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## RESTORATIVE ASPECTS OF THE JUVENILE JUSTICE SYSTEM IN MACEDONIA

### Summary

Juvenile justice is part of the criminal justice system where restorative measures are by far most implemented. This means that, particularly considering the interests of the juvenile offender, response of the criminal justice system towards these offenders is more oriented towards their further protection against future crimes, than towards their punishment. Council of Europe's legislative activities has made this trend obvious and appreciated as a general milestone in the criminal justice treatment to the juvenile offenders. These latest trends are also recognized and introduced in the latest Law on Juvenile Justice in Republic of Macedonia. Authors of this text besides commenting the latest legal provisions are providing wide answers backing up the reasons for their implementation and their adaptation in the criminal justice system in Republic of Macedonia.

**Key words:** restorative justice, juvenile delinquency, mediation in juvenile justice

### INTRODUCTION

The approach towards punishment policy in general, and in the field of juvenile delinquency has evolved depending on the needs and objectives of penal policy. The concept of retribution to the offenders, initially understood as equal retaliation for committed crime, has experienced serious criticism that it does not seriously consider the personality

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of the perpetrator. Due to these arguments, the concept was reinstated with the concept of socialization that involves isolation of the offender due to the committed crime in order to re-educate and reintegrate the offender in the social environment. This approach of re-socialization during the last two decades of XX century has started to lose its dominant position in the criminal law area and penitentiary area, due to the increasing interest of the position of the victim in the criminal sphere, based on the widespread perception that the victim is marginalized in the criminal justice system and usually remains dissatisfied after the successful completion of criminal procedure.

These approaches, however, were not sufficiently concerned with the status of the victim or damaged party and they have even marginalized their status and their role in the criminal procedure in a way that the participation of the victim or damaged party in the criminal procedure was merely reduced to a simple statement of requirement of compensation of damages. However, the new approach of restorative justice is based on quite different grounds, principles and methods. According to these principles restorative justice concept emphasizes the role of the damaged party as equal participant in the criminal justice system, by respecting his will and determination and by consulting him while determining the type and severity of the criminal sanction. Additionally, the concept of restorative justice, in broadest sense, aims towards reaching the goal of fair restitution of the damaged party with the completion of criminal procedure or even further in fair restitution of the damaged party even before the commencement of the criminal procedure. In this fashion, the concept of restorative justice subsumes flexible reaction within tightly defined principles for involvement of all participants in the criminal justice process, their proactive participation during the determination of acceptable outcome process, compliance with previously determined outcome, development of the perpetrators self-awareness sense and recovery of his confidence.

### *MODERN TRENDS IN THE JUVENILE JUSTICE*

#### *General remarks*

Global trends in the penal policy have also been reflected to the field of the juvenile delinquency. These trends are in direct and permanent interest of criminologists and theoreticians in the area of criminal law. Criminologists attempt to define methods of treatment and suppression of further delinquent behavior, and the theoreticians in the area of criminal law strive to find legislative solutions that will incorporate the social reaction upon the perpetrated crime, with the common ultimate goal to reduce the juvenile delinquency and overcoming the problems of juvenile recidivism.

From a historical perspective (Junger-Tas 2010, 2) first legal text that has treated child offenders as a particular category is the Norwegian one from 1896, which provided special protection of the abandoned children. The first juvenile court was established in Chicago in 1899 and the first codified juvenile law was enacted in Canada in 1908. In the European states individual system of juvenile justice has begun to develop in the early years of the XX century<sup>1</sup>. These individual systems were based on three stages (Hanks 2000, 7): prevention, retribution and resocialization. Different treatment and response is evidential when a criminal situation involves a minor. These changes have risen as a the result of the adoption of several international documents that by their virtue insist on implementation of special methods for social integration (Recommendation R /87/ 20) of young people, organization of special programs and assistance for young people in schools. These ideas were developed to enable better integration and socialization of this group of young people.

In Helsinki in 2005 European Ministers of Justice of the Ministerial Conference have concluded that it is of high importance for social peace to: promote criminal policy aimed at preventing antisocial and criminal behavior; develop alternative sanctions and measures; take an extra care of the support and particular needs of victims; reintegrate offenders in the society; construct specific methods for reaction towards juvenile offenders and promote restorative role of courts and prisons. These conclusions are in the spirit of Franz von Liszt (1905, 246) argument given hundred years earlier, in 1905, in which he states that a good social policy is the best criminal policy. Several resolutions were adopted at this conference. Most important are Resolution No. 2 (2005) for the social role of the criminal-justice system – restorative justice. It implicates the importance of alternative measures and measures for restorative justice in the direction of the social cost of offenses and crime control. In virtue of the restorative approach, it is stated that it allows victims to achieve their interests more effectively, to reintegrate offenders easily, and to strengthen public confidence in the criminal justice system.

