

JUVENILES AND THEIR POSITION IN THE CRIMINAL PROCEEDINGS

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ABSTRACT

The issue of juveniles as a special category of participants in deviant illegal activities in the capacity of witnesses and victims, was followed by a great complexity and sensitivity, thus, it is more than necessary to put special emphasis on the proper flow of juvenile justice procedure, and both repressive and preventive measures that should be undertaken and the approach of authorities that conduct the proceedings involving juveniles and the manner in which they should be treated before and after proceedings with the aim of re-educating and reintegrating them in the society. Prevention of criminality amongst juveniles requires efforts from the entire society (family and community). The wellbeing of young persons from the early childhood should be the focus of every prevention programme. There should be community oriented programs and services for prevention of juvenile criminality. Considering the very important and necessary role of all stakeholders implementing juvenile justice procedures in judiciary it is more than necessary for these professionals to have deep knowledge in relation to rights of juveniles, international instruments which provide for these rights and their implementation in practice.

Keywords: Juvenile justice, international instruments, law, reintegration-re-education.

INTRODUCTION

The main objective of the criminal proceedings against juveniles should be to avoid harming the juvenile individual by inadequate treatment, excessive publicity which is related to labelling, as well as to respect the rights to privacy in all stages of proceedings, by withholding any information that could lead to identification of the juvenile perpetrator. In this manner we will ensure that the individual is safely returned to the society as a reintegrated and re-educated person. Juvenile delinquency is foreseen in many guidelines including but not limited to the Riyadh Guidelines which were approved by the United Nations which are dedicated to prevention of criminality in juveniles based on the basic principles listed hereunder: 1. Prevention of juvenile criminality is essential part of crime prevention in the society. Young persons can develop non-criminal standpoints through involvement in lawful activities in the society and develop a humanistic standpoint towards the society and life. 2. Successful prevention of juvenile criminality requires efforts from the entire society, in ensuring a harmonious development of adolescents, by respecting and protecting their personality from the early childhood. 3. A child centered approach is required for interpretation of these guidelines. Young persons should have an active role and partnership in the society and should not be treated as merely subjects for socialisation or control.

The important role in criminal proceedings involving juveniles is regulated by the Constitution and special Code in the Republic of Kosovo.

Legal basis for regulating the field of juvenile justice in the Republic of Kosovo

A characteristic of the Kosovo Legislation is that legal provisions related to juveniles have been unified into a single code, which implies that there is no legal gap in this respect. Thus, there is the comprehensive Juvenile Justice Code¹ regulating the field of juvenile justice despite the fact that there are some challenges when it comes to its interpretation.

The violations perpetrated by juveniles, have a range of main characteristics such as poverty, education disadvantage, child abuse, lack of family support and problems with alcohol and drugs. The ones perpetrating an offence have the tendency of being alienated by their family, community and the society in general. In order to prevent violations, a range of professionals and institutions should be activated. Thus, strategies for preventing violations should address these basic problems aiming at measures for families and children in greater need. By adapting school curriculums for prevention of early school dropout and by ensuring intensive support of the family and assistance for families under such pressure. These are challenges that every country should address through functioning of its internal mechanisms in proclaiming and regulating them in the highest acts on the country.

Under the Constitution of the Republic of Kosovo, Article 22², the Convention on the Rights of the Child (CRC) and seven other conventions³ have been included as integral parts of the Kosovo Constitution and are thus applicable in the territory of Kosovo. Conventions or other agreements, for the reasons indicated above became applicable in Kosovo with the view of improvement and harmonisation of Kosovo legislation. Apart from the international instruments, there are also other documents in the field of human and children's rights which establish important standards to be followed in general by professionals in the justice system regardless of their applicability in the legal aspect.

The main rights of children under international instruments:

- The best interest of the child;
- The right to be treated with dignity;
- The right to be protected from discrimination;
- The right to be informed;
- The right of child to be heard;
- The right to a private life;
- The right to effective assistance;

¹ Juvenile Justice Code, no. 03/L-193, 08 July 2010

² Constitution of the Republic of Kosovo,

³ Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Council of Europe Framework Convention for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;
- (7) Convention on the Rights of the Child;
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

- The right to security;
- The right to be protected from hardship during judicial proceedings;
- The right to compensation;
- The right to special preventive measures.

