

“Making deprivation of liberty a measure of last resort in Greek juvenile law and practice”

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Introductory remarks

At the beginning of the 21st century in Greece the efforts to reform juvenile law and harmonize it with international juvenile justice standards were realized and sealed by the enactment of two laws, Law 3189/2003 on the “Reform of Juvenile Penal Legislation” and Law 3860/2010 on “Improvements of Penal Legislation regarding Juvenile Offenders, Prevention of and Response to Victimization and Criminality of Juveniles”. The new regulations reinforce the minors’ legal position.

In Greece, the juvenile welfare law and the juvenile criminal law are applicable to the age group from 8 to 18. Persons below the age of 8 are subject to parental custody. Persons between the ages of 8 and 15 are subject only to educational or therapeutic measures. Persons above the age of 15 may be subject to educational or therapeutic measures or they may be sentenced to detention in a young offenders’ institution under certain presuppositions. Young adults (18-21) are regarded as being fully responsible at criminal law. It is solely in the discretion of the general court to decide whether to mitigate the punishment. According to the Correctional Code, young adults are kept in young offenders’ institutions (prisons) along with the juveniles.

Both laws (law 3189/2003 and law 3860/2010) provide for some regulations, which aim to serve effectively the principle of imposing deprivation of liberty as a measure of last resort. Diversion in terms of refraining from prosecution has been introduced. The relatively poor catalogue of the educational measures, which was valid till then, has been significantly enriched. Mediation as a successful tool of promoting and concretizing restorative justice ideals has been explicitly included in the new catalogue of educational measures. Additionally, the ambulant therapeutic treatment has been introduced. Furthermore, the presuppositions for the imposition of deprivation of liberty in terms of pre-trial detention, placement in an educational institution and detention in a young offenders' institution, have become more precise and much stricter. Subsequently, the indefinite duration of educational measures has been significantly limited. The duration of the sentence of detention in a young offenders' institution is no longer defined in a certain timeframe, but detention for a fixed period in a young offenders' institution has been introduced. The range of the sentence of detention in a young offenders' institution has been reformed. The right to file an appeal unrestrictedly has been also recognized.

Description of the legal framework in Greece

Introduction of diversion

As it is well known, diversion is explicitly and repeatedly foreseen in the text of many international human rights documents related to juvenile justice. In particular, at the level of the United Nations it is in accordance with Art. 40 § 3b of the United Nations Convention on the Rights of the Child, which is

a legally binding instrument. Furthermore, diversion is mentioned at the following soft-law provisions: Par. 11 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); Par. 22-29 of the General Comment No. 10 (2007) of the United Nations' Committee on the Rights of the Child about Children's' Rights in Juvenile Justice, and Par. 4.1-1 of the Model Law on Juvenile Justice. At the level of the Council of Europe the Committee of Ministers has adopted non-binding documents, in which the following provisions on diversion are to be found: Par. 2-3 of the Recommendation No. R. (87) 20 on Social Reactions to Juvenile Delinquency; Par. 10 and 14 of the Recommendation No. R (88) 6 on Social Reactions to Juvenile Delinquency among Young People coming from Migrant Families; Par. 7 of the Recommendation (2003) 20 on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice, and Par. 24-26 of the Guidelines on Child-Friendly Justice.

In Greece diversion, as applied by the public prosecutor and which may or may not come with the imposition of non-custodial educational measures or the payment of a sum of money up to 1000 Euro in favor of a non-profit institution, was first provided for in Law 3189/2003 on the "Reform of Juvenile Penal Legislation". When a minor (between 8 and 18 years of age) commits a petty offence or a misdemeanor, the public prosecutor may decide to refrain from prosecution, if after having examined the facts of the case and the minor's personality, he decides that the prosecution is not necessary in order to prevent him/her from committing further acts (Art. 45A of the Greek Code of Penal Procedure, in the following: grPPC). The public prosecutor may impose on the minor one or more of the ambulant educational measures (Art. 122 of the Greek Penal Code, in the following: grPC) or the payment of a

sum of money up to 1000 Euro in favor of a non-profit institution. He also decides the period of time within which the measures must be performed. As long as the minor performs and complies with the ordered measures and obligations within the fixed period of time, the public prosecutor archives the case and forwards a report to the public prosecutor of the Court of Appeal. The criminal prosecution proceedings are initiated if there is no compliance with the measure or obligation (Art. 45A in conjunction with 43 grPPC).

