MEASURES FOR PROVIDING THE PRESENCE OF JUVENILE DEFENDANTS DURING CRIMINAL TRIALS

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Abstract

With the enactment of the new Law on Justice for Children Republic of Macedonia its commitments to organize the juvenile criminal justice legislation upon the basic principles of the restorative justice has been demonstrated. The new Law on Justice for Children encompasses both substantial and procedural aspects of the restorative justice for the children - perpetrators of the crime. This new Law is successor of the previous Law on Juvenile Justice and it can be considered as an upgraded and improved version, considering the milieu of the ongoing overall criminal justice system reform in Republic of Macedonia. The author analyses the theoretical background for justification of the measures for providing the presence of the defendants during the criminal trials considering the principles of the restorative justice. Elaboration of the legal provisions and analysis of the practical implementation of these measures is also performed within this text, concluding with practical suggestions for improvement of the implementation of these measures within the criminal trials against child offenders in Republic of Macedonia.

***Key words*:** Law on Justice for Children, restorative justice, juvenile detention

I. Introduction

Trough the codification of its national juvenile justice legislation, Republic of Macedonia has joined the states which have adopted the restorative justice as a leading principle for prevention of the juvenile crime. Furthermore, by undertaking these codifying aspects of its national legislation Republic of Macedonia has in large extent harmonized it with the leading international documents regulating this sphere.

These restorative justice concepts and ideas are particularly feasible within the provisions of the New Law on Justice for Children[1] (further in the text - LJC), adopted in the late 2013. However, this new LJC, cannot be considered as an entirely new and revolutionary one, despite its new name, since it is considered as advanced and improved version to its predecessor - Law on Juvenile Justice (further in the text - LJJ)[2]. The LJJ provisions several years ago have paved the road towards the introduction and implementation of the restorative justice concept in

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[1] Official Gazette of Republic of Macedonia, No.148/2013 г. of 29.10.2013.

[2] Official Gazette of Republic of Macedonia, No.87/2007 г. of 12.07.2007.

juvenile justice system, in the Republic of Macedonia. However, taking into consideration only the name of the new LJC it can be easily misinterpreted that the later one presents entirely new codification for prevention of the juvenile justice due to its, perhaps, biggest change from the previous law - LJJ, by addressing the youth offenders (under 18 years of age) as "children". The legal addressing of the child offenders as “child” offedners has been adopted by influence of the formal nomenclature of the Convention on the Rights of the Children, and is considered as novelty to “juveniles”, as set in the previous law.

Despite the accepting of the Convention’s name for the underage offenders as “children”, the new LJC brings certain ambiguities toward this group of offenders, since this name within the criminal justice system of the Republic of Macedonia generates the necessity for further clarification regarding the age of the offenders at every procedural aspect of the juvenile justice system.

With regard to the remaining provisions of the new LJC, it is obvious to conclude that this new law represents better, improved version of the previous one and provides complete codification of the provisions that are regulating the criminal procedure which is undertaken to sanction criminally responsible childr offenders.

Furthermore, the new LJC improves the restorative justice’s instruments for dealing with the childr offenders in Macedonia.

The additional value of this new law are the provisions which are regulating criminal procedure, as we’ve mentioned above, since with the enactment of the new Criminal Procedure Code in Republic of Macedonia in 2010[3], as *lex generalis* to the juvenile justice, completely new adversarial roles were introduced to the participants of the criminal process. This means that without these procedural provisions within the LJC the court procedure regarding the child offenders should have been regulated under the provisions of the CPC. If this would have happened, than the child offenders in the criminal justice system in Republic of Macedonia would remain in lacunae, or to say with lesser procedural guarantees in comparison to the previous model of the CPC. Therefore, it was necessary to provide additional procedural guarantees within the LJC as *lex speciallis*, which would strengthen the position of the child offenders within the court procedure which was furthermore driven through the restorative justice principles. In addition, general perspective is that these procedural provisions contained

[3] See: Buzarovska G., Kalajdziev G., Criminal Procedure under the New Criminal Procedure Code of 2010, Akademik, Skopje, 2011, pp. 5-8., and Matovski N., Buzarovska G., and Kalajdziev G., Criminal Procedure Law, 2-nd ed. Akademik, Skopje, 2011, pp. 393-395.

within the LJC are less adversarial in regard to the child offenders comparing to those within the CPC for other offenders, and they provide more active role of the juvenile judge in order to deliver proper and better protection of the child offenders' rights.

