

Criminal justice for children, innovations and problems encountered in the practice of Albanian courts

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KEYWORDS

Child in conflict with the law, court, prosecution office, criminal proceedings, the Code of Criminal Justice for Children, court decision

ABSTRACT

This article explores the innovations, challenges, and practical implications of the Code of Criminal Justice for Children (CCJC) in Albania, seven years after its implementation. Through the analysis of over 50 court decisions from various jurisdictions, the study assesses the effectiveness of this legal framework in handling cases involving minors in conflict with the law. The research identifies positive legislative advancements, such as enhanced procedural guarantees and alignment with international standards, but also highlights ongoing issues in consistent application, legal interpretation, and institutional implementation. Notably, discrepancies in judicial practice, gaps in institutional structures, and limited training for legal professionals hinder the full realization of the Code's objectives. The article calls for improved judicial consistency, specialized training, and the establishment of support structures to enhance justice for minors. It concludes with recommendations aimed at better harmonization of domestic and international norms, emphasizing the need for dynamic development in legal doctrine and practice related to juvenile justice.

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1. Introduction

The Code of Criminal Justice for Children (CCJC), approved by Law No. 37/2017, dated 30.03.2017, entered into force on 1 January 2018. Now, after 7 years have passed since the entry into force of this code, with legally binding norms of substantive and procedural criminal law, we can speak about the innovations or difficulties and problems that it has brought to Albanian judicial practice. This is because the developments or progress of this practice in relation to children in conflict with the law, children, victims in criminal cases, or children witnesses in criminal proceedings, has been diverse and currently consolidated. We say consolidated, because this code of great theoretical and practical importance or value has been implemented or has

brought legal effects to Albanian judicial practice for a considerable time (1). Consequently, referring to this study topic, we have reached concrete findings regarding these elements related to children, which we are reflecting in the continuation of this article.

It should be noted first of all that for the purpose of this article, referring to its methodology, a large sample of judicial decisions involving children was studied and researched, consisting of at least 50 decisions, which belong to different natures of cases and sections for the trial of children in conflict with the law, of some of the first instance courts of ordinary jurisdiction.

2. Methodology of the article

This article is based on a research and study of at least 50 court decisions of different jurisdictions, of Albanian courts, which belong to the trials of criminal cases with minors in conflict with the law. At the end of the research and studies of these types of court decisions, an analytical and comparative legal analysis was continued in relation to the concrete findings and recommendations. This analysis was seen from the perspective of innovations and problems, since the Code

of Criminal Justice for Children has only been in force for 7 years. As a result of the methodology used in this research article of a practical nature since it refers to judicial decision-making, the conclusions are reflected along with the findings, accompanied by the relevant suggestions or recommendations.

3. Findings of the article

This study results in the following:

I. The procedural and substantive criminal legislation regarding children in conflict with the law, in its entirety, appears complete. The legal framework in force, aligned with the standards and norms of criminal law, especially procedural law, best regulates the registration of criminal proceedings, investigation, criminal liability, trial and sentencing of children in conflict with the law. Thus, the adoption of the Code of Criminal Justice for Children as well as the updates made to other laws, such as the Criminal Procedure Code, the Criminal Code, or the Law "On the Organization of the Judicial Power in the Republic of Albania", or even the specific or special law "On Legal Aid Guaranteed by the State", constituted a positive innovation in terms of providing guarantees to children in conflict with the law, and not only (2).

We say this because, despite the fact that this legislation essentially regulates the problems of subjects that are children in conflict with the law, i.e. when they

are under investigation, a criminal charge has been filed against them, or they have been brought for trial, it does not leave unregulated other subjects or actors that are children and participate in criminal judicial processes, regardless of the type of criminal offenses, or the nature and typologies of criminal cases.

