



UNESCO house - Paris

WORLD CONGRESS ON JUSTICE FOR CHILDREN

28-30 MAY 2018

STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN

The Scope and the Challenges of the Access of Children to Justice in Macedonian Legislation and Practice

Aleksandra Deanoska, PhD, Associate Professor

*Faculty of Law "Iustinianus Primus", Criminal Law Department,
University Ss. Cyril and Methodius – Skopje, Macedonia*

Paris, 2018

Access to Justice – Can this concept be precisely determined?

In many European countries, the Access to Justice concept was not openly discussed and determined until some decades ago.

The case – law of the European Court on Human Rights raised the visibility of this concept as a fundamental right.

Most relevant provisions representing legal basis in Europe:

- Article 6 – European Convention on Human Rights (Right to a fair trial)
- (also article 13 - Right to an effective remedy)
- Article 47 - Charter on Fundamental rights of the EU (Right to an effective remedy and to a fair trial)

Basics of the right (that encompasses several other “Justice rights”): Access to Court (or alternative dispute resolution body or administrative or other organ competent for minor offences, for example)

CFR of EU: Article 47 - Right to an effective remedy and to a fair trial

- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has **the right to an effective remedy before a tribunal** in compliance with the conditions laid down in this Article.
- **Everyone is entitled to a fair and public hearing** within a reasonable time by **an independent and impartial tribunal** previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

ECHR: Article 6 -Right to a fair trial

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, **everyone is entitled to a fair and public hearing** within a reasonable time **by an independent and impartial tribunal** established by law. Judgment shall be pronounced publicly but the press and **public may be excluded** from all or part of the trial in the interests of morals, public order or national security in a democratic society, **where the interests of juveniles** or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- Para 2 and 3.

Access to Justice or Access to Court

Access to Justice may equal the **Access to Court** only if the tribunal is characterized by legality and legitimacy as prerequisites for provision of effective judicial protection of violated human rights and freedoms.

Court characteristics:

- Established according to the national legislation (Constitution and other relevant legal acts)
- Independent and impartial
- (Appointment of judges, mandate, safeguards against pressure and interference etc., conflict of interests issues etc.)
- Competency (especially in respect of justice for children)

Relevant Macedonian Legislation:

- Constitution of Republic of Macedonia – 1991/amendments
- Law on Courts 2006/amendments
- Law on Justice for Children - 2013

Relevant Macedonian legislation

Constitution of Republic of Macedonia – 1991/amendments

- art. 50 – right to every person to a judicial protection of the rights and freedoms,
- art. 89 – judicial power is performed by the courts that are independent and impartial with regular organization, while the irregular courts are prohibited

Law on Courts 2006/amendments

- Article 1- courts that are independent and impartial
- Article 6:

(1) Everyone has the **right to equal access to the court** in the protection of his rights and legally based interests.

2) When deciding on civil rights and obligations and in deciding on criminal liability, everyone has the right to a fair and public trial within a reasonable time before independent and impartial tribunal established by law.

(3) **No one can be restricted access to the courts** in the protection of basic rights and freedoms due to lack of tangible assets.

Macedonian Law on Justice for Children

- **Law on Juvenile Justice** – 2007 (first attempt to extract the juvenile justice legislation out of the Criminal Code)
- **Law on Justice for Children (LJC)** – 2013 (New, revised and modern Law in compliance with the Convention on the Rights of the Child and other international acts)
- New approach directed to avoidance of formal procedure when possible and application of measures of protection and help and introduction of the mediation.
- Law does not explicitly mention the right to access to court, but its provisions direct to the relevant provisions of other legal acts.
- Additionally, the Law contains a whole Chapter dedicated to children victims and children witnesses who are subject to enhanced protection and rights.

Discussion:

Scope of the Access to Justice

- A) Regarding the actors in the procedure
- Since the access to justice is in fact about effective protection of violated rights and freedoms, is this concept in fact provided only for Children - Victims of crime?
- The answer is negative.
- Children suspects or accused of perpetrating actions that constitute crimes also need effective Access to Justice!
- For example: A Child deprived of liberty should be immediately or latest in 12 hours (according to art. 116, para.16 of the Macedonian LJC) brought to Court (a Judge must examine the legality of the deprivation of liberty and decide on the need for detention).
- Children Victims enjoy enhanced protection according to the Macedonian LJC.

Protection of Children Victims and Witnesses in Macedonia

Article 145 (Rights)

- - to treat him/her with respect for his dignity,
- - to be protected from any discrimination,
- - to be informed of his/her rights in a language understandable and appropriate to his/her age, as well as to respect for the right to privacy,
- - to inform the holders of parental responsibility about all issues related to the crime and regarding the suspect, the defendant and the convict,
- - to inform the child and/or the holders of parental responsibility on the right to participate in the criminal procedure as a damaged party by joining the criminal prosecution or for the realization of a lawful claim for reparation of damages,
- - to special protection of his safety and the safety of his family, care and attention by the authorities and entities participating in the criminal proceedings,
- - to the right to special protection from secondary victimization
- - to the right to psychological and other professional assistance and support from bodies, institutions and organizations for assistance to children victims of crime.

Protection of Children Victims in Macedonia

In the Police and Criminal procedure, the Child Victim of a criminal act shall have the right:

- - on legal assistance from a Lawyer prior to the giving of a statement, i.e. a statement or submission of a legal and financial (damages) claim,
- - compensation for material and non-pecuniary damage in accordance with the program referred to in Article 151 (Special Fund) if the compensation for damage can not be provided by the convict and
- - to a representative from taking the first statement, as well as during the whole procedure.

Special measures of procedural protection as follows:

- - when the Child Victim needs special care and protection, or
- - when the Child is a victim of trafficking in Human Beings, violence or sexual abuse, as well as crimes against Humanity and International law or other serious acts committed against Children for which the law provides for imprisonment for more than four years.

Coming back to the...

Scope of the Access to Justice

B. Substantive part

- Availability of Courts (in Macedonia: special Judges / Councils for Children in the Courts with extended jurisdiction)
- Physical accessibility (distance etc.)
- Access to Information (who should inform the Child/Holder of parental responsibility on the Judicial Protection Rights?)
- Legal Aid (Free Legal Aid) – Mandatory in all Procedures involving a Child
- Right to Access to a Lawyer/ Right to Legal Aid – essential for effective access to justice (Do children have a right to free Legal Aid?)
- Right to an Effective Remedy – another essential prerequisite for effective access to justice
- Role of other Bodies and Institutions (Ombudsman, Social Service Centers etc.)

What happens in Macedonia? Points for Discussion

- Legislation compatibility with International Standards for Children
- Official statistics on Crime Trends (Child Offenders)
- Research and Methodology
- Ineffective Access to Justice
 - Role of the Parents/Parental Responsibility Holders
 - Role of the Social Services
 - Role of the Educational and other institutions
 - Vulnerable Groups
 - Referral to real cases (critical observation)
- Instead of a Conclusion...