

Section III
EUROPEAN LAW AND PUBLIC POLICIES

**REFLECTIONS ON THE EVOLUTION OF MINOR'S RIGHTS IN
CONFLICT WITH THE LAW IN THE EUROPEAN UNION: FROM
THE NATIONAL REGULATIONS TO THE COMMUNITY
REGULATIONS**

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Abstract:

The study proposes an examination of the development rights of juveniles in conflict with the law in terms of legal regulations adopted by the Council of Europe, the European Union and its Member States. Approaching the settlement of all matters relating to human rights, including the rights of the child, it searched the extent to provide a mechanism in respect of children's rights and how its rights are reflected both of the European Convention on Human Rights and Fundamental Freedoms and Community and of national regulations of the Member States of the European Union. Declarative character of the Community provisions do not provide sufficient protection and uniformity toward juvenile rights in this matter, being treated differently in different countries depending on national and regional legal regime. Analysis of international treaties, customary, and national case law emphasized the need for prevention of juvenile delinquency and juvenile protection by merging rules at Community level in order to ensure a common, reasonable and sufficient protection for the juvenile in general and those found in conflict with law in particular.

Keywords: *minor, protection of minors, criminal responsibility of minors, international treaties, acts of the European Union, national provisions.*

1. Introductory remarks

The child is still in the focus of society as a being in need of protection to ensure a successful future. Although the European space is common in geographical terms, legal regime is different and often varied according to national and regional specificities determined by certain treaties and conventions. Ensuring adequate protection of juvenile rights at European level requires unification under common interests and values of this area, dominated by the dimensions of human rights, including the rights of children, in which they are applying rules of international law, the Council of Europe, the European Union and its Member States (F. Sudre, 1997). This feature does not provide multiple protection, but creates a confrontation which often provides different interpretations field and different applications.

Viability of ensuring a functional mechanism to ensure children's rights is reflected through the European Convention on Human Rights and Fundamental Freedoms and regulations of the Member States. Declarative nature of Community provisions do not provide sufficient and unified protection in this matter of juvenile rights, being treated differently in different countries depending on the national legal system and, as such, it requires analysis of both the provisions of international treaties, customary, jurisprudential and national to unify the Community provisions in order to ensure a common protection, reasonable and sufficient of the juvenile in general and the juvenile in conflict with law in particular.

International Convention on the Rights of the Child of 20 December 1990 in art. 1 defines child "as every human being below the age of 18 years unless under the law applicable to the child, adulthood age is attained uner that age" (Ortansa Brezeanu, 1998, p.73).

Setting an age for the acquisition of rights and loss of some privileges is a problem that requires a comprehensive approach in the sense that some of its regulations the

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Convention enshrines postulates concerning minimum age for which prohibits capital punishment (18), rejection of participation in armed conflict to those who have not attained the age of 18, and in others requires states parties to set minimum limits of criminal liability (article. 40), which is based on the principles of non-discrimination, the best interests of the child care and the inherent right to life and maximum development.

According to the UN Standard Minimum Rules on the Administration of Juvenile Justice, a juvenile is a child or young person who, in relation to the legal system considered, able to respond to an offense in a manner different from those applied in the case of an adult. Juvenile delinquency is considered a child or young person who is accused or convicted of having committed an offense (Maria Coca-Cozma, Cristina-Mihaela Crăciunescu, Lavinia-Valeria Lefterache - eds., 2003 p.90-92).

In international law it is considered that the minor is a person under the age of 18, although criminal adulthood may occur earlier than this age, and can benefit from guarantees a process adapted to the requirements of his physical immaturity, emotional, intellectual and Recommendation of the Ministers Committee of Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice considers minor the person who has reached the age of criminal responsibility, but not adulthood (L. Dubois, C. Gueydan, 2005, p. 67).

Most states define child as “person who has not attained the age of 18 years”, although criminal adulthood occurs earlier, on average at 13 or 14 years old for those who were competent or committed serious offenses, according to legal system of states, and unconditional adulthood at 15 or 16 years old.

