

## New Albanian Legislation on Penal Justice For Minors in Conflict with the Law

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***ABSTRACT:***

The effective promotion and protection of the rights and needs of minors in conflict with the law is a key factor in the reintegration of minors. The purpose of this paper is to provide a clear and comprehensive picture of the juvenile criminal justice system in Albania, comparing it with international standards.

Albanian legislation in the field of children's rights has been found not to meet the minimum international standards established. In this context, in recent years Albania has reformed the juvenile justice system in conflict with the law. The improvement of the legal framework and the establishment of competent institutions were evaluated based on two criteria. First, international standards in this area, and second, the impact on ensuring restorative justice that protects the best interests of the child. In conclusion, the problems encountered so far are identified, and the recommendations given in this area.

**Key words:** criminal justice, minor in conformity with the law, legal framework, international standard.

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## I. Under-aged subjects' criminality in Albania during the latest years.

Criminality includes the entire range of actions that put under threat or / and damage human fundamental rights (sanctioned by Law). These Fundamental Rights could be individual (human life, physical integrity, freedom, property, security etc.), or collective – the common values (social order, state /institution security, economic or social system of the state, etc.<sup>1</sup>. The formal and official expression of governing power in a society is the Law, according to which, criminality as a general term intends and includes all the breaching of law and penal (criminal) acts sanctioned by the criminal legislation.

A specifically particular form of criminality is the one of the under-aged subjects. Through a very strict legal viewpoint, the under-aged subjects involved in criminal acts or with criminal behaviours are the analogue counterpart of the adult offender<sup>2</sup>. The under-aged subjects' criminality range in modern societies has registered visible increases and sophistication, according to statistics, particularly in the high socio-economic developed countries<sup>3</sup>. According to several studies completed, the under-aged with criminal behaviour have a higher chance of a continuation of this behaviour by being involved in other offences as adults. Under-aged (children), who are offenders of the law, face a chance of twice up to three time higher risk of involvement in serious, violent and chronic offences and crimes, than subjects that commit criminal offences as adults<sup>4</sup>.

This is the very core reason why, keeping into consideration element of age, mental-emotional development, likewise sociological and physiological of the under-aged, it is essential that criminality for this category be treated detached from the adults' subjects one. The pinpointing of specific elements affecting the under-aged subjects' criminality, alongside with the very specific measures of handling approach for under-aged subjects in the substantive and procedural Criminal Law results in the prevention of under-aged subjects' criminality.

In order to determine the under-aged subjects' criminality, range in Albania, the committing of legal offences from subjects aged from 14 to 18, we have taken as a reference base the official reports published by the Albania's General Prosecutor's Office on Criminality. In compliance of Constitutional obligations, The General Prosecutor's Office has presented a report to the

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<sup>1</sup><https://aabedu.net/uploads/docs/librat/Kriminologjia%20%20Alisabri%20%C5%A0ABANI%20&%20Muhamed%20BUDIMLI%20C3%86.pdf>

<sup>2</sup>Donald J. Newman and Patrick R. Anderson. 1990. "Introduction to Criminal Justice. Random House, fq 569

<sup>3</sup>Ismet Salihu. 2005. "E drejta penale për të mitur". Universiteti i Prishtinës "Hasan Prishtina"

<sup>4</sup><https://www.ncjrs.gov/pdffiles1/ojdp/186162.pdf> - Child delinquency, May 2003, page 1

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Parliament of Albania regarding the criminality situation in the country. The important element to be highlighted is that the figures provided in the report do not include “the dark numbers” of crime<sup>5</sup>.

Regarding the under-aged subjects considered under investigation or defendants, the statistics show these results:

- during 2007 the registered number is of 580 under-aged subjects offenders of law, which constitutes a 34,5% higher figure compared to 2006<sup>6</sup>;
- during 2008 the registered number is of 889 under-aged subjects offenders of law, which constitutes a 53,2% higher figure compared to 2007<sup>7</sup>;
- during 2009 the registered number is of 665 under-aged subjects offenders of law, which constitutes a 25,1% higher figure compared to 2008<sup>8</sup>;
- during 2010 the registered number is of 870 under-aged subjects offenders of law, which constitutes a 30,8% higher figure compared to the previous year<sup>9</sup>;
- during 2011 the registered number is of 1015 under-aged subjects offenders of law, which constitutes a 16,6% higher figure compared to 2010<sup>10</sup>;
- during 2012 the registered number is of 1310 under-aged subjects offenders of law, which constitutes a 29 % higher figure compared to 2011<sup>11</sup>,
- During 2013 the registered number is of 911 under-aged subjects offenders of law, which constitutes a 30 % lower figure compared to 2012.<sup>12</sup>

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<sup>5</sup> Dark (hidden) figure of crime is the term employed to describe the unreported or undiscovered crime.

