

JUVENILES AS VICTIMS OF SEXUAL VIOLENCE
COMPARATIVE VIEW BETWEEN ALBANIAN AND
INTERNATIONAL LAW¹

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Abstract

Today we are faced with rapid technological developments. Thanks to this technology, the information that is received is diverse and now even juveniles have access to receiving information inappropriate for their age. Pornography, false models that create false beliefs in juveniles, or other inappropriate displays on the internet, are a danger that juveniles face every day. Different states have a different age of consent for sexual intercourse. Albania has set the age of 14 as the age at which sexual intercourse will not be considered abuse. The 14-year-old juvenile reaches sexual maturity, but does he or she have the intellectual capacity to understand the importance of the actions performed?

In Albania, the Family Code does not allow marriage under the age of 18, except in special cases. The Civil Code does not allow you to perform legal actions without having the ability to act, which is acquired at the age of 18. Alcohol and tobacco cannot be consumed under the age of 18, nor can a driving license be obtained before this age. All of these are within the scope of the juvenile's intellectual capacity, which is assumed to be reached upon attaining the age of 18. Since there is an age limit of 18 years, the question naturally arises: Why is the limit so low for sexual intercourse?

This paper focuses on the juvenile as a victim of sexual abuse. The choice of this topic comes precisely at a moment when our society has faced such situations, where juveniles have been sexually

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abused, and in many cases, have not found the protection and support of the family and the law.

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Introduction

"Children are our most precious resource", said the 31st President of the United States of America, Herbert Hoover. A child abused in any form of violence means a child abandoned, destroyed and forgotten by society and the law. Denied the love, support and protection of family, society and the law, this child is destined to be a dangerous contingent to society in his future.

The first question we must address in this topic is: Who is considered a "juvenile"? The Code of Criminal Justice for Albanian Juveniles in article 3 point 3 states that "juvenile" is any person under the age of 18". While the Convention on the Rights of Children in its article 1, does not use the term "juvenile", but considers every human being under the age of 18 to be a child. One of the most serious crimes against children is abuse and neglect. Child abuse in any form causes negative psychological and physical effects. Each child's sexual knowledge and behavior is strongly influenced by the child's age, what he observes, including the sexual behaviors of family and friends, and what the child is taught, including cultural and religious beliefs about sexuality and physical boundaries.

As children grow older, they interact socially, become more aware of the differences between boys and girls, and are more social in their exploration. As children become more aware of the social rules governing language and sexual behavior, they will also try to break these rules. They may also ask more questions about sexual issues, such as where babies come from and why boys and girls are physically different (www.healthychildren.org).

1. International standards for children's rights

International acts related to juvenile justice are classified in instruments of the United Nations, the Council of Europe and the European Union. Among them as the most important we highlight, is the "*Geneva Declaration on the Rights of the Child*", adopted by the League of Nations in 1924. This declaration defines the rights of children regarding the means that enable their moral, spiritual and material development, the right to special care in case of illness, disabilities or when children remain orphans, the right to be the first to be helped in crisis situations, the right not to be economically exploited and to grow up in conditions that foster a sense of social responsibility.

The "Universal Declaration of Human Rights" adopted by the General Assembly of the United Nations in 1948, in its article 25, states that childhood are entitled to special care and assistance. "*Declaration of the Rights of the*

Child" in 1959 sanctioned rights such as freedom not to be exploited and the right to name and nationality.

In 1966, the *"International Covenant on Civil and Political Rights"* and the *"International Covenant on Economic, Social and Cultural Rights"* were approved. This was a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976.

In 1973, the International Labor Organization approved Convention No. 138 "On the minimum age for admission to work" which sets the age of 18 as the minimum age to be admitted to various types of work that may pose a risk to health, safety or morals of the individual.

