

Diversity Measures

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Introduction

Diversity measures are a type of non-criminal measures foreseen in the Chapter IV of the Code of Juvenile Justice, which may be imposed on juvenile perpetrators of criminal acts.

These measures can be applied in cases of minor offenses, for which is foreseen the criminal sanction with a fine or imprisonment up to three years or for criminal offenses committed by negligence for which is foreseen the sentence up to five years of imprisonment, except those cases that result in death.

With the imposition of these measures is intended to prevent criminal proceedings against juveniles whenever is possible, rehabilitation and reintegration of juvenile in his/her community and the prevention of recidivist behaviour.

Competent authority to impose them is the public prosecutor, the juvenile judge and juvenile court. And they are executed by the Kosovo Correctional Service.

1. The object of study

The object of study for this scientific paper is the diversity measures envisaged by the Code of Juvenile Justice. In this paper will be addressed the theoretical aspects and their implementation in the practice of the Kosovo judiciary.

In terms of criminal-legal doctrine the object of study is the definition of diversity measures, types, conditions under which they are imposed, their legal purpose, procedure and competence of imposition, and their execution.

While in terms of judicial practice, the object of study is the imposition of measures by the Judiciary of Kosovo and the execution by the Kosovo Correctional Service.

2. Scope of study

The reason for addressing the issue of “Measures of diversity” is that these measures are a type of non-criminal measures that under Kosovo's criminal justice are foreseen for the first time. First, Juvenile Criminal Law of Kosovo, which was adopted on 20th of April 2004, and then was followed with some minor amendments in the Code of Juvenile Justice, which was adopted on 8th of July 2010.

Therefore I consider that addressing this issue presents an interest of studying in the field of criminal juvenile justice, in terms of legal-criminal theory regarding the application in the judicial practice of Kosovo.

Given the fact that these measures present a novice in criminal juvenile justice, I think their treatment through this study in a modest manner will contribute to the legal-criminal theory and practice of criminal juvenile justice in the country. Moreover, it will add value given the fact there is no scientific work undertaken so far in this direction.

3. Methods of study

Methods which are applied to study this topic are as follows: legal methods, historical methods, statistical methods and methods of comparison.

4. Paper Structure

Structure of the paper of master thesis, besides the introductory section it also contains three chapters, conclusion and literature that is used.

In the first chapter of this paper is discussed the concept of juvenile delinquency, historical development of measures and sentences in Kosovo, and the position of juvenile perpetrators of criminal acts in contemporary criminal law.

Second chapter addresses the types of measures and sentences which may be imposed on minor perpetrators of criminal offenses specified under the Code of Juvenile Justice. This chapter is divided into two parts. The first part addresses the descriptive types of measures and sentences which are imposed on minor offenders of criminal acts. While the second part comprehensively addresses the diversity measures.

In the last third chapter is addressed the imposition procedure and execution of diversity measures. This chapter is divided into two parts. The first part deals with the procedure and competence of the imposition of measures of diversity. While the second part has to do with the execution of measures of diversity, the role of the Kosovo Correctional Service in their

execution, reporting about the course execution to the body which has imposed them and the cooperation of this institution with other public organizations regarding execution of these measures.

The conclusion of this study includes the main findings regarding diversity measures and their implementation by the judiciary of Kosovo.

At the end of the paper are given the sources used during the study of this issue starting with books and other university publications.

JUVENILE DELIQUENCY

1. Notion of Juvenile Delinquency

Minors represent a special category of criminal law, who during their biological, psychological and social development can appear as perpetrators of various criminal offenses in overall crime of a country. It is of concern the fact their participation in overall crime after the World War II is growing and in some developing countries with high economic-social development has reached up to 20%¹. It is growing especially the juvenile delinquency and recidivism, but the recidivism of juveniles in committing serious criminal offenses is being increased highly, such as acts of violence and organized crime. Thus, the greater likelihood for recidivism appears among a person who has committed a criminal act.²

Minor offenders do not differ much from the adults about the types and forms of criminal conduct, but differ in that that at the time of committing the crime they are in a sensitive stage in the development of their personality, during which stage they are not able to understand and control their actions. The ways of responding of society in relation to perpetrators of criminal acts can positively or negatively affect the development of their personality. Thus, in order not to stigmatize and label them, and the tendency of society in the future that they will be its useful members, their antisocial actions in criminal-legal literature are called delinquency of minors.

The term delinquency means all actions and behaviours which with positive legal provisions of a country are forbidden, which are names as an infringement. These actions and behaviour present concrete breach and violation of some positive legal norms, which may be of criminal, offense,

¹ Salihu, Ismet, *Criminal Juvenile Law*, Prishtina, 2005, pg. 11.

² Kambovski, Vllado, *Criminal Law, General Part, translation into Albanian Afrim Osmani, Ismail Zejneli, Shkup, 2006, pg. 1081.*

economic and disciplinary nature, so these negative antisocial and criminal acts committed by juveniles are often referred to as juvenile delinquency.³

In criminal and legal theory exist different opinions about the notion of juvenile delinquency, but in this respect its narrow and broader concept finds greater space. According to this notion narrow concept includes only behaviour that is defined as criminal offense. This is prevailing concept in many European jurisdictions. While the general concept of the notion of juvenile delinquency is fabricated with the evolution of juvenile criminal justice, towards the idea of education and improvement through educational measures, which includes behaviour that have violation character of other provisions as are: offenses, civil offenses and antisocial behaviour, which are not stipulated as a criminal act.⁴

The provisions of the Code of Juvenile Justice closely accept the notion of juvenile delinquency.

2. History of measures and sentences imposed on minors in Kosovo and their legal categorization

Juveniles throughout the historical development of criminal justice have had special treatment compared with adults in the case of committing a criminal act, which treatment enjoyed also the juveniles in Kosovo during the historical development of criminal law provisions.

According to Albanian customary law, perpetrator of criminal act was treated a person can carry a gun, such a person was considered to be 12-15 year-old, under which age he/she was considered irresponsible. Albanian customary law had failed to make the separation of minors in special categories, and had failed to set out measures and sentences against juvenile crime offenders and other ways, otherwise from sentences foreseen for adult offenders.⁵

After collapse of the Ottoman Empire, Albania declared independence in 1912 and Kosovo and other Albanian territories were occupied by Yugoslavia, which that time was called Kingdom of Serbs, Croats and Slovenes.⁶

The Criminal Law of Kingdom of Yugoslavia in 1929, the juveniles were considered persons aged 14-21 years, and they were divided in two categories. The first category were called young people aged 14-17 years,

³ Halili, Ragip, *Criminology*, Prishtina, 2002, pg. 21.

⁴ Kambovski, Vllado, *Cited Act*, pg. 1084.

