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Overview of the Juvenile Diversion and Mediation Program

More and more countries encounter necessity and relevance of restorative justice concept in the modern world. Georgia is no exception in this regards. The clear example of this tendency is Juvenile Diversion and Mediation Program included in Georgia in 2010, the results of which appear of utmost interest of various countries. The hereby work provides history of development of diversion and mediation program in Georgia. The article also considers the principles of the program, legal regulation issues. We will also find the detailed statistics of the program. The hereof issues obtain particular relevancy against the background of juvenile justice code, enacted on January 1, 2016.

Key words: Juvenile Justice, diversion, mediation in criminal justice, victim offender mediation (VOM), Restorative Justice.

1. Introduction

The Juvenile Diversion and Mediation Program is based on international practice and the principles of restorative justice.²⁵ The starting point of the program is diversion of a juvenile from the process of formal justice and provision of an environment for him/her to prevent formation of a juvenile as a criminal. Diversion is a mechanism to exempt a juvenile from a formal justice system the primary objective of which is to avert the repeated crime and to involve the victim of an offense into the process of restoration of justice. The professionals developing the hereof program, aspire to the main goal – to provide formation of a juvenile into a full-fledged citizen for a society, abstaining from committing a crime henceforth. Hence, the greatest importance within the program is attached to rehabilitation and social reintegration of a juvenile.

2. History of Development of a Program

The history of a modern mediation in criminal justice in Georgia starts in 2010, with the enactment of the Juvenile Diversion and Mediation Program. Currently, the Juvenile Diversion and Mediation Program is based on an international practice and the basic principles of the restorative justice. It is fairly noteworthy that the victim offender mediation is not inculcated as an independent program in Georgia. It is applied in capacity of the diversion instrument and an integral part of a main program. However, the part 4 of the Article 67 of the Juvenile Justice Code, adopted in 2015 and enacted on January 1, 2016 already allows application of the restorative justice remedies and correspondingly mediation on the basis of the Order of the Judge under the judgment to the juvenile in combination with the sentence.

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²⁵ Restorative Justice Aims at restoration of Broken Relationships. This is the Process Directed to Outline and Satisfy the Needs of an Offender, a Victim and a Society. Upon Implementation of the Programs of Restorative Justice, the Particular Attention is Attached to the Damage – as Moral so Material, Involvement of the Parties into the Process and Acknowledgement of Actions Committed by an Offender, Assuming Obligations (clarification by an author – L.J.).

In compliance with the international standards and approaches, the starting point of the Diversion and Mediation Program is diversion of a juvenile from the formal justice system and provision of environment to facilitate the prevention of a juvenile from committing a repeated crime.

Diversion is the mechanism for exemption of a juvenile from criminal responsibility the primary objective of which is to prevent repeated crime, to facilitate the juvenile to reintegrate into the society as a full-fledged citizen and to involve the victim of an offense into the process of restoration of justice. That is why rehabilitation and social reintegration of a juvenile is of utmost importance in the program and thus, the component of mediation serves for the hereof goal within the program. Naturally, one of the most important objectives of mediation is to satisfy the needs and requirements of a victim as well.

The Juvenile Diversion and Mediation Program was enacted in 2010 on the basis of the Changes introduced to the Criminal Code of Practice of Georgia.²⁶ On the hereof basis, on November 19, 2010 the Diversion and Mediation Agreement was signed for the first time. It was a time when the program was valid only in four cities of Georgia.²⁷ “The Diversion and Mediation Program aims to exempt the juvenile, committing a less grave crime for the first time, who apologized to the victim and is committed to compensate the inflicted damage, from the criminal responsibility. On the one hand, the new program diverts a juvenile from the criminal system and conviction and on the other hand, facilitates to restoration of justice, to prevention of relapse and to form a juvenile into a law-abiding person”.²⁸ Since 2010, the program has been extended and in August, 2013 the pilot mode has been accomplished. In November, 2014, 4 years after enactment of the program, the diversion and mediation program reform has started. The pilot period situation has been analyzed, allowing identification of the gaps and shortcomings and correction of numerous aspects. Most importantly, the program has forwarded to a new stage.²⁹

Within the framework of the reforms undertaken in 2014, numerous important changes have been implemented. First of all, it is noteworthy that the indication into the paragraph “a” of the Article 1 of the Decree of the Minister of Justice of Georgia of 2010 N216 envisages application of the program to the less grave crime and the crime, attributed to the category of a grave crime due to its “group” character (as due to the aggravating circumstances). According to the changes introduced to the Decree in 2014, the program has further applied to the grave crimes as well. Prior to the hereof changes, the Decree of the Minister was to some extent in contradiction with the Article 105 of the Criminal Code of Practice of Georgia, allowing diversion both for less grave or grave crimes, while the Decree of the Minister provided restriction of the hereof possibility.

