

Adequacy of the New Terminology in the Law for Justice for Children

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Abstract

The proper determination on the age limit to determine whether one is a juvenile or an adult is more than necessary in any area of legislation, especially in the area of criminal justice. This is not only to determine whether one can be held accountable for his criminal actions, but also to give him the rights that the juveniles have when they breach the law (such as special criminal procedure for minors, special types of sanctions etc.) The first codification of the juvenile criminal and criminal procedure law into one code (the former Law for juvenile justice) in 2007 was a big step forward in the juvenile criminal legislation. But after only six years was it completely revised into the new Law for justice for children. This was certainly necessary and a part of the complete change of the Law of criminal procedure. This law includes the delineation of the age limit and the gradation of criminal responsibility depending of the age and the type of crime and the criminal sentence that can be imposed for that kind of crime. The new Law also replaces the term minor with the term child. The purpose of this paper is to answer whether it was necessary to change the relevant terminology that relates to the main subject in this Law from the term the minor to the term used in the new law, the child and how this new term is nebulous in practice and in literature because of its imprecision and its extensity.

Key words: *juvenile, minor, child, law, criminal, crime.*

Introduction:

Determination of age limit between juvenile and adult

There are life situations in which a minor is emotionally and intellectually immature and in that way differs from others of his generation, so he cannot be put in the same position as some others who understand their actions, and plan and organize their crime in advance, and are exactly countable for their actions.¹

The question of age in the context of liability is a crucial one in every legislative area concerning children and is a key test factor in the quality of protection of a child's rights in the concrete area of legislation. At an appropriate age, one has new civil rights that were not part of his previous life as an juvenile, such as the right to vote, right to obtain a driver's license, right to work, right to consume and buy alcohol and cigarettes, right to marry, etc. But together with these rights, one obtains responsibilities as well, such as the responsibility to obey the law.

In this regard, two limits of age are of major importance: the lower limit of age, below which any kind of liability is excluded, and the upper limit, which constitutes the limit of adulthood and full responsibility. It is only within these two levels, where civil and penal responsibility of juveniles can be defined, including further differentiation according to individual maturity. Setting an age for the acquisition of certain rights or for the loss of certain protections is complex. However in general, minimum ages that are protective should be as high as possible, while those that relate to the juveniles gaining autonomy and need for the State to respect the child's civil rights and evolving capacities, demand a more flexible system, sensitive to the needs of the individual child.² Also many jurisdictions, such as Macedonia, have an intermediate group, which refers to younger adults, or adults in the age limit between 18 and 21 years. Although these "adults" are considered by law as adults, they can enjoy some of the privileges of the

¹ Marjanovik G. (1998): Criminal law, Skopje, p.249;

² Davitkovski, B., Buzarovska, G., Kalajdziev, G., Mickovic, D., (2010): Comparative review of legislation in the republic of Macedonia and the Convention on the rights of the child, UNICEF, p. 17;

minors, such as the privileges of special procedure as well as special types of sanctions that can be imposed on them.

Regardless of the fact that most of the jurisdictions limit the responsibility of children, determining that children under the age of 14 cannot be held accountable for committing a crime, still there are many doubts, mainly in two directions: is this age limit too low or too high?

According to the first one, this age limit is too low because many psychologists claim that young people mature faster physically and mentally, and this provides them with social maturity earlier than the one prescribed by law. Hence, these professionals would tend to lower the limit on criminal ability below 14, possibly to between the age of 10 or 12 years old. According to the second tendency, the age limit should be higher, or raised to 16 or even 18 years of age because of the fact that the system of juvenile justice should be more humane, freed of repression. A lesser number of criminal laws accept this solution.