⁵ Hajdari, Azem, *Criminal Procedure Law for Juveniles*, Prishtina, 2005, pg. 26-27.

⁶ Salihu, Ismet, *Cited Act*, pg. 17.

against whom could be imposed special educational measures, and sanctions only if they were recidivist. The second category consisted of juveniles aged 17-21 years, against whom could be probably imposed the sentence, provided that specific provisions related to individualization should be taken into account.⁷

The Law on the Punishment Types of 1945 and after its amendments in 1946 provided that against the minors over the age 14 can be imposed primarily educational measures, whereas juveniles older than 16 years were subject to other sentences as were death penalty, deprivation of liberty with forced labour for a period of 6 months to 20 years, forced removal from residence, etc...⁸

Criminal Code of 1947 of the former Yugoslavia, juveniles were divided into minor irresponsible and minors responsible for criminal act. Irresponsible minors were considered persons under age 14 who were not responsible for criminal act committed, and were sent to parents or custody bodies in order to apply educational measures against them. Minors of age 14-18 were considered responsible for criminal act committed and against them could be imposed all sentences as on adults, with exemption of death penalty and deprivation of liberty with forced labour for life, whereas in the case of the imposition of other sentences of this category minors enjoyed facilitated circumstances.⁹

Trends in the application of educational measures are more highlighted in the Criminal Code of the 1951 of the former Yugoslavia, which measures were imposed to the irresponsible juveniles, whereas against the responsible juveniles excepts educational measures there were applied also sentences depending on the criminal offense committed.¹⁰

In 1977 the Criminal Law of the Socialist Federal Republic of Yugoslavia was issued, which contained the basic principles of criminal-legal treatment of juvenile perpetrators of criminal acts and determined the types of educational measures and criminal sanctions that may be imposed on juvenile delinquents, and criminal laws of socialist republics and social provinces regulated the issues of conditions which must be met in order for the court to impose disciplinary measures, educational measures and juvenile imprisonment, which provisions were provided in the Kosovo Criminal Law in 1977.¹¹

According to the criminal legislation of 1977 responsible for the criminal offense were considered persons who have reached the age 14. The juveniles

⁷ Latifi, Vesel, *Criminality of minor delinquency*, Prishtina, 1982, pg. 47.

⁸ Ibid pg. 47.

⁹ Ibid pg. 48.

¹⁰ Ibid , pg. 48.

¹¹ Salihu, Ismet, *Cited Act*, pg. 19.

then were categorized into two categories. The first category consisted of the juvenile of 14-16 years old, to whom can be imposed only educational measures and no penalties, regardless of the criminal offense committed.

The second category consisted of the juvenile 16-18 years old, against whom the educational measures can be imposed in principle except in cases prescribed by law and the special punishment for juveniles, which was called juvenile prison. Besides these two categories of juveniles there was another category recognized of age 18-21 called young adults, against whom could be imposed educational measures if the court deemed that even though the person has reached adulthood at the time of the offense crime committed, he/she had not reached the necessary psychic maturity, concluding that in these cases even with the imposition of educational measures the goal of punishment will be achieved.¹²

Criminal legislation of 1977 has been in force in Kosovo¹³ until the promulgation of the Juvenile Criminal Law of Kosovo, which was approved on 20 April 2004 by Special Representative of the United Nations in Kosovo and because the emergency has entered into force on the same day.

With the Juvenile Criminal Law for the first time in Kosovo the criminal law for minors was regulated by special law, and this solution was in harmony with the contemporary concept of criminal law. A law which contains provisions of material criminal law character, and character procedural and enforcement of criminal sanctions

Persons who have not reached the age of 14 at the time of the criminal act committed, according to positive criminal law of Kosovo are not considered responsible for committing the criminal act¹⁴ and the child under age 14, court proceedings shall not start, and any court proceedings that has started shall be terminated immediately and custody body shall be notified by the prosecutor about the case.¹⁵

Persons between the age 14-18 are considered minors¹⁶ and are divided into two categories. In the first category fall juveniles aged 14-16 who are called the young adults, to which category may be imposed only diversity measures and educational measures and never sentence.¹⁷ While in the second category fall juveniles of age 16-18 who are called minor adults that can be

¹² Salihu, Ismet, *Criminal Law, General Part*, Prishtina, 1995, pg. 427-428.

¹³ UNMIK Regulation 24/99, on Law in Force in Kosovo.

¹⁴ Kosovo Criminal Code, article 11, par. 2.

¹⁵ Kosovo Criminal Law for Juveniles, article 38.

¹⁶ *Ibid*, art. 2, par. 2.

¹⁷ Salihu, Ismet, *Cited Act*, pg. 31.

subject to measures in principle, but in certain cases provided for by law also the sanctions can be imposed against them.¹⁸

Juvenile criminal law recognizes another category of persons aged 18-21, called the young adults¹⁹, who although have reached adulthood the court may impose measures and penalties against them set forth in Criminal Law for Juveniles, if it deems that the purpose that could be achieved by imposing detention will also be achieved by imposing the measure or punishment, taking into account the circumstances under which the crime was committed, expert opinion on the psychological development of young adult and his best interest²⁰.

On 8th of July 2010 the Assembly of Kosovo approved the Code of Juvenile Justice, which repeals the Juvenile Criminal Law of Kosovo. Also in this code as the in previous one, types of measures and penalties for minors and legal categorization of minors did not changed, except some provisions which regulated the issue of mediation, appointing the juvenile prosecutor, setting duration of the measure of diversity "Carrying out the unpaid community service in accordance with the ability of juvenile offenders to perform such work" and re-structuring and re-systematization of other legal provisions.

3. Position of juvenile perpetrators of criminal acts in contemporary criminal law

The criminal law in general during its historical development has incorporated new legal solutions for juvenile perpetrators of criminal acts, and these solutions are provided in various acts of international criminal justice for juveniles.

In modern criminal law at the spotlight is the interest of juvenile perpetrators of criminal acts. In some criminal legislation in the developed countries the juvenile criminal law is regulated by special laws and for juvenile criminal the juvenile courts were set up. Even in the criminal legislation of Kosovo the juvenile justice is regulated by special law, and in its provisions are provided for prosecutors and juvenile judges who judge criminal cases of juveniles. In this respect the legal status of juvenile perpetrators of criminal acts, now considerably is more favourable compared with previous criminal legislation.

¹⁸ Ibid, pg. 31

¹⁹ Kosovo Criminal Code for Juveniles, article 2, pp. 3.

²⁰ Ibid, article 10 pp. 1.

