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## RETRIBUTIVE VERSUS RESTORATIVE APPROACH TO CHILD DELINQUENCY: THE CASE OF NORTH MACEDONIA

### Abstract

This research paper discusses the criminal treatment of children in conflict with the law and children at risk in the Republic of North Macedonia, where the purpose of the study is to analyze the retributive and restorative approach to the phenomenon of child delinquency in the country. The study contains aspects of normative and empirical analysis of justice for children, simultaneously being divided into two parts. Accordingly, retributive justice is dealt with in the first place, that is, the repressive criminal policy against children in conflict with the law by analyzing the criminal sanctions for children provided for in the Law on Justice for Children. Furthermore, during the second part of the study, the possibilities for extra-judicial settlement were analyzed in relation to the treatment of children at risk, that is, the forms of treatment of a restorative nature towards delinquent children. The research paper reflects the factual condition regarding the applicability of the forms dealing with child perpetrators of crimes by the competent institutions, both from a retributive and a restorative aspect. In doing so, we refer to the data published by the publications of the State Statistics Office, as well as the annual reports of the State Council for Child Delinquency Prevention. In this direction, the number of criminal sanctions imposed against children in conflict with the law for the time period 2007-2021, as well as the number of applied non-criminal measures and other restorative procedures against children at risk, is manifested. Hence, one of the main challenges of justice for children in the country which further remains is the more frequent application of the restorative approach to the phenomenon of child delinquency.

**Keywords:** Retributive justice, restorative approach, child delinquency; comparative statistics;



## INTRODUCTION

Justice for children in the Republic of North Macedonia is characterized by a restorative approach to criminal proceedings concerning the phenomenon of child delinquency. Positive criminal legislation for justice for children defines a wide range of forms of treatment with a restorative character of this phenomenon. Although in practice, some of the forms of extrajudicial treatment of children who violate the law are applied less frequently, the courts in this country, when choosing and imposing criminal sanctions against children who are in conflict with the law, give priority to educational measures as milder sanctions for children, and it is proven that they implement the legal principle from the Law on Justice for Children (Article 10), which stipulates that the sentence for children with deprivation of liberty represents only a last resort in the procedure and only under conditions and for a duration determined by law.

Regarding the majority of criminal cases which are tried against minor offenders – children in conflict<sup>1</sup> with the law, courts impose criminal sanctions, that is, educational measures whose purpose is to protect the interest of the child, his education, re-education and proper development.

One of the most important competent subjects within the system of justice for children in North Macedonia is the State Council for Child Delinquency Prevention, which during the course of its activities given recommendations and undertakes initiatives to encourage the competent state institutions to increase the implementation of extrajudicial procedures against delinquent children. Encouraging the competent state institutions to more frequently apply the various forms of treatment towards child offenders, forms that represent restorative justice for child delinquency and which are provided for by the Law on Justice for Children (in articles 24-29, 30, 75-78, 79- 85) remains as the main challenge of criminal justice in North Macedonia.

This research, on one hand, analyzes the number of criminal cases registered by the State Statistics Office of the Republic of North Macedonia for the period 2007-2021, as a reflection of the factual situation regarding the retributive treatment of children in conflict with the law. In that direction, data on the number and types of criminal sanctions imposed on children tried for certain groups of crimes for the above-mentioned time periods presented.

Meanwhile, on the other hand, the annual reports published by the State Council for Child Delinquency Prevention have been analyzed, especially the latest reports for 2019 and 2020, with data showing the conditions of implementing restorative justice towards children in the country. And in this direction, data is presented on the number of children at risk who are registered by specialized bodies – Centers for Social Work, on the number of implemented measures to help and protect children at risk, on the number of conciliation and mediation procedures implemented, as well as the successful completion of such procedures and data on the number of imposed deterrence measures.

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<sup>1</sup> A child in conflict with the law between the ages of 14 and 18 is any child who, at the time of committing the act provided by law as a criminal offense for which a prison sentence of more than three years has been established, has reached the age of 14 and has not reached the age of 18 (Article 19, paragraph 5, from the Law on Children Justice (2013)).

It is worth noting that *restorative justice differs sharply from retributive justice* (Daly 2002:28). Firstly, *restorative justice focuses on repairing the harm caused by crime, whereas retributive justice focuses on punishing an offence*. Secondly, *restorative justice is characterised by dialogue and negotiation among the parties, whereas retributive justice is characterized by adversarial relations among the parties*. And thirdly, *restorative justice assumes that community members or organizations take a more active role, whereas for retributive justice, 'the community' is represented by the state* (Daly 2002:28).

Restorative justice is accepted in the new model of justice for children in North Macedonia and this happened with the adoption of the Law on Juvenile Justice (2007), which established a system of justice for children based on the principles of restorative justice by presenting reforms in the criminal justice system for children, in accordance with the Convention on the Rights of the Child and in accordance with the approach of non-punishment and restorative justice towards the child (Информатор за субјекти кои работат во системот за малолетничка правда 2013). According to this justice model, the sanctioning of the child aims towards recocialization and special prevention of the child, but also the satisfaction of the injured party in the form of compensation for the damage (Ahmedi 2021).

## 1. RETRIBUTIVE APROACH TO CHILD DELINQUENCY IN NORTH MACEDONIA

### 1.1. General rules regarding sanctions for children provided for in the positive criminal legislation of North Macedonia

In the third part of the Law on Justice for Children, entitled Sanctions for crimes and misdemeanors, the conditions for imposing these repressive measures on children, their purpose and types are defined. The purposes of criminal sanctions for children are, primarily, the education of children, resocialization and protection of their interests, that is, the prevention of child delinquency (special and general prevention) (Ahmedi 2021).

