

# Theoretical and Practical Issues of Freedom Deprivation for Juveniles in Procedural Albanian Legislation

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## Abstract

Reforms undertaken after 90's have brought progress in legislation changes and compliance with international standards. This goal is also supported from the membership of our country in several international organizations and ratification of international legal acts. Legal reforms have brought many positive aspects in terms of guaranteeing the procedural position of juveniles and respect their rights at all stages of criminal proceedings. One of the most important aspects of the process is the one related to the freedom deprivation in terms of which are sanctioned a number of principles and procedural rules.

Despite positive steps, the Procedural Penal Code should be subject to further amendments and improvements regarding procedural provisions for the treatment of juveniles during criminal proceedings.

This article seeks to analyze the specific guarantees and particularly procedural rules related to deprivation of personal freedom as well as issues associated with the treatment of juveniles at this stage.

The paper will focus primarily on:

- The issues on special protection of juveniles in criminal proceedings and cases of freedom deprivation in the framework of the international standards.
- Reflecting the concrete situation and the judicial practice issues, in the framework of the Jurisprudence of the Criminal College of the Supreme Court.
- Drawing concrete conclusions and recommendations in regard to the current stage of reflection of the international standards on minors freedom deprivation in the penal legislation and its implementation in practice, as well as the concrete needs for improvement through legal interventions and institutional arrangements.

**Keywords:** juvenile, criminal proceedings, security measures, freedom deprivation, pre-trial detention.

## Introduction

The behavior of juveniles has a significant impact on the degree of development of a society and its future. For this purpose, the treatment of juvenile offenders gets a special significance. Nowadays the issue of treatment of juveniles in conflict with the law is given a special attention at the European level, as well as internationally. This issue has been developed through the adoption of a series of publications such as conventions, resolutions, recommendations, which despite the legal nature, have the common goal of creating standards for the crucial field of the minors criminal justice.

After 90's, Albania was faced with a series of new phenomena, among which is the increase of juvenile crime. On the other hand, membership in various international organizations and ratification of international legal acts led to the need to harmonize legislation with international standards. Legal reforms undertaken after 90's among others have aimed the compliance of the criminal law with international standards.

Approval of the Criminal Code (CC), Criminal Procedure Code (CPC) and the Albanian Constitution were important steps in this direction. Criminal legislation has been further under reformation and is continuously improved. Despite positive steps which will be treated as follows, still further legal and institutional reforms need to be undertaken concerning the treatment of juveniles in conflict with the law. This process is still ongoing both in terms of compliance of legislation with international standards and also in terms of its practical implementation.

These interventions are particularly important in cases relating to deprivation of personal freedom and the application of security measures which represent the first contact of juveniles with criminal justice.

### 1. Enforcement of criminal proceeding principles for juveniles

Adoption of the Criminal Procedure Code with the Law no. 7905 dated 21.03.1995 gave way to a procedural law based on contemporary standards enshrined in constitutional and international level. In this code, are sanctioned a set of standards for human rights and fundamental freedoms which are closely related to criminal proceedings.

Likewise, principles of criminal proceedings as the principle of legality, independence of the tribunal, the presumption of innocence, the right of defense, the legal restriction of liberty, the prohibition of trial twice for the same offense, the use of Albanian language, are also valid in the criminal proceedings of minors. Addressing some of these provisions in more detail is needed to understand more clearly the effect of their enforcement in cases of juveniles.

The principle of legality is enshrined in article 2 of the CPC and asks for all the subjects of criminal proceedings, state bodies, legal persons and citizens the obligation to

implement the procedural provisions in the exercise of prosecution, investigation and criminal trial and execution of judgments. Also the principle of independence of the court<sup>1</sup> and the presumption of innocence<sup>2</sup> are principles that serve as a procedural guarantee to meet international standards in criminal proceedings. This is also due to the fact that these principles stem from international acts such as the Universal Declaration of Human Rights, European Convention of Human Rights, Covenant on Civil and Political Rights, etc. These principles also extend their effect on the criminal proceedings against minors while serving as a guarantee of a fair trial beyond the influence and giving a decision based on evidence and law where guilty will be proven beyond a reasonable doubt.

In accordance with the contents of Article 25 of the Constitution and Article 3 of European Convention of Human Rights, the principle of prohibition of torture as punishment or cruelty, inhuman and degrading is another guarantee of a humane and dignified treatment in accordance with principle of legality and protection of personality and physical and mental integrity of the individual. The principle of the prohibition of torture is sanctioned by the CPC which further provides that prisoners are humanely treated and moral rehabilitation is guaranteed<sup>3</sup>.

