



**THE REPUBLIC OF CROATIA
THE OFFICE OF THE STATE ATTORNEY GENERAL
OF THE REPUBLIC OF CROATIA**

No: A-14/10
Zagreb, 11th January 2010
MK/SP

SUBJECT: Questionnaire on principles of public prosecution as regards juvenile justice for Consultative Council of European Prosecutors (CCPE)

**I
CRIMINAL-LAW SYSTEM**

1. In the Republic of Croatia, pursuant to Article 4 of the Law on Juvenile Courts (NN no. 12/2002), general law, that is provisions of the Criminal Code, Criminal Procedure Act, Law on Courts, and Law on the protection of persons with mental disorders are applied to young perpetrators of criminal offences (juveniles and adolescents). These laws prescribe sanctions for criminal offences and other general regulations unless the Law on Juvenile Courts provides otherwise. Sanctions which may be prescribed and applied against juveniles are educational measures, juvenile imprisonment and security measures. A juvenile, who at the time of perpetration of the criminal offence is 14 years old, but under 16 (younger juvenile), may receive only educational measures, while a juvenile who at the time of perpetration of the criminal offence is 16 years old, but under 18 (older juvenile), may receive educational measures under conditions prescribed by the Law on Juvenile Courts and Juvenile Imprisonment. Security measures are also applied to juveniles under conditions prescribed by the Law on Juvenile Courts. Within general purpose of criminal sanctions (Article 6 of the Criminal Code) the purpose of juvenile sanctions is to influence the upbringing, development of character and strengthening of personal responsibility in juveniles by providing protection, care, assistance and supervision and securing general and professional education of juvenile perpetrator of a criminal offence. Minimal age threshold of criminal responsibility is 14 years.

Juvenile imprisonment is a penalty of deprivation of freedom with specificities in regard to conditions of pronouncement, duration, purpose and content of the sanction. It may be pronounced to older juvenile for committing a criminal offence for which imprisonment of five (5) years or more is prescribed, if, taking into consideration nature and severity of criminal offence and high degree of guilt it is necessary to pronounce a sentence.

Besides educational measures and juvenile imprisonment, security measures of compulsory psychiatric treatment, compulsory treatment of addiction, expulsion of aliens

and forfeiture may also be applied toward juvenile perpetrators; security measure of prohibition to drive a motor vehicle may be applied toward older juvenile.

Provisions of the Criminal Code and criminal-law provisions of other laws of the Republic of Croatia are applied to younger juvenile perpetrators of criminal offences, under conditions prescribed by Article 9 of the Law on juvenile Courts and provisions applied for juvenile perpetrators. Pursuant to Article 109 younger adults adult may receive juvenile sanction when it can be concluded that, taking into consideration the type of criminal offence and the manner of its perpetration, in great length, it is a reflection of the age of a perpetrator and circumstances pointing to perpetrators character justify belief that the purpose of the sanction will be achieved by pronouncing educational measures or juvenile imprisonment. Educational measure may last no longer that until the perpetrator's 23rd birthday. The longest measure of juvenile imprisonment is ten (10) years. If younger adult, at the time of the trial turns 21, he/she may receive prison sentence instead juvenile imprisonment, and if he/she turns 23 during the trial, he/she will receive prison sentence instead juvenile imprisonment. In case of application of educational measures and juvenile imprisonment to younger adults above mentioned security measures may be applied under same conditions as for juveniles. Security measure of prohibition to prohibition to engage in a profession cannot be applied to younger adult perpetrator.

When general criminal law is applied to younger adult, court is not bound, with restrictions of mitigation of punishment listed in the Criminal Code, to pronounce the lowest measure of the prescribed sentence for the criminal offence. Court cannot pronounce a prison sentence to a younger adult for more than twelve (12) years, unless he/she committed criminal offence for which long-term imprisonment is prescribed or for committing concurrently adjudicated criminal offences (at least two) for which prison sentence longer than 10 years is prescribed.

2. In Municipal State Attorney's Offices within County State Attorney's Offices and in County State Attorney's Offices, there are Sections for Juvenile Delinquency within Criminal Departments. State Attorneys for juveniles work within those sections and present their cases before Municipal courts within County Courts and County Courts – sections for juveniles. State Attorneys for juveniles must have expressed tendency/inclination toward upbringing, needs and benefits of the youth. They also have to possess basic knowledge of criminology, social pedagogy and social care for juveniles. State Attorneys for juveniles are appointed to the period of five (5) years from State Attorneys or Deputy State Attorneys in State Attorney's Offices by the State Attorney General of the Republic of Croatia. After 5 years State Attorney may be re-appointed. In annual work schedule of the Office of the State Attorney General of the Republic of Croatia a Deputy State Attorney is determined to conduct proceedings before Juvenile Council of the Supreme Court of the Republic of Croatia. State Attorney Office has expert associates – social pedagogue – defectologist and social workers who collect data for the state attorney so as to reach decision on purpose of commencing proceedings against a juvenile, and justification of proposing discontinuance of preparatory proceedings against a juvenile.