<sup>6</sup>General Prosecutor's Office report "On Criminality in Albania" for 2011, page 206.

<sup>7</sup>General Prosecutor's Office report "On Criminality in Albania" for 2011, page 206.

<sup>8</sup>General Prosecutor's Office report "On Criminality in Albania" for 2009, page 206

<sup>9</sup>General Prosecutor's Office report "On Criminality in Albania" for 2010, page 206

General Prosecutor's Office report "On Criminality in Albania" for 2011

<sup>11</sup>General Prosecutor's Office report "On Criminality in Albania" for 2012, page 221-222.

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- During 2014 the registered number is of 1013 under-aged subjects offenders of law, which constitutes a 11 % higher figure compared to 2013<sup>13</sup>.
- during 2015 the registered number is of 978 under-aged subjects offenders of law, which constitutes a 3,5 % lower figure compared to 2014<sup>14</sup>;
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- During 2016 the registered number is of 753 under-aged subjects offenders of law, which constitutes a 23 % lower figure compared to the previous year<sup>15</sup>.
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- During 2017 the registered number is of 510 under-aged subjects offenders of law, which constitutes a 32,3% lower figure compare with the previous year<sup>16</sup>.
- 
- In 2018 the registered figure of under-aged offenders of law is of 481 subjects<sup>17</sup>.

Graphic-wise, figures on the criminality of under-aged offenders of the Law in Albania in the time-frame 2007-2018, would be shown such as follows below:

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<sup>12</sup>General Prosecutor's Office report "On Criminality in Albania" for 2013, page 201.

<sup>13</sup>General Prosecutor's Office report "On Criminality in Albania" for 2014, page 227-228.

<sup>14</sup>General Prosecutor's Office report "On Criminality in Albania" for 2015, page 256.

<sup>15</sup>General Prosecutor's Office report "On Criminality in Albania" for 2016, page 234.

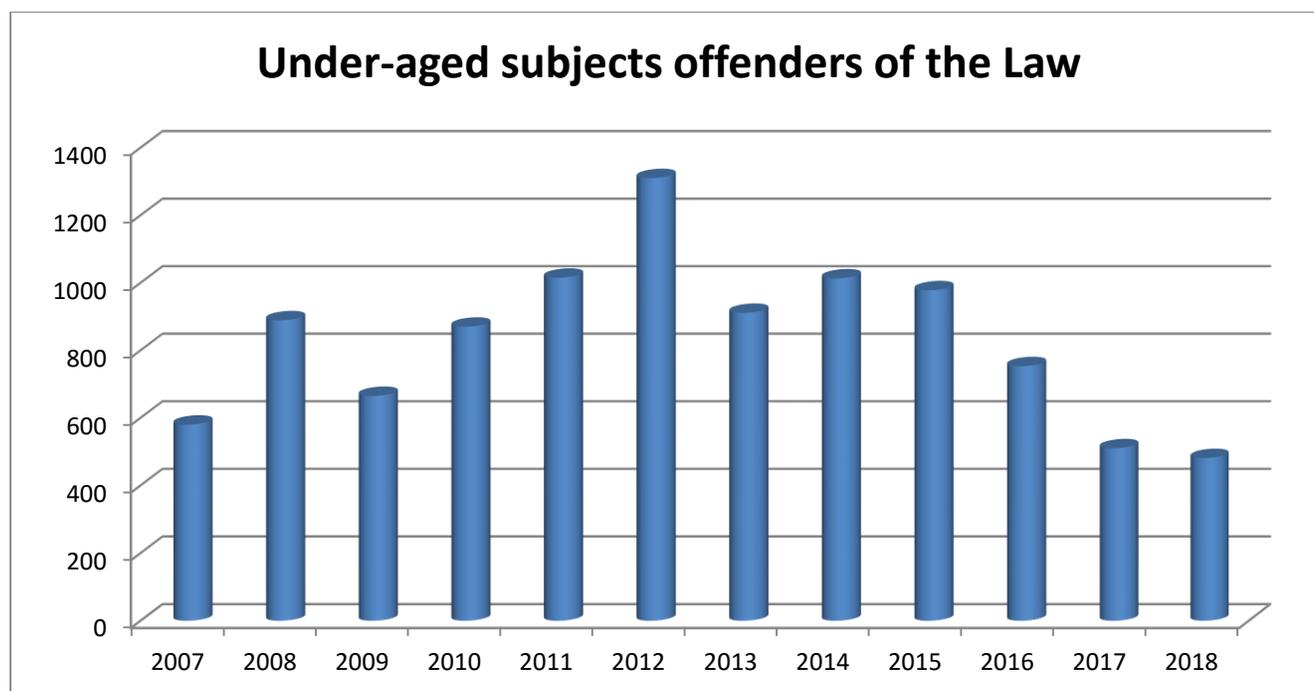
<sup>16</sup>General Prosecutor's Office report "On Criminality in Albania" for 2017, page 239.

