

Guaranteeing The Rights of the Minors in Conflict with The Law and The Juvenile Criminal Justice Code

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Abstract

The purpose of this exploratory study is to investigate the challenges in legal framework and the role that legislative measures play in protecting and guaranteeing a friendly justice system for minors in conflict with the law, victims, or witnesses in a criminal situation or crime. One of the main factors for juvenile delinquency is the economic disparity. Some main factors attributed to the development of bad behaviors are psychological, social, and economic factors. The poor socio-economic environment, which is formed by poverty and scarcity, contributes to the increase of criminality in general and, especially, to the appearance of deviant behavior among minors. The study employs a mixed methodology, comprising a review of the national legislation, institutional framework, and of the relevant literature in the field of the juvenile justice system, social cohesion, education, and re-education, rehabilitation, and re-integration in society for all minors in conflict with the law and child protection system concerning the guaranteeing the Children's Rights, especially for minors in conflict with the law and deprived of liberty. In the society we live in today, juvenile justice is a widespread concern for law enforcement. However, to what extent the laws and punishments used against today's youth have been a main focus, reflected in reports of international and local NGOs, and international and national institutions for the protection of human rights.

Keywords: Juvenile Justice System, Children's Rights, minors in conflict with the law, the best interest of the child, alternative measures, victim, witness, re-integration, rehabilitation, etc.

Introduction

It is a fact today that juvenile delinquency and deviant behavior constitute one of the disturbing phenomena of societies around the world, which affects not only the victim of the crime but also the family of juvenile delinquents, their future, and society in general. Juvenile delinquency covers a wide range of violations of legal and social norms, ranging from crimes with a low social risk to serious crimes committed by minors.

Minors and young teenagers, who live in difficult situations such as poverty, dysfunctional families, drug abuse, or even the death of one of the family members, are among the risk factors for their transformation into delinquents. The deviant behavior of minors is mainly attributed to biological and social effects, and the child's behavior is based on the existence of the more abstract context of socialization. On the other hand, some theories of socio-criminology consider TV and mass media, the community, and, in some cases, religious issues as other sources of delinquency.

Ernest W. Burgess (1952) in his paper discusses certain facts concerning the relation of juvenile delinquency to low family income emerged from various studies. According to his paper, official juvenile delinquents are concentrated in certain areas of every city. These have been called delinquency areas. Juvenile delinquency areas are highly correlated with poverty and low income (pg.34, vol.43).

Shaw and McKay (1942) in collaboration with six sociologists in the USA, studied twenty cities in the United States covering tens of thousands of official delinquents. In all of these communities, they found that juvenile delinquency was concentrated in certain areas which they called "delinquency areas". According to them *"...poverty, accordingly, is only one of a number of factors associated with juvenile delinquency. This conclusion is corroborated not only by statistics but also by the life histories of juvenile delinquents. Among these other factors are bad housing, broken homes, mothers working, parental negligence, over severity, over leniency, rejection, boy and girl gangs, delinquent and criminal traditions, and other neighborhood conditions contributing to the delinquency of the child..."*. (pg.35).

There are other international authors such as Javed, M., Azhar, Z., Anwar, H.N., & Sohail, M. M.(2012), who provide a review on the socio-economic factors affecting Juvenile Delinquency. It was concluded in the present study that peers' negative influence, low income of the family, family conflict, revenge, low literacy level, and lack of parental supervision of their children were the main causes of juvenile delinquency (2(5), 183–19).

Some of the factors identified above by these authors as key issues are similar in Albania's case too, concerning the delinquency of the minors. During the inspections in the penitentiary

system made in the position of the Commissioner for Protecting and Promoting Children's Rights (field expertise) in a group interview with children in conflict with the law, it turns out that some of them come from troubled families, with stories of divorce, violence, no parents or even families with immigrant parents. From the qualitative and statistical data obtained and processed from interviews with juveniles, it is evident that some of the minors in conflict with the law in the Kavaja Penitentiary Institution in Albania^[2] came from families with social, and economic problems and lack of access to education.

The purpose of this exploratory study is to investigate and represent the challenges that face competent bodies in charge of the administration of the Juvenile Justice System in respecting, protecting, and guaranteeing Children's Rights, especially the rights of minors in conflict with the law and deprived of liberty.

