HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Criminal Record of Juveniles and Young Adults

I. Introduction

The NCHR organized a conference regarding the 'Detention Conditions and the Rights of Detainees in Greek Prisons' on the 4th of December 2008 to commemorate the 60th anniversary of the Universal Declaration for Human Rights. One of the sessions addressed the vulnerable groups of detainees, including juveniles. During the vivid discussion that followed parents of former juvenile offenders, teachers and social workers stressed the problems that the criminal record poses to their access to the labour market and by extension to their full integration into the society.

The NCHR took the view that this is a serious issue concerning a vulnerable group and decided to deal with the criminal record of juvenile offenders. When the 1st Sub-Commission convened, it decided to address also the criminal record of young adults given that the penitentiary treatment of both groups is the same.

II. The Law

Criminal record is regulated by articles 573-579 of the Code of Criminal Procedure (hereafter CCP). Regarding juveniles, every court decision imposing detention in a penitentiary facility or reformatory measures is registered in the criminal record (article 574 para 2, el. (bb) CCP). Furthermore, the registrations of reformatory measures cease to be

in force and their use is precluded when the juvenile turns 17 years old (article 578, para 1, el. (b) CCP), whereas the registrations of penitentiary detention are deleted 5 years after the sentence has been served, in case of a sentence not exceeding 1 year, and after 8 years in case of a sentence exceeding 1 year, unless during that time a new conviction takes place (article 578, para 1 el. (e) CCP). In case of a conditional release the period of 5 or 8 years begins after the testing period is completed.

Apart from the aforementioned special provisions, the criminal record of juveniles is regulated as that of adults regarding, for example, who has access to their criminal record, which sentences are registered in the criminal record of judicial use and which ones in the criminal record of general use.

In relation to those provisions we need to note the following: 1) According to article 121 para 1 of the Penal Code an individual is not considered a juvenile when he/she completes 18 years of age. Furthermore, according to article 125 para 1 PC any reformatory measures elapse when the juvenile turns 18 years old. However, article 578, para 1, el. (b) CCP provides that the registrations of reformatory measures cease to be in force when the juvenile turns 17 years old. Thus, the said provisions are evidently inconsistent as far as age limits are concerned.

2) Whereas, in accordance with article 574 para 2, el. (ba) CCP convictions for petty offences are not registered in the criminal record of adults, the court decisions for reformatory measures, that is for petty offences committed by juveniles (given that article 128 PC provides that for petty offences only reformatory measures are prescribed) are registered. Thus, the situation of juveniles is more aggravated in comparison with the one of adults.

3) The provisions regulating the criminal record of juveniles seem to be inconsistent re. one additional point. While article 578, para 1, el. (b) CCP provides that the registrations of penitentiary or reformatory measures cease to be in force when the juvenile turns 17, el. (e) requires the lapse of 5 or 8 years for the registrations involving detention in

penitentiary facility. Those two provisions combined with the special provisions for juveniles of the PC (articles 121-133 PC) concerning reformatory or therapeutic measures or penitentiary detention, but not for penitentiary measures, allow us to conclude that article 578, para 1, el. (b) applies only to reformatory measures.

4) The criminal record falls under the scope of Law 2472/1997 "Protection of individuals with regard to the processing of personal data". Article 2 defines as "sensitive personal data" the data concerning racial or ethnic origin, political views, religious or philosophical beliefs, membership in labour unions, health, social care, sexual life, criminal prosecutions or convictions […]. Furthermore, "processing of personal data" shall mean any operation or set of operations which is performed upon personal data by Public Administration or by a public law entity or private law entity or an association or a person, whether or not by automatic means such as collection, use, disclosure etc.

According to article 7 of Law: «1. The collection and processing of sensitive data is prohibited. 2. Exceptionally the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted by the Authority, when […] (e) the processing is carried out by a Public Authority and is necessary for the purposes of […] (bb) criminal or correctional policy and pertains to the detection of offences, criminal convictions or security measures […]".

According to article 4 para 1 of the said law: "Personal data, in order to be lawfully processed must be […] (b) adequate, relevant and not excessive in relation to the purposes for which they are processed" [principle of proportionality]. The standing provisions regulating criminal record do not comply with the principle of proportionality.

III. The problem

The problem, though, that mostly preoccupies the NCHR is the negative effect of the criminal record to the efforts of juvenile offenders to

integrate back into the society especially in relation to their access to the labour market.

Studies have shown that there is a direct correlation between criminal record and lack of access to the labour market. For example, studies in Australia showed that it is less likely for former detainees to get a job than people with chronic diseases, disabilities or communication difficulties. Only applicants with intellectual or psychiatric disabilities were rated lower.