According to the positive legal provisions in this country, the minimum age for criminal responsibility is fourteen years. *The radical change in the status of children upon reaching a certain age, for example, from the absolute exclusion of any type of sanction until the age of 14, to prosecution and the possibility of sanctions after the age of 14, is a very unnatural choice. Hence, for example, if a child under the age of 13 years, 11 months and 29 days commits murder – no criminal sanctions will be applied against him and if after two or three days he commits petty theft, he will be tried in court and an educational measure will be imposed on him!* (Kambovski 2007: 605). *But the determination of the age limit of children, which conditions the establishment of criminal responsibility of children, must be unconditionally respected, because without such a classification, punishments will first have to be removed from this system, given that their sentencing could increase as a result of subjectivity and sometimes the arbitrariness of the competent state authorities acting against children* (Kambovski 2007:605).

*Along with the abandonment of the concept of guilt and and punishment as a just retribution for a committed criminal offence, the system of sanctions in the Law on Justice for Children fully incorporates the idea of restorative justice (Kambovski at al, 2018:72). However, the principles representing the basis of the new concept of justice for children and the policy of child protection are incompletely implemented by the Law on Justice for Children, which mainly refers to children in conflict with the law, remains with the tendency for the entire system of measures and sanctions to rely on institutional solutions (institutional measures and prison sentences for children). Furthermore, the entire responsibility of supervision over non-institutional measures has been transferred, instead of a special probation service for working with children, to social work centers, which do not have sufficient facilities in order to undertake special measures of treatment and supervision in support of families (Kambovski at al, 2018:72-73).*

## 1.2. Types of criminal sanctions for children

According to the Law on Justice for Children, only one type of criminal sanctions can be imposed on a child aged 14 to 16 for actions that are considered a crime according to the law – and these are the educational measures. In the meantime, children aged between 16 and 18 years old can exceptionally be given the following types of sanctions for criminal acts: monetary fines or alternative measures, in addition to educational measures. The possibility of security measures that can be imposed on children based on the conditions defined by the Criminal Code and the Law on Justice for Children is also foreseen.

**1.2.1.** Educational measures are a type of criminal sanctions that can be imposed on children in conflict with the law between the ages of 14 and 18. These measures are aimed towards the protection, supervision and professional training of children to achieve the result of re-education, as well as their proper development. *These sanctions are driven solely by the idea of education and prevention* (Kambovski 2007).

Educational measures are of several types and, by their nature, are represented as mild criminal sanctions in relation to other sanctions, that is, to penalties. When choosing the educational measure, the court takes into account the following circumstances: the age of the child, the degree of his mental development, his psychological qualities, inclinations, the reasons for which he committed the act, early education, the environment and circumstances in which he lived, the gravity of the committed act, whether he was previously sentenced to an educational measure or a prison sentence for children, as well as other important circumstances that determine the choice of the criminal sanction.

The Law on Justice for Children provides for three types of educational measures that can be imposed on children who commit crimes between the ages of 14 and 18. They are:

A: Reprimand or Referral to a Disciplinary Center;

B: A measure of enhanced supervision by a parent/guardian; enhanced supervision by a foster family and the measure of enhanced supervision by the Social Center;

C: Institutional measures – Referral to an Educational institution and measure of referral to an Educational-Correctional Institution;

The measures of admonition and referral to a Center for Children are imposed when there is no need for longer educational measures, but especially if the child has committed a crime out of carelessness or recklessness. The child is sentenced to measures of enhanced supervision when there is a need for longer measures of education, re-education or treatment with appropriate supervision, if it is not necessary to completely separate him from the previous environment (up until the moment he committed the crime). The first measure of enhanced supervision is imposed in cases where the parent or guardian made a concession, even though they had the opportunity to supervise the child. A variety of reasons can be given as to why parents or guardians are unable to care for their child. As a result of these circumstances, they may not be able to positively influence the behavior/correction of the child's actions.

In this case, it is necessary to find another foster family, usually members of the child's extended family, who are prepared to take on the responsibility of caring for him. Although in practice, this measure has never been imposed according to the statistical data published by the State Statistics Office for the period 2006 to 2017 (see Table 1). The first measure - Supervision by a parent/guardian - is imposed much more often, followed by the measure of supervision by the Social Center, which comes second in place. This is due to the fact that no family, although expected to be from the child's immediate family, is prepared to undertake the responsibility of caring for and supervising a "problematic" child, who is prone to deviant behavior! The third measure, enhanced supervision – is imposed by the social center if there are no conditions for imposing two precautionary measures, enhanced supervision, either by the parent(s) or the guardian(s) or a foster family. In that case, the child will be placed under the supervision of the Center. The duration of these measures cannot be shorter than one year, but not longer than three years.

The institutional measures of Referral of the child to an educational institution and Referral of the child to an educational-correctional institution can be imposed on the child when there is a need for long measures of education, re-education or treatment and complete separation of the child from his former environment. It is worth emphasizing that *the assessment of educational measures from the mild measures, measures of freedom, to the severe measures, measures of deprivation of liberty, does not intend to establish any a priori proportionality between the type and importance of the committed act and the measure to be imposed which, for example, the principle of gradation of actions into severe and mild ones has* (Kambovski 2007:607). *Although it is more than true that even here the choice of these measures is based on the requirement of proportionality, but understood as the choice of the educational measure that corresponds to the child's personality and the need for his education and development* (Kambovski 2007:607). However, this does not oblige the court to always proceed in this order, that is, from the mild educational measures to the severe educational measures, so in the specific case, the court may decide to impose the institutional measure without experimenting with the mildest educational measures (Kambovski 2007:607). In these cases, the application of the

principle of opportunity and reasonableness in decision-making is expressed on the basis of the judge's free conviction, adapting to the specific criminal case.

