

CRIMINAL SANCTIONS FOR JUVENILE OFFENDERS IN THE COUNTRIES OF THE FORMER SFR YUGOSLAVIA

UDC 343.811-053.6(497.11+497.4/.7)

343.24-053.6(497.11+497.4/.7)

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Abstract. *The author discusses juvenile delinquency as a negative social phenomenon, which has been comprehensively observed and analyzed from the (narrower) normative and (wider) sociological point of view. The paper focuses on the comparative analysis of the system of criminal sanctions that may be imposed on juvenile offenders in the legal systems of states created after the dissolution of the former SFR Yugoslavia. The analysis does not include the Republic of Serbia. The primary aim of this paper is to draw attention to the fact that all states of the former SFR Yugoslavia have been facing similar problems in the the field of combating juvenile delinquency, which is evident in their systems of criminal sanctions. The similarities in their criminal sanction systems are certainly a result of the common legal tradition.*

Key words: *juvenile delinquency, criminal sanctions, former SFR Yugoslavia.*

1. DIFFERENT DEFINITIONS OF THE CONCEPT OF JUVENILE DELINQUENCY

Delinquency is an entire set of diverse forms of disorderly human conduct which threaten the basic social norms and values. It is the most severe form of maladjusted behavior, reflected in cases where the juveniles' sense of being a misfit and social maladjustment are not counterbalanced by good family relations (Kostić, 2015: 314). In some cases, recidivism of juvenile delinquency points to the need for punishment, which is based on a neurotic sense of guilt. These children are often depressed, deprived of love and feel worthless. If these children were aware that "they had somebody on their side" (parents, teachers, psychotherapists), it would certainly not be a justification of their antisocial behavior but it could ultimately decrease their anti-social behavior (Silver, 1986: 240).

Unlike misconstructions in reasoning, many forms of the so-called "problem behavior" are quite common in children of a specific age. Insufficient understanding of children's

Received December 17th, 2015/ Accepted April 7th, 2016

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“normal (typical)” behavior at different age of their development is the cause of many disagreements between children and parents. Some form of “problem behavior” should not be ignored expecting that the child will overcome the problem and naturally move into the next developmental phase. Notwithstanding the fact that the period from childbirth to the age of maturity is full of challenges, a child who exhibits minor or major personality disorders is likely to preserve or further develop these disorders in the period of adulthood, which will constantly work against him (Herlok, 1975: 30).

In the socio-criminological sense, juvenile delinquency stands out as a particular type of crime which, as compared to crime committed by adults, features quite different bio-psycho-social properties (Jovašević, Kostić, 2012: 94). In the last decades of the 20th century, juvenile delinquents started being perceived in both criminal law and penology as persons whose conduct causes some damage to the community rather than persons who have committed a criminal offense. The “*protection model*” was criticized for arbitrariness and lack of legal certainty and justice, whereas the concept of social protection was challenged due to the unlimited power of the state in determining the best interest of juvenile offenders. The critics of the “*protection model*” emphasized the need to establish a new model in the system criminal liability of minors. This alternative model was named “*the justice model*”. The application of this model ensures a more humane treatment of juvenile delinquents in the criminal justice system, meeting the standards in the protection of juvenile delinquents’ rights as fundamental human rights, and accomplishing the highest level of social welfare and protection of juveniles’ personality. The international documents set out the highest standards that the international community endeavors to introduce in the national legislations concerning the organization of the criminal justice system for minors, specialization in the field of juvenile justice, the benefits of applying diversion proceedings and alternative treatment, and giving priority to social protection measures over the criminal law measures (Konstantinović Vilić, Kostić, 2011: 275).

Juvenile criminal law (Jovašević, Kostić, 2012: 379) is part of the criminal law which, given the abundance of specific legal solutions, has gradually grown into an independent legal and scientific discipline. It is a separate, autonomous and comprehensive body of law which includes specific solutions which differ from the legal solutions prescribed for adult offenders. Juvenile criminal law is a set of legal rules that determine the position of juveniles in criminal law (both as offenders and as victims of crime), and prescribes a special treatment for juvenile offenders. Being frequently defined in theory as a postulate of criminal policy, juvenile justice is an area of criminal law including provisions applicable to juvenile offenders; given the specific nature of juvenile justice, these rules are based on the perpetrator’s personality (*Taterstrafrecht*) rather than on the committed offence (*Tatstrafrecht*) (Jovašević, Kostić, 2012: 380).

