



Joint Referral Protocol For Juvenile Justice Institutions

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INTRODUCTION

Well-being and protection of children requires very close cooperation and coordination within the juvenile justice system in order to achieve the goal on preventing and combating illegal acts committed by juveniles, their protection, resettlement, re-integration in their families and the society.

The accomplishment of such a cooperation and coordination, in addition to the legal basis and the existing institutional structures, has been enabled and facilitated with the development of the referral Protocol. This Protocol aims to upgrade the aforementioned cooperation to the highest, level by creating a sustainable cooperation between the main institution of the juvenile justice system such as: Courts, Prosecution offices, Kosovo Police, Probation Services, Mediation, Center for Social Work, Lawyers, Correction Centers, etc. which are related actively to the juvenile justice, in accordance with their powers set out in the Juvenile Justice Code and other legal acts.

Through the joint referral Protocol it is intended to strengthen the cooperation between these institutions with the purpose of protecting the juvenile rights, taking care and ensuring the effective implementation of applicable law of the juvenile justice.

The Protocol aims to straighten this cooperation and in particular describes and instructs the competent institutions to consider the cooperation and coordination as priority to their work.

The Protocol will serve also as an interaction between the main institutions of juvenile justice responsible to act in the best interest of a child and in accordance with the national laws and international acts.

Principles:

The juvenile justice system shall emphasize the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the criminal offence.

The Juvenile Justice Code Principles are as follow:

- ✚ Emergency principal of criminal proceedings against juvenile;
- ✚ Principal of confidentiality during of the proceedings against juvenile;
- ✚ Principal of no judgment in the absence of the juvenile;
- ✚ Principle of the opportunity;
- ✚ Well-being pf the juvenile; and
- ✚ Best interest of the juvenile.

ROLE AND RESPONSIBILITY OF THE MAIN INSTITUTIONS

1. POLICE

1.1 Role:

The primary task of the police is to investigate committed crimes and to undertake all necessary measures in order to determine the location of the offender, to stop the perpetrator or his/her assistant from hiding or fleeing, to find and maintain evidences of criminal offences and object that may serve as evidences, to collect all information that could be used in a criminal proceeding. Police have the right to stop and submit additional information from other persons who may be found in the crime scene and who can give important information about the defendant as well as for the flow of the offence in general.

Considering that the criminal procedure against juveniles is specific, also the police duty toward the juveniles is considered specific. As it is known, the criminal procedure against juveniles includes specialized institutions in the field of juvenile justice, such as guardianship authority, the police when dealing with juvenile suspect is obliged to immediately inform the guardianship authority. Despite the guardianship authority, when dealing this juvenile, the police shall also inform its family, respectively juvenile parents as legal representatives that should be present in every phase of the procedure developed against their child.

1.2 Provisions of Services:

1.2.1 Action taken by the police officer

The action taken by the police officer, from the moment of suspicion of a criminal offence up to the submission of the report to the prosecutor, this is a process that conducts the Operational Standard Procedure¹ (OSP) for police officers.

1.2.2 First action stage

When there is suspicion that a juvenile has committed a criminal offence, the police officer shall undertake all necessary actions² according to the law in force and the OSP, to bring the

¹ OSP is a group of high ranking Police Officers of Kosovo, drafting the procedure, hen finalizing you will be informed in time.

² **Explanation: what are the necessary actions:** when receiving un information that a child is a victim, the police officer immediately starts with collecting and registering all data, starting from the moment when the CO, than the site inspection, the nature of the offence, records on the child - victim, record about the suspect (short description), all information relating to the use of items by the suspect, the suspect condition at the moment of committing the criminal offence (under the influence of alcohol or other substances); family relationship between the suspect and the victim, in other word any relevant information that can be related to the

offender to the police station for the examination. The police officer has no right to initiate the examination procedure without the presence of a custodian officer/social work officer and in some cases a psychologist (in case the child has disabilities, or is traumatized), in specific cases also the interpreter of a certain language.

1.2.3 Action stage

During the examination process of juvenile, the police officer should behave wisely and professionally³ and maintain social relationship with the child. The examination of a child shall be conducted at most twice, in cases when the child is in the capacity of the victim or witness⁴. With the prosecutor's decision, the police can detain a child for 24 hours in the "detention center" separated from the adults (according to the highest standards). As to the adult procedure, before any examination, the child must be informed of the:

- Criminal offence he is accused of;
- The right to remain silent and not to answer in any question, unless the information about his identity;
- The right to free interpretation;
- The right to have a defense council and to consult him before and during the examination process;
- That his statement may be used as an evidence during the trial;
- That he can ask for the evidences to use for his defense;
- The obligation that he shall notify the respective institution of any change of the address or the intent to changing it. After the juvenile is informed of his rights, starts the testimony process, at the end of it the juvenile shall read his statement out loud sign it together with all present persons, meaning his defense council, parents, the person who examined him- the police officer.

1.3 Main Responsibilities:

1.3.1 Identification of the circumstances when a child shall not be arrested.

case, information of other institutions (the unit for protection of victims, competent prosecutor, the officer of CSW and other actors depending on the offence: murder, trafficking in person, prostitution, rape).

³ **Professional and wise manner:** During the examination process, the police officer should check the examination room and not allow to many persons inside, taking into consideration the hesitation of the child to testify in front of his/her parents, not to rush questioning him/her and then receive lots of answers, not to promise any gift for the child, should give enough space to express his/her self (toys, drawings), to stop the examination if the police notices that the child is tired, to respect fully his/her privacy, the child should not be kept with others for safety issues, the officer shall not raise his voice while examining the child, but to remain calm, the police shall not put suggestive questions, etc

⁴ Look Article 147 (2) of JJC.

JJC did not foresee special provisions regarding the arrest or detention of the juveniles, therefore in this regard shall be used the provisions for adults.

Important: duration of the arrest or detention on remand of a juvenile shall be ordered only as a measure of last resort for the shortest time possible and cannot exceed a period of twenty-four (24) hours. After the expiry of that period, the police shall release the juvenile, unless the judge orders the detention on remand. The police conduct pre-criminal procedure. The juvenile as the adults, may be held in detention for six hours. The extension of the detention can be done only with prosecutor's instruction on how to deal with the juvenile. The moment when a juvenile is detained, or before giving its statement, he should be provided with legal assistance.⁵

1.3.2 Drafting of the criminal report by the police officer and its submission to the prosecutor

After collecting all evidences, hearing of the witnesses, the injured parties and the juvenile, the police officer drafts a criminal report including all evidences collected during the investigation of a criminal case. If even after the submission of the criminal report to the prosecutor, the police collect new evidences, find new elements of a criminal offence; it should immediately submit a supplementary report to the prosecutor.

Otherwise, if the measures and actions taken by the police and the data collected do not provide any basis for the drafting a criminal report, and if there is not ground suspicion for commission of a criminal offence, the police still has to draft a special report and submit it to the prosecutor. A criminal report with all other documents shall be submitted to the prosecutor including objects, sketches, photos, reports, minutes taken about measures and actions taken, official notes statements and other materials that may contribute to an effective criminal procedure.

⁵ JJC, Article 43 paragraph 6

2. GUARDIANSHIP AUTHORITY

2.1 Role:

Ministry of Labour and Social Welfare (from now on) is responsible for organizing delivery of social and family services in Kosovo, it also ensures equal access to social and family services for all residents of Kosovo, regardless their race, ethnicity, gender, language, religion, political view, nationality, political and social origin, wealth, birth, or other. Each municipality through its relevant Directorate is responsible for providing social and family services within its territory, according to the standards set out by the Ministry.

