

MODEL LAW ON JUVENILE JUSTICE

**Drawn up by the
Centre for International Crime Prevention**

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Introduction

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The model law drafted by the United Nations Centre for International Crime Prevention is the latest in a line of projects and international texts concerning minors adopted by the UN General Assembly, in response to concerns frequently expressed by Member States that the condition of minors is not being taken seriously. Consequently the Model Law has the purpose of ensuring the guarantee and promotion of the rights of minors.

The provisions contained in the model law have been drafted to respond to the increase, both in number and in gravity, of offences committed by minors, while ensuring the pre-eminence of measures of protection, assistance and education over criminal penalties. Generally, the model law emphasises the separate nature of juvenile criminal law and creates in particular specialised magistrates and jurisdictions, aims to avoid slow proceedings (and their all too frequent harmful consequences), to arrive at a good knowledge of the delinquent, and which places a wide range of options at the disposal of magistrates enabling them to arrive at the most appropriate decisions for the young person concerned and which always allows for a revision of the decision. However the purpose of this model law is also to ensure educational assistance to minors in danger and protection to juvenile victims who are usually ignored in national legislative provisions where these exist.

This legislative document must ensure the reform or the establishment of a justice system for minors as an integral part of social justice for young people. The model law is a legal tool intended to facilitate the drafting of national legislative provisions adapted by countries wishing to establish a law on juvenile justice or to modernise their legislation in this area. Therefore it is the task of every country to adopt the proposed provisions compatible with its constitutional principles and the fundamental concepts of its legal system. With a view to facilitating its incorporation into national legislation, the model law presents certain provisions in the form of variations and options. The variation added to an article makes it possible to modulate the adoption of a provision whose absence would not be conceivable within a system of juvenile justice. In addition to the variations, options have also been proposed, which, as the name indicates, represent optional legal provisions. It will therefore be the decision of the State whether or not to take these provisions into account.

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* Variant:

The variant of an article makes it possible to modify the adoption of a provision whose absence would not be conceivable within a juvenile justice system.

* Option.

The options represent discretionary legislative provisions. It will then be for the State to take these provisions into account or not.

Title 1: Guiding principles

Chapter I: Preamble

Article 1.1.-1

The aim of the present law is the recognition of the inherent dignity of all members of human society, particularly of children, and of the equality and inalienability of their rights founded on liberty and justice.

Children and young people are entitled to care and special assistance in order to be able to play their role in the community to the full.

The juvenile justice system must seek the well-being of the young person and must ensure that the reactions of the authorities are in proportion to the circumstances of both the young person and the offence. Therefore, the specialised courts for young people must be separate from courts competent for adults.

The juvenile justice system must also aim to promote the development of the young person's personality and moral responsibility as a citizen.

Young people in conflict with the law must enjoy equitable and humane treatment. Recourse to diversion should be encouraged. If diversion is not applicable, the detention of the young person must be a disposition of last resort, its duration must be as short as possible and the young person must be separated from adults.

In view of the particular and varied needs of young people, sufficient discretion in applying all possible measures must be provided at all stages of the proceedings. The proceedings before the competent authority must protect the interests of the young person and must enable the latter to participate in the proceedings and to express himself or herself freely. The institutionalisation of young people must be ordered only in the absence of other appropriate dispositions. If such is the case, the young people must receive educational, psychological and, if necessary, medical assistance to facilitate their rehabilitation.

Deprivation of liberty shall be pronounced only after careful consideration, limited to the possible minimum and shall be pronounced only for serious offences. Capital punishment and corporal punishment shall never be applicable.

All persons in charge of cases concerning young people (judges, the authority in charge of prosecution, the authorities in charge of the criminal investigation, police officers, prison personnel, and social workers) must receive continuous specialised training.

Chapter II: Definitions

Article 1.2.-1

The term "criminal offence" means any act of commission or omission punishable by the law by virtue of the legal system in question.

Article 1.2.-2

Variant (i)

Criminal offences consist of, according to their gravity, serious crimes (crimes) and major offences (délits).

Variant (ii)

Criminal offences consist of, according to their gravity, serious crimes (crimes) and other offences

Article 1.2.-3

Variant (i)

The term "serious crime" means a criminal offence punished by imprisonment as provided under article 4.2.-14 and can be coupled with suspension of enforcement pursuant to the provisions of article 4.2.-16.

Variant (ii)

The term "major offence" means a criminal offence punished by a measure or penalty pursuant to articles 4.1.-3 to 4.2.-12 and/or a fine pursuant to article 4.2.-1.

Title II: General provisions

Chapter I: Juvenile status

Article 2. 1.- 1

Any person below the age of criminal majority (to be fixed according to the legislation of the country in conformity with the Convention on the Rights of the Child) shall be considered as a young person.

Criminal offences not considered as serious crimes or penalised if they are committed by an adult should also not be punished if they are committed by a young person.

Article 2.1 .-2

The age of a person is determined by the time elapsed since his or her birth.

