

The Sentencing System in the Albanian Criminal Code and the Demand for Special Treatment of Juveniles

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Abstract

Juveniles are subject to a cognitive process and growth, where the physical, intellectual, emotional and personality are still in phase of development phase. As a result, they enjoy a special status which arises the demand for their specialized treatment. The status as a minor in criminal matters raises the need to create a system consisting of different rules, which should take into consideration the physical and psychological peculiarities of the child and his educational needs.

This system should be oriented towards the goal of juvenile education, rehabilitation and development, goal which can be successfully implemented only if it is reflected in the nature and types of sanctions applied to juveniles. In the application of sanctions it should be taken into consideration the need for education, assistance and welfare of the juvenile. Prison sentence and other similar measures should be considered as a last resort and used in order to reduce only when other forms of treatment do not comply with the personality of the offender and the seriousness of the offense. Priority should be given to educational and non-institutional measures.

These requirements impose the necessity of legal interventions in the system of sanctions to address the needs for special treatment in accordance with the personality of the children and their individual needs for education.

This paper aims at a critical analysis of the sentencing system provided in the Criminal Code, in the focus of the standards set by the international instruments which safeguard in a special manner the juvenile as a criminal offender. Through the analysis of legal provisions as well as referring to the juridical doctrine and court jurisprudence, there will be evidenced some issues related to the special treatment of juvenile criminal offenders in the field of the system of sentencing.

After a detailed analysis, there will be provided conclusions and concrete recommendations on the current stage of the sentencing system, its' compliance with the need for special treatment of juvenile criminal offenders, the need for improvement as well as the concrete legal initiatives to be adopted.

Keywords: Sentencing system, Sentence of imprisonment, Special treatment, Alternative measures, Educational measures

Introduction

Under the UN Convention on the Rights of the Child (CRC) as the most important instrument in this field, a child is considered every human being under the age 18. Within the fledgling age, the Convention sets clear limits on the application of criminal justice, including the sentencing system. Article 37 of the Convention, prohibits torture and inhuman treatment or cruel, inhuman or degrading punishment and the imposition of the death penalty or life imprisonment without possibility of release for crimes committed by persons under age 18. Article 40 requires from states to take measures not to confront children who have violated the law with judicial proceedings, by ensuring a range of alternative social care provisions.²

Specific guarantees in the system of sanctions, are also defined in the Beijing Rules³, excluding from this system the death penalty and body punishment. At the same time, it is sanctioned the principle of enforcement of a sentence involving deprivation of freedom as a last resort⁴ giving therefore priority to non-institutional measures, including, supervision, compensation or mediation.

Guidelines for children in the criminal justice system, impose measures to ensure a large system of educational measures and alternatives to freedom deprivation, reducing placement in institutions with the aim of social rehabilitation, creating mechanisms that facilitate informal resolution of issues with juvenile offenders including mediation and restorative justice.⁵

The demand for special treatment in the sentencing system is evidenced by the United Nations also through resolutions. Thus, according to resolution 1997/30, "The administration of juvenile justice," it is specified the need to create a large number of educational measures and alternatives to deprivation of liberty. The same document imposes the requirement for alternative sanctions in domestic legislation to comply with the standards and principles of the CRC and other legal instruments of the United Nations.⁶

The same requirement is reflected in the legal instruments of the Council of Europe. Recommendation 87 (20) "On the social reaction to juvenile delinquency " impose the requisite that measures taken against children should have educational character and

¹ UN Convention on the Rights of the Child adopted by the General Assembly of the United Nations on November 20, (1989), article 1.

² Center of services and integrated legal practices, "Albanian legislation and the Convention of Child Rights", (2008), Tirana, p. 382.

³ The set of minimum standard rules of the United Nations on the administration of juvenile justice.

⁴ Beijing Rules, rule 17/1/c.

⁵ Guidelines for action for children in the criminal justice system, Annex of Resolution 1997/730 of the Economic and Social Council, "On The administration of juvenile justice", item 19-22.

