

## Section 14

### Subsection 1: Scope of Application of Section 14 and General Principles

#### **Article 74: Scope of Application of Section 14**

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1. Section 14 is applicable to a juvenile who is convicted of a criminal offense or a person over the age of eighteen years who is being tried for a criminal offense committed when he or she was a juvenile.
2. Section 12 of the MCC does not apply to juveniles.

#### **Commentary**

For the reasons discussed previously and also below, the penalty provisions applicable to adult convicted persons do not apply to juveniles. Nor do they apply to adults who have been convicted for criminal offenses committed while they were juveniles. This provision underscores the fact that a court must not apply Section 12 of the MCC in either of these cases.

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## Subsection 2: Purposes of Juvenile Dispositions and Principles Applicable to Juvenile Dispositions

### Article 75: Purposes of Juvenile Dispositions

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The following are the purposes of juvenile dispositions:

- (a) the promotion of the rehabilitation and reintegration of the juvenile and his or her resumption of a constructive role in society;
- (b) the promotion of a sense of responsibility in the juvenile convicted person and acknowledgement of harm done to the community;
- (c) the deterrence of the convicted juvenile person and other juvenile persons from committing criminal offenses;
- (d) the separation of the convicted person from society, where necessary; and
- (e) the provision of reparations for harm done to victims or the community.

### Commentary

As discussed in the commentary to Article 34, “Purposes of Penalties,” relating to the purposes of adult penalties, it is imperative that a state articulate a particular criminal policy on the purposes of penalties to guide the judicial determination of penalties. Reference should be made to this discussion in the commentary to Article 34. It is equally important to do this for dispositions applicable to juveniles. The purposes of juvenile dispositions set out in Article 75 are very similar to those in Article 34 relating

to adults, with the addition of Paragraph (a). The placement of this purpose at the top of the list of purposes of dispositions, and as the fundamental principle in Article 76, below, highlights the fact that the rehabilitation and reintegration of a juvenile and his or her resumption of a constructive role in society are key to juvenile dispositions. Reference should be made to Article 76 and its accompanying commentary, which discuss this issue in greater detail. The other principles of penalties can be taken into consideration as secondary factors to be considered by a court in assigning an appropriate juvenile disposition.

## Article 76: Fundamental Principle

The court must consider the rehabilitation and the reintegration into society of the juvenile person and his or her resumption of a constructive role in society as the fundamental principle in determining a juvenile disposition.

### Commentary

The applicable fundamental principle that guides the determination of adult penalties emphasizes the notion of just deserts—a principle that trumps all other purposes of penalties. For a more detailed discussion of the just deserts principle, reference should be made to Article 35 and its accompanying commentary. In short, this principle dictates that the type of penalty, and the term of imprisonment, if one is imposed, will be determined primarily by reference to the seriousness of the criminal offense and the culpability of the convicted person, although other principles set out in Article 34 can also be taken into consideration. The principle of just deserts is not appropriate as a guiding principle for juvenile dispositions, for reasons discussed below.

The need to prioritize the rehabilitation and reintegration of a juvenile convicted person is highlighted in Article 40(1) of the Convention on the Rights of the Child. Article 17(3) of the African Charter on the Rights and Welfare of the Child states that “the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.” As mentioned above, the International Covenant on Civil and Political Rights, Article 14(4), also emphasizes the desirability of promoting the rehabilitation of juveniles in conflict with the law, as does the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The Beijing Rules discuss this issue in the commentary to Principle 17, “Guiding Principles in Adjudication and Disposition.” The rules do not set out a particular purpose of juvenile dispositions, given the difficulties inherent in this task, but the commentary specifies that “strictly punitive approaches are not appropriate.” It also states that “whereas in adult cases, and possibly also in cases of severe offenses by juveniles, just desert and retributive sanctions might be considered to have some merit, in

juvenile cases such considerations should be outweighed by the interest of safeguarding the well-being and the future of the young person.” It is certainly true that making a juvenile responsible for his or her conduct is also of paramount importance. However, these considerations will apply not in preference to the rehabilitative aim but in conjunction with it. Rehabilitation is considered for adults, but only as a secondary consideration under Article 34, above. Much has been written on the ineffectiveness of criminal penalties in the rehabilitation of adult convicted persons. In contrast, there has been more success in rehabilitating juveniles. In the course of the consultation and vetting process of the MCC, many of the experts strongly supported the emphasis on rehabilitation and reintegration of juveniles as the primary purposes of juvenile dispositions.

