Juvenile Justice in Cyprus: Caselaw analysis

Christos Clerides *

The first reported case involving a Juvenile in Cyprus is in 1909. In accordance with the latest official statistics on young offenders age 14-16 in the last three years, 2016-2018, an average of 150 per year offences are reported to have been committed. If one adds an average of 35 offences committed by juveniles age, 7-13, the total is around 185 per year in Cyprus. There has been during this period a small increase in the numbers of serious offences reaching 75 in the year of 2018 compared with 69 in 2017 and 71 in the year of 2016. All the above taken with a note of caution as to the accuracy of reporting juvenile offences[1]. The numbers may be different but the statistics give us an indication. It is expected that the numbers will rise unless other measures involving society in general and the family are taken to curb the trend.

I should say at the outset that Cyprus was found "guilty" by the European Court of Human Rights in Strasbourg in the case of ***Panovits v. Cyprus**, application no. 2268/04, Judgment 11.12.2008*. The case concerned a child, just over 17 charged with manslaughter and robbery. The ECHR found violations of Articles 6 (1) and 6 (3) of the ECHR on account of the failure to inform the child of his right to consult a lawyer prior to the first police questioning. It was also found that there had been a violation of Article 6(1) due to the use in trial of the child's confession, obtained in circumstances which breached his right to due process[2].

*** Christos Clerides is Professor of Law, Head of the Department of Law, Frederick University, Cyprus.**

[1] See Table of Statistics in Kathimerini, 29.4.2019 report of Maria Charalambus in Greek electronic version

[2] The Law has been amended by the Law 22(1)17 Laying down the procedure to be followed. The new Bill before the House of Representatives entitled Law Establishing "System of Criminal Justice Friendly to Children in Conflict with the Law" makes detailed provision in Part IV (Part A) Sections 24-32 since 2005 Law on the Rights of Persons under Arrest and Custody 163(1) 2005 made some provisions as amended in 2014.

The ECHR also found a violation of Article 6(1) of the Convention due to the sentence of the child's lawyer for contempt of Court[3] which undermined his defence[3] . The lawyer had remained the same for all the trial notwithstanding his request to withdraw from the proceedings on account of the fact that he felt unable to continue defending the child in an effective matter.

A judgment of this kind obviously paints a very bleak picture of the Cyprus legal system and its treatment of child offenders.

The Cyprus jurisprudence on juveniles and young offenders can be examined under various headings relating to the type of offences.

A. Sexual offences: Disparity in Treatment

Juvenile Offenders have not always been treated in the same manner by the Courts at various times. Some illustrations from the case law establish the disparity in treatment.

1. (a) In the beginning of the 20th century a boy of 15 ***Christophoro Ianni (1909)*** was charged before the Assize Court with committing sodomy. ***See the case of Rex v. Christophoro Ianni (1909) V8 1 CLR 106 Assize Court of Nicosia, Tyser,C.J.*** *It was decided as follows:*

"There is one point to which we should like to draw attention. The distribution of the punishments is not always quite adequate. In cases of this kind, for a man the appropriate punishment is a "deterrent punishment," for a boy the

[3] Following the Kyprianou v. Cyprus case App. No. 73797 ECHR Grand Chamber 15.12.2005, The Courts of Justice Law 14/60 was amended so as to made if impossible for Advocates to be found guilty of contempt. They may be referred to the disciplinary board for their conduct see Section 44(3) of Law 14/60 (Courts of Justice Law) and the amending law 36(1) 2009.

punishment should be a corrective punishment. It is indeed a pity that in such a case as this a boy should be brought into the Assize Court at all. It would be better if the law were altered, so as to allow the Magisterial Courts to dispose of such cases summarily, by administering castigation [4].

In this case the father now seems to have done his duty. It would be well that he and others in the like situation should remember the old maxim "he who spares the rod spoils the child." Under the circumstances, our order is that the boy be bound over to be of good behaviour for six months and to come up for judgment when called upon.”.

The case concerned a boy of 15, charged with committing sodomy upon a little boy several years his junior.

