

COMPARATIVE APPROACH TO JUVENILE JUSTICE

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Abstract

In this paper, there are presented and analysed the characteristics of criminal legislation for children in several states in order to become familiar with their criminal justice systems. On this regard, importance is given to the comparative approach of juvenile justice, comparing criminal legislations of some states, such as the juvenile justice of the Republic of North Macedonia, the Republic of Kosovo, the Republic of Albania, the Republic of Croatia, the Netherlands, the Swiss Confederation, Norway, England and Wales, in these comparative elements: the minimum age of children; minimum age for criminal responsibility of children, minimum age for the imposition of sentences on children and reaching adulthood. These comparisons are also illustrated in tabular form to provide a clearer picture to the reader regarding the aforementioned comparisons. Also, in this regard, the three main models of legal-penal treatment of children in different states have been discussed and clarified.

Keywords: Juvenile justice, comparative approach, North Macedonia, Albania, Kosovo, Croatia, The Netherlands, Switzerland, Norway, England, Wales.

Introduction

The purpose of processing the different criminal models that regulate justice for children up to the age of 18 is to highlight other characteristics of juvenile justice that are different from those in North Macedonia. It is also important to analyze the common/similar and different points between the researched models.

Below in Table no.1 it is presented the minimum age of criminal responsibility, minimum age for imprisonment and age of attaining maturity according to the respective state:

Table 1: Comparative approach between different states regarding these elements: minimum age of criminal responsibility, minimum age for imprisonment, and attainment of majority age.²

State	Minimum age of criminal responsibility	Minimum age for imprisonment	Age of attaining maturity
North Macedonia	14	16	18
Republic of Albania	14	16	18
Republic of Kosovo	14	16	18
Croatia	14	16	18
Switzerland	10	15	18

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² The data in table 1 is based on the positive Criminal Codes/Laws of the marked states, which are presented in the section "Utilized Literature" of the paper.

The Netherlands	12	16	18
Norway	15	15	18
England and Wales	10	12/15	18

Like neighboring countries - Albania, Kosovo, and those in the region - Croatia, our country has taken into account the recommendations of the Committee on the Rights of the Child by fulfilling the obligations arising from the Convention on the Rights of the Child, first by issuing a special law that regulates juvenile justice.

Compared to the above-mentioned states, the Republic of North Macedonia has gone further towards progress in this aspect and in accordance with the provisions of the Convention, by naming all non-adult persons with the designation "child" with specifications defined in the Positive Law on Justice for Children (2013) (children at risk, children in conflict with the law), removing the designation "juvenile".

The aforementioned states still maintain the notion of "juvenile" by using the term "child" for persons who are excluded from the criminal sphere due to their age (children in these legislations are persons under the age of 14 who are excluded from criminal responsibility). Compared to European countries, such as Switzerland, which has also adopted a special law on juvenile justice, the Netherlands and Norway regulate justice for children with several criminal laws such as the Penal Code, the Code of Criminal Procedure, therefore, they have not adopted a special law in this regard.

The criminal legislation for minors in the Republic of North Macedonia differs in many aspects from the legislation of the above-mentioned countries, not only in terms of unifying this branch of law, but also in determining the minimum age for criminal responsibility, whereby some of those countries provide for a much lower minimum age than our country, such as the Netherlands - twelve years of age, Switzerland - ten years of age, England - ten years of age, while Norway provides for a slightly higher minimum age - fifteen years of age. The countries also differ from each other in determining the minimum age for imposing a prison sentence on children, whereby, like the Republic of North Macedonia, most of them are set at the age of sixteen (Albania, Kosovo, Croatia, and the Netherlands), some others have set a slightly lower minimum age compared to the previous ones - Switzerland, Norway, and Wales at the age of fifteen, while England remains at the age of twelve. All the mentioned countries have a common point in determining the maximum age of "minority" - that is eighteen years of age.

The Balkan countries have a similar system of criminal justice for children, in terms of many specifics - the minimum and maximum age for determining the criminal responsibility of children, types of criminal sanctions for children, the system of justice organs that deal with children, etc.