Enrichment of the catalogue of educational measures with new non-custodial measures

Educational measures should be primarily applied. At the level of the United Nations such a requirement is notoriously recognized in the text of Art. 40 §§ 3b and 4 of the United Nations Convention on the Rights of the Child. Furthermore, this requirement is mentioned at the following soft-law provisions: Par. 18-19 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); Par. 68-69 of the General Comment No. 10 (2007) of the United Nations' Committee on the Rights of the Child about Children's' Rights in Juvenile Justice, and Par. 4.1-2 to 4.1.-5 and 4.2.-1 to 4.2.-6 of the Model Law on Juvenile Justice. At the level of the Council of Europe the Committee of Ministers has adopted non-binding documents, in which the following provisions on educational measures are to be found: Par. 11-17 of the Recommendation No. R. (87) 20 on Social Reactions to Juvenile Delinquency; Par. 8 of the Recommendation (2003) 20 on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice; Par. 3, 9, 12, 23, 25-30 of the Recommendation (2008) 11 on the European Rules for Juvenile Offenders Subject to Sanctions or

Measures, and Par. 24-26 of the Guidelines on Child-Friendly Justice.

In Greece, a wide variety of educational measures as possible alternatives to institutional care and the deprivation of liberty were introduced by law 3189/2003 on the “Reform of Juvenile Penal Legislation”. According to Art. 122 grPC, the following educational measures are available to the juvenile courts: reprimand; placement of the minor under the responsible care of parents or guardians; placement of the minor under the responsible care of a foster family; placement of the minor under the care of Youth Protection Associations, Youth Centers or the Juvenile Probation Service; mediation between the juvenile offender and the victim to allow the expression of an apology and the extra-judicial settlement of the repercussions of the act; compensation of the victim or by some other means the removal or alleviation of the consequences of the act; performance of community work; participation in social and psychological programs organized by public, municipal, local authority or private institutions; attendance at vocational schools or other training or vocational training facilities; participation in special road safety training programs; placement of the minor under the intensive care and supervision of Youth Protection Associations or the Juvenile Probation Service; and placement of the minor in an appropriate public, municipal, local authority or private educational institution.

This list of the main aforementioned educational measures may be supplemented by additional obligations related to the way of life or education of the minor. In exceptional cases, the court can impose two or more of the educational measures. The maximum duration of the educational measure is decided in the judgment of the court (Art. 122 grPC). A periodic review of

its necessity by the court would take place one year (at the latest) after the imposition of the measure (Art. 124 grPC).

The court which orders educational measures may at any time replace them by others when it considers this to be necessary and it revokes them when their purpose has been fulfilled (Art. 124 grPC). The educational measures ordered by the court end *ipso jure* as soon as the minor becomes 18. The court may order that the measures will be continued, but not beyond age 21 where the court considers that the continuation of the measures is necessary for educational reasons (Art. 125 grPC). When educational measures are imposed on minors who committed an offence after having reached the age of 15 and are tried after having reached the age of 18, because the imposition of detention in a young offenders' institution or a mitigated punishment under the general criminal law is not regarded to be necessary but the educational measures are sufficient, the imposed educational measures end *ipso jure* as soon as the minor becomes 25 (Art. 130 grPC).

Introduction of the ambulant therapeutic treatment

All children, who suffer from health problems, should be provided with the appropriate medical therapeutic treatment. The right to protection of health and to social and medical assistance is recognized in Art. 11 and 13 of the Revised European Social Charter. At the level of the United Nations the right of health care is explicitly foreseen in Art. 24 of the United Nations Convention on the Rights of the Child. Furthermore, the requirement of medical treatment for offenders and detainees is mentioned at the following soft-law provisions: Par. 18 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); Par. 45 of the Guidelines

for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); Par. 49-55 of the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), and Par. 4.1-3 of the Model Law on Juvenile Justice. At the level of the Council of Europe the Committee of Ministers has adopted non-binding documents, in which the following provisions on medical care are to be found: Par. 39-48.2 of the European Prison Rules (2006), and Par. 69.1-75 and 117-119 of the Recommendation (2008) 11 on European Rules for Juvenile Offenders Subject to Sanctions or Measures.

In Greece, the ambulant therapeutic treatment has been introduced by law 3189/2003 on the “Reform of Penal Legislation”. The custodial therapeutic treatment should be now a measure of last resort, as an exhaustive list of therapeutic measures for minor offenders, who suffer from certain types of mental or physical health problems or are drug addicts and cannot cease drug-use by themselves, is set out in Art. 123 grPC. Apart from the placement in a therapeutic or other appropriate institution, which is mentioned as the last and the sole custodial therapeutic measure in the list of Art. 123 grPC, the court has at its disposal the following ambulant measures: placement under the responsible care of the parents or guardians or a foster family; the placement under the care of Youth Protection Associations or the Juvenile Probation Service; and the participation in a therapeutic consultative program. It becomes apparent that identical forms of reaction, such as the placement of minors under the responsible care of the parents or guardians or a foster family or the placement under the care of Youth Protection Associations or the Juvenile Probation Service function both as educational and therapeutic measures.