The child stays in the educational institution for a minimum of six months and a maximum of three years. The institutional measure Referral of a child to an educational-correctional institution is the severest educational measure that can be imposed on a child. The measure is imposed on the child, who must be subjected to permanent and reinforced measures for his education and re-education, as well as his complete separation from the environment in which he lived until the commission of the illegal act. The duration of this measure can be a minimum of one year or a maximum of five years or until the child reaches 23 years of age. This measure is carried out in the Tetovo Educational-Correctional Institution, in the newly built facility in Volkovia (near the city of Tetovo), which has been operational since November 2020. Before that, children tried with this measure, for approximately five years, were placed in the prison for children in Ohrid, while even previously in educational institutions for children in Skopje and Veles. This is due to the fact that since 2001, the Tetovo Educational-Correctional Institution ceased to operate as a result of the lack of adequate conditions for the proper functioning of the facility of this educational-correctional institution.

What makes institutional measures special is the manner in which the Law on Justice for Children regulates the determination of their duration by the court. This distinguishes these measures which in themselves contain the consequence of depriving the child of liberty, simultaneously as the prison sentence for the child. In the case of imposing any of the institutional measures, the court imposes the measure, while the duration of the measure is decided in an additional manner each year (depending on the assessment of the staff of the institution, it is decided whether to extend or terminate the measure), in a form regulated by the Law on Justice for Children (Article 47 paragraph 2). Although this legal solution was adopted in order to increase the motivation of children, to improve their behavior and to prove that the effect of these measures has been achieved for them, this manner regulated by law, *in most cases creates a feeling of insecurity among children because the children do not know what will be decided about their "fate" for the next year nor how long they will stay in the appropriate institution* (Ahmedi 2021:59).

**1.2.2.** Penalties for children can be imposed in the cases determined by the Law on Justice for Children, to the child who was at least 16 years old at the time of committing the crime – (the minimum age of 16 years is the main condition for the possibility of sentencing) and other legal conditions are met, such as the high degree of criminal responsibility of the perpetrator and the serious consequences of the crime caused by that action, as well as the court's assessment according to which only through the execution of the punishment against the child will the goal of the sanctions for the child be achieved (education, re-education, development, for the purpose of ensuring and protecting the most necessary interest for the child). *In certain cases, in order to achieve the correct re-education of the child, sentencing him can be shown as an extremely useful sanction in this direction* (Kambovski 2007: 612).

The following penalties may be imposed on a child over 16 years of age: Prison for children; Monetary Fine; Prohibition of driving a motor vehicle of a certain type or category and Expulsion of a foreigner from the country.

Prison for children over 16 years of age is regulated by articles 51-53 of the Law on Justice for Children. This sentence represents the severe sanction which could be imposed upon the child who committed the crime. Therefore, the legal conditions that must be met in order to impose this sentence are the existence of aggravating circumstances related to the crime for which the child is being tried, namely: that the committed crime is sanctioned in the Criminal Code with a prison sentence of at least five years; That the act was committed under aggravating circumstances and the existence of a high degree of criminal responsibility of the perpetrator. The duration of the prison sentence for children is from a minimum of one year to a maximum of ten years. This sentence can be imposed for whole years or half a year. The sentence is carried out in the Correction Facility Prison Ohrid. Prison sentences for male children are carried out in this institution, while the female children punished with this sanction are serving their sentence in the Idrizovo Correction Facility, in a department for females. According to the Decision on the placement of convicted persons and children in correction facilities and educational-correctional institutions as well as detained persons in the detention departments of correction facilities (2020, 1.1. c.), female children convicted with a prison sentence for children and with an educational measure, referral to an educational reformatory, regardless of the amount of the sentence or the measure, are sent to this department.

When determining the sentence, the court cannot impose a prison sentence for children with a longer sentence than the sentence determined for that crime, but it is not obliged to the smallest measure of that sentence defined in the Criminal Code (Kambovski 2007). Hence, for example, *when a prison sentence of up to 8 years has been determined for the committed crime as a special maximum, the court cannot impose a sentence above that maximum, but it can always reduce it below the minimum prison sentence of up to one year* (Kambovski 2007: 612). The Law on Justice for Children provides for the possibility of parole for a child who has been sentenced to deprivation of liberty, as well as the possibility of canceling parole.

The monetary fine may be imposed on a child in conflict with the law as a primary, but also as a secondary punishment, simultaneously with a prison sentence for children or a suspended sentence with enhanced supervision, for crimes committed out of greed. This penalty is imposed in daily fines, from 1 to 120 daily fines. The penalties of the prohibition of driving a motor vehicle of a certain type or category and the expulsion of a foreigner from the country are imposed on the child as primary or secondary penalties, simultaneously with a monetary fine.

The Law on Justice for Children regulates the sanctioning of children in conflict with the law when they commit criminal acts in the stack. For these cases where the legal requirements are met, the law determines that the court will impose only an educational measure on the child or only one punishment - prison for children or a monetary fine.

