

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CPPE)**

**Questionnaire on
principles of public prosecution as regards juvenile justice**

Country: Poland

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.)

Polish legislation does not provide specific powers of prosecutors in applying the general policy in cases of juveniles. The tasks of prosecutors in this area are the same as in the cases of adults offenders. However, in Polish legal system exist certain procedural differences connected with juveniles.

The general policy of the juvenile justice is more educational than repressive. In this regard, in a preamble of the Act of 26 October 1982 on proceedings in juveniles cases, emphasis is laid on: the desire to prevent demoralization and juvenile delinquency and creating conditions for the return to normal life to juveniles who have fallen in conflict with the law or the principles of conduct in the community, and the desire to strengthening the functions of care and education and the responsibility of families for the upbringing of juveniles.

According to article 10 of Polish Penal Code any person, who commits a prohibited act after having attained the age of **17 years** shall be liable under the provisions of this Code.

However, a juvenile, who after attaining the age of **15 years** shall commit the prohibited act specified in the following articles of Polish Penal Code may be liable under the provisions specified in this Code, under certain conditions - if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it, and especially when previously applied educational or corrective measures have proved ineffective. Above mentioned acts are specified in the following articles of the Penal Code:

- Article 134: attempt on the life of the President of the Republic of Poland
- Article 148. § 1, 2 or 3: homicide, murder
- Article 156 § 1 or 3: severe detriment to health
- Article 163 § 1 or 3: causing a dangerous event
- Article 166: high seas and air piracy
- Article 173 § 1 or 3: causing a disaster in traffic
- Article 197 § 3: rape with another person (group)
- Article 252 § 1 or 2: taking of hostages
- Article 280: robbery

In these cases (juvenile under 15 years), the penalty imposed may not exceed two-thirds of the statutory maximum penalty for the offence imputed to the perpetrator. Additionally, the court may also apply an extraordinary mitigation of punishment.

According to the article 10 para. 4 of the Penal Code (PC), when the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it, with regard to the perpetrator who commits a prohibited act after having attained 17 years of age but before having reached the age of 18 years, the court shall, instead of a penalty, adopt educational, therapeutic, or corrective measures prescribed for juveniles.

The article 54 of the Penal Code provides that, by imposing a penalty on a juvenile or a young offender, the court shall be targeted primarily to educate the offender. However, that in view of the perpetrator, who at the time of the offense has not completed 18 years of age, not imposes a penalty of life imprisonment. Under Polish Penal Code a penalty of the deprivation of liberty for life shall not be imposed on the perpetrator who was under 18 at the time of the commission of the offence.

According to the Article 72 para. 1 point 4 of the Penal Code, suspending the execution of a penalty, the court may require the convicted person to do a job, to study or training for a profession, which seems to be a measure which should be used in relation to juveniles and young offenders.

Moreover, in the case of suspension of imprisonment for juvenile offender the supervision is mandatory and is carried out by a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons (Article 73 para. 2 PC).

The Act on proceedings in juveniles cases, provides that family court may:

- 1) give a warning;
- 2) oblige a juvenile to specified conduct, particularly to redressing the damage, to perform specific jobs or benefits to the victim or the community, to apologize to the victim, to study or work, to participate in relevant activities of an educational, therapeutic, or training nature, to refrain from staying in certain environments or locations, or to refrain from using alcohol or other means to enter the state of intoxication,
- 3) establish supervision responsibility of the parents or guardian,
- 4) establish a supervision of youth organization, or other social organization, the workplace or a trustworthy person;
- 5) use the guardian supervision;
- 6) refer to guardian's center, as well as social organizations or institutions working with children of a educational, therapeutic, or training character, after consultation with the organization or institution;
- 7) decide upon a driving ban;
- 8) declare the forfeiture of goods obtained in connection with a criminal offense;
- 9) decide upon a placement with a foster family, in a youth educational center or youth center of sociotherapy;
- 10) decide upon a placement in correctional center for juveniles; (detention center for juveniles);
- 11) take other measures reserved to the family court, as well as to apply the measures provided for in the Family and Custodianship Code.

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 specialized entity within the court where, for instance, a general policy for juvenile justice is defined or discussed? Please give details.

In this regard, have not been provided adequate legal regulations. Prosecutors dealing with juveniles cases applying the general rules of law applicable to all offenders.

Within the courts Polish law does not provide the special units, in which judges and prosecutors cooperate in this field. However, in Polish legal system the family judges are dealing with cases of juveniles. Additionally, the guardians are involved in cases of juveniles. The family judges cooperate in this area with family and guardian centers.

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

Currently, it is not foreseen in this field a special course during the professional training to become a prosecutor, or in practice of the prosecutor. Occasionally, such training is provided by the National School for Judges and Prosecutors.

