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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Questionnaire on principles of public prosecution as regards juvenile justice

Background information

Juvenile justice is one of the most challenging and complex field of action for prosecutors. Today the functions of juvenile prosecutors go beyond prosecution and proceedings as they should cope with other activities such as working with civic and social groups, school and the community itself to prevent juvenile crime.

This questionnaire addresses the prosecution of offences where a child is victim, witness or perpetrator. It primarily focuses on juveniles in the criminal justice system. Additionally it touches upon the place of children in civil cases and administrative proceedings.

The aim of this questionnaire is to find out the best practices and standards of the role of prosecutors in the field of juvenile justice in the Council of Europe member states. The replies to it will serve as a basis for the drafting of the Opinion N°5 of the Consultative Council of European Prosecutors on “the principles of public prosecution as regards juvenile justice”.

This survey is aimed at the role of public prosecutors, therefore it is up to the members of the CCPE to reply to it in consultation, if need be, with the specialists in juvenile justice in their countries. This exercise is a separate one from the survey on juvenile justice organised in 2006 by the CDPC. Nevertheless, the part of the questionnaire “any other remarks and peculiarities” should contain information regarding major reforms that have been done or are under way concerning juvenile justice in the criminal field and the protection of juveniles in danger which may involve important changes since 2006 as to the role of prosecutors in this field.

Country: ARMENIA

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.)

There is no framework law on juvenile justice, however, and the Chapters of the Criminal Code and the Code of Criminal Procedure on juvenile suspects, accused and offenders are short and do not incorporate the basic principles set forth in Articles 37 and 40 of the Convention on the Rights of the Child. Legislation on the treatment of prisoners contains some provisions that are incompatible with international standards, such as those authorising solitary confinement of juveniles as a punishment for 5 or 10 days.

The Rights of the Child Act contains two articles on juvenile justice. The Code of Criminal Procedure and the Criminal Code adopted in 1998 and 2003, respectively, made important changes on the law concerning juvenile offenders. Some additional improvements were made in amendments to the Code of Criminal Procedure adopted in 2001 and 2006, and still others are under consideration at this writing.

The minimum age for the prosecution of juveniles is 14, for more than 20 serious offences. Persons 16 years of age may be prosecuted for any offence recognized by the Criminal Code. Juveniles who have reached these age limits do not have “criminal liability” if they are “not able to understand the nature and significance of one’s actions or to control one’s actions” due to “retarded mental development.”

No law expressly and specifically regulates the treatment of children under the minimum age for prosecution who become involved in criminal activity, that is, any child under 14 involved in any offence recognised by the Criminal Code, and those aged 14 or 15 who participate in **un**listed offences. In practice, they are assimilated to children who commit “anti-social behaviour”. One article of the Law on Education refers to the treatment of such children.

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 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.

Armenian authorities are aware of the recommendation of the Committee on the Rights of the Child that specialized juvenile courts should be established. The main

reason given is the small number of trials of juveniles - 156 cases in 2008, according to the Department of General Investigation. There also is a general reluctance to establish specialised courts. In 2008 trial courts were separated into civil and criminal courts, but this measure was rescinded ten months later and all trial courts again became courts of general jurisdiction. In practice, however, most judges in trial court are specialized and handle only criminal or civil cases.

In the short term, the most practical way of ensuring that juveniles accused of an offence (and children involved in criminal cases as victims or witnesses) are tried by judges having special training in child development, child rights and related matters would seem to be designating one judge in each court to handle such cases. This could be done administratively, with no need for legislative action. The same kind of measure could be taken with regard to prosecutors. In both cases, there appears to be some receptivity to taking this step.

In the longer term, the effectiveness of designated judges and prosecutors in ensuring compliance with relevant principles and standards on the rights of juvenile offenders could be evaluated through the monitoring of trials of juveniles (and eventually other criminal trials involving children). The caseload of courts also could be examined with a view to assessing whether the 'demand' for a specialized court is sufficient to warrant the creation of one in the capitol, where more cases involving juveniles arise. The logical time to do this would be after sufficient time has passed to evaluate the results of further efforts to develop diversion and prevention programmes.

In 2004 one judge from each trial court participated in a training course on juvenile justice and alternative sanctions co-sponsored by UNICEF, the OSCE and ABA ROLI. The Judicial School also organized an in-service training course on child rights in 2008, in cooperation with UNICEF. A course on juvenile justice has been added to the curriculum for candidate judges, and twenty judges have graduated since it was added to the curriculum. There is, however, no regulation or policy requiring that each trial court have at least one judge having any special training in child rights or juvenile justice.

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

Training on the rights of children has been institutionalized in the Police Academy. Annual in-service training is obligatory for both judges and prosecutors, and issues concerning juvenile justice have been incorporated into such training. Prison staff also have participated in ad hoc training on the rights of children.

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.

sentencing of juvenile offenders – alternative sentences

The most commonly used “alternative sentence” is the called “conditional punishment”, the equivalent of a suspended sentence or probation. It can be imposed when a sentence of imprisonment has been imposed, but the court concludes that “the correction of the convict is possible without serving the sentence.”

The Criminal Code also provides for fines and “public work” (community service). Public work may not be imposed on offenders under the age of 16. Fines may only be imposed on convicted juveniles who have their own income or property. In addition, the courts have discretion to impose other measures on first offenders who have committed minor or medium offences. These “disciplinary measures” – warning, parental custody, reparation of the victim, restrictions on conduct or placement in special educational facilities for juvenile offenders or “medical-educational” facilities are not considered sentences. In reality, special educational or medical facilities do not exist. The duration of the other measures may not exceed 6 months. If the juvenile does not comply with the measures imposed, the order may be cancelled and a sentence may be imposed.

