

# CRIMINAL SANCTIONS FOR MINORS ACCORDING TO CRIMINAL LEGISLATION

**Dr. JETMIRE ZEQRIRI**

Professor, Email: jetmirezeqiri16@gmail.com

## Abstract

In the Criminal Code, apart from the criminal penalties, there are also prescribed educational measures, which have a somewhat complex nature, since although they are distinct from the penal punishment, they remain state coercive measures. This paper will address some key issues regarding educational measures as their main characteristics, persons to whom they can apply, their types accompanied by a comparative look, issues related to the implementation of the educational measure against minors, these also in the framework of international legal instruments that define basic criminal justice standards for juveniles, as well as illustrated on a case by case basis. Through the analysis of the aforementioned issues, it is not only the highlighting of the special nature of the educational measures under the criminal law and the importance of their effective implementation, but also the issuance of some conclusions and recommendations from the legislative and institutional point of view regarding these measures punishable penalties that may be rendered by Albanian courts against children or juveniles who commit criminal offenses.

**Keywords:** Children, minors, child's highest interests, institutional education measures, special protective measures, the principle of proportionality, criminal offenses

## 1. INTRODUCTION

In the criminal legislation, some legal provisions are devoted to the treatment of children in conflict with the law, which aim to fulfill the constitutional obligation of the special protection of children by the state. However, the characteristic of the Albanian criminal legislation related to children is that the legal provisions are distributed in different codes and laws and there is no complete separate law, which includes all issues of criminal justice for children. Similarly, the provisions of the General Part of the Penal Code (KP) on children who have committed a criminal offense are distributed in its different chapters. Meanwhile, educational measures are provided in the fifth chapter, which is dedicated to criminal penalties.

## 2. MAIN CHARACTERISTICS OF EDUCATIONAL MEASURES

The only similarity between educational measures and criminal punishments consists in the fact that these, like punishments, are state coercive measures, as they have the following characteristics, among others:

- can only be given by the court to persons who have committed a criminal offense and without the consent or will of the interested parties;<sup>1</sup>
- are compulsorily implemented by the State Police, if they are not executed voluntarily; and

- limit some rights and freedoms of the child who is forcibly placed in an educational institution, which imposes a special living regime and controlled relations with the family<sup>2</sup>.

However, educational measures have some other characteristics, which distinguish them from criminal punishments, and specifically in the interpretation of Article 46 of the Criminal Code, they are presented as follows:

- 1) educational measures can be given by the court to minors who are exempt from punishment or who due to their age do not have criminal responsibility;
- 2) have an optional character for the court, since based on Article 46 of the Criminal Code, the court may grant such measures, but is not obliged to do so for any minor who is exempt from criminal liability due to age or that is exempt from punishment;
- 3) have the purpose of educating the minor and, as a consequence, preventing him or her from committing other criminal offenses in the future;
- 4) they do not have a term defined in the law, so they are granted without a term by the court;
- 5) are regularly subject to re-examination by the court, since in any case the latter, mainly, is obliged to review its decision on the educational measure after one year has passed from the date of the decision<sup>3</sup>;
- 6) the judicial decision on the educational measure is revocable at any time when the circumstances for which it was given disappear. The revocation can be done mainly by the court during the forced review of its decision after one year from its delivery or before this deadline at the request of the interested party or the educational institution;
- 7) they have no other legal consequences in the status of the minor to whom they were given, so they are not registered in the court register;
- 8) in the Criminal Code, only one kind of educational measure is foreseen, which consists in placing the minor in an educational institution.

### **3. PERSONS TO WHOM EDUCATIONAL MEASURES CAN BE APPLIED**

Based on Article 46 of the Criminal Code, educational measures can be applied to minors who:

- a) are exempt from punishment; or
- b) due to their age, they do not have criminal responsibility.

According to the Criminal Code, previous educational measures could also be applied to adults when the court deemed that the punishments were not appropriate, <sup>4</sup> because they had committed criminal offenses with little social risk and had previously shown good behavior. In order to apply educational measures to this category of persons in 1988 in the Criminal Code, several new types of educational measures were added.