In other words, juvenile criminal law is a system of statutory legal rules governing the system of criminal sanctions for juvenile offenders (and for some adult offenders under certain circumstances), sentencing and execution of the imposed sanctions by competent state authorities. Therefore, we can say that juvenile criminal law exceeds the scope of criminal law because it includes not only the substantive criminal law provisions but also the criminal procedure and the enforcement procedure provisions which in terms of their scope, extent and manner of application may apply to juvenile offenders (Jovašević, Kostić, 2012: 380).

These provisions pertain to: a) the concept and type of minors as subjects of criminal law (active and passive entities); b) the concept, types, purpose, conditions and manner of prescribing and imposing criminal sanctions for juvenile offenders; c) the procedure for

imposing criminal sanctions for minors; and d) the procedure for the enforcement of juvenile criminal sanctions. The content and the form of these provisions distinguish the juvenile criminal law from the criminal legislation applicable to adult offenders. In exceptional cases and subject to specific requirements which are explicitly prescribed by law, these provisions may also apply to adult offenders. In addition to the Serbian Criminal Code, the main source of juvenile criminal law in the Republic of Serbia is the Act on Juvenile Offenders and Protection of Minors in Criminal Law (hereinafter: the Juvenile Offenders Act) (Jovašević, Kostić, 2012: 381).

In addition to the definition of juvenile delinquency provided in criminal law, it is may be interesting to note the definitions provided in criminological science. The criminological literature defines juvenile delinquency as numerous and diverse forms of behavior in juveniles, ranging from maladjustment to criminal conduct. In designating this phenomenon, different authors use various terms, such as: juvenile delinquency, social maladjustment, asocial or antisocial behavior, educational/developmental neglect, abandonment, moral deterioration, hooliganism, etc. The different terminology is accompanied by different approaches to explaining this phenomenon. Two prevailing approaches to the issue of juvenile delinquency are: the broader socio-criminological conception, and the narrower normative (legal) conception of juvenile delinquency (Konstantinović Vilić, Nikolić Ristanović, Kostić, 2012: 219).

According to the broader approach, juvenile delinquency includes all forms of deviant behavior, ranging from pre-delinquent behavior to criminal offences explicitly envisaged in criminal legislation. In addition to violations of criminal and other statutory norms, juvenile delinquency includes behavior contrary to moral norms of a society. This broader approach comprises a number of conceptions; the differences among them are reflected in the modalities of theoretical research and analysis. Thus, one of these theoretical standpoints suggests that it is not enough to define delinquency as “behavior punishable under criminal law” but that it is necessary to consider the relationship between legal norms and the moral code (Manheim, 1965: 65). According to another theoretical standpoint, it is important to examine misconduct as a potentially criminal conduct, by taking into account individual and collective morality (Scabo, 1971: 401). A third theoretical standpoint implies that juvenile delinquency includes the conduct which is sanctioned not only by the law but also by the general consent embodied in the moral thinking of the community (Morris, 1957: 132-135).

In this broader sense, the term juvenile delinquency includes “such deviant behavior among young people of a certain age that violate legal norms of the social environment” (Todorović, 1971: 179). Such deviant behavior is often designated as juvenile delinquency, which implies a socially unacceptable or anti-social behavior of young people, including those forms of behavior that are envisaged as criminal offenses and misdemeanors, as well as many other forms of behavior and activities which require the application of educational, correctional and other social measures; for example, it includes truancy, running away from home, loitering, vagrancy, and other forms of behavior that society as a whole does not approve of (Jašović, 1965, 58). Bearing in mind this conceptual definition, the terms “delinquent behavior” or “delinquency” are considered suitable to cover all deviant forms of behavior in juveniles, who should not be regarded as criminals but rather as young persons who should be subjected to alternative treatment and re-education measures, given the prominent characteristics of their development at a specific age.

A vast majority of theorists of European countries support the narrow conception of juvenile delinquency. According to this conception, the term juvenile delinquency or youth crime includes all those forms of behaviors that are envisaged as criminal offences in criminal legislation, both for minors and for adults. This view qualifies the commission of criminal offences as a most serious socially dangerous form of behavior. According to the strict definition, the commission of criminal offenses by juveniles (or juvenile crime) must be distinguished from those pre-delinquent forms of behavior that may not be treated as a crime but merely serve as an alarm for taking preventative measures and actions (Milutinović, 1971: 57).

