

Answers to the Questionnaire on Principles of public prosecution as regards juvenile justice

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.)

The criminal law secures better criminal protection of juveniles and provides for some specific procedures for bringing juveniles to the criminal liability, assignment of punishment, relief from punishment and completion of sentences with due regard for their biological, psychological and social features. Such position relies on the international legal acts, in particular, the Declaration of the Rights of the Child dd. November 20, 1959 saying that “a child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection” (Preamble).

Criminal proceedings of juvenile crimes are based on the general principles of the criminal law and the criminal procedure. However, they have some peculiarities dealing with the age limitation for bringing juveniles to criminal responsibility, limited types and terms of sentences, application of other measures not related with the criminal penalties (compulsory measures of educational character), circumstances in proof, the number and status of persons taking part in the criminal proceedings etc.

In general, persons who have reached the age of 16 before the commitment of a criminal offense shall be criminally liable (paragraph 1 of Article 22 of the Criminal Code of Ukraine), and persons who have committed especially grave crimes (a murder; an attempted killing of a statesperson or public figure, a law enforcement officer etc.; an intended grievous bodily injury; an intended bodily injury of medium gravity; sabotage; gansterism; an act of terrorism; hostage taking; rape; violent unnatural satisfaction of sexual desire; theft; robbery; brigandage; extortion; willful destruction or endamage of property; endamage of communication routes and means of transportation; theft or seizure of the railroad rolling stock, an air-, sea- or a river-craft; misappropriation of a vehicle; and hooliganism) shall be criminally liable after reaching 14 years (paragraph 2 of Article 22 of the Criminal Code of Ukraine).

The necessity to single out special provisions on the criminal liability of juveniles is predetermined by the principles of fairness and humanism, as well as the objective of their re-socialization.

The courts adopt measures of educational character against minors in the age under 11, who have committed socially dangerous acts meeting criteria of a crime, until an offender reaches the official age of criminal responsibility, as provided for by Article 105 of the Criminal Code of Ukraine (warning; restriction of leisure time and special requirements to a minor's conduct; placing a minor under supervision of his/her parents or foster parents, or school teachers or colleagues upon their consent, or other individuals at their request; obliging a minor, who has attained 15 years of age and possesses any property, money or has any earnings, to compensate any pecuniary damages; placing a minor in a special educational and correctional institution for children and teenagers until the minor's complete correction but for a term not exceeding three years.)

Subject to paragraph 1 of Article 97 of the Criminal Code of Ukraine, a minor under 18 who has committed a crime of minor or medium gravity for the first time, may be discharged from criminal liability, provided that his/her reformation is possible without punishment. In such cases, a court shall impose compulsory reformation measures upon the minor.

Some general provisions of the Criminal Code of Ukraine are aimed at strengthening criminal protection of children who have committed crimes and victimized children.

Thus, sub-paragraph 3 of paragraph 1 of Article 66 of the Criminal Code of Ukraine defines commitment of an offense by a minor as the attenuating circumstance. At the same time, commitment of an offense against a minor (sub-paragraph 6 of paragraph 1 of Article 67 of the Criminal Code of Ukraine) or the commitment of an offense through the use of a minor (sub-paragraph 9 of paragraph 1 of Article 67 of the Criminal Code of Ukraine) are defined as the aggravating circumstances.

The section of the Criminal Code of Ukraine devoted to the specific features of criminal liability and punishment of minors contains the great number of provisions on crimes against minors (or some categories of minors) or crimes with aggravated liability if committed against minors.

Article 102 of Criminal Code of Ukraine establishes some limitations on punishment of imprisonment imposed on persons who were under 18 years of age at the time of commitment of an offence. Thus, imprisonment shall be imposed on a minor who committed:

a repeated minor offence - for a term exceeding two years;

a medium grave offence - for a term exceeding four years;

a grave offence - for a term exceeding seven years;

a special grave offence - for a term exceeding ten years.

a special grave offence involving a murder - for a term exceeding fifteen years.

In addition, imprisonment may not be imposed on a minor who committed a minor offence for the first time

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

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

Specialization of prosecutors (and judges) taking part in proceedings of crimes committed by minors and/or against minors, is not defined on the legislative level.

However, there is an interdepartmental specialization. Subject to clause 7.1 of the order of the Prosecutor General of Ukraine dd. April 15, 2004 N 6/1 "On organization of operation of the prosecution agencies in the sphere of protection of rights and freedoms of minors", the public prosecution in criminal cases dealing with juvenile offences shall be vested on the most experienced prosecutors. Usually, they are prosecutors supervising over law observance on protection of rights and freedoms of minors. Public prosecutor took part in all proceedings in criminal cases dealing with offences and dangerous acts committed by juveniles.

Courts have the similar departmental specialization.

The recent Concept of the Juvenile Justice Development in Ukraine supports such specialization.

As a rule, prosecutors undergo advanced training with the National Academy of the Public Prosecution of Ukraine at least every five years.

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.

