

ANALIZA KONCEPTA RESTORATIVNE PRAVDE U SISTEMU MALOLJETNIČKOG PRAVOSUĐA U BOSNI I HERCEGOVINI

Pregledni naučni rad

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Sažetak

Restorativna pravda potiče od engleske riječi restore - što znači vratiti u prijašnje stanje, obnoviti, nadoknaditi, vratiti originalne vrijednosti, postaviti u početni položaj (Miroslavljević, 2010, str. 54). Ideja restorativne pravde je zaživjela krajem dvadesetog i početkom dvadesetprvog vijeka.

Naprijed navedeni koncept pruža različite odgovore na kriminalno ponašanje - od diverzije (skretanja krivičnog postupka od redovnog postupka) do radnji poduzetih tokom bilo kojeg trenutka u krivičnom postupku, te se primjenjuje prema maloljetnicima i punoljetnim licima.

Koncept restorativne pravde zasnovan je na rehabilitaciji počinitelja i obnovi odnosa unutar društvene zajednice. Ideja restorativne pravde je zasnovana na "manje represivnom" postupanju, individualnom pristupu svakoj ličnosti, aktivnom učešću svih strana u odnosu nastalim krivičnim djelom s ciljem uspostavljanja ravnoteže i naglašenom aktivnom ulogom zajednice (Vranj, 2011, str. 43-55). Posebno značajna uloga koncepta restorativne pravde ogleda se upravo u tome što ona kao koncept nije usmjerena na kažnjavanje počinitelja, već u fokus stavlja dijalog između počinitelja i žrtve, društvenu zajednicu, a sve u svrhu prevencije delikventnog ponašanja i uspostavljanja sigurnosti u društvu. Upravo zbog pomenutog, ona se razlikuje od koncepta retributivne pravde, koja je usmjerena na izdvajanje počinioca krivičnih djela iz društva, izricanjem krivičnihopravnih sankcija (Vasiljević-Prodanović, 2010, str. 59).

Ovaj rad ima za cilj da predstavi koncept restorativne pravde i njegovo utemeljenje u sistemu maloljetničkog pravosuđa u Bosni i Hercegovini putem alternativnih mjera.

Ključne riječi: *restorativna pravda, retributivna pravda, alternativne mjere, maloljetničko pravosuđe.*

Koncept restorativne pravde

Cilj principa restorativne pravde leži u zadovoljavanju osnovnih interesa društvene zajednice (Džamonja/Ignjatović, Žegarac, 2008, str. 465).

Jedan od najvažnijih osnova za primjenu koncepta restorativne pravde predstavlja Deklaracija Ujedinjenih nacija o osnovnim principima restorativne pravde (Tulumović, 2014, str. 632).

Restorativna pravda se bazira na četiri (Ćopić, 2010, str. 51) osnovna principa:

1. *princip personalizma i shvatanja krivičnog djela kao povrede ljudi i međuljudskih odnosa - krivično djelo posmatra primarno kao povredu ljudi, a tek sekundarno kao povredu određene zakonske norme,*
2. *princip popravljivanja štete nastale krivičnim djelom - počinitelj prihvata odgovornost za učinjeno, te je spreman da popravi štetu,*
3. *princip učešća – odnosi se na učešće svih zainteresiranih strana u razrješavanju stvari i*
4. *princip reintegracije – povratak počinitelja i žrtve u društvenu zajednicu.*

U okviru koncepta restorativne pravde razvila su se četiri modela (Miroslavljević, 2010, str. 53-64) u svijetu, među kojima je najprihvatljiviji model pod nazivom „medijacija između počinitelja i žrtve“ koji podrazumijeva sučeljavanje licem u lice počinitelja i žrtve uz posredovanje medijatora.

Akcent na prilikom primjene pomenutog principa je stavljen na dijalog zasnovan na razrješavanju stvari.

Restorativna pravda u sistemu maloljetničkog pravosuđa u Bosni i Hercegovini

Pretpostavke za uspostavljanje i primjenu koncepta restorativne pravde su stvorene 1998. godine kada se u zakonodavstvo Bosne i Hercegovine uvode odredbe o mogućnosti izricanja i primjene odgojnih preporuka prema maloljetnicima u krivičnom zakonodavstvu Federacije Bosne i Hercegovine. Odnosno, u Bosni i Hercegovini koncept restorativne pravde je dobio zakonsko utemeljenje kroz odredbe odgojnih/vapitnih preporuka (više riječi u: *Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini 2006-2010*).

Vaspitne preporuke ili vaspitni nalozi predstavljaju „specifične krivičnopravne mjere fakultativnog karaktera, odnosno sui generis mjere koje nisu krivične sankcije isključivo specijalno preventivnog karaktera koje vode vansudskim oblicima intervencije na društveno neprihvatljiva ponašanja mladih“ (Jovašević, Stevanović, 2013, str. 19).

U Republici Srpskoj početkom 2010. godine usvojen je Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske („Službeni glasnik RS“, br. 13/10, 61/13 i 68/20) koji predviđa primjenu dvije vrste alternativnih mjera: policijsko upozorenje i vaspitne preporuke.