Article 2.1.-3

The proof of the real age of an alleged offender or criminal defendant is furnished by a civil registration document recognised in the State in question. When the civil registration document is suspect or devoid of probative value, or, in the absence of such a document, or in the case of a person of nationality other than that of the country in which the crime or serious crime was committed, whose civil registration document does not have irrefutable probative force, the proof of the person's age can be furnished by any means, in particular by medical expertise, taking into account the emotional, mental and intellectual maturity of the child. The determination of age is then a question of fact left to the discretion of the investigating authority, the family court judge or the prosecutor in charge of the case.

Chapter II: Criminal responsibility

Article 2.2.- 1

Only the personal act of an individual can entail criminal responsibility and the resultant sanction.

Article 2.2-2

Any person who has attained the age of criminal majority (fixed by the country) shall be criminally responsible.

Article 2.2.-3

An alleged offender or criminal defendant who has committed a criminal act within a maximum period of two years after attaining criminal majority shall be considered as a young adult. The offender shall be subject to the ordinary criminal courts, but, on pain of nullity, his or her age must be taken into consideration as an extenuating circumstance.

If the young adult has already been subjected to a restrictive measure, the latter can continue to be applied until the end of the second year following his or her criminal majority.

Article 2.2.-4

Variant (i)

An irrefutable presumption of absence of criminal responsibility shall apply to all acts committed by a young person below the age of ... years (the age to be defined by the State).

Any person above that age and below the age of criminal majority must necessarily benefit from a reduction of the penalty provided, as an effect of the excuse of lack of full age.

Variant (ii)

Below the age of criminal majority, and above the age of irrefutable absence of criminal responsibility, a young person aged from ... to ... who has committed a criminal offence

shall be subject to the exclusive competence of the civil court judge. Above that age and below the age of criminal majority, the young person shall be referred to the specialised juvenile courts.

Variant (iii)

An irrefutable assumption of absence of criminal responsibility shall apply to young people aged Young people aged ... to ... shall be subject to the competence of the juvenile courts; they shall, if charged with the acts, be subject to partial criminal responsibility, and only educational measures can be pronounced in respect of them. Young people above that age and below the age of criminal majority shall be criminally responsible, but the penalty envisaged shall not be pronounced in the following cases:

- (a) When it is established that the young person's discernment is insufficient;
- (b) When the circumstances and personality of the offender do not seem to demand it;
- (c) When the criminal act was committed before the end of the year in which the young person incurs only partial criminal responsibility;
- (d) When it is not established that the commission of the offence constituted an intentional and deliberate serious criminal act.

Article 2.2.-5

Criminal acts committed by young people below the age of criminal responsibility, whatever their age, shall not lose the character of serious crimes or major offences.

Title III: Courts of law for the trial of young people

Chapter 1 : Competence and organisation

Article 3.1.-1

Young people charged with offences defined as serious crimes or major offences shall not be referred to the ordinary criminal courts and shall be subject only to the jurisdiction of exceptional courts competent for cases involving young people.

The territorially competent specialised criminal courts for young people shall be those of the place of the offence, of the residence of the young person, of his or her family or guardian, of the place where the young person was found or of the place to which he or she has been committed by the public authorities.

The competence of courts shall be determined by the age of the criminal defendant on the date of commission of the offence and not by the date of judgement of the case.

Section 1: The family court judge

Article 3.1.-2

The family court judge shall be a magistrate specialising in questions of childhood and adolescence, with a thorough knowledge of psychology and social work.

The same specialised knowledge shall also be required for the authority in charge of prosecution responsible for young people's cases.

Article 3.1.-3

The family court judge can exercise the functions of both investigation and adjudication.

Article 3.1.-4

The family court judge shall exercise the function of an investigating judge in cases of serious crimes.

The family court judge shall exercise the function of investigation or adjudication as seems more expedient to him or her according to the gravity of the offence and the interests of the child in the case of major offences.

Section 2: The family court

Article 3.1.-5

The family court shall be competent for more serious cases that may lead to repressive sanctions.

Article 3.1.-6

The family court shall consist of the family court judge acting as president, and two lay assessors chosen on grounds of their special competence in the juvenile field and practising the professions of teaching, education or social welfare. It is a mandatory requirement that one on the assessors must be of the same sex as the alleged offender or criminal defendant.

Article 3.1.-7

Variant (i)

The assessors shall be chosen by the Minister of Justice on the proposal of the family court judge for a period of ... (fixed by the national authorities).

Variant (ii)

The assessors shall be chosen by lot under the conditions provided for the nomination of lay assessors for adults.

Section 3: The juvenile assize court

Article 3. 1.-8

The juvenile assize court shall be competent for the trial of serious crimes within the meaning of article 1 .2.-2.

Article 3.1.-9

The juvenile assize court shall consist of a president, two family court judges as assessors, supplemented by a lay criminal jury numbering ... (to be determined by the State). The latter must possess the qualifications required under article 3. 1.-6 and shall be chosen under the conditions established in article 3.1.-7.

The juvenile assize court shall meet at the seat of the assize court.

Article 3.1.- 10

The functions of the prosecutor at the juvenile assize court shall be performed by the official in charge of prosecution or by a magistrate from the prosecutor's office with special responsibility for cases involving young people.

