

## Child-Friendly JT

*The right of minors to information, translation and interpretation in criminal proceedings:*

*Development of child-friendly tools*

JUST-AG-2016-06

# **NEEDS ASSESSMENT OF CHILDREN IN CONFLICT WITH THE LAW IN CYPRUS: REPORT ON THE RIGHT OF CHILDREN TO INFORMATION, TRANSLATION AND INTERPRETATION IN CRIMINAL PROCEEDINGS**

## **1. INTRODUCTION**

Due to the fact that the mental state of children is particularly fragile and their character is significantly influenced by a variety of factors and elements found in their narrow and wider environment (family, school, society, etc.) as well as their young age; the critical stage of their emotional and psychological condition, children are considered to be sensitive. As a result of these, minors face significant problems and difficulties in handling the criminal proceedings when compared to adult suspects or defendants. These are the prime reasons why it is imperative that there are specific protection measures and legislation to regulate the criminal procedure as well as the criminal sanctions of minors and young people.

It is commonly accepted that minors need special protection in criminal proceedings to be able to understand what is being done before them (e.g. judicial proceedings) and to ensure respect for and exercise of their rights. Otherwise, that is to say, if the person does not understand the procedure or the consequences of his or her actions (e.g. admission or non-confession), the right to a fair trial is greatly restricted, thus jeopardizing the integrity of the judicial process.

Even though the number of juvenile offenders who have committed serious criminal offenses (e.g. robbery) as well as minor offenses (e.g. malicious damage to property) has decreased considerably in Cyprus, should not be a comforting factor<sup>1</sup>. Therefore, within the purposes of the project Child Friendly JT, we aimed to contribute to the correct implementation of Directives 2012/13/EU on the right of information in criminal proceedings, 2010/64/EU on the right to interpretation and translation in criminal proceedings and 2016/800 in regards of the procedural safeguards for children who are suspects or accused in criminal proceedings. Therefore, the main objectives of the project are related to the promotion of child friendly justice by facilitating the comprehension of the information provided to the minors in conflict with the law, as

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<sup>1</sup>[http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/\\$file/CRIMINAL\\_STATISTICS-2015-EL-170817.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/2996200371D490C4C22578BC002FC5BA/$file/CRIMINAL_STATISTICS-2015-EL-170817.pdf?OpenElement) accessed on the 3<sup>rd</sup> of September, 2018.



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well as their parents and/or holders of parental responsibility, through the use of a language adapted to their stage of development. Due to these factors, the need of special protection of juvenile offenders is very important and could be found at an international level, European as well as the Cypriot legal context.

## 2. METHODOLOGY

Since Cyprus did not manage to implement the stated activities (questioner and focus group), therefore, our legal experts took the opportunity to examine the law in books v. the law in action. The report was written upon the desk research which involved the analysis of the existing Cypriot legal framework in regards of juvenile offenders, having in mind the European Directives as well as International Conventions and relevant case law. In the context of the report one can find the implementation difficulties Cyprus is facing in regards of the legislative framework of juvenile offenders. Our researches have tried various times to get the permission to access the prison in order to distribute the questioner to minor and young offenders, however, the Ministry of Justice and Public Order as well as the Department of Prison refused on the ground of the existing legislation. Therefore, we had agreed with the relevant Ministry to send the questioner so that they distribute it to the minors and young offenders in prison, however, we never received the completed questioners.

### 2.1. Participants

The aim of the project was to do a focus group with juvenile offenders and to provide them with a questioner in order to analyse their capacity in regards of their rights. Since such a permission was not approved by the Ministry of Justice and Public Order, our researchers contacted the Director of the Central Prison, however, the unofficial response was that the minors are not interested in such an activity. Therefore, our researchers took the opportunity to analyse the existing Cypriot legal framework in regards of the rights of juvenile offenders and assess the implementation of the legislation.

### 2.2. Instruments

The instruments our researchers were going to use, were translated into Greek. The English version was sent to us by the coordinators of the project and after consultation with Public Authorities, we have translated it into Greek. Both versions of the



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questioner were sent by FAX to the Ministry of Justice and Public Order in order to be distributed to the juvenile offenders. Unfortunately, we never received the completed questioners.

