained adults. (Article 16 of Juvenile Protection Law (No: 5395)

Chains, handcuffs and similar tools cannot be put on juveniles. However, when necessary, the law enforcement may take necessary measures to prevent the juvenile from escaping, or to prevent dangers that may arise with regard to the life and physical integrity of the juvenile or others. (article 18 of Juvenile Protection Law (No: 5395))

7. 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.?

Article 33 of Juvenile Protection Law (No: 5395) regulates the role of social workers who work together with juvenile courts and related juvenile bureaus of public prosecution services:

The officers shall have the obligation to assist the social workers during their studies and to provide them with any requested information on the juvenile.

The money spent by the social workers during their duties and the duty expenses appreciated by the court shall be paid from the flagrante delicto appropriation of the Chief Public prosecutor's office.

The presence of social workers during the interrogation of the minors brings the Public prosecutor in regular relation with social workers enabling him/her to take advantage from their experiences and expertise.

According the Article 35 of the Juvenile Protection Law (No: 5395) an enquiry clarifying the individual characteristics and social environment of the juveniles covered under this Law shall be conducted when considered necessary by courts, juvenile judges or Public prosecutors.

This enables the prosecutor to build a way into the social conditions of the minor who committed a crime.

The social enquiry report can be used by the application of the discretional powers of the prosecutor to prosecute or not to prosecute as regards the Article 171 of the Criminal Procedure Code .

According the article 37 of the Juvenile Protection Law (No: 5395) The directorate of probation and assistance centre (a directorate within Ministry of Justice) shall appoint a supervision officer for juveniles taken under supervision. However, in case of juveniles that are in need of protection, juveniles pushed to crime who have not yet completed age twelve at the time of the offence, and the juveniles about whom there is a court decision to return them to the custody of their families, the supervision duty regarding such juveniles shall be carried out by the Social Services and Child Protection Agency in accordance with surveillance principles.

When appointing supervision officers, the personal characteristics and needs of the juvenile shall be taken into consideration and those with easy access to the juvenile shall be preferred.

Duties of the supervision officer are as follows:
a) to support, assist, and when necessary, advice the juvenile in order to ensure the juvenile's adaptation to the educational, familial, institutional, business and social environment so as to realize the objective sought with the court decision.
b) To provide guidance to the juvenile with regard to institutions from which the juvenile can receive education, employment or support, and with regard to his/her rights and how to exercise such rights.
c) To assist the juvenile in benefiting from the services which he/she may need.
d) To visit the places where the juvenile stays, the persons with whom he/she contacts, and hence examine on-site the education and business performance of the juvenile, and his/her leisure activities.
e) to monitor the implementation of the court decision, the consequences of the implementation thereof, and its effects on the juvenile, and to inspect the fulfilment of the obligations imposed on the juvenile.
f) to submit reports on the development of the juvenile, at three-month intervals, to the Public prosecutor or the court.

When carrying out his/her duties, the supervision officer shall cooperate with the juvenile's parents, guardian, caretaker and teachers.

Representatives of the institutions who have information on the juvenile's mother, father, guardian, caretaker, supervisor, school, workplace or on the juvenile shall have the obligation to assist the supervision officer and provide him/her with any information he/she may request in line with his/her duties.

The juvenile's next-of-kin cannot interfere with the capacities of the supervision officer. (Article 38 Juvenile Protection Law (No: 5395))

The public prosecutor can use this reports by the giving of decision whether the measurements taken as regards the minor are efficient or not and if there is a need to change it etc.

According Article 39 of the law ; The methodology of the supervision that will be applied for the juvenile shall be determined by the supervision officer, together with the specialist carrying out the social enquiry or the social worker at the court, via a plan that they will prepare within 10 days following the appointment.

The following has to be taken into consideration when preparing the plan:
a) the purpose, nature and duration of the measure taken with regard to the juvenile,
b) the juvenile's needs,
c) The seriousness of the state of danger in which the juvenile is,
d) the degree of support given to the juvenile by his/her parents, guardian, caretaker and supervisor,
e) In case of any measures as a result of being pushed to crime, the nature of the act constituting an offence,
f) The opinion of the juvenile.

The supervision plan shall be implemented as soon as it is approved by the court or the juvenile judge. The supervision officer shall report to the court or the juvenile judge the manner in which the court decision is being implemented, its effects on the juvenile and whether the juvenile's parents, guardian, individuals or institutions responsible for looking after and supervising the juvenile fulfil their responsibilities duly, whether there are any conditions that require a change in the decided measure and any other issue on which a report may be requested, every month and whenever demanded.

As regards Article 40 of Juvenile Protection Law (No: 5395) the supervision shall terminate with the end of the period provided for in the court decision. In case the benefit expected from the measure is achieved beforehand, the supervision may be lifted before the expiry of the prescribed period.

