

## **JUVENILE LAW IN KOSOVO**

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In Kosovo, the criminal proceedings against juveniles, who have committed a criminal offense, is regulated by law on minors. This law provides substantive and procedural legal provisions, which deal with minor offenders. These juvenile offenders are different from those adult offenders of crimes. These standards define the legal position of minors in Criminal Procedure and Criminal Justice, giving priority auxiliary corrective measures and social integration of children. These rates highlight the separation of children from adults of age, preventing negative impacts of adult delinquent. This law contains provisions on criminal offenses, which are carried out at the expense of children. Specific provisions of substantive law and procedural execution juvenile criminal, juvenile age related to the age of minors, even for the time of the commission, as well as juvenile trial time, especially in the execution of legal criminal punishment. In this sense, for juveniles who commit criminal acts, rules are processed in specific criminal procedure. This special group of procedural rules should provide such a procedure, which protect the rights of minors as participants, exactly as procedural entity, to avoid the consequences for a minor personality in the procedure and ensure implementation of scope of assistance and rehabilitation of juveniles. What I noticed, is that this specific procedure against juveniles, implements international standards relating to the status of minor offenses, also efforts to protect human rights and procedural guarantees, especially minors as offender. The purpose of the penalty for minors is not an exclusive response for certain issues, but juvenile trial is based first, seeking the most appropriate measures for his/her positive integration into society.

**Key words: children's right, fundamental rights, human rights, criminal law (criminology), universal treaty, the Convention on the Rights of the Child, child, crimes, criminal convictions, court, etc.**

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## 1. Juvenile law in Kosovo

Criminal policy against crime in general cannot be understood in isolation from the broader regional developments. On the spirit of cooperation, in the fight against crime, not just criminal justice legislation of Albania, but also on the countries of the region, is designed and transformed in accordance with relevant international conventions adopted by international institutions like the UN, EU, etc.

Criminal justice legislation of the countries of the region, in the treatment of juveniles in the criminal process, is currently in full compliance with modern criminal policy to follow the member state of the EU. Treatment of juveniles in criminal legislation of Slovenia, Croatia, Macedonia, Serbia, Montenegro, Bosnia-Herzegovina and Kosovo, are in the same spirit, as these countries have applied and aspire to become a member states of the EU.

“As a result of political developments after the EU authority in Kosovo, on 13 March 2003, Kosovo became the in the mechanism of the Stabilisation and Association Agreement with the EU”<sup>2</sup>. In this context, efforts, as a result of a working group of national and international experts, on July 6, 2003, adopted the Provisional Criminal Code of Kosovo, which was repealed effective on January 1, 2013, the Criminal Code<sup>3</sup>. The adoption of this Code, was a very important event for development of social and political life, especially in the area of penal law in Kosovo. Based on scientific area, this Code is similar with the other Codes of European countries or other regulations of them.

“In terms of legislation, the criminal law in Kosovo, after the war, underlines a high importance, the issue of criminal justice treatment of juveniles”<sup>4</sup>. In this, case, the situation is regulated by a specific law<sup>5</sup>, which is in accordance with penal law of the most development countries of EU.

Juvenile Criminal Law of Kosovo, which came into force on April 20, 2004, was prepared with the assistance and support of the best experts of the Council of Europe and Kosovo. This

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<sup>2</sup>Reka B., chairman of the Institute for EU integration of Kosovo, Published by “Doracaku për jurisprudencë”, Prishtinë, 2004, pg.4

<sup>3</sup>Code no.04/L-82, 20 april 2012, came into force on January 2013, official journal of Republic of Kosovo, no.19, date 13.07.2012, Prishtine.

<sup>4</sup>Dr.Ismet Salihu, “Juvenile Law”, Prishtine, 2005, pg.13

<sup>5</sup>Penal Law for Juvenile of Kosovo, base on Regulation of UNMIK-ut, 2004/8, came into force on April 20, 2004.

law, together with Criminal Code and the Criminal Procedure Code implementing modern concepts for the treatment of juvenile delinquents.