Guardianship authority (GA) is a municipal administrative organ, competent for social issues and protection of the children and adult interest and is composed by a group of experts acting within the Center for Social Work.

Each municipality shall establish its Center for Social Work (CSW), as public institutions which will contain one or more branch offices with trained and qualified professional staff. CSW establishes GA, which performs its duty as described by the relevant law of Kosovo.

2.2 Provisions of Services:

Social and family services include the direct social care, counseling or in special cases material assistance for the people in need.

The CSW, according to the provisions of this law is entitled to evaluate the circumstances and living conditions of each person or family who consider themselves in need, in order to fill up these conditions, the CSW shall take into consideration all circumstances including here the degree of need and the available recourses that the center has to fulfill its duty. This applies also to the juveniles who are in conflict with the law.

2.3 Main Responsibilities:

2.3.1 Juveniles in conflict with the law, GA working procedures

In the proceedings against juveniles, despite the competencies provided explicitly in the provisions of the Juvenile Justice Code (JJC), the guardianship authority shall be informed about the flow of the procedure, in order to make proposals or present important evidences that will serve in taking the right decision.

The prosecutor shall inform the competent guardianship authority in written, when initiating the procedure against juvenile.

CSW assign a responsible person who should prepare about the case that was assigned to him and than present it in front of the court with the purpose protecting the best interest of the juvenile.

The court is obliged to inform the guardianship authority for any action taken. CSW maintains all evidences and systematizes them in files for each juvenile.

If the prosecutor decides not to initiate the preparatory procedure, he shall inform the guardianship authority.

2.3.2 Intensive supervision by GA

The court may impose various measures as supervision measures. The court shall impose the measure of intensive supervision by the parent, adoptive parent, or guardian, after hearing the parent, adoptive parent or guardian, when the parent, adoptive parent, or guardian is capable of supervising the minor, but has been negligent in such supervision and when such measure is in the best interest of the minor.

During the execution of this measure, the child remains with the parent, adoptive parent, or guardian. When imposing this measure, the court will also defines the duties of the Guardianship Authority, including:

- a) Overseeing the juvenile's education;
- b) Facilitating access to vocational training and employment;
- c) Ensuring that the juvenile is removed from any adverse influences;
- c) Facilitating access to necessary medical care;
- d) Providing possible solutions to any problems that might arise in the juvenile's life; and
- dh) Such other duties as the court determines would be in the best interest of the juvenile.

2.3.3 Execution of the intensive supervision measure by Guardianship Authority

The competent Guardianship Authority is authorized to execute the educational measure of intensive supervision by a Guardianship Authority. The Guardianship Authority shall, immediately after receiving the ruling imposing the educational measure, designate the official of the Guardianship Authority responsible for execution of the measure and notify the competent court immediately of this.

Guardianship authority is obliged to the court which imposed the measure of intensive supervision through by the guardianship authority regarding the execution of the court decision at least every three (3) months.

2.3.4 Accompany of the juvenile

The parents, adoptive parents or guardian shall be entitled to accompany the juvenile in all proceedings and may be required to participate if it is in the best interest of the juvenile. The juvenile judge may exclude a parent, adoptive parent or guardian from participation in proceedings if such exclusion is in the best interest of the juvenile. When the parents, adoptive parents or guardian of the juvenile do not exercise their parental duties, the court may nominate a temporary guardian for the juvenile.

The courts shall keep a record, prepared by the Centre for Social Work, of social workers, teachers, pedagogues, or volunteer specialists, from which the temporary guardian shall be nominated. To the juvenile without a parental care is a signed a guardian by the guardianship authority.

2.3.5 Persons present in the main trial

In addition to the persons referred to in provisions the Criminal Procedure Code of Kosovo, the parent, adoptive parent or guardian, a representative of the Guardianship Authority and a representative of the Probation Service shall be summoned to the main trial. The failure of such persons to appear shall not prevent the court from holding the main trial.

2.3.6 Notification of the GA by the court

During the execution of an educational measure, the competent court may impose appropriate measures to protect the rights and well-being of a juvenile, including placing the juvenile in a shelter or an educational or similar establishment, placing the juvenile under the supervision of the Guardianship Authority or transferring the juvenile to another family. The court shall inform the Guardianship Authority of any measure imposed.

The courts, public prosecutors' offices, schools and other institutions shall assist and cooperate with the Guardianship Authority in the execution of this educational measure. The parent, adoptive parent or a foster parent of the minor shall inform the Guardianship Authority of any obstacle to the execution of the educational measure.

The Guardianship Authority shall inform the competent court without the delay of the failure of the minor to comply with a special obligation imposed pursuant to Article 26 of the present Code and of any obstacle to the execution of the educational measure.

2.3.7 Release of the juvenile

The parent, adoptive parent or guardian of the juvenile shall inform the competent Probation Service of the release of the juvenile. The Probation Service shall offer assistance to the juvenile after release for as long as he or she needs it, but not longer than twelve (12) months. If it is in the interest of the juvenile, the Probation Service may seek assistance from or cooperation with the Guardianship Authority or the legal representative of the juvenile.

After the release of a juvenile, the Guardianship Authority shall take special care of a juvenile who has no parents and of a juvenile whose family circumstances are not settled. The care shall include, in particular, accommodation, food, the acquisition of clothes, medical treatment, the regulation of family circumstances, the completion of vocational training and employment of the juvenile.

2.3.8 Protection of the children as perpetrator of the criminal offences, without criminal liability

The juvenile justice system shall emphasize the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the criminal offence.

Guardianship authority undertake certain actions in accordance with the Law on Social and Family Services and based on its programs, for the treatment of the perpetrators of the criminal offences under the age of (14) years old. This matter is regulated with the by-law issued by the Ministry.

After informing the prosecutor for the commission of the criminal offence by the child, guardianship authority assigns a case manager for each referring case. After evaluating the case, the manager can establish partnership with governmental and non-governmental organizations (family, school, community, hospitals, police, etc), with the purpose of creating proper environment for better protection and treatment of the juvenile.

2.3.9 Juveniles in conflict with the law as perpetrator of the minor offences

Minor Offence Court informs the guardianship authority about the juvenile perpetrator. Whereas, the GA conducts the evaluation of the case and then sends a written report to the competent court.

3. PROSECUTION OFFICE

3.1 Role of the public prosecutor in the criminal procedure against juveniles:

The office of the public prosecutor is an independent body, responsible for investigating criminal offences, prosecuting persons charged with committing criminal offences which are prosecuted *ex officio* or on the motion of an injured party, supervising the work of the judicial police in investigating persons suspected of committing criminal offences and collecting evidence and information for initiating criminal proceedings. The criminal procedure against juveniles shall only be initiated by the public prosecutor which is the only person who can accuse a juvenile for any criminal offence, regardless if the criminal offence is prosecuted *ex officio*, or according to the private charge.

The public prosecutor shall administer other matters and undertake other actions as provided for by law.

The public prosecutor during the criminal procedure against juveniles supervises the work of the police and takes all necessary measures in disclosing the criminal offences and the juvenile offenders. The police is obliged that during a criminal procedure to inform prosecutor for every action taken by them during the entire procedure.

Public prosecutor supervises the police also during the pre-criminal procedure. He can order and authorize the police to undertake investigative actions during the pre-criminal procedure, even without initiation of the preparatory procedure, in cases when they receive information about the commission of a criminal offence. Public prosecutor is the only organ who can order the arrest of a juvenile when there is a ground suspicion that he/she committed a criminal offence.