Code of Juvenile Justice in article 3 has provided the guiding principles, which predicts that the system of juvenile justice seeks the welfare of minors and provides that any reaction against juvenile offenders shall be always in proportion to the circumstances of the offender and the criminal act.²¹

New trends in juvenile justice recommend the principle of changing the formal judicial proceedings into the informal one.²² Code of Juvenile Justice staying in line with contemporary solutions of criminal justice for juveniles, has foreseen the institute of not initiating the preparatory proceedings. This institute is applied for criminal offenses that are punishable with imprisonment for less than three years or a fine and a public prosecutor may decide not to initiate preparatory proceedings even though there is a suspicion that the minor has committed a crime.²³

Also in cases where the preliminary proceedings has already started the public prosecutor may suspend prosecution of the criminal act and impose a measure of diversity, if the conditions of Article 17 of the Code of Juvenile Justice are met.²⁴

Code of Juvenile Justice has defined and a number of measures of diversity and educational measures that may be imposed on minor perpetrators of criminal act, in order to achieve education, rehabilitation and socialization for the minor. These measures recommend Standard Minimum Rules for Non-Punitive Measures (Tokyo Rules, 1990) and United Nations Standard Minimum Rules for the Administration of the Juvenile Justice (Beijing Rules since 1985)

Beijing Rules recommend a variety of measures for establishment of the competent authority, allowing flexibility so as to avoid institutionalization as much as possible,²⁵ a solution that is incorporated in the Code of Juvenile Justice, through the definition of diversity measures that are in accordance with the Tokyo Rules, which recommend that the court shall have at its availability a range of non-punitive measures and the decisions taken in this should take into account the rehabilitation needs of the offenders, protection of society and the interests of victim.²⁶

While the code in force stipulates that deprivation of liberty shall be imposed only as a last resort and it will be limited to the shortest timeline as much as possible. During deprivation of liberty imposed as a sentence, juvenile

²¹ Juvenile Justice Code, article 3, pp. 1.

²² Kambovski, Vllado, *Cited Acts*, page 1139.

²³ Juvenile Justice Code, article 56.

²⁴ *Ibid*, article 52, pp. 1.

²⁵ Beijing Rules, item 18.

²⁶ Tokyo rules, item 8.

offenders shall be offered with educational, psychological, medical assistance as necessary, to facilitate his/her rehabilitation.²⁷

For a minor who is the subject of criminal procedure the Code of Juvenile Justice requires from the authorities or institutions that participate in judicial proceedings, and other persons and institutions from which the reports and opinions are required, to act quickly and without undue delay.²⁸

These provisions set out in the Code of Juvenile Justice in Kosovo are indicators that the juvenile perpetrator of the criminal offense is at the spotlight of criminal procedure and proper treatment throughout its development shall be ensured.

Measures, fines and diversity measures against minors according to the juvenile justice code

I. Measures and fines according to the juvenile justice code

Juvenile Justice Code has provided a wide range of measures and penalties. Therefore, the court has available a large variety of measures and fines that may impose to the offenders of criminal acts through which is intended to achieve as soon as possible and as better as possible the effect of aid towards the minors, improvement, education and re-socialization, in order for that minors to become useful member of the society and not to commit criminal offenses in the future. Therefore, for this category of people the type of sanctions should not depend on the nature of the offense and the degree of responsibility, but on the need of a minor for education, assistance and care, because criminal responsibility of juvenile offenders is more specific than the criminal responsibility of adult persons who have committed criminal offences.²⁹

In the first part of this chapter will be discussed in a descriptive manner the types of measures and sanctions against minors, which are set forth in Article 6 of the Juvenile Justice Code, while in the second part will be discussed in a comprehensive manner the measures of diversity that are the subject of this paper.

²⁷ Juvenile Justice Code, article 3, pp. 3.

²⁸ Ibid, article 40, par. 1.

²⁹ Ukaj, Bajram, Sanksionet penale ndaj të miturve në Ligjin penal për të mitur të Kosovës të vitit 2004, *Revista e Drejta nr.1-2/2008* fq. 98.

1. Measure according to the Juveniles Justice Code

The measures that may be imposed on minors are diversity measures and educational measures.³⁰ The diversity measures will be discussed in the second part of this chapter, whilst the educational measures that is foreseen in the chapter V of the Juveniles Justice Code that is divided into three types: disciplinary measures, measures of intensive supervision and institutional measures.³¹ The first and second measures are included in the group of non-institutional educational measures, while the third type has to do with institutional educational measures.

The disciplinary measures include the following:

- Judicial admonition and
- Committal to a disciplinary center,³²

The additional supervision measures include following:

- Intensive supervision by a parent, adoptive parent or guardian;
- Intensive supervision in another family and
- Intensive supervision by the Guardianship Authority.³³

On the imposing of the additional supervision measure the court may also impose one or more special obligations, if the court determines that it is necessary for the successful execution of the measure, such special obligations are that the minors³⁴:

- To apologize personally to the injured party;
- To compensate for the damage to the injured party, in accordance with the minor's financial situation;
- To attend school regularly
- To accept employment or to receive training for a profession appropriate to his or her abilities or skills;
- To refrain from any form of contact with certain individuals likely to have a negative influence on the minor;
- To accept psychological counseling
- To refrain from frequenting certain places or locations likely to have a negative influence on the minor; and

³⁰ Juvenile Justice Code, article 7, par. 1.

³¹ Ibid, article 20, par. 1.

³² Juvenile Justice Code, article 21 and 22.

³³ Ibid, article 23, 24 and 25.

³⁴ Ibid, article 26, par. 1.

- To abstain from the use of drugs and alcohol.³⁵

Institutional measures include the following:

- Committal to an educational institution;
- Committal to an educational-correctional institution and
- Committal to a special care facility.³⁶

The Juvenile Justice Code has foreseen also the imposing of the measure for mandatory rehabilitation treatment,³⁷ which may be imposed on minors in accordance with Chapter V of the Criminal Code of Kosovo, which criminal offences were committed during a mental disorder, limited mental ability or under effect of drugs and alcohol.

Measures that may be imposed to juvenile offenders who have committed any offense in a mental disorder state or condition of diminished mental capacity are:

- Mandatory psychiatric treatment and custody in a health care institution and
- Mandatory psychiatric treatment at liberty.³⁸

Whilst for the minor that has committed criminal offences, who are dependent on drug or alcohol the court can impose mandatory rehabilitation in a health institute or in freedom.³⁹

2. Fines according to the Juveniles Justice Code

Juvenile Justice Code in addition to setting a number of measures has also envisaged a number of types of major fines, additional fines and alternative fines, which may be imposed on juvenile perpetrators of criminal acts. The main fines that may be imposed on minors are:

- Fines;
- Order for community servile work and
- Juvenile imprisonment.⁴⁰

³⁵ Juveniles Justice Code, article 26, par. 2.

³⁶ Ibid, article 27, 28 and 29.

³⁷ Ibid, article 38, par. 3.

