

Code No. 03/L-193

## JUVENILE JUSTICE CODE

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts

## JUVENILE JUSTICE CODE

### FIRST PART GUIDING PRINCIPLES AND INTRODUCTORY PROVISIONS

#### CHAPTER I

##### Article 1 Purpose of Law

This Code regulates the procedure of imposed and execution of measures and sentence against the minor, court procedure and mediation procedure for the minor.

##### Article 2 Definitions

1. Terms used in this Code shall have the following meanings:

- 1.1. **Child** - a person who is under the age of eighteen (18) years.
- 1.2. **Minor** - a person who is between the ages of fourteen (14) and eighteen (18) years.
- 1.3. **Young juvenile**- a person who is between the ages of fourteen (14) years and sixteen (16) years.
- 1.4. **Adult juvenile**- a person who is between the ages of sixteen (16) years and eighteen (18) years.
- 1.5. **Young adult**- a person who is between the ages of eighteen (18) years and twenty-one (21) years.
- 1.6. **Juvenile**- a child or a young adult.
- 1.7. **Adult** - a person who has reached the age of eighteen (18) years.
- 1.8. **Specialized education** - an educational program tailored to the special needs of the offender to promote his or her overall proper development and reduce the chance of recidivism.

1.9. **Juvenile imprisonment** - a punishment of imprisonment imposed on a minor offender or, in accordance with Chapter IV of the present Code, on an adult.

1.10. **Special care facility** - an institution that provides treatment for a mental, psychological, social or physical disability.

1.11. **Guardianship Authority** - the department operating within the Centre for Social Work that is responsible for the protection of children.

1.12. **Juvenile judge** - 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.

1.13. **Prosecutor for juveniles** - a professional Prosecutor 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.

1.14. **Juvenile panel** - 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.

1.15. **Probation service**- the institution which does the execution of measures and alternative penalties.

### **Article 3 Guiding Principles**

1. 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.

2. Minor offenders shall be considered for diversity measures and educational measures where appropriate.

3. Deprivation from liberty shall be imposed only as a last resort and shall be limited to the shortest possible period of time. During the time of deprivation from liberty imposed as a penalty, a minor offender shall receive educational, psychological and, if necessary, medical assistance to facilitate his or her rehabilitation.

4. A child participating in criminal proceedings shall be given an opportunity to express himself or herself freely.

5. Every minor deprived of liberty shall be treated with humanity for the inherent dignity of the human person, and in a manner which takes into consideration the needs of persons of his or her age. In particular, every minor deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through the correspondence and visits, save in exceptional circumstances as defined by law.

6. Every minor deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before an independent and impartial court, and to prompt proceedings.

7. The child's right to privacy shall be respected at all stages in order to avoid harm being caused to him or her by undue publicity or by the process of labeling. In principle, no information that may lead to the identification of a minor offender shall be published.

**Article 4**  
**Scope of Application**

1. The provisions of the present Code shall apply to any person charged with a criminal offence committed as a minor, regardless of his or her age at the time when proceedings are instituted.
2. The provisions of the present Code shall apply to any person charged with a criminal offence committed as a young adult.
3. When an adult is charged with a criminal offence committed as a minor, Articles 44 and 48 of the present Code shall not apply.

**Article 5**

The provisions of the Criminal Code of Kosovo, the Kosovo Code of Criminal Procedure, the Law on Execution of Penal Sanctions and any other relevant legislation shall apply to minors, unless otherwise regulated by the present Code.

**Article 6**

1. At any time, the juvenile judge may impose appropriate measures to protect the rights and well-being of a child, including placing the child in a shelter or an educational or similar establishment, placing the child under the supervision of the Guardianship Authority or transferring the child to another family, if it is necessary to separate the child from the environment in which he or she has lived or to offer help, assistance, protection or shelter for the child. The juvenile judge shall inform the Guardianship Authority of any measure imposed.
2. The Guardianship Authority or the authorized representative of a child may request a juvenile judge to impose appropriate measures to protect the rights and well-being of the child.
3. The costs of accommodation of the minor shall be paid from budgetary resources and shall be included in the costs of criminal proceedings.

**SECOND PART**

**CHAPTER II**  
**APPLICABLE MEASURES AND PUNISHMENTS**

**Article 7**  
**Measures and punishments applicable to Minors**

1. The measures that may be imposed on minors are diversity measures and educational measures.
2. The punishments that may be imposed on minors are fines, orders for community service work and juvenile imprisonment.
3. Only measures may be imposed on minors who have not reached the age of sixteen (16) years at the time of the commission of a criminal offence.
4. The duration of any imposed measure or punishment must be established in the decision of the court in accordance with the present Code.

5. When the court imposes a punishment of juvenile imprisonment of up to two (2) years or a measure of committal to an educational institution or an educational-correctional institution of up to two (2) years, the court may impose a suspended sentence in accordance with the Kosovo Criminal Code.

6. Apart from the imposition of a measure or punishment, a minor may also be subject to a measure or punishment under Chapter VIII of the present Code.

### **Article 8** **Selection of Applicable Measures and Punishments**

1. When selecting any measure or punishment to be imposed on the minor offender, the court shall give primary consideration to the best interest of the minor. The court shall also consider the following factors: the type and gravity of the criminal offence, the age of the minor, the degree of psychological development, his or her character and aptitudes, the motives that induced him or her to commit the criminal offence, his or her education at that stage, the environment and the circumstances of his or her life, whether any measure or punishment has been previously imposed and other circumstances that may affect the imposition of a measure or punishment.

2. The Probation Service shall prepare a complete social inquiry on the minor upon the request of the public prosecutor, the juvenile judge or the court as provided for in the present Code. The social inquiry shall include information about the minor's age and psychological development, family background, the background and circumstances in which the minor is living, school career, educational experiences, the conditions under which the criminal offence has been committed and any other relevant information.

3. Prior to the selection of any measure or punishment, the court may request from the Probation Service the social inquiry and a recommendation regarding the selection of a measure or punishment.

### **Article 9** **Imposition of measures on a young adult for criminal offences committed as a minor under the age of sixteen (16) years**

1. Court proceedings cannot be conducted against an adult who has reached the age of twenty-one (21) years for a criminal offence committed as a minor under the age of sixteen (16) years.

2. Court proceedings can be conducted against a young adult for a criminal offence committed as a minor under the age of sixteen (16) years only if the criminal offence is punishable by imprisonment of more than five (5) years. In such court proceedings, the court may only impose an appropriate institutional educational measure. The general criteria set forth in Article 8 of the present Code shall be considered, as well as the amount of time that has elapsed since the commission of the criminal offence.

### **Article 10** **Imposition of measures and punishments on an adult for criminal offences committed as a minor who has reached the age of sixteen (16) years**

1. In court proceedings conducted against an adult for a criminal offence committed as a minor who has reached the age of sixteen (16) years, the court may impose a measure or punishment in accordance with Article 7. The general criteria set forth in Article 8 of the present Code shall be considered, as well as the amount of time that has elapsed since the Commission of the criminal offence.

2. As an exception to paragraph 1 of this article, instead of juvenile imprisonment, the court may impose a term of imprisonment or a suspended sentence on an adult who has reached the age of twenty-one (21) years at the time of the court proceedings.

3. As an exception to paragraph 1 of this article, instead of juvenile imprisonment, the court shall impose a term of imprisonment or a suspended sentence on an adult who has reached the age of twenty-three (23) years at the time of the court proceedings under the conditions foreseen by this Code.

**Article 11**  
**Imposition of measures or punishments on a young adult for criminal offences committed as a young adult**

1. In court proceedings conducted against an adult who has not reached the age of twenty-one (21) years for a criminal offence committed as a young adult, the court may impose a measure or punishment in accordance with Article 7, if it determines that the objective that would be achieved by imposing a term of imprisonment would also be achieved by imposing the measure or punishment, considering the circumstances in which the criminal offence was committed, the expert opinion in relation to the psychological development of the young adult and his or her best interest.

2. The measure or punishment which is imposed may only last until the person has reached the age of twenty-three (23) years.

**Article 12**  
**Effect of punishment the educational measure**

1. When the court imposes a sentence of juvenile imprisonment on a minor who has reached the age of sixteen (16) years during the execution of an educational measure, the educational measure shall cease when the minor begins to serve the sentence.

2. When the court imposes a sentence of juvenile imprisonment or imprisonment of at least one (1) year on an adult during the execution of an educational measure, the educational measure shall cease when the perpetrator begins to serve the sentence.

3. When the court imposes a sentence of juvenile imprisonment or imprisonment of less than one (1) year on an adult during the execution of an educational measure, the court shall decide in its judgment whether the educational measure shall continue or be revoked after the sentence of juvenile imprisonment or imprisonment has been served.

**Article 13**  
**Records of measures and punishments**

1. The court shall keep a record of the measures and punishments imposed on a minor. The Probation Service must have a copy of this record.

2. Data on the measures and punishments imposed on a minor shall be confidential. Only the court and the public prosecutor's office may obtain such data when it is necessary for conducting proceedings against the same individual while he or she is still a minor.

3. The records under paragraph 1 of this Article shall be expunged when the person has reached the age of twenty-one (21) years.

4. When a measure or punishment imposed on an adult for a criminal offence committed as a minor is being executed, the record of the measure or punishment shall be expunged immediately upon the termination of the measure or punishment.

## **CHAPTER III MEDIATION**

### **Article 14**

1. The mediation is non-court procedure that is run by third party, the mediator in accordance with provisions of this code and the law on mediation. The mediation can be utilized only when there is a free will and with the participation of both parties, the minor offender and damaged party.
2. Prosecutor, judge for minors or the panel for minors can propose a mediation if estimating that it is more appropriate taking into consideration the nature of the criminal act, the circumstances under which the criminal act was committed, the minor's background, the possibility of the reconciliation between the minor and the damaged party, the possibility of deducting damage of the damaged party, the possibility of his rehabilitation and reintegration in the society.
3. Mediation can be proposed to the parties in a procedure provided that they have expressed their will for mediation.