## **Article 77: Principles Applicable to Juvenile Dispositions**

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1. The following guiding principles must be taken into account by the court in determining the disposition applicable to the juvenile convicted person:
  - (a) in determining the appropriate disposition for a juvenile, the court must consider the best interests of the juvenile as a primary consideration;
  - (b) the disposition must be in proportion not only to the circumstances and gravity of the criminal offense but also to the circumstances and age of the juvenile and the needs of the juvenile as well as the needs of society;
  - (c) restrictions on the personal liberty of the juvenile must be imposed only after careful consideration and must be limited to the possible minimum; and
  - (d) deprivation of the personal liberty of the juvenile must be a measure of last resort, and the deprivation must be for the shortest period possible.
2. When the court is determining the appropriate juvenile disposition, it must look at individual factors relating to the juvenile convicted person, including but not limited to:
  - (a) the age of the juvenile;
  - (b) the type and gravity of the criminal offense;
  - (c) the degree of his or her psychological development;
  - (d) his or her psychological state at the time the criminal offense was committed;

- (e) his or her motives in perpetrating the criminal offense;
- (f) his or her education and upbringing;
- (g) his or her environment and living conditions;
- (h) whether he or she has previously been convicted of a criminal offense and what penalties were previously ordered against the juvenile; and
- (i) for adults who are convicted of a criminal offense committed as a juvenile, the time elapsed since the commission of the criminal offense.

## Commentary

The principles set out in Article 77 are meant to guide a court in determining juvenile dispositions, in conjunction with the purposes of juvenile dispositions set out in Article 75 and the fundamental principle in Article 76. These principles are derived mainly from Principle 17 of the Beijing Rules, “Guiding Principles in Adjudication and Disposition.”

**Paragraph 1(a):** This paragraph expresses the “best interests of the child principle,” which lies at the core of international standards on the rights of the child. It is contained in Article 3(1) of the United Nations Convention on the Rights of the Child and Article 4(1) of the African Charter on the Rights and Welfare of the Child and is applicable to all the rights of the child, not just those relating to criminal justice. This principle should be considered at every stage of the judicial proceedings, not just at the penalty determination stage.

**Paragraph 1(b):** This paragraph is based on Principle 17.1(a) of the Beijing Rules. It introduces a proportionality requirement that requires a judge to consider not only the objective seriousness of a criminal offense but also subjective features of the juvenile convicted person, such as his or her age, circumstances, and needs. In addition, and as implied in Article 75(e), it is permissible for a court to consider the needs of society in conjunction with the needs of the juvenile convicted person. Of course, this purpose should be read in light of the fundamental principle contained in Article 77.

**Paragraph 1(c):** Paragraph 1(c) duplicates the language contained in Principle 17.1(b) of the Beijing Rules. This principle of minimal interference with the personal liberty of a juvenile implicitly encourages the use of alternative dispositions for juveniles. Reference should be made to the commentary to Article 78, which discusses this issue in greater detail.

**Paragraph 1(d):** The principle expressed in Paragraph 1(d) is also expressed in the MCC in relation to adult convicted persons. This paragraph closely mirrors the language of Principle 17.1(c) of the Beijing Rules. It also echoes the provisions of the United Nations Convention on the Rights of the Child, Article 37(b). The commentary to Principle 17.1 of the Beijing Rules states that this provision “aims at avoiding

incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.” As will be seen below, the MCC provides for noncustodial and custodial dispositions and, in exceptional circumstances, juvenile imprisonment. The avoidance of the deprivation of personal liberty is facilitated through the use of alternative noncustodial dispositions. Reference should be made to the commentary to Article 78, which discusses these issues in greater detail.