As can be seen from the content of Article 46 of the Criminal Code, the same term, "minor", is used for the two main categories of persons to whom the educational measure provided for in

it can be applied. The meaning of this term, which is also used in other provisions of the Criminal Code, often including children under the age of criminal responsibility is not defined in this Code. However, in some other provisions, it is noted that after the changes of 2001, the term "minor children" is also used. Meanwhile, according to the theory of criminal law in Albanian criminal law "minor" is considered any person in the age group of 14-18 years<sup>5</sup>.

In general, in the special legislation for minors in other countries, persons at or above the minimum age for criminal responsibility up to 18 years are considered minors (juveniles), while persons under the minimum age for criminal responsibility are considered children. According to the Convention on the Rights of the Child (1989), a child means any human being under the age of 18. Regarding the definition of a child in Albania, the Committee for the Rights of the Child, after considering the initial report of Albania, in the final observations of the 38th session, has emphasized the lack of clarity regarding the status of children between the ages of 14-18 among others also in the field of justice for young people and in this context has recommended Albania to take all the necessary measures to define who is considered a child in Albania and that the existing legislation be reviewed to ensure that all children under age 18 to receive the protection they need and are entitled to under the Convention.

In this context, referring to the meaning of the term "child" according to the Convention on the Rights of the Child, as well as the meaning of the term "minor" in Albanian criminal law, persons to whom the educational measure provided for in the Criminal Code can be applied may be grouped as follows:

- a. minors who are exempt from punishment;
- b. children who, due to their age, do not have criminal responsibility.

Meanwhile, based on the CC, for educational measures, which can be applied to children under the minimum age for criminal responsibility (MMPP), the lowest age limit below which the educational measure cannot be applied has not been determined, while the upper limit high is indirectly determined by the end of puberty, i.e. at the age of 18. In many other countries in the Balkan region, such as in Slovenia, Kosovo, Montenegro, and Croatia, it is noted that the relevant criminal legislation provides that educational or correctional measures can also be applied to the category of persons aged 18-21 (young adults), although according to the conditions and limitations defined in law.

In relation to this category, the Committee of Ministers of the Council of Europe, in the Recommendation on new ways of dealing with juvenile delinquency and the role of justice for juveniles, has recommended to the Member States that among the new forms of response include the possibility to young adults under the age of 21 should also be subjected to a treatment comparable to that of minors and the application of the same interventions as those applied to minors, if the court deems that they are not mature enough and responsible for their actions theirs as other adults. Even on the basis of the Albanian Constitution, young people, just like children, have the right to a special protection from the state. Meanwhile, with the most recent changes in the CC, it is noted that positive steps have been taken towards the

recognition of this category in the CC, such as with the addition of home stay as a new alternative to imprisonment, which can also be applied "for young people, under the age of 21".

### **3.1 Application of educational measures to minors who have been exempted from punishment**

Regarding the first group of persons to whom educational measures can be given, it is noted that this measure can be given to juvenile perpetrators of criminal offenses only if they have been exempted from punishment. Based on Article 52 of the Criminal Code, the court can exempt the minor from punishment based on the low risk of the criminal offense, the concrete circumstances of its commission, as well as the minor's previous behavior. Consequently, for minors aged 14-18, the educational measure is "secondary" to criminal punishment, which remains primary for this age group. For these children, the rule is the imposition of a criminal sentence, while only as an exception and depending on the circumstances mentioned in Article 52 of the Criminal Code, the educational measure of placement in an institution can be imposed on them.

In the legislation of some other countries, it is noted that further differentiations are recognized for this age group, such as the division into young minors and adult minors, and it is expressly provided that for young minors, which usually include the age of 14-16 years, in states in which the minimum age for criminal responsibility is 14 years, only educational measures can be given, while criminal punishments can only be given starting from the age group of minors to adults, although even in this case only for some serious criminal offenses, sin is an exception to the rule of implementation of educational measures<sup>6</sup>.