The narrow conception of juvenile delinquency comprises a prominent standpoint that the concept of juvenile delinquency includes criminal offences in violation of criminal law norms as well as other forms of behaviors that are inconsistent with other statutory norms in the society. The latter primarily refers to the violation of administrative provisions or administrative offenses, such as: vagrancy, street begging, bullying, causing disorder in public places, "ticket scalping" (speculative resale of tickets at higher prices), driving a motor vehicle without a driving license, prostitution, gambling, etc.); in some jurisdictions, these activities are envisaged as criminal acts but, in criminology, they are defined as pre-delinquent conduct (Milutinović, 1971: 57).

Both the broader and the narrow approach to defining the concept of juvenile delinquency have their advantages and disadvantages. Thus, the broader definition of juvenile delinquency is often criticized for being too vague and diffuse, which may result in abuse during its application and negative consequences in practice (Milutinović, 1970: 4); on the positive side, this definition is often justified in terms of including a wider range of possibilities for preventive action against all forms of socially undesirable behavior by young people (Jašović, 1980: 52). As compared to the broader definition, the narrow definition is more specific and precise, but the observed drawback is its excessive formalism and limited normative framework. Therefore, the theoretical and empirical studies on juvenile delinquency should be based on the more specific and precise definition of juvenile delinquency (in the narrow sense), whereas all other socially unacceptable forms of juvenile behavior should be regarded as pre-delinquent conduct, which calls for examining the extent of its impact on the commission of juvenile crime. In criminological and criminal law literature, there are opinions that the term *juvenile crime* is more acceptable than the term *juvenile delinquency* (Nikolić-Ristanović, 2014: 11).

Notwithstanding different approaches to defining juvenile crime/delinquency, which are primarily aimed at specifying the subject matter of criminological research on this type of crime, the retributive system has remained the predominant one. *Retributive justice* is a form of social reaction which is based on the concept of retribution (and payback: "an eye for an eye"). In the earliest period of development of criminal legislation, it was applied against minors and adult offenders alike. The goal of retributive justice is to respond to a number of questions: who violated the law, which legal provision was breached, what is the sanction for the committed offences, and how the offender shall be punished in order to deter others and prevent further commission of specific crime. In contemporary legislations, the form of retributive justice that is applied in cases involving juvenile offenders is the system of special criminal sanctions for juvenile offenders, which now includes only the criminal sanction of *juvenile imprisonment*.

2. THE REPUBLIC OF CROATIA

In Croatia, the criminal proceedings and sanctions imposed against juveniles are regulated by the Juvenile Courts Act¹. The Croatian legislation does not explicitly include the term alternative measures. Yet, in cases where it is established that a minor has committed the offence but it is not practical to conduct criminal proceedings for criminal offenses punishable by a term of up to 5 years' imprisonment or a fine, the Public Prosecutor may avoid the court proceedings by resorting to special obligations for minors stipulated in Article 10 as well as specific sanctions for juvenile offenders stipulated in Article 7. The types of sanctions that may be imposed on juveniles are *correctional measures*, *security measures* as well as a sentence of *juvenile prison*.

Article 7 of this Act prescribes different correctional measures, including: a court reprimand, special obligations, intensified care and supervision, intensified care and supervision with a daily stay in a correctional institution, referral to a special correctional center, referral to a correctional institution, referral to a reformatory and referral to a special correctional facility.

Special obligations, which may be applied as alternative measures, are prescribed in Article 10 paragraph 2. Taking into account the distinctive characteristics of the juvenile offender, the family circumstances and the nature of the committed offence, a minor may be imposed the following obligations: to apologize to the injured party; to repair or compensate for the damage caused by the offense in compliance with personal abilities; to attend school regularly; to avoid absenteeism from the workplace; to get relevant training and qualification for an occupation that suits one's abilities and interests; to accept employment and to persist in it (under the supervision and support of a social work center); to get involved in the work of humanitarian organizations or activities of communal or ecological importance; to refrain from visiting particular places or events, and to stay away from certain individuals who may have a detrimental effect on one's conduct; to undergo a professional medical treatment, or treatment for drug abuse or other addictions, upon prior consent of the juvenile's legal representative; to engage in individual or group psycho-social counseling treatment for youth; to participate in a training course to obtain professional qualification; to avoid leaving the place of permanent or temporary residence without obtaining a special permission of the social welfare center; to have his/her knowledge of traffic regulations tested in a competent institution (driving school); not to approach or to disturb the victim or the injured party; etc. In case a minor fails to observe the imposed obligation, the competent court is authorized to impose some other special obligation or a more permanent disciplinary measure.