Supervision shall end when the juvenile is arrested for another crime or when the juvenile starts serving the penalty.

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Article 43 regulates that costs of the supportive and protective measures decreed with regard to the juvenile shall be paid by the Government. The amount payable shall be established via a court decision.

In case the financial means of the person responsible for the care of the juvenile pursuant to the provisions of the Turkish Civil Code is not favourable, the amount paid by the Government has to be collected via recourse to the relevant persons and authorities.

As regards the article 44 of the Juvenile Protection Law (No: 5395) the provisions of the Law on Trial of Civil Servants and Other Public Officials dated 2.12.1999 and numbered 4483 shall not be applied to public officials in connection with the duties falling under the scope of this Law.

The prosecutor can therefore begin to directly prosecute the officers who have not fulfilled their responsibilities towards the to be protected children, without having a need to get a permission from some authorities as it is generally foreseen for other public officers.

Article 45 of Juvenile Protection Law (No: 5395) envisages that the supportive and protective measures included in Article 5 of this Law shall be carried out as follows:
a) consulting and shelter measures specified in subparagraphs (a) and (e) by the Ministry of National Education, the Social Services and Child Protection Agency and by local governments,
b) education/training measures specified under subparagraph (b) by the Ministry of National Education and the Ministry of Labour and Social Security,
c) care measures specified under subparagraph (c) by the Social Services and Child Protection Agency,
d) health measures specified under subparagraph (d) by the Ministry of Health.

Any and all kinds of assistance and support requests placed by the Social Services and Child Protection Agency with regard to the fulfilment of law enforcement services required during the execution of the care and shelter measures, the rehabilitation and education of the juveniles, or with regard to other issues falling under the jurisdiction of other ministries shall be responded to, without any delay, by the Ministry of National Education, the Ministry of Interior, the Ministry of Health and the other relevant ministries and public organizations and institutions.

The Ministry of Justice shall coordinate the execution of these measures.

- According Article 76 of the Law on Mmunicipialities (No:5393) an institution called “the city council” seeks to realize the development of a city vision and responsible citizenship, preservation of urban rights and rule of law, sustainable development, responsiveness to environment, mutual social assistance and solidarity, transparency, accountability, participation and subsidiarity in urban life.

The municipalities shall provide assistance and support in relation to the effective and fruitful conduct of the activities of the city councils, consisting of the representatives of professions’ chambers having the status of a public body, trade unions,

notaries,universities if exist,concerned civil society organizations, political parties, public institutions and the neighborhood heads, as well as other relevant participants.

The public prosecution services of different towns are attending the meetings and activities of this institutions within their competence area.

As regards the article 14 of the law on Law on Municipalities (No:5393) the municipalities have the duty to establish protecting houses for woman and children which have a population than more 50.000.
This kind of activities and duties to be fulfilled by the municipalities and different institutions creates conditions for public prosecutors to cooperate with institutions related to the protecting of children.

For example the year before together with the Woman Council of the City Council of the Municipality of Afyon in Aegean Region the Public Prosecution Service of the town has opened a day-nursery for the children of the woman convicts.

According the Regulation on Protective and Supportive Measures Taken As Regards the Juvenile Protection Law (No: 5395; the coordination of the institutions by the implementation of protective and supportive measures have to be fulfilled by a council which consists of the governor, public prosecutor, police or gendarmerie senior officers, directors of national education and public health service, mayor of the city, the director of the regional service of the Ministry of Labor and Social Security, director of the youth and sports service, director of , director of the special provincial administration, director of the probation and assistance centre and representative of bars association.

Academicians or representatives of non governmental organizations can attend the meetings of the council too.

The secretariat of the council has to be carried out by the directorate of the social services of the province.

The governors have to take all measurements including the medical treatment of the child, preparing of social reports, assigning of a residence or staff etc.

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.

The criminal investigation is led by the public prosecutor. But certainly due to the immense of the acts which could fall under the scope of the criminal law this is mostly conducted by the police or gendarmerie. *The police or gendarmerie units are submitting*

the documents prepared by them to the public prosecution services. They act as a type of judicial police. There is always a correspondence or phone contact or other electronic information exchange between these institutions and the prosecution services. The administration of the prosecution is led in general trough orders, information etc. by the public prosecution service.

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.

According the article 6 of the Juvenile Protection Law (No: 5395) Judicial and administrative authorities, law enforcement officers, health and education institutions and non-governmental organizations have the obligation to notify the Social Services and Child Protection Agency of any juveniles that are in need of protection. The juvenile and the persons who are responsible for the care of the juvenile can apply to the Social Services and Child Protection Agency to take the juvenile under protection.

The Social Services and Child Protection Agency has immediately to carry out the necessary enquiry regarding the events notified to it.

