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THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW

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Contents

INTRODUCTION 3
CHILDREN IN CONFLICT WITH THE LAW 4
JUVENILE DELINQUENCY 5
INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF 6
RIGHTS OF CHILDREN IN CONFLICT WITH LAW 6
MODELS OF JUVENILE JUSTICE 10
RESTORATIVE JUSTICE 11
IMPLEMENTATION OF ALTERNATIVE
MEASURES AND SANCTIONS FOR JUVENILES IN
CONFLICT WITH LAW IN MONTENEGRO 15
JUVENILES AND SOCIAL WORK CENTRE 17
Protection of juveniles with inadequate parental care
(with no parental care, from families with disrupted relations) 18
Protection of children with behavioural problems 19
Rights and obligations of childcare authority in
the criminal procedure against a juvenile 20
Social enquiry report of the childcare authority 21
Team work in the Center for Social Welfare 22
POLICE WORK WITH JUVENILES IN
CONFLICT WITH LAW 22
COURT PROCEDURE AGAINST
JUVENILES IN CONFLICT WITH LAW 24
COURT PROCEDURE AGAINST JUVENILES 25
Conditionality of opportunism principle 26
Attendance orders 27
Preliminary procedure 28
The procedure before the juvenile council 29
Pronouncement of sanctions and educational measures 30
SANCTIONS AGAINST JUVENILES 31
POSSIBILITY OF IMPLEMENTATION OF THE ALTERNATIVE
MEASURE OF MEDIATION TO RESOLVE CONFLICTS BETWEEN
JUVENILES IN EDUCATIONAL INSTITUTIONS 34
THE COMMISSION FOR JUVENILE JUSTICE REFORM 37
LOCAL TEAM FOR CONDUCTION OF
DIVERSION PILOT PROJECT 38

INTRODUCTION

This document is the result of the work and dedication of a group of people who, gathered around an idea, have made a significant contribution to the process of the reform of juvenile justice and promotion of the rights of children in conflict with law in Montenegro.

We refer to the people who work with children in conflict with the law and who have everyday professional contact with them and who consequently have particular sensitivity and empathy for their needs.

The group of professionals who work with juvenile justice issues were brought together with the help of UNICEF in 2004 to form a working body – the Commission for Application of Alternative Measures and Sanctions, coordinated by the Ministry of Justice of Montenegro.

In the course of work on this document, the members of the Commission and the Task Force for the pilot project of diversion from Bijelo Polje managed to become a leading force for change.

The document that is in front of you was made for everyone who works with children in conflict with the law and it is expected to inspire all of us to take actions for rehabilitation and re-socialization of such children and to give them a right to the "second chance".

The document sets out international standards for the protection of children in conflict with the law, Montenegrin legislation that stipulates this subject matter and modern trends, and an overview of the results and achievements in Montenegro.

We hope that you will find this document useful for your further work and that it will inspire us to help children and youth embrace positive social values.

We sincerely thank everyone who helped in preparing such a comprehensive document.

Branka Lakočević
Deputy Minister of Justice
Ministry of Justice of Montenegro

Noala Skinner
Representative
UNICEF Montenegro

CHILDREN IN CONFLICT WITH THE LAW

Children who break the law do not do so of their own free will, but rather as a result of restricted opportunities available for their development. Such opportunities become even more restricted once they enter the criminal justice system. Juveniles from risk groups that could get in conflict with the law are often victims of abuse and neglect, negligent and poor parenting and economic difficulties. Juvenile delinquency is not a success story, but evidence of the society failing to ensure protective environment for its children. Labelling such children results in exclusion from society rather than assistance in their rehabilitation. If juvenile offenders continue being criminalized while at the same time being denied a 'second chance' that they deserve, their 'chances' will lead to nothing but their reoffending when they grow up.

These children need support while they are still children. The efforts of the society to rehabilitate such children are insufficient for their developmental needs and are incompliant with the principle of full respect for the rights of the child.

The child's personality is developed throughout his or her development and depends on the stage of development: the child becomes capable of taking responsibility for its needs, acts, health and safety. Therefore, the society has the duty to ensure and provide special protection to children.

The rights of the child are defined in the 1989 UN Convention on the Rights of the Child as the first international agreement dealing with comprehensive protection of children's rights. The Convention is an instruction on how children are to be treated and protected while a special international body of the UN, the Committee for the Rights of the Child, oversees the implementation of the Convention in the countries that have ratified it. The UN Convention on the Rights of the Child is an integral part of the internal legal system of this country and has supremacy over its national legislation, together with other ratified international instruments.

The Convention on the Rights of the Child offers a completely new attitude towards children with an aim to further the status of children in the world. The child is viewed as a human being with its own needs and opinion having an active role in all the activities and issues relevant for its wellbeing.

The Convention on the Rights of the Child is intended for everyone involved with children, those directly working with them or having direct or indirect contact with them through their profession. i.e. parents, teachers, carers, senior officials, health and social workers, lawyers, judges, police officers. Any adult, regardless of the role s/he may take, can contribute to this process by accepting the child as a human being that must be devoted sufficient attention to.

The Convention is also intended for children. Children need to be informed of the rights they are entitled to by birth. If they fight for the respect of their own rights, children develop a sense of responsibility for the respect of rights of others, and when they participate in the decision making they learn to take responsibility for the implementation of those decisions. Learning about and striving for their own rights, they learn that these rights belong to others too.

A juvenile offender differs from an adult offender. Therefore, juveniles in conflict with the law are to be treated differently from adult delinquents. The court must take into account the personality and needs of the juvenile, and social reaction toward juveniles should be directed to education and assistance measures to assist in their development, remove causes of anti-social and criminal behaviour and prevent re-offending. All procedures involving juveniles offenders must observe the principle of proportionality take into account not just the crime and risk for the society but also personality of the juvenile, home environment, age, education and affinities.[1]

JUVENILE DELINQUENCY

There is a vast array of terms used to describe unacceptable behaviour of juveniles in technical literature: non-adapted behaviour, juvenile crime, juvenile delinquency, juvenile offending, educational neglect, etc. In recent years, however, the prevailing opinion has been that the term juvenile offending is the most acceptable one and politically most appropriate if we are to reduce stigmatization of these persons through the language we use. Juvenile offending can be viewed in its narrow and broad sense. In the narrow sense, it stands for the breach of legal norms, i.e. commiting of crimes by a juvenile. In its broader sense, in addition to commiting of crimes it also includes the violation of ethical norms, commission of minor offences as well as antisocial behaviour. Juvenile offending has so far been related only to certain types of crimes (mugging, thefts, etc.) whereas nowadays, with the exception of commercial crimes, no aspect of crime is without. Over the past ten years, the age curve has declined toward the younger age. In addition to changes in the social and family environment, an ever younger age of offenders is also caused by the earlier biological maturity of young generations of today. Of all juvenile offenders in Montenegro, females make 3-5%. Most frequent among the crimes committed by juveniles in Montenegro are property crimes, making over 70%. The most frequent reaction of the state to juvenile offenders, namely over 80% of cases, is to impose the measure of close supervision.

1 *Dijana Popovic Gavranovic, Social Work Centre, Podgorica*

Technical literature classifies the etiological factors of juvenile delinquency into:

1. exogenous or external factors relating to socio-cultural conditions of life: school, family, housing, peer group, media, leisure time, etc.
2. endogenous or internal factors (emotions, character, temperament, intelligence, etc).

As a result of a combination of two or more factors, a juvenile may commit a crime or show antisocial behaviour.[2]

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF RIGHTS OF CHILDREN IN CONFLICT WITH LAW

The key principles of the UN Convention on the Rights of the Child include respect for the best interests of the child, the right of the child to life, survival and development, non-discrimination and active participation in all the relevant procedures. In line with the said principles, a juvenile offender must enjoy full respect of human rights as guaranteed by the Constitution, law and applicable international regulations, just like all the other juveniles under the jurisdiction of the respective state.

