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# TRAINING MODULE

## DIVERSION MEASURES IMPOSED AGAINST JUVENILE OFFENDERS



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# 1. INTRODUCTION

History has always seen and considered the imprisonment of juveniles as harmful to the mental and physical development of juveniles. Therefore, finding alternative forms to imprisonment in order to achieve the same effect of resocialization and sustainable reintegration into society has been a matter of discussion for a long time. These discussions were then followed by a large number of studies that were carried out with the aim of implementing alternative forms to imprisonment and other institutional sanctions.

The findings and conclusions from these studies, as well as the comparison with the practical aspect, have resulted in their transformation into legal provisions, issuing a multitude of international and regional acts. This culminated in the approval by the United Nations (UN) of the Convention on the Rights of the Child (CRC) and many other instruments with international or even regional scope.

Based on the main principles and provisions of the CRC, deep and major reforms were also made in Kosovo, reflecting the changes required to move from the traditional system based on the 'concept of punitive justice' to the 'concept of restorative justice' through the incorporation of alternative measures and punishments to imprisonment of juveniles.

In this aspect, a very important part of this reform was the issuance and approval initially of the Juvenile Law in 2004 and then the Juvenile Justice Code (JJC) in 2010, and recently the Juvenile Justice Code (hereinafter JJC) in 2018 (Code No. 06/L-006).

All three of these codes, although with minor changes, have substantially incorporated the principle of resolving cases through alternatives to imprisonment. All measures of diversion and educationally based alternatives build on standards already recognized in the field of juvenile justice.

However, recent global trends have brought many innovations to the exploration of new forms of diversion and educational measures. Taking into account the success of the implementation and prioritization of alternative measures to imprisonment, as well as the need for the incorporation of new alternative measures, especially those of diversion, JJC (2018) has doubled the number of diversion measures, increasing the number and type of diversion measures from 8 to 16.

Another innovation to the chapter concerning diversion measures is also the manner and conditions for imposing a diversion measure by the State Prosecutor for juveniles. The peculiarity that is worth mentioning, among the types of diversion measures, is that one of the diversion measures, such as the police warning, which, under the defined conditions and in coordination with the State prosecutor for juveniles, may also be imposed by the police officer.

The Code has also regulated the manner of keeping the records and determined that the records for imposing diversion measures do not have the character of criminal records in the sense of the Criminal Code of Kosovo.

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<sup>1</sup> The Module, as per instructions and requirements of the project partners, has been designed for a basic level of training on diversion measures. Similarly, the content of the module does not represent an official position regarding the various interpretations and practices that have been identified at the level of Basic Prosecutor's Offices in the Republic of Kosovo regarding the procedures followed for the imposition of diversion measures.

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This Module provides short and concise information and insights required regarding the imposition and execution of diversion measures, thus outlining the steps and providing the necessary instructions for a professional on how to act from the moment when the criminal offense is committed until the case is closed, with particular emphasis on the procedural aspects related to the fulfilment of conditions and the imposition of measures.

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## 2. ABBREVIATIONS

- AoJ - Academy of Justice;
- MoJ - Ministry of Justice;
- CSW - Centre for Social Work;
- SOP - Standard Operating Procedures;
- KPS – Kosovo Probation Service
- NGO - Non-Governmental Organization;
- LCP – Law on Child Protection;
- CRC – Convention on the Rights of the Child;
- JJC – Juvenile Justice Code;
- CC - Criminal Code
- CPC – Criminal Procedure Code
- KJC - Kosovo Judicial Council;
- KPC – Kosovo Prosecutorial Council;
- UN - United Nations;
- UNICEF - United Nations Children's Emergency Fund;
- TDH - Terre des hommes;
- CRCUN – The Committee on the Rights of the Child of the United Nations;

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## 3. MODULE OBJECTIVES AND EXPECTED RESULTS

### Module Objectives

The general objective of the Module is to provide training material for juvenile justice professionals, with the aim of strengthening capacities and knowledge to increase the implementation of the 16 diversion measures for juveniles in conflict with the law, derived from the Juvenile Justice Code.

The training material is intended to be used and institutionalized for internal training by the Academy of Justice (AoJ) in the future.

### Expected result

At the end of the training, juvenile justice professionals and other participants will be able to:

- Acquire basic concepts on diversion measures;
- Identify the international and local legal base;
- Understand the main principles and guidelines for the protection of juveniles;
- Understand the procedural aspects of imposition of diversion measures;
- Understand the roles and responsibilities for the imposition and execution of diversion measures;
- Acquire knowledge about new types of diversion measures;
- Recognize the advantages and challenges of diversion measures;
- Understand the importance of inter-institutional cooperation and coordination;
- Increase analytical skills by studying the practical cases, etc.



## 4. DIVERSION MEASURES AS DIVERSION FROM THE SYSTEM

Diversion measures, as they are known in professional jargon, imply the actions that juvenile justice professionals undertake to ensure that there is a diversion from court proceedings for the juvenile and that he/she is referred to family and community-based services, programs or activities.

The word or term 'diversion' used by the Juvenile Justice Code, although in terms of translation from the English language is not correct, nevertheless in content it contains all the elements required according to international practice.

The globally used term 'diversion measure', if translated and adapted into Albanian, means precisely the purpose of these measures, which is diversion from the justice system or diversion measures. Diversion from the justice system must be meaningful and in compliance with the legal provisions, always based on the best interest of the juvenile and always aimed at his/her treatment and rehabilitation in order to prevent reoffending.

The concept of diversion infers the premise that although a child may be involved in illegal activities, subjecting them to the formal criminal justice system is more harmful and increases the likelihood of future offending.

Diversion from the system also means the professional evaluation and handling of each and every case referred for proceeding according to the principle of the best interest of the child. Therefore, the finding of the assessment supports the decision whether the case should be diverted from the justice system. This means that not all cases meet the conditions and criteria for diversion. In this way, the scale is balanced for legal and equal treatment of the perpetrator of the criminal offense and the victim of this offense.

By diversion from the justice system and implementing diversion measures, all parties involved are winners. On the one hand, the juvenile perpetrator is treated and rehabilitated, while on the other hand, the victim of the offence is rehabilitated and provided with a compensation for the damage, and finally, the justice system becomes more efficient in rapid case resolution.



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## 5. INTERNATIONAL INSTRUMENTS

Diversion measures, like all alternative measures and punishments, are based on and derive from international instruments now recognized and implemented in Kosovo. These instruments constitute the corpus of acts whereby the regulation and safe implementation of diversion measures and other alternative measures are aimed.

The main international instruments that serve as legal regulators include but are not limited to:

- UN Convention on the Rights of the Child;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Rules)
- Basic principles on the use of restorative justice programmes in criminal matters 2002/12
- Resolution 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;
- United Nations Guidelines for Action on Children in the Criminal Justice System (1997)
- General Comment No. 10 (2007) on “Children's rights in juvenile justice”;
- General Comment No. 12 (2009) on “The right of the child to be heard”;
- General Comment No. 24 (2019) on “children's rights in the child justice system”
- Guidelines of Council of Europe on child-friendly justice.

### Convention on the Rights of the Child

The Convention on the Rights of the Child is among the main international standards and instruments that are applicable in Kosovo and that directly or indirectly govern the aspects of children's rights.

Although Kosovo is not a signatory to international conventions, Article 22 of the Constitution defines the direct implementation of international agreements and instruments, including, among others, the Convention on the Rights of the Child as part of its internal legislation. In addition to the inclusion of the Convention in the legal order of Kosovo, it prioritizes the Convention over the provisions of other laws and acts, where it is determined that:

“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.”



Convention on the Rights of the Child (CRC) is among the main international standards and instruments that are applicable in Kosovo and that directly or indirectly regulate aspects of children's rights.

The CRC, as part of the regulation of children's rights in the field of justice, has given special importance to the aspect of diversion measures, precisely guiding the state parties to treat children as perpetrators of criminal offenses by conversion from the court proceedings.

'States Parties shall seek whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. (Article 40(3.b) i)

#### **United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**

"Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application. In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims. (Rule 11)'

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## United Nations Guidelines for Action on Children in the Criminal Justice System (1997)

The United Nations Guidelines for Actions on Children in the Criminal Justice System (or as commonly known as the Vienna Guidelines), provide as an annex, some comprehensive measures that should be implemented in order to create a well-functioning system of justice administration for juveniles in accordance with international standards. One of the said actions is diversion measures, which states the following: “To prevent further overreliance on criminal justice measures to deal with children’s behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement, social welfare and education sectors.” (Guideline 42).

## Basic principles on the use of restorative justice programs in criminal matters 2002/12

Fundamental procedural safeguards should also apply to restorative justice programs:

(a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Juveniles should, in addition, have the right to the assistance of a parent or guardian;

(b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

(c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

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18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

### **Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005/20.**

#### **III. Principles**

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(a) Dignity. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

(b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, his/her (birth or other status) and his or her parents or guardians' status;

(c) Best interests of the child. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development;

(I) Protection. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect;

(II) Harmonious development. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) Right to participation. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.



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## 6. GUIDING PRINCIPLES

The Juvenile Justice Code (Code No. 06/L-006) in the framework of the basic principles (Article 4) defines principles that originate from the main standards and instruments in the field of juvenile justice, which on the basis and centre have the treatment, education, rehabilitation and resocialization of juveniles. According to this Article, the basic principles that apply appropriately to diversion measures are as follows:

- **The best interest of the child/juvenile**

shall be the prevailing consideration during the whole procedure and actions taken against the child and juvenile.

- **Proportionality of actions**

The juvenile justice system shall seek 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 offender and the criminal offence.

- **Alternatives to criminal sanctions**

Juvenile offenders shall be considered for diversion measures and educational measures where appropriate, giving priority to alternative measures and sanctions in relation to criminal sanctions.

- **Deprivation of liberty as a last resort**

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 juvenile offender shall receive educational, psychological and, if necessary, medical assistance to facilitate his rehabilitation.

- **Expression of opinion and point of view**

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

- **Humane treatment**

Every juvenile 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 personal needs of his age. In particular, every juvenile deprived of liberty shall be separated from adults unless it is considered in the best interest of the child not to do so and shall have the right to maintain contact with his family through the correspondence and visits, save in exceptional circumstances as defined by Law.

- **Legal and professional assistance**

Every juvenile deprived of his 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 liberty before an independent and impartial court, and to prompt proceedings.

- **The right to privacy**

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 labelling. In principle, no information that may lead to the identification of a juvenile offender or re-victimization of the victim shall be published.

- **Urgency**

The procedure against a juvenile and the procedure where the juvenile is harmed with criminal offence shall be urgent. The authorities that participate in a procedure against juvenile and other authorities and institutions from which notifications, reports and opinions are required are obliged to act urgently.