³⁸ UNMIK Regulation, No. 2004/34, on criminal proceedings involving perpetrators with a mental disorder, article 3, par. 3.1.

³⁹ Kosovo Criminal Code, article 77, par. 1 and par. 2.

⁴⁰ Juveniles Justice Code, article 30, 31 and Chapter VII.

While in cases of juvenile offenders when the court considers reasonable, together with the main sentence, may impose punishment in accordance with Articles 54-62 of the Criminal Code of Kosovo,⁴¹ which are:

- Fines;
- Deprivation of the right to elected;
- Prohibition on exercising public administration or public service functions;
- prohibition on exercising a profession, activity or duty;
- prohibition on driving a motor vehicle;
- confiscation of a driver license;
- confiscation;
- order to publish a judgment; and
- Expulsion of a foreigner from the territory of the Republic of Kosovo.⁴²

Also the juvenile justice code has foreseen the possibility that in case when the court imposes a punishment of juvenile imprisonment of up to two years or measure a committal to an educational institution or educational-correction up to two years, the court may impose the suspended sentence in accordance with the Kosovo Criminal Code.⁴³

II. DIVERSITY MEASURES

1. Understanding the diversity measures

Diversity measures are a type of non-criminal measures that are imposed on juvenile offenders for criminal offenses, under the conditions specified in the Code of Juvenile Justice.

Diversity measures can be imposed against the person who committed the criminal offense as young adult, if the court finds that the goal that would have been achieved by imposing detention will also be achieved by imposing the measure.⁴⁴ These measures are mainly foreseen in the contemporary criminal rights, which are also provided in the Criminal Law of Kosovo and are inspired by the Tokyo Rules and philosophy of the provisions of the Rules of Beijing on criminal justice for juveniles.⁴⁵

Prediction of diversity measures in juvenile justice in Kosovo is of great importance in this area, besides its great importance to the issue of regulation

⁴¹ Juvenile Justice Code, article 39.

⁴² Kosovo Criminal Code, article 54, par. 2.

⁴³ Juvenile Justice Code, article 7, par. 5.

⁴⁴ Ibid, article 11, par 1.

⁴⁵ Salihu, Ismet, *Vepra e cituar*, (cited books), page. 33.

of juvenile justice with a special code. These first steps are provided in the Juvenile Criminal Law of Kosovo, by presenting not only an innovation in the country but in the region as well.

Their application to juvenile offenders of criminal offenses, gives the possibility of termination of the preparatory proceedings, thereby impacting on education, not labeling, juvenile's rehabilitation and involving the use of restorative justice⁴⁶ and to prevent recidivist behavior. However, with all the legal reform that was made in Kosovo criminal justice, the minor offences subject matters until recently did not undergo any changes and still in force is the Law on Minor Offences of the year 1979. This law stipulates among other offenses and penalties such as: imprisonment, fines and protective measures.⁴⁷

In this regard it is concluded that the position of the juvenile offender's of a criminal offense is worse than the position of juvenile perpetrators of crime, given the legal fact that a minor who commits the offense may be imposed penalty imprisonment up to 15 days.⁴⁸ Ndërsa në dispozitat e Kodi i Drejtësisë për të Mitur, është e paraparë që ndaj të miturve të cilët nuk i kanë mbushur 16 vjeç, në kohën e kryerjes së veprës penale mund të shqiptohen vetëm masat.⁴⁹ Në këtë kontekst pozita e kryerësve të mitur të veprës së kundërvajtjes, është më e rëndë krahasuar me kryerësit e mitur të veprës penale, edhe pse vepra e kundërvajtjes paraqet nivel shumë më të ultë të rrezikshmërisë shoqërore se sa vepra penale.

In this regard it is concluded that the position of the juvenile offender's of a criminal offense is worse than the position of juvenile perpetrators of crime, given the legal fact that a minor who commits the offense may be imposed penalty imprisonment up to 15 days. While the provisions of the Code of Juvenile Justice, it is anticipated that on minors who have not reached 16 years old at the time of the offense may be imposed only measures. In this context the position of juvenile offenders to work the offense is more serious than minor offenders of crime, although minor work presents much lower level of social risk than the offense.

⁴⁶ Restorative justice is a new approach of criminal justice which is a mixture of punitive justice and restorative justice, which is intended to control the damage caused by the offense through the offense perpetrator, controlling the damages as much as possible, either through compensation, mediation, conciliation between perpetrator and victim and its other forms. On this basis have been conceived a series of alternative sentencing and diversion measures which aim to put in motion this new concept of criminal justice.

⁴⁷ Law on Minor Offences, Chapter II.

⁴⁸ Ibid, article 2.

⁴⁹ Juvenile Justice Code, article 7, par. 3.

2. Purpose of diversity measures

The diversity measures can be applied in all cases when conditions are fulfilled according to the code for imposing such measures. These measures aim to achieve: preventing the commencement of proceedings against a minor offender, to promote the positive rehabilitation and re-integration of the minor into his or her community and thereby prevent recidivist behavior, objectives provided by the Juvenile Justice Code.⁵⁰

Given that juveniles represent a significant category of society, the law has foreseen the possibility that in cases of juvenile offenders of minor offenses not to commence the preparatory proceedings against them, envisioning the possibility of imposing one of eight types of diversity measures, with the intention to protect the juveniles from the unpleasant experiences of the criminal procedure

In this way is required that through diversity measures, which are hereby presented as preliminary measures, to influence the minor to understand that committing a criminal offense presents undertaking an illegal act, which is harmful for the person itself and for the community in general. In this way efforts are undertaken in order to raise awareness of the minors in understanding and controlling actions that he undertakes. All this with the ultimate goal that the minor after committing of the offense, to be rehabilitated and reintegrated as useful and precious member of society and the prohibition of recidivist behavior.

3. Conditions on imposing the diversity measures

Juvenile Justice Code has defined explicitly under which conditions the diversity measures may be imposed, which can be divided into conditions dealing with the offense and the juvenile offender. These conditions, which must be fulfilled cumulatively in the case of imposing one of the types of diversity measures.

As related to the condition for the criminal offences the 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.⁵¹

⁵⁰ Ibid, article 16.

⁵¹ Ibid, article 17, par. 1.

Whilst as related to the minor offender of criminal offences, the diversity measures can be imposed upon an initial fulfillment of the condition for criminal offence, if the minor fulfills the following conditions:

- Acceptance of responsibility by the minor for the criminal offence;
- Expressed readiness by the minor to make peace with the injured party; and
- Consent by the minor, or by the parent, adoptive parent or guardian on behalf of the minor, to perform the diversity measure imposed.⁵²

In meeting these legal requirements, one of the eight types of diversity measures can be imposed upon the minor who has committed a criminal offense, which are competency of the public prosecutor, the juvenile judge or juvenile court. However in fulfilling the full scope of legislation on diversity measures, preferably in all cases, where possible, measures to be imposed by the public prosecutor.