Thus, it turns out that these types of legal regulations offer maximum procedural guarantees together with other procedural norms, such as the Criminal Procedure Code, which is invoked for reference in these types of criminal proceedings, even for the children victims, or children witnesses in various criminal cases, and specifically the respect of procedural rules in their questioning, regardless of the phase of the criminal proceedings (3). As in this code we find binding legal provisions regarding basic or principle aspects related to subjects that are children in conflict with the law. These legal provisions are nothing more than legal guarantees for these subjects. As such, we can cite mandatory legal or psychological assistance for these proce-

dural subjects (4). Likewise, provisions or legal norms in the framework of legal benefits or benefits related to children in conflict with the law are also sanctioned in the Criminal Code, guaranteeing these subjects facilities also in terms of sentencing measures or alternative forms such as exemption from sentence (5).

Referring to this analysis, it can be said that seen from the perspective of the existence of the entire specific legal corpus, with new penal institutes and especially procedural ones, it appears to be of contemporary standards. Not only that, but this code also results to be approachable and in full harmony with the entire legal framework in force pertaining to this field, which makes it of importance and value not only theoretical or of a research nature, but also practical, as it systematically assists the latter.

It should be noted that this legal regulation in particular, as well as the entire legal corpus in general that specifically regulates this area of law, in its essence provides or sanctions rights, as well as offers procedural guarantees for children as subjects of criminal proceedings, being in full compliance initially with the guarantees foreseen in international acts, where we can cite the European Convention on Human Rights and Fundamental Freedoms, or other international acts, which regulate and discipline this area of law, which our country, Albania, has made part of the internal legal system, through their signature and ratification (6). Likewise, we find these types of guarantees or rights also foreseen as constitutional norms of the Republic of Albania, which is the Constitution of this state, as a fundamental act and with the highest legal force. Therefore, it is concluded that the pyramidal system of acts regarding these rights and guarantees is maintained, starting from international acts, the act with the highest legal force, and continuing downwards to a horizontal level referring to the legal hierarchy of acts (7).

II. After the entry into force of this legal corpus, an ever-increasing tendency towards its recognition and practical application by judicial police officers initially, and then by special institutions for the execution of criminal decisions for children, probation officers, social workers, psychologists, lawyers, prosecutors and judges is observed. If you refer to the chronology of criminal decisions, it is easily ascertained that these actors of the justice system are increasingly implementing these specific provisions for children, also noting an increase in the quality of the implementation of legal guarantees for children, and consequently the quality of the relevant decision-making. However, it should be

emphasized that there is still room for improvement. This is in terms of not only updating with special legislation, but also in terms of its correct implementation, according to the spirit and purpose of the legislator in implementing these legal norms.

This is after referring to the findings of each of the cases, taken into study and comparative analysis, two judicial practices are found in terms of the implementation of legislation for children. One practice has to do with the recognition and correct application of these legal norms, by all procedural subjects of a criminal trial. Here we can focus both on the requests or claims of the prosecutor and the defense attorney, in relation to specific requests and concrete legal references based on the Code of Criminal Justice for Children, as well as on the reasoning or legal analysis of the court on these types of requests and specific references. While the other judicial practice consists of the implementation of specific norms only by one procedural subject, for example only by the prosecutor, or only by the court. As in this form or type of judicial practice, we also find confusion of norms or institutes, between those that have general regulations, and those that have specific regulations, even though their names may be the same, their content, and consequently their applicability, is different(8).

From this perspective, there is still room for more to be done in this direction. Here, not only by the subjects of investigation or criminal trial for children, but also by other structures, such as in terms of systematic training of these types of subjects, where the most classic form of professional qualifications would be through continuing training programs from the School of Magistrates, which in fact systematically carries out these types of training, having such a functional competence.

Specific training, with prosecutors or judges specialized or profiled only with criminal trials for children in conflict with the law, can also be organized in different countries, by different programs or projects, which have such a specific focus. This is with the aim of recognizing, qualifying and raising awareness of this group of persons or entities regarding the implementation of special legislation. It should be emphasized that through these types of training or specific knowledge, they can be profiled even further in relation to the concrete field of investigation, defense or trial, which is very specific, as it is related to a special group of subjects or actors, such as children.

