

Questionnaire on principles of public prosecution as regards juvenile justice

Criminal Justice System

Ad Point 1/

Juvenile justice in the Slovak Republic is not governed and regulated under any separate legal rules and it does not follow any specific guidelines, even after the reform of the Criminal Code and Criminal Procedure Code in 2005; it is still incorporated in these general criminal Codes. However, both aforementioned Codes take a due account of particularities of proceedings involving juvenile offenders. Relevant substantive provisions can be found in Chapter IV of the General Part of the Criminal Code under the heading “Specific Procedures for Dealing with Juvenile Offenders”, and particularities of procedures involving juvenile offenders are governed in Section Three of Chapter VII, Subsection II of the Criminal Procedure Code under the heading “Prosecution of Juvenile Offenders”.

Juvenile offenders can be divided into three categories based on their age:

- Children, who at the time of the commission of the offence have not attained the age of 14, and in cases of sexual abuse under Sec. 201 of the Criminal Code the age of 15. These children are not liable to criminal prosecution and if they act in a way otherwise classified as a criminal offence, punitive-educational protective orders may be imposed on them under a court ruling [Sec. 37(2) and (3) of Act No. 36/2005 (Family Act) as amended], or under a ruling made by the child-welfare agency and social agency [Sec. 12(1) of Act No. 305/2005 on the Child Welfare and Social Agencies as amended]. Reprimand addressed to children or their parents, supervision orders, orders on placing a child in the temporary care of a foster family other than his own or placing a child in the temporary care of a residential facility as the result of problems or challenges that are taking place within the birth family, etc. may also be initiated by the prosecutor to promote the child’s legitimate interests; the need for taking these measures must be duly considered and a due account must be taken of the child’s personality, external environment, his family background, as well as of the nature of the child’s actions which are otherwise classified as a criminal offence. Subject to stringent requirements prescribed by law the child may be imposed a mandatory educational or medical treatment order by the civil court; these orders are enforced in specialised educational centres, in professional foster families or in in-patient health care centres. The proposal to impose a mandatory educational or medical treatment order is usually put forward by the prosecutor.
- Juvenile offenders who at the time the commission of the offence have reached the age of 14 but who are below the age of 18. The only change in conditions applies to the sexual abuse offence committed by offenders aged between 15 to 18; criminal liability of offenders aged between 14 – 15 years is considered in the context of their individual mental and moral maturity. However, to classify actions of juvenile offenders regardless of their age as criminal misdemeanours, juvenile offenders’ actions must be – unlike adults’ actions – exerted with considerable gravity. This, of course, does not apply to more serious offences and felonies. Unlike in the case of adult offenders, there are shorter time limits for prosecuting juvenile crimes, a wider range of non-sentencing options, more alternative and non-repressive sentencing

options, but also a narrower range of sentencing options. Custodial sentences imposed on juvenile offenders below the age of 18 are served in juvenile correctional facilities.

- Persons approaching the young adult age, i.e. persons who have reached the age of 18 but have not reached the age of 21. The fact that the offence was committed by a young adult offender may be a mitigating circumstance under Sec. 36 item d) of the Criminal Code. There are no other changes in conditions or differences arising under the Criminal Code, which would apply to the criminal liability of juvenile offenders and adults offenders.

Criminal Proceedings Involving Juveniles

Particularities of criminal proceedings [Sec. 336 – Sec. 347 of the Criminal Procedure Code) are displayed mainly in the following:

- Juvenile offender must be represented by a defence counsel from the moment of formal accusation being brought against him until the final and conclusive disposition of the case or matter at issue
- Involvement of the state youth welfare agency in criminal proceedings
- Defence counsels may bring appeals against court orders or resolutions to the benefit of juvenile offenders on their behalf; the state youth welfare agency may bring appeals even without the juvenile offender's consent, or even against his will
- It is necessary to ascertain and assess the level of the juvenile's mental and moral maturity and his family or social background
- Juveniles below the age of 15 must undergo a mental health assessment
- Juvenile offenders may be taken into pre-trial custody (detention) as a last resort only on condition that the purpose of the pre-trial custody cannot be achieved in any other way and if there are no other less-restrictive alternatives
- Possibility to refer and forward the case to be tried in a court other than a local court within the jurisdiction of which the juvenile offender resides, if such referral is in the juvenile offender's best interest
- Main hearing and public plea-bargaining is not allowed in the absence of the juvenile offender
- Prosecutor must always be present also at public hearings
- Joint prosecution of the juvenile offender and the adult offender above the age of 18 is admissible only in exceptional cases
- If it is to the benefit of the juvenile offender, the hearing may be held without the presence of the public.

