

Guarantees of Juveniles in the Penal Proceedings in Albania Seen through the Principles of the Convention on the Rights of the Child

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ABSTRACT: The Albanian Legislation on juveniles was compiled based on the basic principles that affirm the fundamental international acts. Therefore, it seems that the guarantee of the basic rights and freedom of the juveniles is in very satisfactory levels. Special attention was given to the importance of legal intervention in the legal system for the juveniles. The Criminal Code, as the most important corpus in the protection of the right of juveniles in the legal proceeding, was compiled in such a way as to regulate the phases through which a suspect juvenile of a delinquency goes. Considering the main problematics of this field, a range of procedural guarantees for the juveniles' protection were agreed upon. This leads to the Albanian State creating a Codification of the Criminal Law on the Juveniles based on the basic principles of the Convention on the Protection of the Rights of the Child. All the new approaches of the new legislation as well as the principles of the Convention regarding the procedural guarantee of the juveniles in the legal proceeding will be treated in this article.

KEYWORDS: convention, court, human rights, juvenile, legal procedure, legislation, procedural

1. Introduction

The legal status of juveniles considered as one of the main aspects of regulating their economic and cultural social and economic life constitutes a primary condition for assessing the approach of a democratic country in terms of protection and enforcement of human rights. Specifically, it is an indicator of the quality of its engagement in issues related to the protection of social groups that are exposed to the negative phenomena that mostly transitional societies produce. The juveniles represent a category that necessarily requires a special role of the state as a regulator of their legal position, as an intermediary in the function of improving the quality of life, and above all as a warrantor for the design and implementation of compulsory rules that guarantee real protection for them. Legal protection is in itself a guarantee that gives the child the opportunity to be fully entitled in all aspects of the social life and provides him with a degree of immunity that has the very essence of his highest interest. This places the child in a privileged category because of the physiological, intellectual, and spiritual characteristics he carries at this stage of formation, which must necessarily be subject to a rigorous and authoritarian observation that legally controls all the continuity of the way of reaching the maturity.

The juvenile legal status is nothing more than a legal structure consisting of mandatory rules that protect every aspect of the child's life and in particular those aspects that are subtle and which presume to protect the interest of the child in life, health, integrity, cultural and spiritual formation. This structure is intended to regulate relationships involving the minor and present other actors of society, but because of their natural rivalry, they may abuse their abilities and opportunities in relation to the child. Parents, caregivers, educators, teachers, psychologists are mostly subjects that have close contact with minors and their participation in the consolidation of the child's personality is inevitable. Likewise, subordinate structures such as the family, society, school, public administration, local, judicial, investigative and other bodies play an important role in the implementation of the legal protection norms in the cases presented. It is precisely this structure, or the juvenile legal guardian corps, which has a full extent on the entire space where they communicate and interact with the aforementioned actors, aiming at setting rules that are mandatory to be followed by them, in all cases of communication with minors.

The issue of regulating such reports is challenging for states with a new democratic culture, which are faced with new phenomena that require legal intervention, but without having a previous

tradition of regulating them, it can lead to opaque and unproductive regulations. At the same time, it is important to see the function of the law as a regulator in a particular society especially in the fight against the negative phenomena that affect especially the vulnerable groups and produce dangerous products. In societies where high standard legal regulation has the same standards in terms of its real implementation, we can say that there is a high level of protection of the best interest of the juveniles. Thus, the dual function of the law regarding the guarantee of societies with a sustainable stability is important, where respect of fundamental rights is a priority and real and certain social groups have the same integration and guarantee opportunities as all the other members of the society.

2. Criminal Justice for Juveniles in Albania

Albania is a state with a relatively new democratic culture. Having a severe inheritance in terms of regulating and protecting human rights as a result of a harsh dictatorial system, Albania was found after the 90s in a difficult situation, especially in terms of protecting the rights of citizens and in particular those of juveniles. Therefore, the necessity for the construction of a special legal corps for the protection of minors was considered. Important international acts in the field of legal protection of juveniles were the cornerstone of the building of domestic legislation. We can say that today Albania has full legislation on the protection and rights of juveniles, but it is noticed the lack of multidisciplinary approaches (cooperation between social service, education, state police, probation service, prosecution etc.) (Ministry of Justice 2017). Financial barriers have also been seen as hindering the access of children, parents or caregivers to addressing child-related violation of their rights (Mandro et al. 2015). Children's rights protect him/her in three main aspects: in terms of essential and personal integrity, in the protection of those self-existent rights such as life, health, freedom of conscience, trust, and so on, in terms of economic needs such as the right to employment, vocational training etc., as well as the aspect of social and cultural rights.