2. Principles of juvenile rights protection in conflict with the law

Universality of juvenile rights in general and the juvenile in conflict with law in particular has led the establishment of principles inherent in the development of a legal framework and its corresponding requirements such as non-discrimination principles, special protection, such as timeliness and facility regulated by law and other means for physical, mental, moral, spiritual and social development in healthy, normal ways and in conditions of freedom and dignity, the right to identity, right to receive protection and social security, adequate food, housing and medical services, right of the child in need of treatment, the need for love and understanding, the right to education, protection from all forms of neglect, cruelty and exploitation, protection against racial discrimination practices, religious or of other nature (F. Sudre, 1997, p.109 ff.).

Reflecting the general principles of the protection and promotion of children's rights, according to their importance, concerns three directions (Emese Florian, 2007 p.7-8): respecting and promoting children's rights are subordinated to the overriding interest of the child; child care as one of the fundamental rights of the child; prevalence of best child interests principle in all actions concerning children, whether undertaken by public authorities and in cases decided by the courts.

In order to identify the rights of minors in conflict with the law, it was considered necessary to develop guiding principles of criminal justice for minors, such as:

- The priority principle of educational measures and the subsidiary character of the punishment, which is meant to apply educational measures on juvenile offenders and then if they have not met or are not able to brainwash the child will resort to punishment;

- Principle of mitigating criminal liability according to the age involves improving the situation of children in relation to their age and to improve the situation of the smallest considering the physical, intellectual and affective immaturity, not having sufficient opportunity to understand the danger of the facts they commit;

- The principle of exceptional character of custodial sentences, meaning that imprisonment is the heaviest and the use of it needs to be justified to the extent that no other penalties are meant to correct and educate the child;
- The principle of specialization of proceedings appropriate to minors requirements resulting from their immaturity and danger of judicial process rigors that can become stressful and improper to the understanding of the minor;
- The principle of knowledge need of minor personality if mandatory training principle has not been respected, minor personality must be assessed in sufficient depth and taken into account in any decision;
- The principle of the need for a response, any crime committed by a minor must provide a response that there is alternative to judicial prosecution, less the special circumstances of committing facts and minor personality that justify in his interest classification in the following procedure;
- Coherence principle of criminal liability, liability for an act of delinquency, must be adapted to the seriousness of the facts and minor personality;
- The principle of permanent involvement of parents and legal guardians of minors in juvenile cases shows respect for procedural guarantees specific to minors that aim to be appropriate for his family members also;
- The principle of mandatory assistance by a attorney and a single defender of minor. The attorney follows the minor throughout the procedure;
- The principle of restricted publicity to protect the confidentiality of the process, since its disclosure would be detrimental to him and his development.

It is therefore necessary to create both a unified system of rules and the existence of specialized institutions to compete in the protection of minors, so depending on the internal mechanisms that cause antisocial behaviour and according to their educational needs, be possible rehabilitation.

3. Rights of juveniles in conflict with law under international treaties

International legal regime of the rights of the child in conflict with the law is the priority of international treaties on human rights in general, child's rights and especially on the rights of minors in conflict with the law.

3.1. Rights of juveniles in conflict with law under international treaties on human rights

Universal Declaration of Human Rights established the legality of criminal offenses, the presumption of innocence and milder criminal law enforcement in national criminal laws of the Member States and the International Covenant on Civil and Political Rights has established a set of principles and legal guarantees of public power. First Optional Protocol to the International Covenant on Civil and Political Rights recognizes the competence of the Human Rights Committee to receive and consider communications from individuals who were violated their rights under the Covenant. In turn, The Second International Protocol on Civil and Political Rights abolishes the death penalty (Ortansa Brezeanu, 1998, p.15; C. Butiuc, 2002, p. 22-23 D. Alix, 1997).

UN Convention against Torture and Other Cruel treatment or punishment, inhuman or degrading provides that states shall take legislative, administrative, judicial or other measures to prevent acts of torture and systematic supervision will be exercised on the rules of arrest, detention or imprisonment in the territory under its jurisdiction, including the minors (F. Sudre, 1997, p. 167).

