The justice system for the juveniles
Juveniles adjudicated for the criminal act of “theft” in Albania

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Abstract

The juvenile justice system in Albania has improved from year to year but slow movements are done in improving the whole system for the implementation of the guarantees prescribed in international acts and Albanian legislation.

This article, is aiming to offer some opinions related to the justice system for the juveniles based on the statistical and qualitative data regarding the criminal policy that is used and the precautionary measures given through court decisions.

This article, aims in identifying the issues and provide recommendations, with the main goal of improvement of the legislation and its best implementation in practice by the criminal justice instances, particularly by the prosecution and the court. Through the conclusions derived by this article is intended to exert the right pressure towards state authorities, to improve and better orient criminal policy and to increase the use of alternatives to the precautionary measure of “jail arrest” and imprisonment.

Keywords: Juveniles, Juvenile justice system, theft, the criminal code, criminal policy.

Introduction

Does the actual Albania legal system respect the principle of the highest interest of a juvenile especially when he or she is in contact with the judicial system? Absolutely not!

It has passed more than a decade since in Albania it was evaluated the need for a Specific code for juveniles. The judicial reform that is in discussion in Albania has identified the need for drafting the Juvenile Cod, which is in process.

In many European countries there are many alternatives and fast solutions and rehabilitation programs for the juveniles, in Albania the juveniles are kept in pre-detention sites for years until their legal process has finished. Such processes do not serve the rehabilitation of juveniles, or their integration in the society.

The provisions of the Criminal Code and Criminal Procedure Code for juveniles

The juvenile offenders are a vulnerable group today, not only in terms of age, but also because of the failure to properly legal facilities and the correct implementation of international standards. What strikes most is that minors are a vulnerable group, not only in the early stage of precautionary measures, but also during the phase of the criminal justice process.

The offense of “Theft”, provided by Article 134 of the Criminal Code, affects the juridical relationship defined by the state to ensure the integrity of the property and
items of citizens, under special protection of the criminal law against criminal actions of citizens. “Theft” affects in particular the relationship established between the owner and goods stolen. The offense of “Theft” is recognized by law as a material mischief, which implies that it is considered committed when there is the consequence and in this case there is the event of striping of the injured (the owner or the possessor) permanently of the possession of the property that was subject of theft and/or the possession freely of the property subjected to materialized theft.

Article 134 of the Criminal Code provides for the offense of simple theft, in collaboration or repeatedly, and theft that results in serious consequences. With the law no. 8733, dated 24.01.2001 on the offense of theft, there was added also a paragraph stating “….The same offense, if committed in collusion with others, or repeatedly, or causes serious consequences, is punished by five to fifteen years of imprisonment…”. The offense of theft has changed with the law no. 9275 dated 16.09.2004 where it is provided that …. Property theft is punished with imprisonment of three months up to three years. The same crime, when committed in collaboration or more than once, is punished with an imprisonment term of six months to five years. The same crime, when it has brought about serious consequences, is punished with imprisonment of four to ten years …”.

Also, the first paragraph, namely of law no. 134/1 of 2012 for this offense has been amended making milder the penal policy pursued against these criminal offenses. More precisely, the amendment pertain the insertion of fines as an alternative to other punitive measures on cases of theft.

In the Criminal Code in force, the provisions of the criminal act of theft states the following:1

- Article 134/1 – Theft of property is punishable by a fine or up to three years of imprisonment;
- Article 134/2 – The same offense, if committed in collusion with others, or repeatedly, is punished by six months to five years of imprisonment;
- Article 134/3 – The same offense, if it causes serious consequences, is punished by four to ten years of imprisonment.

The offense of theft is lately turning into a serious concern for our society, as it has become wide spread, especially among the juveniles. One of the causes that contribute to the overpopulation in Albanian Penitentiary Institutions (including prisons and detentions) is related to the high number of prisoners declared guilty of committing this offense.