A court which orders therapeutic measures may at any time replace them by others when it considers this to be necessary. Once their purpose has been fulfilled, it will revoke them after having previously called for a report by a group of experts (doctors, psychologists, social workers). Educational measures may also be replaced by therapeutic ones when it is regarded by court to be necessary. No later than one year after they have been ordered, the court will ascertain whether the conditions for replacement or revocation of the therapeutic measures exist (Art. 124 grPC).

Imposition of deprivation of liberty as a measure of last resort

The international standards require that deprivation of liberty (arrest, detention or imprisonment) should be imposed as ultima ratio. At the level of the United Nations this requirement is particularly and thoroughly described in Art. 37 a) and b) of the United Nations Convention on the Rights of the Child. Furthermore, this requirement is to be found in the following provisions of the international soft-law documents: Par. 17, 19 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); Par. 1, 2, 17 of Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules); Par. 78-79 of the General Comment No. 10 (2007) of the United Nations' Committee on the Rights of the Child about Children's' Rights in Juvenile Justice, and Par. 4.2.-7 to 4.2.-17 of the Model Law on Juvenile Justice. At the level of the Council of Europe the Committee of Ministers has adopted non-binding documents, in which the following provisions on deprivation of liberty are to be found: Par. 16 of the Recommendation No. R. (87) 20 on Social Reactions to Juvenile Delinquency; Par. 15-17 of the Recommendation (2003) 20 on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice; Par.

10, 49 of the Recommendation (2008) 11 on European Rules for Juvenile Offenders Subject to Sanctions or Measures, and Par. 19-22 of the Guidelines on Child-Friendly Justice.

Pre-trial detention

At the pre-trial proceedings, pre-trial detention is intended to be a measure of last resort according to Art. 282 grPPC, as it was amended by law 3860/2010.

The imposition of the pre-trial restrictive measures is always the primary option, when the presuppositions of Art. 282 Sec. 1 grPPC are fulfilled. Apart from the restrictive measures applicable to both adults and juveniles, one or more of the educational measures of Art. 122 grPC may now be imposed as restrictive measures on juvenile offenders (Art. 282 Sec. 2 grPPC).

A remand order may be imposed on an accused juvenile under the same basic conditions as in the case of adults (compelling suspicion of having committed a felony and special reasons for detention, as they are mentioned in Art. 282 Sec. 3 grPPC). However, the possibility of imposing pre-trial detention on juveniles is regulated with a great degree of strictness (Art. 282 Sec. 5 grPPC). Firstly, pre-trial detention is imposed only on juveniles aged over 15. Secondly, the juvenile should be accused of having committed a serious crime (felony), for which it is foreseen in the law that the minimum duration of the threatened sentence is over 10 years regardless of the duration of the sanction to be imposed in the particular case. Thirdly, the maximum duration of pre-trial detention may not exceed 6 months, or 9 months, if the pre-trial detention of the accused continued after he/she has been brought to trial and the trial was postponed or cancelled for any reason (Art. 282 in

conjunction with Art. 291 grPPC). Finally, the infringement of restrictive measures imposed on a juvenile does not automatically entail imposition of pre-trial detention.

Placement in an educational institution

Placement in an educational institution is a custodial educational measure, which is imposed by the juvenile court in three cases: either as a measure for preventive purposes under juvenile welfare law or as a pre-trial restrictive measure instead of pre-trial detention under juvenile criminal law or as a form of formal sanction in the juvenile court procedures under juvenile criminal law.

In Greece, the existing juvenile welfare law, Law 2298/1995, as it has been amended by law 3860/2010, intervenes when a juvenile faces difficulties of social adjustment. The undefined legal term “difficulties in social adjustment” is put into definite terms: Minors may be sent by the juvenile judge to educational institutions if they live in a social environment of persons who commit criminal offences, whether habitually or by profession. Additionally, there should be a social inquiry report from the juvenile probation officer that the minor’s placement in a welfare institution of hosting minors as the primary welfare measure is not feasible or purposeful.

An application form or the written consent of the person exercising parental custody- when the application is submitted by a third person- is still necessary, but the application can be now submitted additionally to the Youth Protection Associations other than the public prosecutor or the police authorities. The written consent of the person exercising parental custody is not necessary when the application is submitted by the public prosecutor.

