
Crime and Juvenile Justice in Albania

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Abstract:

A comprehensive system of juvenile does not exist in Albania. There is no juvenile justice law, and accused juveniles are prosecuted under special chapters of the Criminal Code and the Code of Criminal Procedure. Although there is no specialized juvenile court, specialized judges and prosecutors have been appointed recently, a legal reform regarding the alternatives of imprisonment has been taken and important progress has been made in bringing Albanian law into conformity with international standards.

Despite this dynamic process which is continuing much remains to be done. This article addressees the main aspects of criminal and procedure criminal law that apply to juvenile offenders and identifies gaps that need to be taken in consideration in the future, analyze the responsible institutions, the juvenile delinquency, to identify the types of crimes mostly committed by them and against them.

Key words: Young offender, Alternatives to detention, Juvenile proceedings, Precautionary measures, Crime

Introduction

Under the UN Convention on the Rights of the Child (CRC) as the most important instrument in this field, a child is considered every human being under the age 181. Within the

fledgling age, the Convention sets clear limits on the application of criminal justice, including the sentencing system. Article 37 of the Convention, prohibits torture and inhuman treatment or cruel, inhuman or degrading punishment and the imposition of the death penalty or life imprisonment without possibility of release for crimes committed by persons under age 18. Article 40 requires from states to take measures not to confront children who have violated the law with judicial proceedings, by ensuring a range of alternative social care provisions.¹

Specific guarantees in the system of sanctions, are also defined in the Beijing Rules², excluding from this system the death penalty and body punishment. At the same time, it is sanctioned the principle of enforcement of a sentence involving deprivation of freedom as a last resort³ giving therefore priority to non-institutional measures, including, supervision, compensation or mediation.

Guidelines for children in the criminal justice system, impose measures to ensure a large system of educational measures and alternatives to freedom deprivation, reducing placement in institutions with the aim of social rehabilitation, creating mechanisms that facilitate informal resolution of issues with juvenile offenders including mediation and restorative justice.⁴

The demand for special treatment in the sentencing system is evidenced by the United Nations also through resolutions. Thus, according to resolution 1997/30, "The administration of juvenile justice," it is specified the need to create a large number of educational measures and alternatives

¹ Center of services and integrated legal practices, "Albanian legislation and the Convention of Child Rights", (2008), Tirana, p. 382

² The set of minimum standard rules of the United Nations on the administration of juvenile justice

³ Beijing Rules, rule 17/1/c.

⁴ Guidelines for action for children in the criminal justice system, Annex of Resolution 1997/730 of the Economic and Social Council, "On The administration of juvenile justice", item 19-22.

to deprivation of liberty. The same document imposes the requirement for alternative sanctions in domestic legislation to comply with the standards and principles of the CRC and other legal instruments of the United Nations.⁵

The same requirement is reflected in the legal instruments of the Council of Europe. Recommendation 87 (20) "On the social reaction to juvenile delinquency " impose the requisite that measures taken against children should have educational character and freedom restriction measures should be avoided⁶. In order to achieve the educational purpose, the measures must be implemented within the community and seek its inclusion. According to the educational purpose some criteria associated to the system of sanctions are identified. The sentence of imprisonment should be excluded, except for serious crimes and the respective duration shall be as short as possible. In such cases priority should be given to semi-freedom system, probation and re-socialization programs and education treatment. The same request for expansion of alternative measures and sanctions in accordance with the community needs and best interests of offenders is reflected in Recommendation (2003) 20 "On new ways of treatment of juvenile delinquency and the role of juvenile justice system".

Criminal Code

Nowadays, in international terms, and in our country during the preparation of criminal laws were given special attention and well-being goals. Every day more legislations makers try not to be with repressive, but much closer to social policies. It noted that the Preamble of the Constitution of the Republic of Albania, where stated " We, the people of Albania, proud and aware of our history, with responsibility for the future , with

⁵ Resolution 1997/730 of the Economic and Social Council, "On the administration of juvenile justice", item 15

⁶ Recommendation 87 (20) "On social reaction to juvenile delinquency ", item 14.

faith in God and / or other universal values, with determination to build a state of law , democratic and social , to guarantee the rights and fundamental freedoms ... "7

Primary country did not voice the conviction of the person who has committed the offense, but the voice of the bull reward to the person who is victims, and the resocialised of the offender. In all cases, the victim viewed priority offense. Also, in most cases the maximum penalty does not apply because of the return of the person who committed the offense in a normalized social life. As we know, women and children involved in the offense were given special importance.