"Convention on the Elimination of all Forms of Discrimination against Women", also proclaimed 1979 as the International Year of the Child, setting in motion the working group to draft a legally binding convention on the rights of the child.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). These rules were approved by the General Assembly of the United Nations with resolution 44/33 of November 29, 1985. The Standard Minimum Rules were formulated to be applicable by all member countries, regardless of the legal system they have, as well as being applied to all cases without distinction and impartially. These rules provide the definition of the terms "juvenile" and "violation" in function of the term which is at the foundation of the Rules, "juvenile violator of the law" determining that the age restrictions depend on the legal systems of the states, i.e., on the political system for juveniles which varies from one country to another.

The Beijing Rules emphasizes the expansion of the network of control over juveniles, implying the involvement of the family, school and community in the treatment of juveniles, and aim to achieve several basic objectives, among the most important of which is the promotion of the well-being of juveniles and, in those legal systems that apply, the model of criminal courts.

Another essential object is the so-called "principle of proportionality", known as a tool to control punitive measures in relation to the importance of the violation. In these Rules, it is emphasized that the deprivation of liberty of juveniles should be limited only to those cases where a serious criminal offense has been committed through the use of violence or against repeat juveniles who show no signs of improvement. But what is more important in these rules has to do with the fact that the court must have a large number of measures at its disposal so that it can be as flexible as possible in their use, for determining the most appropriate measure to juveniles.

These measures are recommended to be counseling, supervision, care, conditional sentence, work for public interest, compensation for damage, and participation in a group session for psychological counseling, which have one thing in common, to make it possible during their implementation that the juvenile remains close to the family and community. The detailed analysis of the Beijing Rules orients in two important directions where justice for juveniles should be directed and especially austerity measures against them, on the one hand, the expansion of austerity measures against juveniles, and on the other

hand, to see the possibility that for light criminal offenses, the juvenile should be excluded from a judicial procedure and other measures as those mentioned above should be applied to him.

“Convention on the Rights of the Child”, was approved by the UN on 20.11.1989 and is an important instrument that was ratified by the Republic of Albania on February 28, 1992 and as such has become an applicable part of the internal legal system and directly applicable.

There are four basic principles of this convention:

- Non-discrimination (Article 2)
- The best interest of the child (Article 3)
- The right of life, survival and development (Article 6)
- Right to share (Article 12)

Looking from a narrow point of view, it is noticed that the perception that the Convention gives to children is very democratic, which means that a state based on this has the principle of "social welfare state" where children are seen as citizens and subjects of rights. Article 3/1 states that in all decisions related to children, taken by public, private or social support institutions, courts or administrative authorities, the best interest of the child must be the predominant consideration.

Articles 37, 39 and 40 of the convention regulate the relations of juveniles in the criminal justice system, including the implementation of security measures against juveniles. Article 37/b sanctions that arrest, detention or imprisonment must be taken in accordance with the law, used as a last measure and for the shortest possible time. This aspect is also reflected in Article 31 of Law No. 8331, dated 21.04.1998 "On the execution of criminal decisions", which expressly provides: "When the court in the decision of imprisonment has decided to suspend and replace it with performing a work of public interest, the prosecutor, in the executive order, passes the case to the executive body for action, according to the rules provided in Article 63 of the Criminal Code.

Article 40 of the Convention defines in detail the procedural guarantees that must be respected against a child suspect or perpetrator of a criminal offense. Important is the obligation defined by the convention for the consideration of the case against juveniles without delay by a judicial authority or body, the full respect of private life in all stages of the proceedings, as well as the obligation of the state parties that whenever it is necessary or mandatory for these children to be treated without resorting to the legal procedure. Also, in support of this article, the states recognize every child suspected, accused or anyone who is said to have committed a violation of the criminal law, the right to such treatment that develops in the child a sense of dignity and value.

Importantly in the field of the protection of the rights of juveniles, we also mention the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty", called the Havana Rules, approved on December 14, 1990 "Instructions for the Prevention of Juvenile Criminality", known as the Riyadh Guidelines.

Among the instruments of the Council of Europe as the most important we mention:

- European Convention on Human Rights (ECHR) and Protocols 1, 2, 4, 5, 6, 7, 11.
- The Revised European Social Charter.
- European Convention on the Exercise of Children's Rights.
- European Convention on the Prevention of Torture and Inhuman and Degrading Treatment and Punishment and Protocols 1 and 2.
- European Convention on Social Rights.
- European Conventions on the Supervision of Convicted or Paroled Persons.

