



**OFFICE OF THE PROSECUTOR
GENERAL**

**HEAD of Department for Child
and Youth Protection**

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Memorandum

on the Questionnaire nr. CCPE (2009) 10 REV 3 “on principles of public prosecution as regards juvenile justice” compiled by the Consultative Council of European Prosecutors in Strasbourg, on 4 December, 2009

I. Criminal justice system:

1/a In the Republic of Hungary prosecution service is part of justice – including juvenile criminal justice – with an exceptional role in its system. Starting from the beginning of the criminal case up to the termination of penal law it has got an indispensable part; without public prosecution there is no adequate crime prevention, effective prosecution nor feasible criminal policy.

The activity of the child- and youth protection prosecutor is a special field connected to children and juveniles, a group of persons protected through separately handled guarantees in the statutory instruments. Prosecutors in this field co-operate in the prosecution of crimes committed by a juvenile perpetrator, the observance of the specific procedural regulations and take the necessary child protection measures.

Apart from the prosecution of the committed crimes, one of their main tasks is to analyse the crimes committed by juvenile perpetrators with the aim of their prevention. Juvenile prosecutors act pursuant to statutes, other legal regulations, relevant decrees and guidelines of the Prosecutor General.

The Prosecutor General has issued a decree especially for juvenile prosecutors in which he lists the needs to be observed throughout their work. According to this the juvenile prosecutor must:

- profoundly examine whether the law enforcement agency observed the special regulations concerning juveniles;

- superintend whether the guaranteed statutory instruments concerning the right of the juvenile to defence and legal representation become effective;
- examine whether the special statutory conditions exist in case of coercive measures restricting personal liberty of the juvenile;
- in cases provided for by the law carefully supervise the independent investigation of the law enforcement agency;
- apply legal possibilities of diversion (postpone indictment, mediation, etc.) if the proper advancement of the juvenile with regard to personal circumstances and the nature of the criminal offense can be reached without court proceedings;
- make the necessary child protection arrangements in case of circumstances indicating the abuse of the minor;
- bring charges and represent the case during the proceedings at the juvenile court;
- supervise the legality of the detention and treatment in the reformatories and prisons for juvenile delinquents at least twice a month;
- examine the enforcement of children's rights and the legality of misdemeanour proceedings against juvenile delinquents.

1/b The juvenile criminal justice of the Hungarian legal system grants ab ovo impunity to children. According to the Hungarian Criminal Code grounds for the preclusion of punishability are provided if the perpetrators have not attained their fourteenth birthday at the time of the committal.

In the opinion of the legislator the physical and intellectual development of a child – mainly due to the fact, that this is the age when children leave primary school – reaches a level which enables them to account for their actions. The lack of capacity for guilt is an indisputable presumption under the age of fourteen.

The factual behaviour performed by a minor – due to lack of the subject – is not regarded as a crime; however, this fact does not exclude the possibility of basic child care or measures taken by the authority.

The term minor is used to refer to a person who is above the age of fourteen but under the age of eighteen at the time of the committal. The main aim of punishment or any measures against a juvenile is to help the juvenile improve in the proper direction and become a useful member of the society. The legal provision - according to which a sentence can be imposed on a juvenile if injunction against a juvenile is not expedient, whereas measures for incarceration or punishment can only be imposed if the goal of the injunction or punishment cannot be achieved otherwise - becomes regularly operative in practice.

2/ Dealing with juveniles requires special knowledge on the part of the authority, legal provisions of which are settled in '*On juvenile prosecutors and juvenile courts*' in the Hungarian Criminal Procedure Code.

According to these regulations only juvenile prosecutors, appointed especially to this field of activity can act in criminal procedures against juvenile delinquents. Juvenile prosecutors act on four levels in the prosecution service.

