

# ANALYSIS OF THE LEGISLATION ON JUVENILE DELINQUENCY – KOSOVO CASE

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## **Abstract**

*This paper presents an overview of legislative activity in Kosovo in the field of the justice for minors focused after 2004 year. The goal of paper is to offer the legal and institutional experience regarding the criminal responsibility of minors, procedural regulations related to investigation, prosecution, judicial process, execution of decisions, rehabilitation as well as every measure that has do to with the minor as a victim or as a witness, or any measure which covers the conflict with the law and a minor victim or/and witness of penal act. Problems of minors in the conflict with the law are complex and they require inclusion of many actors before and after the criminal act is done. Without an inclusion of all actors, the system of juvenile justice will not be effective. Paper is focused in the juvenile justice including the penal sanction, diversity measures and education measures. For the needs of this paper the combined methodology is used with the methods of comparasion analysis and the method of sistemic analysis. Paper reviews the legal basis of juvenile justice in Kosovo in order to explain how effective it was from 2004 to 2017 year. Findings witness that legislative measures have not achieved needed efficiency regarding its implementation.*

**Keywords:** juvenile justice, diversity measures, education measures, mediation.

**JEL Classification:** K14, K36

## **1. Introduction**

Kosovo as a new state, which is actually celebratin its tenth Anniversary, has managed to build a juvenile legislation. This new state has build a legal infrastructure which to some extent fulfils the needs for investigation and prosecution of minors that conducted criminal offenses as well as the measures taken against minors that committed crimes or that in these acts have the elements of criminal offense. Kosovo in addition to the criminal strict legislation has sanctioned also some mechanisms or institutions who in various ways take part in the process of treating the juvenile justice. All this has been done in accordance with the modern international trends in preventing criminality of minors in one side, and in pronouncing measures and sentences against minor offenders. Thus if analysed the bellow paragraph it will be seen that the current Kosovo legislation is in accordance with it.

UN Convention on the Rightht of Children (1989) ratified on February 27, 1992 and the Protocol added to it in January 18, 2002 related to trafficking, prostitution and children pornography; Universal Declaration of Human Rights (1948); Declaration of Children Rights; UN Minimum Standard Rules in administering Juvenile Justice (Beijing Rules 1985); UN Rules on Protection of Youth Deprived of Freedom (Havana Rules 1990); UN Guideliness on Preventing the Juvenile Deliquence (Riad Guideliness 1990); UN Minimum Standard Rules related to measures of non-arresting (Tokyo Rulse 1990); UN ILO Regulation nr.29 on obliged work (1930); UN Convention on Political and Civil Rights (adopted on 1966 and entered into force on 1976); Convention Against torture and cruel treatment, inhuman and degrading (Law nr.7727/30.06.1993) as well as: Committee On the Children Rights, Reservations, Declarations and Objection regarding KDF, CRC/C/2/Rev.8, December 07, 1999; Committee of Human Rights-General Comments 17, article 24, 1989, Overview of Comments and general recommendations adopted by the Group of treaties on human righth, HRI/GEN/1/Rev.5, April 26,2001; ECOSOC, Guideliness of action for children in the criminal justyce system, Resolution 1997/30, Annex July 21, 1997; ECOSOC-Main Directives related to justice of children victims and witness of criminal acts 2005; Convention against torture and treatment

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or other cruel punishments or other cruel treatments, additional protocol against torture or cruel, degrading or inhuman punishments.<sup>2</sup>

Kosovo has also a type of heritage from the past times of former Yugoslavia, when there existed a practice and institutions, which dealt with treating that which is known as juvenile justice. Nonetheless, with this paper there will not be paid an attention to the historic development of juvenile justice and a more attention will be paid to the importance of the current Code of Juvenile justice and the issues which are treated by this code as well as the legal basis of the juvenile justice in Kosovo.

## 2. Kosovo legislation – Juvenile Justice Code

Legal basis for building the criminal juvenile justice we find in as follows: 1. Kosovo Constitution<sup>3</sup>, 2. International Agreements<sup>4</sup>, 3. Laws<sup>5</sup> and 4. Other acts adopted by Kosovo Government. Juvenile Justice Code is structured in six parts and it is divided into 22 chapters.

Code has entered into force in 2010 year. Before the data about the parts and the chapters of this code it is important to stress out that in the modern trends, this code gives a big importance to the interests of children. This code gives a big importance to the cases when criminal offenses were conducted from minors then code gives also importance to the educative measures and other measures which are more preferred in comparison of punishments against minors. In essence this is the spirit of all modern legislations in the world, even in both systems: anglo-saxon and the continental. In order to see in more details the juvenile criminal justice code below we will describe some of most important articles and parts/chapters of this code. Otherwise Kosovo had even before the criminal juvenile justice code which was adopted in 2004 year.

