



Historical analysis of legislation for minors in Albania and its evolution, after the democratic changes of the 1990s.

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Abstract

Minors in conflict with the law and minors victims of criminal offenses according to Albanian legislation. Change of legislation for minors in Albania is related to the political changes made after the 90s. After the political changes in the government system, it became necessary to ratify international conventions and acts and change I EGISLATION of minors according to international legal acts and norms for children's rights. The changes made were innovations in the internal criminal legislation for improving access to justice for minors. These changes were accompanied by information and legal education of minors in Albania, prevention, reintegration and rehabilitation of minors.

Keywords: *Juvenile legislation, international conventions on juvenile criminal justice, Juvenile criminal justice issues, Legal certainty, criminal law, juvenile legislation.*

Juveniles in conflict with the law and juvenile victims of criminal offences.

In the framework of the democratic changes that took place in Albania, it was also necessary to change the legislation for minors in our country. Because the legislation of the time was adapted to a centralized social economic order with different acts and norms from Western and international countries. The improvement of the legislation required the ratification of International Conventions, and the adaptation of the legislation in several directions such as:

- Improving access to justice for minors
- Information and legal education of minors.
- Prevention, reintegration and rehabilitation of minors

Children in conflict with the law in many cases are victims of criminal offenses but also victims of discrimination, because such was the legislation of the time with all its problems.

For this reason, a great deal of work has been done by the drafters of legislation to take measures to prevent the discrimination of minors in criminal proceedings, giving them the necessary support in their efforts to reintegrate into society. The adoption of legal acts and norms summarized in the Juvenile Justice Code is mentioned

in unison with international conventions in the field of juvenile justice. This Code regulates the treatment of minors as perpetrators of criminal offenses and victims of criminal offenses, as a whole the treatment of children and minors as participants in criminal proceedings, which is based on respect for fundamental human rights and freedoms, taking into account the good, the interests of minors, taking into account their maturity, level of development, skills and personal characteristics, as well as the gravity of the crime, with the aim of their rehabilitation and social reintegration. The Juvenile Justice Code defines the measures and punishments that can be imposed on minors in conflict with the law, which are also the subject of this paper.

Children's human rights and the standards to which all governments should aspire for improving juvenile justice that guarantees child-friendly justice and protects their best interests through highly articulated legal norms of domestic legislation in a manner clearly and concisely in international agreements and international conventions for minors. After the democratic changes of the 90s in Albania, Albanian legislation has been aligned with the following international acts.

- UN Convention on the Rights of the Child;

- UN Rules on Minimum Standards for the Administration of Juvenile Justice (Beijing Rules) "United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985;
- UN Rules for the prevention of delinquency among young people (Riyadh Rules)
- Resolution 2005/20 Guidelines on justice issues, which include child victims and witnesses of crime;
- European Convention on Human Rights;
- Protocol no. 12 of the Convention for the Protection of Fundamental Human Rights and Freedoms: General prohibition of discrimination;
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- UN Convention on the Rights of the Child – General Comment no. 10 (2007) on "Children's rights in juvenile justice";
- UN Convention on the Rights of the Child - General Comment no. 12 (2009) on "The right of the child to be heard";
- Council of Europe guidelines on child-friendly justice.
- International Covenant on Civil and Political Rights;
- Universal Declaration of Human Rights.

The importance and applicability of international acts in our domestic legislation was a guarantee for the improvement of domestic legislation and the guarantee of human rights in general and of children in particular. The protection of minors from the phenomenon of criminality and the drafting of preventive measures was a challenge for Albanian legislators to improve the legal framework and modernize human rights that would minimize their participation in criminality. The legislation of our country is already in harmony and close to international standards for justice for minors. Our country has ratified many international conventions regarding human and children's rights in particular. These international instruments, which Albania adheres to, are a reference point for the construction of an efficient legal system. In the International Conventions to which our country is also a member, a multitude of legal norms are provided that regulate the protection of children's rights in various spheres of life and in various relationships in which they are involved, whether in criminal, family or civil law. , work etc.

Albanian legal framework for guaranteeing children's rights.

