Children in conflict with the law in Albania

Prepared by Eriketa Korini and Lantona Sado
Co-ordinator: Institute of Statistics, INSTAT, Tirana

MONEE Country Analytical Report
November 2006
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Children in conflict with the law- Albania

ANALYTICAL REPORT
October 2006

Eriketa Korini: Ministry of Justice
Lantona Sado: Social Research Center - INSTAT
I. Juvenile justice system in Albania

Criminality and delinquency are the most negative phenomena occurring as associating factors of multidimensional developments of the last decade. Measurement of criminality values among youngsters depends on many factors, including the age for “responsibility towards criminal acts” and level of reported crimes.

Albanian Criminal Code approved by Parliament with the Law No. 7895, on 27.01.1995, in article 12 titled "Age for criminal responsibility" reads:
"A person bears criminal responsibility if, at the time he or she commits an offence, has reached the age of fourteen. A person who commits petty crimes bears responsibility at the age of sixteen."

Albania ratified the United Nations Convention on the Rights of the Child (1989) on 27 February 1992. The Convention requires, in article 40(1), that "State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

By ratifying the Convention and within its Constitution¹, Albania is now obliged, in terms of article 40(3) thereof, to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law. The fact that children under 18 years represent around 32 per cent of the Albanian population is to be taken into the consideration when we analyze the crimes among this group of population. Albania does not have a comprehensive juvenile justice

¹ The Constitution (articles 5, 116 and 122) does recognize the authority of international agreements in the domestic order.
system. Provisions providing specifically for the consideration of children in conflict with the law are spread throughout several separate bills.

<table>
<thead>
<tr>
<th>Law number</th>
<th>Date</th>
<th>Amendments</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8331</td>
<td>21 Apr 1998</td>
<td>For the Executions of Criminal Decisions</td>
<td></td>
</tr>
<tr>
<td>8328</td>
<td>16 Apr 1998</td>
<td>For the Rights and treatments of Convicts</td>
<td></td>
</tr>
<tr>
<td>8677</td>
<td>2 Nov 2000</td>
<td>For the Organization and functioning of the judicial police</td>
<td></td>
</tr>
<tr>
<td>8737</td>
<td>12 Feb 2001</td>
<td>For the organization and functioning of the Office of the Prosecutor</td>
<td></td>
</tr>
<tr>
<td>8678</td>
<td>14 May 2001</td>
<td>For the Organization and functioning of the Ministry of Justice</td>
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</table>

The need to establish a juvenile justice system in Albania, that complies with international standards, is closely linked to the process of strengthening the democratic system and to adherence to the rule of law.

Without a juvenile justice in place, children in conflict with law will be treated as adults by the law enforcement agents violating provisions of the main existing international and regional instruments.

Actually a three-year programme to develop a juvenile justice system in Albania is underway. A joint effort of the Ministry of Justice, European Commission, SIDA, its mission is to lay the foundation for a system that protects the rights of youth and children in conflict with law in a manner consistent with international standards.
The main objective of this joint programme is to support the establishment of a child-oriented juvenile justice system, offering alternative and educational measures at the pre-trial, trial, and post-trial stages and promoting the social rehabilitation of the child. **This programme aims to develop all components of a juvenile justice system in Albania through five areas of work:**

- Advocacy for legislation and policy development
- Institutional capacity building
- Development of alternatives to detention measures programme
- Protection and reintegration of children deprived from their liberty
- Prevention programs involving community and education system.

In the next three years, this system will ensure that children in conflict with law in our country are treated fairly, offer alternatives to detention for those convicted of a crime, aid in preventing children and youth crime and help them reintegrate into society.

This programme will have the following specific outcomes:

- A juvenile justice act will be drafted detailing the rights of children in conflict with law and protection of those rights (2007-2008).
- Juvenile justice professionals will know how to handle cases of youth in conflict with law.
  (It is in the process the training of professionals dealing with children in conflict with law. Programme of training is carry out by Albanian Magistrate School)
- An effective programme of alternatives to incarceration will be in place, providing mediation, community service and restorative justice at all stages of handling juveniles in conflict with the law.
  A project pilot is going to start in Tirana, regarding this program.
- Children and youth in conflict with law will be legally protected ensured a right to education and learn life and vocational skills to aid their full reintegration into society.
• Communities will work to prevent juvenile crime by providing positive alternatives for children and youth development.

Schools will teach peaceful conflict resolution, and peer counselling and mediation programmes will be to protect children and youth at risk.

1.1 Age of criminal responsibility

a) Age of Criminal responsibility

Current Law

Albanian criminal justice’s treatment of young offenders relies on the age of responsibility. The age of competence for penal responsibility when a juvenile person is in questions is determined in article 12 of the Albanian Criminal Code.