This principle is further detailed in the CPC<sup>4</sup> that during interrogation of the defendant prevents the use of methods or techniques to affect the freedom of the will, or to change the memory capacity and the assessment of the facts.

The principle of the right of defense is sanctioned in Article 6 of the CPC<sup>5</sup>. Predictions concerning the execution of the right of defense are available for both the juvenile and adult offender. In addition, taking into account the significance of the criminal prosecution of a juvenile, the CPC includes also a number of specific provisions.

In relation to minors under 18 years CPC has sanctioned the principle of legal defense in every condition and degree of processing and the binding character of this right<sup>6</sup>. In the case of juvenile offender legal defense is an essential condition for the validity of the criminal proceedings<sup>7</sup>. The interrogation of the juvenile arrested or detained should be done in the presence of a lawyer chosen or assigned<sup>8</sup>.

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<sup>1</sup> Criminal Procedure Code (CPC), article 3.

<sup>2</sup> Ibid, article 4.

<sup>3</sup> Ibid, article 5/2.

<sup>4</sup> Ibid, article 38/2.

<sup>5</sup> Ibid, article 6.

<sup>6</sup> Ibid, article 49/2 .

<sup>7</sup> Article 49/2 of CPC states that: "When the defendant is under eighteen years, the assistance of counsel is mandatory".

<sup>8</sup> Ibid, article 256/1.

Psychological assistance is one of the special procedural guarantees that CPC has sanctioned for the juvenile offender. This assistance is provided in every state and stage of the proceedings with the presence of a parent or other persons chosen by the minor and accepted by the proceeding authority. When the defendant is a juvenile proceeding authority may take actions and may not engage in acts without the presence of a parent or other person chosen by the minor<sup>9</sup>. Deviations from this principle can only be made when it is considered that is in the interest of juveniles or the delay could seriously damage the prosecution<sup>10</sup>. Besides the presence of parents or other relatives in the criminal prosecution of juveniles, a special importance takes the psycho-social assistance in the presence of a psychologist or social worker, who has the necessary skills and creates appropriate conditions that the juvenile can psychologically afford the process.

A great importance in the criminal proceedings has the regulations related with the cases of verification of the age and personality of a juvenile offender. In this case the age of the juvenile is important to determine whether he should or not undergo the process. Determining the exact age is of a great importance not only because a special treatment should be granted to the juvenile, but also because it may constitute a reason for not starting criminal proceedings or dismissal at any condition of proceeding<sup>11</sup>. For this purpose, the proceeding authority has a duty to make the necessary verifications in every state and stage of the proceedings including the expertise<sup>12</sup>. If, after the necessary verifications still can not be determined exactly the age of the offender, it is assumed as he is a juvenile for purposes of criminal proceedings.

In all cases related with juvenile, the proceeding authority is required to make necessary verifications in connection with his personality. He should receive information about conditions of personal life, family and social life of the juvenile defendant in order to clarify the degree of accountability and responsibility, to assess the social significance of the fact and to determine appropriate criminal action. For this purpose he collects information from people who have relations with the minor and gathers experts opinion<sup>13</sup>.

With the legal changes made<sup>14</sup>, by creating the Probation Service, personality assessment of the minor takes a special attention. Probation Service, in its reports

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<sup>9</sup> Ibid, article 35.

<sup>10</sup> In such cases it is obligatory presence of counsel.

<sup>11</sup> According to Article 290 / b of the CPC: "Criminal proceedings can not commence, or has begun to settle in any state of the proceedings when the person has not attained the age of criminal responsibility".

<sup>12</sup> Based on Article 41 of the CCP: "In every state and stage of the proceedings, if there is reason to believe that the offender is a juvenile, expertise should take place in order to verify the age of the offender". When after verification and expertise still remain doubts about the offender's age, it is presumed that he is a juvenile".

<sup>13</sup> CPC, article 42.

<sup>14</sup> Law no. 10024, dated 27.11.2008, "For some changes and additions to Law no. 833, dated 21.4.1998 "On the execution of criminal judgments."

must include information about the personality of the offender<sup>15</sup>. These reports help the prosecuting authority in making appropriate decisions during preliminary investigation. Simultaneously assessing the personality of the child and factors related to his behavior, social origin and education, helps the court in determining a suitable sentence.

