

## Country: Ireland

### 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.)**

#### Introduction to Juvenile Justice System in Ireland

The Office of the Director of Public Prosecutions is responsible for the prosecution of offences in Ireland. The Office is separate and independent in the performance of its function and so is independent from the government, the judiciary, and the Irish police, An Garda Síochána. The Office has published guidelines in a manual entitled, *Guidelines for Prosecutors*, a copy of which is attached. In these guidelines the Office sets out its policy in relation to juvenile justice. It is noted in Chapter 5 that:

The long term damage which can be done to a child because of an encounter with the criminal law early in his or her life should not be underestimated and prosecution must be regarded as a severe measure with significant implications for the future development of the child concerned. Whilst each situation must be assessed on its merits, frequently there will be a stronger case for dealing with the situation by some means other than prosecution, such as by way of caution. On the other hand, the seriousness of the alleged offence, harm to any victim and the conduct, character and general circumstances of the child concerned may require that prosecution be undertaken.

This statement reflects the general attitude to juvenile justice in Ireland and not just that of the Prosecutor. As a result of this emphasis on prosecution as a last resort, the Office does not have a major role in relation to juvenile justice in Ireland, as it will only be engaged in the most serious cases. The Gardaí have a more prominent role in this area. Where a decision is taken to prosecute, this will generally be dealt with summarily by the Gardaí, acting on behalf of the Office of the DPP, in the Children's Court.

The Gardaí administer a scheme called the Juvenile Diversion Programme which aims to keep child offenders out of the formal prosecution system. The Programme was only put on a statutory basis in 2001 under the Children Act

2001; however, diversion projects and caution schemes had been in operation for many years before this. Under the terms of the 2001 Act in order to be eligible for the programme a child must accept responsibility for their criminal or anti-social behaviour. The child is then cautioned and, where appropriate, placed under the supervision of a juvenile liaison officer and possibly involved in a conference attended by family members and other concerned persons. The decision as to whether a child should be admitted to the programme is taken by the Director of the National Juvenile Office upon receipt of a report from a juvenile liaison officer, who is a member of An Garda Síochána specially trained to deal with young offenders. The most recent statistics in relation to the operation of the Programme outline that in 2007 there were 21,941 individuals referred to the Programme: 16,753 of these individuals were admitted to the scheme, while 3,208 were deemed unsuitable for inclusion, 1,190 required no action and 790 had their cases pending at the time the statistics were being compiled.

It should be noted at the outset that under Irish law a child is generally defined as a person under the age of 18. The age of criminal responsibility under Irish law is 12, unless the offence is one of murder, manslaughter or certain sexual offences, in which case a child of 10 or 11 may be charged.<sup>1</sup> The provisions in relation to sentencing are discussed below at question 4.

**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.**

No. However, it should be noted that Part 7 of the Children Act 2001 provided for the establishment of a special Children Court for dealing with young offenders. The Court operates under additional procedural rules which take account of the special circumstances of child offenders. Notably, the Court has extensive jurisdiction over cases concerning juveniles. It may deal summarily with a child charged with an indictable offence, unless the charge is one of manslaughter or murder, rape and serious sexual assaults (offences for which the Central Criminal Court has exclusive jurisdiction). The proceedings before the Court are held *in camera*; only those persons listed in section 94 of the Children Act 2001 may attend. This list includes *bona fide* representatives of the Press; however, the Press are restricted in what they may report as they are prohibited from identifying the accused.

In addition, as mentioned above, there are members of An Garda Síochána who are specially trained to deal with young offenders, these are Juvenile Liaison Officers.

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<sup>1</sup>Section 52 of the Children Act 2001 as amended by section 129 of the Criminal Justice Act 2006

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

Not applicable

**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.**

Evidence from child victims

There are a number of legislative provisions under Irish law that allow for alternative methods to be used in collecting evidence from child witnesses. The most notable piece of legislation in relation to such evidence is the Criminal Evidence Act 1992. The Children Act 2001 also contains provisions in relation to the giving of evidence by child witnesses.

Section 13 of the Criminal Evidence Act 1992 allows for a person under the age of 18 years of age, other than the accused, to give evidence through a live television link. Section 13 further states that where such evidence is given neither the judge nor the barrister or solicitor concerned in the examination of the witness shall wear a wig or gown. It was suggested that this provision infringed the right to fair trial, as protected under the Irish Constitution. However, the constitutionality of section 13 was affirmed in the Supreme Court in the case of *Donnelly v. Ireland* [1998] 1 IR 321<sup>2</sup>. The applicant claimed that the section violated his right to a fair trial claiming that he had a constitutional right to physically confront his accuser in open court. The Supreme Court upheld the section holding that the right to a fair trial did not include in all circumstances the right to physical confrontation with one's accuser. The Court further held that fair procedures were satisfied by requiring that the witness give evidence on oath, which was subject to cross-examination, while the witness was under the scrutiny of the judge and jury.

There are provisions under section 14 of the Criminal Evidence Act 1992 for evidence of child witnesses to be given through intermediaries. However, this provision would not appear to be utilised in practice.