It's a prosecution decision to impose detention measure against a juvenile in duration of 24 hours, under the conditions provided in the Criminal Procedural Code of Kosovo.

Kosovo Prosecution Offices are organized as following: Municipal Prosecution Offices, District Prosecution Offices and State Prosecution.

Municipal Prosecution Office is competent to investigate criminal offences punishable with fine or imprisonment up to 5 years.

District Prosecution Office is competent to investigate criminal offences punishable with five (5) years imprisonment or long time imprisonment.

3.2 Provisions or Services:

3.2.1. Preparatory Procedure

Criminal report, all gathered evidences by the police and other documents shall be submitted to the public prosecutor.

The public prosecutor shall dismiss the criminal report after analyzing all inculpatory and exculpatory evidences and facts, if it is evident from the report that:

- There is no reasonable suspicion that a specific person has committed the indicated criminal offence, unless it is reasonably likely that further investigation by the police may provide sufficient information, in which case the prosecutor shall follow the requirements of Article 209 of the present Code;
- The period of statutory limitation for criminal prosecution has expired;
- The criminal offence is covered by an amnesty or pardon;
- There are other circumstances that preclude prosecution.

Public prosecutor after submitting and analyzing the criminal report and if there is a ground suspicion that the juvenile has committed a criminal offence and for any reason he decides not to impose a diversion measure, the public prosecutor shall initiate preparatory procedure against the juvenile.

Preparatory proceedings shall be initiated by a ruling of the public prosecutor. A stamped copy of the ruling on the preparatory proceedings shall be sent without delay to the juvenile judge.

The ruling on initiation of the preparatory procedure must contain the following:

- the personal data of the juvenile, (name, surname, date of birth, place of birth, place of residence, domicile, nationality, etc) against whom is applied the preparatory procedure;
- Time of the commencement of the preparatory procedure;
- Description of the criminal offence (elements);
- Legal name of the criminal offence;
- Circumstances and facts justifying the ground suspicion of the criminal offence;
- Evidences and gathered information;
- Reports about any measure or punishment imposed previously.

If the public prosecutor decides to initiate preparatory proceedings, he or she shall notify the guardianship authority for the initiation and the flow of the preparatory procedure against juvenile. Guardianship Authority is entitled to be notified of the course of the proceedings and to submit motions and state facts and evidence which are important for rendering a correct decision.

The Probation Service shall prepare a complete social inquiry on the minor upon the request of the public prosecutor; this report must contain the following:

- Juvenile's age and psychological development,
- Family background,
- Background and circumstances in which the minor is living,

- School career,
- Educational experiences and any other relevant information which will serve in taking the right decision against the juvenile.

The public prosecutor shall terminate the preparatory proceedings if at any time it is evident from the evidence collected that:

- There is no reasonable suspicion that the minor has committed the indicated
- criminal offence;
- The period of statutory limitation for criminal prosecution has expired;
- The criminal offence is covered by an amnesty or pardon; ;
- The conditions set forth in Article 56, paragraph 1 of the present Code; or
- There are other circumstances that preclude prosecution.

It is recommended that the public prosecutor to inform also the Probation Service for the termination of the preparatory procedure, based on the Article 56 of JJC.

The preparatory proceedings are not completed within a period of six (6) months. Within this period, the public prosecutor is obliged to undertake all necessary investigative actions to collect evidences relating to the commission of the criminal offence.

All evidences and examinations of the juvenile submitted as evidence by the prosecutor and in order to use it in the trial shall fulfill the conditions provided by the Criminal Procedural Code⁶ and Juvenile Justice Code⁷.

If the prosecutor considers that the collected evidences during the preparatory procedure do not contain the elements described below, the prosecutor terminates the procedure⁸.

3.3 Main Responsibilities:

3.3.1 Detention on remand of the juveniles

Detention on remand of a juvenile shall be ordered only as a measure of last resort for the shortest time possible. After submitting the criminal offence or when a juvenile has been arrested and against him was imposed a police detention, the public prosecutor may request a detention on remand.

The request for detention on remand against juvenile shall be submitted by the competent juvenile judge.

⁶ Criminal Procedural Code, chapter XIX general provisions and evidences

⁷ JJC, cheaper IX procedure, Article 42 paragraph 1

⁸ JJC Article 60

The juvenile shall undergo a general medical examination prior to the commencement of any period of detention on remand to ensure that his or her health is consistent with detention on remand.

In the hearing session for imposing a measure of detention on remand shall be present; the public prosecutor, the juvenile, legal representative of the juvenile and his/her defense council.

During the hearing session, the public prosecutor must present the ground suspicion that the juvenile has committed the criminal offence; the prosecutor should also present reasons why the alternatives to detention on remand would be insufficient to ensure the presence of the juvenile, to prevent re-offending and to ensure the successful conduct of the proceedings.

3.3.2 Not initiation of the preparatory procedure (opportunity principle)

Not initiation of the preparatory procedure against juvenile is a procedural guaranty set by the JJC⁹ considering the best interest of the juvenile and his well-being, this procedural guaranty shall be apply always when the legal conditions as described by the JJC are fulfilled. Not initiation of the preparatory procedure is known as the *Principle of the Opportunity*, this principle is specific.

According to this principle, the public prosecutor may decide not to initiate preparatory proceedings, even though there is a reasonable suspicion that the juvenile committed the criminal offence, if the prosecutor considers that it would not be appropriate to conduct the proceedings against the juvenile in view of the nature of the criminal offence, the circumstances under which it was committed, the absence of serious damage or consequences for the victim, as well as the juvenile's past history and personal characteristics.

When a punishment or measure is being executed against a minor, the public prosecutor may decide not to initiate preparatory proceedings for another criminal offence of the minor, if, having regard to the seriousness of that criminal offence as well as to the punishment or measure which is being executed, the conduct of proceedings and the imposition of a punishment or measure for that criminal offence would not serve any purpose.

In order to ascertain the above mentioned circumstances, the public prosecutor may request that the Probation Service conduct the social inquiry. If it is necessary, the prosecutor may summon the parent, adoptive parent or guardian and the minor, as well as other persons and institutions and the injured party.

If the public prosecutor decides not to initiate preparatory proceedings, he or she shall notify the Guardianship Authority.

⁹ KDM neni 56 paragrafi 1 dhe 2,

3.3.3 Execution of the diversion measures by the public prosecutor

According to the JJC, the public prosecutor may suspend the prosecution of a criminal offence and impose a diversity measure.

A diversity measure may be imposed on a minor who has committed a criminal offence punishable by a fine or by imprisonment of three (3) years or less or for criminal offence carelessly committed punishable by imprisonment up to five (5) years, which bring death as a consequence.

In order to impose a diversion measure against a juvenile, beside the formal conditions the juvenile shall accept the responsibility of the criminal offence, express readiness to make peace with the injured party and accept the diversion measure imposed to him/her, by his/her consent, or by the parent, adoptive parent or guardian who can decide on behalf of the juvenile,¹⁰.

Before deciding on a diversity measure, the prosecutor shall summon the minor, his or her parents, adoptive parents or guardian and defense counsel.

The public prosecutor may decide to impose one of the diversion measures as provided in the Article 18 of JJC based on the nature of the criminal offence, the circumstances under which the offence was committed and base on the juvenile's personal characteristics.