In the case of crimes detected in the act that are committed against children, although these crimes may only be investigated and prosecuted pursuant to a complaint by the victim, apprehension of the offender shall not be subject to a complaint. (Article 90 of Criminal Procedure Code)

In case the suspect or the defendant is underage (has not attained the age of eighteen), or deaf, or mute, or is handicapped to the degree of failing to defend himself and a defense counsel cannot be arranged; a defense counsel is appointed without the requirement of his official request. (Article 150 of Criminal Procedure Code)

After the amendments in the criminal procedure law in the year 2005 the criminal courts cannot sentence anymore for compensations. These fall now under the jurisdiction of the civil courts. According that the juveniles or their representatives who demand compensation can request for judicial aid if they have not enough financial resources for filing charges against the acts of injustice. (Civil Procedural Law Article 465).

As regards Article 7 of Juvenile Protection Law (No: 5395) protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either ex officio or upon the request of the juvenile's father, mother, guardian, the person responsible for the care and supervision of the juvenile, the Social Services and Child Protection Agency or the Public prosecutor.

Before rendering a court decision, a social enquiry regarding the juvenile shall be carried out.

The type of the measure shall be indicated in the decision. The judge may decide for one or more measures.

The judge may also decide for taking under supervision the juvenile about whom he/she has decided for a protective and supportive measure.

Taking into consideration the development of the juvenile, the Judge may decide to change or abrogate the protective and supportive measure. In case of emergencies, this decision may also be rendered by the local judge where the juvenile is located. However, in such a case, the decision shall be notified to the judge or court that had rendered the original decision.

The execution of the measure shall terminate automatically when the juvenile completes age eighteen. However, the judge may decide to continue with the implementation of the measure for a certain period of time in order to allow the juvenile to continue his/her training or education, provided that the consent of the juvenile is taken.

Aside from rendering decisions for protective and supportive measures regarding juveniles that are in need of protection, the court shall also have the authority to decide with regard to custody, guardianship, warship, caretaker, trustee, alimony and personal contact, in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered

- Immediately following being informed, through denunciation or by any other means, of a condition having the impression that an offense has been committed, the Public prosecutor initiates an investigation to uncover the truth and to determine if the conditions demand the filing of a public court case.
The Public prosecutor is obligated to collect and protect all the evidence in favor of or against the suspect and to protect the rights of the suspect, through the judicial security force under his or her authority, for the investigation of the material truth and for the execution of a fair trial. (article 160 of CPC (Article 160 of Criminal Procedure Code)
According the article 158 of the Criminal Procedure Code Denunciations and complaints concerning offenses can be submitted to the chief public prosecutor's office or the authorities of the security force.

Denunciations and complaints submitted to the governor’s office, or the district office of the sub- governor, or the court are conveyed to the chief public prosecutor's office.

Concerning offenses committed in foreign countries that require prosecution within the country, denunciations and complaints can be submitted to the Turkish embassies and consulates.

Denunciations and complaints submitted to the relevant institutions and organizations, as a result of an offense claimed to be committed concerning the execution of a public duty, are immediately conveyed to the chief public prosecutor's office.

Denunciations and complaints can be submitted in paper, or orally to be written down in official records.

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

The public prosecutor can act in normal conditions ex officio .

(*1) Immediately following being informed, through denunciation or by any other means, of a condition having the impression that an offense has been committed, the Public prosecutor initiates an investigation to uncover the truth and to determine if the conditions demand the filing of a public court case.*
(2) The public prosecutor is obligated to collect and protect all the evidence in favor of or against the suspect and to protect the rights of the suspect, through the judicial security force under his or her authority, for the investigation of the material truth and for the execution of a fair trial. (Article 160 of Criminal Procedure Code)

The public prosecutor can perform all types of investigations directly or through the judicial security forces under his command; can request any information from any public functionary to reach the results indicated in the above Article. The public prosecutor requests the execution of the said operations from the relevant public prosecutor responsible for the location, if a requirement to perform an operation outside the jurisdiction of the court arises due to his or her legal duties.

Judicial security force authorities are obligated to immediately inform the relevant public prosecutor under whom they function, of the cases they have taken charge of, of the people they have apprehended and the precautions practiced; and to carry out the orders concerned with the administration of justice given by this Public prosecutor without delay.

The Public prosecutor issues his or her orders to the judicial security force officers in paper; or orally or in case of emergencies. An order given orally is issued in paper as well, in the shortest time possible.

Other public functionaries are also obligated to provide the information and the documents required within the scope of the investigation being conducted, to the Public prosecutor without delay.

