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## POSSIBILITIES OF APPLYING RESTORATIVE JUSTICE TO VIOLENCE IN SCHOOL\*

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### **Abstract**

At the beginning of the paper, the authors point out that school violence is inherent in all societies. As the existing concept of retributive justice embodied in criminal law (does not) produce appropriate results, it is necessary to consider the possibility of applying the concept of restorative justice in the fight against school violence. After defining the concept of restorative justice, the authors highlight the existence of two models of restorative justice - diversionary and therapeutic. A special part is dedicated to presenting the results of criminological research on the possibilities of applying restorative justice to school violence. In the following parts of the paper, the authors presented the scope of school violence, and the normative framework based on which it would be possible to sanction unacceptable behavior. In the end, they observed the given behaviors through the prism of educational orders and the principle of opportunity. The conclusion emphasizes the need for practitioners to consider the possibilities of applying restorative justice to school violence in order to pay special attention to the needs of victims.

*Keywords:* school violence, restorative justice, Republic of Serbia

### **1. Introduction**

In a world where the use of violence against other people is a matter of everyday life, even schools, as institutions of an educational nature, are not immune to cases of violence that occur in their premises. Cases of physical confrontation, with the use of firearms, are the subject of journalistic reporting. It is enough to cite examples from the United States of America, where victims are counted in double digits. At the same time, schools in Serbia are such environments where violence among students, but also between students and teachers, is very present. Minors are very often not they are not even aware of the different forms of violence they are exposed to. As minors spend a large part of the day in schools, they are exposed to the daily risk of becoming a bully or a victim.

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Cases of school violence are not only immanent to the modern age. Namely, students in France in the 16th and 22nd centuries, according to the historian Philippe Aries, came to school armed, and because of this fear spread among ordinary people. A contemporary of Philippe Aries, Michel de Montaigne, had a similar attitude, who stated that schools are real prisons for imprisoned youth and that students are punished with the rod before they become disbanded.<sup>214</sup> Regardless of the fact that the phenomenon of school violence has been known since ancient times, its unique definition is difficult to determine. Although many researchers believe that the definition of school violence is very simple, it is necessary to pay special attention when defining it, because otherwise we would miss some forms of school violence. Some criminologists, such as Furlong and Morrison, emphasize the need to distinguish between school violence and school violence. Namely, school violence is defined as violence that originates from society, whereby it is carried out in the school, as the location of its manifestation, while school violence is defined as violence that arises as a result of the actions of the school, as a certain system, which contributes to the creation and increasing the problems of people in school.<sup>215</sup> Although this distinction between school violence and school violence is clear, there is no need to distinguish between them.

One of the accepted definitions of school violence is the definition given by Funk in his report to the European Commission - it includes a wide range of activities that result in physical or psychological suffering to a person in or around the school, as well as the destruction of property at school.<sup>216</sup> However, it should be emphasized that determining violence in school has certain difficulties. Namely, while the attack of a disgruntled parent on a teacher, due to the bad grades of his own child, near the school, can be classified as school violence, even though it was committed outside the school building and yard, while the attack of a jealous husband on his wife, who is a teacher at the school, within the schoolyard is not a form of school violence. From this example, we can see that determining a consistent definition of school violence is difficult, and it is necessary to take into account different forms of violence, which may have a spatial connection with the school, but cannot be classified as school violence.<sup>217</sup>

At the same time, it is necessary to emphasize another terminological problem in defining school violence. The public often uses the term bullying, which can be translated as mistreatment or abuse, to denote violence in schools. Although school violence and bullying partially overlap, it should be emphasized that school violence is a much broader concept. The term bullying represents, as criminologist Olweus believes, a situation in which a student is abused, i.e. victimized when he is repeatedly exposed to the negative behavior of one or more students over time.<sup>218</sup> Starting from the fact that bullying presupposes the power relationship of one or more persons over the victim, it is impossible to include a fight between equal students under this term.<sup>219</sup>

## **2. The extent of school violence in certain countries**

The United States systematically collects data on school violence. Namely, during the implementation of the National Crime Victimization Survey (NCVS), the US authorities collect data on school crime (School Crime Supplement - SCS). According to the data from 2017, we can state that about

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<sup>214</sup> Popadić D. (2009). *Nasilje u školama (Violence in schools)*. Institut za psihologiju. Beograd,, str. 82.

<sup>215</sup> Denmark, F., Gielen, U., Krauss, H., Midlarsky, E., Wesner, R. (2005). *Violence in Schools: Cross-National and Cross-Cultural Perspectives*. Springer Science, USA,, pp. 86-87.

<sup>216</sup> Vettenburg, N. (2001). *Violence in Schools: Awareness-raising, Prevention, Penalties*. Council of Europe Publishing, Strasbourg,, p. 33.

<sup>217</sup> Popadić, D., op. cit., p. 12.

<sup>218</sup> Sanders, C., Phye, G. (2004). *Bullying: Implications for the Classroom*. Elsevier Academic Press. San Diego, p. 3

<sup>219</sup> Popadić, D., op. cit., p. 26.