Types of the diversion measures are:

- Mediation between the juvenile and the injured party, including an apology by the juvenile to the injured party;
- Mediation between the minor and his or her family;
- Compensation for damage
- Regular school attendance;
- Acceptance of employment or training for an appropriate profession;
- Performance of unpaid community service work;
- Education in traffic regulations; and
- Psychological counseling.

After the imposition of the diversion measure, the prosecutor is obliged to supervise the execution of this measure by the Probation Service of Kosovo. Probation Service compiles a special report for the execution of the diversion measure, through which informs the public prosecutor about the execution process.

¹⁰ Article 17 of JJC

3.3.4 Proposal for the execution of the educational measure or punishment

After completing the preparatory proceedings, the public prosecutor may file a reasoned motion with the juvenile panel for the imposition of an educational measure or a punishment.

Public prosecutor submits a proposal for imposing the educational measure or punishment if the evidence collected during the preparatory proceedings, confirms the ground session that the juvenile committed a criminal offence.

The public prosecutor's motion must contain the following:

- personal data of the juvenile;
- a description of the criminal offence,
- the legal name of the criminal offence with an indication of the provisions of the Criminal Code of Kosovo,
- evidence indicating that the minor committed the criminal offence,
- results of any social inquiry conducted by Probation Service
- motion for the imposition of an educational measure or punishment against the minor;
- Reason why the diversion measure was not imposed.

4. COURT

4.1 Role:

The courts have a great role in our country. The courts function as state governmental bodies, exercising judicial power, whereas their activities are based in the Constitution¹¹ and the law¹². The Constitution regulates general principles of the justice system and the Law on Courts regulates the areas of the organization, function and court jurisdiction.

The current operating judicial system in our country is exercised by the regular courts: Municipal Courts; District Courts; Commercial District Court and Supreme Court. The Code did not foresee special courts or specialized courts for training of juveniles, therefore, it can be concluded that the criminal procedure against the juveniles is conducted by the regular courts. Whereas, concerning the real, territorial and functional competencies, the general legal provisions shall be applied (Criminal Procedural Law of Kosovo).

It should be mentioned that since 01 January 2013, will be in force the Law on Courts which will be the basis of the new judicial system. The law provides that within the territory of the Republic of Kosovo shall be established seven regular Courts, one Appellate Court (with the seat in Prishtina) and the Supreme Court.

Among other, the law foresees the establishment of the Juvenile Departments within the Appellate Court.

However, with the establishment of these departments shall be organized also a special comprehensive training on the juvenile procedure. With the functioning of these departments will also be profiled the specialized juvenile judges.

4.2 Dispozitat e shërbimeve:

4.2.1 Role of the court during the preparatory procedure

The Code determined that the judicial authorization in the juvenile's procedure is exercised through:

- Juvenile judge¹³ ; and
- Juvenile panel.¹⁴

¹¹ Chapter VII of the Constitution of the Republic of Kosovo

¹² Law on Regular Courts, Official Gazette of KSAK. Despite the Law on Regular Courts of the Republic of Kosovo is also promulgated the Law on Courts (Law no.03/L-199), some of the provisions came into force since 01 January 2011, the entire law will come into force since 01 January 2013.

¹³ Juvenile judge is a professional judge who has expertise in criminal matters involving children and young adults and who is competent to exercise the responsibilities set forth in the present Code.

The juvenile judge during the preparatory procedure guarantees the rights of the juvenile, supervises the preparatory process and has equivalent role with the pre-trial judge in the procedure against adult persons. Juvenile judge shall be notified about the preparatory procedure against the juvenile through a stamped copy of the ruling on the preparatory proceedings shall which should be sent without any delay to the juvenile judge.

Important: Submission of the ruling for the development of the preparatory procedure without a delay implies an abstract term and would be good to send it on the day of its receipt.

If the preparatory proceeding is not completed within a period of six (6) months, the public prosecutor shall submit to the juvenile judge a written application supported by reasoning for an extension of the preparatory proceedings.

Important: it is juvenile judge discretion to continue the preparatory procedure, here it should be considered the reasonability and validity of the request, therefore the request should be justified due to the fact of not undertaking any action of the preparatory procedure during the initial procedure.

Based on the logic of the event and based on the fact that the judge is notified for the initiation of the preparatory procedure, the judge shall also be notified for the termination of the preparatory procedure.

The juvenile judge shall appoint an appropriate mental health expert and may request the Probation Service to conduct a social inquiry.

4.2.2 Role of the juvenile judge in imposing the detention on remand

The important role of the juvenile judge is to impose the measure of the detention on remand with the request of the public prosecutor.

This is a very important stage due to the fact the detention on remand against juvenile is determined as “ultima ratio”, therefore, the juvenile judge is obliged to assigned a defense council (if not assigned by other institution), to set and hold a hearing session and take decision on detention on remand.

Important: since the police detention of the juvenile cannot exceed a period of 24 hours, this is considered as a challenge which means that the competent authorities are not allowed to neglect any action that should be undertaken toward the juvenile proceedings.

¹⁴ Juvenile panel means a panel which is constituted in accordance with Chapter X of the present Code to include at least one (1) juvenile judge and which is competent to exercise the responsibilities set forth in the present Code.

The provisions of the Criminal Procedural Code of Kosovo shall be applied in adequacy to the detention against juveniles. This means that even during this procedure, the juvenile judge at anytime may visit detainees on remand, talk to them and accept complaints.¹⁵.

It is worth to mention that a juvenile cannot be hold in the detention more than 12 months from the day of the arrest.

4.2.3 Role of the juvenile judge after the submission of the proposal

Juvenile judge has an important role during the control phase of the proposal (from the submission of the proposal until assignment of the trial) after the submission of the proposal there are to alternatives:

- a. The judge may issue a ruling to dismiss the proposal
- b. or to transfer the matter to another court, (if there are conditions according to the paragraph 1 to 3 of the Article 316 of the CPCK)

Important: these decisions are the “final” decisions which can be taken by the juvenile judge, since all other decisions are to be taken in the capacity of the president of the juvenile panel.

Juvenile judge shall schedule the main trial within eight (8) days of the receipt of the proposal.

4.2.4 The role of the juvenile judge during the trial

With few exceptions, the provision of the Criminal Procedural Code of Kosovo shall apply accordingly at the trial, when taking a decision or judgment against a juvenile.

The public is not allowed to be present during the when trying a juvenile.

At any time, the juvenile panel may terminate the proceedings at the main trial by a ruling and impose a diversity measure if the conditions under Article 17 of JJC are fulfilled.

The juvenile judge shall draw up the ruling or judgment in writing within eight (8) days of its announcement, exceptionally in complicated cases with the president of court the duration of time can be extended but not more than fifteen (15) days.

Taking into consideration that this can be done only after the declaration of the juvenile about the guilt,

¹⁵ Article 297 par.3 of the CPCK

The juvenile panel is authorized to render a decision even if the public prosecutor has not modified his or her motion or prepared a new motion, on the basis of the evidence presented in the main trial indicating that the factual situation as described in the motion has changed.

This represents the discretion of the court panel which can “overcome” the prosecutor's proposal respectively it is not related with the prosecutor's proposal that is characteristic only for the procedure against juveniles.

The court panel by a ruling imposes educational measures while with a judgment imposes the sentence against the juvenile.

Juvenile judge compiles the ruling or the judgment in writing within 8 days from the day of its promulgation, except in complex cases the specified deadline may be extended with the permission of the president of the court, but no more than 15 days.