For these reasons, it is obvious that the new LJC despite its *lex speciallis* status to the new CPC, provides certain level of autonomy to this CPC not only regarding the procedure, but also regarding the measures for providing the presence of the child offenders during the trials.

Taking into consideration the importance of the implementation of these measures during the criminal trials, particularly trough the possibility of the vast abuses which may occur through their improper implementation or their abuse, the following sections of this article will focus on further observation of these measures, particularly through their comparison with the measures which are determined within the provisions of the CPC. In addition we would determine the scope and the dynamics of the implementation of these measures by the Macedonian courts.

II. Theoretical justification of the implementation of the measures for providing the presence of the child offenders during criminal trials

With the enactment of the LJC Republic of Macedonia's criminal justice system is considered to be in accordance with the modern trends in terms of punishment of child offenders. Furthermore, this law is generally in harmony with the modern criminological theories[4] which deal with juvenile justice. Having into considerations the Recommendation of the Council of Europe of 1987[5], together with the international documents, such as Beijing Rules[6], Havana Rules[7] and Riyadh Guidelines[8], it is justified to claim that with the enactment of the new LJC,

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[4] Regading the tendencies of the juvenile justice development in Macedonia, see: Buzarovska G., Misoski B., Restorative aspects of the juvenile justice system in Macedonia, *Teme,* 2011, pp. 366-375, available at: http://teme.junis.ni.ac.rs/teme2-2011/teme%202-2011-02.pdf, also see: Braithwaite J., Restorative Justice: Theories and Worries, Visiting Experts' Papers, 123-rd International Senior Seminar, Resource Material Series No. 63, pp. 47-56. Tokyo: United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders. Available at: http://www.restorativejustice.org/articlesdb/articles/5483

[5] See: Recommendation No. R (87) 20 on Social Reaction to Juvenile Delinquency, 17.09.1987 CoE, together with the conclussions from the Ministrial Meeting in Hlesinki, 2005: Resolution No.2 on the Social Mission of the Criminal Justice System - Restorative Justice, MJU-26 (2005) CoE.

6 UN Standard Minimal Rules regarding the Juvenile Jusitice, available at: http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf.

7 UN Regulations Regarding the Detained Juveniles, available at: http://www.un.org/documents/ga/res/45/a45r113.htm.

8 UN Reccomendations on Prevention of the Juvnile Delinquency, available at: http://www.un.org/documents/ga/res/45/a45r112.htm.

thevRepublic of Macedonia accepts entirely the standards set up in these rules and guidelines regarding the juvenile justice.

However, meticulous reader of the provisions of the new LJC will still detect several rudimental retributive aspects of the punishment of the child offenders[9], contrary to the modern theoretical basis for sanctioning of the juveniles as determined by Hill[10] and Cunneen[11]. These aspects, despite being proscribed as exceptions to the general rules, are unfortunately, extensively and uncriticaly applied in practice,.

Furthermore, despite the theoretical concepts of restorative justice as recognized by Cornwell, Wright and Blad[12], Braithwaite[13] or Cragg[14] as necessity for reconciliation or restitution or compensation of the harms committed with the crime, and by doing this to reclaim or to restore the social peace and social cohesion, juvenile justice system in Republic of Macedonia retains several retributive features.

These features are particularly visible during the initial stage of the criminal procedure commenced against the child offenders' trough the provisions of the LJC where possibilities for arrest and detention are regulated. The restorative justice and retributive justice are not contrary to each other in every aspect, nor they mutually exclude or deny in every occasion[15]. However, taking into consideration the general principle of restorative justice that formal criminal procedure against the child offenders should be executed only by exceptions, implies that the traditional instruments of the criminal procedure when the offenders are children, should be implemented rarely or only as an exception[16].

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[9] Considering the aspects of the restorative justice in comparison to retributive justice, see: Mantle Greg, Fox Darrell, Dhami Mandeep K., Restorative Justice and Three Individual Theories of Crime, Internet Journal of Criminology, 2005, available at: http://www.internetjournalofcriminology.com/Mantle,%20Fox%20&%20Dhami%20-%20Restorative%20Justice.pdf

[10] See: Hill, Frank D., Restorative Justice: Sketching a New Legal Discourse, available at: http://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILH/frank-hill.pdf, pp. 3-6.