The age of juveniles responsible for commission of a criminal offence

When addressing this matter, one should consider that a child under international definition is every person under the age of 18, except when the law determines that adulthood is reached earlier. There are many definitions for juveniles and juvenile offenders. The most recent one determined through a European Recommendation is that a juvenile offender is a person under the age of 18, suspected to have committed a crime.⁴

The age of children facing justice system is different and so is their status in criminal proceedings such as: (suspect, victim, witness). This means that they experience processes of which they form a part, in different manners in both psychological and physiological aspects. A person that is younger than 14 cannot understand the relevance of his/her actions and is not capable of controlling them to the extent of being responsible for them, like an older person would. Article 41 of the Juvenile Justice Code Proceedings shall not be initiated against a child under the age of 14 years, any proceedings that have been initiated shall be immediately terminated, and the Guardianship Authority shall be notified of the case.⁵

Urgent nature of juvenile justice proceedings

Under the Juvenile Justice Code, criminal proceedings against juveniles are urgent. Thus, Article 40 of the Juvenile Justice Code Explicitly provides that: “The authorities or institutions that participate in proceedings involving minors, as well as other persons and institutions from which notifications, reports or opinions are sought are obliged to proceed expeditiously and without any unnecessary delay. The deadlines for undertaking procedural actions and the duration of the arrest, police detention and detention against a juvenile are shorter than the ones against adults.

Under the JJC, the arrest measure against a juvenile can last up to 24 hours. Detention for a juvenile cannot exceed one month, whereas in the preparatory proceedings, its duration cannot be longer than three months. The deadline for appealing the decision for imposing of detention is 24 hours from the handover thereof (time of handover). The deadline for appealing the judgment or educational measure imposed, the deadline is 8 days from hand over thereof. The decision should be drafted within 3 days from the announcement day.⁶

Competencies of the prosecutor in juvenile justice

The juvenile justice code provides series of competencies for the prosecutor. The general competencies, similarly to the procedure for adults, are to disclose and prosecute perpetrators of criminal offences which are prosecuted ex officio and based on a proposition, initiation of preparatory proceedings, file a motion on imposing adequate measures or punishment and

⁴Recommendation CM/Rec (2008) 11 of the Committee of Ministers for member states and the European Rules for young offenders, subject to sanctions or measures , 5 November 2008.

⁵Juvenile Justice Code, no. 03/L-193, 08 July 2010, Article 41 pg. 19

⁶*Ibid*

representation thereof at the judicial trial as well as exercise of ordinary and extraordinary legal remedies.

Apart from the ones indicated in the juvenile justice procedure the prosecutor has wider competencies. He/she is the only authorised prosecutor. Even for criminal offences prosecuted based on a private motion or proposition, he/she is the only one authorised to conduct prosecution. The private prosecution does not exist. The private person or the injured party within the timelines foreseen in the law should hand over a proposition for initiation of proceedings to the prosecutor.

Another characteristic of prosecutor's competencies is regulated under Article 56 of the juvenile justice code. According to that Article the prosecutor may decide not to initiate preparatory proceedings against the minor when there is a grounded suspicion that he committed a criminal offence.

Juvenile justice judge

Under the Juvenile justice Code, the prosecutor is competent to conduct the preparatory proceedings the juvenile justice judge has less competencies during the preparatory proceedings than he/she used to have under the previous law. Some of the competences of the juvenile justice judge are: to appoint a defence council, to impose a diversion measure, decides on the participation of parents in proceedings, appoints experts and expertise when necessary to verify the mental health condition. During court proceedings, the juvenile justice judge should comply with and guarantee the rights of juveniles.

Juvenile justice trial panels –in the first and second instance courts

The juvenile justice trial panel in the first instance during the main trial has competencies to impose educational measures and punishments for the juvenile perpetrators of criminal offences and eventually, at the second instance court proceedings.

The competencies of the trial panel in the second instance are: to decide on the appeal against the decision of the juvenile justice trial panel taken in the first instance, decides on the appeal of the juvenile justice prosecutor, the appeal against the decision of the juvenile justice judge and other instances as provided for by the law.

United Nations Instruments

United Nations instruments for regulating matters related to juvenile justice, intend to emphasise that:

1. Every procedure and every action against a juvenile should be done in line with the offence and the punishment should be centered around the wellbeing of the juvenile and professionalism of stakeholders conducting the proceedings;
2. The aim of the entire process should be to influence re-education and reintegration of the juvenile in the society so that he/she becomes useful to himself/herself, his/her family and the entire society.
3. When dealing with juvenile offenders in the process one should always consider the possibility of their treatment be it through institutional care or even incarceration, always separate from adults, and with due considerations for their rights.