⁶ Resolution 1997/730 of the Economic and Social Council, "On the administration of juvenile justice", item 15.

freedom restriction measures should be avoided⁷. In order to achieve the educational purpose, the measures must be implemented within the community and seek its inclusion. According to the educational purpose some criteria associated to the system of sanctions are identified. The sentence of imprisonment should be excluded, except for serious crimes and the respective duration shall be as short as possible. In such cases priority should be given to semi-freedom system, probation and re-socialization programs and education treatment. The same request for expansion of alternative measures and sanctions in accordance with the community needs and best interests of offenders is reflected in Recommendation (2003) 20 "On new ways of treatment of juvenile delinquency and the role of juvenile justice system".

In the framework of the obligations provided by international legal instruments it naturally derives the question:

How the sentencing system of albanian criminal legislation reflects the need for special treatment for juveniles?

1. Aspects of special treatment in sentencing system

The sentencing system is foreseen in the Criminal Code (CC) of the Republic of Albania adopted by Law no. 7895 dated 27.01.1995. Although the principle of the highest interest of the juvenile is not explicitly sanctioned in the Criminal Code, the Albanian criminal legislation in line with international standards, provides special rules for juveniles, which aim at a favorable differentiation for this category. Article 31 of the Code provides the principle that the sentence of life imprisonment can not be applied to juveniles. According to Article 51, juveniles who at the time of the offense have not attained the age of 18 years, the imprisonment cannot exceed half of the sentence provided by the law for that criminal offense.

In regards to the sentence of imprisonment, article 33 sets the principle of detention in separate facilities from adults. In accordance with the principle that the sentence of imprisonment is the ultimate given, it is anticipated the possibility of excluding juveniles from punishment⁸. When it decide on the exclusion of a juvenile from punishment, the court may decide to place him/her in an educational institution. The measure of placement in an educational institution may be granted by the court even if the juvenile has not reached the age of criminal responsibility.⁹

Besides these special provisions, according to the Criminal Code, provisions of general character may also apply on juveniles. In terms of general provision, article 53 of the

⁷ Recommendation 87 (20) "On social reaction to juvenile delinquency ", item 14.

⁸ Criminal Code, article 52.

⁹ According to the Criminal Code, the age of criminal responsibility is 14 years in cases of committing a crime and 16 years in cases of a contravention. As the age of criminal responsibility is considered the age at the time of the offense.

Criminal Code provides for the reduction of sentence under the limits prescribed by law. This article sets a general rule for determining the sentence of imprisonment, which although does not apply exclusively to juveniles, it can be used even in cases of determining their imprisonment. In this case, in some occasions the court may reduce a sentence below the limits prescribed by law or may give a more lenient sentence. As it turns out by the content of the provision¹⁰, this provision is limited only to special occasions as an exceptional rule. This approach limits its application, including the possibility of applying to juveniles. Such conclusion is also based on surveys carried out which have concluded that there is little or lack implementation of this provision.¹¹

Simultaneously alternative measures to prison which are provided in a separate chapter of the Criminal Code may additionally apply on juveniles. In the legal literature¹² alternative measures are defined as "criminal sanctions imposed by the state, consisting of serving a sentence of imprisonment in a different way than the traditional system of the cell, considering that for low social risk offenders, their re-education and re-socialization would be more effective within the community".

In the way they are enshrined in the Criminal Code, the possibility of their practical implementation is left to the discretion of the court, which in turn decides in accordance with legal requirements whether to apply them or not. These alternatives have a general character and can be applied both to adults and minors. In their application rather than the defendant's age, the court takes into account elements such as social dangerousness of the crime or of the accused.

Prior to the legal reform the number of alternative sentencing was more limited. At the same time, in the courts practice, alternative measures to prison were much less viable. The lack of a supervisory body and the institutional structures became obstacles to their implementation. Although Criminal Code mentions special supervisory bodies¹³, in fact, such bodies have not worked.

Difficulties in practice and lack of supervisory bodies have also hindered the implementation of alternative sentences at juveniles¹⁴. This phenomenon is also

¹⁰ Under Article 53 of the Criminal Code:

"The court in exceptional cases, when it considers that the author present little risk and present some mitigating circumstances, may appoint a sentence below the minimum or a more lenient sentence than that provided by the law" .

¹¹ Albanian Helsinki Committee , "Respect of the rights of juveniles in the criminal process," (2007), Peggy Tirana, p. 25.