Albania has ratified the main conventions protecting children's rights, which are part of the domestic legislation and are mandatory for implementation. But from the monitoring of a number of NGOs that operate in the country in the protection of human rights, the recognition and implementation of these conventions by the employees of the justice system is still limited.

2. Giving consent for sexual intercourse

The purpose of setting an appropriate age of consent for sexual intercourse is to protect juveniles from sexual abuse. The age of consent is the age at which a person is considered to be legally competent to consent to sexual acts.

For the Ancient Greeks, girls were considered fertile at the age of 14. They thought that a woman's blood and fertility were connected and that the woman had collected enough blood in her body to bear children. Therefore, they argued that girls should be married at that age. For Aristotle, a woman would be better able to conceive a child if she waited until the age of 21. (Jones, 2013)

The Romans set the age of 12 for girls, the age at which girls could have a dowry and become legal wives. Plutarch (Lefkowitz, Fant, 1982) explains that men married girls by abducting them, but it is still unclear whether this was a ritualized "abduction" or the girls were abducted randomly off the street. If that were the case, abduction would not be called a consensual act. According to Xenophon, the Athenian writer of the 4th century BC, an older man could choose a younger woman in order to have "worthy" children or the man could have children with another woman on condition of her husband's permission. In both cases, the woman's lack of consent was part of Spartan law, thus showing that the woman's consent was completely irrelevant. Sparta as a city-state with the culture of having healthy children, valuing them as a contribution to society, evaluated the woman's resistance as a deviation, which should not happen.

2.1 Age limit for sexual relations and "Consent" under foreign legislation

The purpose of the minimum age of sexual consent is to protect juveniles from sexual abuse and the consequences of early sex, thereby protecting their rights and development. Juveniles can be lured into sexual activities by adults, offering them favors, putting the juveniles at extreme risk.

Early sexual activity in juveniles exposes them to many risks such as damage to reproductive health, unwanted pregnancy and sexually transmitted diseases (UNICEF, 2014). Early marriage and motherhood are one of the reasons for school dropout by juvenile girls. The Committee on the Rights of the Child considers the age of 13 to be too low, however young age should not be considered as an element for decriminalizing the behavior of juveniles.

Though the child's capacity and development should be respected, the age of consent should not be set too high. The age difference between the partners should also be taken into account as an indicator of the balance of power between them as there are many cases of juveniles of the same age who develop a relationship between them. Age of consent was first used as a term in secular law in 1275 in England, as part of the law of rape. (Robertson, 2021) The expression "within the age" was interpreted by the jurist Sir. Edward Coke as meaning the age of marriage, which was the age of 12. The age of consent makes it easier to prosecute a man who sexually assaults an underage girl. In some countries, as in the case of Malta where the age is 18 years old, supporters of this high limit are justified by scientific reasons that psychological sexual maturity comes later than physiological maturity. They also argue that this age should be in line with other development standards, such as the age at which girls can enter into contracts and have property rights, usually age 21.

Opponents of this theory are more focused on physiological maturity, arguing that teenage girls were sufficiently developed to not need legal protection. Moreover, they argued that girls in their late teens knew enough about how to use the law to "blackmail" unwanted relationships.

In the US, the Supreme Court ruled that it was constitutional to apply the age of consent only to girls, not boys, and related this to the consequences of pregnancy. (Michael M. v. Sonoma County Superior Court, 1981). In the 1970s, European countries began to establish a uniform age of consent for homosexual and heterosexual acts. Under pressure from the European Commission for Human Rights, the former Soviet states and the United Kingdom were the last countries to revise their legislation at the beginning of the 21st century. For more than 800 years, since the era of the first recording of the law of consent, there is a lack of stability for this age. Various legislations stipulate the age of 13-18 as the age of consent. Some states distinguish between homosexual and heterosexual acts, others do not.