In addition to the full affirmation of these rights, the Albanian legislation is complemented in one aspect that is that of the juvenile criminal protection that is regulated by the entirety of legal remedies that constitute the Criminal Justice Code for Minors. Criminal justice for juveniles is guided by some important principles of international law which form the basis for regulating the phenomenon in the main states of the European Union. Despite the fact that these legal systems do not have any dependence on one another, the unification in terms of implementation of the basic principles makes these systems similar to how they regulate the juvenile's position in terms of criminal justice. Similar principles have also oriented the Criminal Justice Code for Minors in Albania, guaranteeing the juvenile that is subject to a criminal proceeding on the same level of protection as those of other countries. The international instruments that led to the drafting of criminal legislation on child protection belong to three categories representing three important international organizations in which the Albanian state is part or inspires to be part of. An important role other than the ratified international acts have played other norms which, despite having no binding character because they are not part of the internal system, have nevertheless served as orientations especially in terms of the principles they carry. This has made it possible to build a full codification structure that best defines the legal protection of minors that are included in different forms in a criminal case. The main international instruments taken into consideration for the drafting of this structure are mainly acts of the United Nations Organization.

3. The Convention on the Protection of Children as an act directly affecting the drafting of the legislation

This international legal act has become part of the Albanian legal system and is the basic instrument that has served to create and subsequently adopt the Law on Protection and Rights of Children in Albania and also the Criminal Justice Code. The Convention provides for the basic principles of the protection of minors in the perspective of guaranteeing fundamental rights such as the right to life, health, education, the right to family life, non-discrimination, the right to information and privacy, etc. In the basic law for the protection of children's rights, all these rights have been affirmed and institutions that monitor their implementation are defined (Law No. 18/2017).

Regarding the criminal justice, the Convention establishes the basic principles of juvenile justice. Minorities in the spirit of the convention are beings of high social interest who require not only a mere institutional treatment but also go further to the provision of primary services which they cannot be provided in the basic structure, such as the family. Being at a stage of special psychological and mental formation, unable and incapable to assume responsibility, and also limited to the exercise of the rights carried, the minor is placed in a special protection from the state which is thus placed in the position of a legal regulator of the juvenile. Safe bases for effective regulation of the child's legal condition are provided if the basic rights guaranteeing his physical, mental and emotional well-being are adapted and enforced. However, the current standards are not sufficient to regulate cases where particular categories of minors become part of criminality and are subjects upon which they commit criminal offenses. Minors who, for various reasons, become part of a criminal proceeding as defendants, witnesses, eyewitnesses, associates or participants at the time when the crime occurs, are subjected to a criminal proceeding that should mostly have a preventive and rehabilitative function of juvenile rather than a punishing function.

As a result, the Convention on the Rights of the Child (UN General Assembly 1989) has provided the standards of juvenile justice out of which no legislation of the countries that have accepted the convention can be issued. Article 40 of the Convention deals with the dignified treatment of a minor accused or suspected of committing a criminal offense for the purpose of rehabilitation and education through the trial. This is also stated in the Albanian Code of Criminal Justice where it is determined that the basic goal is to guarantee educational and preventive measures for minors who commit criminal offenses. The reintegration of juveniles in conflict with the law is a process that does not end at the end of the criminal proceedings or with the taking of a final decision by the competent body. It can be argued that Juvenile Criminal Justice, which consists of certain stages of prosecution, investigation, proceeding, judicial process, execution of punishment and any other alternative punishment or measurement, can be said to be only a chain link through which the care for the minor's rehab goes.

Equally important are other factors that need to be considered organically related to criminal proceedings in order to avoid duplication cases of juvenile re-victimization. It is precisely in this regard that cases of treatment of juveniles in countries such as Albania should be considered and treated because the economic inability and the lack of legal platforms of post-processing situations may promote an increase of the recurrence of juvenile delinquency. However, the issue we are considering concerns the legal mechanisms of dignity of the child during criminal proceedings. These mechanisms aim at creating a good protection for the juvenile who can be found even in aggravated health and emotional situations because of emotional overload. Thus, the mandatory protection by the legal representative, psychologist assistance, the privacy in the proceeding, the optimal conditions of the rehabilitation centers, the possibilities of alternative punishments and the maximum prosecution are the most important factors that ensure a good protection for the minor.

