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General Summary

Alternative sentences constitute a very important component in the context of the standards of juvenile criminal justice. The Albanian legislation in this field has undergone positive developments responding to the needs for reforms for the purpose of its approximation with international standards. Thus, it has undertaken a legal reform in order to guarantee a modern system of alternatives to imprisonment and to enable their application for juvenile offenders.

Despite all of the changes, the reform has been incomplete in ensuring an efficient system of juvenile justice. This article addresses some aspects of the legal reform concerning the treatment of juvenile offenders, focusing on the system of alternative to imprisonment.

The article focuses mainly on the following issues:

- Analysis of legal reform of the detention system, alternatives to imprisonment and their impact on juvenile delinquents.
- Compliance of the domestic legislation with the international standards regarding juvenile justice.
 - Application in practice of the detention system, alternatives to imprisonment, and their impact on juvenile delinquents.
 - Conclusions and recommendations for the juvenile justice in Albania.

Key words

Young offender
International standards
Legal reform
Criminal legislation
Alternatives to imprisonment
Probation service in criminal process

ALTERNATIVE SENTENCES TO IMPRISONMENT AN OPPORTUNITY FOR JUVENILE INTEGRATION

(Implementation of legal reform – theoretical and practical aspects)

Introduction

The alternative sentencing of juveniles is quite an important aspect of the criminal justice standards. Alternative sentencing is the best opportunity for juvenile's rehabilitation and their healthy development in line with the expectations of the society. Favouring the application of alternative punishment to imprisonment ensures respect for the principle of humanism¹ and re-education, as the primary goal of punishment. Alternatives to imprisonment develop juveniles' social skills and accelerate their integration in the society. Therefore, the juvenile criminal justice should encourage alternatives to imprisonment in order to avoid the negative influence of imprisonment, and ensure as an efficient integration and education process, as possible, through methods involving the community.

The Albanian legislation has demonstrated positive developments, responding to the needs for its harmonisation with the international standards. The Criminal Code of the Republic of Albania has significantly improved the contemporary system of alternative sentencing. Various institutional measures have also enabled the application of such system even for juvenile offenders.

However, despite the changes made, the legal reform has not yet managed to ensure a special treatment in terms of sanctions in compliance with the juveniles' highest interests. The purpose of this article is to identify and analyze issues related with the legal reform of alternative sentencing, as well as with their application for juvenile offenders. The analysis is based on a series of components, including the Constitution, Criminal Code, relevant laws and acts, and the international juridical instruments.

1. The legal reform in the field of alternative sentencing

The dynamic development of the Albanian society led to the need for a legal reform which resulted in an improved criminal legislation. The reform consisted of various amendments and additions to the Criminal Code, Criminal Procedure Code, judicial legislation and an adjustment of the prison system². An important aspect of the reform was the

¹ Article 1/5 of the Criminal Code states "The Criminal Code is based upon the constitutional principles of the rule of law, equality before law, application of justice upon trial and humanism".

² Law No. 10023, dated 27.11.2008 "On some additions and amendments to Law No. 7895, dated 27.01.1995 "Criminal Code of the Republic of Albania", Law No.10024, dated 27.11.2008 "On some additions and amendments to Law No.8331, dated 21.4.1998 "On execution of criminal decisions", Law No.9888, dated 10.03.2008 "On some additions and amendments to law No.8328, dated 16.4.1998 "On rights and treatment of prison detainees". Law No. 9877, dated 18.02.2008, "On organization of the judicial

establishment of special juvenile justice sections in some judicial districts of the country, like Tirana, Durrës, Shkodër, Vlorë, Korçë, and Gjirokatër³. The reform improved the content of the Criminal Code regarding alternative sentencing, and enabled the establishment of an institutional system for its supervision.

The probation service was thus established by law No.10 024, dated 27.11.2008 "On some amendments and additions to Law No.8331, dated 21.4.1998 "On execution of criminal decisions" as *"the state body⁴, which supervises the application of alternative sentencing, provides information and reports to the Prosecutor's Office and the Court according to this law and helps sentenced persons overcome difficulties in their social integration"*.

The law gives this body various powers regarding the application, execution, and supervision of alternative sentencing, which facilitates and increases the efficiency of each decision-making phase of the justice bodies, including courts and prosecutors' offices. The probation service not only supervises and checks the application of alternative sentencing, but it even influences the court and prosecutors in choosing the most appropriate alternative.