In the Croatian legislation, the correctional measure of intensified care and supervision can only be performed by the guardianship authority (social welfare center), when it is established that the parent or guardian cannot exert relevant influence on the juvenile's upbringing, behavior and development.

The correctional measure of referral to a juvenile correctional center may be imposed for a specific number of hours a day, for weekends (on Saturdays and Sundays), or for a number of weeks; thus, the corrective measure may be imposed for a period ranging from at least 14 days to 30 days at the most, or for a continuous period of stay on Saturdays and Sundays in the course of 3 to 8 weeks in a row, or for a continuous stay of at least 2 weeks (15 days) up to 3

¹ Zakon o sudovima za mladež. Službeni list Republike Hrvatske. *Narodne novine*, (The Juvenile Courts Act, *Official Gazette of the Republic of Croatia*.), br. 84/2011, 143/2012, 148/2013, 56/2015.

months. In addition, it has to be ensured that the juvenile regularly attends school and is not absent from work. The juvenile court also has a possibility to refer a juvenile to a correctional center for a continuous stay longer than a month, if a juvenile fails (by his/her own fault) to comply with the special obligations and intensified supervision measures.

Juvenile offenders may also be referred to a juvenile correctional institution, where they are subjected to professional treatment, assistance, education and vocational training. If there is a need for intensified correctional measures, a minor may also be referred to a reformatory. Juveniles with psycho-physical impairments may be referred to a special correctional facility, which is a counterpart of the safety measure of mandatory psychiatric treatment.

The sentence of juvenile imprisonment may be imposed on a senior juvenile for criminal offences punishable by imprisonment of over 3 years. The imposed term of imprisonment may not be shorter than 6 months nor longer than 5 years; however, in case a juvenile has committed a criminal offence which is punishable by a long-term imprisonment, or in case there is a concurrence of at least two criminal offences which are punishable by a imprisonment of over 10 years, a juvenile may be sentenced to a term of imprisonment up to 10 years.

Article 28 of the Act provides that the court may issue a judgment where the minor is found guilty but concurrently it may reserve its right not to impose the sentence of juvenile imprisonment if it deems that the minor may be deterred from further commission of criminal offences by pronouncing him/her guilty and by exposing him/her to the threat of subsequent sentencing (i.e. imposing the sentence of juvenile imprisonment at a later date). Alongside this (suspended) sentence of juvenile imprisonment, the juvenile court may order some other measures of intensified care and supervision, referral to a correctional center, as well as one or more special obligations that cannot last longer than the court-ordered probation period. This entails the possibility of imposing a suspended sentence and establishing the checkpoints, which cannot be less than 1 year nor more than 3 years, which according to our Law on Juvenile Offenders and Criminal Legal Protection of juveniles does not exist.

3. THE REPUBLIC OF SLOVENIA

In the Republic of Slovenia, criminal law is regulated by the 2004 Penal Code ² which encompasses relevant legal provisions on juveniles (Articles 70 – 94), including educational and correctional measures and sanctions that may be imposed on juvenile offenders. Thus, Article 77, titled “Instructions and prohibitions”, envisages that a juvenile offender may be issued a court order: 1) to apologize to the injured party; 2) to reach a settlement with the injured party to compensate for the damage caused in the course of committing the offence; 3) to regularly attend school; 4) to take vocational training in order to obtain relevant qualification for a particular job; 5) to take up a form of employment suitable to one’s knowledge and skills; 6) to live with a specified family or in a designated social institution; 7) to perform community service or work for humanitarian organizations; 8) to be submitted to treatment in an appropriate health institution; 9) to regularly attend counseling sessions (educational, vocational, psychological and others); 10) to participate in social training programs; 11) to pass a test on traffic regulations.

² Kazenski zakonik Republike Slovenije. *Uradni list Republike Slovenije*, br.95/2004. (The Penal Code of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, No.95/2004).