After the 90s, Albania emerged from a completely totalitarian system which had created a very poor legislation with norms or acts and contrary to the norms of international law for the respect and protection of human rights. Thus, the economic and social developments of the country, the creation and improvement of the international relations of our country, create the need to change and enrich the internal legislation. So in other words: "domestic legislation had to be modernized" domestic legislation had to be harmonized with international legislation regarding the protection of minors' rights.

Albania ratified some of the most important international acts regarding the protection of children's rights, making them part of the domestic legislation. International agreements have binding

force in our country, under these conditions their drafting has forced the legislators to take all appropriate legal measures for the implementation of these acts.

The rights of minors are defined in some of the most important acts of the Republic of Albania, such as the Constitution, the Criminal Code, the Code of Criminal Procedure and Law no. 10 347, dated 4.11.2010 "On the Protection of Children's Rights". These acts will be part of the following analysis.

The Constitution of the Republic of Albania The Constitution is the fundamental act of the Republic of Albania where children's rights are provided for in the second part of the Constitution, which deals with basic human rights and freedoms in context. Article 54 of the current constitution states that "1. Children, young people, pregnant women and new mothers have the right to special protection from the state. 2. Children born out of wedlock have equal rights with those born out of wedlock. Every child has the right to be protected from violence, abuse, exploitation and use for work, and especially below the minimum age for child labour, which may harm health, morals or endanger his life or normal development." Previously, the rights defined by the Constitution were not divided between adults and minors, which means that the main principles of criminal justice and the procedural guarantees of the defendant imply their extension to minors in the criminal process. Already with the approval of the Criminal Justice Code for Juveniles, the principles of due process have been included in particular, such as:

So, some of the most important principles are.

1. Presumption of innocence (Article 9 of Law No. 37/2017 Code of Criminal Justice for Juveniles, which states: 1. Every minor in conflict with the law is presumed innocent, until the guilt of that, with a final court decision. 2. Any doubt about the charge against the minor is evaluated in his favor).

The presumption of innocence is a fundamental element for the protection of the rights of children in conflict with the law. This principle means that the burden of proof for the charge brought against the child rests with the prosecutor. The child enjoys the benefit of the doubt and is guilty of the charges only when proven beyond a reasonable doubt, which is the highest standard of proof in the judicial process.

Legislation, policies and practices should guarantee any child suspected or accused of violating the criminal law the presumption of innocence until proven guilty by law.

2. The right to due process. Due process must strike a balance between encouraging the child to participate and not forcing the child to testify or plead guilty. It should be recognized that children are more suspicious of adults' questions and that they may feel that they are "forced" by the situation, unlike adults.
3. The right to moral and physical integrity.
4. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.
5. Non-infringement and non-limitation of freedom, etc.

Article 116 provides that "The normative acts that have force in the entire territory of the Republic of Albania are:

Constitution; ratified international agreements; laws; ç) normative acts of the Council of Ministers.

Acts issued by local government bodies are valid only within the territorial jurisdiction exercised by these bodies. The normative

acts of the ministers and the governing bodies of other central institutions are valid throughout the territory of the Republic of Albania in the sphere of their jurisdiction.

They take precedence over the laws of the country.

Law no. 10 347, dated 4.11.2010 "On the Protection of Children's Rights".

See Article 30 of the Constitution of the Republic of Albania "Everyone is considered innocent until proven guilty by a final court decision".

The above acts aim "a) the special protection of the rights of the child through the realization of a complete legal and institutional framework, in accordance with the Constitution, the international acts operating in this field, as well as the legislation in force; b) taking measures to provide the child with the exercise of rights, in accordance with the development of the personality, based on his best interest; c) taking measures to ensure the livelihood, survival and development of the child; ç) ensuring cooperation between central and local structures and authorities, as well as organizations that protect children's rights".

The object of law no. 37/2017 is only the rights of children and special care for them.

Article 3 of this law has these definitions.