Option

Section 4: The police court

Article 3. 1.-11

Criminal offences consist of, according to their gravity, petty offences (contraventions), major offences (délits) and serious crimes (crimes).

Article 3. 1.- 12

The term "petty offence" means a criminal offence punishable by a fine or any other measure provided under articles 4.1.-1, 4.1.-3, 4.2.-1 and 4.2.-3.

Article 3.1.- 13

In the case of petty offences, the family court judge shall exercise only adjudication functions.

Article 3.1.14

Variant (i)

The police court shall consist of a single judge, the family court judge, competent for criminal offences designated as petty offences.

Variant (ii)

In the case of petty offences, young people shall be subject to the normal competence of the police court, which shall apply the legislation on juveniles in such circumstances.

Article 3. 1.15

Variant (i)

When the petty offences are connected to a major offence or a serious crime or constitute an indivisible whole together with them, judicial investigation shall be necessary; the young person and the other perpetrators of the offence shall then be subject to the specialised juvenile courts.

Variant (ii)

When the petty offences are connected to a major offence or a serious crime or constitute an indivisible whole together with them, judicial investigation shall be necessary; the young person and the other perpetrators of the offence shall then be subject to the ordinary courts, but with application of the specialised provisions for Juveniles.

Article 3. 1.- 16

When the acts committed constitute a criminal offence designated as a petty offence, the authority in charge of prosecution shall refer the case to the competent criminal court directly.

Chapter II: Procedure

Article 3.2.- 1

The authorities in charge of carrying out the criminal investigation shall arrest juvenile offenders if that is necessary and no alternatives can be found.

Article 3.2.-2

Committal to police custody shall be possible for a young person over the age of ... years (to be fixed by the legislation of the State) suspected of a serious crime. From the beginning of committal to police custody, the young person shall be entitled to the assistance of a lawyer and, if appropriate, of an interpreter, and a physician must be designated to examine him or her. The parents of the young person or the persons or services responsible for the young person must be informed immediately, as well as the authority in charge of prosecution.

At the end of the period of police custody, which must not exceed 24 hours, the young person shall be brought before the competent judicial authority, which shall decide as to the imposition of preventive detention.

Variant (i)

Section 1: Before the prosecution authority

Article 3.2.-3

The prosecution authority in whose area the family court has its seat shall be in charge of the prosecution of offences committed by young people.

Article 3.2.-4

When the authority in charge of prosecution considers that the facts referred to it seem insignificant or not established, it shall close the case without taking further action.

In the opposite case, when the acts committed constitute a criminal offence designated as a serious crime or major offence, it shall refer the case to the judicial authority competent in criminal justice for young people, either in its capacity as the family court judge, or in its capacity as the investigating judge.

In the case of criminal offences designated as major offences, the authority in charge of prosecution must first attempt to bring about an extra judicial solution within the meaning of the present law, or, failing that, must contact the institutions provided for alternative measures.

Article 3.2.-5

The prosecution authorities can close the case provided that the young person has initiated a reconciliation and, if necessary, made reparation for the damage within the limits of his own resources.

The authority in charge of prosecution can request officers and institutions specialising in the social field, and principally probation and assistance officers, to advise the young person on the possibilities of reconciliation. The consent of the young person and of the persons or institutions responsible for him or her shall be necessary for the implementation of the reconciliation procedure.

In the absence of a criminal offence designated as a serious crime and when the circumstances and personality of the offender do not require a different reaction, the competent authority must take into consideration the possibility of a reconciliation at any time before the opening of the hearing.

The participation of the victim in the reconciliation process must be sought, and that process can take place only with his or her consent.

When reconciliation is established, the authority in charge of prosecution shall close the case without taking further action.

Article 3.2.-6

Option (a)

The victim can initiate action in the ordinary legal manner even when the case has been closed without further action. The civil action can be brought before the judicial authority competent in criminal justice for young people.

When one or more young people are implicated in the same case as one or more adults, the civil action against all those responsible can be brought before the specialised criminal courts for young people.

If the option of a civil action is not open to the victim, the court competent to decide on compensation for the damage caused shall take into consideration the interests of the victim.

Option (b)

The victim can initiate a civil action in the ordinary legal manner even when the case has been closed without further action. The civil action can be brought before the judicial authority competent in criminal justice for young people.

When one or more young people are implicated in the same case as one or more adults, the civil action against all those responsible can be brought before the ordinary courts, but with application of the special provisions for young people.

If the option of a civil action is not open to the victim, the court competent to decide on compensation for the damage caused shall take into consideration the interests of the victim.

Section 2: Before the family court judge

Article 3.2.-7

The family court judge to whom the case has been referred by the prosecution authority can provisionally suspend the proceedings if the acts committed are clearly established, when the circumstances and the personality of the offender do not seem to require the continuation of prosecution, and when the commission of the act is not found to constitute an intentionally committed offence.

Provisional suspension shall be possible only for a probation period of one or two years, with or without the condition of the pronouncement of one or more measures, which require the consent of the young person and of the responsible persons or services.

Article 3.2.-8

Provisional suspension can be pronounced at any time before the end of the proceedings after notification of the prosecution authority.