Restorative justice is defined as an alternative to conventional punishment and alternative to a regular court procedure. While defining restorative justice<sup>2</sup> the following arguments must be taken into consideration: under the concept of restorative justice crime is seen not only as a circumstance that led to a violation of the law and therefore sanction must be imposed, but also as an event that violated interpersonal relations and

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<sup>1</sup> In United Kingdom since 1908, France and Belgium since 1912, Spain since 1918, Nederland since 1921, Germany since 1922, Austria since 1923, (Juvenile Justice 10).

<sup>2</sup> See more at [www.vorp.com](http://www.vorp.com); [www.restorativejustice.org](http://www.restorativejustice.org); [www.voma.org](http://www.voma.org); [www.victimology.org.nl](http://www.victimology.org.nl)

thus it becomes important to determine whether there were consequences of the crime, what is their nature<sup>3</sup> and who was the victim of these consequences. Under this concept interpersonal relations have been distorted by crime committed by the offender and this begets responsibility and liability of the offender. Restorative justice is also seen as a philosophy of living in community with others and as a punishing approach that originates from the definition that the crime has caused harm to someone. It specifically emphasized that criminal policy has to turn to the citizens and their needs (so-called citizen-oriented-justice-policy /bürgernahe Rechtspolitik/) (Delattre 2004) and to come out of the veil of perception that only judicial authority's interests are considered.

*Impact factors that determine the increase of the juvenile delinquency*

Juvenile justice system, these days, exists and operates parallel and individually from the regular criminal justice system. Its individuality has been initiated by the failure of the criminal justice system to suppress the persistent growth of juvenile delinquency. Poverty, class disparity<sup>4</sup> and unemployment are most frequent factors that affect the behavior of juvenile delinquents. They often generate revolt against the system that is not functional and just and increase aggressiveness<sup>5</sup> and violence that often escalates to crime.

Criminology specifically considers the role of the family and the environment in building healthy young generation. Special surveys have been conducted to determine the role of the family, as the first and most important nucleus, for youth's development. Social exclusion (Oberwittler 2005) is a comprehensive concept that originated in France, in the mid 70's of last century, and focuses not only on the material deprivation of the young persons, but it considers their non-participation and non-integration in the social flows in a broader sense: education, culture and politics. Its effects are multiplied in situations where employees do not have enough money for a decent life, as well as migration processes which cause most sufferings to the children and adolescents snatched from the social context which they are adapted to. Therefore, family and school should be the corrective mechanism of the social exclusion.

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<sup>3</sup> Crime is harm done to persons, as defined in A Charter for Practitioners of Restorative Justice, [www.sfu.ca/cfrj/fulltext/charter.pdf](http://www.sfu.ca/cfrj/fulltext/charter.pdf).

<sup>4</sup> In most EU member states, juvenile crime rates are increasing proportionally with the unemployment and poverty (Pfeiffer 1998).

<sup>5</sup> Permanent raise of the violent juvenile crime rates has been notified since the beginning of the 90's of previous century (Eisner 2002).

*Informal approach towards the prosecution and  
sanction of the juveniles*

In favor to the informal approach, the Council of Europe (CoE) recommends (Recommendation No. R /87/ 20) using of informal procedures and mediation while dealing with juvenile offenders in order to avoid their official participation in the criminal justice system.

There is an obvious expansion of implementation of the informal sanctions as an effective tool not only in reduction and limitation of the burden on juvenile courts but also in terms of special prevention. In Germany (Dünkel, 2004, 2) informal diversion sanctions are imposed in nearly 70% of juvenile cases and 50% of them are diversion measures applied by the prosecution that carry no additional responsibilities, then diversion measures applied by the prosecution that carry some type of responsibility and the diversion measures applied by the courts and last are informal sanctions. In this case, the recidivism rate is 27%.

Restorative justice promotes justice diversion model for avoiding criminal procedure; it is consisted of meeting of the offender and the victim during any stage of the procedure, prior to its commencement and even after the termination of the procedure. Basic characteristics of the restorative treatment is that all efforts are focused towards resolving the consequences and finding a mutual solution as a response to the committed crime without engaging in determination of the facts that are relevant to the crime. Restorative approach, procedure and resolution can be applied only when the facts related to the crime are undisputed between the perpetrator and the victim.

Promotion of the alternative types of punishment, diversion models and local community inclusion have contributed to the strengthening of the efforts to define standards for sanctions and measures that can be applied to the juvenile offenders. In that sense Council for Penology Cooperation (PC-CP 2006) under the Council of Europe's European Committee for Problems of the Crime (CDPC) have received an additional mandate to prepare a draft European Rules for Juvenile Offenders Detained or Subjected to Alternative Sanctions and Measures Applied in Community. Hence, this Committee has to take into consideration not only the Council of Europe's recommendations, but also the international standards and reports delivered by the UN Committee on the Prevention of Torture (CPT).