U Federaciji BiH je 2014. godine usvojen Zakon o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku („Službene novine FBiH“, br. 7/14 i 74/20) koji predviđa uvođenje restorativnih mjera u krivično zakonodavstvo prema maloljetnicima, dok je u Brčko Distriktu BiH Zakon o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku („Službeni glasnik Brčko distrikta BiH“, br. 44/11) usvojen 2011. godine.

Cilj primjene alternativnih mjera u postupku prema maloljetnicima je izostanak uključivanja maloljetnika u klasični krivični postupak.

Alternativni modeli općenito predstavljaju primarni odgovor na maloljetničko prestupništvo, predstavljaju vidove reagovanja na kriminalitet u obliku određenih instituta, procedura i/ili programa, kojima se počinitelj krivičnog djela ne lišava slobode. Isti se primjenjuju ili izvršavaju u zajednici (Pleh, 2019, str. 127- 155).

Alternativne mjere i alternativne sankcije zajedno čine alternativne modele.

Prema Pleh, alternativne mjere su *“mjere kojima se reaguje prema počiniocu prije pokretanja krivičnog postupka s ciljem njegovog izbjegavanja, u toku krivičnog postupka u cilju reagovanja na njegova ponašanja i otklanjanja ponašanja koja bi ga dovela u rizik da ponovo počini krivično djelo, ili u fazi primjene ili izvršenja neke krivične sankcije institucionalnog karaktera”*.

Za razliku od alternativnih mjera, alternativne sankcije se izriču nakon provedenog krivičnog postupka, a primjenjuju se ili izvršavaju u zajednici (Pleh, 2019, str. 127- 155).

Sa kompletiranjem donošenja pomenutih zakona na nivou države u BiH je formalno otvorena mogućnost primjene vansudskih oblika reakcije na ponašanje maloljetnika (Tulumović, 2014, str. 651).

Alternativne mjere u zakonodavstvu Bosne i Hercegovine

Zakoni o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku (FBiH, RS, BD BiH) kao alternativne mjere u postupku prema maloljetnicima predviđaju primjenu policijskog upozorenja i odgojnih/vaspitnih preporuka.

Pored pomenutih zakona pravnu regulaciju alternativnih mjera u Bosni i Hercegovini, u ovisnosti o kojoj je alternativnoj mjeri riječ, čine i posebni pravilnici odnosno uredba, te stoga govorimo o sljedećim pravilnicima odnosno uredbi:

Za primjenu alternativne mjere policijskog upozorenja primjenjuje se:

- *Pravilnik o primjeni mjere policijskog upozorenja FBiH,*
- *Pravilnik o primjeni mjere policijskog upozorenja RS,*
- *Pravilnik o primjeni mjere policijskog upozorenja BD BIH.*

Za primjenu alternativne mjere odgojnih/vaspitnih preporuka primjenjuje se:

- *Uredba o primjeni odgojnih preporuka prema maloljetnicima FBiH,*
- *Pravilnik o primjeni vaspitnih preporuka prema maloljetnim počiniocima krivičnih djela RS,*
- *Pravilnik o primjeni vaspitnih preporuka prema maloljetnim počiniocima krivičnih djela BD BIH.*

Policijsko upozorenje

Policijsko upozorenje predstavlja alternativnu mjeru koja se preduzima prema maloljetniku, a koju izriče policijski službenik koji raspolaže sa posebnim znanjem stečenim u toku stručnog osposobljavanja – ovlaštena službena osoba uz odobrenje tužioca na način i u postupku koji je propisan naprijed pomenutim zakonima i pravilnicima.

Osnovni principi na kojima se zasniva primjena policijskog upozorenja su: dobrovoljnost, nepristrasnost, srazmjernost, poštivanje građanskih i ljudskih prava, a u interesu je maloljetnika.

Formalni uvjeti primjene policijskog upozorenja se odnose na sljedeće:

- *da je riječ o krivičnom djelu za koje je propisana novčana kazna ili kazna zatvora do 3 godine,*
- *da je izricanje policijskog upozorenja u skladu sa načelima cijelishodnosti i srazmjernosti.*

Posebni uvjeti primjene se odnose na sljedeće:

- *da maloljetnik prizna krivično djelo,*
- *da je priznanje dato slobodno i dobrovoljno,*
- *da postoji dovoljno dokaza da je maloljetnik počinio krivično djelo i*
- *da prema maloljetniku nije ranije izricano policijsko upozorenje, primjenjena vaspitna preporuka ili izricana krivična sankcija.*

Zakoni o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku (FBiH, RS, BD BiH) i Pravilnici o primjeni mjere policijskog upozorenja (FBiH, RS, BD BiH) definiraju obaveze ovlaštenog službenog lica koje predlaže tužiocu izricanje alternativne mjere policijskog upozorenja prema maloljetniku.

Kada su u pitanju obaveze ovlaštenog službenog lica one se odnose na sljedeće:

Ovlaštena službena osoba je dužna da pribavi socijalnu anamnezu i podatke o izrečenim vaspitnim mjerama, podatke o izrečenim vaspitnim preporukama i podatke iz kaznene i prekršajne evidencije. Nakon pribavljanja odobrenja za ispitivanje maloljetnika od strane tužioca on je dužan da ispita maloljetnika u roku od 24 sata uz prisustvo branioca i roditelja odnosno usvojitelja i organa socijalnog staranja.