According to French criminal legislation, "rape is an act which must consist of violence, austerity, threat or surprise, and there is no room for giving consent if we have the involvement of a juvenile". Based on medical evidence, juveniles are not capable of giving consent for such acts and especially when they are faced with pressure from authoritative persons or persons whom they trust. According to the World Health Organization, sexual abuse of juveniles is a unique phenomenon and the dynamics differ from that of sexual abuse of adults.

In 2015, the Supreme Court in France reaffirmed that there is no age of consent for sexual relations.

But why has the French legal system been determined to not fix an age of consent? In May 1968, there were student protests against capitalism, communism and against some elite and unjust institutions. The protest was considered a cultural revolution which required changes in the issue of sexual relations, where children had the right to be seen as sexual beings, so pedophilia was called a sexual orientation and everything was within the framework of freedom. Meanwhile, in the 1970s and 1980s it was decided that sexual intercourse between an adult and a juvenile was contrary to any moral or legal norm.

The age of consent in Spain is 16, which means that this is the minimum age that an individual is considered legally capable of engaging in a sexual relationship. Individuals 15 and under, are not considered legally competent and engaging in sexual activity with them would result in prosecution for rape. In Spain, the exception of close age is not recognized or as it can be called the "Romeo and Juliet" law where two juveniles of their own willpower have sexual relations and do not bear criminal responsibility. There is no age exception in Spain, when two individuals under the age of 16 have sex, both will be prosecuted according to the law.

The age of consent in Italy is 14. Having sexual relations with juveniles 13 years old and below would result in criminal prosecution for the crime of rape. The age of consent is raised when one partner has an influence on the other partner, such as a teacher. Italy has a close age rule where a 13-year-old will not get into legal trouble if they are involved in a relationship with a peer or someone up to three years older than they are.

Malta is one of the countries that has the highest age of consent, which is 18 years old. Any sexual act performed with individuals below this age will be considered rape. Malta also does not apply the close age rule. Two juveniles under the age of 18 who have sex, even with their consent, will be prosecuted. In Albania, "Performing sexual or homosexual relations with a juvenile child, who has not reached the age of fourteen or with a juvenile who has not reached sexual maturity, is punishable by imprisonment from seven to fifteen years. When the sexual or homosexual relationship is carried out in cooperation, more than once or with violence, or when serious health consequences have been a cause of to the injury to the child, it is punishable by imprisonment of not less than twenty-five years. When the offense results in the death or suicide of a juvenile child, it is punished with imprisonment of not less than thirty years or life imprisonment." (Article 100, Criminal Code). As can be seen from the provision, the age allowed to have sexual intercourse is 14 years old or when the child has reached sexual maturity, whichever is higher. In Albania, the problem of sexual relations with juvenile children has taken on disturbing proportions, especially in recent years. Although it has become a social problem, it has not been possible to determine what the real situation is, though where there are data on the number of injured children, it appears that this phenomenon is quite widespread.

3. Sexual crimes and their consequences

Some categories of sexual crimes, such as violent sexual relations with adults or juveniles are more widespread and problematic than others. (Michael M. v. Sonoma County Superior Court, 1981). These types of relationships, otherwise known as "rape", are the most widespread. Rape is a sexualized form of exercising power and control and not just gratification of the sexual instinct. It is rooted in patriarchal societies. The goal is to depersonalize the victims, reducing them to just their sex. For this reason, rapes are psychologically much more serious than other aggressive behaviors. As elements of this criminal offense, there must be violence and opposition on the part of the injured party. Physical violence is the most serious form of violence.

In addition to physical violence, jurisprudence also accepts psychological violence. Psychological violence expressed through threats usually precedes physical violence. In the circumstances of this crime, acute psychological trauma accompanied by a feeling of anxiety and fear, as well as emotional decline, is in the foreground for most of the victims. In cases where psychological violence precedes physical violence, this will appear as minimal physical violence.