Thus, the Optional Protocol to the UN Convention against Torture and Other Cruel treatment or punishment, inhuman or degrading provides that each State establishes one or several visiting bodies to prevent torture and other forms of Cruel, Inhuman or Degrading treatment or punishment, that will submit recommendations to the authorities in order to improve the behaviour of inmates and prison conditions and prevent torture and other forms of Cruel, Inhuman or Degrading treatment or punishment, make proposals and observations with reference to national law (G. Cohen -Jonathan, 1996, p. 46 et seq.). The prohibition of torture is one of the fundamental precepts of international standards of human rights, including children's rights, and torture does not define the nature of the act itself, but the impact on the victim's age and health.

3.2. Rights of juveniles in conflict with law under international treaties on children's rights

All conventions have the same goal, all the rules they contain are developed according to the same criterion, all rights of the child recognized in society and family are oriented in the same direction: the best interests of the child.

Interests of the child is the essence of international conventions: appears in the preamble of the Hague Convention of 25 October 1980, at the Luxembourg Convention of 25 October 1980, in New York Convention of 20 November 1989, the Hague Convention of 29 May 1993 concerning the adoption, New York Convention of 20 November 1989, the European Convention concerning the rights of the child (Jean-Francois Renucci, 2002).

Essential reason is that society, domestically or internationally actually became aware that children are most threatened by the harshness of time, it was agreed to be regulated internationally by the International Convention on the Rights of the Child, as well as national regulations to respect international treaties standards of human rights in general and child rights in particular.

According to art.37 of the International Convention on the Rights of the Child, for offenses committed by a person under the age of 18 years will not be given any capital punishment, nor life imprisonment without possibility of release. Arrest or detention of a child shall be made by law and will be used only as extreme measures and for a period as short as possible with due respect to human dignity (J. Robert, 1996, p. 74).

Art.40 of the International Convention on the Rights of the Child provides that States Parties shall recognize for every suspect child, accused of or recognized as having infringed the criminal law to be treated in a manner conducive to his sense of dignity and worth and maintains positive goals oriented to rehabilitation of the juvenile justice system in the context of the interests of the child. In this sense, it reveals the importance of excluding at least small children among those who are criminally responsible, avoiding judicial procedures and developing provisions on alternatives to institutional care (Doina Balahur, 2002), with priority the educational goal that develops the respect for human rights and preparation of the child for responsible life in a free and democratic society (C. Arcu, 2001).

The Convention also requires applying a system adjusted to children and recognizes the child as a subject of rights and fundamental freedoms and the need for all actions involving children to consider the best interests of them.

3.3. Rights of juveniles in conflict with law under international treaties in Juvenile Justice

Beijing Rules is the first attempt to regulate the criminal system focused on the peculiarities of juvenile delinquents, on their needs for socialization and community reintegration. It states that juvenile offenders needs to be treated for an offense differently to the treatment of adult and recommends states to adopt laws, special rules for juvenile offenders, and

the establishment of institutions and bodies specialized in the administration of juvenile justice. These institutions must meet the needs of juvenile offenders and the community.

It also recommends to regulate the age of criminal liability, taking into account the specificities of emotional, mental and intellectual maturity of minors and juvenile justice system to pursue juvenile welfare by establishing a bivalent system of justice both restorative and protective, and establishing punishment proportionate to the seriousness of offenses and offender characteristics.

The rules provide procedural rights and procedural guarantees of juvenile offenders, such as the presumption of innocence, the right to be informed of the charges, the right to remain silent, the right to defense, the right to the presence of a close relative, the right to trial by two levels (J. Robert, 1996, p. 101). They provide for the regulation of a wider and flexible range of sanctions for minors so that institutionalization should be a last resort solution.

Determining community sanctions and measures was performed by the rules and minimum standards for non-custodial measures (the Tokyo Rules) governing the rights, values, rules and procedures aimed at keeping a person at liberty whenever possible in all phases of research, monitoring and trial and respect for his dignity.

UN Rules for the Prevention of Juvenile Delinquency 1990 directs the reconstruction of criminal systems in the spirit of restorative justice values, of the social actors involved in the development and socialization of children, involving all factors that ensure effective counter crime in society (D. Alix, 1997, p. 96). This is to establish minimum standards accepted by the UN to protect young people deprived of freedom in any way with the rights and fundamental freedoms of young people aiming to counteract the harmful effects of detention and care for their integration. Imprisonment of young people will be a measure of last resort and for the minimum necessary period and the duration of the sanction will be determined by the judicial authority, without precluding release. In addition, given their vulnerability, juveniles deprived of liberty require special attention and protection, and their rights and welfare will be secured during and after the period when they are deprived of their liberty (F. Sudre, 1997, p. 198).