The field of child- and youth protection is administered by the Independent Department of Child and Youth Protection, reporting directly to the Deputy of the Prosecutor General in criminal matters at the Office of the Prosecutor General; at the appellate chief prosecutor's

offices, county chief prosecutor's offices, local offices, in designated district prosecutor's offices and at the investigating prosecutor's offices organisational by units under this name or by prosecutors delegated for this field of prosecution.

The tasks and competences of the juvenile prosecutor are detailed in the special decree of the Prosecutor General referred to in part **1/a**.

Similarly, in criminal cases of juveniles juvenile judges are the competent authorities. In Hungary there is no separate juvenile court, but a specifically organised judicial division of the court of record, designated to administer juvenile cases, acting at local courts at the seat of the county court.

With regard to the effectuation of efficiency and the aspects of special educational needs the law provided for a council of special composition with an appointed judge to proceed in the first instance (in the first instance one of the associate judges is a pedagogist). In the first instance the presiding judge, on the second and third degree one of the members of the council is appointed by the National Council of Justice of Hungary. The Supreme Court is an exception to the latter rule. Violation of the above regulation is an absolute reason for annulment, since the court was not legally composed.

Juvenile prosecutors act at courts where the appointed juvenile judges administer cases. They do not form a "common specialized entity" from an organizational point of view, but due to their judicatory tasks they are on a daily cooperative term with each other.

3/ It is the juvenile prosecutor who acts in criminal procedures against juveniles. This is essential for a professional and successful procedure and also for the enforcement in practice of special regulations concerning juveniles.

Apart from legal studies this proficiency and competence has several components. Theory (pedagogy, psychology) and practice in fighting juvenile delinquency and also knowledge of life and qualities indispensable for effective child and youth care are required.

At chief prosecution offices and at local prosecution offices juvenile prosecutors are directly subordinate to and supervised by the deputy chief prosecutor responsible for criminal law or the head of the local prosecutor's office.

Basic skills necessary for this specialized work can be acquired during the trainee time required for becoming a prosecutor (as assistant public prosecutors and prosecutorial law secretaries). During this time assistant public prosecutors have the possibility to work with experienced juvenile prosecutors of great expertise which enables them gain the necessary knowledge essential for this field of prosecution. Future prosecutors take part in trainings at the chief prosecutors' offices and also in trainings organised for preparation for the special legal examination organised by the Prosecutors' Training Centre of the Republic of Hungary. In order to make sure, that only professionally qualified prosecutors get appointed to juvenile prosecutors, it is necessary to obtain the assent of the head of the Independent Department of Child and Youth Protection prior to being designated a juvenile prosecutor. After their nomination for juvenile prosecutors, prosecutors are obliged to take part in further trainings organised by the Office of the Prosecutor General.

4a/ Minors, often becoming suffering victims of offences due to their exposure and helplessness, deserve special attention in the course of a criminal procedure.

The main task of the acting organs during the disclosure of offences against minors or the abuse of minors is to protect the minor from psychological injuries, inevitable when taking part in a procedure and giving testimony. Minors are only to be involved in criminal procedures if their testimony can provide otherwise inaccessible evidence.

The hearing of adolescents as injured party is mainly conducted by psychologists or appointed custodians. This procedure enables the psychologist to give attest, whether the statement is based on personal experience, whether it can be considered true, and also to what extent the child is psychologically impaired.

In case it seems necessary, authorities (law enforcement agencies, prosecution service, court and court of guardians) are entitled to remove the minor injured party from their endangering environment and place them in a care institution, where their physical and mental damages can be cured.