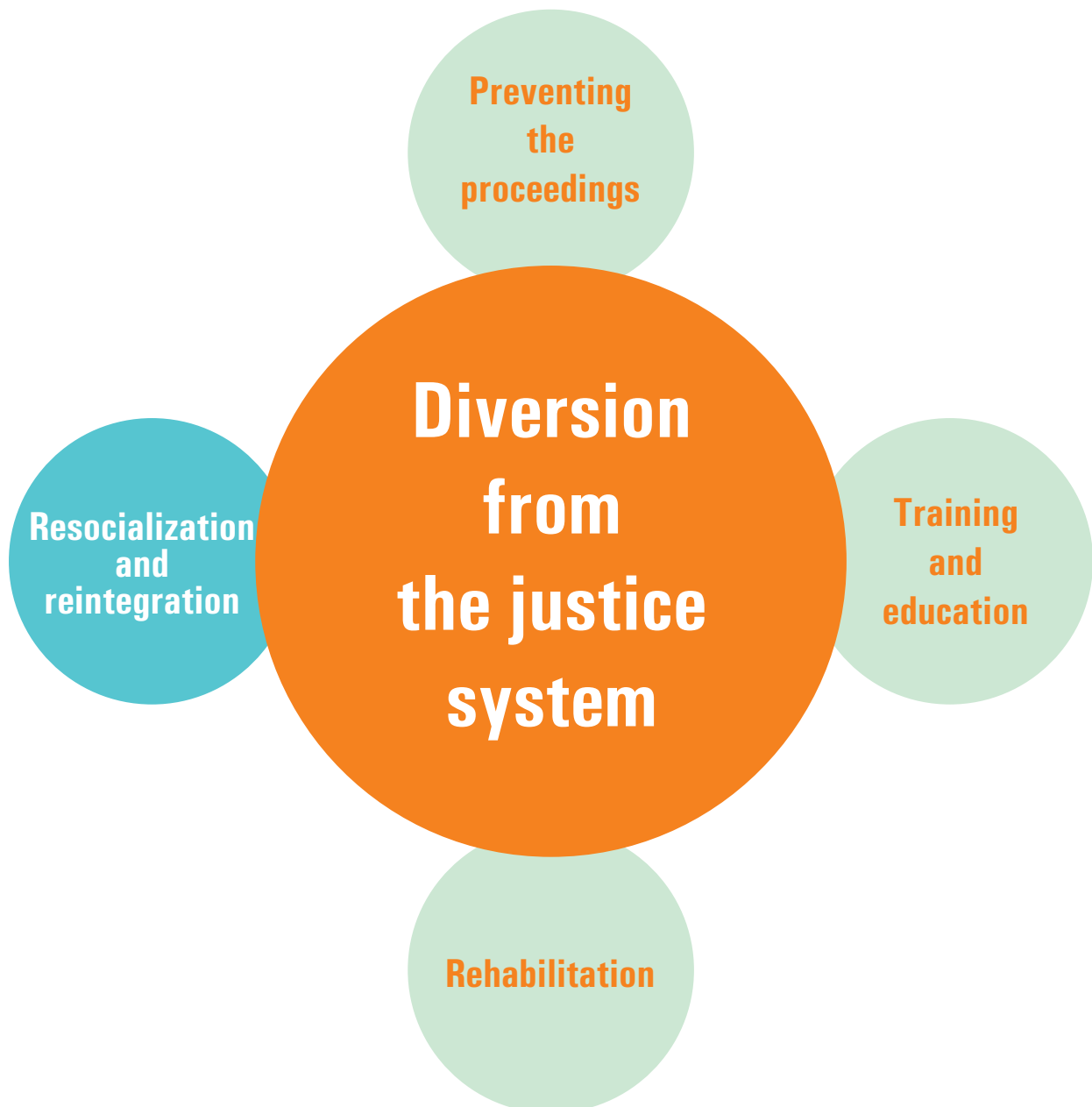
## 7. PURPOSE OF THE MEASURES

The purpose of diversion measures is to prevent, whenever possible, the commencement of court proceedings against a juvenile offender, to assist the positive rehabilitation and reintegration of the juvenile into his community and thereby prevent recidivist behaviour. (Article 19 of the JJC)

So, the purpose of diversion measures is multiple and is based on the concept of work and methodology from the perspective of child protection, which includes:

- Preventing the proceedings or, as explained above, 'diversion from the system';
- Help in positive rehabilitation;
- Reintegration of the juvenile close to his/her community.

And above all, through these measures, the aim is to prevent recidivist behaviour and committing new crimes.



## 8. CONDITIONS FOR IMPOSITION OF MEASURES

With its entry into force in 2018, the Juvenile Justice Code, in Article 21 brought some innovations in terms of the conditions for the imposition of diversion measures. The innovation lies in the condition and the procedure for determining the diversion measure of police warning.

### a) Type of criminal offense

"Diversion measures may be imposed by the prosecutor on a juvenile 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, save those which bring death as a consequence." (Article 21, par.1)

### b) Special conditions for 'police warning'

'Police warning measure from paragraph 1, sub-paragraph 1.16 of Article 20 of the present Code may be imposed to a juvenile as an offender for the first time for criminal offences punishable by fines or imprisonment up to three (3) years.' (Article 21, par.2)

'The police warning as a diversion measure shall be imposed by the police officer with the permission of the state prosecutor for juveniles. The police shall keep record of police warnings imposed, which shall not have the character of records as those of sentenced juvenile, and may not be used in any way that might harm the juvenile.' (Article 21, par.3)

### c) Conditions for the imposition of measures

In addition to determining the conditions that must be fulfilled, JJC also determines the aspect of their cumulative fulfilment. So, all the conditions foreseen in Article 21 paragraph 4 must be fulfilled at the same time, in order to proceed or not with the imposition of the diversion measure:

- acceptance of responsibility by the juvenile for the criminal offence;
- expressed readiness by the juvenile to make peace with the injured party; and
- consent by the juvenile, or by the parent, adoptive parent or guardian on behalf of the juvenile, to perform the diversion measure imposed. (Article 21, par. 4, points 4.1, 4.2, 4.3 - JJC)





## 9. PROCEDURE FOR IMPOSITION OF THE MEASURE

The procedure for imposition of the diversion measure represents the most important moment in terms of the implementation of diversion measures. This is due to the fact that the Juvenile Justice Code foresees several ways or paths that the State Prosecutor can choose before imposing the diversion measure. All these ways or paths are built and guided by the principles provided by the Juvenile Justice Code:

The main and guiding principles according to JJC:

1. The best interest shall be the prevailing consideration during the whole procedure and actions taken against the child and juvenile.
2. Seeking 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 offender and the criminal offence.
3. Prioritizing diversion measures and educational measures where appropriate, giving priority to alternative measures and sanctions in relation to imprisonment, which is imposed only as a last resort.

In accordance with the instructions provided in these principles, the JJC defines one of the main goals of the diversion measures related to the PREVENTION of the INITIATION of court proceedings against the juvenile perpetrator:

'The purpose of diversion measures is to prevent, whenever possible, the commencement of court proceedings against a juvenile offender, to assist the positive rehabilitation and reintegration of the juvenile into his community and thereby prevent recidivist behaviour.' (Article 19 of the JJC)

So, by imposing the diversion measure, it is intended not to start the court proceeding, through which the possibility of the juvenile being involved in unnecessary court proceedings is avoided, respectively keeping the juvenile away from proceedings that may negatively affect his or her treatment and education.

### 'PREVENTION OF THE COMMENCEMENT OF COURT PROCEEDINGS':

The Court Proceeding defined in this Article includes all actions taken by the institutions and professionals of juvenile justice in terms of the truth of the well-founded suspicion. Furthermore, this includes all phases of the criminal proceeding, as defined in the Juvenile Justice Code and, accordingly, in the Criminal Procedure Code. Therefore, the Code does not explicitly define any stage, but defines the court proceeding which includes all stages without exception.

Important:

Despite the possibilities created by the legal provisions in terms of the procedures to be followed, in principle, it is required that whenever possible these proceedings should not be initiated at all, and if initiated, to be suspended, or the proceeding ceases whenever the circumstances have been created for this.

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The wording '...WHENEVER POSSIBLE...' gives the Prosecutor discretion to assess the circumstances and the fulfilment of the conditions for the imposition of diversion measures. And in this aspect, it is not a coincidence that the JJC has determined 3 paths or options that the State Prosecutor may choose before deciding on the imposition of diversion measures, and in fact all of these, with some changes, are aimed at doing everything possible for the diversion of the juvenile from the justice system.

#### A) Appropriateness or as it is known as the principle of opportunity

For criminal offenses punishable by imprisonment of less than three (3) years or a fine, the state juvenile prosecutor may decide not to initiate the preparatory procedure even though there is a reasonable suspicion that the juvenile has committed a criminal offense, if the juvenile state prosecutor considers that it would not be appropriate to conduct the proceedings on the juvenile in view of the nature of the criminal offense, the circumstances in which it was committed, the absence of serious damage or consequences for the victim, as well as the juvenile's past history and personal characteristics'. (Article 52 par.2 of JJC)

#### B) Suspension of prosecution

The juvenile state prosecutor may suspend the prosecution of a criminal offense and impose a diversion measure if the conditions under Article 21 of this Code are fulfilled. Before deciding on a diversion measure, the prosecutor shall summon the juvenile, his parents, adoptive parents or guardian and defence counsel.' (Article 49 of the JJC)

#### A) Termination of the preparatory proceedings

'The juvenile state prosecutor shall terminate the preparatory proceedings if at any time it is evident from the evidence collected that:  
1.4. the conditions set forth in Article 52, paragraph 2 of the present Code are present.' (56 par.1 sub-paragraph 1.4 of JJC)

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The appropriateness or non-initiation of the preparatory proceeding actually represents the main way of deciding on the imposition of the diversion measure; however, the suspension of the prosecution and the termination of the preparatory proceeding are part of the ways whereby the diversion measures should be imposed. And that all three possibilities imply and are part of the overall goal of diversion measures, which is to prevent court proceedings and diverse, where possible, from the juvenile justice system.

Up for discussion:

1. What would be the actions to be taken for each procedure selected?
2. What are the advantages, difficulties and possible obstacles from the 3 possibilities foreseen in JJC?
3. What measures would be considered executed at the moment they are imposed, and is there such a possibility?

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<sup>4</sup> In the consultative workshops that preceded the drafting of this Module, where juvenile prosecutors, probation officers, police, lawyers, mediators, etc., participated, it was observed that there are dilemmas between the basic prosecutors, and there is a big difference in terms of interpretation of these three possibilities that JJC has foreseen. The practice of imposing diversion measures has also been influenced by this non-unique interpretation of the provisions of the JJC.

<sup>5</sup> As long as there is no unique and official interpretation of these provisions, the author of this Module has only provided a summary of the provisions that refer to the procedures and paths to be followed in the case of the imposition of diversion measures, without prejudice to the position or official interpretation regarding this matter.