4. Types of diversity measures

The Juvenile Justice Code in article 18 has determined eight diversity measures types, given in the following:

- Mediation between the minor and the injured party, including an apology by the minor to the injured party;
- Mediation between the minor and his or her family;
- Compensation for damage to the injured party, through mutual agreement between the victim, the minor and his or her legal representative, in accordance with the minor's financial situation;
- Regular school attendance;
- Acceptance of employment or training for a profession appropriate to his or her abilities and skills;
- Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work;
- Education in traffic regulations; and
- Psychological counseling.⁵³

⁵² Ibid, article 17, par. 2.

⁵³ Juvenile Justice Code, article 18.

4.1. Mediation between the minor and the injured party, including an apology by the minor to the injured party

This diversity measure has to do with mediation between juvenile offenders of the criminal offence and the injured party, which targets the reconciliation between them, during which act the minor apologizes to the damaged party for the action and the consequences caused.

The diversity measures of meditation can be imposed on minor offenders of the criminal offences whenever it meets the legal requirements for its imposition, with the intention that juvenile understand that the actions taken have committed an act which is illegal, dangerous, harmful to society and sanctioned by law as a criminal offense. With this is aimed that the minor in the future to understand and control his actions and their significance.

The process of mediation for asking for apology with the approval and acceptance of the minor offender of the criminal offense in one hand and the victim of crime on the other hand. Reconciliation between the juvenile and the injured party is done through mediators for reconciliation, which is the probation officer in Kosovo Probation Service. By achieving reconciliation between the juvenile and the injured party, the execution of this diversity measure is conducted.

Juvenile Justice Code has foreseen the apology as separate liability, which may be imposed on a juvenile perpetrator of the offense, along with any of the measures of intensive supervision.

This diversity measure for the period from 2004 to 2009 was imposed on 197 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁵⁴.

4.2. Mediation between the minor and his or her family

Reconciliation between the minor and his family is another type of mediation, provided as sort of a diversity measure. This diversity measure as for the meaning provided by the legal title has to do with reconciliation among juvenile perpetrators of the criminal offense on one side and his family on the other side.

This diversity measure can be imposed in cases where the relationship between the minor and his family members were aggravated after the offense. Through this measure is intended to rebuild the healthy family relations in order for the minor to feel again the warmth of family and continue education

⁵⁴ Newsletter No. 5 of the Probation Services, page. 39

in that social environment, with the aim that in the future such acts would not to be repeated.

Even at this measure the process of reconciliation between the minor and his family is done through the mediator for reconciliation, who is the probation officer in Kosovo Probation Service. Achieving reconciliation between the juvenile and the injured party, the execution of this diversity measure is conducted.

This diversity measure for the period from 2004 to 2009 was imposed on 13 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo.⁵⁵

4.3. Compensation for damage to the injured party, through mutual agreement between the victim, the minor and his or her legal representative, in accordance with the minor's financial situation;

This diversity measure consists in compensation for damage caused by a juvenile perpetrator of the criminal offense. Through this measure is undertaken the cash compensation of damage caused being material or none material, through mutual agreement between the juvenile and his legal representative on one hand and the victim on the other hand, that agreement can be written or verbal. We note that the measure in question provides that compensation for damage is done in accordance with the financial situation of the minor, which implies that the minor must have personal wealth or income. This condition which is based on economic and financial circumstances of juveniles in our country is difficult to meet, but I consider that this measure can be applied, based on financial assistance of the legal representatives of minor. This diversity measure is executed by officials of the Kosovo Probation Service, under an agreement reached between the juvenile and his legal representative and the injured person or legal entities.

Juvenile Justice Code has foreseen this diversity measure as separate liability, which may be imposed on a juvenile perpetrator of the offense, along with any of the measures of intensive supervision.

This diversity measure for the period from 2004 to 2009 was imposed on 65 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo.⁵⁶

⁵⁵ Newsletter No. 5 of the Probation Services, page. 39.

⁵⁶ *Ibid*, page 39.

4.4. Regular school attendance

Regular school attendance is one of the types of diversity measures that may be imposed on juvenile perpetrators of a criminal offence, by which the minor is required to follow the regular attendance of the learning process. This measure may be imposed but not limited to criminal cases that juvenile offender has committed as a result of not following the regular school or in the process of not attending the school.

Regular attendance in school except that it is provided as a diversity measure, it is also envisaged as a kind of special obligation, which may be imposed together with measures of intensive supervision. Juvenile Justice Code did not set any deadline for the duration of this diversity measure, but I think that this measure can continue until the end of the school year in which the minor perpetrator of the criminal offense is attending.

This diversity measure for the period from 2004 to 2009 was imposed on 53 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁵⁷.

4.5. Acceptance of employment or training for a profession appropriate to his or her abilities and skills;

This measure of diversity under the legal designation provides for two forms of it, accepting the employment by the juvenile perpetrators of the criminal offence or training in an adequate profession according to his abilities or skills. The competent authority which imposes this measure can impose one of its alternatives.

The first form or the acceptance of employment has to do with providing employment for the minor and is imposed on the consent for the work which will be performed, which job should also be consistent with his abilities and skills.

The second form of this measure is to enable an adequate profession. This measure is related to the demand for education, following a course, exercises, lectures or similar exercises by the minor in order to be trained in a particular profession. Also, this measure is imposed with the consent of the minor in accordance with his abilities and skills. I consider that for this form of this measure is necessary that the minor be provided with appropriate certification for the profession in which he was trained. This diversity measure can be imposed on juvenile offenders who show motivation or inclination to work and get trained.

⁵⁷ Ibid, page 39.

This measure is provided as a special form of liability, which may be imposed on juveniles together with any additional supervision measures.

Also for this diversity measure the law has not provided the any deadlines, however I consider that on the imposition of the measure of adequate training for a profession, should last until his proper training and the duration of employment should be provided by the law.

This diversity measure for the period from 2004 to 2009 was imposed on 7 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁵⁸.

4.6. Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work

Performance of unpaid community service work in the Juvenile Justice Code of Kosovo is foreseen as one of the types of diversity measures, which is also foreseen as an alternative fine, which may be imposed on juvenile offenders. The diversity measure for performance of unpaid community service may be imposed on juveniles who have committed several criminal offenses and meet conditions set by law for the imposition of diversity measures.

Community service work is a type of work which must not violate the personal dignity of the juvenile and shall be in accordance with the will of the juvenile to perform such work, which work should also respond to the skills of the minor who has committed the criminal offence. According to the legal name of the measure it is understood that the performed work by the minor is for free, but the performance of such work should be in community service and performed within the public institutions and the general interest of society, according to the decision of the Officer of the Probation Service and responsible institution, in which the minor will perform such work⁵⁹.