Section 15 and 16 allow video-recordings to be admissible where the witness is available for cross-examination in relation to statements made therein. Additional

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<sup>2</sup> See also *White v. Ireland* [1995] 2 IR 268.

provisions in relation to the admissibility of evidence are outlined in section 27(1) of the 1992 Act which state:

Notwithstanding any enactment, in any criminal proceedings the evidence of a person under 14 years of age may be received otherwise than on oath or affirmation if the court is satisfied that he is capable of giving an intelligible account of events which are relevant to those proceedings.

It was originally the case that the unsworn evidence of a child always required corroboration<sup>3</sup>; however, this requirement was abolished under section 28(1) of the 1992 Act. Section 28 introduced a discretion to give a corroboration warning to the jury where the judge decides it should be given. However, in giving such a warning it is not necessary to use any particular form or words. Subsection 3 provides that the unsworn evidence received by one person under section 27 may corroborate evidence given by another person.

In addition to the Criminal Evidence Act 1992, the Children Act 2001 refers to evidence given by children in court. Notably, section 255 gives the District Court power to take a deposition from a child who is a victim of an offence under Part 12 of the Act (cruelty to children, begging, allowing child to be in a brothel, causing or encouraging sexual offence upon a child) or any of the offences listed in the First Schedule where the court is satisfied on the evidence of a registered medical practitioner that the attendance before a court of the child would involve serious danger to the safety, health or well-being of the child. Alternatively the evidence may be given through a live television link. Subsection 4 provides for the taking of the evidence of a child under 14 years otherwise than on oath or affirmation if the court is satisfied that the child is capable of giving an intelligible account of events which are relevant to the proceedings.

### Alternatives to prosecution

As noted, Irish law recognises that prosecution should be a last resort in dealing with young offenders. Please see discussion above on the Juvenile Diversion Programme under question 1.

### Sentencing

The Children Act 2001 sets out provisions, under Irish law, for the punishment of child offenders. Section 142 of the Act outlines that a child, who is convicted of an offence, may be sentenced to a “detention order”; such an order allows a child to be detained in a detention school. Section 143 outlines restrictions on the Court’s power to grant a detention order, stating that the court shall only apply such an order where it is satisfied that detention is the only suitable way of dealing with a child and that there is a place available for them at a detention

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<sup>3</sup> Section 30 of the Children Act 1908

school. Section 155 outlines that where a child reaches the age of 18 while serving a sentence of detention, they shall be transferred to either a prison or another place of detention provided for by the Minister for Justice. Section 156 states that no Court shall pass a sentence of imprisonment on a child or commit a child to prison.

It should be noted that Points 8.14 to 8.21 of the Guidelines for Prosecutors outline the role of prosecutors at sentencing. It will be noted that the prosecutor's role is to put all relevant information before the court and not to advocate any specific sentence. This position would also apply in relation to the sentencing of children.

**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 same principles in relation to the grant of bail apply to juvenile offenders as apply to adult offenders under Irish law. The prosecutor's role in relation to applications for bail is to oppose any application where it is felt that: there is a fear that the applicant would abscond; there is a fear that the applicant will interfere with witnesses; or the offence in question is a serious offence as defined in section 2 of the Bail Act 1997 and the refusal of bail is reasonably considered necessary to prevent the commission of a further serious offence. Where a juvenile is refused bail section 88 of the Children Act 2001, as substituted by section 135 of the Criminal Justice Act 2006, states that a juvenile must be remanded to a "remand centre". However, under section 88(12) of the Children Act 2001 an exception applies to males aged 16 and 17 who may be remanded in St. Patrick's Institution (which is not a remand centre) until a suitable remand place becomes available.

If an application for *habeas corpus* is taken by a juvenile in custody, the Office would have a role in presenting the State's position with regard to this before 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.?**

There is no formal role. The Office would occasionally be asked to give opinions on draft legislation and policy documents.

- 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 Office of the Director of Public Prosecutions is completely independent from the Courts and the Gardaí. The Office will receive a completed investigation file from the Gardaí and will make a decision whether or not to prosecute based on that. In a formal sense, the Office has no role in directing the investigation. In practice, however, it may have a role in some circumstances in requesting additional evidence from the Gardaí or other actors involved in the investigation process and such requests would invariably be complied with.

## **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 Office of the DPP has no role as regards access to justice for juveniles, either for children in danger or those seeking compensation.

It should be noted, however, that under the Irish Constitution, Bunreacht na hEireann 1937, the State has, in exceptional circumstances, an obligation to intervene in the care of a child. Article 42.5 of the Irish Constitution states:

In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

In general, this duty is monitored by the Health Service Executive (HSE), who has a central role in Child Protection Services in Ireland. Under Part IV of the Child Care Act 1991, as inserted by section 16 of the Children Act 2001, the HSE may apply to the Courts for a Special Care Order giving authority to take a child into the care of the HSE. In situations of urgency the Gardaí may intervene to protect the safety of a child, as outlined under section 23D of the Child Care Act 1991. As noted above, the Office of the DPP has no role in this process.

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

No.

**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)?**

No role.

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

The Office would have a role where it is sought to prosecute the parent for abduction. Abduction of a child by one parent is an offence under Irish law by virtue of section 16 of the Non-Fatal Offences Against the Person Act 1997. However, the Office would have no role in securing the return of the child. The Office also has no role in relation to family matters.

**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 Office has no role.

**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.**