

## **INTERNATIONAL JURIDICAL PRINCIPLES FOR PREVENTION OF JUVENILE DELINQUENCY AND LEGAL LEGISLATION AND PRACTICE IN THE REPUBLIC OF NORTH MACEDONIA**

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### **Abstract**

International norms and standards most frequently summarize the new orientation of methods and means for prevention of child abuse, which are systematically placed between the criminal law and protection of children's rights. The universally acknowledged corpus for human rights and freedoms includes special children's rights and thereby it expresses the commitment towards especially strengthened protection and development of children, by elimination of all risk factors for the named development. The regulations of international conventions are of crucial importance for the countries which have ratified them. It is an area which treats the conscience for the need to respect them as the highest, and simultaneously, the strictest criteria for affiliation of the country to the civilized countries, as well as violating children's rights as the harshest violation of human rights. Nevertheless, the application of international conventions in this area, secured by international mechanisms and instruments, doesn't prevent continuous activity of the international community for its' consistent application by the member states. Following contemporary tendencies and international legal standards in the field of juvenile judiciary, Republic of North Macedonia adopted a Law on Children Justice, which surely represents a significant reform in the field of juvenile criminal law. According to duty obliged by law, it applied organization and realization of professional improvement of officials who are working on juvenile delinquency and criminal protection of children, respectively education of police officers, social workers, mediators, advocates and penitentiaries' employees, in the direction of their education, respectively specialization for dealing with juvenile delinquents, as well as dealing with children and minors, in cases when they appear in the role of victims or witnesses of a criminal act. The objective of this paper is to introduce the harmonization of legislation in the Republic of North Macedonia with international legal regulations for prevention of juvenile delinquency, with the aim of presenting a clear picture of a more pragmatic and more humane approach towards juvenile delinquency in the Republic of North Macedonia.

*Key words:* Juvenile delinquency, legal regulation, international legal regulations, Republic of North Macedonia

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### **I. Introduction**

Crime has always been the main problem throughout the history of human development. During the phases of social development, some measures were taken in order to prevent it, however expected results were never achieved. Nowadays, at the beginning of the 21<sup>st</sup> century, along with a large development of science and technology and higher level of education, there are some new forms of delinquency that were unknown in the past. The situation is more alarming when the offenders of criminal deeds are juveniles. Juvenile delinquency is a type of human behaviour which significantly differs or breaks social norms of the community and causes reactions of disagreement with that type of behaviour by the community and society.

In the Republic of North Macedonia, juvenile delinquency is in constant increase during the last 10-15 years. The number of juveniles who are the victim of juvenile delinquency is

increasing, so as the age of persons who commit a crime declines towards younger ages. Although there is no general thesis about reasons that lead towards the appearance of deviations, however based on information from a research done by the Ministry of Internal Affairs, the Social Institute, some PhD and Master thesis on this topic, Internet presentations, data from the Institute of Statistics, as well as data from conducted empirical researches, show that deviations are closely related to a series of socio-economic factors: poverty, unemployment, low educational and professional qualifications, various conflict situations, inherited practices, family influence, influence from the environment, psychological health damages etc. The most common forms of juvenile delinquency are: vagrancy, idleness, escape from home, skipping school, prostitution, theft, violence, alcohol consumption, usage and smuggling of drugs etc. (Велкова, 2006)

International norms and standards usually summarize new orientation of methods and means for prevention of child abuse, and they are systematically located between the penalty law and child protection law. The universally adopted corpus of human rights and freedoms includes special children rights, by expressing a commitment for especially strengthened child protection and development and eliminating all risk factors for its development. Regulations of international conventions are of crucial importance for the countries that have adopted them. It is an area where they are related towards consciousness of the need to respect them as the highest and simultaneously strictest criteria of the countries' affiliation to civilized countries, as well as the violation of children's rights as the harshest violation of human rights. Nevertheless, application of international conventions in this field approved by international mechanisms and instruments doesn't prevent the continuous activity of the international community of their consistent application by the member states. (Камбовски, 2006)

When it comes to juvenile justice that exists and functions separately and in parallel with the system of criminal judiciary for adults, one should act in a very careful manner. Failure in the prevention of child abuse requires its separation in the material and procedural terms, but also accepting meaningfully different manners of behaviour and reaction towards a crime compared to ones committed by adults. Regarding children, one has to bear in mind the social context and changes in the system of values brought by globalization, which is very difficult to juveniles who can't determine their position and define the role they should play in a society led by adults.