Nadalje, obaveza ovlaštenog službenog lica se ogleda i u sastavljanju službenog izvještaja na osnovu odredbi Zakona o krivičnom postupku. Prijedlog za izricanje alternativne mjere policijskog upozorenja mora biti obrazložen. On je dužan da u roku od 3 dana od dobijenog odobrenja od strane tužitelja izrekne alternativnu mjeru maloljetniku, te da mu ukaže na društvenu neprihvatljivost i štetnost njegovog ponašanja, posljedice koje njegovo ponašanje može imati za njega, kao i mogućnost vođenja krivičnog postupka i izricanja krivične sankcije u slučaju ponovnog izvršavanja krivičnog djela.

Za razliku od obaveza ovlaštenog službenog lica, obaveza tužitelja se odnosi na:

- *davanje ovlaštenoj službenoj osobi saglasnosti za ispitivanje maloljetnika,*
- *davanje odobrenja za izricanje mjere policijskog upozorenja.*

Alternativna mjera policijskog upozorenja se zapravo zasniva na primjeni principa oportuniteta.

Za krivična djela sa propisanom novčanom kaznom ili kaznom zatvora do tri godine, tužitelj može odlučiti da ne pokrene krivični postupak iako postoje dokazi da je maloljetnik učinio krivično djelo ako smatra da ne bi bilo cjelishodno da se vodi postupak prema maloljetniku, s obzirom na prirodu krivičnog djela i okolnosti pod kojima je učinjeno, raniji život maloljetnika i njegove lične karakteristike. Tužitelj može postupiti na isti način i u slučaju krivičnog djela sa propisanom kaznom zatvora više od tri godine ako je takvo postupanje u skladu sa principom srazmjernosti. Radi utvrđivanja navedenih okolnosti, tužitelj može zatražiti obavještenja od roditelja, odnosno staratelja maloljetnika, drugih osoba i ustanova, a kad je to potrebno, može ove osobe i maloljetnika pozvati radi neposrednog obavješćavanja. Tužitelj će tražiti mišljenje organa starateljstva o cjelishodnosti pokretanja postupka prema maloljetniku. Kad je izvršenje kazne ili odgojne mjere u toku, tužitelj može odlučiti da ne zahtijeva pokretanje krivičnog postupka za drugo krivično djelo maloljetnika, ako, s obzirom na težinu tog krivičnog djela, kao i na kaznu, odnosno odgojnu mjeru koja se izvršava, ne bi imalo svrhe vođenje postupka i izricanje krivičnopravne sankcije za to djelo.

Odgojne/vaspitne preporuke

Odgojne/vaspitne preporuke predstavljaju oblik alternativnih mjera koje tužitelji ili sudije na osnovu principa oportuniteta primijenjuju prema maloljetnom počiniocu krivičnog djela vršeći tako diverziju sa uobičajenog krivičnog postupka.

Osnovni principi na kojima se zasniva primjena odgojnih preporuka su: dobrovoljnost, nepristrasnost, srazmjernost, poštivanje građanskih i ljudskih prava, a u interesu je maloljetnika.

Formalni uvjeti kojeg predviđa zakonodavac u Bosni i Hercegovini su sljedeći:

- *da je riječ o krivičnom djelu za koja je propisana novčana kazna ili kazna zatvora do tri godine,*
- *za krivična djela za koja je zaprijećena kazna duža od tri godine zatvora ako su ispunjeni zakonski uvjeti i ukoliko je to srazmjerno okolnostima i težini učinjenog krivičnog djela.*

Posebni uvjeti koje predviđa zakonodavac za izricanje odgojnih preporuka se odnose na sljedeće:

- *da maloljetnik prizna krivično djelo,*
- *da je priznanje dato slobodno i dobrovoljno,*
- *da postoji dovoljno dokaza da je maloljetnik počinio krivično djelo,*
- *da maloljetnik u pisanoj formi izražava spremnost za pomirenje sa oštećenim,*
- *da maloljetnik u pisanoj formi da pristanak za primjenu odgojne preporuke, a mlađi maloljetnik i uz pristanak roditelja ili staratelja i*
- *da u pisanoj formi pristanak da i oštećeni u slučaju kada se to prema zakonu zahtijeva.*

Svrha odgojnih preporuka:

- *da se ne pokreće krivični postupak prema maloljetniku i*
- *da se primjenom odgojnih preporuka utiče na pravilan razvoj maloljetnika i jačanje njegove lične odgovornosti kako ubuduće ne bi činio krivična djela.*

Zakonodavac u Bosni i Hercegovini predviđa sljedeće vrste odgojnih preporuka:

- *lično izvinjenje oštećenom,*
- *nadoknada štete oštećenom,*
- *redovno pohađanje škole ili redovno odlaženje na posao,*
- *uključivanje u rad, bez nadoknade, u humanitarne organizacije ili poslove socijalnog, lokalnog ili ekološkog sadržaja,*
- *liječenje u odgovarajućoj zdravstvenoj ustanovi (bolničko ili ambulantno),*
- *uključivanje u pojedinačni ili grupni tretman odgojnih, obrazovnih, psiholoških i drugih savjetovališta.*

U prvu grupu odgojnih preporuka spadaju one koje regulišu lične odnose maloljetnika i oštećenog - lično izvinjenje oštećenom i naknada štete oštećenom. Zatim one koje se odnose na školovanje i rad maloljetnika, kao preporuke tretmanske prirode - redovno pohađanje škole, rad u korist humanitarne organizacije ili lokalne zajednice i prihvatanje odgovarajućeg zaposlenja.