In selecting one or more of these orders to be imposed on a juvenile offender, the court shall take into account the offender's willingness to cooperate and the anticipated effect of these measures. Yet, these orders may not be imposed for a term exceeding one year.

4. REPUBLIC OF MACEDONIA

The Juvenile Justice Act is a legislative act governing the procedure and the imposition of sanctions against juvenile offenders.³ This Act gives priority to preventive, protective and corrective measures. Sanctions can be imposed only by a court which has jurisdiction to adjudicate cases involving juvenile crime. In addition to dividing the juveniles under the age of 14 into younger and older juveniles, the law makes a distinction between a child at risk and an older juvenile at risk.

A child at risk is a juvenile who, at the time of commission of a criminal offence, is over the age of 7 but under the age of 14, as well as a juvenile under the age of 14 who is addicted to the use of drugs, psychoactive substances or alcohol abuse, a child with disabilities, a child who is a victim of violence, an educationally and socially neglected child who lives in conditions where the educational function of the family is impaired, a child who is not included in the educational system, or a child who took to vagrancy or prostitution, who for all these reasons is or may be in conflict with the law. An older juvenile at risk is a juvenile who, at the time of committing the offence which is punishable as a criminal act or misdemeanor (by imprisonment of up to three years or a fine) is of the age of 16 but under the age of 18, a minor who is addicted to the use of drugs, psychoactive substances or alcohol abuse, a minor with disabilities, a minor who is a victim of violence, a minor who is educationally and socially neglected and lives in conditions where the educational function of the family is impaired, who for all these reasons is or may be in conflict with the law.

This distinction is made because juveniles at risk may be subjected to the so-called "Protection and Assistance Measures", which have been introduced in order to enable the implementation of such measures to the children under the age of 14, but only if the Social Welfare Centre finds it necessary for the child's proper upbringing and personality development. In order to assess if the family is able to provide adequate care for the child, the expert team of the Social Welfare Center first talk to the family of younger or older juvenile at risk; then, they prepare a treatment program aimed at providing relevant protection, assistance and mitigating the consequences of past lack of cooperation with the Social Welfare Center.

A juvenile may be subjected to these protection and assistance measures until the age of maturity (by the age of 18). The control over the implementation of these measures is exercised by the Social Welfare Center. The ultimate objective is to avoid a trial and imposing criminal sanctions for minors. If a juvenile has acquired any material benefit or caused damage to another in the course of committing of a criminal offence, the Social Welfare Center shall act as a mediator (in the process of mediation) between the child's family or the legal guardian, the juvenile at risk and the injured party in order to return the financial gain or to compensate the damage/loss or harm caused to the injured party. The Center shall keep internal records on the implementation of the protection and assistance measures undertaken either by the Center or the juvenile judge, and the data shall be submitted to

³ Zakon za maloletnička pravda. *Sl. vesnik na Republika Makedonija*, br. 87/ 2007. (The Juvenile Justice Act, *Official Gazette of the Republic of Macedonia*, No. 87/2007).

the Registry for the implementation of protection and assistance measures, which is run by the Ministry of Labor and Social Policy. A younger juvenile may only be imposed an educational/correctional measure; in addition to being awarded educational/correctional measures, an older juvenile may be imposed some alternative measures or committed to a juvenile correctional institution or prison. Juveniles may also be subjected to security measures envisaged in the Criminal Code of Republic of Macedonia.

The educational/correctional measures include: a) *disciplinary measures*: a reprimand and referral to a disciplinary center for juveniles; b) *intensive supervision measures* by a parent or legal guardian, by another (foster) family or by the Social Welfare Center; and c) *institutional measures* involving referral to an educational institution and referral to a correctional/educational institution. Article 34 of this Act regulates the disciplinary measure of referral to a disciplinary center for juveniles, which is imposed when is necessary to exert some impact on child's behavior or personality for a short period of time: for a number of hours during the day, on weekends, or a number of weeks hours, or to ensure an uninterrupted stay in an institution which cannot exceed 20 days. Increased supervision by the parent, the guardian or relevant institution has to be exercised for a period of at least one year but it shall not exceed three years (Article 35).