Article 3.2.-9

The young person and/or the persons or services responsible for him or her can request the reopening of the proceedings at any time.

Failure of the young person to comply with the conditions for suspension can lead to the reopening of the proceedings.

When the young person commits another criminal offence during the probation period, the prosecution authority can apply to the family court judge for the purpose of reopening the proceedings, also taking into account the further offence committed.

Article 3.2.-10

After the end of the probation period or when the measures have been executed, the family court judge must pronounce final suspension.

Article 3.2.-11

The family court judge shall undertake all information activities that seem expedient to him or her for the establishment of the truth and for knowledge of the young person's personality.

The persons or the service responsible for the young person shall be informed by the family court judge on the progress of the proceedings.

The family court judge shall then pronounce judgment.

Article 3.2.-12

When the prosecution authority refers the case to the family court judge in his or her capacity as an investigating judge, the young person shall be assisted by a lawyer, who must be present during interrogation and confrontation. The designation of the lawyer shall be incumbent on the young person or on the responsible legal officer or the service responsible for the young person; failing such designation, the family court judge shall immediately cause a lawyer to be designated by the competent authority.

The lawyer can consult the file at any time as from the first appearance of the young person before the court. However, such access can be prohibited temporarily by the investigating authority if necessary for establishing the truth.

Article 3.2.- 13

If the young person is of foreign nationality and/or has no command or little command of the language employed during the judicial investigation and the proceedings, an interpreter must be made available. Translation must be made in such a manner as to make the charge, the progress of the judicial investigation and the procedure followed comprehensible to the young person.

Article 3.2.- 14

The family court judge in charge of the judicial investigation must have precise knowledge of the personality of the juvenile offender. He can order certain measures of observation,

and in particular have recourse to social investigations as well as to medical and psychological examinations. In particular, he must gather information on the material and moral situation of the family, on the young person's character and background, on his or her school career, and on the conditions in which he or she has lived or has been brought up.

The parents as well as the persons or services responsible for the young person must be informed and consulted.

Article 3.2.- 15

The family court judge as the investigating judge can decide, where appropriate and after medical and psychological examination, on the institutionalisation of the juvenile offender. He or she shall then deliver an order, stating reasons.

Article 3.2.-16

Placement of the alleged offender shall be made in an open institution. In that case, the young person shall be provisionally entrusted to his or her parents, or, failing that, when the natural environment does not offer all guarantees, and in the best interests of the young person, to members of his or her family, to a trustworthy person, to his or her legal representative, to a half-way house, or to an observation centre qualified for that purpose.

Article 3.2.- 17

If circumstances so require, the juvenile offender can be placed in provisional detention by the judge in charge of the judicial investigation. That will be the case when it is the only means of preserving material evidence or clues or of preventing either pressure on witnesses or victims, or collusion between the young person and any accomplices, or if there are probable risks of flight by the alleged offender.

Provisional detention shall be possible only for offences punishable by at least two years of imprisonment. Only young people aged from 15 to ... years (age of majority in the country) can be placed in provisional detention. They shall be detained in a prison for young people, or separated from adults in a special section of the prison.

The duration of provisional detention shall depend on the gravity of the offence: in criminal cases, the duration shall be six months, renewable once; in major offences, the duration shall be three months, renewable once.

Article 3.2.-18

At the end of his or her judicial investigation, the family court judge can issue an order deciding not to send the young person to trial if he or she considers that the charges against the young person are insufficient. In that case, if the young person was in provisional detention, he or she shall immediately be set at liberty, notwithstanding an appeal by the authority in charge of prosecution. Compensation must be paid to him or her by the State as soon as the order has become final.

The family court judge can take up the case himself or herself as a trial judge if only non-custodial educational measures can be envisaged.

He or she shall refer the case to the family court in more serious cases that may lead to penal sanctions.

In cases of serious crime, he or she shall refer the case to the juvenile assize court.

Variant (ii)

Section 1: Before the prosecution authorities

Article 3.2.-3

The prosecution authority in whose area the family court has its seat shall be in charge of the prosecution of offences committed by young people.

Article 3.2.-4

When the authority in charge of prosecution considers that the facts referred to it seem insignificant or not established, it shall close the case without taking further action.

In the opposite case, when the acts committed constitute a criminal offence, it shall refer the case to the judicial authority competent in criminal justice for young people, either the family court judge or the investigating judge.

Article 3.2.-5

The prosecution authorities can close the case provided that the young person has initiated a reconciliation and if necessary made reparation for the damage within the limits of his own resources.

The authority in charge of prosecution can request officers and institutions specialising in the social field, and principally probation and assistance officers, to advise the young person on the possibilities of reconciliation. The consent of the young person and of the persons or institutions responsible for him or her shall be necessary for the implementation of the reconciliation procedure.

The participation of the victim in the reconciliation process must be sought, and that process can take place only with his or her consent.

Article 3.2.-6

Option (a)

The victims can initiate a civil action in the ordinary legal manner even when the case has been closed. The civil action can be brought before the judicial authority competent in criminal justice for young people.

When one or more young people are implicated in the same case as one or more adults, the civil action against all those responsible can be brought before the specialised courts for young people.