Definitions about basic notions that have to do with the juvenile justice are given in the article 2 of the code. Article 3 of code gives a description of main principles, out of which the following is cited: “deprivation of freedom is pronounced only as the last means and it will be limited with the minimum possible time. During the time of deprivation of freedom, pronounced as the sentence, to the minor offense is offered education, psychological help, and the needy basis and medical assistance in order to ease his rehabilitation“.<sup>6</sup> Even though deprivation of freedom as a sanction is not treated as the measure treated as priority, however when it is applied as such, a special attention is paid to the minor and this of big importance. Thus, „every minor deprived of freedom is treated with humanism for the sake of personal dignity and in that case the personal needs and the age of minor will be taken into the consideration. Specifically every minor deprived from freedom is separated by adults, with the exception when it is considered that it in the interest of minor not to be separated and to enjoy the right to keep contacts with his family through correspondence and visits---except the extraordinary circumstances foreseen by the law.“<sup>7</sup>

In order to avoid possibilities of stigmatization and labeling, which could follow minor after the measures against him ended, the legislator has foreseen „in order to avoid injuries because of excessive labeling, the right of children on privacy is respected at all phases. In principle, no report is going to be published if it identifies the minor perpetrator“<sup>8</sup>

Article 5 of Juvenile Justice Code regulates the issue of what dispositions are implemented against minor in the material and the procedural aspect. Thus, dispositions of Criminal Code, procedural Criminal Code, the Law on execution of penal sanctions and of any other relevant law, which will be implemented for the minors, except on the cases that are regulated differently.

Second chapter of the Juvenile Criminal Code (in the further text code) gives an importance to the measures and the applicable punishments. Article 7 gives the educative measures and the

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<sup>2</sup> Arta Mandro, *Drejësia për të Mitur në Shqipëri*, Children's Human Rights Centre of Albania – CRCA, Tirana, available at <https://www.crca.al/sites/default/files/publications/Drejtesia%20per%20te%20mitur.pdf>, (consulted on 1.10.2018), p.13.

<sup>3</sup> Kosovo Constitution has entered into force in June 2008.

<sup>4</sup> In the field of the human rights as the integral part of constitutional system of Kosovo is a number of international conventions.

<sup>5</sup> Kosovo Juvenile Justice Code is the most important and it is in force since 2010.

<sup>6</sup> Paragraph 3, art. 3, Kosovo Juvenile Justice Code.

<sup>7</sup> *Idem*, Paragraph 5, art. 3.

<sup>8</sup> *Ibid*, Paragraph 7, art.3.

punishments which could be pronounced against minors, which are: fine, order for work in the favor of society and the imprisonment of the minor.<sup>9</sup> Further, regarding sentences, they could not be pronounced for a minor who was under the 16 years of age in the time when the crime was committed.<sup>10</sup>

Measures and punishments foreseen with the code are given as the following definitions. Terms used in this Code shall have the following meanings: *child* - a person who is under the age of eighteen (18) years; *minor* - a person who is between the ages of fourteen (14) and eighteen (18) years; *young juvenile* - a person who is between the ages of fourteen (14) years and sixteen (16) years; *adult juvenile* - a person who is between the ages of sixteen (16) years and eighteen (18) years; *young adult* - a person who is between the ages of eighteen (18) years and twenty-one (21) years; *juvenile* - a child or a young adult; *adult* - a person who has reached the age of eighteen (18) years.<sup>11</sup>

A short review of the legislations of the European states and even broader leads us towards the conclusion that according to these definitions as given by Kosovo Code, do not differ or differ very little. Thus they are essentially similar whereas differences are only in nuances.

Third chapter of Code regulates the possibilities of engaging mediators in the criminal procedures against juveniles. Thus, according to the Code, prosecutor, judge for minors or juvenile trial college may propose mediation if he estimates that this would be more appropriate based on the nature of criminal act, the history of minor, possibilities on turning back the normal relationships between the minor and the injured party, possibility of reducing damage of the injured party, possibility of rehabilitation of the minor and his re-integration in the society.<sup>12</sup> Mediation has started to be applied in Kosovo during the last years as a special solution for alternative solution of conflicts and under this context Kosovo Parliament has adopted the Law on Mediation.