Based on the Code of Criminal Procedure, article 227 is stipulated the classification of personal precautionary measures into coercive measures and interdiction measures. Precautionary measures stipulated in article 228 of Criminal Procedure Code (CPC), provide that no one may be subjected to personal precautionary measures unless he is suspected of a reasonable suspect, grounded on evidence.

Meanwhile in article 229 of CPC it is stipulated that when imposing precautionary measures, the court shall consider that any of them is proper and required by the circumstances with an eye on the degree of precautionary measures that need to be taken.

Considering the provisions of the law, it would not suffice to state before the court that the precautionary measure of jail arrest is being taken against a person because

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1 The Criminal Code, approved by law no. 7895 date 27 January 1995 (consolidated version).
he/she can potentially damage the evidences by being free at large. The reasoning should rather be real and factual in terms of allegations of the prosecutor. The existence of an important cause that puts at risk the obtaining or genuineness of evidence can legitimate the measure of temporary jail arrest, or otherwise known as term detention. The Criminal Chamber of the Supreme Court, in decision No. 457, dated 20.07.2011 has repealed the court decision of the judicial district of Berat and ordered the immediate release of the detainee S. S. on the account that the court erred when it decided to order his 20-day term arrest, by overlooking the requirements of Section 245 of CPC. According to this article, letter (ç) of it stipulates of the jail arrest the determination of the duration of the measure when this is ordered to secure the acquiring or the genuineness of the evidence.

The district courts and courts of appeal despite the clear stipulation both in Code of Criminal Procedure and also in the practice of the Supreme Court, still differ in their practices.

Based on the law on “Electronic surveillance”, which has been entered into force in April 1, 2012, and that started functioning in March 2013, the implementing institution of the electronic surveillance is the Probation Service. The court or the prosecution seek the application of electronic supervision for juveniles and adults who pose low social risk and of persons charged with a criminal offense punishable to a maximum of no more than 5 years. The person must consent to be put on electronic surveillance except in cases provided by law. Important actors in this process are the courts, the prosecutor offices and the Probation Service.

Data on Tirana Court’ decision for the criminal act of theft for the juveniles

Based on the data of the Annual Statistics of Ministry of Justice for 2014\(^2\), it is seen that the highest number of the juvenile’s offenders is in 2012, in total 232 juveniles conducted. Meanwhile in 2013 the number is 199 and in 2014 is 201 juveniles.

Based on a study conducted for the Tirana district court’ decisions for juvenile offenders related to the article 134 of Criminal Code, the analysis of the decisions scrutinized, shows that by assessing case by case the nature and type of stolen goods as well as those ones attempted to be stolen, the reason why these goods were stolen and the places in which such criminal offences more often take place, it resulted that the typical categorization is as follows:

(a) Theft of materials in order to sell them for scrap processing. Items stolen for this purpose would include equipments installed in public places or under the management of state institutions and small or large private businesses. The typical materials stolen are telephone network cables, electric power cables, metering devices of electricity, iron construction materials, generators, transformers, electromotor, duraluminum doors and windows, etc.

(b) Theft of bicycles, vehicles and motorcycles of all sorts, or specific parts of these vehicles such as stereos, battery, wheels, side mirrors etc.

(c) Theft of valuable items such as cash, credit cards, wallets etc. in urban transportation lines (pick pocketing and theft of items from purses or bags of the passengers), on

the streets, in cars, in various businesses, etc.

(d) Thefts of laptop computers, television sets and other valuable items in Educational Institutions like Public Schools and Kindergartens, in private residences and apartments of citizens, using special tools or keys etc. for opening even metal vested front doors.

Evidences from court decisions show that from the total number of defendants, 245 were juveniles, of which, 3 are females. In total, 74 juveniles were adjudicated for the criminal offense prescribed by article 134/1, 168 juveniles were adjudicated for the criminal offense under the article 134/2, 3 juveniles were adjudicated under article 134/3.

The number of the young adults convicted for the theft criminal act is 157, 57 of them are sentenced for the criminal offense under article 134/1 and 99 defendants from this category were adjudicated for the criminal offense under article 134/2.