As for the other diversity measures also for this measure, Juvenile Criminal Law of Kosovo has not provided any duration. But this issue is regulated by the Code of Juvenile Justice, providing that it may be imposed for duration of 10 to 60 hours⁶⁰.

This diversity measure for the period from 2004 to 2009 was imposed on 216 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁶¹.

⁵⁸ Newsletter No. 5 of the Probation Services, page 39.

⁵⁹ Guidelines on specific measures of diversity, Unicef unite for children, page. 8.

⁶⁰ Juvenile Justice Code, article 18, par. 1.6.

⁶¹ Newsletter No. 5 of the Probation Services, page. 39.

4.7. Education in traffic regulations

Education about the traffic rules is one of the diversity measures through which is requested by the juvenile perpetrator of a criminal offense to gain knowledge on traffic rules.

This diversity measure can be imposed but not limited to cases where juveniles commit criminal offenses as a result of ignorance of traffic rules, but also against other juveniles when it is at their interest know and get educated about traffic regulations, in order to prevent the commission of similar offenses. This measure should include theoretical and practical education about the general road traffic, the education which is performed in the respective institution under agreement with the Officer of the Probation Service⁶².

Even for this measure is not provided the duration, but I consider that should last as long as necessary for the minor to achieve success in the education on traffic rules.

This diversity measure for the period from 2004 to 2009 was imposed on 37 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁶³.

4.8. Psychological counseling

Psychological counseling is the last measure that is provided among the eight types of the diversity measures. This diversity measure is imposed on juveniles who need psychological counseling, when is assessed that the lack of psychological counseling has led to a criminal act, and for minors who do not aforementioned obstacles but are living in conditions that can encourage such actions. By this measure is aimed the prevention of recidivist behavior in the future. With the imposition of this measure the juvenile is obliged to visit the psychologist at a certain intervals of time and accept the implementation of the counseling and treatment given by him.

Psychological counseling should be made by the relevant psychologist based at a psychological clinic based on the hearing appointments scheduled by him, based on agreement with the probation officer of the relevant psychologist⁶⁴. Even for this measure the law has not provided any duration. But I consider that this measure may last as long as necessary to complete the successful psychological counseling for the minors, as assessed by a psychologist.

⁶² Guidelines on specific measures of diversity, Unicef unite for children, page 8.

⁶³ Newsletter No. 5 of the Probation Services, page 39.

⁶⁴ Guidelines on specific measures of diversity, Unicef unite for children, page 10.

Also, this diversity measure as many other measures is foreseen as a special obligation, which may be imposed as sole measure or together with other obligations set forth in the law, on the imposition of the measure of intensive supervision.

This diversity measure for the period from 2004 to 2009 was imposed on 28 juvenile offenders that committed criminal offenses, by the judiciary of Kosovo⁶⁵.

Imposing and executing the measures of diversity by the judiciary in Kosovo for the period 2004-2009

Diversity measures according to the years ⁶⁶	Year 2004/05	Year 2006	Year 2007	Year 2008	Year 2009	From year 2004-09	Executed	Under execution	Rejected
Meditation between the minor and the injured party	3	14	31	68	81	197	177	7	13
Meditation between the minors and his family	-	3	1	6	3	13	13	-	-
Compensation for the damaged party	2	3	1	44	15	65	45	4	16
Regular school attendance	1	9	3	29	11	53	41	4	8
Acceptance of employment or training	-	2	-	2	3	7	5	2	-
Conducting community service works without any pay	31	11	70	4	100	216	186	17	13
Education on traffic rules	-	3	11	10	13	37	33	2	2

⁶⁵ Newsletter No. 5 of the Probation Services, page 39.

⁶⁶ These diversity measures are imposed in accordance with the Criminal Law on Juveniles, which at the period of time was in force.

Physiological counseling	-	2	14	4	8	28	25	1	2
Total	37	47	131	167	234	616	525	37	54

From 2004 to 2009 the Kosovo judiciary has imposed 616 measures of diversity, in the first years after entry into force of the Criminal Law for Juveniles the imposing of measures against juveniles has been very small, but since 2007 the imposition of measures increased significantly, which position is best expressed in year 2009 when 324 measures of diversity were imposed.

Procedure, competency and execution of diversity measures

I. Procedure and competency for imposition of diversity measures

The historical development has shown that the function of criminal procedure is multiple, but its basic function is to protect the society from crime and to protect the citizens, whose rights are affected or threatened by criminal acts. Besides this, the application of criminal procedure must enable the protection of the rights of citizens or of persons suspected of having committed certain criminal offenses⁶⁷. Since juveniles present special category of criminal law and their crime problem area is addressed in a specific way, the Juvenile Justice Code, besides foreseeing the substantial provisions, it also contains procedural provisions which apply to juveniles as well as provisions related to the execution of criminal sanctions. While the provisions of the Criminal Code, Criminal Procedure Code and Law on Execution of Criminal Sanctions apply only if they are not inconsistent with the provisions of the Juvenile Justice Code.⁶⁸

Criminal proceedings against juveniles differ from the criminal proceedings against adults, because besides being guided by basic principles of criminal procedure, it is also known for the determination of some specific principles such as: the principle of ex officio prosecution, the principle of rationale (opportunity) in prosecution, the principle of speed, the principle of representation by an authorized representative or guardian of a minor and the principle of non-publicity during the main hearing and publication of the decision.

⁶⁷ Rexhep Murati, *Revision of criminal proceedings due to new facts and evidences*, Prishtina, 2006, page. 13.

⁶⁸ Ejup Sahiti, *Criminal Procedure Law*, Prishtina, 2005, pg. 255.

Given that the object of study in this paper are the measures of diversity, in this respect we will not address that much the characteristics of the criminal proceedings against a minor, but will be elaborating the procedure and competency of awarding the diversity measures.

1. Procedure for awarding the diversity measures

Prosecution of the juvenile offender is exercised under the principle of officiality. The public prosecutor initiates the preparatory proceedings against a juvenile based on the police criminal report or on other sources if there is a grounded suspicion that the minor has committed a criminal offence. This principle also applies to offenses prosecuted under the proposal of the injured party or private lawsuit. The public prosecutor may initiate criminal proceedings if the proposal was submitted for commencing the proceedings by the damaged party within the period prescribed in the provision of the Kosovo Criminal Procedure Code.⁶⁹

The public prosecutor, after receiving the criminal report, proposal of the damaged party or private lawsuit, estimates whether the elements of the criminal offence figure have been fulfilled, for which there are grounds for suspicion that it was committed by a minor, and in the case of positive assessment he/she takes a decision to start the preparatory proceedings against the minor⁷⁰, an act which is equivalent to the decision of initiating the investigations against adult perpetrators of the criminal offence.⁷¹

For offenses punishable by imprisonment of less than three years or by fine, the public prosecutor may decide not to initiate preparatory proceedings even though there is a grounded suspicion that the minor has committed a crime, if the prosecutor deems that it would not be appropriate to conduct the proceedings against the minor due to the nature of the criminal offense, the circumstances in which it was committed, the lack of serious damage or consequences to the victim, as well as the background of the minor and his/her personal characteristics.