Attempts<sup>6</sup> are made to adopt a system for questioning of the juveniles in more informal conditions; this goes along with not requiring the attendance of the juvenile at the premises of the criminal court during the questioning, but to be questioned by a panel group of trained individuals

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<sup>6</sup> As it is the case with interrogation of the children in Scotland (Juvenile Justice 11).

who might even not be attorneys. After the questioning of the juvenile these panels will also conduct interviews with the family of the juvenile, social workers and teachers of the juvenile in order to reach a decision that will consider the best interest of the juvenile.

In several states changes in the juvenile justice system have been inspired by the practice and practitioners - as it is the case with Germany, where a process called "reform through practice" (Dünkel 2004, 4) represents an innovative approach, where amendments to the juvenile procedure are implemented by the social workers, prosecutors and juvenile judges as most involved and updated actors for the possibilities and advantages of the restorative justice approach.

The importance of early psychosocial intervention (Recommendation R /2000/ 20) is accentuated by the following two dimensions. To begin with, its importance is associated with the fact that young people are still mentally and physically growing and socialization problems may contribute to criminal behavior. On the other hand, knowing that whoever came in conflict with the law at early ages and was not properly treated remains at risk for engagement in serious forms of crimes later, even at the age of a juvenile.

It is necessary to define forms of response towards young people that stray from the usual forms of social behavior, although they are still not in conflict with the law. The absence of timely and proper response towards these kinds of social behavior is often the cause juvenile engagement in future criminal activity, which means that the relevant state agencies responsible for monitoring of the juvenile behavior particularly school authorities (teachers, psychologists), or relevant social service authorities, were passive and did not served their purpose accurately. Involvement of the judicial authorities at this case would be considered only as a failed preventive mission of the abovementioned authorities.

Deinstitutionalized approach means multidisciplinary reaction in the process of detection and overcoming the reasons that cause problematic or delinquent behavior of the juveniles, as well as reaching an acceptable final solution, which implies involvement of the immediate family of the minor, school officials, victims and representatives from the immediate local community (Recommendation R /2003/ 20).

New approach to the treatment of juvenile delinquency includes an eclectic approach that requires adjustments of the official reaction towards the causes that have led to the committed crime. Hence, variety of methods and forms of treatment exists: offender - victim mediation, victim support, problem-oriented policies of treatment, programs for resocialization with involvement of the community and the judicial institutions, specific forms of counseling and consultation and training (conferencing).

Youth offending team (YOT)<sup>7</sup> and youth offender panel (YOP)<sup>8</sup> are two specific agencies found in the practice of Anglo-Saxon legal tradition.

The approach to the juvenile delinquents basically consists of three models: alternatives to prosecution; mediation with reparation – as a court epilogue; and imposition of particular obligations before delivering the verdict - the so-called referral orders.

Treatment of juveniles has produced different alternatives to prosecution - possibilities for avoiding the complex mechanism of judicial conduct and reaching mutually acceptable solution of the criminal event, solution that is understood as an acceptable answer to the problems, and further identification of the reasons that have led to these unwanted events. Alternatives to prosecution are constructed as a result of the ever popular principle of minimum intervention (Dünkel 2004, 5), which means commencing criminal procedure and reaction only in the situations when it is considered inevitable. In such situations the interventions towards juvenile offenders should be appropriate and unobtrusive (Recommendation R /2000/ 20) as long as the juvenile offenders' behavior allows it. Some states recognize police diversion actions – when the police are empowered to impose certain obligations in order not to convey criminal charges to the court.

The purpose of restorative justice is to avoid a criminal record for not complying with lesser legal and social norms, if it is determined that the juvenile can be re-socialized, and if it is determined that he appreciates the efforts around him.

Restorative justice as a concept incorporated in the juvenile justice, can also be found in documents of the UN. Thus, in 2000, the governments of Canada and Italy have submitted a draft resolution to UN, in order for the UN to develop international guidelines that will assist member states in adoption of restorative justice programs for juvenile offenders. As a result of this initiative, UN's Economic and Social Council has enacted the Declaration on Fundamental Principles for Restorative Justice (known as UN Basic Principles) in July 2002.

This Declaration consists of several definitions of the term “restorative justice”, that are useful for better understanding of its character-

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<sup>7</sup> It is organized as a form of discussion group consisted of the juvenile offender and members of his immediate family, the victim and members of victim's immediate family, representatives from the juvenile offender's and victim's school, representatives from the local community (immediate local community) which hold meetings in the area of juvenile delinquents' residence.