¹² Foundation "Conflict Resolution and Reconciliation of Disputes", Restorative justice and mediation in resolving criminal despotes, Manual for judges and prosecutors, UNICEF, (2007), Tirana, p. 12.

¹³ Article 61 of the Criminal Code mentioned the term "supervisory bodies " without specifying what were these bodies. In practice these powers are exercised by the police officers.

¹⁴ Albanian Helsinki Committee survey of court decisions on juvenies in certain judicial districts for the period 2005-2006 found that in general sentences have been severe. Only in few cases the courts have decided that according to the best interest of the child, alternative measures to imprison should be imposed. For more see, Albanian Helsinki Committee, "Respect of the rights of juveniles in the criminal process," (2007), Peggy Tirana, p. 23.

observed even by non-governmental organizations operating in this field¹⁵. Legal reforms have made possible the practical implementation of alternative sentencing by creating the Probation Service as a body that supervises the execution of alternative sentences. The creation of Probation Service and expansion of the number of alternative sentences to imprisonment in the Criminal Code has brought about positive changes in the courts policy regarding the penalties applicable to juveniles.

However the demand for special treatment of juveniles is not implemented properly. This conclusion results from an analysis of the data of Tirana's prosecutor's office¹⁶ for criminal cases related to juveniles followed during 2009-2010. only in a few cases, the prosecutor asked the court to sentence alternative measures to imprisonment for juveniles. In most cases the prosecutor has requested the sentence of imprisonment. In some cases, they have imposed a fine. The same attitude has largely been kept by the court. Simultaneously new alternative measure to imprisonment imposed by the amendments of the Criminal Code with the Law no.10023 dated 27.11.2008, as semi-liberty and home arrest, have not been implemented.

2. The rules determining the sentences

According to the doctrine¹⁷: *"The criminal conviction in the criminal law of the Republic of Albania, means a coercive measure, implemented by the state through the courts in accordance with the law against persons having committed a criminal offense."*

In the Criminal Code rules regarding sentencing are defined in Chapter VI. In accordance with article 47, the court determines the sentence taking into consideration the general principles of the Criminal Code and the sentencing limits prescribed by law for each offense. In determining the sentence the Court considers elements such as the degree of social endangerment of the offence and the offender and the degree of guilt. At the same time it takes into account aggravating and mitigating circumstances. These general rules are also applicable in young offender cases. This position is held by the judicial practice.¹⁸

¹⁵ Albanian Helsinki Committee "The criminal justice system for juveniles in Albania", (2005), Tirana Pegi, p. 33.

¹⁶ Statistical data of the Tirana prosecutor's Office, (2009-2010).

¹⁷ Elezi, I, Kaçupi, S, Haxhia, M, "Commentary of the Criminal Code of the Republic of Albania", (2009), West Print, Tirana, p. 197.

¹⁸ In its decision no. 270, dated 28.07.1999 in the criminal case against the defendant BH minor, accused of the crime of attempted murder and illegal possession of firearms provided by Sections 76-22 and 278 / 2 of CC the Supreme Court has stated:

"In imposing the sentencing measure the court has acted properly by taking into consideration the social dangerousness of offence and author, his minor age and the motives that have prompted the crime, therefore there is no reason to change the court decision".

Similarly, in decision no. 94, dated 26.02.2003 in the criminal case against S.K and V.G juveniles accused of theft provided for in Article 134 / 2 of CC, the Criminal Chamber of the High Court has changed the decision of the Gjirokaster Court of Appeal by reducing the detention time by considering: "limited risk of the offender based on his concrete actions and intentions, the fact that he is a juvenile of 16 years old and was pushed into committing offense by a person older. It also considered the competition of mitigating circumstances provided by Article 48 of the CC, as deep repentance, the replacement of the damage, and the normalization of relations with the injured party."