# 10. IMPOSITION AND EXECUTION OF MEASURES

## a) Who imposes the diversion measures?

With the new amendments to the Juvenile Justice Code (Code No. 06/L-006), the only authority that has full discretion for the imposition of all Diversion Measures is the Juvenile State Prosecutor (with the repealed JJC even the Court was able to impose a diversion measure).

This also includes the diversion measure 'police warning'. Because the word 'permit' defined in this provision means the 'simultaneous delegation of authority and discretion' of the Juvenile State Prosecutor to the Police. So, the permit represents an extraordinary authorization given to the police to issue a police warning. Therefore, even the legislator has carefully used the term 'issues' from the term 'imposes', which is a discretion and authority defined only for the State Juvenile Prosecutor.

### Warning:

According to the Juvenile Justice Code, Code no. 03/L-193 of 2010, which has now been repealed, even the Court has been able to impose diversion measures.

Unfortunately, according to official reports, it turns out that in some cases even the Court is imposing diversion measures. This practice must be stopped because these decisions in conflict with the provisions of the JJC and as such are considered as unlawful decisions.

## b) Who executes and supervises diversion measures?

Diversion measures are executed by the Kosovo Probation Service. The role of the Probation Service is very important, since, according to the law, the probation officers are mandated to generally carry out the process of supervising the behaviour and progress of the programs that the juvenile follows from the moment when the execution of the diversion measure begins, and continues with supervising and facilitating the reintegration process, including working with the family, community acceptance and finding the opportunities and modalities required by the obligations defined by the diversion measure.

### Execution of the diversion measure

Kosovo Probation Service is an institution that deals with the organization, implementation and supervision of the execution of alternative measures and sentences, the supervision of conditionally released persons, as well as other duties defined by law. (Article 3, par. 1, sub-paragraph 1.1)

Kosovo Probation Service is an executive agency that operates within the Ministry of Justice and is independent in the performance of its function in line with the Constitution, laws and sub-legal acts. The mission of the Kosovo Probation Service is the execution of alternative measures and punishments in the rehabilitation, reintegration and resocialization of persons to whom the competent bodies of justice have imposed an alternative measure or sentence.

<sup>5</sup> Article 21 par.3 '3. The police warning as a diversion measure is issued by the police officer with the permission of the juvenile state prosecutor.

<sup>6</sup> See the report of the State Prosecutor for 2022

<https://prokuroria-rks.org/assets/cms/uploads/files/RAPPORTI%20VJETOR%20I%20PROKURORIT%20TE%20SHETIT%202022.pdf>

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**According to the Law on Probation Service**, the Probation Service, among others, has the following responsibilities:

1. Probation Service is responsible for carrying out work related to:
  - 1.4. executing the diversion measures and educational measures for juveniles;
  - 1.8. developing individual supervision programs as provided in the relevant applicable legislation;
  - 1.9. drawing up reports on the execution of measures and alternative sanctions and conditionally released persons for the state prosecutor, courts and conditional release panel;
  - 1.11. keeping records and registers on the execution of alternative measures and sanctions as well as reports;
2. Probation service cooperates with central and local government bodies, legal entities and other relevant institutions in the execution of supervision. (Article 6)

**According to the Juvenile Justice Code:**

**'The failure of the juvenile to perform the obligations of a diversion measure shall be reported promptly by the Probation Service to the competent authority which may decide to recommence the prosecution of the case. (Article 21, par. 5 Juvenile Justice Code (Code No. 06/L-006)'**

**'When the juvenile state prosecutor imposes a diversion measure, the ruling and all other relevant information shall be sent to the competent Probation Service to execute this measure.'**

**'If the juvenile fails to perform an obligation ordered as a diversion measure, the Probation Service shall verify the facts and the reasons for the failure to perform the obligation and shall inform the juvenile state prosecutor that imposed the diversion measure. (Article 74, par. 1 and 3 Juvenile Justice Code (Code No. 06/L-006)'**

### **Supervision of the execution of the diversion measure**

In addition to the execution by the Kosovo Probation Service, the Juvenile Justice Code has given a special discretion and role to the Juvenile State Prosecutor to supervise the execution of the diversion measure.

The juvenile state prosecutor shall supervise the execution of the diversion measure. (Article 74, par. 1 and 3 Juvenile Justice Code (Code No. 06/L-006)'

An exception to the execution of other diversion measures is the "Police Warning", which is executed by the Police when it is issued. According to the JJC, after issuing the measure, the police is obliged to record these cases: '.... The police shall keep records of police warnings imposed, which shall not have the character of records as those of sentenced juvenile, and may not be used in any way that might harm the juvenile.' (Article 21, par. 3 Juvenile Justice Code (Code No. 06/L-006)'

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<sup>7</sup> Law No. 08/L-129 on the Kosovo Probation Service.

<sup>8</sup> <https://md.rks-gov.net/page.aspx?id=1,19> (accessed November 2023)

<sup>9</sup> Law No. 08/L-129 on the Kosovo Probation Service.

### c) Time of execution of the diversion measure

The duration of the diversion measure depends on its type:

#### Short term

Measure type	Duration of execution
<ul style="list-style-type: none"><li>• Reconciliation between the juvenile perpetrator and the injured party, including the juvenile asking for forgiveness from to the injured party;</li><li>• Reconciliation between the juvenile and his/her family;</li><li>• Compensation of damage to the injured party through mutual agreement between the injured party, the juvenile and his/her legal representative, in accordance with the juvenile's financial situation;</li><li>• Payment of a certain amount of money destined for charity purposes or in the victim compensation program in accordance with the juvenile's financial situation</li><li>• Police warning.</li></ul>	<p>Their duration can be short, and it can be executed by the imposition of the measure.</p>

#### Medium and long term

Measure type	Duration of execution
<ul style="list-style-type: none"><li>• Regular school attendance;</li><li>• Acceptance of employment or training in an occupation matching his/her abilities and skills;</li><li>• Traffic education;</li><li>• Psychological counselling;</li><li>• Engagement in sports and recreational activities;</li><li>• Counselling between families of juveniles;</li><li>• Refrain from any contact with certain individuals who may have a negative impact on the juvenile;</li><li>• Refrain from frequenting certain places or environments that may have a negative impact on the juvenile;</li><li>• Abstain from the use of drugs and alcohol.</li></ul>	<p>Their duration can be medium or long-term, depending on the type of program and treatment determined by professionals in the field. Although the duration is not fixed, it must be in the interest of the juvenile for treatment and rehabilitation. When it is estimated that the goal of the diversion measure has been achieved, it should be considered that the measure has been successfully executed.</p>

**Exception:**

The only exception according to the JJC in terms of time, is the diversion measure - "the performance of unpaid community service work " which can be imposed in accordance with the ability of the juvenile perpetrator to perform such work as well as with the consent of the juvenile in duration of minimum (10 hours) and maximum (60 hours). So, according to this measure, the time interval should be between the minimum and the maximum. Tip:

The diversion measure 'performance of unpaid community service work' although in name is similar to the sentence 'order for community service work' they differ in many aspects and should not be confused in their practical implementation

Although the duration or execution of diversion measures (with the exception of community service) is not defined under the JJC, this does not mean that the Juvenile State Prosecutor does not have the right to set deadlines and instructions for execution. Rather, it is at the discretion of the State juvenile prosecutor to set deadlines, conditions and give instructions on how to execute the diversion measures, in accordance with the best interest of the juvenile and the circumstances of the case.

**d) Can measures against a juvenile be combined?**

Articles 19 and 20 of the JJC make no exclusion or prohibition regarding the combination of the measures and are constructed in the plural form "...diversion measures can be imposed..." thus enabling the Juvenile State Prosecutor to combine measures where possible and in the best interest of juveniles. So, the combination of measures is allowed and welcomed.



### Example:

Combination of measure 1.1 Reconciliation between the perpetrator and the injured party.... as well as measure 1.3 Compensation for the damage to the injured party... it would be possible in the interest of the juvenile! Because, with their execution, awareness raising of the juvenile perpetrator would be made on the one hand, and compensation would be achieved through compensation for the damage caused to the injured party on the other hand. So, with the implementation of these measures, the long-term impact on positive rehabilitation would be achieved and it would be ensured that the juvenile would not commit criminal offenses in the future, as well as on eliminating the possibility that the injured party would seek to exercise his right to compensation for the damage caused.

or...

The combination of measure 1.4 Regular school attendance and measure 1.5 Acceptance of employment or occupational training.... These two measures, in addition to having an impact on ensuring school attendance, would enable the juvenile to follow any occupational training through regular schooling or even any professional course from which the juvenile would acquire skills and abilities for independent living.

The Code does not preclude the combination of diversion measures. The combination is possible and useful. First of all, at all times the most important consideration is the best interest of the juvenile. So, the combination is possible, the determination of the types of measures that will be imposed on juveniles must precede the circumstances and needs of the juvenile to meet and eliminate the causes that have pushed him/her to commit the criminal offense.

#### **e) Can the diversion measure be imposed more than once?**

JJC does not prohibit imposing the diversion measure more than once. If this is in the interest of the juvenile and after evaluating the circumstances and conditions, the juvenile prosecutor may impose the diversion measure more than once. The decision whether to impose or not is at the complete discretion of the juvenile state prosecutor.



# 11. TYPES OF DIVERSION MEASURES (INNOVATIONS)

JJC, in addition to the 8 types of diversion measures that existed in the 2010 JJC, has added 8 new types of diversion measures. The new measures are innovations and reflect the need and opportunities that should be offered first to the juvenile but also to the professionals in achieving the goal of the treatment and successful reintegration of the juvenile.

Existing	Innovations
<ul style="list-style-type: none"><li>• Reconciliation between the juvenile perpetrator and the injured party, including the juvenile asking for forgiveness from the injured party;</li><li>• Reconciliation between the juvenile and his/her family;</li><li>• Compensation of damage to the injured party based on the mutual agreement between the injured party, the juvenile and his/her legal representative, in accordance with the financial situation of the juvenile;</li><li>• Regular school attendance;</li><li>• Acceptance of employment or training in an occupation matching his/her abilities and skills;</li><li>• Performing unpaid community service work in accordance with the ability of the juvenile perpetrator to perform such work. This measure can be imposed with the juvenile's consent for a duration of ten (10) to sixty (60) hours;</li><li>• Traffic education;</li><li>• Psychological counselling.</li></ul>	<ul style="list-style-type: none"><li>• Engagement in charity activities;</li><li>• Payment of a certain amount of money destined for charity purposes or in the victim compensation program in accordance with the juvenile's financial situation;</li><li>• Engagement in sports and recreational activities;</li><li>• Counselling between families of juveniles;</li><li>• Refrain from any contact with certain individuals who may have a negative impact on the juvenile;</li><li>• Refrain from frequenting certain places or environments that may have a negative impact on the juvenile;</li><li>• Abstain from the use of drugs and alcohol</li><li>• Police warning.</li></ul>

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## 12. SELECTION AND EXECUTION

1.1. Reconciliation between the juvenile perpetrator and the injured party, including the juvenile asking for forgiveness from the injured party;

1.2 Reconciliation between the juvenile and his/her family.

Despite the fact that they are defined in the JJC as diversion measures, these two measures may be implemented and executed appropriately according to the methods and procedures provided for Mediation. Therefore, they present and contain elements of mediation as a whole.

