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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^o 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: Cyprus

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.)

- In Cyprus, the Attorney General's Office is fully responsible for the prosecution policy in the Republic. See Q.7. There have been a number of circulars issued by the Attorney General and directed to public prosecutors regarding the dealing of prosecutions which involve juveniles and there is a particular sensitivity for these cases at the Law Office.

- The current situation in Cyprus Law regarding the age of criminal responsibility (after the enactment of Law 18(I)/2006) is that children *under the age of 14 are not criminally responsible at all* and young persons up to the age of 16 are criminally responsible, but dealt with according to the Juvenile Offenders Law.

- According to article 12 of the Juvenile Offenders Law, the choices that are available to the Court are the following: a) dismissing of the charge; b) imposing probation; c) committing the offender to the care of a relative or other fit person; d) sending the offender to a reform school; and e) ordering the offender to pay a fine or to restore the damages to which he or she was liable. Only as a last resort, and after having been persuaded that there is no other alternative, the Court may also sentence the offender to imprisonment.¹

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.

¹ At the time when children under the age of 14 were criminally responsible, before the enactment of Law 18(I)/2006, only the rest of the methods – a) to e) – were available to deal with them, since imprisonment was strictly prohibited for children.

Our justice system does not provide for specialised public prosecutors for juveniles.

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

See Q2.

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.

- The public prosecutors are not directly involved in the investigation. They can only give directions to the Police regarding the investigative stage.

- The Police Regulation No. 5/18 entitled 'Interrogation and Handling of Cases Involving Juvenile Offenders' explains the ways in which the Police handle juvenile offenders in accordance with the provisions of the Juvenile Offenders Law, Cap. 157. Explanations are given for the procedures which are followed by the Police for Children under the age of 14, as well as for Young Persons between 14–16 years of age who are involved in various offences.

- Furthermore, this Police Regulation includes General Instructions, where it is emphasized that when the Police handle cases concerning Juveniles, have to bear in mind, among others, the following:

1. The Interrogation and the taking of statements from juveniles must be done in the presence of a parent or guardian (Article 12.3 of the "Rights of Persons being Arrested and taken into Custody" Law of 2005).

2. In cases involving students, their arrest and interrogation in the school must be avoided. If this is necessary, it must be done with the consent and in the presence of the school's director or his/her representative.

3. In case of an arrest or an accusation against a juvenile, the parent or guardian and the District Police Commander must immediately be notified.

4. When a juvenile is held in custody of a Police Station, any association with an adult who is not a relative of his/her must be avoided.

- In Article 6 (b) of the “Rights of Persons being Arrested and taken into Custody” Law (163(I)/2005) it is provided that when a person under the age of 18 is arrested, the Social Services are also informed, if the best interest of the young offender so requires. Article 10 of the same Law provides that the interrogation of persons under the age of 18 must be done in the presence of his/her attorney and if he/she so wishes in the presence of a parent or guardian (Article 12.3) Furthermore, when a person under the age of 18 is held in custody of a Police Station, he must be kept in a separate cell.

- When Juvenile offenders are criminally liable (14 years old and above) and commit a criminal action can still be dealt with the outside of the court system in order (*inter alia*) to avoid getting into touch with the Criminal Justice System too early. As far as this choice is concerned, there are the following possibilities:

- a) The Police can simply take no further action against a minor suspect and give just a warning/caution. Theoretically, after the agreed procedure between the Police, the Social Services and the Attorney General’s Office (see Q7), the Police cannot take this decision by itself, but in practice, this can be occurred especially regarding very minor offences.
- b) When the Juvenile Committee decides that no prosecution is advised, and the Attorney General agrees, then either no further action is taken, or the Police is directed to give simply a warning to the young offender, or the young offender is referred to the Social Services and the same measures can be taken as in the cases of children in need of care and protection.

- It should be stated that, apart from these measures that can be taken regarding young offenders, there are no other diversion programmes or victim-offender mediation schemes that can be applied. This is the case not only as far as young offenders are concerned, but also regarding adult offenders. At the moment, though, a draft bill providing mediation in criminal (as well as in family law) cases is under discussion in the Parliament.