The determination of the age limit for criminal accountability in cases has provoked great interest in criminal theory as well as practice because this issue raises many dilemmas. The main issue is: What age can be considered appropriate in which a minor can be considered capable of understanding the significance of his offense and to be capable of controlling his actions. Answering this question is very important to our main problem – how to address juveniles depending of their age and responsibility or to be more precise *which terminology encompasses the best meaning?*

In criminal law, the elementary component that helps us to separate juvenile delinquency from the other types of criminal behavior is the age of the offender that has committed crime. This age is determined as minor age, and the offender as a minor or juvenile, or a child. The category *minors* or *juveniles* occurs in criminal law theory and practice because of the need to separate the minor offenders that commit crimes because of their biological, emotional, psychological and social immaturity and because of the need to treat minors in a different way than adults.³ This specifies that a person cannot be tried for criminal acts committed when the person was a child, and that such a trial is possible only for a person who has reached the age of

³ Arnaudovski Lj. (1984): *Maloletnicko prestapnistvo*, Skopje, p.25;

majority and has committed a crime.⁴ This is the basis for determining criminal responsibility and announcing the minor to be guilty of a criminal offense and imposing penalties to the same.

The juvenile is appointed as an immature person that is yet to be formed psychologically, mentally and physically.⁵ Also the juvenile has not yet formed a system of values, he is emotionally sensitive and reacts under the influence of his impulses and his emotional sensitivity. The juvenile is under a strong external influence of the persons he admires, or of the persons with whom he identifies himself, and these persons are not always the right choice.

Terminology in the Macedonian legal system

In general, Macedonian legislation defines the beginning of childhood at birth and the end at 18 years of age at which adulthood is considered to have been attained, together with the full legal capacity and the right to vote. But the inconsistencies in the terminology in all of the different legal documents are unacceptable and improper. In this sense, other legal documents from the Macedonian legislation, from other branches of law, which pertain to children, refer to children as *child*, *minors*, *juvenile person*, *persons below the age of 18*, *below an age*, *underage*, *younger minor*, *older minor*. The only consistent legal texts that use the term minor (younger minor and older minor and younger adult) is the Criminal code,⁶ and the Law for Juvenile justice, which uses the terms *minor* and *younger minor*, *younger minor at risk*, *older minor*, and *older minor at risk*. But this changed in the new Code, for no particular reason.

⁴ Davitkovski, B., Buzarovska, G., Kalajdziev, G., Mickovic, D., (2010): Comparative review of legislation in the republic of Macedonia and the Convention on the rights of the child, UNICEF, p. 16;

⁵ Nanev, L. (2003): the Position of the juvenile in criminal proceedings, SPPMD, Kavadarci, p.27;

⁶ With unambiguousness in the minimum age of the criminal accountability and the age required so the court can impose alternative measures or punishment.

What are the terms that the other legal documents use? The Law for protection of children defines *children* as any *person under the age of 18, as well as persons with physical and psychological challenges under the age of 26.*⁷ Other legal documents refer to juveniles as children, below an age, under 18, or underage. The last one, the term *underage* often refers to those under the age of majority, but may also refer to persons under certain age limit (such as age for consuming alcohol, cigarettes, for getting a driver's license, marriageable age, voting age etc.) different than the age of majority. The implications of the terms 'below an age' and 'having reached an age' can be different in the justice system, therefore, in order to void ambiguity, the legislation should not use these terms.

Defining juveniles in the criminal legal system

When defining the term *minor* we face with many issues that are crucial for proper definition of this complex term. Hence, some of the common understandings and assumptions that are a basis for an appropriate definition are not precise enough and leave room for a different interpretation. Objectively, the adolescence identifies itself with the absence of certain age, and subjectively, with the fact that the juvenile delinquent is a person who has not achieved biological, somatic, psychological and social maturity and therefore is unable to understand the meaning of his behavior and is unable to control his actions.⁸ The juvenile is a young person that cannot be put in the same position as adults precisely because of his or her adolescence and minority. Therefore the need for a separate and accustomed treatment for minors. The juvenile with a problematic behavior is not a delinquent, but is a juvenile at risk of becoming an offender. But nevertheless juveniles that have committed crime cannot be left unpunished without any consequences of their criminal behavior, just because of their special psychological constitution. The society must held juveniles

⁷ Член 8, Law for protection on children Official Gazette No.98/2000; 17/2003; 65/2004, 113/2005, 98/2008; 107/2008; 83/2009; 156/2009; 51/2011 and 157/2011). Decision on the Constitutional Court on Republic of Macedonia U.No.160/2008 from 01.04.2009 published in Official Gazette No..46/2009;

⁸ See Nanev, L. (2003): the Position of the juvenile in criminal proceedings, SPPMD, Kavadarci, p..26;

responsible but only with special penalties that are numerous and different so they can be individualized to the person of the juvenile delinquent.