The principles, rules, time limits, agreement and all the details that apply to mediation as an extrajudicial procedure apply and can be used appropriately in these two diversion measures.

Cases where the agreement is reached on the spot at the police or the prosecutor are exempted from this rule. In these cases, there is no need to develop a separate mediation procedure. It can be recorded in the minutes or decision for the imposition of the measure, stating that this measure it has been successfully completed when the juvenile and the injured party have reconciled and the juvenile has apologized. The same applies to the reconciliation between the juvenile and his/her family.

1.3. Compensation of damage to the injured party based on the mutual agreement between the injured party, the juvenile and his/her legal representative, in accordance with the financial situation of the juvenile.

### **What is compensated?**

JJC does not specify which damage is involved. Therefore, it should be assumed that the compensation belongs to both material damage and non-material damage.

### **Who is the injured party?**

The injured party may be a natural person or a legal entity.

### **How is the compensation made?**

Compensation is made by payment of the equivalent value of the damage caused, i.e., by giving a certain amount of money. Exceptionally, compensation may also be made by performing any action that does not include financial payment, such as: repairing the damaged car, if the juvenile has experience (crafts) in repairing cars or something similar.

### **How is the agreement reached?**

Drafting the agreement in the form of a written contract or any other form is not necessary. The oral agreement is also sufficient, but for all essential issues, such as the exact amount, method and place of payment of the damage, etc., which is established in the minutes and in the decision.

### **Why the legal representative?**

JJC foresees that the legal representative of the juvenile must also participate in the agreement, because in this way he/she is notified of the criminal offense, the imposition of the diversion measure, he/she becomes aware of the financial situation of the juvenile and through him/her the execution of the measure is more easily supervised.

### **Financial situation of the juvenile**

The diversion measure 'damage compensation' is imposed in accordance with the financial situation of the juvenile and not of his/her family. This means that:

- may be imposed only if the juvenile has personal assets/income;
- the agreement may also be reached for partial compensation of the damage, if the juvenile does not have enough assets to compensate the damage in its entirety;
- if the juvenile has a profession or craft that may be used to compensate for the damage without monetary value.

## 1.4. Regular school attendance.

### **Duration**

Regular school attendance has no fixed duration according to JJC. However, it should be assumed that the duration has to do with at least the end of the school year in which the measure was imposed, or until the prosecutor who imposed the measure is convinced that the effect of the measure on the juvenile has been achieved, but without any special time definition.

### **Type of criminal offences**

Regular school attendance should be imposed for criminal offenses which prevent regular school attendance and, consequently lead to situations, such as association with people who have a negative influence on the juvenile, disrespecting the authority of the school or of the parent, etc. Absence from school can be partial or even complete when the child has dropped out of school.

### **Who is consulted and notified?**

It is quite obvious that before imposing the diversion measure 'regular school attendance', if the juvenile is a student, a report from the school should be provided in advance in order to make an assessment of the juvenile's past in terms of education and learning. At the same time, during the execution of the measure, the prosecutor who imposed the measure and the Probation Service must be in constant contact with the school principal, the teacher in charge of the class or other teachers, because this is necessary to understand the effect of the imposed measure. However, due to the protection of the juvenile's interest, this information must be kept confidential.

### **Where is it executed?**

This measure should, in principle, be executed in the last school the juvenile attended, and if this is not possible, or if it is in the interest of the juvenile to change the school, then the Probation Service must decide by assessing the circumstances and always based on the best interest of the juvenile.

## 1.5. Acceptance of employment or training in an occupation matching his/her abilities and skills.

### **Comparison with community service work**

In both cases, it is about the obligation of the juvenile to work (namely here or to qualify for a certain occupation). However, there are many differences.

Employment is the establishment of the employment relationship. The character of the work is not determined by the JJC, except that it must match with the skills and abilities of the juvenile. Meanwhile, the measure of community service work always represents work, from which society has an interest, so it is of general interest.

Employment is paid, while community service work is unpaid. The employment is established for a fixed or indefinite time, while the community service work is shorter and lasts a maximum of 60 hours.

### **Not mandatory**

Acceptance of employment or training for an occupation, which matches the juvenile's skills and abilities, is not mandatory work/training. All explanations given for community service work related to the consent of the juvenile (or his/her legal representative) apply here as well.

### **The age of the juvenile and his/her protection**

The diversion measure of employment acceptance can be imposed on juveniles of the age, which is determined by the relevant law on labour and international conventions and standards regarding child employment.

The juvenile cannot be employed or engaged in any form that may affect his or her education, well-being and health.

### **What is meant by "training"**

The word training should be understood as education, attending a course, practises, lectures, exercises or similar activities, in order for the juvenile to prepare/qualify for the given occupation. As it is the case with employment, it is about the occupation that matches with the skills and abilities of the juvenile.

### **What is the type of job/skill and who decides**

The JJC makes no specification of the type of work or training, but only that they must "be matched with the abilities and skills of the juvenile." This allows flexibility during deployment. Moreover, the JJC makes no specification of how information on employment or training opportunities is obtained. The entity, which imposes the diversion measure, may have to rely on information obtained from the Probation Service and the guardianship body, as well as from other sources.

### **Duration**

The duration of this diversion measure is not determined by the JJC either. The prosecutor who has imposed this diversion measure, through the Probation Service, must convey that the juvenile performs the work (here the acceptance of employment should not be understood only as an act, but also the work itself, i.e., as a continuity and totality) for a reasonable period (a few months), while the training lasts as long as is necessary to achieve the required result.

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1.6. Performance of unpaid community service work in accordance with the ability of the juvenile perpetrator to perform such work. This measure may be imposed with the juvenile's consent for a term of ten (10) to sixty (60) hours.

**Who should decide on the type of work?**

While the prosecutor, who imposed this measure, decides on its duration, the Probation Service determines the type of work, designates the specific organization where the work will be carried out and decides on the days of the week when the work will be carried out.

**Common good**

Unpaid community service work is imposed when the general interest and not the individual's interest has been violated by a criminal offense. Therefore, the work should be performed for the common good, not for the benefit of the individual.

**Not compulsory**

Unpaid community service work is not compulsory. Prosecutors have held contrary opinions, arguing that the juvenile should be forced to perform the assigned work, because, otherwise, criminal proceedings will be initiated or continued against him/her and that this represents a flagrant disrespect of human rights.

This opinion is not grounded on JJC. The performance of work, as well as other diversion measures, are offered to juveniles. He is offered to perform the work according to the legal rules, and indeed the non-performance of the work results in the initiation or continuation of criminal proceedings against him/her; however, the work is imposed after obtaining the consent of the juvenile (or his/her legal representative), which is a prerequisite for the imposition of diversion measures. On the other hand, the juvenile is not charged with heavy work that does not match with his/her psycho-physical capabilities and abilities, and any reasonable failure to perform the work does not lead to the initiation or continuation of criminal proceedings against him/her.

**Can it be changed - terminated while it is being executed?**

If a diversion measure is imposed on the juvenile, the decision and all other information are sent to the Probation Service. The prosecutor who imposes the measure supervises the execution of the diversion measure. This means that information about the course of the execution can always be requested from the Probation Service or other institutions-persons. On the other hand, if the juvenile does not fulfil the obligation ordered as a diversion measure, i.e., the assigned work, the Probation Service verifies the facts and reasons for not fulfilling the obligation and informs the prosecutor, who has imposed the diversion measure.

It turns out that the only authority that decides on the course of events is the one that imposed the measure. Failure to fulfil the obligation does not always lead to the initiation of the criminal proceeding, because it may be a consequence of objective obstacles, which occurred during the execution of the measure. Therefore, there are no legal obstacles for the execution of the measure of community service work to be terminated or changed (e.g., to change the organization in which the work is performed, or to reduce the number of working hours, etc.).

## 1.7. Traffic education.

### **Where does it take place and what does it contain?**

Traffic education is a diversion measure that means acquiring knowledge in road traffic rules. The education must take place at the driving school or other relevant institution (hereinafter “the institution”) and includes theoretical and practical education related to the general rules of road traffic.

### **Selection**

This diversion measure should be imposed firstly to juveniles who have committed a criminal offense against road traffic safety, but also to other juveniles when it is in their interest, in order to prevent the commission of similar criminal offenses and recidivism.

### **Is there a driving test?**

In the specific case, it is not necessary to hold the classic driving test, nor is the juvenile obliged to take the driving test, but it means the assessment of his acquired knowledge, by the professional person/s determined by the institution, after the completion of the education.

The probation service sends a report on the successful completion of this measure, relying on the results of the supervision of the measure, in cooperation with the institution in which the education is implemented.

### **Duration**

As with other measures of diversion, the duration of traffic education cannot be determined in advance and be a rule. It should last as long as it is necessary for the juvenile to acquire general knowledge of road traffic rules. If the juvenile has prior knowledge, then the duration of the diversion measure should be shorter.

The measure must be executed in a way that does not hinder schooling or other activities in the interest of the juvenile.

### **Agreement with the institution**

There must be some kind of agreement between the Probation Service and the institution, so that the institution accepts the juvenile and offers him/her the education in question. The Probation Service, similar to the measure of the diversion of free work for the common good, must have a list of institutions that agree to provide this service.

### **Confidentiality**

The institution must be informed about the confidentiality of the procedure towards the juvenile and be warned not to publish that the juvenile, who is subject to education, is the offender of the criminal offense.

### **Conflict of interest**

The person assigned by the institution to provide the juvenile with education on traffic rules and the person who made the assessment of the knowledge that the juvenile has acquired cannot be the person who is a party in criminal proceedings against the juvenile. This also applies to other persons who, according to the provisions of the Code of Criminal Procedure, cannot be heard as witnesses or experts who are exempt from the obligation to testify, namely to give findings and opinions as an expert.

## 1.8. Psychological counselling.

### **Where does psychological counselling take place and what does it contain?**

Psychological counselling is a measure of diversion that means the obligation of the juvenile to visit a psychologist and consult with him/her at certain time intervals. Counselling is the acceptance and implementation of the psychologist's advice for the juvenile's active participation in conversations and other treatment determined by the psychologist.

Counselling should take place in the clinic, in the psychologist's office or in another suitable place, as agreed. The place should not be different from the places where the counselling usually takes place, so that the juvenile is not exposed, especially knowing that this measure of diversion is imposed on the juvenile who needs psychological counselling.

### **Selection**

As mentioned above, this measure of diversion should be firstly imposed to the juvenile who needs psychological counselling, and when concluded that the juvenile's certain behaviour has led to the commission of the criminal offense, and that behaviour would be eliminated through psychological counselling. It can also be imposed to other juveniles, especially juveniles who do not have the above-mentioned obstacles but live in conditions that may encourage them to commit such actions. In this way, it will be aimed to prevent the commission of criminal offenses and recidivism.