- Apart from being dealt with out of court procedures, a juvenile offender can always be prosecuted. If found guilty, a judge could impose the following series of measures available by law:

a) According to the *Juvenile Offenders Law (Cap. 157)* , the choices available to the court in dealing with a juvenile offender are the following:

- dismissing of the charge,
- imposing probation,
- committing the offender to the care of a relative or other fit person,
- sending the offender to a reform school,
- ordering the offender to pay a fine or to restore the damages to which he or she was liable,
- only as a last resort, and after having been persuaded that there was no other alternative, the Court may also sentence the offender to imprisonment.

b) The *Probation/Guardianship and other ways of treating convicted persons Law (Law 46 (I)/96)* has introduced a wide range of other sentencing options for juvenile offenders (which can be also applied to adult offenders):

- order a guardianship order; the court places the young offender for a specified period not exceeding three years under the supervision of a probation office and it may also set certain terms that have to be obeyed,
- order a guardianship order combined with an obligation for community work, provided that the young offender consents to it,
- order a guardianship order combined with an obligation to attend a tutorial or training session, provided that the young offender consents to it,
- absolute discharge,
- conditional discharge.

c) Section 5 of the *Treatment of Drug Addicted Juveniles and Convicted Persons in Detoxification and Rehabilitation Centers Law of 1990 (57(1)/1992)* provides for another measure that a court could order

especially for drug addicted juveniles and this is the treatment order. This can be issued after an application by the juvenile's guardian supported by an affidavit which has to satisfy the court that the juvenile needs immediate treatment otherwise his mental/physical health are in severe danger, or there are foreseeable dangers for his future and his life, or he will probably cause harm to himself or to other persons. The length of this order may not be more than 24 months, renewable every 3 months. However, this provision of the Law has never been enacted, since it presupposes the existence of treatment centers that operate according to regulations issued by the Ministry of Health. These regulations until now have not been issued. The Law Committee of the Anti Drug Council for quite a long time has been working on a new law which hopefully will introduce practicable and effective provisions.

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?

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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.?

- The Attorney General's Office participates in a number of National Committees and Organizations working in the field of juvenile delinquency or other relevant fields.

- For example the AG's office participates in the Anti-Crime Council established by the Ministry of Justice and Public Order, aiming to develop a National Crime Prevention Policy and a Policy Formulation concerning the Treatment of Offenders. The Council is chaired by the Minister of Justice and composed of key agencies with an active role in the Prevention of Crime and Treatment of Offenders. The members who constitute the Council come both from governmental and non-governmental agencies. They represent the Ministries of Labour and Social Insurance, Education and Culture and the Ministry of Health. There are also representatives from the Attorney General's Office, the Supreme

Court, the University of Cyprus, the Youth Board, the Cyprus Radio Television Authority, the Union of Cyprus Municipalities and the Pancyprian Welfare Council.

The Council have looked into the situation in Cyprus and in other European countries, regarding the prevention of crime and treatment of offenders and have prepared a report. This report has included suggestions concerning a number of preventive programs and actions that are applied to the general population and high-risk groups and programs and measures for the treatment of offenders and the social rehabilitation of detainees. A significant part of this report has especially examined the situation in the country regarding juvenile crime and has taken the views of experts who had both practical and theoretical knowledge about the way in which children are processed through the criminal justice system.

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.

- In Cyprus, the Attorney General's Office is fully responsible for the prosecution policy in the Republic. In theory, the Office exercise control over all prosecutorial decisions taken by the Police, especially those concerning diversion from prosecution. In practice,² the Attorney General is closely dealing with only the most serious cases, and those regarded as exceptional, complex, or in need of particular attention.

- As far as the handling of juvenile cases is concerned, as early as in 1978, an agreement was reached between the Department of Social Welfare Services, the Police and the Attorney General. That evolved from the idea that, through inclusion and cooperation of a wide range of services involved in youth justice, a

² See Kyprianou, D (2009). *The Role of the Cyprus Attorney General's Office in Prosecutions: Rhetoric, Ideology and Practice*, Springer, Tornaritis, C. (1983) 'The Constitutional Power of the Attorney General to institute, carry out and discontinue any criminal proceedings', 2 *Cyprus Law Review*, 203 and Loucaides, L. (1974) *The Office of the Attorney General of the Republic of Cyprus*, Nicosia: UP.

better decision for the best interest of the juveniles can be made. It was the result of discussions within a Commission set up for the review of the way juvenile offenders are being handled within the system, which was comprised by representatives from the Attorney General's Office, the Ministry of Justice, the Police, the Judiciary, and the Social Welfare Services.