<sup>8</sup> It consists of three members, including the offender. Its endeavor is to find appropriate solution to overcome the present situation upon the occurrence of an event, such as: an apology, compensation, additional obligations to the offender.

istics. Restorative Justice assumes that by using the restorative process<sup>9</sup> or restorative goals, restorative final effect will be accomplished. Restorative process is a process where the victim, offender and other individuals or community members affected by the offense actively participate in resolving problems that have resulted from the offense. Restorative final effect (restorative outcome) comprehends the settlement that was accomplished as a result of commencing the restorative process. This restorative outcome may be found as: restitution, community service or other measure aimed at achieving compensation of the victim and the community and community reintegration of the offender and of the victim. Frivolous participation of the parties, without any imposed pressure and by allowing them to cancel their participation at any time during this process, is of essential significance for the restorative process. All the conversations during this process are kept confidential. For successful restorative process, it is important that the parties have agreed about the facts of the criminal offence, and participation or consent for participation in the mediation process cannot be considered as guilty plea by the perpetrator, for any possible further criminal proceedings.

In terms of fairness, it is also important to stress out the credibility of the settlement. In this fashion the existence of the principle of “non bis in idem” is of particular importance, which means that the settlement has status of a final court decision and for the crimes that were part of the settlement prosecutor can not initiate any subsequent prosecutions. Furthermore the UN Declaration contains specific provisions positioning the procedural guarantees that must be met during the restorative justice process: the right to legal assistance before and after restorative process and if necessary assistance in translation and/or interpretation; parties have the right to be entirely informed concerning the rights that are entitled to prior to submitting their consent as a ground for commencement of the restorative justice process; and prohibition for guided, forceful or involuntary participation of the offender or victim in this process.

Further interest (Bangkok Declaration 2005) for restorative justice was certainly indicated at the UN’s XI Congress<sup>10</sup> held in 2005 in Bangkok, Thailand. For the first time restorative justice was part of the Congress agenda, even though at this Congress the main emphasis was put on the fight against organized crime and terrorism.

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<sup>9</sup> Restorative process – involves activities from the police, public prosecution, courts, probation and prison authorities, during and after the conditional release (Van Ness 2005).

<sup>10</sup> For the Congress’ materials see: [www.realjustice.org/library/uncrimecongress.html](http://www.realjustice.org/library/uncrimecongress.html); [www.unodc.org/unodc/crime\\_congress\\_11/documents.html](http://www.unodc.org/unodc/crime_congress_11/documents.html).



*RESTORATIVE ASPECTS IN THE LAW ON  
JUVENILE JUSTICE IN REPUBLIC OF MACEDONIA*

*Assistance and protective measures*

*General remarks.* Restorative aspects of the Law on Juvenile Justice<sup>11</sup> are contained in the procedure for applying the assistance and protective measures by the CSW (Center for Social Work) which is based on the following legally defined basic principles:

1. Children are guaranteed the fundamental and specific rights determined in the Convention on the Rights of the Child and any other international treaty, in every non-formal proceeding and in court procedure, during every stage of the proceeding, and

2. Handling, determination and implementation of these measures must be in the child's best interests, and to take in consideration the personality characteristics, maturity level and ability to understand the importance of committed act, family and economic environment of the child, the severity of the criminal act, as well as the consequences from the crime.

This procedure provides significant authorities to the CSW as an agency that undertakes activities of deterring nature for further criminal conduct of the children, prevents the commencement of the formal criminal procedure, and yet it allows a specific response with intense content consisted of multiple activities concerning the juvenile and his family.

The assistance and protective measures can be implemented only when the CSW determines that the risk factors are reflected in the development of the child's personality and the proper upbringing and these factors can affect the juvenile to perform further crimes or misdemeanors in the future. These measures can be also applied towards the family members in the case when it is obvious that they have neglected or abused their parental rights or duties concerning the child's personality protection, rights and interests.

Emphasizing the specific nature and effect related to these assistance and protective measures, the Law on Juvenile Justice (LJJ) determines that assistance and protective measures are determined with other substantial laws in the area of education, health, social security, family and other forms of protection of the children. Taking into consideration the legal text of the Law on Juvenile Justice and in order to make it clear, comprehensive and easy accessible, Ministry of Labor and Social Affairs have specified several types of assistance and protective measures (Official Gazette No. 24/2008) in a form of Code-list that enumerates the spe-

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<sup>11</sup> Official Gazette of Republic of Macedonia, No. 87 of 2007 and Amendments in Official Gazette of Republic of Macedonia No. 145/2010

cific assistance and protective measures which are already determined in specific substantial laws. The code-list contains the following assistance and protective measures prescribed in: the Law on Social Security: social prevention, non-residential care, outreach, providing personal documentation, daily and temporary housing, institutional care, placement in institutions for social protection, financial and social assistance; the Family Law: committing marriage, establishing relationships between parents and children, supervision over the exercising the parental rights, disrupted relationships and violence inside of marriage and family, adoption, guardianship, financial support, marital disputes in front of courts, taking consent from a minor for issuing a passport, taking consent from a minor for emigration abroad, etc.

