

Protection of Children at Risk in the System of Justice for Children in the Republic of Macedonia

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Abstract

In the last fifteen years, the Republic of Macedonia conducts thorough reforms in the system of justice for children. Since 2003, intensive efforts have been made in the process of establishment of a legal and institutional framework for protection of children at risk and children in conflict with the law. In this regards, the legislative changes were made in accordance with the Convention on the Rights of the Child and other international standards and principles. The new system is based on three elements (criminal law, civil law, and system of services and protection). The goal is not only to introduce certain principles for the development of justice for children, but to perform constant holistic re-evaluation of the programs for children at risk and children perpetrators of criminal acts. The focus is put on strengthening the relevant institutions as independent administrative units with a multidisciplinary approach in encountering with the complex problem of juvenile delinquency. In that term, precise procedures are instituted, with clearly divided roles of the actors, demanding specialization of the professionals involved in child treatment. Yet, the implementation of the legal framework faces certain obstacles as a result of lack of political will, structural and systematic reasons. The basic goals and principles such as restorative justice, mediation, alternative measures and procedural rights are still non-achieved. The execution of sanctions remains to be most serious problems within the system of child justice. In this context, there are poor infrastructural capacities, insufficient human resources as well as absence of employed effective methods and techniques in the treatment of children.

Keywords: Justice for children, children under risk, assistance, support, protection.

Introduction

The Law on Juvenile Justice was adopted in the Republic of Macedonia in 2007, and it entered into force in June 2009. In 2013 the parliament passed the Law on Justice of Children which stipulates the treatment and handling of children at risk and children perpetrators of actions which the law considers as crimes or offenses. The same Law defines the conditions for application of measures for provision of assistance, care and protection, and educational and alternative measures and punishment of children and younger persons at legal age. This law also stipulates measures for protection of children who are victims of actions which are considered as crimes, as well as measures for protection of children who are witnesses and measures for prevention of child delinquency.

The main objectives of this Law and its application is to achieve the priority interest and protection of the children from

crimes, violence and any other form of threat to their freedoms and rights and their normal development, protection of children perpetrators of actions that are considered by this law as crimes or violations and prevention of repetition of such actions, socialization of the children, education and re-education, assistance and care for the children and protection of the children in criminal proceedings and in front of other bodies and protection of the freedoms and rights of the children guaranteed with the Constitution of the Republic of Macedonia, and the Convention on the rights of the child and other international treaties on the protection of the well-being of the children, that have been ratified in compliance with the Constitution of the Republic of Macedonia.

The new model for of justice for children is part of the overall reform of the Criminal Code of the Republic of Macedonia and it is based on experiences and good practices of developed countries in developing the legislation on juvenile justice. The basic characteristic is the clear intention of the legislator to create a system which is based on the principles of restorative justice, primarily through enhancement of the principle of provision of opportunities in the criminal prosecution, by increasing the number of alternative sanctions and introducing and regulating possibilities for advocacy and mediation. This is expected to result with development of a system which will place the child and its needs in the centre. The system is based on three fundamental elements (criminal code and juvenile justice as part of the criminal code and the provision of social services as part of the social, namely the civil law) with focus on the specific rules for treatment of children who are perpetrators of crimes, and constant holistic re-evaluation of the programmes for children at risk and children in conflict with the law. The new legislation contains provisions for protection of juvenile victims of crimes, namely protection of juveniles as affected persons or witnesses in criminal proceeding and it also contains regulations for prevention of juvenile delinquency (Dimitrijoska, Bogoevska, 2011).

The juvenile justice system foresees specialization in procedures with juveniles, perpetrators of crimes in a way that would be adequate to their age and physical and mental maturity. Therefore, the system of responsible institutions is enhanced in order that the responsible bodies would have clearly defined roles and responsibilities in proceeding and handling children in the process of execution of the educational and alternative measures and punishments. All involved actors are independent administrative units which aim to have joint and well-coordinated action, having in mind the complex nature of the problem and the need for multidisciplinary approach.

1. Child at risk and application of measures for assistance and protection

The new legislation defines the child at risk as any child which is above the age of 7 but below the age of 18 with physical impairment or mental impairment, victim of violence, educationally and socially neglected, that is in a situation which makes it difficult or impossible to enjoy the educational function of the parents or parent /guardians or guardian, which is not included in the education system, child involved in begging, prostitution or street child, or child on drugs or other psychotropic substances and precursors or alcohol, which may come in contact with the law due to such circumstances as a victim or witness of action which is legally considered as offense, crime or violation.