## **II. CONCEPTUAL FRAMEWORK: JUVENILE AND JUVENILE DELINQUENCY**

### **II.1 Juvenile**

In everyday life, we often hear and encounter the term "juvenile", literally, linguistically, legally, psychologically etc. In the linguistic meaning, a juvenile is a person who hasn't reached adulthood, hasn't become a master of him/herself and isn't yet fully responsible for his/her own deeds. Calling upon the Article 1 of the Convention for children's rights, a child is considered every person under the age of 18, except if a law applied on the child determines its' specific age lower than that. (UNICEF, 2017).

There are various approaches towards classification of delinquents in the juridical practice, however they are usually classified in the category of young people (persons of age 14 to 16) and older young people (persons of age 16 to 18). The division is based on anatomic and psychological maturity of specific structures within the juvenile population, i.e. the real base of a possible alignment of their behaviour in the sense of adoption and respecting of the legal,

ethical and social norms. Based on those specifications of the theory of criminal law, respectively the criminal judiciary, this category of persons has a special treatment in the procedure, legal penalty measures, as well as re-socialization measures. (Zejneli, 2008).

The age is very important in civil law, labour law, social protection, however in a way, it is most important in the criminal law. Primarily, it is important in the criminal law because whether a certain person will be held responsible for a committed crime is determined based on their age, what sanctions would be applied if the person is criminally responsible, what type of a criminal procedure will be taken and that is how the criminal sanctions will be applied towards the person, etc. (Latifi, 1984)

It is clear that in contemporary criminal law, there is a tendency to rise the age in which a person is considered a child. This way, this group could include many people who, although they have committed a criminal act at a certain time, they have legally reached adulthood, however, they haven't reached the level of maturity based on which a criminal punishment for adults could be applied. The reality of life requires understanding of the legislative and judiciary about the impossibility to always consider age as a legal enactment. Namely, one can't judge a juvenile delinquent who is intellectually immature, by following the same procedures as for an adult perpetrator, which according to his level of maturity meets the legal criteria, i.e. the one who is intellectually mature and emotionally stable. Thereby, the criminal law relevant to children will be enriched with new opportunities for the increase of efficiency when it comes to children, which is the future of criminal law. (Марјановиќ, 1998)

The contemporary criminal procedure towards juveniles has gone through significant transformations, beginning from the fact that some new scientific discoveries have been introduced, which were the result of studying the juvenile personality. Some basic principles of criminal procedures include radical changes (example: the principle of publicity, separation of the investigation function and the trial) that are subordinated to the basic aim – protection of the personality of juveniles.

The criminal judiciaries in various countries worldwide have different solutions towards the lower limit of childhood age, which serves for differentiation between a juvenile and a child. There are some countries that don't determine the lower limit of the criminal responsibility of the children at all, and some others have set it between 7 and 16. Moreover, in the sense of determination of the lower limit for differentiation between childhood and adulthood, there are differences in the age between 15 and 21 (Наhev, 2003). The key element that distinguishes juvenile delinquency from other types of crimes is the age of the offender, which, according to law is determined as juvenile, and the offender as a child. The category of children in the criminal law arises as a need to separate those persons who, because of their biological, emotional, psychological and social immaturity should not be sanctioned in the same manner like the adults. A child is a young person which according to the juridical system can be held responsible for a criminal deed in a different manner than an adult person (Арнаудовски, 1984).

In the Republic of North Macedonia, before the adoption of Law on Children Justice, the issue of juvenile criminal responsibility was regulated by the Penal Code. Namely, in the Penal Code – general and special part of Chapter VI – which was related to general regulations for sanctioning juveniles, juveniles were considered all persons which in the moment of committing a crime were already 14 years old, until they reached 16, whereas older juveniles were juveniles which in the moment of committing a crime were already 16 years old and under the age of 18. In article 71 of the Penal Code, a child is every juvenile who in the moment of committing a crime was not 14 years old yet, whereas in article 82, in

the category of a young mature person is an adult person who in the moment of committing a crime wasn't 21 years old yet, which means a person between 18 and 21 years old. (Камбовски, 2008).

In the old Penal Code, the definition of categories that covered juveniles was double, namely, it acknowledged the "child" category as well as the "juvenile" category. However, because of harmonization with international regulations, the law-makers of the Republic of North Macedonia decided to use the term "child" and not "juvenile". In the Macedonian criminal law, in the new Law for Justice for children (Official Gazette of RM no.148/2013.), the term "juvenile" is left out, whereas the only term used is "child", in accordance with the example of the Convention for children's rights, i.e. a child is to be considered every person younger than the age of 18, except if through a law applied onto a specific child, the limit of maturity isn't moved to an earlier limit. (UNICEF, 2017).