1. Comparative approach to juvenile justice system in several countries

1.1. Juvenile justice in North Macedonia

Criminal justice for children in the Republic of North Macedonia has undergone many changes since its independence in 1991 until today. In this regard, a separate justice system for children was established in our country in 2007, separate from that for adults, which until then was regulated entirely by criminal laws and procedures. Therefore, the challenge arises of solving the dilemma of the legal nature of criminal justice for children, specifically finding the answer as to whether it represents an independent positive branch in the criminal justice system, or is it a part of criminal law in the broad sense of the word, or is it a sub-branch of it? In this case, it is concluded that it represents a sub-branch of criminal law, as it was separated from the legal provisions that regulate the field of criminal law in the broad sense, namely the

Criminal Code and the Law on Criminal Procedure, with the adoption of the special Law on Juvenile Justice in 2007 and beyond. This is a result of the fact that the Law on the Execution of Criminal Sanctions remains the main internal source of this branch of law, because both the 2007 law and the positive Law on Justice for Children (2013) do not contain provisions that regulate the execution of sanctions against convicted children.

The special treatment of children in cases where they appear as perpetrators of criminal acts, children at risk or victims compared to adults, is a consequence of the UN Convention on the Rights of the Child, based on which North Macedonia's legislation has been harmonized in this regard. The goal of the criminal justice treatment of children in contemporary criminal law in North Macedonia and in all democratic countries is to achieve the goal of education, re-education, resocialization, the development of the child's right, and the protection of his or her best interests. This goal predominates as the spirit under which criminal justice against children is regulated, in which case priority is always given to non-institutional treatment of children, through the application of non-criminal, preventive, educational measures that have to do with the proper welfare of children in contact with the law, whether as perpetrators of delinquent acts or as victims.

The Law on Justice for Children of Republic of North Macedonia adopted on 2013 is the latest positive law that regulates juvenile criminal justice. This law regulates in detail all issues related to the treatment of children in conflict with the law, children at risk, or representing crime victims. In addition to categorizing children into certain age and quality divisions, this law also provides for all types of criminal sanctions and determines the conditions under which they may be imposed on children who have committed criminal acts or misdemeanors. It also regulates the sanctioning of adult persons for acts that are legally provided for as criminal acts that they committed as children, sanctions against children for misdemeanors, and also determines the types and methods of non-penal measures - assistance and protection measures, which together with all types of repressive measures provided for by this law aim at the education, socialization, development of justice and protection of the child's interests. The law also contains provisions on juvenile criminal procedure and mediation procedures. Likewise, this positive law contains provisions on the prevention of child delinquency and regulates in detail the competencies of state bodies in this regard.

In 2019, the Law on Justice for Children underwent two changes, the Law on Amending the Law on Justice for Children and the Law on Amending and Supplementing the Law on Justice for Children.

According to the first legal amendment mentioned above (The Law on Amending the LJCH of 2019), a new paragraph is added to Article 158(1) of the LJCH, which obliges the mayors of municipalities, mayors of municipalities in the city of Skopje, and the mayor of the city of Skopje to propose to the municipal councils, municipal councils in the city of Skopje, and the Skopje City Council to appoint a Council for the Prevention of Juvenile Delinquency. Failure to comply with this legal obligation entails sanctions, specifically fines for municipalities that do not fulfill this obligation.

Meanwhile, according to the second legal amendment mentioned above, the Law on Amending and Supplementing the LJCH in 2019 provides for the delegation of competencies for the approval of decisions for the provision of free legal aid by the Center for Social Work, in cases where the conditions provided for by the LJJ are met. The following subsequent changes grant the Center these competencies:

-The center will present a formal note to the lawyer regarding the legal aid offered and participation in the discussion before the center, as well as the approved decision for free legal aid. Additionally, the lawyer submits the letter along with the list of expenses for the legal aid provided to the Ministry of Justice in accordance with the provisions of the Law on free legal aid, which refer to legal aid for children. Furthermore, the Ministry of Labor and Social Policy

is obliged to make a decision on the appeal as soon as possible. As a result, an administrative contest can be initiated against the decision of the Ministry of Labor and Social Policy before the competent court;

Other changes to the aforementioned law are as follows: the development of the procedure for providing free legal aid, initiated by the Center upon proposal of the child's parent/caregiver, lawyer and representative authorized by the Ministry of Interior. The Center must approve a decision to realize the right to provide free legal aid to the child, while the defender must present the confirmation/minutes of the discussion for this right realized by the child to the Ministry of Justice. Another novelty of this law concerns the determination that for the specified violations of this law, a contradiction procedure should be developed, and a counter-violation sanction should be imposed by a competent court.

