

THE ROLE OF THE EDUCATIONAL PROCESS IN THE SOCIAL REINTEGRATION OF MINOR OFFENDERS

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Abstract

Lack of education and low educational level is one of the risk factors influencing on the criminal behavior of minors. Therefore, the process of education as an element of social reintegration of minor offenders gains special importance. After the 90^s, under the justice reform, measures were taken to provide and guarantee psycho-social and educational care in the detention and imprisonment institutions. At present, a number of positive steps have been taken to guarantee the education of minors in prisons and detention sections, as part of the short-term implementation activities of the government in pursuance of the requirements from the implementation of SAA (Stabilization and Association Agreement)¹. Although legislation and governmental policies have been improved, the right to education and the legal requirement against terminating the educational process have not been adequately respected. Despite the agreements made with educational authorities, the right to education is not fully guaranteed. The requirement for special treatment of minors necessitates taking relevant legal and institutional measures which guarantee an educational process that is in conformity with international standards, as a means of correcting their behavior and social integration. This study focuses on the following issues: Analysis of the educational process as an integral part of the need for special training of minor offenders and its role in their social reintegration. Identification of international standards with regard to special treatment of minor offenders in terms of psycho-social and educational care. A general introduction into the concrete situation and the reforms on guaranteeing the right to education of minors in the imprisonment and detention institutions. Presentation of conclusions and specific recommendations regarding the current state of guaranteeing educational programs and the right to education, as well as suggestion of measures on specific needs for improvement through legal changes and institutional measures.

Key words: *minor; international standards; psycho-social and educational care; educational measures; detention institution*

¹Decision no. 346, dated 05.05.2006, *cited*, point 3.1.2. p. 30.

Introduction

Minors (juveniles) are subjects experiencing an ongoing process of physical, intellectual, affective and personality development. As a result, the educational process for this category is of special importance. An indispensable contribution is made by a healthy social environment and the appropriate level of education. Education develops the intellectual, creative, practical and physical abilities of minors. It affects the development of their personality and provides them with the basic elements of culture and civic education.

Involvement of minors in criminal activities has now become a major international concern. There are numerous factors which influence on the prevention of juvenile crimes and behavior correction. As regards the situation in Albania, studies show that deviant behavior at young ages, more exactly childhood and youth, stems from the interaction of factors of different levels, such as individual, family and social ones.² The educational system and the level of education are the major social factors. Studies show that, generally, minors involved in criminal behavior are children who either have a low educational level or have completely lost ties with school³. The same studies make the correlation between the level of education and the kind of criminal offence made. The lower the level of education, the more serious the criminal offence.

As far as minor offenders are concerned, the treatment by the system of criminal justice should aim at their education and reintegration. Therefore, the justice system for minors should be guided towards education and re-socialization of minors. Depriving minors of liberty must be the last resort and implemented solely in exclusive cases. Priority should be given to alternative punishments and non-institutional educational measures, which enable the preservation of relations with the family and community, the regular attendance of school, employment or professional development. Concerning minors deprived of liberty, the goal of education necessitates the design of educational programs in conformity with their personality and educational needs.

1. National and international legal framework

The right to education has been stipulated in a number of international legal instruments such as Protocol no. 1 of the European Convention on Human Rights, The international covenant on social and economic rights, the Universal declaration of Human Rights, etc.⁴

²Haxhiymeri. E, Juvenile crimes in Albania, an analysis of causes and factors of criminality of juvenile criminality in Albania, *Visi Design*, (June 2007), Tirana, p. 8.

³*Ibid.* p. 32.

⁴Article 13 of the international covenant on social and economic rights stipulates the right of every individual to education. To fulfill this right, primary education must be compulsory and free of charge for all, secondary education in all its forms must be equally available to anybody depending on the abilities of each person and free attendance must be a priority.

Due to its importance, this right has been also provided in justice acts for children. Article 28 of the Convention on the rights of the child provides for the right of children to education on the basis of equal opportunities. This article sets forth the obligation of states for compulsory and free primary education for all people, various forms of comprehensive and professional secondary education, making them open and accessible by every child, and higher education on the basis of the skills of each of them⁵.

Article 29 of the Convention sets forth the main targets of education, underlining the development of children's personality, their preparation for a responsible life in a free society and promoting the values of respect for others and the environment you live in. Unlike the Convention on the rights of the child, which provides this right for all the children irrespective of the status or judicial state, in some acts of juvenile justice, this right is expressly set forth for the category of minors deprived of liberty. A more detailed description can be found at the United Nations Rules for the Protection of Juveniles deprived of their liberty⁶. This document sets forth the right to education and professional training, thus sanctioning a standard to be applied for all minors deprived of their liberty.

Specifically, the elements of exerting this right are detailed as follows⁷:

Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized. Every detention facility should provide

The Universal Declaration of Human Rights states that every person has the right to education. It must be free of charge and compulsory for a minimum of primary education.

⁵More specifically, Article 28 of the Convention of the rights of child sets forth:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

⁶Adopted by the General Assembly by resolution 45/113, dated 14 December 1990.

