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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: Montenegro

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.)

- Juveniles are persons not older than 18 years. Criminal responsibility of juveniles we divide in three groups :

- Persons younger than 14 years are not criminal responsible
- Persons between 14 and 18 years are criminal responsible and toward them it is possible to pronounce diversion order or corrective measures
- Persons between 16 and 18 years are also criminal responsible and toward them it is possible to pronounce a prison sentence

The Criminal Procedure Code of Montenegro prescribes procedural provisions for juveniles that are applicable on persons who committed criminal offence as a juvenile, and at the time of criminal procedure or at the time of trial, they have not reached the age of twenty-one.

For all criminal offences a juvenile proceedings shall be instituted only upon a request of the State Prosecutor.

Juvenile penalty policy have more educative character. The Criminal Code of Montenegro provide for diversion orders with a purpose to avoid instituting criminal proceedings against a juvenile or to discontinue the proceedings, i.e. to influence the proper development of the juvenile and strengthening of his/her personal responsibility by the administration of diversion order so that s/he does not commit criminal offence in future. A diversion order may be imposed on a juvenile criminal offender for a criminal offence punishable by a fine or imprisonment for a term of up to five years. Diversion order may be imposed on a juvenile by the Court at its own discretion or on the notion of the competent State Prosecutor.

When selecting diversion order, competent State Prosecutor and Court , in accordance with their powers, shall take into account fully interest of the juvenile and of the victim, taking care not to interfere within schooling and employment of the juvenile.

Type of diversion orders:

- 1) settlement with the victim, so as to remove the harmful consequences of the offence, wholly or partially, by reparation, apology, work or in some other manner,
- 2) regular attendance of school or going regularly to work,
- 3) involvement, without a fee, in the work of humanitarian organizations or social, local or environmental activities,
- 4) undergoing appropriate examinations and curing the addiction caused by consumption of alcoholic drinks or narcotic drugs, involvement in individual or group treatment at an appropriate health institution or counseling centre.

In the new Law on Juvenile Justice it is prescribed notwithstanding existing diversion orders two new ones: involvement in sport activities and payment of a certain amount of money in favour of humanitarian organization, fund or public institution in a case of juvenile by its own efforts generates income or has possessions. Within this Law it is introduced possibility that diversion order can be applied upon request of the State Prosecutor. According to this new Law diversion orders can be imposed for a criminal offence punishable by a fine or imprisonment for a term of up to ten years.

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.

- Adoption of a new Law on Juvenile Justice that provides special Prosecutor for juveniles is in progress. Within the State Prosecutor's Office will be appointed Prosecutors for juveniles.

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

- The Prosecutors are going to be educated and trained with particular regard to their new function as a Prosecutors for juveniles. Supreme State Prosecutor's Office takes account of a continuous education of Prosecutors, as well as of the Prosecutors involved with juveniles.

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.

- According to the Article 482 of the Criminal Procedure Code "for criminal offences punishable by imprisonment for a maximum term not exceeding five years or a fine, the State Prosecutor may decide not to request the institution of the criminal proceedings if he finds that it would not be purposeful to conduct the criminal proceedings, taking into account the nature of the criminal offence, circumstances under which it has been committed and personal characteristics of the minor."

Moreover, in accordance with the Article 482b of the Criminal Procedure Code the State Prosecutors may dismiss criminal complaint or, on a motion of the State Prosecutors, the Court may discontinue criminal proceeding of imposing criminal sanction against a minor and impose one of a diversion orders. Juvenile prison sentence may be imposed solely on an elder juvenile (16-18 years) who has committed criminal offence for which a penalty of imprisonment exceeding five years as prescribed by law.

According to the provisions of the Criminal Code juvenile imprisonment shall not be less than six months or exceed eight years. Exceptionally, for offences prescribed for which as a mildest penalty measure is a prison penalty of ten years, juvenile imprisonment up to ten years may be pronounced.

New Law on Juvenile Justice introduce new provisions under which juvenile imprisonment can last between six months and five years, or exceptionally ten years for criminal offences for which a minimal possible extent prescribed by law is a penalty of imprisonment for ten years.

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?

- Criminal procedure shall be instituted only upon a request of the State Prosecutor. Prosecutor also, has a possibility to apply the principle of opportunity for all criminal offences punishable by imprisonment for a maximum term not exceeding five years.

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.?

- According to the provisions of the Criminal Procedure Code (article 467), Center for Social Work shall be informed in case the criminal procedure against juvenile is discontinued. This information shall contain the description of the criminal offence and circumstances under which the criminal offence is committed. Guardianship authority is responsible to undertake necessary measures in order to protect and help juveniles. If there is no possibility to provide school and health care for them, in some other way, Center for Social Work will place children in dorms, hospitals or some other institutions.

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.

- State Prosecutor administrates pre-trial proceedings which includes giving initiatives, coordinating activities of institutions in charged for disclosure of criminal offences and detection of criminal offenders. When State Prosecutor request institution of preliminary proceedings or when the State Prosecutor withdraw institution of the criminal proceedings against a minor, he shall notify a Center for Social Work

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.