Also, law enforcement authorities must ensure the right of every child to be treated in a manner consistent with their own sense of dignity and worth. Children who are suspected of committing a crime shall have the same rights as adults, including the right to presumption of innocence, right to privacy, the right not to be compelled to provide information and the right not to be interrogated only in the presence of counsel.

Law enforcement bodies may resort to the use of force when it is strictly necessary and to the extent that this is necessary in the performance of their duties without using firearms against persons except in self-defence or defence of others from the imminent threat of death or serious injury (S. Grataloup, 1998, p. 136).

4. Rights of juveniles in conflict under law in the Council of Europe

Although minors are not named in the Convention on Human Rights and fundamental freedoms, yet they occur in the context of protection of the right to family life, right to education, guaranteeing the right to liberty and security, right to a fair trial and the legality of the sentence and the right to an effective remedy, protection against discrimination and abuse. Convention is largely silent on child rights and makes occasional references on child rights about advertising procedures in courts for juvenile offenders (S. Grataloup, 1998, p. 89), without having to substantiate the rights of the child in specific childhood as was developed by the International Convention of Children's Rights (Doina Balahur, 2002 p.115-116).

Art. 2 of the Additional Protocol to the Convention establishes the right to education, which covers also the minors in conflict with the law. Protocol no. 6 on the abolition of death penalty and Protocol no. 13 concerning the abolition of the death penalty in all

circumstances provide that no one shall be condemned to such penalty (V. Berger, 2005, p. 767, 774-776). European Convention on Extradition provides in Article 11 that if extradition will be refused in case the death penalty is stipulated by the law of the requesting Party, and if the penalty is not provided for by the legislation of the requested Party or is not normally carried out, it can be granted only if the requesting Party gives assurances deemed sufficient by the requested Party that the death penalty will not run (O. Brezeanu, 1998, p. 95).

Protocol no. 7 of the Convention guarantees the right to a double level of jurisdiction in criminal matters and the right not to be tried twice. Protocol no. 12 of the Convention prohibits discrimination based on national or social origin, association with a national minority, property, birth or other status (V. Berger, 2005, p.772-774).

ECHR has issued several decisions on criminal liability and procedures applied to minors based on “in concreto” reasoning depending on the circumstances in the case, without recognizing the minor a right of criminal irresponsibility and without setting age at which this right is recognized to minor delinquent (Jean-Francois Renucci, 2002, p.167-171).

In court proceedings, the minor must have the same procedural safeguards as adult as provided by art.6 of the Convention. ECHR held that it is important that juvenile accused to be treated in a manner taking into account the age, maturity and intellectual and emotional capacities (Jean-Francois Renucci, 2002, p. 256-261 V. Berger, 2005, p. 87).

In many legal systems solving these problems on the juvenile and adolescent criminal treatment was achieved by creating courts equipped with specific procedures to impose sanctions or protective measures aimed more at rehabilitation than punishment of minor for acts he is not entirely responsible (Jean Francois Renucci, 2002, p. 283-284).

In some states, minors are not judged by the same courts as adults. In this case, we must not forget that ritual and ordinary courts can be misunderstood by the minor. According to art.6 §1 of the Convention defendant in a criminal trial must understand any matter relating to law and every detail of proof, and art.6 §3 emphasizes the need of minor to be represented in court for it to understand the real nature of the trial and of any punishment imposed on him (Jean-Francois Renucci, 2002, p. 298; V. Breger, 2005, p.89-90). As a result, juveniles should be in all cases represented by attorneys competent and experienced in the field of juvenile justice, the failure of this requirement is a violation of art.6 §1 of the Convention.