With the purpose of differentiating various categories of children according to their age, their deeds, risk situations, possible sanctions, measures and punishments, terms of children, in the legislature of the RNM they are categorized in three groups:

#### **II.1.1- Children at risk**

Children at risk are all children who are between 7 years old and up to the age of 18, with physical or psychological disabilities, victims of violence, educational or socially endangered, in a situation when the parents or the carers are not able to fulfil the educational and schooling function, the ones who are not involved in the educational system, the ones who are involved in begging, vagrancy or prostitution, using drugs or other psychotropic substances and alcohol, as a result of those circumstances can make a contact with the law as a victim or a witness of a deed which is foreseen by law as an offence or a deed that is foreseen as a criminal deed. In the further division of children at risk, the law is foreseeing two other groups, as follows:

**a) Child at risk up to 14 years of age:** those are the children which at the moment committing a crime foreseen by the law as a criminal act, which is sanctioned through a financial fine or a prison sentence more than three years, or they committed an act which is foreseen by the law as an offence, and the child at the moment of committing the act were between the age of 7 and 14 years old.

**b) Children at risk from 14 to 18 years old;** any child which at the time committing an act foreseen by the law as a criminal act, which is sanctioned through a financial fine or prison up to three years, or an offence which is foreseen by law as a criminal act, while the child is between 14 and 18 years old.

#### **II.1.2- Categories of children with criminal liability**

**a) A child in conflict with the law of the age of 14 to 16:** is any child which at the moment committing a crime foreseen by the law as a criminal act which is sanctioned with prison for more than three years and was between 14 and 16 years old.

**b) A child in conflict with the law and older than 16 years:** is any child which at the moment committing a crime foreseen by the law as a criminal act which is sanctioned with prison for more than three years old and was between 16 and 18 years old.

### **II.1.3- Victim child**

A victim child is any child below the age of 18 and suffered damage, including physical and psychological damage, emotional suffering, material loss or any other violence or endangering of their rights or interests during a committed crime, foreseen by the law as a criminal act.

### **II.1.4- Young adult**

A young adult person is any person who at the moment committing a crime foreseen by the law as a criminal act, was between the age of 18 and 21.

The Law on Children Justice of the Republic of North Macedonia has a mild treatment towards persons of age between 18 and 21, as it offers a possibility to avoid trial, if during the trial the person was not 21, and based on that, those persons can be only trialled for serious crimes, however they would be sentenced under reinforced supervision or institutional and correctional measures (Наhev, 2018).

## **II.2 Juvenile delinquency**

A wide range of socially unacceptable behaviour of juveniles also determines the different definition of juvenile delinquency. It is characteristic to claim that the process of using different terms in relation to this phenomenon is heterogeneous, like juvenile delinquency, maladjusted young persons, youngsters with wrong behaviour, antisocial behaviour, juvenile crime and many other terms. Juvenile delinquency, as a form of social unacceptable behaviour, is an actual social negative phenomenon, which imposes the need for more involvement of the community for solving series of unsolved problems which are accumulating and deepening every year.

In the juridical terminology, juvenile delinquency represents a form of criminal behaviour committed by juveniles in the criminal and juridical meaning of the word. There are age limits that vary from one country to another, depending on series of actual conditions in some countries (social, economic, traditional, biological, climate etc.). Juvenile offenders of criminal acts and offences are persons who according to their biophysical development and causes of their delinquency differ from adults and they have to be treated through a special treatment. Their deeds are not a result of mature thinking and strong will for committing criminal offences, therefore the accountability and guilt are displayed in a special form, compared to adult offenders of the same offences. In short terms, a juvenile delinquent is an individual who is not an adult according to criminal law, however he committed a criminal offence punishable by law (Halili, 2008).

There are three approaches for defining of this term. In the short sense, this term covers only behaviours that are defined as criminal offences. This understanding, which in fact does not differ between criminal offences of adults and criminal offences of children, is prevailing in most European legislations and is also installed in our legislation, in the Law for children's rights. Whilst the wider understanding of juvenile delinquency, except the criminal offences, includes the behaviour which is the contrary of any other foreseen legal form and for which a criminal sanction can be determined. (Белкова, 2006). As far as the third and widest approach, this term is also widened to behaviours with the character of violating other regulations: offences, civil violations, as well as social and antisocial behaviours that are not defined as offences, but they mark a stagnation of the child's development or their

marginalization, and they require help and protection (drug addiction, alcohol, begging, skipping school etc.) (Камбовски, 2006).