In Macedonia, the court may impose a special obligation upon the parent or the guardian who was capable but omitted to exercise supervision over a child, obliging him/her to apologize to the injured party, to repair and compensate for the damage caused by the commission of the criminal offence. The court may also impose special obligations to juveniles: to attend school regularly; to accept employment and go to work regularly; to have vocational training for a job that corresponds to his/her abilities, preferences and physical dispositions; to prohibit the use of alcohol, drugs and other psychoactive substances; to refer them to appropriate institution or counseling; to direct them to use their spare time qualitatively; to prohibit contact with persons who have bad influence on child's personality, to attend professional qualification training or re-qualification programs for employment purposes; to allow inspection and accept advice in terms of allocation and spending of wages or earned income; to get involved in the activities of humanitarian organizations, municipal, environmental and non-governmental organizations; to join certain sports, cultural and entertainment organizations or associations, and regularly attend training sessions or rehearsals.

Penalties that may be imposed on older juveniles are: juvenile imprisonment, a fine, prohibition to drive a particular type or category of motor vehicle, and deportation of a foreigner out of the country. (By contrast, under the Serbian Criminal Code, the measures involving the prohibition of driving a motor vehicle and banishing foreigners from the country are security measures.) In Macedonia, the sentence of juvenile imprisonment may be imposed on older juveniles who have committed a criminal offence punishable by a term of imprisonment of over 5 years' imprisonment and under particularly aggravating circumstances. In such a case, the juvenile prison sentence cannot be imposed for a shorter period than one year or it may not exceed a period of 10 years. A fine may be imposed for a criminal offence committed for material gain and for a criminal offence punishable by imprisonment of at least three years. The court may substitute the imposed fine with community service or, if it is not possible, with a disciplinary measure of referral to a disciplinary center or a security measure of increased supervision. Older juveniles may also be imposed alternative measures, such as a suspended sentence with supervision.

5. THE FEDERATION OF BOSNIA AND HERZEGOVINA

5.1. Bosnia and Herzegovina

In the Federation of Bosnia and Herzegovina (B&H), the legal position of juvenile perpetrators is regulated by the Act on the Protection and Treatment of Children and Juveniles in Criminal Proceedings⁴. This Act envisages that minors are persons between the age of 14 and 18, and they are the ones who may be imposed criminal sanctions. Article 14 of this Act prescribes the jurisdiction of the courts to act towards juvenile and young adults by the age of 23: in first instance courts, cases are heard by a single judge; in appellate proceedings, cases are heard by a panel of 3 judges; in the third instance, cases may be reviewed by the Supreme Court of the Federation of Bosnia and Herzegovina. By contrast, in Serbian legal system, in first instance courts, cases are heard by a panel including a judge specializing in juvenile matters and two lay judges/jurors. In B&H, a police caution and educational recommendation are a form of restorative justice, aimed at avoiding criminal proceedings and criminal sanctions. A police warning prescribed in Article 23 may be imposed on a juvenile who has committed a criminal offense which is punishable by a fine or imprisonment up to 3 years, but only provided that certain requirements have been fulfilled: a) that the minor has freely and voluntarily admitted the commission of the criminal offense, b) that there is sufficient evidence that the juvenile has committed the criminal offense, and c) that the juvenile has not been issued a police warning, educational recommendation or some other sanction before. A police warning is issued by an authorized official specializing in juvenile matters, upon obtaining a prior approval of the public prosecutor. The existing Serbian legislation does not recognize this measure.

Educational recommendations are the counterpart of correctional measures envisaged in the Serbian legislation. The difference is reflected in the fact that the B&H legislation stipulates a number of specific conditions which have to be fulfilled in order to apply educational recommendations. In particular, there is a requirement that the minor shall give a written consent for the implementation of appropriate educational recommendation as well as a written statement on the willingness to make amends to the injured party. The specific types of educational recommendations are prescribed in Article 26, paragraph 1:

- a) personal apology to the injured party
- b) compensation for damage caused to the injured party
- c) regular school attendance or going to work regularly
- d) free-of-charge involvement in the activities of humanitarian organizations or social, local or environmental activities
- e) treatment in an appropriate medical (inpatient or outpatient) institution
- f) inclusion in individual or group educational, psychological and other counseling.

Criminal sanctions that may be imposed on juvenile offenders are very similar to those envisaged in Serbian legislation. In addition to the measures of warning and guidance, the B&H legislation includes a measure of referral to a correctional center while Serbian legislation envisages the measure of intensive supervision with a daily stay in an appropriate correctional/educational institution for juveniles. In terms of specific obligations that may

⁴ Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku. *Službene novine Federacije BiH*, br. 7/2014. (Act on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Official Gazette of the Federation of B&H, No. 7/2014).

be imposed on juvenile, there are some differences; the Serbian legislation envisages the obligation of juvenile to apologize to the injured party and to compensate for the damage caused. these obligations are not envisaged in the B&H legislation.