⁷The Beijing Rules, rule 38-42.

access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

As regards domestic legislation, in accordance with international legal acts, the granting of this right has been taken to a constitutional level. The Constitution of the Republic of Albania sets forth the right to education in chapter IV under the economic, social and cultural rights. Article 57 sets forth the general principle that everyone is entitled to education and elaborates on the elements pertaining to this principle. The inclusion of this principle in the Constitution of the Republic of Albania is in compliance with international legal acts.

To be concrete, Article 57 of the Constitution stipulates that:

- compulsory school education is specified by law,
- public comprehensive secondary education is available to all,
- vocational secondary and higher education can be conditioned only by criteria of capacity,
- compulsory education and public comprehensive secondary education is free.

Education and qualification on the basis of the capacity of children and young people is one of the social objectives of the state, which is also taken to a constitutional level.⁸The objective of education and qualification of children and young people also relates to the special constitutional protection enjoyed by minors⁹. Obviously, the granting of the right to education to all implies the granting of this right to persons deprived of liberty as well. For minors deprived of liberty, education gains special importance as it influences on the improvement and attitude towards the rules of society or change in antisocial behavior. The law on the rights and treatment of prisoners and detainees¹⁰ considers the principle of social rehabilitation as one of the objectives of the treatment of persons deprived of liberty. To meet this objective, the treatment of convicts must be made in conformity with the criterion of individualization. Individualization is performed by identifying individual needs and taking into account the conditions and the environment in which the convict has lived, the educational and social causes that have deprived him of social life¹¹. The objectives of the treatment also include education, vocational training, development of other individual skills or cultural, recreational or sport activities. The law stipulates the right to education, cultural and vocational training through compulsory education for minors and vocational courses in conformity with the existing systems. The right to education is applied both for convicted and detained minors. Meanwhile, the attendance of professional studies is encouraged by using part-time courses.

2. Limitation on personal liberty and the need not to terminate the educational process

⁸ Article 59 of the Constitution of the Republic of Albania sets forth that the state aims at education and qualification on the basis of the capacity of children and young people..

⁹ Article 54 of the Constitution of the Republic of Albania clearly expresses that minors are entitled to special protection by the state.

¹⁰ Article 9 of Law no. 8328, dated 16.04.1998 "On the rights and treatment of prisoners and detainees" sets forth: "The convicts must receive treatment which aims at social rehabilitation for their integration into social life".

¹¹ Ibid, Article 10.

One of the most important issues of criminal procedure is concerned with the limitation of personal liberty. Pursuant to the constitutional principles, the rules and procedures of liberty limitation have been explained in the Code of Criminal Procedure. CCP has not set forth specific regulations concerning the limitation of the personal liberty of minors. Moreover, CCP has not included the rule that the limitation of liberty shall be the last resort and be applied for as short a period as possible.

In contrast, international legal acts on the rights of children such as the Convention on the right of the child, Beijing Rules, etc., recommend that, in conformity with the best interest of the child, priority shall be given to the need for special treatment at all stages of the procedure, from the moment of detention to that of serving the sentence. These legal acts have also sanctioned the principle that measures of liberty deprivation shall be taken as a last resort and for the shortest period of time possible if there is no other way of treating the minor.

International instruments have also provided procedural solutions in favor of applying liberty as the last resort, including the creation of community programs such as temporary supervision and guidance, restitution and compensation of victims¹².

As regards minor defendants, the Code of Criminal Procedure obliges the court to take into consideration the request not to terminate concrete educational processes when it issues personal security measures¹³. Concerning personal security measures, the focus of treatment should concentrate on the problems of applying the measure of prison arrest as one of the measures that completely deprives them of freedom. Being the harshest measure, the Code of Criminal Procedure has set special criteria for the application of this measure. According to CCP, the measure of prison arrest must be applied as a last resort, *only when any other measure is inappropriate due to the special danger of offence and defendant*. As far as this measure is concerned, no special criteria for application to minors are set in addition to the criterion that the measure of “prison arrest” cannot be taken for minors accused of criminal misdemeanor¹⁴.

The criterion of not applying prison arrest for minors, except for cases of misdemeanors, is insufficient. Thus, the legislation has not taken into account the requirements of international legal acts, which set out the principle that detention must be the last resort to be applied for minors. In spite of the legal requirement that the security measure of prison arrest shall be applied when all other measures are inappropriate, a frequent application of this measure to children has been observed, at a time when there are no special criteria for minors. In some cases, courts have not taken into consideration even the criterion of not terminating the educational process. This problem has been reflected in various studies in this field, which have underlined the frequent application of the measure of detention, which, in some cases, has been unjustifiable by the rate of social danger of the criminal offence and the offender, as well as long periods of detention¹⁵.

¹²Beijing Rules, rule 11.4.

¹³Code of Criminal Procedure, Article 229/3:

“When the defendant is a minor, the court takes into consideration the request not to terminate the concrete educational processes”.

¹⁴Code of Criminal Procedure, Article 230/4.