<sup>17</sup>General Prosecutor's Office report "On Criminality in Albania" for 2018, page 259.

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If we are to make the statistical comparison for the time frame we have the data of, we would see that from 2007 until 2012 there is a highly increasing tendency of under-aged subjects involved in offences and criminal activity, whereas during 2013 -2018, we witness a visibly decreasing tendency of the number of defendants of age 14 - 18 years old, who are under criminal investigation for any offence of Law.

## II. The legal framework for under-aged offenders of the Law

After the '90, Albania has taken a different approach in respecting the Human Rights in general, likewise part of the path has been the defence of children's' rights. The under-aged law offenders are a very vulnerable category of society, this also due to the fact that the legal system must offer quick, effective and qualitative legal procedures to defend and support their rights.

- **International standards in the Justice for the Under-aged and the relation with the International Law.**

The Juvenile Criminal Justice scope is equipped with international standards for the handling approach towards the under-aged offenders. This set of rules define the minimal standards that criminal legislations should fulfil, starting from the very beginning of the criminal investigation

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against individuals considered under-aged subjects according to the respective legislation framework of the countries, offering a range of guidelines to the reformation of the criminal proceedings of the tier. Specifically, in the international arena we have:

-*“Standard Minimum Rules for the Administration of Juvenile Justice” (Beijing Rules), is a resolution of the United Nations General Assembly regarding the treatment of Juvenile prisoners and offenders and the administrating of judicial proceeding for them*<sup>18</sup>;

-*United Nation Guidelines “For the Prevention of Juvenile Delinquency” (Riyadh Guidelines)*<sup>19</sup>.

-*United Nations Rules “For the Protection of Juveniles deprived of their Liberty” (Havana Rules)*.<sup>20</sup>

-*Guidelines “For Actions on Children in the Criminal Justice System”*.<sup>21</sup>

In compliance with the international engagements, our country has ratified some of the international conventions in this scope. On the 28th of February of 1992, the republic of Albania has ratified the UN Convention, *“On the Rights of a Child”*<sup>22</sup> that sanctions specific rules for the investigation, judicial proceedings and conviction of juvenile defendants. Through Law Nb.86/2013<sup>23</sup>, is ratified the Third Optional Protocol of the Convention On the Rights of a Child, which is a international mechanism which gives children the right to appeal in case of failure to respect the Convention. Through this Protocol the children and their legal guardian have gained access to appeal individually to the Committee on Children’s’ Rights at the UN, where children have the right to appeal to this international mechanism specific for them, in the cases that national mechanisms fail to address violations of their rights effectively.

The Fundamental Principles that guide and will help in the interpretation of the Convention as a whole unit and guide the implementation:

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<sup>18</sup> Resolution 40/33, dated 29 Nov 1985 by General Assembly, available at: <https://www.refworld.org/docid/3b00f2203c.html>

<sup>19</sup> Adopted by the United Nations General Assembly through Resolution No. 45/112, dated 17.12.1990.

<sup>20</sup> Adopted by the United Nations General Assembly, Resolution No.45/113, dated 14.12.1990

<sup>21</sup> Resolution No.1997/30 by Social and Economic Council.

<sup>22</sup> United Nations Convention on the Rights of the Child adopted by UN General Assembly on 20.11.1989.