International instruments for the protection of children in conflict with law emphasize the need to observe the principle of proportionality, which means that any reaction to a juvenile offender must be in proportion to his background and nature of the crime committed. It must take into account not just the gravity of the delinquent act but also the juvenile's profile.

International standards invite States to avoid as far as possible resort to formal proceedings or trial by a court in all cases involving juvenile offenders taking into account the observance of human rights. The rights of juvenile offenders are defined by a wide range of international instruments, which indicates that there is a need to devote special attention to these juveniles and ensure minimum guarantees of the protection of their rights:

- **Convention on the Rights of the Child** (1989),
- UN Standard Minimum Rules for the Administration of Juvenile Justice, **Beijing Rules** (1985),
- UN Guidelines for the Prevention of Juvenile Delinquency,

2 *Milorad Scekic, Residential Correctional Facility 'Ljubovic'*

- **Rhiad Guidelines** (1990)
- UN Rules on the Protection of Juveniles in Custody (1990)
- Guidelines for the Treatment of Juveniles within Juvenile Justice, **Vienna Guidelines** (1997)
- UN Standard Minimum Rules for Non-custodial Measures - **Tokyo Rules** (1990)
- **International Covenant on Civil and Political Rights** - ICCPR (1966)
- **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1953)
- Council of Europe Social Reaction to Juvenile Delinquency, 1987 (CER(87)20),
- European Rules on Social Sanctions and Measures (1992), (CER(92) 16)
- Council of Europe Social Reaction to Juvenile Delinquency of Juveniles from Migrant Families, 1989 (CER(88)6).

Unlike the UN Convention on the Rights of the Child, European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights that are legally binding documents, rules and guidelines are so called *soft* law that is not of binding nature but serve as good guidance to states as to the direction in which they should develop their juvenile justice systems.

The UN Convention on the Rights of the Child as a comprehensive and leading international agreement protecting the rights of the child defines in Art. 1 the term 'child' to include any person under the age of 18, unless there is a different legal age of maturity under the law of any specific state.

The Convention invites the contracting states to adopt legislation that clearly establishes a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (Art. 40(3) (a) Convention on the Rights of the Child) and prescribe the minimum years of age under which they cannot be committed to custody (Beijing Rules - Rule 4).

Juveniles enjoy all the guarantees to a fair trial just like adults. They enjoy additional - special guarantees because of their age. The Human Rights Committee has established that «juveniles should enjoy at least the same guarantees and protection as adults, under Art. 14 of the ICCPR.

No one, and so no juvenile, may be detained unlawfully or arbitrarily. If, however, a juvenile is detained, Art. 37 of the Convention provides an overview of the rights pertaining to a juvenile deprived of liberty. It is certain that prison is no place for a juvenile for reason of his psycho-physical development, sensitivity and special needs. And yet, international law does not envisage absolute prohibi-

tion of custody of juveniles. Instead, there are indications that international law develops towards giving priority to alternative procedures and placement of children outside institutions with restricted freedom of movement.

According to Art. 37 of the Convention on the Rights of the Child, the State Party shall guarantee that no child can be subject to torture or other cruel, inhuman or degrading treatment, or unlawful detention, as well as that capital punishment or life imprisonment without possibility of release shall not be imposed for offences committed by children under the age of 18. This prohibition also applies to hard or humiliating educational measures or punishments in any other institution. This applies to disciplinary measures too. In addition to the prohibition of physical punishment, such measures include: placement in a cell without light; custody in a small room or cell, reduction of diet, limitation or denial of contacts with family members, collective punishment as well as all other forms of punishment that can threaten physical or mental health of a juvenile.

Arrest, detention and punishment of a juvenile shall be applied as a measure of last resort for a shortest possible period of time against the guarantee that the juvenile shall be separated from adults.

Police may use movement restriction devices on a juvenile only in exceptional circumstances in accordance with the law and other regulations. These methods must not be humiliating and degrading for the juvenile and shall be used to a limited extent and for as short a period of time as possible.

As a rule, juveniles in custody should be separated from adults and must receive treatment in accordance with their age and legal status. Art. 37(c) of the Convention on the Rights of the Child sets forth that a juvenile in custody may be placed with an adult, including adult members of his family, provided that it is in the juvenile's interest.

Art. 40 of the UN Convention on the Rights of the Child defines the rights of children that are either alleged as or accused of having infringed the penal law and invites the signatories to prescribe special regulations, councils and courts for juvenile offenders, to define the treatment of juveniles and define minimum procedural guarantees for a juvenile, minimum age limit for criminal liability, as well as to promote procedures that imply the implementation of a set of alternatives to institutionalization.

During the procedure, juveniles should have special treatment arising from their right to be treated «*in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the age of the child...*» (Art.40(1) Convention on the Rights of the Child).

The procedure before a competent and impartial body shall be conducted expediently, with the attendance of parents and respect of child's privacy and where the procedure is conducted before cameras, the child's identity must not be re-

vealed. Court procedure and accommodation with restricted freedom are recommended as the last available option that is replaced by a number of alternatives, such as: care, supervision, conditional punishment, adoption, education and professional training programme.

In accordance with the UN Convention on the Rights of the Child and other relevant international standards, the rights of the child that must be respected throughout the procedure so as to achieve the goal of a fair trial include the following:

- right of the child to be informed of the charges
- right not be compelled to give testimony
- right to be presumed innocent until proven guilty
- right not to be compelled to confess guilt
- right to legal assistance (a defence counsel) in preparing for the court trial
- right of the child to have his parents or legal guardians immediately informed of its arrest, detention and all the charges against it, unless it is against the child's interests
- right of the child to maintain contact with its family by correspondence and through visits save in exceptional circumstances
- right to an effective legal remedy
- right to privacy
- right to emergency in the procedure administration (emergency procedure)
- right to liberty and safety of person
- right of the child to be interviewed in the presence of parents, professionals - social worker, psychologist, education specialist (from the childcare authority), defence counsel
- right to free services of an interpreter if the child does not understand or does not speak the language used at the interview
- right to be taken to court for the hearing within 48 hours of the arrest, with a guardian and social worker attending

Procedures against juveniles must be implemented in such a way as to ensure the respect for their rights and safety and must take into account their age and willingness to rehabilitate. This is meant to avoid any form of labelling the juvenile because of the criminal offence committed and give priority to the implementation of educational over punitive measures.

A criminal procedure administered against a juvenile is characterized by the exclusion of public. To protect the juvenile's privacy, trials involving juveniles should be closed to the public and media, which is listed as one of the allowed exceptions to the right to a public trial. To avoid labelling of juveniles and pro-

tect their private life, judgments pronounced to juveniles are not public as a rule. Art. 14(1) of the ICCPR sets forth an exception to the request to have judgments publicized when it is required in the interest of the juvenile.

Juveniles have the right to be represented by a defence counsel throughout the procedure whereas juveniles who are not in a position to form their own views should be ensured a right to freely express such views in any court, administrative or other procedure relevant to him, either directly or through his representative. The juvenile himself, his legal representative or relatives, may select a defence counsel (a juvenile must have a defence counsel right from the beginning of the preliminary procedure, so if he fails to retain one, he will be appointed a public defence counsel by the juvenile judge; a juvenile may on no condition waive his right to a counsel and his presence).

Art. 5(1) of the European Convention on Human Rights and Freedoms guarantees everyone the right to freedom and personal safety. The whole of Art. 5 deals with the protection of physical freedom from arbitrary arrest or detention.