### **Duration**

The duration of the measure cannot be fixed but must last as long as is necessary to complete a successful psychological counselling. The assessment is done by the psychologist who simultaneously performs the psychological counselling. The Probation Service sends the report on whether or not this measure has been successfully completed, based on the results of the supervision of the measure, in cooperation with the relevant psychologist who implements the counselling.

The measure must be executed in such a way as not to hinder schooling or other activities of primary interest to the juvenile.

### **The agreement with the psychologist**

There must be some kind of agreement between the Probation Service and the psychologist, for the acceptance of the juvenile and the provision of said counselling.

The Probation Service, similar to the measure of diversion of unpaid work of general interest, traffic education, etc., must have a list of licensed psychologists who agree and are competent to provide psychological counselling services.

The official of the Probation Service, who is a psychologist by profession, cannot be engaged as a psychologist for the implementation of this measure of diversion, but can be appointed as a person from the Probation Service who contacts the relevant psychologist who advises the juvenile, but this official from the Probation Service supervises the implementation of the measure of psychological counselling.

### **Confidentiality**

The psychologist must be informed about the confidentiality of the procedure towards the juvenile and be warned not to publish that the juvenile who is undergoing counselling is the offender of the criminal offense.

### **Conflict of interest**

The psychologist cannot be a person who is a party in criminal proceedings against the juvenile. This also applies to other persons who, according to the provisions of the Code of Criminal Procedure, cannot be heard as witnesses or experts who are exempt from the obligation to testify, that is, to give findings and opinions as an expert.

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## 1.9. Engagement in charitable activities.

### **What does this measure contain?**

The diversion measure for engagement in charitable activities is a typical measure aimed at encouraging awareness-raising and civic responsibility of the juvenile offender. This measure is especially important if the criminal offense has affected or harmed a specific individual, community or social group.

### **What engagement?**

Engaging the juvenile in charity activities is a very good way to increase the juvenile's sense of empathy for other people who need support, or to take responsibility for his/her actions. For instance, if the juvenile has done wrong against disabled people or elderly people, it would be very appropriate for charity activities to focus on caring for these groups.

### **Difference with diversion measures: 1.3; 1.5; 1.6; and 1.10.**

Another important element, which is intended to be achieved through this measure, is the compensation or repayment of the damages caused to the community or society. In this respect, this measure is similar to the measure of diversion of unpaid work for the common good, and other measures of compensation for damage, although they are not the same, since engagement in charity activities usually occurs on a voluntary basis and not on the basis of the employment relationship and unlike work for social benefit, which aims to create the modelling of an employment relationship, for which only the element of salary is missing, engagement in charity activities aims to create civil responsibility and the feeling of empathy, pity, mutual help and humanity.

### **When is this measure selected?**

Therefore, as a measure, it can also be given in cases where the committed offense had character and elements of anti-social behaviour accompanied by a lack of empathy and humanity despite the fact of being a minor criminal offense.

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<sup>11</sup> The guidelines provided by diversion measures 1.9 to 1.16 are taken as a basis from the 'Guide to the implementation of diversion measures by the Kosovo Probation Service' compiled by the international expert, Mrs Holta Zacaj. This 'Guide' has been published by UNICEF in Kosovo. The author of this Module has made some modifications and changes in order to adapt to the goals and needs of training for Juvenile justice professionals.



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## 1.10. Payment of a certain amount of money destined for charity purposes or the program for victim compensation in compliance with the financial situation of the juvenile

### **What is the purpose of this measure?**

This diversion measure aims to create compensation mechanisms for the damage caused by the criminal offense of the juvenile offender, not directly for the injured party or the victim, but for the community or group of victims of a certain category.

### **Where does it differ from the other measure 'damage compensation'?**

The measure 1.3. 'Damage compensation...' means the compensation of damage to the victim and the consequence caused to him or her by the criminal offense directly. While in measure 1.10 compensation through payment is done by paying a sum of money which is destined for charitable purposes or in the victim compensation program, so we have compensation of third parties for the damage, and not directly to the injured party.

This measure can also be imposed for criminal offenses caused to the individual as a direct victim, provided that the latter agrees that for the damage caused to him or her, the amount of money will be given for charitable purposes or in the program of compensation of crime victims.

Another difference is in the element of 'payment', so if in the measure 'damage compensation...' there may be the possibility that instead of paying the amount of money, compensation can be made through 'craft work or any profession', in this measure there is no possibility for the juvenile offender to make any compensation or 'craft work' instead of payment, so here the payment must be only in monetary values.

### **Worsening of the juvenile's financial situation!**

The imposed measure must always be made in accordance with the condition and financial situation of the juvenile. Therefore, the payment of any given amount should not contribute to the worsening of the juvenile's financial situation, risking the juvenile's life or well-being.

### **Impact on awareness-raising and increased responsibility.**

The purpose of this measure is to increase the sense of responsibility towards the damage caused to society, the community or a certain social group from the action of the juvenile. Also, this measure can be used in those cases when the injured party or the victim himself/herself has not reached an agreement with the juvenile offender, as would be required within the scope of the diversion measure of reconciliation with the victim and compensation of the victim.

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## 1.11. Engagement in sports and recreational activities.

### **What does this measure aim at?**

This diversion measure aims to complement and fill the juvenile's daily activity with healthy sports and entertainment activities, aiming to avoid gaps in his/her daily activities, which could become a factor to be involved in the commission of a criminal offense.

### **Reducing negative behaviours and increasing responsibility.**

Although this measure is essentially recreational in nature and to sceptics it may seem that this measure lacks the character of a measure of a mandatory nature appropriate to be imposed after the commission of a criminal offense, in fact this is not true, because the commitment to perform sports activities also requires responsibility and will, qualities that may need to be encouraged in the juvenile offender, always depending on the context. Likewise, one of the goals of restorative justice is relationship repair, positive behaviour modelling, and the well-being of the juvenile, which are well served by such diversion measures.

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## 1.12. Counselling between families of juveniles.

### **Involvement of families.**

This measure of diversion has a special nature since although it obliges the juvenile to comply with, in essence, it contains obligations that go beyond the individual capabilities of the juvenile himself/herself, actually assigning obligations related to his/her family and eventually also to the family of the victim/damaged juvenile.

### **More than mediation.**

In a narrow perspective, this measure could constitute more of a technique to achieve reconciliation than a separate measure, the non-implementation of which would burden the juvenile offender despite the fact that its implementation does not depend on his/her actions. Despite this obvious paradox, this diversion measure aims to repair the damaged relationship between the families of juveniles involved in the conflict, which, if not addressed, can become a premise for disagreement and possibly for further escalation of the conflict.

### **Indirect involvement of families in the criminal offense.**

This measure may be necessary in cases where other family members are indirectly involved in the conflict, for instance when juveniles have used swear words and insults against each other's family members, if juveniles live very close to each other and, despite other measures of diversion such as reconciliation with the victim, the reconciliation and relationships need to be addressed and repaired on a broader basis, including the families of the juveniles.

### 1.13. Refrain from any contact with certain individuals who may have a negative impact on the juvenile.

#### **Protective and preventive measure?**

This diversion measure has the nature of a protective measure and is based on the juvenile's promise not to commit an act. This measure needs to be imposed to the juvenile, who turns out to be involved in a criminal offense due to the influence and the wrong or negative model of another person, whether he/she is a juvenile or an adult.

#### **Defining the individuals in the decision of the prosecutor**

The measure not to meet certain individuals is difficult to monitor and its successful implementation mainly depends on raising the juvenile's awareness of the negative effects of contact with the person defined in the diversion measure decision.

### 1.14. Not to visit certain places or environments that may have a negative impact on the juvenile.

#### **Negative environments.**

This measure of diversion has the nature of a promise/commitment and serves as a protective measure for the juvenile due to the negative impact brought by the activities that take place in certain environments or due to the frequenting of these environments by persons who may have a negative effect on the juvenile.

#### **Place of commission of the criminal offense as a determining factor**

This measure is imposed based on the context of the criminal offense that occurred or other elements or facts, which have been presented or accepted by the juvenile in the context of accepting responsibility as a criterion for granting the measure of diversion. For example, this measure would be appropriate if the juvenile frequents places where alcoholic beverages are sold, clubs which are known for being frequented by people with a criminal history, cinemas which have films with inappropriate content for juveniles, etc. As shown above in the case of the content measure of contacting certain individuals, the challenge in the implementation of this measure is that it can often be easily assumed by the juvenile thinking that monitoring its implementation is difficult as no one will stand guard in the designated place to catch the juvenile in violation.

### 1.15. Abstain from the use of drugs and alcohol

#### **Commitment and promise?**

Like the precautionary measures, this measure of diversion for abstaining or non-use of drugs and alcohol constitutes in itself the obligation to keep a promise and commitment not to use drugs and alcohol.

#### **When is this measure imposed?**

This measure may be appropriate to be imposed in cases where the juvenile has committed the criminal offense under the influence of alcohol or drug consumption or if the criminal offense occurred in the context of the need to find the means to buy alcohol or drugs, as may be the case of theft.

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Addressing the issue of drug or alcohol use, which has become a premise or constituted the main motivation of the juvenile to be involved in crime, is necessary and essential to accomplish the ultimate goal of restorative justice, giving a second chance to repair the damaged social relationship and ensuring the well-being of the juvenile.

### **The combination of measures?**

Measures 1.13; 1.14 and 1.15 to be efficient and to show a long-term result should be combined with the measure of 'Psychological Counselling', this due to the fact that the juvenile's commitment and promise not to approach places, individuals, or even abstinence from the use of alcohol and drugs without any professional support of the psychologist would be weak and there is a great possibility of not being implemented. Therefore, this and many other cases strengthen the opinion that the combination of measures is not only allowed, but it has a very positive effect on his or her treatment and resocialization.

## 1.16. Police warning

### **The biggest innovation?**

The diversion measure of police warning is one of the innovations of the recent legal changes of the JJC, which completes the types of diversion measures aimed at avoiding the unnecessary confrontation of juveniles who commit minor offenses for the first time.

The JJC has singled out this category of juveniles, aiming to address it with priority due to their often-accidental involvement in delinquent acts. The diversion measure of police warning is the only measure that is given by police officers after this measure has been allowed or approved in advance by the prosecutor.

### **Difference from all other measures?**

Unlike other diversion measures, the police warning diversion measure is given by police officers with the permission/approval of the prosecutor. This special legal mechanism is provided by the legislator in order to avoid as much as possible and as early as possible the confrontation of the juvenile offender with the formal justice system.