In both international and national law, the definition of a juvenile is directly or indirectly related to age. The term “minor”, however, may differ from that of "child". The present Albanian Criminal Code defines a child as a person under the age of 18 years. Our Constitution does not give the definition of the child while recognizing in article 54 their rights to be protected.

The age of criminal responsibility differs depending on the qualification of the offence, these being either more serious offences or less severe (“contravention”). According to article 12 of the Criminal Code, the minimum age of criminal responsibility is 14 years if, at the time the child has committed an offence and 16 years when a child has committed a criminal contravention. Below the age of 14 years, the child is presumed not to bear criminal responsibility.

b) Age determination

Current law

In terms of article 41 of the Albanian Criminal Procedure Code, the proceeding authority may make the necessary verifications and if necessary orders expertise
where there are reasons to believe that the defendant is a juvenile. When even after the verification and the expertise there are still doubts regarding the age of the defendant it is presumed that he is a juvenile.

1.2 Categories of offences for children can be detained

The Albanian justice system recognizes the following categories of children in conflict with law:

- Children in conflict with law, who at the time they committed the crime have no reached the age of fourteen years old (no penal responsibility)
- Children in conflict with laws, who at the time they committed the crime have reached fourteen years old.

The categories of offences for which children can be detained are:

- Crimes against the persons (Article II I Criminal Code) in which are included:
  - Crimes against the human life (exp. murder, injury)
  - Sexual crimes (Rapes and attempts with minors aged 14 –17 years old.)
  - Criminal offences against the individual autonomy (exp violation of domicile)
- Criminal offences against the moral and human dignity (exp. prostitution, pornography)

- Penal acts against the property and in economic area. (Article III Criminal offences) in which are included:
  - Theft (specially in collaboration)
  - Property devastation

- Crimes against the state authorities (article VIII I Criminal Code) in which are included:
  - Criminal offences acts against the state activities committed by the Albanian citizen exp. Rebellion against a policeman, non-obedience to a police order etc.
  - Criminal offences against the public order and public security. Exp: the production and possession without permission of a weapon psh, production and sells of narcotics, infraction of the rules of traffic. etc
  - Criminal offences against the system of justice, exp non-declaration of the crime, false declaration.

1.3 Types of sentences to which children in conflict with the law can be subjected and criteria for their application.

- The current sentencing options in the Albanian Criminal Code are the following:

Life imprisonment is not applicable to minors (Article 31 of Penal Code). The sentences are imprisonment sentences (that may not exceed half of the term of punishment provided by law for the act committed, it’s Article 51 of Penal Code), fines or educational sanctions (applicable to minors who are excluded from punishment or who do not bear criminal responsibility too).

According to article 52 of the Criminal Procedure Code, the Court considering the lack of dangerousness of the criminal act, estimating the concrete circumstances under
it was committed, and the previous behaviour of the minor may exclude him from punishment and decide to place in an educational institution. Medical sanctions might be applicable to minors too.

In addition, the Criminal Procedure Code provides for a range of sentences, which may be imposed upon adults or children. They include:

- Postponement of sentence, unconditionally or with one or more conditions (probation);
- Suspension of sentence, with or without conditions (including community service);
- “Fragmentation” of imprisonment (execution fragmented).

Of note is the wide range of options allowed in the Criminal Code for conditions of suspension or postponement of sentence. These are enumerated as follows:

1. To exercise a professional activity or to gain professional education or training.
2. To pay family pensions in due time.
3. To compensate for torts.
4. To be banned from driving certain vehicles.
5. To be forbidden to exercise a professional activity if the criminal act relates to such activity.
6. To be forbidden from certain places.
7. To be forbidden from shops serving alcoholic beverages.
8. To stay in his residence during certain hours.
9. To avoid the company of determined persons, mainly convicts or collaborators of the criminal act.
10. Not to carry weapons.
11. To be subjected to medical treatment against alcohol and narcotics.

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.
1.4 Number and type of correctional facilities that are specialized to accommodate children in conflict with the law in the country: number of children in “adult facilities.

The Albanian law stipulates that young offenders should serve their time in specific detention centres, and in their absence, in specific section, while categorically avoiding lumping youths and adults together.

So, article 33 of the Criminal Code determines that juvenile serve imprisonment sentences in institutions separated from those adult offenders are detained. According to the Criminal Code, the rule concerning the manner of serving the imprisonment sentence, and the convicts’ rights and duties are defined by law.

To this effect, the Parliament of Republic of Albania has adopted two laws:

- Law no 8331, dated 21 April 1998 “On the execution of penal decisions”

  According to Article 5 of this law, execution of decisions with respect to juveniles is carried out in especially favourable places and manners, define by this law.