At all events, regardless of whether juveniles are detained or an emergency procedure is required, the court shall immediately consider the possibility of release, and the contact between the law enforcement agencies and the juvenile offender must ensure respect for the juvenile's legal status, care for his benefit and avoidance of harmful consequences, while fully respecting the circumstances of that individual case. Before the juvenile is committed to custody, the court must check whether the interview has been conducted in accordance with the law.

The juvenile offender's personal records shall be kept strictly confidential and access to them shall be limited only to duly authorized persons. Data from such records may not be used in any subsequent proceedings instituted against such offender once he reaches the legal age of maturity.

MODELS OF JUVENILE JUSTICE

Across various cultures and communities of today, there is a vast array of concepts of criminal liability of juveniles and accordingly of different interventions made. In their attitude to juvenile crime, most communities of today mainly focus on the offender and his delinquent act as well as the efforts made by the state and its judicial and intervention bodies to rehabilitate the offender and prevent future offending.

The retribution approach is the result of a belief that individuals knowingly choose criminal behaviour and are thus accountable for their behaviour regardless of their age and stage of development. Accordingly, the key objective is to de-

termine criminal responsibility - guilt, which is done in a procedure prescribed by the law. The result is a sanction that reflects the gravity of offence and whose service has an intimidating effect.

By contrast, the rehabilitation approach relies on a view that the juvenile's offence is the result of a series of reasons (inadequate parental control and care, poor social skills, negative social and economic environment, etc) other than a conscious choice of criminal behaviour. This approach implies that criminal behaviour of children and youth is a result of incapacity to make judgments and therefore leads to limited accountability for such behaviour. On the other hand, that approach stems from the view that the society has both responsibility and duty to ensure adequate care and protection for all children and youth. Juvenile offenders, therefore, should be ensured not just criminal justice interventions, but also social protection ones. The goal is to prevent the offender from relapsing into criminal behaviour and provide the assistance required to correct the existing unacceptable behaviour.*3*

RESTORATIVE JUSTICE

Restorative justice is a new view of the criminal legal system which focuses more on the restoration of the damage that the crime has done to people and their mutual relations rather than the punishment of the offender.*4*

Restorative justice is a process that involves all who are directly or indirectly affected by the crime in an attempt to decide how best to restore the damage. There are three categories of those directly affected by the crime, namely victims, offenders and their immediate community, whose needs are to receive restitution for material and non-material damage, take responsibility and restore good relations in the community respectively.*5*

Therefore, the emphasis is on the needs of people, individuals, respect for their human values and their personalities, and not just the punishment of the offender.

Restorative justice is based on the following four basic principles:

3 Antonija Zizak, Department for behavioural disorders of the Education-rehabilitation faculty in Zagreb, "Model of out-of-court settlement in a penal procedure against minors and young adults", Nivex Koller-Trbovic, Marija Koren Mrazovic, Bozica Cvjetko, Antonija Zizak

4 Paul McCold and Ted Watchel, International Institute of Restorative Practice, "Searching for a pattern: Theory of Restorative Justice", 2003

5 Paul McCold and Ted Watchel, International Institute of Restorative Practice, "Searching for a pattern: Theory of Restorative Justice", 2003

- establish balance disrupted by a crime or conflict in the community and society and restoring the damage made,
- make restitution to the victim,
- create conditions for the offender to understand and take responsibility for his acts,
- assist in changing and promoting future behaviour of the offender.

Unlike retribution justice, which defines crime as an act against the state (responsibility of the offender is defined by the sanction received), the basic principles of restorative justice include the following:

- crime causes harm to another human being and mutual relations
- victim, offender and local community become active participants in the response to the crime
- victim occupies the central position and it is from the victim's perspective that the restitution for the damage is measured
- juvenile offender may be involved in the decision making on the sanction and restitution
- for the offender, responsibility implies not just acceptance of responsibility but also acting towards the restitution for the damage
- community is responsible for the welfare of its members including both the victim and the offender and therefore has an active role
- constructive dialogue of all who are directly or indirectly affected by the crime results in mutual understanding.

Diversion programmes are an integral part of the movement for restorative justice. Diversion is meant to divert juvenile offenders from the court procedure and direct them toward the official or unofficial support provided by the community thus avoiding the negative influence of the court trials. Research indicates that the official court procedure and placement of juveniles in institutions in most cases do not prevent relapse to criminal behaviour. It must also be borne in mind that institutional measures create additional problems due to:

- affect of criminal "pollution" resulting from life with extremely delinquent groups of peers
- rejection by family and society
- housing problems and problems finding employment after release from prison.

All diversion programmes include four fundamental requirements:

- juvenile offender must confess to the crime
- juvenile offender may not be committed to custody in order to take part

in a diversion programme
- juvenile offender is entitled to a court procedure if he or his parents or guardians do not agree with the implementation of the diversion measure
- juvenile offender may give up the diversion process at any time and have access to an official court procedure.

In various stages of the procedure designed to assist juvenile offenders there are several diversion measures the most frequent ones of which are:
- victim offender mediation
- admonition
- local community corrections council
- joint family meeting
- circle trial
- juvenile court
- community work.

Key objectives of mediation are:
- to support victim rehabilitation
- to give juvenile offenders an opportunity to understand the effect of their act on the victim and take responsibility for their behaviour
- to work towards reconciliation as the key goal founded on the idea of restoration
- to highlite the duty of the state to include citizens in attempts to find a way towards positive reaction to juvenile crime
- to allow the juvenile offender must comprehend the consequences of his behaviour and take responsibility for his behaviour.

Wllingness to be reconciled with the victim implies a voluntary agreement of the juvenile offender to face the victim so as to remove the harmful consequences of the crime.

Voluntary acceptance in the reconciliation procedure is also required on the part of the victim. Unlike retribution justice where the focus is on the crime and violation of law, restorative justice aims at resolving the problem through reconciliation and improvement of the newly created situation. The victim's needs are respected and the offender takes responsibility, which shows he understands the consequences of his crime.

Out-of-court settlement of juvenile delinquency through *reconciliation*, i.e. conclusion of an agreement between the offender and the victim, aims at not just avoiding the penal procedure but also exerting the influence on the juvenile to

avoid crimes, also avoiding the stigmatization and labelling of the juvenile offender. If the victim accepts reconciliation, the victim reaches satisfaction. We must not oversee the fact that it is due to mediation procedure that the number of cases handled by court has been radically reduced.

The Tokyo rules list the following alternative measures and sanctions that can be imposed on juvenile offenders:

- admonition, reprimand and warning
- conditional discharge
- status penalty
- economic sanctions and monetary penalties
- confiscation or expropriation order
- restitution to the victim or compensation order
- suspended or deferred sentence
- probation and judicial supervision
- community service order
- referral to an attendance centre
- house arrest
- any other mode of non-institutional treatment
- combination of the measures listed above.

Typical of all alternative measures is the requirement of the offender to take responsibility for his action and that one of the key requirements for their implementation is voluntary acceptance.

With the introduction of attendance orders as an alternative to a court procedure against juvenile offenders, Montenegro has joined modern trends in society's reaction to juvenile delinquency outside classical criminal procedure.

IMPLEMENTATION OF ALTERNATIVE MEASURES AND SANCTIONS FOR JUVENILES IN CONFLICT WITH LAW IN MONTENEGRO

The Ministry of Justice of the Republic of Montenegro, in cooperation with UNICEF implements the project «Implementation of alternative measures and sanctions for juveniles in conflict with law» with the objective to further the rehabilitation and resocialization of juveniles and promote the system of juvenile justice in Montenegro.

The project implementation started in April 2004 as part of the programme «Children`s Chance for Change» funded by the Swedish International Development Agency (SIDA).