### 2.3. Procedure

The procedure of assessing and analysing of the needs of minors in conflict with the law, started in 2017. We have had four meetings with public authorities in order to get their feedback for the questioner and understand how the procedure works in Cyprus. Since October 2017 we have been trying through letters and phone calls to get the permission to access the prison. Unfortunately, we were denied access, therefore, our researchers did a desk review in order to find the gaps of the legislative framework and contribute to a more child-friendly European Juvenile Justice System as well as to improve the knowledge of professionals working in juvenile justice system.

## 3. RESULTS

When someone explores the issue of criminal proceedings of minors and young people, they can find the European Convention on Human Rights as well as the General Comment (Comment #10) of the Minimum Rules for the Administration of Juvenile Justice as well as the United Nations Rules for the Protection of Human Rights and Fundamental Freedoms as well as the Convention of the Rights of the Child. Under these guidelines, one can find the attempt to improve the law of states in this issue and to promote an alternative and a more modern way of dealing with it<sup>2</sup>. The common factor in all these text, is that there is a common ground, which is the child's best interest.

In any case, when a minor is sentenced to imprisonment or detained, special rights apply. For example, the fact that the prison area must be different from that of the adults<sup>3</sup>, to improve their level of education continuously, even at the area of the prison, grant them access to recreational and sport activities<sup>4</sup> and to empower them to carry out work of their own choice in order to acquire occupational skills<sup>5</sup> to survive

<sup>2</sup> General Comment No. 10, of the International Convention on the Rights of the Child.

<sup>3</sup> Article 13 (4) of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>4</sup> Article 32 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>5</sup> Article 38 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV



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with dignity after their release. In addition to this, they should have access to medical and mental support<sup>6</sup>, day-to-day parental visits and friends, as well as authorisation to go out of prison for a while to achieve steady reintegration into society<sup>7</sup>.

These texts protect the rights of child offenders and have a child-centred approach, aiming reforming the minor as well as to ensure the minors' social integration. These texts, are guidelines and principles that States cannot violate. Each state which adopts and harmonises with International as well as European legislation, provides modernise provisions in order to adapt to the new conditions and attitudes that prevails (social reintegration, protection, avoid stigmatization of the child).

Additionally, when one refers to case law, they can find that juveniles in conflict with the law, need to have special procedures to follow in court and special measures should be taken. The rationale is that the child can not perceive the procedure. In the case of *S.C. v UK (2004)*<sup>8</sup> the European Court of Human Rights ruled that the right to a fair trial<sup>9</sup> of the minor was violated because the national court failed to take special measures to make the minor aware of what is being done before him.

### Existing legal framework

It is important to define the concepts of "criminal law" and "minor" before citing the applicable legislation for juvenile offenders in Cyprus, in order to clarify the content.

The term 'criminal law' means all provisions which define and prescribe in a manner which imposes specific measures (sentences) against certain unlawful acts in order to restore social and legal order. Furthermore, the term "minor" in the Cypriot legislation is generally perceived as any person who has not reached the age of 18. However, in addition to this general rule, in the framework of criminal justice, juvenile delinquency is examined when a minor is considered to be criminally liable for an illegal act or omission. Pursuant to Art. 14 of the Criminal Code (Chapter 154) of the Republic of Cyprus, criminal liability for an unlawful act or omission is attributable to any person aged 14 or over. Therefore, this means that any person who has not reached the age of 14 does not bear any criminal liability for any illegal act or omission. Prior to the

<sup>6</sup> Article 49 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>7</sup> Article 59 of the Minimum Standards of Justice in Juvenile Offenders; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Part IV

<sup>8</sup> *S.C. v the United Kingdom (2004)* 17 BHRC 607

<sup>9</sup> Article 6 (1) of the European Convention of Human Rights



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amendment of the Law 18(I)/2006, the age of criminal liability was 12. Thus, the age limit varies from State to State.

In the Cypriot legal system, although there are provisions guaranteeing rights, there is no specific statutory legal framework for minors, like in other European Member States. Instead, there are some legislative provisions dispersed across legislations which apply only to juvenile offenders, with sentences. In many instances, these provisions are similar and/or identical to those of the adults, with variations that meet the requirements of each case separately.

