



Prishtinas, May 22 2020

Mr. Hashim Thaqi  
President of Republic of Kosovo

Mrs. Vjosa Osmani  
President of Assembly of Kosovo

Mr. Driton Selmanaj  
Chairperson of the Committee on Legislation, Mandates,  
Immunities, Rules of procedure of the Assembly  
and Oversight of the Anti-Corruption  
Assembly of Republic of Kosovo

Mr. Skender Çoçaj  
Chairman of the Kosovo Judicial Council

Mr. Bahri Hyseni  
Chairman of the Prosecutorial Council of Kosovo

Mrs. Albulena Haxhiu  
Ministarka Pravde Republike Kosova

## **Let's Give Juveniles a Chance**

All juveniles, including those whose freedom has been limited, enjoy their basic rights. Convention on the Rights of the Child (CRC) is one of the most universal and international standard. Although, Kosovo is not a signatory party to this Convention, it has included it in its national legislation<sup>1</sup>. Although, we do live in a time where people have become more aware about human rights and child's rights, it seems that the rights of individuals that have caused "damage" to the society, even juveniles' rights, are being considered as an artificial concept, not just to the wide public, but also to the institutional officials, whose duty is to provide and protect those rights.

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<sup>1</sup>Article 22 of the Constitution of Kosovo.

Surely, freedom is limited, be it in prison or educational institution, and this seems to be the right answer from the perspective of the public who wants to protect its security. However, this matter should be seen and examined from the perspective of child's rights, because if you would dig deeper on the lives of the convicted juveniles, in most of the cases you will be able to identify the reasons that pushed them into delinquency, since their family, institutions as well as the community have all failed in helping them. In this way the situation seems to be like a coin with two sides, therefore it is important to consider juveniles as human beings that need to be respected, regardless of the offences they have committed. Our intervention in the society should be focused in the juvenile's potential and capability in becoming useful and valuable members of the society, which can be achieved when limitation of freedom should be considered and remain as a last resort and that the limitation of freedom should serve to ensure their education, maximum of welfare and their planned and prepared integration in the society.

Based on the juveniles' rights and the principle of the *'Best Interest'*, and moreover by considering the emergency situation caused by COVID-19, this interest and these rights, should be implemented like never before, not by treating them as a category in need, but by helping them and institutions in order to protect their main interests, which are health and lives of juveniles.

In this aspect and due to this situation, we have taken on board many initiatives and global calls<sup>2</sup> for the protection of children and juveniles during the pandemic, and especially those that call upon the authorities to undertake steps according to the situation for the juveniles that are in detention or serving any of the measures or punishments imposed based on the national legislation, to consider the following actions, and undertake steps regarding the situation with COVID-19, which include:

1. *Establish a moratorium for not sending juveniles to the detention centers;*
2. *Release all juveniles that are currently in detention or under any measure or punishment, who can safely be released;*
3. *Provide alternatives to institutional measures and placing juveniles under family care or guardianship; and,*
4. *Protection of health, welfare and provide rehabilitation of every juvenile who has to continue serving his/her sentence.*

Despite the fact that in recent weeks several debates and activities were organized regarding the release of juveniles, unfortunately this did not happen due to some reasons published also by media and other means of communication.

Driven by our core mandates for protection of Children's Rights, we, Ombudsperson Institution of Kosovo, UNICEF office in Kosovo, Coalition of Child Protection Organizations (with its 32 member organizations), consider that it is of vital importance to protect the health and lives of these juveniles, and therefore we once again call upon the Judicial Authorities and the Ministry

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<sup>2</sup>Guidance release by UNICEF and the Alliance for Child Protection in Humanitarian Action, along with leading child rights organizations, academics and UN agencies.

of Justice, to reconsider the following legal possibilities, such as: the early release, substitution of the educational measure with an alternative one, conditional release or pardon.

These legal possibilities are envisaged in the following legal framework:

### **I. The Juvenile Justice Code**

The Juvenile Justice Code No. 06/L-006, 2018, in Articles 92 and 93, explicitly envisages the possibility for review, substitution and termination of institutional educational measures.

As stipulated in paragraph 1 of Article 92 of the Code: “Every six (6) months, the director of the institution or facility where an institutional educational measure is executed shall submit to the court and the Probation Service a report on the behavior of the juvenile and the success in the execution of the measure. The director shall, depending on the success in the execution of the measure, submit a motion for amending or terminating the execution of the educational measure in compliance with the individual plan.”

Apart from the authorizations obligatory for the Director of the Institution, JJC, in its next Article 93, paragraph 2, envisages for an additional possibility: “The juvenile, his parent, adoptive parent or guardian, the center, institution or facility where the educational measure is executed or the Probation Service may request a review of the execution of an educational measure.”

Besides the substitution, the Code has envisaged for the Conditional Release of the Convicted Juveniles. Article 36, envisages that: “A person sentenced to juvenile imprisonment may be conditionally released if he/she has served at least one-third (1/3) of the sentence that has been imposed.”

Also, taking into consideration many principles and guarantees envisaged in the JJC and the Criminal Procedure Code (CPC), it is requested from the Court to avoid the imposing of the measure of detention, as a measure to ensure the presence of the juvenile person during the court proceeding. Therefore, during this specific time it is recommended to consider other alternative measures, less severe ones that would ensure the presence of the juveniles, as defendants in a court proceeding.

For all possible forms of substitution of educational measures or punishment, as well as the conditional release, there is an additional institutional guarantee that these children will not be left in oblivion and without any care, because for all possible alternatives, the Probation Service guarantees the continued care for them.

### **II. The Law on the Execution of Penal Sanctions**

Article 6 of the Juvenile Justice Code, has envisaged that the provisions of the Law on the Execution of Penal Sanctions are implemented *mutatis mutandis* also for the juveniles, if this is not regulated with the JJC.

The Law on the Execution of Penal Sanctions, in several of its articles, has envisaged provisions granting relief, namely: Early release (Article 127), now amended with Article 19 of the Law No. 05/L-129.

In this way, the Early Release according to this article, in paragraph 1, is envisaged when:  
“Upon the request of the convicted person, the competent Court may release a convicted person before the completion of his or her service of the sentence of imprisonment if he or she has demonstrated good behavior, success in his or her work and other activities.”

### **III. The Law on Pardon**

As envisaged in its purpose, this Law stipulates the legal authorizations of the President of the Republic of Kosovo for granting of individual pardon.

Moreover, in Article 3, paragraph 1 “Pardon is President’s right intended not as a routine remedy, but as a seldom-used tool to reward extraordinary displays of character and conduct or to **address serious humanitarian concerns.**”

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### **Call for action “Let’s Give Juveniles a Chance”**

Taking into consideration the existing possibilities within the applicable legislation, and being aware that initiatives for legal changes are difficult and usually prolonged, as well as the fact that any delay in this direction may have an impact over the health and overall safety of the juveniles that are placed in detention or any of the institutional educational measure or imprisonment, at cases where the conditions are met we request that Judicial and other relevant institutions take decisions as soon as possible, whether for substitution or review of the institutional educational measures, substitution of detention, early release, conditional release, or pardon.

Under all these circumstances, the undertaking of these actions, in an immediate way and in harmonization and the requirements deriving from the United Nations Convention on the Rights of the Child, is crucial for the respect of the principle of the Best Interest of the child and the principles of the safety of life, survival and development.

Respectfully submitted,

Hilmi Jashari

Ombudsperson