In this law, the provision of alternative measures and educational measures as non-criminal sanctions against perpetrators of minor offenses is a priority, together with the participation of the probation service and guardianship, which in collaboration with parents of minor, prosecutor and the court, in their execution make this law, one of the region attaining. Due to this fact, as the deprivation of liberty or imprisonment of a minor, is intended not only as a last resort, but limited to very short term, and is fully treated in accordance with the rules of the Beijing and Tokyo.

In juvenile criminal law in Kosovo are transposed principles, concepts, institutions and concrete solutions from conventions and international instruments on juvenile and criminal legislations, mainly France and Italy. But, as the model has served Croat law<sup>6</sup>, based on the conditions and possibilities of its application.

Criminal Law for minors composed by 157 articles, is arranged in five parts and is divided into 21 chapters.

In the first part, articles 1-5, are set out basic principles and definitions of key concepts. In the second part, articles 6-36, are defined measures and penalties that can applied to perpetrators of minors offenses.. In the third part, articles 37-78, are set procedures for cases of juvenile perpetrators of criminal acts. In the fourth, articles 79-140, methods of execution are defined measures and penalties. In the fifth, articles 141-149, are set major court proceedings to persons, who commit crimes against minors. In the sixth parts, sections 151-157, are projected transitional and final provisions.

### ***1.1. The main features of the law.***

The main features of this law are as following:

- Basically, was kicked out criminal responsibility for juveniles, as under Article6, paragraph3".... to minors who have not reached the age of 16 years old at the time of the commission of the offense, may be imposed only measures of diversity and educational one.

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<sup>6</sup>Dr. Ismet Salihu, "Juvenile Law", Prishtine, 2005, pg.21

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- The possibility of punishment by imprisonment of minors, according to article 30 of the law, is envisaged exceptionally, only when it comes to minors and adults, who have committed a criminal offense for which punishment is provided, not less than 5 years in prison.
- Prosecution bodies are provided with extensive powers, namely, whether the prosecutor considers that served socialization of juvenile delinquent, may abandon prosecution, while the court has a large number of possibilities for selecting measures and measures of diversity education, but also to replace these measures with one other.
- For perpetrators of minor offenses, are set to specific bodies of jurisprudence, which have the task of combating juvenile delinquency, but also as a special procedure, as close to the police authority, and the court, with the establishment of colleges for judgment of minors, as well as the procedure of execution of alternative measures of punishment of minors, which is different from the execution of penal sanctions for persons majeure under Articles 79-140 of the law.

### ***Separation of minors under the age***

Under Kosovo Criminal Law, article 2, paragraph 2 juvenile considers persons aged 14-18 years. In terms of age, according to this law, the age group 16-18 years referred juvenile adults. So, the first group are set out only diversity and educational measures. In the second group, in certain cases, the penalties can be granted, provided by article 6, paragraph 2, such as fines, community service orders for work in general and prison for juveniles. According to paragraph 5, of this article, for this age group is also anticipated the possibility of granting conditional sentence and compulsory treatment measures as provided for in Article 35 and additional penalties, as provided for in Articles 54-62 of the Criminal Code Kosovo. Besides the above two groups, juvenile criminal law of Kosovo, article 2, paragraph 3, provides another category of people (middle category) who are called young adult. This category consist people of 18-21 years, which is foreseen possibility that this age group, according to Article 10, be given punishment measures, provided for in Article 6 of this law. In this case, the court considers the circumstances in which the offense was committed, expert opinion regarding adult psychological development, as well as the fact, according to which the court is convicted that the purpose to be achieved by

imposing imprisonment, will be achieved by imposing the sentence that measures provided for in Article 6 of this law.