The findings of this paper are supported by prior research in analyzing international and national legislation, strategies, and documents prepared by international institutions, such as UNICEF, special reports and recommendations of national human rights institutions (Ombudsman)^[3], NGOs and other government institutions.

The in-depth analysis of the legislation and recommendations revealed a clear understanding of the findings and also the recommendations for better protecting and guaranteeing the rights of minors in conflict with the law in my country.

1. *The national legal framework*

In accordance with international standards for the administration of criminal justice for minors, in the function of guaranteeing and respect for the best interest of the child in the criminal process, a special law has been adopted, the Juvenile Criminal Justice Code^[4], which contains special arrangements regarding criminal liability minors, procedural rules regarding investigation, prosecution, litigation, enforcement of criminal conviction, rehabilitation or any other measure involving a minor in conflict with the law, a minor victim and/or a witness of the offense.

The purpose of this law is to guarantee a legal framework for criminal justice for minors, in accordance with the Constitution, the United Nations Convention on the Rights of the Child, and other international standards and norms, aimed at the protection of minors and an effective protection of his or her highest interest. The purpose and spirit of this law, in accordance with the principle of the best interest of the child, is that regardless of the minor's role in a criminal process, whether active (in conflict with the law) or passive (victim or witness), the child it must be specifically guaranteed a dedicated legal process, not to aggravate the trauma experienced by the minor, as well as to foster the desire for education and reintegration into society. This gives children the best opportunity to live a healthy and fulfilling life and grow

to be happy and productive adults, enabling them to live their childhood and bring great benefits to society as well.

The principles of this Code are applied at every stage of criminal proceedings, regardless of the status that the minor may have in conflict with the law, and are mandatory for implementation by every individual and competent body, part of the criminal justice administration system, in all their actions and decisions regarding the minor in conflict with the law, the minor victim and/or witness of the criminal offense to guarantee a child-friendly justice and access to it.

Also in the new Juvenile Justice Code (Article 117/1&2) an important role play the provisions regarding the organization of educational and rehabilitation programs for minors in conflict with the law, accused or convicted (compulsory basic education and, depending on the case may be, also secondary or higher education). The right to education and vocational training are inseparable from each other, in accordance with the international standards defined in the Beijing Rules, the Nelson Mandela Regulation, and the European Prison Rules, which make it possible to provide the necessary assistance for education, professional training, employment and any other necessary assistance to minors in conflict with the law, to give them the appropriate support for their rehabilitation at every stage of the criminal proceedings. The primary goal is to provide care, protection, and professional training, to form and enable them to have a productive role in society.

Based on this, our internal legislation provides professional training that is mandatory for minors in conflict with the law, through professional course providers, according to the legal framework in force (Article 117/4 of the Code).

For the above, the criminal justice legislation for minors is in accordance with the best international standards, but the challenge remains its effective implementation in practice. Specifically, based on the findings during the inspections of the National Human Rights Institution (Ombudsman, Commissioner for Protect and Promote Children's Rights) and cases treated "*ex-officio*" by them, several problems are identified, related to the lack of continuous training in the law enforcement structures of the justice bodies (prosecutors, judges, judicial police officers, State Police employees), for the implementation of the principles and procedures defined in the Juvenile Criminal Justice Code, which are not in the best interest of the child and, moreover, negatively affect the process of rehabilitation and a normal physical and mental development of minors in conflict with the law.

As for the approval of by-laws in implementation of Law no.37/2017 "Code of Criminal Justice for Minors", the absence and delay in the approval of the general regulation of prisons, especially for the guaranteeing the rights of minors in conflict with the law has created a gap between the legal provisions in the Code and implementations in practice.

2. *National institutions for the protection of human rights - the Commissioner for the Protection and Promotion of Children's Rights and key actors in the administration of criminal justice for minors*

The national institutions for the protection of human rights, such as the Commissioner for the Protection and Promotion of Children's Rights in the institution of the People's Advocate in Albania [5], in the synthesis, report on the findings and problems found in the juvenile justice system, have addressed the recommendations to the responsible state authorities, in order to strengthen and improve the work of the institutions for the implementation of the corpus of laws, policies, programs, and good administrative practices, to ensure that all of these are implemented in accordance with the international jurisdiction of human rights, especially towards Children's Rights and young teenagers.