The minor's previous hearing before the judge is now obligatory. The juvenile judge decides after hearing the juvenile and after taking into account the social inquiry report from the juvenile probation officer. The juvenile judge has to explicitly define the accurate maximum duration of the placement in an educational institution.

The placement of the minor in an educational institution as a restrictive measure instead of pre-trial detention was first provided for in law 2298/1995. Additionally, pursuant to law 3860/2010 it is explicitly foreseen in Art. 282 grPPC that one or more of the educational measures of Art. 122 grPC may be imposed as restrictive measures on juvenile offenders. The placement of the minor in an educational institution is the sole custodial educational measure of Art. 122 grPC.

However, the possibility to impose this custodial measure as a restrictive measure on minors worsens *de jure* the legal position of these minors in comparison to the accused adults, because the general restrictive measures, which are also foreseen for adults by way of example in Art. 282 grPPC, are connected only with restrictive but non-custodial obligations.

The placement of the minor in an educational institution can be imposed by the juvenile court in the court procedures as a form of formal sanction. It is the sole custodial educational measure, as it is foreseen in Art. 122 grPC. A presupposition for its imposition is the commission of a misdemeanor or a felony and not a petty offence (Art. 128 grPC). This measure shall be imposed exceptionally only when all the other non-custodial educational measures have proven to be ineffective, that means they failed to accomplish their goal, to deter the minor from reoffending.

Detention in a young offenders' institution

Detention in a young offenders' institution means always a sentence to deprivation of liberty.

According to the previous legal provisions (Art. 127 grPC), only persons above the age of 13 could be sentenced to detention in a young offenders' institution when the court, after having examined the conditions under which the offence (a misdemeanor or a felony) was committed and the personality of the offender in its entirety, is persuaded that deprivation of liberty is necessary to deter him/her from committing further criminal acts. The age of 13 years was regarded to be a relatively low minimum age limit for the application of deprivation of liberty on minors, whereas only the dependence of the punishment on a positive assessment of the risk of reoffending was considered to be a rather vague criterion.

Law 3860/2010 has significantly modified the provisions regulating detention in a young offenders' institution. Pursuant to the currently applicable Art. 127 grPC, detention in a young offenders' institution may now be imposed only on minors over the age of 15. Further presuppositions are the commission of serious offences (felonies) that contain elements of violence, which turn against life or bodily integrity or are committed by profession or continuously. Additionally, the court is obliged to justify specially and thoroughly in its judgment, why after having examined the conditions under which the offence was committed and the personality of the offender, non-custodial educational or therapeutic measures are not sufficient.

The raising of the lower age limit for the application of deprivation of liberty on juveniles to the age of 15 signals an improvement of the juveniles' legal situation. The age limit of 15 years is in harmonization with the legal maximal age for the completion of the 9- year- compulsory education in Greece. Children till the age of 15 are obliged to attend the school and thus they do not belong in prisons, as the German criminologist and international law reformer Franz von Liszt (1851-1919) did emphasize.

What is more, the concrete description of the offences, for which deprivation of liberty is to be imposed, allows for a specification and thus a restriction of the application field of the punishment. As it is mentioned in the text of the Explanatory Report of the Draft Law on "Improvements of Penal Legislation regarding Juvenile Offenders, Prevention of and Response to Victimization and Criminality of Juveniles" (law 3860/2010), the provision of Art. 127 grPC has a similar content to the Rule Nr. 17. 1 c) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. This Rule reads as follows: "Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response." According to the Comment on the aforementioned Rule, this provision corresponds to one of the guiding principles in Resolution 4 of the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

Abolishment of the definition of the duration of detention in a young offenders' institution in a certain timeframe, introduction of detention in a young offenders' institution for a fixed period and reform of the range of detention in a young offenders' institution

In Greece, according to law 3189/2003 the duration of the sentence of detention in a young offenders' institution is no longer defined in a certain timeframe, but detention for a fixed period in a young offenders' institution has been introduced (Art. 127 Sec. 2 grPC). The range of the sentence of detention in a young offenders' institution was not, however, reformed by law 3189/2003. According to the old Art. 54 grPC, the time spent in a young offenders' institution could not exceed 20 years or be less than 5, if the offence committed was punishable by law with imprisonment of more than 10 years. In any other case it was at least 6 months and a maximum of 10 years.

The United Nations' Committee on the Rights of the Child apprehensively manifested in its "concluding observations" (1.2.2002) regarding the initial Greek report that the maximum duration of detention in a young offenders' institution amounted to 20 years and this length of detention was not in compliance with the international human rights standards. Therefore, the Committee on the Rights of the Child required that the regulation, which provided for this length of detention, should be abolished.