The above-mentioned principles and guidelines contained in the Criminal Code and in the Criminal Procedure Code must be followed and observed also by prosecutors. There are no specific policies, which would apply to prosecutors within the juvenile justice system.

Ad Point 2/

The Criminal Procedure Code in Sec. 347(1) reads that the investigation and fast-track investigation must be conducted and decisions concerning juvenile offenders may only be made by officers who have sufficient experience with the upbringing of the youth in order to achieve the purpose envisaged by the criminal proceedings. Respect for legal rules applicable to the Prosecution Service and its role in the criminal justice system resulted in the essential need to introduce specialization of prosecutors in juvenile crime and crimes against children, and the need of adequate and systematic specialized training. Under the Decree of the

Prosecutor General No. 6/2008, specialisation in juvenile crime and crimes against children was put in place at all levels of the Prosecution Service (including District and Regional Prosecution Offices as well as the General Prosecution Office). Specialization is defined as the main focus of the prosecutor's practice. All prosecutors involved in the selection procedures had to show professional knowledge and understanding, as well as their experience in the upbringing of the youth. Specialised prosecutors supervise legality of the police investigation procedures before the institution of prosecution and at the pre-trial stage; they also act as prosecution counsels once the indictment was brought, and they negotiate plea-bargaining agreements with respect to the offences committed by juvenile offenders or by persons who at the time of the commission of the offence had not reached the age of 14, or also, with respect to the offences against family and youth and all other cases, in which the victim is below the age of 18. Specialised youth crime prosecutors will report information to the prosecutor acting in the civil proceedings; in the light of such recommendations the court may impose mandatory educational or medical treatment orders based on information contained in the investigation case folder. Specialised youth crime prosecutors are mainly obliged to educate themselves, and regularly attend training courses within the continuous education scheme organized by the Prosecution Service and the Judicial Academy. The list of specialised youth crime prosecutors is kept by the General Prosecution Office of the Slovak Republic, and any changes shall be reported by the Chief Regional Prosecutors not later than within one month after the change took place.

Unfortunately, there are no judges specialised in juvenile crime. Court cases are assigned to trial judges by the Electronic Allocation and Case Management System, which on one hand guarantees impartiality of courts, but on the other hand cases involving juvenile offenders are not tried by specialized judges; they are handled and tried by judges randomly selected by the Electronic Allocation and Case Management System from among all criminal judges trying cases within a particular court.

Ad Point 3/

As mentioned above in Point 2/, in 2008 prosecutors specialised in juvenile crime within the Family and Youth Protection Division were appointed at all levels of the Prosecution Service on the basis of their professional qualities and experience. Each specialised prosecutor is obliged to improve his professional knowledge on their own, and at the same time to attend all training courses organized by the Judicial Academy or by the General Prosecution Office, or by Regional Prosecution Offices. Prosecutors are trained by the Judicial Academy in the context of the General Training Scheme of the Judicial Academy, which is also aimed at judges and candidates for judicial appointments. The General Prosecution Office on a regular yearly basis organizes its own seminars focused on topical problems arising in the course of the practice of the prosecutor's profession, which also involve family and youth protection. For example, on 12th and 13th November 2009 a seminar for prosecutors specialised in juvenile crime and crimes against children was organised, focused on "Procedural Status of Juvenile Offenders in Criminal Proceedings, Legitimacy of Procedures in Juvenile Convictions". As outlined in the Professional Training and Continuous Education Scheme of Prosecutors for the year of 2010, there has been another training course scheduled for 20th and 21st September 2010.