Intimidation does not involve the use of fire arms, which constitutes a different crime figure. (Article 104, Criminal Code). Psychological violence is extremely difficult to prove and often leaves the perpetrators unpunished. Sexual crime should be considered primarily as a traumatic experience. This is because it can generate symptoms such as true post-traumatic stress disorder. In children, the memories of what happened tend to repeat themselves in their worst forms. Usually, the person who has been sexually abused tries to keep distance from the traumatic memories. In some cases, it is even possible that, the abused person has partial amnesia for events or memories.

In significant cases, the memories of the abuse gradually lose some of the dramatic appearance that distinguishes them, becoming more easily manageable by the individual. If this is certainly an advantage, on the other hand it can also be a potential danger, since the abused person can become accustomed to living with the problems caused by the abuse, not to share the problem with anyone and not to fight it. In some cases, this condition can fully take the form of a post-traumatic stress disorder.

As a consequence of sexual crime, the victim can often lose trust in people. When sexual abuse is committed within the family environment and especially, when the abuse is committed by parents or persons who are designated by law as guardians, the abused person usually experiences this as a deep wound because he suffered the abuse from that very person who had the responsibility to protect him. A person grows and feels good in a healthy environment, when he thinks he has a value. In the case of the victim of sexual abuse, there is usually a presence of low self-confidence, the feeling of not being worthy because of what happened to him or her.

In relation to the sexuality of the victim, sexual crimes often produce sexual problems of various natures. Thus, in addition to the most typical sexual

problems such as difficulty or inability to perform sexual intercourse, lack of pleasant sensations, the victim may also suffer from the feeling of guilt and being unworthy or a partial or total lack of desire.

The victim may suffer from psychosomatic problems such as eating disorders, abuse

with alcohol, drugs and narcotics, mistrust, difficulty in managing anger and distancing from people. Anxiety and depression problems are common and can arise from childhood, and can accompany him throughout life.

4. Albanian legislation on the protection of juveniles from sexual abuse

The legislation of our country devotes special protection to juveniles, as a vulnerable category of society, sanctioning it in a series of legislations and by-laws, including the Constitution of Albania, in which important principles regarding the freedoms and rights of children are sanctioned. No one can be deprived of their freedom, except in the cases and according to the procedures provided by law. The freedom of the person cannot be limited, except in cases of supervision of the juvenile for the purposes of education or for accompanying him in the body competent; (Article 27, Constitution of RS). The Penal Code constitutes the basis on which liability is foreseen for juveniles who commit criminal offences. The court may exempt the juvenile from punishment when it assesses the low risk of the criminal offense, the concrete circumstances of its commission and his previous behavior. In cases of exemption from punishment, the juvenile is locked up in an educational institution. (Article 52 of the Penal Code). In fact, this possibility is still unrealizable in the conditions of our country, since there is no such institution. Reducing the punishment to the minimum, when there is little danger and some mitigating circumstances are present, is an important element that is applied to juveniles in conflict with the law. Regarding the punishment in prison, our Criminal Code stipulates that it cannot be more than half of the penalty provided by law for the criminal offense committed (Article 51 of the Criminal Code). They carry out this sentence in separate places from adults (Article 33 of the Criminal Code). Life imprisonment cannot be imposed on juveniles.

The Code of Criminal Procedure contains a number of guarantees for the protection of juveniles. Among other things, he emphasizes that the trial of the juvenile should be done by specialized judges. In fact, this requirement of the law is not implemented in practice. It is not yet a question of juvenile courts, but there are only sections of juveniles, which are created in the courts of the judicial districts, determined by the Decree of the President of the Republic of Albania. When some of the proceedings connected between them belong to the competence of the ordinary court and others to the court that examines the case with juveniles, the latter is competent for all the proceedings, unless the court deems that they should be separated. When the defendant is an adult at the time of the trial but committed one or several crimes when he was a juvenile, the case is tried by the court that examines the case with juveniles. This code also

provides that the juvenile defendant is provided with legal and psychological assistance in any state and degree of the proceeding, with the presence of the parent or other persons requested by the juvenile and accepted by the proceeding authority. (Article 35/1 of the Criminal Procedure Code). The publication of generalities and photographs of defendants and juvenile witnesses, accused or injured by a criminal offense is prohibited. The court can allow publication only when the interests of the juvenile require it or the juvenile has reached the age of 16 (Article 103/4 of the Code of Criminal Procedure). For juvenile defendants, the court takes into account the request not to interrupt concrete educational processes. The juvenile cannot be arrested when accused of a criminal offense (Article 230/4 of the Code of Criminal Procedure).