A positive element brings the article 49 of the Criminal Code which allows the court to consider case by case other mitigating circumstances which even if not provided by law, may however justify a lighter sentence. This opportunity can guide the court during the process of determining the penalty to juveniles, whereby for each case it shall consider any circumstance that favors the offender position. Research studies shows that the courts has taken into account mitigating circumstances other than those prescribed by law, for example, the fact that the offender is a school student, his/her age, poor economic situation of juvenile and his/her family, the small value of the item stolen, etc¹⁹. Yet even in this direction there have been identified deficiencies as results from the practice of the Supreme Court.²⁰

One of the most important aspects in the process of determining the sentences is the possibility of excluding juveniles from punishment. Prior to reaching a final verdict, the court must take into account criterias such as the small risk of offence, circumstances of performance and the previous behavior of minors. Based on these criterias, the juvenile may be exempted from punishment, thus creating potential opportunity for his education. Pursuant to the content of the provision²¹, the exclusion of juveniles from punishment is not an obligation for the court, but it is left in its discretion. It is not bound to implement this provision, unless the criteria are fulfilled.

Discretionary nature of this provision and lack of correctional institutions have brought many problems in its implementation. For this purpose the Criminal Code should be reformed in terms of sanctioning legal rules related to the court obligation of excluding minors from imprisonment sentence and applying only educational measures. The imprisonment sentence should be applied only in criminal cases carrying a high social risk of the offence and the offender.

3. Types of sentences applicable to minors

3.1 Sentence of imprisonment

Referring to the Albanian system of sentences, the most severe one that can be applied to juveniles is imprisonment. This is because life sentence is not given to persons that at the time of committing the crime had not reached the age of eighteen years²².

¹⁹ Albanian Helsinki Committee, "Respect for the rights of juveniles in the criminal process", the work cited, p. 21.

²⁰ In the same decision, the Criminal Chamber of the Supreme Court court has identified the need to not interrupt the educational process to the offender S.K, by arguing:

"The existence of the defendant as school students in Greece, should be considered as an mitigating circumstance justifying relief of punishment, in accordance with Article 49 of the CC, in orden to not interrupted the educational process".

²¹ Under Article 52 of the Criminal Code:

"The Court started from the low gravity of the offense, the circumstances of its commission, the previous behavior of the juvenile may exclude him from punishment. In this case the court may decide to place the juvenile at a educational institution. "

²² Criminal Code, Article 32 / 2.

In accordance with international standards²³, the sentence of imprisonment for juveniles being a form of deprivation from liberty shall be imposed as a last resort. The purpose of imprisonment is to ensure the education and re-education of young offenders and their rehabilitation in accordance with the rules of society. In our Criminal Code the purpose of imprisonment for juveniles is not sanctioned explicitly. By the experts, this is considered, as a deficiency of the new Criminal Code²⁴.

Regarding the application of an imprisonment sentence, the Criminal Code provides several criteria that are also valid for juvenile offenders. In terms of duration²⁵, imprisonment limits related to a crime are five days to twenty-five years. In cases of contravenciones, these limits are from five days to two years. In relation to the length of imprisonment sentence for juvenile offenders the court must consider a special rule sanctioned at article 51 of Criminal Code, according to which:

“For juveniles, who at the time of committing the offense have not reached the age of 18 years, imprisonment could not exceed half of the sentence that the law provides for such criminal offense.

This rule is mandatory for the court and shall be applied in all cases when imposing a sentence of imprisonment against juveniles. After deciding upon the sentence the judge is obliged to deduct half of the sentence that would apply to an adult. However, in the judicial practice, there were cases where the courts, even the Court of Appeal, while determining the sentence had not taken into consideration the fact that the defendant is juvenile, not complying therefore with the requirements of article 51 of Criminal Code. This has made due to the exercise of the right of recourse at the High Court under Article 432 / 1 of the CPC.²⁶

²³ This principle is enshrined in a series of international acts such as: Rule 1 of the United Nations Rules for the protection of juvenile deprived of liberty, Article 37/bi of the UN Convention on the Rights of the Child, Article 46 of United Nations Directive for the prevention of juvenile delinquency (Riyadh Guidelines) Rule 19.1 of the United Nations Minimum Standard Rules for the administration of juvenile justice (The Beijing Rules), etc.

²⁴ Elezi, I, Hysi, V, “Criminal policy”, (2006), PEGI, Tirana, p. 68.

²⁵ Criminal Code, Article 32.