Ad Point 4/

Criminal proceedings and the status of the prosecutor therein are subject to the general principle that applies also to the proceedings involving juvenile offenders, being the principle of legality. Its purpose is to make sure that all offences, of which the law enforcement agencies are aware, will be duly and fairly investigated regardless of whether the police want to investigate them, and if necessary, other formal actions will be taken to prosecute and finally dispose of such cases provided that all statutory requirements have been duly met. The police and the Prosecution Service as the authorities in charge of investigation and prosecution are obliged to investigate and prosecute criminal activities and identify perpetrators. The prosecutor supervises legality of actions taken prior to the commencement of criminal proceedings and at the pre-trial stage. He provides guidance to the police and instructs the police on some procedures to be followed, he supervises individual actions taken by the police through being present in person, or takes the action himself where necessary. The Prosecutor can overrule any unlawful or unjustified decision, he may return the matter to the commanding police officer and ask him to provide any additional information, or he may reallocate the case to any other police officer. These prosecutors' rights may be exercised in all pending cases. The prosecutor may be present at the interviews of juvenile victims adversely affected by the crime, or he may as well take the initiative and interview victims himself. The interviewing of the person below the age of 15 as a witness in situations, where his evidence and deposition as to his knowledge of the criminal offence, offender or facts in issue relevant to the investigation could have an adverse effect on the witness' mental or moral development, needs to be conducted very carefully and in such a way (mainly in terms of oral evidence presented) that no other repeated interview will have to take place at any later stage of the proceedings. The law requires the presence of a qualified teacher, any other person having experience with the upbringing of youth, or any expert who is able to supervise the proper conduct of the interview. At the pre-trial stage, such a witness may be questioned and interviewed again only with the prosecutor's consent. If the interviewed witness is below the age of 15 and if the case involves the offence committed against the relative, adopted child, foster child or child placed in the residential care facility, or if based on the circumstances of the case it may be reasonably assumed that in any repeated interview the person below the age of 15 could distort the reality, or if it may be reasonably assumed that any repeated interview might adversely affect the witness' mental and moral development, the interview must be conducted by using technical audio-visual facilities; however, such person may be interviewed again at any later stage of the proceedings only exceptionally.

Principle of legality binding on the prosecutor is modified by the principle of opportunity. The Criminal Procedure Code defines cases and situations, in which the prosecutor is not allowed or cannot prosecute offences regardless of the age of perpetrator.

No criminal charges may be brought if

- Offences were committed by persons, who are not subject to the jurisdiction of law enforcement agencies and courts in criminal proceedings
- All requirements have been met for the inadmissibility of criminal prosecution (e.g. limitation of actions in criminal proceedings)
- Victims do not give their consent to prosecution
- Prosecution would be in conflict with international treaties or decisions of international organizations, which are binding on the Slovak Republic.

Under relevant provisions of the Criminal Procedure Code the prosecutor may exercise his discretion and decide that he will not bring criminal charges against the perpetrator on legitimate grounds established by virtue of law; this is the platform for

- Dismissal of the case before bringing criminal charges on the grounds of their obvious inexpediency and due to the fact such dismissal is preferable to prosecution

- Dismissal of the case where the likely penalty for the original low-level offence if the case were to proceed to the court is insignificant when compared to the penalty already imposed on the perpetrator under a final court judgement for any other offence, or dismissal of the case because a final and conclusive judgment has been rendered by a foreign court on the original offence, or if a final decision has been made in other than criminal proceedings and such decision can be regarded to be the sufficient and appropriate way to address the offender's behaviour
- Dismissal of the case which involves assisting offender provided that other legal requirements have been met
- Conditional caution provided that other legal requirements have been met
- Conditional caution administered on assisting offenders provided that other legal requirements have been met
- Reconciliation in criminal proceedings and dismissal of the case provided that other legal requirements have been met.

Theoretically speaking, these can also include rather a new procedure which may take place under the Criminal Procedure Code, being plea bargaining.

The above-mentioned range of options is also applied in criminal proceedings, which involve juvenile offenders. The Slovak Criminal Procedure Code does not have any provisions that would apply specifically only to juvenile offenders.

Ad Point 5

A juvenile offender (unlike an adult offender) may be taken into pre-trial custody (detention) as a last resort only on condition that the purpose of the pre-trial custody (rehabilitation) cannot be achieved in any other way and if there are no other less-restrictive alternatives. Most often, the intended purpose of the pre-trial custody can be achieved if • a reliable person gives a guarantee of the juvenile offender's rehabilitation and prevention of his criminal behaviour • a juvenile offender himself gives a guarantee or assurance of his rehabilitation and prevention of his criminal behaviour • certain restrictions are imposed on the juvenile offender • the juvenile offender is supervised by a probation and mediation officer or • the juvenile offender is imposed a financial penalty as a sentencing option. The prosecutor (similarly as other law enforcement agencies at the pre-trial stage and courts at the trial stage) is at each stage of criminal proceedings obliged to carefully consider whether the purpose of the pre-trial custody cannot be achieved in any other way.