In this Code, the following terms have the following meanings:

1. "Alternative to prison sentence" is the measure that can be imposed on the minor by the competent body of the criminal justice system in all its phases, which do not consist in the limitation/removal of freedom.
2. "Juvenile criminal justice" is the procedures related to criminal offenses, including investigation, prosecution, judicial process, execution of sentence, any other measure involving a minor in conflict with the law, victim or witness of an offense criminal.
3. "Minor" is any person under the age of 18.
4. "Minor in conflict with the law" is any person who has reached the age of criminal responsibility up to the age of 18, against whom there is a reasonable suspicion that he has committed a criminal offense, is taken as a defendant and/or has been sentenced by a decision final court for the commission of a criminal offense.
5. "Minor victim" is any person under the age of 18 who has suffered oral, physical or material damage as a result of a criminal offense.
6. "Minor witness" is any person under 18 years of age who may have information related to the criminal offense.
7. "Youth" is any person between the ages of 18 and 21 who is accused of committing a criminal offense when he was a minor.
8. "Relative" is the person who has a close family, gender or relationship with the minor.
9. "The best interest of the child" means the right of the child to have a healthy physical, mental, moral, spiritual, social development, as well as to enjoy a family and social life suitable for the child.
10. "Information" means any data that is appropriate and understandable for the age and reasoning of the minor and that is provided to enable him to fully exercise his rights, except when the provision of this information is contrary to the best interest high minor.
11. "Minimum age of criminal responsibility" is the age of 14 years in cases of committing a crime and the age of 16

years in the case of committing a criminal misdemeanor provided by the Criminal Code.

12. "Measure of restorative justice" is any measure that allows the minor in conflict with the law to understand the responsibility and correct the consequences of a criminal offense, compensate the damage and/or reconcile with the victim/injured and other persons affected by the criminal offense, where the minor who committed the criminal offense and the injured party actively participate together in resolving the consequences of the criminal offense, usually with the help of an independent third party.
13. "Mediation" is the process of settlement outside the court and through dialogue between the minor who has committed a criminal offense and the victim, which is carried out by the mediator and aims to resolve the dispute between them and the consequences arising from the criminal offense, as well as to improve relations between them, regardless of whether it is applied as an avoidance measure or not.
14. "Unit for the Protection of Children's Rights" is the structure for the protection of minors at the local level, according to the law in force on the rights and protection of the child.
15. "Competent body/participating in the administration of criminal justice for minors" is, as the case may be, the judge, prosecutor, judicial police officer, state police officer, lawyer, psychologist, social worker, mediator, protection unit employee of the rights of the child and the probation service, employees of the juvenile rehabilitation and detention institution, as well as any other structure/official involved in this process, who exercise the responsibilities and powers provided for in this Code and who are trained and specialized in juvenile and youth criminal matters.
16. "Legal representative" is the parent, relative or guardian of the minor, who participates in juvenile criminal justice procedure for the protection of the interests of the minor.
17. "Procedural representative" is the person in the sense defined in the law in force on the rights and protection of the child, who will perform the procedural representation of the minor, according to the provisions of this Code.
18. "Person of trust" is the adult person requested by the minor and accepted by the competent body, who accompanies the minor in the stages of criminal proceedings.
19. "Center/institution for the rehabilitation of juveniles" is a structure or program where a juvenile convict is placed or not, which is equipped with the appropriate infrastructure and personnel to meet the special needs of the juvenile and execute judicial decision.
20. "Re-victimization" is causing harm to the minor victim of a criminal offense, as a result of a new criminal offense related to the first one.
21. "Resocialization/rehabilitation" is the encouragement and development, in the direction of the minor's responsibility, of the feeling of respect for the rights of others, to encourage and enable the healthy physical, mental, spiritual, moral and social development of minors and to prepare them to return to society.

22. "Incentives" are some additional benefits, in addition to those that the minor regularly enjoys, which are given due to good behavior and compliance with the rehabilitation and reintegration program.
23. "Avoidance" is an alternative measure for not starting, suspending or terminating criminal prosecution against minors in violation of the law, according to the provisions of this Code;
24. "Second/repeat victimization" is the situation where a minor victim of a criminal offense may be harmed, as a result of participating in the criminal justice process, etc.