1% of the respondents indicated that they had been a victim of violent victimization, under which serious violent victimization, including simple assault, in the period of 6 months before the survey was conducted, and less than 0.5 % reported serious violent victimization, which includes rape, sexual assault, robbery, and aggravated assault. By comparing the data with 2001, we can conclude that there has been a decline in violent victimization. Thus, violent victimization fell from 2% to 1%, while serious violent victimization fell from 1% to less than 0.5%. In addition to serious violent victimization, a major issue related to student safety is bullying.<sup>220</sup>

Namely, in addition to violent victimization, a bigger problem is bullying. According to the SCS, one in five students (20.2%) reported being bullied. Of those students who reported being bullied, 13% were teased, called names, or insulted, while 13% were the subject of rumours. Five percent were pushed, tripped over or spat on. The same percentage is deliberately excluded from the activity. If we were to put bullying through the lens of the sex of the victims, we would see that a higher percentage of male students than female students stated that they had been physically bullied - 6% versus 4%. There is a similar situation regarding the spreading of rumors - 18% of male students stated that they were victims of spreading rumors against 9% of female students. Regarding the exclusion from the dedicated activity, the percentages are 7% against 4% in favor of students. The fact that 41% of students, who reported that they were bullied at school, thought that the violence would happen again is worrying. In relation to the place of bullying, the students stated that it was: hallway or staircase at school (43%), in the classroom (42%), in the cafeteria (27%), outside on the school grounds (22%), online or by text (15%), in the bathroom or changing room (12%) and on the school bus (8%). According to research, the most common reasons for bullying are physical appearance, race/ethnicity, gender, disability, religion, and sexual orientation. Another striking data, which indicates the necessity of empowering students to report bullying, is that only 46% of bullied students informed an adult at school about the incident.<sup>221</sup>

In addition to data on school violence in the United States, we will provide data on this phenomenon in England. Namely, the Office for National Statistics (Office for National Statistics) conducts an annual survey of crime in England and Wales, and since 2009 it has started conducting a survey on the victimization of young people aged 10 to 15 years. Since 2014, the list of questions on youth victimization has been expanded. Therefore, the results on student bullying in England will be presented. It is interesting to mention the data from the 2015 longitudinal study conducted by the Office for National Statistics. The research followed groups of students over a longer period of time in order to establish the degree of victimization over time. Thus, 7% fewer students reported that they were bullied during the 11th year of life, compared to the same students during the 10th year - 37%. Likewise, the bullying rate for the 2015 cohort of 11-year-old students was slightly lower (28.6%) than for the 2006 cohort - 29.1%. In this study, there is a gender disparity, because 35% of female students reported abuse, while the percentage of male students who reported abuse is 26. As expected, a higher degree of victimization exists among students with special educational needs and disabilities - 36%, compared to their peers from the general population - 29%. The Office for National Statistics continued to conduct research in the following years. Thus, it was estimated that around 17% of students were abused during 2017/2018. school years. By comparing the age groups of victimized students, we can see that the degree of victimization was higher among younger students. Thus, 22% of surveyed 10-year-olds reported bullying during the observed time period, while only 8% of 15-year-olds reported bullying.<sup>222</sup>

Based on the presented studies on the scope of school violence, we can rightly ask the question whether a different approach to the fight against this form of violent crime would yield better results. It is usual for the competent authorities to respond to school violence by conducting disciplinary proceedings or criminal proceedings if it is a crime. The application of restorative justice is the essence of a different

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<sup>220</sup> Retrieved 10 December 2022 from: <https://nij.ojp.gov/topics/articles/what-do-data-reveal-about-violence-schools>

<sup>221</sup> Retrieved 13 December 2022 from: <https://www.pacer.org/bullying/info/stats.asp>,

<sup>222</sup> Long, R., Roberts, N., Loft, P. (2020). *Bullying in UK Schools*. House of Commons Library, London, pp. 7-8.

approach. In the continuation of the paper, after defining the concept of restorative justice, the authors will present its two models, and then they will show the possibilities of applying restorative justice to school violence.

### 3. The concept of restorative justice

The concept of restorative justice appeared at the end of the seventies of the 20th century. Thus, for example, the criminologist Braithwaite defines restorative justice as a process whose goal is to repair the damage to the victim, the local community and the perpetrator, caused by the commission of a criminal act.<sup>223</sup> In order to make a clear distinction between retributive justice embodied in criminal law and restorative justice, it is necessary to draw a parallel. Namely, the essence of criminal law is to answer the question of what law was violated, who violated it and what criminal sanction should be imposed on the perpetrator of the criminal act in order to achieve the purpose of imposing criminal sanctions. In other words, criminal law is aimed at retribution, while restorative justice is aimed at the interests of the perpetrator, the injured person and the local community. The application of restorative justice should enable the perpetrator, the victim and the local community to decide together what is the social response to the commission of a specific criminal act.<sup>224</sup>

In addition to Braithwaite, the definition of restorative justice by penologist Marshall is worth mentioning. Namely, the concept of restorative justice means "a process by which the parties, each of whom participates in the relevant criminal act, come together to collectively decide how to overcome the consequences of the crime and its implications in the future".<sup>225</sup> It is also interesting to mention the Norwegian criminologist Nils Christie, who pointed out that a criminal act is a conflict and that as such it is the property of those who are connected to it in some way (perpetrator, victim and local community), not those (lawyers) who somehow steal it. A criminal act, according to Christie, is the basis on which the interested parties will reach an agreement on social responsibility (compensation) for the committed criminal act. Therefore, he suggests the use of restorative justice, because it "represents a better response to criminality, because it is characterized by direct communication between those who are in conflict, which should lead to compensation".<sup>226</sup>

The basic prerequisite for the application of restorative justice is the full participation and consent of all those who were in any way affected by the commission of a criminal act - victims, delinquents, their families and friends, as well as people from the community. In this way, it is possible that the application of restorative justice leads to the removal of the consequences of the committed criminal act, because the entire process is focused on the needs of the victim (what needs to be done to heal the trauma; restore the feeling of security), the delinquent (what needs to be done to evil will never happen again; what to do to make the delinquent behave in accordance with the agreement reached) and community members (what will help them feel safe; what steps should be taken to improve the state of the community so that there is less chance of a crime occurring in future).