### **Article 15 Mediator**

1. A mediator is a physical person who fulfills all the requirements determined in the Law on Mediation and is registered in the Mediators' Register.
2. The mediator helps the parties to come to an agreement
3. Dispositions for the dismissal of the judge determined in Kosovo Code of Criminal Procedure are exercised in compliance even for the dismissal of the mediator. No appeal is allowed against this verdict.
4. The dismissal of the mediator can be asked by the minor, his parent, his adoptive parent, tutor, defense attorney, and damaged party.
5. The authority which has chosen the mediator may decide on the request for dismissal.
6. No appeal on the rejection of the request for the dismissal of the mediator is allowed against this ruling.

## **CHAPTER IV DIVERSITY MEASURES**

### **Article 16 Purpose of diversity measures**

The purpose of diversity measures is to prevent, whenever possible, 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.

### **Article 17 Conditions for the imposition of diversity measures**

1. 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.

2. The conditions for the imposition of a diversity measure are:

2.1. Acceptance of responsibility by the minor for the criminal offence;

2.2. Expressed readiness by the minor to make peace with the injured party; and

2.3. Consent by the minor, or by the parent, adoptive parent or guardian on behalf of the minor, to perform the diversity measure imposed.

3. The failure of the minor to perform the obligations of a diversity measure shall be reported promptly to the competent prosecutor who may decide to recommence the prosecution of the case.

### **Article 18 Types of diversity measures**

1. The diversity measures that may be imposed on a minor offender are:

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

1.2. Mediation between the minor and his or her family;

1.3. 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;

1.4. Regular school attendance;

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

1.6. Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work; This measure may be imposed with the approval of the minor offender for a term ten (10) up sixty (60) hours.

1.7. Education in traffic regulations; and

1.8. Psychological counseling.

## **CHAPTER V EDUCATIONAL MEASURES**

### **Article 19 Purpose of educational measures**

The purpose of an educational measure is to contribute to the rehabilitation and proper development of a minor offender, by offering protection and assistance and supervision, by providing education and vocational training and by developing his or her personal responsibility, and thereby to prevent recidivist behavior.

**Article 20**  
**Types and length of educational measures**

1. The types of educational measures that may be imposed on a minor offender are disciplinary measures, measures of intensive supervision and institutional measures.
2. Disciplinary measures are judicial admonition and committal of a minor to a disciplinary centre. These measures are imposed on a minor offender whose best interest is served by a short-term measure, particularly if the criminal offence was committed out of thoughtlessness or carelessness.
3. Measures of intensive supervision are intensive supervision by the parent, adoptive parent or guardian of a minor, intensive supervision in another family and intensive supervision by the Guardianship Authority. These measures are imposed on a minor whose best interest does not require isolation from his or her previous environment and is served by a long-term measure which provides the minor with an opportunity for education, rehabilitation or treatment. The term of this measure may not be less than three months or more than two (2) years.
4. Institutional educational measures are committal of a minor to an educational institution, committal of a minor to an educational-correctional institution and committal of a minor offender to a special care facility. These measures are imposed on a minor whose best interest is served by isolation from his or her previous environment and by a long-term measure which provides the minor with an opportunity for education, rehabilitation or treatment.
5. The duration of an educational measure may not exceed the maximum term of imprisonment prescribed for the criminal offence.

**Article 21**  
**Judicial admonition**

1. The court shall impose the measure of judicial admonition when such measure is deemed sufficient and in the best interest of the minor in order to positively influence his or her behavior.
2. A minor subject to a judicial admonition shall be informed that he or she has committed a harmful and dangerous act which constitutes a criminal offence and that if he or she commits such act again, the court will impose a more severe measure or punishment.

**Article 22**  
**Committal to a disciplinary centre**

1. The court shall impose the measure of committal to a disciplinary centre when such measure is deemed sufficient and in the best interest of the minor in order to positively influence his or her behavior.
2. The court may commit a minor to a disciplinary centre:
  - 2.1. For a maximum of one (1) month, for up to four (4) hours per day; or
  - 2.2. For a maximum of four (4) days of a school or public holiday, for up to eight (8) hours per day.
3. When imposing this measure, the court shall ensure that its execution shall not hinder the regular employment or school activities of the minor.



4. A minor shall be engaged in useful activities at the disciplinary centre. The activities shall be appropriate to his or her age, skills and interests with the aim of developing his or her sense of responsibility.

#### **Article 23**

##### **Intensive supervision by a parent, adoptive parent or guardian**

1. 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.

2. When imposing this measure, the court may give the parent, adoptive parent, or guardian necessary instructions and order him or her to fulfill certain duties as part of the measure imposed in order to care for the minor and to effect a positive influence on him or her.

3. When imposing this measure, the court may order the Probation Service to verify the execution of the measure and to offer the necessary assistance to the parent, adoptive parent, or guardian.

#### **Article 24**

##### **Intensive supervision in another family**

1. The court shall impose the measure of intensive supervision in another family, after hearing the parent, adoptive parent or guardian, when the parent, adoptive parent, or guardian is incapable of carrying out intensive supervision of the minor and when such measure is in the best interest of the minor.

2. The execution of this measure shall be terminated when the parent, adoptive parent or guardian of the minor becomes able to exercise intensive supervision over him or her or when according to the results of the rehabilitation there is no longer any need for intensive supervision.

3. When imposing this measure, the court may order the Probation Service to verify the execution of the measure and to offer the necessary assistance to the family exercising supervision.

#### **Article 25**

##### **Intensive supervision by the Guardianship Authority**

1. The court shall impose the measure of intensive supervision by the Guardianship Authority, after hearing the parent, adoptive parent or guardian, when the parent, adoptive parent, or guardian is incapable of carrying out intensive supervision of the minor and when such measure is in the best interest of the minor.

2. In the execution of this measure, the minor shall remain with the parent, adoptive parent, or guardian.

3. When imposing this measure, the court will also define the duties of the Guardianship Authority, including:

- 3.1. Overseeing the minor's education;
- 3.2. Facilitating access to vocational training and employment;
- 3.3. Ensuring that the minor is removed from any adverse influences;
- 3.4. Facilitating access to necessary medical care;

3.5 Providing possible solutions to any problems that might arise in the minor's life; and

3.6 Such other duties as the court determines would be in the best interest of the minor.

4. Guardianship authority is obliged to report to court, which has imposed additional supervision measure from the guardianship authority in regards with execution of court verdict at least each three (3) month.

#### **Article 25**

##### **Special obligations in conjunction with measures of intensive supervision**

1. When imposing one of the measures under Articles 23, 24 and 25 of the present Code, 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, provided that the special obligations do not exceed the term of the measure.

2. The court may impose the following special obligations on the minor:

2.1. To apologize personally to the injured party;

2.2. To compensate for the damage to the injured party, in accordance with the minor's financial situation;

2.3. To attend school regularly;

2.4. To accept employment or to receive training for a profession appropriate to his or her abilities or skills;

2.5. To refrain from any form of contact with certain individuals likely to have a negative influence on the minor;

2.6. To accept psychological counseling;

2.7. To refrain from frequenting certain places or locations likely to have a negative influence on the minor; and

2.8. To abstain from the use of drugs and alcohol.

3. The court may, at any time, terminate or modify the special obligations imposed on the minor.

4. If the minor does not comply with the special obligations under paragraph 2 of this Article, the court may substitute the measure of intensive supervision with another educational measure.

5. When ordering the special obligations under paragraph 2, the court shall inform the minor that non-compliance may result in the imposition of a more severe educational measure.

#### **Article 27**

##### **Committal to an educational institution**

1. The court shall impose the measure of committal to an educational institution when a minor requires full-time supervision by appropriate educators and when such measure is in the best interest of the minor.

2. The term of this measure may not be less than three (3) months or more than two (2) years.

**Article 28**  
**Committal to an educational-correctional institution**

1. The court shall impose the measure of committal to an educational-correctional institution when a minor who has committed a criminal offence punishable by imprisonment of more than three (3) years requires specialized education and when such measure is in the best interest of the minor.
2. When deciding on the imposition of this measure, the court shall consider the gravity and nature of the criminal offence and whether the minor has previously been sentenced to an educational measure or juvenile imprisonment.
3. The term of this measure may not be less than one (1) year or more than five (5) years.

**Article 29**  
**Committal to a special care facility**

The court may impose the measure of committal to a special care facility instead of the measure of committal to an educational institution or an educational-correctional institution upon the recommendation of a medical expert when a minor requires special care due to a mental disorder or physical handicap and it is in the best interest of the minor. The court that has imposed the measure shall review the need for further stay in the special care facility every six (6) months and when the minor reaches the age of eighteen (18) years.

**CHAPTER VI**  
**FINES AND ORDERS FOR COMMUNITY SERVICE WORK**

**Article 30**  
**Fine**

1. The court may impose the punishment of a fine on a minor if the minor has the means to pay the fine. When determining the punishment of a fine, the court shall consider the material situation of the minor, and, in particular, the amount of his or her personal income, other income, assets and obligations. The court shall not set the level of a fine above the means of the minor.
2. The punishment of a fine may not be less than twenty-five (25) € or more than five thousand (5.000) €.
3. The judgment shall determine the deadline for the payment of a fine, which may not be less than fifteen (15) days or more than three (3) months, but in justifiable circumstances the court may allow the fine to be paid in installments over a period not exceeding two (2) years.
4. If the minor is unwilling or unable to pay the fine, the court may allow the fine to be paid in installments over a period not exceeding two (2) years. Thereafter, if the minor remains unwilling or unable to pay the fine, the court may, with the consent of the convicted person, replace the fine with an order for community service work which will not interfere with his or her regular employment or school activities.
5. If the minor does not pay the fine punishment or is unwilling to replace it with an order for community work, the court may replace the fine punishment with an uninstitutional educative measure.