In the Republic of Albania this is provided starting from the fundamental law of the state, the Constitution of continuing with the Criminal Code and Criminal Procedure Code, as well as more specific laws designed.

In Article 54 of the Constitution stipulates that "Children, young people, pregnant women and new mothers have the right to special protection by the state." This clearly shows the special attention paid to the children, and for this there can be no cases exceptional.

Albanian criminal justice's treatment of young offenders relies on the age of responsibility. The age of competence for penal responsibility is determined in article 12 of Albanian Criminal Code (hereinafter ACC), which makes its differentiation according to the division of crimes and contraventions. In both international and national law, the definition of a juvenile is directly or indirectly related to age. The present Albanian Criminal Code defines a child as a person under the age of 18 years⁸. Children of the age group between

⁷ Constitution of Albania, Preamble

⁸ The age of minors in the Albanian Criminal legislation has changed from twelve in sixteen, sometimes same age for all offenses and sometimes different for a specific category of serious crime and smaller for other criminal offences. For example, the law No. 382, dated 24 December 1946, "On the general criminal provisions" and the Criminal Code of 1952 (up to its change in 1958), generally accepted age of 14 for the criminal responsibility, but also provided the age of twelve years for some serious crimes or visible ones, such as killing, wounding, theft, etc.

14 -18 can be charged, if they are capable of understanding and willing. When there is uncertainty over the age of the accused child and even after the verification and the expertise, there are still doubts regarding the age of the defendant, it is presumed that he is a juvenile⁹. The Constitution does not give the definition of the child while recognizing in article 54 their rights to be protected. The Article 12 of ACC provides that: "A person bears criminal responsibility if, at the time he or she commits an offence, he or she has reached the age of fourteen. A person who commits a criminal contravention bears responsibility at the age of sixteen". The age of criminal responsibility differs depending on the qualification of the offence, these being either more serious offences or less severe (misdemeanor). Below the age of 14 years, the child is presumed not to bear criminal responsibility. Determination of age for criminal charge is based on biological and social sciences data, in the conclusions of those sciences related to physical and intellectual development of the person to be able to understand and control his activities, socially dangerous consequences that may come from it. In defining the border of ages, the Albanian legislator has taken into account the different level of socially dangerous of crimes and contraventions and as well as the ability of the minor to distinguish them. Social dangerousness of a crime being higher than that of a contravention is easily distinguished by the minor, compared with the criminal contravention that in many cases provides similarity with administrative contraventions¹⁰.

Examples of crimes for which children aged 14 or 15 years may be prosecuted include murder, rape, inflicting bodily harm, violation of domicile, theft, destruction of property, sale of drugs, possession of a weapon and disobedience of a police order¹¹. More than two thirds of convicted juvenile offenders are sentenced for offences against property and only 12 per cent

⁹ Article 41 of Code of Criminal Procedure.

¹⁰ ELEZI , KACUPI, HAXHIA, Coments For CP of Albania, 2009, 100-102.

¹¹ Children in conflict with the law in Albania, 7-8.

were repeat offenders¹². Article 40 of the Convention on the rights of the Child¹³ requires that all state parties establish a minimum age; however, it leaves the specific age to be decided by the individual state. That being said however, the Committee on the Rights of the Child indicates guidelines for the establishment of the minimum age, stating in its General comment no 10 that anything below the age of 12 is considered unacceptable by international standards.¹⁴ So, in line with this article Albania has met the international standards.

At present, there is a wide spectrum of minimum ages of criminal responsibility existing in national legislations across the world- from as young as 7 years up to age 16.

- **Punishment and educational measures**

The chapter V of the Criminal Code refers to the punishments that are given to adults and young offenders. The punishments are included in two systems, principal and supplementary and are applied both for serious offences and misdemeanors. Article 29 establish as principal punishments to be given to a serious offence: life imprisonment or capital punishment, imprisonment and fines. A person who has committed a misdemeanor suffers the following principal punishments: imprisonment and fine. Besides the principal punishments, a person who has committed offences or criminal misdemeanor may also be punishable by one or some of supplemental punishments, which are applicable to minors, too.