### **3.2 Implementation of educational measures against children who have not reached the age of criminal responsibility**

Another feature of the educational measure provided for in the Albanian CC is that it can also be applied to children who, due to their age, do not have criminal responsibility and without any minimum age limit defined for its granting. In the Albanian CC, no such age limitation is expressly provided for the implementation of the educational measure against children under the MMPP. Based on Article 12 of the Criminal Code, the minimum age for criminal responsibility (MMPP), which varies depending on the type of criminal offense, is 14 years for any type of crime and 16 years for criminal misdemeanors. Below these minimum age limits no individual can be held criminally responsible. Pursuant to Article 40/3/a of the Convention on the Rights of the Child, which requires States Parties to designate a MMPP, children under the MMPP are "presumed incapable of violating the criminal law". Therefore, although these children may also be capable of breaking the criminal law, if they commit a criminal offense while under the MMPP, then under the irrebuttable presumption they cannot be charged and held accountable under a criminal procedure. According to Defense for Children International, the MMPP is an important indicator of the state of the juvenile justice system in a given country. Currently MMPP varies in different countries of the world, starting from very young ages like 7 years old up to 18 years old.

The Convention on the Rights of the Child itself has not defined MMPP in its article 40, but according to the Committee on the Rights of the Child a MMPP under the age of 12 will be considered not to be internationally acceptable and in this context States Parties are recommended to raise the lower limit of MMPP to 12 years as the absolute minimum age, and continue with a further increase to even higher levels, preferably 14 or 16 years. In Albania, there have been discussions about changing the MMPP, mainly for the unification of the two minimum limits by recommending the age of 16 as the MMPP for every type of criminal offense. These discussions were also held in KRL during the work on the legal package for justice for minors, reaching the conclusion that the way this age is currently defined in KP is considered to be in coherence both with the current state of child criminality and with factors of others that affect the determination of the MMPP<sup>7</sup>. According to the Albanian KP, the minimum age limits for criminal liability also serve as a basis for distinguishing "variable criminal-legal status"<sup>8</sup> of children who are perpetrators of criminal offenses under the MMPP and in the MMPP (minors), their possible treatment with educational measures, respectively, as the case may be, with educational measures for children under the MMPP or with criminal penalties and only exceptionally and as the case may be, with educational measures for minors who are exempt from punishment. Pursuant to the CC, pushing or enticing minors under the MMPP to commit a crime constitutes a separate crime. Meanwhile, based on the Family Code, if the accomplices in the criminal offense committed by the child were his parents themselves, then the latter, through the criminal decision of the sentence, lose their parental responsibility and their child risks in this way going into custody<sup>9</sup>.

#### **4. TYPES OF EDUCATIONAL MEASURES**

In the current CC, only one type of educational measure is foreseen, namely "placing the minor in an educational institution". This institutional measure, which is the only educational measure that can be applied either to minors who are exempted from punishment, or to children under the MMPP, consists in the mandatory confinement of the child in a special educational institution. A child who is forcibly placed in an educational institution has certain rights and freedoms restricted, as this special institution imposes a special living regime and controlled relations with the family<sup>10</sup>.

In the previous CC, two types of educational measures were foreseen, to which, with the changes of 1988, five more types were added that could be applied mainly to adults. The closure of an educational institution was also foreseen in the KP of 1928, but the relevant provisions clarified some necessary details regarding this measure, such as determinations regarding the types of criminal offenses for which this measure could be given, rules for revocation, its implementation, etc. Thus, it is worth noting that for minor offenders, who at the time of committing the crime (criminal offense) had not reached the age of 10 (for whom criminal prosecution was not allowed due to their age), the court, at the request of the prosecutor, may to order confinement in an educational and improvement institute, when such existed, only if the child had committed an offense punishable by "death, life imprisonment with rigorous imprisonment or imprisonment of not less than one year". The confinement in this institution of education and improvement continues until the guilty reaches the age of 20, but at any time

the court had the right to revoke the decision of confinement in this institution or to order that the child be released to the parents or to the one whom the law entrusts with the care of education his.

