

Application of juvenile imprisonment

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North Macedonia, Tetovo, 2020,

The juvenile delinquency in its elementary view is presented through concrete forms of individual behavior as individual phenomenon or personal phenomenon and it contains all the qualities of human behavior. However, it is necessary to focus more on the elaboration of the meaning and presentation of the term delinquency of juveniles¹.

In criminological and legal- penal literature we encounter a great number of definitions of the meaning of juvenile delinquency. Viewed more widely, there is almost no such area where so many terminological meanings and confusions arise, which indicates that this problem needs to be scientifically illuminated. Without a clear and precise definition, this phenomenon can not be scientifically addressed, as no distinction with other phenomena can be made. Clear terminological definition allows for practical explanation of this phenomenon, thus, delinquency of juveniles. Of all the meanings we have encountered, such as in sociological, criminological and legal literature in the widest sense the notion of juvenile delinquency or delinquent behavior of young people is used².

“In criminal law for a long time dominates the idea that minors should not be separated from adult perpetrators although in Roman law there was a difference of perpetrators by age. The Law of the Twelve Tables has determined a special punishment- beating for minors (*impuberes*) for two actions, public theft and damaging agricultural goods, according to the judge's judgment and compensation for the damage. But for the first time with *Code of Justinian* a precise legal boundary between minors (*impuberes*) and adult perpetrators (*puberes*) has been established in fourteen years for minors and twelve years for minors (female gender). There has been a single system of sanctions with what little children have been “spared” from enforcing punishment if the court does not find them to be harmful (bad). The meaning of minors as criminal in miniature from which reconciliations in criminal justice also result is based on the ruling maxim: *militia supplet aetatem (malice supplements age)*”³

¹ Ž.Jashović, *Kriminologija maloletničke delikvencije*, Beograd.1991, pg.18

² Po aty

³ V.Kambovski, *E drejta penale-pjesa e përgjithshme*, translation, Skopje, 2006, pg. 596

The equalization of juveniler with adut perpetrators continued in the middle ages, mainly in unencoded right where under the legal- customary rules the juvenile limit was fixed between the ages of twelve and fifteen years of the years of life with further implementation of the order *militia suplet aetatem*. In the sources of Middle Ages very few exemptions from such approaches have been foreseen. Carolina (1532) has forbidden except for the occasional cases the enforcement of the death penalty against a juvenile thief up to 14 years. (Tereziana 1768) for children up to the age of seven and thoshe wo are close to this age did not foresee penalties but during the infliction of serious damages a beating punishment could have been imposed. Juveniles up to the age of 14 have been sentenced to lighter penalties and the death penalty is imposed if a serious crime is committed. The 1786 Penal Code of Toscana (elaborated by Becario) excluded children up to the age of 12 from the types of punishments and for them only educational measures has foreseen, whereas minors aged 12- 14 can be sentenced (*discernement*); juvenilies over the age of 14 have been convicted as adults but with lighter punishments. The idea of *discernement* was strengthened by the French Revolution Penal Code of 1791 which set the boundary between minors and adults in 16 years without defining the last borderline and juvenile offenders were convicted same as adults, except for the

This dangerous social phenomenon because of its actuality and importance today has entered the category of world- wide problems which means that it has outreached the national borders of the states and without exception all the countries of the world encounter this problem. It is understood that for many reasons in some countries this phenomenon is more emphasized and in some other countries it is less emphasized.

Compared with adult criminality in terms of forms of perpetration and damages caused, juvenile's delinquency is smaller if we consider the fact that many offences are committed by juveniles randomly without a plan and without prior organizing with other people, but this does not mean that juveniles do not commit even serious criminal offences such as thefts, murders, etc.

Thus, for example, according to Kaiser, minors mostly commit criminal offences against property and delicts of road traffic offences. However, thefts though petty, body injuries, insults, breaking house order, rapes, damage to items and drug dealers show a high degree of growth⁴.

The basic characteristic of juvenile delinquency in contemporary society is that it is in permanent growth and manifests itself with forms of appearance that are quite dangerous and juvenile delinquency today is a major preoccupation in many countries. This is primarily concerned with studying and analyzing causes and resources that lead to juvenile delinquency on the one hand, and on the other hand there is an attempt and commitment to find the most appropriate methods, tools and ways to obstruct it⁵.