Since this mechanism is an innovation, it is important to understand both the procedural aspect and the necessary steps that are recommended to be taken in order to effectively implement the measure, guaranteeing the procedural rights of juveniles, as well as respecting the legal mandates of the institutions involved, that of the police and the prosecution. In this context, giving discretion to police officers to issue the measure of diversion of police warning has been purposely associated with the supervision of this measure by the prosecution, which is the institution mandated by law to carry out criminal proceedings.

### **For what offenses can this measure be imposed?**

This measure of diversion is a measure that is mainly imposed for minor offenses and aims to raise awareness and create more responsibility for the juvenile in relation to the criminal offense committed by him/her, as well as the consequences of him/her being involved in another criminal offense in the future, which would result in the lifting of the diversion measure and resuming the criminal proceedings. Therefore, two conditions must be cumulatively fulfilled: the offense being minor and being committed for the first time.

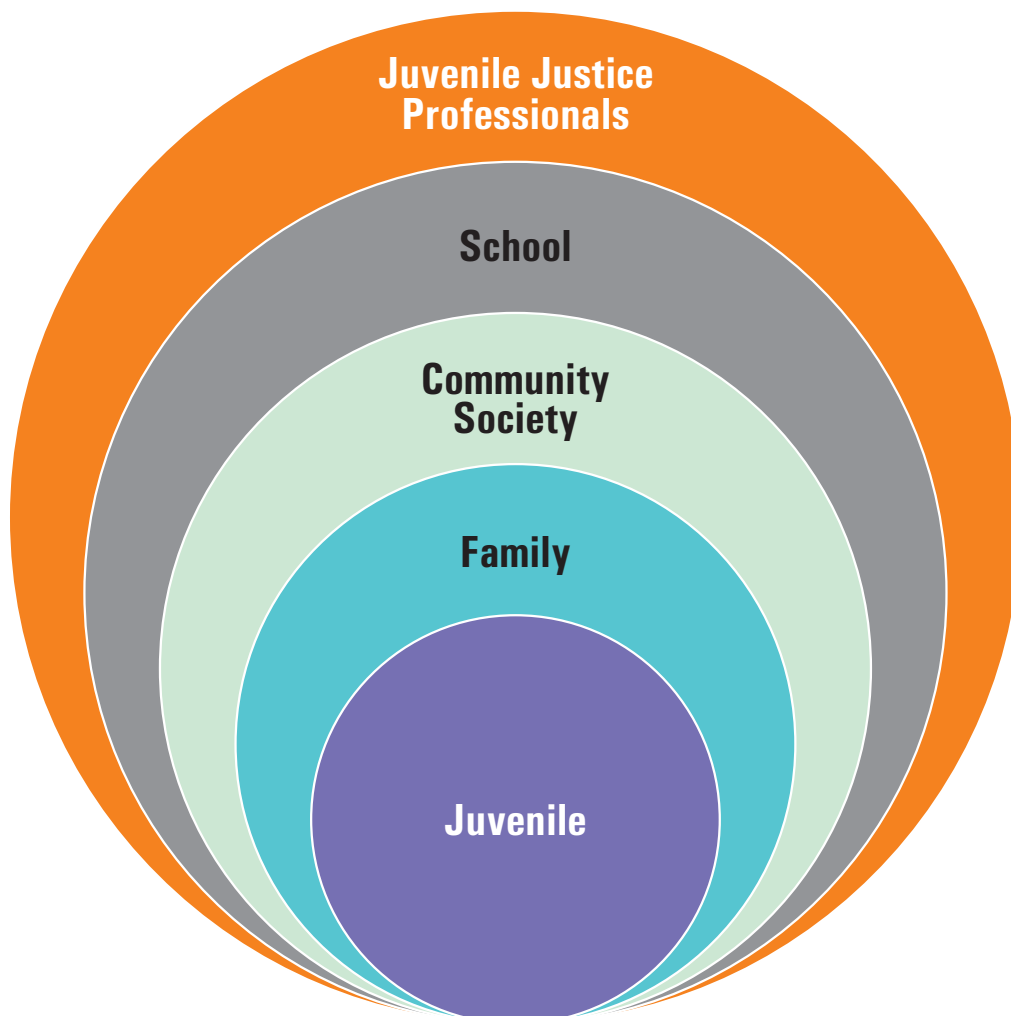
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## 13. INTER-INSTITUTIONAL COOPERATION

Imposition, and then also the execution of diversion measures, is not an insignificant challenge. It requires attention and a very professional and organized planning from all the institutions and professionals involved.

These institutions and professionals involved to easily and properly execute the measure must cooperate to coordinate the implementation of the programs required for each measure separately.

The very variety and the very large number of diversion measures require the involvement of and cooperation between multiple institutions and not only, because even the parents and the community and society where juveniles live and interact have roles and responsibilities.



Regardless of the role and responsibility of everyone involved in the case, the juvenile must always be at the centre of any planning or intervention we undertake to protect and treat the juvenile.

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In order to achieve the goal of diversion measures, cooperation and interaction is required from institutions and mechanisms including but not limited to:

- School;
- Centre for Social Work;
- Health;
- Police;
- Prosecution;
- Court;
- Probation Service;
- Lawyer;
- NGOs;
- Media
- Institutions where the measure is executed (Psychological Services-Mental Health Centres; Vocational Training Centres; Driving Schools; Libraries; Red Cross and other humanitarian organizations; Religious Communities; Public and Private Hospitals; Sports Clubs; Public Enterprises; Various private businesses, etc.).

All these institutions and mechanisms, through cooperation and interaction, must provide programs and activities that affect the treatment, resocialization and reintegration of juveniles who have committed a criminal offense. The programs are different and numerous, but juveniles must be provided with at least those that derive from the type of measure imposed and which include but are not limited to the following:

- Mediation services;
- Participation in programs concerning school dropout prevention;
- Building life skills and abilities;
- Sports and recreational activities;
- Traffic education;
- Psychological counselling;
- Active participation in volunteering programs;
- Alcohol and drug addiction prevention treatment;
- Community care programs;
- Specialized services, etc.

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## 14. ADVANTAGES AND BENEFITS

The successful imposition and execution of diversion measures has many advantages and benefits not only for juveniles, but also for their family, the community and the justice system itself in general.

### Benefits for the juveniles

- Preventing juveniles from suffering the negative developmental impact associated with formal court proceedings, including stigmatization of the child (and their family) and of criminal records;
- Preventing the negative and long-term impact of imprisonment on the development of the physical, mental, and emotional health of juveniles, as well as the increased possibility of repeating criminal offenses resulting from deprivation of liberty;
- Ensuring the speed and bearing of the consequences of the conduct and commission of the criminal offense;
- Is intended to discover the reasons that have influenced the behaviour of the juvenile offender to commit that criminal offense, as well as to identify and address the needs of the child and to offer effective rehabilitative activities;
- Contributing positively to the development of the juvenile;
- Involves the child and enables him/her to understand the consequences of the committed act;
- Encourages the child to take responsibility for the damage caused, in a way that rehabilitates and reintegrates him/her into society, with special emphasis if diversion is combined according to the approach of restorative justice.

### Benefits for the society

- The possibility of recidivism is reduced;
- High costs are avoided by proceeding the case through the formal justice system;
- The high costs of keeping juveniles in custody are avoided;
- Damage caused is repaired if diversion is combined with a restorative justice approach;
- Contributes to social development and conflict resolution;
- Influences and contributes to peace-building efforts and placing the needs of the victim at the centre of the process if diversion is combined with a restorative justice approach;
- Positively contributes to the improvement of national security by promoting the inclusion rather than the exclusion of vulnerable juveniles.



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## Benefits for the system

- Reduces the number of juveniles and minor offenses that overwhelm the formal judicial system, and allows resources to be focused on recidivists and high-risk offenders;
- Reduces the number of juveniles who are deprived of their liberty, which can affect the improvement of the conditions of those juveniles who are already deprived of their liberty;
- Enables the officials of the justice sector to deal with the case expeditiously;
- Increases professionalism, job satisfaction and morale of personnel working in the juvenile justice sector.

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## 15. ANNEXES

### A) Terms and definitions from the JJC

Child - a person who is under the age of eighteen (18) years;

Juvenile - a person who has reached the age of fourteen (14) years old but not eighteen (18) years old;

Young juvenile - a person who has reached fourteen (14) years old, but not sixteen (16) years old;

Adult juvenile - a person who has reached the age sixteen (16) years old, but not eighteen (18) years old;

Young adult - a person who has reached eighteen (18) years old, but not twenty-one (21) years old;

Adult - a person who has reached the age of eighteen (18) years;

Specialized education - an educational program tailored to the special needs of the offender, which seeks to assist his holistic adequate development and reduce the chance of recidivism;

Juvenile imprisonment - a punishment of imprisonment imposed on a juvenile offender or, in accordance with the Second Part, Chapter VII of the present Code, on an adult;

Special health care facility - an institution that provides treatment for the mentally disabled juvenile offender;

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

Juvenile Judge - a judge who has expertise in criminal matters involving the juvenile, child and young adult and who is competent to exercise the responsibilities set forth in the present Code. The Juvenile judge is appointed at the preparatory procedure stage as a chairperson of the body or panel at all stages of the criminal procedure;

Juvenile State Prosecutor - a State Prosecutor who has expertise in criminal matters involving the juvenile, child and young adult, prosecution of adult offenders for the offences committed against the juveniles, and who is competent to exercise the responsibilities set forth in the present Code;

Juvenile panel - a panel which is constituted of three (3) judges of which the president is a juvenile judge that judges during the trial;

Junior Collegiate - a collegiate which is constituted of three (3) judges of which the president is a juvenile judge that takes decisions outside the trial;

Probation service - the institution which executes measures and alternative penalties, as well as other tasks defined by the Law;

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Mediator - the neutral third person who facilitates the victim and the offender to assist parties through communication reach appropriate solution regarding disagreement;

Child victim or witness - a person under the age of eighteen (18) years old who is a victim or witness of a criminal act;

Children under the age of criminal responsibility - the child who at the time of committing of the criminal act has not reached fourteen (14) years old;

Victim advocate - the authorized representative for defending the interests of child victims;

Juvenile advocate - the advocate licensed by the Kosovo Bar Association;

Deprivation of liberty - any form of detention or imprisonment or putting the person under an environment of arrest or police detention, and this person may not leave it upon his will, based on a decision of any court, administrative authority or other public authority;

Re-victimization - the situation in which a person suffers more than a criminal incident for a certain period of time.

Juvenile law professional - means all professionals who work and deal with juveniles, including but not limited to: Police, Lawyer, Juvenile Prosecutor, Juvenile Judge, Probation Service Officer, Social Worker, etc.

Restorative justice - is an approach to justice oriented to the repair - as much as possible - of the damage caused by a crime or conflict

## B) Case study

### CASE STUDY (A)

#### The defendant

BB just turned 16, and was arrested for property damage. She has previous offenses including unexcused absences from school (3 cases) and twice arrested for other minor offences. A month ago, she was observed throwing stones at a Volkswagen vehicle, which was parked on Ali Hadri Street no. 5. in Prishtina. The witness was B.D, who lives near this address. After being confronted by the witness, who called the police, the juvenile fled. The juvenile was arrested by the police a few blocks away from the scene and was identified by the witness. The juvenile admitted that she has thrown stones. The damage was caused to the rear window of the car and the rear passenger window. Both are broken. The paint on the left rear panel and trunk is also damaged. The total damage is calculated at 900 EURO.