### **Juvenile Offenders Law, Chapter 157**

In Cyprus, the only legislation which refers to juvenile offenders is the Juvenile Offenders, Chapter 157, which was introduced in 1946 and the last amendment was made in 1972. The legislation consists of 25 Articles and is supposed to regulate the procedures followed in criminal proceedings of minors and the sentences which could be imposed upon them. Since it was last amended in 1972, it cannot serve the needs of juvenile delinquency today. Thus, since it is an 'old' legislation, it is important to analyse some of its basic provisions.

Chapter 157 deals with juvenile offenders, taking into account both their age and the promotion of their interests. In particular, Article 5 of Chapter 157 deals initially with the issues concerning the court, for example that juvenile cases are dealt with by a Juveniles Court in a different building or area than the District Court. In addition, the cases should be held on different days and hours of the hearings of adults.

However, in Cyprus the cases of minors are heard in the District Court or the Assize Court, depending on the case, since no specialised Juvenile Courts have been established. A typical example is the case of Republic of Cyprus v Alexis Anastasiou<sup>10</sup>, in which the accused, aged 17, in which, the case was held in the Larnaca's Assize Court for the criminal offense of homicide. In addition, the same article observes that personal data are protected, since the Article determines that only members and court officials, lawyers and members directly or indirectly involved in the case (parents or guardians may be present in the courtroom if it is considered to be necessary by the court), prohibiting at the same time the publication of details of the minor without the permission of the court.

<sup>10</sup> Republic of Cyprus v. Alexis Anastasiou 15064/14, 6722/14, 11808/14

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According to Chapter 157, the duty of the Juvenile Court is, among other things, is to directly explain to the minor the accusation he/she is accused of, in a simple and comprehensible language, as stated in Article 10 (I). This is due to the fact that a minor cannot understand nor realises the vocabulary and legal terms used to hold the case. Indicatively, in the case *R v. West London Youth Court*<sup>11</sup> where the accused was 15 years old, while according to the findings, his capacity was for as one of an 8-year-old child, the court had taken special measures so that the accused minor could participate in the process and in order for his right to fair trial not to be encroach, including the use of simple and comprehensive language ('concise and simple language'). It is important to state here, that the Juvenile Offenders Court may draw information for the minor (e.g. academic performance, general behaviour, medical history, etc.) if the Court considers the information to be valid for the hearing of the case and upon decision of the case. This kind of information is usually included in the reports of the Social Welfare Services to set up for cases of juvenile delinquents. Thus, the most important aspects of this article of the legislation, is that it states the sentences and/or penalties imposed upon the juvenile offender.

Moving on, Article 7 of Chapter 157 underlines that if a juvenile is detained or referred to the court, the custody should take place at a police station instead of the prisons. It is noted that the police are obliged to ensure that the minor will not come into contact with an adult convict.

The criminal handling of minors is overseen by Article 12 of Chapter 157. When in regards of this Article, if the Juveniles' Offenders Court is satisfied with the outcome of the examinations, it can act upon one of the following ways: a) reject the category, b) put the minor under the supervision of the 'Guardian Officer' (this task has been delegated to the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance<sup>12</sup>), c) place the minor in a reformatory school which is not yet established in the Republic of Cyprus, d) order the payment of fined or costs for damages which occurred by the act of the offender (usually, the payment is made by parents or guardians since the minor does not own his/her own property) and e) impose a sentence on imprisonment, which is pointed out to be a very important aspect<sup>13</sup> since we do not have a detention centre for juvenile offenders. Furthermore, when one explored the stated Article, they will find that imprisonment is ordered only if and when

<sup>11</sup> *R (TP) v West London Youth Court [2005] EWHC 2583*

<sup>12</sup> Law Office of the Republic of Cyprus, Criminal Law,  
<http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument>  
accessed on the 3<sup>rd</sup> of September, 2018

<sup>13</sup> Law Office of the Republic of Cyprus, Criminal Law,  
<http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument>  
accessed on the 3<sup>rd</sup> of September, 2018 (Mitleton)



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the minor cannot be treated under the above mentioned ways. The sentence of imprisonment is perceived to be the extreme measure<sup>14</sup>.