## **1.2. Types of punishment measures**

Juvenile Criminal Law of Kosovo, provides 8 types of diversity and educational measures. The aim of measures is to draw attention to minors because of who committed the crime, as well as their treatment to rehabilitation and resocialization, the function of a more fair. In addition to these measures, the law provides punishment by fine as measure, or, order to work for the benefit of the community, and juvenile detention punishments. The set of measures of diversity, education and enable the court to sentence type and size of measure and give him the punishment, which is thought to achieve the goal of education and rehabilitation of the minor.

### ***Measures of diversity***

1. Mediation, between juvenile perpetrator and the injured party, including search and forgiveness from the child, to the injured party.
2. Mediation, between the child and his family.
3. Compensation for damages, the injured party, by mutual agreement between the victim, the juvenile and his legal representative, in accordance with the financial situation of minors.
4. Following regular school
5. Acceptance of his employment or training in the profession, in accordance with his abilities and skills.
6. Conduction of free labor, community service, in accordance with juvenile perpetrators skills to perform such work.
7. Education in traffic rules.
8. Psychological counseling.

In Article 14, the juvenile pen law is provided the following conditions, to provide diversity measures:

- a. Conditions, which must meet a minor, in connection with the crime committed. For the offense, which is projected to fine or imprisonment up to three years for adults;
- b. Conditions that must meet delinquent minor, such as acceptance of responsibility or guilt for the crime committed, the willingness to comply with the injured party from criminal behavior, and give consent to be parents, adoptive parent or legal guardian of the minor.

### *Education measures*

Under Article 17 of the law, related to education measures are applied 8 types of these, based on three groups:

The first group includes disciplinary measures. These are:

1. Judicial admonition;
2. Sending juvenile in a disciplinary center

The second group includes supervisory measures:

1. Increased supervision by parents, adoptive parent or legal guardian of the minor;
2. Increased oversight of another family;
3. Increased supervision of the custody

The third group includes institutional measures:

1. sending juveniles in rehabilitation institution;
2. sending juvenile correctional educational institutions;
3. sending juvenile perpetrators of particular institution.

Disciplinary measures and precautions to add executed in freedom and institutional measures executed by mentioning the minor from the family environment and institutions located in specific educational care.

According to Article 7 of the law to minors, the court in choosing measure of diversity or educational measure, takes into account the following criteria and conditions:

The type and severity of the offense;

- The age of the child;
- The level of psychological development;

- His character and disposition;
- Motivations that have promoted to commit the offense;
- His background and education;
- Environment and circumstances of his life;
- If committed measure or punishment in previous times;
- All other circumstances that may affect the imposition of the penalty.

### *Penalties for minors*

The juvenile law in Kosovo, in Article 6, for the perpetrators of minor's offenses is provided these types of punishments:

1. Fine;
2. The order of community service work;
3. Juvenile prison.

Although these types of punishments are repressive nature, their aim is to provide rehabilitation and development of the right of minors and as provided in Section 7 of this law, which explicitly states: "...court first considers the best interests of the child..."<sup>7</sup>

In any case, cannot be given a fine as sanction, if the minor doesn't own the means to pay the fine, under the Article 27 of this law.

The court cannot give penalty orders for work, community service, for more than 30-120 hours, and for that kind of work, which exerts influence on the minor in raising its function, as in the future, commits a criminal offense again, will be given the same punishment or worse.

The punishment of juvenile imprisonment, deprivation of liberty, although it has some special features, which make changes substantially from the execution of a sentence of imprisonment for adults. Through this form of punishment, intended to exercise influence in education, but also to provide protection in order to achieve rehabilitation and specialized education, in accordance with professional skills and personal development appropriate juvenile prisoners, as provided in Article 29 of this law.

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<sup>7</sup>Penal Law for Juvenile in Kosovo, Article 7.

Terms under which this form of punishment imposed, are provided in Section 6 of this law, which states, "... *only to a minor increase, which is criminally responsible for the criminal offense committed, must have its resources for the execution of fine, family situation and other factors that are sufficient to establish the court conviction that it form of punishment would be instructive to the minor character.....*".