These proceedings in front of the CSW are not identical nor should be identified with the court proceedings against juveniles. This is elaborated by the statement that assistance and protective measures do not consist of deprivation or restriction of personal rights and liberties of the juveniles imposed when a juvenile commits a crime by the court or his family or guardian, his blood relatives in a straight line or brothers or sisters, spouse, and any other adults with whom the minor lives in a joint household.

*Juvenile categories and risk factors.* The LJJ is specific in terms of categorizing the juveniles according to which assistance and protective measures may be applied. Namely, these measures may only be applied towards the following categories of children or juveniles at risk: 1) *Child at risk* (7–14 years), 2) *Minor juvenile at risk* (14–16 years old), 3) *Older juvenile at risk* (16–18 years old).

Law of Juvenile Justice has adopted a dual approach in defining the basics that can be monitored as "risk factors":

a) Initially at risk (depending on age) means that the committed action contains all the legal characteristics of the specific crime for which (except in relation to child at risk) the Criminal Code proscribes imposition of a fine or imprisonment up to three years. In fact, in such cases we are dealing with the simplest and less severe crimes that can be even subsumed under "risky action". Taking the juvenile's age into consideration, the performance of this type of action will not necessary lead to activation of a formal criminal procedure, but it still allows activation of the procedure for imposition of assistance and protective measures as diversion method that has multiple positive effects to a child at risk;

b) Socio-pathological phenomena and behaviors that are considered to be in "touch with the law" and could easily be the understood as criminal conduct or "clash with the law".

*Proceedings in front of the CSW.* Procedure for imposing of assistance and protective measures is initiated with the report to the CSW submitted by the Ministry of Interior, by the school or other educational

institution attended by the juvenile, by the family, by the juvenile personally, by the victim or the another entity (such as NGO, SOS line, Ombudsman, health institution etc).

All participants involved with children or minor or older juvenile at risk are required to consider the findings regarding these categories as classified information and to deal with them according to the positive regulations regulating protection of the personal data.

Particularly important is the authority granted to the CSW for personal determination of performance of the action or existence of the circumstances that are regarded as risk situation. Depending on this authority CSW can individually initiate the abovementioned proceedings. Notifications received by the CSW are kept in a separate register kept within the premises of CSW and are treated as classified information in accordance with regulations for protection of the personal data. Minister of Labor and Social Policy (Official Gazette of RM No. 24/2008) have regulated the form and content of this register, as well as procedures for registering these information in order to unify the practice and the proper implementation of the legal provisions. The registration of the notifications in a separate registry aims to avoid any possibilities within the CSW for frivolous decision whether to make these notifications public or not and how to keep this register. Every registered notification must be laced in a separate case-file that consist the conclusion of the professional team within the CSW upon the merits of notification, which could be decision to initiate proceedings for application of assistance and protective measures or decision that the notification does not provide sufficient grounds for initiation of the abovementioned confidential procedure. Both decisions must provide the merits upon which the CSW's team has reached the decision.

If the CSW team considers the submitted notification as grounded, than CSW team will initiate with a *formal decision* confidential procedure for implementation of the assistance and protective measures. Aim of the CSW team is to determine the factual circumstances of the particular event or the state of risk as a basis for submitted notification. The first action undertaken after delivering of the formal decision to commence proceedings is confidential interview with the child at risk, minor or older juvenile at risk and his family in a period not longer than 7 days starting from the date when notification was received, or within a period of 24 hours in cases that can not be delayed or in cases that CSW will assess as urgent. The interview is led by the representative of a professional team composed of teacher, social worker, psychologist and lawyer. The interview is extremely valuable tool as a source of gathering information for the child's profile, family relations, possible problems and risks, encouraging the child to engage in conversation and to tell what has happened with his own words – as he understood, what were the reasons

for such conduct, if any, whether this was impulsive reaction or something preceded the juvenile's action, whether the cause lies in the need to impose himself to the group of friends or classmates or simply lies in the need to be accepted as equal to them, to determine the source of such poor identification etc. At this point CSW team must demonstrate professional skill in inducing the parents to be supportive and to train them for fulfilling the Program. If the parents are identified as a risk factor then CSW team may interview with the minor the parent's absence, but in presence of other family members who fall within the statutory term "family" – adult relatives in a straight blood line or other adults with whom the child lives in a joint household.

