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Presentation at the Norwegian - Russian conference on "Children and punishment '.

Dear colleagues and partners - from Norway - and abroad!
We in the Public Prosecutor's Office have looked forward to this conference and to exchanging views and experiences, not least with our Russian colleagues.

Although our judicial systems differ, we have a *common* goal, namely to prevent and combat crime among children and young people by developing and using sanctions that make young offenders accountable for their actions and reduce the risk of reoffending, while taking care of the victim and meeting society's demand for protection.

Before I proceed to today's topic, I think it may be helpful to give a brief summary (and for many of you a repetition) of how the police and the prosecuting authority are organized in Norway. As the chart shows, we have a two - track system in the police, where the *ultimate* responsibility for administrative, economic and policiary issues (the green squares) lies with the National Police Directorate and the Ministry of Justice, while responsibility for criminal proceedings - investigation, prosecution and hearing of individual cases, as well as what we call professional leadership (red squares) lies with to the Director General of Public Prosecutions.

As you can see, the prosecuting authority has been organized into three levels. Each level is assigned authority directly by law. On the lowest level, the prosecuting authority is *integrated* into the police. This means that the prosecution lawyers (police lawyers) have their workplace in the police district, where they are responsible for leading the investigation, and often work with police officers in specific cases. The system of the prosecuting authority being integrated with the police works well and is an important factor for efficient and well-functioning handling of criminal prosecutions. The next level in the hierarchy is the public prosecutors, who are divided among 10 public prosecutor's offices with regional responsibilities for handling criminal prosecutions in the police districts. The Director General of Public Prosecutions has overall responsibility for the prosecuting authority and handling criminal prosecutions in the country. He has many and complex tasks, ranging from decisions to prefer an indictment and hearing individual cases to professional leadership of the public prosecutor's offices and the prosecuting authority in the police. The Director General of Public Prosecutions exercises professional leadership, among other things, by means of annual targets - and an annual priority circular, where the general objectives of handling criminal

prosecutions - high quality, high detection rate, short processing time and adequate response – are stated. The Director General of Public Prosecutions also exercises professional leadership through enforcement directives, guidelines and orders in different cases, including on the use of alternative sanctions.

Let me return to the topic of the day, where I have been asked to give an overview of the criminal sanctions for children and young people, and say something about the experiences we have gained. Let me emphasise that many of these sanctions are not reserved for the young, but that young age is a key factor in the choice of the sanction. Currently, we have no criminal sanction that exclusively targets the age group between 15 and 18 years, but as you know, the Ministry has proposed a new criminal sanction for minors.

Over the last decade, it has gradually been acknowledged that the ordinary punishments, suspended and custodial sentencing have obvious weaknesses as regards some young people. A suspended sentence alone will often have very little effect and a custodial sentence would be directly detrimental.

These are not exactly new thoughts, as already in the last century it was advocated that the public authorities should not have any absolute obligation to prosecute. The view was that in some cases, legal proceedings with a judgement could have a negative impact that far exceeded the public interest if the person in question was punished. It was such thoughts that lay behind introduction of the rule that the *prosecuting authority may decide not to prosecute, even if all the conditions for criminal liability have been met*, provided that there are *extenuating* circumstances, the so-called waiver of prosecution. It is difficult to give an exhaustive list of relevant circumstances, but a young age is at least one of the circumstancees that has been emphasised. There are no restrictions as regards in what cases a waiver of prosecution may be granted, even though the vast majority are related to minor offences. The waiver of prosecution may be conditional or unconditional. In the latter case, the case is decided once and for all. Conditional waiver of prosecution means that more specific conditions have been set, for example, that the person in question agrees to mediation. For young offenders this may be an appropriate response. It is also worth noting the provision we have in the prosecution instructions regarding notification to the accused. Not only must the notification be given in writing, but according to the provision, the accused should also be notified verbally about what the conditions entail and the consequences of not complying with these. Furthermore, the provision states that the accused should be given "a suitable warning under the circumstances." There is reason to believe that such a meeting may be effective in the case of first-time offenders. The use of a waiver of prosecution has varied and the number has declined since the 1980s. It is difficult to have any opinion about the

reasons for this, but there is reason to believe that the emergence of new penalties and alternative sanctions has had an impact.