The Greek legislator fulfilled the requirement and reformed the provisions regarding the range of the sentence of detention in a young offenders' institution with law 3860/2010 on "Improvements of Penal Legislation regarding Juvenile Offenders, Prevention of and Response to Victimization and Criminality of Juveniles". According to the modified Art. 54

grPC, the duration of detention in a young offenders' institution may not be more than 5 years or less than 6 months if the offence committed is punishable by law with imprisonment for up to 10 years. If the threatened sentence is life imprisonment or imprisonment for a period longer than the one mentioned in the previous subparagraph, then the duration of detention in a young offenders' institution may not be more than 10 years or less than 2 years. In extra-ordinary cases of particularly serious offences that are punishable by law with life imprisonment or imprisonment of at least 10 years, the court may impose confinement up to 15 years.

As a result, according to law 3860/2010 the minimum duration of detention in a young offenders' institution remains 6 months, whereas the maximum duration is being limited to 5 or 10 years or in extra-ordinary cases to 15 years.

The unrestricted recognition of the right to appeal

Art. 6 of the European Convention on Human Rights foresees the full exercise of the right to a fair trial, which can be reassured through the widening of opportunities to appeal against the judgments of judicial authorities irrespectively of the nature or the duration of the sanctions imposed. At the level of the United Nations the main provision recognizing the right to file an appeal unrestrictedly is to be found in Art. 40 § 2 b) and v) of the United Nations Convention on the Rights of the Child. Furthermore, this requirement is stressed in the following provisions of the international soft-law documents: Par. 7.1 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); Par. 60-61 of the General Comment No. 10 (2007) of the United Nations' Committee on the Rights of the Child about Children's' Rights in Juvenile

Justice, and Par. 3.2-28 to 3.2.-29 of the Model Law on Juvenile Justice. At the level of the Council of Europe the Committee of Ministers has adopted non-binding documents, in which the following provisions on the right of appeal are to be found: Par. 8 of the Recommendation No. R. (87) 20 on Social Reactions to Juvenile Delinquency, and Par. E.2 (Rule of Law) of the Guidelines on Child-Friendly Justice.

In the Greek legal order for many decades the lodging of appeals in the juvenile justice system depended on the nature and the duration of the sanctions imposed. No appeal was permissible against judgments, which ordered educational or therapeutic measures.

The right to appeal against a decision imposing the sentence of detention in a young offenders' institution was also limited to sentences of more than 1 year of detention. In other words, this sentence had never been appealable when the minimum duration of detention in a young offenders' institution amounted to 6 months up to 1 year.

An accused could also appeal against a judgment imposing deprivation of liberty the duration of which was more than 60 days (judgment of the Juvenile Court consisting of one single judge) or 4 months (judgment of the Juvenile Court consisting of three judges), provided that the juvenile was sentenced to imprisonment under the general criminal law (Art. 489 Sec. 1 letter e grPPC). Under general procedural rules, appeal in cassation was permitted in the case of unappealable judgments (Art. 504 Sec. 1 in conjunction with Art. 510 grPPC).

The Greek legislator took into account the recommendation made on this matter by the United Nations' Committee on the Rights of the Child in its "concluding observations" (1.2.2002) regarding the initial Greek report and modified the relevant

regulations. According to law 3189/2003 on the “Reform of Juvenile Penal Legislation”, the sentence of detention in a young offenders’ institution regardless of its length is now appealable. Additionally, the law 3904/2010 on “Rationalization and Improvement of the Penal Justice System” introduced the possibility to appeal against any judgment imposing educational or therapeutic measures as well as any judgment imposing imprisonment under the general criminal law regardless of its length.

Pursuant to Art. 130 grPC, as it was amended by law 3860/2010, when a minor committed an offence (felony that contained elements of violence, which turned against life or bodily integrity or was committed by profession or continuously) after having reached the age of 15 and is tried after having reached the age of 18, the court may impose- instead of detention in a young offenders’ institution- the punishment provided for the offence according to the general criminal law (such as penitentiary, imprisonment or fine) but is obliged to mitigate the sentence in accordance with the provisions of Art. 83 grPC. A mitigated punishment may be imposed instead of detention in a young offenders’ institution, if the court finds that educational or therapeutic measures are not sufficient and that detention in a young offenders’ institution is necessary but no longer appropriate. If the court finds that the imposition of detention in a young offenders’ institution or a mitigated punishment under general criminal law is not necessary, because the educational or therapeutic measures are sufficient, the imposed educational measures end *ipso jure* as soon as the minor becomes 25, as it has been aforementioned.