¹² Of 292 offenders covered by the 2005-2006 study, 120 were charged with petty thefts and 98 with more serious offences against property; 34 were repeat offenders. See, Observance of the Rights of Juvenile Offenders in Criminal Proceedings, UNICEF, 11-5.

¹³ Albania ratified the United Nations Conventions on the Rights of the Child (1989) on 27 February 1992. By ratifying the Convention and within its Constitution¹³, Albania is obliged in terms of article 40 (3) thereof to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.

¹⁴ Committee on the rights of the child, General Comment No. 10 Children's rights in juvenile justice, 2007, para.16

The number of juveniles prosecuted for misdemeanors is much smaller than the number prosecuted for crimes. A report covering 2000-2005 indicates that the average number of juveniles convicted of offences during those years was 298 per year¹⁵.

Article 51 of ACC provides favorable rules for minors, which mean that, when a juvenile has committed a criminal offense, the punishment can not exceed half of the penalty, prescribed by law and for the minor can not be given life prison sentence¹⁶.

The Albanian law stipulates that young offenders should serve their time in specific detention centers, and in their absence, in specific section, while categorically avoiding lumping youths and adults together. In practice, the lack of infrastructure makes the implementation of this provision very rarely. Differently from other countries i.e. Italy where the penal institutions for minors are independent structures of the penal institutions for adult.

In Albania, there is no prison specifically for adolescent girls. Women and young female offenders convicted of crimes serve their sentences in a special section of a low-precautionary prison.

So, Article 33 of ACC provides that the minor serve his sentence of imprisonment in special places a part from adults. According to the Criminal Code, the rule concerning the manner of serving the imprisonment sentence, and the convicts` rights and duties are defined by law. To this effect, the Parliament of Republic of Albania has adopted two laws:

- Law No. 103 47 dated 4 November 2010, “For the protection of the rights of the Child”.
- Law No. 10024 dated 27 November 2008, “On some amendments and additions to Law No. 8331, dated 21 April 1998, “On the execution of criminal decisions”.

¹⁵ Children in Conflict with the Law in Albania, p. 7.

¹⁶ Article 31 of ACC.

According to Article 5 of this law, execution of decisions with respect to juveniles is carried out in especially favorable places and manners, define by this law.

- Law No. 8328, dated 16 April 1998, “On the rights and treatment of offenders sentenced to imprisonment’

Adoption of this law has great importance of the safeguarding of the rights and the treatment of young offenders sentenced to imprisonment. Article 15 of this law determines that the execution of sentence for the minors in the low precautionary prisons should take the priority.

Article 46 of ACC provides only one type of educational measure, placing minors in an educational institution which is given in two cases: “The educational measure is given to minors excluded from penalty, Article 52 of ACC and to the minors because of age have No criminal liability”.

This provision does not define the criteria for granting educational measures to minors (14-18) years that are excluded from the penalty, as this institute is regulated from Article 52 of ACC. Even though the educational measures are not a punishment, somehow restrict certain rights to the person because the minor have to stay on the places of the educational institution, has scheduled meetings with parents or other persons, etc¹⁷.

Educational measure shall be revoked by the court when it is estimated that is achieved the purpose for which it is given. Unfortunately, this provision of the Criminal Code is applied very rarely for lack of these educational institutions, whose scope of this activity should be the education of juvenile offenders

Article 52 of ACC, exclude minors from punishment and it applies in those cases when all legal conditions of the first paragraph are met, and not just one of those. These conditions refers to the lack of dangerousness of the criminal act, estimation of the concrete circumstances under which it was

¹⁷ MUCI, E drejta penale, Pjesa e Pergjithshme, 2008, p. 140.

committed and the previous behavior of the minor. As a result, a minor can not be excluded from penalty, if he has committed a serious crime.

For most countries, sanctions for juveniles differ from those for adults. In few countries includes Albania the sanctions are broadly the same, but milder punishments are given. In most of the countries there are separate sanctions for juveniles¹⁸.