Article 8 of this law defines all general principles such as the highest interest of the child, equality without any kind of distinction, regardless of race, color, gender, language, religion, political opinion or any other type of opinion, national or ethnic origin. or social, wealth, disability, family background or any other condition of the child or his parents/legal representatives, the elimination of all forms of discrimination or punishment of the child, due to the position, activities, expressed thoughts or beliefs of the parents. / legal representatives or members of his family, etc. The regulation of these norms is about guaranteeing the due process of law for minors and their treatment by specialized institutions in the field of justice for minors.

The protection of fundamental rights and freedoms is one of the most important principles of the Albanian state, this is clearly sanctioned in the Constitution, the Criminal Code, the Code of Criminal Procedure and all international conventions ratified by our country and which are mandatory for implementation . . The protection of human rights constitutes a moral and human obligation in the social aspect, due to the fact that the rights of one person end where the rights of another person begin.

National and international legal acts give minors a special treatment to guarantee the protection of rights at all stages of criminal proceedings such as during preliminary investigation, trial at all levels of the judicial system, sentencing and execution of court decisions, as well as treatment. in penal and educational institutions.

Considering the age of the child, his physical and mental development which is still in process, we must say that the child needs a special protection not only from the family but also from the state institutions involved in providing justice to minors. .

The procedural aspect of dealing with a criminal offense involving a minor is of fundamental importance that begins at the first moment of arrest and continues with the same intensity until the trial.

This is due to the fact that an inappropriate procedure would violate the fundamental rights and freedoms of minors in particular and of any other individual in general. The right to freedom and security of the person is one of the basic and most important human rights, which comes after the right to life, since freedom and security have the same values as life itself.

Criminal legislation in the Republic of Albania, like any other contemporary criminal legislation, is based on the democratic principles of justice, which aim to ensure a fair and equal criminal procedure by guaranteeing the protection of fundamental freedoms and legitimate interests of individuals. such as the strengthening of the legal order and the implementation of the Constitution and legislation as a whole. Our criminal legislation stands out for its purely accusatory nature, with full equality of the parties at the trial

stage of the case, giving broader rights to the criminal prosecution body during preliminary investigations, rights which are verified, controlled and approved by the court for the main procedural actions.

The purpose of the activity of the criminal procedure bodies is to know as well as possible the conditions and circumstances in which the specific criminal offense took place, as well as all the facts or data related to it.

Article 2 of the Code of Criminal Procedure stipulates the rules for the manner of prosecution, investigation and trial of criminal offenses as well as the execution of court decisions, these rules are applicable to the subjects of criminal proceedings for state bodies, legal entities. and citizens.

The criminal procedure code provides a number of provisions that apply to minors.

Under these conditions, the legal definition of the term "child", the age of criminal responsibility according to Albanian legislation, the Convention on the Rights of the Child is the most important instrument in the field of defining and protecting children's rights. The Convention on the Rights of the Child adopted by the General Assembly of the United Nations Organization on November 20, 1989 in article 40 paragraph 3 point a determines that "States Parties shall determine a minimum age below which children are presumed incapable of violating criminal law", but the age limit, below which the deprivation of liberty of a child should not be allowed, must be determined by law. According to the United Nations Rules for the Protection of Juveniles Deprived of Liberty, a minor is a child or juvenile who, under the relevant legal systems, is treated for a statutory offense differently from an adult. The Beijing Rules stipulate that in legal systems that accept the concept of age of criminal responsibility for minors, the age of onset should not be placed at a very low level, taking into account the facts of emotional, mental and intellectual maturity.

One of the most important principles in determining the age limit of minors and therefore the age for criminal responsibility is the principle of the best interest of the child. According to our Constitution, although there is no specific article related to the best interest of the child, it provides special protection intended to indicate a greater status of care for children, which should be reflected not only in legislation, but even in the whole activity. of state bodies and entities in contact with minors. in time with rule 4 of the Beijing Rules.

Determining the age of criminal responsibility is closely related to the obligation of states to create an effective system of criminal justice for minors, therefore, the age of criminal responsibility is considered the age for which a person can be considered responsible for a criminal offense and can to be subject to criminal proceedings. The age of criminal responsibility varies from country to country based on a country's social and cultural development. Most legislation has defined the age of 18 as the age limit that makes an individual responsible for their behavior and actions.