Defining juvenile is a very severe assignment, especially because of the non-uniformity in different legislations of the age at which minors became adults.

The definition of *child* in the United Nations Convention of rights of children⁹ is the following one:¹⁰ child is a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger.¹¹

Some years ago the Macedonian legislation combined the juvenile criminal and criminal procedure law into one Code. This was not only a big step ahead for the juvenile system but it was also a big step for the appropriate treatment of juveniles that have breach the Criminal code and were laid responsible before the appropriate authorities. Before the Law for juvenile justice, the criminal responsibility of the juveniles was regulated in the Criminal Code that refers to adults, in a separate chapter – former chapter VI¹² and the procedure against juveniles was regulated in the provisions of the former Law on criminal procedure. This Criminal code provided highly inadequate provisions for juvenile responsibility. The provisions were partial, extensive, general and non-precise. Above all this legislation had a purpose to punish rather to prevent criminal behavior among juveniles. This code provided only provisions for the type of sentences that can be imposed to juveniles or minors, as they were referred into the code.¹³ The terminology of the Code was unambiguous but stated in an inappropriate way. By this means, the code defined the types of juvenile

⁹ Convention on rights of Children, adopted by the UN General Assembly with the resolution No. 44/25, 20.11.1989 entering into force 20.09.1990, according article 49;

¹⁰ Article 1 from the UN Convention of the rights of a Child, 1989;

¹¹ For the full text on the Convention in Macedonian language see Buzarovska, G., Nanev L., Koshevaliska, O. (2012): International documents for juvenile justice – modern trends in the treatment of minors, SPPMD, Kavadarci p.286;

¹² See Kambovski, V. (2008): Criminal Code – integral text, Official Gazette of Republic of Macedonia, Skopje;

¹³ See Criminal Code, consolidated text, (2004): Official Gazette No.19 from 30.03.2004, Skopje;

delinquents in the context of the provision *criminal sanctions against juveniles (art. 72)*. According to this article:

... on a minor that in time of committing the crime, has turned 14 but is under 16 years old (younger minor), only educational measures can be imposed.

... On a minor that in time of committing the crime, has turned has turned 16 but is under the age of 18 (older minor) education measures can be imposed only in terms provided with this Code, and in exceptional cases, the sentence juvenile prison can be imposed...

Our opinion is that the types of minors were easily determinate, but defining them in the context of a provision that has another purpose (in this case defining which sentences can be imposed to minors) was inappropriate and misleading.

The former Law for criminal procedure, contained provisions for the special procedure against juveniles, in chapter XXVIII.¹⁴ Juveniles in the context of this Law were also referred as minors. The law provided special procedure for minors, different in many ways from the procedure against adults. One of the main principles of the procedure was the principle of secrecy, for the purpose of protection the moral integrity of the minor.

The first codification of the relevant juvenile legislation was made in 2007 when the Law for juvenile justice¹⁵ came into force. This Law was applied until the entering into force of the new Law for justice for children. The Law for juvenile justice for the first time, had incorporated the provisions for the responsibility as well as for the procedure and finally for the types of penalties that can be imposed to juveniles, into one special Law for juveniles. Also this Law contained provisions for the categories minors at risk, protection of minors that are victims of crimes and provisions for prevention of juvenile delinquency. The main focus of this Law was given to

¹⁴ See former Law on Criminal Procedure (2005): Official Gazette No.15 from 07.03.2005, Skopje

¹⁵ Law for juvenile justice, Official gazette No.87/2007, 103/2008; 161/2008 and 145/2010), Skopje;

the protection and prevention of juvenile delinquency. This Law also referred to juveniles as minors.

