

JUVENILE DELINQUENCY OR JUVENILE CRIME

UDC 343.91-053.6

Miomira Kostić, Filip Mirić

University of Niš, Faculty of Law, Serbia

Abstract. *The subject matter of this paper is the concept of juvenile delinquency, its conceptual distinction from the concept of juvenile crime and other forms of juvenile deviant behaviour. The conceptual framework of a phenomenon is never a matter of purely linguistic and terminological designation because the definition of a concept has a significant impact not only on the social response of public authorities but also on the attitude of individual members of the specific society towards the phenomenon. This issue is particularly important when it comes to the socially unacceptable phenomena, such as juvenile delinquency and juvenile crime. This paper is not aimed at advocating for the specific use of one or the other legal term in the process of defining the illicit behaviour of juvenile offenders. The authors underscore that the proper application of these legal terms largely depends on the scope and extent of illicit conduct that the specific term entails and conceptually defines.*

Key words: *juvenile delinquency, juvenile crime, concept definition.*

1. THE CONCEPT OF JUVENILE DELINQUENCY

The process of defining the concept of a social phenomenon shall necessarily start from the etymological meaning of the word. The term “*delinquent*” is a word of Latin origin (Lat: *delinquere*) meaning a perpetrator, a villain (Vujaklija, 1986: 198). Some other dictionaries include more detailed definitions of delinquency. In the Oxford Advanced Learner’s Dictionary, the term *delinquency* implies bad or criminal behaviour of (usually) minors, whereas the term *delinquent* is used to denote a person who exhibits a tendency towards committing criminal offences (Hornby, 2000: 332). According to the Oxford Dictionary of Law, a juvenile offender/delinquent is a person between the age of 14 and 17 who has committed a crime (Martin (ed.), 2003: 276). In general, a juvenile delinquent may also be defined as a minor who cannot be controlled by parental authority and commits anti-social or criminal acts, such as vandalism or violence (Dictionary.com, 2015).

Received November 7th, 2015 / Accepted December 7th, 2015

Corresponding author: Miomira Kostić, LL.D.

University of Niš, Faculty of Law, Trg kralja Aleksandra 11, 18000 Niš, Republic of Serbia

E-mail: kosticm@prafak.ni.ac.rs

Juvenile delinquency stands out as a distinct criminological phenomenon primarily due to the special biological, psychological and social characteristics of juveniles and their special legal position in criminal justice system. Ample distinctive phenomenological and etiological features distinguish juvenile delinquency from the delinquency of adults. This approach is not pertinent to criminological and sociological research only; it has been widely accepted in criminal law theory and judicial practice in terms of establishing criminal liability (culpability), competence of judicial authorities, criminal proceedings and criminal sanctions which may be imposed on juvenile offenders. There are several approaches to this problem. One interesting conception suggests that juvenile delinquency emerges as a result of discrimination that juveniles are exposed to; as the society does not provide sufficient attention to young people, delinquent behaviour is the youngster's way of attracting attention to themselves and their needs. Edwin Schur, the proponent of the interactionist school of thought and one of the most radical criminologists who wrote on youth crime, considers that the juvenile crime problems are only aggravated by intervention of the criminal justice system (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 222). Although this issue has been present since the earliest human societies organized on the basis of legal norms and other social conventions, the study of this social phenomenon is of a recent date (Knežević, 2010:11).

First and foremost, any serious study of a social phenomenon calls for establishing the conceptual framework and definition of the concept. In criminological literature, as noted by Ž. Jašović, there are different definitions on juvenile delinquency as a form of socially unacceptable behaviour. However, they are often inconsistent, contradictory and related to different terms and concepts whose content is not always easy to define. Some of the commonly used terms and expressions include: educational disregard or desertion, neglect or deprivation, susceptibility or vulnerability, young people of asocial behaviour, "problem children", morally impaired youth, morally defective youth, behavioural disorders, habit disorders, social maladjustment, asocial/anti-social or socio-pathological conduct, juvenile delicts (petty offences), juvenile crime, juvenile delinquency, youth violence/bullying and hooliganism (Jašović, 1978 : 21). While none of these terms is quite comprehensive, each of them embodies a segment of youth conduct that the society has marked as socially unacceptable behaviour. Thus, depending on the type of delinquent behaviour, juveniles may be classified into three major categories: juvenile deviants, juvenile delinquents and juvenile criminal offenders.