The establishment of the probation service is a positive development in applying alternative sentencing as the best way to educate and reintegrate juvenile offenders. With the relevant secondary legislation already in place, this service is now established and operates as a centralized body both at the central and the local level⁵. Structures at the central level are already established and work continues for establishing the local network.

Important amendments are made to the Criminal Code regarding alternative sentencing through the Law No.10023, dated 27.11.2008 "On some additions and amendments to law No. 7895, dated 27.01.1995 "Criminal Code of the Republic of Albania"". Such additions and amendments improved the content of the existing provisions, and introduced new provisions on alternative sentencing like the 'half-freedom', or the 'stay at home'. The different forms of alternative sentencing to imprisonment, foreseen by the Criminal Code include:

- a) Half-freedom;
- b) Suspension of the execution of imprisonment and its replacement with probation;
- c) Stay at home;

power in the Republic of Albania", Decision No.303, dated 25.03.2009 "On approval of prison general regulation".

³ Decree No. 5351, dated 11.06.2007 "On creation of special sections for the trial of juvenile offenders in the courts of law at the district level".

⁴ Article 10 of the law provides a definition for the probation service.

⁵ At the central level, the Probation Service consists of the General Probation Service Directorate under the Ministry of Justice, while at the local level it consists of its offices in the first instance courts. For more information, see Article 7/1 of Decision No. 302, dated 25.03.2009 on the approval of the regulation "On the organization and functioning of the probation service, and procedures and standards for supervising the execution of alternative sentences".

- d) Suspension of the execution of imprisonment and community work;
- e) Release on probation.

Another positive aspect of the amendments made to the Criminal Code is related to the decisions that the court may take in case of obligations imposed on an offender in the context of an alternative punishment are not met. In accordance with the European standards⁶ and the latest legal amendments, the court is now able to change the punishment measure, add new measures, and even replace the existing measures with new ones in case of the offender not complying. This is a positive development compared with the previous legal regulation, when in case of incompliance, the court would revoke the alternative sentencing and make the offender serve the remaining imprisonment sentence. In addition to replacing alternative punishment with imprisonment in case of offenders not meeting the requirements, the court may now look at other appropriate alternatives. This is now an obligation of the court, and a principle to be respected in revoking or changing an alternative form of punishment foreseen by the Criminal Code⁷.

2. Alternative sentencing to imprisonment. Its application for juveniles.

2.a Half freedom

This new alternative sanctioned in Article 58⁸ of the amended Criminal Code introduces some positive novelties, which enable its application on juveniles. This measure can now be applied in a larger number of circumstances⁹. The court may impose a half-freedom measure on

⁶ Rule 10 of the European rules on community sanctions and measures states: "The law shall not foresee an automatic conversion of a community measure or sanction into imprisonment in case of failure to meet the requirements related with such a sanction or measure."

⁷ According to Article 10 of the Law No.10024, dated 27.11.2008 "On some additions and amendments to Law No.8331, dated 21.4.1998 "On the execution of the criminal decision", which adds Article 31/10 to the existing law:

"In the case a court of law decides upon changing or revoking an alternative sentence, the sentence of imprisonment is given only in the case no other suitable alternative sentences are available. In any case, the court takes into account the severity and type of infractions committed by the offender".

⁸ This alternative replaced the alternative of the fragmentation of the imprisonment sentence that consisted of a sequenced execution of the sentence, i.e. no less than a week for a period no longer than three years with Law No.10023, dated 27.11.2008 "On some additions and amendments to Law No. 7895, dated. 27.01.1995, the Criminal Code of the Republic of Albania" where Article 58 is amended as follows:

"In the case of an imprisonment sentence of up to one year, the court, based on the entitlement of the sentenced offender with regard to legitimate labor, vocational training, attending to basic family obligations or with regard to the necessity of medical treatment, may decide upon the modification of the imprisonment sentence in a sentence of conditional freedom. The offender that is subject to such modification shall be obliged to return to prison upon fulfillment of the said entitlements and obligations within the terms and conditions laid out by the court. In case the offender does not fulfill these entitlements and obligations, Article 62 of this Code shall apply".

⁹ The court used to apply the fragmentation of a prison sentence in case of grave family, medical, professional, or social conditions. Such circumstances did not have to be

offenders for various reasons related with their *occupation, education, professional or vocational training, essential family responsibilities, or their need for medical treatment or rehabilitation*. The same alternative form of punishment may also be applied for juveniles who suffer of health problems, or juveniles who are addicted to drugs, and who consequently need to continue their medical treatment and rehabilitation. This allows for a continuation of education, professional training, and social rehabilitation in compliance with the juveniles' precise needs. The novelty¹⁰ introduced here is the supervision of the offenders serving their half freedom sentence by the probation service. The probation service shall also draft a daily program for the offender to follow while outside the detention facility.