<sup>23</sup> Law No.86, dated 25.02.2013 *“On Ratification of three Optional Protocols to the UN Convention on the Rights of the Child on a communications procedure.*

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1. The Principal of Non-Discrimination<sup>24</sup>. The children should be protected and never be subjected to any form of discrimination or punishment due to gender, race, skin colour, ethnicity, etc. In the everyday life poverty is considered a common cause of children discrimination. The committee On the Tights of the Child has highlighted that the implementation of this principal should not be depending on the budgetary limitations<sup>25</sup>.
2. The Principal of the Best Interest of the Child<sup>26</sup>. In all actions concerning children that are taken by public or private, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. In case of a confrontation with a domestic law, the principal of the best interest of the child will serve as the guideline for interpretation.
3. The right to life, survival and development<sup>27</sup>. This right includes not only the physical health of the child, but likewise the right to his or her moral, emotional and social development.
4. The right to respect the views o the child<sup>28</sup>. Every child who is able to express their view and opinion should be heard. The decision making bodies should adapt that children become an integrated part. The committee has decided on a minimum of criteria for the correct fulfilment of this right.<sup>29</sup> In concrete terms: - The right to Information; - The necessary legal assistance; - the access to have p-resent a translator in case the child is not able to understand and use the language; - the respecting of the child's private life in all stages of judicial proceedings; - The child has the right to attend of free will the sessions of judicial proceedings and should not be under pressure to testify in court<sup>30</sup>.

The guaranties for children offenders of law sanctioned by the “*Convention on the Rights of the Child*”, are part of the economic, cultural and social rights and as such all the states must undertake effective action for their fulfilment. The Contracting State shall respect and effectively ensure the rights set forth in the present convention for a child within their jurisdiction through the completion of positive obligations, therefore concrete and adequate steps and measure shall be put in place.

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<sup>24</sup> Article 2 of *Convention on the Rights of the Child*.

<sup>25</sup> Centre for Development. 2016. “*Juvenile Offenders and Convention on Children's Right*”, Stockholm, page 13.

<sup>26</sup> Article 3, *Convention on the Rights of the Child*.

<sup>27</sup> Article 6, *Convention on the Rights of the Child*

<sup>28</sup> Article 12, *Convention on the Rights of the Child*

<sup>29</sup> These requirements have been compiled with reference to the provisions of Articles 12, 37, 40 of the *Convention on the Rights of the Child*.

<sup>30</sup> Centre for Development. 2016. “*Juvenile Offenders and Convention on Children's Right*”, Stockholm, page 16.

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For the monitoring of compatibility (harmonization) of State parties' legislation framework with the "Convention On the Rights of the Child", the UN has established the UN Committee for the Rights of the Child. The countries that have ratified the Convention have the obligation to present to the Committee certain reports, where amongs all else they elaborate on the measures undertaken for ensuring of the Convetion's Rights. The initial report is presented 2 years after the ratification date, followed by periodical reports every five years.

Albania, after ratifying the UN Convention on the Rights of the Child, to ensure the implementation of international engagements, has presented the periodical reports to the Committee. The Committee, after considering in details the second and fourth report of Albania<sup>31</sup>, has deemed that the countries' legislation framework does not comply with some of the Minimum Standards set forth by the Convention, resulting in the drafting of required recommendations<sup>32</sup>. The Committee recommended the Albanian state brings its Justice System on Juvenile at the same lines with the Convention (in particular manner with Articles 37, 39 and 40) and with other essential standards, including the "Standard Minimum Rules for the Administration of the Juvenile Justice "(Beijing Rules), Guidelines for The Prevention of Juvenile Delinquency (Riyadh Guidelines), The Vienna Guidelines for Actions with Children.

In the international framework, regarding the respecting and ensuring of Human Rights, Albania has ratified several documents such as: The Council of Europe Convention "On the Protection of Children against Sexual Exploitation and Sexual Abuse"<sup>33</sup> (*Lanzarote Convention*), The European Convention "On Contact Concerning Children"<sup>34</sup>, The Council of Europe Convention on Preventing and combating Violence against Women and Domestic Violence"<sup>35</sup>.

In compliance with these international engagements, the domestic law has undergone bettering and positive changes, nonetheless until the latest years the Albanian legislation is still deemed as not ensuring the minimal standards on Criminal Justice for the under-aged subjects. The European Commission, through the 2016 Progress report for Albania, among else has recommended that: "*Albania should improve the institutional mechanisms on Protection of the*

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<sup>31</sup>Namely, reports (CRC/C/ALB/2-4) at 1738<sup>th</sup> and 1739<sup>th</sup> meetings (CRC/C/SR.1738 and CRC/C/SR.1739), on 25 Sept 2012.

<sup>32</sup>[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=ALB&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=ALB&Lang=EN)

<sup>33</sup> Ratified by law No.10071 year 2009.

<sup>34</sup> Ratified by law No.9359, year 2005.

<sup>35</sup> Ratified by law No.104, year 2012.

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*Children; in particular the Improvement of the current legislation on Juvenile Justice in accordance with the international standards*<sup>36</sup>.