¹⁵System of criminal justice for minors in Albania, Pegi Tirana, 2005, p .40.

Another observation made by these studies is the fact that court decisions, when issuing the security measure, do not always include data on circumstances of family, social and personal life of minors, or the administration of documents regarding the psychological situation, personality and school attendance¹⁶.

Deficiencies in the application of prison arrest measure against minors have been also observed by the Supreme Court in the judicial practice. In a number cases, the Penal College of the Supreme Court has changed the decisions of the courts about the measure of prison arrest for minor defendants. In a number of the decisions, the Penal College of the Supreme Court has reasoned that courts have not taken into consideration the need not to terminate the educational process¹⁷.

3. Guaranteeing minors deprived of liberty the right to education in institutions of detention and execution of penal verdicts.

Working with minors deprived of liberty is a highly challenging task. As a different category from adults, the educational process gains special importance by taking into consideration the final goal, their social reintegration. Guaranteeing the right to compulsory education for minors is a legal obligation being implemented for detained minors as well. The assessment of the situation regarding the guarantee of the right to education for minors deprived of liberty and the attendance of the educational process is made on the basis of the observations made by organizations acting in this field.

Observations made in the institutions of minors such as the Institution of Kavaja (IVM), the Detention Institution of Vlorë (IP), the Detention Institution “Jordan Misja”(IP), the institution of executing criminal verdicts Korçë (IEVP), generally show the awareness of the personnel working with minors about their specific needs and the need for a special treatment¹⁸. Regarding the right to compulsory education of minors, field observations show that this requirement has been met in the institutions they are held. In cooperation with Regional Directorates of Education, a number of teachers have been appointed to teach minors who have not completed the 9-year compulsory education. In the Institution of Kavajë, during the observation period, teaching was provided on a regular daily basis to minors who had not completed the compulsory education. A few of them had even received the final certificate¹⁹.

¹⁶ Ibid.

¹⁷In decision no. 00-2008-36, dated 05.03.2008, a criminal case against defendant M. P., minor, charged with deliberate serious injury, the Supreme Court has changed the decision of Court of Appeals of Tirana and the first instance court Mat, by issuing the security measure of bail. In this decision, this court has stated the need to respect the requirements of issuing security measures and not terminate the educational process.

In decision no. 51, dated 25.02.2009, about defendant E. K., juvenile, the Penal College decided to change the decision of the District Court and the Court of Appeals of Tirana, and issue the security measure of bail in compliance with the criterion of not terminating the educational process.

¹⁸Albanian Helsinki Committee (AHK), Report on the situation of human rights of persons deprived of liberty in detention institutions and those of executing criminal verdicts during the period of June-November 2013, p. 54.

¹⁹Ibid,p. 55.

Observations made during the period of May- November 2012 show that in I EVP Korçë, I EVP Lezhë, IP “Jordan Misja” and IP Vlorë, compulsory education was provided²⁰. As regards vocational courses and activities, the same sources observe that the situation varied from institution to institution. In some institutions, a number of educational courses were organized for minors, such as courses of computer, English and Italian. Moreover, the weekly program also included such activities as going to the library, group discussions on certain topics, individual counseling by the social worker, various sports activities, gym and cinema classes. Problems were observed in some institutions, including the lack of appropriate facilities such as the gym or rooms for recreational activities²¹.

Conclusions and recommendations

The right to education is important for everyone but for minors it is especially necessary due to the fragility of age and specific needs to model positive behavior. Due to this importance, the right to education has been stipulated in the constitution. Guaranteeing the right to education is a key factor in preventing crime and deviant behavior by minors. As for the case of minors deprived of liberty, its importance is directly connected with the model of behavior, education and their social reintegration. Therefore, all necessary measures should be taken to ensure the guarantee of this right in institutions where minor offenders are held, as a means of social development and improvement of their behavior.

Observations made by Non-profit Organizations acting in this field speak of numerous positive changes in terms of guaranteeing the right to education of minors. The institutions where minors are held, in cooperation with directorates of education, have taken measures to provide compulsory education. Nevertheless, there are still problems of exerting this right, especially in detention institutions. This is also due to the unspecified duration of the time the minors are held in the institution until the final verdict. Moreover, there are still problems with logistics, i.e. providing the necessary equipment to enable the teaching process. The conditions of infrastructure and facilities in the institutions of serving the sentence frequently do not comply with the requirements to meet the educational standards. In addition to education, the treatment of children should also include a number of other educational activities such as vocational courses, cultural, recreational and sport activities, which improve the social behavior of minors.

There are still problems in terms of meeting these requirements. The institutions of serving the sentence and re-education should be provided with the relevant facilities and equipment necessary for school and professional education, cultural and recreational activities, as well as other joint and individual activities.

²⁰Albanian Helsinki Committee (AHK), Report on the situation of human rights in the police directorates and stations, in institutions of detention and execution of criminal verdicts during the period of May-November 2012, p. 29.

²¹Ibid.

Meeting standards of treating minors and the implementation of educational programs aimed at developing their personality necessitate the improvement of professionalism and the training of the personnel in charge of minors.

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