Unlike the previous alternative punishment consisting of a maximum period of three years of imprisonment, the new alternative sentencing includes no such timeframes. *What is the maximum term for a one-year imprisonment converted into half freedom?* It is the court which determines the length of the alternative half freedom sentence after taking into consideration the offender's obligations in his or her free life. This is also going to be an aspect to be solved by the judicial practice. Such an evasive wording of the provision, though, may lead to confusion among the judges, as well as to potential misinterpretations. Therefore, judges and prosecutors need to be trained on alternative sentencing so that they have a good understanding of the new provisions, and apply them properly.

2.b Suspension of the execution of imprisonment and probation

Avoiding imprisonment and isolation from the social environment, this alternative sentencing provided by Article 59 of the amended Criminal Code¹¹ serves the offender's faster integration. The definition given in criminal literature for the suspension of the execution of imprisonment is "the decision of the court to put an offender under probation for a specific timeframe or to release him or her under probation¹²".

specifically related with the juveniles' needs. On this ground, this alternative has not been applied in the case of juvenile offenders.

¹⁰ The rights and responsibilities of the probation service regarding the supervision of the offender serving a half freedom sentence are prescribed in details in Article 6 and 7 of the Law No.10024, dated 27.11.2008 "On some additions and amendments to Law No.8331, dated 21.4.1998 "On execution of criminal decisions".

¹¹ The above-mentioned law amends Article 59 of the Criminal Code as follows:

"Owing to the low risk posed by the offender, and taking into account the age, health or mental conditions, living conditions and needs, with special regard to the needs related to the family, education and employment, and taking into due account the circumstances related to the criminal offence and to the behavior of the offender subsequent to it, the court may, upon issuing the imprisonment sentence of up to five years, order the offender to keep contacts with the probation service in the framework of a probation period by thus suspending the execution of the imprisonment sentence, upon the condition that the convicted offender shall not commit another criminal offence.

The Court asks the offender to fulfill one or more obligation as laid out in Article 60 of the present Code. The term for the probation period extends from 18 months to 5 years".

¹² Prof. Dr. Elezi. I, Prof. Dr.Kaçupi. S, Prof. As. Dr. Haxhia. M, (2004), "Commentary of the Criminal Code of the Republic of Albania", "GEER" publishing house, Tirana, pg 261.

With the amendments made to Article 59, there are now more circumstances¹³ in which the court may put an offender under probation. The circumstances are now not only related with the criminal offence, but also with the offender's age, personal qualities, health conditions, family, and social and professional situation. These circumstances reflect the tendency of the Albanian legislation to comply with the international juridical standards¹⁴. Quite a positive element in this aspect is also the taking into account of the *offender's age, as well as his or her need to study or work*. This will enable juvenile offenders punished with five years of imprisonment to be released on probation, avoiding thus the negative effects of imprisonment. They will thus not be isolated from the society or the family environment, which offer more suitable conditions for their education.

The court may order the offender during his or her probation term to keep contacts with the probation service and meet one or more obligations mainly of a social character¹⁵.

The latest amendments on the obligations that the court may impose were quite necessary, especially if such obligations are to be applied on young offenders, who have been addicted to alcohol or narcotics. The application in practice of these obligations, though, is going to face difficulties, as the treatment or rehabilitation centres are not yet properly developed in our country.

Before the latest amendments to the Criminal Code, the only obligation that the court could impose on this category of offenders was the medical treatment against alcohol or narcotics. However, a medical treatment is inadequate to fight against such phenomena, unless it is accompanied by a psychological treatment through rehabilitation programs. Therefore, the legal amendments need to be accompanied by institutional developments, i.e. the creation of rehabilitation centres, strengthening of the co-operation with the NGOs operating in this field, and the creation

¹³ The Criminal Code sets only to conditions for the suspension of the execution of imprisonment:

- a) Low risk posed by the offender;
- b) Circumstances of the criminal offence.

¹⁴ Rule 17.1 of the UN Standard Minimum Rules for the administration of juvenile justice (the Beijing rules) sanctions adjudication and disposition as one of the leading principles:

"The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society".