There is a general principle that applies to the criminal proceedings involving juvenile offenders: custody (detention) cases involving juvenile offenders must urge a speedy and firm action of the law enforcement agencies (the police or prosecutors). The prosecutor is at every stage of criminal proceedings, which involve juvenile offenders, obliged to take due account of and promote and strengthen protection of juvenile offenders.

Custodial sentences imposed on juvenile offenders below the age of 18 are served in juvenile correctional facilities.

Ad Point 6

When it comes to the juvenile crime, prosecutors on one hand and local and regional governmental and public bodies, local government organizations or any other organisations

and entities on the other hand do not cooperate on the basis of any laws, but they cooperate mainly in the context of situation in individual locations and their particular needs.

Under Sec. 4(1) items f) and g) of Act No. 153/2001 on the Slovak Prosecution Service, the Prosecution Service is involved in the preparation and implementation of preventive measures aimed at the prevention of violations of laws and other generally binding legal rules. It is also involved in eliminating the causes and conditions of criminal activities, as well in the prevention of crime and in the combat of crime. The Prosecution Service pays special attention to the prevention of offences committed by juvenile offenders below the age of 18. The Prosecutor General is a member of the National Crime Prevention Council (*Rada vlády SR pre prevenciu criminality*). The Prosecution Service on a regular basis participates in the preparation of national action programmes and plans for children and youth; its main role is to take measures aimed at the prevention of the children's and youth's exposure to negative phenomena, measures aimed at the proper care of children, who do not live in their biological families, and measures aimed at the training of professionals working with children and for the benefit of children. The Prosecutor General takes part in conferences organised on a regular yearly basis by the National Center for the Crime Prevention, Criminal Law and Criminal Justice (*Národná spoločnosť pre prevenciu criminality, trestné právo a súdnictvo*) in cooperation with the Slovak Ministry of Education, which deals with the crime prevention at primary and high schools and aims to explore new alternatives and new options to combat juvenile crime. In the context of the of Social Pathology Prevention Scheme, which focuses on children and youth, prosecutors may turn to the Centre of Educational and Psychological Prevention (*Centrum výchovnej a psychologickéj prevencie*) (established under Act No. 279/2003 on Educational Facilities), and seek/propose specific out-patient social, psychological and medical treatment of children exposed to pathological phenomena.

The Prosecution Service also co-operates with schools in individual geographic regions, where lectures, discussions, round tables or any other meetings are organized on the premises of schools at their request, or of the prosecutor's own motion if he feels that it is necessary to increase the awareness of the youth. Teachers are often very helpful and assist in investigating various juvenile offences.

Prosecutors (on a regular yearly basis) inform local government bodies on the rate of crime in their respective jurisdictions. Their reports also include information on the rate of juvenile crime and on measures taken against juvenile offenders.

Ad Point 7

The Prosecution Service cooperates with the police, courts of law, child-welfare agencies, social agencies and medical doctors within the limits of applicable criminal and administrative laws. The prosecutor is the only entity authorised to indict and charge a juvenile offender with a crime by formal legal process upon proposal put forward by the police investigation officer, of course, having taken a due account of the circumstances of the case, and he may also decide about the outcome of the pre-trial procedures involving a juvenile offender. He closely cooperates with child-welfare agencies and social agencies with a view to assisting them to prepare a report on the situation in the juvenile offender's family and on his social background. All institutions involved in this process always bear in mind and take a due account of the educational impact of their decisions.