After 2016, the ensuring and respecting of Rights of Juvenile Offenders of Law is considered as one of the top priorities of the Albanian state, where we can witness during 2017 important improvements On Criminal Justice for the under-aged subjects. The reforming of the Justice System has aimed the ensuring and achieving the of effective procedural defence of Juveniles and the strengthening of the Restorative Justice<sup>37</sup>.

The Law “*On the Rights and Protection of a Child*”<sup>38</sup> has set forth the Rights and Protection that every Child shall have, likewise the offering of specific care for the children. The Law states the establishing of the central and local mechanisms and authorities that ensure and guarantee effectively the exercising, respecting and promoting of these rights

The Albanian Juvenile Criminal Code<sup>39</sup> has “*De jure*” reached the compatibility of the Albanian legislation with the international standards for the Juvenile Justice<sup>40</sup>. This Law “*aims the ensuring of the domestic legal framework for Juvenile Criminal Justice is in compliance with UN’s Convention for The Rights of the Child and other obligatory international norms and standards, that in their scope aim to the defence of the child and the effective defence of the of highest interest of the child*”<sup>41</sup>. Through this law it has been reached a harmonization of the domestic legislation with the international rules and for Juvenile Justice in UN level, Council of Europe and European Union<sup>42</sup>.

## - Domestic Law and Institutional Authorities for Juvenile Justice.

The Criminal Code, in the Juvenile section, states clear rules on criminal Juvenile responsibility and accountability, procedural rules related to the investigation, criminal prosecution, the judicial proceedings, the execution of the criminal sentence, the rehabilitation or any other measures that concerns an under-aged subject offender of the law, an under-aged victim and/or a witness of a criminal act, likewise rules for youth of age 18-21 years old. The code is a Unit of criminal

<sup>36</sup> EU Progress Report Albania 2016, chapter 23, page 57.

<sup>37</sup> Council of Ministers Decision No 541, dated 19.09.2018 “On Adoption of the National Justice for Children Strategy and Action Plan 2018-2021”.

<sup>38</sup> Law No.18, dated 23.02.2017 “On the Rights and Protection of Children”.

<sup>39</sup> EU Progress Report Albania 2018, Chapter 24.

<sup>40</sup> Adopted by law No Nr.37, dated 30.03.2017, entered into force on 01.01.2018.

<sup>41</sup> Article 2 of Criminal Justice for Children Code.

<sup>42</sup> The Code has aligned Albanian legislation with EU Directive No.2011/93 dated 13.12.2011, published on official gazette No.335, dated 17.12.2011.

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substantial and procedural norms, as it contains all the dispositions that concern the under-aged from the Criminal Procedural Code, Criminal Code, the law “*On the rights and treatment of convicted and pre-trial detainee*”, likewise other referral law of Justice System for the Juvenile.

Even though, the reaching of in the international standards should be completed “*de facto*”, we should not be forgetting that many of the legal provisions of the Code are Blankets and their implementation is depending from the regulations and directives approved by the Council of Ministers, Ministry of Justice and responsible institutions. Very valuable to be highlighted is that for the ensuring of the effective respecting of Juvenile rights, on only the legal framework is a pivotal element but the institutional one as well, meanwhile the great importance will fall on the establishing, operation and monitoring of mechanisms for the protection of rights.

In application of the Criminal Justice Code for Juveniles, Minister of Justice has proposed several lanes to the Council of Ministers which has approved the below-listed decisions:

1. *DCM No.207, dated 10.04.2019 “On the designation of the competent authorities and the procedure to be followed for the fulfilment of court-imposed obligations on minors in conflict with the law”;*
2. *DCM No.233, dated 17.04.2019 “On the determination of specific regulations regarding the functioning of the premises, their level of security and the standards of education and rehabilitation programs, in cases of restriction of juvenile freedom”;*
3. *DCM No.148, dated 20.3.2019 “On the procedure applied by the probation service in case of non-fulfilment of the alternative measure of avoidance of prosecution”;*
4. *DCM No.149, dated 20.3.2019 “On the establishment, organization, functioning, characteristics of use and access to primary and secondary data and information providers of the Integrated System of Justice Data for Minors”.*

Likewise, the Council of Ministers is currently working on 2 draft-decisions:

1. Council of Ministers’ draft-decision on of the Council of the Ministers “*On the organization, functioning, and determination of specific arrangements regarding the structure and staffing of the juvenile and minor crime prevention centre*”;

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2. Council of Ministers' draft-decision "On several amendments to DCM No.437/2015 "On adoption of the General Regulation of Prisons."