- **Alternatives to detention**

Even after a criminal sanction has been inflicted through a conviction, the child is not always imprisoned. In fact, alternative sentences to detention constitute a very important role in the context of the standards of juvenile criminal justice. The alternative sentencing of juveniles is the best opportunity for juvenile's rehabilitation and their healthy development in line with the expectations of the society. Favoring the application of alternative punishment to imprisonment ensures respect of the principle of humanism and re-education, as the primary goal of punishment.

Chapter VII of the Criminal Code that concerns "alternative to imprisonment" applies to adults and young offenders. Important amendments are made to the Criminal Code regarding alternative sentencing through Law No. 10023 dated 27 November 2008 "On some additions and amendments to law No. 27 January 1995 "Criminal Code of the Republic of Albania". Because the lack of the application, such additions and amendments improved the content of the existing provisions, and introduced new provisions on alternative sentencing like the "half-freedom", or the "stay at home". This law has established the probation service¹⁹, which check the

¹⁸ See, European Sourcebook of Crime and Criminal Justice Statistics-2010, Fourth edition, p. 287.

¹⁹ Law No. 10024 of 27 November not only establishes a probation service under the Ministry of Justice, it also makes some positive changes in the law concerning probation. For example, pre-sentencing reports (which will be prepared by the probation service) are now obligatory rather than

application, execution and supervision of alternative sentencing and influences the court and prosecutors in choosing the most appropriate alternative. It must be emphasized that Albanian Criminal Code does Not refer any alternative sentences only and exclusively for juveniles.

The new amendments apply both to adults and juveniles.

Referring to Criminal Code, the alternative forms of sentencing to imprisonment are:

1. Semi-freedom;
2. Suspension of the execution of imprisonment and its replacement with probation;
3. Stay at home;
4. Suspension of the execution of imprisonment and community work;
5. Release on probation.

Special institutions for the treatment of minors

In Albania is opened a special institution for treatment of minors sentenced to imprisonment²⁰ (the only one of this type). There are currently accommodated 13 juveniles.

The Institute of Criminal Execution handles juveniles sentenced to imprisonment with special educational programs in accordance with their age and psychosocial level. This institution serves as a rehabilitation, counseling and educative center for juveniles, deprived of their liberty, which are treated

discretionary, and provisions concerning revocation of probation are more flexible (Article 10).

²⁰ The Work for the establishment and functioning of this institution began in 2007, with financial support from the EU CARDS Program with an investment of 2.4 million euro. The institution was inaugurated, on 22 October 2009 and currently has started its operation at full capacity and administrative infrastructure.

by a specialized staff, where about 80% are civilians and the rest are police staff. Institution capacity is for 40 minors, aged 14 to 18.

Classification of minors in rooms is performed based on the collection of the primary information given from teachers (if they have conflicts with other prisoners or enmity cases, psycho-social situation and other similar situations) and then according to the criminal offense that have committed and their respective age.

There are a total of ten institutions in Albania which have a separate section for the minors. There are 71 minors actually in these institutions which the sentence is yet to be given and 13 are suffering the sentence²¹.

Crimes committed against minors

Involvement of minors in certain activities "not criminal", but those are inappropriate for them as: begging, drug use, school dropout, etc., can create potential conditions for the juvenile be involved in criminal activities or to be victimized. The reality shows that minors have been victims of some crimes, such as maltreatment or abuse by parents, including sexual abuse, trafficking for different purposes, feud, etc. However, there are no statistics on the number of victimized children in Albania.

Different cases of child abuse are presented and reviewed by the Ombudsman. The Ombudsman has provided a special contribution in the fight to protect children's rights, addressing individual complaints and investigating its own initiative in several public occasions.

²¹ Regarding the institutions, where minors remain detained and punished by Order no. 3185 dated 28.04.2008 of the Minister of Justice, "*On the classification of Educational Institutes of Criminal Acts*", are categorized as institutions with a section for minors the following institutions in these places: Veqarr, Fushe Kruje, Tepelene, Rrogozhine, Lezhe, Korçe, "Jordan Misja Tirana", Vlorë, Durrës, Kavajë.(I.E.V.Penale)

From the statistical data²², the crimes committed against the minors, with a higher rate are: intercourse with minors between fourteen to eighteen (Article 101/1,2,3) and exploitation of prostitution with aggravated circumstances (Article 114/a).

Conclusions

Referring to the statistical data, the juvenile delinquency is an increasing phenomenon in Albania.