¹⁵ Regarding the punishments foreseen by Article 60 of the Criminal Code, the court may apply one or some of the following punishments on juvenile offenders:

1. To exercise a professional activity or to gain professional education or training;
2. To compensate for torts;
3. To be banned from certain places;
5. To be banned from shops/ facilities that serve alcoholic beverages;
6. To stay in his residence during certain hours;
7. To avoid the company of determined persons, mainly convicts or collaborators of the criminal act;
8. Not to possess, carry, or use weapons;
9. To be subject to medical treatment or rehabilitation against alcohol and narcotics;
10. To stop using alcohol and narcotics.

of a service network both at the central and the local level.

2.c Stay at home

This is a new alternative introduced with the amendment to the Criminal Code¹⁶. This special alternative, to imprisonment was not foreseen in any of the previous Criminal Codes. The 'stay at home' is defined as "serving a sentence at home, at another private home, or in a public health and care centre¹⁷". The court may decide to oblige an offender to 'stay at home' considering:

1. the offender's imprisonment sentence;
2. offender's individual circumstance.

The 'stay at home' sentence is applied only on offenders, who are sentenced two or more years in prison, and who have only two more years to serve.

As for the individual circumstances¹⁸, this alternative measure is applied only for a certain category of offenders, who have special family or health circumstances. In addition, the 'stay at home' measure is also applied for *young people under the age of 21 with documented needs to study, work, or meet family obligations*. As one may notice from the content, this alternative measure introduces a new element in our Criminal Code. It is for the first time that the term 'young' is sanctioned in the Code, ensuring a favoured treatment for the young under the age of 21. Such treatment is in full compliance with the international standards requiring national legislations to ensure a special protection for the young age groups¹⁹. Sanctioning this age group as a special category marks one step ahead toward providing a special legal treatment for this category.

The application of this alternative for the young people under the age of 21 is conditioned by the existence of certain circumstances related to their health, studies, work, or family obligations. The 'stay at home' does not imply an offender's isolation within his or her home without a possibility to move. The provision enables the court to authorize the offender to move out of his/her home, engage in working or studying

¹⁶ Law No. 10023, dated 27.11.2008 "On some additions and amendments to Law No. 7895, dated 27.01.1995 "Criminal Code of the Republic of Albania" added Article 57/a, which provides for the alternative sentence of 'stay at home'.

¹⁷ Article 4/1 of the above-mentioned law.

¹⁸ According to Article 4 of the law, the court may oblige the offender to stay at home in the existence of the following circumstances:

- a) For pregnant women or women with children less than 10 years of age that live with their mother.
- b) For fathers who have child-attending responsibilities for a child less than 10 years of age in the case the mother is dead or unable to attend to the child.
- c) For persons in severe health conditions in need of continuous healthcare outside the detention facilities.
- c) For persons more than 60 years of age that are considered as persons with disabilities.
- d) For young persons less than 21 years of age with documented health, education, labor or family-related needs.

¹⁹ Rule 3.3 of the Beijing Rules asks for the application of the principles laid out in these rules on the juveniles that violate the law

activities, i.e. regularly follow his studies or work, and even attend rehabilitation programs, if necessary. Thus, this alternative serves juveniles' integration in the society, enjoying full rights like any other member of the society, and enables them to work and study as the basic conditions for their integration. The disposition introduces, thus, several progressive elements. The role of the probation service is quite important for the execution of the 'stay at home' decision²⁰. In this case, the probation service plays not only a supervisory role, but even a supporting role for the offender. The probation service drafts programs for the offender, and ensures the necessary assistance and help through co-operation with the local government authorities, health institutions, social services, NGOs and any other public and private operator. However, the practical application of this provision remains to be seen in the future. Its successful application requires the necessary secondary legislation and good co-operation between the probation service, the court, and the above-mentioned bodies.

2.d Suspension of the execution of imprisonment and community work

*"Community work refers to work done by an offender with his or her consent, but without remuneration, in favour of the public interest or an association appointed by a court decision, for a period of forty to two hundred and forty hours"*²¹.