**Paragraph 2:** It is essential that the court look at the individual circumstances of the convicted juvenile person to assist in determining an appropriate juvenile disposition. The court must create an individualized disposition based on the individual characteristics of the convicted juvenile person and the circumstances surrounding the particular criminal offense that he or she committed. Paragraph 2 enumerates an illustrative but not exhaustive list of individual factors that a court must take into account when determining a juvenile disposition.

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## Subsection 3: Structure of Juvenile Dispositions

### Article 78: Principal Juvenile Dispositions

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The applicable juvenile dispositions are:

- (a) judicial admonition;
- (b) intensive supervision of a juvenile;
- (c) a disciplinary measure, either on its own or coupled with subsequent intensive supervision;
- (d) an institutional measure, either on its own or coupled with intensive supervision; and
- (e) juvenile imprisonment or juvenile imprisonment with a suspended sentence.

### Commentary

Principle 18 of the Beijing Rules provides that a large variety of dispositions be available to courts when dealing with juvenile convicted persons. It gives a variety of examples, many of which have been integrated into the MCC. The rules focus on avoiding institutional measures, which in Principle 19 are said to be “a disposition of last resort.” Institutional measures encompass facilities such as juvenile correctional facilities, juvenile prisons, and prisons where adult convicted persons are held. The MCC and international standards on the rights of juveniles aim to keep juveniles as far away from any kind of institutionalization as possible. Some states, however, tend to use imprisonment as an automatic punishment for juveniles and to place the juveniles not in juvenile facilities or centers but in adult prisons, where they are exposed to the negative influences and to physical or sexual abuse at the hands of adults.

Many studies have shown the limited positive impact of prison on the rehabilitation of juveniles. The commentary to Principle 19 of the Beijing Rules states that “progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences.” When institutionalization is used as a measure of last resort, international standards are clear that its focus must be on providing care, protection, education, and vocational skills to juveniles, with a view to assisting them to assume socially constructive and productive roles in society (see Principle 26 of the Beijing Rules).

Article 78 provides a range of dispositions—some noninstitutional, one semi-institutional, and others institutional. Supplementing these, the seven dispositions contained under Article 79 on additional dispositions form part of the range of dispositions a court may impose upon a juvenile convicted person. A court can be creative in how it combines these dispositions. For example, the court may admonish a juvenile person under Article 78(a). It may combine this admonition with an order that a juvenile attend school on a regular basis, as described in Article 79(a). As described in Article 79(c), it may order the juvenile to refrain from contacting certain persons or going to certain areas, both of which may tempt the juvenile to commit a criminal offense.

The main focus of the dispositions contained in the MCC, in line with the purpose of juvenile penalties in Article 75, is the rehabilitation of the convicted juvenile person, his or her reintegration into society, and the resumption of a constructive role in society. Where a juvenile convicted person is separated from society through semi-institutional or institutional measures, the focus of these dispositions should also be rehabilitation. For example, during the term of a disciplinary measure under Article 83, the juvenile will be engaged in useful activities that aid in the development of a sense of responsibility. Institutional measures involve staying at an educational, rehabilitation, or treatment center. Juvenile imprisonment involves a period of time served in a detention center. Juvenile imprisonment is a measure of last resort and may be imposed only in exceptional circumstances. When a juvenile is imprisoned, the institution should offer a variety of programs aimed at rehabilitating the juvenile. For a more detailed discussion, cross-reference should be made to the commentary to Article 85.