### **III. INTERNATIONAL LEGAL PRINCIPLES FOR PREVENTION OF JUVENILE DELINQUENCY**

Prevention in one society represents the activities directed towards changes of social conditions which cause criminal behaviour of some family members (Hope, 1995). This is achieved through training of social institutions, like families, schools, age groups, associations and organizations for reduction of crime. Moreover, prevention in a society can represent a combination of a developmental and situational prevention and it includes programmes that are applied on the level of the whole community, respectively in those where the community is the focus of the intervention (Welsh, 2002).

The regulations of international conventions and agreements, at the time of their adoption and application, depending by their relevant conditions, become a constituent part of the domestic law and possess more power than any opposite regulation of law. Therefore, courts can directly apply the regulations of ratified conventions by calling upon the constitutional regulations.

The most important international standards for the field of juvenile delinquency are:

1. UN convention for children's rights (1989);
2. The Pact for civil and political rights (1966);
3. Minimal rules of the UN for application of juvenile judiciary (Beijing rules, 1985);
4. UN regulations for protection of juveniles in detention (JDL rules, 1990);
5. UN guidelines for prevention of juvenile delinquency (Riyadh guidelines, 1990);
6. Standard minimal UN regulations for alternative criminal sanctions (Tokyo rules, 1990)
7. Minimal UN regulations for protection of juveniles deprived of freedom from year 1990. (Havana rules);
8. Guidelines for treatment of children in the system of criminal judiciary from year 1997 (Vienna guidelines);
9. European convention for protection of basic human rights and freedoms, 1950;
10. European convention for application of children's rights, 1996;
11. Recommendation of the European Council on social reactions on juvenile delinquency, 1987. (CE R87 (20)
12. European regulations for social sanctions and measures, 1992. (CE 92(16))
13. Recommendation of the European Council on social reactions about juvenile delinquency from the aspect of persons from migrant families, 1988. (CE R (88)6)
14. Recommendation of the European Council on reconciliation in criminal deeds, 1999. (CE R (99)19)
15. Recommendation of the European Council on new manners of handling juvenile delinquency and the role of juvenile judiciary (Rec (2003)20);

16. Recommendation of the European Council on rules for juvenile offenders of criminal deeds that are liable to sanctions and measures (Rec (2008)11);
17. Guidelines of the European Council on judiciary adjusted for children (2010).

We are going to explain some of them here:

### **III.1 UN Convention on the Rights of the Child:**

In the UN Convention on the Rights of the Child, all human rights adopted for a special group of people (children) are included in one place, which represents a novelty in the international law which is being created under the umbrella of the United Nations. Thanks to that, the Convention surely became the most important international agreement on children's rights, and all other international agreements on human rights whose specific regulations are dedicated to children's rights are of a subsidiary nature. In one word, the UN Convention on the Rights of the Child today is the highest authority in the field on international children's rights. The UN Convention on the Rights of the Child treats in details the political, civil, economic, social and cultural rights from the children's perspective.

The UN Convention on the Rights of the Child is divided on the Preamble and three parts. The Preamble reminds of the basic principles of the United Nations and special regulations of determined and relevant instruments on human rights. It validates that children, due to their sensitivity, need special care and protection and here it highlights primarily the role of the family. In the Preamble, necessities of legal and other forms of children protection are reaffirmed, before and after their birth, the importance of respecting cultural values of the community from which the child emerges and the vital role of international cooperation on protection of children's rights. The signatory country has to do everything in its power to apply the rights embodied in the UN Convention on the Rights of the Child. The first part of the Convention contains a catalogue of rights adopted for children, but also some regulations through which the signatory countries are obliged to take all measures to apply the rights of the Convention and respecting the highest standards in this field, on international and also on national level. The second part of the Convention contains regulations through which obligations of signatory countries were developed further and they regulate the establishment and functioning of a special supervisory body – the Committee for the Rights of the Child. The third part of the Convention regulates the issues of signing, ratification, accession, entry into force, putting reserves, changes, cancellations and deposition of this agreement.