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<sup>223</sup> Strickland, A. (2004). Restorative justice. Petera Lang Publishing, New York, p. 1.

<sup>224</sup> Dimovski, D., Ilić, I. (2012). Mogućnosti primene instrumenata restorativne pravde u krivičnom postupku prema maloletnicima (Possibilities of applying restorative justice instruments in criminal proceedings against minors). Krivičnopravni položaj i socijalna zaštita maloletnih prestupnika / priredili Kostić, M., Konstantinović Vilić, S., Brkić, M., Pravni fakultet u Nišu i Centar za socijalni rad "Sveti Sava", Niš., str. 90.

<sup>225</sup> Konstantinović Vilić, S., Kostić, M., (2006). Penologija (Penology). Centar za publikacije Pravnog fakulteta, Niš, str. 101.

<sup>226</sup> Čopić, S. (2007). Pojam i osnovni principi restorativne pravde (The concept and basic principles of restorative justice). Temida, Prometej, Beograd, broj 1, godina 10, str. 27.

Achieving the purpose of restorative justice requires full and immediate accountability of all participants. Thus, the accused person faces the victim of the committed criminal act and others who suffer the consequences of the crime. This gives them the opportunity to explain their behavior, take full responsibility and be part of the process in which it is decided to unify the needs of all interested parties. At the same time, the application of restorative justice strives to return to wholeness everything that was destroyed by a criminal act. The commission of a criminal offense inevitably leads to the division of the way of thinking among the members of the local community into "us-them". The application of restorative justice strives to overcome such a way of thinking with the aim of reconnecting within a social community. Connecting into one unit prevents isolation within the community, in the sense of alienation felt by both the delinquent and the victim, as well as other members of the social community who suffer the consequences of committing a criminal act. Ultimately, the application of restorative justice aims to empower the community to prevent further harm by "building relationships and addressing important social issues that are the primary causes of crime."<sup>227</sup>

#### 4. Two forms of restorative justice

Among the researchers of scientific thought, two models of restorative justice are distinguished - diversionary and therapeutic. In the case of the diversionary model of restorative justice, it is important to emphasize that it is implemented instead of criminal proceedings, which leads to the imposition of alternative sanctions. Thus, this model of restorative justice is more focused on the perpetrator of the crime. Proponents of this model of restorative justice point out that, as the criminal procedure is full of prejudices, for individual perpetrators of a criminal act, in order to achieve resocialization, it is more effective to act outside the walls of penitentiary institutions, whereby reconciliation with the victim and the local community is achieved.<sup>228</sup> Over time, different types of restorative justice diversionary models have been developed: restorative justice conference for young delinquents (restorative justice conference)<sup>229</sup>, diversion from conducting criminal proceedings (pre trial diversion)<sup>230</sup>, diversion program intended for minors, who have committed criminal acts under the influence of psychoactive drugs. substances (Chemical Awareness Program), diversion program specialized for minor thieves (Theft Awareness Program), diversion program intended for minors who were engaged in illegal tobacco trade (Tobacco Awareness Class) and so on.

The therapeutic model of restorative justice is characterized, in contrast to the diversionary model of restorative justice, by its application only after the passing of a conviction, with special attention paid to the victim with the aim of empowering her and overcoming all the hardships of the committed criminal act. By applying this model of restorative justice, the needs of the victim are emphasized in the overall assessment of society's reaction to the committed crime. The greatest application of this model occurs in the case of crimes of sexual violence, in which the victim and the perpetrator know each other.<sup>231</sup> The therapeutic model of restorative justice can also be applied to crimes with a fatal outcome - murder. That's right, according to Professor Mark Umbreit, the best example of applying the therapeutic model of restorative justice to the application of murder is the case of Sarah, whose father was murdered, and his killer named Jeff. After serving 25 years in prison, Jeff became eligible for parole. When the daughter of his victim Sarah heard about such a thing the possibility made her feel angry and vulnerable, after which

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<sup>227</sup> Coward, S. (2000). *Restorative Justice in Cases of Domestic Violence: Healing Justice? Directed Interdisciplinary Studies*, Carleton University, p. 7.

<sup>228</sup> Miller, S. (2011). *After the crime: The power of restorative justice dialogues between victims and violent offenders*. New York University Press, New York, p. 12.

<sup>229</sup> Elrod, P., Ryder, S. (2004). *Juvenile Justice: A Social, Historical, and Legal Perspective*. Jones & Bartlett Learning, Burlington, pp. 177-179

<sup>230</sup> Strickland, op., cit, pp. 66-67.