The repeal of the concept of the first committed crime, provided in the Decree of the Minister of Justice of Georgia of 2010 N216 is to be considered as an important change, Existence of the hereof reservation implied the possibility of wider elucidations and contradicted with other Articles of the hereof Decree, namely with admission of diversion upon aggregate of crimes. In most cases upon aggregate of crimes, time of commitment of crime differs. Correspondingly, diversion from the second crime becomes impossible as the second crime cannot be considered as the crime committed first. After introduction of changes, the program further applies to the persons without previous crime records before decision on diversion.

Annulment of the mandatory pre-condition of decision-making on diversion on commitment of a juvenile to apologize to the victim and compensate the damage can be considered as the most important change in terms of mediation.

²⁶ The Law of Georgia on Amendments and Changes to the Criminal Code of Practice, № 3616, the Legislative Herald of Georgia, 24, 09, 2010.

²⁷ The Report by the LEPL Center for Crime Prevention on the Diversion and Mediation Program, 2015, 1, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

²⁸ *Shalikhshvili M.*, the Legal, Criminological and Psychological Aspects of the Juvenile Diversion and Mediation Program, Tbilisi, 2013, 4.

²⁹ The Report by the LEPL Center for Crime Prevention on the Diversion and Mediation Program, 2015, 1, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

Another significant change was to improve the procedures and establish the action terms for the professionals. Prior to the changes of 2014, the professionals engaged in the program had no detailed action terms outlined. Hence, based on the practice we may state that there were cases when the mediation and/or diversion agreement has been signed sundry months or even one year after commitment of crime. Naturally, it entailed loss of meaning of mediation and diversion. The hereof circumstance hindered a juvenile in acknowledgment of the crime committed thereby; it was the basis for the victim to have the sense of injustice. Besides, absence of terms even entailed formal vain mediation.

One of the most important changes of 2014 was increase of the role of the mediator in the program. On the basis of the change introduced to the Decree of the Minister of Justice of Georgia of 2010 N216, the mediator enjoys the right to be engaged into the diversion and mediation process on the early stage starting in November, 2014. According to the previous edition, the prosecutor was to receive approval or rejection of participation of the victim in the process. The change envisages involvement of the mediator in all the cases with participation of the victim. He/she elucidates the essence and objective of the program and then receives informed approval or rejection of the victim on participation in mediation process. "Practice revealed that the prosecutors often fail to provide communication with the victim on the extent necessary due to lack of time or other grounds. They fail to elucidate the essence and the objectives of the program for the victims, thus gaining their approval on participation in the mediation process".³⁰

Therefore, change undoubtedly is one of the positive steps, evidenced with the indices published by the LEPL "Center for Crime Prevention". According to data for 2015, application of the mediation component is increased in the program. The index of the successfully accomplished mediation³¹ for 2015 constituted 51%, which is higher than the index of the preceding years almost three times. The index of successful mediation for 2014 constituted 18% and for 2013 – 25%. Success of mediation is as well evidenced with the number of mediation conferences: 114 mediation conferences have been held in 2015 while the number of the conferences constituted 28 for the similar period in 2014, and 34 conferences in 2013.³²

3.Principles of the Program

The Decree of the Minister of Justice of Georgia of February 1, 2016 N120 on "Rules of Application of the Juvenile Diversion/Diversion and Mediation Program and Approval of the Basic Conditions of the Agreement to be signed between the Parties" establishes the following principles of juvenile diversion/diversion and mediation program: maximal facilitation to application of alternative mechanisms; voluntarism; proportionality; confidentiality; inadmissibility of stigmatism; consideration of the best interests of juveniles. Below, we will consider each of the principles severally.