Subject to Article 308 of the Code of Criminal Procedure of Ukraine, a victim is examined in accordance with rules governing examination of witnesses. Subject to Article 168 and Article 307 of the Code of Criminal Procedure, a minor witness under 14 years of age and, upon the court's discretion, under 16 years of age shall be examined in court in the presence of a teacher and, if required, of a doctor, parents or other representatives in law.

After examination of a minor witness, the latter shall be removed from a courtroom, unless the court finds that presence of such witness in a courtroom is required. On exceptional basis, when interests of the case or protection of a witness so require, a minor witness can be examined, upon the court's ruling, in the absence of the defendant. At that, after the defendant returns to a courtroom, the court shall make him/her aware of a witness's testimonies and give him/her the possibility to ask a witness questions and provide explanations on the witness's testimonies.

Minor victims under 16 years of age shall not be warned about the criminal liability for intentional misinterpretation; they shall be informed on their duty to tell the truth only.

In compliance with the legislation currently in force, a prosecutor produces evidence, participates in examination of evidence, and files motions (including requests for new evidences) (Article 264 of the Code of Criminal Procedure of Ukraine).

Article 98 of the Criminal Code of Ukraine contains the exhaustive list of penalties imposable on minors who committed any criminal offence (a fine; community service; correctional labor; arrest; imprisonment for a determinate term as major types of penalties; a fine and disqualification from some offices or activities as supplementary penalties).

It is half as much penalties applicable to adult offenders.

In practice, the vast majority of juvenile offenders are placed under supervision of their parents; and individuals who committed crimes of minor gravity for the first time are subject to conditional sentences without imprisonment.

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?*

When performing functions in the system of criminal justice in relation to juveniles, public prosecutors shall have the same tasks and authorities as defined by the general rules. At that, they shall take into account the specific legal status of minors.

Article 434 of the Code of Criminal Procedure of Ukraine reads that a juvenile may be apprehended and committed to custody only in exceptional situations when such a measure of restraint is justified by the severity of the crime incriminated to the juvenile concerned, upon availability of grounds and in accordance with Articles 106, 148, 150, and 155 of the Code of Criminal Procedure of Ukraine. Parents and persons who fulfill parental functions should be informed on apprehension and placement of a juvenile in custody.

When an investigator approves a submission of a request on keeping a juvenile offender in custody, the prosecutor shall examine all facts of the case and verify legality of evidences collected before filing a request with the court. With due regard for advisability or groundlessness of isolation of a juvenile offender, the prosecutor shall approve or reject a submission of an investigator on selection of the above referred preventive measure.

It should be noted that in each particular case public prosecutors shall carefully verify the necessity of keeping juveniles in custody and shall examine juveniles in all cases. The relevant procedure is regulated with clause 5.1 of the Order of the Prosecutor General of Ukraine N 4 dd. September 19, 2005 “On organization of the procurator's supervision of adherence to the law by the examination and investigation bodies”.

At the stage of pre-trial investigation prosecutors shall verify legality of refusals in opening a criminal case dealing crimes against children or closing of such cases.

6. What is the role played by public prosecutors in the partnership with local social and administrative agencies working in the field of juvenile delinquency? For instance, are public prosecutors involved in the choices regarding the city policies and do they participate in instances where these partners sit together with elected persons (such as city mayors), schools, teachers, etc.?

Prosecutors coordinate activities of law-enforcement bodies, social and administrative agencies in the field of juvenile delinquency. They share information; during coordination meetings, prosecutors hear reports of representatives of such bodies and agencies, make motions, including those submitted to local self-government bodies, for taking the required actions.

Representatives of enterprises, institutions and organizations minor studies at or works for shall take part in the court processing; it strengthens the pedagogic effect to the trial and allows getting the fullest data on the personality and behavior of a minor, his/her background, education and labor conditions (Article 443 of the Code of Criminal Procedure of Ukraine).

For additional educational pressure, other organizations, like custodian bodies, health care institutions, civil society organizations and intermediates in the process of reconciliation of victims with minor offenders, shall take part in the court proceeding with participation of minors. If reconciliation is attained, the court can impose the most suitable measures of educational character against minors with due regard for material circumstances, when solving the issue of releasing from liability because of adoption of compulsory measures of educational character or reconciliation with victims.

The above referred representatives of enterprises, institutions or organizations shall not have independent procedural rights, but they can be examined by the prosecutor or the court as witnesses, if required.

In addition, a legal representative of a juvenile defendant should be present during the court sitting (Article 441 of the Code of Criminal Procedure of Ukraine). Subject to paragraph 10 of Article 32 of the Code of Criminal Procedure of Ukraine, “representatives in law” shall be parents, custodians, caretakers of the person concerned or representatives of institutions and organizations, which took custody, or care of the persons concerned.

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.

Subject to clause the order of the Prosecutor General of Ukraine dd. April 15, 2004 N 6/1 “On organization of operation of the prosecution agencies in the sphere of protection of rights and freedoms of minors”, public prosecutors shall oversee adherence to laws in activities of the Services in Charge of Juveniles and the Criminal Juvenile Militia with due regard for the crime rate, occurrence of juvenile crimes and status of rights of the minors. Prosecutors shall audit Services in Charge of Juveniles and departments for family, children and youth affairs; take measures for raising the level and efficiency of the preventive

measures of the Criminal Juvenile Militia; respond towards violations of the law on search for missing children, prevent involvement of juveniles in the criminal and other illegal activities.