<sup>231</sup> Miller, op, cit., 12.

she consumed Professor Umbright's help. Namely, Professor Umbright organized some kind of mediation between her and the killer. At the beginning of the mediation, Sara only managed to say how she felt after four minutes. When it was Jeff's turn, he told his version of events, emphasizing the impact of the unfortunate event on his life. In an interview after the mediation, Sara pointed out that seeing Jeff was like walking through a fire that takes away her pain.<sup>232</sup> After illustrating that the therapeutic model of restorative justice can be applied even in the case of the most serious crimes, the conclusion is that the therapeutic model of restorative justice makes up for the shortcomings of the diversionary model and pays special attention to the needs of victims of gender-based violence, because the diversionary model of restorative justice does not produce special results in terms of overcoming the relationship of supremacy of the perpetrator in relation to the victim, whereby there is a possibility of revictimization.<sup>233</sup>

## 5. Examples of good practice in the application of restorative justice to school violence

Conflict and the use of violence, even with a fatal outcome, are part of our daily lives. Faced with problems, young people often resort to violence, as a method of solving problems, or overcome given situations by avoiding them, during which they accumulate fear and anger. Although these responses, according to Rogers, are natural, they are inappropriate over a long period of time and can cause far more serious consequences.<sup>234</sup>

Young people must learn that disagreement with other people is inevitable and that conflict resolution by itself is impossible. That's why you need to learn how to de-escalate the conflict, manage it and finally solve it. One of the ways to master these skills is to implement appropriate prevention programs against violence in schools. Prevention measures in schools must have the support of the local community. In order for the violence prevention program, which is implemented in schools, to give results, it is necessary that teachers, professors, administrators and other school personnel undergo training on methods of conflict resolution and mediation, as one of those methods. After the participation of school staff in such seminars, these skills can be applied in classrooms, school yard, gym, corridors, cafeteria and so on. With the greater use of mediation in schools, it becomes part of the school environment. The use of these skills extends to other areas, further leading to violence prevention.<sup>235</sup>

A very interesting program of violence prevention measures, in which the school is the bearer of such measures, is the "Resolving conflict creatively program" (RCCP), in which 70,000 students from 180 schools participated in New York. The main characteristic of the Program is the existence of the so-called student mediators. Those students, who are chosen by public or secret ballot, undergo a three-day intensive course, learning how to actively listen, reflect feelings, paraphrase what each side has said and ask questions so that the parties can reach a mutually acceptable agreement. In the primary schools covered by the project, mediators wear a T-shirt with a clearly marked sign. Their task is to watch other students during recess and lunch for any sign of future conflict and use of (extreme) violence. If such a situation occurs, the student

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<sup>232</sup> Dimovski, D. (2012) Kriminološko određenje ubistva – doktorska disertacija (Criminological determination of murder - doctoral dissertation). Pravni fakultet u Nišu, Niš, str. 3.

<sup>233</sup> Miller, loc. cit.

<sup>234</sup> The Journal of at-risk issues, (2000). National Dropout Prevention Center and the National Dropout Prevention Network, USA, Volumes 7-9, p. 34.

<sup>235</sup> Schargel F., Smink J. (2001). Strategies to help solve our school dropout problem. Eye on education, Larchmont, p. 220.

mediator approaches the parties, asking them if they want mediation. Once agreement is reached, they retire to a quiet room for the mediation process to begin.<sup>236</sup>

Unlike elementary school, mediators in secondary schools receive information about potential conflicts between teachers and students. The results of the implementation of the Program were impressive. In 1988 and 1989, there were 107 successful mediations in the five schools where the evaluation was carried out. Broadly speaking, there were over 1,000 mediation procedures in all schools, during which dozens of conflicts, which would have led to the use of violence (perhaps even with a fatal outcome), were surely prevented. Likewise, over 80% of professors and students were convinced that mediation is a successful way of preventing conflicts and violence.<sup>237</sup>

Australia is one of the countries that has made a serious step forward in the implementation of restorative justice as a way to prevent school violence. Namely, the Australian authorities were encouraged by the violence in Maroochydore State High School in April 1994. In this regard, expert counseling was soon held on the potential use of restorative justice in cases of school violence, because previous research has shown the existence of a low level of empathy in bullies, along with impulsivity and a tendency to victimize their victims. Restorative justice would be embodied in the application of a community conference, the goal of which is for the young person to be called to account, take responsibility, and atone for what they have done, while repairing the damage done to those individuals who are directly affected and to the community as a whole. In this way, restorative justice seeks to provide support and opportunities for communication between those involved in the disputed event in order to encourage accountability, reparation and movement towards understanding, satisfaction and healing. In other words, a community conference is convened after the event in question, where the perpetrator and his or her victims are invited along with their families, as well as appropriate school personnel. The procedure is led by a previously trained facilitator who asks a series of pre-prepared questions directed at the offender, the victim, the victim's supporters and the offender's supporters. Supporters are family members, friends, and sometimes teachers. At the beginning of the community conference, the perpetrator is expected to describe the disputed event in his own words, which leads to a common understanding of the damage caused, with a clear understanding of the responsibility for causing it. After that, everyone gathered with joint forces should decide what should be done in order to repair the damage, but also in what way to minimize the possibility of its recurrence. The goal of the agreement is to reflect the wishes of the victim, but in any case there must be the consent of all parties to the procedure for its conclusion. In this way, it can be seen that the concluded agreement is an example of the application of restorative justice. The agreement may include, in addition to the compensation plan, a plan to provide appropriate support to any of the participants, including the violator, with one or more participants taking responsibility for monitoring the implementation of the agreement. It is interesting to point out that the facilitator tends to ask questions in such an order as to enable the transformation of deeply negative emotions such as contempt, anger, fear, disgust, anxiety, to shame and surprise, and finally to interest and relief. The community conference contributes to the fact that the victim of violence receives recognition, as well as confirmation of the victimization by the gathered, while guaranteeing safety in the future, which all results in repairing the damage and reducing the possibility of the perpetrator repeating something similar.<sup>238</sup>

Already at the beginning of the implementation of the project, 119 schools in the region of Queensland (Queensland) were involved. In this way, 379 school staff were trained as conference moderators. In the first two years of the implementation of the project, 89 community conferences were held, with the tendency to apply it even more in the following period. In most cases, it was about physical

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<sup>236</sup> Robbins P. (2000). *Anger, aggression, and violence: an interdisciplinary approach*. McFarlad & Company, North Carolina, pp. 150-151.