Maximal Facilitation to Application of Alternative Mechanisms. Introduction and establishment of the hereof principle into Georgian reality is very important and useful. M. Shalikashvili, in his work, notes that the hereof principle is new for Georgian reality and the material³³ processed thereby had no indication thereto. It is noteworthy that unlike Georgian reality, the said principle is provided in and established under the important international acts, such are: Convention on the Rights of the Child³⁴ and

³⁰ The Report by the LEPL Center for Crime Prevention on Juvenile Diversion and Mediation Program, 2014, 2-3, <<http://diversion.ge/res/files/52/Diversion%20Report%202014.pdf>>, [30.06.2016].

³¹ Mediation process served as the topic for the conference, accomplished with conclusion of the Agreement on Diversion and Mediation ,clarification by the author – L.J.

³² The Report by the LEPL Center for Crime Prevention on Diversion/Diversion and Mediation Program, 2015, 5, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

³³ *Shalikashvili M.*, The Legal, Criminological and Psychological Aspects of Juvenile Diversion and Mediation Program, Tbilisi, 2013, 32-22.

³⁴ Convention on the Rights of the Child , adopted on November 20, 1989, enacted on September 2, 1990.

UN Standard Minimum Rules for Administration of Juvenile Justice (hereafter referred to as the “Beijing Rules”).³⁵

The sub-paragraph “b” of the paragraph 3 of the UN Convention on Rights of the Child abides the States to undertake the remedies or the children in conflict with the law without court proceedings and with full observance of human rights and legal guarantees. Besides, the 6th and the 11th norms of the “Beijing Rules” uniquely establish preference of application of alternative remedies upon criminal proceedings. The norms, consistent with the hereof international norms, shall be introduced into the Criminal Code of Georgia, which undoubtedly can be considered as an event of utmost importance. The above-mentioned process is even further enhanced with the Juvenile Justice Code³⁶ which is a significant step forward for Georgian Criminal Law and Juvenile Justice.

In line with the Decree of the Minister of Justice of Georgia N120, participation in the Diversion/ Diversion and Mediation process is a **voluntary** decision when the juvenile admits the crime committed. Any kind of pressure on the parties in view of their participation in the process is inadmissible. The parties are entitled, at any stage, to refuse participation in diversion/mediation process. The hereof principle is one of the constituent principles of diversion and mediation program. Without voluntarism, the goals envisaged under the program could not be achieved. It is particularly important that all the participants of the process are empowered, at any stage – pre-conference or mediation conference, to refuse participation in the program. The hereof principle further enhances the guarantees envisaged under the program. Otherwise, without participation thereof in the process, juveniles would fail to acknowledge the crimes committed thereby.

It is as well noteworthy that the juvenile subject to be diverted shall not refuse the mediation component solely when he/she agrees on diversion. Her/his consent on diversion implies automatic consent on participation in mediation. This is the very reason entailing increased role and involvement of the mediator in diversion and mediation program. Currently, based on practice, we can state that the mediators spend much time and efforts to ensure acknowledgement by the victim of his/her role and function. Involvement of the victim is very important for a juvenile to acknowledge his/her own crime as well besides the benefit of compensation of the moral and material damage for the victim.

According to the **principle of proportionality**, the obligations imposed on a juvenile shall be pro rata to the offenses committed thereby. In line with the Decree of the Minister of Justice of Georgia N120, it is important to take the age of juvenile, his/her personal characteristics, the nature and gravity of the crime, inflicted damage and impact of the crime on the society into account upon definition of the remedies.

The said principle prevents imposition of the severer punishment on a juvenile for his/her offenses and prevents the remedies selected therefore to be severer than the crime committed. According to the information provided by the practitioner professionals, selection of the terms for the agreement on diversion shall be individual in any case on the basis of the individual estimation report composed by the social worker of the National Probation Agency.

Confidentiality is one of the most important principles of juvenile diversion and mediation program. Without confidentiality, the objectives of the program could not be achieved, entailing vanity of the efforts of the professionals. The said fact is one of the bases to prevent stigmatization of a juvenile. The principles of privacy protection and inadmissibility of stigmatization are the most important and fundamental, protecting a juvenile and granting such an importance to the juvenile diversion and mediation program. “It is up to the participatory state in the diversion and/or mediation process and the public institutions to prevent stigmatization of a juvenile as guilty (labeling) entailing him/her to seek an offender in his/her personality. Tender and individual attitude of the parties of the diversion and/or mediation process towards the juvenile

³⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, The Beijing Rules, adopted on November 29, 1985.