The terms and expressions used in this Law had the following meaning:

*A **minor** is any person up to the age of 18 who is considered a child according to the Convention on the Rights of the Child;*

*A **child at risk** is a minor who, at the time of committing an act determined by law to be a crime or misdemeanor, has reached the age of seven but has not reached the age of fourteen; as a **child at risk** is also considered a minor under the age of 14 if he is considered to use drugs, psychotropic substances and alcohol, if suffering from a mental disability, if the child is a victim of violence, if educationally and socially neglected, i.e. is suffering hindered or limited realization of the educational function within the family or is not included in the educational system, and if the child has turned to begging, roaming or prostitution and due to such conditions is or may come into conflict with the Law;*

*A **younger minor** is a person who, at the time of committing an act determined by law to be a crime or misdemeanor, has reached the age of 14 but has not yet reached the age of 16;*

*A **younger minor at risk** is a person who, at the time of committing an act determined by law to be a misdemeanor or a crime for which a fine or term of imprisonment of up to three years is applicable, has reached the age of 14 but has not yet reached the age of 16, or a person who is addicted to drugs, psychotropic substances or alcohol, a child with a mental handicap, and an educationally and socially neglected child that is in a position whereby the realization of the educational function in the family is impeded or disabled and who, because of such conditions, is or may be in conflict with the Law;*

*An **older minor** is a person who, at the time of committing an act determined by law to be a crime or misdemeanor, has reached the age of 16 but has not yet reached the age of 18;*

An older minor at risk is a person who at the time of committing an act determined by law to be a crime for which a fine or imprisonment up to three years is anticipated, or a misdemeanor, has reached the age of 16 but has not yet reached the age of 18, or a person who is drug, psychotropic substances and alcohol addict, a child with a mental handicap a person who is addicted to drugs, psychotropic substances or alcohol, a child with a mental handicap, or an educationally and socially neglected child who is in a position whereby the realization of the educational function in the family is impeded or disabled and who, because of such conditions, is or may be in conflict with the Law;

A younger adult is a person who at the time of criminal trial has reached the age of 18 but has not yet reached the age of 21;¹⁶

The codification on the substantive, procedural and penalty law into one and only code in which in addition to all stated before, also contains provisions for prevention, alternative dispute resolution, provisions for children victims or witnesses of an crime, means much more than simple codification. This also means keeping up to date with all of the new trends in the understanding of juvenile development and action.¹⁷

The terminology in this Law was also quite clear. The term minor was used when the legislator wanted to refer to juveniles. The division between minors was made depending of their age and of the crime and prescribed punishment for that particular crime. Our opinion is that this set of definitions and terminology is the right one for our justice system. The term minor should not be replaced with the term child, because the term child is a broader one and creates uncertainty in the terminology. This cannot be permitted in criminal law.

¹⁶ See Buzarovska, G., Nanev L., Koshevaliska, O. (2012): International documents for juvenile justice – modern trends in the treatment of minors, SPPMD, Kavadarci, p.56;

¹⁷ Koshevaliska O. (2013) The Juvenile justice system in the context of the theoretical ambitions on mediation, Yearbook on behalf of Marjan Marjanovski, Faculty of Law, Justinianus I, University St. Cyril and Methodius, Skopje;

After only six years of the use of this law, it was completely revised into the new Law for justice for children.¹⁸ This was certainly necessary and a part of the complete change of the Law of criminal procedure.¹⁹ Throughout the text of the new Law we can see that the primary focus is given to the protection, education, rehabilitation and proper development of minors. In article 19 of this Law, the legislator gives many definitions, depending of the age, responsibility, the risk of becoming an offender and the type of penalty that can be imposed to the juvenile offender.

This provision provides the following definitions:

Child is every person under the age of 18 years.

Thus this Law is in accordance with the UN Convention on the rights of children.

Child in jeopardy is every child that has turned 7 but hasn't turned 18 years, with physical disabilities or intellectual disabilities, victim of violence, educational and socially neglected child which is in such condition in which it is difficult or impossible to achieve any educational function from the parents / parent / or guardians / guardian, child that is not included in the system of education and upbringing, child involved in mendacity, vagrancy or prostitution, child in a use of drugs and other psychotropic substances and precursors or alcohol, that because of these situation may come in breach of law as a victim or as a witness on a crime that is prescribed as crime or offence by law.

Thus the legislator provided provision not only for ones that breach of law, but also for ones that are at risk to become offenders, depending of their intellectual or physical disabilities, children in a use of drugs or other psychotropic substances, or any child that is with predisposition of becoming an offender.