In the legislation, we find sanctioned the age for criminal responsibility, its verification and the suspension of proceedings in cases where the person has not reached the age for criminal responsibility. As above, according to the Criminal Code of the Republic of Albania, in its article 12, it is determined that "There is criminal responsibility for a person who, at the time of committing a crime, has reached the age of fourteen. A person who commits a criminal misdemeanor is liable when he has reached the age of

sixteen. ". So, in this article, the age for criminal responsibility for criminal offenses and criminal misdemeanors is sanctioned, defining fourteen years as the minimum age. Circumstances that do not allow the initiation of proceedings are clearly stated in Article 290 paragraph 1 of the Criminal Code, which stipulates that "Criminal proceedings cannot be started and, if they have been started, they must cease in any state of the proceedings when: b) the person has not reached the age of criminal responsibility"

Article 41 of the Code of Criminal Procedure provides for the verification of the defendant's age, which states that: "In any state and degree of the proceeding, when there is reason to believe that the defendant is a minor, the prosecuting body makes the necessary verifications and when it is the case, it orders the expertise. When, even after the verifications and expertise, doubts remain about the defendant's age, it is presumed that he is a minor".

Children up to the age of fourteen are exempt from criminal sanctions such as punishments and any type of educational measures.

An important role in terms of age for criminal responsibility has also been played by Article 7 of the Criminal Code, it is defined: Article 7

The age of the minor¹. For the purpose of criminal liability for crimes, a person who has reached the age of 14 but not 18 at the time of committing the crime is considered a minor.

2. For the effect of criminal liability, a person who has reached the age of 16 but not 18 at the time of committing the criminal offense, etc., is considered a minor, has set a limit regarding the age limit for criminal liability.

Minors in relation to the state police and the judiciary.

One of the basic rights of children in the criminal process is the right to have a defense attorney throughout the proceedings. This right cannot be waived in any way. This right can be exercised by the minor or the legal representative, the adult member of the family, and if none of them appoints a defender, the body of the procedure appoints a defender at public expense.

One of the important principles on which the State Police operates is the principle of respect for basic human rights and freedoms, especially the rights of children. In Article 18 of this law no. 108/2014 For the State Police it is determined that "Each police officer enjoys the attributes of the Judicial Police, in accordance with the criminal procedural legislation and the law on the organization and operation of the Judicial Police".

Judicial police exercise their activity in accordance with the provisions of the Code of Criminal Procedure and law no. 8677, dated 2.11.2000 "On judicial police". In the relevant prosecutor's offices, a special sector currently operates in the structures of the judicial police for the handling of juvenile cases in accordance with the Code of Criminal Justice for Minors and KK.Pr. Criminal.

Considering the delicate age of the child, the law provides for more assistance during the criminal process, which is psychological and/or family assistance. Psychological assistance can be decided by the procedure body

In the criminal procedure, the right of the minor to express his opinions on all issues that affect him must be respected and applied at every stage of the judicial process.

The role of the Prosecutor's Office in the investigation of minors in conflict with the criminal law.

The Prosecutor's Office is the responsible institution that fights crime in Albania in accordance with the Constitution of the Republic of Albania and LAW No. 97/2016 on the Organization and Functioning of the Prosecutor's Office in the Republic of Albania.

Article 1. The scope of this law defines the rules for: a) the organization and functioning of the prosecution in the Republic of Albania; b) conditions, criteria and procedures for the appointment of the Prosecutor General; c) the relations of the prosecution of the general jurisdiction with other state institutions, with other public or private entities and with the public; ç) the functioning of the administration of the prosecution; d) the status of the civil servant of the prosecution. In Article 21. Sections of the prosecution offices 1. In each prosecution office, for certain categories of criminal offenses, when it is possible and necessary, the head of the prosecution office creates sections with no less than three prosecutors. Their rise is based, among other things, on the number and specialization of prosecutors, the type, prevalence and categories of criminal offenses, subjects, as well as on the recommendations of the Council of Ministers in the fight against criminality. The special section for minors is created, in any case, in the prosecutor's offices near the courts in which the relevant sections for the trial of minors have been created according to the law. In these aspects, the section for minors has been created in certain districts that cover the entire territory of the Republic of Albania to deal with minors' issues.