State Attorneys for juveniles solve criminal cases of juvenile delinquency, protection of children and juveniles and cases where perpetrators of criminal offences are younger adults.

3. Education of the State Attorneys for juveniles is conducted through targeted meetings organised by the Office of the State attorney General of the Republic of Croatia. State Attorneys for juveniles participate in those meetings as well as expert associates and discuss problems in working on cases of juvenile delinquency, protection of children and juveniles and younger adults with the aim of standardisation of practice in working on certain criminal offences, application of educational measures and juvenile imprisonment. Furthermore, education is also organised by the Ministry of Justice of the Republic of Croatia via seminars of the Judicial Academy. Lecturers from the country and from abroad participate in these seminars and among other things discuss and acquaint themselves with the work of State Attorneys for Juveniles and Juvenile courts abroad.

4. In criminal proceedings where children or juveniles are injured persons – especially in criminal offences against sexual freedom and sexual morality and criminal offences against marriage, family and youth, when a witness examined is a child who has been injured by the criminal offence, the examination is carried out with the assistance of a psychologist, pedagogue or other expert person. An investigating judge shall order that the examination be video-taped and audio-taped. The examination shall be carried out in the absence of the judge and parties in a room where the child is situated in such a manner that the child can be questioned by the parties through the investigating judge, psychologist, educator or other expert person. This manner of examination is prescribed by Article 238 of the Criminal Procedure Act. Minutes are made on examining and it is read during the trial, and tapes are reproduced, and in that way secondary victimisation of the injured child are avoided. If an injured child is questioned for the first time during the trial, panel may decide that the questioning be conducted by the president of the panel outside the trial, and such questioning will be conducted in the manner described above. During the questioning of a juvenile, especially if a juvenile is an injured person, questioning will be conducted in a manner which will enable avoidance of damaging effects to juvenile's psychiatric state.

Law on Juvenile Courts enables a State Attorney not to initiate criminal proceedings although a reasonable suspicion, that a juvenile committed a criminal offence for which a prison sentence of 5 years or a fine are prescribed, exists if he/she thinks that there would be no purpose in conducting criminal proceedings against a juvenile taking into consideration nature of a criminal offence and circumstances in which the offence was perpetrated, prior life of a juvenile and his/her personality characteristics. Furthermore, State Attorney may condition the decision not to initiate proceedings by readiness of a juvenile to fulfil obligations prescribed by Article 64 of the Law on Juvenile Courts. When a juvenile fulfils the obligations (according to his/her own capabilities of amending or compensating the damage caused by the offence, become involved in the work of charity organizations or work of community service, undergoes treatment of addiction or becomes involved in individual or group work within Youth Counseling) under cooperation and supervision of Social Service, State attorney will make a final decision on non-initiating of proceedings. Also, when execution of penalty or educational measure is underway or these sanctions became final, or a juvenile, by the decision of Social Service has been placed in Social Service institution, State attorney may decide not to initiate proceedings for other criminal offence a juvenile committed if conducting proceedings and pronouncing sanctions for the offence would not bear meaning taking into consideration the severity and nature of the offence and motive of commitment.

Provisions on opportunity of conducting criminal proceedings are meaningfully applied in criminal proceedings against younger adults, if it is established that it is possible to take into consideration the application of juvenile criminal law.