In this regard, difference is made between a child at risk that is below the age of 14, namely a child that at the time of the action which is legally considered as crime which requires payment of fine or prison sentence over 3 years, is over the age of 7 but below the age of 14, and a child at risk at the age between 14 and 18, who at the time of the action which is legally considered as crime which requires payment of fine or prison sentence up to 3 years is over the age of 14 but below the age of 18.

Sanction may not be imposed on a child below the age of 14 at the time of the action which is legally considered as crime or violation. Measures for assistance and protection for a child at risk are implemented when the centre for social work appraises that the situation of risk has significant impact on the development of the personality and proper education of the child. The measures for assistance and protection do not mean taking away or limitation of the freedoms and rights of the children due to the committed action which is legally considered as crime or violation or situation of risk, that may be imposed on the child, parents/parent, namely guardians/guardian, by the court or other bodies determined by the law. Measures may be imposed on family members if they have neglected or misused the execution of their rights or duties in terms of protection of the personality and the rights and interests of the child. These are measures stipulated by law in the area of education, health protection, social protection, family and other forms of protection.

2. Procedure for a child at risk

The procedure for treatment and handling children and juveniles at risk is featured by several characteristics: (1) avoiding formal court proceeding; (2) flexibility and discretion of relevant organs in determination of measures for assistance and protection for each individual case; (3) respect of the principle of urgency in the procedure by establishing strict legal deadlines for undertaking the required actions; (4) respecting the privacy of the child and the family.

The Centre for social work plays a key role in the overall process for handling and treatment of children and juveniles at risk. Special departments and expert teams for juveniles are formed in the Centre for social work and they are obliged to attend national or international specialized trainings for juvenile delinquency which last at least five days in one calendar year.

The specific nature of the work with children at risk requires multidisciplinary action, namely efforts of team of experts comprised of pedagogue, social worker, psychologist and legal advisor. The expert teams develops a plan with measures and activities for individual work with the child and the parents/or/parent, namely the guardians/or/guardian and informs the parents, or the guardian with the developed programme, in order to ensure their active participation in the process of implementation of the measures for assistance and protection and in the same time it emphasizes the possible consequences if they do not cooperate with the Center for social work.

The following innovations are expected to enable significant impact on the improvement of the handling of these categories of children, for ensuring the protection of their basic rights:

Compulsory engagement of a lawyer: In cases when the action of the child at risk below the age of 14 is considered as crime in compliance with the law and when imprisonment of at least 5 years is required or in cases when the rights and interests and personality of the child are endangered, there is obligation to make the discussion in presence of a lawyer who is responsible to protect the rights and interest of the child. The presence of the lawyer is also compulsory in case when the public prosecutor proposes measures for a child at risk above the age of 14, for action considered as crime which means penalty of up to 3 years in prison, if the centre believes that the rights and interests and the personality of the child are endangered, if in the expert team there isn't a legal person. The parents/or/parent, namely the guardians/or/guardian of the child select a lawyer, and if they don't do that, the Centre is obliged to select a lawyer, from the list of lawyers provided by the Lawyer's Chamber of the Republic of Macedonia. The expenses for legal assistance are covered by the parents/or/parent, namely the guardians/or/guardian of the child, and in cases when they cannot cover the expenses, they are paid from the Budget of the Republic of Macedonia in compliance with the provisions of the Law on free of charge legal assistance.

Obligation for participation of the family: the expert team meets the parents/or/parent, namely the guardians/or/guardian at least once a month. If the family or guardian do not implement the programme of the Centre, within a period of seven days from determination of such circumstance, the Center notifies the responsible judge for the child who within a period of 3 days must pass a decision for implementation of the measures contained in the plan, with appropriate guidelines for further actions by the Centre. The decision of the judge for the child may be also passed on a proposal of the lawyer of the child at risk, or on a proposal of the parents/or/parent, namely the guardians/or/guardian of the child. If the parents/or/parent, namely the guardians/or/guardian do not undertake actions according to the decision of the court, the court will notify the public prosecutor for undertaking further action. If the measures defined in the individual plan of the Centre cannot be implemented due to non-availability of the child or his/her parents/or/parent, namely the guardians/or/guardian, the Center notifies the public prosecutor and the Ministry of Internal Affairs.