Furthermore, in the implementation of legal obligation Minister of Justice has finalized the package of draft-directives:

1. Directive No.7640, dated 05.07.2018 "On specifying the form and rules of preparation of the document on conditional release of sentenced juveniles";
2. Directive No.7641, dated 05.07.2018 "On defining the elements of the agreement for the implementation of the broker avoidance measure";
3. Directive No.4950, dated 02.05.2018 "On specifying the special register form of the alternative measure of avoidance of prosecution, "verbal warning";
4. Directive No.4951, dated 02.05.2018 "On approving the format and data for the alternative avoidance measure, "Written warning";
5. Directive No.7639, dated 05.07.2018 "On approving the rules for the use of the integrated juvenile criminal justice data system by the General Directorate of Prisons and the Directorate General of Probation Service";
6. Joint directive with the Ministry of Education, Sports and Youth, No.3348/1, dated 18.04.2018 "On the regulation of the educational process in the institutions for the execution of juvenile criminal offenses"<sup>43</sup>.

**The Integrated Data System on Criminal Justice for Juvenile Subjects**, is a legal obligation that derives of the Article 136 of the Code of the Criminal Justice for the Code for Under-aged, the implementation of which a respective decision of Council of Ministers has been approved<sup>44</sup>. In compliance with the legal obligation the Ministry of Justice in cooperation with the National Agency for the Information Society is in the process of establishing The Integrated Data System for Criminal

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<sup>43</sup> The abovementioned directives are accessible to:

Order No.367, dated 15.07.2019 "On approving the format of the individual plan for fulfilling the court-imposed obligation on juveniles in conflict with the law."

Order No.368, dated 15.07.2019 "On approving the report format for failure to comply with the alternative measure of avoiding prosecution of juveniles in conflict with the law"

<sup>44</sup> DCM No.149, dated 20.3.2019 "On the establishment, organization, functioning, characteristics of use and access to primary and secondary data and information providers of the Integrated System of Justice Data for Minors."

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Justice for the Under-aged, which in itself is a system that is unique and digital and generates base indexes in a synthetic manner regarding:

- “a) The current Criminality situation regarding the Juvenile;*
- b) The number of serials offenders from the under-aged;*
- c) The scale of reintegration or rehabilitation of under-aged offenders after the completing of their sentence by prison or in the cases not sent to prison;*
- ç) The number of under-aged offenders that have been tried in a free state, arrested or detained;*
- d) The number of under-aged offenders treated through the procedure of deflection of criminal prosecuting and sentenced via alternative sanctions;*
- dh) the number of under-aged offenders tried and convicted;*
- e) The type of the criminal offence or breach of law committed by the under-aged subjects;*
- ë) the number of victims and the type of offence committed against them; and*
- f) Other records related to the under-aged offenders”.*<sup>45</sup>

The unifying and digitizing of records for the under-aged offenders has the scope of creating a wide statistical data-base<sup>46</sup>. The correct statistical data are essential to the creation of government criminal policies regarding criminal justice for under-aged subjects, being that the lack of a functional system is an obstacle momentum for the drafting of concrete and detailed strategies for the improving of certain services. No government body or Agency can complete or carry out effective studies and surveys on the criminality state, or the measures and steps to be taken by justice institutions, within the community and civil society for the prevention of criminality. Furthermore, complete access of justice bodies in these records affects directly on the efficiency and good administration of criminal justice for the under-aged offenders.

In accordance with the provisions of the Code of Criminal Justice for the Under-aged, the establishment of the new institutions dealing with under-aged offenders has started, concretely with:

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<sup>45</sup> Article 8 of DCM Nr.149, dated 20.03.2019.

<sup>46</sup> Article 9 of DCM Nr.149, dated 20.03.2019

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## **1. The Centre for Prevention of Delinquency of Under-aged and Youth.**

It has been approved through the Decision of Council of Ministers No.314 dated 15.5.2019 “*On determination of specific arrangements regarding structure and staff of the Minors and Juvenile Crime Prevention Centre.*”

Currently, the relevant and related inner structures of the Ministry of Justice are following up with the process of the establishment of the Centre for Prevention of Delinquency of Under-aged and Youth in cooperation with the Public Administration Department (DAP) on the finalizing of the procedures for the opening-up of the Centre in the shortest possible timeframe.