As it is already mentioned above, juvenile imprisonment may be pronounced to older juvenile for criminal offence for which a prison sentence of five (5) years or more is prescribed, if in regard to the nature and severity of the criminal offence it is necessary to pronounce a sentence. Juvenile imprisonment cannot last less than six months or longer than five (5) years and it is pronounced in full years and months. Juvenile imprisonment may last up to ten (10) years for criminal offence for which long-term imprisonment is prescribed or for committing concurrently adjudicated criminal offences (at least two) for which prison sentence longer than 10 years is prescribed. In deciding on the imprisonment, the court will take into consideration all circumstances affecting the range of the sentence (Article 56 paragraph 2 of the Criminal Code – A General Rule on the Selection of the Type and Range of the Punishment) having in mind the degree of maturity of a juvenile, time necessary of his/her upbringing, education and vocational training, and the sentence may be shorter in regard to degree of guilt if it will be enough to achieve the purpose of punishment. A juvenile convicted to juvenile imprisonment may be released on parole if he/she served one third of the sentence, but not before he/she spent six months in prison institution. During parole court may pronounce educational measure of enhanced supervision. Parole lasts until the time period for which the sentence was received. It can also be revoked if a convicted juvenile, during parole, commits one or more criminal offences for which a prison sentence in duration of six months or juvenile imprisonment of six months are prescribed. Court may also pronounce a sentence that juvenile is guilty of committing criminal offence and at the same time hold from pronouncing juvenile imprisonment if the court feels that the possibility of subsequent punishment would restrain the perpetrator from committing further criminal offences. Besides the judgement court may also pronounce an educational measure of enhanced care and supervision or one or more special obligations. After at least one year of probation court may pronounce final withholding from juvenile imprisonment if the new facts confirm that the juvenile will not commit further criminal offences. Before making such decision the court will question Social Service representative. If a juvenile whose juvenile imprisonment sentence had been withheld, is sentenced for committing other criminal offence or received educational measure during probation, court will pronounce a judgement for criminal offence priory committed criminal offence, if that, considering the new sentence or educational measure would be necessary to divert the juvenile from committing further criminal offences. A juvenile may receive a sentence for criminal offence committed before if he/she, regardless of the explicit warning of the court refuses to fulfil special obligations or constantly opposes conducting educational measure he/she received.

5. State attorney may, in cases where a juvenile perpetrator had been brought before an investigating judge, request his/her detention (which may last for 24 hours) if there are grounds for suspicion that a juvenile committed a criminal offence burdening him/her and if reasons from Article 102, paragraphs 1 and 2 of the Criminal Procedure Act exist – grounds for ordering detention, i.e. in the request for initiation of preliminary proceedings suggest ordering detention from the above-mentioned reasons. Detention may only be applied as a final measure, in proportion to severity of the criminal offence and anticipated sanctions, in the shortest duration and only if its purpose cannot be achieved by applying precautionary measure (Article 90 of the Criminal Procedure Act) or

temporary accommodation (Article 72 of the Law on Juvenile Courts). In the course of preliminary proceeding a juvenile may be placed under custody of Social Service so as to receive assistance and protection or he/she may temporarily be placed into Social Service institution, when it corresponds with anticipated sanction and with the aim of protecting a juvenile from further endangerment of his/her development, especially from temptation of repeating the criminal offence. Overall duration of detention during preliminary proceeding is three months. During detention a juvenile must be enabled to work and under circumstances receive education useful for his/her upbringing and vocation. As a rule, a juvenile is separated from adults while in detention, rarely is placed with adults and only if isolation of juvenile lasts longer period of time and placing him/her with an adult would not have a damaging effect. Duration of detention from submitting proposal for pronouncing sanction to final judgement must not be longer than half of the time period prescribed by article 109 paragraph 1 of the Criminal Procedure Act. This provision states the longest duration of detention before a first-instance judgment is passed. Detention is determined in months, and years in relation to upper limit of the prescribed prison sentence.

6. State Attorney's Office in juvenile proceedings cooperates, before all, with Social Service Centres (collecting data on personal and family circumstances of juveniles and younger adults, supervision of educational measure of extended care and supervision and educational measure of special obligations), contacts and visits educational institutions and juvenile institutions in which juveniles perform educational measures, and also juvenile prison. In regard to juvenile delinquency and statistical data State Attorney's Office also cooperates with other institutions, first of all with the aim of improving prevention through the work of those institutions.

7. Cooperation between State Attorney's Office and Police is present in pre-trial proceedings in the work on specific cases. With the aim of protecting juvenile's interests, especially in cases of protection of children and juveniles in criminal-law sense, we cooperate with Social Service Centres as well. During further proceedings, by submitting request for initiation of preliminary proceeding against a juvenile perpetrator of criminal offence or investigative request, i.e. indictment request in case of criminal offences committed against children and juveniles, State Attorney is a party in the procedure before court.

II

CIVIL-LAW SYSTEM AND ADMINISTRATIVE PROCEEDINGS

8. In criminal cases where a perpetrator of the criminal offence is a child (up to 14 years), where criminal responsibility is excluded, if it is necessary to protect child's personal and family circumstances that is to prevent further delinquent behaviour, or we are dealing with a child who committed several criminal offences, State attorney's Office initiates procedure for conducting social protective interventions pursuant to the Family Law and monitors accomplishment and results of undertaken interventions. State Attorney's Office may initiate the same procedure in regards to a juvenile against whom a criminal offence had been committed. As a rule, those are criminal offences against marriage, family and youth, that is criminal offences of abandonment and molestation of a child or a juvenile and violent behaviour in a family.