Child in jeopardy under the age of 14 is every child that in the time of committing the act that by law is provided as crime for which the court can

¹⁸ Law on justice of children, Official Gazette RM No.148/2013;

¹⁹ Law on Criminal Procedure (2010): Official Gazette, No.150/10 Skopje;

impose a fine or imprisonment up to 3 years or for an act that by law is determined as an offence, has not turned 14 years of age.

Thus, the legislator prescribes that child in jeopardy under the age of 14 is a child that has committed a crime for which a fine or imprisonment up to 3 years can be imposed. The term child maybe appropriate, given the fact that the offender is under the age of 14. But the legislator did not make provisions for child under the age of 14 that has committed a crime for which a imprisonment for more than 3 years can be imposed. Our opinion is that this group should be named *child in jeopardy under the age of 14 years* but to refer to every crime that has been committed by them. The legislator in this way makes provisions only for the ones that have committed easier crime, forgetting to provide provisions for the offenders that committed more severe crime. This has to be amendment. Otherwise the legislator has not provided provisions for children in jeopardy under the age of 14 that have committed a crime for which imprisonment for more than 3 years can be imposed.

Child in jeopardy from 14 to 18 years of age is every child that in the time of committing the act that by law is provided as crime for which the court can impose a fine or imprisonment up to 3 years or for an act that by law is determined as an offence, has turned 14 but has not turned 18 years of age.

Thus the legislator provides criminal responsibility for an ofender that has committed a crime for which a fine or imprisonment up to 3 years can be imposed, in cases when the offender is between the age of 14 and under 18 years of age. Our opinion is that the terminology is not appropriate. Accepting this term child means saying that a child is criminally responsible. Maybe the appropriate term will be *minor in jepardy from 14 and under 18 years*. This group, in the provisions of Law of juvenile justice, was divided into two groups, using the terms a younger minor at risk (between the ages 14 - 16) and older minor at risk (between the ages 16 - 18).

Child in breach of law from the age of 14 till 16 years old is every child that in the time of committing the act that by law is provided as crime for which the court can impose imprisonment more than 3 years has turned 14 but has not turned 16 years of age.

Child in breach of law from the age 16 years old is every child that in the time of committing the act that by law is provided as crime for which the court can impose imprisonment more than 3 years has turned 16 but has not turned 18 years of age.

Child in breach of law from ages of 14-16 and 16 to 18 years of age, are a new group, that for the first time is provided in our criminal justice system. These two groups are referring to offenders that have committed crime for which a imprisonment more then 3 years can be imposed. Our opinion is that dividing the juveniles that have committed a crime for which a imprisonment for more than 3 years can be imposed, is a right thing to do. In this way the court will have a chance to impose the right sentence depending of the sentences that can be imposed to juveniles according to these groups.²⁰ At any rate, the terminology is not the appropriate one. The term *child* can not be the appropriate term for an offender that has committed a crime for which imprisonment for more than 3 years can be imposed. Our opinion is that the appropriate term will be *minors in breach of law* from 14 to 16 and 16 and 18 years respectively.

Child victim is every child under 18 years old that has suffered harm, including physical or mental injury, emotional suffering, pecuniary loss or other injury or threat to his rights and interests as a result of committing an act that by law is provided as crime.

The term child when referring to child that has been victim or a witness of a crime is the only appropriate term that can be used in this case.

Younger adult is a person that in the time of adjudication for an act that by law is provided as a crime, has turned 18 but is under 21 years old.

²⁰ In accordance with Article 34 from the Law for justice for children on a (1) a child between the ages of 14 and under 16 years old for an action which is provided by law as a criminal offense the court may impose only on educational measures. (2) A child that has turned 16 but is under 18 years old for an action which is provided by law as a criminal offense, the court may impose educational measures, and in an exceptional cases, the court may impose sanctions or alternative measure. (3) A child that has turned 16 but is under 18 years old can be released from sentence under general conditions stipulated by the Criminal Code...

Just to be clear, the acceptance of the “new” term *child* when referring to juveniles was made in order to make some uniformity for the used terms in the criminal legislation and to even with the other areas of legislation that refer to children as well as to bring the code in line with the international legislation. But instead of this a bigger confusion was made. We think that the using of the previous terms minors, younger minors and older minors, was clear enough and easier to understand and know. The new *gradation* of the term child is much confusing and difficult to remember and finally, is not clear enough.