- Law no 8328, dated 16 April, 1998 “ On the rights and treatment of offenders sentenced to imprisonment”

  Adoption of this Law has great importance of the safeguarding of the rights and treatment of young offenders sentenced to imprisonment. Article 15 of the Law determines that the execution of sentence for the minors in the low security prisons should take the priority.

At present, it doesn’t exist a special facility for juvenile. Instead, children and youth in conflict with law in Albania (14-17 years old and 18-21 years old) are accommodated in a section of the ‘Vaqarr” Prison located in Tirana. It is a close institution and a low security one.
Table. Sentenced minors in the Vaqarr prison

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Begin of the year (January)</strong></td>
<td>18</td>
<td>16</td>
<td>10</td>
<td>5</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td><strong>End of the year (December)</strong></td>
<td>13</td>
<td>12</td>
<td>11</td>
<td>18</td>
<td>21</td>
<td>16</td>
</tr>
</tbody>
</table>

The pre-detention system is in the process of changes and now is under the administration of Ministry of Justice (it was under the Ministry of Interior). Actually this Ministry of Justice has three pre-detention in its administration but we have statistical information only about pre-detention 313 “Jordan Misja”

Table. Arrested minors in the pre-detention 313 “Jordan Misja”

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Begin of the year (January)</strong></td>
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<td>37</td>
<td>41</td>
<td>51</td>
<td>76</td>
<td>58</td>
</tr>
<tr>
<td><strong>End of the year (December)</strong></td>
<td>27</td>
<td>20</td>
<td>18</td>
<td>27</td>
<td>40</td>
<td>17</td>
</tr>
</tbody>
</table>

(Note: We don’t have detailed information on arrested minors about the other pre-detentional institutions, which are under the Ministry of Interior. Those data refers to the total arrested persons)

Although, Ministry of Justice and UNICEF Tirana are working on the detention and pre-detention institution (Vaqarr and 313 Jordan Misja) in order to improve educational programmers and developing the programmer for vocational training that would enable minors in those institutions to be reintegrated normally into society once they are released from prison. In the intervening time, some psychological assistance is going to provide to young people by Minor Legal Clinic, a well-known NGO in Tirana.

- Exclusion of minors from punishment
**Article 52 of the Criminal Code** stipulates that the court, considering the lack of dangerousness of the criminal act, estimating the concrete circumstances under which it was committed, and the previous behaviour of the minor, may exclude him from punishment. In these cases, the court may decide on juveniles being sent to an educational institution.

**Article 46 of the Criminal Code** states that educations sanctions may be applied towards minor who are excluded from punishment or, because of their age, they do not bear criminal responsibility. Educational sanctions imply placement of a minor in an institution for education.

Unfortunately, those provisions of the Criminal Code are not applied for lack of these educational institutions, whose scope of this activity should be the education of juvenile offenders.

Actually, Ministry of Justice and UNICEF-Tirana, are in the process of establishment a new re-education institution for the children in conflict with law which is going to be located in Kavaja. This re-education institution, will serve as one of the most commonly adopted alternative to sentence juvenile up to age 18. At the same time it is the only possibility for the treatment of juvenile under age 14, who do not bear criminal responsibility and who, according to the statistical records, are in considerably large numbers. (See the table below)

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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<tbody>
<tr>
<td>Children under 14 years old prohibited</td>
<td>80</td>
<td>63</td>
<td>68</td>
<td>126</td>
<td>105</td>
<td>184</td>
</tr>
</tbody>
</table>

Source: Ministry of Interior

Actually in our country, in the information system doesn’t exist any information about the lawyers and judges in our. The only information refers to lawyers and judges trained to work with children in conflict with the law by “Magistrature School”².

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² The magistrature school plays a very important role in this field.
During 2003-2005 are trained by this school financed by UNICEF 50 judges, 20 procurers, 24 judicial policies, 45 lawyers and 36 social workers. There are performed also some trainings on this field, by the Legal Minor Clinics located in Tirana, Korca, Shkodra and Fier. During the period 2003–2005 are trained in the field of children in conflict with the law and 56 detention staff<sup>3</sup> 120 police.

II. The analyze of the situation of the children in conflict with the law

Over last decade involvement of young people in crimes in general and in violent crimes in particular has become a grave concern for Albanian society. When we analyze the statistical information delivered from the ministry of Justice, it’s evident that through years (the period 2002 – 2005) the trend is almost stable. Is typical for all the period that around 90 percent of convicted juveniles refers to crimes.

In 2005 the total number of convicted juveniles is 289, from which 258 for crimes and 31 for contraventions. But this last year is characterized by the increase of the juvenile convicted for contraventions, comparing to 2004.