11 See: Cunneen Chris, Restorative Justice, Globalisation and the Logic of Empire in: Borders and Transnational Crime: Pre-Crime, Mobility and Serious Harm In an Age of Globalisation, McCulloch & S. Pickering, eds., Palgrave Macmillan, pp. 99-113, 2012, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2196663.

12 Cornwell, David J and Wright, Martin and Blad, John (2013). Civilizing criminal justice: An international restorative agenda for penal reform. Hook, Hampshire: Waterside Press, Ltd, pp. 28-29.

[13] See: Braithwaite John, Restorative Justice & Responsive Regulation 3-rd. Ed. Oxford University Press, 2002, pp. 5.

[14] See: Cragg Wesley, The Practice of Punishment, Towards a Theory of Punishment (1992), London, Routledge, pp. 38-40.

[15] See: Zehr Howard, Gohar Ali, The Little Book of Restorative Justice, available at: http://www.unicef.org/tdad/littlebookrjpakaf.pdf, pp. 59-60.

[16] Specifically see the article 13 from UN Beijing Rules, op. cit.

The reason for such exceptional implementation of these measures for providing the presence of the defendant during the criminal trial, particularly regarding the most severe measure – detention, lies within the nature of these measures. These measures have bifacial nature. The first one is determined by the right to liberty and since this right is the fundamental one, its deprivation could be accepted only as an exception during the trial and prior to the guilty verdict. Second one is defined practically by the first one, since the only possible acceptance to the deprivation of the right to liberty prior to the termination of the criminal trial can be justified trough the protection of the rights to: fair trial, equality of arms and public and contradictory hearing. This means that with the deprivation of the right to liberty during the criminal trial, this very same right can be protected trough the due process[17].

However, this statement is plausible only if the deprivation of the liberty serves as an exception and as ultimate measure, meaning that the right to liberty can be limited for providing the presence of the defendant in order to protect his/hers right to a fair trial and only in cases when defendant's presence could not be achieved with other less severe and intrusive measures.

However, implementation of these measures for providing the presence of the child offenders during the criminal trials has different perspectives. This is due to the fact that the main goal of the criminal procedure that is undertaken for the child offenders is to protect the defendants from further criminal acts and to have effect regarding the education and upbringing of the juveniles[18], instead to punish them for their criminal deeds as is the situation with the defendants older than 18 years. For these reasons, regarding the implementation of the measures for providing the presence of the defendants during the criminal trial, by the provisions of the LJC, priority should be given to those measures which are characterized as measures for: support, supervision and protection of the child offenders, instead to the implementation of the measures which are characterized with deprivation of their liberty, such as detention as the most severe[19].

In addition to the argument that this most severe measure should have only limited and exceptional use for the juvenile defendants, can serve the fact that in most cases child offenders are not prone to the risk factors which are generally connected with the implementation of the

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[17] See: Josipović Ivo, Uhićenje i pritvor, Targa, Zagreb, 1998, pp. 38-40, and Haddad, James B. et al, Criminal Procedure, Cases and Comments, 5-th ed. Foundation Press, New York, 1998, pp. 823-824.
[18] See Kamboski Vlado and Velkovska Violeta, Juvenile Justice, 2-nd Avgust S, Skopje, 2008, pp. 256-257.
[19] See UN Havana Rules, and: From Legislation to Action: Trends in Juvenile Justice Systems Across 15 Countries, Defence for Children International, 2007 Geneva, pp. 32, available: https://www.defenceforchildren.org/files/DCI-JJ-Report-2007-FINAL-VERSION-with-cover.pdf.

detention. This means that in most of the cases child offenders are not capable for flight, since they have limited resources for travel (they do not know how to drive, usually do not own a vehicle, unless they steal one or do not possess valid driving license), they have insufficient financial funds since they are usually unemployed and in most of the cases they live with their parents. Furthermore, it is under the speculations how much juveniles can influence to the investigation by tampering the evidence or how many child offenders could pose a threat to the public order, considering the phenomenology of the juvenile crime.