Naposlijetku, treću grupu odgojnih preporuka čine one preporuke koje su usmjerene na uklanjanje ili ublažavanje faktora koji su uzrok delinkventnog ponašanja maloljetnika, a vezuju se za njegove lične prilike i socijalni ambijent - smještaj u drugu porodicu, dom ili ustanovu, liječenje u odgovarajućoj zdravstvenoj ustanovi, te posjećivanje odgojnih, obrazovnih i drugih savjetovališta (Gurda, 2011, str. 177-199).

Navedena podjela predstavlja osnovni kriterij za razlikovanje postupka izricanja i primjene odgojnih preporuka. Stoga, analogno rečenom razlikujemo: postupak

primjene odgojnih preporuka koje reguliraju lične odnose maloljetnika i oštećenog i postupak primjene ostalih odgojnih preporuka.

U odnosu na krivične sankcije koje može izricati isključivo sud, odgojne preporuke može izreći i tužitelj, odnosno jednu ili više odgojnih preporuka za konkretni slučaj (Gurda, 2011, str. 177-199).

Nadležni tužitelj može izreći sljedeće odgojne preporuke: lično izvinjenje oštećenom, naknadu štete oštećenom, redovno pohađanje škole i posjećivanje odgojnih, obrazovnih, psiholoških i drugih savjetovališta.

Sudija za maloljetnike može izreći sljedeće odgojne preporuke: rad u korist humanitarne organizacije ili lokalne zajednice, prihvatanje odgovarajućeg zaposlenja, smještaj u drugu porodicu, dom ili ustanovu, te liječenje u odgovarajućoj zdravstvenoj ustanovi (Gurda, 2011, str. 177-199).

Prilikom primjene odgojnih preporuka - lično izvinjenje oštećenom i naknada štete oštećenom, pored maloljetnika, svoj pristanak u pisanoj formi daje i osoba oštećena krivičnim djelom.

Tužitelj, odnosno sudija, prilikom izbora odgojne preporuke ima obavezu, shodno zakonu, da uzme u obzir mišljenje i sveukupne interese maloljetnika, kao i interese oštećenog, uz obavezu da vodi računa da se primijenom odgojnih preporuka ne ometa redovno školovanje ili rad maloljetnika.

Odgojne preporuke mogu se tokom njihovog trajanja zamijeniti drugom odgojnom preporukom ili ukinuti. Izbor i primjenjivanje odgojnih preporuka vrši se u saradnji sa roditeljima, usvojiteljem ili starateljem maloljetnika i nadležnim organom starateljstva.

Kada je u pitanju trajanje i izricanje odgojnih preporuka bitno je naglasiti činjenicu da odgojne preporuke mogu trajati najduže jednu godinu i izriču se na pune sate, dane i mjesece.

Evidencije o izrečenim odgojnim preporukama vode tužilaštva i sudovi. Odgojne preporuke nemaju karakter kaznene evidencije o osuđivanosti maloljetnika i ne mogu se upotrijebiti na bilo koji način koji bi bio štetan za maloljetnika (Gurda, 2011, str. 177-199).

ZAKLJUČAK

Ulaganje u provođenje mjera usmjerenih u suzbijanju maloljetničkog prestupništva, predstavlja jedini ispravan put ka razvoju društva u cjelini. (Čuljević, 2024.)

Nesumnjivo jednu od značajnih uloga u postizanju pomenutog predstavlja i koncept restorativne pravde utemeljen u sistemu maloljetničkog pravosuđa, prevashodno putem alternativnih mjera.

U Bosni i Hercegovini koncept restorativne pravde je dobio zakonsko utemeljenje kroz odredbe odgojnih/vapitnih preporuka, čija je svrha da se ne pokreće krivični postupak prema maloljetniku i prevencija, odnosno da se primjenom odgojnih preporuka utiče na pravilan razvoj maloljetnika i jačanje njegove lične odgovornosti kako ubuduće ne bi činio krivična djela.

Cilj restorativne pravde je transformacija pogleda društva na kriminalitet i druge forme neprihvatljivog ponašanja sa klasičnog reagovanja na kriminalitet (koji je zasnovan na kažnjavanju i čija svrsishodnost je u savremenom dobu dovedena u pitanje) na drugi pogled usmjeren ka popravljaju nastale štete i uspostavljanja mira u zajednici.

Restorativna pravda teži popravljaju odnosa nastalog izvršenjem krivičnog djela, odnosno uspostavi balans između potreba i interesa svih zainteresovanih strana u procesu - žrtve, učinioca i članova zajednice.

UN i druge međunarodne organizacije preporučuju korištenje koncepta restorativne pravde, koji može imati primenu u širokom spektru društvenih problema - prvenstveno maloljetničke delikvencije koja je nažalost, u svakom društvu uključujući i naše, u ogromnom porastu.

Obzirom na naprijed navedeno, restorativna pravda zasigurno postaje osnov preispitivanja postojećeg krivičnogpravnog sistema.