It is thought that the causes of delinquency of juveniles are similar to the causes of adult delinquency, but in the literature some factors are highlighted that are somewhat more typical for this age of the delinquents. Thus, especially as factors are mentioned: family environment, family education, deficient family, economic conditions, detrimental impact of the street, movements of the population village- city, education process, the impact of mass media especially the impact of the press, television, film and literature⁶.

The fight against juvenile delinquency can not be guided to the same extent and by the same means as the adult perpetrators of offences and the types of penalties can not be imposed the same as in adults.

For juvenile offenders who have reached the age of 16, the court may pronounce punishment with imprisonment.

Age is the main objective criterion for classifying the convicted persons. Given the fact that persons of different ages deal with criminal acts and behaviors, the age of perpetrators of convicted persons can be divided according to positive legal provisions. According to the positive penal laws of different countries, the age of the perpetrators or convicts can be divided

imposition of the death penalty and the mitigation of punishment was foreseen. *Discernement* as a condition for punishment was the spiritual development of the juvenile that enabled the meaning and importance of the offense, namely, the recognition of the bad. The introduction of this idea represented the first step towards defining the principle of a more gentle punishment.

Other juvenile justive reform waves have been induced by rapid social changes in the second half of XIX century.

⁴ Zoran Sulejmanov, Makedonska Kriminologija, Skopje, 2000, page 586

⁵ Ragip Halili, Kriminologija, Prishtinë, 2016, page 224

⁶ Ibidem

into the age of juvenile and adult persons, but within this division there are other subdivisions⁷.

Juvenile prison may be imposed on an adult minor for criminal responsibility who has committed a criminal offence for which a punishment of imprisonment of up to five years or a more severe punishment has been imposed if the offence was committed in particularly severe circumstances and in the high degree of criminal responsibility of the offender and in which case it would not be reasonable to impose educational measures. Serving the sentence for minors may not be shorter than one year and longer than ten years, and is pronounced in full years or half of the year. When calculating the sentence of an older juvenile for a criminal offence, the court can not impose juvenile imprisonment for longer than the defined imprisonment for that offence. When calculating juvenile imprisonment, the court will take into account all circumstances that make the sentence more severe or lighter, in particular taking into account the degree of the child's spiritual development and the time appropriate for his/her education, re- education and vocational training.⁸

The court may impose the punishment of juvenile imprisonment on a minor offender who has reached the age of sixteen (16) years and has committed a criminal offence punishable by imprisonment of more than five (5) years when the imposition of an educational measure would not be appropriate because of the seriousness of the criminal offence, the resulting consequences and the level of responsibility. (Article 33 of JJC of Republic of Kosovo).

The court may impose juvenile imprisonment for minor offenders only in cases when the criminal offence is of high social risk and due to the circumstances of the perpetration of the offence and the quality of the offender.

The term of juvenile imprisonment may not be less than six (6) months nor more than five (5) years and shall be imposed in full years and months. The maximum term of juvenile imprisonment shall be ten (10) years for serious criminal offences punishable by long-term imprisonment, or if the minor has committed at least two (2) concurrent criminal offences each punishable by imprisonment of more than ten (10) years. (Article 34 of JJC of Republic of Kosovo).

The imposed sentence is recorded in the penal record and is erased from the penal records after five years pass from the day the punishment is served, becomes obsolete or is pardoned, if during this time the condemned does not commit a new crime. (Article 104 of Criminal Code of Republic of Macedonia).

A child may be imprisoned only if he has committed a criminal offence which the minimum of the punishment is foreseen to be 7 years and such punishment is necessary because of the nature, high social risk of the criminal offence and level of guiltiness. (Article 97, of the Republic of Albania).

In the function of the special interests of the protection and care for the minors special measures are taken, with which the standards defined by the Constitution are guaranteed, the ratified international agreements as well as the provisions of this Code.⁹ The General Regulation of Prisons specifically provides rules on:

⁷ Ragip Halili, *Kriminologja*, Prishtinë, 2011, pg. 129

⁸ See the Law on the Rights of Children of North Macedonia, Article 51

⁹ Article 111 of Penal Code for Children's Rights of R. of Albania.