Treatment on a fair and non-discriminatory basis constitutes another principle that is also defined in the standards of the Convention. Any juvenile in conflict with the law, victim or witness, regardless of gender, race, color, ethnicity, language, gender identity, sexual orientation, political and religious beliefs, economic, educational or social status, parental responsibility, family or marital status, civil status or residence, health status, genetic predisposition, disability, belonging to a particular group and any other condition of the minor, parents or legal representatives of the minor shall be treated without any kind of isolation or discrimination based on Article 11 of the Code. This extended definition of discrimination that is consistent with the definition of the Convention on Discrimination is a key defense that is provided to juveniles in the proceeding and is the basis for a fair trial on a legal basis. An equally similar definition is also provided by the Law no. 10.221 "On Protection from Discrimination", 2010, article 3. The Code widens the circle of factors that constitute discrimination, leading to high levels of protection of minors at this point. Discrimination is a condition that involves making unjust decisions and denigrating the individual. In cases that it is present in important administrative and criminal proceedings, the consequences are even more dangerous.

In the protection of subjects who are victims of discrimination, a special state structure has been established, which is the Commission for Protection from Discrimination, but again we can say that forms of discrimination are present in juvenile criminal proceedings. Discrimination is also present in other areas of minors' treatment and it may be argued that in uneducated societies discrimination is part of the social mentality. Having this in mind, it is considered that the most dangerous point of interest is not only the lawfulness of the protective provisions as it is done in the Criminal Justice Code but also the monitoring and punishment of practical cases that undermine the integrity of the person and the juvenile in special way. In compliance with these principles it can be said that the criminal proceeding has respected the dignity of the juvenile.

Principle of non-retroactive consequences. No subject of the right can foresee future legal arrangements (Nuni 2009, 45). This means that in a society people must behave in accordance with the legal provisions in force and that constitute the legal order of a country. In the context of juveniles, we cannot expect this to happen, as they are not entirely aware of the rule of law because of their young age.

Therefore, the Convention has taken care of establishing a standard implemented in the Code where it is stipulated that no child can be accused, suspected or qualified for violation of criminal law due to acts or omissions that were not prohibited by domestic or international law by the time it was committed as stated in 40/1a of the convention. In compliance with this principle, the Constitution of the Republic of Albania (Art. 29) presents the principle of non-retrospective consequences of criminal offenses. In its content, the Juvenile Criminal Code (1989), does not explicitly impose retroactive effects, implying its implementation in accordance with the definition laid down in the Constitution and in the Criminal Code. For purposes of criminal liability for crimes, it is considered a minor, a person who has reached the age of 14 but not 18 at the time of committing the crime.

For purposes of criminal misconduct, the juvenile is considered to be a person who has reached the age of 16, but not 18 at the time of committing the offense. Because of the social risk and degree of harmful consequences, criminal offenses are treated by the law as infringing upon some important values that are related to life, health, property, etc. Subjects involved in criminal offenses or delinquencies, especially victims of crime, are accountable for earlier violations of the law, for example civil cases. Thus, juveniles are subject to criminal responsibility for committing crimes at the age of 14. Theories of psychology, philosophy and social sciences see the minor at this age as being in search of completeness of individuality and physiological maturity. Under such conditions the juvenile is unable to take maximum account of the consequences of harmful acts or to fully conceive the circumstances of the crime.

Moreover, it is impossible to have accurate knowledge of the legislation that operates in the criminal field. Being aware of the law as having an abstract nature because, due to different circumstances and factors, it can never be complete for all individuals and groups of society. In the context of juveniles, the principle of non-retrospective consequences is not so related to the awareness and the possibility of anticipating and recognizing the law by a minor, but with a constitutional principle that expresses in itself the human and democratic character of the law. The early age of criminal responsibility should be seen as a guarantee not only for curbing and preventing crimes by the subjects concerned, but also as a groundbreaking measure with a positive impact on the crime situation in one country. The fact that minors are responsible for minors charges the legislator with the important task of drafting special procedural rules for this category.

4. Procedural guarantees in the light of the principles of the Convention

The procedural guarantees included in the Code are almost borrowed from the Convention for the Protection of Children's Rights. For all juveniles who are accused or suspected of being victims of crime, the Convention provides a number of procedural guarantees that make it possible to preserve the physical, mental and psychological integrity of the juvenile in criminal proceedings. The presumption of innocence, the right to information, the acceleration of the process, the examination without delay, the treatment of children in accordance with their welfare are procedural guarantees, but in fact correspond to the fundamental rights of juveniles are sanctioned in the Convention and in

the domestic Law. Thus a minor suspected of committing a crime or offense has the same rights as a minor under normal circumstances.