The rights of minors in the judicial system in Albania

The judicial system of the Republic of Albania exercises its activity in accordance with the Constitution of the Republic of Albania and the amended law no. 98/2016 "On the organization of judicial power in the Republic of Albania"

In the ninth part of the Constitution in article 135 paragraph 1 it is determined that "1. Judicial power is exercised by the Supreme Court, as well as by the courts of appeal and the courts of first instance, which are created by law".

The juvenile justice system operates by assigning juvenile sections to the competent courts. Likewise, in the trial of minors, the courts must prioritize the best interest of the child and the determination of the punishment must be proportionate to the offense committed. Currently, the trial of juveniles is governed by the Code of Criminal Procedure.

The importance of having a juvenile lawyer

Legal aid is a right sanctioned and guaranteed by the Constitution of the Republic of Albania and international acts ratified by our country. The right of defense is guaranteed in Article 31 of the Constitution and in the Code of Criminal Procedure. Thus, Article 35 of the Criminal Code deals with the assistance given to the minor defendant. In point 1 of this article it is determined that "The minor defendant is offered legal and psychological assistance, in any state and degree of the proceeding, with the presence of the parent or other persons requested by the minor and accepted by the proceeding body." So, the right to have a lawyer who can protect

the rights of minors constitutes a legal obligation. This is reinforced more if we analyze article 49 of the CPC.

In paragraph 2 of Article 49 of the Criminal Code, it is determined that "When the defendant is under the age of eighteen or has a physical or mental disability that prevents him from realizing the right of defense himself, the assistance of the defender is mandatory. ." So, the lack of a defender would invalidate the decision that the judicial body would give in cases against minors. Good coordination between the courts and prosecutors' offices on the one hand and the local chambers of lawyers in the districts on the other hand would increase the quality of representation and protection of minors.

Aspects and procedural measures provided in contemporary legislation for minors in conflict with criminal law.

Procedural aspects that provide protection for minors.

The method of sanctioning procedural principles and guarantees is not merely declarative, but imposes the obligation of procedural bodies to respect them at every stage of providing criminal justice to minors.

The child's participation in the criminal process is difficult not only because his position is delicate, being a victim of a criminal offense, but also because of his age that he cannot be part of the family and properly understand the procedural actions. For this reason, the child is often replaced by the legal representative (parent/guardian) in the process judicial. On the other hand, it should be borne in mind that only procedural acts can be performed by the legal representative on behalf of the child, while he must be present when giving personal statements.

The Code has sanctioned the following principles as principles of criminal justice for minors:

1. The principle of presumption of innocence
2. The principle of the highest interest of the child
3. The principle of protection against discrimination
4. The right to harmonious development of minors
5. The principle of proportionality
6. Advantage of alternative avoidance measures
7. Restriction or removal of freedom as a last measure
8. Minor's participation in the process
9. Examination of cases involving minors without delay and with priority
10. Mandatory participation of the psychologist.

Procedure of detention and arrest of minors.

The criminal proceedings of minors include all the procedural actions that are taken against each person from the moment he is accepted as a defendant until the moment the final decision is taken by the court in charge of him. In article 2 of K.Pr. The rules are mandatory for the subjects of criminal proceedings, for state bodies, legal entities and citizens".

In the CPC, the principles of the criminal procedure for minors are provided and which find expression in an express way, the principle of the best interest of the child.

The juvenile justice process begins with the investigation conducted by the police officer as the authority responsible for investigating and identifying a misdemeanor at the time it is committed or when it is reported. At the time of detention or arrest, the police officer, after analyzing the situation, must:

1. Releases the minor and sends him to his parents with a warning or reprimand.

2. Releases the minor and takes him to the parents on the condition that the minor enters a community program.
3. Keeps the minor in custody and refers the case to the juvenile courts for further proceedings.