If the accused minor is characterized by intellectual retardation he should be judged by a court for adults. In the case of S.C. v. Royaume-Uni, the accused was an 11 year old boy with a mental age of 8 years, in this case the Court considered that to hear the case of a child who may not participate in the proceedings by his age is essential to use a jurisdiction close to disability suffered, thus adapting the procedure (Jean-Francois Renucci, 2002, p. 317; V. Berger, 2005, p. 212-213).

Proceedings of ordinary courts are intimidating for minors, and the Court stated that specific measures should be taken to change the normal procedures for reducing for minors of courts rigors for adults. For example, judges do not have to wear a wig and robe and the accused must sit with representative and social worker (Jean-Francois Renucci, 2002, p. 411). The Court also ordered that access to the audience hall may be prohibited to the press and public in whole or part of the process if the minor's interests require it (Jean-Francois Renucci, 2002, p. 432-433; V. Berger, 2005, p. 433).

Imprisonment under art.5 §1 of the Convention provides several conditions of detention before and after the process, and in the case of juvenile offenders, prison should only be a measure of last resort in all stages of the proceedings, preliminary investigation and execution of punishment.

On punishment of foreign minors, ECHR estimated that it must be taken into account not only the nature and seriousness of the offense, but also social, cultural and family relations that

the offender has with host state (Jean-Francois Renucci, 2002 , p.467). To the extent that Member States may exclude juvenile detention, except for serious crimes committed by older minors. Provisional detention should be shorter for juveniles than for adults.

Recommendation on new ways of treatment of juvenile delinquency and the role of juvenile justice, specifies that it is necessary a reasonable duration of pre-trial detention for juveniles. Suspects minors should not be detained for more than six months before trial, the period can be extended only if a judge participated in the examination of the case and obtained the certainty that any delays in proceedings are justified by exceptional circumstances (Jean-Francois Renucci, 2002, p.578; V. Berger, 2005, p. 258-259).

The fact of keeping a juvenile in detention for six months, without taking into account the young age of the accused, may constitute a violation of art.5 §3 (Jean-Francois Renucci, 2002, p. 582; V. Berger, 2005, p.88). Thus, the Court held that 48 days of detention imposed on the applicant, aged 17, is a violation of art.5 §3, even if he had a criminal record and was accused of a serious crime (Jean-Francois Renucci, 2002, p. 597).

Art. 5 (1) d) allow states to decide on the detention of a minor for the purposes of “educational supervision” or “legal action”. In Case Boumar v. Belgian court ruled that Belgian authorities could not invoke the clause “educational supervision” to justify the detention cell of a child in a prison (V. Berger, 2005, p. 87-88). In the case of Nielsen v. Denmark a Danish young man whose parents were separated when he was a child, preferred to live with his father, which actually did for a few years, against judgments by which he had been entrusted with his mother for growth and education. Finally, the mother asked the boy's hospitalization in public psychiatric hospital. Recognizing the applicability of art.5 of the Convention to “any person” and specifically noting that art.5 (1) d) protects minors, the Court held that this provision is not put into practice because “hospitalization of petitioner is not a deprivation of liberty within the meaning of Art.5 of the Convention, but it was a responsible exercise of parental rights of the mother” (V. Berger, 2005, p. 570; Lidia Barac, 2001, p. 45).

Offenses committed by juveniles should only involve surveillance, education measures and not criminal sanctions. A minor should not be punished as an adult by his immaturity, conviction is a high degree of culpability or intervention measures likely to have positive effects. Recommendation of the Committee of Ministers on the European Prison Rules provide that persons who are less than 18 years should not be detained in the same prison with adults, but in special institutions for them. ECHR reveals in this regard, that admission of a minor in a house arrest does not violate art.5 §1 (d) of the Convention, but is not likely to pursue education supervised of person concerned. Thus, Bouamar business v. Belgian a minor suspected of certain offenses was placed in a detention house in virtual solitary confinement without the assistance of qualified personnel, the Court held according to conditions of detention that they can not be considered to pursue an educational purpose and placements in different institutions in the short term lasting up to 15 days are not compatible with art.5 § 1 (d) (Jean-Francois Renucci, 2002, p. 601; V. Berger, 2005, p. 87-88). The Court in that case shows that if a state chooses supervised education system to implement its policy in the field of juvenile delinquency, it has the task to equip themselves with suitable infrastructure to security imperatives and pedagogical objectives (Jean-Francois Renucci, 2002, p . 628)