Albania took an important step forward in the juvenile criminal justice system with the adoption of the "Juvenile Justice Code", which entered into force on January 1, 2018. The characteristics of juvenile criminal legislation before the adoption of this Code were the distribution of provisions relating to juveniles in Codes, laws and by-laws. In certain acts no distinction was made between the provisions for juveniles and those for adults. Our system has made a series of reforms aiming at the compliance of our legislation with the international standards of the Children's Right Convention. But, on the one hand, the laws with their gaps and incoherence and on the other hand, the lack of proper implementation of the law have caused a rather problematic situation in reality. With the approval of the new Code of procedural guarantees and the rights of juveniles as victims in criminal proceedings, a differentiation has been made both in rights and in the manner of their treatment in the criminal process. Juveniles enjoy the same rights as adults, except for those that the Code has specifically assigned to juveniles as subjects of law. Free legal and psychological assistance is an essential element of criminal proceedings for juveniles, the absence of which leads to the absolute invalidity of the process. The protection of the juvenile's privacy is an essential element.

The juvenile victim or witness of the criminal offense shall be treated with care, in a friendly and sensitive manner, in such a way as to respect his dignity throughout the process, taking into consideration his personal situation, immediate and special needs, age, gender, disabilities, if any, and maturity level (Article 33/a, Juvenile Justice Code).

With the approval of the Code, chapter IV is fully devoted to the competent bodies and the measures they must take to ensure that the people who work with this age category have the necessary knowledge, specific training, high professional awareness and receive appropriate measures for their sustainability in this position.

Law no. 8328, dated 16.04.1998 "On the rights and treatment of prisoners and pre-trial detainees" provides that convicts and no convicted persons (pre-trial detainees) should be treated with programs aimed at their integration into social life. Juveniles shall serve their sentence in special institutions only for them and, if possible, in special sections of other institutions according to the criteria

of this law. Cultural and professional education and training is done through the organization of the school, mandatory for juveniles.

5. Provisions of the Criminal Code on sexual abuse of juveniles

5.1 Sexual or homosexual relations with juveniles

The section on Sexual Crimes in the Penal Code opens with Article 100, which punishes sexual or homosexual relations committed with juveniles under the age of 14 or with juveniles who have not reached sexual maturity. This provision envisages a form of crime that presents a great social danger and that is fairly wide spread. Albanian regulations find support in the UN Convention on the children's rights. The Convention was approved by the United Nations Organization on 20.11.1989 and has been signed by all Western European countries, including Albania.

In the Criminal Code, this type of crime has undergone changes with the law no. 8377/2001. Currently, the Criminal Code provides as a criminal offense sexual, homosexual relations, as well as any other sexual acts with a juvenile who has not reached the age of 14, or with a juvenile who has not reached sexual maturity, an offense for which when committed with violence, or results in the death or suicide of a juvenile, a heavier sentence is applied than in the first paragraph of Article 100.

The judicial practice shows that the initially given sentences were too low and only when the dimensions of this crime became worrying for society did the court significantly increase the length of the sentence.

The object of the crime is the legal relations established to ensure the sexual inviolability, life and health as well as the normal sexual development of a juvenile who has not reached sexual maturity. From the objective side, the crime is committed with active actions. An active subject can be any person who has reached the age of criminal responsibility, while a passive subject is any juvenile under the age of 14 or who has not reached sexual maturity. From the subjective side, the crime is committed with direct intent to carry out this action. In these cases, the subjective element of intent is also identified in having knowledge of the fact that the injured party is under the age of 14 and despite this fact, the perpetrator had intercourse with the victim. But, even if the physical development of the injured party, analyzed in harmony with the other circumstances in which the acquaintance between the perpetrator of the criminal offense and the injured party was developed, may raise the suspicion that the injured party has not reached the age of 14 years old, the perpetrator of the criminal offense is obliged to be informed about the age of the victim. Obtaining information can be done by different means and by different persons, but at least the perpetrator of the criminal offense is obliged to ask the injured party about his or her age. This obligation derives from Article 4 in relation to article 100/1 of the Criminal Code, according to which citizens cannot claim exemption from criminal liability if they are not familiar with the law, except

when the lack of familiarity is for objective reasons. (Decision no. 922, dated 06.2010 of the Court of Tirana)