1.2. Juvenile justice in Republic of Kosovo

In the criminal legislation of Kosovo, special attention has been paid to the treatment of children who come into conflict with the law, and in 2018 the Code of Justice for Minors was adopted, the provisions of which regulate all issues of justice for minors. The code regulates all issues related to juvenile offenders, children and minors as participants in a procedure based on the respect for fundamental human rights and freedoms, taking into account the best interests of minors, their maturity, level of development, abilities and personal characteristics, as well as the gravity of the offense with the aim of their rehabilitation and social reintegration.³

The new Code of Juvenile Justice of the Republic of Kosovo⁴ repealed the Juvenile Justice Code of 2010, which addressed obstacles encountered during the implementation of the 2010 code and introduced several new provisions that significantly advance legislation in this field. Some of the most important issues of the Kosovo Code of Juvenile Justice include: the expansion of the number of principles that guarantee and protect children's rights, as well as the inclusion of a separate chapter that regulates assistance and protection measures for children under the age of 14 who commit criminal offenses.

1.3. Juvenile justice in Republic of Albania

Until 2017, in Albania, issues related to juvenile criminal justice, including material, procedural, and enforcement of criminal sanctions, were regulated by special laws such as the Criminal Code, the Code of Criminal Procedure, etc. In other words, there was no single law that would have consolidated all this matter. As a result of requests to Albania to harmonize national legislation with that of the EU, as well as the spirit of the most important international organizations, on March 30, 2017, the Parliament of the Republic of Albania adopted the Criminal Justice Code for minors, which came into force on January 1, 2018.

The Criminal Justice Code for minors contains provisions of material and procedural nature, such as: criminal liability of minors, procedural rules related to investigation, criminal prosecution, judicial process, execution of a criminal sentence, rehabilitation, or any other measure that involves a minor in conflict with the law, as well as a minor victim and/or witness of a criminal offense. This Code also contains provisions related to young people aged 18 to 21. As can be seen from the name of this law itself, the Republic of Albania has not unified the

³ Bajrami, T., *Masat ndaj të miturve delikuentë në Kosovë*, Centrum 7, 2017, p. 291.

⁴ The draft of the Juvenile Justice Code was approved at the 121st session of the Government of Republic of Kosovo, with Decision no. 02/121, dated 21.12.2016, while the Juvenile Justice Code entered into force in October 2018.

name of persons under 14 with those aged 14 to 18 with the term "child", as required by the UN Convention on the Rights of the Child, but has retained the term "minor".

1.4. Juvenile justice in Republic of Croatia

Croatia has ratified a number of international treaties that define the specific needs and rights of children. These documents contain universal standards in the field of child rights protection. Croatia became a party to the CRC on 8 October 1991. Criminal justice for minors in Croatia is regulated by a special law - the Law on Courts for Minors.⁵

The law contains provisions on material and procedural criminal law, as well as provisions on the execution of sanctions for minors and young adults. The aforementioned law also contains rules on criminal protection of children and minors. In Croatian legislation, the term "minors" includes persons who are at least 14 years old and extends its scope to individuals who have reached adulthood but are younger than 21 years old. The main principles of the Croatian juvenile justice system are: the principle of urgency, the principle of timely treatment, the principle of graduated sanctions, and the principle of variability of sanctions.⁶

1.5. Juvenile justice in Swiss Confederation

Below are some key comments related to the administration of juvenile justice in the Swiss Confederation from the official publication "Concluding Observations from the Second and Fourth Periodic Reports of Switzerland" published by the Committee on the Rights of the Child in 2015, which highlight the main characteristics of juvenile criminal justice in this state:

- The minimum age of criminal responsibility in Switzerland still falls below international acceptable standards, therefore, there is a request for raising the minimum age for criminal responsibility to at least 12 years, as an international standard.
- The use of different terminologies when referring to the best interests of the child, which leads to misconceptions.
- The lack of harmonization between the legislation of different cantons regarding children's rights.
- Free legal aid for children is not always guaranteed, so the Committee calls for ensuring that all children have access to available or appropriate rights for assistance.
- Since only a few defense lawyers specialize in juvenile criminal law and procedures, the Committee requests that Switzerland ensure that all persons involved in the administration of juvenile justice, including lawyers, receive appropriate training.
- Children are still not separated from adults in pre-trial detention centers, so the Committee calls on the Swiss Confederation to expedite the process of creating adequate pre-trial detention facilities to ensure that children are not held in common areas with adults.⁷

1.6. Juvenile justice in Norway

Norway does not have a separate penal system that regulates justice for children separate from that for adult offenders, so there is no specific law that would regulate justice for children apart from the penal code. Issues such as the age of criminal responsibility, types of

⁵ Law on Juvenile Courts, "Official Gazette of the Republic of Croatia". (Zakon o sudovima za mladež, "Narodne novine" No. 84/11, 143/12, 148/13, 56/15).