**Article 31**  
**Order for community service work**

1. The court may order community service work with the consent of the minor to replace an institutional educational measure of up to three (3) years, juvenile imprisonment of up to two (2) years or a fine.

2. When imposing an order for community service work, the court shall order the minor to perform unpaid community service work for a specified term of thirty (30) to one hundred and twenty (120) hours. The Probation Service will determine the type of community service work to be performed by the convicted person, designate the specific organization for which the convicted person will perform the community service work, decide on the days of the week when the community service work will be performed and supervise the performance of the community service work.

3. The community service work shall be performed within a period specified by the court which shall not exceed one (1) year.

4. If, upon the expiry of the specified period, the minor has not performed the community service work or has only partially performed such community service work, the court shall order that a proportionate duration of the original term of the institutional educational measure or juvenile imprisonment be executed, considering the duration of community service work that has been performed. In the case of a fine, the court shall order the payment of a fine proportionate to the duration of the community service work that has not been performed.

## **CHAPTER VII JUVENILE IMPRISONMENT**

### **Article 32 Purpose of juvenile imprisonment**

The purpose of juvenile imprisonment is to contribute to the rehabilitation and development of the minor offender with an emphasis on the minor's education, specialized education, vocational skills, and proper personal development. In addition, juvenile imprisonment should positively influence the minor through protection, assistance and supervision to prevent recidivism.

### **Article 33 Imposition of juvenile imprisonment**

The court may impose the punishment of juvenile imprisonment on a minor offender who has reached the age of sixteen (16) years and has committed a criminal offence punishable by imprisonment of more than five (5) years when the imposition of an educational measure would not be appropriate because of the seriousness of the criminal offence, the resulting consequences and the level of responsibility.

### **Article 34 Duration of juvenile imprisonment**

1. The term of juvenile imprisonment cannot exceed the maximum term of imprisonment prescribed for the criminal offence but may be lower than the minimum term of imprisonment prescribed for the criminal offence.

2. The term of juvenile imprisonment may not be less than six (6) months nor more than five (5) years and shall be imposed in full years and months. The maximum term of juvenile imprisonment shall be ten (10) years for serious criminal offences punishable by long-term imprisonment, or if the minor has committed at least two (2) concurrent criminal offences each punishable by imprisonment of more than ten (10) years.

3. When deciding on the term of juvenile imprisonment, the court shall consider all the mitigating and aggravating circumstances set forth in Article 8 and 64 paragraphs 1 and 2 of the Criminal Code of Kosovo.

**Article 35**  
**Conditional release from juvenile imprisonment**

1. A person sentenced to juvenile imprisonment may be conditionally released if he or she has served at least one-third of the sentence that has been imposed.

2. When granting conditional release, the court may impose a measure of intensive supervision by a parent, adoptive parent or guardian, in another family or by the Guardianship Authority to last until the end of the original sentence.

3. The court may revoke the conditional release if during the period of conditional release the minor commits a criminal offence for which a term of imprisonment or juvenile imprisonment of at least six (6) months is imposed.

**Article 36**  
**Statutory limitation on the execution of juvenile imprisonment**

1. The punishment of juvenile imprisonment cannot be executed after the following periods have elapsed:

1.1. Five (5) years from a final decision imposing juvenile imprisonment of more than five (5) years;

1.2. Three years from a final decision imposing juvenile imprisonment of more than three (3) years; and

1.3. Two (2) years from a final decision imposing juvenile imprisonment of up to three (3) years.

**Article 37**  
**Imposition of educational measures and juvenile imprisonment for concurrent criminal offences**

1. For concurrent criminal offences, the court shall impose only one educational measure or only a punishment of juvenile imprisonment when the legal conditions are fulfilled for the imposition of such punishment and the court finds that it should be imposed.

2. Paragraph 1 of this Article shall also apply when the minor has committed another criminal offence before or after the imposition of the educational measure or juvenile imprisonment.

**CHAPTER VIII**  
**MEASURES OF MANDATORY TREATMENT AND ACCESSORY PUNISHMENTS**

**Article 38**  
**Purpose and Imposition of Measures of Mandatory Treatment**

1. The purpose of a measure of mandatory treatment is to contribute to the rehabilitation of the minor and to prevent the risk of recidivism. The mandatory treatment shall be imposed in accordance with the provisions of Criminal Code of Kosovo.

2. The court may impose a measure of mandatory psychiatric treatment on a minor in accordance with the Law on Proceedings Involving Perpetrators with a Mental Disorder.
3. The court may impose a measure of mandatory rehabilitation treatment on a minor in accordance with Chapter V of the Criminal Code of Kosovo.
4. A measure of mandatory treatment shall be imposed only after consultation with the Probation Service, the Guardianship Authority and appropriate experts.
5. A measure of mandatory treatment cannot be imposed simultaneously with a disciplinary measure.

**Article 39**  
**Imposition of Accessory Punishments**

The court may impose an accessory punishment in accordance with Articles 54 – 62 of the Criminal Code of Kosovo, where appropriate.

**THIRD PART**

**CHAPTER IX**  
**PROCEDURE**

**Article 40**

1. The authorities or institutions that participate in proceedings involving minors, as well as other persons and institutions from which notifications, reports or opinions are sought are obliged to proceed expeditiously and without any unnecessary delay.
2. A minor who has been detained on remand shall be brought as speedily as possible for adjudication.

**Article 41**

1. Proceedings shall not be initiated against a child under the age of fourteen (14) years. If the child is under the age of fourteen years at the time of the commission of the criminal offence, any proceedings that have been initiated shall be immediately terminated, and the Guardianship Authority shall be notified of the case.
2. Guardianship Authority undertakes certain necessary steps in accordance with the Law on Family and Social services based on their programs for treatment of juvenile criminal offenders under the age of fourteen (14) years. This matter might be regulated in detailed way with secondary legislation that could be issued by Ministry of labor and social welfare.

**Article 42**

1. A minor shall not be adjudicated in absentia.
2. When undertaking an action at which a minor is present, and especially at his or her examination, the authorities participating in the proceedings are obliged to act carefully, taking into account the psychological development, sensitivity and the personal characteristics of the minor, so that the conduct of the proceedings does not have an adverse effect on his or her development.

#### **Article 43**

1. The minor must have a defense counsel from the beginning till the end of procedure.
2. In a case when the minor, the legal representative or his or her family member does not engage a defense counsel, the juvenile judge or the competent authority conducting the proceedings shall appoint ex officio a defense counsel at public expense.
3. If the minor remains without a defense counsel in the course of the proceedings and if he or she fails to obtain another defense counsel, the juvenile judge or the competent authority conducting the proceedings shall appoint ex officio a new defense counsel at public expense.
4. If the conditions are not met for mandatory defense, a defense counsel shall be appointed at public expense at the request of the minor, the legal representative or his or her family member, if he or she is unable to pay for the cost of his or her defense. The appointment of defense counsel at public expense shall not be against the will of the minor.
5. The minor shall be instructed on the right to defense counsel at public expense under the previous paragraph before the first examination.
6. Only a defense counsel registered at the Bar Association of Kosovo can represent a minor.

#### **Article 44**

1. The parents, adoptive parents or guardian shall be entitled to accompany the minor in all proceedings and may be required to participate if it is in the best interest of the minor. 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 minor.
2. When the parents, adoptive parents or guardian of the minor do not exercise their parental duties, the court may nominate a temporary guardian for the minor.
3. 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 in cases under paragraph 2 of this Article.

#### **Article 45**

The minor 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.

#### **Article 46**

No one may be exempted from the duty to testify concerning the circumstances necessary for the evaluation of the psychological development of the minor and for a familiarity with his or her personality and the conditions in which he or she lives.

#### **Article 47**

1. When a minor has participated in the commission of a criminal offence with an adult, the proceedings against the minor shall be severed and conducted according to the provisions of the present Code.

2. Exceptionally, the proceedings against the minor can be joined to the proceedings against an adult and can be conducted in accordance with the general provisions of the Criminal Procedure Code of Kosovo, only if joined of the proceedings is essential for a comprehensive clarification of the case. A juvenile panel of the competent court shall issue a ruling on this on the reasoned motion of the public prosecutor or the defense counsel. The parties may appeal the ruling to the court of second instance within three days of the receipt of the ruling.

3. When joint proceedings are conducted against a minor and an adult perpetrator, the provisions of Article 40, Articles 42 - 46, Article 48, Article 49, Article 50 paragraphs 1 and 3, Articles 64 - 68 and Article 71 of the present Code shall always be applied in regard to the minor when questions relating to the minor are being clarified in a hearing and Articles 79 and 80 of the present Code shall always be applied in regard to the minor, while other provisions of the present Code shall be applied if their application is not in conflict with the conduct of joint proceedings.

#### **Article 48**

1. In proceedings against minors, irrespective of the powers which have been explicitly provided for in the provisions of the present Code, the 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.

2. The public prosecutor shall notify the competent Guardianship Authority whenever proceedings against a minor are initiated.

#### **Article 49**

1. The minor shall be summoned in person and through his parent, adoptive parent or guardian.

2. The service of decisions and other written documents on the minor shall be carried out in accordance with the provisions of the Criminal Procedure Code of Kosovo. However, documents shall not be served on the minor by being displayed on the bulletin board of the court, and the provisions of the Criminal Procedure Code shall not be applied.