Introduction of procedure for mediation: If the action of the child, which is considered as crime or violation in compliance with the law, resulted with gained property or caused damage to others, the Centre mediates between the child at risk and his/her parents/or/parent, namely the guardians/or/guardian and the person that suffered specific damage in order to enable mutual conciliation and promise that such action would not be repeated and that property loss or damage would be reimbursed or compensated. The conciliation procedure may not last more than 30 days after passing the decision for initiation of conciliation procedure. The parties sign agreement which has meaning of out-of-court payment of the debt. If the mediation does not end up successfully, within 30 days from the day when the mediation was concluded as unsuccessful, the damaged party may file proposal for initiation of procedure for confiscation of property from the person that took the property or had property benefit in order to claim damage

refund.

The assessment of the child at risk and his/her needs is the base for the development of the Individual plan for treatment of the child at risk. The assessment of each child is comprised of two types of assessment:

- Individual assessment which is focused on the factors that are directly linked with the child—physical, cognitive and emotional functioning of the child; and
- Situational assessment which is focused on specific situations in the environment of the child. The assessment is conducted with close participation of the child, his/her parents and the expert team from the Centre.

As soon as the assessment of the needs is conducted, the next step is the development of the Individual plan for treatment of the child at risk depending on the required services and having in mind the needs and strengths of the child and his/her family.

The individual plan for the work with the child contains the planned objectives, the required measures and activities that need to be imposed and implemented in order to ensure appropriate assistance and support for the child and his/her family, the implementing persons/bodies, time frame for implementation of the plan and the expected results. In the process of the development of the individual plan for work with the child, the members of the expert team cooperate with the child and the members of his/her family and with other persons and institutions if required.

The time frame of the Individual Plan is minimum one year with possibility for continuation of activities in compliance with the individual needs, having in mind the physical, psychological, psychiatric, legal and social needs of the child at risk.

The measures for assistance and protection for the child at risk are determined by laws in the area of housing, social protection, laws in the area of education, family and other forms of protection.

The measure for provision of **housing** for the family, namely for the child at risk is, implemented if the family/child does not have appropriate space for living. Housing may be temporarily provided, but lasting solution is also possible in order to ensure premises for living for the child. The support may be also in form of provision of appropriate domestic appliances. If the family does not have appropriate premises for living, the child may be temporarily sheltered in foster family or social institution.

The measures and activities, and the rights and services within the area of social protection that are applied for protection of children and their families are as follows: non-institutional protection¹ and right to financial assistance².

*Non-institutional protection*³ for children at risk is as follows: first social service and individual assistance for the child, assistance to the family of the child, daily and temporary shelter and placement of the child at risk in a foster family.

The first social service for the child at risk enables determination of the risk, and provision of assistance for finding possible solutions, services, means and modalities for protection and detection of institutions that might offer the required services for the child.

The individual assistance for the child is done through his/her motivation to participate in the support process provided on continuous basis by the Centre for Social Work. The individual assistance is ensured through expert, advisory and counseling work in order to enhance the capacities and to use the available potentials of the child.

The assistance to the family is provided with expert, advisory and counseling work in order to enhance the capacities and potentials of the family of the child in order to initiate a positive change in attitude, valuation and behavior among the family members and the child. The parents are trained to use skills for coping with the behavior of the child, through the establishment of support system. The treatment sessions enable change in the attitude and mutual relations and communication in a way that enables adaptable functioning of the family and more successful inclusion in the community life.

¹Law on social protection "Official Gazette of the Republic of Macedonia" No. 79/2009 (Fair Copy) No. 148/2013, Article 20, Article 85-87.

²Law on social protection "Official Gazette of the Republic of Macedonia" No. 79/2009 (Fair Copy) No. 148/2013, Article 47.

³Law on social protection "Official Gazette of the Republic of Macedonia" No. 79/2009 (Fair Copy) No. 148/2013, Article 26.

The financial assistance for the family with child at risk may be provided depending on the material situation of the family and the employment ability and capacity of the parents of the child. This assistance may be in form of regular financial assistance, one-off financial assistance, assistance in kind and social financial assistance.

In the area of child protection the parent/guardian may become entitled to child benefit as well as right to special benefit. The material support is provided also in form of employment or self-employment for the family members of the child at risk.

The child at risk is usually without education or with low education status or the child has terminated the education process. The successful social integration may be achieved with active involvement of the child in the education process depending on the age, education status and the abilities and competencies of the child. The child is provided with education which is compulsory for the child, such as primary or secondary education, depending on the age of the child. The child at risk prepares to get involved in the education process or starts or continues the interrupted education process.

The legislation¹ that deals with educational issues in this area is as follows: Law on primary education², Law on secondary education³ and Law on textbooks for primary and secondary education⁴. The Law on professional education and training⁵ regulates the professional education and training as part of the education system. Article 34 states that professional training is available to pupils that have completed primary education and for those that haven't completed primary education, but have the obligation to complete primary education in parallel with the professional training. The Family Law⁶ states that the guardian of the child is responsible to undertake appropriate measures for continuation of the education of the child.