²⁶ In Decision no. 18, dated 26.01.2000, the Criminal Chamber of the Supreme Court in the criminal case against the offenders G.B, J.M, J.P juveniles charged with robbery in collaboration, provided by Article 139 and 25 of the Criminal Code, has stated:

“The Court of Appeal erred concerning the application of criminal law, specifically Article 51 of the CCP, because in determining the imprisonment sentence hasn’t mind the fact that the offenders were juveniles at the time of the offense”.

In decision no. 605, dated 26.09.2007 in the criminal case against the offenders D.C and D.K, a juvenile accused for robbery in collaboration and illegal possession of firearms, provided by articles 139-25 and 278/2 of CC, the Criminal College of the High Court has stated:

“The Court of Appeal in the final decision has not mentioned the fact that the offender was a juvenile when committed the crime and the sentence of imprisonment can not be more than half of the sentence that the law provides. The sentence of 10 years of imprisonment is an extreme punishment for a juvenile and not consistent with the social dangerousness of the offence and the offender”.

The same attitude has kept the college in its decision no. 229, dated 25.04.2001 in the case related to the offenders A.L and A.S, accused of theft in collaboration provided by article 134 and 25 of the Criminal Code when stated that:

“For the offenders who were juveniles at the time of the offense, Article 51 of the CC is not applied and consequently, they have been punished as adults.” See also Decision 500, dated 01.10.2003, Decision No.38, dated 21.01.2004, etc.

In terms of imprisonment duration, sentences applied to juveniles, have been mostly higher²⁷. In connection with his place in relation to other types of sentences, the Ministry of Justice statistics show that imprisonment continues to have a common application to juvenile offenders. This punishment is applied in cases where juveniles have committed crimes such as murder, intentional serious bodily injury, theft, destruction of property, illegal possession of firearms, violation of traffic regulations²⁸ etc, but even when performed contravenciones such as threats, public disorder, injury, etc.²⁹

As regards the manner of serving a sentence of imprisonment, under section 33 / 3 of the Criminal Code juveniles serving the sentence in individual places by adults. This means that upon reaching 18 years minors should be transferred to institutions or sections of detention for adults. In practice, in institutions for the execution of criminal sentences (IEVP), the prison administration has allowed separate sections for persons of the age 18-21 years. Consequently the necessity arises that this differential treatment for purposes of sentence also find reflection in the criminal legislation. Arrangements of this nature are found in foreign legislations including that of Kosovo.³⁰

3.2 The fine

It consists in the payment to the state of a sum of money within the limits prescribed by law³¹. The fine may be issued by the court to persons who commit a crime, as well as people who commit contraventions. Provision has differentiated the amount of fine in case of crimes and contraventions. For persons who commit crimes, the penalty is one hundred thousand to ten million ALL, while for those who commit contraventions, from fifty thousand to three million ALL.

Court sets deadlines for payment of the fine, and considering the economic condition of the defendant, may decide that fines can be paid in installments.

An important element of the provision is the right of judges to decide replacement of the fine to imprisonment, if the fine is not paid in due course. In connection with this element in foreign legal literature has been quite contentious. The authors state

²⁷ Albanian Helsinki Committee, "Respect for the rights of juveniles in the criminal process", the work cited, p. 23.

²⁸ Statistical yearbooks of the Ministry of Justice, Ministry of Justice publication years 2002-2010.

²⁹ In 2008, from 51 minors convicted, 36 were sentenced to fine and 15 imprisonment. Of these, the court has applied the the imprisonment sentence in 4 cases for criminal offence of threat, in a case of criminal case of intentionally injury, in a criminal case of prohibited fishing in a case relating to criminal offence of breaking the public peace, in a case of criminal offence of driving drunk or without license, and in 6 cases of criminal offence of crossing the border illegally. See Ministry of Justice, Statistical Yearbook, Tirana 2008, p. 86-87.

³⁰ The rules about serving the sentence for minors are sanctioned in Article 132 of the Law on Execution of Criminal Sanctions in Kosovo. According to this article in minor correctional facilities may remain minors and persons who have not attained the age of 23 years. Exception may be allowed to stay in these institutions for persons who have not attained the age of 27 years, when it is necessary to professional training, or when there remained less than 6 months from the sentence.