Implementation of the legal framework in practice

Statistical data on the application of diversion at state level are not available. It is a fact, however, that in practice diversion have been applied to a limited extent. The rare application of diversion and of the new educational measures is attributed to the lack of appropriate infrastructures and resources as well as to the absence of adequate training programs for the juvenile justice officials.

In Greece, where juveniles are concerned, the emphasis in juvenile criminal responses is to be found in educational measures. Although the trend in educational measures ordered against juveniles is gradually declining, still the educational measures constitute the majority of all sanctions imposed by the juvenile court. Unfortunately the new educational measures are not listed in the statistical records given by the Hellenic Statistical Authority, although the juvenile probation services do record such data.

The placement of the minor in a therapeutic or other appropriate institution was very rarely applied. The new therapeutic measures are also not listed in the statistical records given by the Hellenic Statistical Authority. In practice it is not possible to impose the new therapeutic measures because the group of experts, who has to write the report, has not been appointed so far. However, the participation in a therapeutic consultative program in combination with the placement under the care of the Juvenile Probation Service is often applied as an educational measure on drug-addicted young offenders.

Pre-trial detention on juveniles is applied to a great extent and for relatively long periods of time. In the year 2012 60% of all male juvenile detainees (547 males at the age of 15-21 years) were detainees on remand and not convicted. The long-lasting procedures in the judicial system and subsequently the large

number of juvenile detainees on remand is a matter causing concern according to the “concluding observations” on the second and the third Greek report (2012) of the United Nations’ Committee on the Rights of the Child.

In Greece only one public educational institution for male juveniles operates in Volos at central Greece. The number of juveniles living in the educational institution exceeds the official capacity number. There is a lack of specialized personnel. In many cases the placement in the educational institution is imposed as a restrictive measure, as an alternative to pre-trial detention.

In the course of the years detention in a young offenders’ institution has been imposed by the courts with a great degree of strictness. From 1978 to 1993 detention in a young offenders’ institution had never been imposed in a percentage more than 1% of the total number of juveniles subject to a criminal law sanction. Since 1994 there has been an upward trend - with fluctuations - in the practice of sentencing to detention in a young offenders’ institution (1994: 1,6%, 2005: 1,9%, 2009: 2,7%).

In Greece, young offenders’ institutions (prisons for juveniles and young adults) have been operating in Volos, Avlona and in Kassaveteia. In 2014 a new prison only for juveniles under the age of 18 started operating. Since 2008 young women have been detained in the prisons for females in Elaionas Thiba. According to a telephone conversation with the directors of young offenders’ institutions (prisons) in Volos, Avlona and Kassaveteia in March 2012, the total number of young male detainees was 547. Only 40 (7%) were under the age of 18, while 507 (93%) were over 18. The vast majority (4/5) of these young male detainees did not have the Greek citizenship: 106 (19, 4%) were Greeks and 441 (80, 6%) were foreigners.

Regarding their legal status, as it has been mentioned, 329 (60, 1%) were detainees on remand and 218 (39, 9%) were convicted.

The Greek Ombudsman: incarceration and the detainees' rights

In Greece, the Greek Ombudsman, an independent administrative authority which mediates between public administration and citizens in order to help citizens in exercising their rights effectively, has been operating since 1998. In the year 2003 the Children's Rights Department as one of the six Deputy Ombudsmen started operating in Greece. The main mission of the Children's Ombudsman is to safeguard and promote children's rights.

In 2010 a group of members of the Greek Ombudsman visited the young offenders' institutions (prisons for juveniles and young adults) in Volos and in Avlona (two of the three prisons for juveniles and young adults at that time) so as to conduct an autopsy about the operation and living conditions in these prisons. The Greek Ombudsman's members could draw the following conclusions, which focus mostly on the deficiencies and the problems in these two prisons.

Firstly, there was a problem of overpopulation as the number of juvenile detainees was double than the official capacity number. The detainees were not separated according to the legal status of detention (remand or conviction), but according to the ethnic origin. The majority of the detainees were over 18 and they came from different nations. Most of the detainees were detainees on remand and they were accused of having violated the law about illegal entrance and transfer of illegal foreign nationals and the law about drugs. A small minority

were accused of having committed robbery, theft or offences which turn against life. Some of them failed to pay the costs of proceedings or the imposed fines. Suspension of the penalty was imposed on a number of detainees under the condition of expulsion, but they were still detained till the ascertainment of the expulsion's feasibility.

The facilities of the prisons were also proven to be inadequate. There was a shortage of financial resources. Only the needy detainees were provided with items of personal hygiene. Complaints were made about the quantity and quality of food, whereas there was no dining room and food was consumed inside the cells. Clothes were offered through donations of the church or other charity institutions.