Community punishment is a main punishment in line with prison and fines. It is an alternative to a custodial sentence in cases where the rehabilitation element is prominent. Community punishment may be imposed when the punishment would not have been more than 1 year imprisonment, the offender consents and the purpose of the penalty does not weigh heavily against a sanction in freedom. In community punishment orders, the court determines the number of hours, which may be between 30 and 420 hours, and an execution time. However, the judgement does not specify what the community punishment will entail - the Norwegian Correctional Services does this. This may, among other things, concern community service and programmes aimed at specific target groups, treatment or mediation and follow-up by the mediation board. We see that in this way it is possible to set up a programme with room for individual adaptations, which can be changed along the way if so required. In the event of a breach - either in the form of a new offence or that the offender does not comply with the requirements from the Norwegian Correctional Services, the matter may be brought before the court with a petition for enforcement of the default period of imprisonment. Although community service is not aimed specifically at young people, in several cases you can see that the court has referred to young age, often in combination with rehabilitation considerations, when determining community punishment.

I have already mentioned the *mediation board,* as a criterion for conditional waiver of prosecution and as part of execution of community punishment. The idea of a mediation board emerged in the late 1970s and the first pilot project was implemented in 1981. After this, the scheme has evolved and is currently the main supplier of "restorative justice", while the prosecuting authority is the main supplier of cases to the mediation board. Key elements of the concept are that the parties affected by a conflict or an offence participate in a process where the offender will be encouraged to understand the consequences of their actions and to take responsibility for them, and that the victim should be able to tell the perpetrator directly how the crime has impacted him or her. With the mediator’s help, together they will find the best way of repairing the harm.

The prosecuting authority's transfer of cases to the mediation board is a prosecution decision and pursuant to Section 71a of the Criminal Procedure Act. One condition is that the case is suitable for mediation and that a more severe reaction is not called for in the interests of acting as a general deterrent. Furthermore, there must be a victim or injured party, which means that, for example, drug offences or traffic violations that have not impacted an individual cannot be transferred. An offence such as crime for

profit, criminal damage and assault are some examples of cases that may be transferred to the mediation board, though the list is not complete. There is no requirement that the offender has previously been unpunished, even if the scheme will be most relevant in such cases. There is no statutory age limit, but the routine assessment of whether the case is suitable for transfer, will most likely primarily and in practice apply to young offenders. Anyway, it is important that the prosecuting authority decides the issue as early as possible. This is partly due to the statutory time limit in Section 249 of the Criminal Procedure Act, which states that if the suspects were under 18 years of age at the time of the offence, the question of prosecution is to be decided within 6 weeks after the person is deemed to be considered a suspect in the case, unless in the interests of the investigation or other special circumstances it is necessary that the decision be made later. If the case ends with an approved agreement, the prosecuting authority can only instigate criminal proceedings again if the accused is guilty of material breach of the agreement. Transfer to the mediation board requires that the parties agree and that they agree on *important* aspects of the case. The mediation board must not be a substitute for the police's investigations or attempts to see if the parties can agree on what really happened. It is the prosecuting authority's responsibility to assess the evidence and whether the case qualifies for mediation. Transfer to the mediation board should not be an "easy" solution to facilitate the investigation or criminal proceedings.

In addition to what I have already mentioned, the mediation board may also be used as a special condition in a suspended or split sentence. As the case is then heard with criminal sanctions, neither the limitations in scope nor the conditions set will apply. Let me refer to a case from Trondheim district court and judgements from 7th August 2009. Three people, born respectively in 1989 and 1990, were, among other things, indicted for aggravated robbery and attempted aggravated robbery. Normally, they would have been given a long custodial sentence, but their defence lawyers argued for community punishment. In accordance with the prosecutor's request, they were sentenced to 1 year and 4 months' imprisonment, of which 6 months, and 8 months for one of the accused, were suspended with 2 year's probation on the special condition that they attend mediation in the mediation board and meet the agreements entered into under the auspices of the mediation board during the entire probation period. The three had agreed to participate in the "young offender team" as a pilot project under the auspices of the mediation board. The judgement states in part: *"From what has been informed, the pilot project has reaped good results. It's main goal is to create an interdisciplinary social safety net for a convicted person in order to prevent him or her from re-offending."*