4.2.5 The role of the juvenile judge in imposing measures and sentences

The juvenile judge has an extremely important role in the proceedings against juveniles, (now the decisions are made as a panel for juveniles) when deciding to impose educational measures and sentences against minors. Another special feature is that in this procedure when determining the measures and punishments, there should always be a focus on the interest of the juvenile.

This implies a very delicate obligation of the court and here we should take into account all the subjective and objective circumstances in particular the principle of proportionality.

This in practical terms means that in the selection between educational measures and the punishment a priority should be given to educational measures, while when deciding on the type of educational measures (disciplinary measures, measures of intensive supervision and institutional measures) more suitable measures should be determined by which we would achieve the goal of the measure and the best interest of the juvenile.

5. PROBATION SERVICE

5.1. The role of the Probation Service

Probation Service is an institution under the Ministry of Justice and is responsible for the execution of measures and alternative sanctions, as well as for the reintegration of convicted persons in the society.

The PS with its work covers the entire territory of Kosovo through 5 (five) Regional Directorates (Prishtina, Mitrovica, Peja, Prizren and Gjilan), each of which covers the territory is covered by the respective District Court. The work of these departments in the execution of measures and alternative sanctions, as well as the reintegration of convicted persons in society, is supervised by the Central Department, whose headquarters is in Prishtina. With the reorganization of the courts, the PS plans to have 7 (seven) Regional Departments, respectively, in those countries where there will be the headquarters of the Basic Courts.

5.2. Provisions of Services

In the proceedings against juveniles, the Probation Service according to the Juvenile Justice Code is involved in almost all stages of the procedure. This involvement starts from when the criminal report is logged for the juvenile in the prosecution office, continues during the trial in court, then with the execution of non-institutional educational measures and alternative sanctions, as well as in providing the post-criminal assistance through care program after release with the purpose of the reintegration of juveniles in the society.

To accomplish this role, the PS should cooperate with many governmental institutions including educational institutions, Centers for Social Work and the Custodial Organ, Vocational and Employment Training Centers, health institutions, cultural institutions, Kosovo Police and other institutions. In addition, the PS, with the aim of providing the most efficient services cooperates with various non-governmental organizations and the community.

In the JJC, in the juvenile procedure are foreseen these service provisions for the PS:

1. Social Survey (Article 8, par. 2 of the JJC);
2. Pre-punitive report (Article 8, par.3 of the JJC);
3. Role of the Probation Service Officer in the trial (Article 70 of the JJC, par.2);
4. Execution of Diversion Measures (Article 83 of the JJC);
 - Reconciliation between the juvenile perpetrator and the injured party, including also the apology of the juvenile to the injured party;
 - Reconciliation between the juvenile and his family;

- Compensation of damage to the injured party according to a mutual agreement between the injured party, the juvenile and his legal representative, in accordance with the financial situation of the juvenile;
 - Regular attendance to school;
 - Accepting employment or training in an adequate profession with the abilities and skills;
 - Conducting free community service work;
 - Education on traffic rules;
 - Psychological Counseling;
5. Execution of the Educational Measures (Articles 84, par.2, 85, 86, 87, 88 of the JJC);
 - Execution of the measure of sending to a disciplinary center (Article 90, par. 3);
 - Execution of the measure of intensive supervision by a parent, adoptive parent or guardian (Articles 91, 92, 93 of JJC);
 - Execution of the measure of intensive supervision in another family (Articles 94, 95, 96, 97 and 98 of the JJC);
 - General provisions on institutional educational measures (Article 103, par.1);
 - Execution of the measure of committal to an educational institution (Articles 111 and 112 of the JJC);
 - Execution of the measure of committal to an institution for special care (Articles 124, 125 and 126 of JJC);
 - Review, replacement and termination of educational measures (Articles 127 and 128 of the JJC);
 6. The execution of an order for community service work (Articles 132 and 133 of the JJC);
 7. Post criminal assistance - after release care (Articles 141 and 142 of the JJC).

Also, the Probation Service supervises the execution of measures and alternative sanctions provided in the Juvenile Justice Code, issued in accordance with the Criminal Code of Kosovo (CCK) and the Law on execution of criminal sanctions (LECS), such as:

1. Conditional sentence (Article 7, par. 4 of JJC, Articles 43 - 52 of the CCK, as well as articles 10 -163 LECS);
2. Compulsory treatment measures (Article 38, paragraph 4, Article 144 of the JJC, Article 76 and 77 of the CCK and Articles 179 - 187 of LECS);
3. Supervision of juveniles released on probation (Article 35 of the JJC, Article 80 of the CCK, as well as Articles 128 - 131 of LECS).

5.3. Key responsibilities

5.3.1 General provisions in dealing with cases on PS

Upon accepting the case (the requirement, ruling, etc.) in the PS, at the respective Regional Directorate, first a probation officer is assigned for the case (case manager) that is responsible for monitoring the case from the receipt of the request or the ruling until the completion of all proceedings in relation to the case. These include; keeping the file with all the documents of the case, gathering information about the case, its supervision, the contact and cooperation with families, the community, other relevant institutions with the purpose of taking and exchanging information for the juvenile, reporting in court or the prosecution office for the case, etc.

5.3.2 Social Survey and the Pre-Punitive Report

Upon the receipt of the case, the probation officer as the case manager conducts visits on the field in order to collect as much relevant information for the realization of the social survey. On this occasion, the family of the juvenile and institutions that are relevant to the provision of information (schools, the Centre for Social Work, etc.) are visited, where the juvenile is interviewed, as well as the parents and any other family member, teacher, social worker and any other relevant person.

After gathering the necessary information, the probation officer writes the Social Survey report / Pre-Punitive report, after which it is submitted to the institution which has requested it.

The procedure that is developed by the probation officer for the gathering of information, the report writing and the deadline for the completion of the social survey / pre-punitive report must be conducted within three weeks of receiving the request.

5.3.3 The role of the Probation Service Officer at the trial

At the invitation of the court, the probation officer (case manager) participates in the trial held for the juvenile. On this occasion, during the trial, the probation officer presents his view on the possibilities of re-socialization of the juvenile, offering and justifying any information that may be important in relation to the decision taken for that juvenile.

5.3.4 Execution of Diversion Measures

After rendering a ruling from the prosecution office or the court on the execution of the relevant diversity measure, the Probation Officer performs the following actions: prepares the plan for the execution of the measures which involves the contact with the juvenile and his parents and other parties involved depending on the imposed diversion measures (such as the injured party, school, institution where community service work can be performed, Vocational Training Centre, psychologist, driving school, etc..). After the execution of the diversion measure, the case manager prepares a final report for the prosecution office or the court.

In cases where the juvenile fails to meet its obligations according to the ruling of the prosecution office or the court, the probation officer shall make a report for the non-execution of the diversion measure, in which he will describe the reasons for its non-execution and where did the juvenile fail.

However, in cases where despite the willingness and readiness of the juvenile to perform the obligations, for other reasons fails to execute certain measures of diversion, the probation officer made a report to the prosecution office or the court, which shall give the reasons for the omission of the measure and will require the replacement with another diversion applicable measures, or even to consider the imposed measure as completed.

5.3.5 Execution of Educational Measures

In cases where the court imposes these measures and orders the Probation Service, the Probation Officer visits the family of the juvenile, contact the juvenile and his family, the school, CSW, the police, the community, etc. in order to better fulfill the obligations arising from the ruling, as well as providing more efficient service to the juvenile.