Also, public prosecutors oversee adherence to the laws aimed at protection of rights and interests of children. It is one of the major directions of prevention crimes and offences among minors, in particular, in the sphere of life and health protection, education, recreation and leisure, benefits and guaranties for minors, in particular those dealing with adoption.

Also, the public prosecutor takes part in all court proceedings dealing with offences committed by minors. At that, the court May cite representatives of the Service in charge of Juveniles and the Criminal Juvenile Militia to appear in court session. A representative of the Service in Charge of Juveniles may express his/her opinion about the most appropriate form of re-education of the defendant (Article 442 of the Code of Criminal Procedure of Ukraine).

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

The policy of the Ukrainian state in relation to justice for juveniles mainly focuses on the educational and preventive aspects. The current laws of Ukraine provide for the special procedure of execution of justice for minors, which is regulated by provisions of the criminal procedural law (Chapter 36, Articles 432-449 of the Code of Criminal Procedure of Ukraine). The said procedure establishes additional guarantee for preservation of rights and lawful interests of juveniles (the right to defense, specific procedures of detention and arrest, examination etc.), as well as regulates relief from criminal penalties or completion of sentences. Specific features of the criminal liability and punishment of juveniles are regulated by Section XV (Articles 97 – 108) of the Criminal Code of Ukraine.

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

Specific authorities of the prosecution agencies are justified by the fact that minors cannot protect their rights by themselves; their representatives in law often ignore their duties of children protection. Acting within limits of their competence, prosecutors can open criminal cases, issue acts of the prosecutor's response (orders, protests, submissions), raise issues on bringing individuals who affected the rights of children, to liability, file claims on behalf of minors (Article 121 of the Constitution of Ukraine, Articles 20-24 of the Law of Ukraine On Prosecutor's Service) in order to protect rights and interests of children. Thus, the Ukrainian law contains provisions on criminal liability for persistent failure to perform duties related to the care of a child (Article 166 of the Criminal Code of Ukraine) and abuse of the rights of guardian (Article 167 of the Criminal Code of Ukraine).

Last year, the prosecutor's services initiated 1,700 criminal cases aimed at protection of children, issued more than 18,000 response documents, secured remuneration of social and other benefits to the amount of UAH 55 million, and restored rights of 185,000 children.

Prosecutors also perform representative functions; for example, prosecutors take part in all cases dealing with deprivation of the parental rights and adoption.

10. What is the specific role of public prosecutors in applying protective and educative measures towards juveniles? Within the framework, are public prosecutors in relations with other instances or bodies such as, for instance, community homes, schools and how are their contacts with these bodies organized (designated correspondents, free telephone line, etc)?

Central and local authorities cooperate with welfare and law-enforcement agencies, including the prosecution services, in order to prevent offences among children and minors,

develop the special preventive measures, share information, and discuss the juvenile crime status on a regular basis during the inter-departmental coordination meetings, schedule specific actions for elimination of reasons and conditions nourishing the juvenile delinquency.

Prosecutors supervise over law observance by the Services in Charge of Juveniles and the Criminal Juvenile Militia in their activities, as well as the special institutions for minors. At that, prosecutors perform regular audits; on a monthly basis — at the reception centers for juveniles; on a quarterly basis — at shelters for minors; at least once in every six months — at secondary schools and vocational schools of social rehabilitation, centers of medical, social and psychological rehabilitation.

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

In cases of child abduction by one parent or in other family-related cases when interference of the prosecution service is required, a public prosecutor shall act within limits of his/her competence with due regard for the circumstances. If signs of a crime covered by paragraph 2 of Article 146 of the Criminal Code of Ukraine (illegal confinement or abduction of a person, in particular, committed in regard of a minor) are available, the prosecutor shall verify the case under the procedure established by Article 97 of the Code of Criminal Procedure of Ukraine and resolves on opening a criminal case or on refusal in opening a criminal case.

Article 162 of the Family Code of Ukraine stipulates legal consequences of illegal conduct of one parent or another person at determination of the place of residence of a minor. Subject to the above referred provision, if one parent changes a place of residence of a child without consent of another parent, including child abduction, the court shall issue an order on withdrawal of a child and return his/her to the previous place of residence without delay upon a claim of the person concerned. The prosecutor shall have the right to file the relevant claim on behalf of a child.

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?

In order to protect a child's rights, the prosecutor shall have the right to file a claim for deprivation of the parental rights of parents who neglected their parental duties or for withdrawal a child from a family and placement with a welfare institution etc.

Prosecutors shall resort to all forms of representative activities when protecting social, housing, and pecuniary rights of minors in court. At that, prosecutors shall have the right to file claims for restoration of affected rights and claims against illegal change of specialization and alienation of child institutions, utilization of budgetary funds allocated for implementation of the child programs, for illegitimate purposes. They use materials of prosecutor's audits, criminal cases, citizen appeals, information from public authorities responsible for protection of the minor's rights.

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