⁶ Mandić, S., *Perception of a Croatian Juvenile Justice System - Professionals' Perspective*, 9th International Conference of the Faculty of Education and Rehabilitation Sciences, University of Zagreb, Zagreb, 2017.

⁷ UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined second to fourth periodic reports of Switzerland*, 26 February 2015, CRC/C/CHE/CO/2-4. <http://www.refworld.org/docid/566e80214.html> [accessed 10 August 2017]

criminal sanctions that may be imposed on non-serious offenders and the conditions for their imposition, criminal procedure for children and special procedures related to restorative justice, and the application of criminal sanctions against convicted children are regulated by several criminal laws of the country such as the Penal Code, the Law on Conflict Resolution (the Mediation Law) and the Criminal Procedure Act. Since there is no separate justice system for minors in Norway, victim-offender mediation can be offered to all offenders, regardless of their age, but in most cases, this procedure is applied to adolescents or young adults who have committed criminal offenses.⁸

It is worth noting that Norway presents a model when it comes to health care, child care, and social equality - it leads the world. When it comes to criminal justice for minors, most of the world follows Norway. This state has a high degree of social and family stability and offers a model for health, child care, and social equality.⁹

1.7. Juvenile justice in the United Kingdom

UK is a party to the Convention on the Rights of the Child and its two optional protocols, as well as the European Convention on Human Rights. However, the administration of justice in the UK is decentralized, with each jurisdiction having its own competencies. This has led to inconsistencies in meeting international obligations and a lack of internal mechanisms for creating uniform levels of protection for children. The Committee on the Rights of the Child has repeatedly criticized this situation.¹⁰

In England and Wales, a series of laws dating back to 1933 regulate the justice system for children and aim to ensure that accused children are given a fair trial and treatment. The minimum age of criminal responsibility in England is currently ten years old¹¹, and children under this age are considered *doli incapax* and unable to form criminal intent.¹² The justice system for children in England and Wales is regulated by the Crime and Disorder Act of 1998 and overseen by the Youth Justice Board.

It is worth noting that England and Wales now have more young people in custody than any other country in Europe: four times more than in France, 12 times more than in the Netherlands, and 160 times more than in Norway, Sweden and Finland, and often in conditions "completely unsuitable" for any country claiming to be civilized. With high rates of prisoners up to 88% and increasing evidence of unsuitable and brutal regimes characterized by harassment and suicide, it is clear that the imprisonment of children is a costly failure.¹³

The United Nations Convention on the Rights of the Child states that children should be protected from imprisonment whenever possible, and when deprived of their liberty they should be treated in a humane and respectful manner. Article 37 of the Convention emphasizes that the imprisonment of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time." However, in England, the lowering of the age for the detention of young people (from 14 to 10) together with the increase in the length of sentences is in direct contravention of such provisions. Moreover, since there are limited institutions for

⁸ Kemény, S., *Victim-Offender mediation with juvenile offenders in Norway* (Mestitz, A., Ghetti, S., (Eds.), *Victim-Offender Mediation with Youth Offenders in Europe An Overview and Comparison of 15 Countries*, Springer, Holland), Bologna, 2005, p. 101-114.

⁹ Wormer, K. V., *The hidden juvenile justice system in Norway: A journey back in time*, Federal Probation Vol:54, n.1, 1990, p. 57-61

¹⁰ Lisle, C., *Is the United Kingdom failing its Children? Applying International Youth Justice Standards in a Devolved Legal System*, Westminster Law Review, 2014.

¹¹ Children and Young Persons Act, 1933, 23- 24 Geo. 5, c. 12, 60.

¹² Feikert, C., *Children's Rights: United Kingdom (England and Wales)*, Law Library of Congress, 2007 (2015).

¹³ Muncie, J., Goldson, B., *England and Wales: The New Correctionalism*, (*Comparative Youth Justice: Critical Issues*), SAGE Publications Ltd, London, 2006, p.34-47. (accessed on: 11 May 2017)

young female offenders, they are held in adult prisons and often placed in the same spaces as adults. This fact constitutes a violation of the provisions of the Convention, which proclaim that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so."¹⁴

1.8. Juvenile justice in The Netherlands

The criminal law for children in the Netherlands is regulated by the Penal Code and the Code of Criminal Procedure. Special rules apply when a child is sentenced and remains in a care institution for young people under the Law on Care Institutions for Young People (2000). The Ministry of Security and Justice is responsible for upholding the law enforcement in the Netherlands and for this reason is also responsible for the justice system for minors.¹⁵