No access to the labour market apart from significantly obstructing the social reintegration of former offenders may also lead to the perpetration of new crimes. The 'official stigmatization' via the criminal record creates a long-term, if not permanent, deterioration of the offender's social status. As a result reoffending might constitute the compulsory alternative for those who cannot be employed. Studies have shown that employment may reduce reoffending from 30 to 50% and that 60% of former detainees could not find a job because of their criminal record.

The problematic situation has an even greater impact on juvenile offenders since they constitute a particularly vulnerable group. The stigmatization of juvenile offender via his criminal record is disproportionate given that the process of his social integration is not completed. The damage that may be caused to his self-esteem and the way he is perceived by society as a whole might prove to be destructive for his future.

Although most studies lack a multidimensional examination of the concurring and interlinked causes preventing reintegration of juvenile offenders, in our view, the criminal record should be considered as one of the important factors. For a successful reintegration several problems need to be resolved, and the the criminal record is one of them.

According to a Greek study from 1933 until 1999-2000 only one out of five former juvenile detainees was not imprisoned again or sentenced. One out of four interviewees said that it was probable to reoffend in case

his/her reintegration efforts are not fruitful. Almost 80% of juvenile offenders commit new crimes. Furthermore, a Greek psychiatric study showed that unemployed juvenile offenders reoffended twice as much as those who were employed.

Moreover, even when they manage to find a full-time job, the salary they get is inadequate to cover their needs. They are lore likely to get jobs in the unskilled personnel sector, where a clear criminal record is not a requirement.

Therefore, the correlation between criminal record and lack of access to the labour market is clear, and it often results to recidivism.

The socially beneficial process of encouraging juveniles to change their life is undermined when they know or feel their mistakes of the past will hinder every step of the social and economic life. This is corroborated by teachers and social workers employed in penitentiary facilities. They face great difficulties in convincing juveniles to attend classes since they take the view that graduating from school will not be useful given that they won't be able to be employed due to, *inter alia*, their criminal record.

The NCHR stresses that juveniles constitute a special category of offenders given that youth misbehavior or misconduct not conforming to social norms is often part of the growing up process and, more often than not, disappears upon transition to adulthood. On the basis of the aforementioned, the NCHR considers the reform of juvenile criminal record to the direction of maximum limitation of its use as necessary.

IV. International instruments addressing the criminal record of juveniles

NCHR's standing is not based solely on humanitarian grounds and the need for a second chance to juvenile offenders. It is also based on a number of international regulations.

1. The Convention for the Rights of the Child

The criminal record of juveniles is not expressly regulated by an international convention. However, according to article 40 para 1 of the Convention for the Rights of the Child: “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”.

This phrasing is based on the view that juvenile offenders must be protected, as much as possible, from the negative effects of stigmatization and that their misbehavior should be addressed not via punishment but via educational-pedagogical measures. The Committee for the Rights of the Child has noted that many children in conflict with the law are also victims of discrimination, e.g. when trying to get access to education or to the labour market. It is necessary to take the appropriate measures to prevent such discrimination, inter alia, by assisting child offenders to reintegrate in society.

Furthermore, referring to article 40, para 1 of the Convention the Committee has stated that “reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society”.

Thus, the State needs to reform the criminal record of juvenile offenders so as to facilitate their reintegration in society as prescribed by the Convention. It also needs to reform it for another reason.

According to article 37 el. (b) of the Convention: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law

and shall be used only as a measure of last resort and for the shortest appropriate period of time".

2. The shortcomings of Greek practice

Law 3189/2003 on the "Reform of penal legislation for juveniles and other provisions" provided for a number of reformatory and therapeutic measures that render the imprisonment of juveniles the last resort. However, the law is not adequately implemented in practice, as noted by the Committee on the Rights of the Child. As noted by the Ombudsman for the Rights of the Child, the number of "social monitors" assigned with the task of supervision of the new reformatory measures for juveniles is very small. The implementation of certain reformatory measures violates other legislative provisions of labour law for example. These structural and legislative obstacles result in courts sentencing juveniles to imprisonment and, by extension, marking their criminal record.

Therefore, the Greek State does not comply with article 37 of the Convention, but also 'hinders' the reintegration of juveniles via their marked criminal record as a result of the non-implementation of reformatory and therapeutic measures.

3. The recommendations of the Committee on the Rights of the Child

The CRC has dealt with the criminal record of juveniles. Referring to article 16 of the Convention (right to privacy) noted that: "the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender". It also recommended that the States parties introduce rules allowing for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or -for certain serious offences, where removal is possible at the request of the

child-, if necessary, under certain conditions (e.g. not having committed an offence within two years after the last conviction).