In compliance with Article 63 of the Criminal Code, the replacement of imprisonment with community work is done by taking into account the risk presented by the offender and her/his criminal offence, as well as the circumstances in which the offence was committed. As for the dangerousness of the criminal offence, the Criminal Code requires that this alternative is used only when the court has decided to sentence the offender with one year of imprisonment. The dangerousness of the offender and the circumstances in which he or she committed it are to be evaluated by the court at its own discretion. The court may decide to sentence the offender with forty up to two hundred and forty hours of community work, to be carried out within a six-month timeframe. With the latest legal amendments, this provision also changed and its content is now improved. In addition to the defining the 'community work', the provision now determines the daily time for community work, which should not exceed eight hours. In compliance with these amendments²², the probation service determines also the type of work and the place where it is to be carried out, taking into consideration the offender's *regular work and his or her family obligations*. Such wording, though, limits the application of this provision on young people over the age of 16²³. The provision also need to identify other factors determining the

²⁰ Such activity is laid out in detail in Article 9 of the Law No.10024 date 27.11.2008 "On some changes and additions to Law No. 21.4.1998 "On the execution of sentences on criminal offences" that adds article 31/4 in the existing law.

²¹ This definition is given in Article 8 of Law No. 10023 dated 27.11.2008, "On some additions and changes in Law No. 7895 dated 27.01.1995, "Criminal Code of the Republic of Albania" that amends the content of Article 63 of the Criminal Code.

²² Ibid, paragraph 5.

²³ The age of 16 is the minimum age for entering the labor marked as stipulated in the Labor Code.

type of community and the number of working hours like the offender's age, and his or her education. Although community work has not yet been applied by the Albanian courts as an alternative punishment for the young offender, I think that this form of punishment is very positive and educative for them. Such form of punishment strengthens their willingness to work, as well as their dedication and commitment to the community where they live, as one of the most important elements of their integration process. Psychologists²⁴ think that the young people sometimes commit criminal offences because of their feeling of apathy or emptiness caused by lack of engagement. Their involvement in community work is likely to have a very positive impact on their behaviour and accountability. This alternative may be particularly applied on juveniles who commit criminal offences like theft or destruction of property, making them aware of the importance of material goods and the lawful ways in which they are gained. The provision, therefore, needs to be reviewed and improved in order to extend its application to juvenile offenders.

2.e Release on probation

Unlike other alternative sentences, the release on probation is applied only if the offender has already served a part of his or her imprisonment. The release on probation is granted only to those offenders who have displayed an exemplary behaviour during their detention, thus demonstrating that the purpose of their re-education is reached. In these circumstances, serving a full imprisonment sentence is no longer needed, and the offender is released.

Article 64 of the Criminal Code allowed release on probation before its amendment through Law No.8733, dated 24.01.2001. This law amended the conditions on which release on probation is granted²⁵. These amendments allow release on probation to be granted when the offender has already served the following before requesting his or her release on probation:

- no less than half of the sentence in case of contraventions;
- no less than two thirds of a five-year sentence in case of crimes;
- no less than three fourths of a five to twenty five years of imprisonment.

The sentence served does not take into account the time granted by an amnesty or pardon.

Early release on probation is not applied for recidivists sentenced for deliberate crimes. The provision, however, does not deprive recidivists punished for criminal offences or crimes committed due to negligence of this opportunity. The 2008 legal amendments did not introduce any new elements regarding the part of the sentence served before requesting to be released on probation.

²⁴ Hysa, A. (2007), *Alternative sentences as a practical solution to imprisonment, Restorative Justice and Negotiations for Solving Criminal Conflicts – A manual for judges and prosecutors*, UNICEF, Tirana, pg. 23.

²⁵ Criminal Codes of 1997, and 1995 foresaw the release on parole upon the expiry of the first half of the duration of the imprisonment sentence given by the court.

The provision allows for the release on probation of an offender only for “**special reasons**”, i.e. *if he or she shows with his or her work and behaviour that the part of imprisonment that she or he has served has been successful in reaching its goal*. Interpretation of this term allows the court to consider the release on probation as an exception even when the requirements to grant it are met. Practice has actually shown several deficiencies with the application of the release on probation caused mainly by the different interpretations of this provision by the judges of the “*special reasons*”. Sometimes, judges associate, and wrongly so, this term with the offender’s economic or family situation. Thus, although their work and behaviour during the served part of the sentence demonstrate that he or she has been educated, the judge does not yet grant them release on probation. Similarly, offenders claim that despite their willingness to work and meet the requirements for release on probation, there is only a limited possibility for them to work in their detention facilities.

That is why I think that the article, and particularly the ‘special reasons’ phrase, need to be reviewed. A more liberalized application of the release on probation by the judges would have quite a positive impact in encouraging young offenders to manifest a positive behaviour, and respect for the internal regulations of their detention facilities. This policy will also help in reducing the overpopulation of these facilities, which is actually the main problem they face. The provision should also allow a differentiated treatment of the young offenders under the age of 21 in terms of the criteria they have to meet in order to be granted release on probation. Considering their work performance in detention as an indicator of their education would make no sense, as juveniles under the age of 16 may not be forced to work.