The Beijing Rules provide that “volunteers, volunteer organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of juveniles in a community setting” (Rule 25.1) and consequently to the execution of juvenile dispositions. The commentary to Rule 25 states that “cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized.” There are many examples of cooperative ventures between state and voluntary organizations in the realm of juvenile dispositions. The authorities in a post-conflict state should consider seeking out reputable organizations to work with in this venture.

Before a state implements semi-institutional and institutional measures into its domestic legislation, it should ensure that sufficient resources are provided to build and maintain the institutions (or, where they already exist, to modernize and repair them), staff the institutions, and fund their work and activities. Semi-institutional and institutional measures are often under-resourced, being underprioritized in the budgets of the governments of post-conflict states and underfunded by international donors. In Kosovo, for example, according to the Organization for Security and Cooperation in Europe report entitled *Kosovo, Review of the Criminal Justice System (April 2003–October 2004): Crime, Detention and Punishment*, the execution of juvenile dispositions is hampered by a lack of adequate institutions for convicted juveniles (page 57). The institutions contained in the Kosovo Code of Criminal Procedure—namely, disciplinary centers, educational institutions, special-care facilities, and foster-care facilities—were not budgeted or established by the time the law came into force. The Probation Service established in Kosovo also lacks the capacity to undertake its role envisaged vis-à-vis juvenile dispositions.

Additionally, training programs for judges should be undertaken to educate them about juvenile penalties. In Kosovo, according to the OSCE report, judges made almost immediate recourse to custodial dispositions rather than considering alternatives. This judicial reflex is common in many other post-conflict states. It must be addressed through training and education for judges; public awareness campaigns targeting the local population, who share the judges' views, may also be valuable.

**Paragraph (a):** Reference should be made to Article 81 and its accompanying commentary.

**Paragraph (b):** Reference should be made to Article 82 and its accompanying commentary.

**Paragraph (c):** Reference should be made to Article 83 and its accompanying commentary.

**Paragraph (d):** Reference should be made to Article 84 and its accompanying commentary.

**Paragraph (e):** Reference should be made to Article 85 and its accompanying commentary.

## Article 79: Additional Juvenile Dispositions

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In addition to a principal disposition, the court may order the convicted juvenile person to:

- (a) attend school on a regular basis;
- (b) accept employment or training for a profession, appropriate to his or her abilities or skills;
- (c) refrain from contacting certain individuals who are likely to have a negative influence on the juvenile;
- (d) refrain from visiting certain places or locations that are likely to have a negative influence on the juvenile;
- (e) refrain from the use of drugs or alcohol;
- (f) undergo counseling or treatment for alcohol and other substance abuse or addiction; or
- (g) undergo mental health, including psychiatric or psychological, counseling or treatment.

### Commentary

The additional dispositions in Article 79 may be used to supplement the principal dispositions provided for in Article 78, where their use is in the best interests of the juvenile convicted person. The primary dispositions stress the central purpose of juvenile penalties: rehabilitation. The additional dispositions may further assist in rehabilitation, for example, through prohibiting a juvenile convicted person from contacting certain individuals who have, in the past, been engaged in criminal activities with the juvenile, or through providing counseling or treatment to a juvenile who has a drug or alcohol addiction or mental illness. The use of a personal apology to a victim may not only have a rehabilitative effect but may also provide some satisfaction to the victim of a criminal offense and to society, thus serving one of the other purposes of juvenile dispositions.

Obviously, most of the additional dispositions cannot be imposed upon a person who is subject to a custodial disposition such as institutionalization. The additional dispositions can be ordered to apply, however, once the juvenile convicted person is no longer serving a custodial disposition.

Just as with principal dispositions, the authorities in a post-conflict state should consider joining forces with reputable volunteers, volunteer organizations, local

institutions, and other community resources to implement the additional juvenile dispositions.