#### **Article 50**

1. All proceedings involving minors shall be confidential. No recording of the proceedings, including audio- or video-recording, may be made public without the written authorization of the court.

2. Only the part of the decision rendered in the proceedings authorized for publication shall be made public.

3. When an authorized part of recorded proceedings or of the decision is made public, personal data that can be used to identify the minor shall not be revealed under any circumstances.

4. The provisions of this article shall apply to proceeding involving adults tried for criminal offences committed as minors.



**CHAPTER X**  
**COMPOSITION OF JUVENILE PANEL**

**Article 51**

1. A juvenile panel in the court of first instance and the juvenile panel in the court of second instance, except for panels in the Supreme Court of Kosovo, shall be composed of a juvenile judge and two (2) lay judges. The juvenile judge shall be the presiding judge of the panel.
2. A juvenile panel in the Supreme Court of Kosovo shall be composed of three (3) judges, including at least one juvenile (1) judge. When a juvenile panel adjudicates at a main trial, it shall be composed of two (2) juvenile judges and three (3) lay judges.
3. The lay judges in a juvenile panel shall be selected from among professors, teachers, educators, social workers, psychologists and other persons who have experience in the upbringing of minors.
4. Lay judges participating in a juvenile panel shall be of different genders.

**Article 52**

1. The public prosecutor may suspend the prosecution of a criminal offence and impose a diversity measure if the conditions under Article 17 of this Code are fulfilled. Before deciding on a diversity measure, the prosecutor shall summon the minor, his or her parents, adoptive parents or guardian and defense counsel.
2. The juvenile judge may impose a diversity measure if the conditions under Article 17 of this Code are fulfilled. Before deciding on a diversity measure, the juvenile judge shall summon the minor, his or her parents, adoptive parents or guardian and defense counsel. If the juvenile judge decides to impose a diversity measure, any ongoing proceedings shall be stayed.

**Article 53**

The court of second instance shall have jurisdiction:

- 1.1. To decide on an appeal against a decision of the juvenile panel rendered at first instance;
- 1.2. To decide on an appeal against a decision of the public prosecutor;
- 1.3. To decide on an appeal against a decision of the juvenile judge; and
- 1.4. In other cases, as provided for by law.

**Article 54**

1. As a rule, the court within whose territory a minor has a permanent residence shall have territorial jurisdiction for proceedings against the minor.
2. If a minor does not have a permanent residence or if it is unknown, the court within whose territory the minor has current residence shall have territorial jurisdiction.
3. Proceedings may be conducted before the court within whose territory a minor has current residence, even though he or she has a permanent residence, or before the court within whose territory the criminal

offence has been committed, if it is clear that the proceedings will be conducted more easily before that court.

## **CHAPTER XI**

### **PREPARATORY PROCEEDINGS**

#### **Article 55**

1. The public prosecutor shall initiate preparatory procedure against a specified minor on the basis of a police criminal report, a criminal report from other persons or other sources, if there is a reasonable suspicion that the minor has committed a criminal offence.

2. Preparatory procedure for criminal offences prosecuted on the basis of a motion for prosecution or a private charge shall only be initiated by the public prosecutor if the injured party has submitted a motion to initiate proceedings to the public prosecutor within the prescribed period of time provided for in provision of the Criminal Procedure Code of Kosovo.

#### **Article 56**

1. For criminal offences punishable by imprisonment of less than three (3) years or a fine, the public prosecutor may decide not to initiate preparatory proceedings, even though there is a reasonable suspicion that the minor committed the criminal offence, if the prosecutor considers that it would not be appropriate to conduct the proceedings against the minor 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 minor's past history and personal characteristics.

2. 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.

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

4. In order to ascertain the circumstances under paragraph 1 of this article, the public prosecutor may request that the Probation Service conduct the social inquiry provided for in Article 8 of the present Code. 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.

5. If, for any reason, it is not possible to have the social inquiry under paragraph 4 of this Article completed before taking a decision on the appropriateness of the initiation of preparatory proceedings, the public prosecutor shall secure the necessary information under Article 8 of the present Code and may consult with the Probation Service about his or her decision.

#### **Article 57**

1. Preparatory proceedings shall be initiated by a ruling of the public prosecutor. The ruling shall specify the minor against whom the preparatory proceedings will be conducted, the time of the initiation of the preparatory proceedings, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, evidence and information already collected and a report on any measure or punishment

previously imposed on the minor. A stamped copy of the ruling on the preparatory proceedings shall be sent without delay to the juvenile judge.

2. Provisions of the Criminal Procedure Code of Kosovo shall apply *mutatis mutandis* to the conduct of preparatory proceedings.

#### **Article 58**

1 The juvenile judge shall appoint an appropriate mental health expert when it is necessary to establish the state of the minor's mental health either at the time of the commission of the criminal offence or the competency of the minor to stand trial or both. The juvenile judge may make such appointment *ex officio* or on the request of the public prosecutor, defence counsel, parents, adoptive parents or guardian. The examination shall be carried out in an appropriate and confidential environment. The opinion of the mental health expert shall be confidential and shall only be disclosed to the court and the parties.

2. The juvenile judge may request the Probation Service to conduct a social inquiry.

#### **Article 59**

1 During the course of preparatory proceedings, the juvenile judge shall guarantee the rights of the minor.

2. The defense counsel and the parent, adoptive parent or guardian of the minor may attend actions undertaken in the preparatory proceedings. When such persons are present at such actions, they may submit motions and put questions to the person who is being examined.

3. The examination of the minor, when necessary, shall be undertaken with the assistance of a pedagogue, psychologist, defectologist, etc.

#### **Article 60**

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

1.1. There is no reasonable suspicion that the minor has committed the indicated criminal offence;

1.2. The period of statutory limitation for criminal prosecution has expired;

1.3. The criminal offence is covered by an amnesty or pardon;

1.4. The conditions set forth in Article 56, paragraph 1 of the present Code; or

1.5. There are other circumstances that preclude prosecution.

2. The public prosecutor shall immediately notify the juvenile judge of the termination of the preparatory proceedings. The public prosecutor shall also immediately notify the minor of the termination of the preparatory proceedings unless no action has been undertaken in the preparatory proceedings.

#### **Article 61**

If the preparatory proceedings are 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. The preparatory proceedings may be extended in accordance with the provisions of the Criminal Procedure Code of Kosovo.

#### **Article 62**

Before completing the preparatory proceedings, the prosecutor shall notify the defense counsel of his or her intention to complete the proceedings within fifteen (15) days. During this period, the defense counsel may submit a request to consider new facts or evidence Article 59, paragraph 2 of this Code. If the prosecutor grants the request, the preparatory proceedings shall not be completed and a new notification of the completion of the proceedings shall be necessary. If no request is submitted, the proceedings shall be completed within the time period communicated to the parties. The prosecutor may not accept a request to consider new facts or evidence after the completion of the preparatory proceedings.

#### **Article 63**

1. 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.

2. The public prosecutor's motion must contain the following: the personal data of the minor, 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, the evidence indicating that the minor committed the criminal offence, the results of any social inquiry conducted by Probation Service and a motion for the imposition of an educational measure or punishment against the minor.

### **CHAPTER XII**

#### **PROVISIONAL ARREST, POLICE DETENTION AND DETENTION ON REMAND**

#### **Article 64**

The provisional arrest, police detention or detention on remand of a minor shall be ordered only as a measure of last resort for the shortest time possible.

#### **Article 65**

1. The police may arrest and detain a minor in accordance with Chapter XXIV of the Criminal Procedural Code of Kosovo.

2. The provisional arrest or police detention of a minor cannot exceed a period of twenty-four (24) hours. On the expiry of that period, the police shall release the minor unless a juvenile judge has ordered detention on remand.

#### **Article 66**

1. As an exception, a juvenile judge may order detention on remand against a minor if the grounds defined in provisions of the Provisional Criminal Procedure Code are present and if alternatives to detention on remand would be insufficient to ensure the presence of the minor, to prevent re-offending and to ensure the successful conduct of the proceedings. The juvenile judge shall consider whether the measures listed in Article 6 of the present Code or Article 268 (1) of the Criminal Procedure Code of Kosovo may be ordered as alternatives to detention on remand. The ruling on detention on remand of a minor shall provide a reasoned explanation for the insufficiency of alternatives to detention on remand.

2. A minor may be held in detention on remand on the initial ruling for a maximum of thirty (30) days from the day he or she was arrested. The detention on remand of a minor may only be extended by a juvenile panel of the competent court for an additional period of up to sixty (60) days.

3. The juvenile panel of the competent court shall review the ruling on detention on remand within thirty (30) days from the issuance of the ruling. Such review shall be conducted in the presence of the minor, his or her defense counsel and the public prosecutor.

#### **Article 67**

1. Minors held in detention on remand in a detention facility shall be separated from adult detainees.

2. A minor held in detention on remand may be held in an educational-correctional institution, if the juvenile judge considers this to be in the best interest of the minor.

3. While in detention on remand, the minor shall receive social, educational, vocational, psychological, medical and physical assistance, as required in view of his or her age, gender and personality.

#### **Article 68**

1. Provisions of the Criminal Procedure Code of Kosovo shall apply mutatis mutandis to the detention on remand of minors.

2. Notwithstanding paragraph 1 of this Article, minors shall not be held in detention on remand more than twelve (12) months from the arrest.

3. The juvenile judge shall have the same authority with respect to minors in detention on remand which the pre-trial judge has under the Criminal Procedure Code of Kosovo with respect to adults in detention on remand.

### **CHAPTER XIII**

#### **MAIN TRIAL**

#### **Article 69**

1. When the juvenile panel receives a motion of the public prosecutor, the juvenile judge may issue a ruling to dismiss the motion or to transfer the matter to another court, if the conditions set forth in provisions of the Criminal Procedure Code of Kosovo exist.