Juvenile deviants are offenders whose acts constitute a violation of cultural norms and habits of other individuals, religious or customary norms of the immediate social environment, ethnic/minority group or community. Violation of these norms does not involve criminal prosecution and imposing criminal sanctions against the perpetrators. However, these offenders are subject to social condemnation by individuals or groups in the given social environment. *Juvenile delinquency* in a broader sense implies deviant behaviour featuring specific psychological, socio-psychological and individual motives and causes. Such conduct violates the customary and statutory norms and patterns of behaviour (Joksić, Bojić, 2012). Delinquent behaviour includes criminal behaviour as well as forms of antisocial conduct which are not incriminated in criminal legislation. Criminal offenders are adults, physically and psychologically "normal" people, whose delinquent conduct constitutes a violation of the criminal legislation of the given society. Therefore, criminals are not

mentally impaired adults or juveniles but persons who engage in criminal activities which are highly likely to lead to the commission of crime (Nikolić, Joksić, 2011: 103-104).

Taking into account the contemporary achievements of criminology, psychology, criminal policy and other related sciences and scientific disciplines, it is therefore highly unjustifiable to label the young people displaying delinquent behaviour as “criminals” or “deviants”. Bearing in mind the correction and re-education of juvenile offenders, it seems that in many cases a more appropriate term may be “juveniles displaying delinquent conduct”, because it does not refer to the personal characteristics of the juveniles in derogatory terms but underscores the delinquent behaviour which has to be changed. The wording is particularly important in terms of the labelling theory, whose basis postulates apply to juvenile delinquency because people are often identified with the labels they are given by other members of the community or the society as a whole. Besides, such improper designation of juveniles who display delinquent behaviour may lead to emotional unrest, sense of rejection, isolation and depression. It certainly does not exclude the need to clearly and specifically identify the illicit behaviour which contains elements of a criminal offence as – *juvenile crime* (juvenile delinquency in the narrow sense).

Therefore, juvenile delinquency implies an entire spectrum of youth conduct, ranging from maladjustment to commission of serious crime (felonies). Generally speaking, there are two approaches to solving this problem: a (broader) criminological and sociological approach, and a (narrower) formal/legal approach. The domestic criminological and criminal law literature includes a similar classification (Nikolić-Ristanović, 2012; Hrnčić, 2007). This article is not aimed at advocating for the specific use of one or the other conception and related legal term in the process of describing the illicit behaviour of juvenile offenders. In fact, the authors wish to underscore that the proper application of these legal terms largely depends on the scope and extent of illicit conduct that the specific term entails and conceptually defines.

In the broader sense, juvenile delinquency includes all forms of juvenile deviant behaviour, ranging from the pre-delinquent behaviour to criminal offences envisaged in criminal legislation. However, juvenile delinquency does not imply only a violation of legal provisions but also a violation of moral norms of a specific society. Thus, the broader conception of juvenile delinquency comprises a number of interpretations. The first interpretation suggests that juvenile delinquency cannot be defined simply as behaviour contrary to legal norms; namely, it also implies the need to determine the relations between the legal norms and the moral norms in the specific society at a specific time. The second interpretation rests on the fact that it is essential to study the juvenile’s delinquent behaviour and to observe one’s conduct as potentially criminal conduct, in light of individual and collective morality, just as it is done with criminal offences. The third interpretation implies an eclectic approach where juvenile delinquency is perceived not only as a violation of legal provisions but also as a violation of moral norms of a society. This concept of juvenile delinquency is also designated as “young people’s delinquent behaviour”. In other words, juvenile delinquency in the broader sense includes “such deviant behaviour of young people of a certain age which constitutes a violation of legal norms of the society” or “any activity of minors or underage group which constitutes a substantial breach of some social norm” (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 223). In addition to a range of criminal offences, juvenile delinquency includes an array of other forms of deviant behaviour (such as: running away from home, school truancy, vagrancy, begging

in the streets, etc.). Some of these forms of behaviour fall into the group of delicts (petty offences), while others violate some social/moral norms which are not explicitly regulated in the positive law.

The formal/legal conception has been accepted by a vast majority of European scholars. In the narrow sense, juvenile delinquency encompasses all forms of juvenile behaviour which are explicitly envisaged as criminal offences in the criminal legislation. This formal/legal concept of juvenile delinquency is clearly distinct from other forms of deviant behaviour. Thus, juvenile crime has to be distinguished from pre-delinquent behaviour which serves only as a wake-up call for taking preventive measures. This conception of juvenile delinquency includes several interpretations. According to one of these interpretations, juvenile delinquency includes not only the violation of criminal law provisions but also different delicts (misdemeanor) and violations of administrative law norms (such as: vagrancy, begging, prostitution, etc.) which are from criminological standpoint perceived as forms of pre-delinquent behaviour. In criminal law literature, juvenile delinquency in the narrow sense is often designated as juvenile crime. Juvenile crime implies a set of criminal offences committed by (senior and junior) juvenile offenders in a specific society in a specific period of time (Jovašević, 2006: 280). Thus, in criminological and criminal law literature, some authors consider that the term *juvenile crime* is more acceptable than the term *juvenile delinquency* (Nikolić-Ristanović, 2014 :11). On the other hand, the idea to avoid the use of the term *juvenile crime* comes from the school of thought called "New Social Defence", whose representatives point out to the "stigmatizing" effect of the term *crime* (Ignjatović, 2015 : 20).