One issue not dealt with in the substance of the MCC is the consequence of not complying with an additional juvenile disposition. The drafters of the MCC struggled with this issue. Ordinarily, this is an issue that might be dealt with by a state probationary body rather than the court. Otherwise, bringing a juvenile convicted person before the court every time an order for additional dispositions is breached would unnecessarily burden the court. A state implementing legislation on juvenile dispositions should make provision for the consequences of a breach of an additional juvenile disposition. This provision may be contained in the relevant legislation on the body established by law to oversee the execution of penalties and juvenile dispositions (i.e., the probation service).

**Paragraph (f):** As with many of the principal dispositions discussed in Article 78, sufficient resources and personnel are necessary to implement this disposition. As just discussed, the authorities may wish to consider cooperating with a reputable voluntary organization in providing this disposition.

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## Subsection 4: Procedure for Determining Juvenile Dispositions

### Article 80: Procedure for Determining Juvenile Dispositions

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1. The court must decide upon the appropriateness of a particular juvenile disposition in light of the purposes of juvenile dispositions under Article 75, the fundamental principle under Article 76, and the principles applicable to juvenile dispositions under Article 77, including the individual circumstances of the convicted juvenile person under Article 77(2).
2. When a juvenile, or an adult who committed a criminal offense as a juvenile, has been found criminally responsible for two or more criminal offenses, the court must impose a joint disposition.
3. The court must first determine which principal disposition to impose upon a convicted juvenile person. In doing so, the court must take into consideration the suitability of each disposition in relation to its potential rehabilitative effect upon the juvenile convicted person.
4. The court must then follow the procedure and principles set out in the relevant article on the particular principal disposition that has been selected.
5. After imposing a principal disposition on the convicted juvenile person, the court may also impose an additional disposition.

### Commentary

**Paragraph 1:** This paragraph articulates the overarching principles that should be considered during each step of determining the appropriate juvenile penalty.

**Paragraph 2:** When an adult is convicted of two or more criminal offenses, either resulting from the same criminal episode or prior to or after a conviction, a court must assign a penalty for each offense and then move to consider a joint penalty. Reference should be made to Articles 52 and 53 and their accompanying commentaries. This procedure does not apply to juveniles. Where a juvenile commits more than one offense, only one principal juvenile disposition can be imposed upon the juvenile. Of course, the principal disposition can be supplemented by additional dispositions where necessary. The fact that the juvenile has committed more than one criminal offense will certainly be an important factor in the court's decision on which particular principal disposition it imposes.

**Paragraph 3:** Each disposition under the MCC has the same general purpose and potential effect—that is, to rehabilitate the juvenile convicted person. In some cases, rehabilitation might require only a judicial admonition. In other cases, temporary custodial measures or institutional measures may be necessary to rehabilitate the juvenile. The approach will depend on the individual circumstances of the juvenile convicted person. A court should assess each disposition in light of these circumstances.

**Paragraph 5:** Reference should also be made to Article 79, on additional dispositions, and its accompanying commentary.

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## Subsection 5: Principal Juvenile Dispositions

### Article 81: Judicial Admonition

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1. A judicial admonition is a measure by which the court informs the juvenile that he or she has committed a harmful and dangerous act that constitutes a criminal offense and that if he or she commits such an act again, the court will impose a more severe disposition upon him or her.
2. The court may impose a judicial admonition upon a juvenile where such a measure is deemed sufficient and in the best interests of the child in order to rehabilitate the juvenile convicted person and to positively influence his or her behavior.

### Commentary

A judicial admonition is called a warning in some systems. It is the least severe of the applicable juvenile dispositions and can be used when a court considers it sufficient to rehabilitate and positively influence a juvenile's behavior and when it is appropriate based on the best interests of the child principle. In some instances, going through the criminal process, being found criminally responsible, and being warned that any future criminal conduct will result in a more severe disposition is enough to rehabilitate the juvenile convicted person without the need to deprive him or her of personal liberty. A judicial admonition can be supplemented by an additional disposition, such as an apology, as set out in Article 79.