According to chapter II, of law no.37/2017, "Juvenile Criminal Justice Code", the general principles include:

1. the principle of protection against discrimination;
2. the right to the harmonious development of the minor;
3. the principle of the child's best interest;
4. restriction or deprivation of liberty as a last measure;
5. friendly justice;
6. the presumption of innocence;
7. avoidance of criminal prosecution and criminal punishment;
8. the principle of proportionality;
9. consideration without delay and priority.

What is essential and reflected in these recommendations and reports [6], is the obligation of the key actors of the administration of criminal justice to minors to guarantee the rights of children and young adolescents, accused of violating the criminal law, respecting the principles of the Code and also the internal legislation for Children's Rights and protection. And, therefore, it is clear that a juvenile justice system must ensure that children and adolescents enjoy all the same rights as other human beings.

During the monitoring visit to Kavaja Minors Institute, 19 minors were accommodated in this institution, of which 18 were detained and 1 (one) convicted. All minors who were in this institution are male. From the conducted interviews and evaluation of the relevant documentation and files, for the 19 minors, it was found that 18 were in the process of investigation and/or trial and were kept under the security measure of "arrest in prison". The average length of stay in the institution of detained juveniles is approximately 17 months, where the longest length of stay is 36 months in one case and the lowest is 0.1 months [7]. It is noted that the average length of stay of children in detention in Albania continues to be high

compared to neighboring countries, a problem that is also evidenced in Resolution 1244 of the United Nations Security Council. Although the average length of stay has dropped to 92 days in 2016, there is still a lot of work to be done, to reach at least the level of neighboring countries, such as Montenegro and Kosovo.

In the analysis of the above-mentioned data, we find that in relation to the number of convicted minors, a high number of pre-detained minors is evident. The arbitrary use of the measure of "prison arrest" or in an excessively prolonged manner, is considered a violation of the rights of minors in conflict with the law, the consequences of which are sensitive to them. In relation to the nature of the criminal offense, it is observed that the highest number of minors are accused of the criminal offense of theft, meanwhile, the measures of detention for this criminal offense should be given in mitigating circumstances. This is not in accordance with international standards and domestic legislation. This is due to the fact that detention or imprisonment, as measures applied to minors in conflict with the law, should be considered as the last alternative. The Juvenile Criminal Justice Code guarantees the rights of minors who commit criminal offenses has a preventive and restorative approach and provides for the imprisonment of minors as the last alternative provided in the legal provisions. Alternative measures aimed at preventing the minor from criminal proceedings or the implementation of restorative justice measures are evaluated as the first possibility. When this assessment is made, by each competent body, the respective acts reflect the consideration that the alternative measure (Article 15 of the Code) of avoidance better serves the goals of resocializing, rehabilitating the minor, and preventing violations of the law as opposed to placing him under criminal responsibility and enforcement of criminal punishment^[8]. The correct application of the principle of proportionality, where any measure taken against the minor in conflict with the law must be in relation to the circumstances of the commission of the criminal offense, the personality of the minor, in accordance with the needs related to age, upbringing, education, personal, family, social and environmental conditions, developmental needs, as well as other needs of the minor, including, if applicable, special needs (Article 13).

Another important issue is the restriction or removal of freedom as a last measure, which provides that the arrest, detention, or imprisonment of a minor does not apply if the goal can be achieved through a milder measure. Also, the arrest, detention, or imprisonment of a minor is implemented in accordance with the provisions of this Code, as well as in accordance with criminal procedural legislation, insofar as this Code does not provide otherwise. These measures are used only as a last measure, for as short a time as possible, and are subject to regular periodic review by the court (Article 15/2).

One of the obligations that the Code stipulates regarding the competent bodies for the administration of criminal justice for minors is the training and specialization of the competent authorities, which means that these bodies that work or are in contact with minors in conflict

with the law, victims and/or witnesses of a fact, event or criminal offense, must have the necessary expertise and, that the persons who administer the criminal justice process for minors, must be specialized and trained in the field of protection of children's rights. This obligation includes many employees and professionals such as the prosecutor, judicial police officer, judge, State Police officer, lawyer, psychologist, social worker, child rights protection unit worker, etc. The judge assigned to the juvenile trial in these sections must be specialized and trained in juvenile criminal justice (Article 15, 25/1&4 and 27 of the Code).