During the interview attorney's presence is mandatory. The attorney has a single task – to protect the interests of the juvenile during the process. An attorney is selected by the juvenile's family, and if the juvenile's family does not select the attorney, he will be determined by the CSW ex officio. Special interest is paid to the dilemma whether the same attorney should represent juvenile interest during the CSW interview and in front of the police. Having in mind the juvenile's best interest a most desirable solution is for the same attorney who was summoned to the police and is already familiar with the facts and the minor's personality, his family atmosphere, the problems that have led to behaviors that entail risk and so on, represents the juvenile's interest during the interviews undertaken by the CSW. The role of the attorney is to actively protect the interests of the juvenile during the proceedings in front of the CSW. After the completion of the interview the attorney is obliged to produce a legal opinion.

Considering the essence of the role of the attorney during the proceedings in front of the CSW, attorney's legal opinion must contain the following elements:

a) *Notification review* – review of the facts contained in the notification as description of the critical event for which a CSW procedure is commenced;

b) *CSW procedure review* – regarding to: the possibility that he is actively involved in this procedure; the child's active participation in the interview: whether even though child was present during the interview the conversation took place only between adults and child was totally disregarded. A part of this review might also be the CSW's team attitude, way of asking questions, whether and to what extent has the CSW team taken into consideration the reactions of the juvenile, whether they have put enough effort to explain to the juvenile the consequences of his actions, whether they've stimulated participation, whether CSW team gave equal opportunity to the child to outline his views of the incident and to state the reasons for his action, whether CSW team has explored the possibility that there were situations that have preceded the whole critical

event, whether the event happened as result of anger and resentment by the juvenile or is it result of piled frustrations or dissatisfaction for some previous developments that were not resolved in the best interest of the juvenile. Besides these, attorney in his opinion may evaluate also the role of juvenile's parents, their attitude towards the incident etc;

c) *Attorney's opinion concerning the need for undertaking further reactions* - governed by the circumstances of the case and the personality of the juvenile, as part of the legal opinion the attorney may state prognoses whether the development of the Program for implementation of the assistance and protective measures is in best interest of the juvenile and his further behavior in the society, or that he believes that the criminal event is only incidental and any further treatment to the juvenile would be ungrounded. Namely, it should not be required from the attorney to propose specific assistance and protective measures

The attorney is obliged to submit his legal opinion in writing within 7 days of the interview with the CSW's professional team. If the professional team does not accept the attorney's opinion, or the attorney does not submit in writing the opinion on time, CSW within 7 days of its submission or supposed date (dead line) for submission shall refer to the competent juvenile judge in order to decide upon any further CSW's activities regarding that juvenile. In the case when the attorney has failed to submit legal opinion the court shall notify BARM after CSW has referred to the competent juvenile judge. Perhaps it is more logical and convenient solution BARM to be notified by the CSW instead by the juvenile judge who should be involved only in the situation when there is no harmonized opinion between the CSW and the attorney. A Program for implementation of the specific assistance and protective measures is produced by the CSW professional team upon the collected information and other data available to the center and conducted interviews with the juvenile and his family. This Program should be prepared within 30 days. CSW's expert team is also obliged to implement this Program. After a maximum of 10 days after the adoption of the Program, CSW's professional team must conduct second interview with the child's family in order to directly ascertain whether the parents or guardians are obeying the measures of the Program. Supervision over the implementation of the Program is performed by the Institute for Social Security. Furthermore, during the implementation of the Program CSW's expert team must meet with the juvenile's parents or guardians at least once a month. If they determine that the juvenile's family or guardians fail to implement the Program, within 7 days of the discovery of such situation, CSW shall notify the competent juvenile judge. After that the juvenile judge must address specific instructions for implementation of the Program to the CSW, within 3 days. The outreach of these provisions is strengthened with the Amendments to the Law on Juvenile Justice, in which, court is now empowered to fine the

parents that are not implementing the Program. Imposed fine can be ranged from 300 up to 500 euro.

One can conclude that the procedure for implementation of assistance and protective measures by its characteristics and nature provides more benefits for the juveniles. Furthermore the implementation of assistance and protective measures does not create criminal record for the juvenile, and due to this, the juvenile is treated as the primary offender if after implementation of the Program, he commits another crime regardless whether as a juvenile or as an adult. This approach allows avoidance of the stigmatization from juvenile's early age and determines the reaction that is directed towards future social integration of the juvenile.

