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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: Nederland

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.)

The general objective of Dutch juvenile criminal law and procedure is to prevent persistent offending. It is also designed to play an educative role. The Netherlands has a separate juvenile justice system that includes a large number of interventions aimed at positively influencing the behaviour of young offenders. In addition, the Code of Criminal Procedure contains a number of separate procedural safeguards related to the special approach taken to young offenders during proceedings. In brief, the dual aim of juvenile justice is to set limits and to protect.

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.

In the Netherlands each court district has specialised public prosecutors for juveniles. Among other qualifications, they must have an affinity with and knowledge of juvenile criminal and procedural law, as well as of legislation in other relevant areas such as child protection.

In combating juvenile crime, prevention and aftercare are at least as important as prosecution and sentencing. To be able to achieve a proper balance, these specialised public prosecutors must be fully familiar with civil law instruments and with the care services. They must also have some knowledge of child development and the expertise that will enable them at a later stage to chair the Court District Youth Platform (AJP). Indeed, the mandate of the specialised public prosecutors for juveniles is broader than the criminal law alone – they are also empowered, for example, to apply to the courts for supervision orders.

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

Specialised public prosecutors for juveniles must meet specific requirements and have followed specific courses.

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.

Witnesses and suspects make statements to the police, the examining magistrate (*rechter commissaris*) and the courts. Witnesses are summoned and must appear, otherwise they run the risk of being committed for failure to comply with a court order. Suspects have the right to remain silent.

If there is sufficient evidence, the public prosecutor is free to decide whether or not to prosecute (the discretionary principle). He may choose from a range of alternative forms of disposal, such as referral to the HALT Bureau (where young offenders are given the chance to make amends by repairing damage caused etc), or imposing a community service order or course of study and/or a fine in lieu of prosecution. In making this choice, however, public prosecutors are bound by the policy rules laid down by the Public Prosecution Service which recommend certain forms of alternative sanction depending on the circumstances. In the interests of uniformity, these policy rules are widely observed. For persistent offenders alternative sanctions are often no longer an option.

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?

This role is no different from that played in cases involving adults: the public prosecutor prepares the case, issues a summons or opts for a different form of disposal (see answer to question 4). During the hearing he argues his case, formulates his demand and at the end of proceedings is responsible for the enforcement of any penalty or non-punitive order imposed by the court.

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.?

A distinction is drawn between the public prosecutors who handle juvenile cases and 'policy public prosecutors' who sometimes handle cases but are mainly responsible for developing policy for the public prosecutor's office in the relevant court district. The latter have regular consultations with other partners in the system who work together in the AJP in the field of juvenile justice. In addition, policy agreements are discussed and laid down, sometimes in the form of voluntary agreements, at national level. At local level, contacts are maintained with the relevant court management board and other organisations, for example schools.

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.

The public prosecutor leads the investigation and in the process has contact with all kinds of actors, including the police, the youth care office etc.

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 public prosecutor can apply for an order placing a juvenile who is at risk under supervision for his/her own protection. The order temporarily divests parents/guardians of their responsibility.

Young people who become the victim of a criminal offence receive help and support if so desired. The public prosecutor merely plays a coordinating role by referring victims to other organisations. In the Netherlands the recently enacted Victims' Status (Legal Proceedings) Act explicitly sets out the rights of victims of criminal offences.

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

Yes, the public prosecutor can initiate an investigation and prosecute a suspect *ex proprio motu* where no criminal complaint has been laid, but where in view of the nature and gravity of the suspected offence, there are sufficient grounds for investigation.

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)?

The public prosecutor can apply for an order placing a juvenile who is at risk under supervision for his/her own protection. The order /temporarily divests parents / guardians of their responsibility, the juvenile will be placed in the most appropriate care setting. The public prosecutor plays a coordinating role, advising and referring, and possibly contacting the relevant organisations. A number of these work closely with the Public Prosecution Service, including the probation service, youth care offices, and the Child Protection Board. Many of these organisations are under the authority of the Ministry of Justice.

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

The Public Prosecution Service has two tasks.

a. Prosecution

The intentional removal of a minor from the authority under which he has been lawfully placed or from the supervision of a person authorised to exercise such supervision is a criminal offence in the Netherlands. Under article 279 of the Criminal Code, this offence carries a term of imprisonment not exceeding six years, or a fourth-category fine.

b. Assistance in tracing and returning abducted children

The Central Authority can ask the Public Prosecution Service for help in tracing a child. Section 9 of the International Abduction of Children (Implementation of Conventions) Act reads as follows.

Section 9

1. If the Central Authority requires the cooperation of police officers in order to trace the whereabouts of a child in the Netherlands it may approach the public prosecutor in the court district where the child is thought to be, or in The Hague court district. The public prosecutor may transfer the case, subject to instructions given by him, to a public prosecutor in another court district, if efforts to trace the child are to be pursued in that district.

2. The public prosecutor referred to in subsection 1 gives priority to requests for assistance from the Central Authority.

3. Police officers instructed to assist in tracing the whereabouts of a child may enter any premises for this purpose provided it is reasonably necessary for the performance of their duties.

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 Psychiatric Hospitals (Committals) Act (BOPZ) protects people who are admitted to hospital involuntarily and sets out their rights while committed. The Minister of Health, Welfare and Sport bears primary responsibility for the Act and policy related to the Act.

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.