Not in each unit of the prosecution service in cases of juveniles a prosecutor specialized in this field is involved. In larger units of prosecution service, a prosecutor engaged in dealing with civil and administrative matters also deals with cases of 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.

In cases when a juvenile is responsible as an adult under the Penal Code, the general standards of the Code of Criminal Procedure for the accused are applied.

There are certain differences for hearing an injured person and witness who not completed 15 years at the time of the prohibited act. According to the Article 185a and 185b of Polish Code of Criminal Procedure, they should be heard by the court with the participation of an expert psychologist.

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?

During a proceedings in the case of juvenile prosecutor is an ordinary party. May therefore participate in the hearing, speak about each activity and evidence and appeal against the court's decisions. Prosecutor has no decision-making powers in this area. As an ordinary party of the proceedings, prosecutor has the right to appeal against decisions made by a family judge.

In cases, when juvenile is subjected to the criminal responsibility (situation defined in the Article 10 of the Penal Code), the proceedings is conducted according to the provisions of the Code of Criminal Procedure and the enforcement of the sentenced penalty is conducted under the Executive Penal Code. A convicted juvenile is settled in prison for young offenders. Then, a penitentiary judge oversees the implementation of the penalty. In the criminal enforcement proceedings prosecutor do

not have any supervisory or decision-making powers, prosecutor in this area is an ordinary party and may therefore, make a complaint against the order issued in the course of proceedings.

6. What is the role played by public prosecutors in the partnership with local social and administrative agencies working in the field of juveniles 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.?

The Act on the public prosecution service does not specify the cooperation between public prosecutor and local public authorities in the area of juveniles, but provides in Article 9 and 40 such cooperation with regard to all crime.

However, the internal Code of practice of public prosecution organizational units in Paragraph 294 provides that the cooperation between the public prosecutor and the national authorities, organizational units of state, local government bodies and social organizations, in preventing crime and other infringements. Under Paragraph 294, public prosecutor:

- 1) on its own initiative presents to government authorities information about the state of crime and state law enforcement, and when necessary, puts forward the motions for police regulations provided in the Act on local self-government;
- 2) participates in the work of the security and order commission on the basis of the Act on regional self-government;
- 3) take other activities designed to create legal and organizational conditions against infringements of the law.

The above-mentioned activities are not widely used in practice by the prosecutors, but from a formal point of view such a possibility is provided by the law.

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.

Such activities are provided in the Act on on the proceedings in juveniles cases and in the Family and Custodianship Code. Jurisdiction in these matters has the competent family court and specialized family judge.

II. Civil justice system and administrative proceedings:

8. What is the role of public prosecutors as regards access to justice of 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.

- With regard to the juvenile as a victim: see the answer to Point no. 4 of this Questionnaire.
- With regard to the juvenile's claim for compensation:

According to the Article 49a of the Code of Criminal Procedure, each victim (not only a juvenile) and the prosecutor, can, until the end of the first interview the victim at trial, put forward a motion referred to in paragraph 1 of article 46 of the Penal Code.

Article 46 paragraph 1 of Polish Penal Code provides that, if the person is convicted of an offence causing death, serious injury to health, disturbance of bodily organ or disturbance to health, an offence against traffic safety or an offence against the environment, property or commerce, or offence against people performing jobs, the court, upon a motion from the injured person or from any other entitled person, shall impose the obligation to redress the damage caused, in whole or in part. The provision of Civil Law on the limitation of claims and the possibility to adjudicate a pension, shall not be applied.

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

According to the Article 23 of the Polish Code of Criminal Procedure, in the case of an offence committed on a juvenile injury, or in co-operation with a juvenile, or in circumstances which may be indicative of demoralisation of a juvenile or of a demoralising influence over a juvenile, the court, and in the preparatory proceedings the public prosecutor, shall inform the family court to consider the measures prescribed in the provisions on the proceedings in juveniles cases and in the Family and Custodianship Code.

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.) ?

Measures of this type have been prescribed by the Act on the proceedings in juveniles cases. This kind of activity is conducted by the family court and the family judge.

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

Polish Penal Code in the Article 211 states that any person who abducts or detains a minor below the age of 15 or a person who is helpless because of mental or physical reason (contrary to the will of the person appointed to take care of or supervise) shall be subject to a penalty of deprivation of freedom of up to 3 years.

The offence of child abduction is prosecuted by the public prosecution (indictable offences) and the prosecutor shall initiate proceedings in the normal manner. In Polish legal system for such cases has not been provided a particular type of criminal conduct.

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?

Such measures are provided in the Act on on the proceedings in juveniles cases and in the Family and Custodianship Code. Jurisdiction in these matters has the competent family 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.