³¹ Criminal Code, article 34.

in the case of conversion of the fine with a prison sentence because of the economic impossibility of paying it, in fact *"is not done nothing but poverty is doomed"*³². This element makes it unsuitable in practice the implementation of this provision in case of offenses committed by juveniles. This difficulty increases even for the fact that the provision in question provides no preferential treatment in case of application of the punishment for juveniles. The same critical attitude with regard to this aspect is also held by albanian scholars.³³

About the possibility of improving this provision when applied to juveniles also had concrete proposals. A proposal has been that in which if the juvenile at the time of the offense have not attained the age of 18 years, a fine can not be more than half of the fine that the law provides for criminal offense"³⁴. This proposal also assumes importance because, although the possibility of appointing half of the sentence, under Article 51 of Criminal Code relates only to punishment by imprisonment, in practice the courts have erred by extending this opportunity also to fine. This is established in the case law of the Criminal Panel of the Supreme Court.³⁵

Another proposal was also one that in the case of juvenile penalties, the fine should be replaced by jobs in public interest, determine the type of work and institutions that will be performed³⁶. This last proposal we think is most appropriate and serves the educational role that should have sanctions against juveniles. For this reason it would be necessary that amendments to the Criminal Code to improve this provision in cases of application to the juveniles, where the impossibility of paying the fine, she be converted to work in the public interest.

This change will serve to the interest of juveniles, especially those coming from poor families with economic difficulties. This change of conversion of a fine in work with the public interest would also be useful when applying to adults. In all cases the possibility that persons who do not have the economic means to pay a fine should not suffer the negative consequences of punishment by imprisonment.

³² Pallazzo, F, Papa, M " Lezioni di diritto penale comparato", Giappichelli editors, (2000), Padova, p. 135.

³³ Albanian Helsinki Committee, "Criminal Justice system for juveniles in Albania", work cited, p. 34.

³⁴ Amendments in the form of a legal package related to minor justice, a publication of the Ministry of Justice, (2002), Tirana, p. 1.

³⁵ In decision no. 541, dated 03.11.2004, in the criminal case charged the defendants R.Xh. EK, and LD, a minor, the Criminal Chamber of the Supreme Court has identified the inaccuracies of the District Court and Court of Appeal in the application of Articles 51 and 53 of the Criminal Code as follows:

"The courts have erred by applying article 51 of the Criminal Code to the defendant, when sentenced them to a fine. This article, as clearly emerges from its content and meaning, applies only in cases of custodial sentences for minors".

³⁶ Albanian Helsinki Committee, "Criminal Justice system for juveniles in Albania", work cited, p. 34.

4. Medical and educational measures

Unlike the sanctions analyzed above, medical and educational measures are characterised by the fact that are given only to a limited category of persons, and include:

- medical measures for irresponsible persons who have committed a crime;
- educational measures for juveniles who have not attained the age of criminal responsibility or that are exempted from punishment.

Educational measures are considered “special sanctions against juveniles aiming primarily at preventing the activity of juvenile delinquents, and also their rehabilitation and reconciliation”³⁷. One of the essential features of educational measures relates to the fact that they apply only to juvenile offenders, i.e people who have not fulfilled the age of 18 years. In this case, the court can implement educational measures, to juveniles who have not attained the age of criminal responsibility, as well as to those that the court evaluates that can be exempted from punishment.

Educational measures are foreseen in the previous criminal legislation. They have existed in the criminal codes of the dictatorship period, are characterized by an even greater diversity in relation to the current legal regulation. A very detailed treatment in this direction is provided by Law nr.599, dated 1.05.1948 “Criminal Code, General Section”, which provides a diverse number of educational correct measures³⁸. This law provided the obligation of the court to consider the interests of the juvenile re-education in every case of their implementation. Further medical and educational measures are enshrined in the Criminal Codes of 1952 and 1977.

In connection with their sanctioning of the Criminal Code, scholars maintain that the current criminal legislation has made a step backwards in comparison with previous criminal legislation³⁹. In the Criminal Code in force, medical and educational measures are provided in the same provision⁴⁰. In accordance with Article 46 of the Criminal Code medical measures are:

- Outpatient obligatory treatment;
- Obligatory - medication in a medical institution;

³⁷ Halili, R, “Penalogjia”, Blendi publishing, August (2000), Pristina, p. 215.