**1.2.3. Alternative measures and security measures:** According to the Law on Justice for Children, the following alternative measures can be imposed on a child over the age



of 16 with criminal responsibility: Conditional sentence with enhanced supervision; Conditional termination of the procedure and Community Service. In the meantime, the law provides that a security measure can also be imposed on a child who is tried with an educational measure or a prison sentence for children. The following security measures can be imposed on an unaccountable child under the conditions established by the Criminal Code: Compulsory psychiatric treatment and custody in a health facility, Compulsory psychiatric treatment in liberty, and Compulsory treatment of alcoholics and drug addicts (as a measure of compulsory treatment of children from addictions).

### **1.3. Criminal sanctions imposed against children in conflict with the law in North Macedonia: 2007-2021**

This analysis is based on the number and type of sanctions imposed on children in conflict with the law from two age groups: 14-16 years and 16-18 years, respectively the number of educational measures imposed on them - disciplinary measures, measures of enhanced supervision and institutional measures as well as the number of sentences imposed, for each year. The ratio of the number of prison sentences in relation to the educational measures imposed on convicted children (aged 16-18) is also reflected.

From the obtained results, it can be concluded that the courts in the country implement the legal principle of giving preference when choosing to impose educational measures in relation to the penalty of deprivation of liberty, which is required to be applied as a last resort in the procedure under certain legal conditions (Articles 10 and 15 of the Law on Justice for Children). This finding is based on the fact that during the years 2007-2021, of the total number of sanctions imposed on children tried for each year, more than 95% are educational measures. Prison for children remains very low during this period, between 0.3% and 3.1% (see Table 1).

**Table 1:** *Convicted children in conflict with the law aged 14 to 16 years by type of penalties in North Macedonia: 2007-2021*

Year	Total (aged 14-18)			Children aged 14-16							
	Total	Fe- male	At- tempt	Total (aged 14-16)	Disciplinary measures		Measures of intensified supervision			Institutional measures	
					Re- buke	Disci- plinary center	By the Par- ents	In another family	By a social agen- cy	Educa- tional institu- tion	Refor- matory
2007	537	15	16	155	11	-	96	-	42	1	5
2008	529	17	23	169	19	-	95	-	44	-	11
2009	748	39	12	210	21	-	116	-	64	1	8
2010	547	20	10	162	33	-	80	-	42	2	5
2011	722	22	16	220	27	-	116	-	64	2	11
2012	556	9	9	140	12	-	85	-	36	-	7
2013	473	24	4	123	17	-	67	-	33	2	4
2014	461	16	18	107	10	1	59	-	28	1	8
2015	348	22	9	73	14	-	35	-	21	-	3
2016	468	19	4	119	10	1	58	-	42	5	3
2017	368	14	11	112	11	-	63	-	34	2	2
2018	330	-	-	73	10		57			6	
2019	300	-	-	82	20		60			2	
2020	350	-	-	80	27		50			3	
2021	382	-	-	93	28		55			10	

**Source:** *State Statistical Office, Publications: "Perpetrators of criminal offences" for 2007-2017 and News releases: "Reported, accused and convicted perpetrators of criminal offences and children in conflict with the law" for 2018-2021, Skopje.*

Regarding children in conflict with the law, it can be noted that in the period 2007-2021 (Table 1), the most often pronounced educational measure against children aged 14-16 years was the measure of intensified supervision by parents, while after it came the measure of intensified supervision by Center for Social Work. The disciplinary measure of Rebuke was pronounced in a significant number, while the institutional measures were pronounced in a smaller number.

During the period 2007-2017, the disciplinary measure – Referring children to the Disciplinary Center was pronounced only twice, while regarding the measure Intensified supervision by a foster family, it is established that it was never once pronounced to the children during the above period of time (For the period 2018-2021, the State Statistical Office does not present detailed data on the type of educational measures that are imposed within their groups, but only on the total number of the same group of certain measures). In this direction, there is a need to specify the conditions related to the application of these

measures and their efficiency, that is, the already overdue initiative for legal supplementing of the provisions of the Law on Justice for Children regulating these two measures is necessary, to specify the conditions related to their execution in order to create opportunities for them to be pronounced in the future.

**Table 2:** *Convicted children in conflict with the law in North Macedonia aged 16 to 18 years by type of penalties: 2007-2021*

Year	Total	Imprisonment	Educational measures	Disciplinary measures		Measures of intensified supervision			Institutional measures	
				Re-buke	Disciplinary center	By the parents	In another family	By a social agency	Educational institution	Reformatory
2007	479	15	464	46	-	254	-	155	0	9
2008	510	11	499	95	-	234	-	156	4	10
2009	537	14	523	64	-	251	-	202	2	4
2010	385	9	376	74	-	165	-	122	5	10
2011	502	2	500	65	-	277	-	151	-	7
2012	416	7	409	45	-	213	-	137	2	12
2013	350	-	350	63	-	154	-	127	-	6
2014	354	3	351	52	-	192	-	91	1	15
2015	275	8	267	65	-	111	-	83	1	7
2016	349	4	345	39	-	162	-	142	-	2
2017	256	5	251	39	-	128	-	75	3	6
2018	257	3	254	36		208			10	
2019	218	2	216	30		185			1	
2020	270	1	269	76		186			7	
2021	289	1	288	77		199			12	

**Source:** *State Statistical Office, Publications: "Perpetrators of criminal offences" for 2007-2017 and News releases: "Reported, accused and convicted perpetrators of criminal offences and children in conflict with the law" for 2018-2021, Skopje.*