The importance of determining the personality of the juvenile during the investigative activity is evidenced by a number of authors where is emphasized the circumstances and factors that influence the formation of human personality. Thus, some authors<sup>16</sup> highlight the importance of investigating the individual qualities of the child, not just focusing on the circumstances that characterize the offender, but also in circumstances related to family, school, and work, social life. For some others<sup>17</sup>: "Clarification of the minor's personality is a big help to the prosecution and the court authority in deciding the right measures to be taken against him, as in the investigation stage or in the judgment of the case".

Also, with the amendments of the CPC, is sanctioned the standard of specialized structures for the adjudication of juveniles. Currently the trial of juveniles is done by the relevant sections, created in the judicial district courts established by Decree of the President. The creation of these courts as well as conditions imposed on the CPC for the trial of minors by judges specialized in this field, serves to the knowledge of the procedural provisions for juveniles and their correct application. Now these specialized structures are not only competent for the trial of minors but also to any other decision stages of criminal proceedings including the implementation of security measures.

## **2. Procedural rules related with freedom deprivation**

In accordance with Article 12 of the Criminal Code, subject of criminal proceedings are minors who have reached the age 14 for crimes and age 16 for misdemeanours. The criminal proceedings of juveniles has some specification associated with the particular nature of juveniles as subjects of criminal responsibility. One of the main elements of criminal proceedings is related with freedom deprivation.

Article 27 of the Constitution established that:

"No one's liberty may be limited, except in cases and under procedures prescribed by law". In accordance with this constitutional requirement, rules and procedures of constraint are detailed in CPC. Typical cases of freedom deprivation are the cases relating to arrests and detention of suspects for committing a crime.

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<sup>15</sup> Ibid, article 10.

<sup>16</sup> Gjoliku. L, the People's Justice, A few questions about juvenile criminality, its causes and preventive war organization, No. 2, (1972), Tirana, pg. 68.

<sup>17</sup> Baboçi. S, the People's Justice, Patterns of investigation in cases involving juveniles, No. 4, (1971), Tirana, pg. 28.

More specifically, the arrest and detention are provided in Chapter III of title V of the CPC, articles 251-259. This chapter contains general procedural aspects of the terms and implementation procedures of arrest and detention, which apply in general, without excluding any particular category, including juveniles. Arrest in flagrancy is performed when flagrant conditions exist and comply with criteria set out in article 251, while the ban applies in cases of risk of escape of the person suspected of committing a crime<sup>18</sup>. CPC has not sanctioned any exception regarding the conditions of the implementation of arrest in flagrancy and detention. With the amendments of 2002 it was provided that juvenile offenders accused of a misdemeanour may not be detained prior to trial<sup>19</sup>.

In cases of arrest in flagrancy or detention, officers and judicial police agents are obliged to apply certain general rules<sup>20</sup> which are valid even for juveniles:

- To inform the detainee or the arrested in the language they understand about the causes of the measure and the accusation;
- To inform the prosecutor of the place where the arrest or detention is made;
- To notify the detainees and the arrested that there is no obligation to make statements;
- To let him know the right to choose defense counsel and to inform about it.
- To put the detainee and the arrested in the detention facilities as fast as possible;
- To ensure the person who is deprived from freedom the right to humane treatment and respect of his dignity<sup>21</sup>.
- With the consent of the detained or arrested to notify the family without delay;

When the detainee or the arrested is a juvenile, except them, are applied some special rules like<sup>22</sup>:

- Mandatory notification of the parents<sup>23</sup>;
- By the order of the prosecutor, the detainee or the arrested should be kept under supervision at his residence, or any other safe place<sup>24</sup>;

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<sup>18</sup> Islami,H, Hoxha,A, Panda,I, Commentary of the Criminal Procedure Code, (2007), published with support from Danida and the Soros Foundation, Tirana, pg. 338.

<sup>19</sup> CPC, article 230/4

<sup>20</sup> The duties of judicial police in cases of arrest or detention provided for in section 255 of the CCP. At the same time is an important element of the article 28 of the Constitution which stipulates the rights of persons deprived of their liberty, which account for obligations and duties of the proceeding.

<sup>21</sup> Republic of Albania Constitution, Article 28 / 5.

<sup>22</sup> CPC, article 255.

<sup>23</sup> Ibid, Article 255 / 4. In juvenile law package prepared by the Ministry of Justice was proposed change to this point to enable its implementation in practice. Under this package notification of parent should be done at the moment of detention or arrest.