³⁸ Article 72 The law provides these corrective educational measures:

1. Submission of juvenile parent or guardian with the duty to exercise oversight over the firm;
2. Placement of the juvenile in an educational institution;
3. Placement of the juvenile in correctional and education house;
4. Sending a minor to be treated at an medical institute;

³⁹ Hysi.V, “Penologjia”, PEGI, (2006), Tirana, p. 179.

⁴⁰ In accordance with Article 46 of the Criminal Code medical measures are:

1. Outpatient treatment required;
2. Forced-medication in a medical institution;

Educational measures is:

1. Placement of juveniles in an educational institution.

Educational measure is:

- Placement of juveniles in an educational institution.

The Criminal Code has not set time bounds for the duration of medical and educational measures, this also due to their specifications relating to the circumstances in which they apply. The court is obliged to consider its decision on providing medical and educational measures after the expiry of one year after its imposition. We think that the deadline of one year is a period long enough in which you can change the terms and conditions that would make such measures invalid. For this purpose it would be appropriate that the obligation of reviewing these measures be imposed upon a shorter period, six months.

In connection with educational measures, one of the main shortcomings of the Criminal Code is the lack of diversity, which basically makes it impossible to apply the requirements of international legal acts. Thus, the principle of isolation of juveniles from previous environment which should be the last resort, cannot be applied, as the only educational measure is the placement in a re-education institution which means the isolation from the social environment and stay in an institution.

Simultaneously, the lack of necessary infrastructure, specialized staff and above all, individual institutions, has made it impossible to implement this measure by the court. The impossibility of implementing educational measures by the Court highlighted the problem of the treatment of juvenile offenders who have not attained the age of criminal responsibility. In this way the criminal law does not respond to the treatment needs of children who have not attained the age of criminal responsibility. The measure of placing in a educational institution is insufficient, it is not implemented in practice and is in breach to international standards that require implementing measures that do not isolate the child from the social environment.

Also, the court can not even apply this measure to juveniles over 14 years as an alternative form of punishment to imprisonment. The conclusion of the failure of educational measures in practice is based even on surveys⁴¹. The Ministry of Justice, in the framework of legal reforms within the criminal justice system for juveniles, proposed a series of positive reforms to improve the content of educational measures⁴². These changes mainly consisted in increasing the number of educational measures and setting deadlines for their duration.

⁴¹ From a study conducted by the criminal decisions final data on minors from district court in Tirana, Shkodra, Fier, Elbasan, Gjirokastra, Vlora and Korca in the period 2005-2006 shows that in any case the courts have applying the exemption from punishment. The opposite can be said for provision that provides for reduction of half the penalty provided by law for the offense. As a provision binding the court it is applied to all decisions on minor imprisonment. For more see, Albanian Helsinki Committee, "Respect for the rights of minors in the criminal process", Pegi, work cited, p. 25.

⁴² Amendments in the form of a legal package of minor justice, the work cited. For more details see also, Albanian Helsinki Committee, "Criminal Justice System for juveniles", work cited, p. 36.

The proposals consisted in a total reform of Article 46 by providing a range of educational measures as a written reprimand, supervision by the parent or by a reliable person and placement in a specialized institution. At the same time the working group proposed a categorization of institutions in open regime institutions, partially open and closed. Although the goal of the reform was positive in terms of increasing the effectiveness of the implementation of educational measures, these proposals are not yet reflected in the Criminal Code.

Law. no.10023, dated 27.11.2008 "On some amendments to Law no. 789, dated. 27.01.1995 "Criminal Code of the Republic of Albania", brought no change in terms of educational measures. In regards to medical measures, it would be most appropriate for them to have a separate legal regulation in the Criminal Code. This conclusion is drawn based on the category of entities over which they are applied, who might be juvenile or irresponsible persons. Even the purpose of their application is also different, as educational measures aimed the education of juveniles, and medical measures the treatment of irresponsible persons.