2. If the juvenile judge does not issue a ruling to dismiss the motion or to transfer the matter to another court, he or she shall schedule the main trial within eight (8) days of the receipt of the motion.

3. 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 are fulfilled. Before deciding on a diversity measure, the juvenile panel shall summon the minor, his or her parents, adoptive parents or guardian and defense counsel.

### **Article 70**

1. The minor, the defense counsel and the public prosecutor shall be present at the main trial.
2. 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.
3. The provisions of the Criminal Procedure Code of Kosovo regarding the amendment and extension of the charge shall also apply in proceedings against a minor. However, 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.

### **Article 71**

1. The public shall always be excluded when a minor is being tried.
2. The juvenile panel may allow the main trial to be attended by experts and persons who are professionally involved in the welfare and education of minors or in combating the criminal behavior of minors.
3. During the main trial, the juvenile panel may order that all or certain persons be removed from the session with the exception of the minor, the public prosecutor, the defense counsel, the representative of the Guardianship Authority and the representative of the Probation Service. The juvenile panel may order that the parent, adoptive parent or guardian be removed from the session only in exceptional circumstances if there are reasons to believe that such exclusion is in the best interest of the minor.
4. The provisions of this article shall apply to proceedings involving adults tried for offences committed as minors.

### **Article 72**

1. The main trial shall be adjourned or recessed only in exceptional cases. The juvenile judge shall notify the president of the court of every adjournment or recess of the main trial and shall state the reasons thereof.

### **Article 73**

1. The juvenile panel is not bound by the motion of the public prosecutor in rendering its decision on the type of measure or punishment to be imposed.
2. The juvenile panel shall terminate the proceedings at the main trial by a ruling, when the grounds set forth in provisions of the Criminal Procedure Code of Kosovo exist.
3. The juvenile panel shall impose an educational measure on the minor by a ruling. The enacting clause of the ruling shall state only the order for an educational measure and any other measure or punishment in Chapter VIII of the present Code and the minor shall not be pronounced guilty of the criminal offence described in the motion of the public prosecutor. The explanation of the ruling shall contain a description of the criminal offence and the circumstances which justify the imposition of the educational measure.

4. The juvenile panel shall impose a punishment on a minor by a judgment. The judgment shall be rendered as provided under provisions of the Criminal Procedure Code of Kosovo. The judgment shall also include an order for any measure or punishment in Chapter VIII of the present Code.

#### **Article 74**

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.

#### **Article 75**

1. The court may order the minor to pay the costs of proceedings and to satisfy property claims only if it has imposed a punishment on the minor. If educational measures have been imposed upon the minor, the costs of the proceedings shall be paid from Kosovo budget and the injured party shall be referred to civil litigation to realize property claims.

2. If the minor has his or her own financial income or property, the court may order the minor to pay the costs of proceedings and to satisfy property claims even where educational measures have been imposed.

#### **Article 76**

Part Four of the Criminal Procedure Code of Kosovo shall apply mutatis mutandis to the main trial of minors and the rulings and judgments issued in respect of minors.

### **CHAPTER XIV**

#### **LEGAL REMEDIES**

#### **Article 77**

1. The persons referred to in provisions of the Criminal Procedure Code of Kosovo may appeal a ruling imposing diversity measures, a ruling terminating the proceedings at the main trial, a ruling imposing an educational measure, a judgment imposing a punishment and a judgment or ruling imposing a measure under Chapter VIII of the present Code. This appeal may be filed within eight days from the day of the receipt of the ruling or judgment.

2. The defense counsel, the public prosecutor, the spouse, the parent, adoptive parent or guardian, a relation by blood in a direct line to any degree, the brother or the sister may file an appeal on behalf of the minor, even against his or her will.

3. A minor cannot waive his or her right of appeal.

4. An appeal against a ruling imposing an educational measure served in an institution suspends the execution of the measure. The court may decide to execute the measure notwithstanding an appeal if it determines that this is in the best interest of the minor, after hearing the minor and his or her parents, adoptive parents or guardian.

### **Article 78**

1. The court of second instance may modify the appealed decision by imposing a more severe measure only if so requested in the appeal by the public prosecutor.
2. If the ruling or judgment in the first instance did not impose juvenile imprisonment, the court of second instance may impose juvenile imprisonment only if a hearing is held. If the ruling or judgment in the first instance did not impose an institutional educational measure, the court of second instance may impose an institutional educational measure only if a hearing is held.

### **Article 79**

A request for the protection of legality may be filed both in cases under provisions of the Criminal Procedure Code of Kosovo and when a punishment or an educational measure has been imposed upon a minor in breach of the provisions of the law.

### **Article 80**

The provisions on the reopening of criminal proceedings terminated by a final ruling or a final judgment as provided in provisions of the Provisional Criminal Procedure Code shall apply mutatis mutandis to the reopening of proceedings terminated by a final ruling terminating the proceedings at the main trial, a final ruling imposing an education measure and a final judgment imposing a punishment.

## **FOURTH PART**

### **MEDIATION AND EXECUTION OF MEASURES AND PUNISHMENT**

#### **CHAPTER XV**

#### **MEDIATION PROCEDURE**

### **Article 81**

1. Before the parties enter the mediation procedure, the minor prosecutor or panel shall acknowledge the parties with the principals and rules of the mediation, as well with the procedure and the legal effects of any agreement being reached through mediation, in accordance with the law on Mediation.
2. When the minor offender and the damaged party express their will for mediation, this assent shall be put in a record.
3. In accordance with the Law on Mediation, the minor prosecutor or panel, by ruling, appoints an independent mediator from the list of mediators.
4. The mediator, after receiving of the ruling which appoints the mediator, shall contact the minor offender and the damaged party and after that to start with the mediation procedure.
5. Mediation procedure shall not be longer than ninety (90) days starting from the day of the announcement of the ruling. Minor Prosecutor or Panel is officially notified with the result of the mediation.
6. If the mediation procedure does not succeed, in that case the court trial shall continue from the abolishing point.



7. Mediation procedure for minors is free of charge for the parties. The mediation costs, including the payment for the mediator, are being paid from the budget of the Kosovo Court Council in cases when the mediator is appointed by the minor panel or the minor college, whilst in the cases when the mediator is appointed by the Prosecutor, the costs of the procedure are being paid from the budget of the Kosovo Prosecutorial Council.

8. The payment of the costs for the procedure of the mediation and the mediator is done based on the law on mediation as well as sub-legal acts drafted for its implementation.

## **Article 82**

### **Finalization of the Mediation Procedure**

1. Mediation procedure is over when:

1.1. the mediation has been successfully finished;

1.2. the deadline of ninety (90) days has expired;

1.3. the mediator considers that the continuation of the procedure is not possible or not reasonable;

1.4. the minor or the damaged party declare that they want to terminate the procedure;

2. When the mediation has no success, the minor prosecutor, panel, or college which has proposed the mediation, restarts the abolished procedure from the moment of its abolishment;

3. When the mediation is successful, the court proceeding or the proceeding of the prosecutor against the minor offender of the criminal act is terminated. After the termination of court proceeding, juvenile judge or prosecutor shall inform the parties regarding their decision.

4. If the parties come to an agreement over the compensation of the damage, then it is submitted to the minor prosecutor or panel, and if they approve it, the agreement becomes an executive power and it is executed in accordance with the law on power.

## **CHAPTER XVI**

### **EXECUTION OF DIVERSITY MEASURES**

#### **Article 83**

1. When the prosecutor, the juvenile judge or the court imposes a diversity measure, the ruling and all other relevant information shall be sent to the competent Probation Service to execute this measure.

2. The authority which imposed the diversity measure shall supervise the execution of the diversity measure.

3. If the minor fails to perform an obligation ordered as a diversity measure, the Probation Service shall verify the facts and the reasons for the failure to perform the obligation and shall inform the authority which imposed the diversity measure and the competent public prosecutor.

## CHAPTER XVII

### EXECUTION OF EDUCATIONAL MEASURES

#### Article 84

##### General principles on the execution of educational measures

1. The court which imposed the educational measure is the competent court which shall have jurisdiction to supervise the execution of the educational measure and issue orders in relation to the execution of the educational measure.
2. The Probation Service which is located in the territory where the minor has permanent or current residence shall have jurisdiction to exercise responsibilities in relation to the execution of the educational measure.

#### Article 85

1. An educational measure shall be executed with respect for the personality and dignity of the minors, encouraging their physical, moral and intellectual development and protecting their physical and mental health.
2. An educational measure shall be executed based on an individual program adapted to the personality of the minor as far as possible and designed in accordance with modern achievements of knowledge and practice.
3. The individual program is designed on the basis of a comprehensive analysis of the special characteristics of the minor, the causes and the type of the criminal offence and other forms of behavioral difficulties as well as the educational level, the development of the minor and the circumstances of his or her family life.
4. The individual program shall contain motivating means that are adapted to the personal characteristics of the minor, enrollment in education and vocational training, free time activities, activity with the parents, adoptive parents, the guardian or other family members of the minor and other means of exercising influence on the minor.

#### Article 86

1. The expenses of executing educational measures shall be paid from budgetary resources.
2. The parents or persons who are obliged by law to care for the minor shall be obliged to contribute to paying the expenses of executing educational measures.
3. The level of contribution of the parents or the persons who are obliged by law to care for the minor shall be determined by the court when it renders a ruling imposing the educational measure. If determining the level of contribution requires a more detailed study of the financial situation of the parents or persons who are obliged to care for the minor, the court shall first render a decision imposing the educational measure and then continue the procedure for determining the level of contribution.
4. The competent court may change the decision on the level of the contribution if circumstances subsequently change.