³⁶ Juvenile Justice Code, Article 8, №3708-IIR, the Legislative Herald of Georgia, 24.06. 2015.

shall be based on privacy of personal information of the citizens and shall prevent stigmatization of an adult as a criminal and formation of his/her criminal career”.³⁷

None of the international or local documents analyzed by me give an exact definition of the **best interests of a juvenile**. Based on these documents, the best interest of a juvenile in every particular case shall be identified in individual manner. The best interest of a child within the criminal justice sphere shall be elucidated as his/her right to: be protected, have the sense of safety and welfare; have the rights on health, education and development protected; and the primary starting point shall imply resocialization-rehabilitation of a child and his/her reintegration in society in capacity of a full-fledged citizen.³⁸ All the hereof aspects shall be observed on the basis of communication with the child, listening if he/she has something to say. The hereof right is severally defined under the Article 12 of the Convention on the Right of the Child.³⁹ Definition of the best interest of a child is provided in the international document, such is the “Beijing Rules” and the General Comment N10 of the UN Committee on the Right of the Child, stating: “In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs.

Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety”.⁴⁰

4. Legal Regulation of the Program

Currently, the Juvenile Diversion and Mediation Program is regulated under the acts as follows: the Law of Georgia on “Juvenile Justice Code”; the Decree of the Minister of Justice of Georgia of February 1, 2016 on “Ratification of the Basic Conditions of the Agreement on Juvenile Diversion/Diversion and Mediation Program to be signed between the Parties”; the joint Decree of the Minister of Justice, the Minister of Internal Affairs and the Minister of Corrections of Georgia of March 15, 2016 N132/N95/N23 and the Decree of the Director of the LEPL “Center for Crime Prevention” on “Rule of Activity of the Mediators engaged in the Juvenile Diversion and Mediation Program and Ratification of the Draft Documents”. The Juvenile Justice Code enacted on January 1, 2016 entailed introduction of lots of changes to the issues of regulation of diversion/diversion and mediation program, including the most important changes envisaging extended application of the program to the persons of the age of 18-21, granting the authority of diversion to the Court, establishment of new remedies etc.

According to the current regulation, the authority of diversion of the person under 21 shall be granted to the Prosecutor prior to the pre-court session under the part one of the Article 39 of the Juvenile Justice Code of Georgia and in line with the part two of the hereof Article, the Judge as well enjoys the authority of diversion, granted under the Juvenile Justice Code – to return the case to the Prosecutor in view of diversion of a person. It entails liability of the Prosecutor to divert the person under 21. In line with the Juvenile Justice Code, the Judge is entitled to make the decision on diversion as with own initiative so on the basis of the substantiated mediation of the party. It is as well important that the Judges in practice make decisions not only on the basis of the mediation of the party but require from the National Probation Agency to

³⁷ *Shalikhshvili M.*, The Legal, Criminological and Psychological Aspects of the Juvenile Diversion and Mediation Program, Tbilisi, 2013, 41.

³⁸ The Explanatory Note to the Juvenile Justice Code, 59-60, <<http://www.parliament.ge/ge/law/8688/18832>>, [30.06.2016].

³⁹ Convention on the Rights of the Child, adopted on November 20, 1989, enacted on September 2, 1990.

⁴⁰ General Comment №.10, Children’s Rights in Juvenile Justice, UN, 2007.

deliver the individual estimation report of the person subject to be diverted, which plays an important role upon decision-making on diversion.

The authority of diversion granted to the Judge can be considered as a positive action, though the statistical data so far evidences that the index of diversion returned from the Court compared to the common index, is quite low. According to the information by the Prosecutor's Office of Georgia, in 2015 during five months 15 cases of persons under 21 have been returned from the Court, constituting 200 persons in total diverted. However, hereof factor serves as the filter at some extent for the Prosecutor as well to timely make correct decision on diversion.

The record provided in the part two of the Article 8 of the Juvenile Justice Code can be considered as the most important factor as well, envisaging consideration of possibility of diversion on the juvenile cases first of all and estimation of the degree of resocialization-rehabilitation of a juvenile and prevention of crime against the criminal responsibility and application of penalty. All these factors set high standards both for the Prosecutor and the Judge – in case of availability of the respective pre-conditions to argument non-application of diversion and preference of criminal responsibility as more important in every concrete case.