<sup>24</sup> CCP, article 255 / 3.

- Taking measures to ensure the right of defense which in the case of minors is mandatory<sup>25</sup>.

With the exception of these rules in Chapter III of the CPC are not provided specific competencies of the prosecuting authority in relation to the juveniles' treatment.

Meanwhile the CPC has not forecasted the principle that children shall only be deprived of liberty as a last resort, and for the shortest appropriate period of time. In contrary this principle exists in almost all recently sanctioned legal acts of juvenile justice, starting from the UN Convention<sup>26</sup>. Also, in accordance with the Rule 17.1 (c) of the Beijing Rules, deprivation of freedom for minors should be an exceptional case which should be applied only in specific cases<sup>27</sup>. The same adjustments can also be found in the United Nations Rules, for the protection of juveniles deprived of freedom, where freedom limitation happens only in exceptional cases<sup>28</sup>. This principle enshrined also in other instruments such as Rule 46 of the Riyadh Guidelines, Rule 17 of Rules of Havana, etc.

According to international standards in the CPC, this rule should be extended to all cases relating to detention and arrest of juveniles and alternative measures to detention or arrest should be provide. International instruments have provided the procedural solution in favor of the application of freedom deprivation as a last resort, where is worth mentioning the increase of the self-determination right of the police and prosecution in order to avoid the formal procedures<sup>29</sup>. For this purpose it is suggested the creation of community programs such as temporary supervision and protection, restitution and compensation of victims<sup>30</sup>. In the new legislative changes priority should be given to provisions that provide the possibility of treating juveniles at their dwelling place or other alternative measures from the restriction of freedom.

These legal interventions are necessary considering that the practice has yet identified problems with the treatment of juveniles at the time of detention and arrest. These problems relate to inadequate infrastructure facilities of detention in police stations, as well as with the treatment and respect of their rights. With all the improvements

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<sup>25</sup> Ibid, Article 49.

<sup>26</sup> Article 37/bi of Children Rights Convention provides that any deprivation of liberty must be:

- legal and not arbitrary;
- be imposed as a last resort for solutions;
- extended only for the shortest period of time as possible.

<sup>27</sup> Rule 17.1 (c) of the Beijing Rules provides that:

"Deprivation of freedom shall not be appointed until the juvenile be convicted of a serious act involving violence against another person, or repetition in the performance of other serious violations, in cases when there is no other suitable reaction"

<sup>28</sup> United Nations Rules for the protection of juveniles deprived of liberty, rule 2 and rule 17.

<sup>29</sup> Beijing Rules, rule 11.3.

<sup>30</sup> Ibid, rule 11.4.

from year to year, concerns regarding the treatment of the detainees at police stations are identified by the Ombudsman's reports<sup>31</sup>.

A particular importance in the phase of freedom deprivation takes the demand of international standards regarding the treatment of minors by specialized structures. The Beijing Rules lay down an obligation that the police structures that deal with minors should be instructed and trained in particular. For this purpose in larger cities special police forces should be formed<sup>32</sup>. Committee on the Rights of the Child considers as a priority issue the need to train police officers in order to ensure that children be treated carefully and their rights are respected, and parents be informed immediately after arrest and the guarantee of legal assistance<sup>33</sup>.

In the framework of the requests of State Police Strategy<sup>34</sup>, one of the priorities is the extension of special structures for treating juvenile at all levels of police and increase the professional level of police officers. Actually since 2008 in the new structure of the State Police is created a new sector, that of protection of minors and domestic violence. In the General Police Directorate this sector is an integral part of the Department of investigation and prevention of crimes. Such coordination structures are set up even in country's districts. These structures deal with the coordination and monitoring of work of local government structures engaged in the investigation and prevention of crime.

However, the priority of treatment of juveniles by specialized structures has not yet found adequate application in practice. Treatment of juveniles in the early stages of procedures, prohibition or accompaniment, made from structures of investigation and prevention of crime where the police forces do not always have the necessary skills and specialization on the rights of minors. In addition, in practice there were cases of non-compliance of the procedural safeguards during interrogation of juveniles after arrest or detention<sup>35</sup>.

### **3. Conditions and criteria for defining security measures**

The assignment of security measures is one of the most important moments of juvenile criminal proceedings. Security measures are classified into coercive measures

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<sup>31</sup> Report on the activities of the Ombudsman, 1 January-31 December 2009, pg.50 and pg.199-201. (Ombudsman's official website, [www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al)). The report identifies the violation of legal regulations concerning the police escort and interrogation of juveniles, provided for in Law no. 9749, dated. 04.06.2007 "State Police" and the CCP.