III. It is very important that the Albanian courts, in the current period, after the judicial reorganization of

the courts of first instance of general jurisdiction, based on the new judicial map, foreseen by the organic law of the judiciary, preserve intact the special section for the trial of children. This applies equally to the prosecutor's offices, the special sections under them. This is because the frequent non-change of judges and prosecutors from these special sections will practically create a corps of profiled judges and prosecutors with professional experience in this field, as well as well-trained for these types of trials. As their frequent movement or turnover would not be productive, I think, since it would not create a stable core of professionals who would know and consequently adequately implement the special legislation for children in conflict with the law. In this way, the basic law, the Code of Criminal Justice for Children, would remain fragmented in its implementation.

IV. The development of judicial practices for children in conflict with the law, by different judges within the same special section belonging to a court, or between sections of judges of different courts, will continue to bring, as now, different decision-making for the same or similar nature of cases. As a result, different applicability of special criminal legislation for children. This increasingly dictates the unification of this judicial practice by the Criminal College of the Supreme Court, in relation to the application of different institutes, or for different legal attitudes. In relation to this finding, we consider the application or implementation as directly as possible in judicial practice of special criminal legislation for children.

Here we can concentrate on several moments, such as the way of applying to children in conflict with the law of the institute of substantive criminal law, of suspension of the execution of the decision with imprisonment and placing the person on probation, Article 104 of the Code of Criminal Justice for Children. This provision has different legal criteria from the same institute foreseen in the Criminal Code, for trials against adults, Article 59 of the Criminal Code. While the implementation in the respective codes of both these provisions has the same purpose of the legislator, where the institute of suspension of the execution of the decision with imprisonment and placing the convicted person on probation are conceived as alternatives to the sentence with imprisonment.

From the study of the files of some pilot courts, it was found that there were cases when the prosecutors' offices and then the courts referred only to Article 59 of the Criminal Code as a general provision. This was at a time when the specific provision, Article 104 of the Juvenile

Criminal Justice Code, did not allow for the application of this type of alternative sentence, since the criterion of the "purity" of the juvenile's judicial status was not met, as a specific criterion or requirement of the content of this specific provision. Just as there were cases in this studied judicial practice, even though the conditions and criteria of the specific provision were met, prosecutors or judges still referred to the general provision, Article 59 of the Criminal Code, at a time when for the same alternative of imprisonment there was a specific provision and consequently a specific legal regulation in the special law itself, the Code of Criminal Justice for Children (9).

The same can be said for the application of the suspension of the execution of the decision to imprisonment and the obligation to perform a work in the public interest. The specific provision foreseen in the Code of Criminal Justice for Children, linked in interpretation to other provisions of this code, provided for this institute of substantive criminal law with different regulations. According to the specific provision, Article 101 of this code, work in the public interest could be given as a type of additional punishment, but also as an alternative to imprisonment, based on specific legal regulations. This special provision differs not only in content from the general provision for adult convicted subjects, Article 63 of the Criminal Code, but also in relation to the purpose of its implementation. While the latter is given only as an alternative to imprisonment, with different legal criteria for application from the specific provision that regulates the same institute of substantive criminal law, not only in terms of the active subjects, but also its content (10).

Seen from this perspective, referring to the judicial practices researched for the purposes of this paper, it is found that prosecutors and judges have in many cases misinterpreted or misapplied these two provisions. As in certain cases, they have also confused the criteria for their application, applying and referring instead of specific criteria, general criteria, which has led to a failure to correctly implement the legal provisions, thus confusing the very intention of the legislator in their implementation.

However, referring to the findings of this study topic, it is concluded that there have also been judicial decisions that, in terms of legal reasoning, structure, analysis and concrete legal references, clearly indicate a very good knowledge and implementation of the legal framework for children in conflict with the law. Consequently, these decisions can serve as a basis for raising awareness among law enforcement entities and as "raw material"

for the development and recognition of judicial practice by the Supreme Court. Therefore, they clearly serve as an orientation of judicial practice, for the very professional treatment of issues that judges have made in concrete cases.