Let us consider the diversion procedures on the basis of the hereof documents and practice. On the first stage, after the Prosecutor makes the preliminary decision on diversion, he/she meets the juvenile and his/her legal representative (in case if the juvenile uses the services of a lawyer, with the lawyer as well); elucidates the essence of the diversion program, the model terms and provides all necessary information. In case if the consent is granted, the Prosecutor meets the victim to provide the information about the decision on diversion and concludes the protocol of consultation with the victim; henceforth, the Prosecutor elucidates that the victim will be contacted by the mediator and provides the brief information about the activity of the mediator. At the second stage, the Prosecutor adopts the resolution on onset of the diversion process and submits the address within the term of three business days to the respective territorial unit of the National Probation Agency appealing assignment of a social worker. Simultaneously, he/she submits the address to the LEPL "Center for Crime Prevention" of the Ministry of Justice of Georgia appealing for assignment of the mediator. The Head of the Probation Bureau and the Manager of the Diversion and Mediation Program shall, within the term of two business days, assign the social worker and the mediator with the case. Each of them then is entitled to start their activity.

The social worker has the term of 10 business days to estimate the juvenile and his/her social environ; to estimate the biological, psychological and social factors of the juvenile subject to be diverted and to prepare the individual estimation report providing all hereof factors and to offer the terms of reference for diversion to the Prosecutor and in case of mediation, to the mediator. At that, he/she shall estimate the risk of repeated crime. Simultaneously, the mediator, within the similar term of 10 business days, shall work with the victim. Within the hereof term, he/she shall meet the victim, introduce the diversion program, provide the information on mediation and obtain consent or refusal on involvement in the mediation. Besides, the mediator is authorized to declare refusal on involvement of the victim in the mediation process. The above-mentioned circumstance can be conditioned on various basis, for instance with aggressive behavior of the victim, his/her ideology or other factors. The mediator, within the term of 10 days, in case of the refusal of the victim or his/her (mediator) personal refusal on involvement of the victim in mediation process, shall submit the respective protocol to the Prosecutor, the Diversion and Mediation Program Manager and notify the social worker as well. At this very stage the decision is made either on further continuation of mediation or termination of the process.

Based on practice and according to the information of the practitioner mediators, the greatest efforts they have to direct to convince the victim to participate in mediation. In this case, the mediators strive to increase the motivation of the victim as mostly their motivation is quite low. Most of them fail to acknowledge the positive role of mediation as for him/her so for the juvenile. Often, the citizens are not even aware of mediation and naturally know nothing about the program. The mediators strive to elucidate the essence, objectives and principles of the program to the victims and to increase their motivation. However, ac-

According to the statistic data by the LEPL “Center for Crime Prevention”, the greater part of the victims agrees on mediation.⁴¹ Mostly, their refusal is conditioned with the lack of time and minimal degree of damage. There are the cases in practice when the mediator himself/herself concludes the protocol of refusal due to various reasons, for instance due to the long period after commitment of crime, psychological state of the juvenile, or even due to refusal of the victim to meet the mediator at all.

In the event if diversion continues without mediation, within the term of 10 business days upon receipt of the individual estimation report developed by the social worker, the Prosecutor shall provide conclusion of the Diversion Agreement. The hereof term covers as well five business days, given to the social worker and the Prosecutor to communicate the Agreement terms. In case of diversion without mediation, the agreement in practice is signed in the Prosecutor’s Office by: juvenile, his/her legal representative, Prosecutor and the social worker. In the event if the juvenile uses the services of the lawyer, the lawyer shall as well sign the agreement; the translator or other person may as well be attending the signing process, certifying the agreement with their signatures.

In the event if diversion is accompanied with mediation, within the term of 10 days upon receipt of the individual estimation report developed by the social worker, the mediator shall provide the preparatory meetings for mediation between the parties and organize the mediation conference.