Despite the fact that the Albanian Juvenile Justice Code has sanctioned all these guarantees, in reality it is difficult to enforce them due to the great structural and organizational deficiencies of the judicial system and the one suffering the punishment. But can we talk about a transparent procedure and in support of the definitions made at a time when there are still no assisting structures of prosecution and the part after the judicial decision which deals with the rehabilitation and re-socialization of the juvenile? The best way to reduce the number of juveniles in conflict with the law is prevention (Penal International Reform 2016, chapter 2). The system of punishment or better say rehabilitation has the basic function of healing the subject, i.e. his/her rehabilitation to be re-involved in real life and to be equal with other minors. This function becomes even more important when the need for non-repetition of the crime is considered, which if it does, means that the whole process has failed to achieve its purpose properly. From the whole of the adopted rules, it is noted that the whole criminal prosecution system is intended to promote an educational role by treating the juvenile as a social being that needs protection and re-education. This process takes time which also involves the participation of other actors and other structures out of the process.

Procedural guarantees are another aspect of the Convention on the Rights of the Child. In its Article 40 there are a series of mandatory rules listed to be applied in special phases of criminal proceedings. Procedural guarantees are a form of legal protection that assures the individual inviolability to any action of the present exponents during the stages of investigation, prosecution, judicial review as well as execution of the decisions. Finding himself in the conditions of an unfavorable position since a lawsuit has been filed against him for the commission of unlawful acts, the minor risks being violated in his fundamental rights which also have constitutional protection. In this situation his physical, spiritual, but emotional integrity is at stake.

In the stages of criminal proceedings, fundamental freedoms such as freedom of expression, information, the necessary protection, juvenile delinquency etc. can be put to the notice. Legitimate actions or omissions of persons conducting criminal proceedings against juveniles are thus prevented by providing a regulated activity by strict norms that make up what is called a procedural guarantee of the juvenile in the criminal process. The right to procedural guarantees is part of the constitutional regulation. Article 30 of the Constitution of Albania regulates the presumption of innocence, which is broadly included in the Criminal Procedure Code Law no. 7905 (1995, 8, Art. 4), which also serves as an analogous provision for minors as there is no specific treatment in the Criminal Justice Code. Respect for warranties relating to fundamental rights is a prerequisite for the enforcement of the guarantee for a presumption of innocence. The minor is legally innocent until the end of the trial and giving a final ruling on his guilt.

Under these conditions his rights to a secure legal status in the protection of fundamental rights are compulsory. The Convention on the Rights of the Child provides guarantees in accordance with fundamental rights. This also applies to the Code, but being reduced to include those guarantees that are governed by specific criminal laws that apply during a criminal proceeding in Albania. Article 40 of the Convention lists the presumption of innocence, the right to privacy, the examination without delay of proceedings, the treatment of children in relation to their welfare, legal status and the violation of the law. Among other things, it is forbidden for the child to testify or plead guilty. He has the right to ask as well as to testify, to admit.

Throughout this process the juvenile has full access to mandatory legal protection and, where necessary, for translation. The legal representative makes legal protection at all stages of the proceedings, taking into consideration the opinion of the minor. A minor has the right to ask and give opinions on issues he is able to judge and foresee the consequences. In this context, it is also necessary to have the presence of a psychologist who should follow the best interest of the child. As stipulated in the Constitution of the Republic of Albania, Article 30, the juveniles in the criminal proceeding have the right to the immediate disclosure of the indictment filed against them. According to the case, the information is made through the parent or the legal representative of the juvenile. Being a constitutional principle of immediate and direct information about the accusation against the

juvenile gives him or his legal representative the opportunity to consider and take legal protection measures for the child. The right to information should not be disconnected from other rights and principles, but as an integral part of the right to privacy, non-discrimination, dignified treatment, etc., which constitute the complex standards that enable the child to be treated in accordance with the best interest.