However, according to art.5 §4, any person deprived of liberty by arrest or detention shall be entitled to bring an appeal in court for the legality of detention and to order release if the detention is not lawful. Obligation derived from art.5 §4 varies according to circumstances and the kind of deprivation of liberty. Thus, the minor does not need to be heard in person, but in the presence of an attorney, legal representative and social worker to provide the necessary safeguards (Jean-Francois Renucci, 2002, p. 617). Review Term

of appeals should be short in time as the invested tribunal to rule on custody of minors (Jean-Francois Renucci, 2002, p. 618).

Thus, under the European Convention on Human Rights and its Protocols do not insert special provisions regarding the rights of minors, in particular those relating to juveniles in conflict with law and ECHR case law refers only to their limits, taking into account the needs of the minor, a stronger side in this regard lies with the Council of Europe, Recommendation of Committee of Ministers.

The recommendations of the Committee of Ministers of European Council concerning new ways of dealing with juvenile delinquency and the role of juvenile justice determines that the aim of Juvenile Justice is to prevent offending and committing criminal acts, to re-socialize and reintegrate juveniles. Charges should reflect the age and maturity of the individual offender and criminal measures to be applied upward, but in step with the increasing level of responsibility of the individual. According to it, juveniles should not be held in police custody for more than 48 hours and pre-trial detention may not exceed six months before trial. Also, whenever possible, on juvenile suspects detention alternative will apply. Deprivation of liberty should never apply as an impending punishment, as a form of intimidation or serve as a substitute for child protection or mental health measures (L. Dubois, C. Gueydan, 2005).

Recommendation REC (2000) 22 of the Committee of Ministers of European Council to member states on the implementation of European Regulation stimulation on community sanctions and measures inserted guiding principles for more effective use of community sanctions and measures including estimated implementation of alternatives to detention, probation, suspended sentence of imprisonment, community service, compensation, victim-offender mediation, treatment for offenders who abuse alcohol and drugs, intensive supervision of certain categories of offenders, restrictions on freedom of movement, prison parole followed by post-release supervision (D. Alix, 1997, p. 145).

5. Rights of minors in conflict with the law in the European Union

The protection of children's rights in the European Union is focused on four areas: participation of the EU states in the international system of human rights protection; membership of the European Union member states in the Council of Europe; European Union instruments; internal rules of each Member State on human rights, as an expression of the principle of subsidiarity.

Pursuant to art.6 of the Treaty of European Union, the European Union is founded on the principles of democracy, respect of human rights and fundamental freedoms, resulting in the International Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States (L. Dubois, C. Gueydan, 2005 p.3). Pursuant to art.29 of the Treaty of European Union provides that states shall cooperate in criminal matters for the prevention of organized crime, including trafficking in human beings, crimes against children, drug trafficking, weapons.

Approximation of the laws, regulations and administrative provisions of the Member States in criminal matters is essential for the application of European Union policy and may be established minimum rules concerning the definition of criminal offenses and sanctions in the area concerned (V. Păvăleanu, 2009, p. 30).

European Parliament and the Council may establish measures to encourage the prevention of crime, excluding any harmonization of the laws of the Member States. In this context, the establishment of common rules on the prevention of juvenile delinquency, the protection of minors in conflict with the law, the adoption of Community acts is required.

These regulations will help to harmonize the provisions of the Member States, and ensure better protection of children's rights at EU level and effectiveness under the principles of supremacy of Community law and direct effect. Thus, according to the principle of

supremacy of Community law, the Directive takes precedence over national norm, even though the latter would be adopted after the entry into force of the Community act.

Under the principle of direct effect, the Treaties and other Community legislation can be invoked by individuals before national courts and are likely to create rights and obligations for legal entities.

Also, setting penalties will take account of the principle of legality of penalties which Community law is imposed not to worsen criminal liability independently of national law (George V. Ivan, 2009 p.31-32).

According to art.II-84 of the Treaty establishing a Constitution for Europe, children are entitled to protection and care as is necessary for their well-being. They may express their views freely on issues that concern them, according to the age and degree of maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary concern. Every child has the right to have regular, personal relations and direct contact with both parents unless it is contrary to his interest¹.