*Damaged party compensation.* Restorative aspects of the juvenile justice are also reflected by the possibility of damaged party compensation before the CSW. Namely, assistance and protective measure implementation procedure provides the opportunity for damaged party compensation when juvenile's action is proscribed by the law as a crime or misdemeanor by which child, elder or minor juvenile at risk had obtained financial benefit or had caused damage to the damaged party. In these situations CSW has to mediate between the child's, elder or minor juvenile's at risk families or guardians and the victim (if the victim is juvenile, than juvenile victim's family is also include in this procedure), in order for the proceedings of the crime to be returned or to compensate the damage.

Furthermore, the goal of this treatment has to be emphasized – that is by using best efforts to find a mutually acceptable solution, with CSW as a mediator, between the juvenile and his parents on the one side and the damaged party on the other side. Anyway, LJJ does not provide obligation for the damaged party to be indemnified at this stage of the proceedings. At this stage whether the parties agree to a certain amount of compensation or reparation of the results of the juvenile's crime depends only on parties' good will and determination. The procedure of mediation can last maximum 30 days starting from the date of its initiation.

If this proceeding remains unsuccessful, damaged party may, within 30 days of the notification for unsuccessful proceeding, submit a proposal to the juvenile judge for initiation of a procedure for confiscation of the assets from the person who holds this asset or to whom it has been transferred or submit a proposal for compensation of the damage. Upon these requests, the juvenile justice applies the relevant provisions from the Law on Criminal Procedure.

### *Mediation*

Mediation as a method of reconciliation between victim and perpetrator is a model considered as an alternative conflict resolution caused by crime. Mediation's role in the criminal law have risen from the efforts

to apply restorative justice methods that try to prevail over the retributive approach to punishment, approach that is oriented only towards the crime and the offender. Mediation aims to emphasize the interests of the parties in the resolution of the conflict, instead of the state interests (Jean–Pierre 1998, 106; Henry 1989, 256).

The mere participation of the parties in resolving the conflict is seen as some socialization of the state function – resolving a criminal case, something that in this fashion is performed by certain social agencies (mediation boards) (Grubac 1973, 560). Taking into account the types of mediation, we can talk about: waiver of prosecution by intervention in cases when public prosecutor is involved in mediation process (Horvatic 1982, 74)<sup>12</sup>; and a model more familiar with the term conditional suspension of proceedings in cases when court is involved in the mediation process<sup>13</sup>.

*Conditions for conducting the mediation procedure.* Implementation of the mediation procedure in every phase of the juvenile justice is also recommended by the European rules. Under the provisions of the LJJ in Republic of Macedonia, mediation procedure can be conducted when the juvenile has perpetrated crime or misdemeanor punishable with imprisonment sentence up to 5 years. In this situation instead of commencing the prosecution, the competent public prosecutor can refer the parties to mediation procedure in the case of previously receiving a written consent by the juvenile and his legal proxy, legal counsel and the damaged party. In cases when the court procedure has commenced, and where the court has previously received written consent from the juvenile and his legal proxy, legal counsel and the victim, the competent juvenile court considering the principle of expediency, , may discontinue the procedure by issuing a formal decision for referral of the parties to the mediation procedure.

Parties are obliged to submit the written consent to the public prosecutor or to the juvenile court within three days of suggestion for initiation of the mediation procedure. If the time limit is breached, than the juvenile court or public prosecutor will consider that the parties have rejected the proposal for mediation procedure.

*Mediation procedure.* After the formal decision for referral to mediation, within three days from the submitted written consent, the parties should amicably determine a mediator from the juvenile court's mediators list and inform the public prosecutor or the juvenile court for their decision. In cases when parties can not agree in the selection of the mediator,

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<sup>12</sup> Withdrawal from criminal charges with or without intervention is possible when public prosecutor does not acts upon the principle of mandatory prosecution opportunity (Horvatic 1984, 515).

<sup>13</sup> Also introduced in Macedonian Criminal Code article 58-a;

the public prosecutor or the juvenile court is obliged to appoint a mediator from the mediator's list within three days and notify the parties about the appointment. The mediation procedure consists of several meetings between the parties and the mediator to reach a mutually acceptable solution.

Similar to the CSW's settlement procedure, the legislator had determined the maximum duration of the mediation procedure – it could be maximum 45 days counting from the date of submission of a written consent to the competent authorities. If mediation procedure within this time frame did not result in a mutually acceptable solution, than the case will be returned, by the mediator, to the public prosecutor or to the juvenile court and regular proceedings will continue.

Presence of the parties during the mediation process is mandatory. The mediator in accordance with the parties shall determine the terms and place for the mediation and before the beginning of the mediation procedure the mediator is obliged to acquaint the parties with the principles, rules and costs of the mediation procedure. The mediator communicates with the parties together or individually. Any information received by any of the parties, may be disclosed by the mediator to the other party of the proceedings, except for those information that the party will determine as confidential. Each party is given an opportunity to present its opinion upon the other party's proposals, which means that the parties and the mediator may at any time during the mediation procedure state their proposals for the successful resolution of the case.