From the aspect of juvenile criminal law, the regulations of the UN Convention for children's rights are especially important for the juvenile judiciary, which we find in articles 37, 39 and 40 of the Convention. In this manner, in article 37 (a) of the Convention, it is obliged to parties, respectively countries signatories of the Convention to ensure that:

- no child will be a subject to torture or any other form of cruel, inhumane or humiliation acting or punishment;
- it will forbid the application of a death penalty or a life sentence without the possibility of release;
- no child will be detained arbitrarily or against the law, respectively its freedom mustn't be taken away;
- all detainment in prison, arrest and imprisonment of a child must be done in accordance with the law and it should be applied only as a last possible measure, respectively mean, and if it is

done, it should last in the shortest time and appropriate possible manner (article 37. (b) of the Convention);

- it will act in a humane manner with every child whose freedom is taken away, through respecting its' dignity which is acquired by birth for every human being and in a manner which is appropriate with the needs of persons of their age;
- every detained child will be kept separated from adults, except if a different decision is made because of the wellbeing of the child and his interests, and that the detained child will have the right to maintain contacts with his family through writing and visits, except in states of emergency;
- every detained child will have the right of an immediate access to legal and any other appropriate help, as well as the right for the child to decline the lawfulness of detention in front of a court or any other relevant, independent and unbiased organs, respectively the right to complain on the decision for detainment, as well as the right for a quick decision in every similar procedure.

On the other hand, the rights that should be respected throughout all phases of a criminal procedure, because they are the key elements for a fair and just trial, are installed in article 40 of the UN Convention for children's rights, the Beijing rules (see rule 7) and other international documents, in the regards of:

- the right of the child to be told why it is accused;
- the right to remain silent (to defend itself by remaining silent);
- the right to consider himself innocent (presumption of innocence);
- the right not to be coerced to confession by force;
- the right of legal help in preparation for the court procedure;
- the right of presence of parents of carers;
- the right of efficient legal cure;
- the right of conduction of a procedure "without postponement";
- the right of cross examination of witnesses from the other party and bringing and listening to own witnesses under same circumstances.

The UN Convention for the Rights of the Child, in article 40 (3), also obliges the signatory countries to adopt a law and establish procedures and institutions that will act in cases of children which clash with the law, and it obliges them to establish programmes of court procedures (so-called diversion procedures), as well as alternatives of institutional treatment of juveniles with the aim of their protection and wellbeing.

### **III.2 Standard minimal rules of the United Nations for juvenile judiciary**

Minimal rules of the United Nations for juvenile judiciary, better known as the Beijing rules, were adopted by the General Assembly of the UN, through a Resolution number 40/33, on the 29<sup>th</sup> of November 1985. They are the first rules adopted with the aim of protection rights and needs of children who are in conflict with the law, and these rules are offering signatory countries the guidelines needed for protection of children's rights and respecting their needs in the development process of special and specialized systems of judiciaries for juvenile committers of juvenile offences. Beijing rules consist of general guidelines upon which



judiciaries should be run from the moment of the detention of the child until they leave detention. Beijing rules act within the frames which, besides them, imply two other sets of rules adopted in 1990 and they administrate the judiciary system for juvenile offenders of criminal offences. Of course, it's about the Rules of the United Nations on protection of juveniles in detention (so-called Havana rules or JDL rules) and the Regulations of the United Nations for prevention of juvenile delinquency (so-called Riyadh regulations). These three sets can be observed as guidelines for a three-level process: first, social policies to refer to prevention and protection of young people from doing criminal deeds and offences (Riyadh guidelines); second, establishment of a progressive judiciary system for juveniles who are in clash with the law (Beijing rules); and finally, protection of basic rights and establishment of measures for social integration of juveniles once they are held in detention, through imprisonment or any other closed institution.

Beijing rules are aiming to secure application of basic principles in the future development of juvenile judiciary of some member countries, as follows:

- Righteous and humane treatment of juveniles who are in clash with the law. Member countries should strive and promote wellbeing of juveniles and their families, as well as achieve proportional reactions of authorized officials on the nature of offenders and the nature of the offence.
- Application of diverting (deviation diversion program), starting from the formal hearing, up to appropriate community programmes through which approval of juveniles is being encouraged.

### **III.3 United Nations Rules for protection of juveniles in detention**

United Nations regulations for protection of juveniles in detention (from unfounded detention) – so-called Havana rules from year 1990 – United Nations Rules for the Protection of Juveniles Deprived of their Liberty – La Habana Rules, 1990, was adopted by the UN General Assembly, through a resolution number 45/113, on the 14<sup>th</sup> of December 1990.