The principal points of that agreement were the following:

- a) When a child under the age of 14 commits a minor offence, the Police carry out a preliminary investigation in order to find out whether the child is really involved in the commission of the crime. If this is the case, then the Police refer the case to the District Welfare Officer to be dealt with by him, according to the powers that the law invests him with (see section 1.2.c and 4.2). The District Welfare Officer shall inform the Police about his decision.**
- b) When a child under the age of 14 commits a serious offence or when a young person between 14 and 16 years old commits an offence (minor or serious), the Police carry out the usual investigation and they inform the parents, as well as the District Welfare Officer, who has to prepare a social report about the juvenile, giving details about his/her background, family circumstances, character, etc. In each district of the jurisdiction, a Committee is established, made up of representatives from the Police and the Social Welfare Services, responsible for reviewing all those juvenile cases and suggest whether a prosecution is advised or not. For minor cases, if there is an agreement, a final decision could be made by the Committee. For more serious cases or where there is a disagreement, the Committee's suggestions as to the proper disposal of the cases and a review of the Social Welfare Services' report are forwarded to the Attorney General's Office with the relevant criminal file. Law Officers could endorse or overrule the decision of the Committee.**

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.

- The Director of Social Welfare Services is empowered by legislation to take juveniles in danger into his/her care. The Children Law/Cap. 352, as well as the regulations governing the policy of the Social Services Department, provide for various measures that Social Services can take in relation to a child in need of care, without judicial proceedings. The priority lies with the forms of voluntary assistance for families and children with behavioral problems, such as counseling, day-care of children to foster families etc.

Only if the possibilities for voluntary assistance are exhausted or insufficient, measures will be imposed as a result of judicial proceedings. The Children Law/Cap. 352 provides that a social welfare officer can bring a child to a Juvenile Court and the Court has the following choices available:

- order the child to be sent to a reform school,**
- commit the child to the care of a fit person,**
- order his parent or guardian to enter into a recognizance to exercise proper care and guardianship,**
- place the child for a specified period not exceeding three years under the supervision of a welfare officer or a probation officer.**

The Director of Social Welfare Services is represented in Court by officers of the Attorney General's Office.

(Note: According to Law 74(I)/2007, the Commissioner for Children's Rights has competence and responsibility, inter alia, to represent children and their interests in procedures affecting them and to be appointed by the court as their representative.)

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

- If there is a suspicion/allegation for the commission of an offence regarding which a juvenile is in anyway involved, as in any other case, the Attorney General is empowered to order the Police to initiate a criminal investigation.

- It is the responsibility of the Social Welfare Services to examine cases (ex officio or after a complaint) where children's physical and psychological integrity is in danger due to inadequate family care and/or other factors.

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)?

- See Q.8.

- If the parent of any child habitually and without reasonable excuse neglect to send the child to a school commits an offence and, therefore, the Attorney General can initiate a prosecution against him/her.

- Since 1998, according to a circular from the Attorney General, all Government Department officers (police officers, social workers, doctors, etc.), to whose attention came a case of domestic violence – especially those involving juveniles - have an obligation to submit a report to the Attorney General within seven days. A team of Law Officers would examine the reports and give directions.

- The Attorney General's Office participate in a number of National Committees and Organizations working in the field of juvenile justice.

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

- The Republic of Cyprus has acceded to the Convention on Civil Aspects of International Child Abduction signed in The Hague on 25.10.1980 which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. For the implementation of the Convention, the Ministry of Justice and

Public Order has been assigned as the Central Authority in the cooperation with the competent Central Authorities of other contacting states.

The Attorney General's Office represents the Central Authority in legal proceedings.

(There is also the Regulation (EC) 2201/03 concerning the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility which is applicable in Cyprus as a member state of the EU).

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?

See Q.8

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.