Medical treatment was insufficient. A serious number of detainees faced psychological problems so that self-harm incidents or aggressive behaviors were to be observed.

A social service did operated in the prisons. The foreign detainees had, however, difficulties in communicating with the personnel due to lack of interpreters.

The opportunities for recreation, sports and cultural activities were minimal. Detainees went out in the yard at a different time with the criterion of the ethnic origin for safety reasons.

Detainees contacted with relatives and friends by phone at their own expense. They were not aware of the possibility to receive visits in a room without grid. The granting of leaves was often not based on the criterions foreseen by the law, while the formal and substantive presuppositions for the granting were not previously examined. On the whole, detainees were not properly informed about their legal rights and obligations and legal assistance was provided in an insufficient manner.

Primary school and secondary school operated, but some problems were to be observed. The rooms were not always heated in the winter and no study rooms were available. The library was closed or there were no books in foreign languages. Meal was served during the school time. Juveniles who were transferred in another prison often could not continue attending the school because no equivalent school operated in the other prison. Furthermore, vocational training programs were offered only occasionally. Only a small percentage of detainees had the opportunity to perform work so that they could reduce their time spent in detention through the good-time regulation of favorable crediting of working days or days of schooling, training or further education towards the time to be served.

Finally, unannounced inspections on young detainees by the prison staff occurred often. Prison staff was feeling anxiety, frustration and weakness to deal with problematic situations effectively.

During these visits the members of the Greek Ombudsman concluded that the living conditions of the detainees were inhuman and degrading pursuant to the relevant definitions by the United Nations and the Council of Europe. The Greek Ombudsman made suggestions for the improvement of the conditions in these prisons.

The special issues related to the problem of overcrowding should be elaborated in a more constructive way. The legitimacy as well as the expediency of detention for offences, such as illegal entrance and transfer of illegal foreigner nationals, failure to pay the costs of proceedings and the fines, or for reasons, such as long-lasting delays in applying the law about expulsion or in bringing the detainees on remand before the court, are disputed. The lack of a system of a proper

definition of the detainees' age and the prevalence of problematic views by the personnel regarding the age of majority do not allow for a proper separation of detainees.

The building facilities and the living conditions of the detainees shall be also improved. The detainees themselves can be encouraged to play a more active role by: a) performing work and repairing the building facilities, b) utilizing their knowledge and cooking and c) participating in cooking courses. At the same time the state shall support the detainees by: a) providing all detainees without exceptions with items of personal hygiene, b) appointing young doctors and a specialized nursery personnel to offer medical care 24 hours a day, c) activating programs of legal assistance free of charge and d) reducing the costs of telecommunications.

The opportunities for recreation, sports and cultural activities shall be enhanced. The library shall function as a place of recreation, an alternative to the long hours of stagnation. The Ministry of Justice and the Ministry of Education shall work coordinately so as to reassure that the special educational needs of detainees can be satisfied in a sufficient manner. Focus shall be given on the organization of vocational training programs and even on the operation of a vocational secondary school in the prisons.

A larger number of detainees shall have access to work, when a) jobs are given according to concrete criterions based on rationalism and b) the detainees succeed one another at the posts at regular intervals.

All detainees shall have a thorough comprehension of their rights and obligations, when a) they are provided with a special information sheet and b) an interpreter is available for the foreigner detainees.

The preparation for release shall be well organized, the detainees shall be well informed about the after care programs and the procedures leading to a release shall take place in a more speedy way.

Finally, the Greek Ombudsman made the following legislative proposals: a) the lower age limit for the imposition of deprivation of liberty shall be increased to the age of 16, b) minors shall exercise their right to serve the custodial sentences not continually but on certain days of the week, while their obligations at work or at school shall be taken into account (Art. 63 of the Greek Correctional Code), c) minors shall exercise their right to perform community work instead of serving their custodial sentences in prisons (Art. 64 of the Greek Correctional Code and Art. 122 grPC), d) the minors' transfer to another prison shall be ordered only exceptionally and only when it is reassured that he/she can continue attending the school and e) alternative measures on minors who are to be detained because of failure to pay the costs of proceedings or fines shall be applied.

By making this contribution, the Greek Ombudsman aimed at protecting the rights of juvenile detainees and stressing the obligation of the Greek state to always take into account and realize the best interests of the child (Art. 3 of the United Nations Convention on the Rights of the Child).