If the option of a civil action is not open to the victim, the court competent to decide on compensation for the damage caused shall take into consideration the interests of the victim.

Option (b)

The victims can initiate a civil action in the ordinary legal manner even when the case has been closed without further action. The civil action can be brought before the judicial authority competent in criminal justice for young people.

When one or more young people are implicated in the same case as one or more adults, the civil action against all those responsible can be brought before the ordinary courts, but with application of the special provisions for young people.

If the option of a civil action is not open to the victim, the court competent to decide on compensation for the damage caused shall take into consideration the interests of the victim.

Section 2: Judicial investigation

Article 3.2.-7

When the prosecution authority decides to refer the case to the investigating court, the latter shall undertake all information activities that seem expedient to it for the establishment of the truth and for knowledge of the young person's personality.

Article 3.2.-8

During the judicial investigation, the young person shall be assisted by a lawyer, who must be present during interrogation and confrontation. The designation of the lawyer shall be incumbent on the young person, on the responsible legal officer or on the service

responsible for the young person; failing such designation, the family court judge shall immediately cause counsel to be designated by the competent authority.

The lawyer can consult the file at any time as from the first appearance of the young person before the court. However, such access can be prohibited temporarily by the investigating judge, if necessary for establishing the truth.

When the young person is of foreign nationality and/or has no command or little command of the language employed during the judicial investigation and the proceedings, an interpreter must be made available. Translation must be made in such a manner as to make the charge, the progress of the judicial investigation and the procedure followed comprehensible to the young person.

Article 3.2.-9

The investigating judge must have precise knowledge of the personality of the juvenile offender. He can order certain measures of observation, and in particular have recourse to social investigations as well as to medical and psychological examinations. In particular, he must gather information on the material and moral situation of the family, on the young person's character and background, on his or her school career, and on the conditions in which he or she has lived or has been brought up.

The parents as well as the persons or services responsible for the young person must be informed and consulted.

Article 3.2.-10

The investigating judge can decide, where appropriate and after medical and psychological examination, as to the institutionalisation of the juvenile offender. He or she shall then deliver an order, stating reasons.

Article 3.2.-11

Placement of the alleged offender shall be made in an open institution. In that case, the young person shall be provisionally entrusted to his or her parents, or, failing that, when the natural environment does not offer all guarantees, and in the best interests of the young person, to members of his or her family, to a trustworthy person, to his or her legal representative, to a half-way house, or to an observation centre qualified for the purpose.

Article 3.2.-12

If circumstances so require, the juvenile offender can be placed in provisional detention by the judge in charge of the judicial investigation. That will be the case when it is the only means of preserving material evidence or clues or of preventing either pressure on witnesses or victims, or collusion between the young person and any accomplices, or if there are probable risks of flight by the alleged offender.

Provisional detention shall be possible only for offences punishable by at least two years of imprisonment. Only young person aged from 15 to ... years (age of majority in the country) can be placed in provisional detention. They shall be detained in a prison for young people, or separated from adults in a special section of the prison.

The duration of provisional detention shall depend on the gravity of the offence: in criminal cases, the duration shall be six months, renewable once; in major offences, the duration shall be three months, renewable once.

Article 3.2.-13

At the end of his or her judicial investigation, the family court judge can issue an order deciding not to send the young person to trial if he or she considers that the charges against the young person are insufficient. In that case, if the young person was in provisional detention, he or she shall immediately be set at liberty, notwithstanding an appeal by the authority in charge of prosecution. Compensation must be paid to him or her by the State as soon as the order has become final.

Article 3.2.-14

In the absence of a criminal offence designated as a serious crime and when the circumstances and personality of the offender do not seem to demand it, the competent authority in charge of the judicial investigation must take into consideration the possibility of a reconciliation at any time before the commencement of the hearing.

When reconciliation is established, the authority in charge of prosecution must close the case without taking further action.

Article 3.2.- 15

The family court judge to whom the case has been referred by the judge in charge of the judicial investigation can provisionally suspend the proceedings if the acts committed are clearly established, when the circumstances and the personality of the offender do not seem to require the continuation of prosecution, and when the commission of the act is not found to constitute an intentional serious offence.

Provisional suspension shall be possible only for a probation period of one or two years, with or without the condition of the pronouncement of one or more measures, which require the consent of the young person and of the responsible persons or services.

Article 3.2.-16

Provisional suspension can be pronounced at any time before the end of the proceedings, after notification of the prosecution authority.

After the end of the probation period or when the measures have been enforced, the family court judge must pronounce final suspension.

Article 3.2.- 17

The young person and/or the persons or services responsible for him or her can request the reopening of the proceedings at any time.

Failure of the young person to comply with the conditions for suspension can lead to the reopening of the proceedings.

When the young person commits another criminal offence during the probation period, the authority in charge of prosecution can apply to the family court judge for the purpose of reopening the proceedings, also taking into account the further offence committed.

Article 3.2.-18

When its judicial investigation has been completed, the investigating authority shall transmit the file to the family court judge when the facts do not constitute a serious offence.