Chapter four of Code regulates the issue of diversity measures, their goals, conditions for pronouncing diversity measures and the types of diversity measures.<sup>13</sup>

Chapter five regulates issues of educative measures, types, duration, etc. Chapter 6 regulates penalties and the order for work on the general interest. Chapter 7 is a chapter that talks about the detention of minors as the measure which is less favoured and less popular. However, article 33 describes the goal of imprisonment penalty whereas the article 33 regulates how the punishment is pronounced. Meanwhile duration of minor imprisonment cannot exceed maximum foreseen for the penal act but it could be under the minimum of imprisonment foreseen for the penal act; and the imprisonment for minors cannot be pronounced in the duration less than six months and more than five years and it is pronounced in complete months and years. Maximum duration of imprisonment for minors is ten years for serious criminal offenses punished with the long duration punishment, or when the minor has committed two criminal acts in union where each is punished with the imprisonment for more than ten years.<sup>14</sup>

Chapter eight solves issues of measures for obligatory treatment and complementary sentences, whereas the third part of code---nine chapter deals with the procedures. In this context it is important to be stressed out that the minor cannot be sentenced in absence and he/she (minor) should have a defending lawyer from the beginning of procedure up to the end.

Chapter ten of code talks about the composition of the trial panel and this chapter in a clear way shows how much attention is paid to the minors.

For criminal juvenile procedure: 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 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 judges, including at least one juvenile judge. When a juvenile panel adjudicates at a main trial, it shall

<sup>9</sup> *Ibid*, Paragraph 1, art. 7.

<sup>10</sup> *Ibid*, Paragraph 2, art. 7.

<sup>11</sup> *Ibid*, Paragraph 3, art. 7.

<sup>12</sup> See more at art. 2 of the Kosovo Juvenile Justice Code.

<sup>13</sup> *Idem*, paragraph 2, art. 14.

<sup>14</sup> *Ibid.*, articles 16, 17 and 18.

be composed of two juvenile judges and three 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.<sup>15</sup>

Chapter eighteen of code deals with the execution of punishments and with the competent organs obliged to implement them. Nineteen chapter of code deals with the assistance which is given to minors of the execution of sanctions.

A very important part of code is the fifth part which deals with the court procedure that include criminal acts committed against minors, concretely in the chapter 20 there are regulated issues about trials against adults who committed crimes against minors. Based on importance of child custody and not only for their health, bellow there si given the total description of criminal acts against the minors as given in the criminal code: Rape; Commission of Sexual Acts by Threat to Honor or Reputation; Sexual assault; Degradation of Sexual Identity; Sexual Abuse of Persons with Mental or Emotional Disorders or Disabilities; Sexual Abuse of Persons Under the Age of Sixteen (16) Years; Promoting Sexual Acts or Sexual Touching By Persons Under the Age of Sixteen (16) Years; Sexual Abuse by Abusing Position, Authority or Profession; Facilitating Prostitution; Abuse of Children in Pornography; Showing Pornographic Material to Persons under the Age of Sixteen (16)Years; Sexual Relations within Family Units; Cohabiting with Persons Under the Age of Sixteen Years in Extramarital Community; Changing the Family Status of a Child; Unlawful Abduction of a Child; Mistreating or Abandoning a Child; Violating Family Obligations; Avoiding Maintenance Support; Prevention and Non-Execution of Measures for Protecting Children; Conscription or Enlisting of Persons between the Age of Fifteen (15) and Eighteen (18) Years in Armed Conflict; Establishing Slavery, Slavery-like Conditions and Forced Labour; Trafficking in persons; and Withholding Identity Papers of Victims of Slavery or Trafficking in Persons.<sup>16</sup>

### 3. Conclusions

Kosovo criminal legislation to a highest extent is completed, but nonetheless discussions in academic and in practice channels are being developed regarding the needs for chnges in the legislation. Regarding the juvenile justice, Kosovo after the war has managed to build up a system which gives a special protection to children even in the moments when they appear as violators of legislation. Juvenile justice code has filled up gaps from the previous legislation and it has managed to be a law in coherence with the modern European trends. This code in addition to santioning elements of the criminal acts committed or which could be ccommitted by minors, has sanctioned also the criminal acts committed by adults against minors. Juvenile justice code has regulated precisely developed procedures of pronouncing measures against minors, it has specified the role of prosecutor as well as it has regulated the composition of trial colleges in the cases when minors committed crimes. Code has included the notion of mediation where it has given a substantial role to the institution of mediator as well as othe institutions who care for children from the aspect not only social as the tutorial institutions. However it is still early to draw conclusions about what has been achieved with the current legislation and for the determined orientations for changes. Nonetheless, paper's goal was to stress out the main solutions from the Juvenile Justice Code whearas specific reccomendations will be object for the papers to follow.

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<sup>15</sup> *Ibid*, paragraphs 1,2 of art. 34 of Kosovo Juvenile Justice Code.

<sup>16</sup> Article 145 of Kosovo Juvenile Code.

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