<sup>237</sup> Robbins P., *op. cit.*, pp. 151-152.

<sup>238</sup> Thorsborne, M. (2013). *School violence and Community Conferencing: The benefits of Restorative Justice*. Transformative Justice Australia, Queensland, p. 3.

attacks and causing material damage. At the same time, cases were recorded that the community conference was used for controversial events that included the use of psychoactive substances, truancy, verbal abuse, disruption of classes, damaging the reputation of the school, and even for threatening to throw a bomb. The evaluation of the project showed that the participants were very satisfied with the restorative justice process, with a high rate of compliance with what was agreed between them. At the same time, the recidivism rate is low. After the restorative justice procedure was carried out, the offenders felt that they were more accepted, and they were more closely connected with the other participants in the procedure. It is interesting to note that the majority of victims felt safer, but also more capable of coping better with a similar situation. Mediators felt that holding community conferences reinforced school values, with a significant shift from a retributive response to a restorative response to contentious situations.<sup>239</sup>

## 6. The structure of school violence and its normative framework in the Republic of Serbia

Consideration of the possibility of applying restorative justice to school violence requires an analysis of the extent of violence, but also the structure of school violence, so that we can properly assess what needs to be analyzed from a normative framework. In other words, based on the previously determined structure of school violence, we will analyze certain criminal acts in order to establish whether the conditions for applying the diversionary model of restorative justice are met. Namely, the reason for such steps is reflected in the fact that in the Criminal Code we can see that there is no special criminal offense whose place of execution is related to the school. There are several criminal acts, which will be the subject of analysis, where the perpetrator and the victim can be students, and the place of execution is a school.<sup>240</sup>

In 2003, the Faculty of Philosophy conducted a study on forms of violence at school, which showed that the most prevalent form of violence in primary and secondary schools is verbal violence, as well as other forms of psychological violence. Namely, 40% of respondents testified about insults and ridicule, while gossiping, spreading lies and social isolation were present in 38% of respondents. Kidnapping and destruction of property, blackmail, coercion, sexual harassment and threats with weapons were the most common after psychological violence. The prevalence of violence in schools is evidenced by the fact that the aforementioned research showed that 70% of respondents were eyewitnesses to fights and injuries among students.<sup>241</sup>

Another study showed similar results. Thus, the research conducted by UNICEF, using a questionnaire on 26,628 students from 3rd to 8th grade in 50 elementary schools throughout Serbia in the spring of 2006, showed that in a period of three months, 65.3% of students, judging by their statements, experienced some form of peer violence (percentages range from 48% to 80%, depending on the school). If cases of repeated violence are analyzed, then 20.7% of students could be classified as victims, 3.8% as bullies and 3.6% as victims/bullies. 35.7% of students complained about the violence of adults, and 42% of students witnessed verbal aggressiveness of students towards teachers. The most common forms of peer violence were insults (45.6%) and scheming (32.6%). Boys declared themselves as bullies a little more often than girls and were exposed to peer and adult violence a little more often. Older students were more likely to be violent and more often complained about adult violence, while age differences in exposure to violence were minimal.<sup>242</sup>

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<sup>239</sup> Thorsborne, M., op. cit., p. 2.

<sup>240</sup> Krivični zakonik (Criminal Code), Sl. glasnik RS, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019

<sup>241</sup> Nešić, S., Jović, N. (2011). Zaštita dece od nasilja u školama (Protection of children from violence in schools). Izveštaj Zaštitnika građana i panela mladih savetnika, Zaštitnik građana, Beograd, str. 7-8.

<sup>242</sup> Popadić D. Plut D. (2007). Nasilje u osnovnim školama u Srbiji – oblici i učestalost (Violence in elementary schools in Serbia - forms and frequency). Psihologija, Vol. 40 (2). str. 309.



Based on the aforementioned research, we can say that certain forms of violence at school represent criminal acts. Namely, it is serious bodily injury from Article 121 of the CC, minor bodily injury from Article 122 of the CC, participation in a fight from Article 123 of the CC, endangerment with a dangerous weapon during a fight and argument from Article 124 and insult from Article 170 of the CC. Starting from these criminal acts, in the next part we will analyze the necessary elements in order to achieve their execution. Namely, this criminal offense consists in inflicting serious bodily injury or seriously harming the health of another person, and the punishment is imprisonment from six months to five years. The act of execution can be different, while the degree of injury is determined based on the expertise of medical experts. The legislator requires the existence of intent. The circumstances of the case may be such that the conditions for the existence of the form referred to in paragraph 2 of this article are met - especially serious physical injury. Namely, the legislator prescribed that whoever seriously injures another person or impairs his health so severely that as a result the injured person's life is endangered or an important part of his body or an important organ is destroyed or permanently and to a considerable extent damaged or weakened or a permanent incapacity is caused. for the injured person's work or permanent and severe impairment of his health or disfigurement, shall be punished by imprisonment from one to eight years. Further analysis of Article 121 of the CC shows its existence