II. Civil Justice System and Administrative Proceedings

Ad Point 8

The prosecutor's role is by virtue of law limited in relation to persons below the age of 18 in terms of any immediate risk posed to their education, living arrangements, etc. However, if the prosecutor finds out that there is any risk posed to the life or health of a minor child, he must immediately report to the child-welfare agencies or social agencies; child-welfare agencies and social agencies shall then make sure that the child will be placed in a social facility, and will ask the court to make a court ruling in this matter. Procedures are governed and regulated in Act No. 305/2005 on the Child Welfare and Social Agencies as amended and in the Civil Procedure Code. However, the prosecutor may then exercise his powers conferred upon him by law and become a party to the pending case over the child care and custody [Sec. 35(2) item d) of the Civil Procedure Code], mainly dealing with the child support and maintenance, visitation rights, supervised or restricted parental visitation rights, denial of parental visitation rights, approval of important actions to be taken on behalf of the minor child and to the best of its legitimate interests, approval of important decisions which the parents cannot reach, foster care or residential care arrangements in children's homes or other residential care facilities where the child has reached the age of consent, etc. When becoming a party to the court proceedings, the prosecutor may act on third-parties' motions, or he may rely on facts he learnt himself during the examination and review of respective court records. Prosecutors become parties to civil court proceedings in those cases where a serious risk has been posed to the child's legitimate interests or the child's due upbringing. Most often, in Slovakia these cases involve the issues of sole custody, foster care or residential care orders, supervised or restricted parental visitation rights, denial of parental visitation rights, and grandparent visitation rights. When exercising his powers in the civil proceedings (be it the power to propose the imposition of a mandatory educational or medical treatment order or the right to become a party to the proceedings) the prosecutor always supports and promotes public interest, which the parties sometimes do not fairly present in their argumentation. The prosecutor's role is to protect neutrality and fairness of proceedings, uniform, stable and consistent procedures and consistent decision-making policies, and thus to protect legitimate rights and interests of parties who create legal relations.

Another power that the prosecutor may exercise in civil proceedings, which involve protection of minor children's legitimate rights and interests (even to rather a limited extent) is the power conferred upon the Prosecutor General to bring a last-resort extraordinary appeal against a final and conclusive court order in cases where the law itself or interests of individuals, legal entities or state have been violated, and the protection of such interests cannot be otherwise restored [Sec. 243e et seq. of the Civil Procedure Code]. Speaking in terms of the Family Act, such last-resort extraordinary appeal can be brought only against final and conclusive court orders on supervised or restricted parental visitation rights, denial of parental visitation rights, sole custody, paternity determination, denial of paternity or adoption.

As it results from the above, the prosecutor may exercise his powers conferred upon him by virtue of law even in civil court proceedings, be it either upon proposals and motions put forward by litigants, as a result of the examination and review of court records, or upon proposals and motions made by child-welfare agencies, social agencies, media, etc.

Like other citizens, even the minor child if aggrieved by the offence as a victim may exercise his statutory right guaranteed by applicable laws, and may report an offence to law

enforcement agencies if he reasonably believes that there is a risk posed to his rights or legitimate interests, or that his rights and legitimate interests have been violated. Due to the fact the minor child's capacity to sue and be sued is limited, law enforcement agencies must enable the presence of the child's authorised representative, guardian, qualified teacher, social-welfare agency representative or any other authorised agent during each interview conducted in the course of investigating reported crime. If the crime was committed by the child's relatives (his parents or foster parents, i.e. his authorised representatives who otherwise exercise the child's rights or by other relatives), the guardian must be appointed to protect the child's rights and legitimate interests. If there is a risk of any delay at the pre-trial stage, such guardian shall be appointed for this purpose by the pre-trial judge at the prosecutor's request. The guardian is mainly the public body or the authorised representative of the Victim Support Service.

Under Sec. 49 of the Criminal Procedure Code, the victim must be first given a due written notice of his rights in the criminal proceedings, of available victim support organisations and of services they provide; this first-contact written notice must be given by the law enforcement agency. Moreover, law enforcement agencies and courts are obliged to provide room for the due exercise of the victim's rights.

In order to protect child victims, the Slovak Criminal Procedure Code uses the concept of protected witness and anonymous witness. If the child victim suffered any harm, loss or damage and provided that a damages claim was made duly and on time, the prosecutor may ask the court to rule on the compensation order in the guilty verdict against the perpetrator. Compensation for damages and the obligation to reimburse costs incurred by the victim as a result of the offender's violent criminal activities is also governed and regulated in Act No. 437/2004 on Claim Compensations and Act No. 255/1998 on the Criminal Injuries Compensation.