However, this system should also provide them with special protection (Article 116/1&2, of the Code), which is necessary for their age and stage of development, in accordance with the main principles of the juvenile justice system, namely, the rehabilitation of children and adolescents, their development inclusive and their re-integration into society, to make it possible for them to play a constructive role within this system [\[9\]](#).

3. Finding and discussions

This study is based on a qualitative methodology entrenching primary resources in international and national legal frameworks regulating the Juvenile Justice System and original data from field expertise. In exercising the duty of Commissioner of the Protection and Promotion of Children's Rights in Albania, during the inspections in the penitentiary system, what is observed today in Albania is the fact that the juvenile justice system must respect the principles sanctioned in the Juvenile Criminal Justice Code [\[10\]](#), which apply specifically to juveniles and, in a special way, must evaluate and respect the rules, through which the implementation of the general principles of the Code is ensured, for persons who have not yet reached the age of criminal responsibility, but also that of maturity. The juvenile criminal justice system should also guarantee the principle of last resort, which means that it should consider alternative measures to avoid punishment (Article 15 of the Code) and not the application of detention measures or other forms of punishment. deprivation of liberty, which in the case of persons under the age of 18 should be used as a last resort. Thus, the competent bodies should be encouraged to move towards the elimination of forms of imprisonment, in the case of children and young teenagers.

Indeed, it is found that there is a considerable gap between what is foreseen and sanctioned in the legislation and the experiences of minors in conflict with the law and young teenagers, accused of violating criminal laws. In this way, it is observed how, with the exception of some examples and best practices, the criminal justice system for minors in our country is characterized by:

- some manifestations of discrimination;
- forms of violence;

- the lack of professionals specialized in juvenile justice issues;
- a lack, in terms of the application of measures to avoid punishment or in the worst case, an abuse of the measures used to deprive minors of their freedom and,
- during the quarantine from COVID-19, it was determined that persons deprived of liberty, including children, were deprived of the right to *short-term* visits with their family members during the quarantine and, as an exception to this restriction, those cases were when meetings could take place in special environments that did not require direct physical contact. In response to the measures to prevent the spread of COVID-19, the Albanian penitentiary system reacted, implementing several regulatory acts, orders, and instructions (initially) of an organizational nature, which consisted of suspending visits and other activities of persons found in the conditions of deprivation of liberty, in order to limit contacts with other people from abroad. During the pandemic period, the restrictive measures imposed by the responsible state bodies, as a whole, brought restrictions on the institutions of deprivation of liberty for minors in Kavaja Institute for Minors, such as: closing the activity of the learning process, professional training courses, conducting meetings "*vis à-vis*" with family members and relatives, the development of judicial processes, etc.

It often happens that children and adolescents who commit or are accused of committing criminal offenses are cut off from all contact with their family and community - contacts that are essential for the enjoyment of their rights and their development. Especially the pandemic situation negatively affected the emotional state of minors deprived them of freedom and harmonious development, causing stress and suffering, precisely from the lack of meetings with family members. Although children deprived of liberty in closed institutions faced an increased risk of infection or the spread of disease, the measures put in place to control the spread of the virus negatively affected their well-being and healthy development.

It is important to note that the measures taken to fight the COVID-19 pandemic should be proportionate both to the dictated situation and in accordance with human rights standards. For this reason, it is estimated that the competent institutions did not take into account the principle of the best interest of children and their protection, in the process of drafting and implementing plans in response to the pandemic, as a result of the restrictions, the visits of minors and relatives were banned for 14 months. Similarly, the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) and UNICEF, for the possibility of other alternative measures such as their release or return to their families, were not taken into account. If the measure could be considered proportional and necessary in the first months of the pandemic, it was no longer justified and, after a period of 6 months, it would have been enough time to take concrete measures, adapting the environments from a structural point of view, with the aim of meeting juveniles deprived of their liberty with their families.

Children and adolescents' first contact with the juvenile justice system is through the police and, for them, this is not a very good experience. The police often treat minors in conflict with the law, victims and/or witnesses, and young teenagers inappropriately and arrest, detain, or escort mainly those who come from families with a poorer socio-economic structure, those belonging to minorities, or those who identify as belonging to certain communities, such as Roma and Egyptian. Institutions for the protection of human rights, especially children's rights, such as the Commissioner for the Protection and Promotion of Children's Rights in the institution of the People's Advocate^[11], for police practices (have found in the administrative investigations carried out "*ex-officio*"), in which children and adolescents are routinely held, precisely based on perceptions about their behavior, or simply because they are assumed to be "at risk", or abandoned, as they live on the streets or wander around.