The police is the body that makes the first contact with the perpetrator of the criminal offense. Her duty is to accompany the person to the police station in cases where there are reasonable grounds that the person has committed a criminal offense.

In cases of red-handed arrests or detentions, judicial police agents are obliged to respect some general rules that also apply to minors.

Notify the detainee or detainees in the language they understand of the reasons for the measure and the charge against them:

Notify the prosecutor of the country where the arrest or detention took place;

To make known the right to choose the defender and to notify the defender chosen or appointed by the prosecutor;

To place the detainee or the arrested person at the disposal of the detention rooms, as soon as possible;

To guarantee him the right to humane treatment and respect for his dignity.

In cases where the detainee or the arrested person is a minor, some special rules apply, such as

Notify parents or guardian immediately.

The guarantee of protection in the case of minors is mandatory.

In Article 54 of the Constitution it is sanctioned that "Children, young people, pregnant women and new mothers have the right to a special protection from the state" Minors are accompanied in separate facilities from those of adults. In the case of a minor, the prosecutor, the family and the defense lawyer must be notified immediately. After the person is detained, he must be informed immediately and in detail about the charge against him, about his rights, as well as the possibility to notify his family and relatives.

The Convention on the Rights of the Child states that: The child shall be given the opportunity to be heard in any judicial or administrative proceeding concerning him, directly or through a representative or an appropriate body, in accordance with the rules and procedures of national legislation. In this provision, the law is very clear about the help offered to the minor, whether it is the help of a lawyer or the participation of a psychologist throughout the criminal proceedings.

Legal guarantees in the judicial process against minors

The trial is one of the most important moments of criminal proceedings and is of particular importance in terms of respecting procedural guarantees and the best interest of minors. The trial procedure must initially be in accordance with the minimum trial standards, mainly those related to the principle of due process. Here we would refer to the ECHR which defines the criteria of a regular legal process. Article 6 of the ECHR deals with the right to a regular judicial process where it is determined that "Every person has the right to have his case heard, publicly and within a reasonable time by an independent and impartial court, established by law, which will decide both disputes regarding his rights and obligations of a civil nature, as well as the validity of any accusation of a criminal nature" Based on this article, it can be said that our procedural system has created the necessary guarantees in

terms of guaranteeing the right to a regular legal process. This principle is sanctioned in Article 42 of the Constitution of the Republic of Albania, where it is stated that: "Everyone, for the protection of his constitutional and legal rights, freedoms and interests, or in the case of accusations brought against him, has the right to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law"

The Code of Criminal Procedure in accordance with the Constitution and international standards provides for a number of guarantees regarding the right to a due process. Thus, in Article 1 of the Code of Criminal Procedure it is stated that: "Criminal procedural legislation has the duty to ensure a fair, equal and orderly legal proceeding" Referring also to Article 6 of the ECHR regarding the independence of the courts, article 3 of the Criminal Code defines that: "The court is independent and acts on the basis of the law" One of the essential aspects of international standards is the creation of specialized structures that administer cases for minors.

There are no juvenile courts in Albania. Article 13 of the Code of Criminal Procedure states that "Juveniles are tried by the relevant sections established by the courts of judicial districts, determined by decree of the President of the Republic" Creation of sections of courts for minors in all six judicial districts, where established and the appeal courts have been an important step in the improvement of criminal justice.

Juvenile interrogation procedure

The interrogation of minors is an investigative action of special importance and complexity compared to the interrogation of adults. This is because of the special psychic properties they have. Therefore, special care should be taken when interrogating minors. During the interrogation in the case of the criminal offense, we distinguish many specifics in the defendant, victims, in the statements of women, the elderly, and even minor children.

When interrogating minors, special care must be taken due to the special psychological properties of these persons. These properties mean their inability to understand the situation due to the lack of psychic development, the way of thinking and conceptualizing things and situations.

Elements of punishments against minors

The elements of punishments against minors have their source in the notion of punishment. These elements do not have any difference from the elements of penalties in general.