Preventive measures should be taken such as programs for the treatment of parents over their children's education, educational measures, employment, welfare measures for increasing the improvement of living conditions, social services and medical care, which are important and essential tools for the prevention of crime. All these steps should be reflected in a special legislation for minors.

Preparation of a Juvenile Justice system in line with the international legal framework:

a. legislation

There is a need for drafting a new, comprehensive juvenile justice legislation for Albania. This legislation should be fully in line with the international legal standards and should be prepared, taking into consideration the national context. A team of national experts should be appointed by the government in order to prepare such a legislation. If needed, the drafters could request, through UNICEF, international assistance for this important exercise. What follows are a

²² During 2009, 11 cases are registered in Albanian courts for the crime of exploitation of prostitution with aggravated circumstances, 8 cases for intercourse with minors between fourteen to eighteen, 7 cases for intercourse with minors, 5 cases for abandonment of minor children. In total for 2009 have been registered 50 crimes. Regarding contraventions against the minors, 93 cases are registered for denial of support, 21 cases for unlawfully taking the child.

number of issues to be covered in the legislation. But their implementation could be anticipated and should not be postponed until a fully new legislation will be adopted. Existing legislation could be studied, in order to see the possibilities it may offer for initiating these ideas.

b. specialized police units

We have the impression that formal reactions to juvenile delinquency, if any, are very often limited to reactions by the police, including unreported detention for several hours in police cells and the use of physical punishment by policemen. The legality of this reality should of course be questioned. It is in any case against the international provisions with regard to the administration of juvenile justice²³ It seems very useful on a short-term basis to discuss the possibility of introducing specialized Youth Units in every police Commissariat. The specialized Youth Unit could consist of one regular policeman especially trained for this purpose and a social worker. These specialized Youth Units should be involved with both children as victims of abuse, exploitation and violence in general and children as authors of crime and violence.

The Unit could be in charge of:

- interviewing of children
- if needed, transferring the cases to existing social services/schools

c. specialized juvenile magistrates

Currently the criminal justice administration is not functioning very well. Very few cases involving children seem to be dealt with by the Criminal Courts. On a short term basis and in attendance of a new legislation dealing with juvenile delinquency, each criminal court (in every district) should be

²³ The United Nations Minimum Rules for the Administration of Juvenile Justice – 1985

encouraged to have at least one public prosecutor and one judge especially trained in juvenile justice. They will deal exclusively with criminal matters involving children (child victims as well as juvenile delinquents).

Special Courts for children could be developed in the context of a possible new legal framework

- involvement of social workers
- in supporting the police
- in supporting the courts
- in supporting the penitentiary personnel
- in supporting prevention schemes

e. constructive sanctions

In order to avoid the feeling of impunity amongst young Albanians, it is important that society has also the formal possibility to react to juvenile delinquency. On the other hand, it is important that juveniles suspected of having infringed the law are diverted as much as possible from criminal proceedings. Reactions to juvenile delinquency within the criminal justice area should always be constructive, humane and fully respecting all human rights of the children concerned.

REFERENCES

- Elezi I, Kacupi S, Haxhia M (2009) *Komentari i kodit Penal te Republikes se Shqiperise*. Tirana: Geer Publisher.
- Halili R (2003) *Kriminologjia*. Tirana: Prishtina Publisher.
- OSCE (2008) *Manual per punonjesin e sherbimit te proves*. Tirana: Pegi Publisher.
- Korini E, Sado L (2006) *Children in Conflict with the Law in Albania*, Analytic Report.
- WODC (2010) *European Sourcebook of Crime and Criminal Justice Statistics*.
- OSCE (2010) *Manual for the application of the alternative imprisonment sentences*.

Center of services and integrated legal practices, "Albanian legislation and the Convention of Child Rights", (2008), Tirana.

Guidelines for action for children in the criminal justice system, Annex of Resolution 1997/730 of the Economic and Social Council, "On The administration of juvenile justice".

Resolution 1997/730 of the Economic and Social Council, "On the administration of juvenile justice".

Recommendation 87 (20) "On social reaction to juvenile delinquency".

Legal framework

Law No. 7895 of 27 January 1995, *Criminal Code of the Republic of Albania*.

Law No. 7905 of 21 March 1995, *Code of Criminal Procedure of the Republic of Albania*.