<sup>32</sup> Beijing Rules, rule 14.

<sup>33</sup> Comity of the rights of the children report, CRC/S/GC/10, item, 152(b)(ii).

<sup>34</sup> Strategy for the State Police for the 2007-2013 sanctions that:

"Children, as a category delicate and very sensitive society, have often been victims of and involved in criminal activities, for the protection and treatment is and remains a priority in police activity." For more details see the State Police Strategy 2007-2013, pg. 40. (official website of the State Police [www.asp.gov.al](http://www.asp.gov.al)).

<sup>35</sup> Albanian Helsinki Committee, Respect for human rights in places of detention, (2007), Pegi, Tirana, pg. 36.

and preventive measures<sup>36</sup>. In setting the security measures the court should consider the general terms and conditions provided by articles 228 and 229 of the CPC.

The provisions of the CPC that provide conditions for assignment of security measures are in accordance with the constitutional regulation contemplated in paragraph c of section 27 under which a person's freedom may be limited when:

*“There is reasonable doubt of having committed a criminal offense or to prevent the commission of the offense or his escape after its commission.”* Reasonable suspicion means: *“A conviction arising from the evidence obtained and reviewed in accordance with the requirements of the law which in their unity show that the offense has occurred and it was committed by the accused”*<sup>37</sup>.

According to this provision, security measures can be imposed<sup>38</sup>:

- a) when there are important reasons to take or endanger the authenticity of evidence;
- b) when the offender has escape or exist the risk to escape;
- c) When under special circumstances or the due to the defendant's personality, it is likely that he will commit serious crimes or the same type of crime under which it is accused.

These conditions provided in section 228 of the CPC, are general terms applicable to all persons, including juveniles. Regarding the criteria for determining the security measures the court should consider:

- a) the appropriateness of each of them with the level of security needs;
- b) applying the measure in relation to the importance of fact and sanction prescribed for the offense.

At the same time should be taken into consideration the continuity, repetition and mitigating and aggravating circumstances that the Criminal Code provides.

Even these criteria are also applicable to all classes of offenders adults and juveniles. The only specific criteria in determining the security measures for juveniles, *is the need to not interrupt the educational process*<sup>39</sup>.

In the case of minors, the court in accordance with the terms and conditions, may appoint one of the coercive measures provided in section 232 of the CPC as follows:

- a) *ban on moving overseas;*
- b) *the obligation to report periodically to the police;*

<sup>36</sup> CPC, article 227.

<sup>37</sup> Commentary of the Code of Criminal Procedure, the work cited, p. 315.

<sup>38</sup> CPC, article 229/2.

<sup>39</sup> CPC, article 229/3.

- c) *the obligation to remain within a certain geographic area;*
- d) *the prohibition and obligation to stay in place;*
- e) *deposit of a caution ;*
- f) *house arrest;*
- g) *pre trial detention ;*
- h) *the obligation to be admitted to a psychiatric hospital.*

Regarding preventive measures, as provided by Section 240 of CPC due to their special nature, they require a certain age that is necessary to exercise public functions, professional or business. Consequently these measures can not be applied to juveniles.

For this reason, in case of juveniles, will be of great interest to focus on the problematic issues related to the application of coercive measures, in particular the measure of pre-trial detention.

### **3.1.a The application of the pre-trial detention measure as a last resort**

International instruments suggest the application of this measure as a last resort in cases of juveniles and the need to give priority to alternative measures<sup>40</sup>. Considering its importance, procedural law has sanctioned specific criteria for the application of this measure. CPC has sanctioned the principle that the pre-trial detention measure as the most severe measure should be applied as a last resort, *only when every other measure is inappropriate due to the high risk of crime and the offender*<sup>41</sup>. Simultaneously for certain groups such as pregnant women or nursing mothers, persons in serious health condition or who have attained the age of 70 years, or drugged or alcoholic people who are subject of therapeutic programs in special institutions, these measure can be imposed only in exceptional cases. This rule does not apply for juveniles.

The only special requirement of the implementation of this measure to juvenile, *is that it can not be determined for juveniles accused of a misdemeanour*<sup>42</sup>.