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?

There is no limit to the duration of detention once the trial begins. The lack of such a limit is not compatible with the recommendation made by the Committee on the Rights of the Child in 2007, to the effect that all cases involving juvenile accused of an offence should be resolved within 6 months.

sentencing of juvenile offenders – custodial sentences

The maximum length of the sentences that may be imposed on juvenile offender for other offences depends in part on the age of the offender and the gravity of the offence: the maximum sentence for offences of minor offences is 1 year, for offences of medium gravity - 3 years; the maximum for the most serious category of crimes committed by persons under the age of 16 is 7 years for a single offence, and the maximum for serious or very serious offences committed by juveniles 16 or 17 years of age is 10 years, for a single offence. The total sentence for juveniles convicted of multiple offences may not exceed 7 years for juveniles between the age of 14 or 15, and 10 years for those aged 16 or 17.

In principle, another type of sentence consisting of a short period of imprisonment (from 15 days to 3 months) can be imposed on juveniles 16 or 17 years of age, but this sentence has fallen into disuse, at least for juveniles.

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

In 2008, the Government approved a National Programme for the Prevention of Crime 2008-2012. Three of the nine activities envisaged by the Programme specifically concern juveniles: the creation of “rehabilitation centers for juvenile offenders in Yerevan, Gyumri and Vanadzor”; ensuring cooperation between the municipal Child Protection Units and NGOs, and the introduction of Juvenile Police officers in ten secondary schools on a trial basis. The decree approving the Programme also established an inter-ministerial commission to coordinate implementation. The commission should meet quarterly, but to date it has met only once, in August 2009

The governmental bodies that have most responsibility for the prevention of offending by juveniles are the Juvenile Police and the newly established “Child Protection Units.” There are 280 juvenile police officers throughout the country, and all have received training on child rights and related issues. A code of conduct on the treatment of children was adopted in 2005.

Traditionally, the Juvenile Police undertake this responsibility mainly through the “registration” of children at risk. They have now taken on another role in a “legal socialization” project aimed at sensitizing school children about offending. This project, known as Project “Zang”, has been incorporated into the National Programme for the Prevention of Crime and is implemented with the assistance of the NGO “Project Harmony Armenia”. It is implemented in grades 6 to 9 by teams of teachers and Juvenile Police officers. Initially there was resistance, because of the bad image of the police, but parents and schools later evaluated the experience positively. The organizers also report that the programme has helped change the attitudes of participating police officers.

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 main function of prosecutor prescribed by the law is to carry out the procedural control of investigation, to make mandatory instructions, to cancel illegally made decisions of investigators.

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.

Prosecutors have no any special functions on this field; they just operate within the powers granted to it by the Constitution and on the basis of the Law on Prosecutor's office.

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

Police officers and investigators both investigate crimes. Their roles overlap, but are not identical. Investigators are posted in every province, under the authority of the head of the Department of General Investigation in the capital. They do not answer to the head of the police in the province in question.

As in most countries, the police have the power to detain for purposes of investigation persons “suspected in immediate [commission] of crime”, i.e. those caught in the act of committing an offence, identified by an eye-witness or found in possession of evidence of the offence shortly after an offence, those who flee the scene of a crime, or who not resident of the area where the offence occurred or cannot identified. Whether they are adults or juveniles, such persons may be detained by the police for 72 hours without a court order.

In addition, the police have a broader power to “institute a criminal case” and carry out an “inquiry” regarding reported crimes. The aim of an inquiry, which must be completed within 10 days, is to collect evidence of the crime and “discover” the offender. In the exercise of this function, police officers may take suspects into custody and interrogate them. If the police obtain sufficient evidence to charge a suspect, the case is forwarded to the Department of General Investigation.

When a case is forwarded to the Department of General Investigation, investigators carry out - or complete - a preliminary investigation. The preliminary investigation begins when a decision to “initiate criminal prosecution” has been made, and may last two months. Investigators have authority to detain and interrogate suspects during the preliminary investigation, but only for 72 hours. Further deprivation of liberty can only be authorised by a court once the suspect is charged, thus becoming an accused. The preliminary investigation ends when the case is forwarded through the prosecutor to the court for indictment, or closed.

Suspects and accused persons have the right to an attorney as from the time of detention or accusation, and to have an attorney present during interrogation. The participation of a defence attorney in criminal proceedings is mandatory (i.e. cannot be waived) if the suspect or accused was a juvenile at the time of the offence.

Relatives of detained juvenile suspects must be informed immediately, and have the right to visit. If the detainee is under the age of 16, parents also have the right to be present

when he or she is interrogated. If the presence of parents cannot be arranged, a representative of the Guardianship and Tutelage Council should take their place. In practice, however, this does not always occur.

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)?

Prosecutors have no any special functions on this field; they just operate within the powers granted to it by the Constitution and on the basis of the Law on Prosecutor's office.

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

It is regulated in general by provisions the Criminal Procedural and Criminal Codes of Armenia.

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?

Prosecutors have no any special functions on this field; they just operate within the powers granted to it by the Constitution and on the basis of the Law on Prosecutor's office.

III. Any other remarks and peculiarities which could be indicated, according to you, and which concern the role of public prosecutors in your country vis-à-vis juvenile justice.