LITERATURA

- Čuljević I. (2024). *Maloljetničko prekršajno pravo u Bosni i Hercegovini - razvoj prekršajnog prava i analiza pravnog okvira - pregledni naučni rad.*
- Ćopić, S. (2010). *Restorativna pravda i krivičnopravni sistem - doktorska disertacija, Pravni fakultet Univerziteta u Nišu.*
- Džamonja/Ignjatović, Žegarac, N. (2008). *Restorativna pravda između filozofije i empirije. U Godišnjak Fakulteta političkih nauka u Beogradu.*
- Gurda, V. (2011). *Odgojne preporuke kao alternativa krivičnom postupku prema maloljetnicima i njihova primjena u praksi. U Anali Pravnog fakulteta u Zenici, br. 8.*
- Jovašević, D., Stevanović, Z. (2013). *Primjena alternativnih mera za maloletnike u krivičnom pravu. U Zbornik Instituta za kriminološka i sociološka istraživanja, Beograd, broj 1-2/2009.godine, u: Lj. Mitrović, „Vaspitne preporuke i njihova primjena u uporednom pravu“, Godišnjak fakulteta pravnih nauka, godina 3, broj 3, Banja Luka 2013.*
- Mirosavljević, A. (2010). *Modeli restorativne pravde u svijetu za mlade u sukobu sa zakonom i pregled istraživanja njihove učinkovitosti. Kriminologija i socijalna integracija, br. 1.*
- Pleh, V. (2019). *Alternativni modeli u krivičnom zakonodavstvu za maloljetnike u Bosni i Hercegovini. U Godišnjak Pravnog fakulteta Univerziteta u Sarajevu, LXII-2019, str.127-156.*
- *Strategija protiv maloljetničkog prestupništva u Bosni i Hercegovini 2006-2010.*

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na:

<http://www.mhrr.gov.ba/PDF/default.aspx?id=182&langTag=bs-BA>

- Tulumović, M. (2014). *Restorativna pravda uz osvrt na međunarodnu regulativu i primjenu u maloljetničkom zakonodavstvu. U Anali Pravnog fakulteta u Zenici, 7(14)..*
- Vasiljević-Prodanović, D. (2010). *Restorativna pravda u krivičnopravnom sistemu. Temida, Beograd, 9/2010.*
- Vranj, V. (2011). *Alternativne mjere i sankcije u krivičnom zakonodavstvu i praksi u Bosni i Hercegovini. Sarajevo: Pravni fakultet Univerziteta.*
- *Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Brčko distrikta. Službeni glasnik BDBiH, br. 44/11.*
- *Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku FBiH. Službene novine FBiH, br. 7/14, 74/20.*
- *Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske. Službeni glasnik RS, br. 13/10, 61/13 i 68/20.*

ANALYSIS OF THE CONCEPT OF RESTORATIVE JUSTICE IN THE JUVENILE JUSTICE SYSTEM IN BOSNIA AND HERZEGOVINA

Review scientific paper

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Summary

Restorative justice comes from the English word restore - which means to return to the previous state, restore, compensate, restore original values, set in the initial position (Miroslavljević, 2010, p. 54). The idea of restorative justice came to life at the end of the twentieth and the beginning of the twenty-first century.

The above concept provides various responses to criminal behavior - from diversion (diversion of criminal proceedings from regular proceedings) to actions taken during any moment in the criminal proceedings, and is applied to minors and adults.

The concept of restorative justice is based on the rehabilitation of perpetrators and the restoration of relationships within the social community. The idea of restorative justice is based on "less repressive" treatment, an individual approach to each person, active participation of all parties in the relationship resulting from the criminal offense with the aim of establishing balance and an emphasized active role of the community (Vranj, 2011, pp. 43-55). A particularly important role of the concept of restorative justice is reflected in the fact that it is not aimed at punishing perpetrators, but rather focuses on dialogue between perpetrators and victims, the social community, all for the purpose of preventing delinquent behavior and establishing security in society. Precisely because of the above, it differs from the concept of retributive justice, which is aimed at separating perpetrators of criminal offenses from society by imposing criminal sanctions (Vasiljević-Prodanović, 2010, p. 59).

This paper aims to present the concept of restorative justice and its establishment in the juvenile justice system in Bosnia and Herzegovina through alternative measures.

Keywords: *restorative justice, retributive justice, alternative measures, juvenile justice.*

The concept of restorative justice

The goal of the principle of restorative justice lies in satisfying the basic interests of the social community (Džamonja/Ignjatović, Žegarac, 2008, p. 465).

One of the most important foundations for the application of the concept of restorative justice is the United Nations Declaration on the Basic Principles of Restorative Justice (Tulumović, 2014, p. 632).

Restorative justice is based on four (Ćopić, 2010, p. 51) basic principles:

1. *the principle of personalism and the understanding of a criminal offense as an injury to people and interpersonal relationships - views a criminal offense primarily as an injury to people, and only secondarily as a violation of a certain legal norm,*
2. *the principle of repairing damage caused by a criminal act - the perpetrator accepts responsibility for what has been done and is ready to repair the damage,*
3. *principle of participation – refers to the participation of all interested parties in resolving matters and*
4. *the principle of reintegration - the return of the perpetrator and the victim to the social community.*

Within the concept of restorative justice, four models have been developed (Miroslavljević, 2010, pp. 53-64) in the world, among which the most acceptable model is called "mediation between the perpetrator and the victim", which implies a face-to-face confrontation between the perpetrator and the victim with the mediation of a mediator.