Under the B&H law, the measure of referral to a correctional center may be imposed when it is necessary to exert a short-term impact on a juvenile's behavior. A juvenile may be sent to a correctional center: a) for a certain number of hours during the day, for at least 14 days but not longer than 30 days, b) for a continuous stay of at least 15 days but not more than 3 months, whereby the court has to ensure that the execution of this measure does not affect the juvenile's regular education or employment responsibilities. The stay in the correctional/educational center also implies that the minor shall take part in educational and working activities in line with his/her personal characteristics, abilities and interests, as well as in other educational/correctional activities aimed at developing the juvenile's sense of responsibility. In addition, the competent court may also impose the measure of intensive supervision, which may be equated with the Serbian measure of intensified supervision with daily stay in an appropriate correctional/educational institution for juveniles. If a juvenile unjustifiably refuses, avoids or obstructs the performance of these specific obligations, the court may decide to refer him to a correctional center for continuous stay for a period not exceeding one month.

5.2. The Republic of Srpska

In the Republic of Srpska, juvenile justice is regulated by the Act on the Protection and Treatment of Children and Minors in Criminal Proceedings.⁵ It is identical to the legislative act which is applied on the entire territory of the Federation of Bosnia and Herzegovina. The only difference is a slightly different terminology and the fact that it is written in Serbian script. The terminological differences may be illustrated by the following example: the term "educational recommendations" as envisaged in the B&H legislation corresponds to the term "special educational obligations" as envisages in the legislation of the Republic of Srpska.

6. THE REPUBLIC OF MONTENEGRO

In Montenegro, juvenile criminal proceedings and sanctions are regulated by the Act on the Treatment of Juveniles in Criminal Proceedings⁶. This law provides for alternative measures in order to avoid initiating criminal proceedings and imposing criminal sanctions on minors. These alternative measures include warnings and educational orders.

Admonitions are envisaged in Article 10 paragraph 1 of this Act, which provides that a warning may be issued to or imposed on a juvenile offender who has committed a criminal offense which is punishable by a fine or imprisonment of up to 3 years, provided that: a) there is evidence raising a reasonable suspicion that the juvenile has committed a criminal offense; b) the juvenile has given consent, upon approval of his/her legal guardian; c) the juvenile has not been previously issued an educational order or imposed a criminal

⁵ Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku. *Službeni glasnik Republike Srpske*, br. 13/2010. (Act on Protection and Treatment of Children and Juveniles in Criminal Proceedings. *Official Gazette of the Republic of Srpska*, No. 13/2010).

⁶ Zakon o postupanju prema maloljetnicima u krivičnom postupku. *Službeni list CG*, br. 64. 2011. (The Act on the Treatment of Juveniles in Criminal Proceedings). *Official Gazette of Montenegro*. No. 64/2011)

sanction. The warning may be issued by the state prosecutor for juveniles or by an authorized police officer specializing in juvenile protection (a juvenile officer), after obtaining a prior approval of the state prosecutor.

The Montenegrin rules on the correctional/educational orders are the same as the rules provided in Serbian legislation but the conditions are somewhat different. Namely, in Montenegro, the correctional/educational order may be imposed for the commission of criminal offenses which are punishable by a fine or imprisonment of up to 10 years; in Serbia, it may be imposed for criminal offences punishable by a term of up to 5 years' imprisonment. There are also additional requirements: a) the existence of evidence giving rise to a reasonable suspicion that the juvenile has committed the criminal offense, and b) the juvenile has given his/her consent, upon obtaining approval from the legal guardian. In Montenegro, the types of educational orders are: settlement with an injured party, regular school attendance and going to work; taking part in the activities of humanitarian organizations, community work, sports activities; paying a sum of money for a humanitarian organization, fund or public institution; attending professional training courses and preparation or preparation for exams; refraining from visiting certain place or contacting particular people; being subjected to questioning and drug/alcohol-addiction treatment. Correctional orders may be imposed only by the state prosecutor; in Serbian law, they may be imposed only by a judge for juvenile offenders.