Exceptional use of the detention for the juveniles opens another problem, regarding the detention facilities. Considering the fact that number and frequency of the crimes where the juvenile defendants should be detained is very low, in most states (and Republic of Macedonia is not exception to this) there are no institutional facilities where these defendants should be placed. This means that if child offenders are placed within the detention facilities for elder defendants or within the facilities for already sentenced juveniles, then this can perform serious risk of criminal infection to the juveniles. In this sense, the implementation of the detention of the child offenders is highly problematic, since there are many obstacles which are detrimental to the juvenile's upbringing and educational processes.

Due to these reasons, the detention of the child offenders in most of the European criminal justice systems[20] is considered only as an exceptional measure and is implemented only in cases when it is strictly inevitable.

III. Normative and practical aspects of the implementation of the measures for providing the presence of the juvenile defendants in Republic of Macedonia

a. Legal provisions for implementation of the measures for providing the presence of the juvenile defendants

Legal provisions for implementation of the measures for providing the presence of the juvenile defendants are proscribed within the LJC, *as lex specialiis*. At the same time CPC, *as lex generallis*, provides general provisions for regulation of the implementation of these measures. Thus, CPC, as *lex generallis*, proscribes the following measures which can be also

[20] Ibid, see for example: Franch, Belgian, Dutch and/or Italian experience, pp. 35-38.

implemented for juvenile defendants[21]: citation; precaution measures (as follows: ban on leaving of the residence or domicile; obligation to report to a specified official authority; temporary seizure of passport or other personal ID and ban of its issuance; temporary suspension of a driver's license or a ban of its issuance; ban on visiting a particular place or area; a ban on approaching or establishing or maintaining contact or relations with certain individuals, and ban on undertaking certain professional or work related activities associated to the crime); bail; arrest; short-time detention; domestic detention and most severe measure - detention.

While, LJC[22], as *lex speciallis*, regulates the following measures: temporary residence within an institution for education, care and protection of children (other than the institutions that are responsible for enforcement judgments containing measures and sanctions against children); temporary supervision by the Center for Social Welfare (further in the text CSW) and temporary residence within a foster or other family.

Considering the specific characteristics of the child offenders, LJC provides certain specifics or additional requirements, which has to be met in order to implement the measures for providing the presence of the defendants which are regulated within the CPC. This means that the measures regulated within the CPC which are, generally, intended for adult offenders can be implemented towards child offenders if the following preconditions are met[23]:

- Prior consent of the CSW;
- Detention is treated as a last resort in relation to other, less severe, measures for providing the presence of the child are regulated under the provisions of the CPC;
- The use of detention is justified due to: the child's personality, the possible consequences of the detention on his personality and his proper development and
- Existence of the risk that the juvenile offender might repeat the crime, or if it is necessary to protect the personal life and health of the juvenile, and therefore implementation of the measures from LJC is considered to be too lenient and are not justified.

Despite these preconditions, LJC, as *lex speciallis*, provides additional conditions which have to be met regarding the procedure for implementation of the measures for providing the presence of the defendant as regulated in CPC. This means that the detention of the juvenile defendant can be imposed only by the judge for children and can be up to 90 days.

[21] Art. 144, line. 1, CPC.
[22] Art. 115 LJC.
[23] Art. 117 LJC.

However, the LJC provides that the detention for child offenders initially has duration up to 30 days and can be extended up to 90 days (wich means: additional 60 days to initial 30 days), only if there is written consent for this extension by both the prosecutor and the SWC. In such circumstances the extension of the duration of the detention for additional 60 days can be made only by the Juvenile Court Counsel (counsel consisted of three juvenile judges) within the Basic (first instance) Court.

In addition to this, LJC provides additional safeguards regarding the rights of the juvenile detainee, since the court for its decision has to urgently inform: juvenile's parents or foster parents, CSW and juvenile's defense attorney.