Also when the punishment or the measure is executed against a minor, the public prosecutor may decide not to initiate preparatory proceedings for another criminal offense committed by the minor, if given that the severity of that offense, as well as the punishment or the measure being executed, the conduct of proceedings and awarding of the punishment or the measure for the criminal offence would not serve any purpose⁷². In these cases, even though

⁶⁹ Juvenile Justice Law, Article 55.

⁷⁰ Same source, Article 57.

⁷¹ Ejup Sahiti, *Quoted book*, page 258.

⁷² Juvenile Justice Code, Article 56.

conditions for commencing the preparatory proceedings under the principle of legality have been met, the public prosecutor may not begin the criminal proceedings against the juvenile based on the principle of opportunity.

But even after the preparatory proceedings against the juvenile have commenced, the public prosecutor may suspend the prosecution of the offense and award a diversity measure, if the conditions specified for the imposition of diversity measures have been met. Before deciding on the diversity measure, the prosecutor shall summon the minor, his/her parent, adoptive parent or guardian and his/her protector.⁷³

According to the practice of awarding the diversity measures in the practical work of Kosovo judiciary, in cases when legal requirement for awarding a diversity measure has been met in terms of the committed offense, the public prosecutor shall ask from the Probation Service officials to conduct a social survey on the minor. According to this social survey, if it was found that other determined conditions are met by the juvenile perpetrator for awarding the diversity measures, the preparatory proceedings shall be suspended and the juvenile awarded the adequate diversity measure, taking into account and recommendation made by the Probation Service officer.⁷⁴

While in the cases when legal conditions for the awarding of diversity measures have not been met, the public prosecutor shall submit a reasoned proposal to the juvenile bench to impose an educational measure or punishment.⁷⁵

Upon receiving a reasoned proposal to impose an educational measure or punishment, the juvenile judge checks this proposal prior to sending the case for review before a juvenile bench. If the juvenile judge notes that the conditions have or may be met for imposing the diversity measure, he/she may decide to impose a diversity measure despite the prosecutor's proposal to impose an educational measure or punishment. The juvenile judge, before deciding to impose the diversity measure, shall summon the minor, his/her parent, adoptive parent or guardian and protector. If the juvenile judge decides to impose a diversity measure, any proceeding that is ongoing is dismissed.⁷⁶

In other circumstances, if the juvenile judge considers that the public prosecutor's proposal is appropriate and that there are no legal conditions for imposing the diversity measure, he/she shall determine the trial session within eight days of the receipt of proposal⁷⁷. While the juvenile bench, at any time

⁷³ Same source, Article 52, paragraph 1.

⁷⁴ Kosovo Judicial Institute seminar with the topic Role of public prosecutor in the imposition of diversity measures by the Public Prosecutor, Lirije, Morina, Prishtina 2009.

⁷⁵ Juvenile Justice Code, Article 63 paragraph 1.

⁷⁶ Same source, Article 52, paragraph 2.

⁷⁷ Same source, Article 69, paragraph 2.

during the main hearing against the minor, may dismiss the judicial review proceedings and impose the diversity measure, if the conditions to impose diversity measures have been met.⁷⁸

It is also important to note that the imposition of diversity measures takes place with the ruling.

2. Competency for awarding the diversity measure

The Juvenile Justice Code in its guiding principles has foreseen that juvenile offenders are awarded diversity measures as required⁷⁹; thereby it determined the possibility that at any stage of criminal proceedings diversity measures may be imposed on a minor if the conditions provided for their imposition have been met. The imposition of these measures, as mentioned above, is under the authority of the public prosecutor, the juvenile judge and juvenile bench.

The public prosecutor is the first and the most appropriate authority to impose diversity measures; he/she can suspend the prosecution of the offense and impose a diversity measure, in every case where the conditions for their imposition have been met. In this way, one of the goals of these measures is fulfilled, which aims to prevent whenever possible the commencement of the criminal proceedings against juvenile perpetrators of criminal offences.⁸⁰

From the total of 616 measures imposed in the territory of Kosovo judiciary, in most of the cases the diversity measures were imposed by the public prosecutor. This is an indication that their statutory purpose is being achieved. But despite this, for even more successful application of diversity measures, the juvenile prosecutors must in a way specialize in the field of juvenile delinquency, to recognize the phenomenology and psychology of juvenile criminal delinquents, to recognize the factors and causes of delinquency among minors and also recognize best international practices of juvenile justice, because only this way can they affect the resocialization and the return of these juveniles as decent citizens in the society, which aim must be the goal of any punishment or other diversity measure, which is imposed to a minor.⁸¹

The Juvenile Justice Code has identified the possibility of imposing the diversity measures by the juvenile judge and juvenile bench. The imposition of diversity measures by the juvenile judge comes to expression when receiving a

⁷⁸ Same source, Article 69, paragraph 3.

⁷⁹ Same source, Article 3, paragraph 2.

⁸⁰ Juvenile Justice Code, Article 16.

⁸¹ Valon Murati and Selatin Kllokoqi, *Quoted book*, pg 28.

reasoned proposal by the public prosecutor to award an educational measure or punishment.

II. Execution of diversity measures

After the imposition of diversity measures, a copy of the decision on the imposition of the diversity measure along with other information is sent to the competent authority for the execution of the measure. The body that executes the diversity measures is the Kosovo Probation Service.

This body has started functioning before the enactment of the Juvenile Justice Law, firstly in December 2002 as a pilot project in Prishtina, under the authority of the Criminal Management Division at the Justice Department under UNMIK Pillar I.⁸²

While the scope and powers of this body are defined by the Law on Execution of Criminal Sanctions. This body is also called the Service for execution of alternative sanctions and social reintegration of convicted persons. Duties of the Probation Service shall be as follows:

- To prepare social survey for juvenile perpetrators;
- To supervise and provide assistance to the convicted individuals during the execution of alternative sanctions;
- To supervise and provide assistance to the perpetrators addicted to drugs and alcohol, who are undergoing compulsory rehabilitating treatment which is executed in freedom;
- To supervise and provide assistance to the convicted individuals on parole;
- To instruct and supervise convicted individuals on completing their sentence, and
- Any other tasks as determined by the competent authority in the field of judicial affairs⁸³.