The purpose of the project is to promote the rights of juvenile offenders in Montenegro through legislative reform, support to institutions of the system and establishment of a diversion pilot model in the municipality of Bijelo Polje. There, juveniles in conflict with the law would be «diverted» from regular court and administrative procedure, which would assist their rehabilitation and direct their lives towards positive values. Most successful modern procedures and experience in work with juvenile offenders are based on the UN guidelines and recommendations. They include alternative measures and sanctions, diversion schemes and well established rehabilitation programmes that have proven successful in most states in Europe.

The Ministry of Justice of the Republic of Montenegro coordinates the Intersectoral Commission for Juvenile Justice Reform in Podgorica, and the Local Team for the implementation of Diversion Pilot Project in Bijelo Polje composed of representatives of line ministries, judicial bodies, social care centres, schools, Residential Correctional Facility «Ljubovic» and the office of the Protector of Human Rights and Freedoms. Members of the commission and team have been trained in victim offender mediation at training sessions provided by a foreign mediation expert that lasted 15 days in total. A group of selected professionals gained knowledge on restorative justice and specialized knowledge on victim offender mediation so as to be able to effectively lead the process of resocialization and rehabilitation of juvenile offenders, as well as the reparation of victim and community as a whole.

In July 2005, a Memorandum of Cooperation was signed by the Municipality of Bijelo Polje, Ministry of Justice of Montenegro, Ministry of Labour and Social Care of Montenegro and UNICEF with the goal to establish the Children and Family Support Centre in Bijelo Polje where in addition to the Mediation Service the Centre would also provide all kinds of assistance and support to vulnera-

ble and socially underprivileged children, such as children victims of violence, abuse and neglect and children in conflict with the law. Victim offender mediation services will be provided by the Bijelo Polje team members who have been trained and who have the knowledge required to lead the victim offender mediation procedure.

As part of the juvenile justice reform project the Memorandum of Cooperation was signed in June 2006 by the Ministry of Justice of Montenegro, Prosecutor General of Montenegro and UNICEF to give legitimacy to the implementation of the pilot project on alternative measures and sanctions for juveniles in conflict with the law but also to promote the institute of mediation - settlement-out-of-court settlement between the victim and suspect. Thanks to the work of commission and team members, with coordination provided by the Ministry of Justice and support from UNICEF, the issue of the status of juvenile offenders in Montenegro has enjoyed special attention, primarily in the reform of criminal legislation that is underway. Through the amendments of the Criminal Procedure Code and Criminal Code regulations in the area of juvenile justice have been harmonized with relevant European standards to a large extent. An important new provision introduces attendance orders, expansion of the principle of opportunism, that is the possibility to apply it for crimes punished by a fine or up to 5 years imprisonment. The purpose of attendance orders is to avoid the instituting of criminal procedure against the juvenile or to suspend it with the overall goal to further the juvenile's development, strengthen his personal responsibility and avoid commission of crimes in the future. Therefore, when a juvenile confesses to the crime, and depending on his attitude to the crime and victim, a juvenile offender may be imposed one or more attendance orders for maximum six months. During the implementation itself, the order may be replaced by another attendance order. An attendance order may be imposed on a juvenile by a court after its own assessment or at the recommendation of the competent public prosecutor. The attendance order is pronounced as a substitute of criminal prosecution, which is an important new option that allows a juvenile a second chance, prevents crime and offers a juvenile a chance to follow the right track in life and become an active and positive member of the society. The implementation of attendance orders is regulated by a special secondary legislation instrument. The Ministry of Justice has set up a working group to draft the Attendance Order Implementation Rules.

Community work is another new measure for juvenile offenders. There is common consent that this sanction is particularly suitable to juveniles (bearing in mind their specific features). Community work (in the areas of humanitarian work, environment protection and culture) was introduced as a special measure that the court may impose on juvenile offenders together with an education-

al measure of close supervision envisaged by articles 91 and 17 of the Criminal Code of the Republic of Montenegro.

The introduction of settlement for juvenile offenders gives the public prosecutor a possibility to reach a settlement between the victim and the offender with the assistance of specially trained people. Settlement is out-of-court agreement reached between the victim and the suspect for the purpose of restoration of damage (by means of an apology, payment, work or in some other way), so as to remove, entirely or partially, harmful consequences of the crime. Settlement is the result of the victim offender mediation whose purpose is to achieve reconciliation between the victim and the suspect.

The Prosecutor General shall produce instructions regulating the fulfilment of special obligations and the conditionality for the opportunism principle for juvenile criminal offenders.

The results of the project «Implementation of non-custodial measures and sanctions in the Republic of Montenegro» are already visible but there is still much to be done. Through the project of implementation of non-custodial measures and sanctions the procedure focuses on the juveniles to assist their rehabilitation and social reintegration, protect their personality in accordance with the Convention on the Rights of the Child and further their development, which calls for the restriction of penal measures and promotion of non-custodial ones.[6]

JUVENILES AND SOCIAL WORK CENTRE

The social work centre has proven to have a very important role in working with juvenile offenders primarily for reason of the professionals it employs and its position within the child and social care system. Within this system, the centre is the body most responsible for understanding and treating juvenile delinquency and the juvenile himself, as well as for individualization of his treatment.

Social work centres are the pillars in the overall professional social work in the field of juvenile delinquency. The centre is the body of social and family legal care and therefore allows the provision of most adequate assistance to juvenile offenders. However, the fulfilment of social care objectives depends on society's capacity and resources, that is on how powerful the social services and educational institutions are as well as on the mutual links among all entities involved in juvenile delinquency.

6 *Slavica Rabrenovic, Ministry of Justice, coordinator of the project of implementation of alternative measures and sanctions*

Social care centres are institutions dealing with problems of children with antisocial behaviour in open protection: indirectly - by providing assistance to their parents in developing and maintaining partner and parent relations and directly - through the treatment and resocialization of juvenile offenders.

The expert procedure in the social care centre allows for the assessment of juvenile's delinquent behaviour in the light of his personality, which is composed of inherited and acquired features as well as of reactions to stimuli affecting the behaviour and adaptation to the environment. Individualization of juvenile's treatment means that social care experts make an assessment of his personality that changes depending on maturity, knowledge, personal experience, social and home environment, education, relationship with parents, peers and others as well as the picture of himself and his personality. Such an enquiry ensures a better understanding of why the juvenile has broken the law and assists in the selection of measures and treatment promising the best results.

The Family Law, Criminal Code and Social and Child Care Law of the Republic of Montenegro provides for the interventions that have the status of a special intervention in child protection, namely rehabilitation of family and prevention of more serious forms of child abuse or child behavioural disorders. The centre takes a series of measures in the interest of the juvenile, applies them to juveniles with initial forms of delinquent behaviour as well as to juvenile offenders.

Protection of juveniles with inadequate parental care (with no parental care, from families with disrupted relations)

The centre supervises the exercise of parental right and protects interests of juveniles *ex officio* in the following way:

- warns the parents about the problems in the juvenile's education
- imposes the measure of permanent supervision over the exercise of parental right
- denies the juvenile's parents custody and places the juvenile with another family or institution
- requires full information on the management of the juvenile's property,
- requires the court to impose the measure whereby the parents have the status of guardian with respect to managing the juvenile's property
- initiates the procedure for the stripping or reinstating of parental right
- where a juvenile is without parental care, it takes all the measures necessary to keep the juvenile in his natural family, appoints a guardian, arranges placement with a foster family/social care institution or adoption
- for the needs of a divorce procedure, it gives the court its opinion on child

custody, awards custody over children born out of wedlock, determines the visitation scheme for the parent that the child does not live with
- provides protection to juveniles living in financially and socially underprivileged families.