### **Article 87**

1. An educational measure shall be executed after the final decision of the court and when there are no legal obstacles to its execution, unless provided otherwise by the present Code.
2. The court shall deliver the final decision to the authorized institution or individual for execution within three days from the day when the decision became final, together with a birth certificate, school certificate or transfer paper, report of medical examination, data from the criminal file on prior criminal offences, proceedings conducted and reports issued by the Probation Service.
3. The authorized institution or individual receiving the sentence for execution shall begin execution of sentence within three (3) days from receipt of the sentence.
4. The competent court shall maintain records on every minor on whom it has imposed an educational measure.

### **Article 88**

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

### **Article 89**

#### **Execution of a measure of committal to a disciplinary centre**

The measure of committal to a disciplinary centre for minors shall be executed in a special educational institution.

### **Article 90**

1. A parent, adoptive parent or guardian shall ensure regular visits by a minor to the disciplinary centre.
2. The disciplinary centre shall immediately inform the competent court when a minor fails to report in a timely manner to the disciplinary centre or that he stops visiting it regularly.
3. The disciplinary centre shall maintain a record on the execution of the education measure which shall be delivered for inspection to the competent court and the competent Probation Service.

### **Article 91**

#### **Execution of a measure of intensive supervision by a parent, adoptive parent or Guardian**

The execution of the educational measure of intensive supervision by a parent, adoptive parent or guardian begins when the parent, adoptive parent or guardian receives the final ruling on the imposition of the educational measure.

### **Article 92**

1. The parent, adoptive parent or guardian shall obey the orders and instructions of the court which has imposed the educational measure and shall allow the Probation Service to verify the execution of the educational measure, when such verification is ordered by the court.

2. A dispute between parents, adoptive parents or guardian of a minor and the Probation Service shall be resolved before the competent court.

#### **Article 93**

1. The parent, adoptive parent or guardian of a minor and the Probation Service shall inform the competent court on the progress of the execution of the educational measure according to the terms ordered by the court.

2. The Probation Service shall inform the competent court without 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.

#### **Article 94**

##### **Execution of a measure of intensive supervision in another family**

1. The competent court shall designate the family in which a minor subject to the measure of intensive supervision in another family is to be placed, upon the motion of the competent Probation Service.

2. Before submitting the motion, the Probation Service shall examine the personality of the minor and the social and psychological structure of the family in which he or she is to be placed.

3. Under the same conditions, priority shall be granted to a family to which the minor is related or is emotionally attached.

#### **Article 95**

1. The Probation Service and the family in which the minor shall be placed shall conclude a written agreement that regulates their mutual rights and obligations.

2. The family in which the minor is to be placed shall permit the Probation Service to verify the execution of the educational measure, when such verification is ordered by the court.

#### **Article 96**

During the execution of the educational measure of intensive supervision in another family, the minor shall maintain permanent connections with his or her family, unless the competent court orders otherwise on the motion of the Probation Service.

#### **Article 97**

The competent court may, ex officio, or upon the motion of the Probation Service, order a change of the placement of the minor, if the circumstances in the family in which the minor is placed have changed to such extent that the execution of the educational measure is made difficult.

#### **Article 98**

The provisions of the present Code on the execution of the educational measure of intensive supervision by a parent, adoptive parent or guardian shall apply mutatis mutandis to the execution of the educational measure of intensive supervision in another family.

**Article 99**  
**Execution of a measure of intensive supervision by the Guardianship Authority**

1. The competent Guardianship Authority is authorized to execute the educational measure of intensive supervision by a Guardianship Authority.
2. 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.

**Article 100**

1. The courts, public prosecutors' offices, schools and other institutions shall assist and cooperate with the Guardianship Authority in the execution of this educational measure.
2. 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.
3. 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.
4. The provisions of the present Code on the execution of the educational measure of intensive supervision by a parent, adoptive parent or guardian shall apply mutatis mutandis to the execution of the educational measure of intensive supervision by the Guardianship Authority.

**Article 101**

The provisions of the present Code on the execution of the educational measure of intensive supervision by a parent, adoptive parent or guardian shall apply mutatis mutandis to the execution of the educational measure of intensive supervision by the Guardianship Authority.

**Article 102**  
**General provisions on institutional educational measures**

A minor who is subject to an institutional educational measure shall have the same rights as an adult who is sentenced to imprisonment in addition to the rights provided for by the present Code.

**Article 103**

1. On the request of the minor or his or her parent, adoptive parent or guardian, or on the motion of the Probation Service, the execution of an institutional educational measure may be stayed for just cause.
2. The competent court shall decide on the stay of the execution.
3. An appeal against a ruling at first instance on the stay of the execution may be filed with the court of second instance within three (3) days from receipt of the ruling.

**Article 104**

1. A request or motion for a stay of execution stays the execution of an institutional educational measure until the final ruling on the request or motion.

2. If the court on rejecting a request which has been submitted a second time determines that the right of request is being abused, the court shall decide that the appeal does not stay the execution of the institutional educational measure.

#### **Article 105**

The provisions in the Law on Execution of Penal Sanctions on the stay of execution of a sentence of imprisonment shall apply mutatis mutandis to the stay of execution of an institutional educational measure.

#### **Article 106**

1. On the request of a minor or his or her parent, adoptive parent or guardian or on the motion of the director of the institution where the institutional education measure is being executed, the institutional educational measure may be suspended for justifiable reasons for up to three months. Exceptionally, for the purpose of treatment the suspension may last until the completion of the treatment.

2. The competent court shall decide on the suspension.

3. An appeal against the ruling at first instance may be filed with the court of second instance within three days from receipt of the ruling.

#### **Article 107**

1. A court shall suspend execution of the institutional educational measure also when the minor has been committed for the execution of the measure, before the ruling on the request or motion for a stay of execution of the measure enters into force and later it is established that the request or motion was grounded.

2. In the case foreseen in paragraph 1 of this Article, the duration of the execution of the institutional educational measure is not to be counted in the length of the suspension of the execution of the institutional educational measure.

#### **Article 108**

An institutional educational measure shall not be considered to be executed during the period of the suspension of the institutional educational measure.

#### **Article 109**

The provisions of the Law on Execution of Penal Sanctions on the suspension of execution of a sentence of imprisonment shall apply mutatis mutandis to the suspension of execution of an institutional educational measure.

#### **Article 110**

##### **Execution of the measure of committal to an educational institution**

1. The educational measure of committal to an educational institution shall be executed in an institution for the education of juveniles.

2. A minor who is subject to an educational measure has the same rights and duties as the other minors in the educational institution. Only the director of the educational institution and the educator in charge of the minor shall be informed that the educational measure was imposed on the minor.

#### **Article 111**

1. The competent Probation Service is authorized to order the minor to report to the educational institution.

#### **Article 112**

1. If execution of the educational measure cannot begin or continue because the minor refuses to comply with the educational measure or escapes, the Probation Service shall immediately inform the competent court and the authorized police station, which shall transport the minor to the educational institution.

2. The method of transporting the minor to the educational institution shall not violate his or her dignity.

#### **Article 113**

##### **Execution of the measure of committal to an educational-correctional institution**

1. 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.

2. Females who are subject to this education measure shall be accommodated in the female section of the educational-correctional institution.

3. Adults who are subject to this educational measure, as well as minors who reach the age of eighteen years in the educational-correctional institution, shall be accommodated in a special section of the educational-correctional institution.

#### **Article 114**

1. 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.

2. 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.

3. 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.

#### **Article 115**

1. If a minor who has been properly summoned does not report at the educational-correctional institution, the court shall order that he or she be transported to the educational-correctional institution. If the convicted person hides or is in flight, the court shall order the issuance of a wanted notice.

2. The method of transporting the minor to the educational institution shall not violate his or her dignity.

#### **Article 116**

1. 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.

2. The minor shall then be sent to the section for personal examination for no more than sixty (60) days for the purpose of establishing an individualized program. The program for dealing with minors shall be established by an expert team at the educational-correctional institution.

#### **Article 117**

1. Minors are assigned to educational groups in accordance with their age, mental development, and other personal characteristics and in accordance with features of their individualized programme.

2. An educational group has at most twenty (20) minors and a special educator.

#### **Article 118**

1. A minor has the right to exercise sufficiently in order to remain healthy and to spend at least three (3) hours daily outside closed premises during free time.

2. A minor shall have a secured environment for playing sports, exercising and other physical activities.

#### **Article 119**

If there are no lessons of a certain kind or educational level in the educational-correctional institution, a minor shall be permitted to attend lessons outside the educational-correctional institution if such attendance is not harmful to the execution of the educational measure and the decision is justified by the minor's previous educational progress.

#### **Article 120**

1. 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.

2. A minor shall have the right to receive a visit at least once per month by other persons who will not have a negative influence on execution of the measure.

3. The director of the educational-correctional institution has the authority to prohibit visits for justified reasons in accordance with a sub-legal act issued by the Ministry of Justice.

#### **Article 121**

1. A minor has the right to daily and weekly rest in accordance with the provisions of Law on Execution of Penal Sanctions.

2. 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.



3. 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.

#### **Article 122**

1. The provisions on the disciplinary procedures and punishments applicable to persons sentenced to imprisonment set forth in the Law on Execution of Penal Sanctions shall apply *mutatis mutandis* to a minor subject to a measure of committal to an educational-correctional institution.

2. A minor may not be subject to solitary confinement as a disciplinary punishment.

3. A minor may be accommodated in a special unit of the educational-correctional institution as a disciplinary punishment under the following conditions:

3.1. The period of accommodation in a special unit may not exceed fifteen (15) days;

3.2. The minor shall not be accommodated alone in the special unit;

3.3. The minor shall be entitled to exercise his or her right to spend at least three (3) hours daily outside closed premises during free time in accordance with Article 118 of the present Code and to receive visits according Article 120 of the present Code.

