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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: ESTONIA

### 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 to the Child Protection Act, if a child who has committed a criminal offence is punished, criminal punishment, particularly imprisonment, shall be used only as a measure of last resort and is to be avoided. In the case of a child who has committed a criminal offence, measures such as counselling, probation, reconciliation, curatorship, and educational programmes for the prevention of legal offences shall first be applied.

For the purpose of ensuring the need arising from international and national legislation for uniform special treatment of minors in criminal proceedings, the Chief Public Prosecutor of Estonia has provided investigative bodies and prosecutor's offices with directions for pre-trial proceedings and recommendations for judicial proceedings in criminal matters where persons below the age of 18 participate in as victims, witnesses, suspects, or accused.

The primary purpose of penal power in the case of minors is to prevent the commission of new criminal offences, help them catch up socially, and integration. Thus, the primary purpose of affecting a minor is to educate, not to punish him or her. Requesting a prison sentence to a minor must be exceptional and deliberated by the prosecutor and it must be applied when choosing an alternative type of punishment is not justified.

In the Republic of Estonia, a person is capable of guilt if he or she is at least fourteen years old when committing the offence.

2. Does your country's criminal justice system provide for specialised public prosecutors for juveniles, entrusted with the implementation of specific laws and procedures?

Yes, in the Republic of Estonia, crimes against minors and crimes committed by minors are dealt with by specialised prosecutors.

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.

No separate entity has been formed together with judges, but judges and prosecutors participate in joint trainings and meetings, in which they discuss problems relating to work.

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

The prosecutors who are specialised in criminal offences relating to minors have obtained regular higher education in law, but they are provided with special trainings in Estonia as well as abroad; for all prosecutors in Estonia who are specialised in minors, joint round table meetings are held on a regular basis where the problems arising from work are discussed and which involve presentations given by various experts (e.g. psychologists, pedagogues, etc.). Prosecutors work in close cooperation with police units specialised in minors.

4. As regards victims of offences, can the public prosecutors apply specific procedures and means, in particular to collect testimonies?

A prosecutor may collect testimonies independently or with the assistance of investigative bodies but witnesses and victims who are below fourteen years of age are interrogated with the participation of a child protection official, social worker, or psychologist. A victim support specialist, who has counselled the victim, may also be involved in the interrogation. Witnesses and victims who are minors are generally interrogated in an interrogation room for minors, which is furnished with furniture and recording systems that consider the age of the child. In case of sexual offences and offences against the person, minors below 14 years of age are not interrogated more than once unless it is inevitable; if possible, minors who are victims in sexual offences and offences against the person are not summoned to court to give testimony directly for the second time if this may bring them new suffering. In such case, video recordings are being used.

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.

Prosecutors are formally not restricted by the law when choosing a punishment or sanction to be imposed on a minor, and the law does not connect it to the degree of the criminal offence or to previous punishments. Thus, the decision of the prosecutor is based on the circumstances characteristic to the person, on the proposal of the probation supervisor, on the opinion of the legal representative regarding the punishment or sanction, on whether the juvenile committee has previously imposed sanctions on the person, and on which effect such sanctions have had.

In all cases, the prosecutor may choose between the following options:

1. Terminate the criminal proceedings and send the materials to the juvenile committee of the minor's residence (a special committee which deals with the problems of young people at the local level and is not a part of the court system). Juvenile committees may impose the following sanctions: admonition; sanctions concerning the organisation of study; referral to a psychologist, addiction specialist, social worker, or other specialist for consultation; obligation to live with a parent, foster parent, guardian, or in a family with a caregiver, or in a children's home; community service; surety; participation in youth or social programmes or medical treatment; sending to a school for pupils who need special treatment due to behavioural problems. Before sending the materials to the juvenile committee, the prosecutor will explain to the minor and his or her legal representative the essence of the act with criminal elements and the grounds for terminating criminal proceedings. The juvenile committee will be sent a criminal file or selection of materials to the extent necessary for the juvenile committee for choosing the right sanction. Such measures are not entered into the punishment register of the person.
  2. Forward the materials to a court, which may impose the following alternative sanctions on the minor (will be entered into the punishment register):
    - 1) admonition;
    - 2) subjection to supervision of conduct;
    - 3) placement in a youth home;
    - 4) placement in a school for pupils who need special treatment due to behavioural problems.
  3. Bring charges and request a formal criminal sanction for the minor, e.g. a pecuniary punishment or imprisonment. Requesting a prison sentence to a minor must be deliberated by the prosecutor and exceptionally applied when choosing an alternative type of punishment is not justified.
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?

A prosecutor applies with a judge for the arrest of a minor, but preventive custody is applied to minors only in exceptional cases. The prosecutor involves in the proceedings concerning arrest a pedagogue or a psychologist and a doctor, who have the opportunity to express their opinion about the deprivation of liberty of the minor in the course of the proceedings either in writing or orally.

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 work in close cooperation with the juvenile committees established to local governments, prosecutors participate in the meetings of the committees if necessary, work related joint meetings are held in local governments.

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.

Prosecutor's offices control pre-trial proceedings, ensuring their legality and efficiency; whereas a prosecutor may be present in a procedural act and intervene in its course, make procedural acts, issue orders to investigative bodies, etc. The proceedings of criminal offences committed by minors and criminal offences against minors are in Estonia the priority in the fight against crime, in which all the different participants engage in daily and close cooperation.

## **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.

It is mandatory for a counsel to participate in the whole criminal proceedings if a person has committed a criminal offence when being a minor.

The legal representative in criminal proceedings of a victim who is a minor is his or her parent or guardian, who is obliged to protect the rights and interests of the child. If damage (including moral damage) has been caused with the same criminal offence to the parent or guardian as well, they must be involved in the proceedings as victims. A natural person who is a victim may participate in criminal proceedings in person or through a representative. If the court finds that without the assistance of a lawyer, the essential interests of the victim may remain unprotected, the court may on its own initiative decide upon the provision of national legal assistance to the person.

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

In Estonia, prosecutor's offices have no competence outside criminal proceedings. However, in Estonia applies the principle of legality, i.e. a prosecutor is obliged to initiate criminal proceedings if the elements of criminal offence become evident.

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 previous answers. Before making a decision about a suspect who is a minor, a prosecutor orders a report from the probation officer, the purpose of which is to provide the prosecutor with additional information in order to enable the prosecutor to make a correct procedural decision about the minor.

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

In Estonia, prosecutor's offices have no competence outside criminal proceedings.

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 Estonia, prosecutor's offices have no competence outside criminal proceedings.

**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.**

A body conducting proceedings should, upon disclosing data regarding pre-trial proceedings, primarily consider the interests of a minor and if possible, ensure his or her anonymity.

An application should always be submitted for declaring a court session to be held *in camera* if a minor is a victim in offences against sexual self-determination and against family and minors. In other criminal matters, the need for submitting an application for declaring a court session to be held *in camera* should be assessed according to the interests of the minor.

Proceedings of a criminal matter of a minor should always be conducted within the shortest possible period of time.