It shall apply to the family court in more serious cases that may lead to penal sanctions.

In cases of serious crimes, it shall apply to the juvenile assize court.

Section 3: Before the family court

Article 3.2.-19

The family court shall pass judgment after having heard the young person, the witnesses, the parents or the persons responsible, the prosecution authority, the lawyer, and the social services concerned.

Article 3.2.-20

The hearings shall be held in camera, and the president of the family court can at any time order that the young person withdraw during all or part of the hearings. After the latter's return, the judge shall summarise the content of such hearings for him or her. The only persons admitted to the hearings shall be the witnesses in the case, the close relatives, the young person's legal representative, the lawyers, the representatives of the social services, and the representatives of the institutions providing care for young people.

The publicity of the hearings and of the record of proceedings shall be restricted. The identity of the juvenile offender must never be revealed to the public, particularly in the

press, or on the radio or television. A maximum fine of ... (at the discretion of the State) shall be imposed on any journalist who infringes this ban.
The judgment shall be delivered in a public hearing.

Section 4: Before the juvenile assize court

Article 3.2.-21

After swearing of the jurors, the president of the juvenile assize court shall declare the jury finally constituted.

Article 3.2.-22

The president shall read out the questions to which the court and the jury shall have to reply.

Article 3.2.-23

The hearings shall open after the provisions of article 3.2.-21 and 3.2.-22 have been complied with.

Article 3.2.-24

The court shall inform the jury that the benefit of the extenuating excuse of lack of full age shall be upheld for the juvenile criminal defendant, subject otherwise to nullity.

Article 3.2.-25

The hearings shall proceed according to the provisions of articles 3.2.-19 and 3.2.- 20

Article 3.2.-26

The hearings shall cease when the president declares them closed.

Article 3.2.-27

Any decision against the criminal defendant shall be taken by an absolute majority of votes.

Section 5: Appeal procedures

Article 3.2.-28

Any decision delivered in a court of first instance must be capable of submission to a higher court.

Article 3.2.-29

The rules of procedure applicable to the court of second instance shall be those of national law.

Title IV: Applicable measures

Chapter I: Educational measures and extra judicial settlement

Section 1: Extra judicial settlement

Article 4. 1.-1

Before the commencement of the proceedings and during the latter, the authority in charge of prosecution, the family court judge or the family court can attempt to bring about an amicable settlement at any time by means of reconciliation between the victim, given his or her consent, or the prosecutor, and the juvenile offender.

The reconciliation can also be followed by reparation of the damage caused to the victim or the community, in keeping with the young person's reimbursement possibilities.

Section 2: Educational measures pronounced by the family court judge / family court.

Article 4.1 .-2

The family court judge and the family court can order, depending on the gravity of the acts committed, the application of educational measures with regard to the young person.

Article 4.1.-3

They can:

- a) Deliver a simple verbal reprimand to the young person;
- b) Return the young person to his or her parents or guardian, to the person in whose care he or she was, or, with a view to better physical or moral protection of the young person, to a trustworthy person;
- c) Envisage, depending on the interests of the young person and/or in the light of circumstances, the placement of the young person in a specialised institution, with social educators specially trained for that purpose. In that case, the judge can, by means of an order, stating reasons, opt for a regime of treatment at liberty or for a regime of semi-custodial care if he or she considers that such a mode of treatment is preferable. Such a regime of semi-custodial care can be prescribed for a duration of not more than ... years (to be determined by the State) and cannot be extended beyond the age of majority, when that age is reached, unless so requested by the young adult.
- d) Envisage placement in a medical or medico-educational establishment on the advice of a physician qualified for that purpose.

Article 4.1.-4

They can pronounce the postponement of the educational measure when the prospects for the development of the young person's personality justify it. In that case, they shall fix the date on which a decision will be taken on the educational measure, which must occur at the latest ... years (to be fixed by the State) after the postponement decision.

Article 4.1.-5

At any time they can intervene to adapt the measures taken initially, either *ex officio* or at the request of the parents, of the members of the family or of the persons or services to whom or which the young person has been entrusted.

They can at any time call on the services of probation and assistance officers.

After a period of ... (to be fixed by the State), the educational measures must be reviewed in the light of the development of the situation and of the juvenile offender's personality.

Chapter II: Punitive sanctions

Section 1: Alternatives to custodial penalties

Article 4.2.- 1

The family court judge, the family court or the juvenile assize court can impose on the young person a fine not exceeding ... (amount to be determined by the State).

Article 4.2.-2

The family court judge or the family court can also apply the provisions of article 4. 1.- 1.

Article 4.2.-3

The family court judge, the family court or the juvenile assize court can pronounce as a penalty the obligation for the young person to perform, for a period of ... hours or ... day(s), but not exceeding ... days (to be determined by the State), unpaid community service for the benefit of a public law entity or an association qualified to carry out work for the community.

The sanction shall end on completion of the work.

That measure can be applied only with the agreement of the alleged offender and the consent of his or her legal representatives.

Article 4.2.-4

During the period fixed for the performance of the work, the young person shall remain subject to supervisory measures by the judge, to visits by the probation officer, to medical examinations, to prior authorisation for any travel that would obstruct performance of the work, and to the requirement to justify changes in employment or residence producing the same effect.