incrimination of serious bodily injury qualified by death, which is reflected in the fact that as a result of the act from para. 1 and 2 of this article, the death of the injured person occurred, and the perpetrator will be punished with imprisonment from two to twelve years. In the event that an ordinary serious bodily injury or a particularly serious bodily injury was caused due to negligence, a prison sentence of up to three years is prescribed (paragraph 4). In the event that the act from para. 1. to 3. of this article is committed on the fly, which means that the perpetrator was brought into a strong state of irritation through no fault of his own by an attack, abuse or serious insult by the injured party, the sentence of imprisonment from paragraph 1 to three years is provided for the offense from paragraph 2 of three months to four years, and for the offense referred to in paragraph 3, from six months to five years. Special protection is provided to minors (persons who have not reached the age of 18), pregnant women and persons performing tasks of public importance. It is paragraph 6 of Article 121 of the CC that is important because special protection is provided to a person who has not reached the age of 18, and this category includes all elementary school students and almost all high school students. In this regard, the legislator prescribed stricter punishment if the victim is, among other things, a person who has not reached the age of 18. Thus, if the act referred to in paragraph 1 of this article is committed against a minor or a pregnant woman or a person who performs tasks of public importance, the perpetrator will be punished with imprisonment from one to eight years. For the crime referred to in paragraph 2 of this article, a prison sentence of two to twelve years is prescribed, while for the crime referred to in paragraph 3 of this article, a prison sentence of five to fifteen years is prescribed.

The next criminal offense worth mentioning is light physical injury from Article 122 of the CC. The nature of the criminal offense consists in inflicting light bodily injury or light damage to the health of another person, whereby a fine or a prison sentence of up to one year is prescribed (paragraph 1). If minor physical injury is caused by a weapon, dangerous tool or other means capable of seriously injuring the body or severely impairing health, the perpetrator shall be sentenced to imprisonment for up to three years (paragraph 2). In the event that the perpetrator was provoked by the indecent or rude behavior of the injured party, the court may issue a judicial warning to the perpetrator of the act referred to in paragraph 2 of this article.

Staying at school can result, due to disturbed relations between students, to the occurrence of fights. In this connection, there is a place to apply Article 123 of the Criminal Code, which criminalizes the crime of participating in a fight. The nature of this criminal offense consists of participating in a fight in which someone is deprived of life or another is inflicted with serious bodily injury. A fine or a prison sentence of up to three years is prescribed. As the action of this criminal offense refers to participation in a fight, the question arises as to what is meant by a fight. Namely, we define a fight as a physical confrontation between two or more persons, who attack each other, or one attacks and the other defends itself by attacking. A fight

results in endangerment of life or body, because there is a danger that one of the participants in the fight will be physically injured or deprived of life. By comparing serious bodily injury with certain forms of the criminal offense, we can see certain differences. Thus, in the case of the criminal act of participating in a fight, the perpetrator did not directly realize the consequences of the act in the sense of taking the life of another person or inflicting serious bodily injury, but by participating in the fight, he contributed to the creation of the necessary conditions for someone to be killed or seriously injured. In other words, for those participants in the fight who are found to have deprived another person of life or seriously injured them, they are responsible for the criminal offense of murder or serious bodily injury, while the others are responsible for the criminal offense of participation in the fight. In the event that the person who participated in the fight is seriously injured, he is not responsible for this crime, because the serious bodily injury must be inflicted on another person.

The next criminal offense worthy of our attention is known as endangerment with a dangerous weapon during a fight or argument from Article 124 of the CC. The nature of this criminal offense consists in the fact that during a fight or an argument, a person brandishes a weapon, dangerous tool or other means suitable for seriously injuring the body or severely damaging health. A fine or a prison sentence of up to six months is prescribed for this form. A more severe form is prescribed in the event that a person brandishes a firearm during a fight or argument, which leads to the imposition of a prison sentence of up to two years and a fine.

The last criminal offense that we believe is committed at school is the insult from Article 170 of the CC. Namely, this criminal offense consists of insulting another person, for which a fine of twenty to one hundred daily amounts or a fine of forty thousand to two hundred thousand dinars is prescribed. Since the legislator did not define what is considered an insult, it is necessary to consult the theory of criminal law. Thus, statements or behaviors that disparage or humiliate another person are considered an insult. Insults can occur through statements, oral or written, through symbolic signs or actions, but also through gentle slapping, pouring water, pulling hair, etc. The existence of a criminal offense is not affected by whether what is contained in the offensive statement is true. In other words, the existence of a criminal offense is conditioned by the fact that it belittles or underestimates another person, which is assessed in each specific case on the basis of the social evaluation of the protection of honor and reputation, as well as the understanding and customs of the environment, as well as the circumstances under which the event took place, the relationship between the perpetrators and persons to whom the insult refers, etc. A more serious form exists if the act referred to in paragraph 1 of this article was committed through the press, radio, television or similar means or at a public meeting. In that case, a fine of eighty to two hundred and forty daily amounts or a fine of one hundred and fifty thousand to four hundred and fifty thousand dinars is prescribed.

## **7. Possibilities of applying restorative justice to school violence in the Republic of Serbia**

Since violence in school is mostly committed by minors, but there is a possibility that it can also be committed by adults, because some final grade students have reached 18 years of age, in the continuation of the work we will provide a basis for the application of restorative justice for both categories. Following the trends present in recent decades in many countries, the Republic of Serbia, with the Law on Juvenile Offenders and Criminal Legal Protection of Minors<sup>243</sup>, based on the theory of non-intervention, introduced sui generis measures in the form of educational orders into its legislation. They do not have the character of criminal sanctions. Educational orders are defined as measures that are imposed on minor perpetrators of criminal acts, by authorities determined by law, based on the conditions prescribed in the law, in order

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<sup>243</sup> Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Law on juvenile offenders and criminal protection of minors), Sl. glasnik RS, br. 85/2005

to achieve the purpose prescribed by law, in the interest of the minor perpetrator of the criminal act and the injured person.