Support for the child at risk in *organizing and spending the free time* with involvement of all available resources, for ensuring free expression of interests of the child at risk and his/her family.

The access to educational services is ensured through the following measures: provision of information for enrolment/finalization of the formal education for the children that have incomplete primary and secondary education, professional training, access to free of charge textbooks⁷ for pupils in primary schools and high-school students, and free of charge transport for pupils/students that live over 2,5 km from the school.

The psychological-pedagogical service of the school is obliged to be continuously involved in the provision of support for the child.

The associations of citizens provide the required documentation for enrolment / finalization of the education (primary and secondary education) and may financially cover the expenses for schooling and school materials for children at risk through appropriate project activities.

The Law on labor relations⁸ enables employment of children above the age of 15 who have completed the compulsory education⁹.

The evaluation of the Individual plan for treatment of the child at risk is implemented for the following purposes:

¹ In compliance with the law, everybody is entitled to education without any discrimination on any grounds.

² Law on primary education, "Official Gazette of the Republic of Macedonia" No.103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 6/2012, 100/2012 и 24/2013.

³ Law on secondary education, "Official Gazette of the Republic of Macedonia" No.44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 81/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 6/2012 и 24/2013.

⁴ Law on textbooks for primary and secondary education, "Official Gazette of the Republic of Macedonia" No.98/2008;99/2009,83/2010,36/2011,135/2011,46/2012,24/2013 and 120/2013.

⁵ Law on professional education and training, "Official Gazette of the Republic of Macedonia" No. 24/2013.

⁶ Family Law, "Official Gazette of the Republic of Macedonia" No. 84/2008, Article 177-d .

⁷ Law on textbooks for primary and secondary education, "Official Gazette of the Republic of Macedonia" No.98/2008;99/2009, Programme „We Care“ 2.2 Free of charge textbooks for primary and secondary education. www.segrizime.gov.mk

⁸ Law on labor relations, "Official Gazette of the Republic of Macedonia" No. 54/2013 (Fair Copy) Chapter 13 Articles 172-176.

⁹ Law on labor relations, "Official Gazette of the Republic of Macedonia" No. 54/2013 (Fair Copy) The working time may not last longer than four hours a day. Night work is forbidden, as well as difficult physical work and other work which might have serious impact on the health of the child. The employer is obliged to ensure the protection for children, victims of economic exploitation and to prevent them to do any work which might have harmful effect on their safety, health, physical, mental, moral and social development or which can affect their education".

- to assess the accomplishment of the objectives with the implementation of the foreseen activities;
- to identify problems in the process of implementation of activities;
- to put forward proposals for improvement of the Individual Plan in compliance with the defined needs and conditions.

Internal and external resources are used for conducting the evaluation. The permanent internal evaluation¹ conducted by the institution that provides services for the child, regularly assesses and evaluates the Individual Plan for treatment and when required it reviews and adapts the assistance and procedures according to the needs of the child at risk.

In compliance with the Law on Social Protection, the Institute for Social Work, is responsible for oversight of the expert work and the employees of the centres for social work, in order to ensure monitoring, control, insight and promotion of the quality of the expert work and the efficiency in accomplishing the fundamental functions and roles of the institutions for social protection.² The institute also puts forward relevant proposals for additional technical and educational enhancement of the capacities of the institutions for work with children.

It is realistic to propose external evaluation of the Programme for assistance and support in reintegration of children, in order to achieve impartiality in the process of evaluation of the procedures for support in all areas in order to come up with appropriate recommendations for further improvement of the Programme which remains an open document for amendments and additions according to the needs.

Concluding remarks

The integral part of the current reform of the juvenile justice system in the Republic of Macedonia represents development and implementation of the rights of the children in the justice system in compliance with the Convention on the rights of the child.

The new model of justice is developed in direction of:

- Specialized system separated from the criminal legislation which places the child and its needs in the very centre;
- System which promotes the concept of restorative justice instead of re-distributive justice with application of diversified measures;
- System which incorporates a holistic approach which involves perpetrators of crimes and children at risk;
- System based on application of protective measures and avoidance of unnecessary criminalization of the child;
- Respecting the best interest of the child, and the principles of non-discrimination, participation and the right to life and development.

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² Law on Social Protection, “Official Gazette of RM” No. 79/2009, (Fair Copy), Article 249.

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