Direct investigations are conducted by the Public prosecutors, concerning public functionaries for whom improper exploitation or negligence in their duties or works

related to the administration of justice appointed to them by the Law or required of them at the legal offices, and security force supervisors or officers for whom improper exploitation or negligence in the oral and written requests and orders given by the Public prosecutors have been determined. The provisions of the Law about the Adjudication of Civil Servants and Other Public Officers are administered for governors and sub-governors; the procedures of exercise of jurisdiction judges are subject to due to the duties are administered concerning senior security force supervisors.

Under conditions of *flagrante delicto* requiring severe sentences, provided that the provisions of this Law are applied, the administration of investigations for individual offenses of governors and sub-governors according to the general provisions is under the jurisdiction of the Public prosecutors of the province the sub-governor is related to and of the closest province to the governor's area of office. For conducting of trials concerning such offenses, the appointed court of the location of investigation is authorized.

Article 7 of Juvenile Protection Law (No: 5395) foresees that protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either ex officio or upon the request of the juvenile's father, mother, guardian, the person responsible for the care and supervision of the juvenile, the Social Services and Child Protection Agency or the Public prosecutor.
measure.

The judge or the court may, ex officio or upon the request of the Public prosecutor, examine the results of the measure being implemented with regard to the juvenile, and abrogate, extend or change the measure.

When considers necessary during investigation, the Public prosecutor may file a request to the juvenile judge for a protective and supportive measure regarding the juvenile. (Article 15 of Juvenile Protection Law (No: 5395))

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 organised (designated correspondents, free telephone line, etc)?

Judicial and administrative authorities, law enforcement officers, health and education institutions and non-governmental organizations have the obligation to notify the Social Services and Child Protection Agency of any juveniles that are in need of protection. The juvenile and the persons who are responsible for the care of the juvenile can apply to the Social Services and Child Protection Agency to take the juvenile under protection.

The Social Services and Child Protection Agency shall immediately carry out the necessary enquiry regarding the events notified to it. (Article 6 of Juvenile Protection Law (No: 5395)

Protective and supportive court decisions regarding juveniles can be taken by the juvenile judge either ex officio or upon the request of the juvenile's father, mother, guardian, the person responsible for the care and supervision of the juvenile, the Social Services and Child Protection Agency or the Public prosecutor. Article 7 of Juvenile Protection Law (No: 5395)

- All of this instances of bodies have free access to the public prosecution service. They can request for aid from the public prosecution service if a judicial intervention is necessary.

The public prosecutor has the duty to work in collaboration with the Social Services and Child Protection Agency and the coordination councils within the governorship or district administration.

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

Turkey has signed The Hague Convention on the Civil Aspects of International Child Abduction.

The central authorithy which receives the requests for the return of the abducted children is the Ministry of Justice.

If the abducted child resided before the abduction in Turkey and was at that time under 16 the local public prosecution services are functioning as application authorities for the returning of the child.

The application shall contain according the Convention:
"a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b) where available, the date of birth of the child;

c) the grounds on which the applicant's claim for return of the child is based;

d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

e) an authenticated copy of any relevant decision or agreement;

f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g) any other relevant document."

If the child who is claimed to be abducted reside in Turkey, the documents including the same information given above, but this time prepared by the foreign authorities has to be sent via the Turkish Ministry of Justice to the local Turkish public prosecution services, where the abducted child is.

The local public prosecution service has the duty to try to find a friendly solution for the returning of the child. *But if the parent who abducted the child refuses to deliver him the public prosecution service has according the law No:5717 to file a suit at the family court for getting a verdict on the returning of the abducted child.*

The costs of the trial have to be paid buy the prosecution service but a restitution of the one who turned out to be in the wrong is obligatory.

If the family court decides for the return of the child, the related public prosecution service has the duty to demand the return of the child trough Enforcement law.

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?

According the article 9 of the Juvenile Protection Law (No: 5395), In case of a situation which requires taking the juvenile under immediate protection, the juvenile shall be taken under care and supervision by the Social Services and Child protection Agency, and then the Agency shall apply to the juvenile judge within five days at the latest following the day the Juvenile was brought to the Agency, in order for an urgent protection decision. The judge shall decide with regard to the request within three days. The judge may decide for keeping the juvenile's location confidential and, when necessary, establishment of personal contact.

An urgent protection decision can only be rendered for a limited period of maximum thirty days. Within this period, the Agency shall carry out a social enquiry regarding the juvenile. If, following the enquiry, the Agency concludes that there is no need to decide for a measure, it shall notify the judge of its opinion and the services it will provide. Whether the juvenile is to be delivered to his/her family or whether any other measures are to be taken shall be decided by the judge.

In case the Agency concludes that a measure is required for the juvenile, it shall file a request to the judge demanding for a protective and supportive measure.

It is accepted that in urgent cases the court can decide ex officio on an urgent protection decision and this decision has not to be compulsory sent to the Social Services and Child Protection Agency. The court can decide to submit the decision directly to the public prosecution service for its execution.