- New Law on Juvenile Justice contains special provisions on the juveniles as injured persons in criminal procedure. In the Law are listed 34 criminal offences for which is typical that during the procedure could lead to the severe injures for a juvenile and those criminal offences are enshrined in following chapters of the Criminal Code: criminal offences against life and body, criminal offence against freedoms and rights of man and the citizen, criminal acts against sexual freedoms, criminal acts against marriage and family, criminal offences against public order, criminal offences against humanity and rights guaranteed under international law. In the case when this criminal offences injured juvenile, actions will be carried out by persons with specific knowledge in the area of rights of the child and criminal protection of juvenile. In the draft Law it is prescribed that juvenile injured in the criminal proceedings will be heard with help of psychologist, pedagogue or other expert. Moreover, if he deems necessary, judge for juveniles can decide to hear juvenile without presence of parties using technical means for transfer of sound and picture.

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

- For all criminal offences a juvenile proceedings shall be instituted only upon a request of the State Prosecutor. For criminal offences prosecuted upon a private complaint, the proceedings may be instituted if the injured party has submitted the motion for the institution of the proceedings within a term specified by Article 51 of the Criminal Procedure Code to the competent State Prosecutor. If the State Prosecutor does not submit a request for the institution of juvenile proceedings, he shall notify the injured party thereof. The injured party may not assume the prosecution or submit a private complaint to the Court, but he may, within a term of eight days from the day of receiving the notification from the State Prosecutor, request that a Panel for juveniles of the Competent Court decide on the institution of the proceedings.

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)?

- By adopting new Law on Juvenile Justice, Montenegro will work on creating of action plans which will further define activities of state prosecutors together with other institutions such as shelters, schools etc.

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

- In Criminal Procedure Code in Chapter 19th (criminal offences committed against marriage and family) the following criminal offence committed against minor have been prescribed:

- **Extramarital community with a minor** “(1) An adult person who lives in an extramarital community with a minor shall be punished by an imprisonment sentence of three months to three years. (2) A parent, adoptive parent or a guardian who enables a minor to live in an extramarital community with another person or incites him/her into it shall be punished by a penalty referred to in Paragraph 1 of this Article. (3) If an act as of Paragraph 2 of this Article is done for gain, the perpetrator shall be punished by an imprisonment sentence of six months to five years. (4) If a marriage is concluded, prosecution shall not be undertaken, and if it is undertaken it shall be stopped. “
- **Depriving of a minor** “(1) Anyone who unlawfully keeps a minor from his/her parents, adoptive parent, guardian, other person or an institution, se/he has been entrusted with, or deprives them of him/her, or prevents execution of the decision according to which a minor has been entrusted with a particular person, shall be punished by a fine or an imprisonment sentence not exceeding two years. (2) Anyone who prevents execution of a decision of a competent body stipulating the way in which personal relationships between a minor and his/her parent or another relative are to be maintained, shall be punished by a fine or an imprisonment sentence not exceeding one year. (3) If an act as of Paragraph 1 of this Article is done for gain or other base motives or due to it health, upbringing or education of the minor are seriously endangered, the offender shall be punished by an imprisonment sentence of three months to five years. (4) Perpetrator of acts as of Paragraphs 1 and 3 of this Article who voluntarily delivers a minor to a person or an institution s/he has been entrusted with or enables the execution of the decision on entrusting a minor, may be remitted from penalty by a court of law. (5) If a suspended sentence is pronounced for an act referred to in Paragraphs 1 to 3 of this Article, the court may oblige the perpetrator to deliver the minor within the specified time limit to the person or an institution the minor is entrusted with or to enable execution of the decision on entrusting a minor, or decision stipulating the manner of maintaining the personal relationship between the minor and his/her parents or another relative.”
- **Changing the family status** “(1) Anyone who changes the family status of a child by setting up, substitution or in some other way shall be punished by an imprisonment sentence ranging of three months to three years. (2) Anyone who, out of negligence, changes the family status of a child by substitution or in some other way shall be punished by an imprisonment sentence not exceeding one year. (3) An attempted offence as of Paragraph 1 of this Article shall be punished.”
- **Neglecting or abusing a minor** “(1) A parent, adoptive parent, a guardian or any other person who by gross negligence of his/her duty to take care and bring up a minor he is obliged to take care of, neglects him/her shall be punished by an imprisonment sentence not exceeding three years. (2) A parent, adoptive parent, guardian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to mendicity or for gain leads him into

doing other acts detrimental for his/her development, shall be punished by an imprisonment sentence of three months to five years.”

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?

- According to the article 487 of the Criminal Procedure Code in the course of the pre-trial proceedings, the judge for juveniles may order a minor be placed in a shelter, educational or other similar institution, or to be placed under the supervision of a juvenile welfare authority or moved to another family, if this is necessary to separate the minor from the environment he lives in, for providing an assistance to him, or for the protection or housing of the minor.”

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.

- New Law on Juvenile Justice introduced changes concerning principle of opportunity. According to the provisions of the existing Criminal Procedure Code the State Prosecutor may decide not to request that the criminal proceedings be instituted for criminal offences punishable by imprisonment for a maximum term not exceeding five years, while now draft law provides possibility to apply principle of opportunity for criminal offences punishable by imprisonment for a maximum term not exceeding eight years.

State Prosecutor after adoption of a new law will have monitoring role together with judge for juveniles, on practicing of corrective measures. Competent State Prosecutor has duty to visit juvenile in an institution in which he serves his corrective measure and competent tutelary authority has duty to send report on the execution course of the corrective measure every six months to the Court and to the State Prosecutor.

Also, State Prosecutor monitors implementation of diversion order by assessing reports sent by competent tutelary authority.