Conclusions

The criminal legislation has sanctioned a series of guarantees in the field of sanctions system and specification of punishment, for juvenile offenders. Despite positive changes, there is still the need for intervention in terms of setting more detailed rules in the system of sanctions for juveniles. The Criminal Code still does not guarantee a specific system of sanctions and measures alternative to juveniles in conflict with the law. Analysis of the provisions, leads to the conclusion that the rules sanctioned in our Criminal Code are insufficient to ensure standard application of imprisonment as an excluding measure and only in severe cases. Further improvements should be made especially in terms of setting specific rules for the detention of juveniles in order to sanction a differentiated treatment. The current legal regulation under which punishment can be applied to a person who at the time of the offense has attained the age of 14 years does not comply with the demand for their education and rehabilitation.

Referring to foreign legislations, including the criminal legislation of Kosovo⁴³, it would be judicious the sanctioning of a rule under which the imprisonment punishment may not apply to a particular age group of juveniles (14-16 years) regardless of the type of offense committed. For this category it can be applied only educational measures. In the changes the Criminal Code needs to undergo, we maintain that should be taken into

⁴³ Based on the law for juvenile to Kosovo, juveniles are classified into two groups:

1. Young juveniles, aged 14-16 years, to which can not be given punishment, but only educational measures.
2. juvenile adults, aged 16-18 years, to which can be given the imprisonment punishment. The same arrangement is also enshrined in the criminal legislation of countries such as Macedonia, Croatia, Slovenia etc.

consideration such a differentiation. Increasing the age for the purpose of applying the penalty of imprisonment shall better serve the compliance with international criminal law and reintegration of juveniles into society.

Naturally, this change should be accompanied by the increase in the number of educational measures and establishment of necessary infrastructure for their application. The only measure of education in our Criminal Code, that is placement in a educational institution is a measure that implies separation from the social environment. Moreover, in absence of institutional infrastructure even this measure can not be applied, forcing the courts not to refer to this provision

The lack of diversity of educational measures, makes it impossible to apply the requirements of international legal acts, in order to give priority to measures to imprisonment. In this way the principle according to which the isolation of juveniles from previous environment should be a measure of last resort, can not be respected. In determining the educational measures there can be taken positive examples referring to juvenile criminal legislation in Kosovo, Italy, France ect. Also, in accordance with the legislation of Western developed countries⁴⁴, such as Italian, German, French, etc., our Criminal Code should provide rules for handling specific age groups over 18 years.

In the field of alternatives to imprisonment, through the legal reform there are made significant improvements in order to ensure a modern system of alternatives to imprisonment. In the Criminal Code of the Republic of Albania the number of alternatives to imprisonment has increased and existing content is improved. This reform has also enabled the creation of an institutional system of their supervision, enabling their application for juvenile offenders.

Despite the new additions and changes in the field of alternative sentencing, there has not been reflected a differential treatment in accordance with the highest interest of the juvenile. Alternatives to prison sentences are applied case by case to adults and to juveniles, without distinction based on status as a juvenile.

This is a deficiency that can be avoided by setting specific alternative sentences, and expanding educational measures provided by the Criminal Code. Simultaneously, to changes in the Criminal Code must correspond also the necessary law base and institutional infrastructure as a condition for the creation of a system that takes into account the best interest of the juvenile and his educational needs.

⁴⁴ French criminal law, etc. predict that German special treatment for persons aged 18-21 years, who constitute a special category for purposes of determining the sentence, as well as the effect of sentence to imprisonment.

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3. Criminal Code of the People's Republic of Albania, approved by Law no. 1470, dated 23.05.1952;
4. Criminal Code of the Socialist People's Republic of Albania, approved by Law no. 5591, dated 15.06.1977;
5. Law no. 253, dated 24.12.1946, On the general provisions of criminal law;
6. Law no. 599, dated 13.05.1948, the Criminal Code, General Section;

7. Criminal Code of the Republic of Albania, approved by Law no. Dated 7895, 27. 01. 1995, amended;
8. Law no. 8331, dated 21.4.1998, On execution of court decisions;
9. Law no. 10024 dated 27.11.2008 For some changes and additions to Law No. 8331, dated 21.4.1998 "On the execution of court decisions";
10. Decision no. 302, dated 25.03.2009 for approval of the Regulation On organization and operation of probation services and for setting standards and procedures for supervising the execution of alternative sentences;

3. International Acts

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2. Standard Minimum Rules of the United Nations for the administration of juvenile justice (The Beijing Rules) 1985;
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