### **Law of Guardianship and Other Forms of Handling of Juvenile Offenders (46(I)/1996)**

Another legislation in the Cypriot legal system concerning juveniles is the Law of Guardianship and Other Forms of Handling of Juvenile Offenders (46(I)/1996). The establishment of this legislation establishes a significant development for dealing with juvenile offenders since it provides alternative ways while addressing the minor. Under Article 5 of the above mentioned law, the offender could be placed under the supervision of the "Guardian Officer" (the period of supervision may not be less than one year and not more than three years). The Custody Order<sup>15</sup> can include terms of community work, with whom the offender is doing work without a salary, under certain conditions, such as the consent of the minor in doing so (Article 6). Additionally, some other forms could be the attendance of the minor in classes, to be present at fixed days and hours to the "Guardian Officer". These measures are valid only if the minor accepts the terms. If there is acceptance, then there should be appropriate arrangements made with competent authorities, ministries etc. (Article 7).

It is important to note that the violation of the terms of the Custody Order entails some sanctions as provided by Article 8 of the Law 46(I)/1996. When exploring this under case law, one finds the case of *Head of Police Force of Limassol v. Konstantinou Georgiou*<sup>16</sup>, in which the court, after taking into account facts (marital status, report of the Social Welfare Office, etc.) imposed a sentence of imprisonment to the accused. The offender was 17.5 years old who repeatedly violated the terms of the Custody Order which was imposed on him. He also violated the community work terms, therefore, the last measure which was taken upon him was his imprisonment.

### **Rehabilitation of Convicted Persons Law of 1981 (70/1981)**

Provisions concerning minors can also be found in the Law of Rehabilitation of Convicted Persons Law of 1981 (70/1981) which was last amended in 2004 (amendment 228(I)/2004). In particular, with this amendment, the conditions of dismissal of previous sentences (Article 5 of 70/1981) regarding young people up to

<sup>14</sup> Juvenile Offenders Law, Article 12 (2)

<sup>15</sup> Law Office of the Republic of Cyprus, Criminal Law, <http://www.law.gov.cy/law/lawoffice.nsf/All/59BC3A2D676F658CC2257424003D6C49?OpenDocument> accessed on the 3<sup>rd</sup> of September, 2018.

<sup>16</sup> *Head of Police Force of Limassol v. Konstantinou Georgiou* 34504/10

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21, are not so strict<sup>17</sup>. In this way, the offender is given another chance to be included in society despite the offence he/she committed.

### **Children’s Law, Chapter 352**

The special protection and care that a juvenile needs as a developing person, can be found under the Children’s Law, Chapter 352. If the Juvenile Court decides that the minor needs care and protection for the benefit of the minor, Article 64 of Chapter 352, provides that the minor could be placed in a reformatory school or he/she will go under the care of a competent person, either he/she is a relative or not.

### **Rights of Persons under Arrest and Detention Law**

A very important law reform in this area is the introduction of the Law of the Rights of the People who are Taken in Detention of 2005 (N. 163 (I)/2005). This legislation sets rules from which there are conditions which regulate detention, degrading treatment and the rights of the arrestees and of prisoners. Article 6 of the above mentioned legislation, enshrines the right of information to parents and guardians, in relation to the arrest of offenders under the age of 18. Under the law, the police officers are obliged to immediately inform the parents or guardians of the minors regarding the reasons of the arrest and/or custody. If it is deemed to be necessary, the Social Welfare Services are informed as well.

Under Article 10 of the above mentioned law, it is explicitly stated that if a person under the age of 18 is being interviewed or a person with intellectual incompetence; his/her lawyer must be present at all times, throughout the investigation. Furthermore, Article 12 (2), enshrines the right of parents or guardians of the minor to attend all the meetings and/or communication with his/her lawyer as well as to be present at any medical examination (Article 27 (2)) the minor might undertake for the purposes of the case. When one explores this legislation, they can identify that the purpose of these two articles is the protection of the minor in regards of any violations of the minor’s rights during the procedure. Since juveniles are a sensitive group of people, the legislation (under Article 16 (1)) provides that their relatives, parents or guardians, they can visit them on a daily basis (a right which is not guaranteed for adult offenders), in a designated area in the presence of a member of the police force or a prison staff.