However, there are several inconsistencies, regarding the proper protection of the juvenile detainee's rights which are easily detectable within the LJC. One of the most severe of these inconsistencies is within the situation when the LJC provides the opportunity for the judge of the pretrial procedure to be authorized to decide upon the implementation of the juvenile detention, instead of the juvenile judge. Despite the fact that this possibility is regulated only as an exception in the situation when there is necessity for urgent response regarding the implementation of the juvenile detention and in that specific moment the juvenile judge is absent. We consider that this exception is unacceptable, since it opens the possibility for decision making upon the juvenile detention to be addressed to the state body which does not have proper training, or knowledge regarding the juvenile justice. In addition, the threshold for this legal exception is put with very uncertain legal wording, which may open the possibility in the practice that this exception will become a rule. Furthermore, to disregard the importance of the specific knowledge and training that juvenile judge has in regard the juvenile justice in comparison to his/hers colleague – judge of the pretrial procedure.

Besides this, LJC provides certain specifics which do provide additional protection of the juvenile detainees, in regard with the additional provisions regulating the treatment and facilities' condition for the juvenile detention. In this sense, LJC sets that the juvenile detention has to be executed in the premises which are clearly divided and separated from the premises where adult detainees are placed. In addition LJC provides additional provisions which regulates the educational and work activities of the juvenile detainee, which are necessary for proper upbringing of the juvenile, by limiting or reducing the negative impact of the deprivation of the juvenile's liberty upon juvenile's personality. There are, also, provisions which are affirming the mandatory confidential contact of the juvenile detainee with his/hers family at least on a weekly

bases. Together with these additional guarantees the LJC guarantees the right to a medical assistance to the juvenile detainee together with the right to access to the social media as part of the socialization and upbringing process of the juvenile.

Proper implementation of these guarantees is provided through the regular and scheduled monitoring and control by the juvenile judge, who, under the provisions of the LJC, is obliged to visit short-time detainee at least once during the short-time detention, or on every ten days while the juvenile is in regular detention.

However, it is questionable, whether these additional guarantees as regulated within the LJC will be effectuated with the implementation of this most severe measure only by exception, and whether these additional guarantees are in correlation to the core substance of this measure. This dilemma is due to the impression that the detention measure is by far most regulated measure within this law, with the note that the legislator has only provided additional preconditions regarding its duration; while it remains uncertain whether by these preconditions it is really tougher to implement it in practice. Furthermore, we do not share the impression that the LJC provides additional conditions which would make the implementation of this measure truly only as an exception to the other measures. By this, we deem that by only verbal statement that the juvenile detention is implemented only as an exception, and/or without additional clarification or stating the exceptions, these LJC as *lex speciallis* provisions are to be considered as cosmetic improvement of the CPC provisions. By this, in reality in court's practice there are no real guarantees for reducing the frequency of the implementation of the juvenile detention.

Hence forward, serves the argument that LJC does not provide additional provisions for clarification or simplification of the implementation of the less severe measures for providing the juvenile defendant's presence during the criminal procedure, which are stated in LJC, who by the virtue of the thing should have priority in the implementation over the measures regulated in the CPC or even over the detention.

LJC provides specific provisions with regard to these less severe measures, only in a way where it reduces the time span of their implementation, without entering into the nature and the goals of these measures. In this fashion, the maximum duration of the short-time detention is reduced to 24 hours (instead of 48 hours for the adult offenders); maximum duration of the arrest and notification of the judge is 12 hours, or 8 hours if the child has committed misdemeanor regarding the public order, or if the child is intoxicated (instead with the period of 24 hours for the adult offenders).

It is interesting to note, that the LJC does not provide any additional specifics regarding the implementation of the other less severe measures to detention. This means that there are no any additional specifics regarding the implementation of the bail, nor house-detention. The omission of these additional specifics by the legislator can derive the conclusion that the legislator did not have any idea what to do with these measures regarding the child offenders, or that the legislator did not intend to use these measures in practice.

Initially, the issue of bail is primarily tackled with the financial guarantee which is interconnected with this measure. This means that the court, not the legislator, does not have any idea how to address this measure to the child offenders, since in most of the cases the juveniles do not own any property, nor are they employed, nor have legal personality to handle their assets. It is also questionable whether the juvenile who owns property has sufficient mental capability regarding the protection of his/hers asset in order to put this asset as a guarantee for his/hers presence during the trial. In this fashion Macedonian legislator did not even consider the possibility of creating agency for bail, such as the well-established practice in USA[24], or a state welfare fund for protection of the interest of the juveniles in order to increase the implementation of this measure.