Legislation protecting children's rights in Albania is entirely governed by the principle of the Convention on the Rights of the Child confirming the best interest of the child. This has to do with the treatment of the juvenile in the vital, health, social, intellectual, emotional field, and so on. The first plan takes care of life and health. When we talk about life's care we need to keep in mind the progress of the juvenile and take full measures not to harm the mental and emotional health of the child. Under the terms of a non-respecting proceeding with the said warranties, unforeseeable traumas may be caused that may impair the physical and mental health of the minor as well as his or her image. The mental and emotional health of the child is the essence of the principle that protects highest interest, but it is also followed with other aspects that regulate the situation where the minor can be found during the proceedings that these can also cause harmful consequences. In order to maintain the integrity of the juvenile and the guarantees of the right to life, the remission of the death penalty, the imprisonment of an eternal imprisonment, the practice of any form of violence or mistreatment of any form may remain.

Albania has ratified important laws that protect juveniles from violent forms of violence and ill-treatment. Among other things, we can mention the International Covenant on Civil and Political Rights. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN Rules and Guidelines on Juvenile Justice, etc. All the standards of these acts served for the completion and drafting of the Juvenile Justice Code. Article 37 of the Convention on the Rights of the Child stipulates that there can be no death penalty nor capital punishment or permanent imprisonment for the child. The arrest, detention or imprisonment of a child should be in accordance with the law and should be granted only as a last resort and for a short time. The child deprived of liberty must be treated in a humane way and must stay close to family. The separation of the child from the family is treated in a special way by the Albanian legislation on juveniles.

The law on the protection of children's rights has foreseen this as a very extreme measure, even in the case of application, the child has the right to have regular contacts and maintain normal correspondence with the family of origin. In the case of criminal prosecution, the family is seen as a support and accompanying of the juvenile until the end of the process. Only when it plays a denigrating role can the juvenile disengage and its placement in special educational institutions be made. These standards and other provisions provided for in the Code provide the possible guarantees for the development of human and democratic legislation that focuses on the treatment of juvenile offenders who are victims of crime. The internationalization of these principles and making them part of the domestic legislation of the member states of the European Union and of inspiration plays every day and more a decisive role in the creation of unifying rules for the treatment of juveniles. The modern conceptualization of criminal prosecution systems, no longer interdependent between punishment and education, but clearly positioned on the rehabilitative and integrative role of juvenile, is seen today as a product that not only prevents criminality but also strong grounds for an emancipated society.

Democratization of a country should be closely linked to the emancipation of the legal corps that governs a country and in particular with the democratization of institutions. Albania is ranked today among the countries that have the best legislation in the protection of children both in terms of guaranteeing the substantive rights as well as in terms of their procedural protection. Being an aspirant country for the European Union has come before important tasks, especially when it comes to protecting the categories for which the state plays a primary role. But despite the serious adjustments in the field of rights there is much to be done in the framework of their full respect and implementation in practice. As is the case in countries with consolidated democracy, cases of violation of children's rights in terms of discrimination, privacy, freedom of thought, or cases of violence and ill-treatment are present. These should be considered in relation to the political and

social economic conditions, and above all with the still unconsolidated mentality of the various social groups and other participant exponents. Treatment of juveniles in criminal proceedings does not end only with the drafting of legislation in accordance with international acts. This can only be the beginning of a path that will truly guarantee a space where respect for fundamental rights and freedoms does not remain an abstract notion.

5. Conclusions

The juvenile justice system in Albania has been drafted based on the principles of international protection acts ratified by the Assembly of Albania. This has made Albania ranked among the countries with very good legislation for the protection of children. The administration of juvenile justice and its compliance with international standards puts the highest interest of the child at the heart, considering the imprisonment as the last resort. Child reintegration is the main purpose of this system that is mostly built as an educational process to protect the integrity of the child.

In Albania, progress has been made in the administration of juvenile justice by providing legal and procedural guarantees and passing from a punitive system to a reintegration approach. The mental and emotional health of the child is the essence of the principle that protects his highest interest, but it is also followed with other aspects that regulate the situation where the minor can be found during the proceedings that these can also cause harmful consequences. In order to maintain the integrity of the juvenile and the guarantees of the right to life, the remission of the death penalty, the imprisonment of an eternal imprisonment, the practice of any form of violence or mistreatment of any form may remain. From the whole of the adopted rules it is noted that the whole criminal prosecution system is intended to promote an educational role by treating the juvenile as a social being that needs protection and re-education. This process takes a long time, which also involves the participation of other actors and other structures out of the process.

The modern conceptualization of criminal prosecution systems, no longer interdependent between punishment and education, but clearly positioned on the rehabilitative and integrative role of juvenile is seen today as a product that not only prevents criminality but also strong grounds for an emancipated society.

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