Article 4.2.-5

The community service can be suspended by the family court judge, the family court or the juvenile assize court for weighty medical, family, vocational or social reasons.

Article 4.2.-6

In the event of established and deliberate non-performance, the authority in charge of prosecution can commence prosecution proceedings on grounds of failure to comply with a court decision (see law of the State).

Section 2: Custodial sanctions

Subsection 1: Custodial sanctions pronounced by the family court

Article 4.2.-7

The family court can pronounce custodial penalties against young people only by special decisions, stating reasons.

Article 4.2.-8

A family court that pronounces a penalty can order that its enforcement be completely or partially suspended. Suspension shall apply to fines and/or to sentences entailing a term of imprisonment for at most five years.

The president of the family court, after pronouncing a penalty combined with simple suspension, or with placing on probation, or combined with community service, shall apprise the convicted juvenile of the consequences that can be entailed by sentencing to a term of imprisonment without suspension for a further offence committed during the period of suspension.

The pronouncement of a penalty combined with suspension and performance of community service for a number of ... hours or ... days, but not exceeding ... days (to be fixed by the State), shall be made in compliance with the provisions of articles 4.2.-3 to 4.2.-5.

In the interests of the young person and with the agreement of the latter and the consent of his or her legal representatives, the president of the family court can designate a probation officer for the period of suspension. The latter shall support the efforts of the young person to comply with the condition imposed by the suspension in order to avoid any recidivism on his or her part.

If the condition is complied with, the conviction shall be deemed null and void. In the event of failure to comply with the condition, the court shall revoke the suspension, barring exceptional circumstances, by means of a special decision, stating reasons, and the penalty shall be enforced.

When the court pronounces a sentence combined with suspension and placing on probation for a period not exceeding ... (at the discretion of the State), the juvenile alleged offender shall be subjected to supervisory measures by the judge, to visits by the probation officer, to medical examinations, to prior authorisation for any travel and to the requirement to justify changes in employment or residence. If so pronounced by the family court, he or she can also be subjected to special obligations such as the obligation to attend an educational course or vocational training, to submit to treatment or care, or, according to his or her own capabilities, to make reparation in full or in part for the damage caused.

The benefit of suspension shall entail the immediate release of the alleged offender if the latter had been placed under provisional detention.

Article 4.2.-9

When the family court has not ordered that enforcement of a pronounced penalty be suspended in full or in part, the young person or his or her legal representatives can introduce a request for suspension on medical, vocational or scholastic grounds.

Such a request shall be admissible at any time before the beginning of enforcement of the penalty.

Article 4.2.-10

The family court can pronounce:

- a) Either placement in a qualified public or private educational or vocational education establishment. Placement shall be carried out under a semi-custodial regime;
- b) Or placement in an open institution or in a public institution for the correctional education of young people of school age.

The court shall fix the duration of the sanction, which cannot exceed ... months (to be fixed by the State concerned), and which cannot be extended beyond the age of majority.

Article 4.2.-11

The family court can grant a dispensation from the penalty pronounced in application of article 4.2.-10, when it appears that the reintegration of the young person is complete, that the damage caused has been repaired and that the disturbance resulting from the offence has ceased.

Article 4.2.-12

The family court can also defer the pronouncement of the penalty pronounced in application of article 4.2.-10, when it appears that the reintegration of the young person is in the process of being completed, that reparation for the damage caused is in the process of being made and that the disturbance resulting from the offence will cease.

In that case, the family court shall fix in its decision the date on which a decision will be made on the sanction, which must occur at the latest one year after the postponement decision.

Subsection 2: Custodial sanctions pronounced by the juvenile assize court

Article 4.2.-13

The penalty pronounced by the juvenile assize court shall be calculated taking into account the benefit of the excuse of lack of full age and all other extenuating factors with regard to the penalty.

Article 4.2.-14

The juvenile assize court cannot pronounce on juvenile criminal defendants custodial sentences greater than half of the penalties incurred by adult criminal defendants, in application of the excuse of lack of full age.

The assize court can pronounce custodial sentences on young people only by special decisions, stating reasons.

Article 4.2.- 15

The juvenile assize court cannot condemn the criminal defendant to a perpetual custodial sentence, and the maximum custodial sentence, when it is incurred, must not exceed 15 years.

Article 4.2.-16

The juvenile assize court that pronounces a penalty can order that its enforcement be completely or partially suspended. Suspension shall apply to fines and/or to sentences entailing a term of imprisonment for at most five years.

The president of the juvenile assize court, after the pronouncement of a penalty coupled with simple suspension, or with placing on probation, or coupled with community service, shall apprise the juvenile sentenced of the consequences that can be entailed by sentencing to a term of imprisonment without suspension for a further offence committed during the period of suspension.

The pronouncement of a penalty coupled with suspension and performance of community service for a number of ... hours or ... days, but not exceeding ... days (to be fixed by the State), shall be made in compliance with the provisions of articles 4.2.-3 to 4.2.-5.