Under the umbrella of the United Nations, during year 1990, and especially after the adoption of the United Nation's Convention on children's rights in year 1989, three other documents were brought in, as follows:

- United Nation's rules on protection of juveniles in detention (so-called Havana rules),
- United Nation's Regulations on prevention of juvenile delinquency (so-called Riyadh guidelines), and,
- Standard minimal rules of the United Nations for alternative measures of the institutional treatment (so-called Tokyo rules).

These three international documents, in a certain way, are fulfilling the previously adopted Beijing rules. They also serve as means for interpretation and implementation of the United Nation Convention on the Rights of the Child, and along with the Guidelines for proceeding with juveniles in the system of criminal judiciary and the model of law on juvenile judiciary represents a great guidance upon which national judiciaries should move in direction of juvenile delinquency. United Nation's rules on protection of juveniles in detention, although they are not obligatory to member countries, represent the most complete and most constructive sets of minimal standards, rights and procedures upon which one should act in all child-related cases, respectively juveniles held in detention. However, although these Rules themselves are in the form of non-obligatory recommendations, some of them became

obligatory through flawless incorporation into national laws. They also are, in a manner, elaboration of basic principles that are present in the UN Convention on children's rights.

### **III.4 United Nation's Guidelines for prevention of juvenile delinquency**

The United nation's Guidelines for prevention of juvenile delinquency – so called Riyadh Guidelines from year 1990 – The United Nations Guidelines for the Prevention of Juvenile Delinquency - The Riyadh Guidelines, 1990, were adopted by UN General Assembly, through a Resolution number 45/112, on the 14<sup>th</sup> of December year 1990. The UN Guidelines for prevention of juvenile delinquency, also known as Riyadh Guidelines are named according to the important international expert meeting, held in year 1988 in the capital of Saudi Arabia, with the aim of making a draft text of this document. Riyadh Guidelines from year 1990 represent an integral, non-obliging document for signatory countries, which treats issues of crime prevention in the field of juvenile judiciary. Riyadh Guidelines are “based on the assumption that country members will efficiently decrease the number of children who are in clash with the law, by strengthening and improving auxiliary systems and life quality (social welfare and wellbeing) of children during their early childhood and during the period of adolescence”. The Guidelines, first and foremost, discover a positive, proactive approach towards prevention and maybe, just because of that reason, are very comprehensible. Also, the Guidelines certainly express the growing conscience about children as complete human beings, an attitude that was far from the dominating attitude in the western orientated countries during XIX century, but which is obvious in the new regulations, like the United Nation's Convention on children's rights (year 1989). According to Riyadh Guidelines, governments of signatory countries were obliged to adopt various and comprehensive plans for prevention, where all segments of society, family, community, school and professional and similar institutions would be involved.

Riyadh Guidelines carry a special importance in the sector of education and social work and they consist of 66 principles, divided into seven chapters:

- Basic principles,
- Scope of regulations,
- General prevention,
- Processes of socialization,
- Social policies,
- Legislature and juvenile judiciary and
- Research, development policies and cooperation.

## **IV. JUVENILE DELINQUENCY AND LEGISLATIVE REGULATIONS AND PRACTICE IN THE REPUBLIC OF NORTH MACEDONIA**

Modern trends in dealing with juveniles are governed by regulations included in international instruments for juvenile justice, according to which a formal component of wider access to delinquency and crime should be understood and created. In the system of juvenile judiciary in RNM, besides courts for juveniles, the police, prosecutors, probation services and penitentiary institutions are included. In correlation with the international frame of legal regulations, in recent years changes have been made within the laws in the above-mentioned institutions, and simultaneously the system of juvenile justice has been brought into a close

connection with the governing authorities in the field of health and education, social services and non-governmental organizations who offer help and support to victims.

In years 2004/2005, a multidisciplinary team of internal experts carried a superior research about the efficiency of measures taken against children at risk in the Republic of North Macedonia. Implementation of this project resulted with verification of the situation in the Republic of North Macedonia, in the sense of factors that determine the punishment reaction of juvenile delinquency, as well as the manners for its prevention through an analysis of the criminal status of children in Macedonia through the penal legislation. (Арнаудовски,2005).

The conducted research confirmed the necessity of codification of the juvenile penal law and adoption of a Law on Children Justice, which represents a complete set of general regulations about the content, aims and basic principles, as well as treatment of children at risk, penal and material regulations, and compartment on application of children's sanctions, regulations for protection of children – victims of crime and prevention of juvenile delinquency. This law represents the juvenile penal law in RNM closest to the modern legislature, which for the first time brought the behaviour of the children offenders in a direct connection with the factors of etiological nature for this type of a criminal offense.