## Article 82: Intensive Supervision of a Juvenile

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1. Intensive supervision is a measure under which a juvenile is placed under the intensive supervision of his or her parents, adoptive parents, legal guardians, foster parents, or [insert name of social care body].
2. The court may impose a measure of intensive supervision upon a juvenile where he or she would benefit from an extended measure of education, rehabilitation, or treatment under adequate supervision but where it is not necessary to totally isolate the juvenile from his or her home environment.
3. The court may order that the parents, adoptive parents, or legal guardians of the juvenile intensively supervise the child, where it deems the parents, adoptive parents, or legal guardians to be capable of exercising such supervision.
4. The court may also order that the [insert name of social care body] monitor the enforcement of the supervision order or render assistance to the parents, adoptive parents, or legal guardians in supervising the juvenile.
5. Where the court determines that the parents, adoptive parents, or legal guardians cannot reasonably be expected to intensively supervise the juvenile, and where it is in the best interest of the juvenile, the court may order the juvenile to be placed in a foster home for intensive supervision.
6. The court may also order that the [insert name of social care body] monitor the enforcement of the supervision order or render assistance to the foster parents in supervising the juvenile.
7. The court may discontinue intensive supervision in a foster home where it subsequently becomes possible for the parents, adoptive parents, or legal guardians to exercise this role.
8. Where the parents, adoptive parents, or legal guardians cannot reasonably be expected to intensively supervise the juvenile on their own, and where no foster home is available for the juvenile to undergo intensive supervision, the court may order the [insert name of social care body] to be responsible for the supervision of the juvenile.
9. Where the court orders the [insert name of social care body] to be responsible for supervising the juvenile, the juvenile will stay with his or her parents, adoptive parents, or legal guardians, and the intensive supervision over him or her will be exercised by an authorized person of the [insert name of social care body].

10. When the court orders intensive supervision by a parent, adoptive parent, legal guardian, foster parent, or the [insert name of social care body], it must include in its order the parties' duties in intensively supervising the juvenile.
11. The court may at any time terminate or modify the special obligations it has ordered the juvenile to fulfill or the duties it has imposed upon parents, adoptive parents, legal guardians, foster parents, or the [insert name of social care body].
12. The court may order intensive supervision for a minimum period of three months and a maximum period of three years.
13. In the event that the orders are not fulfilled, the court may substitute the order for intensive supervision with another disposition. At the time the obligation is imposed, the court must warn the juvenile convicted person of the consequences of not fulfilling an obligation imposed upon him or her.
14. The court may also terminate the order for intensive supervision or substitute another juvenile disposition for it where:
  - (a) circumstances that had not existed or were unknown at the time the court made its order arise; and
  - (b) such circumstances might have affected the outcome of the court's order.

## Commentary

Intensive supervision is a noncustodial, noninstitutional disposition that involves the juvenile convicted person remaining at home or being placed in a foster home and being supervised by parents, adopted parents, legal guardians, foster parents, or the relevant social care body in the state. Intensive supervision can last anywhere from three months to three years. It is a good alternative to institutionalization, as the juvenile is adequately supervised but at the same time does not have to leave his or her home environment. It might be usual to supplement intensive supervision with an additional disposition, particularly one relating to education, rehabilitation, or treatment, given the aim of intensive supervision. A court will assign another body—the social care body—to assist in overseeing the execution of the juvenile disposition. Of course, in a post-conflict state, social care bodies may not exist or may be underfunded. A post-conflict state should strive to ensure that sufficient resources are directed to the establishment and/or running of a social care body tasked with, among other things, overseeing court-ordered intensive supervision of juvenile convicted persons. Legislation may be required to establish the social care body and define its relevant powers and purposes. Another issue that should be addressed by the post-conflict state relates to foster care. Many states have developed systems for foster care under the ambit of family law. A post-conflict state should look at its laws on foster care prior to implementing this provision. If there are no laws on foster care, the state should consider

addressing this issue, where appropriate, and inserting provisions relating to court-ordered intensive supervision of juvenile convicted persons within the laws on the domestic foster care system. These issues become particularly important to juvenile justice in the post-conflict context, in which supervision by the juvenile's natural parents may not be an option if the parents have been killed or incapacitated or have fled the country during the conflict.

