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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 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: ITALY

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 Italian Constitution, the criminal action is mandatory. Not having discretion in this respect, when public prosecutors are informed of a crime they must prosecute any illegal conduct. This principle applies also to crimes committed by juveniles.

No specific guidelines are provided for, but a special procedure is provided for proceedings and criminal trials against juvenile defendants. It is partly different from the procedure concerning adult defendants:

- particular attention is paid to the personality of the young defendant;
- the main aim of the trial is to re-educate him/her;
- the social service plays a relevant role;
- the provisional arrest is not mandatory;
- preventive custody is differently regulated and specific rules are provided for all precautionary measures;
- when the defendant is found guilty, not only the conviction, but also other different outcomes are provided for trials.

The minimum age for criminal responsibility is fourteen.

2. 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.

Yes. The Italian criminal justice system provides for specialized public prosecutors and courts for juveniles, entrusted with the implementation of specific laws and procedures. Specialized professional judges and honorary judges act in 26 specialized criminal courts for juveniles. A specialized public prosecution office exists for each of those courts.

In every Court of Appeal there are specialized sections which have jurisdiction on criminal and civil trials concerning juveniles.

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

The recruitment process is the same for all judges and public prosecutors. When public prosecutors (or judges) apply to be appointed as juvenile prosecutors (or judges), the High Council for the Judiciary evaluates the professional skills –and particularly the specific qualification– of the candidates.

Continuous training is provided for public prosecutors (and judges) also in the field of juvenile justice.

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.

Public prosecutors can examine through protective methods young witnesses who are the victims of crimes. They can be helped by specialised experts (e.g. psychologists, infantile neuropsychiatrists etc.). These methods are always used with children who are victim of sexual abuse. Every public prosecution office for juveniles has also a specialised criminal investigation unit.

Due to the mandatory nature of the criminal action in the Italian system, the public prosecutor has strict limits for his/her choices, defined by the law. Every choice is subject to judicial control. When the public prosecutor considers a crime "slight" and the illicit conduct of the young defendant as "occasional", he/she can request a non suit judgement "for criminal irrelevance of the fact" (but the judge can disagree and order the public prosecutor to prosecute).

Another possibility for the public prosecution is to ask the court to suspend the proceedings for a sort of probation. The positive result of the probation (which can last up to three years) extinguishes the criminal offence.

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?

After a provisional arrest by the police, the public prosecutor can question the young accused person also before the judge's interrogation and can release him/her from prison. Nevertheless a hearing must be held by the judge before 96 hours from the arrest.

After a conviction, the public prosecution office is competent for the execution of the sentence and expresses its advice on every request presented by the offender to the judge.

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.?

Public prosecutors are not involved in choices regarding city policies. They (as well as judges) can take part in inter-institutional meetings, aimed to better coordinate the fulfillment of lines of actions already approved at the competent political level (such as

meetings to coordinate the fight against juvenile bullying, to carry out projects concerning penal mediation, to monitor the drug addiction phenomenon, and so on).

- 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 the Italian system, the public prosecutor has direct control of the criminal investigation. He/she directs the detective branch and dispose of specialised police units. It is under his/her responsibility to promote and take advantage of relationships with social services, school and any other institution, to understand in depth the personal and family situation of the young offender and to take appropriate decisions at the end of the investigation and other possible initiatives (such as the assignment to a rehabilitation centre, for example).

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 juvenile public prosecution office receives every information (by school, police, social service, private persons, voluntary organizations etc.) concerning child abandonment or any other detrimental situation. The prosecutor conducts the appropriate investigations and can ask the juvenile court for a procedure to verify the exertion of parental authority and to propose possible judicial interventions. He/she can also start a procedure for re-education of a child, in case of deviant behaviour. Being a necessary party in all proceedings, the public prosecution office must give its advice before any decision by the juvenile court.

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

Yes. See §§ 7, 8 and 10.

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)?

The public prosecution office is the only body (apart from parents and relatives of the interested child) that can start a procedure in front of the juvenile court. In the investigation phase, it consults all the competent agencies to know the personal and family situation of the child and, when a child is the victim of a crime at home, it

coordinates its action with the public prosecution office in charge of the case concerning adults.

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

The public prosecution office can be invested by the central conventional Authority in case of international child abduction (according to The Hague Convention).

As far as an internal abduction case is concerned, the prosecution office acts as specified above in § 8. It starts the search of the child, conducts investigations and takes appropriate initiatives (also with respect to the parental authority).

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?

The public prosecutor has no direct powers to order measures such as the placement of juveniles in the name of their self protection, but can take initiatives in their interest in front of the juvenile court. In case of urgency, when a serious danger threatens the child, administrative authorities (Mayor, police, social services) can adopt provisional measures (also removing the child from his/her family). Immediate information must be given to the public prosecution office for juveniles, competent to present a request of confirmation to the juvenile court.

- 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.**