The above criterion, the non application of pre-trial detention for juveniles only in cases of a misdemeanour in fact is insufficient. In this way the legislator has not taken into account the requirements of international legal acts that stipulate the principle that pre-trial detention should be a last measure to be applied to juveniles. Such a deficiency in the CPC is also evidenced by the UNICEF experts under the projects of reforming the justice system for juveniles<sup>43</sup>.

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<sup>40</sup> This principle is now a universal principle sanctioned in almost all instruments on juvenile justice as a Minimum standard rules of the United Nations in connection with the administration of juvenile justice, Minimum standard rules of the United Nations with respect to measures non-arrest, the Council Resolutions on human rights, such as the Resolution on the rights of the Child, etc.

<sup>41</sup> CCP, article 230 /1.

<sup>42</sup> Ibid, Article 230 /4.

<sup>43</sup> O, Donnell.D, Assessment Achievements of Juvenile justice reform in Albania, (2009), UNICEF, Tirana, pg 9.

Meanwhile the CPC has not provided specific length of time of this measure for juveniles. The maximum duration of pre-trial detention applies equally to juveniles and adults. This means that on juveniles can be applied even the maximum term provided for in the CPC which is up to 3-years<sup>44</sup>.

Considering the possibilities of extending the term in cases provided in this code<sup>45</sup>, this legal arrangement does not comply with the requirement that the deprivation of freedom should be the last resort and for the shortest period of time. Application of these terms does not comply with the recommendations of the Committee on the Children Rights<sup>46</sup> or other legal juvenile justice acts<sup>47</sup> which suggests that these term can not be longer than 6 months. Lack of provisions that state specific time terms and strict criteria of pre-trial detention measure in cases related to juveniles is a deficiency of CPC, considering the frequent application of this measure in practice.

Despite the legal determination that this pre-trial measure should be used when all other measures are inadequate, in the absence of specific criteria, this measure has been applied frequently to the juveniles.

Also, court decisions have not always been reasonable in terms of applying this measure in cases of juveniles. These shortcoming is evident in several cases of the Supreme Court, which in a majority of cases has changed the court decisions regarding the pre-trial detention measure at juvenile offenders. Essential arguments of Supreme Court decisions are based on the fact that the district court did not properly evaluate the criteria for determining this security measure and did not take into account the need for uninterrupted educational process for juveniles.

Thus, in decision 273, dated 09.08.1999 the Criminal Chamber of Supreme Court decided to change the decision for setting the pre-trial detention measures for a juvenile, due to the fact that the district court had not evaluated right the criteria determining the "reasonable doubt" and did not take into account the uninterrupted educational process<sup>48</sup>.

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<sup>44</sup> In relation to the total length of pre-trial detention see CPC, Article 263 / 6.

<sup>45</sup> Ibid, Article 263 / 4, 7,8 and Article 264.

<sup>46</sup> Children's Rights in Juvenile Justice, General Comment no. 10, CRC/S/GC/10, pg 38. See, also Assessment Achievements of Juvenile justice reform in Albania, work cited, p. 33

<sup>47</sup> Recommendation no. R (2003) 20 of the Committee of Ministers "With regard to new ways of dealing with criminality of juveniles and the role of juvenile justice", item 16.

<sup>48</sup> Criminal College in this decision, inter alia, stated:

"In setting the decision, the court has no right evaluated the criteria for determining a security measure, provided by Article 229 of the Criminal Procedure Code. In conditions when the offense for which the accused is charged provides for the punishment of a fine, when the materials submitted by the prosecutor have not been questioned of continuity or repetition, in the commission of such acts, or actions in aggravating circumstances, this College considering also the need for the continuity of the educational process, decides that the measure issued against him should be changed".

A similar decision 00-2008-36 was taken on 05.03.2008 based on the arguments of non taking in consideration by the district court of the conditions for setting the security measures <sup>49</sup>.

Also in decision no.51, dated 25.02.2009, the Criminal Chamber decided to amend the security measure of pre-trial detention, based on criteria of uninterrupted educational process<sup>50</sup>. Similar attitudes can be found in a number of other decisions of this organ such as the decision nr.193, dated 19.03.2001, the decision nr.528, dated 05.10.2001, the decision nr.120, dated 18.04.2000, decision no.161, dated 04.03.2002, decision no.13 dated 06.02.2003.

Court practices mentioned above was an overview of some of the most common errors that are encountered in the districts court decisions regarding the implementation of conditions and criteria determining the security measures, and specially the pre-trial detention as the most severe measure at juveniles and other procedural provisions relating to them.