9. Criminal proceedings against a juvenile are initiated for all criminal offences only upon the request of a State Attorney. From criminal offences where procedure is conducted upon the request or a private suit, proceedings may be initiated if an authorized person (natural or legal) submitted proposal for initiating proceedings to competent state attorney within 3 months from the day the perpetrator or criminal offence came to his/her knowledge. In criminal proceedings against a juvenile injured person cannot take the place of a prosecutor. If a State Attorney assesses that there are no grounds to request initiation of criminal proceedings against a juvenile (reported act is not a criminal offence prosecuted ex officio, statute of limitation or the offence is under amnesty or pardon, there are other circumstances that exclude guilt or criminal prosecution or there is no reasonable suspicion that a juvenile committed reported criminal offence), injured person will be notified and he/she may in the period of eight (8) days from the time notice was received request the Youth Council of the higher court to initiate proceedings against a juvenile. When Council decides to initiate proceedings, competent State Attorney will take over proceedings against a juvenile.

10. Contacts between State attorney's Offices and other institutions or bodies dealing with juvenile population are mainly carried out in regard to contact in specific cases, regardless of the side who initiated contact. Situation is identical in criminal cases committed against children and juveniles.

11. Regarding the work of State Attorney's Offices on criminal offences against marriage, family and youth, and other criminal offences in which an injured person is a child or a juvenile, State Attorney's Office acts when it gains knowledge of commitment of such criminal offence, that is, when it receives a criminal report after which it reaches a decision based on merits and present indictment documents before court.

12. After juvenile judge conducts preliminary proceedings and delivers a file to the competent State Attorney, State Attorney may submit proposition for application of educational measure or punishment of a juvenile. Among educational measures prescribed by the Law on Juvenile Courts, State Attorney may suggest to send a juvenile to educational institution, educational centre or special educational institution (institutional measures). These measures are proposed when it is necessary to undertake more permanent and more intensive educational measures towards a juvenile or treatment measures by isolating a juvenile from his/her previous surroundings. Institutional measures are undertaken only as the last possible mean and their duration is prescribed by the Law on Juvenile Courts in the period necessary to achieve the purpose of educational measures. In criminal proceedings where an offence had been committed against a child or a juvenile, or when a child is a perpetrator of a criminal offence, if it is necessary to separate a child or a juvenile from their families for their protection, and to enable their development and education, State attorney's Office does not only conduct actions with the aim or realisation of separation and placement into appropriate institution, but those actions are exclusively conducted by the Social Service Centres. In such cases State Attorney's Office may, in the course of the entire procedure, warn, signal to Social Service Centres the situations and families which need to be examined to consider separation of a child or a juvenile from the family.

III

The Republic of Croatia passed the Law on Juvenile Courts in 1997. That was the first time we had a unique legal act which entirely regulates legal position of juvenile perpetrators of criminal offences. The Law entered into force on 1st January 1998, and it had only one amendment and change since then in 2002 (NN 12/2002). On that occasion there were no significant changes made in relation to existing legal position of young perpetrators. By this Law entire material and procedural position of a juvenile, younger adults and legal protection of children and juveniles is regulated within one law. With the aim of further upgrade and improvement of solutions from the existing legal text, and taking into consideration and accepting the most recent accomplishments and information from the field of intervention of society towards younger perpetrators of criminal offences, the Law on Juvenile Courts will be amended. The Ministry of Justice of the Republic of Croatia passed the Final proposition of the Law on the amendments of the Law on Juvenile Courts in October 2006. This Final proposition is being review by the Work group for drafting of the Bill of the Law on the amendments of the Law on Juvenile Courts. This Work group was formed with the Ministry of Justice of the Republic of Croatia. Representatives of the State Attorney's Offices and courts, Ministry of Justice, Ministry of Health and Social Welfare, Ministry of Interior Affairs, the Faculty of Law and the Faculty of Special Education and rehabilitation are appointed as members of Working group. Working group is examining the Final proposition of the Law on the amendments of the Law on Juvenile Courts from October 2006 and all other propositions whose aim is to enable implementation of the law within application of general law (Criminal Procedure Act passed on 15th December 2008 which significantly changed the role of the State Attorney from preliminary proceedings to final ending of the criminal procedure, and which will enter into force on 1st September 2011, as well as the Criminal Code whose amendments are underway).

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