From the study of all court decisions, it was found that 450 defendants have not been convicted before, while the rest of 237 have a criminal record. It was found that in most cases, the persons with criminal precedents were convicted for the same type of criminal offense.

Meanwhile 18 defendants have been rehabilitated under article 69 of the Criminal Code. Of the total number of 245 juvenile case decisions scrutinized, it was found that only 67 of them had a previous criminal record. By examining the decisions, it was found that juveniles charged with the offense of mere theft (134/1) have had a previous criminal record on 32% of the instance, and have fallen under article 134/2 in collaboration or more than once in 24% of the instances.

It resulted that about 20% of juvenile defendants were recidivist, convicted for the same offense other times, even within the same year. An extreme case worth mentioning is the case of a juvenile convicted five times for the same type of criminal offense, which Tirana District Court declared guilty for the sixth time.

By scrutinizing the decisions it was found that 36 juveniles’ defendant were adjudicated under the precautionary measure of jail arrest, 9 juveniles with house arrest measure, 32 juveniles with precautionary measure of compulsory to appear before the judicial police, 15 juveniles adjudicates in absentia, 68 of them without any precautionary measure.

Based on the information taken by the decisions it resulted that the information for the personal precautionary measure for more than 90 juveniles was missing.

Through scrutinizing the court decisions, comparing the precautionary measure with which the persons are adjudicated and the sentence that they received, it resulted that the type of precautionary measure affects both the type and the length of the sentence given by the court. This issue will be addressed in more depth in the relevant section where the relevant statistics will be analyzed.

In an overall assessment, it is ascertained that for those defendants investigated or adjudicated under the precautionary measure “jail arrest” or “home arrest”, the court is liable to give imprisonment for the defendant and not an alternative sentence. This is has even another hidden reason, which does it mean that the court give the same amount of imprisonment as the amount of the precautionary measure in pre-detention.

Tirana District Court in its decisions specifies that the average trial length is calculated
based on the data from the previous year, and in case there is no data in the previous year for this type of case, then the average is calculated by the date of the current year. It is noticed that regardless of the fact that Tirana District Court determines the average length of trial of criminal cases precisely according to the actual year, it was found that in one instance, the average length of a trial for Article 134/2 was 121 days whereas in almost throughout 2012 the average length of trial for this provision, was 131 days. In a few other cases, this average ranges from 236 to 265 days.

So, there is no clear definition of the average length and how that average is calculated. On the other hand, these are all cases decided on 2012, but not all of them were also processed totally during 2012 but also during 2011. This might be also one of the reasons that the average length of a trial varies from year to year. It is inexcusable to have different lengths of the same process in cases of same specifics.

Based on the court’s decisions, it resulted that in 23 cases the trial process for the juvenile defendants adjudicated under the article 134/1, has varied from 2 days up to 122 days. For 14 juveniles the trial length varied from 122 days to 6 months (180 days) and for 15 juveniles varied from 6 months to 1 year. It resulted only in 4 cases that the trial length lasts less than 1 month.

What is surprising in these decisions is resulted that in 3 cases the trial process for the criminal act of “theft” has last from 450 days to 552 days.

Some “example” cases for illustration

The case of the first minor
Juvenile X.Y, not previously convicted, who was adjudicated for the criminal act of theft foreseen by the article 134/1. His trial process lasted 450 days, the court found guilty and sentences with 3 months imprisonment. He has had no personal remand order but the long period in which his trial was conducted was a violation of article 6 of the European Convention of HR and the articles 37 and 40 of the Convention of children rights. In the end, the sentence was suspended by the application of Article 59 of the Criminal Code.

The case of second minor
A juvenile Y.Z, not previously convicted, was adjudicated for the theft of water pomp, foreseen by the article 134/1. His trial process lasted 526 days and in the end the juvenile was sentenced with 1 month of imprisonment for the theft of water pomp, likely costs 1,650 All. It resulted that for most of the time he was defended by a lawyer. Around 11 hearing sessions were postponed due to the absence of experts/witnesses/judges.

