

RIGHT TO EDUCATION FOR CHILDREN DEPRIVED OF LIBERTY IN PLACES OF DETENTION

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ABSTRACT:

One of the key elements in the process of resocialization for children deprived of liberty is the education. Unfortunately, this vulnerable category of persons deprived of liberty has been on the margins of the society not only in Macedonia¹, but worldwide. For the children deprived of liberty Manfred Novak once wrote “Deprivation of liberty means deprivation of rights, agency, visibility, opportunity and love. Depriving children of liberty is depriving them of their childhood” (Nowak, 2019)

This paper gives an overview of the international and national standards that deal with the right to education for children deprived of liberty, uncovering at the same time the situation with this category of persons deprived of liberty in Macedonia.

Key words: *human rights, education, resocialization, children deprived of liberty*

Introduction

“Education is a basic human right that works to raise men and women out of poverty, level inequalities and ensure sustainable development. Education is one of the most powerful tools in lifting excluded children and adults out of poverty and is a stepping stone to other fundamental human rights.” (United Nations Educational, n.d.)

Children deprived of liberty are “invisible and forgotten group in the society despite increasing evidence of being victims of further human rights violations” ((OHCHR), 2017). Many of them were victims or witnesses of domestic violence, or suffer from some mental, physical or developmental problems (Kitkanj, 2013).

That is why one of the key elements in the process of resocialization of children deprived of liberty is their education. This is of exceptional importance considering that a large percentage of children deprived of liberty lag behind in the educational process. In other words, the education they have acquired does not correspond to their real age, which is most often due to the conditions

¹ Although in 2018 the name of the country changed from the Republic of Macedonia to the Republic of North Macedonia, for the purposes of this paper the name Macedonia shall be used throughout the paper, except when citing relevant acts, books and other literature adopted, written after 2018.

in which they lived, but also the guardianship and care they had (Milutinovikj, 1976). Precisely for the sake of their preparation for an independent and purposeful life in freedom, it is of utmost significance for children deprived of their liberty to be offered an appropriate education that will not differ in any way from the regular educational process.

The right to education

The right to education is enshrined in several international documents, the Universal Declaration of Human Rights as a key human rights' act being among. Its article 26 emphasizes that *"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."* (Universal Declaration of Human Rights, 1948)

The International Covenant on Economic, Social and Cultural Rights recognizes the right to education for everyone (International Covenant on Economic, 1966), while as the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, 1966) not only that recognizes that right but also strives for the primary education to be compulsory and free for every child.

The European Convention on Human Rights in its Protocol 1, article 2 "Right to education", guarantees that *"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."* (ECHR, 1950)

The right to education for persons deprived of liberty

The right to education is specifically guaranteed for persons deprived of liberty or even more for children deprived of liberty. Thus, the United Nations Standard Minimum Rules for the Treatment of Prisoners also known as the Nelson Mandela Rules (The United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015) in its rule 104 provides for further education of all prisoners who are capable to profit from, hereby including even the religious education where possible. These rules secure compulsory education for illiterate and young prisoners, demanding special attention to that from the prison administration.

In respect to persons deprived of liberty, the European Prison Rules (European Prison Rules, 2006) guarantee that *"every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations"* These rules particularly emphasize that education is mandatory for illiterate convicts, but above all for children deprived of their liberty as an integral part of the general education system.

Having in mind the vulnerability of children, the deprivation of liberty of children should be a measure of last resort and for the shortest possible time, thus the UN Convention on the rights of the child (UN Convention on the rights of the child, 1989) stipulates that *"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."*

However, in those cases when the deprivation of liberty occurs, the right to education is among the key rights enshrined in several key documents. Namely, the UN Convention on the

Rights of the Child (UN Convention on the rights of the child, 1989) in general recognizes the right of a child to education and envisages various safeguards so that that right is exercised to its fullest extent. Therefore, every state signatory of the Convention must provide every child, including those deprived of liberty, with education.

When children deprived of liberty are concerned, their right to education is guaranteed in the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) (UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), 1990). As a matter of fact, the Rules specify that the education offered in places of deprivation of liberty should match the needs and abilities of the child and should be designed so to prepare them for return to society. In that spirit, the article 38 clearly points that *“Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.”* The Rules also emphasize that *“juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.”* (UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), 1990)

The Havana Rules clearly encourage education and easier re-integration of the children into the society after the period of imprisonment. For that purpose, these rules even guarantee that *“diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.”*

The right to education in the Macedonian context

In terms of the right to education, the Macedonian legal system vouches the right to education with its Constitution. (Constitution of the Republic of Macedonia, 1991) Namely, in its Article 44, the Macedonian Constitution clearly states that *“everyone has the right to education. Education is available to everyone under equal conditions. Primary education is compulsory and free of charge”*. The right to education is further regulated in the Law on Primary Education (Primary Education, 2019), so as in the Law on Secondary Education. (Secondary Education, 1995)

Compulsory education generally refers to two dimensions: first, school attendance for the purpose of receiving education over a fixed period of time (number of years); second, the specific curriculum determined by the state or other requirements introduced by the educational framework, such as the obligation to wear a school uniform. (Rabin.Y, 2014)

Article 15, paragraph 2, of the Law on Primary Education (Primary Education, 2019) further stipulates that *“primary education shall be organized and provided in health care institutions, penal and correctional institutions, as well as in home settings, in accordance with this law”*. While Article 53, paragraph 12 the Law instructs that *“when it is not possible to organize teaching by grade in classes for students in health care institutions, penal and correctional institutions or educational institutions, the nearest primary school shall organize individual or group educational work”*.