In the case of a breach of an intensive supervision order, the court may have to have recourse to another juvenile disposition, which may involve imposing an institutional measure on the juvenile convicted person. The same goes for a situation in which certain circumstances that would have influenced how the court determined the disposition are uncovered, as set out in Paragraph 14.

## Article 83: Disciplinary Measures

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1. A disciplinary measure is a short-term institutional measure under which a juvenile convicted person is committed to a juvenile disciplinary center.
2. In the juvenile disciplinary center, the juvenile will be engaged in useful activities, as appropriate for his or her age, skills, and interests. The aim of these activities is to develop a sense of responsibility in the juvenile convicted person.
3. The court may impose a disciplinary measure upon a juvenile where:
  - (a) a juvenile perpetrated a criminal offense out of thoughtlessness or carelessness; and
  - (b) the disciplinary measure is deemed sufficient to positively influence his or her behavior and is in his or her best interest.
4. The court may impose a disciplinary measure:
  - (a) for a maximum of four days of a school or public holiday for up to eight hours per day;
  - (b) for a specified number of hours during a day but for not more than one month; or
  - (c) for a continuous stay over a specified number of days totaling not more than twenty days.
5. When the court orders a disciplinary measure against a juvenile, it must ensure that the order does not hinder his or her regular employment or school activities.
6. After the juvenile has completed the disciplinary measure, additional intensive supervision may be imposed.

## Commentary

A disciplinary measure can involve either semi-institutionalization or full institutionalization for a short period of time (not exceeding twenty days). A disciplinary measure is an appropriate disposition in a situation where a juvenile committed a criminal offense out of thoughtlessness or carelessness and where it is sufficient, to rehabilitate the juvenile convicted person, that he or she undergo a short period in an institution. The period of institutionalization can be either served all at once or spread out over a longer time, during which the juvenile might attend the institution only on weekends and holidays, for example. Where this option is chosen, a court may have concluded that judicial admonition would be insufficient in the particular case. Intensive supervision at home or in a foster home may also have been deemed insufficient to meet the purpose of rehabilitation. An additional degree of supervision may be required in the juvenile disciplinary center. In this institution, the juvenile must undertake useful activities intended to help him or her develop a sense of responsibility. To implement this measure, funding, resources, and personnel will be required. Reference should be made to the commentary to Article 78, which discusses this issue in greater detail.

A disciplinary measure may be coupled with intensive supervision that applies after the period of the disciplinary measure has expired. In imposing intensive supervision on the juvenile convicted person, a court is also at liberty to impose additional dispositions.

## Article 84: Institutional Measures

1. An institutional measure is an extended custodial measure under which a juvenile convicted person is committed to a juvenile institution.
2. In the juvenile institution, the juvenile will be engaged in useful activities appropriate for his or her age, skills, and interests. The aim of these activities is to rehabilitate and educate the juvenile convicted person.
3. The court may impose an institutional measure upon a juvenile where he or she would benefit from an extended measure of education, rehabilitation, or treatment under adequate supervision, and where his or her best interests would be served by isolation from his or her previous environment.
4. The court may order an institutional measure up to a maximum period of three years.
5. The court may terminate an institutional measure or substitute another juvenile penalty for it where:
  - (a) circumstances that had not existed or were unknown at the time the court made its order arise; and

(b) such circumstances might have affected the outcome of the court's order.

6. Intensive supervision may be imposed in addition to a disciplinary measure after the juvenile has completed the institutional measure.