Consequences of the socioeconomic crisis in the juvenile justice system

Since 2009 Greece faces a serious socioeconomic crisis, which on the whole has a negative impact on the lives of children, especially of Roma children, unaccompanied children and children coming from migrant families. Juveniles' living

conditions have been deteriorated because there is a large percentage of families (nearly 21%) under the poverty threshold in Greece and young people confront a large percentage of unemployment (approximately 65% in comparison to the average percentage of 24% at the Euro Zone). It has been also observed that many children, especially Roma children leave school or have poor performance at school. The juvenile justice system operates also with many problems due to the socioeconomic crisis. The Juvenile Protection Societies have been merged, other social services work with very limited personnel and the public financial resources have been drastically cut down.

Perspectives and Conclusion

In Greece, the legal position of the child as offender has been significantly reinforced through the enactment of progressive laws. The new regulations aim to serve the principle of imposing deprivation as a measure of last resort. Deprivation of liberty is a severe punishment, which does not result in a reduction of crime and social (re-)integration of the offender. Thus, it is essential to avoid and restrain the use of custodial sentences for juveniles and seek for alternative ways of dealing with juvenile delinquency.

The paramount application of diversion as well as the wide and increasing implementation of non-custodial educational or therapeutic measures can be an alternative response to juvenile delinquency, which enables crime prevention, social integration and promotes the education principle in a more effective, human und economically affordable way than deprivation of liberty.

In particular, the introduction of mediation between the minor offender and the victim reveals the legislator's will to protect the victims' interests and to encourage the young offender to undertake responsibility for his/her act. Mediation is a constructive means of confronting with the problem of youth crime because the negative physical, psychological or economic effects on the victim can be reduced or healed and the positive potential of the young offenders' personality can be strengthened.

The participation in a therapeutic consultative program allows for a special treatment in a modern ambulant way and is preferred rather than the placement in a therapeutic institution.

Deprivation of liberty in terms of pre-trial detention, placement in an educational institution, placement in a therapeutic institution and detention in a young offenders' institution is tended to become a measure of last resort. The Greek legislator modified the relevant provisions in a substantial way and introduced more concrete and stricter criterions for the imposition of deprivation of liberty. Additionally, the duration and the range of detention in a young offenders' institution was significantly reformed. The evident intent of the legislator was to comply with the international human rights standards.

The widening of opportunities to appeal against the judgments of judicial authorities irrespectively of the nature or the duration of the imposed sanctions is also an important step towards the better and more comprehensive realization of the principle of imposing deprivation of liberty as a measure of last resort.

In practice, the effective implementation of the law in Greece remains a requirement of high priority. Despite the obstacles all

professionals in the juvenile justice system should keep on working hardly so as to serve the best interests of the child and the Greek state ought to support their work by all means. The duties of juvenile probation officers and juvenile public prosecutors have been continually expanded but unfortunately an equivalent increase in the number of the appointed personnel in the juvenile justice system has not occurred. At the beginning of the new century, the juvenile justice system in Greece is faced with a significant challenge, which is that law in books should become law in action.

BIBLIOGRAPHY

Dimopoulos, Charalampos/Kosmatos, Kostas (2010). Juvenile Law. Theory and Practice, 2nd Edition, Nomiki Bibliothiki, Athens (in Greek).

Greek Ombudsman (2011). Penal confinement and rights. The Greek Ombudsman's Perspective. In: V. Karydis and Ef. Fytrakis (Eds.), Nomiki Bibliothiki, Athens (in Greek).

Pitsela, Angelika (2014). Täter-Opfer Ausgleich im Jugendkriminalrecht in Griechenland. Gedächtnisschrift für Michael Walter (359-377). Duncker und Humblot, Berlin.

Pitsela, Angelika (2013). The penal response to juvenile delinquency. Sakkoula Editions, Athens-Thessaloniki (in Greek).

Pitsela, Angelika (2012). Die neuesten Entwicklungen des Jugendstrafrechts in Griechenland. Festschrift für Wolfgang Heinz (478-491). Nomos, Baden-Baden.

Pitsela, Angelika (2011). Youth Justice and Probation. In: L. K. Cheliotis and S. Xenakis (Eds.), Crime and Punishment in Contemporary Greece. International Comparative Perspectives (505-527). Peter Lang. Oxford et al.

Pitsela, Angelika (2011). Greece. In: F. Dünkel et al. (Eds.), Juvenile Justice Systems in Europe. Current Situation and Reform Developments. 2nd revised Ed., Vol. 2 (623-670). Forum, Mönchengladbach.

Pitsela, Angelika (2010). Zur neuesten Reform des Jugendkriminalrechts in Griechenland. Festschrift für Argyrios Karras (1183-1212). A.N. Sakkoulas, Athen, Komotini.