In summary, conditions of conviction with imprisonment of minors are:

1. At the time of the offense, the juvenile perpetrator be greater than 16 and less than 18.
2. The punishment of juvenile with imprisonment may be granted only for offenses that provide for imprisonment of 5 years.
3. If the courts, finds only certain level of responsibility;
4. For offenses that causing serious consequences and if due to the high degree of responsibility, it wouldn't be appropriate to provide educational measures.

The minimum length of imprisonment for adults and juveniles is not less than six months to five years in prison, but for specific works and if it has committed more than one offense, the court may provide for imprisonment up to ten years. If the minor has completed not less than one third of the penalty of imprisonment, the court may grant bail, accompanying the extent of supervision by the parent. Adoptive parent or legal guardian, to the termination of the sentence imposed under Article 32 of the law, this decision may be revoked in the event that a juvenile commits another offense during that time period.

### ***Providing additional sentences for juvenile***

As a special type of major penalties, additional penalties may also be given to minors, according to Article 36, the juvenile law in Kosovo. Courts can make these type of punishments:

1. Prohibition to drive;
2. Removal of driving license;
3. Receipt of the object;
4. Expulsion of a foreigner from territory of Kosovo.

To grant these kinds of sanctions, the court must comply some conditions provided by Article 36 of this Law.

### ***Giving compulsory treatment measures minors***



In the context of internal factors, mental disorders and mental illness, and addiction to drugs and alcohol are seen as essential premise causes of criminal behavior, not merely for adults but also for children. Under juvenile law in Kosovo, Article 35, measures of treatment are mandatory for minors under the provisions of articles 76 and 77 of the Criminal Code of Kosovo. Under the Code of Criminal Procedure, Article 486-488, is provided special judicial procedure for granting compulsory treatment measures for juveniles, in the framework which, taken into account the personality of the juvenile court, educational measures, type of the penalties that can be given to this category of perpetrators of criminal acts. According to articles 76-77, the Criminal Code, provides for three types of compulsory measures of treatment for juveniles:

1. Compulsory psychiatric treatment for perpetrators with mental disabilities;
2. Compulsory psychiatric treatment for perpetrators with reduced mental capacity;
3. Treatment through compulsory rehabilitation of persons addicted to drugs and alcohol.

In the implementation of these measures, the primary goal is to contribute to the rehabilitation of minors, and to prevent the risk of recidivism. Under section 140, the juvenile law in Kosovo, compulsory treatment measures are kept in a special ward of the Institute for Special Care, where these measures be executed.

## 2. Conclusions

We analysed the organization of institutions, that the juvenile proceeding and operation of juvenile criminal law in Kosovo. In this legislation, we see the *existence of the Juvenile Court*, as a separate institution with specialized judges for juvenile problems. All institutions are focused on protecting the rights and freedoms of the child and not the primary function for juvenile punishment for the offense committed. *Kosovo legislation gives authority to the sentencing judge for minors*, to give him as many opportunities *in the educational setting and alternative measures* in order to limit as much application imprisonment. In this legislation, providing a series of alternative and educational measures for juveniles, to enable the court to apply these measures do not apply to sentences of imprisonment or a fine. In criminal law in Kosovo, *striking the right of waiver of attorney from prosecution in cases where it considers that serves the socialization of the child. In Kosovo legislation is anticipated custody institutet* that will

oversee the implementation of alternative sanctions by the minor, will observe the impact that has had on the behavior and socialization of minors, and to help families with problems in the upbringing and education of children. *It is important to be noted in view of the right of juvenile criminal law in Kosovo, legislation and enforcement institutions, is the fact that they are built in the spirit of facilitating and favoring minors,* and provided solutions are quite good, that can be adopted by Albanian criminal legislation.

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### **Links**

[www.hcch.net](http://www.hcch.net)

[www.ilo.org](http://www.ilo.org)

[www.cps.gov/juvenilecrime](http://www.cps.gov/juvenilecrime)