The amendments²⁶ to the law on the execution of criminal offences give the probation service an important role to play during the session of adjudicating the offender’s request for release on probation. The probation service submits a report on the offender’s social background, family situation, and his or her chances of integration. The court is now no longer the only body to decide whether the offender does or does not have chances of integration. The intervention of the probation service is now also needed for a decision to be taken. However, the court is still the decision-making body. The probation service, on the other hand, does still have a role to play after the offender is released on probation. The service supervises the execution of the court decision, and when necessary, it co-operates with the local authorities like the State Police. The probation service may even ask the prosecutor to change one or more of the obligations that the offender has to meet, if the latter is incapable of meeting them.

²⁶ See Article 8 Law No.10024, dated 27.11.2008 “On some additions and changes in Law No. 8331, dated 21.4.1998 “On the execution of criminal sentences”.

3. Criminal juvenile justice. The need for juvenile's special treatment

Reforms of the criminal juvenile justice should ensure special treatment in compliance with the juvenile's highest interest. The international legal instruments require the countries to ensure special protection of this category because of their status as juveniles²⁷. The UN Convention on the Rights of the Child is the most important instrument in this field, considering anyone under the age of 18 as a child²⁸. Within this age, the Convention sets clear limits for the application of criminal justice. Article 37 states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It also states that neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age. Article 40 sanctions the need for the creation of a special juvenile justice section for the purpose of re-integrating the juvenile offenders in the society. In addition to the minimum guarantees to be ensured during children's arrest, detention, or imprisonment²⁹, Article 40 also requires the member states to take measures to prevent the confrontation of the children who have violated the law with the judicial proceedings by providing a series of alternative provisions on their social care³⁰. From the point of view of the obligations deriving from the international juridical instrument, one would naturally ask the following question.

3.a How is the special juvenile treatment reflected in the Albanian criminal legislation?

The basis of the criminal legislation of the Republic of Albania consists of its Criminal Code approved by Law No.7895, dated 27.01.1995. This code is drafted after the criminal codes of democratic countries like France, Germany, Italy, etc³¹. Since the date it entered into force until now, the Code has gone through constant additions and amendments. A definition of the principles of the criminal legislation in Article 1/c was an important element of the amendments made to the Criminal Code. Such principles include the rule of law, equality under the law, fair trial,

²⁷ Paragraph 5, Article 40 of the UN Convention on the Rights of Child asks state parties to support the approval of laws, procedures, and the establishment of authorities and special institutions for children that are suspected, accused and proven to have committed criminal offences. Also, the supranational pact on the political and civil rights, Article 24 guarantees the right of every child to have a special legal protection. Same principle applies in Rule 2.3 of the Beijing Rules, article 52 of the UN Directives on the prevention of juvenile delinquency (Riyadh Directives) etc.

²⁸ According to Article 1 of the Convention a child is considered each and every human being less than 18 years of age except for the case the adult age has been differently set by the pertinent national legislation.

²⁹ These guarantees are not subject to this essay that focuses only in some aspects of juvenile justice related to the system of the criminal sentencing.

³⁰ Albanian legislation and the Convention on the Rights for the Child, (2007), publication of the Center for Integrated Services and Practices, Tirana, pg. 382.

³¹ Prof. Dr. Elezi. I, Prof. Dr. Kaçupi. S, Prof. As. Dr. Haxhia. M, (2004), "Commentary of the Criminal Code of the Republic of Albania", "GEER" publishing house, Tirana, pg 12.

humanism, and non-punishment by analogy³². These principles provide the necessary framework for ensuring the fundamental rights and freedoms, as well as its compliance with the Constitution³³ and the international standards. The principle of human punishment is particularly important in the treatment of juvenile offenders. This principle is reflected in the provisions of the Criminal Code dealing with the legal age to be held criminally responsible, calculation of imprisonment for juveniles, application of educating measures, and alternative sentences.

Treatment of juvenile offenders is not foreseen in a special chapter of the Criminal Code. The provisions that contain specific legal regulations on the treatment of juvenile offenders are found in different chapters of the Criminal Code. At the same time, some general provisions are also applicable to issues related with juveniles.