Ad Item 9

In the civil proceeding, the only proposal which can be put forward by the prosecutor of his own motion is a request that a court rule on the mandatory court-ordered educational or medical treatment [Sec. 35(1) item e) of the Civil Procedure Code, Sec .105 of the Criminal Procedure Code].

Under Sec. 105 of the Criminal Code the court shall rule on the mandatory court-ordered educational or medical treatment (also upon the prosecutor's proposal) in civil proceedings with respect to the minor child aged between 12 – 14 years if such person committed a crime for which a life sentence can be imposed on an adult offender. The court may (but does not have to) do so if a court-ordered treatment is necessary with a view to safeguarding due upbringing of the child below the age of 14 who acted in a way that would otherwise be classified as an offence.

Ad Point 10

A new concept introduced by the Criminal Code after its reform is the punitive-educational protective order, which is imposed on the juvenile offender after assessing the gravity of the offence and the juvenile offender's attitude, and after due consideration of the envisaged effect of the punitive-educational protective order on the juvenile offender's behaviour. At the pre-trial stage, such measures may be with the juvenile offenders' consent imposed by

prosecutors; offender's behaviour is thereafter carefully monitored and supervised at the pre-trial stage. The prosecutor's decision to impose the punitive-educational protective order (various obligations and restrictions) in a form of a formal resolution must be duly served on the juvenile offender, his authorised representative and child-welfare agency, because only the child-welfare agency may coordinate the implementation of punitive-educational protective orders and restrictions set out in Sec. 107 of the Criminal Code (probation under the supervision of the probation and mediation officer, compensation and indemnification for loss or damage, community service orders, psychotherapy, mandatory enrolment in social training programmes, educational programmes, retraining courses or any other programmes aimed at the development of the juvenile offender's skills and personality, etc.) If the punitive-educational protective order is imposed by the prosecutor in a form of a reprimand, such measure will be duly recorded in writing and such written record shall be signed by the juvenile offender and his authorised representative. The juvenile offender may at anytime withdraw his consent to the punitive-educational protective order, as a result of which such punitive-educational protective order shall be deemed to have ceased by virtue of law. Should the prosecutor find out that the juvenile offender is unable to comply with such punitive-educational protective order as a whole or in time (whether for objective or subjective reasons), the prosecutor may dismiss or change such measure.

The prosecutor usually communicates with bodies implementing such punitive-educational protective orders in writing, but there are also other forms of communication between these bodies and prosecutors specialised in juvenile crime during the office hours.

If the child-welfare agencies, social agents or civil courts impose punitive-educational protective orders on juvenile offenders below the age of 14 upon the prosecutor's proposal, the compliance with such orders is monitored and supervised by the issuing authority.

Ad Point 11

Child abduction by the non-custodial parent is under Sec. 210 of the Criminal Code classified as a crime. Should the prosecutor learn about the child abduction, he shall initiate due investigation of the case by the police and based on the result of the investigation he will decide how to proceed in the case; indictment with formal charges shall be brought to a court of law. Any necessary measures to be taken in relation to the abducted minor child shall be taken by child-welfare agencies and social agents, or by the Centre for the International Legal Protection of Children and Youth (*Centrum pre medzinárodno-právnu ochranu detí*). The prosecutor does not have the power to enforce the return of the child to the custodial parent.

Ad Point 12

Measures to be taken with a view to protecting the child's life and his health, as well as with a view to promoting his mental and physical development as well as the return and travel of the child within the Slovak Republic without accompanying persons fall within the scope of powers of child-welfare agencies and social agents. Deportation (expulsion) orders imposed on juvenile offenders are enforced by judicial authorities without the involvement of prosecutors.

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

We would like to see the establishment of specialised criminal benches at all levels of our court system, which would deal with the juvenile crime cases. Such specialisation in juvenile crime would also be very helpful within the police to make sure that juvenile offenders and those who cannot be held criminally liable due to their age will be dealt with by duly qualified police officers having necessary experience.

In order to protect children's rights and legitimate interests duly and properly, it would be very helpful to extend the scope of the prosecutor's powers mainly in the field of civil justice. The prosecutor could have more powers to put forward proposal to the civil court in those cases where the child's rights and freedoms have been violated. This also applies to denials of paternity, with respect to which the prosecutor (rather ineffectively) cannot exercise any powers.