Article 5 paragraph 1 of the Law on Juveniles stipulates that one or more educational orders may be applied to a juvenile offender if he has committed a criminal offense punishable by imprisonment of up to five years or a fine. The purpose of educational orders is not to initiate criminal proceedings, i.e. to suspend the initiated proceedings, as well as to influence the proper development of minors and strengthen their personal responsibility so that they do not commit criminal acts in the future. Regardless of the fact that educational orders are sui generis measures, the purpose of their imposition is a way of achieving the general purpose of all criminal sanctions prescribed in Article 4 of the Criminal Code, which is the suppression of acts that violate or endanger values protected by criminal legislation. The condition for issuing any educational order is the recognition of the criminal offense and the minor's relationship to the criminal offense and the injured party. The relationship of minors towards the criminal act and the injured party is characterized by the minor's remorse for having committed a criminal act and injured another person, as well as the willingness to apologize and cancel the harmful consequences of his behavior. The educational order can last six months at most.

An educational order for a minor can be issued by the competent public prosecutor for minors or a judge for minors. By anticipating the possibility that the competent public prosecutor can impose educational orders for minors, we confirm the thesis that educational orders are sui generis measures that do not belong to the system of criminal sanctions that can be imposed on minor perpetrators of criminal acts, because criminal sanctions are imposed after the criminal procedure has been carried out. The competent public prosecutor for minors can be guided by the principle of opportunity when a minor has committed a criminal offense for which a prison sentence of up to five years or a fine is prescribed. When he judges that it is not expedient to conduct criminal proceedings against a minor, for whom there is evidence from which there is a reasonable suspicion that the minor has committed a criminal offense, considering the nature of the criminal offense and the circumstances under which the offense was committed, the minor's earlier life and his personal properties, the public prosecutor can condition the decision not to initiate criminal proceedings on the consent of the minor and his parents, adoptive parents or guardians, as well as the minor's willingness to fulfill one or more educational orders. The following educational orders are available to the public prosecutor for minors:

- 1) settlement with the injured party in order to eliminate, in whole or in part, the harmful consequences of the act through compensation for damage, apology, work or in some other way,
- 2) regular school attendance or regular going to work,
- 3) involvement, free of charge, in the work of humanitarian organizations or affairs of social, local or environmental content.

If the minor fully fulfills the educational order, and the report is submitted by the guardianship authority, the public prosecutor for minors will issue a decision rejecting the criminal complaint, i.e. the injured party's proposal to initiate proceedings. If a minor does not fulfill the taken educational order or fulfills it only partially, but to the extent that justifies the initiation of criminal proceedings, the public prosecutor for minors submits a request for the initiation of preparatory proceedings to the judge for minors of the competent court.

If the public prosecutor for minors submitted a request to initiate preparatory proceedings, he can only submit a proposal to suspend the proceedings against the minor, provided that the minor agrees to fulfill one or more of the aforementioned educational orders. In the event that the juvenile judge agrees with the proposal, the procedure is suspended, and in case of disagreement, the decision is made by the juvenile panel within eight days. Unlike the juvenile prosecutor, who can issue or submit a motion to issue

only three educational orders, the juvenile judge or the juvenile council can apply, in addition to the three educational orders that can be issued by the juvenile prosecutor, two educational orders of a medical nature:

- 1) subjecting to appropriate examination and withdrawal from addiction caused by the use of alcoholic beverages or narcotic drugs and
- 2) inclusion in individual or group treatment in an appropriate health institution or counseling center.

In addition to restorative justice, which is applied to minors, by introducing the principle of opportunity in the Criminal Procedure Code of 2001, which entered into force on March 28, 2002, the legislator introduced one of the most significant innovations in Serbian justice - the introduction of restorative justice according adults. With this, he wanted to rationalize the criminal procedure, which followed the general trend in the world in criminal legislation.<sup>244</sup> This tendency was continued in the subsequent Criminal Procedure Code.<sup>245</sup> Namely, the public prosecutor can postpone criminal prosecution for criminal offenses for which a fine or a prison sentence of up to five years is foreseen, if the suspect accepts one or more of the following obligations. The legislator stipulated as obligations: 1) removal of harmful consequences caused by the commission of a criminal offense or compensation for the damage caused, 2) payment of a certain amount of money to an account prescribed for the payment of public revenues, which is used for humanitarian or other public purposes, 3) performance of a certain socially useful or humanitarian work, 4) fulfilling the due support obligation, 5) undergoing withdrawal from alcohol or narcotic drugs, 6) undergoing psychosocial treatment in order to eliminate the causes of violent behavior and 7) fulfilling the obligation established by a legally binding court decision, i.e. respecting the restrictions established by a legally binding court decision.

The public prosecutor, by ordering the postponement of the criminal prosecution, determines the time limit in which the suspect must fulfill the assumed obligation, and the time limit cannot be longer than one year. If the suspect fulfills the obligation, the criminal complaint will be rejected by the public prosecutor, and the injured party will be informed about it.