The emphasis in applying the aforementioned principle is on dialogue based on the resolution of matters.

Restorative justice in the juvenile justice system in Bosnia and Herzegovina

The prerequisites for the establishment and application of the concept of restorative justice were created in 1998 when provisions on the possibility of issuing and applying educational recommendations to minors were introduced

into the legislation of Bosnia and Herzegovina in the criminal legislation of the Federation of Bosnia and Herzegovina. In other words, in Bosnia and Herzegovina the concept of restorative justice was legally established through the provisions of educational/educational recommendations (more details in: *Strategy against Juvenile Delinquency in Bosnia and Herzegovina 2006-2010*).

Educational recommendations or educational orders represent *"specific criminal law measures of an optional nature, or sui generis measures that are not criminal sanctions of an exclusively special preventive nature that lead to extrajudicial forms of intervention against socially unacceptable behavior of young people"* (Jovašević, Stevanović, 2013, p. 19).

In the Republika Srpska, at the beginning of 2010, the Law on the Protection and Treatment of Children and Juveniles in Criminal Procedure of the Republika Srpska ("Official Gazette of the RS", no. 13/10, 61/13 and 68/20) was adopted, which provides for the application of two types of alternative measures: police warning and educational recommendations.

In the Federation of BiH, the Law on the Protection and Treatment of Children and Minors in Criminal Proceedings ("Official Gazette of the FBiH", No. 7/14 and 74/20) was adopted in 2014, which provides for the introduction of restorative measures in criminal legislation towards minors, while in the Brčko District of BiH, the Law on the Protection and Treatment of Children and Minors in Criminal Proceedings ("Official Gazette of the Brčko District of BiH", No. 44/11) was adopted in 2011.

The goal of applying alternative measures in proceedings against minors is to avoid involving minors in classic criminal proceedings.

Alternative models generally represent the primary response to juvenile delinquency, representing forms of response to crime in the form of certain institutions, procedures and/or programs that do not deprive the perpetrator of his/her liberty. They are applied or carried out in the community (Pleh, 2019, pp. 127-155).

Alternative measures and alternative sanctions together constitute alternative models.

According to Pleh, alternative measures are *"measures that are taken against the perpetrator before the initiation of criminal proceedings with the aim of avoiding him, during the criminal proceedings with the aim of reacting to his behavior and eliminating behavior that would put him at risk of committing a criminal offense"*

again, or in the phase of applying or executing a criminal sanction of an institutional nature”.

Unlike alternative measures, alternative sanctions are imposed after the criminal proceedings have been completed, and are applied or executed in the community (Pleh, 2019, pp. 127-155).

With the completion of the adoption of the aforementioned laws at the state level in BiH, the possibility of applying extrajudicial forms of reaction to the behavior of minors has been formally opened (Tulumović, 2014, p. 651).

Alternative measures in the legislation of Bosnia and Herzegovina

The Laws on the Protection and Treatment of Children and Minors in Criminal Proceedings (FBiH, RS, BD BiH) provide for the application of police warnings and educational recommendations as alternative measures in proceedings against minors.

In addition to the aforementioned laws, the legal regulation of alternative measures in Bosnia and Herzegovina, depending on the alternative measure in question, is also made up of special rulebooks or regulations, and therefore we are talking about the following rulebooks or regulations:

For the application of the alternative measure of a police warning, the following applies:

- *Rulebook on the application of the FBiH police warning measure,*
- *Rulebook on the application of police warning measure RS,*
- *Rulebook on the application of the police warning measure BD BIH.*

For the implementation of alternative measures of educational recommendations, the following applies:

- *Regulation on the application of educational recommendations to minors of FBiH ,*
- *Rulebook on the application of educational recommendations towards juvenile perpetrators of criminal offenses of the RS,*
- *Rulebook on the application of educational recommendations towards juvenile perpetrators of criminal offenses in the BD of BIH.*

Police warning

A police warning is an alternative measure taken against a minor, and is imposed by a police officer who has special knowledge acquired during professional training - an authorized official with the approval of the prosecutor, in the manner and procedure prescribed by the aforementioned laws and regulations.

The basic principles on which the application of police warnings is based are: voluntariness, impartiality, proportionality, respect for civil and human rights, and it is in the interest of the minor.

The formal conditions for applying a police warning refer to the following:

- *that it is a criminal offense punishable by a fine or imprisonment of up to 3 years,*
- *that the issuing of a police warning is in accordance with the principles of comprehensiveness and proportionality.*

Special conditions of application refer to the following:

- *that the minor admits the criminal act,*
- *that the recognition was given freely and voluntarily,*
- *that there is sufficient evidence that the minor committed a criminal offense and*
 - *that the minor has not previously been issued a police warning, educational recommendation or criminal sanction.*

The Laws on the Protection and Treatment of Children and Minors in Criminal Proceedings (FBiH, RS, BD BiH) and the Regulations on the Application of Police Warning Measures (FBiH, RS, BD BiH) define the obligations of an authorized official who proposes to the prosecutor the imposition of an alternative police warning measure against a minor. .