Within the term of 10 days, the mediator shall communicate the agreement terms with the Prosecutor and the social worker and then at least once meet the juvenile and the victim to prepare them for the mediation conference subject to be held by the mediator. The hereof meeting shall necessarily be held on the neutral territory. In compliance with the Ordinance of the Director of the Center for Crime Prevention, the preparatory and general meetings in Tbilisi shall be held in “Mediation House” established in 2014 purposed to serve the special venue for mediation; the “Mediation House” provides the comfortable rooms for the preparatory meetings and mediation conference. As to the process of the conference, it is held by the mediator. The meeting is attended by the juvenile, his/her legal representative, lawyer (if such) and the victim. In case of will, the mediation conference can as well be attended by the Prosecutor and the social worker. It can be considered as another important change after enactment of the Juvenile Justice Code. According to the practitioner mediators, the mediation process was at significant extent complicated with presence of the Prosecutor and the social worker, which mostly was expressed in lack of time or busy schedule, entailing difficulty of establishment of the conference time to be acceptable for all the parties. It was causing difficulties in practice. It is as well noteworthy that on the basis of the Ordinance of the Director of the Center for Crime Prevention, the meeting can as well be attended by the supporters of the parties. The supporter can be any person attending the meeting with the will of the party. The mediator, in this event, shall preliminarily communicate the hereof fact with another party and only upon consent of another party, shall allow involvement of the supporter in mediation process.

During the mediation conference, all the parties are given the floor. The sequence of the speeches shall be defined by the mediator. According to the practitioner mediator, it is as well important to ensure layout of the participants upon the conference. The juvenile and the victim shall be seated face to face on the right and the left side of the mediator. The legal representative of the juvenile and the social worker shall seat next to him/her and the Prosecutor shall seat next to the victim. During the conference, the participants frankly speak about the occurred fact, express their emotions and opinions. At the general meeting of mediation, the juvenile shall not be rebuked. The parties shall speak about the action committed instead of personality of the juvenile. Aggressive and directive speeches are as well inadmissible. In case of the tension, the mediator is entitled to declare the break and lead the parties to the separate rooms to later gather them at the mediation conference again. The general meeting shall be accomplished with signing of the agreement by all the attendees.

⁴¹ The Report by the LEPL Center for Crime Prevention on Diversion/Diversion and Mediation Program, 2015, 5, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

In restorative justice, especially in the victim offender mediation, so-called “reintegration shame” theory is considered as a disputable but important theory, described in the work by John Braithwaite⁴² “Crime, Shame and Reintegration”. The author discusses that shame, especially as one of the methods of prevention of repeated crime, shall be dissociated as the shame, humiliating a person, insulting him/her and entailing stigmatization, from the reintegration shame, when important people do correctly condemn the crime but not the personality of the offender, which allows the offender to be released from shame and prevents repeated crime. According to the reintegration shame theory, consideration of the crime consequences in presence of the victim (family members of the offender) creates the sense of shame at the conference; in this process, support of the people beloved and respected by the offender, facilitates to achievement of reintegration goals, converting the process into the ritual. It is not the shame felt by means of police, Judge or an article in the newspaper, to which the offender most likely would not pay attention; it is the feeling of shame from the point of view of the people he/she loves and respects.⁴³

As to the Agreement on Diversion and Mediation, it is the agreement of a civil type with the possible validity period of 12 months. It reflects the obligations of the parties. We shall attach particular attention to the part of the agreement concerning the juvenile and it can be conditionally divided into two parts – services and obligations. The first part covers various services for rehabilitation and resocialization of the juvenile; as to the obligation part, it can as well be sub-divided into two parts – obligations towards the victim and obligations towards the society. Based on the information by the practitioner professionals, we can state that the mediators and other professionals mostly try to ensure compensation of the damage by the offender not with his/her actions but by monetary means. It means imposition of obligations towards the victim. As the mediators state, development of such conditions is relatively simple when we deal with the legal entity. Based on practice analysis we can state that there are frequent cases of employment of juveniles in the supermarkets, stores and other facilities without been paid which serves for compensation of the damage inflicted by the juvenile. As to the part of the obligations towards the society, it is purposed for the juvenile to acknowledge the crime committed by him/her, elucidation of the damage inflicted to the society etc. In such cases, deriving from the practice, conditions such are assistance rendered to the personnel in the nursing homes and canteens, participation in greening and cleaning actions etc. are frequently applied.⁴⁴To illustrate the above-said, below we provide the examples of sundry conditions envisaged under the agreement, selected in the mediation process:

- help to the victim in agricultural activity;
- help to the victim in stock-taking and cleaning of the store owned by the victim;
- compensation of the damage inflicted to the store owned by the victim;
- help to the water supply service employees in mending and monitoring the pipes;
- help to the top management of the pool in cleaning the yard.⁴⁵

On the basis of the hereof and other conditions we can state that involvement of the victim in mediation process especially upon selection of the conditions is of utmost importance. The primary purpose of such conditions is analysis of the action committed and damage inflicted by the juvenile. That is why involvement of the victim putting forward his/her conditions is so important. Besides, it may serve as a trigger for the juvenile to realize his/her culpable action and consequences thereof. Thus, we strive to provide compensation of the material damage and reduction of the moral damage inflicted to the victim.