In terms of sanctions, the Criminal Code contains certain criteria which are very important for the juvenile offenders, and which reflect the human character of this code. According to Article 31, life imprisonment may not be applied to juvenile offenders. In addition, according to Article 51, imprisonment for juveniles who had not reached the age of 18 when they committed the criminal offence, may not be longer than half of the imprisonment foreseen by the law for that specific criminal offence. Article 33 states the principle of having special detention facilities for adult offenders. In compliance with the principle of imprisonment being the last resort for the juvenile offenders³⁴, the Criminal Code allows for the juvenile offenders to be exempt from imprisonment³⁵. The court in this case should take into consideration the dangerousness of the criminal offence, the circumstances in which it was committed, and the offender's previous behaviour. Based on these criteria, a juvenile offender may be exempt from imprisonment, having thus more opportunities for education. When the court decides to exempt a juvenile offender, it sends him or her to a re-education institution. The court may decide so not only when the juvenile offender is exempt from imprisonment, but also when he or she has not yet reached the age eligible for criminal responsibility³⁶. In these cases, the court decided to send the offender to a re-education institution. Actually, lacking such institutions has made the provision inapplicable. This is also what a

³² Added through law No.8733 dated 24.01.2001 "On some additions and changes to Law No.7895 dated 27.01.1995 "Criminal Code of the Republic of Albania".

³³ Article 54 of the Constitution of Albania guarantees a special protection from the state for children and minors.

³⁴ UN rule on the protection of minors in detention, Article 37/b of the UN Convention on the Rights of the Children, Art 46 of the UN Directives on the Prevention of Juvenile Delinquency, Rule 19.1 of the Minimal Standards on the justice administration on minors (Beijing Rules), etc.

³⁵ According to art 52 of the Criminal Code:

"Based on the neglectable risk posed by the criminal act, by the behavior to date of the minor and by the concrete circumstances of its occurrence, the court may exclude the minor from the imprisonment sentence by deciding upon sending the minor in a correctional institution".

³⁶ The Albanian Criminal Code considers the age of 14 as the threshold for criminal liability and the age of 16 for liability for criminal offences. The reference age for the imputation of the offence is the age of the offender at the moment of the criminal act.

recent survey showed, i.e. such provisions are still inapplicable in practice³⁷.

In addition to the provisions on the special treatment of the young offenders, there are a series of other general provisions in the Criminal Code that can be also applied on juveniles. Thus, although not directly relevant to juveniles, the principle of reducing a punishment below the limits foreseen by the law and sanctioned in Article 53³⁸ is also applicable to juveniles.

As for alternatives to imprisonment, they are prescribed in Chapter VII of the Criminal Code. In the Albanian juridical literature³⁹, alternatives to imprisonment are defined as: "*Criminal sanctions established by the state, which consist of imprisonment suffered in a way different from the traditional prison cell system, considering that the re-socialisation of certain perpetrators and offences of a low social risk, would be most effective in the community itself*". Based on this definition and the term "*alternative to imprisonment*", we come to the conclusion that: *alternatives are applied only when the court has already decided to imprison an offender, and when the specific circumstances of the perpetrator or the offence he or she has committed make the court think that it would be appropriate for the sentence to be executed in one of the alternative forms foreseen by the Criminal Code. Thus, when the court decides in favour of an alternative form to imprisonment, this is not about a new punishment, it is rather the way in which the punishment or the imprisonment sentence is going to be served.* The way this provision is worded in the Criminal Code leaves the application in practice of such alternative forms at the discretion of the court, which is responsible for taking a decision in compliance with the legal criteria and for deciding whether to apply them or not. Thus, the lawmakers see imprisonment as the first option for the courts to choose, and community work as an alternative to imprisonment. The number of alternative punishments has been more limited prior to the legal reform⁴⁰. Problems faced by the

³⁷ A study conducted by the Albanian Helsinki Committee on the final sentences given to minors by the district courts of Tirana, Shkodra, Fier, Elbasan, Gjirokastra, Vlora and Korça for the period 2005-2006 documents that the courts have never applied the exclusion from the imprisonment clause. The contrary applies for the provision on the reduction by half of the sentence foreseen by the law on criminal offences. This provision has been applied in all imprisonment sentences on minors. AHC, (2007), Fulfillment of the rights of minors in the criminal process, a study of the final sentences of district courts 2005-2006, "Pegi" publishing house, Tirana, pg 25.

³⁸ According to Article 53 of the Criminal Code:

"In certain cases the court may, in the case it ascertains that the offence and its perpetrator are of a negligible risk and the offence has been committed under mitigating circumstances may give a sentence that is lower than the minimum sentence prescribed by the law or a less severe sentence than the one prescribed by the relevant provision".