When it comes to the obligations of an authorized official, they relate to the following:

The authorized official is obliged to obtain a social history and data on the imposed educational measures, data on the imposed educational recommendations and data from the criminal and misdemeanor records. After obtaining approval for the examination of the minor from the prosecutor, he is obliged to examine the minor within 24 hours in the presence of the defense attorney and parents or adoptive parents and social welfare authorities.

Furthermore, the obligation of the authorized official is also reflected in the preparation of an official report based on the provisions of the Criminal Procedure Code. The proposal for the imposition of an alternative measure of a police warning must be explained. He is obliged to impose an alternative measure on the minor within 3 days of the approval received from the prosecutor, and to point out to him the social unacceptability and harmfulness of his behavior, the consequences that his behavior may have for him, as well as the possibility of conducting criminal proceedings and imposing a criminal sanction in the event of a repeat commission of a criminal offense.

Unlike the obligations of an authorized official, the obligation of the plaintiff refers to:

- *giving an authorized official person permission to examine minors,*
- *granting approval for the imposition of a police warning measure.*

The alternative measure of a police warning is actually based on the application of the principle of opportunism.

For criminal offences punishable by a fine or imprisonment of up to three years, the prosecutor may decide not to initiate criminal proceedings even though there is evidence that a minor has committed the criminal offence if he or she considers that it would not be appropriate to initiate proceedings against the minor, given the nature of the criminal offence and the circumstances under which it was committed, the minor's previous life and his or her personal characteristics. The prosecutor may proceed in the same manner in the case of a criminal offence punishable by imprisonment of more than three years if such action is in accordance with the principle of proportionality. In order to establish the above circumstances, the prosecutor may request information from the minor's parents or guardians, other persons and institutions, and when necessary, may summon these persons and the minor for direct notification. The prosecutor shall seek the opinion of the guardianship authority on the appropriateness of initiating proceedings against the minor. When the execution of the punishment or educational measure is in progress, the prosecutor may decide not to demand the initiation of criminal proceedings for another criminal offense committed by a minor, if, considering the gravity of that criminal offense, as well as the punishment or educational measure being carried out, there would be no point in conducting the proceedings and imposing a criminal sanction for that offense.

Educational recommendations

Educational recommendations are a form of alternative measures that prosecutors or judges apply to a juvenile perpetrator of a criminal offense based on the principle of opportunity, thus diverting them from the usual criminal proceedings.

The basic principles on which the application of educational recommendations is based are: voluntariness, impartiality, proportionality, respect for civil and human rights, and it is in the interest of minors.

The formal conditions stipulated by the legislator in Bosnia and Herzegovina are as follows:

- that it is a criminal offense punishable by a fine or imprisonment of up to three years,*
- for criminal offenses punishable by a sentence of more than three years in prison if the legal requirements are met and if this is proportionate to the circumstances and gravity of the criminal offense committed.*

The special conditions provided by the legislator for issuing educational recommendations refer to the following:

- that the minor admits the criminal act,*
- that the recognition was given freely and voluntarily,*
- that there is sufficient evidence that the minor committed a criminal offense,*
- that the minor expresses in writing his willingness to reconcile with the injured party,*
- that the minor gives written consent to the application of the educational recommendation, and the younger minor also with the consent of the parents or guardians and*
- to give written consent to the injured party in the event that this is required by law.*

Purpose of educational recommendations:

- that no criminal proceedings be initiated against the minor and*
- that the application of educational recommendations influences the proper development of minors and strengthens their personal responsibility so that they do not commit criminal acts in the future.*

The legislator in Bosnia and Herzegovina foresees the following types of educational recommendations:

- personal apology to the injured party,*
- compensation for damage to the injured party,*
- regular school attendance or regular going to work,*
- involvement in work, without compensation, in humanitarian organizations or jobs of social, local or environmental content,*
- treatment in an appropriate health facility (hospital or outpatient),*
- inclusion in individual or group treatment in educational, psychological and other counseling centers.*

The first group of educational recommendations includes those that regulate the personal relations between the minor and the injured party - personal apology to the injured party and compensation for damages to the injured party. Then there are those that relate to the education and work of the minor, as recommendations of a treatment nature - regular school attendance, work for the benefit of a humanitarian organization or local communities and accepting suitable employment.

Finally, the third group of educational recommendations consists of those recommendations that are aimed at removing or mitigating the factors that are the cause of delinquent behavior of minors, and are related to his personal circumstances and social environment - placement in another family, home or institution, treatment in an appropriate health institution, and visiting educational, educational and other counseling centers (Gurda, 2011, p. 177-199).

The aforementioned division represents the basic criterion for differentiating the procedure of issuing and applying educational recommendations. Therefore, analogously to what has been said, we distinguish: the procedure for applying educational recommendations that regulate the personal relations of minors and the injured party and the procedure for applying other educational recommendations.

In relation to criminal sanctions that can only be imposed by a court, educational recommendations can also be imposed by the prosecutor, that is, one or more educational recommendations for a specific case (Gurda, 2011, pp. 177-199).

The competent prosecutor can issue the following educational recommendations: a personal apology to the victim, compensation for damage to the victim, regular school attendance and visits to educational, psychological and other counseling centers.