V. Judicial practice has established as an immediate need the creation of structures or institutions that the special law itself, the Code of Criminal Justice for Children, provides as such. The establishment and functioning of these specific institutions is required because the application by the court, for example in a specific case, of the type of main punishment, restriction of freedom for children in conflict with the law, directly depends on them. This type of sentence is foreseen in the special code in its articles 95 and 98. On the other hand, the establishment and subsequent functioning by the responsible structures of precisely these special institutions is required as a main condition, *sine qua non* (a necessary condition or without the existence of which), to apply this type of main punishment, not imprisonment, for children in conflict with the law.

Although the Juvenile Criminal Justice Code itself provides in its article 140 for the establishment of these institutions one year after its entry into force, that is, on January 1, 2019, it is found that not only within this legal deadline, but also afterwards this obligation had not yet been fulfilled to the level or needs required by the respective state institutions. This has also led to different judicial decision-making in practice regarding this type of sentencing, even though all the legal conditions for the application of this type of sentence have cumulatively competed. Such a fact has occurred precisely due to the lack of these specialized administrative structures which would make it possible to implement judicial decision-making of such a nature or type in practice.

Thus, referring to the studied decision-making, it is concluded that there have been cases when judges have very carefully and professionally analyzed the types of main and additional punishments, foreseen by the Code of the Criminal Justice for Children. Then they have focused on the suitability of each of them, in relation to the purpose of the sentence, for the specific case. This, by looking at the sentence also from the perspective of the potential execution of the specific type of sentence. So, giving an effective sentence in each specific case.

In this sense, it is concluded that one of the judicial practices has shown maximum commitment and care, in analyzing and then giving or concluding the senten-

ce in the relevant judicial cases. The judges who have developed this judicial practice have hesitated, not applying the type of sentence for children in conflict with the law, that of the sentence of restriction of freedom. This is even in cases where it was assessed by them as the most appropriate and efficient sentence in the specific case. The failure to give this type of sentence, in addition to being justified correctly by the judges, had as its main motivation or justification, precisely the lack of special institutions where this type of sentence could be executed.

Meanwhile, we have also found judicial decisions that belong to this judicial practice, where judges have applied the restriction of freedom as a type of sentence for children in conflict with the law. This is because they have considered this type of sentence to be appropriate and that it fulfills the purposes of the sentence in the specific case, despite the lack of special institutions where such a type of punishment should be executed. In relation to this moment, the courts have not subjected it to the legal analysis and reasoning reflected in the content of the decision. From this point of view, these types of judicial decisions remained simply and only on paper, without the possibility of real implementation or execution, practically making these decisions ineffective in implementation(11).

Consequently, based on these conclusions, the creation and subsequent functioning of special institutions or structures foreseen by the Code of Criminal Justice for Children regarding children in conflict with the law is a primary and immediate need. This applies not only to the institution analyzed above regarding the execution of the decision to restrict freedom, but also to any other special institution foreseen by this code. Likewise, it is important to issue or update any type of sub-legal act that regulates and disciplines the creation, organization and functioning of these special institutions. This is because such a thing would complete the entire institutional, or structural and legal framework in the function of effective justice for children in conflict with the law.

VI. The development of judicial practice will undoubtedly lead to, and has indeed led to, legal difficulties and impasses, which have necessitated the identification of ambiguities, shortcomings or legal vacuums. In this sense, it is very important to initially identify these problems from judicial practice. This is in order for them to serve as basic materials for working groups that may be established in the future by state bodies with the aim of possible amendments, in terms of

updating or improving the criminal legislation for children. Judicial practice, its progress, as well as the problems identified by it, undoubtedly constitute the most essential element in improving the legislation, being an indicator or catalyst for signaling legal interventions. This is because we must accept that in addition to the innovations that the new legal framework has brought in the field of children in conflict with the law, it has naturally also brought difficulties in its implementation.

