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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: _____

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 case of awarding or releasing from criminal liability, according to the current legislation the juvenile shall be the one who had attained twelve before the perpetration of the crime but had not reached eighteen¹; though, legislative changes raising minimum age of criminal responsibility up to fourteen years has been introduced to the parliament of Georgia for further consideration.

As for the sanction applied against juveniles article 88 Criminal Procedure Code of Georgia defines the following:

- *Imprisonment is awarded against a juvenile from twelve to fourteen years only for committing a grave or especially grave crime. The term of imprisonment awarded against a juvenile from twelve to fourteen years shall be bisected. However, the final sentence shall not exceed seven years. It should be noted that no juvenile under 14 has ever been imprisoned in Georgia. According to the transitive provisions of Criminal Code of Georgia, a juvenile under fourteen if imprisoned should be put into the specialized penitentiary institution for juvenile detainees aged from twelve to fourteen; This kind of institution does not exist in Georgia and as such the sanction has never been applied in practice. In addition, the legislative amendments regarding the criminal responsibility are pending before the parliament as noted above.*
- *Imprisonment awarded against a juvenile from fourteen to sixteen years shall be reduced by one third, and the final sentence shall not exceed ten years.*
- *Imprisonment awarded against a juvenile from sixteen to eighteen years shall be reduced by one fourth, and the final sentence shall not exceed fifteen years.*

Thus the legislator has approached the criminal responsibility of the juvenile with particular caution. Apart from those provisions, a juvenile who has committed a less serious crime may be released from criminal liability if he has reconciled with the victim (article 89¹ CCG). The law explicitly provides that first-offending juvenile may be released from criminal liability if the court holds that it is advisable to apply a coercive measure of educative effect (article 90 CCG).

(For additional information regarding procedural guarantees for juveniles see question 5).

¹ Articles 33 and 80 of Criminal Code of Georgia (hereinafter CCG).

Although, the juvenile justice is primarily covered in national legislation of Georgia as in any other respective countries, the Government of Georgia has taken position that the legislative basis is not enough to fully cover reforms required in the sphere. Therefore, the approach taken by the Government has been to create a policy document that would guide all relevant agencies, including the prosecution in juvenile justice system. This was particularly important for Georgian reality, as it has only experienced soviet type of juvenile justice. Therefore, conceptually new approach has been developed known as Juvenile Justice Strategy (JJ Strategy). It is part of Criminal Justice Reform Strategy adopted in 2009. JJ Strategy has been drafted in close cooperation with UNICEF and thus encompasses relevant international standards. The strategy recognizes prevention as a cornerstone of juvenile justice system and defines that any intervention dealing with children in conflict with law should be aimed at reducing re-offending. Detention should be used for the shortest possible time in cases of serious crime. The strategy emphasizes on the need of re-integration of juveniles and children in conflict with law in the society. It also notes that due consideration should be given to the fair trial guarantees of the juveniles as well as their treatment in the penitentiary establishments. (The Juvenile Justice Strategy and Action Plan is attached).

JJ Strategy is a policy document for the whole Government and thus for any public prosecutor as well. In addition, JJ Action Plan defines specific objectives and activities, including ones in relation to prosecutors.

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.

There are no specialized prosecutors dealing merely with juvenile cases in Georgia. The Training Center of the Ministry of Justice organizes training on the juvenile justice related issues for prosecutors on general basis.

Apart from ongoing training, in line with the Juvenile Strategy and Action, the Ministry of Justice in cooperation with the United Nations Fund for Children (UNICEF) is planning specialized training for selected group of 50 prosecutors. These training would allow prosecutors to specialize in juvenile cases as well as practice the discretionary prosecution in the best interest of child (for the information regarding the discretionary prosecution please view below the information).

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

For the extensive training mentioned above, the 50 prosecutors will be elected based on their previous experience; priority will be given to those prosecutors who have been working on juvenile cases previously. Extensive training will focus on following issues:

- *General overview of international standards on Juvenile Justice;*
- *Role of child development specificities while going through the justice procedures;*
- *Psychological areas to be considered while dealing with juvenile cases;*
- *Special skills to communicate with juveniles,*
- *Assessing of the reliability of the information delivered by the juvenile*
- *Special skills on handling juvenile cases in court (including innovations considered by the new Criminal procedural Code – e.g. jury trial and juvenile cases);*
- *Special techniques of interviewing children in conflict with the law (including victims, witnesses and offenders);*
- *Specific issues related to interrogation and cross-examination,*
- *General overview of the issues related to juvenile victims;*
- *Motivation and specific requirements of the juveniles;*
- *Protection of the best interests of the child in the justice system*

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.

One of the main components of the juvenile criminal justice reform is extensive use of alternatives to prosecution that in essence represents ultimate dismissal (removal, redirection) of juvenile offender from the criminal procedure system. As a result, such approach aims at harmonized development and re-socialization of juveniles in conflict with law.