The juvenile judge may issue the following educational recommendations: work for the benefit of a humanitarian organization or local community, acceptance of suitable employment, placement in another family, home or institution, and treatment in an appropriate health institution (Gurda, 2011, pp. 177-199).

When implementing educational recommendations - personal apology to the injured party and compensation for damages to the injured party, in addition to the minor, the person injured by the criminal offense also gives his/her consent in writing.

The prosecutor, that is, the judge, when choosing an educational recommendation, has the obligation, in accordance with the law, to take into account the opinion and overall interests of the minor, as well as the interests of the injured party, with the obligation to take care that the application of the educational recommendations does not interfere with the regular education or work of the minor.

Educational recommendations can be replaced by another educational recommendation or canceled during their duration. The selection and application of educational recommendations is made in cooperation with the parents, adoptive parents or guardians of minors and the competent guardianship authority.

When it comes to the duration and issuing of educational recommendations, it is important to emphasize the fact that educational recommendations can last no longer than one year and are issued for full hours, days and months.

Records of issued educational recommendations are kept by prosecutor's offices and courts. Educational recommendations do not have the character of a criminal record of a juvenile's conviction and cannot be used in any way that would be harmful to the juvenile (Gurda, 2011, pp. 177-199).

CONCLUSION

Investing in the implementation of measures aimed at combating juvenile delinquency represents the only correct path towards the development of society as a whole. (Čuljević, 2024.)

Undoubtedly, one of the significant roles in achieving the aforementioned is played by the concept of restorative justice based on the juvenile justice system, primarily through alternative measures.

In Bosnia and Herzegovina, the concept of restorative justice has received a legal basis through the provisions of educational recommendations, the purpose of which is not to initiate criminal proceedings against minors and prevention, i.e. to influence the proper development of minors and strengthen their personal responsibility so that they do not commit criminal acts in the future.

The goal of restorative justice is to transform society's view of crime and other forms of unacceptable behavior from the classic response to crime (which is based on punishment and whose usefulness has been questioned in the modern era) to another view aimed at repairing the damage caused and establishing peace in the community.

Restorative justice seeks to repair the relationship created by the commission of a criminal offense, or rather, to establish a balance between the needs and interests of all interested parties in the process - the victim, the perpetrator, and members of the community.

The UN and other international organizations recommend the use of the concept of restorative justice, which can be applied to a wide range of social problems - primarily juvenile delinquency, which is unfortunately on the rise in every society, including ours.

Considering the above, restorative justice certainly becomes the basis for reviewing the existing criminal justice system.

LITERATURE

- Čuljević I. (2024). *Juvenile Misdemeanor Law in Bosnia and Herzegovina - Development of Misdemeanor Law and Analysis of the Legal Framework - A Scientific Review.*
- Ćopić, S. (2010). *Restorative Justice and the Criminal Justice System - Doctoral Dissertation, Faculty of Law, University of Niš.*
- Džamonja/Ignjatović, Žegarac, N. (2008). *Restorative Justice between Philosophy and Empiricism.* In *Yearbook of the Faculty of Political Sciences in Belgrade.*
- Gurda, V. (2011). *Educational recommendations as an alternative to criminal proceedings against minors and their application in practice.* In *Annals of the Faculty of Law in Zenica*, No. 8.
- Jovašević, D., Stevanović, Z. (2013). *Application of alternative measures for juveniles in criminal law.* In *Proceedings of the Institute for Criminological and Sociological Research, Belgrade*, No. 1-2/2009, in: Lj. Mitrović, "Educational recommendations and their application in comparative law", *Yearbook of the Faculty of Law, Year 3, No. 3, Banja Luka* 2013.
- Miroslavljević, A. (2010). *Restorative justice models around the world for youth in conflict with the law and a review of research on their effectiveness.* *Criminology and Social Integration*, No. 1.
- Pleh, V. (2019). *Alternative models in criminal legislation for minors in Bosnia and Herzegovina.* In *Yearbook of the Faculty of Law, University of Sarajevo*, LXII-2019, pp.127-156.
- *Strategy against juvenile delinquency in Bosnia and Herzegovina 2006-2010.*

Available at: <http://www.mhrr.gov.ba/PDF/default.aspx?id=182&langTag=bs-BA>

- Tulumović, M. (2014). *Restorative justice with a review of international regulations and application in juvenile legislation.* In *Annals of the Faculty of Law in Zenica*, 7(14).
- Vasiljević-Prodanović, D. (2010). *Restorative Justice in the Criminal Justice System.* *Temida, Belgrade*, 9/2010.
- Vranj, V. (2011). *Alternative measures and sanctions in criminal legislation and practice in Bosnia and Herzegovina.* *Sarajevo: Faculty of Law, University.*
- *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Brčko District.* *Official Gazette of the BDBiH*, No. 44/11.

- *Law on the Protection and Treatment of Children and Juveniles in Criminal Procedure of the Federation of Bosnia and Herzegovina. Official Gazette of the Federation of Bosnia and Herzegovina, No. 7/14, 74/20.*
- *Law on the Protection and Treatment of Children and Juveniles in Criminal Procedure of the Republika Srpska. Official Gazette of the RS, No. 13/10, 61/13 and 68/20.*