In Table 2, the number of convicted children aged 16-18 in the period 2007-2021 according to the type of criminal sanction imposed is displayed. From these data, it could be initially observed that, when compared to the data from Table 1, that from the total number of tried children aged 14-18 years, most of those tried belong to the age group of 16-18 years. Furthermore, as it is displayed in Table 2, for this category of children, other sanctions can be imposed, in addition to educational measures, where in this case data is presented only concerning the number of prison sentences imposed on children (in addition to other sanctions provided for by the Law on Justice for Children). The measure most often imposed upon convicted children aged 16-18 is the measure of intensified supervision by the parent, followed by the measure of intensified supervision by the Center for Social

Work. The disciplinary measure Rebuke is ranked after them in terms of number, and the institutional measures are the least imposed. And for this category of children (as well as for the category of 14-16 years old, in Table 1), in no case did the courts impose the following measures: Referral to a Disciplinary Center and Intensified supervision by a foster family.

If we compare the number of prison sentences with the number of educational measures imposed on children, it could be concluded that such number is fairly insignificant and this situation is in accordance with Article 10 of the Law on Justice for Children. In that direction, from 2007 to 2021, the number of prison sentences imposed compared to the total number of criminal sanctions imposed on children has moved from a minimum of 0% in 2013 to a maximum of 3.1% in 2007 as the year with the most prison sentences (15 in total). In 2009, 14 prison sentences were imposed, that is, 2.6% of the total number of children tried. In recent years, the percentage of this imposed penalty in relation to the total imposed sanctions for children is very low, namely in 2019 -0.9%, in 2020 - 0.4% and in 2021 - 0.3%. (See Tables 2 and 3)

**Table 3:** The number of imposed sanctions on children in conflict with the law, the ratio of number of penalty of prison and the number of educational measures: 2007-2021

Year	The total number of imposed sanctions on children	Prison for children	Educational measures
		%	%
2007	479	3.1	96.9
2008	510	2.2	97.8
2009	537	2.6	97.4
2010	385	2.3	97.7
2011	502	0.4	99.6
2012	416	1.7	98.3
2013	350	0	100.0
2014	354	0.8	99.2
2015	275	2.9	97.1
2016	349	1.1	98.9
2017	256	2.0	98.0
2018	257	1.2	98.8
2019	218	0.9	99.1
2020	270	0.4	99.6
2021	289	0.3	99.7

**Source:** State Statistical Office, Publications: “Perpetrators of criminal offences” for 2007-2017 and News releases: “Reported, accused and convicted perpetrators of criminal offences and children in conflict with the law” for 2018-2021, Skopje.

In 2020, only one male child was sentenced to prison for children. The sentence was pronounced by the Basic Court of Veles (*Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021*: 46). Meanwhile, from the data presented in the tables above (Tables 1, 2 and 3), it can be seen that the educational measures imposed on children in conflict with the law dominate in number during all the years of research and it can be concluded that they represent the largest percentage of sanctions imposed on children in this country. According to this order, during the time period 2007-2021, more than 97% of the convicted children were sentenced to educational measures compared to the total number of imposed sanctions (in 2013 these measures were imposed 100% on all the children tried) (See Table 3).

## 2. RESTORATIVE APPROACH TO CHILD DELINQUENCY IN NORTH MACEDONIA

The Law on Justice for Children regulates the treatment of child offenders in other forms besides the regular criminal court procedure, that is, it provides for the possibility of imposing non-criminal measures against children, by conducting some of the extrajudicial proceedings or court proceedings with elements of restorative justice. The procedures of restorative justice regulated by the Law on Children's Justice are: the procedure for applying assistance and protection measures and the plan of measures and activities for individual work with the child and parents (Articles 24-29), the mediation procedure (Article 30), the application of deterrent measures (Article 75-78), mediation (Articles 79-85), the procedure for acceptance of responsibility and the agreement on the amount of the penalty (Article 108).

### 2.1. Assistance and protection measures

According to the Law on Justice for Children, the assistance and protection measures can be applied to children at risk up to 14 years of age and over 14 years of age. These measures are of interest to the child, as well as his development and education. The Law on Justice for Children does not explicitly determine the types of measures for assistance and protection, but only determines that these are measures determined by material laws in the field of education, health, social, family and other forms of protection (Article 23).

In this case, the Ministry of Labor and Social Policy determined the types of these measures in the List of measures for assistance and protection, attaching it as an additional document to the Rulebook on the form, content and management of the Register for the implementation of measures for assistance and protection of children and minors at risk, approved in 2008. According to the abovementioned list, the types of assistant and protection measures defined in the relevant regulation are the following: From the Law on Social Protection: Social Prevention; non-institutional protection; field work; provision of personal

documentation; daily and temporary care as assistance to the individual and the family and guidance to the appropriate (daily) center; institutional protection; accommodation in a social protection institution; the right to social protection; From the Law on Family: The marital relationship; creating/strengthening parent-child relationships; supervision over parental rights, deteriorated and violent relationships in marriage and family; adoption; guardianship; conducting proceedings in matrimonial disputes; From the Law on Justice for Children: Working with children and minors at risk; giving consent to the minor; acting according to child protection conventions.

During the implementation of the procedure for the implementation of assistance and protection measures, the degree of maturity of the child and his ability to understand the committed crime should always be followed, in addition to recognizing the factuality of his age, which does not always coincide with the criteria of maturity (Pajoviq 2011).