1. (b) By contrast 60 years later ***in the case of Michalakis A. Xirishis v. The Republic (1969) 2 ΑΑΔ 125*** the Supreme Court in its appellate jurisdiction in Criminal matters dealt with a young teenage 17 years of age committing an unnatural offence upon a child under 13. The appellant was sentenced to two years imprisonment. The Supreme Court would have none of this kind of behaviour.

“*The less said about it, the better. In this country, the general public still feel very strongly against this kind of conduct. It tends to undermine the character of the parties concerned; it is a stain on*

---

[4] The matter today is governed by the Juvenile Offenders Law Cap 157 enacted 20th December 1946 by the Colonial Government of Cyprus amended insignificantly by Law 94/72. Relevant are also. The Probation and Other Treatment of Offenders Law 46(1)/ 96, the Childrens Law Cap. 352 amended by Law 23(1)/ 99, Law 143(1)/02 and the European Convention for the Violence and Delinquent Behaviour of Spectators in Athletic Events and especially football Match 1985, Law 22/87. For Drug offences see also Law 29/77 amended by Law 20(1)/92: Offenders under 25 (maximum one-year imprisonment for users). See also Convention for the Rights of Children, Law 243/90

their name; it often operates adversely to, the institution of marriage which is the main foundation of family life in our communities; and has ruinous consequences on the life of persons who had the grave misfortune to fall when still young children, into the hands of unscrupulous and selfish individuals with perverted sexual inclinations."

Note was taken in the judgement of the fact that the Assize Court invoking section 65 of the Children's Law Cap 352 directed that the boy in question be brought before the Juvenile Court to be dealt with under section 64 for his protection. The Court remarked:

"…This indicates that, in the Court's view, the boy needed protection as one of the consequences of appellant's conduct was to expose the boy to moral danger and contempt in his village-community. In fact, the boy's life, not only within his community but also for considerable distance around, has been gravely handicapped by appellant's conduct. So much so that as the boy grows up he will, probably, find that he can only get rid of the stigma on his name and character by emigrating to another country."

In his dissenting judgment Hadjianastassiou J., disagreed with the majority as follows:

"However, with regard to these kind of offences, and fully aware that these offences are abominable crimes against the society,— particularly so in small communities-nevertheless, bearing in mind the modern trend of approach with regard to the treatment of young offenders, I feel that I ought to have dealt with this problem not with the same thoughts and considerations as I would have done in the case of an older person, but continue to be guided by the well

established principles of treating young offenders. I have, therefore, taken into consideration the nature of the offence, the circumstances in which it was committed, the antecedents of the prisoner up to the time of the sentence, his age and character, as well as the fact that he is a first offender; and bearing in mind all these considerations, I have reached the conclusion that imprisonment would not have been the appropriate punishment, particularly so, in the absence of medical evidence, and lack of proper institutions.

And further

"I would, therefore, like to adopt a passage from the judgment of my learned brother, Josephides, J., in the case of Charalambos Tryfona alias Aloupos v. The Republic, 1961 C.L.R. 246 at p. 252:—

"I have given careful and anxious consideration to this case because I believe that young men must be given a chance to reform. It is a pity that in Cyprus we have no 'borstal institutions' as in England. Young men of the age of 16 and upwards can be committed to these institutions to be trained and given a chance to reform."

I am in a position to know that during the past seven or eight years the Courts in Cyprus have repeatedly asked the legislature to establish such institutions, but without any result. I now take this opportunity of expressing the hope that the responsible authorities in our new Republic will consider establishing the borstal system in Cyprus at the earliest possible moment".

I also take this opportunity of adding my own hopes that the responsible authorities of our country would decide to establish the long-felt Borstal system without any further delay. The present case shows very clearly that any delay will produce

further unnecessary and unpleasant results with regard to the treatment of young offenders. It would, indeed, show to the young offenders and to the public at large, that the community would be willing to give them a chance to reform, and not simply throw them into jail where they would be mixing with hard criminals.

... I would have been prepared to place this young offender under probation for a period of three years, because there was no evidence before the trial Court that the appellant made this abominable practice a habit, and that his mind became so perverted that he ought not to have been given a first chance."