The subjective motives and purpose of this criminal offense are not important for the legal qualification of the offense but are taken into account by the Court in individualizing the measure and type of punishment. Also in the same provision, in the second and third paragraphs, the specified circumstances in which the criminal offense is committed are also provided, such as cooperation, committing the crime more than once, committing the crime using violence, serious health consequences and when the result is the death or suicide of a disabled person, which brings a more severe penalty for the perpetrator of this criminal offense.

The legal choice made by the legislature regarding the way to regulate sexual or homosexual relations with juveniles is undoubtedly the best form of guardianship of juveniles. This statement is based on the fact that a juvenile under the age of 14 does not have the necessary awareness and capacity to manage his sexuality.

With the current developments of society, including Albania, juveniles have been emancipated in all areas of life and as a result also in the area of sexual relations. However, two important circumstances should be taken into account: a) that the juvenile, at such a young age, is not able to properly understand the positive and negative consequences of a sexual relationship, whether physical or psychological;

b) that, on the other hand, this is a legislative choice which comes as a result of a consensus of adults finalized for the protection of juveniles themselves.

Juveniles by their own natural experience are easily influenced by adults who in some cases use them according to their desires. For this reason, the law punishes the active subject, who, with the consent of the passive subject, performs sexual or homosexual relations with a juvenile. In this way, the possibilities to achieve the finalization of the absolute protection of the juvenile against any kind of interference in his sexual sphere are amplified. This legal norm guarantees the position of the juvenile and is positioned to protect the development of his or her sexual personality. If we accept this fact, then we are also recognizing sexuality as an individual right and freedom of every subject. Having sexual relations with juveniles is considered taboo for anyone and juveniles are not recognized with any right to express their sexual freedom. As confirmed by the presence of violence as a necessary element in relations with juveniles aged 14-18, regulated by Article 101 of the Criminal Code, the legislature defines the age of 14 as the criminal boundary between legality and illegality in performing sexual relations with or among juveniles. This happens because the law cannot continuously interfere in the life and sexual personality of the juvenile. Or else the normality of sexuality would be denied and a form of traumatization would be involved. This form of criminal offense presents an abstract risk model, in the sense that the judgment on the existence of dangerousness is formulated a priori by the legislature. This is a criminal offense based on an absolute presumption of inviolability of juveniles under the age of 14, at which point he or she becomes the holder of the right to sexual

freedom. For this reason, the law does not prohibit sexual relations with juveniles over the age of 14 and who have reached sexual maturity. Article 100 contains two other paragraphs in which the legislature has provided for qualified, aggravating circumstances, in which sexual relations with juveniles can be carried out.

5.2 Sexual or homosexual relations with violence with juveniles aged 14-18

Violent sexual or homosexual relations with juveniles at the age of 14-18 constitute a crime that presents great social danger. The object of the crime is the legal relations established to ensure the sexual freedom and inviolability of the juvenile child at the age of 14-18 and who has reached sexual maturity from criminal actions.

From the objective side, the crime is committed with active actions accompanied by physical or mental violence with the aim of having sexual relations with juveniles aged 14-18 years. So, as mentioned above, to have this crime occur, a fundamental element is the use of physical or psychological violence. An active subject can be any person who has reached the age of criminal responsibility, while a passive subject is children aged 14-18 and who have reached sexual maturity.