Both conceptions of juvenile delinquency have their advantages and disadvantages. The broader conception is most frequently criticized for being somewhat vague, imprecise, diffused and potentially leading to negative consequences in practice; on the other hand, its most prominent advantage is the opportunity for preventive action aimed at suppressing and counteracting a large number of socially dangerous phenomena, which is of particular relevance in juvenile delinquency. The major advantage of the narrow conception of juvenile delinquency is a more precise and specific definition as compared to the broader conception, but its basic drawback is the limited scope of this concept in the provided legal norms and explicit formalism. Different approaches to defining juvenile delinquency additionally prove the complexity of this issue, which sometimes generates problems in theoretical and empirical research (Mirić, 2014: 8). Thus, the scope, aims and purpose of scientific research largely determine which conception of juvenile delinquency will be accepted within the framework of the specific research.

The concept of juvenile delinquency in many ways affects the process of devising measures for its prevention and suppression. If the juvenile delinquent behaviour is observed from the aspect of motivation, causation and social conditioning, it is certainly more appropriate to use the broader conception. On the other hand, if the specific research is aimed at exploring the punishable conduct of juveniles demonstrating some forms of delinquent behaviour which are envisaged in the criminal legislation, it is certainly more opportune to use the narrower (legal) conception. The use of either of these conceptions is largely determined by the competences of public authorities which are entitled to counteract juvenile delinquency, i.e. whether the social reaction will be limited only to judicial authorities or whether the subject matter involved in the specific case requires the participation and activity of a number of other bodies and institutions (such as: social welfare services, correctional facilities, etc.). Therefore, given that the preferential use of the two theoretical

concepts on juvenile delinquency largely depends on the method of researching a specific social phenomenon, neither of these two concepts may be accepted *a priori*.

The measures for preventing and counteracting juvenile delinquency include general and special prevention measures. It seems that in no other area of life the role of prevention and comprehensive consideration of all criminogenic factors is so significant as in the area of juvenile delinquency; namely, due to their young age and future prospects, juveniles still have a chance to change, adopt proper patterns of behaviour and return to life in the society, particularly if the society provides them the relevant assistance in that process. The future of a society significantly depends on the relations which the society has with juveniles in conflict with the law. For this reason, combating juvenile delinquency is not merely a political or criminal law issue which should be resolved by the members of the scientific, academic and professional communities. It is a much wider struggle for a more just and humane society, a society of equal opportunities for all (Dimovski, Mirić, 2013 :191).

2. *IN LIEU* OF CONCLUSION

The first stage in the substantial exploration of a social phenomenon is the process of defining its conceptual framework. It is particularly important when it comes to the illicit conduct which includes both socially unacceptable and dangerous forms of behaviour, such as juvenile delinquency and juvenile crime. The terminological designation of a specific concept becomes even more consequential in view of the fact that juveniles may be active participants and perpetrators of various crimes and delicts (misdemeanors). Yet, it should be borne in mind at all times that the ultimate objective of the social and legal response to juvenile delinquency is rehabilitation and re-socialization of minors displaying delinquent behaviour rather than mere punishment; thus, punishment should never be administered as an end in itself (just for the sake of punishment) but as a means to an end (rehabilitation and re-socialization).

Considering all the above, we may conclude that the concept of juvenile delinquency is a highly complex issue which may be approached in different ways depending on the scope and extent of illicit conduct it encompasses. In that context, the legal doctrine has made a distinction between the broader criminological and sociological approach, and the narrower formal/legal approach. This paper is not aimed at advocating either of these approaches and related concepts; rather, it underscores the complexity of the observed issues and calls for careful examination of the underlying implications.

Ultimately, it may be concluded that the concept of juvenile delinquency is hardly ever a matter of linguistic and terminological designation or definition of an unacceptable social phenomenon. As a rule, the specific designation has a significant impact not only on the overall social response embodied in the mechanisms of legal and social control but also on the attitude of individual members of the specific society towards the phenomenon. Therefore, we underscore that both conceptions of juvenile delinquency are highly relevant and that the proper application of related terminology depends on the subject matter, goals and the ultimate purpose of the specific research on socially unacceptable juvenile conduct.