In addition to these remarks, the implementation of the domestic-detention is problematic, since there are no clear provisions for its exclusive implementation to child offenders. Furthermore, in absence of formal conditions for house-detention both in CPC and in LJC, such as permanent illness or other specific health condition, it is not clear whether this measure might interfere or interrelate with the most frequent sanction imposed to the juveniles – increased supervision by the family. Which means that the legislator should corelate, despite the fact that sofar has omitted to do so, this measure with the imposition of the above mentioned sanction. In this way the measure for providing the presence of the juvenile defendant can serve as a pilot program towards the proper determination of the sanctions of the child offenders.

b. Practical implementation of the juvenile detention

In order to provide proper insight of the imeplementation of detention besides the legal analysis, it is important to have information regarding the court practice with the implementation of the above analyzed legal provisions.

[24] See: Hall Daniel E., Criminal Law and Procedure, 5-th ed., Delmar Cengage Learning, 2009, pp. 445-446.

Hence, we have analyzed the available data for the implementation of juvenile detention by the Macedonian courts. In virtue of this, the most obvious conclusion is that there are very obscure relevant publicly available data regarding the implementation of the measures for providing the juvenile defendants' presence during the criminal trials. The only official available data are the yearly reports provided by the Directorate for Execution of Sanctions (further in the text DES), while the data of overall crimes, such as reported, indicted and sentenced are gathered by the State Statistical Office in Macedonia (further in the text SSO).

Table 1. Detained juveniles according to the DES and dynamics of the juvenile crime according to the SSO.

Year	No. detainees	duration	transfer detention/ sanction	reported	indicted	sentenced
2008	18	NA	NA	1355	981	715
2009	NA	NA	NA	1519	1030	748
2010	NA	NA	4	1244	750	547
2011	NA	NA	1	1163	1002	722
2012	4	30	10	1001	778	556
2013	8	30-60	4	1005	657	473
2014	8	30-60	6	972	607	461

Source: DES available at: http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=UIS and SSO available at www.stat.gov.mk

From the available data, we can conclude that the implementation of the measures for providing the presence of the juvenile defendants does not raise any specific interest within the Macedonian institutions. This conclusion can be drawn due to the fact that available data is very vaguely mentioned in the DES's yearly reports and due to the fact that this data, when mentioned, is stated superficially, and only with mere figures. The data within the yearly reports are provided without any broader analysis nor justifications for the current figures or some specific reasoning regarding the overseen situation. Additional argument that the implementation of these measures does not raise any interest within the state bodies is the fact that detention, or any other less severe measure applied to the child offenders is not monitored by the SSO at all.

However, from the vague data, it is obvious that the juvenile detention is used rarely in regard to the reported persons, for example only in two percent of the reported offenders (for example 2014, 2013). Certain methodological problem can also be detected regarding the presentation of the data by the DES, particularly regarding the figures for the detained juveniles who are transferred from detention to the effective institutionalized sanction. This is due to the fact that number of the detained juveniles should be larger than the number of the transferred juveniles from detention to institutionalized sanction. Probably this inconsistency was noted within the reports from 2013 and 2014, so the numbers have some sense. If our presumption is correct, than we can conclude that the number of the detained juveniles per year was somehow constant in the past two of the observed years with 8 juvenile detainees. However, if we connect this number to the juveniles who are serving institutionalized sanction, yearly around 20, than the conclusion is that half of the sentenced juveniles with institutionalized sanction were detained previously during the criminal trial. If this correlation can be confirmed, by the state official data we can reach the conclusion that there is excessive use of the detention, and that the juvenile detention is used as a tool for the judges to impose institutionalized sanctions to the child offenders.

Taking into consideration the number of the detained child offenders in comparison with the rate of the detained adult offenders, we can conclude that there is similar pattern. This means that we can reach similar conclusions regarding the extensiveness of the implementation of the detention to the adult offenders[25]. However this conclusion would be too shallow and remote, since we do not operate with specific and trustworthy data regarding the implementation of the detention to the child offenders.

Considering the length of the detention, above data points out that it ranges from 30 to 60 days. This means that the authorities did not manage to restrain the procedural activities within the shortest time frame. However, it is worth to mention that the average duration of detention was in the middle of the time range, and it was not closer to the maximum of legally determined time, so we can state that the state institutions were diligent in implementing the criminal procedure while child offenders were in detention.