The Code of Criminal Justice for Juveniles provides that for the conditions of living and food for juvenile defendants/convicts, more special care should be shown, compared to the conditions of other defendants and convicts. These conditions must be in accordance with the age, condition, and special needs of the minor (Article 116/1,2 of the Code). This element has not been exhaustively harmonized in the by-laws, which include food rates for minors.

Similarly, the non-respect of the rights of minors in conflict with the law and young teenagers, when they are deprived of their freedom, is noted with concern. It is often found that the conditions in the environments in which children and adolescents are deprived of their freedom, in general, are inadequate and often create psychological violence in children or adolescents, or even an obstacle in their harmonious, physical, and social development (Article 13 of the Code no.37/2017). Moreover, conditions of detention do not always adequately guarantee other rights of children and adolescents, rights that should never be restricted when they are in detention, such as the right to life, physical integrity, health, food and education, and entertainment and cultural activities (Law no.18/2017).

Thus, through the recommendations addressed to the state bodies by the defenders of children's rights, they have been asked to undertake to respect their obligations, both in terms of international legislation, also of domestic law^[12], to protect and ensure the rights of young children and adolescents in the juvenile justice system. In fact, in a number of specific recommendations, is underlined their responsibility for taking the right and necessary measures, to adapt our juvenile justice system to international standards in this field, guarantee a friendly justice, the application of procedural rules, and, most importantly, guarantee children that such access and access really exists.

4. Conclusion

In order to prevent juveniles and young adolescents from becoming delinquent in society, the key actors in the administration of juvenile criminal justice, professionals, organizations, NGOs, local or foreign, and the community, should be actively involved in providing services. essential to the well-being of children in their best interest!

The challenges we face today may include the same typology of crime, new typologies of crime, or obstacles in the ability of competent juvenile justice administration bodies to address such problems, including those related to the arrest of minors, detention, referral to court, implementation of alternative measures to avoid punishment, trial, placement on probation, implementation of rehabilitation and/or mediation programs, as well as lack of information exchange or integration of technological innovations and innovation within the juvenile justice system.

Recommendations on the case of Albania

- It's imperative to draft a special regulation for minors deprived of their freedom, in accordance with the principles and determinations of the Code of Criminal Justice for Minors.
- It's necessary to draft a guideline with measures in case of recurrences of pandemic emergency situations, in order to eliminate the negative consequences that may appear during the period of isolation if such a thing will be affected by the situation or the imposition of restrictive measures.
- It's necessary to strengthen the capacities of the personnel engaged in the specialized sections for minors in the courts and prosecutor's offices of the judicial districts, through systematic and consolidated training, with the aim of applying alternative punishments for minors or implementing alternative measures to avoid punishment.
- It's "a must" by the responsible state authorities, to guarantee the stability of the staff of social services in the institutions of deprivation of freedom for minors and to strengthen their capacities on an ongoing basis, with the aim of applying innovative methods of positive discipline, as a new approach in the administration of juvenile criminal justice.

In conclusion, I think the main issue that children end up in our juvenile justice system is that ***we as a society have not been able to meet their needs in the communities they come from!***

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[2] Kavaja Minors Institute was opened in October 2009. This institute was conceived as a rehabilitation, counseling, and education center for juveniles detained and convicted. During the monitoring visit from the Ombudsman in 2019 in this institution, 27 minors were accommodated, 24 of whom were detained and 3 convicted. The capacity of the Juvenile Institute in Kavaja is 40 people, respectively for 21 detained minors and 19 convicted minors. During the monitoring visit from the Ombudsman in 2021, 19 minors were accommodated in this institution, of which 18 were detained and 1 (one) convicted. All minors who were in this institution are male.

[3] The recommendation of the CPPCR in the People's Advocate Institution addressed to the state authorities, www.avokatipopullit.gov.al

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[9] Regulation 29.1, Beijing Rules - *The UN Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules) provide guidelines on how children should be treated while they are in the criminal justice system. The rules address issues such as privacy, special training for the police, and due process guarantees.

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