- a) structure and functioning of the Institutions of Execution of Criminal Sentences for children;
- b) individual planning of execution of sentence by the child;
- c) implementation of forms of incentives and other measures for sentenced children;
- ç) imposing of disciplinary measures against sentenced children;
- d) procedure of processing the requests and complaints of sentenced children;
- dh) organization of rehabilitation process for sentenced children;
- e) conditions for implementation of security measures and the use of special means in relation to sentenced children;
- ë) functioning of record-books and personal files of sentenced children;
- f) visual and/or electronic monitoring and control of sentenced children;
- g) detailed conditions for execution of the imprisonment sentence against the sentenced children.

Juvenile prison should have some special features, such as: it should be very little charged with repressive and coercive measures but rather with measures of improvement such as: convicted minors should be more engaged in work, learning, sports and cultural activities, etc. In juvenile prison a follow-up of classes school is organized, the choice of attending classes first and foremost depends on the prison's own possibility. In those entities where there are no conditions for organizing teaching, the minors will attend classes at the city school where they serve their sentences¹⁰.

When weighing the punishment the court will take into account all circumstances that make the sentence more severe or lighter, in particular taking into account the degree of the child's spiritual development and the time appropriate for his/her education, re-education and vocational training¹¹.

Juvenile prison does not recall legal consequences that consist of a prohibition on gaining certain rights. The imposed sentence is recorded in the penal record and is erased from the penal records after five years pass from the day the punishment is served. Juvenile imprisonment can not be executed when the following expires: ten years juvenile imprisonment, over five years of juvenile imprisonment, over three years of imprisonment for minors up to one year¹².

According to some data about 85% of criminal offences committed by juveniles are criminal offences against property, 6% of offences against life and body, whereas 9% are other criminal offences. It is an interesting fact that from the total number of criminal offences committed by minors, 7% were committed by minors of female gender, whereas 50% of these offences were committed by juvenile offenders organized in criminal gangs¹³.

Meanwhile, from the literature we will note the fact that 45% of juvenile perpetrators are pupils, 29% of them before committing the criminal offence have quitted their school whereas 12 % of them have been transferred from one school to another due to poor school success, discipline and ditching school and 5-9% of them are juvenile recidivist. Another fact which is also important is that 32% of juvenile delinquents permanently had had poor success in school and had repeated their class¹⁴

¹⁰ Zoran Sulejmanov, Penologija, Skopje, 1999, page 787 ;

¹¹ Vllado Kambovski, E drejta penale (translated into Albanian) Skopje, 1996, pg. 113;

¹² Ibidem;

¹³ S. Aleksoski, Kriminalna psihologija, Shtip, 1997, page 13;

¹⁴ Ibidem;

Following through a table we will present statistical data on convicted persons according to the criminal offence group for the years 2010- 2016.¹⁵

	2010	2011	2012	2013	2014	2015	2016
Criminal offences against life and body	59	79	43	39	47	43	70
Criminal offences against human rights and freedoms	1	5	1	5	-	2	7
Criminal offences against human health	7	15	7	12	4	7	13
Criminal offences against marriage, family and youth	1	1	-	1	1	-	2
Criminal offences against property	4036	513	409	353	267	198	257
Criminal offences against security of people and property	1	6	4	4	6	2	2
Criminal offences against security of people	35	39	26	24	14	28	22
Criminal offences against public order	16	35	43	25	100	42	79

From the table data we can notice that minors during the period 2010-2016, mostly committed criminal offences against property.

The purpose of juvenile imprisonment is to contribute to the rehabilitation and development of the minor offender with an emphasis on the minor’s education, specialized education, vocational skills, and proper personal development. In addition, juvenile imprisonment should positively influence the minor through protection, assistance and supervision to prevent recidivism. (Article 32 of JJC of R. of Kosovo).

As a main purpose of serving the imprisonment the Criminal Prosecution Execution Law defines resocialization which as a notion besides re-education includes the social adaptation of the convicted person, his preparation for social support and behavior in freedom. For this purpose all penological methods and means of serving the punishment are regulated which because of individual violation are sublimated through the notion of treatment of the convicted person.¹⁶

A person sentenced to juvenile imprisonment may be conditionally released from juvenile imprisonment.