Fulfilling these obligations and the execution of supervision measure will be checked regularly by the probation officer, which depending on the request of the court is obliged to report on the progress in the execution of this measure. Even in cases of failure to fulfill the special obligation and the difficulties in the execution of this measure, the probation officer shall without delay inform the court.

5.3.6 Review, replacement and termination of educational measures

In cases where the juvenile judge during a visit to the institution where a measure is executed, notices irregularities in the treatment of the juveniles and informs the Probation Service for such a thing, the responsible probation officer, visits the correctional facility (Correctional Centre) where he contacts the responsible persons of the institution, officials which are responsible for the case and for the juvenile itself. According to the information received, the probation officer makes a report to the competent court in which he also proposes the appropriate measures in order to eliminate these irregularities.

Also, the Probation Service, respectively the responsible probation officer, depending on the progress of the execution of the measure, as well as other information may request the competent court to review the execution of the educational measure.

5.3.7 Execution of the order for community service work

After rendering the decision by the Court, the Probation Officer contacts with the juvenile and his family and the institution where the work will be performed free of charge.

The elected institution and the type of work to be performed by the juvenile must be in accordance with psycho-physical capabilities of the juvenile. The head of the institution where the work will be performed assigns a responsible person which will supervise the juvenile during the time he is there, which together with the juvenile will track of hours performed by the minor regularly. Also, regularly the probation officer will contact with the responsible person for the course of work performance and occasionally will visit the juvenile at the institution to see closely the progress of the work.

During the execution of OCSW in case the difficulties arise in the institution where the juvenile has started to perform the work, the Probation Officer should change the institution where the juvenile is performing the work. For the successful or partial execution, as well as for the non-execution of this order, the Probation Service does a written report to the court.

5.3.8 Post-Criminal Assistance – after release care

While the institutional educational measures or the juvenile imprisonment is executed, the probation officer (case manager) maintains contacts with the minor, the family and the institution where he is located through participation in the "Case Management Plan and Care after release". This plan is realized in cooperation with responsible persons of the Correctional Center in Lipjan.

During the time the juvenile is an institution, the probation officer contacts the family, the community and various institutions, in order to identify various resources and opportunities which can be exploited by the juvenile after the release and for re-socialization and better re-integration into the society.

After the release of the juvenile from the institution, the probation officer for a specified period (3-6 months) provides support by ensuring continuity of services and activities for the juvenile in the community, depending on the needs and resources identified during the time that the juvenile remained in the institution. For this purpose, the probation officer cooperates with CSW, the school, other institutions and the community.

5.3.9 Execution of Juvenile Conditional Sentence

When the court imposes a conditional sentence on a juvenile and orders the Probation Service for the execution of this sentence, the probation officer contacts the juvenile, parents, the school, CSW and the guardianship authority, relevant institutions and organizations that may be related to the court's decision, in order to develop the individual program of supervision. After the preparation of the program of supervision, the probation officer verifies whether or not the program has been fulfilled, the obligations arising from him to the juvenile and reports regularly to the court which has imposed this sentence.

5.3.10 Execution of compulsory treatment measures

In the case of the imposition of these measures for juveniles by the court and when the court orders the Probation Service, to execute these measures, the probation officer must contact with the juvenile, his parents or his legal guardians, the guardianship authority and the CSW, and the respective health institution in which this measure will be implemented. In cooperation with these institutions the rehabilitation program is prepared.

Probation Service Officer supervises the progress of the rehabilitation program and informs the court about the progress made in every two (2) months.

In cases where the juvenile to whom this measure has been imposed, refuses to cooperate with the Probation Service or for various reasons does not adhere to the rehabilitation program, the probation officer within shortest time must notify the Court.

5.3.11 Supervision of juveniles on conditional release

The Probation Service after receiving a complete file and the decision for conditional release from the conditional release panel begins the supervision of a person released on condition. On this occasion he meets the juvenile, his family and prepares the individual program for his supervision, the fulfillment of which is intended for the integration and socialization of a person released on condition in the community. For this purpose, the probation officer cooperates with schools, CSW and the Guardianship Authority, CVT, employment centers and other relevant institutions, as well as with the community in general.

In order to assess the progress in fulfilling the obligations imposed by the Conditional release panel and those arising from individual program of supervision, the probation officer makes regular reports to the conditional release panel.

In cases where the person released on condition does not cooperate with the Probation Service, fails to fulfill the imposed obligations, the Probation Service Officer has an obligation to notify the conditional release panel with a special report on the proposal to revoke the decision on conditional release.

6. CORRECTIONAL SERVICE

6.1 Role:

Kosovo Correctional Service (KCS) was established on November 05, 1999 initially with the opening of the Pre-Trial Detention Center in Prizren. In May 2000 for the first is recruited the new correctional staff.

The Correctional Service is a functional and advanced service in all areas. This has come as a result of the assistance of the international community since the establishment KCS, in cooperation with all partners of Justice and in constant adaptability with the laws in Kosovo aims to correct and re-socialize the prisoners by respecting their fundamental rights regardless of race, language and religion as well as providing them a safe environment for the staff, the prisoners and the society. In this context, the role of KCS is focused on the responsibility for the management of prisoners, detainees, juveniles according to the applicable laws of Kosovo, as well as to European conventions and other regulations issued in the respective institutions. KCS is responsible for the management of the institutions of different levels of security and supervision of persons under the care of KCS.

6.2 Service Provisions:

6.2.1 Execution of the measure of committal to an educational-correctional institution

The educational measure of committal to an educational-correctional institution shall be executed in an educational-correctional institution established for this purpose. An educational-correctional institution is a correctional facility of the semi-confined type. The competent court shall inform the educational-correctional institution of the date on which the minor shall report and shall serve the final decision along with personal information about the minor collected during the proceedings.

The competent court shall order in writing the minor to report to the educational-correctional institution on a specific day for the execution of the educational measure. The period of time between the receipt of the order and the day of reporting shall be no less than eight days and no more than fifteen (15) days. When the minor is admitted to an educational-correctional institution, his or her identity and the grounds and authority for the educational measure shall first be established and then he or she shall undergo a medical examination within twenty-four (24) hours of arrival.

The name of the minor, the grounds and authority for the educational measure and the date and time of his or her arrival at the correctional facility shall be recorded in a register.

At the educational-correctional center can be sent also juvenile girls but they should be placed in the special sector of women. Besides the division into male and female juveniles

sent that are sent to this center are divided into educational groups in accordance with their age, mental development and other features in accordance with the individualized program.

During the execution of the educational measure the juveniles have the right to attend classes within the center and if for certain subjects there are no classes or educational level at the educational-correctional institution, the juvenile is allowed to go to school outside the correctional educational institution, if such attendance is not detrimental for the execution of the educational measure and the decision is justified by previous advances of the juveniles in education. A minor shall have the right to receive a visit at least once each week for a minimum of one hour by his or her parent, adoptive parent, guardian, spouse, child, adopted child, and other relatives by blood in a direct line or in a collateral line to the fourth degree. A minor has the right to an annual vacation of thirty (30) days which may be taken outside the premises of the educational-correctional institution by the order of Correction institution.

The director of the educational-correctional institution may grant a minor additional leave from the educational-correctional institution on educational, occupational, family and other social grounds for a maximum of fifteen (15) days each year.