UN legal standards for regulating juvenile justice

The UN Convention on the Rights of a child (1989) ratified on 27 February 1992 and its additional protocol, of 18 January 2002 in relation to the sale, prostitution and pornography of children; Universal Declaration on Human Rights (UDHR) (1948).⁷
 Declaration on the Rights of the Child; United Nations Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules 1985);
 United Nations Rules for protection of youth who are deprived of their liberty (Havana Rules 1990);
 United Nations instructions for the prevention of youth criminality – (Riyadh Guidelines);
 United Nations Standard Minimum Noncustodial Rules (Tokyo Rules) (1990);
 The UN Convention 138 (ILO) on determination of minimum age for work (1979) ratified by Albania in 1999; The UN Convention no. 29 on Forced Labour (1930);
 The International Covenant on Civil and Political Rights (approved on 1966 and entered into force on 1976);
 The Convention against Torture and other cruel, degrading and inhuman treatment or punishment (Law no. 7727/30.6.1993)
 Comity on the Rights of the Child, Reservations, Declarations and Objections related to the CRC, CRC/C/2/Rev.8, 7December 1999;
 Human Rights Committee, General Comments 17, “Article 24”, 1989, Summary of General Comments and Recommendations Adopted by the Human Rights Treaty Group, HRI/GEN/1/Rev.5, 26 April 2001;
 Socio-Economic Committee, “Action guidelines for children in the criminal justice system”, Resolution 1997/30, Annex, 21 July 1997;
 Socio-Economic Committee, the Main Directives related to children victims and witnesses of criminal acts, 2005;
 The Convention against Torture and other cruel, degrading and inhuman treatment or punishment. Additional Protocol of the Convention against Torture and other cruel, degrading and inhuman treatment or punishment.⁸

Legal Standards of the Council of Europe for regulating juvenile justice

The human rights documents of the Council of Europe contain principles of UN Treaties and other documents for protection of fundamental human rights. To name a few:

European Convention

European Convention on Human Rights ECHR³ and its Protocols no.1; 2; 4; 6; 5; 11;7;

European Social Charter (revised)⁴;

European Convention on exercising the rights of children;

European Convention on the Rights of a Child;

European Convention “Prevention of torture and cruel, inhuman and degrading treatment or punishment”⁵ and its Protocol no. 1 and 2;

European Convention on Social Rights

European Convention on supervision of persons on conditional release, law no. 8724/26.12.2000.

Getting acquainted with international instruments is only one part of the medal which is incomplete if not followed by its implementation. Direct applicability of international law

⁷ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/aln.pdf accessed on 30/05/2016

⁸ Analysis: “Juvenile justice in Albania” 2015, UNICEF – Tirana, Albania pg. 13

allows for setting aside the national rules which are of lower value. Interpretation of the international law in the spirit of international law and referral to international law to support a solution grounded in the international law.⁹

CONCLUSIONS

Considering the very important role of all stakeholders implementing juvenile justice procedure it seems like it is necessary for these professionals to have deep knowledge in relation to the rights of juveniles, international instruments which foresee these rights and their application in practice. Professional development and empowerment of capacities of entities that conduct the juvenile proceedings should be continuous. Judges, prosecutors, lawyers and other professionals should be specialised in juvenile justice.

The main aim of criminal proceedings should be to avert harm to juveniles from inadequate treatment. The impact of this will be in heaving the juveniles return to society, as reintegrated and re-educated persons. When dealing with initiation of juvenile proceedings the following question should be posed: What is the best interest of the child in proceedings? In this way the best interest of the juvenile should always be the primary consideration.

The presence of the psychologist, parent, custodian, custodial institution, is mandatory in juvenile justice proceedings. The judge should use all possible legal remedies, and impose adequate measures for the purpose of preventing whenever possible, awareness raising and re-educating the juvenile. The decision should serve the protection of rights and well-being of the juvenile.

In case of dilemmas in the national laws, application and implementation of international conventions should take precedence. The stakeholders conducting juvenile justice procedure should be encouraged to come up with concrete proposals. Examination, procedure, measures and punishments imposed on the juvenile are confidential information thus their privacy should be respected in order to avoid harming the image of the juvenile.

The manner in which the juveniles are interviewed should be at the level prescribed in different acts and conventions that address the issues of minors, so that the juvenile is psychologically calm, without fear, pressure and capable of explaining his/her case. Likewise, the procedure should be comprehensible for the juvenile. Following a review of the measure/punishment, its implementation should be done accurately and should be monitored at all times in order to see whether it is being implemented or not, in order to be effective in the positive senses that a juvenile does not repeat the criminal offence.

⁹ Constitution of the Republic of Albania adopted through Law No. 8417, dated 21.10.1998 of the People's Assembly. Adopted by a referendum on 22.11.1998 Promulgated through the Decree No. 2260, dated 28.11.1998 of the President of the Republic, Rexhep Mejdani amended through Law No. 9675, dated 13.1.2007 as amended by Law No. 9904, dated 21.4.2008 as amended by Law 88/2012 (dated 18.09.2012) - *Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members Assembly is done by the same majority for the purposes of the ratification of an international agreement. 2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it. 3. The norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.*

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