With reason, the question arises as to whether educational orders are applied to perpetrators of school violence, that is, the principle of opportunity. If we were to observe the mentioned criminal acts through the prism of the analyzed criminal acts, we would see that for certain forms there is a place for the application of educational orders and the principle of opportunity. Namely, violence at school also includes violence to which adults are exposed, most often teachers and teachers, but also adult students. In this regard, in the case of the criminal offense of grievous bodily harm, educational orders can be applied, i.e. the principle of opportunity, in the first, fourth, of the fifth and individual forms from paragraph 6 of Article 121. In the case of minor physical injury, educational orders, that is, the principle of opportunity, are applicable for both forms. The same is the case with the criminal offense of participating in a fight, while for the criminal offense of threatening with a dangerous weapon during a fight and argument, there is a place for the application of educational orders, that is, the principle of opportunity, only for the first form. In the case of an insult, there is a possibility of using the mentioned institutes.

Of all the above-mentioned possibilities of applying educational orders, i.e. the principle of opportunity, we consider that an educational order is a settlement with the injured party in order to remove, in whole or in part, the harmful consequences of the act, as well as the obligation imposed by the public the prosecutor - removing the harmful consequences caused by the commission of a criminal offense or

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<sup>244</sup> Bejatović, B., Đurđić, V., Milan Škulić, M., Ilić, G., Kiurski, J., Matić, M., Lazić, R., Nenadić, S., Trninić, V. (2012). *Primena načela oportuniteta u praksi - izazovi i preporuke* (Application of the principle of opportunity in practice - challenges and recommendations). Udruženje tužilaca i zamenika javnih tužilaca Srbije, Beograd, str. 5.

<sup>245</sup> Zakonik o krivičnom postupku (Criminal Procedure Code), Sl. glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - odluka US i 62/2021 - odluka US

compensating for the damage caused, fully meet all the criteria so that they can be brought under restorative justice, but at the same time they coincide with the events in reality.

Although certain behaviors of students at school can be classified as criminal offenses, and educational orders can be applied, that is, the principle of opportunity, it should be emphasized that in most cases there is no criminal reaction. This means that the disputed case is resolved at the school level. Therefore, it is necessary to consider whether schools in the Republic of Serbia implement appropriate programs of restorative justice.

Starting from the experiences in America, our schools should be the bearers of the implementation of prevention measures against violence. Namely, violence is a daily occurrence among students, which is best evidenced by the data obtained by UNICEF. These conflicts are often transferred for violent resolution of conflicts outside the school, which in the last case leads to extreme violence (murders). Thus, UNICEF in Serbia implements a project called "School without violence".<sup>246</sup> Elementary school "Radoje Domanović" from Niš was one of the pioneers in the implementation of this program, because on March 9, 2006, the presentation of the project was organized to the members of the school team of Elementary School "Radoje Domanović". One of the obligations of the school, undertaken by the project, is the organization of the so-called forum theater, in which there is an obligation for students to play certain roles, such as students who behave in accordance with the norms of society, i.e. students who are violent. In this way, students learn how to recognize violence and how to react differently to different forms of violence. In the penological dictionary, in this way students apply psychodrama, that is, sociodrama. At the same time, numerous workshops were held within the project, with the aim of reducing violence at school. However, although the workshops were gladly accepted by the students, as it was confirmed in the report, no changes were observed in their daily behavior. Although organizing a forum theater is important for recognizing violence in schools, it should be noted that only the second obligation within the "School without violence" program is the application of restorative justice. Namely, the second school violence prevention program carried out in "Radoje Domanović" elementary school in Niš is related to the mediation procedure. Elementary school "Radoje Domanović" is one of the few schools in the territory of the City of Niš where the mediation procedure is carried out. Based on the above, we see that schools have begun to apply an alternative way of responding to school violence, but that it is necessary to make additional efforts so that all schools accept the possibility of applying mediation, and that it is not necessary in every case to apply disciplinary punishment to students if it is opportune to apply mediation.

## **8. Conclusion**

Violence in school is a persistent phenomenon, because it is not immanent only in the modern age. The social reaction to this negative social phenomenon occurred only in the 20th century. Although it occurs in all countries around the world, some countries have found a way to keep this form of violence under control, and are working to reduce it through specific prevention programs. One of the school violence prevention programs is related to restorative justice. The obtained results regarding the application of restorative justice to school violence indicate all the benefits of such an approach.

In this regard, we are encouraged to check whether there is a place for the application of restorative justice in schools in the Republic of Serbia. Although there are legal possibilities to implement restorative justice embodied in educational orders for minors and the principle of opportunity for adults, it was necessary to determine which behaviors on the part of students could be classified as criminal acts. Based on that, we established the scope and structure of violence in the school, and we subsumed these behaviors under certain criminal acts. After that, we analyzed for which crimes there is a possibility of applying restorative justice. However, we should be aware of the fact that school violence is dealt with at the level

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<sup>246</sup> Retrieved 29 November 2011 from: [http://www.unicef.org/serbia/support\\_3041.html](http://www.unicef.org/serbia/support_3041.html)

of the educational institution, and that there is no reaction from judicial authorities, although sometimes there is a need for it. This puts us in a situation to see if schools recognize the need to apply restorative justice. Thus, the elementary school "Radoje Domanović" from Niš was a pioneer in the application of restorative justice in the form of mediation. However, it should be emphasized that in one period during 2012 there was a pause, because there was a problem with the manager of the mediator team. It was soon overcome, and the mediation procedures continued. Based on the above, we can say that it is necessary to continue with the introduction of the mediation procedure in schools throughout Serbia in order to try an alternative way to fight against school violence

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