Consequently, the following are considered elements of punishments against minors:

1. Punishment according to its content represents a negative moral and ethical assessment of the criminal offense and the perpetrator.
2. Penalties must be a consequence of the criminal offense committed.
3. Fines must be determined by law.
4. Punishments have a specific purpose.
5. Penalties may be imposed only on responsible perpetrators of criminal offenses. –
6. Penalties can be pronounced by the court only according to the procedure established by law

The aforementioned elements of punishments against minors are constitutive in nature. This means that in the absence of only one

of them there can be no punishment in the direct sense of the criminal law.

Characteristics of punishments against minors

Based on the constitutive elements and the effects of punishment, in the theory of criminal law, some characteristics or features have been defined that must be met in the case of its announcement and implementation. These basic features of punishment in general and of punishments against minors consist of the following:

1. Punishment must be personal. –
2. Punishment must be humane.
3. The punishment must be legitimate.
4. Punishment should hit juvenile perpetrators equally.
5. The sentence must be separate.
6. The sentence must be revocable.
7. The penalty must be repairable.

Criteria and conditions for the implementation of the measure of avoidance from criminal prosecution

They are defined in Article 55, from the content of which it is established that the purpose is to define the criteria and conditions for the implementation of the avoidance measure.

The criteria and conditions for the implementation of the avoidance measure are provided in article 55/2 et seq. of the Code. The application of the avoidance measure for the minor in conflict with the law is conditioned by a number of conditions and criteria. Some of them are necessary and some others are left to the discretion of the proceeding body to evaluate them. Referring to this article, the imperative conditions are as follows: the avoidance measure can be applied only if there is sufficient evidence that the minor has committed a criminal offense for which a prison sentence of up to 5 years or a fine is provided. ; The measure of avoidance can be applied only in cases where sufficient evidence proves the existence of the criminal offense and the involvement of the minor in this criminal offense. This condition is reinforced even more in the acceptance and explanation of the criminal offense by the minor. So, the measure of avoidance is applied in any case where the existence of criminal liability is proven with sufficient evidence. Where it is an imperative condition and further, the proceeding body must refer to the legal provision that provides for the measure of punishment for the criminal offense committed. Referring to the measure of punishment, it can be concluded that the measure of avoidance against minors is applied in cases of crimes against people or crimes of low social risk, for which a maximum sentence of up to 5 years or a fine is provided.

The initiation of the avoidance measure can be done in two forms, at the initiative of the prosecutor or at the request of the minor in conflict with the law or his representatives. The avoidance measure can also be imposed at the request of the social worker or the psychologist.

The Code provides for the minor's right to legal advice and assistance to understand the proposed measure and whether it is appropriate and acceptable to him.

If the prosecutor's proposal for the implementation of the avoidance measure is not accepted by the minor, a record is kept where the reasons for the non-acceptance are recorded.

The first paragraph of Article 62 provides for the types of possible alternative measures for avoiding criminal prosecution that may include: a) restorative justice and mediation programs; b)

counseling for the minor and the family; c) oral warning; d) written warning; e) binding measures; f) placement under care.

REFERENCES

1. -the constitution,
2. Penal Code,
3. -Criminal Procedure Code and Law no. 10 347, dated 4.11.2010 "On the Protection of Children's Rights"
4. law no. 37/2017 Code of Criminal Justice for Minors.
5. Internet resources
6. UN Convention on the Rights of the Child;
7. UN Rules on Minimum Standards for the Administration of Juvenile Justice (Beijing Rules) "United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985;
8. UN Rules for the prevention of delinquency among young people (Riyadh Rules)
9. Resolution 2005/20 Guidelines on justice issues, which include child victims and witnesses of crime;
10. European Convention on Human Rights;
11. Protocol no. 12 of the Convention for the Protection of Fundamental Human Rights and Freedoms: General prohibition of discrimination;
12. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
13. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
14. UN Convention on the Rights of the Child – General Comment no. 10 (2007) on "Children's rights in juvenile justice";
15. UN Convention on the Rights of the Child - General Comment no. 12 (2009) on "The right of the child to be heard";
16. Council of Europe guidelines on child-friendly justice.
17. International Covenant on Civil and Political Rights;
18. Universal Declaration of Human Rights.