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<sup>17</sup> Rehabilitation of Convicted Persons Law of 1981, Article 12 (2) – Chapter 157



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According to the legislation, the prisoner or the arrestee must be informed in regards of their rights as soon as possible. If they are minors, they should be informed as well along with their parents and/or guardians, as found under Article 17 (2). One of the most important provisions of the legislation is that the juvenile prisoner is detained in a place other than that of the adults, as provided in Article 20 (2). The same provision applies prior to the hearing of the case, while the minor might be under arrest. The reason why this is so important for juvenile offenders is because they are considered to be vulnerable due to their age and because he/she should be protected at a large extend from adult offenders who might harm and/or exploit the minor etc.

### Implementation difficulties

When one takes into consideration Chapter 157 as well as the other legislative provisions mentioned above, one realises that it does not mean that Cyprus has a special system of rules which are applicable to minors. For example, the legislation provides that there should be special Juveniles Offenders Court(s), reformatory schools and special detention centres for minors, in reality, they do not exist. Therefore, minor offender cases are being held in the District or Assize Courts (at which adult cases are also being held). Their prison is the central prison of Nicosia, in a common building with adults sharing the same facilities as the adults, except, minors are being kept in a separate wing even though they do not separate them according to their sex (the minors in the central Prisons of Nicosia, males and females are in the same sector of the prison). Therefore, there is a question arising from this fact; of whether exploitation or violence within the area of the prison is happening, against minors. The legislation provides for the existence of a special reform school, to which the minor is placed, however, we do not have such a provision in practice.

Furthermore, the legislation itself derogates with the corresponding European and international, as the amendments as well as the legislation which is old, do not serve the modern needs in the area of the criminal justice treatment of minors. There were some efforts made in regards of the modernization of the existing legislation with the submission of a new draft of law<sup>18</sup>, which predicted alternative sanctions and procedures of minors, but, without any progress. It has been observed that, in some cases, the sentences imposed on juvenile offenders are common to the ones imposed on adults, with some commutation since the court recognises the minor's young age.

<sup>18</sup> Commissioner for Children's Rights,  
<http://www.childcom.org.cy/ccr/ccr.nsf/All/BC60D95921CCF715C2257D930037B5F9?OpenDocument>  
accessed on the 4<sup>th</sup> of September 2018



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However, the rights of juvenile offenders, though there are a lot of deficiencies, are being protected up to an extent.

It seems that the effectiveness of these measures is inadequate as the Republic of Cyprus presents significant gaps in addressing minor offenders (e.g. absence of special detention centre, special courts, specific and adequate legislation in regards of minors, etc.), which should be covered immediately. Furthermore, in the modern era, the era of technology and information, the possibility of perception and the sense of responsibility of minors are much more developed in relation to the earlier years.

Before one reaches to the point of violating the law, there should be emphasis drawn on prevention and not repression which could be achieved with specific measures such as individual assessment of living conditions, of family background etc. which could be a decisive factor which leads the minor to the violation of the legislation. Indeed, it is one of the most delicate tasks, to deal with minor and young offenders, however, that is why we need to reform the existing legislation in order for minors to enjoy their rights<sup>19</sup>.

For the arrest or the imprisoning of a minor, the competent authorities need to apply all the guaranteed rights of the child, as required by law and by the feeling of justice. There should be different designated areas for arrested minors and/or offenders and the Cyprus Republic needs to resolve this issue as soon as possible.

## 4. CONCLUSION

In conclusion, after the analysis and referrals of the relevant legislation which regulates the way the criminal proceedings should be done in relation to minor offenders, it is clear that Cyprus does not have any specific, efficient and compiled legislation. The legislation which deals with juvenile offenders is scattered in various pieces of the legislation. Especially when having in mind the Juvenile Offenders Law which dates back in the previous century, one can be sure that Cyprus needs to deal with this matter urgently. In addition, the complete absence of facilities (Juvenile Courts, Juvenile Prison etc.) along with no specific legislation from Cyprus, appears that there is gap when comparing the European Directives to the Cypriot legal framework. There is a need of modern criminal law procedures and provisions concerning juvenile offenders. The Republic of Cyprus must make a series of actions such as adopting a

<sup>19</sup> Pikis, *Sentencing in Cyprus* (2007, 2<sup>nd</sup> edition, Nicosia) 88-90

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specific legislation, set up special centres for the detention of juvenile offenders, recruitment of specialists as staff in management issues of juvenile offenders and in training the existing staff upon manuals and the approach they should have when they come into contact with juvenile offenders, with the assistance of various stakeholders (lawyers, police officers, judges etc.).



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