Criminal sanction for juveniles include: educational/correctional measures, security measures and (exceptionally) juvenile imprisonment. The correctional measures include: 1) precautions and guidance, 2) increased supervision by a legal guardian, and 3) institutional measures. The Montenegrin measure of increased supervision by a legal guardian corresponds to the measure of increased supervision by parents, adoptive parents or guardians as envisaged in Serbian legislation. The only difference occurs in institutional arrangements; the Montenegrin legislation prescribes the following institutional measures: referral to an educational institution of a non-institutional type where a person can stay until he/she reaches the age of 23; referral an institution where a minor shall stay for at least 6 months but not longer than 3 years (until he/she reaches the age of 23); and referral to a specialized facility where a juvenile can stay for a maximum of 3 years and under certain conditions until they reach the age of 21 or 23. The provisions on judicial reprimand (admonition) are the same as those envisaged in Serbian legislation. When it comes to specific obligations, it is worth noting that Serbian legislation does not recognize a special obligation to pay a sum of money for a humanitarian organization, fund or public institution, nor a special obligation to refrain from visiting certain places or contacting particular people. The provisions on juvenile imprisonment generally coincide with the provisions of Serbian laws but there is a slight difference; namely, in Montenegrin legislation, the sentence of juvenile imprisonment may be imposed for the offenses which are punishable by a term of 10 years' imprisonment; in Serbian law, juvenile imprisonment may be imposed for offences punishable by a term of over 20 years imprisonment, or for concurrent criminal offences punishable by a term of over 10 years' imprisonment.

IN LIEU OF CONCLUSION

Juvenile delinquency is a complex criminal justice and criminological phenomenon, which embodies the interaction of numerous exogenous and endogenous factors. Thus, it is essential to identify the causes of delinquent behaviour, to provide an adequate social response to juvenile delinquency/crime and to create conditions for re-socialization of juvenile delinquents. In that context, juvenile criminal sanctions are not primarily aimed at punishing the juvenile offender but rather at ensuring relevant protection, supervision and assistance in terms of the offender's upbringing, general education and vocational training, promoting the development of the offender's personality, enhancing the personal responsibility (etc.) for the purpose of rehabilitation and resocialization.

The states created after the dissolution of the former SFR Yugoslavia have developed similar systems of criminal sanction for juvenile offenders. The similarities in their systems of criminal sanctions are certainly a result of the common European-continental legal tradition that all these systems are based on, as well as a result of similar problems they have been facing in the field of combating juvenile delinquency. It all points to the need for joint action in this field.

The problem of juvenile delinquency and crime calls for a multidisciplinary approach, which should include an active involvement of experts from different scientific and professional fields: legal professionals, the judiciary, psychologists, pedagogues, sociologists, etc. An adequate response to juvenile delinquency may be provided only by joint effort and expertise of professionals of different specialties. The suppression of juvenile delinquency is much more than just a criminal policy issue. The way we address the problem of juvenile delinquency and treat juvenile offenders will largely determine the future of our state and the society as whole.

Acknowledgements: This paper is part of an unpublished Master thesis "*Criminal Sanctions for Juvenile Offenders*", defended at the Faculty of Law, University of Niš, on 28th September 2015.

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Legislation

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KRIVIČNE SANKCIJE ZA MALOLETNE DELINKVENTE U PRAVNIM SISTEMIMA DRŽAVA BIVŠE SFRJ

U radu autor najpre maloletničku delinkvenciju analizira kao društveno negativan fenomen. Maloletnička delinkvencija je sagledana u svom totalitetu, sa formalnopravnog (užeg) i sociološkog (šireg) stanovišta, kroz različita određenja pojma maloletničke delinkvencije. Predmet rada je i uporednopravna analiza sistema krivičnih sankcija koje se mogu izreći maloletnim učiniocima krivičnih dela u pravnim sistemima država nastalih raspadom bivše SFRJ (izuzev Republike Srbije). Osnovni cilj rada je da se još jednom ukaže na činjenicu da se sve države bivše SFRJ suočavaju sa sličnim problemima u borbi protiv maloletničke delinkvencije, što je svakako vidljivo i u sistemu krivičnih sankcija. Sličan sistem krivičnih sankcija je svakako posledica i zajedničke pravne tradicije koju dele navedene države.

Ključne reči: maloletnička delinkvencija, krivične sankcije, republike bivša SFR Jugoslavija

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