Bearing in mind the acting of all bodies involved in children treatment (police, social authorities, public prosecutors, courts, executive agencies and sanctions against children), the law is subordinated to the request for removal of factors which cause criminal behaviour of children.

Within all those activities that are in the middle of the important concept for fighting and preventing juvenile criminal, the state itself is involved, which is the highest and most responsible body for protection of guaranteed children's rights and freedoms. (Selim, 2017)

#### **IV.1 General rules of the Law on Children Justice, regarding sanctions against children**

Categorization of children in different groups, dependable on their age, and then followed by seriousness of the criminal offence and sanctions for it, as well as the psychological and physical state of the child, its maturity and ability of understanding consequences of his own deeds, is a base for a different penal and legal status of children. Dependable on that categorization, in the system of children judiciary there are various types of sanctions foresee, dependable on various age categories and the weight of the crime committed.

As far as the children that can be sanctioned, the Law of justice towards children consists of the following specifications:

- Only a child of the age 14 to 16 years old can be prosecuted for an offense foreseen by the law as a criminal offence;
- A child of the age 16 to 18 can be prosecuted for deeds foreseen by the law as offences, and they can be punished or alternatively sentenced;
- A child of the age 16 to 18 years old can be released from a sentence under the general conditions set by the Penal Code;
- A child can be sentenced with penal sanctions in accordance with the Law of justice towards children for an offence foreseen by the law;
- A child can be given safety measures in accordance with the Penal Code and the Law of justice towards children;

- Confiscation of property, property interest and items gained with acts foreseen by the law as penal and criminal offences for children, is done in accordance with the general conditions set by the Penal Code. (Нанев, Кошевалиска, 2018).

When deciding about application of sanctions and measures, initially, priority has to be given to prevention, protection and education measures. The measure or sanction applied on a child older than 14 years of age must be compatible to his personality, seriousness of the deed foreseen by law as criminal deed or an offense and its consequences, the need for his education and development with the aim of providing and protecting interests that are best for the child.

In the Macedonian penal legislator concerning children, there is a strong tendency to minimize imposing sanctions to children, i.e. imposing punishments to children is seen as the last resort followed by using all previous means which are basically of restorative nature, that is, they are preventive and not repressive. The main purpose of correctional measures, punishments, alternative measures and infringement sanctions is offering protection and help to children through supervision, training and development of their personal responsibility to ensure their education and appropriate development. Hence, the system of sanctions itself is highly preventive, unlike the system of sanctions for adults which is repressive itself. Therefore, when legal conditions are fulfilled, the competent court issues a penalty only if issuing educational or alternative measures are not justified.

All measures taken against children that committed a criminal offence should contribute towards the improvement of the children's respect towards social values. That should be followed by encouraging compensation of the damage made to the victims and the community. Sanctions should be relevant for a particular child, by taking into consideration his needs and his level of development. Whenever possible, in the process of rehabilitation and reintegration of the child, parents, relatives, communities, social and other types of institutions should also be involved. One of the basic principles is that the criminal sanction has to be proportional to the seriousness of the deed and the level of criminal responsibility of the child, where the court has to take into consideration the factors related to the damage done to the victims, the weight of the deed, before the sentence, as well as all mitigation and aggravating circumstances related to the child or the offense and they are relevant for the specified case (See: Прирачник за Правда за децата, UNICEF, 2014).

## **IV.2. Types of sanctions against children**

### **a) Correctional measures**

Correctional measures are punishment legal measures which consist of protection, help, supervision, professional improvement and development of the child's personal responsibility, and they are directed towards their education, re-education and proper development. It's about sanctions regulated strictly by the idea of prevention. (Камбовски, 2006)

Correctional measures that can be imposed are the following:

- Reprimand or referral to a child centre;
- Intensified supervision by the parents or carers;
- Intensified supervision by the foster family;
- Intensified supervision by the Centre for social work.

Institutional measures are referral to a correctional institution or a correctional facility.

**b) Measures of intensified supervision**

Intensified measures of supervision are applied to the child when there is a need for constant correctional measures, re-education or a treatment with an appropriate supervision, and there is no need for full segregation from the environment where they live, study and work. The following measures can be introduced as measures of intensified supervision upon the child:

- Intensified supervision by the parent or the carer;
- Intensified supervision by the foster family, or
- Intensified supervision by the Centre for social work.

**c) Institutional measures**

Institutional measures are obliged upon the child when there is a need for constant measures of correction, re-education or treatment and their complete environment. These measures mustn't last for more than five years and they can last maximum until the person reaches 23 years of age.