The prosecutor can act on behalf of minors in a criminal proceeding as follows:

- if the disclosures of a criminal procedure against an accused of legal age indicate the suspicion of abuse of the minor in their care, the prosecutor will notify the child welfare agency or initiate an official proceeding. In case of necessity (if the family environment seriously endangers the mental, emotional and moral growth of the minor, including offence committed by the custodian to the injury of the minor) the juvenile prosecutor will take steps concerning temporary guardianship;
- if the hearing of the minor (under 14) as a witness in the trial would disadvantageously influence his/her progress, the prosecutor may motion for the investigative judge conduct the hearing (in these cases the minor witness cannot be summoned for trial, his/her statement made in the presence of the investigative judge will be presented at the trial);
- in the interest of the minor (witness, injured party) the prosecutor can place a motion on (partial) hearing in camera;
- the prosecutor can motion that the court orders the hearing of the minor through a closed telecommunication network;
- if in the course of the trial the necessity arises that the minor witness, having been interviewed by the investigatory judge should be heard again, the prosecutor may propose that this should be conducted by a delegated judge or an arbitrator;
- if the parent has deliberately committed a crime to the injury of their minor child, for which the prosecutor recommended the sentence of imprisonment, with regards to the conditions provided for in Family Welfare Act the prosecutor can present a motion to the court to terminate custody of the parent regarding the injured minor;
- the prosecutor can enforce the civil claim of the minor injured party or his/her legal representative.

4/b The aim of the criminal sanctions enforced against juveniles is to facilitate their proper improvement. This means that when proposing a certain punishment or measure to be taken against the juvenile delinquent, the prosecutor – bearing in mind the general objectives – has to examine with particular care, whether the implemented sanctions are to facilitate the proper improvement of the juvenile at the same time.

Imprisonment, being the most serious sanction, is to be implemented against a juvenile only in the last resort. Sentence to enforced imprisonment can only be necessary against juveniles having committed serious crimes, and a different punishment or confinement in a reformatory does not seem to effectuate the particular aims of punishments, set for juveniles.

Law has provided for the period of imprisonment to be imposed on juvenile delinquents different from adults. In case of every offence the statutory minimum of punishment is one month.

The maximum of punishment in case of a juvenile being over 16 at the time of the committal of the crime punishable by life imprisonment is 15 years; crimes punishable by ten and above years of imprisonment shall be punishable by up to 10 years of imprisonment. For juveniles under 16, in case of committal of a crime punishable by life imprisonment, the maximum punishment is 10 years. In any other cases, where the maximum punishment is more than 5 years, juveniles cannot be sentenced to more than 5 years.

4/c The need for waiving of court proceedings and implementation of alternative divertive legal institutions concerning impeachment of juvenile delinquents derives from international agreements on children's rights and the desire to meet the exigencies of the time.

In case of juvenile delinquents with regard to the peculiarities of adolescence it is essential to conduct expeditious criminal proceedings. This is why prosecutors, when applicable, motion the employment of legal institutions facilitating the acceleration of procedure.

If legal conditions exist the prosecutor may postpone bringing charges against the juvenile delinquent if the postponement will have an advantageous impact on the offender's behaviour or he can refer the case to a mediatory procedure if the procedure can be avoided.

5/a A court warrant for pre-trial detention of juvenile delinquents can only be effected on the motion of the prosecutor. The prosecution can only propose the detention of a juvenile if the existence of conditions envisaged for adult defendants through special preponderance of the offence justifies the coercive measure of imprisonment. Special preponderance is based upon the sentence, the circumstances of the committal and the successiveness of the crime.

Up to the time of bringing charges the prosecutor is entitled to terminate the pre-trial detention if it is no longer pertinent. Pre-trial detention of a juvenile can last no longer than two weeks.

Pre-trial detention of a juvenile has to be implemented in a reformatory school or in a detention centre. The prosecutor proposes to the court the exact place of implementation.

5/b In criminal proceedings against juveniles the indictments are always represented by the juvenile prosecutor. In the course of the trial prosecutors, relying on their proposals and jurisdiction of remedy help the court establish the facts with reference to the juvenile's personality and his/her characteristic environment; and put forward the implementation of a sanction facilitating the proper improvement of the juvenile.

5/c The imprisonment of juvenile delinquents must take place in special penal institutions; pre-trial detention and enforceable corrective education takes place in reform schools.