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[25] For the implementation of the detentiot to the adult offenders in Macedonia see: Buzarovska Gordana, Andreevska Slavica, Tumanovski Aleksandar, Application of Pretrial Detention Pursuant to the Criminal Procedure Code of 2010 Legal Analysis, 2015 Skopje, OSCE Misson to Skopje; and Misoski Boban, Protection of the Right to Bail as a Derived Human Right from The Article 5 of the ECHR in Macedonia, *SEE-LAW NET: Networking of Lawyers in Advanced Teaching and Research of EU Law post-Lisbon Outcome of the SEE Graduates EU Law Teaching & Research Academy Collection of Paper*s, Saarbrucken, Germany 2013, pp. 157.

The lack of official data regarding the implementation not only of the detained juveniles, but also regarding the information regarding the implementation of the less severe measures for providing the defendant's presence raises additional dilemma regarding the efficiency of the juvenile criminal justice system. Furthermore this dilemma is supported with the fact that in Macedonian juvenile justice system the most popular measures, in more than 90% of the cases[26], for sanction of the child offenders is intensified supervision by the family, foster family or CWS. In addition, this means that trough the monitoring of the implementation of the measures for providing of the presence of the defendant during the trial, as regulated within the LJC, we can tackle the efficiency and the impact of the family to the juvenile's attitudes. In this fashion the juvenile judge would have additional support for justification of the imposition of the above mentioned sanction, or he/she could not only have insight, but also relevant knowledge regarding the child offenders family's capability in prevention of their offspring in his/hers criminal intentions. However, by not having this type of data, or by not implementing these less severe measures in practice by the courts, particularly for the implementation of these measures during the pretrial phase of the juvenile court procedure, the juvenile judges can only speculate regarding the juvenile offender's behavior and cannot provide proper institutionalized answer trough the imposed sanctions to the juvenile offender's specific restorative justice needs.

In addition, the fact that we do not operate with clear and specific data regarding the implementation of these measure for providing the child offenders during the trial, leads to the only possible conclusion that we cannot have relevant data analysis with relevant conclusions driven from the available data. In addition, this could also generate the conclusion that the Macedonian officials do not pay specific attention regarding the proper implementation of these measures, nor they consider their future improvement.

IV. Conclusion

Macedonian juvenile justice system has undergone trough massive changes and improvements which finished with the enactment of the new Law on Justice for the Children. These reforms were aimed to improve the position of the child offenders by instituting several

[26] See the available data from the State Statistical Office ofr example for 2013, available at: http://www.stat.gov.mk/Publikacii/2.4.14.11.pdf, pp. 104-105, where this measure for intensified supervision is implemented in more than 90% of the child offenders. This is particularly problematic, since the fact that from 473 sentenced children 431 are living with their family, which brings the dilemma of the efficiency of the supervision of the family. Meaning if the family's supervision to the child was proeper, than the child would do not crimes at first place.

new instruments inspired by the principles of the restorative justice. Through these legal changes Macedonian juvenile justice system is up to date with the latest trends in this area.

Having in mind these legal drafting activities, the legislator's idea to provide instruments for improvement of the measures for the providing of the juvenile offender during the criminal trial it is highly suitable.

However, the position of these new measures and their impact to the juvenile justice is not easily identifiable for the legal professionals and legal academics, due to that fact that there are insufficient data regarding their implementation by the Macedonian courts. In addition we can conclude that these measures were not properly tackled both by the legal professionals and by the legal academics.

Since there is no proper measuring of the juvenile crime, or proper answer to the dynamics and phenomenology of these specific types of offenders, we cannot conclude that there is sufficient nor proper impact towards the improved protection of the child offenders with the enactment of the new LJC. In this fashion, we are not able to conclude whether the provisions of the new LJC have reached their goal in regard to further protection of the child offenders by accepting the restorative justice principles.

Furthermore, lack of proper data regarding the implementation of the new legal provisions regarding the measures for providing of the juvenile defendants during the trial, does not support the fact that the juvenile detention is used only as the last resort, while priority is given to the least severe measures as regulated within the provisions of the CPC and LJC.

Due to this, we deem that in order to have proper implementation of these legal novelties and new restorative justice concepts by the courts specific changes of the attitudes and mind sets by the stakeholders which are implementing these new solutions in practice is essential.