After signing the Diversion/Diversion and Mediation Agreement, implementation by the juvenile of the terms envisaged under the Agreement shall be monitored by the social worker, organizing intermittent meetings with him/her to speak about the occurred fact and to let him/her realize the crime committed. The

⁴² Braithwaite J., *Crime, Shame and Reintegration*, Cambridge, UK, 1989.

⁴³ Annual Report for 2003 and Resource Material Series № 63. UNAFEIFuchu, Tokyo, 2004.

⁴⁴ The Report by the LEPL Center for Crime Prevention on Diversion/Diversion and Mediation Program, 2015, 5, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

⁴⁵ Ibid.

social worker also inspects the course of implementation of the agreement terms and develops the monthly report to be submitted to the Prosecutor. The Prosecutor, in his/her turn, shall at least once per three months meet the juvenile. There exists probability that the juvenile will not use the chance and will breach the agreement term. In this case, if the breach is gross, the Prosecutor, after interviewing the juvenile and his/her legal representative and taking all the circumstances into account, is entitled to terminate the Diversion/Diversion and Mediation Agreement and process the case to the Court by means of traditional jurisdiction. The number of similar cases is few – in 2015 the index constituted only 2%.⁴⁶

5. Statistics⁴⁷

The period of 2010-2014 is sufficient to detect the shortcomings and analyze the statistics. It serves as basis for the changes introduced in the end of 2014. It is crucial that the index of diversion has remained unchanged in 2015. Particular attention shall be attached to the index of successful mediation⁴⁸, increased three times compared to 2015. It also is a result of the changes introduced in the end of 2014.

All in all, 296 juveniles in total were diverted in 2015. 143 juveniles out of 296 were subordinated to mediation and 114 mediation general meetings were held.

Starting from 2010 till December 31, 2015 inclusive, 1038 juveniles in total were diverted.

1. The index of successful mediation according to the number of juveniles (in re cases with the concrete victim):

| | 2013 | 2014 | 2015 |
|---------------------------|------|------|------|
| Successfully accomplished | 25% | 18% | 51% |

2. The index of Successful Mediation Conferences:

| | 2013 | 2014 | 2015 |
|---------------------------|--------------------------|--------------------------|---------------------------|
| Successfully accomplished | 34 mediation conferences | 28 mediation conferences | 114 mediation conferences |

3. Reasons of Failed Mediations in 2015:

| Reason | Quantity | Percentage |
|---------------------------------|----------|------------|
| Refusal of the victim | 7 | 2% |
| The mediator refusing mediation | 71 | 24% |
| The victim refusing mediation | 67 | 23% |
| Other | 8 | 3% |
| Successful mediation | 143 | 48% |
| Total | 296 | |

4. Data for 2013-2015:

| | 2013 | 2014 | 2015 |
|---|-----------|-----------|-----------|
| Juveniles involved in diversion and mediation program | 332 cases | 204 cases | 296 cases |
| Concrete victims in cases | 203 cases | 197 cases | 282 cases |
| Other | | | 7 cases |
| Mediation held | 51 cases | 36 cases | 143 cases |
| Percentage | 25% | 18% | 51% |

⁴⁶ The Report of the Prosecutor General of Georgia on Juvenile Diversion, 2015, 19.

⁴⁷ The Report by the LEPL Center for Crime Prevention on Diversion/Diversion and Mediation Program, 2015, 5, <http://ganrideba.ge/res/files/52/Diversion%20Report_2015.pdf>, [30.06.2016].

⁴⁸ The Process of Mediation, Serving as the Topic for the Mediation Conference, Ending with Conclusion of the Diversion and Mediation Agreement (clarification by the author – L.J.).