3.4. The minor shall have access to textbooks and other books; and

3.5. The minor shall be visited by a medical officer and educator once a day and by the director of the educational-correctional institution twice a week.

#### **Article 123**

##### **Execution of measure of committal to a special care facility**

A minor sentenced to the educational measure of committal to a special care facility due to mental disorder or physical handicap shall be sent to an appropriate facility of social protection, where he or she has the same rights and duties as the other minors accommodated in the institution.

#### **Article 124**

By the request from Probation Service, the Police will escort the minor to the institution of special care facility.

#### **Article 125**

1. If execution of the educational measure cannot begin or continue because the minor refuses to comply with the educational measure or escapes, the Probation Service shall immediately inform the competent court and the competent police station, which shall transport the minor to the institution.

2. The method of transporting the minor to the educational institution shall not violate his or her dignity. A medical officer shall accompany the minor when he or she is being transported to the special care facility.

## **Article 126**

1. The special care facility shall inform the competent Probation Service and the competent court on the progress of the execution of the educational measure.
2. The facility shall specially inform the competent court of the medical condition of the minor when he or she reaches the age of eighteen (18) years.

## **Article 127**

### **Review, substitution and termination of educational measures**

1. Every six months, the director of the institution or facility where an institutional educational measure is executed shall submit to the competent court and the competent Probation Service a report on the behavior of the minor and the success in the execution of the measure. The director shall, depending on the success in the execution of the measure, submit a motion for amending or terminating the execution of the educational measure.
2. Every six (6) months, the juvenile judge shall visit the minors accommodated in an institution or facility and, through direct contact with the minors and the officers directly involved in executing institutional educational measures and reviewing the records of the institution or facility, establish whether the minors are treated correctly and in accordance with the law and whether the institutional educational measures have been successful.
3. The juvenile judge shall immediately inform the competent Probation Service and the institution or facility executing the institutional educational measure about any deficiencies or other observations. Upon receiving such information, the Probation Service shall immediately carry out the appropriate checks and undertake measures to correct the illegalities and irregularities and to inform the competent court about the actions undertaken.

## **Article 128**

1. The competent court that has imposed an educational measure shall review the execution of an educational measure every six (6) months.
2. The minor, his or her parent, adoptive parent or guardian, the centre, institution or facility where the educational measure is executed or the Probation Service may request a review of the execution of an educational measure.
3. The juvenile panel of the competent court shall issue a decision on the request referred to in paragraph 2 of the present Article within eight (8) days of the receipt of the request. An appeal against the decision may be filed with the court of second instance within three (3) days from receipt of the decision.
4. During the review, the competent court shall consider the reports of the Probation Service and of the director of the institution or facility where an institutional educational measure is executed and shall hear the minor, his or her parent, adoptive parent or guardian, the defense counsel, public prosecutor, and the Probation Service.
5. On the basis of the review, the court may decide to continue or terminate the execution of the educational measure, or substitute it for a less severe educational measure.
6. As an exception to paragraph 5 of the present Article, the court may substitute an education measure with a more severe educational measure where the minor has failed to comply with a special obligation imposed pursuant to Article 26 of the present Code.

### **Article 129**

1. If, after a ruling on imposing an educational measure has been rendered, additional circumstances, new evidence or evidence which existed but which was not known at the time the decision was rendered comes to light which would clearly have affected the selection of the measure, the court shall review the ruling and may terminate the execution of the measure or may substitute it with another educational measure. The court may not impose a more severe measure on the basis of newly-considered evidence.
2. 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. The court may not impose a more severe measure.
3. If, through no fault of the minor, the execution of the measure of committal to a disciplinary centre has not commenced within six months from the date on which the decision imposing the measure becomes final, the measure shall not be executed.
4. A review of an educational measure pursuant to the present article shall be conducted in accordance with Article 128 of this Code.

### **Article 130** **Complaints and petitions**

The provisions in the Law on Execution of Penal Sanctions on the submission of complaints and petitions by convicted persons sentenced to imprisonment shall apply mutatis mutandis to the submission of complaints and petitions by minors subject to the educational measures of committal to a disciplinary centre, a committal to an educational institution, committal to an educational-correctional institution or committal to a special care facility.

## **CHAPTER XVIII**

### **EXECUTION OF SENTENCES**

#### **Article 131** **Execution of Fines**

1. The provisions in the applicable Law on Execution of Penal Sanctions on the execution of fines shall apply mutatis mutandis to the execution of fines imposed on minors.
2. A fine imposed on a minor which is unpaid may not be replaced by a term of imprisonment.

#### **Article 132** **Execution of Orders for Community Service Work**

1. The provisions in the applicable Law on Execution of Penal Sanctions on the execution of a suspended sentence with an order for community service work shall apply mutatis mutandis to the execution of orders for community service work imposed on minors.
2. If it is in the interest of the minor, the Probation Service may seek assistance from or cooperation with the Guardianship Authority or the legal representative of the minor.

3. Special attention should be paid to ensuring that the completion of community service work does not prevent regular school attendance or other important activities.

### **Article 133**

1. The Probation Service staff shall submit a written report to the court that has imposed the punishment on the performance of the community work and any obstacles in the execution of this measure.

2. If the minor cannot complete the community service work because of a subsequent change in circumstances for which he or she is not responsible, the Probation Service shall ask the court to review the order for community service work.

3. The court may, in view of the results achieved, amend the order or terminate the execution of the measure.

4. The expenses regarding the execution of diversity measures, educational measures and order for community service work shall be paid from Kosovo budget.

### **Article 134**

#### **Execution of juvenile imprisonment**

1. The provisions of the present Code regulating sending, admission, stay and suspension of execution, allocation to educational groups, rights to visit and participation in physical exercise, determination of work and education, the possibility of regular schooling, disciplinary punishment of minors in educational institutions and procedures for complaints and petitions shall also be applied to the execution of the punishment of juvenile imprisonment.

2. The provisions in the Law on Execution of Penal Sanctions on the execution of a sentence of imprisonment shall apply mutatis mutandis to the execution of juvenile imprisonment where they are not in conflict with the present Code.

3. A minor who has been sentenced to juvenile imprisonment shall have the same rights as an adult who is sentenced to imprisonment in addition to the rights provided for by the present Code.

### **Article 135**

1. During the time they serve their sentences, minors shall be provided with appropriate vocational training based on their knowledge, skills, interests and current work, and depending on the limits of the correctional facility. The bases of the treatment are involvement in work that is educationally beneficial and with an appropriate remuneration, facilitating and encouraging contacts between the minor and the outside world through letters, telephone, receiving visits, going on home visits, sports activities and providing necessary conditions for religious practice.

2. The professional staff of the service treating the minor shall have an adequate knowledge in the fields of pedagogy and psychology.

### **Article 136**

1. Juvenile imprisonment shall be served in a correctional facility for minors, and, in exceptional cases, in separate departments of a correctional facility for adults. A correctional facility for minors shall be of the semi-confined type. Exceptionally minors may serve a sentence of juvenile imprisonment in correctional facilities of the confined type.

2. Males and females shall serve their sentences of juvenile imprisonment in separate correctional facilities or in separate departments of those facilities.

3. Minors who become adults during the execution of the punishment of juvenile imprisonment shall be accommodated in a separate department of the facility. Minors shall serve their sentences of juvenile imprisonment in a correctional facility for minors until they have reached the age of twenty-three (23) years. If at that age they have not served the full sentence, they shall be transferred to a correctional facility for adults. In exceptional cases, convicted persons who have reached the age of twenty three (23) years may be allowed to remain in a correctional facility for minors if this is necessary for the completion of their education or vocational training, or if the remainder of the sentence to be served is not more than six (6) months. However, they can under no circumstances remain in a correctional facility for minors after reaching the age of twenty-seven (27) years.

4. Adults on whom juvenile imprisonment has been imposed shall be accommodated in a separate department of the facility.

5. Every year, the director of the facility where juvenile imprisonment is executed is obliged to submit a report to the court that has imposed juvenile imprisonment on the behavior of the minor and the execution of juvenile imprisonment.

#### **Article 137**

1. As a rule, minors shall serve their sentences together.

2. Upon the request of a minor, the director of the correctional facility may permit the minor to be separated from other convicted persons if the director determines that the concerns underlying the minor's request are reasonable and there are no other alternatives for addressing the minor's concerns.

3. The director of the correctional facility may order a minor to be separated from other convicted persons, without the request of the minor for such separation, only if such measure is necessary:

3.1. To avert danger to the life or health of the minor or other persons; or

3.2. To avert a threat to the security of the correctional facility posed by the continued presence of the minor in the general prison population.

4. The provisions in the Law on Execution of Penal Sanctions on separation from other convicted persons shall apply mutatis mutandis to the separation of a minor from other convicted persons.

#### **Article 138**

1. In accordance with a sub-legal act issued by the Ministry of Justice, the director of a facility may authorize a minor to take leave twice each year to visit to his or her parents, adoptive parents, guardian spouse, children, adopted child, brothers and sisters.

2. The leave shall last up to thirty (30) days and as a rule it shall be authorized when lessons are not being held.

#### **Article 139**

1. A minor has the right to spend at least three (3) hours daily in open environment within the institution.

2. A minor shall not be subject to solitary confinement as a disciplinary punishment.

#### **Article 140**

The juvenile panel in the district court of the territory where the punishment is being served shall decide on a petition for judicial protection against the measures and decisions of the director of the correctional facility in which the convicted person is serving the sentence of juvenile imprisonment.