2. In an indecent assault case, committed at age 15 the accused was dealt much more leniently nowadays. The leniency maybe attributed to the extremely long time that elapsed from the commission of the offence to the bringing of the proceedings in Court. ***In the case of the Republic v. XX Case No. 13730/15 (9.10.15)*** the Assize Court of Limassol dealt in camera with the case of an accused aged 15 years at the time of the commission of offences of indecent assault against 3 cousins of the accused younger than him. One of the charges related to an offence when the accused was 18 and one complainant 17. The offences were committed mainly mid-90s. At the time the charges were brought the accused was in his mid-thirties. Offences related to "touching" and "rubbing" with clothes on. The Court made reference in its judgment to the treatise of Kapardis, Solomonides and Stephanou "Sentencing in Cyprus: Penal aspects, Principles and Jurisprudence", pages 86-89 where reference is made to the leniency showed in sentencing young offenders deemed less responsible for their behaviour and the need to reform. The accused was in custody for 3 months. The Court decided that this was enough. He was bound over with the sum of €5000 to keep the peace for two years.

B. Offences against the property dealt differently in general: Custodial sentences frequent

1. In the ***Cleanthous case (1966)***

In the case of Demetrios Cleanthous v. The Police (1966) 2 AAΔ 120 the appellant was a young person of 15 years sentenced for stealing a "Raleigh" bicycle worth £12. He was placed on Probation for a period of three years. He failed to comply and as a result sentenced to 6 months imprisonment. The Supreme Court sitting on appeal decided that it would have been better to ask for a report to the Court under section 4 of the Probation of Offenders Law Cap 162 and the appearance of the probationer before the Judge for some stern warning. The Court decided to give him another chance taking into consideration his apology and that he had been in prison between 4.11.66 – 5.12.66 (a month). A 2 year probation Order was substituted. This after the child served one month in prison. Something extremely damaging.

2. ***In the case of Andreas Georghiou Chrysostomou v. The Police (1972) 2 AAΔ 23*** the appellant a young offender was sentenced to 18 months imprisonment for house breaking and stealing. He was 15 years at the time. Two other similar offences were taken into consideration. An expert's report showed the Appellant as an antisocial type with bad family environment. He was having criminal tendencies in the past. He was committed to the Lambousa School a reform school. He frequently absconded. In a report from the head master of the Lambousa School it was stated that the average stay in the School was 18 months. Anything less would create a bad presented. Sentence was reduced to 9 months imprisonment. "*This will have the effect of making the Appellant appreciate that he should not have absconded from the Lambousa School and that it is also adequate for the purpose of punishing the Appellant for his misdeeds.*" Reference was also made to the fact that "*detention*

at Lambousa is primarily of a reformatory nature, and life there is much more comfortable and pleasant than in prison."

The Court felt that the trial court was wrongly swayed by the Director of Lambousa that 18 months is the norm. Life in Lambousa is not the same with punishment of an equivalent term in prison the Court decided.

3. ***In the case of Costas Petsas v. The Police (1981) 2 ΑΑΔ Δ 169*** the appellant 15 years old was convicted on his own plea of guilty for breaking into the same kiosk and stealing various articles. The appeal was against on order sending him to Lambousa[5]. Separated parents. Living with mother a barwoman. Basically, on the loose antisocial behaviour generally. Criminal psychologist report that the appellant should be given psychotherapy and during treatment shall be free to be with his parent. The Supreme Court did not set aside the Lambousa order. Sending him to the reform school was a course required to be adopted both for the benefit of the appellant and for the benefit of the society in general. As a result, a "detention" sentence was endorsed.

4. ***In Criminal Appeals No 4773 and 4774, Yiannakis Ioannou & Christakis Panayi v. The Police (13.10.86)*** a six months imprisonment was imposed on a 16 years of age offender at the time of the commission of the offence. He was released forthwith having served 3 months (breaking and entering/theft offences). Imprisonment of young offenders is a measure of last resort it was held. Society is interested in reform in such cases the Court remarked.