Parties may withdraw from the mediation procedure at any time without the obligation to provide any reasons for their decision to the other party or to the mediator. Withdrawal of the mediation procedure will be considered as submitted from the moment when the party submits a withdrawal statement in written to the mediator. The mediator shall terminate the mediation procedure if he considers that the parties have reached settlement that is illegal or is inadequate for execution.

The procedure for mediation can end in several ways:

a) By signing a written settlement by the mediator and the parties regarding the mutually acceptable settlement for compensation of material damages and moral satisfaction;

b) By written statement of the mediator, after the consultation with the parties, that any further attempts for mediation are not justifiable, at the date of filing of the statement, or

c) By expiry of the legal time-frame for completion of the mediation procedure.

The signed settlement is confirmed by the public prosecutor or by the juvenile court that brings formal decision that simultaneously means that this procedure is final and is considered as "res judicata".

If the public prosecutor or the juvenile judge does not accept the settlement, in case when they consider that legal requirements for finish-



ing of the mediation procedure are not met, nor its goals were met, then regular criminal procedure continues from the spot where it was suspended.

### *CONCLUSION*

Children's and juveniles' behavior deserves to be analyzed and the most appropriate models for response to their socially unexpected attitude must be selected. This selection should be in the direction of avoidance of punishment, imposition of bans, restrictions or obligations that only bear further frustration to the juvenile, and in direction of acceptance of diversion measures that consider the age of the juvenile and will affect to the causes that lead to juvenile's behavior to be on the verge of delinquent behavior or contains all the legal elements of a certain crime punishable by fine or imprisonment up to three years.

Admittedly, it is not always easy to predict when and how one deviant behavior will become criminal behavior. The new and modified approach urges CSW's activities instead of the public prosecutor' and the court's activities, certainly respecting the requirements proscribed in the law.

The advantage and the primacy of the social reaction directed toward the children through parents leads to the conclusion that formal juvenile criminal justice system has become a subsidiary measure in dealing with the juvenile delinquency. It is particularly important to determine the cases where the attempts to ensure the welfare of the child shall be the only reaction according LJJ. It seems that the assessment of the nature and severity of the causes that have led to delinquent behavior and possibility of successful and long term removal of grounds through the procedure of the implementation of assistance and protective measures is crucial.

These juvenile justice measures require multifunctional approach. In this fashion, determination and experience of the members of the CSW's professional team that undertakes the procedure and structures the Program for implementation of the assistance and protective measures are of the highest importance. These very same factors should have the leading role, when the members of the CSW's professional team determine juvenile's psychological profile and his maturity; understand the reasons that have led to criminal behavior, scan the family environment where the juvenile lives and is raised, determine the sources of false and risky identification as a model for the juvenile's behavior, evaluate the juvenile's involvement in the educational process and his cognitive and social skills, etc.

The procedure for implementation of assistance and protective measures can unequivocally be considered as a great benefit to the concept of the child's welfare as guiding principle in determination of the treatment and fine-tuning of the society's reaction. At the same time it is

necessary for all stakeholders to implement the provisions of the Law on Juvenile Justice uniformly, and to be united by single common goal - to ensure the best interests of the juvenile, delve into the reasons that have led to the submission of the notification as initiative for commencement of the procedure for implementation of assistance and protective measures. Only by obeying these principles stakeholders of the restorative juvenile justice will be empowered to determine a Program that will target the grounds for delinquent behavior of the juvenile and will contribute to adequate and complete juvenile's psychophysical development and socialization.

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Гордана Лажетић - Бужаровска, Бобан Мисоски, Скопље, Република Македонија

### РЕСТОРАТИВНИ АСПЕКТИ СИСТЕМА МАЛОЛЕТНИЧКЕ ПРАВДЕ У РЕПУБЛИЦИ МАКЕДОНИЈИ

#### Резиме

Мере ресторативне правде највише се спроводе у систему малолетничке правде. То значи да је, имајући у виду интересе малолетних преступника, одговор кривично-правног система према овим преступницима више оријентисан према њиховој заштити од будућих кривично-правних активности, него према изрицању казне. Савет Европе је преко своје законодавне активности, учинио овај тренд очигледним и цењеним као почетну станицу и базу у третману малолетних преступника. Ови су савремени трендови препознати и прихваћени и у Закону о малолетничкој правди Републике Македоније. Аутори овог текста, поред коментара законских одредби, дају и даље одговоре о разлозима за њихову имплементацију у кривично-правни систем Републике Македоније.

**Кључне речи:** ресторативна правда, малолетничка делинквенција, медијација у малолетничкој правди