In the interests of the young person and with the agreement of the latter and the consent of his or her legal representatives, the president of the juvenile assize court can designate a probation officer for the period of suspension. The latter shall support the efforts of the young person to comply with the condition imposed by the suspension in order to avoid any recidivism on his or her part.

If the condition is complied with, the sentence shall be deemed to be null and void. In the event of failure to comply with the condition, the juvenile assize court shall, barring exceptional circumstances, revoke the suspension by means of a special decision, stating reasons, and the penalty shall be enforced.

When the juvenile assize court pronounces a sentence coupled with suspension and placing on probation for a period not exceeding ... (at the discretion of the State), the criminal defendant shall be subjected to supervisory measures by the judge, to visits by the probation officer, to medical examinations, to prior authorisation for any travel that would obstruct performance of the work, and to the requirement to justify changes in employment or residence. If so pronounced by the juvenile assize court, he or she can also be subjected to special obligations such as the obligation to attend an educational course or vocational training, to submit to treatment or care, or, according to his or her own capabilities for contribution, to make reparation in full or in part for the damage caused.

The benefit of suspension shall entail the immediate release of the criminal defendant if the latter had been placed under provisional detention.

Subsection 3: The enforcement of penalties

Article 4.2.- 17

After the pronouncement of the custodial sanction by the competent authority, enforcement of the judgment and verification of its implementation shall lie within the competence of the magistrate in charge of the enforcement of penalties pursuant to the ordinary legal provisions.

Title V: Educational assistance for the protection of young people in danger

Chapter I: young people victims

Article 5. 1.- 1

Educational assistance measures can be ordered by the family court judge when:

- a) The health and security of the young person are jeopardised or if the conditions for his or her education are seriously compromised; or
- b) The young person is the victim of offences committed by one of his or her ascendants or by a person having authority over him or her.

Article 5.1.-2

The case shall be referred to the family court judge at the request of the young person, his or her parents, the persons or services to whom or which the young person has been

entrusted, or at the request of a competent authority. In exceptional circumstances, the judge can take up the case *ex officio*.

Article 5.1.-3

The family court judge shall undertake all expedient investigations to determine whether the health, security, morals or education of the young person are compromised. He or she shall hear the young person unless a hearing would be of such a nature as to compromise the young person's health and mental state by reason of his or her age, health or intellectual faculties. He or she shall hear the father and the mother of the young person. He or she can also undertake all expedient hearings.

Article 5.1.-4

The family court judge can decide:

- a) That the young person remain in his or her current environment. In that case, the judge shall designate either a qualified person or an observation, educational or re-educational service in an open institution. Such person or service shall be responsible for monitoring the development of the young person and for reporting periodically to the judge;
- b) That the young person remain in his or her current environment, but with the obligation that the young person regularly attend a medical, educational or vocational training establishment;
- c) That the young person be removed from his or her current environment and entrusted either to trustworthy members of his or her family, or to another trustworthy person, or to a medical or educational establishment.

Article 5.1.-5

A father and/or mother for whose child an educational assistance measure had to be taken shall retain their parental authority unless the family court judge should decide otherwise, or unless it is necessary to remove the young person from the family home.

Article 5.1.-6

The family court judge can adapt educational assistance measures at any time, taking into account the development of the young person's situation and personality and/or of that of the family environment.

Article 5.1.-7

The family court judge shall intervene to review the measures taken initially, either *ex officio* or at the request of the parents, of the members of the family, or of the persons or services to whom or which the young person has been entrusted.

The obligation to review the measures must be complied with every ... month (to be fixed by the State).

Article 5.1.-8

The decision of the family court judge shall be appealable according to the provisions of national law and subject to the restricted publicity conditions fixed in article 3.2.-20.

Chapter II: Endangered young people

Article 5.2.-1

The family court judge can order educational assistance measures when the young person is exposed to incitement or to illicit or dangerous acts that jeopardise his or her health and morals and that would constitute sexual assaults by the young person or directed against the young person and/or that would be instrumental in his or her corruption.

Article 5.2.-2

The case shall be referred to the family court judge at the request of the young person, of his or her parents, or of any other persons or services. The judge can also take the case up *ex officio*.

Article 5.2.-3

The family court judge shall undertake all expedient investigations to determine whether the young person is endangered. He or she shall hear the young person unless a hearing would be of such a nature as to compromise the young person's health and mental state by reason of his or her age, health or intellectual faculties. The judge shall hear the father and the mother of the young person as well as the persons responsible for incitement to commit illicit acts. He or she can also undertake all expedient hearings.

Article 5.2.-4

The family court judge can decide as to the application of educational assistance measures such as those provided under article 5.1.-4.

Article 5.2.-5

Any person who has influenced the young person to commit illicit acts leading to sexual assaults and/or instrumental in his or her corruption shall be prosecuted according to the provisions of national law.

Article 5.2.-6

Educational measures can be reviewed at any time according to the provisions of articles 5. 1.-6 and 5. 1.7, taking into account the development of the situation and of the young person's personality.

Article 5.2.-7

A decision of the family court judge shall be appealable according to the provisions of national law and subject to the restricted publicity conditions fixed in article 3.2.-20.