[5] Lambousa is the ancient Greek name for the village of Lapithos, Kyrenia where the school was situated. After the Turkish invasion of 1974 and the inevitable closure (Polemidia) of the Lambousa Reform School, it was reopened in Limassol in 1980 but closed in 1986

5. ***In Criminal Appeal No 177/2005 of 4.11.2005 Erasmia Andreou v. Police*** the accused 17 years at the time for the commission of the offence of conspiracy, stealing cheques, forgery and uttering was described as entirely immature as compared with her co-accused. Sentence of 2 years was reduced to 9 months.

It would appear from the above that there is unfortunately a Court tendency for imposing a prison or detention sentence to young offenders relating to offences against property.

C. Other cases

1. ***In Criminal Appeal No 191/2012 of 1.11.12 (Silvene Patrick V Police)*** the Supreme Court sitting as an appeal court reduced a sentence of 6 months imposed on an illegal immigrant so as to be released forthwith after serving 3 months on account of his age (14). The imprisonment sentence was deemed inappropriate and was not defended by advocate appearing for the Republic.

2. By contrast ***in the case Attorney General v. Elias Kakoushia (2005) 2 ΑΑΔ 45*** the Supreme Court allowed the appeal increasing the fines for road traffic offences by a young offender age 17 saying the following:

> "*Young they maybe, in the sense of not having completed 18 years to acquire legal capacity. Nevertheless, in present day society young persons age 15, 18, have the advantage of education and at the age 17-18 join the army where they have great responsibility towards the country. The free*

movement of ideas and information is part of daily life and the young ones have actual and dynamic participation in it. Therefore, the young ones are in a position to appreciate correctly their responsibility to respect the laws of the state and their fellow citizens.”

(Artemides P., Kramvis J., Nicolatos J.[6])

D. Procedural advantages of limited effect

1. ***In the case of Andreas Xeni v. Police Famagusta (1939) V16 1 CLR 62*** in case stated No 3/39 the Chief Justice CREAN C.J. dealt with an appellant 15 years of age a “young person” as defined in the Juvenile Offenders Law of 1935 charged with the theft of a 10s. note. He decided that committal of juvenile offender to Reformatory for 9 months by the President, of the District Court of Famagusta sitting in the Juvenile Court is not an imprisonment and therefore the appellant had no right to appeal. A characteristic passage from the Judgment of Griffith Williams J. sitting with the Chief justice merits our attention:

“By section 9 of the Juvenile *Offenders Law, 1935, a clear distinction is drawn between imprisonment and sending to a Reformatory. Section 9 (2) is as follows:-*

"No young person shall be sentenced to imprisonment if he can be "suitably dealt with in any other way whether by fine, corporal punishment, committal to a reformatory or otherwise."

From this section it seems clear that the sentence of nine months at a Reformatory imposed in this case was not "imprisonment without option" against which an appeal would lie under section 34 of the Administration of Justice Law.

[6] Nicolatos P., is currently the President of the Supreme Court.

Counsel for the juvenile pointed to section 10 of the Juvenile Offenders Law, 1935, which reads: "No appeal as to sentence shall lie where a "child or young person is sentenced to whipping only," and contended that this section by necessary implication permitted appeal from any other sentence. But this does not seem to me to be the right interpretation to put on it. The Juvenile *Offenders Law is one of a kind sent out from England to be passed in all Colonies irrespective of the local laws in force there. It is not intended entirely to take the place of the ordinary criminal procedure, but to be supplementary to it. We must therefore construe this section 10 in its narrow sense as meaning no more than it says. Actually, it seems to be of no practical value in this Colony, as whipping is not one of the sentences enumerated in section 34 (1) of the Courts of Justice law in respect of which an appeal lies."*

2. (a) ***By contrast in Andreas George Evans and another v. The Police (1945) (V18) 1 CLR 57*** it was decided that detention in a reformatory is equivalent to imprisonment and therefore, there is a right of appeal *Jackson C.J. sitting with Griffith Williams* refused to follow Andreas Xeni v. Police the relevant passage reads as follows:

"*We think that the distinction between imprisonment and detention in a reformatory which is very clearly made in the* Juvenile *Offenders Law of 1935 is made for quite special purposes, that is to say that it has regard to the treatment which juveniles detained in a reformatory are to undergo as opposed to the treatment which they would be subjected to in prison. We do not think that the distinction could have been made with the right of appeal in mind, and that it could have been intended to take away from juveniles a right of appeal which they would have had if ordered to be detained in the special division of the prison in Athalassa. Furthermore, we have in the Juveniles Law itself, section 10, which clearly contemplates a right of appeal in some instances. When we asked*

for an explanation of that section we were told that a child if sentenced to a fine of £10 would have a right of appeal, but that he would have none if ordered to be detained in a reformatory for a period which would extend for four years."