Such a finding requires that in the near or distant future, this legislation, after being professionally studied by facing the various problems or issues reflected by judicial practice which are enriched in each judicial year, can be improved and approached in harmony with domestic norms initially, but also with international standards at the same time. Today we see that there is still a clash of norms between the concepts or institutes of general criminal and procedural law, with those of special law. This is only one finding encountered by judicial practice, which has to do with the clarity and cohesion of criminal norms, but there are many other findings, which deserve a careful and professional legal study and treatment. In this perspective, we also appreciate the suggestion of approaching, improving, and legally updating the special norms of the criminal legislation of children in conflict with the law.

VII. Referring to the judicial practice until now, its progress or development, the findings of this practice, whether in terms of innovations or problems, the dynamic development of the legal doctrine in this field is suggested, such as: legal research works, various

references in conferences or symposiums, legal treatments in continuing training seminars of the School of Magistrates, etc., various publications such as manuals for children, monographs, or commentaries on the Code of Criminal Justice for Children, as well as laws or groups of special norms of criminal legislation pertaining to minors. In this perspective of analysis, it should be noted that such developments undoubtedly constitute a contribution of essential and irreplaceable value in this regard.

In relation to this finding, it should be emphasized that these treatments of legal doctrine, by legal scholars, as professors or theorists in general, and of criminal law in particular, would serve as a guide or manual for the development of judicial practice in this regard. Various conferences with a special theme and focus on the development and problems of judicial practice, on issues involving children in conflict with the law, would also constitute an important contribution in this regard. Consequently, the awareness and interest of as many scholars of criminal law as possible regarding children, in research works, publications or legal treatments of issues that belong to this target group of subjects would constitute a valuable benefit in these periods of time and that this would serve judicial practice immensely. This is because it turns out that currently these types of studies or legal works are few, even though the time that has passed since the entry into force of the Code of Criminal Justice for Children has been sufficient to address or deepen these types of legal concepts related to children in conflict with the law.

5. Conclusions and recommendations

- The procedural and substantive criminal legislation in Albania regarding children in conflict with the law, in its entirety, appears complete. The adoption of the Code of Criminal Justice for Children as well as the updates made to other laws constituted a positive innovation in terms of providing guarantees to children in conflict with the law.
- After the entry into force of the Code of Criminal Justice for Children, it is observed an ever-increasing tendency towards its recognition and practical application by the judicial system and other actors. But, there is still room for improvement.
- It is recommended to organize specific training of prosecutors and judges specialized or profiled only with criminal trials for children in conflict with the law.
- It is very important that the Albanian courts and prosecutor's offices preserve intact the special section for the trial of children, with the aim to create a corps of profiled judges and prosecutors with professional experience in this field, as well as well-trained for these types of trials, in the way of better implementation of the special legislation for children in conflict with the law.
- Based on the analysis of court decisions, there are different decisions for the same cases. This can serve as a basis for raising awareness among law enforcement entities and as "raw material" for the development and recognition of judicial practice by the Supreme Court.
- Judicial practice has established an immediate need for the creation of structures or state insti-

tutions for the execution of punishments for children in conflict with the law, in the way to complete the entire institutional, or structural and legal framework in the function of effective justice for children in conflict with the law.

- There is still a clash of norms between the concepts or institutes of general criminal and procedural law, with those of special law. Thus, the legislation for children in conflict with the law can be improved and approached in harmony with domestic norms initially, but also with international standards at the same time.

- Referring to the judicial practice, its progress or development, the dynamic development of the legal doctrine in this field is suggested, such as: legal research works, various references in conferences or symposiums, legal treatments in continuing training seminars of the School of Magistrates, various publications such as manuals for children, monographs, or commentaries on the Code of Criminal Justice for Children, as well as laws or groups of special norms of criminal legislation pertaining to minors.

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