³⁹ Kacupi. S, (2007), Mediation in criminal cases on restorative justice perspective, Restorative justice and negotiations for solving criminal conflicts – A manual for judges and prosecutors, UNICEF, Tirana, pg. 12.

⁴⁰ Prior to the amendments of the year 2008, the alternatives provided for by the Criminal Code were the following:

1. Fragmentation of the imprisonment sentence;
2. Suspension of the execution of the imprisonment sentence and the transfer to the probation sentence;

judicial system in applying alternative punishments have always been raised by lawyers⁴¹. Such punishments have been applied only to a small extent. The lack of a supervisory body and institutional structures has been an obstacle for their application. Although the Criminal Code mentioned special supervisory bodies⁴², such bodies have not actually functioned in practice. In absence of such special bodies, the supervisory role has been played by Police officers and prosecutors. Supervision by police and prosecutors has not been that successful. In these circumstances, judges were faced with two options; either imprison young offenders, or suspend their imprisonment and put them under probation with no one being responsible for checking his or her performance⁴³. Difficulties faced in practice apply to the application of alternative punishments also for young offenders⁴⁴. The legal reform enabled the application in practice of the alternative punishments by establishing the probation service which supervises the execution of such punishments.

Despite the positive steps taken so far, our system of alternatives to imprisonment requires further regulation. The Criminal Code does not yet provide a special system of alternative sanctions and measures for juvenile offenders. Latest additions and amendments have failed to provide a special treatment for juvenile offenders in compliance with their highest interest. Alternative punishment to imprisonment is applied on a case-by-case basis, regardless of the offender's age. There are not yet any soft sanctions to be separately applied or unconditioned by imprisonment. This is a shortcoming to be tackled by providing special and widely educative alternative measures for young offenders.

There are still certain problems with the institutional infrastructure which present difficulties for judges in imposing alternative sentences to imprisonment for young offenders. Establishing a juvenile justice system with a particular focus on the provisions that regulate educational services for convicted minors, has actually been part of the Albanian

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3. Suspension of the execution of the imprisonment sentence in exchange of the obligation to carry out works and services in the public interest;
 4. Release on parole before the expiry of the imprisonment term.

⁴¹ The General Prosecutor Theodhori Sollaku referred as follows in the National Conference "On the execution of final court rulings", (2004), published by the People's Advocate, pg 19 "In the judicial practice there results that in many cases the legal criteria on the assignment of the type of sentence are not followed and there lacks an unified strategy / policy on the application of sentences for criminal offences at the district, appeal or national level".

⁴² Article 61 of the Criminal Code referred to the term "bodies for the supervision of the proof" but it did not specify what these bodies are in real terms.

⁴³ AHC, (2005), "The Albanian Criminal Justice System for Minors in Albania", "Pegi" publishing house, Tirana, pg 33.

⁴⁴ In its 2005-2006 study, the Albanian Helsinki Committee assesses that the criminal sentences issued by some district courts on minors have been quite severe. In no case the court has declared that the child's higher interest should prevail through the issuance of sentences alternative to imprisonment. For more information please refer to the AHC, (2005), "Respecting minor's rights in the criminal process", "Pegi" publishing house, Tirana, pg 23.

strategies⁴⁵ and action plans⁴⁶, but it has not yet been realized. The newly established probation service is a positive, but inadequate step in this aspect. There is a need to create the necessary institutional infrastructure, including education institutions, rehabilitation centres, and community service facilities for young offenders. In addition, professional recruitment and the constant training of the personnel responsible for imposing, applying, and for supervising the alternative sentences remain another challenge for the Albanian society in its efforts to meet the international standards in the field of juvenile criminal justice.

⁴⁵ National Strategy for Children 2001-200 approved by the Council of Minister's Decision No. 368 dated 31.05.2005, page 12.

⁴⁶ Action Plan of the National Strategy for Children 2005-2010, page 9.

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Action Plan for the National Strategy for Children, 2005-2010

Decree No. 5351, dated 11.06.2007 “On the establishment of special sections of juvenile justice under judicial district courts”

General Prison Regulation approved by Decision No. 303, dated 25.03.2009 f the Council of Ministers

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4. International acts

Convention on the Rights of the Child, ratified by the Albanian state in February 1992 European Convention on protection of fundamental rights and freedoms, approved by Law Nr. 8137, dated 31.07.1996

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