The Center for Social Work is competent to assess when the above measures would be applied to children at risk, by determining whether the risk situation has an impact on the child's personality and on his proper education. The Law on Justice for Children stipulates that the measures in question can also be applied against parents or guardians, if they have neglected or abused the exercise of their rights or obligations related to the protection of the person, rights and interests of the child. The Law on Justice for Children regulates the mutual cooperation between the Center and the mentioned entities and in all cases when the Center is informed that there are different conditions of risk in certain children, which is competent to act immediately upon these notifications received from various entities such as, for example, the Ministry of Interior, the school or any other institution where the child is in care and the child's parents or guardians, or even from his own action.

The Law on Justice for Children determines the deadlines in which the Center must act towards the child at risk, within a period of no longer than 15 days from the receipt of the notification or other acknowledgement. While, in cases of emergency (when there is an existing danger posing to the person) the Center is required to act within 36 hours at the latest to call the child at risk, his legal representatives, and to initiate a procedure of credible nature to determine the factual condition of the specific event. In order to determine the factual condition of the event or the risk-related situation of the child, the center conducts the conversation by forming an expert team consisting of a teacher, a social worker, a psychologist and a graduated lawyer. During the conversation, the law determines the mandatory participation of the child's defender in cases where the crime committed by a child at risk under the age of 14 is sanctioned with a prison sentence of at least five years, as well as in cases where there is an existing risk to the person, rights and interests of the child.

The above-mentioned expert team must prepare the Plan containing the measures and activities considered to be applied to the child and his legal representative within 30 days. Assistance and protection measures can be applied to the child until reaching the age of eighteen, and the supervision of the implementation of the plan is conducted by the Center for Social Work.

According to the data presented in the annual report of the State Council for Child Delinquency Prevention for 2019, the measures of assistance and protection (as a form of restorative justice) were most often applied. The percentage of children at risk to whom assistance and protection measures were applied in 2019 is 30 percentage points higher

compared to 2018 when it amounted to 53% and does not differ from 2017 when it amounted to 83% (Draft Law on Justice for Children 2022).

**Table 4:** Number of children at risk referred to Center for Social Work by age, and by gender

	<b>Total</b>	<b>Female</b>	<b>Male</b>
<b>2018</b>	1689	309	1380
<b>2019</b>	2035	424	1611
<b>2020</b>	1850	254	1596

**Source:** State Council for Child Delinquency Prevention: Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021, Skopje, p.18-19.

The data in Table 4 display the number of children at risk who were referred to Centers for Social Work in 2020. The source of this data is from 30 Centers for Social Work in North Macedonia. From the available data, it follows that 452 children were referred to a population of 100,000 during the year of 2020. Compared to previous years, in 2020 the number decreased by 9% compared to 2019 and increased by 10% compared to 2018. Moreover, as compared by gender, the number of male children in 2020 decreased by 1% compared to 2019 and increased by 16% compared to 2018. Among female children, the number in 2020 decreased by 40% compared to 2019 and by 19% compared to 2018 (*Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020*: 19).

The largest number of children is referred to the Strumica Center for Social Work (262), the Veles Center for Social Work (235), the Skopje Center for Social Work (222), the Shtip Center for Social Work (213) and the Kavadarci Center for Social Work (182). The largest number of female children (37) is sent to the Prilep Center for Social Work, while the largest number of male children (239) is referred to the Strumica Center for Social Work. If a comparison is made of the number of children referred per Center for Social Work in relation to the year of 2019, a significant decrease in the number of children at risk in Skopje (from 768 in 2019 to 222 in 2020) can be observed, major changes are not noted in Kavadarci, Shtip and Veles, while there is a significant increase at the Strumica Center for Social Work – from 61 children in 2019, the number rose to 262 children in 2020 (*Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020*: 20-21).

Regarding the measurement of the percentage of children at risk which have received services from the Center for Social Work, that is, assistance and protection measures that were applied to them, the data collected from all 30 Centers for Social Work in the Republic of North Macedonia are as follows:

In 2020, 1287 measures were applied to 779 children, or 42% of children at risk (out of 1850 children at risk in total). Of them, 82% are male children, and 18% are female. Compared to previous years, the percentage of children at risk to whom assistance and

protection measures were applied in 2020 is 39 percentage points lower compared to 2019, when it was 81%, and 11 percentage points lower than 2018, when it was 53%. (*Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020*: 36).

#### **2.4. Mediation procedure for compensation of the injured party carried out by the Social Center**

The Law on Justice for Children (in Article 30) authorizes the Center for Social Work to undertake the mediation procedure between the child at risk and his legal representative and the injured party if the child at risk obtained property benefit or caused damage to another. The purpose of applying such procedure is to reach an agreement between the parties, obtaining a promise from the child that the act in question will not be repeated, as well as for the return of the property benefit or compensation for the damage caused (achievement of material and moral satisfaction by the victim). The mediation procedure may last a maximum of 30 days after the approval regarding the beginning of the decision. An agreement is drawn up for the achieved reconciliation, which has an extrajudicial meaning. While, in the event that the mediation remains unsuccessful, the law provides for the opportunity for the injured party within 30 days to submit a proposal for the initiation of the procedure for the confiscation of the property and property benefit from a person to whom the property or property benefit has been transferred or for a property law claim for compensation to harm.

#### **2.5. Children at risk involved in the mediation procedure in the Center for Social Work**

The following segment displays the percentage of the number of children at risk, for whom the Center has implemented a mediation procedure, compared to the number of children at risk referred to the Center for Social Work.