In this regard, the concept of discretionary prosecution represents a recognized and effective mechanism for the “dismissal” of juveniles from criminal justice system.

At this moment legislative changes have been prepared and presented to the parliament of Georgia regarding discretionary prosecution under article 28 of the Criminal Procedure Code of Georgia, according to which “the Prosecutor, on the basis of the well-grounded resolution, is authorized not to initiate criminal proceedings or to terminate already launched criminal proceedings due to the absence of public interest thereof.” Under proposed draft, prosecutor can use its discretionary power towards juveniles who have committed grave or less grave crimes and divert them from the criminal proceedings, as in such cases interests of juvenile re-socialization and common liberalization of criminal law policy override public interest of prosecution. The proposal aims to divert such minors to the rehabilitative and preventive activities under the Community Prosecution project piloted in several districts of Georgia (for details see below information).

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 are basic guarantees for juveniles in conflict with law provided by Criminal Procedure Code of Georgia (hereinafter CPCG). Prosecutors are obliged to supervise fulfillment of those guarantees during criminal proceedings, namely: **mandatory participation of legal representative in proceedings of Juvenile** from the very first interrogation of a juvenile (refusal of defender by juvenile shall not be accepted – art. 81); **Attendance of juvenile’s teacher or representative during interrogation is mandatory** (art. 306), **Attendance of prosecutor during interrogation is mandatory** (art. 248); **duration of interrogation shall not exceed 2 hours without recess and 4 hours a day, but if the juvenile shows obvious signs of fatigue, the interrogation shall be terminated** (art. 647, while in case of adult an interrogation shall not exceed 4 hours without recess and total duration of the interrogation within a day shall not exceed 8 hours); **juvenile cases are decided by judges specially trained in pedagogy and psychology** (art. 654); **juvenile’s case shall be isolated into a separate independent proceeding** (art. 246) **and shall be held in camera if requested** (art.655); **notification upon detention of juvenile of any member of family thereof, or any of relatives or near ones in 3 hours** (while for adults mentioned time limit is up to 5 hours – art. 138.); **decision on cancellation or shortening of judicial investigation is prohibited if defendant is under 16 years** (which mean that judicial investigation shall be held in full extent – art. 473.)*

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.?

Since 2006, the Community Prosecution project is practiced in various regions of Georgia. Community prosecution is grass-roots approach to justice; it unites law enforcers and society in general to address safety concerns of local communities. The major goals of Community Prosecution are increase of prosecutors’ accountability before the public; assist prosecutors in crime prevention; awareness rising of prosecutors’ work while increasing public trust. Juvenile Justice has been considered as one of the main priorities for the Community Prosecution.

To fulfill the above-mentioned goals several activities are implemented, namely: twice a year sociological surveys are conducted for the assessment of situation; local consultative councils (involving parents, teachers, civil sector) are created at regional prosecutor’s offices; cooperation with police, educational and social institutions; organization of intensive educational programs in local schools (e.g. seminars related to the specificities of following crimes: hooliganism, use of drugs, carrying cold and hold weapons, criminal liability of juveniles, sanctions and other consequences), organizations of students’ visits to local prosecutor’s offices; direct contact with juveniles on probation/supervision; organization of competitions in intellectual games and in sports, etc.

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.

Articles 55 and 56 of the CPCG define capacities of the prosecutor during investigation: prosecutor executes criminal prosecution. Prosecutor exercises procedural guidance of investigation at the pre-trial stage. Prosecutor also supervises accurate and homogenous implementation of law by operative-investigative bodies. Prosecutor's decisions, directions and requirements issued are binding for the relevant governmental authorities, private and legal persons. Prosecutor is entitled to request and obtain the entire criminal case or separate materials; to revoke resolutions of investigator and subordinate prosecutor; to take a case from one investigator and transfer it to another; to terminate or suspend proceedings if there exists the legal ground; conclude a plea agreement with the accused.

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.

N/A

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

No.

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)?

In the regions where project Community Prosecution is implemented prosecutors are obliged to participate in social activities which serve as one of the most effective means of reinforcement of the social role and status of a prosecutor in public perception. It includes both introductory activities (public seminars for students, lectures, reports before the local governmental units, social discussion, etc) and more specific activities (for example, the fight against drugs, the problem of homeless children, religious intolerance, etc) like sports, creative, entertainment, social work and other similar activities.

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

According to the Hague Convention on the Civil Aspects of International Child Abduction the Central Authority, responsible in child abduction matters, is the Ministry of Justice of Georgia. In line with the abovementioned Convention child abduction by one parent is not criminalized in Georgia, therefore no criminal proceedings are initiated against the abducting parent. Accordingly, the public prosecutor's office of Georgia has no specific role in matters of child Abduction as well as other family related cases. Any application that is received by the public prosecutor's office regarding child abduction is transmitted to the Ministry of Justice of Georgia (for additional information, please visit http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=208&lang_id=ENG).

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?

Prosecutor has no role in expulsion cases.

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.

See attached the Juvenile Justice Strategy and Action Plan.