There is an ongoing dilemma as to when and to what extent the centre should interfere with the life of a family, or when exactly family problems require the intervention of the state agencies. The prevailing opinion in both the public and among professionals is that one should not interfere with family life, which may lead to society's tolerance of poor parenting, family violence and may render adequate child protection impossible.

Protection of children with behavioural problems

In its work with juvenile offenders, the childcare authority has the following special tasks:

- from the moment it learns of the crime (not just from the moment criminal charges are filed or prosecutor's or court's petition filed) until the pronouncement of the criminal sanction, it tries to gather sufficient information on the juvenile's family, the social and financial status of both the juvenile and his family, and assess and examine the personality of the juvenile.
- faces the juvenile with the effects of crime, while not implementing exclusively the protection model. The juvenile is a subject of law and is required to accept part of responsibility for what he has done
- before the criminal procedure is initiated, during the procedure, after criminal charges are dropped or the case dismissed, it takes social care measures it is authorized for
- participates together with the prosecutor in the decision making on whether to initiate the procedure or drop the charges
- cooperates with the juvenile judge during the preliminary procedure, takes part in the main hearing and gives opinion on the educational measure proposed
- organizes, supervises, directly enforces measures of close supervision (intense supervision by parents, adoptive parents or guardians; close supervision by the childcare authority; close supervision together with the order to attend a juvenile day care centre)
- refers juveniles who have been imposed an institutional measure to the attendance centre, correctional facility and a special institution for the treatment and training

- authority to refer a child showing antisocial behaviour to a correctional facility for resocialization; may issue an order for the juvenile's parents to lose custody and award custody to another person or a correctional facility for the juvenile's future care and education
- cooperates during the enforcement of institutional measures with correctional institutions and facilities, as well as with the juvenile's family and prepares the juvenile for his return to his family and normal life
- cooperates with the juvenile offender and his family after the expiry of the educational measure as long as necessary.

Rights and obligations of childcare authority in the criminal procedure against a juvenile

The social care centre (childcare authority) is not a party to the procedure, but acts as an important assistant to the agencies in charge of the criminal procedure and is entitled to the following rights:

- to be notified of the beginning of the procedure
- to be updated on the course of the procedure
- to file motions, point to facts and evidence during the procedure
- to initiate the decision of the juvenile council on the instituting of procedure in case it disagrees with the prosecutor's decision not to initiate the preliminary procedure
- subject to approval of the juvenile judge, to attend preliminary procedure activities and file motions
- where after the preliminary procedure the prosecutor makes a proposal to the juvenile judge to suspend the procedure and the centre does not agree with the proposal, it may request that the issue be subject to the juvenile council decision
- to attend the juvenile council sessions when it decides on the prosecutor's proposal for the measure to be issued
- to attend the main hearing where the juvenile council reaches the final decision

leading to its obligations to:

- give opinion, at the request of the public prosecutor, on the necessity of initiating the procedure
- submit data on the juvenile's personality and his home environment,
- supervise, under the decision of the juvenile court, the juvenile during the preliminary procedure

- collect data on the enforcement of the educational measure, at the request of the judge
- suggest modifications to or suspension of the measure during the supervision.

Social enquiry report of the childcare authority

The court decision in the procedure against the juvenile is based on the social enquiry report prepared by the childcare authority. The childcare authority is competent for making an assessment of the juvenile's personality and home environment since it has a team of experts with expertise in such relevant areas as social work, psychology, education, and criminology.

The social enquiry report includes a detailed description of the juvenile's mental and physical condition in the context of the socio-economic circumstances he lives in and is focused on resocialization. It includes the following: basic data on the juvenile, his personality, mental condition, personal features and affinities, health condition, his personal history focusing on events that may clarify his current behaviour, any changes in his social environment, education, performance in school, relations with friends, peers; his home environment; data on parents, their marital and family relations and parenting; education process; family economic standing; any socio-pathological conditions in the family; recidivism, as well as data on the circumstances of the crime. When necessary, the report also includes the data indicating there is a need for forensic expertise. At the end, the report presents the expert opinion on the education measure, any obligations, security measures and an estimate of effectiveness of the future treatment.

The childcare authority's report is used as evidence in the criminal procedure. However, the judge must make every effort to avoid quoting the section dealing with the juvenile's personality and his home environment since that can negatively affect the juvenile while it is not absolutely necessary in the procedure.

The report serves as the basis for: the pronouncement of an educational measure, sanction, special obligations, security measures, the enforcement of a sanction and the decision to suspend the sanction. The report of the childcare authority is a very useful tool but is not binding for the judge.

Team work in the Center for Social Welfare

Team work is the main methodology applied in social care centres because it can deal with various factors relevant for the beginning and development of behavioural disorders. Team work is more than a sum of different kinds of expertise, it is a method for comprehensive research, diagnostics and the selection of treatment. It is indispensable when one needs to study various aspects of life of the juvenile and his family. When selecting an expert to work with juvenile offenders, one must bear in mind that it is the expert who makes sure the procedure against the juvenile is as humane as possible, tailored to his needs and leading to positive outcomes.

Therefore, the social care centres must have a team composed of a social worker, education specialist (special teacher), and a psychologist, which is in charge of the assessment, diagnostics and enforcement of the measure. Professional standards require two teams, one for assessment and diagnostics, and another one for the treatment of the juvenile. Having two teams in place benefits the juvenile as he identifies the first team as investigation and the other one as someone on his side.

In their treatment of juvenile offenders who have been imposed an educational measure, experts of the social care centres apply individual work but some also apply group work, the two of them complementing rather than excluding one another. With the assistance of the group work, social skills of the group members are improved and many problems get resolved successfully. [7]

POLICE WORK WITH JUVENILES IN CONFLICT WITH LAW

The task of the police is to detect perpetrators of all crimes qualified as such under applicable regulations of the Criminal Code and Criminal Procedure Code of the Republic of Montenegro. In the procedure, juveniles appear as both perpetrators and victims and work with specially trained police officers.

Work with juveniles, from the method in which a juvenile is summoned for an interview, to the interview and hearing, all to the way to the filing of the petition, requires special education and professional training.

The way in which the police summons a juvenile offender or invites him to official premises for any other reason shall be as follows:

7 Dijana Popovic Gavranovic, Social Care Centre, Podgorica

- the police sends the juvenile a written invitation stating the reason for which he is invited. The invitation also notes the obligation of his parents to attend the interview
- if attendance of any other expert is required for the interview of the juvenile, an official notification is sent to the Social Care Centre inviting one of their officers to attend the interview on the police premises
- thanks to his knowledge and duties, the officer of the Social Care Centre can offer useful advice to the juvenile as well as represent and protect his rights.

In case the police has arrested the juvenile, it has the duty to notify him of his rights, which implies the following:

- as early as at the first interview, the juvenile must be informed of the crime he is charged with and grounds on which he is suspected
- he must be given a chance to state his view of the facts and of evidence against him and be able to present facts and evidence in his favour
- the juvenile need not present his defence or respond to the questions asked.

When a juvenile becomes a suspect of a crime he is charged with, the police must inform him of his rights to defence and all other rights guaranteed under the law:

- right to a defence counsel: prior to hearing, authorized police officers must inform the juvenile of his right to take a defence counsel - attorney and agree with him on the manner of defence
- right to be informed before the first hearing that all the statements he makes may be used against him as evidence
- right to sufficient time and opportunity to prepare his defence.

If a juvenile is found in the commission of a crime and detained, his rights are to:

- be informed of reasons for detention
- be informed that he does not need to make any statement
- have his parents or guardians informed of his detention
- select a defence counsel of his choice or with the assistance of his parents or guardians
- be taken to the investigating judge within the shortest time possible
- have correspondence and talk to his defence counsel (exceptionally, the investigating judge may order mandatory inspection of correspondence during the investigation).

