



Enquiry on the principles of public prosecution as regards juvenile justice

Ref: CCPE(2009)10REV2

## I. Criminal procedure

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All stages of the criminal procedure generally seek, in principle, to expedite cases involving juvenile perpetrators. The system also generally endeavours to avoid imprisonment as a coercive method and unconditional imprisonment as a penal measure, except where otherwise absolutely required by the severity of the offence.

Section 4 of chapter 3 of the Criminal Code of Finland states that a prerequisite for criminal liability is that the perpetrator had reached the age of fifteen years at the time of the act. Sentences for offences committed by persons under the age of 18 years are determined according to a mitigated penal latitude. In such cases section 8 of chapter 6 of the Criminal Code provides that at most three-quarters of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the perpetrator. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment.

Section 9 of chapter 6 of the Criminal Code provides that a sentence of imprisonment for a fixed period not exceeding two years may be conditional (*conditional imprisonment*) unless the seriousness of the offence, the guilt of the perpetrator as manifested in the offence, or the criminal history of the perpetrator requires the imposition of an unconditional sentence of imprisonment. However, an unconditional sentence of imprisonment shall not be imposed for an offence committed when the perpetrator was under 18 years of age, unless this is demanded by weighty reasons.

Under chapter 6, section 10, subsection 2 of the Criminal Code, a person who has committed an offence when under 21 years of age may be subjected to supervision in order to reinforce conditional imprisonment, where this is to be deemed justified in view of the social adaptation of the perpetrator and the prevention of further offences.

Section 10a of chapter 6 of the Criminal Code provides for a special juvenile penalty, which may be imposed for an offence committed before reaching the age of 18 years if:



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1. a fine is, with consideration to the seriousness of the offence, the guilt of the perpetrator manifested in the offence and the criminal history of the perpetrator, an insufficient punishment, and there are no weighty reasons requiring the imposing of an unconditional sentence of imprisonment, and
2. the imposing of a juvenile penalty is to be deemed justified in order to promote the social adaptation of the perpetrator and the prevention of new offences.

A juvenile penalty may also be imposed under the foregoing conditions if only part of the offences heard at the same time before the court were committed while under the age of 18 years.

The duration and nature of the juvenile penalty are governed by a separate Act on juvenile penalties. Section 2 of the said Act provides that the minimum duration of the juvenile penalty is four months and the maximum duration is one year.

A person sentenced to a juvenile penalty remains under supervision for the duration of the penalty. The juvenile penalty includes supervision meetings, supervised assignments and programmes to promote social interaction skills, and associated support and guidance. The juvenile penalty also includes supervised orientation to working life and working in general, except where this is considered clearly unnecessary or especially difficult to arrange.

Section 6 of chapter 1 of the Criminal Procedure Act requires the public prosecutor to prefer charges if there is a *prima facie* case against a suspect. An exception to this mandatory prosecution for juvenile perpetrators is noted in paragraph 2 of section 7 of chapter 1 of the said Act. whereby the public prosecutor may waive prosecution for an offence committed by a person under 18 years of age, for which a penalty no more severe than a fine or imprisonment for no longer than six months is anticipated and the offence is deemed to be the result of lack of judgment or incaution rather than heedlessness of the prohibitions and commands of the law.

According to section 13 of chapter 5 of the Criminal Procedure Act, if a defendant under 18 years of age is charged with an offence which, under the circumstances referred to in the charge, is subject to a penalty more severe than imprisonment for six months, the main hearing is to take place within 30 days of the time when the criminal case became pending. If the main hearing is cancelled, a new main hearing must take place within 30 days of the originally scheduled date



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for the main hearing. This ensures that criminal cases against juveniles are processed as quickly as possible.

2 The Finnish prosecution service does not employ prosecutors specialising exclusively in offences suspected to have been committed by juveniles. In practice, however, such cases concerning young people are often assigned to certain prosecutors, who thereby develop firm familiarity with the special characteristics of these cases. The Finnish prosecution service employs special public prosecutors with particular expertise in criminal cases involving juvenile victims.

While there are no specialised juvenile courts or special divisions handling cases involving young offenders in the Finnish court system, such cases tend to be assigned to certain judges in some courts.

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4 The testimony of a victim of an offence who is under 15 years of age may be received in court for probative purposes without hearing the victim in person in court. Section 11 of chapter 17 of the Code of Judicial Procedure prescribes that if a statement given in a pre-trial criminal investigation by a person who has not reached the age of 15 years (or a person who is mentally incapacitated) has been recorded on a video recording device or on a comparable video and audio recording, the statement may be admitted as evidence in court if the defendant is provided with an opportunity to present questions to the person being heard.

Under section 21 of chapter 17 of the Code of Judicial Procedure, a person who has not reached the age of 15 years or who is mentally incapacitated may be heard as a witness or for probative purposes if the court deems this appropriate and if

1) hearing him or her personally is of central significance to the clarification of the matter; and

2) hearing the person would probably not cause said person suffering or other harm that could injure him or her or his or her development.

Where necessary the court must appoint a support person for the person to be heard.

5 The normal official duties of a public prosecutor basically apply in a pre-trial investigation and main hearing concerning juveniles. These include observing the special provisions governing juveniles (see item 1 above) and ensuring that the juvenile is treated according to legislation.



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- 6 If it seems probable that a person who has reached the age of 15 years but is not over 21 years of age has committed an offence, a special report (personal enquiry) is prepared on the previous life stages of the young person concerned and on the conditions in which he or she has lived. This report is appended to the charge that is submitted to the court examining the case. The report is prepared and submitted to the public prosecutor by the probation and after-care authority.
- 7 As the prosecutor is in a position to influence the pre-trial investigation of a case, to decide whether or not to prefer charges, and to prosecute the case in court, the prosecutor can, in practice, influence the progress and investigation of the case in various ways; for example by seeking to ensure that the case is not unduly delayed or notifying special authorities if their actions are required.

## II Civil and administrative proceedings

- 8 - 12 Public prosecutors are not involved in civil and/or administrative proceedings concerning juveniles.

State Prosecutor

Mika Illman

