

Answers to the

Questionnaire on principles of public prosecution as regards juvenile justice

Country: **Germany**

I. Criminal justice System

- 1. For far more than one hundred years, Germany has an explicit policy on juvenile delinquency. Since 1908, the Juvenile Court Act (YCA) focuses on the idea of education and rehabilitation of young offenders rather than that of their punishment and retaliation. These principles have been enriched repeatedly by many challenges, such as the goal to limit the time of deprivation of liberty and to implement diversion measures. The German YCA, especially the one 1923, has inspired the legislation of many countries. The Act finds application to offenders who are between fourteen and eighteen years of age at the time of their offence. The young offenders are to be prosecuted only if they are mature enough to realize their wrong doing and are capable to act appropriate. The Act also applies to offenders between the age of eighteen and twenty-one, if their personal development is like a young offender or the offence is typically youth –like. According to the YCA, the young offenders are prosecuted for the same types of offences like the adults but with different consequences. Imprisonment is the last measure and can only be imposed by the judge; Prison time is kept between six months and ten years.**
- 2. In Germany, there are specialised public prosecutors for juvenile offenders and for the protection of juvenile victims. They are organised in special units within the prosecution office, but not in special entities outside the prosecution service and not together with the juvenile court-system or juvenile judges.**
- 3. According to the YCA, the Chief Prosecutor of every prosecution office has to appoint specialised prosecutors for juveniles. They should be capable and experienced in the education and bringing-up of children and juveniles. Youth prosecutors are permanently trained in special training programs in all fields of science and society, including social developments and questions of psychology. This year, for instance, there are training courses on the treatment of victims as witnesses, violence within the family, stalking, child abuse, child protection in general, family and custodian (care) law, protection of children during investigation and proceedings, investigation in the field of drugs and crime, treatment of young intensive offenders, cooperation with police, court, youth authorities, juvenile delinquency and crime prevention, best practices in the every-day-work of youth-prosecutors, new developments in the youth law field, psychiatry and criminal law, psychology of witnesses).**
- 4. In General, in cases with young victims juvenile prosecutors should be involved in the investigations from the very beginning. They are respon-**

sible for a confidential atmosphere during the hearing. They must take care of the presence of a lawyer and of the parents or custodians both of the victim and of the offender, if this is appropriate to avoid a repetition of investigative measures. They should seek for speeding the investigations and the court proceedings. They may initiate or chose educational alternatives to prosecution to a broad extent. At a very early stage of the investigation, prosecutors have to involve social workers to find out the family background and the situation of the young offender. To avoid pre-trial detention of juvenile offenders, prosecutors should initiate alternatives like special closed homes for jeopardised young people.

5. Prosecutors play a key role in all cases of pre-trial custody, detention and imprisonment. Because of the added danger of any deprivation of liberty for juveniles – including committing suicide or being “infected” by adult prisoners – prosecutors have a special task to keep these measures as short as possible. On the other hand, at all stages before and after the conviction they have to care for the non-intervention and influencing of victims or other witnesses by the young perpetrator.
6. In Germany, prosecutors are part of the local social network. They join conferences about social burning points, initiate city policies or other social measures to prevent young people from becoming criminals or to suppress severe criminality.
7. By law and in practice, prosecutors play a key role in the coordination and cooperation of the main actors in the criminal investigation process. For example in my district, I have implemented guidelines for prosecutors, which should help to protect young victims as witnesses in criminal proceedings of child abuse. Prosecutors should be sensible, well trained and fitted with some experience. They need to have contacts to colleagues who work in the same field. They should initiate and organise interdisciplinary work-shops together with the police, courts, lawyers, medicines, psychologists, public youth-authorities and private victim-protection-organisations (NGOs). From the beginning of the investigation, police has to come into contact with the prosecutor who decides about the investigative and protective measures. The prosecutor has to inform the relevant (youth and social) authorities and family and criminal courts. He or she has to decide about asking for pre-trial arrest or detention and for defence and victim lawyer. If a corporal inspection of the victim is needed, the prosecutor has to take care that this will be done by an experienced medicine and that the human rights of the victim are respected. The interrogation of the victim has to take into account, that these are vulnerable persons. On the other hand the prosecutor has to prevent the victim from undue influence by contact persons which may inflict the credibility of the witness in regard of the future proceedings. Generally, prosecutors should interview the victim themselves or ask a judge to do so; if possible by video-technique and in the presence of an expert on credibility of testimony to prevent a repetition of the interrogation. Prosecutors should fully inform all involved persons about their rights and duties, including civil compensation. During the court proceedings, prosecutors have to avoid the meeting of the offender and

the victim outside and, if appropriate, even inside the court-room. During the court hearing, the prosecutor is responsible (together with the judge) for a calm atmosphere. After the sentencing, prosecutors have to take the appropriate measures to avoid a recurrence of the crime.

II. Civil justice system and administrative measures.

8. In civil and administrative proceedings prosecutors do not play a legally binding role. Specialised juvenile authorities and guardian courts take care of young persons if needed. Prosecutors have the obligation to inform the appropriate authorities, parents or guardian courts in course of the criminal cases they have to work on. So they may initiate guardianships or administrative, educational or pedagogical measures. Every victim of an offence gets written information about the rights of compensation by the prosecution service.
9. According to German law, ex-officio investigations have to be initiated by the prosecution service only if there is a supporting fact that a crime has been committed. For example, if a child has died by negligence of the parents and public authorities have had knowledge of family problems before, prosecutors may start a criminal investigation against the responsible officials.
10. Within the local frameworks, prosecutors play an important role in crime prevention measures that are taken by the administration. For example, there are designated correspondents for schools or soccer-hooligans.
11. see answer No. 8. and 9.
12. see answer No. 8. and 9.

III. Any other remarks

In addition to the wide range of prevention measures to protect people and society from crimes and victimisation the investigation and prosecution activities and measures play an important role in combating juvenile criminality. Statistics seem to prove that the German criminal justice system is working efficiently. Only thirty percent of the offenders have committed second or more crimes. The criminological and statistical results seem to prove that the basic principle of German juvenile justice, the principle of education and discipline remains valid. In this field, Prosecutors have the responsibility from the beginning of the criminal proceedings, have to decide whether to drop the cases or to prosecute with appropriate measures or to ask for prison sentences as a measure of last resort.