The General Assembly of the UN has taken a similar view. According to the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules): records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

4. The recommendations of the Committee of Ministers of the Council of Europe

The Committee of Ministers has addressed the criminal record of juvenile offenders. According to its Recommendation No. R (84) 10 on the Criminal Record and Rehabilitation of Convicted Persons criminal records are principally intended to provide the authorities responsible for the criminal justice system with information on the antecedents of the person on trial, in order to assist them in making a decision appropriate to that individual. Any other use of criminal records may jeopardize the convicted person's chances for social reintegration, and should, therefore, be restricted to the utmost. Furthermore, in relation to authorities or persons entitled to receive extracts from criminal records, the Committee recommends to States to restrict to the utmost the communication of decisions relating to minors. Furthermore, the Report on which the above recommendation was based, recommended the limitation, to the maximum extent possible, of the access the criminal record of juveniles except from the authorities of the criminal justice system, as a means to increase the chances of social reintegration of juveniles'.

With the recommendation No. R (87) 20 on Social Reactions to Juvenile Delinquency, the Committee of Ministers recommended to States to ensure that criminal records of juveniles are confidential and only communicated to the judicial or other relevant authorities and that are

not used after the persons in question come of age, except on compelling grounds provided for in national law.

Lastly, with another recommendation, (2003) 20 concerning New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice, the Committee of Ministers, recommended to States to facilitate the entry of juvenile offenders into the labour market, and to make every effort to ensure that young adult offenders under the age of 21 are not forced to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise.

It is evident that the provisions regulating the criminal record of juveniles are not in compliance with the aforementioned rules and recommendations. The long periods of time (5 or 8 years) that need to lapse for the criminal records to be cleared, as well as the large number of authorities and persons who can access the criminal record of juveniles do not follow the desirable regulation of the criminal record so as to avoid the stigmatization of juveniles and to facilitate their social reintegration.

V. The case of young adults

According to article 133 PC, the persons considered as 'young adults' are those who at the time of the crime committed, were 18-21 years old. In the case of young adults the courts may impose a reduced sentence (article 83 PC). Thus, the legislator takes the view that although these individuals are adults a reduced sentence will contribute to preventing recidivism.

This approach is adopted because it is considered that the maturation process of the persons in question is not complete. Besides, from a psychological and psychiatric point of view the category of young adults as such is disputed since it is argued that they do not have characteristics differing from those of adolescents.

It needs to be noted that according to article 12 para 1 of the Correctional Code "young detainees are the detainees of both sexes from

the age of 13 to the age of 21". Thus, their correctional treatment is the same with that of adolescents following the tendency to expand the *ratione personae* of criminal law to young adults.

The tendency to expand the *ratione personae* of criminal law to young adults is supported by international instruments. According to Beijing Rules (3.3), "Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders". Furthermore, the Committee of Ministers has recommended to States to review, if necessary, their legislation on young adult delinquents, so that the relevant courts also have the opportunity of passing sentences which are educational in nature and foster social integration.

On the basis of the aforementioned, the NCHR taking into account that: a) the criminal record of young adults is regulated by the provisions applicable to all adults and b) the obstacles caused to the social reintegration of young adults, an almost equally vulnerable group as that of adolescents, due to their criminal record, considers the reform of their criminal record as necessary.

VI. Recommendations

The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives when dealing with child offenders.

The NCHR, on the basis of all the above, and considering that the non reintegration of young offenders opposes the interests of the society as a whole due to the danger of recidivism, recommends the following:

A. In relation to the criminal record of juveniles

1) The non registration in the criminal record of decisions involving reformatory measures

2) The non registration in the criminal record of sentences involving detention in correctional facilities when the juvenile is younger than 15 years old during the perpetration of the crime.
3) When the juvenile is older than 15 years during the perpetration of the crime, his/her criminal record to be cleared three years after the sentence has been served if the sentence is less than one year, and 8 years if the sentence is over 1 year, unless during that time a new conviction takes place.
4) The access of the authorities as defined in article 577 el. (d) CCP to the criminal record of judicial use to be prohibited when they act as potential employers and to be limited to the criminal record of general use.
5) The NCHR taking into account both the need to facilitate the social reintegration of juvenile offenders and the need to protect the society as a whole, calls upon the State to define which serious offences will be registered in the criminal record of general use.

B. In relation to the criminal record of young adults

1 The criminal record to be cleared 5 years after the sentence has been served, in case the sentence is less than one year, and after 8 years in case the sentence is over 1 year, unless during that time a new conviction takes place.
2 The access of the authorities defined in article 577 el. (d) CCP to the criminal record of judicial use to be allowed when acting as potential employers, solely when the conviction relates to the character of the employment for which the former offender is a candidate.
3 The NCHR taking into account both the need to facilitate the social reintegration of juvenile offenders and the need to protect the society as a whole, calls upon the State to define which serious offences will be registered in the criminal record of general use.

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