Institutional measures that can be introduced upon the child include:

- Referral to a correctional institution and
- Referral to a correctional facility.

**d) Alternative measures**

Under the influence of international documents that promote measures which are not directed towards institutional treatment; however, they imply introduction of obligations or prohibitions without deprivation from liberty, the Macedonian law-maker decided to adopt some alternative measures. The alternative measures are a part of the Penal Code for almost a decade and some of them can be applied to children. The following alternatives can be introduced to a criminally responsible child older than 16 years of age, for a criminal offense foreseen by the law as such:

- Probation with protection supervision,
- Probation discontinuance of the procedure against the child, and
- Community service.

**e) Safety measures**

In certain circumstances, depending on the characteristics of the child, an appropriate medical treatment and intervention should be introduced. Safety measures are regulated by the Penal Code, and the Law for justice towards children contains only certain specifications in relation to children. The aim of safety measures is removal of situations or circumstances that could influence on children to commit a crime in the future. From the safety measures foreseen by the Penal Code, the next three types of measures upon children can be recognized:

- Obligatory psychiatric treatment and intervention in a health institution,
- Obligatory psychiatric treatment out of prison,
- Obligatory treatment of children with addictions.

After the safety measure is implemented, the court will decide whether it will continue the imprisonment or institutional punishment for the children.

**d) Punishments for children**

Starting from the determination of the Law of justice towards children always to give priority to prevention, protection and educational measures, punishments are considered as the hardest sanctioning answer to the hardest forms of crime. The punishment can be introduced to a child older than 16 years of age, if some serious consequences of the criminal offence

and high criminal responsibility don't justify the correctional measure. Under the conditions from the Law of justice towards children, a child that is in clash with the law and older than 16 years of age can be sentenced to one of the following punishments:

- Imprisonment for children,
- Financial fine,
- Ban for operating a motor vehicle of a certain type or category, and
- Deportation of a foreigner from the country.

Imprisonment for a child can be determined only as a main punishment for a child which is criminally responsible, older than 16 years, which did a deed foreseen by the law as a criminal offense for which a prison sentence longer than 5 years is issued or a harder punishment if the deed is done under special aggravating circumstances and with a high level of criminal responsibility for the offender, and those circumstances don't justify the introduction of the correctional measure (Zejneli, 2008).

Financial fine is by rule the main punishment, except for the deeds of self-interest, where the financial fine can also be introduced as an auxiliary punishment, along with the punishment of taking into custody of the child, or a probation sentence with protection supervision.

Ban for operating a motor vehicle can also be introduced as the main punishment, but also as an auxiliary punishment along with a financial fine under circumstances foreseen in article 38 of the Penal Code.

Deportation of a foreigner from the country can be introduced as the main punishment, but also as an auxiliary punishment, along with a financial fine, under circumstances foreseen in article 38 of the Penal Code. (Нанев, Кошевалиска, 2018)

## V. CONCLUSION

The policy of treatment of juvenile offenders of criminal offenses represents a complex problem and that is why a necessity to introduce changes in the existing practice is on-going. A reform of the institutional treatment of juveniles having issues with the law, application of a new conceptual frame, opportunities for affirmation of new forms and shapes, and especially the possibility for realization of new efforts in practice are rightfully the subject of interest of the scientific and professional public. Following contemporary tendencies and international legal standards in the field of juvenile judiciary, Republic of North Macedonia adopted a Law on Children Justice, which surely represents a significant reform in the field of juvenile criminal law. According to duty obliged by law, it applied organization and realization of professional training of officials who are working on juvenile delinquency and criminal protection of children, respectively education of police officers, social workers, mediators, advocates and penitentiaries' employees, in the direction of their education, respectively specialization for dealing with juvenile delinquents, as well as dealing with children and minors, in cases when they appear in the role of victims or witnesses in a criminal procedure.

The UN Convention contributed to the Republic of North Macedonia to strengthen cooperation between all bodies involved in child treatment (police, social work centres, government prosecutors, courts, bodies for implementation of correctional measures and sanctions upon children). When it comes to protocols on the above mentioned Convention, as well as the Beijing rules, first of all it was an opportunity to divert procedures from informal to formal-legal procedures. The rules of Havana and Riyadh allow children to enjoy their

rights in procedures even when they are deprived of their freedom. Namely, institutions where they are placed should serve their needs, offering them to be in contact with the outside world and at the same time provide a great cooperation between the authorities for improvement of their position.

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