### **CHAPTER XIX**

#### **ASSISTANCE AFTER EXECUTION OF INSTITUTIONAL EDUCATIONAL MEASURES OR JUVENILE IMPRISONMENT**

#### **Article 141**

1. During the entire time that an institutional educational measure or juvenile imprisonment is being executed, the Probation Service shall maintain regular contact with the minor, his or her family and the institution or facility in which the minor is accommodated.
2. No later than three (3) months before the release of the minor, the institution or the correctional facility where the institutional educational measure or juvenile imprisonment is being executed shall inform his or her parents, adoptive parents or guardian and the Probation Service about this and shall propose to them measures for the reception of the minor.

#### **Article 142**

1. The parent, adoptive parent or guardian of the minor shall inform the competent Probation Service of the release of the minor.
2. The Probation Service shall offer assistance to the minor 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 minor, the Probation Service may seek assistance from or cooperation with the Guardianship Authority or the legal representative of the minor.

#### **Article 143**

1. After the release of a minor, the Guardianship Authority shall take special care of a minor who has no parents and of a minor whose family circumstances are not settled.
2. 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 minor.

### **CHAPTER XX**

#### **EXECUTION OF MEASURES OF MANDATORY REHABILITATION TREATMENT OF MANDATORY PSYCHIATRIC TREATMENT**

#### **Article 144**

1. The provisions of the Law on Execution of Penal Sanctions on the execution of a measure of mandatory rehabilitation treatment and the provisions of the applicable law on the execution of a measure

of mandatory psychiatric treatment imposed on adults shall apply mutatis mutandis to the execution of these measures imposed on minors.

2. A minor shall serve a measure of mandatory treatment in a separate department of the health care institution where these measures are executed.

## **PART FIVE**

### **PROCEEDING INVOLVING CRIMINAL OFFENSES COMMITTED AGAINST CHILDREN**

#### **CHAPTER XXI**

#### **TRIAL OF ADULTS FOR CRIMINAL OFFENSES COMMITTED AGAINST CHILDREN**

##### **Article 145**

1. The juvenile panel and juvenile judge shall try adults for the following criminal offences committed against a child, as provided in the Criminal Code of Kosovo:

- 1.1. Rape;
- 1.2. Commission of Sexual Acts by Threat to Honour or Reputation;
- 1.3. Sexual assault;
- 1.4. Degradation of Sexual Identity;
- 1.5. Sexual Abuse of Persons with Mental or Emotional Disorders or Disabilities;
- 1.6. Sexual Abuse of Persons Under the Age of Sixteen (16) Years;
- 1.7. Promoting Sexual Acts or Sexual Touching By Persons Under the Age of Sixteen (16) Years;
- 1.8. Sexual Abuse by Abusing Position, Authority or Profession;
- 1.9. Facilitating Prostitution;
- 1.10. Abuse of Children in Pornography;
- 1.11. Showing Pornographic Material to Persons under the Age of Sixteen (16) Years;
- 1.12. Sexual Relations within Family Units;
- 1.13. Cohabiting with Persons Under the Age of Sixteen Years in Extramarital Community;
- 1.14. Changing the Family Status of a Child;
- 1.15. Unlawful Abduction of a Child;
- 1.16. Mistreating or Abandoning a Child;
- 1.17. Violating Family Obligations;

- 1.18. Avoiding Maintenance Support;
- 1.19. Prevention and Non-Execution of Measures for Protecting Children;
- 1.20. Conscription or Enlisting of Persons between the Age of Fifteen (15) and Eighteen (18) Years in Armed Conflict;
- 1.21. Establishing Slavery, Slavery-like Conditions and Forced Labour;
- 1.22. Trafficking in persons; and
- 1.23. Withholding Identity Papers of Victims of Slavery or Trafficking in Persons.

#### **Article 146**

1. Proceedings against a person who commits a criminal offence under Article 145 of the present Code against a child shall be conducted in accordance with the provisions of the Kosovo Code of Criminal Procedure, except the provisions on the issuance of a punitive order defined with provisions of the Kosovo Code of Criminal Procedure.
2. Police officers who specialize in criminal offences against minors shall investigate such criminal offences.

#### **Article 147**

1. When conducting proceedings involving a criminal offence committed against a child, the authorities or institutions shall act with particular care in relation to the child who suffered harm from the criminal offence, bearing in mind his or her age, personal characteristics, education and the environment in which he or she lives, so as to avoid any possible harmful consequences for his or her upbringing and development. The examination of the child shall be conducted with the assistance of a pedagogue, psychologist or another expert.
2. If a child against whom a criminal offence referred to Article 145 of the present Code is committed is examined as a witness, such examination shall be conducted at most twice. The examination shall be conducted with the assistance of a pedagogue, psychologist or another expert. The court may order that the witness be examined outside the courtroom by means of closed circuit television.
3. A child against whom a criminal offence referred to Article 145 of the present Code is committed may be examined as a witness in his or her own home or some other location where he or she is present or a Centre for Social Work rather than in the court. Paragraph 2 of this article shall apply to such examination.
4. Any technical recording of the examination conducted by closed circuit television under paragraph 2 of this article shall be destroyed within five (5) years of the entry into force of the judgment.
5. Article 50 of the present Code shall apply mutatis mutandis to proceedings involving a criminal offence committed against a child.

#### **Article 148**

The juvenile judge shall inform the competent Guardianship Authority of the facts and evidence that were established in the criminal proceedings to have contributed to or facilitated the commission of the criminal offence so that appropriate measures for the protection of the rights and the well-being of the child can be undertaken.



#### **Article 149**

If it is established during criminal proceedings that the parent is abusing or grossly neglecting parental duties and rights or is violating the rights of the child, the prosecutor shall initiate non-contentious proceedings to remove the rights of parental care from the parent.

#### **Article 150**

As a rule, the court within whose territory the injured party has a permanent residence shall have territorial jurisdiction for proceedings involving criminal offences committed against a child whereas proceedings may be conducted before the court within whose territory the criminal offence has been committed if the proceedings will be conducted more easily before that court.

#### **Article 151**

Article 51 of the present Code shall apply mutatis mutandis to adjudicating a criminal offence under Article 145 of the present Code committed against a child.

#### **Article 152**

1. The juvenile panel of the municipal court and the juvenile panel of the district court at first instance shall be composed of a juvenile judge and two (2) lay judges. When the juvenile panel adjudicates at first instance a criminal offence punishable by imprisonment of at least fifteen (15) years or by long-term imprisonment, it shall be composed of two (2) judges, of whom one is a juvenile judge, and three (3) lay judges.

2. The juvenile panel of the Supreme Court of Kosovo shall be composed of three (3) judges when adjudicating at the second instance. When the juvenile panel is adjudicating at the main trial a criminal offence punishable by imprisonment of at least fifteen (15) years, it shall be composed of five (5) judges, of whom three (3) are judges for minors, whereas when it adjudicates at second instance with a hearing, the juvenile panel shall be composed of two (2) judges for minors and three (3) lay judges. When adjudicating at third instance and deciding on extraordinary legal remedies, the panel shall be composed according to the Kosovo Code of Criminal Procedure.

3. In cases without a hearing, the panel shall be composed according to the Kosovo Code of Criminal Procedure. However, at least one member of the panel shall be a juvenile judge.

4. The judge in summary proceedings is the juvenile judge of the municipal court.

#### **Article 153**

Proceedings involving a criminal offence under Article 145 of the present Code committed against a child shall be conducted expeditiously and without unnecessary delay.

**PART SIX**  
**TRANSITIONAL AND FINAL PROVISIONS**  
**CHAPTER XXII**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 154**

An institutional education measure which has been imposed by a final decision before the date of the entry into force of the present Code cannot last longer than the period of time provided by the present Code.

**Article 155**

Juvenile imprisonment, which has been imposed by a final decision before the date of the entry into force of the present Code for a longer period of time than could be imposed in accordance with Article 34, paragraph 2 of the present Code, shall be reduced in accordance with the provisions of the present Code.

**Article 156**

Preparatory proceedings initiated before 6 April 2004 but which were not completed by this date shall be continued and finished according to the provisions of the previous applicable law.

**Article 157**

1. Criminal proceedings at first instance under Part Three of the present Code in which the motion of the public prosecutor was filed before 6 April 2004 but which were not completed by this date shall be continued according to the provisions of the previous applicable law until:

- 1.1. The criminal proceedings are dismissed in a final form by a ruling; or
- 1.2. The judgment rendered at the main trial becomes final.

2. Criminal proceedings at first instance under Part Five of the present Code in which the indictment, summary indictment or private charge was filed before the date of entry into force of the present Code but which have not been completed by this date shall be continued according to the provisions of the previous applicable law until

- 2.1. The criminal proceedings are dismissed in a final form by a ruling; or
- 2.2. The judgment rendered at the main trial becomes final.

**Article 158**

Upon the entry into force of the present Code, if any prescribed period of time is running, such period shall be counted pursuant to the provisions of the present Code, except if the previous period of time was longer or the provisions of the present Chapter provide otherwise.

#### **Article 159**

Up to the time when will be setup of Prosecutorial Council, where mediator is chosen by Prosecutor, the expenses regarding the mediation procedure, including the payment of mediator shall be paid from Ministry of Justice budget.

#### **Article 160**

The competent authorities shall issue sub-legal acts for the application of this Code in a six (6) months term from the day of entry into force of this Code.

#### **Article 161**

The present Code shall supersede Juvenile Penal Law UNMIK, Regulation No.2004/8 of the date 20.02.2004 and any provision of the applicable law which is inconsistent with it.

#### **Article 162**

This Code shall enter into force fifteen (15) days after its publication in the Official Gazette of Republic of Kosovo.

**Code No. 03/L-193**  
**8 July 2010**

**Promulgated by the Decree No. DL-039-2010, dated 28.07.2010, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.**