Conditional release consists in the fact that a person serving a prison sentence is released before he has held the conditional sentence until the time for which the punishment has been imposed expires not to commit another offence.¹⁷ If the conditionally released person does not commit another criminal offence during this time, the rest of the sentence will not hold. The reasonability of conditional release is based on the fact that this institution in the last intent also serves as a measure of protecting the society from re-committing criminal offences.

A sentenced minor may be granted conditional release from serving the sentence only if the minor has served:¹⁸

¹⁵ Statistical review 2.4.17.09 (878), R.of Macedonia, 2016

¹⁶ Vllado kambovski&Ismail Zejneli, E drejta penale, Tetove, 2018,fq.258

¹⁷ Ismet Saliu, E drejta penale e përgjithshme, Prishtinë,2010,fq.543

¹⁸ Ligji per te mitur I R.shqiperise,n.129

- a) not less than one third of the imprisonment sentence in case the minor has been punished by up to three years of imprisonment;
- b) not less than one half of the imprisonment sentence in case the minor has been punished by up to eight years of imprisonment;
- c) not less than two thirds of the imprisonment sentence in case the minor has been punished by over eight years of imprisonment.

A person sentenced to juvenile imprisonment may be conditionally released if he or she has served at least one-third of the sentence that has been imposed. When granting conditional release, the court may impose a measure of intensive supervision by a parent, adoptive parent or guardian, in another family or by the Guardianship Authority to last until the end of the original sentence. The court may revoke the conditional release if during the period of conditional release the minor commits a criminal offence for which a term of imprisonment or juvenile imprisonment of at least six (6) months is imposed. (Article 35 of JJC of R. of Kosovo).

For the purpose of more efficient re- socializing of sentenced juvenile offenders, entities should provide the minors with the following:

-adequate education, individual programs, good accommodation conditions, qualified social staff, offering various activities in the entities, not using physical violence against minors, health care, juvenile facilities should provide a convenient environment for juveniles. Dividing juvenile imprisoned females from adult imprisoned females.

Closure of minors in institutions is a very painful process, it damages their development and does not always give the effect of their socialization, and is rarely an effective measure in terms of rehabilitation, reintegration and prevention of further violation.

The UN and the Council of Europe have established standards for the treatment of prisoners on the basis of soft law provisions which are authoritative.

The OSCE refers to the UN Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules) and the European Prison Rules. The UN Minimum Standard Rules were adopted in the 50s, aiming to “determine what is widely accepted as a principle and good practice in dealing with prisoners and managing institutions.”⁶ The European Prison Rules, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987, are a general regional standard that provide guidelines for prison services on how to ensure compliance with human rights in their facilities. While the UN Standard Minimum Rules have not been amended since their adoption, the European Prison Rules were updated in 2006 “to reflect developments in criminal policies, punishment practices and overall management of prisons in Europe.”⁷

INSTEAD OF CONCLUSION

The fight against juvenile delinquency can not be guided to the same extent and by the same means as the adult offenders of criminal offence and the types of sanctions can not be imposed the same as to adults. The court may impose juvenile imprisonment for minor offenders only in cases when the criminal offence is of high social risk and due to the circumstances of the perpetration of the offence and the quality of the offender.

Juvenile prison may be imposed on adult minor with criminal responsibility, if he has committed a criminal offence for which a prison sentence is imposed or more severe punishment and if the offence was committed in particularly aggravating circumstances, it would not be reasonable to impose educational measures.

The punishment of imprisonment is held in open and closed institutions. Types of entities, organization and ways of serving the sentence are regulated with the Sanction Enforcement Law. The legal framework also includes international standards of conduct with convicted persons, whose statute has started with the minimum standard rules of conduct with convicted persons.

The purpose of juvenile punishment is to re-socialize, reintegrate, rehabilitate and prevent commission of a criminal offence or committing a criminal offence by offering juvenile care, assistance and supervision.

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Kodi Penal i RMV-ut

Ligji mbi te drejtat e femijeve i RMV-ut