If the police finds that the juvenile has committed the crime, it files a petition against him to the competent public prosecutor.[8]

8 *Radovan Stijovic, Security Centre Podgorica*

COURT PROCEDURE AGAINST JUVENILES IN CONFLICT WITH LAW

Freedom is the natural state of any human. However, for people to be able to enjoy their right to life and freedom, they must observe certain rules of conduct. To ensure these rules are observed, the state on behalf of entire society prescribes behaviour that is prohibited. Criminal offences define prohibited forms of behaviour by which the state protects its citizens, their rights and freedoms, their life, health, property and other resources in the general interest of the public. Criminal offences and sanctions (educational measures and penalties) for crimes are found in the Criminal Code of the Republic of Montenegro and an additional small number of them in other laws.

Bearing in mind the level of mental and physical development, i.e. the process of biological maturation, the child under the age of 14 is not considered criminally responsible. Therefore, he cannot be subject to a court procedure, pronouncement and enforcement of educational measures and imprisonment. After the age of 14, the child is considered a juvenile under Montenegrin criminal legislation. It is the age when puberty changes are completed and adolescence begins (a stage of development between the ages of 14 and 18) during which the child reaches intellectual, emotional, social, sexual, and physiological maturity. That is why a child at the age of 14 may be held responsible for his actions and consequences resulting from them. Therefore, he is responsible for the crime committed and is subject to the provisions of the Criminal Code of the Republic of Montenegro and the Criminal Procedure Code of the Republic of Montenegro that contains special provisions on the procedure against juveniles.

The term used in laws for persons between the ages of 14 and 18 is *a juvenile*, and for persons between the ages of 18 and 21 a younger adult, for which under certain conditions there is a legal provision under which he can also qualify for sanctions normally imposed on juveniles.

As a person grows up, it is impossible to draw a line marking a transition from adolescence into adulthood. This is the key reason why persons between the ages of 18 and 21 under certain conditions may also qualify for provisions specifically designed for juveniles.

The criminal procedure against a juvenile involves the police, public prosecutor, court (first instance court that makes the first decision in a court procedure and second instance court - or a court of appeal that decides on appeals against the decisions of the first instance court) and the social care centre.

The commission of crimes at this age, that is between the ages of 14 and 18, is called juvenile delinquency and is considered a particularly dangerous form of crime.

COURT PROCEDURE AGAINST JUVENILES

Regulations on the position of juveniles in our criminal law are not grouped together in a special law, but are regulated by the Criminal Procedure Code and Criminal Code of the Republic of Montenegro.

The court procedure is conducted by a juvenile judge and in the event of a more serious crime by the juvenile council composed of a judge and two laymen judges (teachers, pre-school teachers and other experts with experience in child education).

There is a special court procedure implemented against juveniles where everyone involved has the duty to act cautiously, bearing in mind the level of development, sensitivity, personal features and privacy of the juvenile. That is why the Criminal Procedure Code provides for special general provisions that are applied solely to juvenile offenders, namely:

- ***ABSENCE OF JUVENILE'S RESPONSIBILITY*** (when it is established that the juvenile did not turn 14 at the time of commission of the crime).
- ***JUVENILE MAY NOT BE TRIED IN ABSENTIA***
- ***RIGHT TO AN ATTORNEY*** (the juvenile must have an attorney right from the beginning of the preliminary procedure where the procedure is conducted for crimes punished by imprisonment over three years)
- ***SUMMONING THE JUVENILE*** (the juvenile is summoned through his parents, guardian, etc)
- ***CONFIDENTIALITY OF PROCEDURE*** - ban on publications on the course of procedure (without approval of the court, the course of procedure against the juvenile must not be published or the decision made in the procedure). Only part of procedure or decision may be published upon prior approval. Publications must not include the name of the juvenile or other data revealing the identity of juvenile.
- ***EMERGENCY OF THE PROCEDURE***

  During the procedure, the court may enjoy substantial assistance of the Social Care Centre that submits data and points to facts important for the adoption of the right decision. The procedure against a juvenile is divided in two stages, namely the preliminary procedure and the procedure before the juvenile council.
- ***INITIATING THE PROCEDURE***

  The criminal procedure against a juvenile is instituted for all crimes solely at the request of the public prosecutor (if the public prosecutor fails to file a petition for the procedure to be instituted against a juvenile, he

shall inform the victim of that. The victim may not initiate the procedure himself, but may request within 8 days of the receipt of notification by the public prosecutor that the juvenile council of the competent court passes a decision to initiate the procedure).

- ***IMPLEMENTATION OF OPPORTUNISM PRINCIPLE***

  For crimes punished by up to 5 years of imprisonment or a fine, the public prosecutor may decide not to request the criminal procedure although there is evidence indicating the juvenile has committed the crime provided he feels it would not be right to initiate criminal procedure against the juvenile for reason of the nature of the crime and circumstances under which it was committed, the juvenile's personal history and his personal qualities (to establish such circumstances, the public prosecutor seeks information from the parents, guardians, an other persons and institutions that may provide such information).

Conditionality of opportunism principle

Passing the decision on the implementation of opportunism principle to a juvenile may be made conditional by the Public Prosecutor with the consent of the juvenile, his parents, adoptive parents or guardian, upon the implementation of one or more special provisions from Art. 91 of the Criminal Code.

For obligations envisaged by Art. 91 of the Criminal Code the public prosecutor shall, with the assistance of specially trained people, carry out settlement between the victim and suspect. If the juvenile partially fulfils his obligation that the public prosecutor's decision not to initiate a criminal procedure is conditional upon, the public prosecutor may decide not to request instituting of procedure if he finds that it would not be beneficial in view of the nature of the crime and circumstances under which it was committed as well as juvenile's personal history and qualities as well as reasons for failure to fulfil obligations completely.

The public prosecutor shall file a request for the criminal procedure if the juvenile does not fulfil his obligation or fulfils it only partially or to an extent that justifies the need to institute criminal proceedings.

The public prosecutor shall inform the victim if he decides not to file a request for criminal procedure against the juvenile. The victim may not request the criminal procedure then. However, if the property claim has not been resolved during the fulfilment of ordered obligations, the victim is free to seek its resolution in a civil procedure.

Attendance orders

- ATTENDANCE ORDERS - for crimes punished by up to 5 years in prison or a fine, the public prosecutor may suspend the criminal petition or the court may, at the proposal of the prosecutor general, suspend the criminal procedure for the pronouncement of criminal sanction against a juvenile and issue an attendance order under the terms of Art. 80a 1,2,3 of the Criminal Code - *When a juvenile offender is guilty of the crime punished by up to 5 years in prison or a fine, the juvenile may be imposed one or more attendance orders, subject to the assessment of the court or the proposal of the prosecutor general. The application of the attendance order is made conditional upon the confession of the crime by the juvenile and his attitude towards the crime and the victim.*

A juvenile offender may be imposed one or more attendance orders for a crime punished by a fine or 5 years in prison.

An attendance order may be imposed on a juvenile by a court at its own discretion or at the proposal of a competent prosecutor general. The conditions for the implementation of an attendance order include: juvenile's confession to the crime and his attitude towards the crime and the victim.

The purpose of attendance orders is to avoid initiating criminal procedure against the juvenile or suspend the procedure. The goal is to further the proper development of the juvenile, strengthen his personal responsibility and avoid his relapse into criminal behaviour in the future.

Attendance orders include the following:

- *settlement with the victim so that through the restitution for the damage, apology, work or in some other way harmful consequences of the crime may be removed entirely or partially*
- *regular attendance of school/commitment to employment*
- *inclusion, without remuneration, in the work of humanitarian organizations or the work relevant for the society, local community or the environment*
- *submission to an alcohol or substance abuse evaluation and anti-addiction treatment*
- *attendance of individual or group treatment in a health care institution or counsel centre.*

When selecting the educational order, the prosecutor general and the court shall take into account the interest of the juvenile and the victim, also bearing in mind that the implementation of one or more attendance orders must not interfere with the juvenile's education or employment.