This problem is also reflected in studies conducted in this area where it was found the frequent use of pre-trial detention measure, in some cases without justification of the degree of social dangerousness of the crime and author.

More details about this phenomenon can be found in studies regarding decisions of first instance courts related juvenile offenders when it is concluded that the security measure used more often by the courts has been the pre-trial detention. This measure is also applied when the dangerousness of the juvenile and the offense does not justify such a decision<sup>51</sup>. Also, compared with the offence committed by juveniles, detention periods has been long<sup>52</sup>. The same study found that 40% were detained before trial<sup>53</sup>.

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<sup>49</sup> In this decision, this court has expressed the need to respect the conditions for setting the security measures and the uninterrupted education process as follows:

"The existence of reasonable doubt based on evidence is an essential element, but not sufficient in determining a personal security measure. Referring to the contents of the article 228 / 3 of the CCP, it is obligatory for the court to argue the existence of any of the conditions covered by this provision. In their decision the Court of First Instance and the Court of Appeal, only mentioned the conditions provided in Article 228 and 229, without judicially analyzing this conditions. Both Courts has failed to prove the existence of a significant risk that endanger the authenticity of evidence, (letter "a" of Article 283 / 3) whether the defendant has escape or there is a risk to escape, (letter "b" of Article 283 / 3), or proof the circumstances related to the personality of the offender that make it likely that he will commit other crimes. (letter "c" of Article 283 / 3). The Courts have also not taken into account the fact that in circumstances where the offender is a juvenile, to the extent possible, security measures should not interrupt the educational process.

<sup>50</sup> Among other things this court argued that:

"It is concluded that the offender is a third year student at the high school" A. Z Çajupi " in Tirana and under article 229 / 2 of the CPC, both courts must keep in mind the demand of the continuity of the educational process. On the other hand, in his decision regarding the type of personal security measure for the offender, the court should have consider the fact that it is a minor, drug user, and family circumstances ".

<sup>51</sup> Albanian Helsinki Comity, The criminal justice system for juveniles in Albania, (2005), Pegi, Tirana, pg. 40.

<sup>52</sup> In about 38 trials these time periods have been extended by 1-5 months, in a few decisions from 6-10 months, and in some cases more than 1 year. For more see, Albanian Helsinki Committee, Observance of the Rights of Juvenile Offenders in Criminal Proceedings, (2007), Pegi, Tirana, pg. 17-18.

<sup>53</sup> Ibid, pg.19

Consequently the courts do not in any case take into consideration the standard of deprivation of liberty as a last resort. Simultaneously with all the positive changes made in the institutional infrastructure, as a result of the transfer of the detention system, from the Ministry of Interior to the Ministry of Justice still there are problems in terms of implementing the pre-trial detention measure<sup>54</sup>. The transfer of the pre-trial detention system from the Police Stations in facilities administered by the Prisons General Directorate was a step forward in terms of management of the pre-trial detention regime. Pre-trial detention institutions are currently placed near IECD (Institutions of execution of criminal decisions). Despite positive changes, the primary requirement in this regard remains the creation of detention centre specifically for the juveniles. The only special institution for juveniles is Kavaja institution, an institution that is categorized as a juvenile special institute with a prison section and pre-trial detention section<sup>55</sup>. Actually this institution is mainly used as juvenile prison, so the creation of this institution has not yet given solution to the treatment of juveniles in all stages of criminal procedures.

Currently, the juveniles offender are kept in separate rooms or sections at the pre-trial-detention sections placed at the IECD that do not fully comply with the standards and the needs of their treatment and education.

The implementation of all recommendations, regulations and other international acts for the pre-trial detention and prison facilities is part of government policy objectives and other obligations arising from the implementation of the Stabilization and Association Agreement<sup>56</sup>.

For this purpose necessary legal changes should be made in order to determine appropriate alternative measures of freedom deprivation of liberty, and mainly of pre-trial detention measure to be applied in cases of juveniles. In this context changes also should be made to CPC regarding specific time periods of pre-trial detention for juveniles and specific criteria for applying this measure. In cases related to juveniles, an investigation process without delay is a necessity. This requirement stems from international acts, which state that in cases when a juvenile is detained the criminal process should be as short as possible in order to make sure a short detention period<sup>57</sup>.

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<sup>54</sup> This change was sanctioned in Decision no. 327, dated 15.05.2003 "On the transfer of the detention system under the Ministry of Justice."