(b) ***In the case of Costas Evgeniou v. The Police (1984) 2 ΑΑΔ 327*** it was held that considering the impact of an order of remand in custody and its implications on the freedom of the person, it is fair to construe s.12(2) of Cap 157 (Juvenile Offenders Law) as disallowing the detention of a person under 14. Pretrial detention is a species of imprisonment. Section 12(2) absolutely prohibits imprisonment of a child under 14. In the circumstances Section 7(1) of Cap 157 no longer confers powers to order the detention of a child under 14 before trial, at a police station. The appellant was remanded in custody at Ayios Dhometios Police Station on a charge of homicide. It was argued that by virtue of Law 12/75 section 2 pre-trial detention should be regarded, after conviction as part of the sentence of imprisonment. Counsel for the Republic did not oppose. Section 7(1) of the Law enables a Court to remand a child under 14 to custody in a police station. The Court nevertheless decided that s.7(1) no longer confers power to order the detention of a child 14. Law 12/75 enacted subsequent to the Constitution equated custody to imprisonment after sentence. Therefore, s.7(1) was rendered inapplicable.

(c) ***In the case of Police v. Alexis Anastasiou Case No. 16022/14 (26.11.2014), District Court of Larnaca*** the District Judge dealt with an application for the accused to remain in custody pending his trial before the Assize Court. The accused was charged inter alia with murder. The accused had already a criminal record. In this case he was 17 years and three-month-old. The Court found that Cap 157 providing for Juvenile Courts and reform schools became inoperative nowadays. In any event the law is applicate for persons 16 years of age and under.

Therefore, and in any event, Cap 157 was inapplicable in the case in hand. Inapplicable were also the provisions of the Children Law Cap 352 which although in general applicable to children under 18 the law provides for the custody of under 16 in remand homes (section 38-40) and for their treatment by Juvenile Courts (sections 63-73). The Court made reference to the need for amendment of the legislations highlighted in the case of ***Trifona alias Aloupos v. The Republic (1961) CLR 246 and Meytanis v. The Police (1966) 2 CLR 84.***

The Court proceeded to cite from G. Pikis 2nd Edition Sentencing in Cyprus 2007, page 44 where reference is made to the Lambousa Reform Establishment which as a result of the Turkish occupation had to close. With respect to under 18 suspects Article 11(2) (δ) of the Constitution makes possible their custody under certain conditions. So does Article 5(1) (d) of the European Convention on Human Rights, ratified by Law 59/62. Under Law 1639(1)/2005, Section 20, "Law on persons arrested and under custody" there is a duty to hold in custody under 18 years of age suspects in separate cells from other suspects of age. Reference was also made to the International Convention on Civil and Political Rights ratified by Law 14/1969, sections 2 and 3, which make similar provision. In the circumstances it was ordered that the suspect be kept in custody in a separate police cell. Otherwise he was treated by the Court in remanding him to custody as an adult accused.

3. ***In Re Lefki Chrysanthou (1995) 1 ΑΑΔ 1025 [Artemides]) J.*** the applicant a child under 16 at the time of allegedly commuting the offenses was charged along with other teens with various offences. She sought leave for the certiorari and mandamus alleging that when the charges were filed in Court, she was above 18 and would be deprived of the benefits of law Cap. 157. The Court dismissed the application for various reasons but held inter alia that the jurisdiction of the criminal

trial judge, the trial and treatment of the accused if found guilty are not differentiated with the application of the Juvenile Offenders Law, Cap. 157 from a normal criminal trial. If convicted his young age will be taken into consideration. The provisions of the law are applicable with respect to the age of the accused at the time of trial, and not the commission of the offences. The delay in prosecuting until she was above 18 had no bearing on the validity of the charges.