In the scope of their activity as responsible for the inspection of legality in execution of punishments and protection of rights juvenile prosecutors are obliged to supervise corrective education and legality of pre-trial detention enforcement twice a month with special attention to the legality of the documents serving as a basis for admission, the observance of deadlines of detention, the circumstances of detention and the insurance of the rights of the detainees.

The juvenile prosecutor supervises the enforcement of the special regulations concerning pre-trial detention of juveniles in the detention facilities of the police and in the detention centres at least once every four months (once every six months in the capital).

The Republic of Hungary is party to the international Convention for the Prevention of Torture and Inhuman Degrading Treatment or Punishment. The member states of the Council of Europe signed the Convention on Prevention of Torture and Inhuman Degrading Treatment or Punishment on 26th November 1987 which came into force together with Act III of 1995.

With regard to the requirements and the increased importance of human rights juvenile prosecutors pay special attention to the supervision of legality of the treatment of juvenile detainees when examining the implementation of the above detailed deprivation of personal liberty.

6/ Juvenile prosecutors regularly participate in cooperative crime prevention consultations with probation supervision services, police, family protection and county child and youth protection coordinators.

Similarly, there is a daily cooperation between the juvenile prosecutors and the county courts of guardians, acting on behalf of juveniles.

7/ In the course of their work prosecutors administer judicatory tasks provided for by the law. In criminal procedures the prosecutor acts as a public prosecutor and in the course of his/her activity cooperates with other organs and authorities, but does not act as a coordinator or organiser.

II. Civil justice system and administrative proceedings

8/ Apart from their task related to criminal justice juvenile prosecutors bear a wide scope of judicial supervisory competence. In compliance with this they supervise the enforcement of children's rights granted by the legislation of the Republic of Hungary and the legitimacy of the extra-procedural enforcement of certain criminal statutes. In case of circumstances indicating abuse of juveniles, juvenile prosecutors take the necessary child protection measures without delay and inspect whether the law enforcement authority had fulfilled its reporting obligation.

Pursuant to the Criminal Code of Hungary if a person obligated to rearing, guidance or care of a minor seriously breaches his/her duty in this aspect and endangers the mental, emotional and moral growth of the minor, the act is regarded as a separate offence. On suspicion of such a crime only the juvenile prosecutor is entitled to act. In the course of the criminal proceeding the prosecutor can enforce the civil claim - related to the caused damage of the crime - of the minor injured party or his/her legal representative.

9/ The pretention for punishment is vindicated by the public prosecutor, entitled to prosecution and bringing charges. If legal conditions for the procedure exist, the juvenile prosecutor is not only entitled but is also obliged to initiate a criminal proceeding (bring charges and prosecute) regardless of the crime and the perpetrator.

Investigation is commenced on a complaint or ex officio information of the law enforcement authority or the prosecutor. Juvenile prosecutors can initiate an investigation ex officio if they learn about facts which – if true - perform the factum of a crime.

10/ In Hungarian criminal law corrective education is the exclusive special measure only applicable against a juvenile. It is proposed by the juvenile prosecutor if the education of the juvenile in a reformatory is necessary for the successful correctional education. This measure is justified in cases when the juvenile has to be removed from his/her usual environment but the sentencing to imprisonment is not necessary.

Juvenile prosecutors help the court establish the facts with reference to the juvenile's personality and the relevant aspects of his/her environment and take relevant facts into account when sentencing the juvenile. Already in the course of the investigation the prosecutor is obliged to explore whether the investigative authority possess an environmental scanning including the data registered by the educational institution or information from the employer. If regarded necessary the prosecutor enters into relations with the probation officer and the educational institution.

11-12/ Pursuant to the legal regulations [7/1988 (VIII. 1) IM ministerial decree] concerning the Hungarian implementation of the Hague Convention on the Civil Aspects of International Child Abduction in case of the wrongful removal of a child to or from Hungary the minister of justice as Central Authority and the competent civil court are entitled to proceed. The juvenile prosecutor does not act in such procedures.

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