The case of third minor
A juvenile Z.G not previously convicted, was adjudicated for the theft of car stereo, and foreseen by the article 134/1. His trial lasted 552 days and the juvenile was sentenced with 6 months imprisonment. For most of the time he was defended by a lawyer. The defendant was convicted for stealing a car stereo.

The case of fourth minor
Also, in criminal case no. 688, the minor C.V has been accused for a criminal offense provided by Article 134/1 of the Criminal Code, even though it was supposed to be a summary trial, lasted 265 days, when the average length of trial is 122. The calendar of the case shows that it was postponed 9 times due to the absence of the prosecutor, of the attorney and of judges.
In the same situation is presenting even the duration of the court sessions for the
criminal acts under the article 134/2. For 20 juveniles, the trial lasted from 130 – 180
days, for 32 juveniles lasted from 6 months to 1 year and in 5 cases has been lasted
from 1 to two years.

According to Article 400 of CCP, it is stipulated that ...When the defendant is arrested in
the commission, the prosecutor may present before the court, within twenty-four hours, the
request for the evaluation of the arrest and the simultaneous trial. 2. If the arrest is considered
as being right and there is no need for other investigations, it is proceeded immediately in the
trial, whereas when it is not found correct, the acts are returned to the prosecutor. But even in
the last case, when the defendant and the prosecutor give the consent, the court proceeds with
the direct trial.”

The relatively long length of proceedings, especially in those criminal cases where the
defendants are juveniles, harm juvenile’s interests and the process of administering
justice. It is worth noting that by the Decree of the President of the Republic, no. 5351,
dt. 11.06.2007, Special Sections are created for trialing of juveniles within the 6 judicial
districts, respectively in Tirana, Durrës, Vlora, Shkodra, Gjirokastra and Korça. Also,
by the order of the General Prosecutor General, no.163, dt.01.10.2007 is decided the
establishment and appointment of the organizational structure, for well-functioning
and competences of juvenile sections in the above mentioned Prosecution Offices
of the Judicial Districts. The order of Prosecutor General stipulates that in Juvenile
Sections are appointed the most experienced prosecutors and lawyers in juvenile
cases, those that have participated in qualification trainings related to ensuring
constitutional and legal rights for juveniles during investigation and formulation of
charges. With that in mind, the non reasonable long length and procrastination of
litigations of juveniles, is considered too blatant, especially in cases where the ones
causing the unreasonable delays are the prosecutors of the case themselves.

It is worth noting also the positive examples as “best practices”, regardless the
respect of the due legal process. Thus, in the criminal case no. 757, dt.10.01.2012,
the prosecution at Tirana District Court has made a request for the giving of the
precautionary measure of jail arrest and direct trial for this defendant, charging
him with the criminal offense of theft of property provided for by Article 134 pg.1
of the Criminal Code. In its request, the prosecution has asked that the defendant
be adjudicated with a direct trial under the provisions of Article 400 of the Code
of Criminal Procedures, which provides that: 1. When the defendant is arrested in the
commission, the prosecutor may present before the court, within twenty-four hours, the
request for the evaluation of the arrest and the simultaneous trial. 2. If the arrest is considered
as being right and there is no need for other investigations, it is proceeded immediately in the
trial, whereas when it is not found correct, the acts are returned to the prosecutor. But even in
the last case, when the defendant and the prosecutor give the consent, the court proceeds with
the direct trial.”

In this criminal case, the Court found that the facts were clear and after evaluation of
the arrest, it proceeded with the direct trial. The trial of this case lasted only two days
and only one hearing session was held.

The sentence given to an offender is one of the most important institutes of the criminal
law. It follows not only general principles of the criminal law, but it takes into account
also some special principles which form the bases for this institute. Such principles
are the one of legality, the principle of individualization of sentencing, the principle
of utility or necessity of sentencing as well as the principle of appropriateness of the sentence.

