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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: England and Wales

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.)

Answer:

The Code for Crown Prosecutors, issued by the Director of Public Prosecutions, under section 10 Prosecution of Offences Act 1985 is the principal guidance that prosecutors must apply when making decisions about all prosecutions, whether of youths or adults. The Code sets out the test that must be applied to all decisions to prosecute. The first stage of the test is consideration of the evidence. A prosecutor must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” before a case can pass to the second stage. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be.

The second stage of the test is the public interest which must be considered in every case where there is sufficient evidence to provide a realistic prospect of conviction. Prosecutors must balance factors for and against prosecution carefully and fairly. Paragraph 8.8 of the Code requires Crown Prosecutors to consider the interests of a youth when deciding whether it is in the public interest to prosecute. However, a prosecution should not be avoided only because a defendant is under 18. The seriousness of the offence and past offending behaviour are also relevant considerations.

Paragraph 8.9 of the Code explains that youth cases are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and warning (out of court formal diversionary measures administered by the police.) This is because reprimands and warnings are intended to prevent offending and the fact that a further offence has occurred indicates that attempts to divert the youth from court have not been effective. The public interest will usually require a prosecution in such cases. Sometimes a first offence is too serious for diversion and the public interest will require a prosecution. A youth must admit an offence before he can be eligible for a reprimand or warning. If he denies the offence, the public interest may require a prosecution

The Code is supplemented by legal guidance on youth offenders which is published on the Crown Prosecution Service website. The guidance sets out the key considerations that apply in all youth cases, namely:

- **The welfare principle (section 44 Children and Young Persons Act 1933) that requires courts to have regard to the welfare of all children and young people appearing before the court, whether as defendants, victims or witnesses;**

- The principal aim of the youth justice system (section 37 Crime and Disorder Act 1998) which is to prevent offending;
- The European Convention on Human Rights;
- The United Nations Convention on the Rights of the Child 1989;
- The United Nations Minimum Standards for Juvenile Justice (the Beijing Rules) 1985.

It seeks to strike a balance between the interests of a young person who has less insight into the causes and consequences of his offending behaviour than an adult and the need to protect the public from harm caused through further offending.

The guidance applies to all youth offenders who are those aged 10 to 17 inclusive. The age of criminal responsibility was set at 10 by Parliament (Children and Young Persons Act 1963.)

The youth court has no power to sentence a child of 10 or 11 to custody. It can sentence youths aged 15, 16 and 17 to a custodial sentence (Detention and Training Order) of up to 24 months. It can also pass this sentence on youths aged 12, 13 and 14 if they are “persistent.” This is likely to mean that the youth has been convicted of or has admitted to the police that he has committed imprisonable offences on at least 3 occasions in the past 12 months.

Youths can be tried in the Crown Court, where they are jointly tried with an adult, or where the alleged offence is so serious that a lengthy period of detention may be appropriate. These offences include rape, residential burglary, wounding with intent to commit grievous bodily harm. If the youth is convicted of one of these offences by a jury, the Crown Court can pass a sentence that does not exceed the maximum that could be passed on a person aged 21 or over. In practice, a youth will usually receive a shorter sentence of about half to three quarters of the adult sentence.

Youths who are sentenced to custody may be detained in a secure children’s home (run either by the local authority or a private company), a secure training centre (run by private companies, or , in the case of older youths in a young offender institution or prison. In the latter case, those under the age of 18 are accommodated in a separate building from those aged 18 to 21.

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.

The Crown Prosecution Service appoints youth specialist prosecutors. Their role is to make the major decisions in all youth cases and to prosecute youths in court. The youth court is presided over by a District Judge or by a panel of magistrates who have received youth training. The CPS works with colleagues in other youth justice agencies such as the youth courts, police and youth offending teams to implement policies that require interagency cooperation, such as the Persistent Young Offender pledge to halve the time from arrest to sentence that ended in December 2008, and the current Criminal Justice:

Simple, Speedy Summary initiative to reduce delay in the youth court. These interagency groups operate on a local basis and although they may discuss national policy, they may devise their own local procedures and protocols.

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

All public prosecutors are appointed following fair and open competition, in accordance with civil service policy. Youth specialist prosecutors are public prosecutors who have at least two years general prosecution experience and have additional training in youth offenders. The training is a three day course that is accredited by both branches of the legal profession; the Law Society and the Bar Council. Youth specialists usually volunteer for this role because they have an interest in children and young people. They usually carry out their youth specialist role in addition to their adult work.

Youth specialist prosecutors receive regular updates on youth justice initiative through the constant revision of the legal guidance on youth offenders, an annual youth justice conference that alerts prosecutors to new and imminent developments in youth justice and twice yearly seminars.

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.