5. The Statistic Data of 2015 According to the Regions:

| Region | Quantity | Percentage |
|---|----------|------------|
| Imereti | 16 | 5% |
| Racha | 0 | 0% |
| Kakheti | 28 | 9% |
| Samtskhe-Javakheti | 15 | 5% |
| Samegrelo-Zemo Svaneti | 27 | 9% |
| Shida Kartli | 19 | 6% |
| Mtsketa-Mtianeti | 8 | 3% |
| Kvemo Kartli | 22 | 7% |
| Adjara | 29 | 10% |
| Guria | 17 | 6% |
| Prosecutor's Offices in Tbilisi | 104 | 35% |
| The Prosecutor's Office/District Prosecutor's Offices | 11 | 35% |
| Total | 296 | |

6. The Statistic Data for 2015 According to Months:

| Month | Quantity | Percentage |
|-----------|----------|------------|
| January | 14 | 5% |
| February | 16 | 5% |
| March | 29 | 10% |
| April | 27 | 9% |
| May | 28 | 9% |
| June | 32 | 11% |
| July | 27 | 9% |
| August | 25 | 8% |
| September | 14 | 5% |
| October | 21 | 7% |
| November | 15 | 5% |
| December | 48 | 16% |
| Total | 296 | |

7. The Statistic Data According to Gender:

| Gender | Quantity of cases | Percentage |
|--------|-------------------|------------|
| Female | 26 | 9% |
| Male | 270 | 91% |
| Total | 296 | |

8. Diversion data According to the Age upon Committing a Crime:

| Age | Quantity of cases | Percentage |
|--------------|-------------------|------------|
| 14 years old | 52 | 18% |
| 15 years old | 61 | 21% |
| 16 years old | 75 | 25% |
| 17 years old | 108 | 36% |
| Total | 296 | |

9. The Statistic Data for 2015 According to the Categories of Crimes:

| Validity term | Quantity of cases | Percentage |
|---------------|-------------------|------------|
| 1 month | 19 | 6% |
| 1,5 months | 1 | 0% |
| 2 months | 129 | 44% |
| 2,5 months | 4 | 1% |
| 3 months | 93 | 31% |
| 4 months | 35 | 12% |
| 5 months | 6 | 2% |
| 6 months | 9 | 3% |
| 7 months | - | 0% |
| 8 months | - | 0% |
| 9 months | - | 0% |
| 10 months | - | 0% |
| 11 months | - | 0% |
| 12 months | - | 0% |
| Total | 296 | |

10. The Statistic Data for 2015 According to Validity Term of the Agreement:

| Category | Quantity of cases | Percentage |
|------------|-------------------|------------|
| Grave | 95 | 32% |
| Less grave | 201 | 68% |
| Total | 296 | |

11. The Statistic Data for 2010-2015 According to the Regions:

| Region | Quantity | Percentage |
|---|----------|------------|
| Imereti | 104 | 10% |
| Racha | 1 | 0% |
| Kakheti | 67 | 6% |
| Samtskhe-Javakheti | 49 | 5% |
| Samegrelo-ZemoSvaneti | 64 | 6% |
| ShidaKartli | 68 | 7% |
| Mtskheta-Mtianeti | 33 | 3% |
| Kvemo Kartli | 102 | 10% |
| Adjara | 88 | 8% |
| Guria | 35 | 3% |
| Prosecutor's Offices in Tbilisi | 412 | 40% |
| Prosecutor's Office/District Prosecutor's Offices | 15 | 1% |
| Total | 1038 | |

12. The Statistic Data for 2010-2015 According to Gender:

| Gender | Quantity of cases | Percentage |
|--------|-------------------|------------|
| Female | 96 | 9% |
| Male | 942 | 91% |
| Total | 1038 | |

6. Conclusion

Hence, we may conclude that starting since 2010 up-today, the Juvenile Diversion and Mediation Program has constantly been updated: year after year the program coverage has been extending to include more cities and enlarge application area; in 2014 the category of crimes has been enlarged to which diversion applies and the program coverage extended to the crimes of grave category; the procedures have changed; the action terms for the professionals have been established; upon the hereby wave of the reform, the role of the mediator has been enhanced; the problems revealed as a result of analysis of the past period of the program have been eliminated; in line with the Juvenile Justice Code, the Juvenile Diversion Program shall as well apply to the adults of 18-21 years old since 2016; the Judge has been granted the authority to return the case to the Prosecutor in view of diversion, which will be mandatory for the Prosecutor; new diversion remedies have been established; the Diversion and Mediation Program became the primary considerable remedy for the professionals in the justice system and other significant changes have been implemented.