**Graphic: Juvenile delinquency, 2002-2005**

![Graph showing juvenile delinquency, 2002-2005](image)

Source: Ministry of Justice

The crimes against the property or theft are considered as the most common criminal acts committed from young people. So, in 2004 there are 209 juvenile convicted for these acts and in 2005 there are 196 juvenile convicted. The data confirm also that juveniles are often sentenced for violent crimes and most of the criminal acts of them are those against the property.

If we try to make further deep analyzes, in 2005, the number of children in detention is 25 children per 100,000-child population and this indicator is lower compared to year 2004, (32 children per 100,000 child population).

Many studies indicate that the delinquent behaviour of juvenile has its roots in interaction of factors at the level of individual, family and society. For these reason, it is very important that the decreasing of the juvenile delinquency phenomenon in Albania has to imply a multilevel and multi-sectoral approach.

Involvement of juveniles and young people is closely related to individual and external risk factors that create context for criminal behaviour. Taking into account that internal factors like physical and psychological characteristics have positive but weak correlation with youth violence or criminal behaviour, the analyzing of external factors like, family and neighbourhood environment, quality of education, good governance and rule of law are of utmost importance.

Family and family environment affect the life of an adolescent and young people in general. Even not measured based on information, a significant number of adults become part of a crime as consequences of the crisis Albanian families are faced during the transition period. “Crime is observed more frequently in divorced families, or a violent one, one parent family, or with parents who have migrated. In such disordered family environment the children instead of the positive model of behaviour find indifference, neglecting, social deviances, conflicts and continuous stress.”

From the territorial distribution point of view, the crime of murder and robbery is more present to adults living in areas of heterogeneous community. Poverty and lack of opportunities to find employment or ensure better living conditions caused after the 90-ies a massive movement of the rural population to urban areas. The suburbs of the Albanian towns are already over inhabited by new comers, a relatively young one, possessing not many possibilities or professional abilities to find employment and

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20 E. Dragoti “Teenagers”
integrate into the economic life of that town. This situation presents the first condition to become part of illegal activities. On the other hand, social integration is accompanied by a series of difficulties, which are not that easy to overcome, because of cultural differences. The authentic settlers do not offer integrating will for the new comers and in the best case they are indifferent.

Expert in criminality among the young people consider the educational system as antidote for poor and unstable home environments, because school is a place where children are supported and nurtured. Today, public education and schools do not offer the opportunity to reach a substantial percentage of our youth population and do not teach them skills to resolve conflicts, or other elements of a curricula aiming at the reduction of violence. These efforts taught to the youngsters should reach those who face any form of violence at home or in the streets. On the other hand, schoolteachers are not interested and motivated to identify problems of youth or their families at an early stage.

- Important notes regarding the Albanian System for the gathering data concerning juveniles in conflict with law.

1- Police stations provide the Statistical Records Department in the Ministry of Interior, with data on the persons charged with criminal offences. These data are contained in the informative descriptions attached to the typical forms this ministry distributes and collects.

No special data on juvenile offenders are delivered. Final statistics provide information on the criminal offences committed by juvenile grouped as “under 14 year” and “14-17\(^4\) years old”, and their total on a nation level. No data on juveniles’ personality, sex and education may be obtained from their statistics.

2- The Attorney’s General Office collects data on the number of juveniles suspected of having committed a criminal offence, whose case is under investigation. This institution gathers the data contained in the typical forms distributed to the district

\(^4\) In this group are included also minors when they are 17 years 11months so until they celebrate they 18 years birthday.
prosecutor’s officers. These statistics do not provide data especially on young offenders.

3- Ministry of Justice gains access to the data on juvenile offenders through the forms submitted by the district courts. The first part on the form contains data on the convict’s personality (14-17\textsuperscript{5} years old and education), and the second part provides statistical evidence on the adjudicated juveniles (types of criminal Offence, measure of sentence, medical and educational measures, and the alternative to punishment).

4- The Directorate General of Prisons gathers the data on young offenders in the Vaqarr Prison (the only one detention centre in Albania in which juvenile offenders are held) by consulting the different district court decisions.

5- The weakness during collection of proof or administration of crime facts by both criminal police and justice system creates a gap between reported crimes or those crimes ended with a sentence process\textsuperscript{6}. Beside the fact that official data reports high level of identification of reported crimes identified crimes, mostly 80 percent or over, about 2/3 of the detained persons have a sentenced process.

References:

Criminal Code of the Republic of Albania
The legal framework in Albania - children in conflict with the law.
Statistical Yearbook, Ministry of Justice
Youth in transition, Social Research Center - INSTAT 2003
UNICEF, Programme 2003 - 2005
Statistical data : Ministry of Interior

\textsuperscript{5} Idem- footnote 4
\textsuperscript{6} Youth in transition, INSTAT 2003