4. ***In the case of Police v. Charalambos Paspatas Case No. 10907/10 (17.3.2011) of the District Court of Limassol,*** the accused age 15 was charged with assault casing G.B.H. and for carrying an assault weapon. The case was dismissed on grounds of doubt at the prima facie stage as to the identification of the accused. The trial took place as in any other case of an adult accused before the District Court.

Concluding Remarks

1. As it can be seen from the above the Courts interpreted the law so as to afford certain procedural advantages to Juveniles but not always as far as the trial process is concerned.

Juveniles and young persons have been treated as adult accused in many respects.

2. As it can also be seen from the above case law, the treatment of juveniles in Cyprus by the Courts has not always been consistent. Although Courts are aware that juveniles and young persons i.e. under 18, have to be treated differently, they have in many respects been treated as something of a sui

generis species between juveniles and adult offenders and sometimes as adults indeed[7].

Imprisonments have been imposed on several occasions. The lack of a proper system of justice in practice for juveniles and special training has meant that juveniles were treated very subjectively. Courts on the one hand express the need and desire to treat juveniles and young offenders differently but in practice they administered on many occasions' justice for adults to juveniles.

3. The condemning judgment of the ECHR was an endorsement of a lack of sensitively of the judicial system to administrating juvenile justice.

4. The passage from the judgment in the case of ***Kakoushias (2005), supra*** is perhaps illustrative of the underlying concept of judicial thinking is dealing with juveniles.

> *"…in the present-day society young persons age 15, 18, have the advantage of education …. The free movement of ideas and information is part of daily life and the young ones have active participation… Therefore, the young ones are in a position to appreciate correctly onewordon their responsibility to respect the laws of the state and their fellow citizens."*

One wonders. Do we really need Juvenile Justice if the above statement is true?[8]

---

[7] For the Practice of Sentencing see in general G. Pikis ex-President of the Supreme Court of Cyprus "Sentencing in Cyprus", 2nd Edition 2007, pages 42-45, 88-90

[8] For a critique see Andreas Kapardis, Juvenile Delinquency and Victimization in Cyprus, European Journal on Criminal Policy and Research, 2013, Vol. 19, Issue 2 pp. 171-182

5. Judgments of the Supreme Court are generally brief and they do not seem to be concerned with the causes of juvenile crime and an investigation as to them on the basis of evidence put before it. One gets the feeling at times that it only pays lip service to the need for reform rather than punishment.

6. It is hoped that with the enactment of the new law establishing a system of Criminal Justice Friendly to Children in Conflict with the Law, 2019, attitudes will change and the practice of the Juvenile Court will be different[9]. Some remarks nevertheless on that are in place:

1. The mechanisms proposed are too good to be true. With the Welfare Office short staffed or overwhelmed with social welfare cases to deal with, it will be difficult to cope. Also new personnel will have to be engaged and trained to implement the law. That may prove possible only in the long run.

2. Juvenile Justice is taken almost completely out of the hands of the Court system and given to various Departments, the Ministry of Justice, Ministry of Labour and Social Welfare, the Office of AG and various experts. Decisions on juveniles and young persons up to the age of 18 will now be taken by Departments and experts.

3. It is regrettable that the new law does not provide for a separate Juvenile Court but leaves the matter basically to Judges of the Family Court to deal with Juvenile Offenders. In the Functional Review of the Court System of Cyprus Report, March 2018 of the Institute of Public Administration Ireland reference is made that in 2016 the Family

[9] The new Juvenile Court will be administrated by the Family Court Judges. Some will be newly appointed

Court had to deal with 6.471 cases, see page 53 and at page 57 for no a backlog of 3581 cases pending at the end of 2016.

4. Given the experience we had from the poor performance or not of the Supreme Court in dealing with Juvenile Cases and the lack of having trained Supreme Court Judges to deal with such cases one wonders whether an appeal to the Supreme Court from the Juvenile Court will contribute towards better justice for juveniles.

7. Having said the above, the steps been taken are positive overall and in the right direction with improvements to be discussed and implemented.

1/11/2019

Christos Clerides, Professor,

Head, Law Department, Frederick University