REFERENCES

1. *Dictionary.com* (2015), [Online], Available: <http://dictionary.reference.com/browse/juvenile-delinquent> [21 October 2015].
2. Dimovski, D., Mirić, F. (2013) 'Politika suzbijanja maloletničke delinkvencije kao determinanta društvenog razvoja' (Policy for combating juvenile delinquency as a determinant of social development), *Anali poslovne ekonomije*, vol. 5, no. 9, pp. 178-192.
3. Hornby A.S. (2000) *Oxford Advanced Learner's Dictionary*, Sixth edition, Wehmeier, S. and Ashby, M. (ed.), Oxford: Oxford University Press.
4. Hrnčić, J. (2007) 'Neka terminološka razjašnjenja u oblasti maloletničke delinkvencije' (Terminological clarification in the area of Juvenile Delinquency), *Zbornik Instituta za kriminološka i sociološka istraživanja, Institut za kriminološka i sociološka istraživanja*, vol. 26, no. 1-2, pp. 183-202.
5. Ignjatović, Đ. (2015) 'Kriminalitet maloletnika: stara tema i nove dileme' (Juvenile Crime: an old issue raising new dilemmas), in Stevanović, I. (ed.) *Maloletnici kao učinioci i žrtve krivičnih dela i prekršaja*, Beograd: Institut za kriminološka i sociološka istraživanja.
6. Jašović, Ž... (1978) *Kriminologija maloletničke delinkvencije* (Criminology of juvenile delinquency), Beograd: Naučna knjiga.
7. Joksić I., Bojić B. (2012) 'Krivičnopravni status maloletnika u međunarodnim i evropskim instrumentima' (Criminal law status of minors in international and European legal instruments), *Evropsko zakonodavstvo*, no. 39-40, pp. 38-59.
8. Jovašević, D. (2006) *Leksikon krivičnog prava (Criminal Law Lexicon)*, Beograd: Službeni glasnik.
9. Knežević, S. (2010) *Maloletničko krivično pravo-materijalno procesno i izvršno* (Juvenile Crime: substantive, procedural and enforcement legislation), Niš: Centar za publikacije Pravnog fakulteta u Nišu.
10. Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M. (2009) *Kriminologija* (Criminology), Niš: Pelikan print.
11. Martin, E.A.(ed.) (2003) *Oxford Dictionary of Law*, Fifth edition, Oxford: Oxford University Press.
12. Mirić, F. (2014) *Savremena shvatanja fenomenologije i etiologije maloletničke delinkvencije* (Contemporary conceptions of phenomenology and etiology of Juvenile Delinquency), Niš: Pravni fakultet Univerziteta u Nišu.
13. Nikolić Z., Joksić I. (2011) *Maloletnička delinkvencija-socijalnopsihološki i krivičnopravni aspekti* (Juvenile Delinquency: socio-psychological and criminal law aspects), Beograd: Institut za kriminološka i sociološka istraživanja.
14. Nikolić-Ristanović, V. (2012) 'Kriminalitet maloletnika ili maloletnička delinkvencija-pojmovno određenje i njegov značaj' (Juvenile Crime or Juvenile Delinquency: concepts and significance), *Revija za kriminologiju i krivično pravo*, vol. 50, no. 1-2, pp. 183-188.
15. Nikolić-Ristanović, V. (2014) 'Određenje pojma i njegove konsekvence: kriminalitet maloletnika ili maloletnička delinkvencija?' (Juvenile Crime or Juvenile Delinquency: definitions and implications), in Nikolić-Ristanović, V.,Stevković, Lj. (ed.) *Maloletnička delinkvencija u svetu i Srbiji- trendovi i društveni odgovori*, Beograd: Izdavačko-grafičko preduzeće "Prometaj" i Fakultet za specijalnu edukaciju i rehabilitaciju Univerziteta u Beogradu.
16. Vujaklija, M. (1986) *Rečnik stranih reči i izraza* (Dictionary of foreign words and phrases), Beograd: Prosveta.

MALOLETNIČKA DELINKVENCIJA ILI MALOLETNIČKI KRIMINALITET?

Predmet rada je pojmovno određenje maloletničke delinkvencije, njeno razgraničenje u odnosu na maloletnički kriminalitet i druga devijantna ponašanja maloletnika. Pojmovno određenje određene pojave nikada nije puko jezičko i terminološko pitanje jer od njegovog rešavanja zavisi i društvena reakcija, a često i stav koji će o toj pojavi imati i članovi određenog društva. Ovo je naročito značajno kada je reč o društveno negativnim pojavama kakva je svakako maloletnička delinkvencija, odnosno maloletnički kriminalitet. Nije namera autora da pledira za upotrebu određenog od ova dva termina za određenje protivpravnog ponašanja maloletnika, već da ukaže na činjenicu da njihova upotreba zavisi od obima i opsega protivpravnog ponašanja koji se njime želi obuhvatiti, odnosno pojmovno odrediti.

Ključne reči: *maloletnička delinkvencija, maloletnički kriminalitet, pojmovno određenje.*