## **2. The Institution for Restraint of Liberty.**

The Council of Minister has given the green light for the *Establishment of the Multidisciplinary Institution for the Rehabilitating of the Under-aged Offenders* through the decision “DCM Nb.233, dated 17.04.2019 “*On the designing of specific rules on the functioning of premises, their level of security and rehabilitation and education programme standards in the cases of under-aged subjects facing liberty restraint*”. The Institution for Restraint of Liberty is deemed to be operating as a semi-opened institution, where the liberty of action/dislocation of the under-aged offenders will be limited to the point of being prevented of committing criminal offences and acts and will be very specifically designed and aimed at reintegration and re-socializing of the under-aged offender into the community.

Currently, relevant and related inner structures of the Ministry of justice are following-up the process of the establishment of The Institution for Restraint of Liberty.

## **3. The Competent Authorities.**

The transitional Provisions of the Code<sup>47</sup>, have charged the Council of minister and the respective ministers to draft and publish bylaws and regulations to enable the establishing and the functioning of the competent bodies that operate in relation to :

- a. placing of the under-aged under care (article 69 of the Code)
- b. placing of the under- aged under supervision (article 83 of the Code)

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<sup>47</sup> Articles 140-142 of the Criminal Justice for Children Code.

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- c. placing of the under- aged under a specialized service (article 84 of the Code)
- d. the restraint of the liberty of the under-aged (article 98 of the Code)
- e. *“Fulfilment of Certain Obligations”* towards the under-aged. (article 102 of the Code)

The Council of Ministers, through a decision published in the official journal<sup>48</sup>, has appointed the competent authorities and the procedures to be followed by them in the cases when the Court of Law sentences the under-aged offender to fulfil one of the certain obligations in accordant the Article 102 of the Code of Criminal Justice for Under-aged Offenders. The authorities appointed and the procedures to be followed are the same independently of the fact that the fulfilment of certain obligations sentence will be given as an additional penalty or a as a non-imprisonment sentence. *“The head of the social services and child protection unit at the local government bodies prepares and updates the lists of competent authorities and responsible persons and sends them to the local structures of the State Police, Prosecutor's Office and the relevant section / court”*<sup>49</sup>. Likewise, in the same Decision of Council of Ministers are also specified the local competent authorities, which are to be responsible for fulfilling of the certain obligations sentenced by the court on juvenile offenders.

In accordance to the international standards, other alternatives regarding security steps and measures should be put in place when it comes to the under-aged offenders during the preliminary investigations. In this very context, the Code<sup>50</sup> has foreseen specific measures for the under-aged offenders, such as:

- a) *placing the under-aged offender under supervision*
- b) *placing the under-aged offender under specialized service.*

Currently, we have under processing the draft project of Decision of Council of Ministers *“On adopting the regulation on the organizing and functioning of the specialized service, of programs and their funding regarding under-aged offenders”*.

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<sup>48</sup> DCM No.207, dated 10.4.2019 *“On the designation of the competent authorities and the procedure to be followed for the fulfilment of court-imposed obligations on minors in conflict with the law.”*

<sup>49</sup> Chapter II *“Competent Authorities”*, point 5.

<sup>50</sup> Article 82, *Criminal Justice for Children Code.*

## 4. The Unit for Protection of the Rights of the Child

The Municipality Unit for the Protection of the Child is established and operates as a specific unit within the responsible structure of social services in municipal level and is assigned as specific task the prevention, identification, assessment, protection and following up of cases of children facing peril and/ or in need for protection.

The units for Protection of the Rights of the Child are subordinate to the State Agency for the protection of the Rights of the Child, which is subordinate to the Ministry of Health and Social Protection.

### III. Conclusions and Recommendations

In the report from European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment<sup>51</sup>, it is stated the conclusion that in Albania the treatment of under-aged subjects is not in accordance with international standards<sup>52</sup>. In a late analysis of the situation of the under-aged convicted that carry out their given sentence in the relevant institutions, it is mentioned that the juveniles do not get the correct services in the institutions. Our country has only two pre-trial centres for the under-aged offenders, precisely in Vlora and Lezha, whereas for the reintegration of under-aged offenders there is only one institution that is located in Kavaja, with a capacity of 40 people and it offers to the convicted under-aged offender's educational activities, trainings, intermediation, free legal assistance and reintegrating activities. The most part of the convicted are of the age 16-17 years and taking into consideration the accommodating capacities of this institution and the high number of under-aged offenders convicted, it is clearly visible that the most part of them do not receive educational training or reintegrating treatment consistent to the international standards.

The personnel working with under-aged offenders of law should be properly trained, in order to be able to meet a combination and balance of security and order demands inside juvenile penitentiary institutions with the obligation to assist the convicted in developing personal

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<sup>51</sup> Albania Report by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment for 2018.