- *An attendance order may last for maximum six months, during which time it may be replaced by another order or suspended.*

- *The selection and implementation of an attendance order is conducted in co-operation with the juvenile's parents or guardian and the competent child-care authority.*

The implementation of attendance orders referred to in Art. 80c of this law is regulated by the secondary legislation.

In addition to the measure of close supervision, the court may impose on a juvenile a special obligation to do humanitarian, cultural, environmental and other work in the public interest without remuneration. Such work may last for up to 30 hours a month and may be done over a time period of minimum one month and maximum four months. When defining this obligation, the court must avoid interference with education or employment.

The procedure against juveniles is composed of two stages: the preliminary procedure and the procedure before the Juvenile Council.

Preliminary procedure

When the public prosecutor files the petition to initiate the preliminary procedure, the juvenile judge of the competent court shall conduct preliminary procedure provided he agrees with the petition. If the juvenile judge does not agree with the petition, he shall require the decision of the Superior Court Juvenile Council.

During the preliminary procedure, the juvenile judge collects the following: data on the juvenile's personality, his age, his social and home environment, and, if necessary, data on his mental and health condition. These data are obtained from the Social Care Centre. If necessary, the interview of the juvenile may be attended by a psychologist, social worker or another expert. During the preliminary procedure, the juvenile's parents, guardian or other persons may be interviewed for the necessary data.

The juvenile court determines the way in which individual preliminary procedure activities will be conducted (activities concerning the defence of the juvenile, rights of victim, and collection of evidence necessary for the decision). If the public prosecutor and defence counsel insist on their presence, they shall be notified of the time the measures mentioned above are to be taken.

During the preliminary procedure, the juvenile judge may order the placement of the juvenile into a daycare centre or other similar institution, or to be placed under supervision of the Social Work Centre childcare authority or be placed with another family if he feels it is necessary so as to separate the juvenile from his earlier social setting, provide him with assistance, protection and better housing.

During the preliminary procedure, the juvenile judge may decide, either in his official capacity or at the proposal of the public prosecutor, to detain the juvenile provided statutory requirements under Art. 148(a) of the Criminal Procedure Code are in place (namely, that there is reason to believe that the juvenile committed the crime, that the juvenile is in hiding and that his identity may not be established, or that there are other circumstances that indicate that there is a danger of his flight).

In the event that the juvenile judge does not agree with the proposal of the public prosecutor for the juvenile to be placed in detention, he shall seek the decision from the Juvenile Council of the same court.

On the basis of the detention order issued by the juvenile judge, the detention during preliminary procedure may last for maximum one month.

After the preliminary procedure, detention may last for maximum four months for younger juveniles, and six months for older juveniles.

Having examined all the circumstances, the juvenile judge shall deliver the files to the public prosecutor who submits to the Juvenile Council either the proposal for the sanction or proposal for the educational measure.

The procedure before the juvenile council

When the court receives the proposal of the public prosecutor (for the implementation of an educational measure or a sanction), as well as when the procedure is conducted without the proposal of the public prosecutor, (after the completed preliminary procedure), the Juvenile Council then arranges the council session or the main hearing. The main hearing and the session are arranged within eight days of the receipt of the public prosecutor's proposal or the completion of the preliminary procedure.

- JUVENILE PRISON SANCTIONS AND INSTITUTIONAL MEASURES /referral to an educational institution, referral to a correctional facility/ may be pronounced only after the main hearing, while other educational measures may be pronounced at the council session/ the parties are informed of the session and are not invited/.

- MAIN HEARING/ it is subject to provisions intended for adults in relation to preparation for the main hearing, management, postponement and suspension of the hearing, record of the main hearing and other issues. Invited to the main hearing are: the public prosecutor, the juvenile, a defence counsel (if defence is required), the victim, witnesses, forensic experts, the juvenile's authorized representatives and representatives of the Social Care Centre.

- EXCLUSION OF THE PUBLIC FROM THE MAIN HEARING

- TEMPORARY PLACEMENT OF THE JUVENILE / this measure may be adopted both during the procedure and after the court decision is made, before the enforcement of educational measure or the sanction of imprisonment in juvenile prison/.

After the council session or the main hearing, the Juvenile Council shall impose on the juvenile either an educational measure or imprisonment in juvenile prison.

Pronouncement of sanctions and educational measures

The Juvenile Council is not obligated by the proposal of the public prosecutor as to whether to impose on a juvenile a sanction or an educational measure. After the Council session or the main hearing, the Council may:

- ***suspend the procedure against the juvenile*** if there is no evidence that the juvenile committed the crime, if there are circumstances excluding the criminal liability of the juvenile and it the court finds that there is no reason to pronounce any sanction or educational measure the procedure is suspended under a decision.
- ***pronounce an educational measure to the juvenile*** disciplinary measures, measures of close supervision or institutional measures, while educational measures are pronounced in the form of a decision.
- ***juvenile prison*** a juvenile who is pronounced guilty is imposed the sanction of imprisonment in the juvenile prison, the sanction of juvenile imprisonment is pronounced in the form of a court judgment.

SANCTIONS AGAINST JUVENILES

Criminal sanctions imposed on juvenile offenders include: educational measures and juvenile prison. The purpose of criminal sanctions against juveniles (through social, educational and other measures) is to provide protection and assistance to juvenile offenders by way of supervision, professional training and development of personal responsibility, so as to further their education/re-education and development, develop their capacity for positive social roles and prevent their commission of crimes in the future.

A juvenile who at the time of commiting of the crime is between the ages of 14 and 16 (a younger juvenile) may be imposed only educational measures.

A juvenile who at the time of commission of the crime has turned 16 and is not yet 18 (an older juvenile) may be imposed educational measures and, only exceptionally, the sanction of juvenile prison.

Educational measures:

a) ***disciplinary measures*** (they are imposed on a juvenile when there is no need to take any of the long-lasting educational measures against him, particularly when the crime was committed out of thoughtlessness). These measures include:

- admonition,
- referral to the Juvenile Education Centre (this measure may be implemented for two hours, twice a week, over a period from 8 to 12 weeks).

b) ***measures of close supervision*** (they are imposed on a juvenile who deserves long-lasting educational measures, re-education or treatment with supervision, but his complete separation from his usual social setting is not necessary). These measures include:

- close supervision by parents, adoptive parent, or guardian,
- close supervision by the childcare authority
- close supervision involving attendance of a juvenile daycare facility.

The said measures are imposed for a period from 6 months to 2 years.

In addition to the measures of close supervision, a juvenile may be imposed special obligations, such as the obligation for him to:

- apologize to the victim in person
- remove the damage caused by his criminal offence, within the

limits of his own capacity
- o show commitment to school or employment
- o do training for a profession suited to his capacity and affinity
- o refrain from alcohol and other substance abuse or undergo treatment
- o visit a health care institution or advisory centre or act in accordance with their instructions
- o stay with another family willing to accept him and being capable of supervising him.

When defining such obligations, the court shall point out to the juvenile and his parents, adoptive parents and a guardian, that should he fail to fulfil these obligations, the pronounced measure of close supervision may be replaced by another educational measure.

c) ***institutional measures*** (they are imposed on a juvenile who needs to be imposed long-term measures of education, re-education or treatment and his separation from his current setting).

Institutional measures include:

1. placement in a residential facility (the court shall pronounce this measure when a juvenile needs ongoing supervision by experts).