#### The injured party

He is HH, 48 years old, unmarried. The house where the car was damaged is his house, which he had rented out to other people for 4 years. The injured party had been living with his parents in the latter's house for several years.

The injured party is notified by the witness and the police who arrested the juvenile for the damage to his car. In those moments, the injured party gets very nervous from this news, and wants to take retaliatory actions, but the witness and the neighbour stop him from taking any action.

The police file a criminal report and submit it to the Prosecutor's Office. The Juvenile State Prosecutor, in accordance with the provisions of the JJC, issues a decision for the initiation of investigations and at the same time requests from the Probation Service of Kosovo to draw up a social survey for the juvenile.

Based on the social survey, it can be seen that the juvenile admitted the criminal offense and showed sincere remorse. She also had problems and setbacks in terms of education and training. Moreover, she also had some minor criminal offenses committed in her past.

The Probation Service in the social survey recommends to the prosecutor the possibility of imposing any of the diversion measures or referring the case to mediation.

#### **Please describe the concrete actions you should take, with special emphasis:**

- Would you choose the mediation procedure or impose the diversion measure?
- If you were to decide on the imposition of the measure of diversion, which measure or measures would you choose?
- Or, would you proceed with a proposal for the imposition of educational measures or punishment against the juvenile?

## CASE STUDY (B)

### **Drini was caught in the act!**

Drini just turned 14 years old. His mother asked him to go to the neighbourhood minimarket to buy some things for home needs. Upon leaving the minimarket, he was caught by the minimarket guard because he had not paid for some of the products. The unpaid products were 2 perfumes which had a value of 90 euros.

The guard of the minimarket notifies the manager and they discuss the case. They decide to notify the police and Drini's family.

After 30 minutes, Drini's mother and the police came. First, the case manager discusses with Drini's mother and then tells the Police about the case.

### **The first time in conflict with the law!**

Drini felt upset and very worried all the time. Based on the information provided by the mother, Drini is an educated, polite boy with great respect for his parents and the community where he lives. Drini's mother's only concern is that he has already started to show some symptoms related to staying up late at night and being late at school from time to time.

After being interviewed by the Police, Drini clarified that he 'stole' these perfumes because he was ashamed to ask his parents for money to buy these perfumes, and he did not want to be discovered by his parents that he had started dating a peer whom he had sympathy for. Both of them attend the same school and neighbourhood.

He is very sorry and regrets his action, swearing that he will not repeat this action in the future. Furthermore, Drini's mother apologizes and pays the minimarket for the two perfumes stolen by Drini.

### **What is next!**

In the meantime, after the interview, the Police calls the Juvenile State Prosecutor and ask for instructions on what to do in this particular case.

### **Please describe the concrete actions you should take, with a special emphasis on:**

- Would you issue the diversion measure 'police warning'?
- If you are not going to issue a police warning, what other measure would you impose?
- If neither of the above, what would you do in this particular case?

## C) Forms of decisions

### C-1) NOT INITIATING THE PREPARATORY PROCEDURE (PRINCIPLE OF OPPORTUNITY)



**The Republic of Kosovo /Republic of Kosovo /Republic of Kosovo  
State Prosecutor /Državni Tužilac/States Prosecutor**

**Prokuroria Themelore në ...../ Osnovno Tužilaštvo u ...../ Basic Prosecutor's Office in ..... ..**

JUVENILE DEPARTMENT

PPM. No. 75 / 20....

Date 13.05....

Pursuant to Article 52 paragraph 2. of the Juvenile Justice Code (JJC), issues the following;

#### DECISION

#### ON NOT INITIATING THE PREPARATORY PROCEDURE

#### Against the juvenile:

1. ...., from ..., village ....., born on 12.06.1997, student, no other criminal procedure is ongoing, Albanian, citizen of the Republic of Kosovo,

#### Reasoning

Against the juvenile ....., **from village .....**, **Ke .....** criminal complaint was filed with no. ...., due to the well-founded suspicion that on dt. 16.04.20..., committed the criminal offense of **theft, from Article 313 of the CCRK.**

Based on the case files found in the criminal report and the juvenile's statement given to the police, we have come to the conclusion that the juvenile, on 16.04.20..., has committed the criminal offense of theft, referred to in Article 325, paragraph 2 of the CCRK, but declares that she feels very sorry for the case and will not repeat the criminal offense, has apologized to the injured party, and it is the first time she ran afoul of the law.

The state prosecutor, pursuant to Article 52 paragraph 2 of the Juvenile Justice Code, due to the nature of the criminal offense, the circumstances in which it was committed, the promise that she will not commit another criminal offense, and the juvenile is not previously known for the Prosecution as a perpetrator of criminal offenses, has decided as in the enacting clause of this decision.

**The decision is submitted to:**  
Centre for Social Work .....,

**STATE PROSECUTOR,**  
\_\_\_\_\_  
X.X.

## C-2) NOT INITIATING THE PREPARATORY PROCEDURE (PRINCIPLE OF OPPORTUNITY)



### The Republic of Kosovo /Republic of Kosovo /Republic of Kosovo State Prosecutor /Državni Tužilac /States Prosecutor

Prokuroria Themelore në ...../ Osnovno Procetuzija u ...../ Basic Prosecutor's Office in ..... ..

Case number: 2022: .....

Date: 27.09.20....

Document number: .....

PPM.No..... /20.....

*Pursuant to Article 52, paragraph 2 and 4, of the JJC issues the following:*

#### **DECISION TO NOT INITIATE THE PREPARATORY PROCEDURE**

#### **Against the juveniles:**

- 1.** *F.F, from father F., born on 04 February 20....., in ....., with residence in ....., on "Mulla Idrizi" street, residential building "A.....", floor V, medium economic status, Albanian, citizen of the Republic of Kosovo, because the preparatory procedure did not suit its purpose.*
- 2.** *E.N, from father I. and mother M, maiden name K, born on July 30, 20...., in ....., where he also lives in the neighbourhood "Dh. B" "Xh", student, medium economic status, with personal number ....., Albanian, citizen of the Republic of Kosovo, because the preparatory procedure would not suit its purpose.*

#### **Reasoning**

*The Basic Prosecutor's Office in ..... - Department for Juveniles, on 13 September 2022, submitted to this prosecutor's office the criminal report submitted by the Kosovo Police - South Police Station in Prishtina, with case number ....., against the juveniles F.F and E.N, from ....., due to the suspicion that in cooperation they have committed the criminal offense of destroying or damaging property, referred to in Article 321 of the CCRK.*

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*After reviewing the data in the criminal report, as well as the material evidence found in the case files, such as: initial report of the incident, with case number ....., dated 08 August 20....., statement of the injured party D.G, statement of juveniles F.F, E.N, statement of T.M, for which a criminal report has been filed and the procedure was carried out in Pristina as the place of the commission of the criminal offense, then the certificate on the receipt and return of the items, the officer's report, copies of the identity card, we consider that there is a reasonable suspicion that the above-mentioned juveniles, on 8 August 20..., in have jointly committed the criminal offense of destruction or damage to property referred to in Article 321 related to Article 31 of the CCRK.*

*The decision not to initiate preparatory procedures against juveniles F.M and E.N, from ....., due to the criminal offense of destruction or damage to property referred to in Article 321 in relation to Article 31 of the CCRK, is also based on the principles guidelines of the JJC, where the well-being of the juvenile is a determining factor together with the circumstances of the perpetrator and the criminal offense, as well as in Article 3 of the Convention on the Rights of the Child, where in all actions related to children, the best interest the best interests of the child should be the predominant consideration. In this particular case, not proceeding with the case further and not confronting the juveniles with procedures in other justice institutions, such as the court and the prosecutor's office, are in the best interest of the juvenile.*

*Therefore, based on the abovementioned, as well as pursuant to Article 52, paragraph 2 of the Juvenile Justice Code, due to the nature of the criminal offenses, the circumstances in which they were committed, the minor damage, the remorse of juveniles, the promise that they will not commit criminal offenses in the future, and also the blockade device has been returned to the injured party, as well as the fact that juveniles are not previously known to the Prosecutor's Office as perpetrators of criminal offenses, is decided as in the enacting clause of this decision.*

**STATE PROSECUTOR**

Y.Y

*The decision is submitted to:*

- 1. A copy of this decision shall be submitted to the prosecutor.*
- 2. A copy of this decision shall remain in the files of this case.*
- 3. A copy of the decision to the juveniles.*





**The Republic of Kosovo /Republic of Kosovo /Republic of Kosovo  
State Prosecutor /Državni Tužilac/ State Prosecutor**

**Prokuroria Themelore në ..... / Osnovno Tužilaštvo u ..... / Basic Prosecutor's Office in .....**

Juvenile Department  
PPM.nr. /20...  
Date: 15.11.20.....

Pursuant to Articles 19, 20 and 21 paragraph 1,1, as well as Articles 49 and 74 of the JJC, on, issues the following:

**DECISION**

**Against the juvenile:**

D.D from father M. and mother M, maiden name E.... born on 13.12.20..., in GJ, with residence on "M...T..." street, student at "M.M" high school, 11<sup>th</sup> grade, Albanian, citizen of the Republic of Kosovo, with phone no.....

**The criminal prosecution of the same is suspended  
THE DIVERSION MEASURE IS IMPOSED –  
- Reconciliation between the minor and the injured party -  
(A.A with phone no. ....),**

This measure will be executed by the Probation Service - Regional Office in..., in accordance with the provisions of the JJC, and in accordance with Article 74, paragraph 2, this prosecutor will supervise the execution of this diversion measure, in case of non-fulfilment of the obligations arising from the decree against the juvenile, it may be decided to resume the criminal prosecution.

The costs of the procedure related to the implementation of this measure will be covered with the budget of the Republic of Kosovo

**Reasoning**

**The course of the procedure**

The Basic Prosecutor's Office in ..... - The Juvenile Department, dated 05.10.20..., has accepted the criminal report filed by the Police Station in....., with no. of the case ..... dated 02.10.20..., against the above-mentioned juvenile, due to the criminal offense of theft referred to in Article 313, paragraph 1 of the Criminal Code of the Republic of Kosovo.

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This prosecutor's office, after reviewing the data from the criminal report and the other attached documents, issued a decision to start the preparatory procedure, notified the CSW, and requested from the PSK the full social survey.

The juvenile D.D, in the statement given to the police in the presence of the defence lawyer, stated that on 22.09.20... "I went behind the FSK building to get woods. I saw some screws with their brackets laying on the ground, about 35 pieces, which are used in holding the elevator poles. I took them with the intention to sell, because I thought nobody needs them anymore. I have returned the same to the injured party."