<sup>52</sup> Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by Law No.7727, dated 30.6.1993, stipulates: "For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions."

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positive abilities. Helsinki Committee in Albania has carried out an analysis on the ensuring of human rights for individuals deprived of liberty and in the official report the international body has highlighted the shortage in number of specialized psychologists and social workers to work specifically with under-aged convicted offenders of law. The psychologists have a general profile, they are not specialized in dealing with juvenile matters or offences, as a result their interviews with do not address the specific needs of convicted children<sup>53</sup>.

Re-educating juvenile perpetrators is one of the main challenges facing the justice system. For years on, it was thought that the punishment and severity of the criminal sanction would be sufficient for special prevention (of the perpetrator) and the general prevention (of individuals of society). In Albania it has been found that despite the severity of juvenile sentences (application of imprisonment sentences), it has resulted that 90% of juveniles return to recidivism.<sup>54</sup>

In the UN Convention for the Rights of the Child it is foreseen that every child has the right to survival and development<sup>55</sup>. This principal implies that the juvenile offenders have the right for a normal development and in this framework, in determining and drafting of punishment and re-education policies for juvenile offender, it must be taken into account that the under-aged subjects must continue to develop physically, morally, spiritually, mentally and socially even during the period of punishment and re-education.

The Juvenile Criminal Justice must keep as a priority the well-being of the juvenile convicted and must ensure that any measures taken towards them are commensurate with both the juvenile's rights likewise the victim's rights<sup>56</sup>. In this context, there are two objectives that the juvenile justice system must meet, initially, the promoting of juvenile offenders' well-being, which is achieved by taking measures without separating the children from their family and/or society, alongside with the principle of proportionality, which must maintain and keep the balance between the punishment ("just desert" theory) and the importance of the offense.

The Code for Juvenile Criminal Justice foresees the creation of an Integrated Data System for Juvenile Criminal Justice, likewise on the same bases has been adopted the decision of Council of Ministers Nb.149, dated 20.3.2019 "*On the creation, organization, use and accessibility*

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<sup>53</sup> Albanian Helsinki Committee report "*On situation of human rights of persons deprived of liberty in the State Police stations, in detention centres and prisons, as well as in psychiatric hospitals, July 2015–January 2016.*"

<sup>54</sup> Aida Bushati, Geron Kamberi, Florian Xhafa, Holta Ymeri, Mona Xhexhaj, Nirvana Deliu, Sajmira Kopani "*Convention on EU Integration: Assessment and Recommendations 2015–2016*". Publishing house FLESH, page 27–29

<sup>55</sup> Article 6, *Convention of Rights of the Child.*

<sup>56</sup> Article 5, *The Beijing Rules.*

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*features, primary and secondary data in deliverer of the e information of the Integrated Data System on Juvenile Criminal Justice*". For the time being, this integrated system is not yet implemented, therefore in this regard, all necessary legal and institutional steps and measures must be undertaken to the establishing and operating of this system efficiently in the near timeframe.

The juvenile criminal justice database holds a key role very essential in improving access to juvenile criminal justice, good administration of justice as single unity, as well as improving policies related to juvenile justice.

To enable the undertaking of policies in criminality prevention, a key element is the systematic study and analysis of juvenile delinquency data and the initiation of necessary steps and measures, as it is state throughout the entire assignment it is noticeable the lack of several bylaws adopted by the Council of Ministers and the Minister of Justice, which in the respective cases would enable the practical implementation of the legal provisions of the Code of Juvenile Criminal Justice. The government, in the shortest timeframe possible, should complete the legal framework, asses the practical implementation of these legal improvements and follow up by taking the necessary steps for the further harmonization and adjusting of the criminal legislation with the specific needs of under-aged offenders of law, witnesses and victims.

Despite various improvements of the legal framework, adequate community-based planning and budgeting, likewise re-education and reintegration programs for juvenile offenders are still lacking. In order to have an effective juvenile criminal justice and the standards set forth in the Code, of course the foreseen budget also has a decisive role.

It is imperative for the government to carry out short-term and long-term measures concrete planning for community-based re-education and reintegration programs, coupled alongside with budget costs.

In this context, to get to the improvement of the juvenile justice system, it is necessary to amend the law on the state budget, where the measures to be taken in the context of juvenile criminal justice should have a specific financial iteming until the reaching of international standards. Part of the revenues in the state budget (under this item) should also be the revenues generated from sale through auctioning of criminal acts (offences) seized products, likewise deriving from public and community interest work hours of under-aged offenders.

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