The explicit difference between children and minors in criminal legal system is extremely necessary. With the new Law of justice of children, the legislator states that a child is every person under the age of 18. As we stated before, this is provided in all the international documents concerning children, like the UN Convention on protection on children. But the question is how to distinguish children from minors. This was easy before the entering in to force of the new Law, children were ones that are under 14 or with the words of the Law – minor under 14, and everyone between the ages of 14 and under 18 were consider to be minors. Depending of the crime that they have committed or of their behavior they were deviated into separate types such as younger/older minor or minors at risk from the age of 14 and under 16, and from the age of 16 and under 18.

Finally, despite all the progress of the national law concerning children, whether in criminal law or other areas of law, we can conclude that our law characterizes with inconsistent use of terminology. Terms such as infants, juveniles, minors, youth and children, and all stated above, are in parallel use. But, sad to say, this is not the case only with our law, the inconsistency in the terminology used is present on international level as well. Hence, the term juvenile is undefined in the International Covenant on Civil and Political Rights, yet defined for the purposes of the Beijing Rules²¹ as a person who under the respective legal system may be dealt with for an offence differently from an adult. In contrast, the Rules for the Protection of

²¹ See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) adopted by the General Assembly in its resolution 40/33 of 29 November, and rule II (a) Rules for the Protection of Juveniles deprived of their Liberty and see Bueren, V. (2006) The international Law on the Rights of the Child;

Juveniles deprived of their Liberty²² define juvenile as everyone under the age of 18. Treaties also adopt the term minor which, for some authors is inappropriate because they think is inherently a discriminatory term having as it does connotations of less than major.²³

GENERAL CONCLUSION

The gradation scale of age according to which children / minors are divided in different groups depending of their age when committing the crime, as well as the penalty that can be imposed for that of crime is of particular importance. This division gives meaning and importance of the system of sanctions that can be imposed to juveniles who have committed acts that by law are considered as criminal acts, because in this way the court has the opportunity to choose and apply sanctions through which the society will achieve its goal, and that is punishing the offender with the right sanction that has not only punitive but also resuscitative goal. But this gradation scale shouldn't in any way be more confusing and led to inappropriate division between minors depending of their age and the criminal sanction that can be imposed for the crime that they have done, which is the case in our new Law. Also the misleading's (like the misleading to provided provisions for children that have committed a crime for which imprisonment for more than 3 years can be imposed) are unacceptable.

The purpose of this paper was to answer whether it was necessary to change the relevant terminology in the Law for justice for children, and that is, instead of the term *minor* the term *child* to be used.

²² United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113, 14 December 1990;

²³ Van Bueren, G. (1998): International Documents on Children, Martinus Nijhoff Publishers, p.19;

Our opinion is that the terminological inconsistency must be eliminated in the whole Macedonian legal system.²⁴ The term child should be used only when referring to juveniles under the age of 14 years, and in cases when children are victims or witnesses of a crime. The other legal documents should use only the term child because this term is appropriate for them. But this term cannot be used in criminal legislation because of the special circumstances of the criminal code. Our criminal legislation is not prepared to use only this term – the term child whenever referring to juveniles, because this means that in every law that is in the corpus of the criminal justice system, the terminology should be amendment and replaces. In other words wherever previously was used the term *minor*, now one should use the term *child*. This will be rather inappropriate in some cases, as in the former term *Prison for juveniles* being changed to *prison for children*.

Finally, our opinion is that the terminology in the new Law for justice for children must be revised in order to express the difference between children and minors in the criminal justice system.²⁵ The terminology now, how it is, will provide nebulous not only in literature but also in practice, because of its imprecision and its extensivity.

²⁴ Same in Davitkovski, B., Buzarovska, G., Kalajdziev, G., Mickovic, D., (2010): Comparative review of legislation in the republic of Macedonia and the Convention on the rights of the child, UNICEF, p. 17;

²⁵ Davitkovski, B., Buzarovska, G., Kalajdziev, G., Mickovic, D., (2010): Comparative review of legislation in the republic of Macedonia and the Convention on the rights of the child, UNICEF, p. 17;

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