Initial witness statements are not taken by public prosecutors, but are taken by the police as part of their investigation into a criminal offence. Most statements are taken in writing, although certain categories of witness, such as those under 17 and those who are otherwise vulnerable through incapacity or fear of testifying, may be interviewed by the police and the interview recorded on video. The recording is played in court instead of the witness giving evidence in chief. The witness is then cross examined by defence, but the court may allow this to occur using a TV link which allows victims and witnesses to give evidence without the fear of intimidation by the defendant or the stress of the court room.

The prosecutor can only prosecute a youth if the 2 stages of the test set out in the Code for Crown Prosecutors (see answer to question 1 above is satisfied.) Diversion by way of reprimands and warnings, the formal diversion by the police, can only occur when the following statutory criteria are satisfied:

- **There is sufficient evidence to provide a realistic prospect of conviction;**
- **The public interest is satisfied by use of diversion;**
- **The youth has no previous conviction;**
- **The youth admits the offence.**

There are further limitations on this diversion, in that a youth can only receive one reprimand. A second offence may be dealt with by way of a warning (which is an oral admonishment given by police, followed by a referral to the youth offender team who will carry out an assessment and offer an intervention programme designed to prevent the youth from re offending.)A youth can only receive one warning, unless 2 years have passed from the date that he received the warning to the date of the new offence.

If the youth is not eligible for a warning, then the public interest will usually require a prosecution. However, the prosecutor may decide that no formal action is necessary e.g. where the offence is low level and unlikely to be repeated or that the behaviour has already been dealt with by the rules applicable in the school or children's home in which the offending behaviour occurred.

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?

The prosecutor will give pre charge advice to the police and this will include advice on whether to release a youth on bail and the appropriate conditions, or whether the youth should not be released but brought to court in custody to ask the court to refuse bail.

At court, the youth prosecutor will speak to the youth offending team and the youth's solicitor, to explain the prosecutions objections to bail. This will enable the youth offending team to put together a package of conditions and interventions that will address and alleviate the prosecutor's objections. This package may include conditions that the youth lives at a specified address, is electronically tagged to ensure that he abides by a curfew and stays at home between certain hours, and engages in intensive supervision and activities of up to 5 hours a day with the youth offending team.

The decision whether or not to grant bail is for the court, which is not obliged to comply with the prosecutor's recommendations. However, the prosecution can appeal the decision of the court to grant bail, and will do so where the prosecution considers that a remand with a security requirement is necessary to protect the public from serious harm from the youth or to prevent the youth from committing further offences. This appeal will be to the Crown Court.

The prosecutor has a limited role at the sentencing stage. The prosecutor does not make representations as to the type or length of sentence, but is confined to providing information to the court about the offence, the offender and the victims and to advising the court of the law and its powers.

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.?

As the youth justice system in England and Wales follows a justice rather than a welfare model, the partnership roles played by the Crown Prosecution Service are largely in the field of criminal justice rather than services for children and young people.

The Crown Prosecution Service is a member of the National Criminal Justice Board, and there are Local Criminal Justice Boards (LCJBs) in each of the 42 criminal justice areas. LCJBs consist of members of all criminal justice agencies such as police, courts, probation service and they are responsible for the delivery of criminal justice services.

Local Safeguarding Children's Boards (LSCBs) are statutory bodies that exist in each of the 150 local authority areas and are responsible for safeguarding and promoting the welfare of children in each area. There is a statutory duty on a number of organisations to cooperate to safeguard children, including the police, local authorities, youth offending service, prisons and health services. However, although the Crown Prosecution Service is not subject to this statutory duty, the CPS may join the LSCB.

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 police are responsible for conducting the investigation into a criminal offence, but may seek advice from the Crown Prosecution Service, who can advise on the nature and extent of evidence that is needed and the lawfulness of the way that evidence is adduced. The police will liaise with child protection services and experts as necessary to obtain evidence.

The courts play no role in the investigation process, although the police may need the magistrates to issue a warrant in order for them to enter premises to effect a search e.g. for drugs or stolen goods.

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

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

Where a criminal offence has been committed and has been investigated by the police, prosecutors will apply the Code for Crown Prosecutors (see above at Q1) in making a decision about whether or not to prosecute. Where there are parallel proceedings, ie criminal and civil/family proceedings involving the same child(ren), prosecutors and police will need to ensure relevant information / evidence is shared appropriately between the two courts so that consistent decisions can be made in the interests of the child and in the interests of justice.

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?

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.

The Crown Prosecution Service is committed to the policy of Safeguarding Children and Young People, whether the child/young person is a victim, witness or defendant. Safeguarding includes promoting the welfare of children.

The Safeguarding policy, in brief, requires prosecutors to carry out their functions in the context of protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking this role so as to enable those children to have optimum life chances and to enter adulthood successfully.