From the subjective side, the crime is committed with direct intent to carry out this action. The data obtained from the official sources of the Ministry of Justice constitute disturbing data on the number of abuses. The reasons for the increase in sexual relations with juveniles can be found in various factors, such as the fact that the use of physical violence is easier against this category of subjects since they are physically weaker. Even the use of psychological violence is easier to exercise against these subjects, as a result of not reaching the appropriate maturity to correctly judge and evaluate the danger that threatens them as well as the sexual relationship and the consequences it brings on the physical and psychological health of the child. It is an undeniable fact that juveniles are subjects that are easily manipulated from a psychological point of view.

A serious problem is the fact that sexual crimes are committed in aggravating circumstances, such as when there is a large number of victims or in special forms of cooperation.

5.3 Obscene acts with juveniles

In the section on Sexual Crimes, article 108, protection is provided for juveniles, on whom obscene acts have been committed. The object of legal protection is the normal sexual development of juveniles who have not reached the age of 14. On the objective side, the crime is committed with active actions physically or immorally obscene to juveniles.

The subject is general, i.e., persons who have reached the age of criminal responsibility and are responsible. From the subjective side, the crime is committed with direct intent to perform this action. The subjective side is the

main element to distinguish this criminal offense from that provided for by Article 100 of the Criminal Code, which is pending. As for the legal definition of this criminal offense, it is required to be only the intention of the author of the criminal offense performing obscene acts and not performing sexual relations. This is a criminal offense that endangers the juvenile protected by this article, which, as we said above, is the normal sexual development of the juvenile and the formation of his sexual personality. Obscene actions consist of any type of act objectively referable to sexual life and which is perceived in the event that it would be observed as an expression of an erotic impulse that does not aim to perform sexual relations, but simply to satisfy the desires of the active subject with these actions that do not constitute a sexual act. These actions though they are not manifested with violent actions or threats, can provoke harmful disturbances to the calm and normal development of the juvenile's sexual personality and his values as a person are reduced to a thing, perhaps without the juvenile's awareness, by the sick exhibitionism of the active subject.

The legislative regulations protect the normal sexual development of juveniles under 14 years of age that may be disturbed by these actions, and perhaps this was the reason that such an offense is not foreseen for juveniles 14-18 years of age, since juveniles at this age are considered to have reach such a degree of consciousness in the sexual field that it can no longer be clouded by voluntary assistance in the performance of such actions. With the provision of this criminal offense, the legislature protects not only the sexual personality of the juvenile, but also human values that will develop in the future within the juvenile.

The juvenile is instrumentalized and even though he or she cannot be aware of what is happening and maybe he or she does not understand that shameful acts are being committed against him or her and he or she is being used for the sexual pleasures by the active subject and for this reason the legislature does not condition the existence of this criminal offense with the consent of the juvenile or with violence exercised against him. He is protected regardless of the degree of consciousness and experience in the sexual field and must continue to be protected, because shameful acts can lead to the closure of the juvenile in himself as well as to the creation of his wrong world in the sexual field.

Conclusions

Despite the political, social and cultural developments that Albania has undergone during these 30 years post-communism, sexually abused juveniles still do not have the proper attention from the law and institutions. The legal framework has been significantly improved, bringing many innovations in the protection of juveniles, but the data from the courts and prosecutor's offices prove that the abuse of juveniles continues to be at a high level.

A coordinated network of authorities responsible for the protection, support and rehabilitation of juveniles who are victims of sexual violence should be created. The authorities set up at the central and local level should have the objective of supporting the victims, mitigating the consequences of sexual violence and preventing this violence.

Juvenile's victims of sexual violence should be guaranteed prompt access to the services of courts and other law enforcement agencies. These services should be with simplified procedures and exempt from fees.

Violent criminal offenses against children, including sexual ones, must be punished with effective, proportionate and convincing sanctions and measures, taking into account the seriousness of the offense.

Persons convicted of violent criminal offenses against children, including persons' subject to criminal proceedings, should be offered access to effective intervention programs and measures aimed at preventing and minimizing the risks of repeating the criminal offense.

To increase regional cooperation as well as with EU countries, in order to exchange experiences and provide assistance for increasing professional capacities and applying best practices in dealing with cases of sexual abuse of minors.

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