Pursuant to the authority provided by the law, the Kosovo Probation Service has important duties in the process of execution of alternative sanctions and social reintegration of convicted persons⁸⁴, but in this paper we will treat only the role of the Kosovo Probation Service during the criminal procedure against minors and the execution of diversity measures.

⁸² Kosovo Probation Service newsletter of 2007, pg. 3.

⁸³ Law on Execution of Criminal Sanctions, Article 194.

⁸⁴ Rexhep Gashi, "Law on Execution of Criminal Sanctions, legal instrument of great importance for the Kosovo penitentiary system", *Magazine Law No. 1/2005* pg. 59.

1. Role of the Kosovo Probation Service

Kosovo Probation Service carries a key role in the area of execution of diversity measures. In cases when the prosecutor, juvenile judge or the court awards a diversity measure, the ruling and all other information are taken to the competent Probation Service for its execution.⁸⁵ Probation Service Officers, upon receiving the ruling on the imposition of a concrete diversity measure, make plans and preparations for the execution of the diversity measure and selection of competent public body in which the minor will fulfill his/her execution.

Kosovo Probation Service, besides the execution of diversity measures, plays a major role in preparing the social survey⁸⁶ In the course of criminal proceedings against a minor, both before the commencement of the preparatory proceedings and during its development.

Role of the Probation Service before the commencement of the criminal proceedings against a minor is in the cases when public prosecutor decides not to initiate criminal proceedings (based on Article 56 of the Juvenile Justice Code). In these cases the public prosecutor, before deciding not to begin the criminal procedure, may ask from the Probation Service to prepare a social survey on the juvenile. While in cases when the preparatory procedure starts against the juvenile, the Probation Service prepares comprehensive social survey on the minor upon the request of the public prosecutor, the juvenile judge or juvenile bench. Preparation of the social survey is the most emphasized powers of this service during the development of preparatory proceedings. During this phase, the public prosecutor after receiving social survey may adjourn the preparatory proceedings to impose adequate diversity measure.

2. Supervision and reporting on the execution of diversity measures

The body imposing the diversity measures shall supervise its execution⁸⁷, Probation Service officers, after preparing the plan for the execution of the diversity measure and selection of competent public body, have the duty to monitor the execution progress of the diversity measures by the minor. If the minor does not fulfill the order of performing the diversity measure, the Probation Service verifies the facts and reasons for the failure to

⁸⁵ Kosovo Juvenile Justice Code, Article 83, paragraph 1.

⁸⁶ Social survey includes data on the age of the juvenile and psychological development, family biography, background and circumstances that the juvenile lives in, educational level, educational experience, conditions under which criminal offense was commissioned and any other relevant information, (Kosovo Juvenile Justice Code Article 8. paragraph 2).

⁸⁷ Kosovo Juvenile Justice Code, Article 83, paragraph 2.

perform obligation and informs the body that imposed the diversity measure and the competent public prosecutor⁸⁸, regarding the execution or failure to execute the diversity measure by the juvenile perpetrator in the shortest period of time.

3. Cooperation of the Kosovo Probation Service with other public organizations

The Probation Service carries out the execution of diversity measures in cooperation with various public organizations, that it concluded agreements for execution of these measures. Kosovo Probation Service has agreements with a considerable number of organizations throughout the territory of Kosovo, in which juvenile offenders carry out obligations imposed by diversity measures.

With the successful implementation of diversity measures we intend to achieve their legal goal, by helping the minor in positive rehabilitation and reintegration into his/her community and prevention of recidivistic behavior.

In the territory of Kosovo, in a period of 2004 to 2009 according to the information by Kosovo Probation Service, there were 616 diversity measures imposed, of which 525 were executed or 85% of them, 37 or 6% were under execution, while the execution of 54 or 9% of diversity measures was rejected by juveniles.

Conclusion

Governing of juvenile justice by special law in Kosovo has marked a major historical event of criminal justice in the country, since the juvenile justice is for the first time treated separately from the adults' criminal justice. The importance of treating this issue stands in the way that Kosovo after its liberation, is dedicated to the harmonization of legislation according to European Union rules and standards.

The Juvenile Justice Code provides innovative legal solutions which are presented for the first time in the country's legal system. In this context falls also the determination of a new type of measures, namely diversity measures, which present legal innovation not only in the country but also in the region. These measures may be imposed on juvenile perpetrators of criminal offence for which the punishment by fine or imprisonment up to three years is foreseen, or for offenses committed due to negligence for which the punishment includes up to five years of imprisonment, with the exception of

⁸⁸ Same source, Article 83, paragraph 3.

those which lead to death, and are aimed at preventing the criminal proceedings against a minor, positive rehabilitation and reintegration of the juvenile in social community and prevention of recidivistic behavior.

Diversity measures are divided into eight types, for which the Juveniles Justice Law has determined conditions for their imposition, purpose, competency of awarding and execution; but for some of these measures it did not foresee the duration of execution. Therefore I consider that due to the nature and the content of some of the diversity measures such as: regular attendance at school; acceptance of employment or training for an adequate occupation to his/her abilities and skills; education in traffic rules and psychological counseling, the Code should have determined the minimum and maximum duration of their execution.

From the entry into force of the Juvenile Justice Law on 20th April 2004, until 2009, there were 616 diversity measures imposed, out of which the most frequent was the diversity measure "performance of community service work" in 216 cases, and "Mediation between the juvenile perpetrator and the injured party" in 197 cases, but still in small number of cases did the judiciary impose the diversity measure of "Acceptance of employment or training for an adequate occupation appropriate to his/her abilities and skills" in 7 cases, and "Mediation between the juvenile and his/her family" in 13 cases. In this respect I think that these measures should be imposed more frequently, creating conditions for their awarding and execution, either by establishing institutions for execution, continuous training of prosecutors and juvenile judges, and through consultation of judicial practice of municipal public prosecutors and municipal courts in Kosovo.

During the study of this problem area, we have noted that the diversity measures have also their legal goals. One of the goals is the prevention of criminal proceedings against a juvenile. I think that this goal is on a good way towards its fulfillment, since the largest number of measures were imposed by public prosecutors.

I assess that despite some initial hindrances in the imposition of diversity measures in the period between 2004 and 2009, they have nevertheless begun to give their first fruits in achieving legal goals.

Their execution in the practice of Kosovo judiciary has been successful, since in 85% of them, these measures were successfully executed. Reports indicate that the juveniles who have been awarded diversity measures, have come to realize the importance of his/her actions, unlawfulness and social dangerousness of criminal offenses, the consequences they cause, and that they repented for actions they have taken. Therefore I think these minors have achieved positive rehabilitation, reintegration into society and prevention of recidivistic behavior; in this regard I would consider it would be helpful to

adopt the new Law on Minor Offences, to foresee the possibility of imposing diversity measures even to juvenile offenders who commit minor offenses.

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