<sup>55</sup> Order of the Minister of Justice no. 4057, dated 05.05.2010, for an amendment to the Order no. 329, dated 15.01.2009 "On the categorization of institutions for the execution of court decisions".

<sup>56</sup> Decision No. 463, dated 05.07.2006, cited, section 1.2.1.1, p. 30

<sup>57</sup> United Nations Rules for the protection of juveniles deprived of liberty, rule 17.

## Conclusions

The status of juvenile imposes the need for special treatment in accordance with the psycho-physical peculiarities of the juvenile and his educational needs. International standards recurrently refer to the need for specific treatment of this category which should be reflected also in the penal legislation. In regard to this, the sanctioning of standards on penal prosecution of juveniles and of the procedural rules on freedom deprivation, takes a significant role.

After the democratic developments, the entire domestic legislation went through a deep reform, part of which was the approximation to the international standards. As a result of this reform, some of the standards in the treatment of juveniles have been reflected in the procedural penal legislation. Despite progressive changes, the legal framework needs further amendments and improvements in terms of sanctioning specific rules for the penal prosecution of juveniles and the rights provided in international legal acts.

In this context a positive step would be a separate chapter for the provisions related to the treatment of juveniles, which will also open the way to the preparation of a special procedural code of criminal justice for juveniles.

One of the shortcomings of the actual code is that no specific arrangements are sanctioned regarding the freedom deprivation of juveniles. In contrast, international legal acts on the rights of children, recommend that in accordance with the best interest of the child, priority should be given to the special treatment at all stages of the proceedings from the moment of detention of juveniles until the proper measure is taken.

Also in the CPC should be increased the number of principles of criminal proceedings related to minors. In this regard, the additions and changes that CPC will undergo should take into consideration the special coverage of the principles of criminal proceedings for juveniles<sup>58</sup>.

Primarily should be explicitly sanctioned the principle of the best interest of the minor as one of the most important principles of criminal proceedings in juvenile issues. In order to implement this principle, would be appropriate to sanction the creation of

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<sup>58</sup> In the legal package of juvenile justice, designed by the working group of the Ministry of Justice was proposed an amendment to Article 2 of the CCP that would predict some important principles of criminal proceedings for juveniles as follows:

1. Juvenile criminal proceedings should be aimed at developing the personality and moral responsibility as a citizen of the juvenile.
2. Juveniles are entitled to a specialized support and assistance to enable the growth of their role in the community.
3. During criminal proceedings interests of minors should be protected.
4. Placement of juveniles in the institution for the purposes of criminal decisions or security measures should be done only in the absence of other appropriate measures. In this case, they should receive educational assistance, psychological and medical if necessary, in order to facilitate their integration into society.

specialized structures for minors in all stages of proceedings, including a specialized counsel. This will serve to increase the professional skills and opportunities in understanding and applying correctly the criminal procedural legislation for juveniles.

In order to provide correct treatment to juveniles and necessary assistance in the early stages of contact with criminal justice, the demand for qualified personnel should be extended to all police structures.

The experience of countries such as Italy, or France where this requirement is expressly provided for in procedural criminal law can be a good example<sup>59</sup>. Another good measure should be the recruitment of professional staff that will be in direct contact with the juveniles, who apart from higher education diploma should have other criteria such as specialization in the field of juvenile justice or experience in this field. Also, the creation of special sections for minors should be accompanied by a complement of procedural provisions that provide the development of juvenile justice process. Finally referring the experience of other advanced countries, the judicial body composition should include not only judges but also professionals and other specialists such as psychologists or social workers.

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<sup>59</sup> Article 5 of the CPC in Italy on criminal proceedings to juvenile defendants states: "In every prosecutor office located near the juvenile court should be establish a specialized department of the judicial police, which will be composed of personnel with the preparation on this particular area." Meanwhile in France is set up and works the Juvenile Prosecutor office, which consists of prosecutors charged with criminal proceedings in cases of juveniles.

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8. Order of the Minister of Justice no. 4057, dated 05.05.2010, For an amendment to the Order no. 329, dated 15.01.2009 "On the categorization of institutions for the execution of court decisions".
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## 4. International Acts

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4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990;
5. Standard Minimum Rules of the United Nations concerning the non-arrest measures (Tokyo Rules) 1990;
6. United Nations Guidelines on Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990;
7. Resolution 7 / 29 of the Council of Human Rights on "Child Rights"

## **5. Judicial practice**

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