In 2020, the Center for Social Work conducted a mediation procedure for 8 children at risk, which represents 0.4% of the total number of children at risk (1850 children). Mediation was successfully implemented in 7 of the children to whom it was applied. In 2019, mediation was applied to 34, and successfully implemented to 31 children. In 2020, the procedure was applied in three Centers for Social Work, namely Probishtip, Skopje and Strumica. The largest number of children was included in the center in Skopje (5 children) (*Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020*: 40).



## 2.6. Mediation procedure

The Law on Justice for Children (Articles 79-85) regulates the conditions for mediation between the child and the injured party. In this case, the law authorizes the competent public prosecutor, after receiving the criminal complaint for a crime for which a prison sentence of up to five years is provided, or the competent court in cases where court proceedings have been initiated, to direct the parties to the mediation procedure (Only for cases related to crimes against gender freedom and gender morality and forms of gender-based violence against women, the Law on Justice for Children excludes the possibility of developing the mediation procedure, in accordance with ratified international agreements).

Within three days of the written consent, the parties to the agreement appoint a mediator from the list of mediators in the competent children's court and notify the public prosecutor or the children's court or, in case the parties do not reach an agreement, the court or the Public Prosecutor within three days determines a mediator from the list of mediators. The deadline for completion of the mediation procedure is expected to last up to 45 days from the day of submission of the written consent to the competent authority. If the mediation procedure is not completed within this period, the case will be returned to the public prosecutor or the court procedure will continue from where it had been interrupted.

In Tables 4 and 5, the number of children who were referred to the mediation procedure and the number of successful cases of mediation are recorded. In 2020, there are 100% successful cases referred to mediation by the Public Prosecutor's Offices. Of the 11 children referred to mediation in 2020, nine children were referred by the Public Prosecutor's Office Tetovo and two were referred by the Public Prosecutor's Office Strumica (see Tables 5 and 6).

**Table 5:** Application of mediation by the court and by the Basic Public Prosecutor's Office

	By Court	By the Basic Public Prosecutor's Office
2018	0	3
2019	4	11
2020	0	11

**Source:** State Council for Child Delinquency Prevention: Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021, Skopje, p.42

According to the data displayed in Table 5, in 2020, the courts did not refer a single child to mediation. In 2019, the courts referred four children to mediation. In 2018, the courts did not refer a single child to mediation. *In 2019, the Public Prosecutor's Offices referred 11 children to mediation, of which the mediation was successfully completed in seven of those children. This is a small progress compared to 2017 and 2018 when the courts did not refer a single child to mediation (Draft Law on Justice for Children 2022: 2).* And in 2018, the Public Prosecutor's Offices referred three children to mediation, of which the mediation was successfully completed for only one child. (See Table 6)

**Table 6:** Number of children referred to mediation by the Basic Public Prosecutor’s Office and the successfulness of the mediation

	2014	2015	2016	2017	2018	2019	2020
<b>Sent to mediation by the Basic Public Prosecutor’s Offices</b>	15	8	2	0	3	11	11
<b>Successful mediation</b>	12	5	2	0	1	7	11

*Source: State Council for Child Delinquency Prevention: Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children’s rights and child delinquency in 2020, 2021, Skopje, p.42*

## 2.7. The procedure for implementing deterrence measures

The extrajudicial procedure for the implementation of measures of deterrence against the child is carried out by the public prosecutor, under the conditions prescribed by the Law on Justice for Children (Article 75), as an opportunity to avoid the court procedure and to give priority to the elements of restorative justice. In this regard, the law foresees the possibility, after reporting a crime committed by a child over 14 years of age, for which a monetary fine or a prison sentence of up to three years has been determined, the competent Public Prosecutor may:

- not initiate court proceedings even though there is evidence that the child committed the criminal offence, if he considers that it would not be expedient for the proceedings to be conducted considering the nature of the crime and the circumstances under which it was committed, the child’s previous life conditions and his personal properties, as well as when the execution of the sentence or the educational measure is in progress; conditionally postpone the initiation of the procedure before the court for a period of six months, provided that within that period he does not commit another criminal offense and compensates the damage or in another way corrects the harmful consequences caused by the commission of the offense; and not initiate a procedure if, based on the report from the center, it is determined that an agreement has been reached between the child and his family and the injured party for the return of the property benefit, the compensation of the damage or the repair of the harmful consequences of the crime.

It is important to emphasize that the Law on Justice for Children excludes the possibility of applying the procedure for mediation and settlement (as a type of these preventive measures), if the crime resulted in the death of a person.

In 2019, the country recorded little application of deterrence measures. Thus, in 2019, the number of children against whom the Basic Public Prosecutor’s Office applied deterrence measures decreased, and unlike 83 children in 2018, such measures were applied to 52 children in 2019; In 2020, the Public Prosecutors applied measures of deterrence against 23 children, 20 from the male gender and three from the female gender. *The measures were*

applied in the Basic Public Prosecutor's Office Skopje to 15 children, and in the Basic Public Prosecutor's Office Struga to eight children (Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021: 43-44). (See Table 7)

**Table 7:** Number of children against whom the Basic Public Prosecutor's Office applied deterrence measures

Year	2018	2019	2020
<b>Total</b>	83	52	23

**Source:** State Council for Child Delinquency Prevention: Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021, Skopje, p.44

## **2.8. Non-initiation court proceedings for crimes punishable by up to five years in prison**

The Law on Justice for Children provides for the possibility of not initiating court proceedings against a child who is reported as a suspect for a crime punishable by law up to five years of prison and for which there is sufficient evidence that the child is the perpetrator of such crime. This authority is given to the Public Prosecutor, who after receiving the notification or the criminal complaint, within 30 days, can decide not to initiate the procedure against the child (Article 76). *Here we, once again, observe the broad authorities that the Public Prosecutor has during the criminal proceedings against the child, giving priority to the principle of opportunity. The victim is given a sole opportunity within 8 days of receiving the notification from the Prosecutor regarding such a decision, to ask the Children's Council within the competent court to make a final decision whether to initiate court proceedings or not* (Buzharovska et al., 2016: 13).