These are open-mode institutions, which means that the juvenile lives there full board and regularly attends school in the same town, does professional training with the consent of his carer. He is allowed to go out and stay with his family over the weekend, on holidays and during vacations as well as receive visits.

A juvenile stays in this institution for minimum 6 months and maximum 2 years. During this measure, the court may decide to suspend it.

2. placement in a correctional facility (the court shall impose this educational measure if the juvenile needs enhanced measures of re-education). These are institutions with more stringent rules where the juvenile is deprived of his liberty for the term of the measure. These institutions have open, semi-open and closed units.

A juvenile may stay in this institution for a minimum one year and maximum four years.

During the implementation of this measure the court may decide to stop it. The court may conditionally release the juvenile from the correctional facility provided he has stayed there for minimum one year and that based on his performance in education and re-education process it may be expected that he will not commit any crimes in the future and that he will behave properly in the community where he continues his life.

3. placement in a special institution for treatment and training. The

juvenile may stay in this institution for maximum three years. This measure is imposed instead of the security measure. It may be enforced until the age of 23. After this age, it is enforced in the same institution as the measure of compulsory psychiatric treatment and care in a psychiatric institution. When a juvenile turns 18, the court must assess whether he needs to continue his treatment there.

- **juvenile prison** is the strictest sanction imposed in exceptional circumstances for most serious crimes. The sanction of imprisonment in a juvenile prison may be imposed only on an older juvenile.
- Imprisonment in a juvenile prison is imposed for minimum 6 months and maximum 8 years. Exceptionally, for crimes punished by the shortest imprisonment sentence, i.e. 10 years of imprisonment, a 10 year imprisonment in a juvenile prison may be imposed. The juvenile prison term is pronounced in full years and months.

The sanction of imprisonment in a juvenile prison is imposed on older juveniles when the court finds that there are elements for criminal liability of the juvenile as well as that he is at such a level of mental development that he may understand the seriousness of the crime and is capable of controlling his acts as well as that there are grave consequences of the crime and a high level of criminal responsibility. This criminal sanction is implemented exceptionally, for most serious cases.

A juvenile who is imposed a sanction of imprisonment in a juvenile prison having already served one third of his sanction exceeding one year, provided his performance in the education process promises that he will behave properly upon release and that he will not commit any further crimes, may be conditionally released from the juvenile prison. In addition to conditional release, he may be imposed the measure of close supervision.

Security measures may be imposed on juveniles together with an educational measure and imprisonment in a juvenile prison and may include the following:

1. compulsory psychiatric treatment and care in a health-care institution
2. compulsory non-institutional psychiatric treatment
3. compulsory alcohol and substance abuse treatment.[9]

9 *Miljana Pavlicevic, Superior Court in Podgorica*

POSSIBILITY OF IMPLEMENTATION OF THE ALTERNATIVE MEASURE OF MEDIATION TO RESOLVE CONFLICTS BETWEEN JUVENILES IN EDUCATIONAL INSTITUTIONS

Education legislation regulates rights and obligations of students. Art. 97 of the General Law on Education («Official Gazette of the Republic of Montenegro», No. 64/02 and 31/05) sets forth that the students have the following rights:

- right to receive instructions at the beginning of the school year on his rights and obligations
- right to quality education (lessons)
- right to express his opinion on the teachers' work
- right to request to have his knowledge assessed by a commission during the school year
- right to participate in the drafting of instructions including his rights and obligations
- right to timely and complete information on his rights and obligations;
- right to protection from all forms of violence in school
- right to be absent from school for maximum 5 work days during the school year, upon prior notification
- right to participate in the decision making on the content of school excursions and other forms of educational work
- other rights defined by the statute of the institution.

Representatives of the students association have the right to take part in the work of the school's professional bodies when they are discussing issues of interest to the students (such as students' standard, leisure activities, etc).

Art. 98 of the General Law on Education prescribes the following students' duties:

- to justify days of absence in time
- not to disturb the lesson and work in the classroom
- not to leave the classroom without the teacher's permission
- to regularly, diligently and conscientiously work to further his education and manners
- to observe regulations, advice, instructions and decisions of teachers, principal and school bodies
- to regularly attend school
- to behave decently with his teachers

- to respect the personality of other students and develop friendly and humane relations
- to look after the school property
- to help keep school facilities clean and in order
- to take part in school duty shifts
- to observe the school house rules
- to observe other duties prescribed by the institution statute.

In exercising his rights and duties in an educational institution, the student may get into conflict with other students. In such situations, the implementation of settlement/mediation would be of utmost significance for conflict resolution and for maintaining good relations among students.

Such situations require participation of the students' parents (or guardians), homeroom teacher, teachers, school's education specialist and psychologist, and the school principal.

The initiative for conflict resolution may come from the student himself, his parents or other school staff.

Where a student fails to fulfil his obligations or comply with the school rules, he may be subject to educational measures envisaged by special laws at all levels and types of education while the procedure and manner of their execution is regulated by secondary legislation (Rules of procedure for the award of prizes, rewards and educational measures to elementary school students («Official Gazette of the Republic of Montenegro, No. 56/04), Rules of procedure for the pronouncement of educational measures for grammar school students and the Rules of procedure for the pronouncement of education measures for students of vocational schools («Official Gazette of the Republic of Montenegro», No. 31/06)).

Bearing in mind that the said regulations prescribe educational measures for non-compliance with duties and school rules as well as the manner and procedure of their enforcement, mediation can be partially implemented in cases described above for the resolution of conflicts between students, between teachers and students, between the principal (as the head and legal representative of the institution) and a student, as well as between the students and school staff.

In conclusion, although education legislation on the implementation of educational orders does not envisage the institute of settlement as an alternative form of conflict resolution, the application of mediation would be significant in certain stages both before and during the procedure.

Having in mind the regulations described above, professionals working in educational institutions can use the technique of settlement/mediation to resolve conflict situations within the school, which is extremely important for the prevention of juvenile delinquency. Accordingly, it is necessary to organize ongoing training

of all that can potentially take part in a mediation procedure. Particularly important is the training of student mediators in mediation procedure since the conflicts arising among students can best be resolved by students themselves.[10]

10 *Dragica Andjelic, Ministry of Education and Science of Montenegro*
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THE COMMISSION FOR JUVENILE JUSTICE REFORM

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Ombudsman Office of the Republic of Montenegro

9. Nevenka Stanković
10. Veljko Šćekić

Higher Court Podgorica

11. Pavlićević Miljana

Basic Court Podgorica

12. Natalija Boričić
13. Vesna Moštrokol
14. Spomenka Đukanović

Police Directorate of the Republic of Montenegro

15. Radovan Stijović

Office of the Basic State Prosecutor Podgorica

16. Živković Raspopović Marija

Court for Misdemeanors Podgorica

17. Rakočević Maja

Center for Social Welfare Podgorica

18. Dijana Popović Gavranović
19. Orlandić Snežana

Center for Children and Youth "Ljubović"

20. Šćekić Milorad
21. Glomazić Novka

LOCAL TEAM FOR CONDUCTION OF DIVERSION PILOT PROJECT

Security Center Bijelo Polje

1. Pavićević Vesna
2. Bulatović Miloš

Center for Social Welfare Bijelo Polje

3. Radosav Nedović
4. Vanja Mašković

Basic Court Bijelo Polje

5. Banda Rahmo
6. Belević Gorica

Court for Misdemeanors Bijelo Polje

7. Zorica Rakonjac

Office of the Higher State Prosecutor Bijelo Polje

8. Lepa Medenica
9. Bugarin Nada

Office of the Basic State Prosecutor Bijelo Polje

10. Jašarević Rasim

School Centre Bijelo Polje

11. Rakočević Veselin
12. Dobardžić Edita

Bijelo Polje Municipality

13. Vukica Rakonjac