In this regard, Article 23 of the Charter of Fundamental Rights of the European Union provides that children are entitled to protection and care necessary for their well-being. In all actions concerning children undertaken either by public authorities or private institutions should take priority over the interests of children (L. Dubois, C. Gueydan, 2005, p.268).

These provisions are declarative and do not ensure functionality because Community acts have not been developed and the necessary mechanisms needed for implementation created. European Parliament and the Council may determine under Art.69B of the Lisbon Treaty minimum rules concerning the definition of criminal offenses and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature and impact of such offenses or from a special need from a common base, such as crime of terrorism, human trafficking and sexual exploitation of women and children, illicit drugs, weapons, money laundering, corruption, counterfeiting of means of payment, organized crime. Depending on developments in crime, the Council may take decisions that indicate other areas of organized crime. European Parliament resolution of 21 June 2007 provides that States may adopt minimum standards and guiding principles in juvenile justice common to all Member States in the field of juvenile justice, which focuses on three basic pillars, firstly, the prevention, secondly, the judicial and extrajudicial measures and thirdly, rehabilitation, social integration and rehabilitation based on internationally agreed principles by the Beijing Rules and Riyadh principles, the UN Convention on the rights of the Child as well as other international conventions in this field (L. Dubois, C. Gueydan, 2005, p. 298).

European civil society considers children a distinct category of persons who have special needs different from those of adults, who lack the ability to protect themselves and have fewer opportunities to protect and advocate for themselves. Many of the programs and projects initiated by the European Union on the protection of law and improving the situation of children are open to strategic partnership with public organizations and candidate countries to accession or are in the process of negotiating accession.

Despite an active cooperation of civil society at community level and the development of rules and implementation of joint actions in the field of children's rights and those in conflict with the law in particular, there has been a homogenization of legal rules at the European space and their power arises from the existence of their historical traditions, cultural backgrounds and the absence of Community measures.

6. Conclusions

Rights of the child in conflict with the law remain to be the concern of international organizations, regional and national ones respectively. Ensuring adequate and appropriate

protection of these categories of minors requires the involvement on international and regional levels to ensure uniform protection.

Regulations of relevant international treaties in this area provide enough discretion to states to establish a system of protection of juveniles in conflict with law and reflecting the diversity in legal systems reveals that the legal regime is different and often diverse.

Council of Europe provides an indirect protection of children's rights through its instruments, of which the most functional one remains the European Court of Human Rights, but its decisions are only relevant on the current causes and do not provide sufficient evidence for the evolution of principles, but only to portray facts and offer concrete solutions. In addition, the recommendations of the Council of Europe by virtue of optional, does not grant the relevant obligation to follow for states.

Deficiency governing the protection of minors' rights can be covered by the European Union by offering reasonable safeguards of operation and mandatory to the Member States under the principles of precedence of Community law and its direct effect. Jurisdiction of the European Union through the European Parliament and the Council to establish standards regarding the protection of minors in conflict with the law is derived from art.69 D of the Treaty of Lisbon.

Therefore, it is necessary to be adopted to establish procedural safeguards regulations and directives issued by the prevention of juvenile delinquency to be implemented by Member States. Community acts should focus on fixing the age limit for criminal liability, by linking it to the average established by European states as well as the procedural requirements in the context of the right to a fair trial and the need to educate children in the prevention of juvenile delinquency.

They also must provide for the establishment of tribunals with staff and equipment tailored to minor's requirements, establishing the presence of the social worker, psychologist, educator known by the minor and able to meet its requirements. Similarly, it requires legal assistance by an attorney specialized in cases involving minors, excluding formalities and the procedure rigors, such as avoiding wig and gown of magistrates and lawyers.

Similarly, educative measures need to be established and how to apply them, their priority in relation to criminal sanctions. Application of deprivation as a last resort, only if the educational measures can not re-educate the child.

The adoption of a suitable framework for minor protection at Community level will ensure its protection in a common space, trustworthiness and create an European future oriented to prevent juvenile delinquency and indirectly to crime reduction.

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