Pilot projects with "young offender teams" have also been implemented in Kristiansand, Oslo and Stavanger. These have partly been based within the mediation

board’s administration and partly within the so-called SLT model (coordination of local crime prevention efforts). The aim was to prevent young offenders from embarking on a life of crime and contribute toward positive development of each youth. The goal was to be achieved through strengthening inter-departmental collaboration at various administrative levels, not just ad - hoc, but committed collaboration over time for the individual youth. The teams are made up of the police, child welfare services, correctional services, the mediation board and the health service and school system. Composition of the team is adapted to the needs of the individual case. The teams have been based on a prosecution or judgement on special conditions, but participation can also be a sentencing factor.

Other models, based on the concept and philosophy of restorative justice, have also been tried. In 2007-2009, the Mediation Board in Agder completed a pilot project where young people between 15 and 18 years of age, who were suspected of violence, were to able to meet the victim for mediation under the auspices of the mediation board, at the same time as the case was under investigation, but otherwise independently and without ties to the criminal proceedings. Implementation of the project required the participation of the prosecuting authority, among other things, to select relevant cases and to obtain the necessary consent of the parties. Following an application, the Director General of Public Prosecutions supported the Chief Constable and the public prosecutor's recommendations and agreed to the prosecuting authority contributing to the project subject to specified conditions.

Among other things, due to the lack of cases, the evaluation report provided no basis for drawing conclusions on the impact and intrinsic value of parallel processing, compared with models and projects aimed at young offenders.

The three-year project "Young offender teams in Kristiansand, Oslo, Stavanger and Trondheim" has also been evaluated. The 2009 report from NTNU concludes that youth offender teams should be continued and developed further. According to the report, the teams manage to intercept a high-risk group, which would otherwise normally fall off the radar. The teams have also documented a high level of implementation in the number of young offenders they have worked with and there has been a re-offending rate among the participants.

A report from Nordland Research Institute in 2009, which assessed the use of mediation in crimes of violence and intimidating behaviour, shows that the majority of those who participated in mediation sessions believe that it led to an improvement in relations between the parties and was important in the process of getting over the incident.

Without being able to quantify or having complete knowledge, the results agree with the prosecuting authority's impression and also support and reinforce the need to continue to develop and find good, realistic solutions to deter children and young people from a life of crime.

This will require good cooperation and holistic thinking across the government agencies, as no single agency can solve the problem of youth crime. Together, we must develop strategies, formulate and coordinate realistic measures and ensure that there are resources to implement the scheme. Information exchange is also essential. Client confidentiality should not be an obstacle to cooperation.

Finally, you may of course ask whether the police and the prosecuting authority actively and fully use the possibilities inherent in the current system, or whether we are too traditional and reluctant to try out new ideas and follow new paths. In my view, this is not the case. The prosecuting authority, with the Director General of Public Prosecutions at the helm, is positive toward the use of alternative sanctions and effective rehabilitation measures, provided that the sanction used as an alternative to a prison sentence prevents crime to the same extent and does not reduce the deterrent effect of the penalty. Reducing the use of the most radical measures and reacting at as low a level as is considered to be acceptable is in good harmony with humanitarianism and a sense of justice. In his objectives and priorities circular for 2010, the Director General of Public Prosecutions has repeated the request for, and I quote:
"Use of alternatives to imprisonment where such responses are believed to be more effective in preventing crime. Particularly as regards young offenders, the goal is to find an alternative punishment to prison."

The Director General of Public Prosecutions has also stated that there is room for, and that the prosecuting authority should actively strive to increase the number of transfers to the mediation board and the use of restorative justice in criminal justice.

We are therefore moving forward as regards what measures should be used, areas of applications and procedures, and are eagerly awaiting the result of the Norwegian Storting's debate on Proposition no. 135 L regarding "Children and punishment '.