According to the Dutch Penal Code, the criminal sanctions for children are imprisonment for minors or a fine; alternative measures - community service, work that contributes to repairing the damage caused by the criminal act and participation in a training project; supplementary penalties - confiscation and revocation of driving licenses and measures - referral to a youth institution, confiscation, seizure of illegally earned profits and compensation for damages.¹⁶

In the Netherlands, children can be arrested and questioned by the police at any age. The minimum age of criminal responsibility is 12 years old. The prosecutor's office and the police custody can only act from that age. The Dutch Penal Code and the Code of Criminal Procedure contain rules and sanctions that guarantee that children will be deprived of their liberty only when there are no other options and when alternative measures, such as police detention and imprisonment, have been applied first.¹⁷

2. The main models of criminal justice for children

"It is now clear that in most states there are successful reforms in preventing juvenile delinquency, where measures with an educational character are prioritized, and the emphasis is always placed on special prevention."¹⁸ Different authors have tried to make a distinction between the models regarding the differences of different state systems, which favor the model of intervention instead of classic punishment for children, dividing them into three main models: 3.1. **The minimal intervention model**, which aims to prevent stigmatization by promoting diverse measures and avoiding classic criminal procedures. This model is found in Austria, Germany, and Scotland.¹⁹ 3.2. **The restorative justice model** prioritizes non-judicial ways of resolving conflicts. The proper reintegration and socialization of children who have committed a criminal offense is achieved through measures and procedures involving the offender, the victim, and society: mediation, family group discussions, and other formats. Mediation is the most applied measure in a larger number of European countries²⁰; 3.3. **The neo-correctionalist model** aims to make the offender aware of the action he/she has committed, but parents may also be involved in certain interventions and measures. In England and Wales, these interventions are called "parenting orders." The minimal intervention model leads to the

¹⁴ Muncie, J., Goldson, B., *England and Wales: The New Correctionalism*, (Comparative Youth Justice: Critical Issues), SAGE Publications Ltd, London, 2006, p.34-47. (accessed on: 11 May 2017)

¹⁵ Berger, M., Brummelman, J., *Juvenile Offenders Detention Alternatives in Europe*, 2015.

¹⁶ The Penal Code of the Netherlands, (1881, with amendments in 1994,) article 77h.

¹⁷ Berger, M., Brummelman, J., *Juvenile Offenders Detention Alternatives in Europe*, 2015.

¹⁸ Buzharovska, G. L., *Кривично постапување спрема децата во ризик и во судир со законот*, Skorje, 2015, p. 53.

¹⁹ *Ibid.* p. 60.

²⁰ Buzharovska, G. L., *Кривично постапување спрема децата во ризик и во судир со законот*, Skorje, 2015, p. 60.

functioning of non-formal action, which contains two components: diversity models in action, which present an alternative to classic criminal procedures, and the expansion of alternative measures and sanctions (community sanctions and measures), which may be imposed on children.²¹ In conclusion, there are different approaches to juvenile justice systems, with some favoring interventions rather than traditional punishment. These approaches aim to prevent stigmatization and promote the proper development and socialization of the child. The three main models of juvenile justice systems are the minimum intervention model, restorative justice model, and neo-correctionalist model. Each of these models has its strengths and weaknesses, and different countries have implemented varying degrees of success with these models. However, it is clear that there are successful reforms in the prevention of juvenile delinquency, where the emphasis is placed on educational measures and special prevention. Ultimately, the goal of juvenile justice systems is to ensure the proper development and rehabilitation of the child, while also protecting society from potential harm.

Conclusion

In conclusion, the comparative approach for juvenile justice systems in different countries highlights the diversity of approaches and models used to address delinquency among children. While some countries have adopted a more punitive approach with traditional criminal justice procedures, others have shifted towards a more restorative and rehabilitative approach that aims to prevent stigmatization and promote the social development of children. The success of these approaches is highly dependent on the resources and support available to implement them effectively. Nevertheless, the trend towards more preventive and education-based measures is promising, and it highlights the importance of prioritizing the needs and well-being of children within the justice system.

European countries differ from our country in the types of criminal sanctions and measures and programs provided for in relation to the treatment of children at risk and those in conflict with the law. Therefore, there is a need for North Macedonia to continue the orientation of the work started by the specialized police for the prevention of child crime and for the treatment of children suspected of criminal acts - by following the best practices of regional and international police, always with the aim of protecting the best interests of children. In the future, good practices of different countries should also be followed, which can be adapted and implemented in our country, such as various repressive and preventive measures and programs provided for in the legislation of European countries such as the Netherlands, Switzerland, or Norway.

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²¹ *Ibid.* p. 61.

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