The juvenile judge who has the educational measure is obliged to visit the juveniles placed in an institution or center once every six months, and through direct contact with the juveniles and officials who are directly involved in the execution of the institutional educational measure and after reviewing the records of the institution or the center, determine whether juveniles are treated fairly and in accordance with the law, and if the institutional educational measures have been successful. The juvenile judge shall immediately inform the competent Probation Service and the institution or the center that executes the institutional educational measure for any remark.

The competent court that has imposed an educational measure shall review the execution of an educational measure every six (6) months. The juvenile his or her parent, the adoptive parent or the guardian, the centre, the institution or the facility where the educational measure is executed or the Probation Service may request a review of the execution of this educational measure. If the execution of an educational measure has not commenced within one (1) year from the date on which the decision imposing the measure becomes final, the court shall review the decision and decide whether to execute or to terminate the measure or to substitute it with another educational measure.

6.3 Key responsibilities:

KCS, in cooperation with all partners of justice and in constant adaptability with the laws in Kosovo intended to correct and re-socialize prisoners by respecting their fundamental rights regardless of race, language and religion as well as providing a safe environment for staff, the prisoners and the society.

6.3.1 Execution of juvenile imprisonment

The provisions of the Law on Execution of Criminal Sanctions for the execution of the sentence of imprisonment shall apply accordingly to the execution of a sentence of imprisonment for juveniles in cases when they are not in line with the rules of JJC. During the detention period, juveniles are offered appropriate professional training based on their knowledge, skills, interests and work that is performed, depending on the possibilities of the correctional institution.

Basis of treatment include educational useful work with the appropriate reward, facilitating and encouraging contacts between the juveniles and the outside world through letters, phone, receiving visits, home visits, sports activities and providing the necessary conditions for performing religious rituals. Detention for juveniles is held in the juvenile correctional institution and, in exceptional cases, in separate departments of correctional facility for adults.

The Juvenile Correctional Institution is a semi-open and open type. Exceptionally the juveniles can carry a sentence of imprisonment for juveniles in the correctional confined institution.

7. MEDIATION

7.1 Role

The Mediation Commission is the highest decision-making organ of mediation established by the Ministry of Justice under Article 17 of the Law on Mediation no.03/L-057 of the date 18.09.2008. The duties and responsibilities of the Commission derive from the Law on Mediation. The activity of the Commission is based on the principles of legality, collegiality, independence, professionalism, impartiality and transparency.

Mediation is an alternative way of resolving the conflict in which a third party that is neutral and impartial (mediator) helps the parties in dispute to reach an agreement acceptable to all.

The mediator is a neutral third party authorized to mediate between the two parties in order to resolve disputes in accordance with the principles of mediation. Principles of mediation are: The expression of will, equality of the parties in the procedure, impartiality, confidentiality and credibility and urgency.

Mediation procedure is conducted by the mediator who is a natural person who meets all the requirements set by the Law on Mediation and is registered in the register of mediators.

The mediation process supports the Justice system in Kosovo, reduces the number of pending cases, affects in the simplification of the procedure, its acceleration, lowering the costs and regulates relations between the parties.

7.2. Service Provisions

In accordance with the provisions of the Juvenile Justice Code and the Law on Mediation, the mediation procedure can be applied only when there is free will and participation of both parties the juvenile perpetrator and the injured party.

Mediation as an alternative of dispute resolution to a juvenile may be proposed by the prosecutor, the juvenile judge or juvenile panel if it considers that it would be more appropriate taking into consideration the nature of the offense, the circumstances under which the offense was committed, the criminal history of the juvenile, the possibility of the return of normal relations between the juvenile and the injured party, the possibility of reducing the damage to the injured party, the possibility of juvenile rehabilitation and re-integration in society.

Mediation may be suggested at any stage of the judicial procedure.

Cases that may be preceded to mediation are:

- cases in dispute relations in property - legal relations subject to law

- commercial;
- family;
- labour;
- other civil reports;
- administrative; and
- criminal;

Each law has its provisions such as criminal law cases which may be referred to mediation are those cases where punishable with imprisonment up to 3 years or a fine.

7.3 Key responsibilities

7.3.1 Referral procedure

The mediator facilitates communication between the parties by creating safe space in which the parties can freely express their feelings, needs and interests. It is very important that each party to tell its story on the event in the past. There should be an explanation on everything that has led to misunderstandings, insults and injuries in order to reshape and correct their relations in the future.

The mediator in a constructive way leads the mediation session between the parties by ensuring that the conversations turns back on the right track, to express wishes and needs, to understand different viewpoints and perspectives, through which new possible solution can emerge on the horizon.

- Before the parties go to mediation proceedings, the prosecutor or the juvenile judge shall notify the parties to the mediation principles and rules, as well as for the process and the legal effects of any agreement reached through mediation in accordance with the Law on Mediation.
- After the parties agree that their case should be resolved through mediation, the prosecutor or the juvenile judge shall suspend the case and will complement the prosecutors or courts order to refer the case into the Mediation Centre.
- The prosecution or court officer will immediately submit the order, together with a copy of the claim to the Mediation Center.
- Mediation Center Administrator is responsible to contact with the parties and the mediator to schedule the first session.
- After getting notified on the mediation process, roles and responsibilities, the parties sign an agreement to initiate the mediation procedure.
- The date on which the mediation agreement is signed will be considered as the date of the commencement of the mediation procedure.
- If mediation is not completed during the first session then other sessions will be held while the procedure is completed. The Mediation Center will reconfirm such sessions

with the parties and the mediator, and will make all efforts to ensure that the mediation procedure will be completed within 90 days.

- When the parties reach an agreement on the settlement of their dispute, the mediator will prepare a mediated settlement agreement, which shall be signed by the juvenile, the parent or the guardian, the damaged party and the mediator. This agreement formally is sent to the prosecutor, the judge or the juvenile panel, which by a ruling may interrupt the proceedings and notify the parties regarding their decision.
- If the prosecutor or the juvenile judge approves the mediated agreement, the agreement wins an executive title and is executed in accordance with the applicable law.
- If the parties fail to reach an agreement on the settlement of the dispute, the mediator will prepare a report on the failure of the dispute and will report to the prosecutor or the judge.
- The responsible officer of the court or prosecution shall submit a copy of the decision to the mediation center.
- Courts, Prosecution Offices and Mediation Centers will maintain the confidentiality of mediation and will seal all documents belonging to a mediation process.
- Juvenile mediation procedure is free of charge for the parties. Costs of the procedure, including payment for the mediator shall be paid by the Kosovo Judicial Council or by the Kosovo Prosecutorial Council.

7.3.2 Conclusion of the Mediation Procedure

- If the parties agree with the consensus, the agreement becomes in a writing form and is signed in four copies: two for the parties, one for submission to the court or prosecution office and a copy is kept in the Mediation Center.
- The agreement signed by the juvenile, the parent or his guardian, the damaged party and the mediator.
- If within 90 days no agreement is reached through mediation, the case goes back to the prosecution office or to the court.
- The mediation procedure ends when the mediator does not consider as necessary to continue further or when the parties declare that they wish to terminate the mediation procedure.
- The mediator shall keep confidential all information collected during the mediation process, or associated with the mediation, including the fact that the mediation will be or has been done, excluding cases when obliged by law or public policy. Any information that has been given to the mediator in trust by one party should not be shared with other parties without permission, unless it is obliged by law.