Regarding the second case, when the child was ordered to be handed over to his parents or guardian, it was foreseen that the court would order them to "take care of his preservation and education and observe his behavior, that, in case they do not kill him and thus, the minor commits a delict of any kind, they have to pay a light fine from one quintal to fifty fr. gold, which is set in that decision." So, the parents or the guardian were warned about paying a light fine, defined in the decision, in case the child committed a delict of any kind while they had not fulfilled their obligations in "observing his behavior". The rules provided for children under the age of 10, on confinement in an educational and improvement institute, release at the age of 20 or revocation of the decision or surrender to parents or guardians at any time by court decision, were also applied to children aged 10-15 years old if it was proven that they did not have a "discernment" and if they had committed the same serious criminal offenses defined for children under 10 years of age. Meanwhile, for children 10-15 years of mental capacity at the time of committing the criminal offense, as well as for children aged 15-18 years, special rules were defined for reducing the punishment. For children aged 15-18, who at the time of the sentence had not reached the age of 18, the possibility was also foreseen that, by order of the court, the sentence against personal freedom would be served in a correctional institution.

The object of study in this paper is the treatment of the topic of criminal offenses committed by minors under the Juvenile Justice Code with special emphasis in the Municipality of Ferizaj in the period from 2014 to 2021.

Trying to clarify these criminal offenses committed by minors in the Municipality of Ferizaj according to the statistical data that the Police Station in Ferizaj possesses from 2014-2021 is as follows;

<b>Criminal offenses committed by minors</b>		
<b>Police Station In Ferizaj</b>	<b>Minors</b>	<b>Cases</b>
Year 2014	308	433
Year 2015	263	329
Year 2016	226	371
Year 2017	210	333
Year 2018	225	340
Year 2019	248	299
Year 2020	245	353
Year 2021	274	428

Also, from the statistical data provided by the Police Station in Ferizaj, for minors who have committed criminal offenses at the age of 14-18, it can be seen that;



<b>Criminal offenses committed by minors</b>		
<b>Police station in Ferizaj</b>	<b>Year 2014-2021</b>	<b>Cases</b>
<b>14 Years old</b>	121	267
<b>15 years old</b>	339	457
<b>16 years old</b>	457	681
<b>17 years old</b>	537	708
<b>18 years old</b>	551	773

According to the aforementioned data, the number of minors who have committed a criminal offense includes delinquent minors who have committed more than one criminal offense within the year.

## 5. CONCLUSION

The educational measures provided by the Criminal Code can be imposed on minors (juveniles) only when they are exempted from criminal punishment for the committed criminal offense and also for children under the age of criminal responsibility at the time of committing the criminal offense. According to Article 46 of this Code, the court can only impose an educational measure that is an institutional measure consisting of placing the child or minors in a special educational institution.

This paper analyzes the characteristics of the educational measure provided by the Penal Code in the historical context, compared to the criminal legislation of other European and regional countries and referring to international instruments for the rights of the child, taking into consideration the main issues related to the implementation of the educational measure. It concludes with recommendations for some important improvements needed, such as defining educational measures in at least one separate chapter in the General Part of the Albanian Criminal Code that would focus on juvenile offenders and among other issues related to it minors would specify the characteristics and rules of imposition and enforcement supervision for educational measures. In such provisions, the institutional measure currently provided for in this Code would become an exception and a measure of last resort among a variety of educational measures applicable to minors and this variety would ensure the applicability of the principle of proportionality in the selection process the most appropriate and effective measures. Other relevant issues include ensuring the main criteria that Albanian domestic courts must take into account when deciding an educational measure, where the best interest of the child must be the main consideration; changing the role of educational measures for minors in relation to criminal punishment from the secondary, as now envisaged, to the primary role (giving priority to educational measures); considering, in accordance with the recommendations of the Committee of Ministers of the Council of Europe, the possibility of extending the applicability of the special provisions for minors, where appropriate, to the main young people under the age of 21; for children under the age of criminal responsibility, it is necessary to take into account the recommendation of the Committee on the Rights of the Child

that special protective measures may be taken for these children if necessary in their best interests.

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