## Commentary

When the court concludes that a judicial admonition would not serve the rehabilitative needs of a juvenile convicted person, and where supervision at home or in a foster home or short-term institutional facility would not result in the rehabilitation of the juvenile convicted person, the court may consider more long-term institutional measures. In the institution, which may be an educational, rehabilitation, or treatment center, the juvenile should be engaged in educational or rehabilitative activities that will assist in his or her future reintegration into society. The term *juvenile institution* has been used generically to describe a place where the juvenile will spend his or her time while an institutional measure is in effect. Potentially, an institutional measure could be served in the same institution as a disciplinary measure. In other cases, where the state has treatment centers—for example, for drug or alcohol addiction—the juvenile may spend the term of the institutional measure there. The same considerations relating to funding, staffing, and resources apply, as with all institutional measures. Reference should be made to the commentary to Article 78, which discusses this issue in greater detail.

## Article 85: Juvenile Imprisonment

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1. Juvenile imprisonment may be imposed only where:
  - (a) the juvenile was between the ages of sixteen years and eighteen years at the time of the commission of the criminal offense;
  - (b) the juvenile has committed a serious criminal offense;
  - (c) the juvenile possesses a high degree of culpability; and
  - (d) the court concludes that other juvenile dispositions will not aid sufficiently in the fundamental principle of rehabilitation of the juvenile.
2. The imprisonment of a juvenile must be used as a measure of last resort and for the shortest appropriate period of time.
3. When the court orders the imprisonment of a juvenile, the court must not impose a period of imprisonment in excess of half the maximum penalty provided for the relevant criminal offense.

4. The court may order the imprisonment of a juvenile for a period of time less than the minimum penalty provided for the relevant criminal offense.
5. In determining the length of the period of imprisonment, the court must consider the aggravating and mitigating circumstances, set out in Article 77(2).
6. When the court orders the imprisonment of a juvenile, it may suspend the sentence of imprisonment.
7. The provisions of Article 55 apply, with the necessary modifications, to a suspended sentence to be imposed upon a juvenile convicted person.

## Commentary

The imprisonment of a juvenile is permissible only in certain circumstances. The person must be between the ages of sixteen and eighteen years when he or she commits the criminal offense. In addition, the criminal offense must be serious and the juvenile convicted person must have a high degree of culpability. Finally, the court must determine that none of the other juvenile dispositions in the MCC would serve to rehabilitate the juvenile. Imprisonment, as it is envisaged in the MCC, is a measure of last resort. This idea echoes the provisions of the Convention on the Rights of the Child, Article 37(b); the Beijing Rules (Rule 17); and paragraph 1 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. If possible, juveniles should be placed in a separate juvenile prison, rather than being imprisoned with adults in the same facility. If this is not an option, arrangements should be made for the segregation of juveniles and adults within the prison facility and for the elimination of contact or interaction between adults and juveniles, consistent with international human rights standards. In Kosovo, for example, in the early days of the peace operation, when the international military force in Kosovo, KFOR, was responsible for ensuring law and order, it worked with UNICEF and United Nations civilian staff on the issue of juvenile detention. Because of the devastation to the criminal justice infrastructure during the conflict, there were no separate juvenile prisons or institutions, so KFOR worked with UNICEF and the United Nations to ensure that juveniles were housed separately within a prison that also housed adults. Juveniles had their own, separate quarters and ate and exercised at separate times so that adults and juveniles did not come into contact. Eventually, a separate juvenile facility was built.

Reference should be made to the discussion in the Model Detention Act of international standards relating to the detention and imprisonment of juveniles and practical ways to implement these standards.

As set out in Article 76, the primary focus of juvenile imprisonment should be rehabilitation and not retribution. Juveniles should be engaged in educational and rehabilitative activities in the prison. The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty emphasizes this idea in section E (paragraphs 38–46) on education, vocational training, and work. Penal Reform International's *Ten*

*Point Plan for Juvenile Justice* stresses that juveniles should be held at “small open facilities with minimal security measures” and that “education and rehabilitation should be the main priorities.” These issues are discussed in greater detail in the commentary to the Model Detention Act.