What was a surprise studying these court decisions, it resulted that only one of juveniles was found not guilty, one was sentenced with a fine, while 243 imprisoned. The percentage of those that were found not guilty is only 0.4% whereas the other 99.6 % was found guilty. It is noted that prison sentence is the most applied for the criminal offense of theft provided by Article 134 of the Criminal Code. In some cases, this type of sentence is suspended under Article 59 and 63 of the Criminal Code that provide for alternatives to imprisonment (the statistical data will be shown in the relevant section).

By the reasoning of the court in the decisions that were scrutinized, it was found that the criminal offense of theft is a crime one that poses social threats. The court finds that the theft of property has a social perception of posing a relatively high risk, as it goes contrary to the interests of natural or legal persons in peacefully enjoying the right of ownership over their property, as the most real right of all human rights, entitled to judicial protection in international legal acts.

In criminal law, the sentence given against defendants is not determined in a precise way, providing thus the court with plenty of room to choose the type of sentence it will impose. The court considers also the application of Article 51 of the Criminal Code, according to which “For minors, who at the time they committed the criminal act were under 18 years old, the imprisonment sentence may not exceed half of the term of punishment provided for by law for the criminal act committed.”

In the most cases, the juveniles were given a minimal or an average sentence based on the provisions of the Criminal Code. In some excessive cases, they were given the maximum sentence. This is noted in those cases when the juveniles have been adjudicated in absentia and mainly represented by a lawyer.

Article 35/1 of the Code of Criminal Procedure, states that: “The juvenile defendant shall be provided legal and psychological assistance at any stage and instance of the proceedings”.

In the verdicts scrutinized it is noted that the expert’s valuation of the items stolen, in order to determine their value, is not always performed. The determining of the value of the property is important not only in deciding the precautionary measure and sentence, but the same goes also with regard to the legal qualification of the criminal offense. Thus, the United Chambers of the Supreme Court, by decision No.5, dated 11.11.2003, determines the guiding criteria of estimating the value of the stolen items, classifying it under Article134/2 of the CC, cases when the amount of money stolen or the value of stolen items exceeds 1,000,000 (one million) AL, when they are stolen from individuals, and in case when the amount of money stolen exceeds 2,000,000 (two million) AL, when the items were stolen from legal persons or state property ...”;

In the examined verdicts, the Tirana District Court does not always refer to the unifying decision of the Supreme Court, and the technical expertise is not always carried out on time. Consequently this has led to the establishment of different practices regarding the legal classification of the offense under Section 134 of the Criminal Code, and in determining the type and extent of the sentence.

3 The Procedural Criminal Code, approved by law no 7905, date 21.03.1995 (consolidated version).
The sentences with imprisonment do not serve the effectiveness of a preventive and rehabilitative criminal policy.

Conclusions

In order to make juvenile justice more effective and to act in the best interests of the juveniles would be better to build a system alternative – sanction – oriented rather than imprisonment – sentence – oriented\(^4\).

Regarding the judicial system, despite the establishment of the Special section for the juveniles, no changes have been made in criminal policy. The court should take measures to make alternative juvenile sentences applicable in order to guarantee their reintegration and reeducation.

Since the imprisonment precautionary measure is more used by the court, the law on criminal procedure shall set a minimum age limit for juvenile offenders upon whom the courts cannot impose the security measures of imprisonment.

Due to the data on the length of trials, it is crucial that the prosecution and special section of the courts undertake speedy investigations and processes and execute special court orders without delay in order to reduce the time that juveniles are held in the prisons.

The Code for the minors as the part of the law package of the Judicial Reform undertaken by the Parliament during these two last years, is a must and should be approved as soon as possible. The Code for the minors will lead to another range of professionalism of judges, prosecutor, attorneys, psychologists, probation services officers, and all actors who will be useful for the rehabilitation and reintegration of the minors.

References

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\(^4\) Albanian Helsinki Committee, Juvenile Justice System in Albania, 2005, Tirana.