In the statement given to the police dated 23.09.20....., the injured party A.B stated "On the critical day during the inspection, I noticed that a package of bolts for the assembly of the elevator and two pieces of sheet metal used for construction of the lift were missing. Their value is around €50.

For the juvenile we have received from the probation service, the regional office in ....., the social survey filed as AS.nr.... -.....dated 23.10.20..., which shows that the juvenile has violated the legal norms for the second time. He has completed primary school, he is attending high school, the level of education among the family is of secondary level. The juvenile admits that he has committed the criminal offense and says that he did it unintentionally.

#### **Prosecutor's findings;**

Based on the abovementioned, it has been established that, in this case, the legal conditions referred to in Article 19 in order to achieve the goal of diversion measures, and the conditions to impose the diversion measures referred to in Article 21, paragraph 1.1 and 1.4 of the JJC, namely to impose against the juvenile in question, based on Article 20, paragraph 1, sub-paragraph 1.1, of the JJC, the Diversion Measure - Reconciliation between the juvenile perpetrator and the injured party, including an apology from the juvenile to the injured party - as in the enacting clause of this decision, have been met.

Therefore, in accordance with Article 49 of the JJC, no criminal prosecution continued against this juvenile for the above-mentioned criminal offense, due to the above-mentioned reasons, especially taking into account the acceptance of responsibility for the criminal offense, for which he says to have committed unintentionally; therefore, we consider that such a measure is in the best interest of the juvenile and this measure will enable the achievement of the appropriate effect in preventing recidivist behaviour of the same juvenile.

**Legal advice:** An APPEAL may be filed against this decision within 8 (eight) days from the day of receipt, before the Court of Appeals, through this Prosecutor's Office.

#### **The decision is submitted to:**

Probation Service in.....,

Basic Court in .....

STATE PROSECUTOR

\_\_\_\_\_  
Y.Y

## C-4) SUSPENSION OF PROSECUTION



### The Republic of Kosovo /Republic of Kosovo /Republic of Kosovo State Prosecutor /Državni Tužilac/StatesProsecutor

Basic Prosecutor's Office in ...../ Osnovno Procetuzija u ...../ Basic Prosecutor's Office in .....

JUVENILE DEPARTMENT

PPM.no. /20...

Date: 15.06.20....

.....

Pursuant to Article 19, 20 and 21 paragraph 1.1, as well as Articles 49 and 74 of the Juvenile Justice Code (JJC), issues the following:

#### DECISION

Against the juveniles:

1. A.A, born on 07.06.20.... in ....., lives on the street: "Adeem Jashari" - ....., student of the "B.B" primary school, grade V/5, Albanian, citizen of the Republic of Kosovo.
2. T.A, born on 06.08.20.... in ....., lives on the street: "Adem Jashari" - ....., student of the "BB" primary school, grade IX/5, Albanian, citizen of the Republic of Kosovo.

The prosecution is  
SUSPENDED and the  
- DIVERSION MEASURE IS IMPOSED –

Reconciliation between juvenile perpetrators - and the injured party A.H, from ....., Str. "VI" n.n (Neighbourhood .....- near the cemetery), including an apology from the juveniles to the injured party.

This measure will be executed by the Probation Service - Regional Office in....., in accordance with the provisions of the Criminal Code, while in accordance with Article 74, this prosecutor office will supervise the execution of this diversion measure, in in case of non-fulfilment of the obligations arising from the Decision by the juvenile, it may be decided to resume the prosecution.

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The costs of the procedure related to the implementation of this measure will be covered with the budget of the Republic of Kosovo.

**Reasoning:**

On 25.05.20.... the criminal complaint was submitted to this Prosecutor's Office from the police station - in ....., with no. of the case ..... dated 21.05.20.... against the aforementioned juveniles, due to the criminal offense: Minor bodily injury referred to in Article 185, para. 1, subparagraph 1.1 and Article 31 of the Criminal Code of the Republic of Kosovo (CCRK).

This Prosecutor' Office, after reviewing the data in the criminal report and other attached documents, interrogated the juveniles AA and TA in the presence of their legal representative-parents and defence lawyers according to their official duties. The juveniles admitted to have committed this criminal offense, expressed regret for the offense committed, promise that they will not commit other criminal offenses in the future, as well as agree with the imposition of the diversion measure. Also, his legal representative, the parent, as well as defenders according to their official duties, agree for the imposition of this measure.

Social survey of juveniles filed as: As. No....., dated 07.06.20..., the victim's statement given at the police station on ..... 18.05.20....., the statement of the juvenile, the statement of the witness, photo documentation, are other material evidences which document the existence of the abovementioned criminal offense and the personal circumstances of the juvenile.

Based on the abovementioned, it has been established that in this particular case, the purpose of the diversion measures and the legal conditions defined in the JJC in Articles 9, 20, and 21 for the imposition of the diversion measure, as in the enacting clause of this decision, as well as the requirements of the Convention on the Rights of the Child (CRC), Article 3, paragraph 1 and Article 40, paragraph 3 point b: where the highest interest of the child must be the predominant consideration and that the prevention of the initiation of judicial proceedings against the juvenile perpetrator and that the criminal prosecution has not continued.

Therefore, we consider that such a measure is in the best interest of minors and will achieve the appropriate effect of positive rehabilitation in order to prevent recidivist behaviours.

**Legal advice:** An appeal may be filed against this decision within 8 (eight) days from the day of receipt of the decision, before the Court of Appeals, through this Prosecutor's Office.

**The decision is submitted to:**

Basic Court in .....- Juvenile Department;  
Probationary Service in .....;  
The injured parties;  
Juveniles.

JUVENILE PROSECUTOR

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XX



**The Republic of Kosovo /Republic of Kosovo /Republic of Kosovo  
State Prosecutor /Državni Tužilac/ State Prosecutor**

**Prokuroria Themelore në ..... / Osnovno Tužilaštvo u ..... / Basic Prosecutor's Office in .....**

Case number: 2020: .....

Date: 18.02.20....

Document number: .....

Juvenile Department

PPN. M.no..../20....

Date; 18.02.20....

KOSOVO POLICE  
Police Station - Investigation Unit  
.....

**Case:** Response to the special report, received in this Prosecutor's Office on 11.02.20..., for case no. CA-2....., dated 06.02.20....., reported by the Kosovo Police - CIU - Police Station in ....., due to the criminal offense, **holding in possession - control of weapons - a razor, referred to in Article 366 of CCRK,**

We appreciate your report regarding the specific case as quite reasonable and that the same (your report) is in complete harmony with Article 81 paragraph 4 of the CPC.

After comprehensive and complete review of your aforementioned report and other attached documents, **we note that in this case the perpetrator of this criminal offense BN, born on 11.10.20....., in ....., with residence in the village of B..., with phone number ....., carried a red-black razor to school, thus violating the applicable law regarding weapons.**

- The juvenile was interviewed in the presence of the parent, then
  - no damage was caused to the third party,
  - the juvenile has admitted that he has committed the offense,
- the juvenile is subject to the procedure for the first time,
- the juvenile is 15 years old.

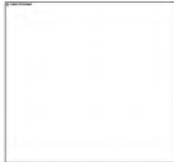
Therefore,

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WE ASCERTAIN that in this case, the conditions for the imposition of the measure of diversion POLICE WARNING mentioned in Article 19 and 20, paragraph 1, sub-paragraph 1.16 of the JJC, against the juvenile, B.N from .....K. village are met. ....

State Prosecutor  
Y.Y

For the above-mentioned reasons, CIU in ....., instructs to issue a police warning to the minor,



The Republic of Kosovo  
Republic of Kosovo/ Republic of Kosovo  
State Prosecutor /Državni Tužilac/ State Prosecutor



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Basic Prosecutor's Office in ..... / OsnovnoTužilaštvo u ..... / Basic Prosecutor's Office In.....

Juvenile Department  
PPN. M.no..... /20....  
Date; 18.02.20....

### OFFICIAL NOTE

After comprehensive and complete review of your above-mentioned reports and other attached documents, we observe that in this case the perpetrator of this criminal offense: BN, born 11.10.20..., in. ...., with residence in village of B..... K..., with phone No. ...., carried a red-black razor to school, thus violating the law applicable to weapons.

- The minor was interviewed in the presence of the parent, then
  - no damage caused to the third party,
  - the juvenile has admitted that he has committed the offense,
- the juvenile is subject to the procedure for the first time,
  - the juvenile is 15 years old.

Therefore,

WE ASCERTAIN that in this case the conditions for the imposition of the Diversion Measure - POLICE WARNING, provided for in Article 19 and 20 paragraph 1, sub-paragraph 1.16 of the JJC, are met, in which case we instruct the police to impose the same against the juvenile B.N from B..... village of K.....

State Prosecutor  
Y.Y

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## D) Sources and materials consulted

- 1989 United Nations Convention on the Rights of the Child<sup>14</sup>;
- Juvenile Justice Code (CODE No. 06/L-006) OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVO / No. 17 / 18 OCTOBER, 2018, PRISHTINA.
- Criminal Code of the Republic of Kosovo (CODE NO. 06/L-074) OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVO / No. 2 / 14 JANUARY, 2019, PRISHTINA
- The Criminal Procedure Code of the Republic of Kosovo (CODE NO. 08/L-032) OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVO / No. 24 / 17 AUGUST 2022, PRISHTINA
- Law on Child Protection (LAW NO. 06/L-084) OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVO / No. 14 / 17 July, 2019, PRISHTINA
- Beijing Rules and Guidelines<sup>15</sup>,
- Tokyo Rules and Guidelines<sup>16</sup>,
- Riyadh Rules and Guidelines<sup>17</sup>,
- United Nations Secretary-General's Guidelines on the "United Nations Approach to Juvenile Justice" 2008<sup>18</sup>;
- 2005 United Nations Guidelines on Justice Involving Child Victims and Witnesses<sup>19</sup>;
- Council of Europe Guidelines on Child-Friendly Justice 2010<sup>20</sup>;
- United Nations Comment Number Ten on Children's Rights in Juvenile Justice<sup>21</sup>;
- Five Advocacy Briefs on Child Justice. Diversion of Children in Conflict with the Law from Formal Judicial Proceedings in Europe and Central Asia. UNICEF Regional Office for Europe and Central Asia. November 2022;
- Acquis Communautaire, especially with the recent directives that have been issued precisely on the protection of children during legal processes<sup>22</sup>.

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<sup>14</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>15</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

<sup>16</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

<sup>17</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

<sup>18</sup> [https://www.unicef.org/protection/RoL\\_Guidance\\_Note\\_UN\\_Approach\\_Justice\\_for\\_Children\\_FINAL.pdf](https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf)

<sup>19</sup> <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

<sup>20</sup> <https://www.coe.int/en/web/children/child-friendly-justice>

<sup>21</sup> <http://www.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>22</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>