7.3.3 Mediators file

Mediation Center and the responsible officer of the competent court shall keep the following documents in the file of mediation for each subject:

- a. Court order for the referral of the case to the Mediation Center;

- b. A copy of the original file of the case (only the lawsuit and the response to the lawsuit);
- c. The agreement of the parties for mediation and the selection of mediators;
- d. Mediated settlement agreement, or;
- e. The report on the achievement of the settlement of the object of agreement if applicable; and
- f. The court decision on the settlement of the dispute through mediation/executive document (notice of the execution by the court).

7.3.4 List of Mediation Centers

- Mediation Center in Prishtina;
- Mediation Center in Gjilan;
- Mediation Center in Ferizaj;
- Mediation Center in Gjakova; and
- Mediation Center in Peja

8. CHAMBER OF ADVOCATES

8.1.Role:

The advocate plays an important role when the case can be dismissed or may not commence. It should identify all possible cases cited below and negotiate with the prosecutor for all the options to make it possible for the prosecution to appreciate the circumstances in favor of the juvenile. In circumstances where a crime suspicion falls on a juvenile, the advocate, if necessary, should highlight the fact that there are no doubts that the juvenile to have committed the offense. A lawyer should keep in mind that criminal legislation makes a distinction regarding the qualification of the evidence and evidence proof between the accused juveniles and adults, predicting that for adults is required a "reasonable doubt" as for the juveniles "ground suspicion". Despite the lack of the Kosovar doctrine in this regard, with a literary interpretation, it seems that the legislator wanted to establish a higher standard of evidence to initiate criminal proceedings for juveniles by putting "grounded suspicion". In this context the doubt, in order to be based, should be based on evidence, otherwise the "reasonable suspicion" which can rely on indications including accidental evidences or those circumstantial evidence or even the suspicion itself because of interpretation of circumstances. Note that this level of different evidence proof appears only as such in relation with the initiation of the proceedings and not of the process, since evidence proof in criminal proceedings has as a basic standard the "beyond any reasonable doubt". This even though is not stated explicitly, it can be inferred from the provisions of the Code of Criminal Procedure.

8.2 Service Provisions:

8.2.1 The right of the defender in relation to his client defendant

The law provides that the guarantee of only the rights of the suspect/defendant is not sufficient to guarantee the exercise of rights. Consequently, the same rights law has provided also to the defense counsel. This is accomplished by enabling free and secret contacts between the defendant and the advocate. The rights of the defenders are realized by ensuring to him the preliminary reports when investigative actions must be conducted (questions/checks/inspection, etc.). Another right of defense is the ability to watch and issue copies of all other documents related to investigative actions (motions, evidence, analysis, minutes seizures, etc.) after the completion of the investigation. So any documents which is related to the trial of the case.

Accusatory system ensures the equality of the parties. This principle is realized by enabling the defense not only to challenge the prosecutor's evidence, but also to require the taking of evidence in favor of the defendant. The advocate must justify the need for evidence regarding specific proceeding. Therefore not every request to obtain evidence is considered a *priori*. The decision of the prosecutor can be appealed.

8.2.2 Dealing with children

The relationship between the lawyer and juvenile client is essential for a more effective representation. In this context, not infrequently happens that law practitioners do not pay attention and consideration to their juvenile clients. Sometimes even the best lawyers find themselves prepared and trained to focus only on "high interest" of the child and his standards and neglect the common approach of legal protection. They should bear in mind that only through counseling and effective protection, children exercise their rights. In this context, the function of the defense counsel is to make known the child's position, wishes and opinions.

8.3 Key Responsibilities:

8.3.1 Examination by the police

The defense counsel shall make objections and try to avoid:

- Double sided and unclear question
- Making assumptions before the question and it does not matter if the assumption is true or false, since what is important is related to the fact that it leads to a predicted response.
- Asking questions, which include difficult words or slang; this is not recommended in cases when dealing with juvenile issues. The only case where their use is permitted is when the defendant has the same concept of the term as well as you.
- Leading questions: for example: Suppose that you know the meaning of the word "empathy"?
- Although many people may answer "no" the question itself leads to giving an answer "Yes".
- Ask questions that include both negatives: for example: "Don't you think that not many people know the meaning of the word "empathy"? In such a case it is unclear what means a "No" or "Yes" response.
- Presumptive questions: for example: "Tell me everything you know about these people and how they are persuaded to act in this way?"

In this case, the one that interrogates uses undefined terms such as "influence" and "in this regard" and the lawyer should make objections regarding presumptions included in these questions.

8.3.2 Risks/Difficulties with the youth during the examination

The defense counsel should consider the following risks when dealing with issues of youth in conflict with the law:

Juveniles are often unable to assert themselves and to challenge adults; this is the reason why they answer questions like the adults want and this is valid even if the question is made by the defense counsel. In any case, the lawyer should inform the juvenile about what he expects from him to say. The suspected juvenile should be encouraged to give his opinion as he is examined by the lawyer. This is achieved by ensuring the juvenile that you, as his lawyer are only interested in what he thinks and that there is no right or wrong answers.

The defense counsel should avoid any form of questions that sounds like a test for the juvenile. This makes the juvenile to remain silent or not to give answers that are expected from him. Another risk relates to the fact that the juveniles often tend to answer “yes”, regardless of the question and what they think. In order to avoid this problem, it is very important the wording of the question itself, for example, “Would you do this?” can be phrased “How would you feel if you would do this?”

In addition to the above, the juveniles often prefer to respond with “I do not know”. The reasons why they answer like this are:

- Because they do not understand the question as a concept and/or the vocabulary used;
- Because they think that you expect them not to know the answer;
- Because they do not know much about the question that is made to them.

In this context the answer “I don’t know” needs to be carefully evaluated.

Juveniles can become quickly confused and easily lose their focus. They may consider it as a waste of time and as not important and useless the information that is required. You as a defense counsel must ensure that the interview is conducted in a peaceful place and devoid of strong emotions. These conditions help the juvenile to focus.

You should not assume from the suspected juvenile to have a constant concentration and good responses even if they are in optimum condition. Therefore, it is important for the process of the examination not to be too long. The length of the examination process makes the juvenile confused in and influences him to give inaccurate information. You, as a lawyer should inform all those who take part in the examination process that the normal duration is of an examination is 1 hour to 1 ½ hours. Extension beyond this period is a violation of the rights of the juvenile.

The juveniles tend to interpret the questions word by word. Therefore, you should avoid the metaphors, analogies etc. The question should be formulated in that way so it’s understandable for the juvenile.

The priorities of the juvenile are different from those of adults. They may not understand the rules of an examination where the examiner asks questions and the interviewee responds. If

the juvenile is involved in the vastness of the "why", the best strategy is the deconcentration and reorientation of their attention by opening another topic.

The juveniles interpret the actions of others based on the characteristics and emotional terms. The juveniles find it difficult to see the world through the eyes of others, and for this reason it is important that both the examiner and the lawyer to recognize the developing aspects of the child. For example: the question that is addressed to the the juvenile is "Why did your friend shot you?" And he replies, "Because he was upset". In this case it is important to verify if he responds in this way because of the affection he has for his friend trying to justify him, or because he knows exactly how his friend usually reacts when he is in this situation.

References:

Constitution of Kosovo;

United Nations Conventions on Children's Rights (adopted and opened for signature, ratification and accession to the General Assembly resolution no. 44/25 of 20 November 1989, and which entered into force in accordance with Article 49 on 2 September 1990);

Juvenile Justice Code;

Code of Criminal Procedure;

Law on Social Services;

Law on Regular Courts, Official Journal of the KSAK-së;

Law on Courts;

Law on the Execution of Criminal Sanctions: and

Law on Mediation

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