## **2.9. The procedure for acceptance of responsibility and agreement on the amount of the penalty**

The Law on Justice for Children (Article 108) foresees the possibility of developing a special procedure against the child for acceptance of responsibility and an agreement on the amount of the penalty in those cases where the legal conditions for punishing the child are met (A child over the age of 16 can be punished with criminal responsibility only if due to the serious consequences of the crime committed and the high degree of criminal responsibility, it would not be reasonable to impose an educational measure). In this case, the public prosecutor can propose to the parties to initiate a special procedure for acceptance of responsibility and an agreement on the amount of the penalty when there is sufficient evidence that proves the factuality of the child's guilt, that is, his responsibility for the

committed crime, as well as when the conditions stipulated by the Law on Justice for Children for sentencing the child are met (in Article 50). *After reaching an agreement, the public prosecutor submits such an agreement to the Children's Council, which therefore must pass a judgment that will impose an appropriate sanction on the child. From the analysis of the data related to the implemented special procedures, this form of procedure is conducted less often, when regarding mediation and the procedure for the implementation of deterrence measures* (Buzharovska et al., 2016:14).

During the past three years, only in 2019 the Basic Public Prosecutor's Offices undertook a procedure for acknowledging responsibility and agreeing on the amount of the penalty as a form of intervention/diversion in the court proceedings against one child, while in 2018 and 2020, this procedure was not applied at all (Annual report on the work of the State Council for the prevention of child delinquency and on the situations in the field of children's rights and child delinquency in 2020, 2021: 44).

## **2.10. Restorative character of alternative measures for children**

*Elements of restorative justice also are included within the court procedure itself, in cases of giving the opportunity for imposing alternative measures instead of punishments. The Children's Council has the possibility to impose alternative measures for children over 16 years of age, which in actuality contain elements of restorative justice* (Buzharovska et al., 2016:19). These measures (Conditional sentence with enhanced supervision; Conditional termination of the procedure and Community Service) are discussed in the first part of the paper in relation to criminal sanctions for children, but we only mention them here to emphasize the *restorative character that they have, despite the fact of them being an integral part of the types of criminal sanctions that, as repressive measures provided by law, contain the retributive character as well* (Buzharovska et al., 2016:19).

## **CONCLUSION**

Even though the forms of implementation of restorative justice against child offenders are insufficiently applied in the country, it can be concluded that justice for children in the Republic of North Macedonia is characterized by the restorative approach to criminal proceedings against the phenomenon of child delinquency. According to the Law on Justice for Children, courts, when choosing criminal sanctions for children, give priority to educational measures (as mild sanctions for children), which proves that they implement the principle proclaimed in the Law on Justice for Children, according to which the sentence for children with deprivation of liberty should be imposed only for serious crimes and should be considered as a last resort in addition to other repressive measures for children, only when the legal conditions for its pronouncement will be met. The repressive policy towards the phenomenon of child delinquency is characterized by a wide range of criminal sanctions for

children, which are aimed at protecting the interest of the child, education, re-education, as well as his proper development.

These are some features of retributive justice for child delinquency in RNM:

The variety of criminal sanctions for children (especially educational measures), which are provided by the positive penal legislation, gives the courts the space to impose an appropriate sanction in relation to the needs of the child in order to achieve the goal of these repressive measures; Courts in the country clearly give priority to educational measures in addition to punishments for children, the penalty of deprivation of liberty is imposed in a very small number of cases. In the criminal legislation for children, the Republic of North Macedonia has not incorporated new educational measures for children; During the last two years (2019 and 2020), not a single security measure was imposed on a child (according to the data published in the Annual Report of the State Council for Child Delinquency Prevention for 2020, 15-16); The two educational measures: Referral to a Disciplinary Center and Intensified supervision by a foster family remain very rarely imposed in relation to all other educational measures, and this is due to the lack of conditions for their implementation. Therefore, there is a need to work toward this direction, that is, it is necessary to indicate legal amendments to the Law on Justice for Children, which would specify the conditions for facilitating implementation of these measures, and which would enable their more frequent imposition; Alternative measures are imposed on children and this trend should continue in the future.

In addition, it is worth highlighting some key conclusions related to restorative justice: Although justice for children is characterized by a restorative spirit and the tendency of the competent institutions in the country is to apply the forms of such justice to children, this is not shown as sufficient enough in practice. Although the implementation of a mediation procedure in the Center for Social Work and a significant number of assistance and protection measures are applied to children at risk, however, in recent years, unsatisfactory application of the following restorative measures was found: deterrence measures, mediation conducted by the courts and referral of children to mediation by the Public Prosecutor's Offices, the procedure for recognition of responsibility and agreement on the type of punishment. For greater efficiency of restorative justice in the country, greater commitment is needed from all competent entities for the implementation of forms of restorative justice when dealing with child perpetrators of crimes in all cases where the legal conditions for the possibility of conducting extrajudicial procedures are met, in order to protect the best interest of the child. Regarding such direction, it is necessary for the competent entities to take into account and implement the recommendations given by the State Council for Child Delinquency Prevention.

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