The educational process in the Macedonian penitentiary system has long been one of the biggest challenges (NPM, 2023) and this is all the more important when it comes to children in conflict with the law with imposed sanctions i.e. deprived of liberty.

As a matter of fact, the Law on the Execution of Sanctions (Execution of Sanctions, 2019), stipulates that *“in the institution for children, primary and secondary education is mandatory, and depending on the conditions and capabilities of the institution, other types of vocational training for children are also organized.”*

Hence, the compulsory and accessible education for children deprived of liberty remains a challenge. In neither of the two institutions for juveniles deprived of liberty in the country (Juvenile Prison Ohrid and Educational-Correctional Institution Tetovo) is there a regular educational process. Occasionally, when some donor organizations such as UNDP (Development Programme, n.d.), USAID (Agency for International Development, n.d.) had projects, classes were organized (Macedonian language, English language, mathematics), but regular educational process does not exist. The last cycle of such teaching ended in January 2023. (NPM, 2023)

The amendments to the Law on Primary Education (Primary Education, 2019) envisage that primary education in penitentiary-correctional and educational-correctional institutions should be implemented according to a curriculum and program for primary education for adults, which will be implemented by a primary school that has certification for adult learning.

The absence of an educational process in places of deprivation of liberty, especially when children are concerned, constitutes a disregard for the right to education guaranteed by international conventions, constitution and national laws and may constitute a factor that increases the risk of situations that could be classified not only as inhumane, but also humiliating. Namely, depriving a child of education by the system that has undertaken to protect and correct him, especially when considering that a larger percentage of child perpetrators of crimes and deprived of liberty are simultaneously victims, constitutes secondary victimization by the state, i.e. its institutions (Nikolij-Ristanovikj, 2019).

The lack of an educational process in the penitentiary institutions can be reflected in the feeling of self-esteem and the possibility for positive changes and progress. In absence of education and other productive activities, boredom, hopelessness and isolation occur. Thus, instead of bringing positive changes in the personality, violence may prevail since the lack of organized educational process directly affects the success of the resocialization and rehabilitation of a prisoner (Waldron, 2010).

The right to education is closely related to the right to appeal i.e. to submit a complaint. The inability to lodge a complaint or to get personally acquainted with the rights a person is entitled to, may provoke feelings of despair, hopelessness, and even fear, frustration, pain and humiliation.

The feeling of pain and humiliation is closely related to a situation that one may define as inhuman or degrading. Thus, if for “inhuman” is considered a treatment that does not satisfy the most basic human needs: the need for food, water, sleep, physiological needs, daylight and recreation, contact with other people, the “degrading” may be the one that provokes in a person the “feelings of fear, pain and inferiority” (Waldron, 2010). That feeling is solely individual, personal, just like the situation a person is in and it is closely related to the inherent dignity that the Convention on the Rights of the Child (UN Convention on the rights of the child, 1989) talks about. According to Convention, the inherent dignity is the right to a dignified life and treatment as inseparable part of every human being, including children since it directly affects the quality of life.

The seriousness behind the lack of education for the children in places of deprivation of liberty, can be explicitly displayed with the judgment of the Supreme Court of North Macedonia issued in

February 2024 in favour to the submission of the European Roma Rights Centre. As a matter of fact, *“the collective complaint covering the period from 14 September 2015 to 4 March 2020, accused North Macedonia’s juvenile correction system of failing to provide equal access to education for children placed in the correctional centre (direct discrimination by status). As most of the affected children were Romani, this also amounted to indirect discrimination based on ethnicity, violating the children’s right to equality”*. ((ERRC), n.d.)

Conclusion

Securing education for juveniles deprived of liberty is not only a rehabilitative tool but a fundamental human right and a key element to a meaningful reintegration process. Lacking to provide education in places for deprivation of liberty serves to deepen the abyss of marginalization and recidivism. That is why the regular educational process for children deprived of liberty must be an imperative.

Providing professional and other creative, meaningful activities in such facilities will enable children with a safer and more productive future in freedom.

Having in mind all that, the relevant stakeholders should secure:

- Regular access to education in all detention institutions;
- Trained and with relevant skills equipped personnel who are at the same time child oriented;
- Continuation of the educational process in freedom;
- Inclusion of other services (support organizations, communities) to assist children after release.

To put an end to the neglect of the children deprived of liberty means not only investment in themselves but also in the society. Education means knowledge, awareness of yourself and the others around you. Having skills means having future and being productive. That is why it is so important to provoke that shift of the narrative from punishment to rehabilitation and improvement, discovering the potential in every child and equipping him with a second chance, a chance for productive future.

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